

**PUBLIC COMMENTS TO GARDINER PLANNING BOARD  
ON “GARDINER GREEN” PROJECT  
BY ABUTTERS AND NEIGHBORS**

October 12, 2021

Dear Chair Willis and Members of the Gardiner Planning Board:

We submit these comments on behalf of the many households in the immediate neighborhood surrounding the existing site of the former MaineGeneral Hospital and Alzheimer’s Care Center.

At its core, the Gardiner Green proposal seeks to take advantage of the benefits of the Open Space Design Criteria and the related affordable housing bonus, in a manner that thwarts the purpose of both provisions. The project would have no affordable units proposed for sale—instead improperly limiting the affordable units to only one of the types of units in the project; it shows no dedicated useable open space on the plan; and it does not meet the minimum land area for Open Space Design. As proposed, it fails to meet the requirements of Gardiner’s Land Use Ordinance (LUO). The Applicant attempts to obscure this failure through a proposal for a phased development that improperly asks for subdivision approval for all of the units—including those that could result from a density bonus—but without providing the necessary information for all three phases. As a result, the Applicant has not given the Board sufficient information for the Board to exercise its authority in granting approval of the Subdivision and Site Plan applications.

The provisions of the Gardiner LUO are not exceptional. Developers around Maine are regularly able to submit complete applications, respond substantively and thoughtfully to Board and public comment, and satisfy the requirements of similar ordinances as they proceed with thoughtful new development. That is what should be expected here. Invective and insults are entirely inappropriate. It is the Applicant’s burden to show compliance with all the requirements of the LUO and he has so far failed to do so.

**I. The Applicant’s Subdivision Application Lacks Sufficient Information About the Condo Units Proposed for Future Phases.**

**The proposed subdivision plan is incomplete because it fails to show the proposed condominium lots.**

The Applicant’s revised proposal includes condominium units for sale, but no lot lines for the condominium units. He is proposing to develop 34 rental units in one building as Phase 1, and to create condominium units on the rest of the property in Phases 2 and 3. In a memo last May, City Staff explained that “in order for condos to be sold on the property, the lot will need to be subdivided with the apartments on one lot and the condo-owned land on another,” thereby

necessitating a subdivision plan “amendment that will require all the normal submission requirements for a subdivision” including “new lot lines and dimensions” among other items.

To grant final subdivision approval for the entire development would—at a minimum—require approving the creation of some lots of land not currently shown or delineated on the subdivision plan. The plan does not currently show the separation of the lot or lots to be owned by the entity that will rent 34 apartments in Building 6 (aka the hospital building), from the lot or lots to be owned by a condominium association. The subdivision plan would need to—but does not here—show how these lots could comply—individually or collectively—with the High Density Residential (HDR) unit density and setback requirements or instead with the Open Space Design subdivision requirements.<sup>1</sup> The redevelopment of the main hospital building alone into 34 units would require a lot equal to 3.9 acres, which includes space for 68 parking spaces, and .78 acres of open space (1,000 square feet per unit).

The Applicant is required to show all the subdivision lots—including the proposed division between the condos and the rental units—and must outline precisely what variances from the HDR dimensional requirements are requested and require board approval. This subdivision plan does not do that, and must be denied for that reason alone. Additionally, once the lot is subdivided for rental versus sale units neither lot will meet the dimensional requirements to qualify for Open Space Design.

## **II. Open Space Design Projects Require Submission of a “Total Site Plan” Including for All Future Phases.**

**The Applicant cannot benefit from the Open Space Design density bonus and setback variances unless the application is complete for all improvements to the property.**

The LUO Open Space Design provisions require that “[e]ach lot, proposed building site and building shall be an element of an overall plan for the site development. Only developments having a *total site plan for structures* shall be considered.” Section 10.23.2.2. The applicant must “illustrate the placement of buildings and the treatment of spaces, roads, services, and parking and in so doing, shall take into consideration *all requirements of this Subsection* and of *other applicable sections of this Ordinance.*” Section 10.23.2.2.

This requirement for a “total site plan” means the applicant must submit a complete site plan application for the entire project, regardless of whether construction is to be completed in phases. This additional requirement makes sense in the context of Open Space Design. A total (and complete) site plan is the only way the Board can evaluate whether a proposal is consistent with purposes behind Open Space Design “to permit the innovative approach[] to housing and

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<sup>1</sup> Gardiner Land Use Ordinance, § 7.7. (hereafter LUO) and 10.23.

environmental design.” If the Board does not have complete depictions and plans for all project elements, it cannot be expected to determine that the application conforms with both the technical performance standards as well as the objectives of Open Space Design.

