

City of Keene
New Hampshire

HISTORIC DISTRICT COMMISSION
MEETING MINUTES

Wednesday, March 16, 2022

4:30 PM

**Council Chambers,
City Hall**

Members Present:

Andrew Weglinski, Chair
Russ Fleming, Vice Chair
Councilor Catherine Workman
Hope Benik
Sophia Cunha-Vasconcelos

Staff Present:

Mari Brunner, Senior Planner
John Rogers, Interim Community
Development Director
Thomas Mullins, City Attorney

Members Not Present:

Hans Porschitz
David Bergeron, Alternate
Peter Poanessa, Alternate
Sam Temple

1) Call to Order and Roll Call

Mr. Fleming called the meeting to order at 4:32pm. Chair Weglinski arrived at 4:32pm. Roll call was taken.

2) Minutes – February 16, 2022

Chair Weglinski made a motion to approve the minutes of February 16, 2022 as presented. Councilor Workman seconded the motion, which passed unanimously.

3) Continued Public Hearing:

Chair Weglinski announced the continued public hearing for COA-2022-01 – 35-43 & 45-47 Main St – T-Mobile Telecommunications Installation. He stated applicant T-Mobile Northeast LLC, on behalf of owner Mitchell H. Greenwald Revocable Trust, proposes to install a telecommunications facility on the roof of the existing building at 45-47 Main St (TMP# 575-025-000-000-000) and a generator on the property located at 35-43 Main St (TMP# 575-026-000-000-000). Both properties are ranked as Primary Resources and are located in the Downtown Core District.

Chair Weglinski invited the applicant forward for an update.

Amy White, on behalf of T-Mobile Northeast, stated they are proposing to install a telecommunications facility on the rooftop of 45-47 Main Street. Antennas will be located on the rooftop of that property and supported by ground equipment located in the basement of 35-43 Main Street, and the site will be supported by a proposed generator on the exterior of the building at 35-43 Main Street. She went on to state that the facility consists of two enclosures on the rooftop, each of which houses antennas and remote radio heads (RRHs) connected by fiber cabling that will be run in a coaxed chase across the roof and down the building, then into the basement where the equipment is being stored. Ms. White stated the enclosures measure 8ft x 9ft 8 inches and are set back 16ft from the roof, and a total of 10ft above the roof. She reminded the commission that at the last hearing they talked about the color of the enclosures and had initially presented black, based on what has been acceptable in other municipalities. The commission sought photo simulations in alternative colors, in particular a greyish/blue and a brick color without the pattern, as well as additional views further south on Main Street. Ms. White referred to four additional sets of photo simulations in their packet, the first being the original black enclosures with two additional views further down on Main Street. She pointed out that the enclosures are not visible from the rotary, which is why there are no photo simulations for that location. She went on to state option B is the brick colored enclosure and option C shows the greyish colored enclosure. They also provided an additional view where the front enclosure matches the tan brick and the rear enclosure matches the traditional brick color.

There were no questions from the board or the public and no additional staff comments.

Chair Weglinski closed the public hearing and began HDC deliberations. He thanked the applicant for providing options and for going above and beyond.

Ms. Benik stated her preference would be option B, the brick colored paint, stating it appears more seamless than the other options and blends in with the other buildings.

Mr. Fleming agreed, noting that the brick color goes with the overall brick coloring that Main Street has.

Chair Weglinski stated he could go with either black or the brick color, but does not prefer the greyish color.

Councilor Workman stated she would go with option B as well.

Ms. Cunha-Vasconcelos stated she initially leaned towards the greyish color but feels okay about the brick color as well.

Mr. Fleming made a motion to approve COA-2022-02 for the installation of a telecommunications facility and generator on the properties located at 35-43 and 45-47 Main Street as presented on the plan set identified as "Site Number: 4KN0339A, Site Name: 55 Main

St. Keene RT” prepared by AEG Advanced Engineering Group, P.C. on September 7, 2021 and last revised on November 17, 2021, with the condition that the color selection match that of option B, a brick tone without brick seams.

