CITY OF KEENE, NH
Joint Committee of the Planning Board & Planning, Licenses & Development Committee

Monday, January 11, 2021
6:30 pm

The agenda & supporting materials are available at: ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee

Join by Computer / Smart Device:
• Go to www.zoom.us/join
• Enter Meeting ID: 893 8296 4232

Join by Telephone:
• Call (888) 475-4499 (toll free)
• Enter Meeting ID: 893 8296 4232

Technical Issues:
• For issues with access during the meeting call: (603) 209-4697
Meeting Agenda

• Statement of Authority to Hold Remote Meeting – Chair Bosley

• Call to Order

• Roll Call

• Minutes of December 14, 2020

• Continued Public Workshop for Ordinances O-2020-10 & O-2020-11

• Next Meeting – Tuesday, January 19, 2021 at 6:30 pm
Authority to Hold Remote Meeting

In Emergency Order #12, issued by the Governor of the State of NH pursuant to Executive Order #2020-04, certain provisions of RSA 91-A regulating the operation of public body meetings have been waived during the declared COVID-19 State of Emergency. Specifically:

• The requirement that a quorum of a public body be physically present except in an emergency requiring immediate action under RSA 91-A:2, III(b);

• The requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the location specified in the meeting notice as the location of the meeting under RSA 91-A:2, III(c).

• Provided that the public body must:
  • Provide access to the meeting by telephone, with additional access possibilities by video or other electronic means;
  • Provide public notice of the necessary information for accessing the meeting;
  • Provide a mechanism for the public to alert the public body during the meeting if there are problems with access; and
  • Adjourn the meeting if the public is unable to access the meeting.

• All votes are to be taken by roll call.

• All Committee participants shall identify the location from where they are participating and who is present in the room with them.
Meeting Agenda

• Statement of Authority to Hold Remote Meeting – Chair Bosley
• Call to Order
• Roll Call
• Minutes of December 14, 2020
• Continued Public Workshop for Ordinances O-2020-10 & O-2020-11
• Next Meeting – Tuesday, January 19, 2021 at 6:30 pm
Call to Order

• The public may access the meeting by any of the following options:
  
  • Go to [www.zoom.us/join](http://www.zoom.us/join) & enter Meeting ID: **893 8296 4232**
  
  • Call **(888) 475-4499** and enter Meeting ID: **893 8296 4232**
  
  • View live on Cheshire TV **Channel 1302**

• If you encounter any issue with accessing the meeting, call **(603) 209-4697**

• Anyone wishing to view a copy of the agenda and supporting materials may find it on the City’s Joint Committee webpage at: [ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee](http://ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee)

• Members of the public shall not be permitted to speak nor shall comments be taken **until** the Chair asks for public comment.
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• Roll Call
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Roll Call

Planning Board:
- Mayor George Hansel
- Councilor Michael Remy
- Emily Lavigne-Bernier
- Roberta Mastrogiovanni
- David Orgaz
- Gail Somers
- Pamela Russell-Slack
- Andrew Weglinski
- Tammy Adams, Alternate

Planning, Licenses & Development Committee:
- Councilor Kate Bosley
- Councilor Mitch Greenwald
- Councilor Phil Jones
- Councilor Gladys Johnsen
- Councilor Catherine Workman
Meeting Agenda

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• Call to Order
• Roll Call
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Recommended Motion: To approve the minutes of the December 14, 2020 meetings

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- Mayor George Hansel
- Councilor Michael Remy
- Emily Lavigne-Bernier
- Roberta Mastrogiavanni
- David Orgaz
- Gail Somers
- Pamela Russell-Slack
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- Councilor Kate Bosley
- Councilor Mitch Greenwald
- Councilor Phil Jones
- Councilor Gladys Johnsen
- Councilor Catherine Workman
Relating to the establishment of the City of Keene Land Development Code & changes to the City's downtown zoning districts.

Petitioner, City of Keene Community Development Department, proposes to update and unite the City of Keene’s regulations related to land use and development, including the Zoning Regulations, into the City of Keene Land Development Code; to establish 6 new zoning districts in Keene’s downtown area (Downtown Core, Downtown Growth, Downtown Limited, Downtown Edge, Downtown Transition, Downtown Institutional Campus); to remove the Gilbo Avenue Design Overlay District and the Downtown Railroad Property Redevelopment Overlay District; and, to modify the SEED Overlay District.
Ordinance Application is submitted to City Council. City Council refers it to the Joint Committee for a Public Workshop. The Public Workshop phase is for the Joint Committee to:

- Review proposal
- Collect public input
- Propose changes

Planning Board & Historic District Commission hold public hearings to review & vote on proposed changes to specific regulations. City Council holds a public hearing to hear public comments on the Ordinance. City Council votes on Ordinance following PLD recommendation.
Public Workshop Schedule*

**NOVEMBER 9, 2020**
6:30 pm (remote meeting)
- Ordinance Overview
- Review of Articles 1 – 9 of proposed Land Dev. Code

**NOVEMBER 16, 2020**
6:30 pm (remote meeting)
- Review of Articles 10-18 of proposed Land Dev. Code
- Address comments/questions from previous meeting

**DECEMBER 14, 2020**
6:30 pm (remote meeting)
- Review of Articles 19 – 22 of proposed Code
- Address comments/questions from previous meeting

**JANUARY 11, 2021**
6:30 pm (remote meeting)
- Review of Articles 23, 24, 26,27 of proposed Land Dev. Code
- Continued Discussion on Congregate Living / Social Service Uses and License

**JANUARY 19, 2021 (Tuesday)**
6:30 pm (remote meeting)
- Review Articles 25 & 28 of proposed Land Dev. Code
- Address comments/questions from previous meeting and/or proposed edits

**FEBRUARY 8, 2021**
6:30 pm Tentative In-person opportunity to provide comments/questions on proposed Ordinances.

**MARCH 8, 2021**
6:30 pm (remote meeting)
- Committee votes on consistency with Master Plan & for Mayor to set a Public Hearing Date

*Schedule may change.*
How may the public follow along/provide input?

• **ATTEND MEETINGS** *(Online/Telephone/In-person sessions on Dec. 14 & Feb. 8)*

• **VIEW RECORDED MEETINGS & MEETING MATERIALS** *(City website, City Hall)*

• **SUBMIT WRITTEN COMMENTS** *(via email, mail, or drop off at City Hall)*

• **MEET WITH STAFF / CITY OFFICIALS**

• **VIEW WEBSITE FOR MORE INFO** *(www.keenebuildingbetter.com)*

*ci.keene.nh.us* *www.keenebuildingbetter.com* *communitydevelopment@ci.keene.nh.us* *603-352-5440*

3 Washington St, 4th Floor, Keene, NH 03431
TONIGHT’S MEETING
Proposed Land Development Code Sections to be reviewed tonight:

- **Article 23** – Floodplain Regulations
- **Article 24** – Earth Excavation Regulations
- **Article 26** – Appeals
- **Article 27** – Enforcement
- **Continued Discussion on Congregate Living and Social Service Uses and License**
Article 23 – Floodplain Regulations

• Currently Chapter 54 in City Code of Ordinances

• Addresses regulations for buildings/structures located in the Floodplain / Floodway
  • Required for participation in the National Flood Insurance Program
Article 23 – Floodplain Regulations

- Propose to remove the three foot lower elevation limitation on compensatory storage which will allow for more location options for developer to create the required storage while still maintain that it is within the same hydraulic reach.
Propose to remove the exception for minor fill projects. *(Sec 54-62 of City Code)*

Propose to remove the exception for minor building projects. *(Sec 54-63 of City Code)*

Propose that new construction or substantial improvement of a detached accessory structure of 500 sf or less does not have to meet the elevation or non-residential floodproofing requirements if certain minimum standards are met.

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**Sec. 54-62. - Exception for minor fill projects.**

Under this division, a project which involves less than 500 square feet of fill shall be considered a minor fill project. If a minor fill project can be shown by the applicant to comply in all aspects with the performance standards of this article, the superintendent of code enforcement may issue a building permit without requiring the detailed submittal and review requirements specified in this division. However, it is the intent of this section to prevent attempts to avoid full flood hazard review by submitting a project in increments of less than 500 square feet. For this reason, the superintendent shall not issue more than one minor fill project permit per site in any 48-month period.

**Sec. 54-63. - Exception for minor building projects.**

Under this division, a project which involves less than 300 square feet of ground floor addition shall be considered a minor building project and shall be exempt from this article. However, it is the intent of this section to prevent attempts to avoid full flood hazard review by submitting a project in increments of less than 300 square feet. For this reason, the superintendent of code enforcement shall not issue a permit for more than one minor building project per site in any 48-month period.

Still need to apply to for floodplain permit, and must provide drawings and plan stamped by engineer.
• Propose to amend the definition of “Substantial Improvement” to include a 5-year time period

**CURRENT DEFINITION**

*Substantial improvement* means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds 50 percent of the assessed value of the structure."

**PROPOSED DEFINITION**

Substantial improvement means any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, *taking place during a 5-year period*, the cumulative cost of which equals or exceeds 50% of the *market value of the building or structure before the improvement or repair is started*. 
Article 23 – Floodplain Regulations

• Propose to incorporate parts of the NH Model Floodplain Ordinance with respect to Floodplain Requirements.