The Applicant has not submitted these key Site Plan elements:

- Building and structure drawings showing the footprint, height, front, side and rear profiles and all design features necessary to show compliance with this ordinance.<sup>2</sup>
- Elevation drawings prepared by a professional engineer or architect showing the façade and roof of the side of all proposed structures facing the road, and the side facing the customer entrance. The drawings shall clearly illustrate the profile of the roof. All façade and roof materials shall be identified including color and texture.<sup>3</sup>
- Photographs or similar photo representations or drawings showing the architectural design and context of the proposed structures and adjacent properties on both sides of the road.<sup>4</sup>

Contrary to the “total site plan” required by the Open Space Design criteria, the Applicant has failed to provide the required elevations and photo representations for the proposed structures. To date, he has only provided professional elevations for Phase 1 which is the redevelopment of Building 6 (the hospital building). He has so far refused to provide the required elevations of the other proposed buildings claiming that the expense is too great. These required submissions should not be waived here.<sup>5</sup>

The elevations provided for Phase 1 are insufficient to evaluate the Open Space Design criteria. In this project, the truly substantive changes to the property would occur in Phase 2 and 3. The Applicant proposes a second story on the hospital annex building and adding a back second story to the boiler room in Phase 2, adding a second story to an existing building and constructing four

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<sup>2</sup> LUO, § 6.3.3.1, We note that these are also required for simple building permits where site plan review is not required, and applicants to the code enforcement officer and the Planning Board in the past have been able to comply without objection.

<sup>3</sup> LUO, §. 6.3.4.2

<sup>4</sup> LUO, §. 6.3.4.3

<sup>5</sup> The LUO permits waiver of application requirements only “for good cause shown” and only if such waiver will not “unduly restrict the review process.” LUO, § 6.3.1. “Good cause” requires “a finding that particular submissions are inapplicable, unnecessary, or inappropriate for complete review.” The Applicant is not claiming that the elevations are inapplicable, unnecessary or inappropriate for the proposed project. He only claims that the required elevations and renderings are too expensive. This is not a permissible ground for a waiver under the LUO. If it were, it would conflict with the requirement that the Board consider whether “the applicant has the adequate financial and technical capacity to meet the provisions of this Ordinance.” LUO, § 6.5.1.14. If the Applicant cannot afford to meet the requirements for site plan application, it raises a substantial question about his financial capacity to complete the project in accordance with the LUO.

brand new structures in Phase 3, but omits the required site plan information for those changes. All told, the Applicant has failed to provide the required elevations and depictions for over 39% of the project. This is far from a “total site plan” as the Open Space Design ordinance requires. This significant shortcoming precludes the Board from evaluating substantive standards that must be met at this stage, such as whether the application is compatible with the neighborhood in the HDR district (as we discuss below).

The Applicant cannot have it both ways. He cannot seek to benefit from the setback variances and density bonus of Open Space Design with an application that is only complete for 60 percent of the project. This falls far short of the “total site plan” required for Open Space Design. If the Applicant finds it too expensive to complete his application, he can proceed with Phase 1 as his total and complete project. However, the Applicant should not be permitted to benefit from the density bonus and set back variances permissible under the Open Space Design standards without providing the required “total site plan” information.

### **III. The Applicant Fails to Meet the Eligibility Requirements for and Objectives Behind Open Space Design.**

#### **(a) LUO § 10.23 - Open Space Design Eligibility:**

In order to be eligible for Open Space Design, “the minimum land area necessary for an open space design is 5 acres of suitable land.”<sup>6</sup> The Applicant falls short of this requirement as his proposal requires the use of an impermissible odd shaped lot and impermissibly counts land not suitable for development. Although the Board conducted a straw poll on these issues at an earlier stage, it must revisit them before it can give final approval. In addition, the Board cannot—and should not—approve an open space project that lacks a sufficient amount of dedicated useable open space.

**The LUO prohibits “flag lots and other odd-shaped lots in which narrow strips are joined to other parcels to meet minimum lot-size requirements.”<sup>7</sup>**

This application impermissibly uses an odd shaped lot to meet the minimum acreage for Open Space Design. Under the LUO, the only permissible reason to create a flag lot or odd shaped lot is when it is “necessary” for a “right of way” to a rear lot and it meets certain other dimensional requirements defined in sub-section 8.3 of the ordinance. That is plainly not the case here.

The LUO defines “flag lot”<sup>8</sup> but does not define “odd shaped lot.” The board must therefore look to the customary dictionary definition. Miriam-Webster defines “odd” as “differing markedly

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<sup>6</sup> LUO, § 10.23.2.3.

<sup>7</sup> LUO, § 8.1.4.

<sup>8</sup> See LUO § 17.2 (“Flag Lot: A lot or parcel of land that is located to the rear of another lot or lots which front on an improved public road and that is not able to be developed solely because it lacks the necessary minimum frontage on

from the usual, ordinary, or accepted.” Oxford English dictionary defines “odd” as “different from what is usual or expected.” Whether a lot is different from what is a usual or expected shape is informed by the lot requirements in LUO Section 8. Sub-section 8.3 emphasizes that flag and odd shaped lots are prohibited unless they provide access to a rear lot. The ordinance clearly provides that achieving minimum lot-size requirements is not a permissible purpose of a flag lot or odd shaped lot, yet here, that is precisely why the Applicant seeks to join this new odd shaped lot to the project parcel.

