

## **SECTION 2      ADMINISTRATION AND ENFORCEMENT**

### **2.1 Code Enforcement Officer**

**2.1.1** Unless otherwise provided in this Ordinance, the Code Enforcement Officer (CEO), as duly appointed by the City Manager and confirmed by the Gardiner City Council, shall administer and enforce this Ordinance. No building permit or certificate of occupancy shall be issued by the Code Enforcement Officer except in compliance with the provisions of this Ordinance. The Code Enforcement Officer shall have the following duties, among others, in enforcing this Ordinance:

**2.1.1.1** Examine preliminary plans.

**2.1.1.2** Act upon all applications and collect any fees due; refer/process all applications as required.

**2.1.1.3** Act upon building, construction and use applications which are under the jurisdiction of the Code Enforcement Officer.

**2.1.1.4** Review site plan review applications, subdivision applications and other applications for completeness of submissions and refer such applications to the Planning Board.

**2.1.1.5** Refer requests for variances and administrative appeals to the Board of Appeals.

**2.1.1.6** Refer applications for certificates of appropriateness to the Historic Preservation Commission.

**2.1.1.7** Inspect sites where building permits have been issued to ensure compliance with all local, state and federal laws, codes and/or ordinances.

**2.1.1.8** Investigate complaints and reported violations.

**2.1.1.9** Keep written inspection reports and thorough records.

**2.1.1.10** Issue violation notices.

**2.1.1.11** Participate in appeals procedures.

**2.1.1.12** Process or act on consent agreements involving violations of this Ordinance and appear in court when necessary.

**2.1.1.13** Prepare agenda for mailing before each meeting of the Planning Board and Board of Appeals, and attend meetings of the Planning Board and Board of Appeals.

**2.1.1.14** Revoke a permit after notice if it was issued in error or if it was based on erroneous information.

### **2.1.2 Administration**

When there is a question concerning the interpretation of this Ordinance, the Code Enforcement Officer may refer the matter to the Board of Appeals for interpretation.

### **2.2 Enforcement**

**2.2.1** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal buildings, or structures, removal of illegal buildings, structures, additions, or work being done, or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

**2.2.2** When any violation of any provision of this Ordinance shall be found to exist, the City Solicitor, as directed by the City Council, is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the City of Gardiner.

**2.2.3** Any person, firm, or corporation including, but not limited to, a landowner, his agent or contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with Title 30-A MRSA Section 4452.

#### **2.2.4 Floodplain Management**

In addition to any other actions, the Code Enforcement Officer, upon determination that a violation of the Flood Plain Management section exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of Flood Insurance. The valid declaration shall consist of; 1) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location; 2) a clear and unequivocal declaration that the property is in violation of a cited state or local law, or ordinance; 3) a statement that the public body making the declaration has authority to do so and a citation to that authority; to 4) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and 5) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

#### **2.2.5 Subdivisions**

**2.2.5.1** No plan of a division of land within the city which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Planning Board in accordance with this Ordinance.

**2.2.5.2** A person shall not convey or offer to convey any land in a subdivision which has not been approved by the Planning Board and recorded in the Registry of Deeds.

**2.2.5.3** A person shall not sell, lease, offer or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.

**2.2.5.4** No public utility, water district, sanitary district, or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Planning Board.

**2.2.5.5** Development of a subdivision without Planning Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land, or lots, or construction of buildings which requires a plan approved as provided in this Ordinance and recorded in the Registry of Deeds.

**2.2.5.6** No lot in a subdivision may be sold, leased or otherwise conveyed before the road upon which the lot fronts is completed up to and including the entire frontage of the lot in accordance with this Ordinance.

#### **2.2.6 Sludge Management**

**2.2.6.1** If the Code Enforcement Officer shall find that any provision of the Sludge Management section is being violated, the Code Enforcement Officer shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. Said violation shall be corrected within 48 hours.