Chair Weglinski seconded the motion, which passed unanimously.

4) Discussion about the Role of the HDC with New Construction in the Downtown Historic District

Chair Weglinski stated this was added to the agenda due to challenges with previous items which revealed the need to understand what role the HDC is playing moving forward, and what safe measures are in place for new construction in their Historic District.

Ms. Brunner stated under the old regulations the HDC reviewed all new construction within the downtown Historic District before a building permit could be issued. She explained that starting around 2012, within a short period of time a number of large new construction projects happened within the Historic District. Examples include the Food Co-op, MoCo Arts, the Washington Park Apartments and the Keene Public Library connector. Around that same time staff received a lot of feedback from the HDC that the process of reviewing new construction needed to be improved, noting that the standards/process was too subjective. There were instances where the HDC was not happy with results but felt like they didn’t have anything specific in their regulations to back them up. Ms. Brunner went on to explain that there were previously 5 standards for new construction relating to materials, placement, massing and scale of the building. In addition, after the HDC reviews a project within the Downtown Historic District it still has to go to the Planning Board for site plan review; however, the Planning Board did not have the ability to review architecture and visual appearance if the project had to go to the HDC. This caused the Planning Board some frustration, especially when it came to the large aforementioned projects which are prominent buildings in the downtown.

Ms. Brunner went on to state that when staff were gearing up to work on the Land Development Code (LDC) project, they researched form-based codes as an alternative to conventional zoning regulation in the downtown. She explained that a form-based code is a way of regulating land development to achieve a specific built form and foster predictable results. It does so by using physical form as the organizing principal rather than the separation of uses. In other words, it is less focused on uses and very focused on the built form.

Ms. Brunner stated the goal of the LDC project was to update the City’s zoning and permitting processes to create a more efficient experience for everyone, while still maintaining thoughtful regulations that would work to achieve the community’s goals. At the March 20, 2019 HDC meeting, staff presented a first draft of the HDC regulations for the LDC project, which was the first time staff brought up the idea of exempting new construction from the HDC’s review. Ms. Brunner stated the proposal was received favorably and noted that it was an almost completely different board than today.

Ms. Brunner went on to state that there were two reasons behind their recommendations. One being that form-based codes in the downtown regulate the built form of new construction, including placement on the lots. For example, build to lines, build to zones and build to percentage, and height regulations, as well as a category called “building activation” which looks at the maximum blank wall area, maximum building entry spacing, minimum ground floor transparency, etc. Ms. Brunner stated staff felt that with the form-based codes going into place that they duplicated, and were a bit more specific, than what the HDC had before in their standards for new construction. In other words, 3 of the 5 previous standards were essentially replaced by the form-based code. She mentioned that there were two standards which were not replicated in the form-based codes, including the standard on acceptable materials and the standard that prohibited vinyl siding.

Ms. Brunner stated the second reason behind their recommendations was an effort to improve the process a developer has to go through when building in the downtown. Staff tried to streamline the process and taking the HDC part out of it allowed developers to save a month or more in time and expense. Additionally, this eliminated the potential for conflict between the boards.

Two years later at the March meeting in 2021, staff brought forward the final version of the HDC regulations and a question was raised about the legality of exempting new construction from HDC review. Ms. Brunner stated staff brought back a revised version at the April 2021 meeting with a memo that summarized the City Attorney’s opinion about the HDC’s authority to exempt new construction. At the same time, an idea was brought up with regards to the removal of the HDC’s role with new construction for issuing certificates of appropriateness, which is under the HDC’s process. It was suggested that they ask the Planning Board to build in a process where, during site plan review for a major project within the Downtown Historic District, the project would get referred to the HDC for input prior to the Planning Board making a decision.