City Solicitor Pottle has advised that the “facts and circumstances” of any potential or proposed odd shaped lot or flag lot should be carefully examined to determine their import (or not) in satisfying dimensional standards related to minimum lot size. The facts and circumstances may show that a transfer between property owners creating flag or odd shaped lots “objectively demonstrate[s] the primary purpose is with respect to dimensional standards other than access.” In these circumstances, Solicitor Pottle notes “the lot itself may violate the LUO, or the portion of the lot representing the odd or flag shape *may not be counted towards the dimensional requirements relative to minimum lot size.*” (Emphasis added.)<sup>9</sup>

At the December 8, 2020 Planning Board Meeting, the Applicant candidly acknowledged that the proposed addition of the odd-shaped lot is necessary to meet the minimum land area for Open Space Design.<sup>10</sup> At that point, his plans showed the additional lot as a thin strip of land ending in a rectangle approximately 50’ x 300’ in size (noted on the plan as .5 acres but described in the purchase and sale agreement as .44 acres), to be carved out of land on which the Alzheimer’s Center is located and conveyed by MaineGeneral Rehabilitation and Long Term Care. By March 9, 2021, the Applicant submitted revised plans showing an expansion of this rectangle to a trapezoidal shaped lot of .9 acres.<sup>11</sup> Neither of the purchase and sale agreements nor any of the amendments show this increase in acreage or change in shape.

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said improved public road. A flag lot shall consist of an access strip providing access to the improved public road and a rear lot.”)

<sup>9</sup> The solicitor goes on to list several factors to consider namely: time and context of the property transfer, objective purpose(s) of the transfers, statements of the property owner and other persons, characteristics of the odd or flag shape land in question (e.g., steep slopes; wetlands; etc.), design of a project or proposed activity relative to the flag or odd shaped land, and any other objective factors the reviewing authority finds relevant to the inquiry. The Applicant has failed to present any factors that point to a permissible purpose that would permit the board to find that the lot could be counted.

<sup>10</sup> See minutes of 12/8/20 meeting at p. 10 (“It is a narrow strip that was joined to increase the areas so that the number of dwellings could be increased. Mr. Boghossian states that it was added because it did not meet the minimum lot size for his plan.”)

<sup>11</sup> See hatched area shown on plans dated March 9, 2021. Mr. Boghossian told the Planning Board on December 9th that he could not acquire a larger strip of land here due to expansion of the Alzheimer’s Center parking lot, but it appears he later discovered that MaineGeneral Rehabilitation & Long Term Care could convey a slightly larger triangle of land. The Applicant’s most recent plans submitted on September 24, 2021, still show the “deed line” of the parcel to be conveyed along the southern edge of the rectangle -- i.e., not including the entire trapezoid.

Without this additional .9 acre parcel, the Applicant cannot meet the 5-acre minimum necessary for the Open Space Design density bonus, nor can the Applicant meet the 1,000 square feet of open space required for each multi-family unit. He relies on the odd shaped addition to the 150 Dresden Avenue parcel for both. However, adding the additional lot to the existing 150 Dresden Avenue parcel is impermissible if it is to achieve these goals.<sup>12</sup>

Further, the proposed additional lot does not fit within the permissible grounds for odd shaped or flag lots. First, it does not provide access to the site as would be an allowable purpose under subsection 8.3. The project parcel has 244 feet of road frontage on Dresden Avenue with two proposed entrances – neither of which comes near to using the odd-shaped parcel for a right of way. Second, there are no natural features impacting the shape of the additional lot. The lot's shape is entirely a function of the Applicant's desire for additional acreage and the location of a man-made feature (a parking lot) recently expanded on the Alzheimer's Center parcel.

Taken together, the Applicant's objectives and the physical characteristics of the lot plainly show that this is an impermissible odd shaped lot that is prohibited by the LUO. We request that the Board make clear findings of fact regarding each of the factors related to the oddly shaped lot as outlined by Solicitor Pottle (see footnote 9), and issue clear conclusions of law regarding whether or not those factors make this an impermissible odd shaped lot.

**The Applicant has failed to bear his burden that the additional odd-shaped lot is suitable for development<sup>13</sup> and therefore countable towards the Open Space Design 5-acre minimum.**

The area that may be counted towards the 5 acres required for Open Space Design excludes “wetlands, rivers, streams, brooks, stormwater drainage features, and resource protection district areas, areas within the 100-year floodplain and areas within roads and other rights-of-way.”<sup>14</sup>

The Board has already heard considerable evidence regarding areas that should not be counted towards the 5 acres required for Open Space Design. First, the Applicant's own Site Plan shows a “stone dam” in the rear of the 150 Dresden Avenue parcel raising questions of water features that would make the area unsuitable for development. Further, the Board has received public comment indicating that the steep topography and presence of streams and drainages make the

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<sup>12</sup> The LUO is clear that the applicant bears the burden of proof in showing that his proposal meets the review criteria and standards of the ordinance. However, he has failed to lay out the facts and circumstances showing the additional lot is permitted under the LUO. In fact, the Applicant has only offered statements pointing to the impermissible purpose of achieving minimum lot size.

<sup>13</sup> In a memorandum from Kris McNeil, Mark Eyeran, and Jonathan Pottle (aka “City Staff”) to the Planning Board, dated April 9, 2021, staff notes that ‘suitable’ and ‘suitable for development’ are not defined in the LUO. However, “development” is defined as ‘any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.’