**2.2.6.2** After notification and the 48-hour correction period, any person who continues to violate any provision of this section, shall be considered in violation of this Ordinance. After the second violation of the same provision within one growing season, the permit shall be immediately suspended upon notification from the Code Enforcement Officer.

**2.2.6.3** A copy of the notice of violation shall be sent to the Department of Environmental Protection. The DEP shall also be notified upon the correction or any violation and/or of any fines assessed by the city.

## **2.3 Planning Board**

### **2.3.1 Establishment**

Pursuant to Article VIII, A. of the Maine Constitution and Title 30-A, M.R.S.A. 3001, The City of Gardiner hereby establishes the Gardiner Planning Board.

### **2.3.2 Appointment, Term, Removal, Vacancy**

**2.3.2.1** Appointment to the Board shall be made by the Mayor with the advice and consent of the City Council.

**2.3.2.2** The Board shall consist of 7 members.

**2.3.2.3** The term of each member shall be 3 years, except that initial appointments shall be for one, one, one, two, two, three, and three years respectively, with the terms expiring August 1.

**2.3.2.4** When there is a vacancy, the Mayor with the advice and consent of the City Council shall appoint a person to serve for the unexpired term.

**2.3.2.5** Neither a municipal officer nor his or her spouse may be a member.

**2.3.2.6** All members shall be legal residents of the City of Gardiner through their entire tenure.

**2.3.2.7** A member may be removed by the Mayor with the consent of the City Council for cause upon written charges and after public hearing.

**2.3.2.8** A vacancy shall be created when any of the following occurs:

**2.3.2.8.1** Member moves his or her residence from the City.

**2.3.2.8.2** Member resigns.

**2.3.2.8.3** Member is removed for cause by City Council.

**2.3.2.8.4** Death of member.

### **2.3.3 Organization and Rules**

**2.3.3.1** The Board shall fill such other offices as it may determine. The term of all offices shall be one year with eligibility for re-election.

**2.3.3.2** Unless otherwise provided by law, the Mayor shall designate, with the advice and consent of the City Council, the Planning Board Chairman under Article VI, Section 1 of the City Charter.

**2.3.3.3** The Planning Board shall meet monthly unless there is no business.

**2.3.3.4** No meeting of the Board shall be held without a quorum consisting of at least four members.

**2.3.3.5** A legal vote shall consist of a majority of the members present and voting.

**2.3.3.6** The Board shall adopt rules for the transaction of business, and the recording-clerk, shall keep a record of its resolutions, transactions, correspondence, findings and determinations.

**2.3.3.7** The recording-clerk shall be provided and paid for by the municipality.

**2.3.3.8** Any questions of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

## **2.4 Duties: Powers**

**2.4.1** The Board shall assist in the preparation a comprehensive plan as defined by 30-A M.R.S.A. 4326. A comprehensive plan in its final form shall be submitted to the City Council for adoption.

**2.4.2** The preparation of a comprehensive plan shall encompass every aspect of planning. It shall include the formulation of long-range policy objectives as well as the recommendation of specific ordinances to the City Council in order to accomplish those objectives.

**2.4.3** In the preparation stages of a comprehensive plan in accordance with 30-A M.R.S.A. 4326, a public hearing shall be held. The Board shall publish notice of the hearing not more than ten days or less than seven days in advance in a newspaper of general circulation in the area.

**2.4.4** The Board shall perform such duties and exercise such powers as are provided by the Code of the City of Gardiner and the laws of the State of Maine.

**2.4.5** The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

## **2.5 Board of Appeals**

### **2.5.1 Establishment**

A Board of Appeals is hereby established in accordance with state law and the provisions of this Ordinance.

### **2.5.2 Appointments, Composition and Organization**

**2.5.2.1** Appointments to the Board shall be made by the Mayor with the advice and consent of the City Council.

**2.5.2.2** The Board shall consist of seven 7 primary members and two 2 alternate members. An alternate member would become a voting member when so designated by the Board Chairperson due to the absence of a primary member.

