



CITY OF GARDINER

6 Church Street, Gardiner, Maine 04345

www.gardinermaine.com

ORDINANCE REVIEW COMMITTEE (ORC)

Monday February 12, 2018 @ 3:00 PM

Meeting Notes

Members Present: Chair Debby Willis Joel Alexander
Louis Sigel Clare Marron
Patricia Hart, City Councilor
CEO/Assistant Planner, Barbara Skelton

Members Absent: Les Young

Also Present: Dorothy Morang, Staff to Ordinance Review Committee
Mark Eyerman, Planner

1.) Welcome

Chair Willis opened the meeting and welcomed everyone.

2.) Roll Call

3.) Consideration of meeting notes of January 22, 2018

Louis Sigel moved to accept the minutes. Clare Marron seconded the motion.

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

Old Business

4.) **Finish the Historic proposed amendments**

Mark went over the proposed amendments to Section 12 of the Land Use Ordinance relating to the Historic Preservation Commission and agreed upon at the last meeting. Members were ok with the amendments and decided to move them along to the Planning Board for review.

Louis Sigel moved to send the amendments to the Planning Board for their review and recommendation to the City Council. Joel Alexander seconded the motion.

Vote: 6 in favor. 0 opposed.

5.) **Begin review of revised subdivision language**

Mark noted that the Planning Board acts as an agent for the State in reviewing proposed subdivisions. As Mark reviewed the subdivision section in Section 14 of the Land Use Ordinance, he noted several things that are in law, but not in Gardiner's Ordinance. He will address those as he goes along.

Mark went over a basic approval process that he is proposing, distinguishing between "minor" and "major" subdivisions.

A "minor" subdivision would consist of less than 5 lots and the proposal would have to meet several additional criteria. If met, it would be a 2-step process that would include a pre-application meeting with the CEO/Planner and a final application review by the Planning Board.

A "major" subdivision would be a 4-step process to include a pre-application meeting with the CEO/Planner. Following that, the developer would prepare a site inventory and analysis and go to the Planning Board for review and feedback. The formal reviews at the Planning Board include a preliminary application and a final application.

A discussion followed concerning the "minor" subdivision not having a preliminary review. Several examples of issues that have occurred in the past seemed to warrant the extra step. Mark said he will work on this.

Mark went through Section 14 of the Land Use Ordinance and noted the things in state law that are missing and/or edited in Section 14.

Section 14.4.1 added language

Section 14.4.2 amended/added language

Section 14.4.5 added language

Section 14.5.15 added language

Section 14.4.20 added section

Section 14.5.5 added language

Section 14.5.7.1 amended/added language

Section 14.5.7.2.1 renumbered and amended/added language

Section 14.5.7.2.2 renumbered and added language

Section 14.5.7.3 renumbered section

Section 14.5.7.4 renumbered section

In Sections 14.5.7.1 & 2 a discussion occurred concerning the waiver of review criteria and performance standards. We have not waived these in the past, but have if they do not apply, we have used that language.

(Memo dated 2/8/18 showing edits is attached)

Other

In processing an upcoming variance appeal, it was noted that the only group required to be notified of an appeal in the Appeal Procedure, Section 2.4.4 in addition to the CEO & municipal officers is the Planning Board. The appeal can come as a result of action by the Historic Preservation Commission, the CEO or the Planning Board. It was suggested that a change be made to address the underlying agency/person whose action resulted in the appeal. All agreed and Mark will look at changing the language in Sections 2.4.4.2 and 2.4.4.8.

CEO Skelton went over the proposed zoning map that was edited to separate the colors making the zones easier to distinguish. An insert was placed at the bottom of the map to show the traditional downtown and parking space exemption. A discussion occurred about parking in general. Pat noted that parking was brought up at a recent City Council meeting. They are looking at having a parking study and plan done for the whole city. It was decided to go with current parking as defined in the Land Use Ordinance for now.

Upcoming meeting dates with tentative topics:

February 26, 2018 Complete subdivision amendments
 Amend appeal procedures

7.) Adjourn
 Meeting adjourned at 4:36 pm.

To: Ordinance Review Committee
From: Mark Eyerman
Subject: Subdivision Amendments
Date: February 8, 2018

I have started working through possible amendments to Section 14 of the Code dealing with subdivisions. After thinking about it, I think we should go through the entire section and update it to do the following:

1. Assure that the provisions conform to the state subdivision law – the state establishes the criteria that have to be used in reviewing subdivisions as well as the general process and procedures.
2. Create separate processes and requirements for minor subdivisions and major subdivisions – as we discussed briefly last week a minor subdivision might be a subdivision that creates less than 5 lots and does not involve the construction of any new streets, sewers, water mains, etc.
3. Include the idea of a site inventory and analysis as the first step for a major subdivision in place of a “sketch plan”.
4. Make any other edits or updates that we feel are desirable to improve the provisions but to keep the basic framework of the section unchanged.