Ms. Brunner stated at the August 2021 Planning Board meeting the City of Keene Community Development Department proposed to amend the Keene Planning Board regulations related to the review of major site plans. The amendment was to require that any major site plan application for new buildings, or additions to buildings, which are younger than 50 years old and are located in the Downtown Historic District, be reviewed and commented on by the HDC prior to the Planning Board closing the public hearing on the application. She went on to state that the Planning Board opted not to adopt that change to their regulations.

Ms. Brunner recapped that at the last HDC meeting they had an application for demolition of a contributing resource in the Historic District, making it the first time they are going to be able to test the form based-codes in the downtown. She noted that the LDC is fairly new and went into effect in September, and there hasn’t been an opportunity to test the codes yet. She added that the City Attorney is present for any questions.

Chair Weglinski stated the history from his perspective was that standards for new construction were vague and very subjective and the commission found themselves taking on the role of designer. He explained that when they received applications they had to pick apart the design and were constantly in that situation because they lacked solid standards. He noted that at the same time the City had been in the process of getting the new form-based code in and towards the end of that long and delayed process the commission sort of felt pressure for the form-based code needing to be done. In turn they felt sort of pushed into voting to approve, with the caveat that they thought they would still have that Planning Board option. When they realized there was no welcome involvement from the Planning Board is when things started to feel wrong, and that's what has led them to the current discussion. He went on to state that a concern with some of the HDC members and some of the community is that they have a special Historic District area, yet they have some data collected code determining what is appropriate for their personal, loved fabric of their downtown. Chair Weglinski stated he sees both sides of the issue and recognizes that it's challenging to come through the HDC and experience delayed development, noting there's a lot more to the issue than just one right answer.

John Rogers, acting Community Development Director, stated as part of the LDC the City did hire outside consultants that came into Keene and worked on the ground to understand the built environment and the value of the downtown area, and that's how they developed the form-based code. They did this in consultation with staff and a steering committee.

Mr. Fleming asked if the form-based approach was deemed to eliminate the need for the HDC. Mr. Rogers answered that it was not the intent of the form-based code to not have the HDC involved, because they still are.

Mr. Fleming referenced the presentation at their last meeting on HDC rules and responsibilities and noted the slide on HDC purposes. He stated the first item read "preserving districts which reflect cultural, social, economic, political, community and architectural history." He stated if there's no role for the HDC in deciding on new construction in the Historic District, how can they possibly live up to the aforementioned responsibility?

Ms. Brunner stated when they considered the possibility of asking the HDC to exempt new construction from their review, they mentioned that to the consultants who then carefully reviewed HDC regulations and purposely tried to make sure that what they were proposing in the form-based code would be consistent. She added that they never contemplated getting rid of the HDC and mentioned that HDC strengths have historically been with reviewing existing resources in the Historic District. Ms. Brunner added that the only board with the authority to deny demolition of a building within the Historic District is the HDC, so they have that in their power in terms of preserving the historic character of downtown.

Chair Weglinski stated City Council has the right to dissolve the HDC at any time but if that happens they would lose the Historic District. He added that one of their standards talks about affecting the fabric of the historical area, not necessarily building specific, but how one

renovation, building or repair impacts the whole district and surrounding neighborhoods. He stated that is the most powerful part of their standards and he feels it's being ignored by the form-based code that gives them no authority to review new construction.

Mr. Fleming asked how the Planning Board is selected and if they have to have interest in preserving the Historic District as a criteria. Ms. Brunner stated there are 9 members including the Mayor, a City Council member, and staff person, and the other 6 members are nominated by the Mayor and appointed by City Council, the only requirement being that they must be Keene residents. She went on to state that, for the HDC, there's a section in the ordinance on membership that talks about who should be a part of the HDC. She stated it notes that one member should be a City Council member, one member should be a member of the Heritage Commission, and one member may be a member of the Planning Board. It also encourages a property owner and business owner within the Historic District, and members with background in architecture or construction and an interest in historic preservation.

