



# CITY OF GARDINER

## PLANNING BOARD

Gardiner Planning Board  
City of Gardiner, Maine

May 29, 2008  
Special Meeting 6:00 PM

### ROLL CALL

Present: Pat Hart Judith A. Dorsey Deborah Willis  
Ian Burnes Pamela Mitchel Edward Lawrence  
James Montell

Also Present: Dorothy Morang, Planning Board Recording Secretary  
David Cichowski, CEO

Heidi Stevens Sean Farris Jennifer Bunting  
Robert L. Johnston John Lawrence Phil Barter

- 1.) **Chair, Pat Hart called the meeting to order at 6:02 PM, welcomed everyone and went over the meeting schedule.**
- 2.) **Roll call taken.**
- 3.) **May 13, 2008 Meeting Minutes.**

Pam Mitchel moved to accept the May 13, 2008 minutes as written. Judy Dorsey seconded the motion.

Vote: 4 in favor. 0 opposed 2 abstained (Ed Lawrence and Jim Montell were not at the meeting). Motion passed.

6:04 PM Ian Burnes arrived.

#### 4.) **PUBLIC HEARING – Minor Site Plan Review**

**Heidi Stevens is seeking approval to establish a Day Care business within the Performance Standards of Home Occupation. The property, located at 229 Highland Av, City Tax Map 36, Lot 23, is in a High Density Zoning District.**

Heidi Stevens introduced herself and said that this is a Home Occupation relocation from 167 Highland Av. She plans to serve two to four families in the area. She needs approval to get her state license. The State has been to the house for their inspections.

The Board reviewed the Application for completeness. It was determined that the plan needed to show the location of the lighting and an approval block. In addition, they needed an estimate of traffic and additional waivers to be requested.

6:20 PM meeting recessed to allow the Applicant the opportunity to complete the Application and plan.

6:27 PM Meeting resumed. The Board received the waivers and additional information requested.

Pam Mitchel made a motion that we approve the waivers that the Applicant requested for the following submission requirements: 5. H. 5. b, c, d (width of streets), e (ground floor elevations), i, l, m and r. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion that the Application is complete. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board reviewed the Performance Standards in Section 3 of the Land Use Ordinance to determine those that were applicable.

Pam Mitchel made a motion that the following Performance Standards apply to this Application: C, I, O and S and none of the other Standards apply. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board discussed Standard C, Access Management and had concerns about customers backing into the driveway from the road. It was noted that the driveway had a turn-around as noted on the plan. Ms. Stevens said that there is a flattened placed at the end of the driveway in which the customers can pull into and off from the road. From there they can back into the driveway. She also offered that she could move her car so that the customers could use the turn-around.

Pam Mitchel made a motion that Standard C has been met. Deborah Willis seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board reviewed the requirements in Standard I, Home Occupation.

Pam Mitchel made a motion that Standard I has been met. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board discussed Standard O, Noise.

Pam Mitchel made a motion that Standard O has been met. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board discussed Standard S, Off-Street Parking and Loading and determined that it does not apply to this Application.

Pam Mitchel made a motion that Standard S does not apply. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board reviewed the Site Plan Review Criteria in Section 5. Q. of the Land Use Ordinance.

They skipped Review Criteria 1 and 2 for now.

Pam Mitchel made a motion to accept Review Criteria 3 as written. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board discussed traffic access. They reviewed the Applicant's plan to have the vehicles pull onto the shoulder and back in or just drive out from there. They felt it was ok.

Pam Mitchel made a motion to accept Review Criteria 4 as written. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion to accept Review Criteria 5 as written. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board reviewed the remainder of the Review Criteria and decided to make one motion for those that do not apply.

Pam Mitchel made a motion that we will consider the following Review Criteria: 10, 11, 12, 18 and 19 and the other Review Criteria: 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, and 21 do not apply. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

It was noted that the reason a lot of the Review Criteria does not apply is that this Application falls under the Home Occupation criteria and the Applicant is not building anything or changing the site in any way.

Pam Mitchel made a motion that because of the Gardiner Water District's approval, they accept Review Criteria 10 as written. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion to accept Review Criteria 11 as written. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion to accept Review Criteria 12 as written. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion to accept Review Criteria 18 as written. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion to accept Review Criteria 19 as written. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion (Review Criteria 2) that this proposed use meets the provisions of all applicable regulations and ordinances of the City, and meets the intent of the Comprehensive Plan, as amended. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion (Review Criteria 1) that this proposed use conforms to the requirements of the district in which it is to be located and other pertinent requirements of this ordinance including the performance standards of Section 3 and adequately meets the standards, where applicable to the proposed development. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

7:02 PM Open meeting for public comment. No comment. CEO Office did not receive phone calls or written comment on this Application.

7:02 PM Close public hearing.

Pam Mitchel made a motion that we approve this Application. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

7:03 PM recessed meeting to sign plan.

7:06 PM Meeting resumed.