<sup>14</sup> LUO, § 10.23.2.5

additional .9 acre lot unsuitable for development. We will have photographs and maps at the public hearing to illustrate these features. Given that the topography and other evidence indicates the presence of streams and drainage features, the Applicant must affirmatively demonstrate that the area is suitable in order to meet his burden under the LUO and qualify for Open Space Design. The Applicant has not done so here.

**(b) LUO § 10.23.3 – Suitability of the area selected for Open Space and alignment with ordinance objectives:**

In his most recent site plan application submitted on September 24, 2021, the Applicant has proposed dedicating 56,000 square feet of “wooded land as open space which will be left undisturbed in perpetuity with the exception of a maintained walking trail.” The plans submitted with the application, however, *do not delineate any dedicated open space or walking trail*. We and the Board are thus left to guess which area(s) of the property the Applicant plans to designate. This is contrary to the ordinance and a very clear directive given to the Applicant at a prior meeting.<sup>15</sup> As discussed above, much of the wooded area on the 150 Dresden Ave parcel and the .9 acre odd-shaped lot is unsuitable in even meeting minimum lot area requirements, but regardless, it is certainly not useable “common open space.” Indeed, attempting to use this land for open space is inconsistent with the definition and objectives for open space under the Open Space Design criteria specifically and the LUO generally.

Under the Open Space Design criteria, a development must dedicate common open space upon project approval. LUO, § 10.23.4.1. Common open space is defined as “land within or related to a development, not individually owned, which is designed and intended for the *common use or enjoyment of the residents of the development or the general public*.”<sup>16</sup> Within multi-family projects such as this one, the project must dedicate 1,000 square feet per dwelling unit, “consisting of a yard, garden or playground area shall be provided.”<sup>17</sup> Here, the subdivision plan does not designate any specific area as open space, and much of the area would not qualify. For example, “narrow strips of land or collections of small tracts shall not be permitted as open space unless designated as part of a trail system connecting larger parcels” which is not the case here, so the narrow strips cannot be counted. LUO, § 10.23.4.1. Further, “in no case shall land unsuitable for development be counted as the required open space” LUO, § 10.23.3, which would disqualify other portions of the lot. Finally, open space selection in a development seeking to qualify under the Open Space Design should be guided by six priorities.<sup>18</sup> The

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<sup>15</sup> LUO, §10.23.4.2; see minutes of July 13, 2021 at p. 4 (“Open space should be clearly identified on the plan, with a note in the text, referring to the area being used for open space being permanently restricted from development.”)

<sup>16</sup> LUO, § 10.23.4.1, § 17

<sup>17</sup> LUO, § 10.16.3.9

<sup>18</sup> LUO, § 10.23.3.1., The six priorities governing open space dedication selection include:

10.23.3.1.1 Existing recreational areas or trails.

10.23.3.1.2 Scenic areas as identified by the city and the Comprehensive Plan.

10.23.3.1.3 Existing agricultural fields, pastures, or orchards.

Applicant fails to demonstrate that any of these are met by its proposal. The most recent site plan application mentions a trail, but the plans do not depict the location of any trail.

In evaluating proposed “open space,” the Board must read the Open Space Design Criteria priorities alongside the broader ordinance definitions and objectives. The overarching emphasis in evaluating open space is “common use and enjoyment of the residents or public.” Here, as noted above, the wooded areas to the north of the proposed Phase 3 townhouses and in the additional .9 acre lot contain steep slopes and drainage gullies. This natural topography presents accessibility challenges for residents and the general public who might even consider using the area. It may also violate the Federal Fair Housing Act for this land to serve as the principal open space for the development.<sup>19</sup> These barriers to use and enjoyment mean that the proposed open space fails to meet the objectives of the LUO.

Further, the Open Space Design priorities emphasize connection to existing natural and historical resources. It is these public benefits that justify the additional concentration of dwelling units under the LUO. However, the “wooded land” that the Applicant references (without delineating) as open space does not connect to or include existing recreational area; scenic areas; agricultural fields, pastures, or orchards; significant wildlife and plant habitat areas; or archaeological or historical sites. The Applicant’s vague reliance on the last priority item “existing undeveloped forest areas” also ignores the reality that there is no right to access any adjacent woods which are all privately owned.

Finally, permitting this Applicant’s proposal to satisfy the ordinance requirements for open space would deny future residents the benefits of open space that the LUO intends for multi-family projects. The ordinance requires that multi-family projects provide 1,000 square feet per unit for yard, playground or garden.<sup>20</sup> The Open Space Design criteria permit “innovative approaches to housing and environmental design.” The criteria do not permit a developer to deviate from the overall amenities contemplated for multi-family projects by the LUO. Residents of multi-family housing that are built under the Open Space Design criteria should benefit from either a yard, playground or garden or an innovative comparable alternative.

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10.23.3.1.4 Significant wildlife and plant habitat areas.