**2.5.2.3** The term of each member shall be 3 years, except that the initial appointments shall be for one, one, one, two, two, three and three years respectively, with the terms expiring August 1.

**2.5.2.4** When there is a vacancy, the Mayor with the advice and consent of the City Council shall appoint a person to serve for the unexpired term.

**2.5.2.5** Neither a municipal officer nor his or her spouse may be a member.

**2.5.2.6** All members shall be legal residents of the City of Gardiner through their entire tenure.

**2.5.2.7** A member may be removed by the Mayor with the consent of the City Council for cause upon written charges and after public hearing.

**2.5.2.8** A vacancy shall occur for any of the following reasons:

**2.5.2.8.1** Member moves his or her residency from the city

**2.5.2.8.2** Member resigns

**2.5.2.8.3** Member is removed for cause by City Council

**2.5.2.8.4** Death of member.

**2.5.2.9** Unless otherwise provided by law, the Mayor shall designate, with the advice and consent of the City Council, the Board of Appeals Chairman under Article VI, Section 1 of the City Charter.

**2.5.2.10** No meeting of the Board shall be held without a quorum consisting of 4 members.

**2.5.2.11** A legal vote shall consist of a majority of the members present and voting unless otherwise prescribed in this section.

**2.5.2.12** The Board shall adopt rules for the transaction of business and the recording clerk shall keep a record of its resolutions, transactions, correspondence, findings and determinations.

**2.5.2.13** Any questions of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

## **2.6 General**

**2.6.1** All appeals shall be based upon a written decision of the Code Enforcement Officer or Planning Board.

**2.6.2** Administrative appeals and variance appeals shall be heard and decided upon by the Board of Appeals in accordance with the provisions of this Ordinance.

**2.6.3** Administrative and variance appeals shall lie from the decision of the Code Enforcement Officer to the Board of Appeals and Planning Board review, site plan review and subdivision appeals shall lie from the decision of the Planning Board to the Board of Appeals. All appeals of the decisions from the Board of Appeals shall go to the Superior Court according to state law.

### **2.6.4 Appeal Procedure**

**2.6.4.1** In all cases, a person aggrieved by a decision of the Code Enforcement Officer or Planning Board shall commence his/her appeal within 30 days after a final decision is made. The appeal shall be filed with the Board of Appeals on forms approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.

**2.6.4.2** Following the filing of an appeal, the Board of Appeals shall hold a public hearing on the appeal within 45 days. The Board of Appeals shall notify the Municipal Officers, Code Enforcement Officer and the Planning Board, at least 14 days in advance, of the time and place of the hearing. The applicant shall publish notice of the hearing not less than 14 days in advance in a newspaper of general circulation in the area.

**2.6.4.3** The applicant shall notify the Code Enforcement Officer and by certified mail the owners of all property within 100 feet of the property involved if the property is in a Residential or Central Business district and within 200 feet of the property in all other districts at least 14 days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing, and shall furnish proof of such notification.

**2.6.4.4** The owners of property shall be considered those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another

hearing or invalidate any action by the Board of Appeals.

**2.6.4.5** At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

**2.6.4.6** The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he/she deems appropriate for an understanding of the appeal.

**2.6.4.7** The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.

**2.6.4.8** Within 20 days of the public hearing, the Board of Appeals shall reach a decision on an appeal and shall inform, in writing, the appellant, the Code Enforcement Officer, the City Manager, the Mayor and the Chairman of the Planning Board.

**2.6.4.9** Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall forthwith issue a building permit in accordance with the conditions of the approval.

**2.6.4.10** A variance under the provisions of this Ordinance secured by vote of the Board of Appeals shall expire if the work or change involved is not commenced within 1 year of the date on which the appeal is granted, and if the work or change is not substantially completed within 2 years of the date on which the appeal is granted.

**2.6.4.11** If a variance expires, to continue work in progress or to commence construction, a person must apply for a new variance or the person will be in violation of these Ordinances.