Mr. Fleming stated he heard the form-based rules don't say you can't use vinyl siding so technically, unless the Planning Board is against vinyl siding, someone could build a vinyl sided building within the Historic District. Ms. Brunner stated she will need to double check but she believes that's true.

Mr. Fleming stated he feels they should approach the planning board and voice that there should be some input from the HDC for new construction in the Historic District. He went on to state that he felt they compromised very well and understood that the extra hearings and approvals were time consuming for the developers. They gave up their right to hear and approve but asked for some official recognition and input into the process, which was denied. He added that the project before them last month was a clear example of the bind they are in. He questioned why they should give demolition permission at all knowing they will have to turn their back to the property and new construction in the Historic District.

Chair Weglinski asked if this was something that needs to go to City Council instead of the Planning Board. Ms. Brunner stated the Planning Board has authority over their own regulations so they could ask them to include that step in the site plan review process; however, the HDC has authority over their own regulations so they could choose to amend their regulations to remove that exemption for new construction. She pointed out that the process to do so is now different and explained that the LDC put everything into City code so it's a two-step process. You first hold a public hearing and amend the regulations and then it will also have to go to City Council for a vote. She stated they haven't had a chance to test the form-based codes downtown yet so City Council may want to see how the codes play out before making a major amendment to them. Ms. Brunner stated they could ask the Planning Board again and added that it sounds like their main objection was they felt like it was adding an extra step to the process that wasn't necessary.

Councilor Workman stated, if those are their only two options, it sounds like the easiest path would be to have another conversation with the Planning Board and see if maybe having a concrete example like the Cobblestone project could change their opinion, and then go from there if that doesn't work.

Mr. Fleming stated he thinks someone from the HDC should be representing if they go to the Planning Board, not staff. He wondered if the Planning Board standards could be tweaked a little to reflect concerns, like the vinyl siding. He highlighted that they will be having a project coming through to test out the form-based code.

Chair Weglinski stated he is hearing they aren't necessarily looking to have power to approve a building but want to be heard and have input that gets brought up and mentioned so that the people who are approving are able to hear from the HDC.

Mr. Fleming asked if there was a representative from the Planning Board on the HDC. Short discussion revealed there is not a member from the Planning Board. Ms. Brunner reported that the language states there "may" be a member from the Planning Board and it notes that there should be a member from the Heritage Commission. Mr. Fleming added that they will likely learn a lot from going through the Cobblestone project but the downside is that it may work fine because of the owner; however, the next time around could be different.

Mr. Fleming asked if they can instruct HDC staff to notify them when any new construction has been submitted in the Historic District. Ms. Brunner stated when an application for a building permit for new construction within the Historic District is submitted, they could probably ask for that to be referred to the HDC, which is how it was before. However, site plan review sometimes happens and the process concludes before a permit is even submitted, so their input would come after the Planning Board has already reviewed the application.

Mr. Rogers stated the timing might not work because building permit applications go out to a third party. He explained that a lot of larger projects that are over a certain square footage, or very complex projects, will go to a third party plan reviewer who will review the application and make sure it meets codes. That means by the time an application gets to the Planning Board there's potential for a very quick turnaround for the building permit process. Ms. Brunner stated the Planning Board has an architectural and visual appearance standard so with new construction they would require building elevations. She stated members of the HDC could monitor Planning Board agendas and view application materials online; however, as far as referring site plans to the HDC, that wouldn't be appropriate unless it was built into the Planning Board's regulation. Chair Weglinski noted that any members from the HDC could see the items posted online and show up to the public hearing if need be. Ms. Brunner agreed.

