



CITY OF GARDINER

PLANNING BOARD

Gardiner Planning Board
City of Gardiner, Maine

February 12, 2013
Regular Meeting 6:00 PM

ROLL CALL

Present: Debby Willis, Chair Pamela Mitchell Nate McKenna
Judith Dorsey Ronald Condon Edward Lawrence

Absent: James Montell

Also Present: David Cichowski, Code Enforcement Officer (CEO)
Dorothy Morang, Planning Board Recording Secretary
Nate Rudy, Director of Planning and Community Development

Patricia Hart, City Councilor
John Burgess, Board of Appeals Representative to the Ordinance Review Committee
Thom Harnett, City Mayor

Ralph Clark	Robert Rapalos	Wendy Seremet
Gloria Haley	Geraldine Rideout	Mattie Parlin
Hilda Whitmore	Joan Vining	Don Vining
Keith Whitmore	Robert Lash	Mark Warren, Applicant
Marcina Johnson	Chandler Johnson	Phil Barter
Margaret Barter	Veronique Vendette	Ian Pillsbury
Carl Perry		

1.) Call the Meeting to order.

Chair Willis called the meeting to order.

2.) Roll call taken.

3.) Meeting Minutes October 9, 2012

Pam Mitchell moved to approve the minutes as written. Judy Dorsey seconded the motion.
Vote: 5 in favor. 0 opposed. 1 abstained (Ed Lawrence was not at meeting) Motion passed.

4.) **Public Hearing – Plan Board Review**

Mark Warren, Applicant is seeking approval to conduct a 9,054 SF Retail Business in an existing structure with 6,000 SF of outside storage/display area. The property, located at 26 Winter St, City Tax Map 034, Lot 82-1 is in the Central Business (CB) Zoning District.

Chair Willis asked the Applicant to introduce himself and to give an overview of his proposal.

Mark Warren said that he would like to have a 9,054 SF retail business in an existing business with outside storage. He said he didn't put the name of the business on the Application when it was submitted because he didn't have a lease with the business at that time and he didn't want to publicize it. The business is an Off Price Store. They were previously in Gardiner on Water St where US Cellular is located now. He will use the existing building, gut it and make it one room. He said that the outdoor space could be nothing, or if a truck unloads goods, there may be supplies stored out there for a time. He is ready to close on the property this Friday and the business hopes to open within one month.

Pam asked where the outdoor display would be. Mark said that there would be two display areas – one in front of the building and one in the back beyond the parking area near where the inventory would be unloaded.

Judy said that the Land Use Ordinance doesn't allow an outdoor storage facility in the Central Business (CB) Zone. She is concerned if we allow this, Mark might sell the building and someone else could use it as a grandfathered storage facility.

Mark said that it isn't a separate storage facility; the items are related to the retail sales. Judy said that the Ordinance doesn't say the storage facility is ok if it is related to retail sales. Chair Willis noted that the Board members didn't know the building use when they were considering outdoor storage. It appears to be an accessory use to the retail business. Mark said that the next tenant might be, for example a hardware store and want to store pellets, etc. – it would be related to the retail business. Ron asked if any other retail businesses in the CB District had outdoor storage. Nate McKenna said Harvey's on Maine Av. He said he saw it as store inventory, not as an outdoor storage facility.

Chair Willis asked the Board members if anyone felt that they couldn't review this Application in an unbiased manner. Everyone felt that they could review it.

6:13 PM Chair Willis opened the Public Hearing and asked if there was anyone from the public who wanted to comment. No one commented. She closed the Public Hearing.

The Board reviewed Gardiner's Land Use Ordinance, Section 6.2.3 – 6.2.13 Review Criteria. Judy asked, concerning 6.2.8, why the Applicant needed to cut some trees. Mark said to neaten up the area and one tree needed to come down. Judy asked if the Board could limit what could be stored outdoors as there shouldn't be hazardous materials next to the stream, such as oil, anti-freeze, fertilizer. Mark said he would suggest adding to the

approval that there would be no liquid stored outside or anything that would leach into the stream.

Pam Mitchel made a motion that we accept the Review Criteria, 6.2.3 – 6.2.13 as written. Judy Dorsey seconded the motion.

Vote: 6 in favor. 0 opposed. Motion passed.

The Board reviewed Section 8 – General Performance Standards and decided that Standards 8.7, 8.8 and 8.9 apply.

8.7 Exterior Lighting – Chair Willis asked the Applicant if he was going to change or add to the exterior lighting. Mark said no.

8.8 Noise – Chair Willis asked the Applicant about noise. Mark said that there would not be any loud noise or loud speakers outside the building.

