



City of Gardiner
Code Enforcement Office
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DATE: 23 March 2005
TO: Chris Paszyc, Planning and Development Director
E. Patrick Gilbert, City Services Director
James Toman, Police Chief
FROM: Barbara E. McPheters, Code Enforcement Officer
SUBJECT: Anthony Auto violation status, Map 16 Lot 32

As requested, I have reviewed the following documents provided by Cindy Sirois:

1. Traffic Access standards in Section 5 Site Plan Review of the current Land Use Ordinance adopted June 28, 2003
2. Driveway/Entrance Width requirements and Turnaround Area/Parking on all State Highways and State Aid Roads requirements in Section 3 Performance Standards of the current Land Use Ordinance adopted June 28, 2003
3. Off-Street Loading and Internal Circulation standards in Section 3 Performance Standards of the current Land Use Ordinance adopted June 28, 2003
4. Notes of "Meeting with City of Gardiner Councilperson's Dec 21, 2004"
5. Title 30-A: Municipalities and Counties §3009
6. Title 30-A: Municipalities and Counties §2635, 2636 and 2671
7. Central Maine Newspapers article of February 18, 2005
8. Capital Weekly article of February 18, 2005
9. E. Patrick Gilbert, CSD memo of February 17, 2005
10. State of Maine Motorist Handbook and Study Guide page 47
11. State of Maine Commercial Driver's Manual pages 2-22 and 2-23
12. MaineDOT Website section 1.0 The Maine Department of Transportation
13. MaineDOT Website section 3.0 Getting Help from the Department

I will address each issue by number as listed above:

1. The current Land Use Ordinance requirements would be applicable to any new application. In this case (as noted by the City Solicitor previously) the business was approved based upon the previous ordinance. Therefore the current regulations do not apply. If a use similar to Anthony Automotive submitted an application, Traffic Access Standards would be governed by City of Gardiner Land Use Ordinance

Section 5-Q-4 (see attached excerpts). The previous ordinance was silent regarding traffic access into a site.

2. The prior ordinance did address “Off-Street Parking and Loading Requirements”. The maximum entrance width was 26 feet and parking was to be arranged to prevent backing into the street. The current regulations do not apply, as this was permitted under a previous land use ordinance. Current Land Use Ordinance Sections 3-C-3 and 3-C-5 would apply here if a new application were submitted similar to Anthony Automotive (see attached excerpts).
3. The prior ordinance did contain the wording on “Off-Street Loading” but was silent on internal circulation requirements. As noted in numbers 2 and 3, the current regulations do not apply. Current Land Use Ordinance Sections 3-S-4 and 3-S-9 would apply here if a new application were submitted similar to Anthony Automotive (see attached excerpts).
4. There are no notations on this document. Therefore, I have not addressed the issues listed.
5. I would agree that the municipal officers could and do regulate vehicles on the public ways. These regulations are enforced through the local police department as designated by the municipal officers within state law.
6. I would also agree that the City Council, acting as the governing body of Gardiner, can enact rules, make recommendations and assist residents on a daily basis and provide for the police department as noted in the law.
7. I cannot comment on the writings and interpretations of the press.
8. Same as Number 4.
9. There are no notations on this document, therefore, I have not addressed the issues listed.
10. This is a police matter. However, I reviewed this with Chief Toman and find that the reference applies to vehicles that have broken down. Emergency signals would not be required in this situation.
11. Chief Toman researched the applicable law (Federal Law Title 49: Transportation – Part 392 – Driving of Commercial Motor Vehicles §392.22(b)(2)(iii) BELOW). It appears that emergency warning devices are not required in business or residential districts except when conditions require headlights.
12. I have no reason to dispute the fact that an “Office of Freight Transportation” exists within the Maine Department of Transportation.
13. It would appear that the “Control of Activities within State Highway Rights-of-Way” would be within MDOT jurisdiction. The City does have rules and regulations regarding driveways and entrances onto state and state-aid roads. The Police Department does control and enforce parking on all roads within the City. The concern about parking and signs along Brunswick Avenue/Route 201 has been addressed previously by the Council and City Services (including the Police Department). No request has been made by the Code Office regarding peak hour vehicle counts or traffic control signs relating to this issue. The office would address this only for new or expanded applications. Requests for traffic control and/or warning signs would be directed to the City Services Department.

I hope I have adequately addressed all the issues raised. Please let me know if you have any questions.

CITY OF GARDINER LAND USE ORDINANCE EXCERPTS

CURRENT CITY OF GARDINER LAND USE ORDINANCE REQUIREMENTS THAT WOULD BE APPLICABLE IF PROJECT SIMILAR TO ANTHONY AUTOMOTIVE WERE SUBMITTED FOR REVIEW IN 2005:

5-Q-4. Traffic Access

a. Adequacy of the Road System - Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate four hundred (400) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development must function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project must not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within the Central Business District and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

A development not meeting this requirement may be approved if the applicant demonstrates that:

- 1) A public agency has submitted a letter stating its intent to commit funds to construct the improvements necessary to bring the level of access to this standard, or
- 2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.

b. Access into the Site - Vehicular access to and from the development must be safe and convenient.

- 1) Any driveway or proposed street must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards, to the maximum extent possible.
- 2) Points of access and egress must be located to avoid hazardous conflict with existing turning movements and traffic flows.
- 3) The grade of any proposed drive or street must not be more than +/-3% for a minimum of two (2) car lengths, or forty (40) feet, from the intersection.
- 4) The intersection of any access/egress drive or proposed street must function: (a) at a Level of Service of D following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period; or (b) at a level which will allow safe access into

and out of the project if less than one thousand (1,000) trips are generated.

5) Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrian hazards. Access from other streets may be allowed.

6) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.

7) Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

8) The number of driveways serving a proposed project shall comply with the access management standards of Section 3 of this ordinance.

c. Accessway Location and Spacing - Accessways shall comply with the access management standards of Section 3 of this ordinance.

d. Internal Vehicular Circulation - The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site.

1) Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of WB-40 vehicles and City's fire apparatus.

2) Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

3) The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

4) All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.

3-C-3. Driveway/Entrance Width.

The width of an access point is the distance across the driveway or entrance, excluding radii, measured parallel to the highway.

a. Driveway Width. Driveway width within the highway right of way shall be between 12 and 22 feet.

b. Entrance Width. If 50% or less of the traffic projected to use the entrance will be larger vehicles, entrance width within the highway right of way shall be between 22 and 30 feet. If 50%

or more of the traffic projected to use the entrance will be larger vehicles, entrance width within the highway right of way shall be between 22 and 30 feet

3-C-5. Turnaround Area/Parking on all State Highways and State Aid Roads

a. Driveways and entrances shall be designed so that all maneuvering and parking of any vehicles shall take place outside the right of way of the highway and such that vehicles may exit the premises without backing onto the shoulder or traveled portion of the highway.

b. All new driveways shall have a turnaround area of at least 8 feet wide by 15 feet long.

c. All entrances shall have a turnaround area of at least 8 feet wide by 15 feet long or equal to the length of the design vehicle, whichever is longer.

3-S-4. Off-Street Loading

In any district where permitted or allowed, commercial or industrial uses shall provide, as necessary, off-street loading facilities located entirely on the same lot as the building or use to be served so that trucks, trailer and containers shall not be located for loading, unloading, or storage upon any public way.

3-S-9. Internal Circulation

Parking areas for nonresidential uses must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.

§ 392.22 Emergency signals; stopped commercial motor vehicles.

(a) Hazard warning signal flashers. Whenever a commercial motor vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped commercial motor vehicle shall immediately activate the vehicular hazard warning signal flashers and continue the flashing until the driver places the warning devices required by paragraph (b) of this section. The flashing signals shall be used during the time the warning devices are picked up for storage before movement of the commercial motor vehicle. The flashing lights may be used at other times while a commercial motor vehicle is stopped in addition to, but not in lieu of, the warning devices required by paragraph (b) of this section.

(b) Placement of warning devices—(1) General rule. Except as provided in paragraph (b)(2) of this section, whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by §393.95 of this subchapter, in the following manner:

(i) One on the traffic side of and 4 paces (approximately 3 meters or 10 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction away from approaching traffic.

(2) Special rules

(i) Fusees and liquid-burning flares. The driver of a commercial motor vehicle equipped with only fusees or liquid-burning flares shall place a lighted fusee or liquid-burning flare at each of the locations specified in paragraph (b)(1) of this section. There shall be at least one lighted fusee or liquid-burning flare at each of the prescribed locations, as long as the commercial motor vehicle is stopped. Before the stopped commercial motor vehicle is moved, the driver shall extinguish and remove each fusee or liquid-burning flare.

(ii) Daylight hours. Except as provided in paragraph (b)(2)(iii) of this section, during the period lighted lamps are not required, three bidirectional reflective triangles, or three lighted fusees or liquid-burning flares shall be placed as specified in paragraph (b)(1) of this section within a time of 10 minutes. In the event the driver elects to use only fusees or liquid-burning flares in lieu of bidirectional reflective triangles or red flags, the driver must ensure that at least one fusee or liquid-burning flare remains lighted at each of the prescribed locations as long as the commercial motor vehicle is stopped or parked.

(iii) Business or residential districts. The placement of warning devices is not required within the business or residential district of a municipality, except during the time lighted lamps are required and when street or highway lighting is insufficient to make a commercial motor vehicle clearly discernable at a distance of 500 feet to persons on the highway.

(iv) Hills, curves, and obstructions. If a commercial motor vehicle is stopped within 500 feet of a curve, crest of a hill, or other obstruction to view, the driver shall place the warning signal required by paragraph (b)(1) of this section in the direction of the obstruction to view a distance of 100 feet to 500 feet from the stopped commercial motor vehicle so as to afford ample warning to other users of the highway.

(v) Divided or one-way roads. If a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a divided or one-way highway, the driver shall place the warning devices required by paragraph (b)(1) of this section, one warning device at a distance of 200 feet and one warning device at a distance of 100 feet in a direction toward approaching traffic in the center of the lane or shoulder occupied by the commercial motor vehicle. He/she shall place one warning device at the traffic side of the commercial motor vehicle within 10 feet of the rear of the commercial motor vehicle.

(vi) Leaking, flammable material. If gasoline or any other flammable liquid, or combustible liquid or gas seeps or leaks from a fuel container or a commercial motor vehicle stopped upon a highway, no emergency warning signal producing a flame shall be lighted or placed except at such a distance from any such liquid or gas as will assure the prevention of a fire or explosion.

[37 FR 17175, Aug. 25, 1972, as amended at 40 FR 10685, Mar. 7, 1975; 47 FR 47837, Oct. 28, 1982; 48 FR 57139, Dec. 23, 1983; 59 FR 34711, July 6, 1994; 60 FR 38747, July 28, 1995; 63 FR 33279, June 18, 1998]