Ms. Cunha-Vasconcelos stated she is brand new to all of this but is hearing that when the HDC did have authority to review new construction there was not a good standard and it became a taste-based situation. She also heard that part of what was happening with the Planning Board

was to create a more concrete set of parameters with the form-based codes, and it was done through the Planning Board as a way to streamline the process for developers. In summary, she is hearing that the intent was to put more rigor around the process and put some definition around what forms they wanted downtown. She stated it's not necessarily going through the HDC, but it sounds like the intent of maintaining that aesthetic was intended to be captured in the codes. She concluded by posing the question that if there was something that was supposed to get done, and it is getting done, does it matter how it's getting done? Or whether it's going through the HDC or the Planning Board if it's being achieved, and perhaps more efficiently?

Chair Weglinski stated, if he remembers correctly, the historical portion of the form-based code is minimal.

Ms. Brunner reviewed the HDC's old standards for new construction. She explained that there were five and the first one said that "new buildings or construction shall be cited so the existing pattern of the historic streetscape, setbacks, spacing, lot coverage, scale, massing, height and orientation in which they are located is not disrupted." She noted that everything in that standard is regulated through form-based codes and is much more objective now. She reiterated that the professional consultants created the codes by going into downtown and taking very specific measurements and designed the boundaries of sub districts within the downtown. They also identified within the sub districts what the predominant built form was, or that they wanted to see. Standards were then designed to promote that.

Ms. Brunner stated the second standard said "the shape, scale and fenestration of the new buildings or structures shall respect the established historic architectural character of the surrounding area." She noted that the building activation standards in the form-based codes cover that point. She explained that the building activation standards require a maximum space between entries, maximum amount of blank wall space, minimum amount of transparency on floors, etc.

Ms. Brunner went on to state that the third standard said "new buildings or structures shall take into account the historic relationship of existing buildings and site features on the site." She stated they felt the form-based code standards addressed that by saying you have to locate your building to match the existing historic built pattern of the surrounding area.

Ms. Brunner stated standards number 4 and 5 are where the form-based code may not cover. Standard 4 said "exterior cladding shall be of materials that are common in the district. Acceptable materials include brick, stone, terracotta, wood and metal. Wood shingles, wooden clapboards, concrete clapboards, and brick are also acceptable types of siding." Standard number 5 said "materials commonly referred to as vinyl siding are inappropriate contemporary materials and are therefore prohibited for use on new construction in the historic district." She stated that those last two standards relate to the materials that are used to construct the building, which would be reviewed by the Planning Board under the new regulations. She noted that the Planning

Board standards are more focused on aggressive colors and don't have as much of a focus on materials.

Chair Weglinski stated the 3rd standard is tough with form-based because it is also somewhat subjective. He stated it's difficult to know what fits the surrounding neighborhood/fabric and they are relying on the applicant's architect to propose and present, and that too is subjective to the Planning Board, which would be subjective to the HDC as well.

Ms. Brunner stated she interpreted that standard to mean that what you're constructing has to match the built form of what's already there.

Chair Weglinski stated he doesn't think anyone is opposed to new and modern and also not opposed to more traditional, and so the challenge is to figure out how they get heard by the Planning Board. He reviewed their options of amending standards and getting approval from City Council, presenting concerns to the Planning Board, or reviewing Planning Board packets once they become available to the public and showing up to the meetings if they have an issue. Ms. Brunner stated they could also ask the Planning Board to amend their regulations to include standards around materials, if that's an issue the HDC is really concerned about.

Mr. Fleming asked for clarification on the form based codes and "aggressive colors." Ms. Brunner stated the form based codes are in zoning and that's something staff reviews. If something doesn't meet the zoning it goes to the Zoning Board of Adjustment for a variance, and it can be a big burden for the applicant to prove that they meet the threshold for getting a variance. She went on to state that the Planning Board's review is more subjective and that's why the review for architecture and visual appearance is with the Planning Board and not with staff.

Chair Weglinski asked for input on what they want to do as next steps. Mr. Fleming expressed that it feels as if the HDC is not needed at all because they are turning everything over to the Planning Board. He added the downside would be that Keene would lose its Historic District if the HDC no longer existed.