**2.6.4.12** A variance granted by the Board of Appeals shall be recorded in the Kennebec Register of Deeds within 90 days of the date of written approval of the variance pursuant to MRSA Title 30-A Section 4353, Subsection 5. The variance is not valid until it is recorded.

## **2.7 Powers and Duties**

### **2.7.1 Administrative Appeals**

The Board of Appeals shall hear and decide where it is alleged there is an error in any order, requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this Ordinance or in the City's adopted building code. The Board may waive any portion of the building code only if such waiver (s) fully complies with good, sound engineering practices. If a waiver is granted, the waiver shall only apply to that particular project. The action of the Code Enforcement Officer may be modified or reversed by the Board of Appeals, or a waiver granted from the building code, by a concurring vote of at least 4 members of the Board.

### **2.7.2 Planning Board and Historic Preservation Commission Appeals**

The Board of Appeals shall hear and decide, the appeal of any person aggrieved by the final action of the Planning Board or Historic Preservation Commission with respect to a Planning Board review, site review, subdivision approval or certificate of appropriateness in accordance with the following procedure:

**2.7.2.1** The appeal shall be limited to a review of the action of the Planning Board or Historic Preservation Commission with respect to the record of the hearing before the Planning Board or Historic Preservation Commission. No new evidence may be introduced by any party except as provided below:

**2.7.2.1.1** The Board of Appeals may take evidence with respect to the standing of any party to maintain an application or appeal.

**2.7.2.1.2** By agreement of all parties, the Board of Appeals may receive additional materials necessary to complete the record of action taken by the Planning Board or Historic Preservation Commission, not included in the record as forwarded by the Planning Board or Commission.

**2.7.2.2** Conditions attached to a site plan review approval or Subdivisions or Certificate of Appropriateness may be appealed.

**2.7.2.3** The Board of Appeals may modify or reverse the action of the Planning Board or Historic Preservation Commission only where the Board of Appeals finds that the action of the Planning Board or Commission is clearly contrary to the applicable ordinance. The parties appealing the action of the Planning Board or Historic Preservation Commission shall have the burden of persuasion as to all issues on appeal.

**2.7.2.4** In the event that the Board of Appeals finds that the action of the Planning Board or Historic Preservation Commission fails to address required issues under the applicable ordinance, or that the decision or record of proceedings before the Planning Board or Commission as forwarded to the Board of Appeals is incomplete, the Board of Appeals shall refer the matter back to the Planning Board or Commission for further proceedings or completion of the decision or record, as appropriate. Upon referral back by the Board of Appeals, the Planning Board or Commission shall complete necessary further proceedings within 60 days. No matter appealed to the Board of Appeals shall be referred back to the Planning Board or Commission more than twice, over the objection of any party.

### **2.7.3 Variance**

**2.7.3.1** The Board of Appeals shall hear and decide, upon appeal, in specific cases where a relaxation of the terms of this Ordinance would not be contrary to the public interest and where, a literal enforcement of this Ordinance would result in unnecessary or undue hardship. An undue hardship shall mean:

**2.7.3.1.1** That the land in question cannot yield a reasonable return unless a variance is granted; and,

**2.7.3.1.2** That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,

**2.7.3.1.3** That the granting of a variance will not alter the essential character or the locality; and,

**2.7.3.1.4** That the hardship is not the result of action taken by the applicant or a prior owner.

**2.7.3.2** A financial hardship shall not constitute grounds for granting a variance. A variance is not justified unless all four elements of an undue hardship are present in the case. As used in this Ordinance, a variance is authorized only for height, area, and size of structures or size of yards or open spaces. Establishment or expansion otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. The Board of Appeals shall grant a variance only by concurring vote of at least 4 members and in so doing, may prescribe conditions and safeguards as are appropriate under this Ordinance.

