



## CITY OF GARDINER BOARD OF APPEALS

### REGULAR MONTHLY MEETING MINUTES

March 28, 2006

**Present:** Michael Eldridge, Chairperson Kendall Holmes  
Judith Skehan Andrew MacLean Harlan Brown

**Also present:** David Cichowski, Code Enforcement Officer (CEO)  
Dorothy Morang, Recording Secretary

Scott Ware	Misty Michaud	William Henderson
Stanley Brown	Alice Brown	Rusty Greenleaf
William Perry Jr.	Joyce Perry	Gloria Rogers
Steve Rogers	Patricia Bence	Daniel Bence
James Plourd	Rebecca Whitten	Francona Atwater
Pamela Amrein	Harold Gerard	Lynn Gerard
James I. Cohen	John Goudreau	Bobbi-Jo Burdin
Anne Cough	Ralph Clark	Francis Grey
Larry Veilleux	Lorna Veilleux	Mitchell Rasor, Applicant

- 1.) Chair, Mike Eldridge introduced the Board members to the audience and declared a quorum with five members attending. He called the meeting to order at 6:04 PM, followed by the Pledge of Allegiance.
- 2.) Roll call was taken.
- 3.) Andrew MacLean made a motion to accept the minutes of the December 14, 2006 meeting as presented. Harlan Brown seconded the motion.  
Vote: 5 in favor. 0 opposed. Motion passed.

### NEW BUSINESS

4.) Variance

**Woodlands Assisted Living, Inc., MTC Enterprises, LLC, Applicant requests variances of ten (10) feet two (2) inches from a required thirty (30) foot side yard setback (northern property line), a nine (9) foot variance from a required thirty (30) foot side yard setback (southern property line) and a forty-one point five (41.5) foot variance from a required two hundred (200) foot minimum road frontage. The property, located at 284 Brunswick Avenue, City Tax Map 29 Lot 9 is in the High Density Residential (HDR) Zoning District.**

Chair Eldridge went over the agenda and the purpose of the meeting and explained how the meeting would proceed. He asked the Board members if they were comfortable with proceeding on this application. Judy Skehan recused herself as she is an abutter of the property and has some concerns about the plans.

Chair Eldridge reviewed the application and determined that it was complete and was received in a timely fashion. The other members were ok with the application. Kendall Holmes asked to have the materials sent to him earlier.

Mitchell Rasor, Agent for the Applicant, described the project. The building was the Robinson's Nursing Home. It is in the High Density Residential Zoning District and was a legal non-conforming use. MTC Enterprises, LLC, along with the owner, Woodlands Assisted Living, LLC are proposing to develop the property into market value apartments. They had a meeting on February 6, 2006 with the neighbors to discuss their proposal for the property. He wanted it noted that they are not putting in condominiums as mentioned in Jason Simcock's memo regarding the proposal.

Mitchell reviewed the reasons why the variance is being sought and the Applicant's response to the Justification of Variance and the six conditions (A – F) that must be met before the Board of Appeals can find that a practical difficulty exists. He indicated that the property is a lot of record with an existing building encroaching on setbacks. He said that the proposed use is one of only five uses permitted in this zoning district. He believes that it is a desirable change from the vacant building and is in keeping character of the neighborhood. A market impact study was not done but cleaning up the site and the improvements would not negatively impact the market value. They are attempting to make the property more conforming to the change in use. They can't control the land on either side so there are no feasible alternatives. It isn't feasible to tear down the building. Mitchell said it won't negatively impact the environment, it's already there. It is not in the Shoreland.

Kendall Holmes asked if it met the parking requirements. Mike Eldridge said that the Planning Board would handle that aspect of the project if it came before them. Kendall asked if the proposal was just for the building and original lot because it references another lot. Mitchell said the Variance request is just for this lot.

Andrew MacLean asked when the owner's knew about the setback issues –was it before the purchase? Mitchell said no, it was when they discussed the proposal with the Code Enforcement Officer (CEO). Andrew asked if the owners tried to determine cost estimates for demolition of the building. Mitchell said they looked at a range of options for the use of the property. Through their analysis, this is the most cost effective.

Harlan Brown asked if the Board was only looking at Phase I at this time. Mike said correct. Kendall asked if the Applicant has not submitted a full written proposal, can we do anything.

Erik Stumpf, Attorney, said that the Board can act on the application. They need to consider if the Applicant has met their burden of proof.

Mitchell said that they had initial meetings with the CEO and went over the general concept which triggers Site Plan Review. He provided enough material to discuss that process. Kendall said that he was a little hazy on the basic details.

6:42 PM Open meeting for public comment.

Jim Cohen of Verrill Dana, representing Lynn Gerard, an abutter. He is not speaking for all in the room. He said the Applicant has the burden to prove all six criteria have been met. He believes that there is not a lot of backup information for statements made in Justification of Variance. He references each condition. A.) MTC has not introduced evidence concerning the general condition of the neighborhood. B.) He said that the Applicant will have to go through Site Plan Review and there could be changes. The Board needs to think about some of these things. There is a history to this property on Gary Street. The Planning Board turned down a previous conditional use, the Board of Appeals overturned it and the Superior Court upheld the Planning Board because they determined it would change the character of the neighborhood. To properly develop the lot, they would have to gain access to the back of the lot through Gary Street. C.) Did the Applicant know about the situation? They have not presented any economic information to show economic hardship. If they didn't ask before they bought it, they are responsible for the situation. There is no information about the economic impact. D.) There are feasible alternatives. The building is only a portion of a larger piece of property. They can legally develop residential units on other portions of the property in compliance with the required setbacks. E.) MTC has failed to demonstrate that a variance will not unreasonable adversely affect the natural environment. There are Cat-of-Nine-Tails on the property and given the history of flooding and drainage problems on the property, particularly in the Gary Street area, this is a significant issue. He urged the Board not to accept the Application.