8.9 External Material Storage – Pam noted that the area around where the storage area and dumpster is proposed is very well screened on the stream side and in the back. There is a raised area on the Summer St side, but it might need a tree or something added on that side for screening. Chair Willis shared her concerns about the storage area - that children could get access to it and it be hazardous for them or if it got unsightly. She suggested that the CEO could request it be fenced in if that happens. Mark said he was ok with that.

Pam Mitchel made a motion that General Performance Standards 8.7 and 8.8 have been met and 8.9 has been met with the condition that no liquid be stored outside that could be hazardous to the stream and the CEO can require, if necessary a tree or 2 be planted to further screen the dumpster. Judy Dorsey seconded the motion.

Vote: 6 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion (Review Criteria 6.2.2) that all of the applicable provisions of this Ordinance have been met with the conditions on the outdoor storage. Judy Dorsey seconded the motion.

Vote: 6 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion that we approve this Application with the provisions previously noted. Judy Dorsey seconded the motion.

Vote: 6 in favor. 0 opposed. Motion passed.

Chair Willis thanked the Applicant and wished him the best.

5.) **Public Meeting – Land Use Ordinance Change**

The Planning Board will consider a draft submitted by the Ordinance Review Committee for an Ordinance change to allow domesticated livestock keeping/raising (mini goats and sheep) in residential districts and provide a recommendation concerning the draft to the City Council.

Chair Willis welcomed everyone and asked Mayor Harnett or Councilwoman Pat Hart to explain how this request for change to the Ordinance came about. Pat said that she and Thom put it forward from the Council to the Ordinance Review Committee because they had been approached by several people who wanted to raise small livestock on their property in residential zones and the current ordinance does not allow it. The Council felt it should be fully vetted and with public input, so they asked the Ordinance Review Committee (ORC) to research and review the request for the change. Although they sponsored it, they said that they went on record as being neither for nor against it. She thanked the Ordinance Review Committee for all of the work that they did on this. She noted that after review by the Planning Board, it will go back to the City Council for review and a decision. She made mention of several people, both on the Planning Board and in the audience who served on the ORC and thanked them for their work.

Chair Willis summarized the work that the ORC had done in preparing the draft before the Planning Board. She said that they had looked at ordinances in a number of Maine municipalities and from around the country and also had received a lot of information from Maine Farm Trust. The ORC members went through all of the data and tried to come up with an ordinance that would allow for the keeping and raising of certain small animals in residential districts while protecting neighboring lots with setbacks. They looked at all of the issues that should be covered and decided that the Brunswick model was the most complete. From that ordinance, they made modifications to come up with the draft that is now before the Planning Board. She explained that the three documents in the Planning Board packets are the ORC draft showing mark-ups, the ORC draft with mark-ups accepted and the ORC draft as it would fit into the Land Use Ordinance, removing things such as what kind of feed, shelter, etc. that the animals would need, as they are not land use issues. Those requirements could go in another document to go with the license. Chair Willis then read through the full draft.

Chair Willis opened the meeting for public comment, asking those in favor to go first.

Marcina Johnson remarked that the process had been very good. She noted that many people came to her home to view the area where her goats are as did staff from the Maine Department of Agriculture, Gardiner's Animal Control Officer, the Code Enforcement Officer (many times) and a member of the Goat Association. She said that they all seemed impressed. The goats are non-violent and not aggressive.

Wendy Seremet, an abutter said that she was a little nervous at first because of the possibility that there might be an odor. She said she noted that her 150 lb. lab was worse than the goats and she did not smell anything from the goats. She said they are pets – she's been in the pen and she enjoys watching them and hearing them bleat. She said that she has found nothing that would be detrimental to the neighborhood. Pam Mitchel asked if

her lot was adjacent to the Johnson's lot. Wendy said that her lot abuts the whole length of the Johnson's property.

Judy Dorsey said that the focus in the newspaper has been on the goats, what about sheep. Chair Willis said that others will speak on the sheep.

Veronique Vendette said that she lives on Brunswick Av in the High Density Residential Zone and she has 3.6 acres of land. She is trying to live as sustainably as possible. She would like 1 – 2 sheep to mow the grass, eat fallen apples and for her and her family to eat the meat and use the wool. Pam Mitchel asked if the sheep would be less than 100 lbs. Veronique said yes, since they would be keeping them only during the growing season. Judy Dorsey asked if she had had sheep before. Veronique said no, but she had researched them. She noted that the sheep will defecate on the grass and it will be absorbed into the ground within seven days.

Gloria Haley lives on Clinton St behind the Johnson's. She said she had been to see the goats and she didn't smell any odors.