10.23.3.1.5 Archeological or historic sites.

10.23.3.1.6 Existing undeveloped forest areas.

<sup>19</sup> The implementing regulations of the Federal Fair Housing Act require that multi-family housing “public and common areas are readily accessible to and usable by handicapped persons” 24 C.F.R. § 100.205(c)(1). Common use areas are defined as “rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.” 24 C.F.R. § 100.201. To the extent that the trail is an amenity offered to residents, the Applicant is likely triggering FHA accessibility requirements.

<sup>20</sup> LUO, § 10.16.3.9.



The Applicant's vague proposal is far from this objective of the LUO. Thoughtful, connected and usable open space is the centerpiece of the Open Space Design criteria. The Applicant's proposal makes it an afterthought. The Board cannot—and should not—allow any Open Space Design project that has no real, useable open space—let alone one that seeks a density bonus.

**(c) Affordable Housing Proposal – the LUO requires affordable units for sale as well as for rent.**

The Applicant seeks to increase the density of his development through the Open Space Design bonus for designating 10% of the units as affordable as defined by 30-A M.R.S. §4301(1). The proposal places all the affordable units in Phase 1 and only provides for affordable rental units. This does not comply with the objectives of the LUO and comprehensive plan and the broader policy objectives both seek to achieve. When evaluating an affordable housing proposal for the density bonus, “[t]he city may set conditions on the density bonus proposal to ensure that the intent of this Ordinance is followed.” LUO, § 10.23.5.2. Therefore, the city should exercise its authority and set conditions on the project that both rental and ownership units be offered as affordable.

The Open Space Design density bonus allows a developer to increase project density by 20% if 10% of the units are made affordable to households at or below 80% of the area median income. When, as here, units will be offered for both sale and rental, the affordable housing units must meet “the *sales price and/or rental targets* established by the Gardiner Comprehensive Plan.”<sup>21</sup>

The “and/or” provisions of LUO section 17.2 includes both “sales price” as well as “rental targets”—demonstrating that when units will be *only sold or leased* it must meet the sales price or rental targets, but when, as here, they will be *both sold and leased*, there must be affordable units of each kind as part of the proposal. This is the only reading of this provision that is consistent with the policy goals laid out in the comprehensive plan that “Gardiner should be an attractive place to live for people of all ages with a focus on assuring that the community *meets the needs of younger people and families*.” Gardiner Comprehensive Plan, 62.<sup>22</sup> The comprehensive plan further provides that “the City should assure that its development regulations allow a wider range of housing in the developed residential neighborhoods while at the same time maintaining the livability of these neighborhoods.” *Id.*, 70.

These two provisions align with a broader housing policy trend to provide ownership opportunities to families at all income levels, and not relegate affordable units to only rental units. Indeed, one key tool highlighted by ownership advocates is precisely the density bonus

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<sup>21</sup> LUO, § 17.2 defines “Affordable Housing” as: “Housing units which meet the sales price and/or rental targets established by the Gardiner Comprehensive Plan.”

<sup>22</sup> [Comprehensive Plan and Amendments \(2014\) | Gardiner ME \(gardinermaine.com\)](#)

proposed in the LUO.<sup>23</sup> Evidence shows that lower income homeowners get far less assistance than renters of equivalent income,<sup>24</sup> and the provisions of Gardiner’s LUO, read consistently with the comprehensive plan, demonstrate that affordable housing proposals must advance this policy.

As proposed, the Applicant’s proposal does not meet the needs identified in the LUO and comprehensive plan for a variety of affordable housing types. The affordable units are the smallest within the project and are offered only for rent, despite the project proposing other larger units for sale. Contrary to the policy of the LUO, the Applicant’s proposal does not include any affordable townhomes which would both be larger to accommodate families and be for sale.

The Applicant’s affordability proposal falls short of what Gardiner needs and what its ordinances require. During Covid-19, the Gardiner ownership market (as with the rest of Maine) has boomed. The city has seen a 41.2% median sale price increase this year over last year.<sup>25</sup> Further, the need for affordable rental units also remains high.<sup>26</sup> Gardiner should only grant the density bonus to projects that meet both of these challenges and therefore should place conditions on this affordable housing proposal to include both affordable ownership along with rentals and require that larger units be made affordable.

For all the above substantive reasons, the application should be denied.

#### **IV. Both the Subdivision and Site Plan Applications Fail to Put Forward a Proposal Which Complies with the LUO and the Comprehensive Plan.**

##### **(a) Compliance with the LUO standards that incorporate the Comprehensive Plan**

Section 14.4.9 of the subdivision standards requires that “the proposed subdivision conform[] to all the applicable standards and requirements of this Ordinance, the Comprehensive Plan, and other local ordinances.” All of these elements are required. Section 14.4.9 of the LUO further provides that “[i]n making this determination, the Planning Board may interpret these ordinances and plans.” The Applicant must carry its burden to demonstrate to the Board that the proposed subdivision complies with the Comprehensive Plan, and the Board must make specific findings on those issues as required by Section 14.4.9.