• Propose to remove construction details that are repetitive with the State Building Code and just reference the State Building Code in the regulations.

• Remove the reference to the Ash Swamp Brook flood area, which was removed from the FEMA maps in 2006.
Article 24 – Earth Excavation Regulations

• Currently Overlay Zoning District (adopted in 2008), propose to be standalone regulations

• The proposed Land Development Codes merges the existing Planning Board Earth Excavation Regulations and the Earth Excavation Overlay District Ordinance into one Chapter

• Authority is NH RSA 155-E
Article 26 – Appeals

• Merged existing appeal language into one chapter of the proposed Land Development Code (current language is found in codes, regulations, state statutes, and rules of procedures)

• Established Appeal Process for:
  • Minor Project Review Committee (To Planning Board per NH RSA 674:43(III))
  • Community Development Director Decision (To Planning Board)
Article 27 – Enforcement

• Addresses authority of the Building and Health Official to enforce the proposed Land Development Code, and the authority of the Public Works Director to enforce the provisions of the Code specific to the public right of way
  • Addresses issuance of permits, certificates of occupancy, stop work orders, fines and penalties

• Existing enforcement language lives in Zoning, Chapter 70 and NH state statutes

• Reorganized into one section and updated language for clarity
Summary of Approach

The City's approach essentially segments group homes— as a use— into three tiers. Within the current draft Land Development Code, each of these tiers is permitted within different zoning districts as outlined in Article 8 and may be subject to conditional use permit approval.

The first tier is those group homes with up to four residents. For the purposes of the Land Development Code, this first tier is simply considered a single-family home, as it is accommodated within the City's definition of "family." As such, it is subject to the LDC regulations pertaining to single-family homes and is permitted anywhere a single-family home is permitted.

The second tier is defined within the Land Development Code as "Group Home – Small." This tier accommodates group homes with up to eight residents and is allowed in select districts with the approval of a conditional use permit. These group homes are also subject to a series of use standards addressing number of structures per lot, permitting and licensing requirements, and design considerations. It is our understanding that the City arrived at a threshold of eight residents after significant research into best practices and regulations of peer communities. We typically see thresholds used in other communities ranging from eight to twelve residents; the City's use of eight seems logical and in alignment with common practice.

The third tier of group homes is defined as "Group Home – Large," and includes those facilities providing accommodation to up to 16 residents. Such facilities are allowed in select districts with the approval of a conditional use permit and are— like "Group Home – Small," subject to series of use standards contained within the LDC.

In our estimation, this is a common approach to regulating group homes in accordance with the federal Fair Housing Act. The threshold established at which additional standards or approval processes may be applicable— more than four unrelated residents— is consistent with the definition of "family" contained within the City's Code, which specifies four or fewer unrelated residents. Per a joint statement from the Department of Housing and Urban Development and the Department of Justice released in November 2016:

"A local government may generally restrict the ability of groups of unrelated persons to live together without violating the [Fair Housing] Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed." 1

Congregate Living and Social Service Conditional Use Permit

“Group Home – Large,” and “Group Home – Small,” are allowed in select zoning districts with the approval of conditional use permit as specified in Article 15 of the Land Development Code. The conditional use permit process is designed to provide a mechanism for review of the impacts of uses based upon their size, intensity, or anticipated impacts. As these two uses operate not as single-family homes, but as more intense residential dwelling types, requiring their evaluation in accordance a series of clear review criteria is not, in our view, onerous.

The CUP process outlines a series of eight criteria against which applications will be evaluated and establishes guidelines for the Planning Board should the body decide to exercise its discretion in the creation of conditions related to approval of a CUP. We believe this process provides ample opportunity for the Planning Board to make reasonable accommodations as may be necessary to ensure any person with a disability is afforded equal housing opportunity.

Congregate Living and Social Service License

Both large and small group homes are required to obtain a congregate living and social service license, which must be renewed annually. Application for such license requires applicants to assemble and submit information including – among other items – a description of the size and intensity of the facility, and an operations and management plan outlining security, life safety, and other measures. On its face, this requirement is not onerous, but we believe a few key alterations should be made to ensure that the requirement does not potentially run afoul of Fair Housing regulations.

Unlike the Congregate Living and Social Service Conditional Use Permit process, the licensing process provides no criteria for review of the information requested of applicants, simply specifying that the information “may be used by the licensing authority in evaluation of an application and annual renewal for [a Congregate Living and Social Service] License.” As such, the potential denial of an application, denial of renewal, or revocation of a license is not buttressed by clear language in the regulations, as it is within the CUP process.