Hilda Whitmore lives on Clinton St. behind the Johnson's. She said that she has noted the goats coming out of the house and not from the cellar. She has lived there 28 years. This is a city, not a town. Dogs and cats should be allowed, but there should be a limit. She doesn't let the neighbors kids over to her place because they ask for food. She lives on the further side of her duplex and her sister on the other and feels that these are too close to her sister's house. She said that the Johnson's don't have that much room. She thinks the goats are living in the house and should be outside – it's cruelty.

Geraldine Rideout lives on Ash St. She said that the lots are not that big and she is concerned what it will do to property values and what if the goats get loose.

Carl Perry, owner of 23-25 Clinton St. and is the landlord to Hilda and Janice. He said that they have expressed that they smelled odor. He came tonight to find out what is going on. He is concerned about the property value, the welfare of animals and the small lots. He has not smelled any odor.

Chair Willis explained that the City Council will make the policy decision on this. The Planning Board is reviewing the draft as it relates to land use and will give a recommendation as is or with modifications for or against the draft to the City Council.

Ron Condon asked if the current owners of livestock would be grandfathered. Chair Willis said no.

Robert Rapalos lives on 51 Pierce St. He said it's not just about the Johnson's – it's the whole city. He said this is a test case for this and is concerned if the amendment passes, what will be tolerated in the future – horses, etc. He is for enhancing the livability of the city and sustainability. He is concerned about the livestock expansion in residential zones and referred to two issues in the city – the church with the rubber roof and the gas station near the Common and nothing can be done about them. He is concerned about setting a

precedent introducing livestock into residential areas which could create the optimum condition for vermin. During the summer of 2010, after a homeowner decided to raise chickens on a street below his, rats worked their way up to Pierce St from that farm. If approved, what if someone wants to have a miniature pony. He moved into the town for the stability a city provides. He asks that they not make a decision in haste.

Ralph Clark lives on Pierce St. He said he grew up in Aroostook County and everything that Mr. Rapalos said is true. He said the lady on Brunswick Av with 3.5 acres wanting to have sheep - he could live with that. He said that this issue is absolutely going to blow right up. There are beautiful homes in the residential districts. He looked at the place on Plaisted St and they shouldn't put anything there. He said he's disappointed. Since 1956 he's closed more houses in the city than anyone. Those property owners will get screwed.

Phil Barter lives on Brunswick Av. He said he has sold real estate for 37 years in this community. He is concerned about property values. He said a barn door committee has had to be resurrected in the past to rectify a zoning change with another zone. What kind of activity do we want to allow. He doesn't mind the mini goats on Plaisted St or Brunswick Av, but what's to prevent 22 homes wanting to have them. He looked at the standards required. In the rural zone is one thing, but in the city, they may not be enough. He wouldn't expect the rest of the community to put up with his animals. He said that what the ORC came up with is reasonable but he sees some issues.

Rob Lash lives at 7 High Holborn St. He asked about the outcome of other communities that have allowed this. Chair Willis said that in Seattle, over a 5-year period, they have had only 37 applications - it's not very popular. Some municipalities' ordinances do not cover this - there are no restrictions. Rob said that it's realistic to believe that if people do not have experience with these animals; the neighbors will pay the price. They should have some type of knowledge about animals to raise them. He spoke with a sheep farmer who told him that a sheep can eat the vegetation off from two acres in one week. Another issue is the boundaries - surveys would need to be done or you can't accurately draw the set back lines. His general concern - the real reason zoning areas were created was to prevent what wouldn't be good. What if a neighbor is negatively impacted - would the city be liable?

John Burgess, a representative from the Board of Appeals to the ORC. He said that all of the concerns are legitimate. The ORC look at 36 communities and most have no ordinance prohibiting livestock. Some of them are the most affluent communities in the state. Bar Harbor allows it in their ordinance and encourages it. Chicago also allows it. We have to look at Gardiner and what's best for Gardiner. The ORC worked very hard on this and had some good, honest input. They tried to do what was best for the city.

Veronique Vendette asked what is the procedure if this doesn't pass - can the city go case-by-case? Chair Willis said no.

Hilda Whitmore asked why they are calling it a town, it's a city. Judy Dorsey explained that a town versus a city is the form of government. Hilda said she doesn't agree.

Pat Hart said that she echoes what Mr. Burgess said and welcomes any input at the City Council meetings.

7:47 PM - Hearing no further comments, Chair Willis closed the public hearing.

Nate McKenna, a Planning Board representative to the ORC said it was a tough job – not cut and dry. There were so many things to look at and all lots are different. He noted that a number of things can take down a property value – i.e. an ugly fence, dogs, etc.