This requires consideration of the social and cultural character of residential neighborhoods. The Comprehensive Plan designates the Dresden Avenue neighborhood as a “limited growth area,”

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<sup>23</sup> “Increasing access to sustainable homeownership.” *Local Housing Solutions*, [Increasing access to sustainable homeownership - Local Housing Solutions](#)

<sup>24</sup> Edgar Olson, *Promoting Homeownership among Low-Income Households*, URBAN INSTITUTE, (August, 2007), [Promoting Homeownership among Low-Income Households \(urban.org\)](#)

<sup>25</sup> [Gardiner Housing Market: House Prices & Trends | Redfin](#).

<sup>26</sup> [Mainers struggling to find housing in post-pandemic market | newscentermaine.com](#)

meaning that it is one of the “established neighborhoods where the City’s objective is to maintain the current development pattern while allowing limited infill or redevelopment that is in character with the adjacent neighborhood.”<sup>27</sup> (Emphasis added.) The Comprehensive Plan refers to “limited growth areas” as “areas in which intensive development will be discouraged but modest infill development and redevelopment will be accommodated.”<sup>28</sup> References in the Comprehensive Plan to new housing are only for the “designated growth areas.” (Emphasis added.)

It is difficult to see how the Board could view a proposed development of 56 units of new housing at the Gardiner Green site as anything less than “intensive development.” As has been noted, such a development would increase the number of housing units on the street by 230% (43 existing + 56 new = 99 units;  $99/43 = 2.3$ ). It certainly cannot be construed as “modest infill development” given that it would more than double the number of dwellings on the street.

Without a density bonus, the dimensional standards for multi-family housing in a High Density Residential area would allow for development of 34 units on 3.9 acres of land ( $34 \times 5,000 \text{ SF} = 170,000 \text{ SF}/43,560 \text{ SF/acre} = 3.9 \text{ acres}$ ) and an additional 5 units on .62 acres (excluding the flag lot) for a total of 39 units. This already pushes the limits of what could be considered “modest infill development” at this location. (Indeed, it would increase the number of households on Dresden Avenue by 150%).

Allowing this applicant to add 20% more units by approving a density bonus in a “limited growth area” while providing no useable open space, and no affordable units for sale, would thwart the land use objectives set forth in the Comprehensive Plan and the specific requirements of the LUO.

#### **(b) Compliance with the Site Plan Review criteria**

Furthermore, the Applicant fails to meet his burden that the application aligns with the character of the neighborhood in the HDR District.

The site plan review criteria in Section 6.5.2.1 require the applicant to prove that the proposal “will be sensitive to the character of the site, neighborhood and the district in which it is located including conformance to any zoning district specific design standards.” This provision uses the phrase “including conformance” to those specific standards – it does not say “limited to” the district-specific design standards. Thus, the Board’s evaluation of sensitivity to the character of the neighborhood must include, but *cannot be limited to*, determining whether the project conforms to the design standards set forth in Section 7.8.4 that are specific to the HDR district (e.g., building height and width, appearance of the walls facing the street). Section 6.5.2.1 requires a broader inquiry, similar to the determination about compliance with the Comprehensive Plan. Indeed, in their memo of April 9, 2021, City Staff suggested that the Planning Board could “make a partial determination as to the character of the neighborhood” based on “size, bulk, and density considerations” separate from (and prior to) analyzing building

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<sup>27</sup> City of Gardiner Comprehensive Plan 2014, p. 90 [12.536\\_council\\_accepted\\_plan\\_8-27-14\\_0.pdf](#) ([gardinermaine.com](#))

<sup>28</sup> *Id.*

design details to determine whether the specific district standards have been met. Many Dresden Avenue neighbors have spoken eloquently about the established character of the neighborhood and how it would be adversely affected by this project as proposed. Those comments support a finding that this project as proposed is not in keeping with the character of the neighborhood.

The proposal is inconsistent with the character of the neighborhood even just applying the district-specific standards in Section 7.8.4. Section 7.8.4.3 provides that the “reconstruction of an existing principal building or structure must be compatible with the established character of the neighborhood in which it is located” and the Planning Board must apply the criteria set forth in the subparts of section 7.8.4.3. Subsection 7.8.4.3.5 requires a finding that the appearance of the wall of the building facing the street must be consistent with the predominant pattern in the immediate neighborhood.

The Applicant asks the Board to focus on the appearance of the existing buildings and conclude that any change would be an improvement and thus make the project compatible with the neighborhood. But that is not the standard. In order to approve the conversion of the former hospital buildings into the proposed residences the required finding is that the *proposed development* – including a 34-unit apartment building with glass and steel cladding as shown in the elevations for Building 6 presented on June 25, 2021 – is consistent with the predominant pattern in the neighborhood. Here, the Board cannot make that finding based on the evidence in this record. (*See* photographs of the houses on Dresden Avenue submitted by Michael Gent and Cheryl Clark on March 9, 2021, entitled “A Look at the Physical Character of Dresden Avenue”.)