Though the licensing process does contain a requirement for the licensing authority to provide written documentation of the specific reasons resulting in a denial, and an appeal process is provided when an application is denied or a license revoked, we believe that including a series of criteria for review of license applications and annual renewals would strengthen the City’s position. These criteria should focus on an evaluation of any violations of conditions issued at approval and/or City ordinances, as the presumption is the license will be renewed so long as the use has operated consistently in the same manner each year.
Congregate Living & Social Service License

- Revisited proposed Congregate Living & Social Service License Language
- Propose standards for uses that require CUP and uses that do not require CUP
- Propose review criteria for licensing authority when evaluating license applications (including renewal applications)
- Propose schedule for when licenses expire and need to be renewed based on uses
- Question remains regarding licensing authority / appeal process
Proposed Congregate Living / Social Service License Application Materials:

a. Description of the property location including street address and tax map parcel number.

b. Description of the client population to be served, including the services provided to the clients/residents of the facility and of any support or personal care services provided on- or off-site.

c. Description of the size and intensity of the facility, including info about: the number of occupants; max beds or persons; hours of operation; size and scale of buildings or structures on the site; size of outdoor areas

d. The average length of stay for residents/occupants of the congregate living facilities

e. Name, phone number, and address of the property owner.

f. Name, phone number, and address of a person acting as the operator, if not the owner, who will serve as a point of 24-hour contact for the public and the City.

g. Evidence that all required licenses, permits or authority to operate have been obtained

h. Operations and Management Plan (which includes a security plan, life safety plan, staff training and procedures plan, health and safety plan, emergency response plan, neighborhood relations plan, building and site maintenance procedures)

i. Homeless Shelters shall provide the additional information:
   - Rules of conduct & registration system for guests
   - Polices and procedures for denying access to the shelter
Standards for Uses that require a Congregate Living & Social Service Use Permit:

Proposed License Application Review Criteria

- The use has maintained compliance with the terms and any conditions of the Congregate Living and Social Service Conditional Use Permit issued by the Planning Board.

- Upon a finding by the Licensing Authority that the use is not in compliance with the terms and any conditions of its respective Congregate Living and Social Service Conditional Use Permit, the application shall be referred to the Community Development Department for further action. The Licensing Authority shall not act on a congregate living and social service license application until the Community Development Department has determined that the application is in compliance with the terms and conditions of the issued Congregate Living and Social Service Conditional Use Permit.
Standards for Uses that do not require a Congregate Living & Social Service Use Permit:

Proposed License Application Review Criteria

• The use is found to be in compliance with the submitted operations and management plan, including but not limited to compliance with all applicable building, fire, and life safety codes.

• The use is of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.

• The use does not produce public safety or health concerns in connection with traffic, pedestrians, public infrastructure, and police or fire department actions.

• The Licensing Authority may require conditions on a license as reasonably necessary to insure compliance with the requirements of this section. Failure of any Licensee to comply with such conditions shall be considered a violation of the license.
Proposed Congregate Living / Social Service License Term & Renewal

Notwithstanding the date of the initial issuance, each congregate living and social services license issued under this Article shall expire in the year subsequent to its issuance date on the date specified in the list below for the category of use specific to the license.

- Drug Treatment Clinic – May 1
- Group Home, Large – May 1
- Group Home, Small – May 1
- Fraternity/Sorority – June 1
- Group Resource Center – June 1
- Homeless Shelter – July 1
- Lodginghouse – July 1
- Residential Care Facility – August 1
- Residential Drug/Alcohol Treatment Facility – August 1
Members of the public wishing to speak may do so now by:

- If using a computer: **Click on the “Raise Hand” icon** on the screen.
- If using a phone: **press *9** on your keypad.

To join the meeting now dial (888) 475-4499, Enter Meeting ID #: 893 8296 4232 and Enter *9

Be prepared to state your name & address. You may have to wait to be recognized.
PUBLIC COMMENT for this meeting is CLOSED

Written comments on info shared at tonight’s meeting may be shared with City Staff via email, mail, dropping off at City Hall
How to Follow Along?

City Website:  
ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee

Project Website:  www.keenebuildingbetter.com/ldc

Email:  communitydevelopment@ci.keene.nh.us

Call:  (603) 352-5440

Mail:  3 Washington St, 4th Floor  
Keene, NH 03431

NEXT  
Public Workshop:  
Jan. 19 (Tues)  
6:30 pm
Motion to continue the public workshop for O-202-10 & O-2020-11 to the January 19, 2021 Joint Committee meeting.

Roll Call Vote

**Planning Board:**
- Mayor George Hansel
- Councilor Michael Remy
- Emily Lavigne-Bernier
- Roberta Mastrogiavanni
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