Basic Approval Process

Here is how the review and approval process could work under these concepts:

- **Minor Subdivisions** – A two-step process as follows:
 - Mandatory pre-application meeting with the CEO/Planner to review the proposal and the process and procedures and determine that it is a minor subdivision that can go directly to a final application
 - Submission, review and Board action on a final application
- **Major Subdivisions** – Essentially a four-step process as follows:
 - Mandatory pre-application meeting with the CEO/Planner to review the proposal and the process and procedures and determine that it is a major subdivision that has to go through the three-step review process
 - Submission, review and Board feedback on a site inventory and analysis (no formal Board action)
 - Submission, review and Board action on a preliminary application
 - Submission, review and Board action on a final application

Draft Amendments to Section 14

I am working through Section 14 section by section to see where we need to make changes and to lay out the possible amendments;

14.1 – OK

14.2 – OK

14.3 – OK

14.4 – These are the criteria that the Board is required to use to review and approve a subdivision. These need to reflect the criteria set out in 30-A § 4404. The current approval criteria come close but there are a few areas that should be updated. In a few of the criteria the language used in the City's Code differs slightly from the language in the state law but most of these deviations do not affect the substance so I have left them alone. Here are suggested amendments:

14.4.1 is missing one of the five parts included in the state law so here is amended language:

14.4.1 The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider: the elevation of the land above sea level and its relation to the floodplain, nature of the soils and subsoils and their ability to adequately support waste disposal, slope of the land and its effect upon effluents, the availability of streams for disposal of effluents, and the applicable state and local health and water resource rules and regulations.

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14.4.2 is close but we probably should clean it up as follows:

14.4.2 The proposed subdivision has sufficient water available for the reasonably ~~ve~~ foreseeable needs of the subdivision.

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14.4.5 dealing with traffic is missing the second part of the state criteria. This applies only to municipalities that are defined as urban compact municipalities – I believe Gardiner that Gardiner is so defined by MeDOT so we should include it. Here is an amendment to add that:

14.4.5 The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside of an urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section.

14.4.11 does not include the additional standards that apply to subdivisions along "outstanding river segments". The Kennebec from Bath to Augusta is defined as an outstanding river segment. The location of the railroad right-of-way makes subdivision of river frontage unlikely except possibly in South Gardiner. So I am leaning toward not including the additional language in the City Code but we should review this – look at 30-A MRSA 4404.11.A.

14.4.15 doesn't include the reference to the state definitions of the various waterbodies so here is a possible amendment that does that:

14.4.15 Any river, stream, or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. All rivers, streams, or brooks shall be protected from any adverse development impacts. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

The state criteria include a provision dealing with subdividing land that has been subjected to a liquidation harvest. This probably isn't a significant issue for Gardiner but we should add the criteria from the state law as 14.54.20. Here is the language:

14.4.20 Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the municipal reviewing authority must determine prior to granting approval for the subdivision that 5 years

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have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. A municipal reviewing authority may request technical assistance from the Department of Agriculture, Conservation and Forestry, Bureau of Forestry to determine whether a rule violation has occurred, or the municipal reviewing authority may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If a municipal reviewing authority requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the municipal reviewing authority within 30 days of receipt of the municipal reviewing authority's request. If the bureau notifies a municipal reviewing authority that the bureau will not provide assistance, the municipal reviewing authority may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to Title 12, section 8869, subsection 14.

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14.5 – We need to update the vested rights provision in subsection 14.5.5 to reflect the revised procedures as follows:

14.5.5 Rights Not Vested

The submittal of a site inventory and analysis shall not be considered the initiation of the review process for the purposes of bringing the application under the protection of 1 M.R.S.A. Section 302. The submittal of a final plan for a minor subdivision or a preliminary plan for a major subdivision to the Code Enforcement Officer to review for a complete application shall not be considered the initiation of the review process for the purposes of bringing the application under the protection of 1 M.R.S.A. Section 302. The formal review process shall begin upon written notification to the applicant that a complete application has been received.

14.5.7 – I think we should separate the granting of waivers for the approval criteria and for other performance standards. Here is a first crack at a possible amendment:

14.5.7.1 The Planning Board may vote to waive any of the review criteria ~~and/or ordinance performance standards only if when~~ it finds that the scale of the subdivision or the particular circumstances of the proposed development makes the particular criterion not applicable to the subdivision proposals, one of the following:

14.5.7.2.1 ~~The Planning Board may vote to waive One or more of the review criteria and/or ordinance performance standards~~ if it finds that the standard(s) is/are not applicable to the proposal due to the size of the project, circumstances of the site, design of the project, or unique features of the proposal.

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14.5.7.2.2 ~~The Planning Board may also vote to waive one or more of the ordinance performance standards if it finds that~~ the applicant has proposed an alternative design that meets or exceeds the requirements set forth in the performance standards.

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| 14.5.7.32 The applicant shall submit information and materials that support the waiver request with the application.