Ms. Brunner stated that within the HDC they have two levels of projects, one is major, which are the larger projects that always go to the HDC for review. The other is minor, which are smaller projects like replacing windows and entryways. She added that they get way more minor than major projects. Ms. Brunner explained that the cumulative impact of those projects is big because staff can enforce HDC standards, which results in a lot of projects that have preserved historic character. She also reminded them of their power to deny applications to demolish buildings when they are considered contributing or primary buildings.

Chair Weglinski stated if the Cobblestone building wasn't a safety issue they likely would have turned the request to demolish down. He also brought up that there are other items that the HDC is going to be undertaking in the near future.

Ms. Brunner gave a quick overview of upcoming projects and started off by stating that there was a lot of background information in the old HDC regulations, which was not included in the LDC because they were hearing from developers that it was confusing. As a result, they took all the background information and guidelines out of the LDC to make it clearer and easier. Their intent was always to create a companion document that includes education and background on the HDC and guidelines, which is a project that has been on the back burner. She stated that is something that the commission could work on. Additionally, another project is an annual mailing to all of the property owners within the Historic District to let them know they are in it and give them the opportunity to ask questions. She stated this would also help with compliance for instances when people need to get permission from the HDC. Also, because new construction is exempted, they'd want to send out a notice annually to any new buildings that will be coming under their purview. Ms. Brunner went on to state that another project is doing an inventory for the properties that are in the extension to the Historic District downtown overlay, which was extended in 2011 and inventory has not yet been completed.

Ms. Cunha-Vasconcelos stated she doesn't see that many opportunities for new construction in the Historic District and she always thought of new construction as a small portion of what the board does. She stated there still seems to be a lot that can be done without new construction. There was short discussion on options for new construction and how it comes in waves.

Mr. Fleming asked if someone submits a site plan application, is it a public document right away? Ms. Brunner stated yes. He stated if they pay attention to the Planning Board's website and see when their site plan applications come in, they could then bring it to the attention of the HDC themselves. Ms. Brunner deferred to the City Attorney for this.

Thomas Mullins, City Attorney stated that there will be a site plan application for the Cobblestone building and individuals from the HDC have the right to go to that hearing and express a position as to what that site should look like. At that point there is a provision in the statute that allows for joint meetings before the two boards, each board has the authority to agree to that or not. He stated his concern with having a board go to a site plan meeting to have this discussion could potentially trigger a meeting of the HDC that wasn't properly noticed, and that could be a problem. Additionally, at the moment the HDC doesn't have any jurisdiction over new construction, so that raises the question of if they would actually be there as a board if they showed up. He suggested, at a minimum, that one or more members of the board go to the site plan review hearing and at least see what happens. He commented that members of the Planning Board are all residents of the City of Keene and have an interest in what the City of Keene looks like, and are not shy in terms of looking at how buildings are constructed. He suggested that it's important to allow the LDC to work at least once and see how it plays out. If the HDC then still feels strongly that it doesn't trust what's happening and wants to move the initiative forward, he suggested they do so and decide if they want to amend regulations and put it in front of City Council. He suggested they follow those two steps first, attend the site plan review meeting and see what the results are, and then if they still feel strongly that they won't protect the Historic

District character they could move forward with amending regulations. There was clarification that Mr. Mullins meant for them to go to the site plan hearing, not the site visit.

Mr. Fleming stated those suggestions sound reasonable. There was general agreement amongst the commission.

- 5) **Staff Updates**
- 6) **New Business**
- 7) **Upcoming Dates of Interest**

Chair Weglinski stated the next meeting is April 20th at 4:30 PM. The next site visit will be before the meeting and will be confirmed by staff the week prior.

- 8) **Adjournment**

Chair Weglinski adjourned the meeting at 5:54 PM.

Respectfully submitted by,
Nicole Cullinane, Minute Taker

Reviewed and edited by,
Mari Brunner, Senior Planner