Chair Willis said that when the issue came to the ORC, the members were asked if they wanted an ordinance and they were in agreement – yes. They did a lot of research both in-state and country wide. They covered every issue from vermin, unintended consequences, property values, good owner/bad owner and who would decide.

David Cichowski, CEO said he looked at all of the issues. The amendment would require 4,000 SF per animal so the property would have to have a minimum of 40' x 100' of grazing area and 30' to the property line and 50' to an abutting residential unit beyond that. Some lots might not be able to have livestock. He noted that Augusta allows livestock anywhere unless it creates a nuisance. He has heard more articles on the 6:00 PM news about abuse of dogs than goats or other livestock. In 2010, the City created the chicken ordinance and there were lots of concerns. Since that time, his office has issued between 5 – 8 permits for chickens in these built up residential areas and he hasn't had any complaints.

Judy Dorsey said she is concerned about the bigger issue – quality of life. She and others are going through the Heart and Soul process and have done a lot of interviews with a broad range of people and a lot of core values came out of that. The number 1 was to protect the neighborhoods. She doesn't know how many people were notified about this meeting.

Chair Willis said that there have been a number of articles in the KJ about this as well as legal ads in the paper.

Judy Dorsey said that she isn't sure she's going to vote on this. If it were to be expanded, put in a required 1 acre lot or higher setbacks, it would stop it in dense areas and allow it on larger lots.

Ron Condon said that he looks at the big picture too. He feels that the comprehensive plan should be done first and the ordinance would follow that. He agrees with Judy and feels that this is not community driven – it's a one-house issue and it needs to be dealt with from the comprehensive plan down. It would have to be a pretty good sized lot to accommodate livestock.

Chair Willis noted that it was not a single house issue – that at least 3 property owners in District 2 had requested the review and the issue of sustainability has been brought up by others in other meetings as well.

Judy said the number one issue as a person living in the High Density Residential District is vermin. Nate McKenna said it was not an issue in what the ORC looked at and it hasn't been an issue with chickens. Judy asked what goats and sheep ate. Marcina Johnson said that the goats eat hay, grain and greens. Veronique said that sheep eat apples, salt block and grass. Pam Mitchel said that grain is what attracts vermin, not hay. David Cichowski said that he has only had 1 complaint about rats with respect to chickens. The owner was putting out too much grain at a time and the chickens weren't eating it all up.

Ed Lawrence said he agrees with Ron. He sees it as fighting fires - changing ordinances. You can't make it a perfect world for everyone.

David Cichowski asked for a clarification - if they had a duplex could they have 4 animals. Pam Mitchel said no, it says a maximum of 2 animals.

Judy Dorsey said it would be an enforcement burden - enforcement issues are not being dealt with now. Chair Willis said that the ORC looked at this and spoke with the Animal Control Officer, the City Manager, the CEO and the Police Chief to look at who would be responsible for what part of enforcement.

Pat Hart said that there was a man sitting beside her that has since left and he wanted it to be consistent throughout the city as there are small lot in every zone.

Carl Perry said that he works for the Maine Department of Agriculture and said that the Department uses a point system and sets standards for grazing, units, etc. He suggested that they consult with them.

Phil Barter said that he feels the setbacks should not be any less than the required home business setbacks. He said that they are writing an ordinance to accommodate a small number of people that will affect a lot of people. He is concerned about fencing.

Pam Mitchel said she would like to see the setbacks match the chicken setback requirements.

Pat Hart said that whatever they decide, she would like to have finding of fact as the City Council will need the information. Judy Dorsey asked why do they have to go forward and asked for a poll. It was 2 for and 4 against. Judy said she had another solution - put in contract zoning - they tried to do that in 2010 and it didn't go. She said she thinks it didn't go because the Council didn't understand it. Pam said that is what the ORC draft is trying to do - that it can be ok to have a certain number of livestock if the property meets these standards. The draft might need a little more work. Judy said she opposes it because she thinks a lot more people will want it and she can't tell how many.

Veronique offered that they try it and see what happens. They could make a change that would be for 1 - 2 years and see if it is a problem. Judy said that contract zoning would do that.

Chair Willis said that she would like to give the City Council our expertise and set a framework.

Pam Mitchel made a motion that we proceed with this document, modify it appropriately and send it to the City Council. There was no second.

Chair Willis asked if someone would make another motion. No one that could make a motion did. (the Chair could not make or second a motion).

OTHER

6.) ADJOURN

Pam Mitchel moved that we adjourn. Ron Condon seconded the motion. Vote: 6 in favor. 0 opposed. Motion passed.

Meeting adjourned at 8:40 PM