## 5.) **Public Hearing – Minor Site Plan**

**John Lawrence is seeking approval for a 25% expansion of an existing non-conforming commercial office use. The property, located at 103 Brunswick Av, City Tax Map 34, Lot 285, is in a High Density Zoning District.**

John Lawrence introduced himself and said that he owns the property known as 103 Brunswick Av. He said that he has continued the existing use of the building, which is office space on the first floor and the second and third floors are apartments. He would like to expand the non-conforming use of the first floor by 25% into the attached garage for commercial office space and storage. It has been previously used for storage. He proposes to put heat in the garage, upgrade the electrical and make a small office and kitchenette area. That space would be used by Tilbury Publishing to store a small inventory of books and include an office area with a desk,

telephone and computer. Their commercial warehouse is off from Route 126. There might be a UPS truck delivering once a day.

The previous tenant was a speech therapist and a KVCAP van used to come there. There will be a reduction in trucks/vans entering the property.

Judy Dorsey asked who was in the main building office space now. John said two attorneys and two psychologists. The publishing executives' office will be less client-intensive. In addition, one of the psychologists uses their office only as a satellite office to her main office in Freeport and the other psychologist is only there one to two times a week – the remainder of the work is conducted at the schools.

Judy said that she feels there is a legal issue here – is this an existing non-conforming use? David Cichowski (CEO) said that he has reviewed this file a number of times and has spoken with Jason Simcock, Erik Stumpfel and Bill Najpauer about this and the letter from a former CEO, Barbara McPheters concerning this property. They all seem to agree that because no one from the City appealed Barbara's letter, the time passed for making a change to what the letter said. The letter determined it was an existing non-conforming use. Jason, Erik and Bill all agreed that this is the point from which we go forward.

Judy felt that the letter says that the property conforms so it isn't a legally non-conforming use, therefore cannot be expanded. She feels that there may be a way around this, but she's concerned that the garage may be turned into more offices later. If we say that this is not an expansion, we could put in a stipulation that this area be used for this purpose only.

David said that in 1959, Dr. Dennison bought the property and used the first floor for his office and lived above it.

Ian Burnes said that we have a letter that states that as far back as we can get records, it has been a commercial.

Pam Mitchel said that she thinks this is a legal non-conforming use and asked when that area was rezoned.

Robert L. Johnston, a former Planning Board Chairman gave some history on the building and the area. He said that in his time on the Board, that area was zoned as it is now, also downtown retail, commercial and in the 1991 Comprehensive Plan it was suggested it be a professional/business zone. He said he can appreciate what the Planning Board members are grappling with.

Phil Barter said that he has practiced real estate in Gardiner for 32 years. He thought that most of the zone changes stopped at the former 711 store. Dr. Dennison had a home occupation and the ladies who worked there afterwards also lived there. The Comprehensive Implementation Committee that he was on also recommended that it be a professional/business zone – no retail, no restaurants and in recent years, there has been a push to extend that out Brunswick Av, which he is ok with. He feels it was a home occupation, not a non-conforming use.

Deborah Willis shared information from a court case she looked up where a city helped an applicant establish a use. She asked if a city calls it a non-conforming use, does it make it that.

Ian Burnes said the Board has two choices – to go forward with the review and recognize a legally non-conforming use and allow it to be expanding or to say the existing use of the garage is storage as will be the new use. Mrs. Bunting said that it will also hold a small office.

Jim Montell said he feels we should proceed.

Chair Hart suggested they take on vote on whether it is a legally non-conforming use.

Judy said that she'd like to talk with Bill Najpauer to be sure he's thought about all of these issues and if he's ok with this, she is.

Dave said that he had had a pre-planning meeting with Bill and the Applicant and Bill gave the direction to go this way.

Chair Hart said that based on Logan's comments on changing zones, she feels that it is an expansion of a non-conforming use.

Pam Mitchel made a motion that the use of this building is a non-conforming use that can be expanded 25%. Ian Burnes seconded the motion.

Vote: 5 in favor. 2 opposed. Motion passed.

Logan said that most publishing companies are offices, not manufacturing.

Judy Dorsey made a motion that this Application for expansion is being treated as an expansion as office space under the Land Use Chart. Pam Mitchel seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The Board reviewed the Application for completeness as outlined in Section 5. H. of the Land Use Ordinance.

The Board determined that, in addition to the waivers requested, they needed a waiver request for 5. H. 5. d & e and 5. H. 6 b. Also needed is a map drawn to scale showing both existing and proposed buffers, parking spaces and the entry way. Also show the position of the sign and external lighting on the plan and draw arrows to indicate water flow across the lot. Also include an aerial shot of the area and traffic counts per day and at peak hours.

Pam Mitchel made a motion that the following waivers be granted for the Application: 5. H. 5. b, c, i, l & r and 5. H. 5. d. (width of streets); 5.H. 5. e. (ground floor elevations); and 5. H. 6. b. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion to table the Application. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

The next meeting to continue this Application will be held on Thursday, June 5, 2008 at 6:00 PM in the City Hall Council Chambers.

Chair Hart offered a workshop at this time to discuss and provide information to the Applicant. There will be no vote and nothing is binding. They discussed parking and buffering. The current plan shows parking in the right-of-way.

## **OTHER**

### **5.) ADJOURN**

Pam Mitchel made a motion to adjourn. Judy Dorsey seconded the motion.

Vote: 7 in favor. 0 opposed. Motion passed.

Meeting adjourned at 9:12 PM