**(c) Inconsistency across the depictions of each phase create doubt about what the board would be approving as a part of Site Plan Review.**

The Applicant’s “phased” approach raises numerous inconsistencies that will impact construction, design and ownership. The Phase 2 plan does not show conditions that will exist at the end of Phase 1. Similarly, the Phase 3 plan does not show conditions as they will exist at the end of Phases 1 and 2. Discrepancies include:

**The application fails to show condominium lot ownership across “phases”.** As noted above, none of the plans show a line separating what land area will be owned by a condominium association versus what will be owned by the Applicant and rented as part of Phase 1. The subdivision application, dated September 24, 2021, states that the swimming pool area will be developed as part of Phase 3, but it is not included on the Phase 3 plan as part of the shaded area being developed in that phase, nor is it clear whether the pool would be owned by the condominium association or the entity that will own Building 6.

**The parking lot changes across phases do not account for residents at the end of Phase 1.** A note on the Phase 1 plan acknowledges that 68 parking spaces are required for the 34 rental units, yet those spaces are not delineated on the plan, and the entire existing parking lot is excluded from Phase 1 as shown on these plans. Phase 2 involves development of 6 units, requiring 12 additional parking spaces, but these are not

delineated on the plan either. The Phase 3 plan appears to include plenty of parking for all three phases, but there is no delineation of which parking areas would be owned by the condominium association and which would be allocated to the 34 rental units in Building 6. There is also no indication about where Phase 1 and 2 residents would park given the drastic change in parking spaces during Phase 3 construction.

**Structures and Buffer Zones are not consistently shown, and the change is not accounted for in the notes.** We have observed a shed located on the north end of the Alzheimer's Center's expanded parking lot that appears to be within the hatched trapezoidal shape to be conveyed from MaineGeneral Rehabilitation & Long Term Care. This is not shown on any plans. Moreover, the dumpsters are located within the buffer strip to the west of the parking lot for 150 Dresden Avenue on the Phase 1 plan but are removed in the Phase 2 and 3 plans.

**Setbacks from roads and property lines as shown on the plans do not comply with the ordinances.** The road setback is shown as 15 feet from the edge of the right-of-way on Dresden Avenue; Section 7.7 requires 25 feet in HDR. The rear setback along the Alzheimer's Center lot line is shown at 10 feet; the LUO requires 30 feet for new multi-family dwellings.<sup>29</sup> The ordinance also requires a minimum side setback of 30 feet for new multi-family dwellings which is also not depicted on the Applicant's plans.<sup>30</sup>

**V. The Applicant has Failed to Provide Sufficient Evidence of Financial Capacity for Either Subdivision or Site Plan Review.**

The subdivision standards expressly require "a letter from a financial institution such as a bank ... that states that the applicant has the necessary funds available or a loan commitment from this institution to complete the proposed development within the time period specified by the applicant."<sup>31</sup> Further, an application requires, "a list of construction items, with cost estimates, that will be completed by the applicant prior to the sale of lots and evidence that the applicant has financial commitments or resources to cover these costs."<sup>32</sup> For Site Plan Review, Section 6.5.1.14 requires the Board to make a finding that the "applicant has the adequate financial and technical capacity to meet the provisions of this Ordinance."

The Applicant has only submitted a letter from a bank officer (John Butera of Skowhegan Savings Bank) indicating that the bank "is reviewing ... the scope of the project and the financial aspects"; that the bank is "very interested in exploring this opportunity and can hopefully initiate the underwriting process at some point in the future." The bank "look[s] forward to receiving more detailed information [from Mr. Boghossian] and [is] very interested in potentially financing this project." (Emphasis added.) Mr. Boghossian's attorney has asserted that "[w]ith substantial assets, excellent liquidity and zero debt, Mr. Boghossian is in an excellent financial position to

<sup>29</sup> LUO § 10.16.3.3

<sup>30</sup> LUO § 10.16.3.2.

<sup>31</sup> LUO § 14.6.7.1.13.

<sup>32</sup> LUO § 14.5.8.4.4.3.4.18

secure the additional funds needed to complete this project.”<sup>33</sup> However, the Applicant has presented no evidence to back up his attorney’s opinion.

The bank’s letter and the Applicant’s attorney’s statement fail to meet the Applicant’s burden to demonstrate financial capacity, as required for all applications, or his burden to prove that he has the financial capacity to “complete the proposed development within the time period.”

The Applicant also has not submitted the required list of construction items with estimates, nor financial commitments for those costs, a substantive requirement of the ordinance. Moreover, here the lack of estimates for the proposed work and the financial commitments to meet them is particularly concerning because of the current condition of the Applicant’s property in Bethel, Maine (“Gehring Green”), which calls into question whether the Applicant will move forward with the project if approved.

When we raised concerns about Gehring Green in prior public meetings on this application, Mr. Boghossian’s attorney responded: “There are NO stalled projects. The Bethel site is under construction as we speak.”<sup>34</sup> According to Bethel town officials consulted after that comment was made, however, no building permits have been issued and no roofing or structural work has been done on the Gehring house. As you can see from the attached photographs taken on August 27, 2021, the structure is boarded up with plywood in the windows and appears to have deteriorated significantly over the 11 years that it has been sitting there undeveloped. (Indeed, it looks similar to the former nursing home property adjacent to 150 Dresden Avenue, which Mr. Boghossian has acknowledged is a blight on our neighborhood.)