## **2.7.4 Dimensional Standards Variance**

**2.7.4.1** The Board of Appeals may grant a variance from the dimensional standards of the zoning ordinance when strict application of the ordinance to the petitioner and petitioner's property would cause a practical difficulty and when the following conditions exist:

**2.7.4.1.1** The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood;

**2.7.4.1.2** The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

**2.7.4.1.3** The practical difficulty is not the result of action taken by the petitioner or prior owner;

**2.7.4.1.4** No other feasible alternative to a variance is available to the petitioner;

**2.7.4.1.5** The granting of a variance will not unreasonably adversely affect the natural environment; and

**2.7.4.1.6** The property is not located in whole or in part within the shoreland areas as described in Title 38, section 435.

**2.7.4.2** As used in this subsection, "dimensional requirements" means and is limited to zoning ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

**2.7.4.3** As used in this subsection, "practical difficulty" means the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

**2.7.4.4** Existing, non-conforming buildings within the Cobbossee Corridor District do not need to meet the dimensional standards contained in this Ordinance due to change of use or other circumstances requiring review by the City or the Planning Board. Existing buildings cannot be made more nonconforming.

## **2.7.5 Disability Variance**

**2.7.5.1** The Board of Appeals may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, Section 4553 and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

**2.7.5.2** As used in subsection, "physical or mental disability" shall mean any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness, and includes physical or a mental condition of a person that constitutes a substantial disability as determined by a

psychiatrist or psychologist, as well as any other health or sensory impairment that requires special education, vocational rehabilitation or related services.

## **2.7.6 Floodplain Management Appeals**

**2.7.6.1** In addition to the above-mentioned provisions of 2.7.3, the following shall also apply in cases involving requests for variances from the requirements of the Floodplain Management section of this Ordinance.

**2.7.6.2** A variance shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

**2.7.6.3** A variance shall be granted only upon:

**2.7.6.3.1** A showing of good and sufficient cause; and

**2.7.6.3.2** A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,

**2.7.6.3.3** A showing that the existence of the variance will not conflict with other state, federal or local laws or ordinances; and,

**2.7.6.3.4** A determination that failure to grant the variance would result in "undue hardship."

**2.7.6.4** Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief and the Board of Appeals may impose such conditions to a variance, as it deems necessary.

**2.7.6.5** Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that all criteria for a variance in 2.7.6.3 are met, all applicable Flood Plain Management requirements are met and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety..

**2.7.6.6** Variances may be issued for the repair, reconstruction, rehabilitation or restoration of historic structures upon determination that the development meets all the criteria for a variance as contained in 2.7.6.3 and the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

**2.7.6.7** If a variance is granted, the Board of Appeals shall notify the applicant in writing over the signature of the Chairman of the Board of Appeals that:

**2.7.6.7.1** The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage.

**2.7.6.7.2** Such construction below the base flood level increases risks to life and property; and,

**2.7.6.7.3** The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any

claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

**2.7.6.8** The Board of Appeals shall submit to the Code Enforcement Officer and Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

### **2.7.7 Historic Preservation Appeals**

Variations may be issued for the reconstruction, the rehabilitation or restoration of structures listed on the National Register of Historic Places, or on State Inventory of Historic Places without regard to the variance procedures set forth above.

### **2.7.8 Shoreland Zoning Appeals**

**2.7.8.1** Variance requests for property located in a Shoreland, Resource Protection, or Shoreland Overlay District shall meet the following conditions:

**2.7.8.2** Variations may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and set back requirements.

**2.7.8.3** Variations shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

**2.7.8.4** The Board shall not grant a variance unless it finds that the strict application of the terms of this ordinance would result in undue hardship. The term “undue hardship” shall mean:

**2.7.8.4.1** That the land in question cannot yield a reasonable return unless a variance is granted:

**2.7.8.4.2** That the need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood:

**2.7.8.4.3** That the granting of variance will not alter the essential character of the locality: and

**2.7.8.4.4** That the hardship is not the result of action taken by the applicant or prior owner.

**2.7.8.5** A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to the action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

**2.7.8.6** A copy of all variations granted by the Board of Appeals is submitted to the Department of Environmental Protection within 7 days of the decision.