Steve Rogers, an abutter on Gary Street. He understands that the Board needs to stay focused on the Variance request, but you can't look at it without looking at the whole picture. It is Phase II and III that most people are concerned with. Mike Eldridge said that the Boards authority was only in the six criteria.

Andrew MacLean asked if the Site Plan Review could be done before this. Erik Stumpfel said the Planning Board could grant an Approval with conditions of the variance. But probably should come to this Board first.

Misty Michaud, an abutter. She asked if the variance is not granted, could the property be used for office space and use the building as is. Andrew said any other use than a nursing home would require a variance. All new uses must meet the current standards.

Bill Perry, an abutter on Pierce Street. When they discuss that the future plans don't matter, he takes exception to that – it does matter.

William Henderson, an abutter, Apostolic Faith Ministry. Laws change. When the building was built they didn't have a problem with the criteria.

Ralph Clark, an abutter. We're not getting enough information to make a decision. In the first meeting with the neighbors, he asked if they needed a variance and the answer was no. There is no information on the possible access from Gary Street.

James Plourd, an abutter. There are other uses. It was a nursing home. His father owns other nursing homes. They wouldn't have to change if they used it for that.

Mitchell clarified that the Applicant doesn't run nursing homes. It isn't their business.

Eric Jermyn, an abutter. The fact that the Applicant didn't realize the setback issues is not relevant – they didn't do their homework. The Ordinance was created for a reason. A nursing home is quiet at night, an apartment complex would have more traffic and other noise associated with dwelling units.

Jim Cohen, representing Lynn Gerard. There are feasible alternatives, a nursing home and 1 & 2 family uses. We can't ignore the impact of the future uses on the neighborhood. We can't evaluate the conditions if we don't know the future plans. The Board does need to consider it.

7:14 PM meeting closed for public comment.

Chair Eldridge said the Board has three options, to approve, deny or to continue for more information.

Andrew MacLean moved to deny the request. He gave his reasons for his decision.

Andrew said he does not believe that the Applicant has met their burden of persuasion. He feels that the application is totally inadequate. Since he has been on the Board, this has been the first commercial venture that they have looked at. He would have expected the Applicant to put together a better application than was seen here tonight. In contrast, he felt

that Mr. Cohen's memo was very helpful, thorough and persuasive. The most persuading thing to him or the most glaring deficiency in the application is D, no feasible alternative. We haven't seen anything of other options that might have been considered - whether the cost of demolition - altering the bldg. In item A., we all know what that neighborhood is like but there has been no effort to link the proposed project to the nature of the existing residential neighborhood. He said he has more difficulty with B and the discussion about looking to the future and the proposed re-development of the property. He understands it is relative to some of the six points, but he doesn't believe that that discussion is something that should take place before the Board of Appeals. It belongs before the Planning Board. If our Ordinance is unclear about whether the Applicant can go their first, then I would encourage the Applicant to pursue that avenue before coming back to us on the bigger issues of re-development of the property. Andrew said he would be willing to give the Applicant more leeway on C. Practical Difficulty is not the result of action taken by the Petitioner. The building is there. Could they have done the due diligence necessary to determine that there were setback requirements and problems with the property and factored that into their negotiations. Certainly they should have, but that argument by the residents is less persuasive to me than some of the others. Item E., again this is somewhat less persuasive to him because it requires them to think down the road about the total re-development effort, not just this variance request. Item F., there's been no definitive evidence presented, whether it's in the Shoreland area or not. Over all, he believes the application inadequate. He, like probably most in the room, drives by the vacant building almost on a daily basis and would love to see it re-developed. The Applicant needs to go back to the drawing Board. He's not prepared to give them suggestions on what they can do to improve the Application.

Kendall Holmes seconded the motion.

Michael Eldridge said he concurs with Andrew on No other feasible alternative. Perhaps there was not enough criteria justification given by the Applicant. Had they come forward with facts and figures stating this is the existing building. To take it down – to remove those corners – this is what it is going to cost us, would have been more help to him.

Kendall Holmes said that reading through what was proposed, he does not see how this Board really can intelligently approve any of the criteria here, based on the proposal that was put forward. There just isn't enough information. We've not seen a discussion of alternatives. We've not even seen a proposal on paper that gets down to what's the building going to be used for. It almost like we're being asked to give a blank check approval of variances and then they'll fill in the blank about what they'll use the building for and that just seems to fly in the face of the ordinances the way they're written.

Harlan Brown said he doesn't have any comments right now.

Michael Eldridge said he already conveyed his response based on Criteria D that no other feasible alternative was really explored to his satisfaction. Had the Applicant come forward

and said this is what we can do with the building and actually had some facts and figures from a contractor, it would have been much more approachable.

Vote: 4 in favor. 0 opposed. Motion passed.

## **OTHER BUSINESS**

### **5.) Adjourn**

Andrew MacLean moved to adjourn. Michael Eldridge seconded the motion.

Vote: 4 in favor. 0 opposed. Motion passed.

Meeting adjourned at 7:27 PM