This is precisely why construction estimates and financial commitments are required for site plan approval. The Applicant has not provided those here and has failed to satisfy this requirement of the LUO.

## **VI. Conclusion**

This Applicant, like all who appear before this Board, must be held to the standards of Gardiner’s land use ordinance. This proposal seeks to take advantage of the benefits of the Open Space Design Criteria and the related affordable housing bonus without complying with the ordinance provisions that would enable it to do so. The project does not designate any useable open space, has no affordable units proposed for sale, and falls short of the minimum dimensional requirements to qualify for Open Space Design. Moreover, the proposed phasing improperly seeks to defer submission of necessary materials until future phases, in a manner not allowed by the LUO. The Applicant asks for up-front approval of the density bonus but does not

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<sup>33</sup> Memorandum from Michael Lane, Esq., to Planning Board dated July 12, 2021, at 2.

<sup>34</sup> See July 12, 2021 Memorandum to Gardiner Planning Board from Michael Lane, at p. 2.

include the “total site plan” that the LUO requires as a prerequisite to that approval. As proposed, this project fails to meet the requirements of the LUO and must be denied.

Thank you for considering these comments. We will be present at the public hearing on October 12, 2021, to review the key points in these comments with you orally and to answer any questions you may have.

Respectfully submitted by,

Phyllis Gardiner  
Phyllis Gardiner

Robert L. Johnston  
Robert L. Johnston

Cheryl Clark  
Cheryl Clark

Michael Gent  
Michael Gent

Aula Main  
Aula Main

Morgan Pierce  
Morgan Pierce

James Montell  
James Montell

Karen Montell  
Karen Montell

EMAIL PERMISSION TO SIGN  
Robert Moniere

Susan Shaw  
Susan Shaw

Barbara Estabrook  
Barbara Estabrook

Ron Burnham  
Ron Burnham

(AT WORK)  
Kathy Pardee

Mary Hutchins  
Mary Hutchins

Donald Cameron  
Donald Cameron

Lisa St. Hilaire  
Lisa St. Hilaire

Helen Stevens  
Helen Stevens

Gordon Stevens  
Gordon Stevens

Ian Burnes  
Ian Burnes

Marianne Roth  
Marianne Roth

Billy Rosser  
Billy Rosser

Don Brown  
Don Brown

Karen Adrienne  
Karen Adrienne

EMAIL PERMISSION TO SIGN  
Jan Joyce

Ward Shaw  
Ward Shaw

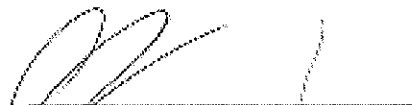
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Penn Estabrook

Sue Burnham  
Sue Burnham

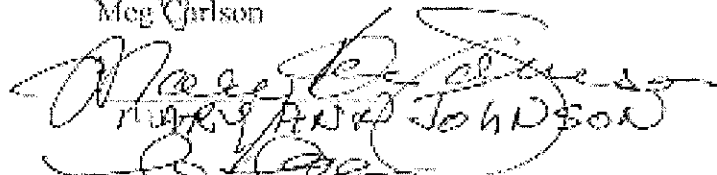
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Adrienne Doyle

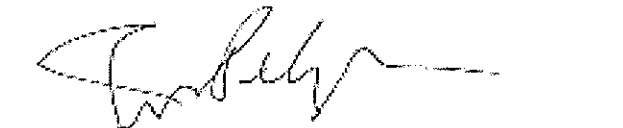
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Dave Hutchins



  
Jeff Bussell

  
Meg Carlson


  
Mary Ann Johnson  
Amen Agee


  
Jessica Pilkington  
William A. Burnes

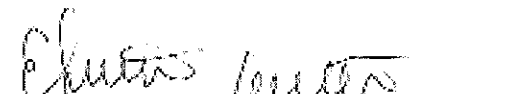
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Holly G Burnes  
Nancy B. Gardiner


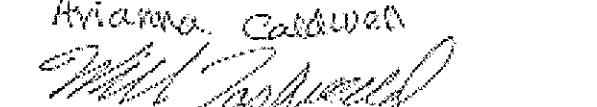
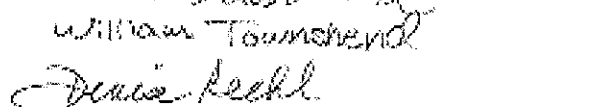
John R. Nelson

Elizabeth Nelson  
Betty Heseltan  
Betty Heseltan  
George Heseltan  
George Heseltan

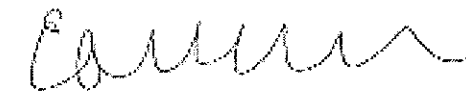
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Todd Warkley

  
Ani Bussell  
Anni

  
Elizabeth Kenneth

  
Arianna Callawa  
  
William Tounshend  
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Denise Reehl  
  
Marcella Genovese  
Lyndee Genovese  
Dorothy Davis

Sherril Nelson

  
Cindy Conving  
Michelle Shaw  
Michelle Shaw

Scott D. Fossett  
Scott D. Fossett

Jan McJoda  
Laura M Fossett