



CITY OF GARDINER BOARD OF APPEALS

MEETING MINUTES

Tuesday November 7, 2023

6:00 PM

City Council Room Chambers

The Board of Appeals held an Executive Session (pursuant to 1 M.R.S. 405(6)(e)) prior to the meeting on October 17, 2023, at 5:00pm

Call Meeting to Order: Chair Young called the meeting to order at 6:15 pm. He determined that there was a quorum. The board determined that the appeal application was complete, that the board had authority to hear the appeal, and that none of the board members were biased or conflicted towards this application.

- Roll Call: Board Members-** Chair Lester Young, Glen Glazier, Guy Ferriss, Douglas Baston, Kevin Sullivan, Ted Potter. Kristen Poremby was unable to attend.
Appellants- Helen & Gordon Stevens, Auta Main & Marianne Roth, Cheryl Clark & Michael Gent, Ian & Gillian Burnes, Lisa St. Hilaire, Robert Monniere & Janice Joyce, Susan Shaw, Holly & Danile Bruner; and Phyllis Gardiner.
Others present- Zachary B. Brandwein Esq., Mark Bower Esq. Paul Boghossian- Hathaway Holdings, Jim Coffin- Coffin Engineering, Melanie Mohny, Amy Posovsky, Barbara & Penn Estabrook, Jack Fles, Ron Burnham, Karen Montell, Donald Brown, Stephanie & Stephen Woodard, Dan Linsky, Shawn Dolley and Planning Board Chair Debby Willis, CEO- Kris McNeill, and Angelia Christopher.
- Administrative Appeal- Planning Board** - The Appellant group- which consists of abutters, and neighboring property owners, are appealing the August 9, 2023, Planning Board decision of the Subdivision and Site Plan Review for the Gardiner Green project will present their case first. This group of appellants is appealing the decision on the basis that ordinances 6.5.1.14, 14.4.10, and 10.16.3.9 were not met. The appellants felt that information submitted for the requirements for technical, financial capacity, and open space under were not sufficient.

~Ian Burnes spoke on behalf of the appellant group with a 15-minute limit. The neighboring property owners are concerned that the blight already affecting this property will continue and worsen and will end up untouched for years like another project of this developer.

The appellants felt that the documentation that was submitted to prove financial capacity, letters of interest from financial institution, were not enough to prove that this project could be completed. They wanted to see commitment of funding. Given how many applications were submitted for this project, and the errors that were made, the appellants are concerned that the applicant will not be able to complete a multimillion-dollar project such as Gardiner Green. The appellants disagree with the open space plan and feel that the applicant did not meet the 34,000sf requirement. They question what the developer is calling open space and feel that several areas designated to do not fit into the elements of yard, garden, or playground. The areas that they feel meet open space standards do not add up to the required amount. Mr. Burnes states that this is also another example of the applicants' lack of technical capacity. "If he can't find areas on the property that can be designated open space, how are they supposed to trust him with this project?"

~Attorney Bower will be presenting information for the applicant- Hathaway Holdings- Paul Boghossian. He started out with an image of the property in its current state and then a rendering that shows the future appearance. This project is three years in the making, with 19 meetings including public comment. There have been many revisions to the plan for a 34-unit building. The end result is a good project that meets the requirements of the ordinances. Board of Appeals can only modify or reverse the actions of the PB, only if there is proof that that the standards in question did not meet ordinance requirements.

In regard to financial and technical capacity- Mr. Bower points out that the letter of support from the bank refers to a good working relationship with Mr. Boghossian on several projects spanning 20 years. The letter also stated that financial options would be explored for the project once municipal approval was received. This project needs Planning Board approval before any financing can be guaranteed. The application was approved with conditions- one of them being that he needed to secure and submit proof of financial commitment when he applies for the building permit to start work.

It has been difficult to produce a firm project cost due to the rising prices of construction in recent years. Now that approval has been granted for the project, Mr. Boghossian can put out bids for the work to be done. Mr. Boghossian has a reputation for using reputable contractors and has some very successful projects behind him. To counter the appellants comments about applications being full of typos and errors Attorney Bower stated that he did not see any errors in the final plan that was approved. As for statements about the applicant not meeting open space requirements, the open space plan that the appellants submitted with this appeal is not the plan that was part of the final approval. The plan they are using is from an earlier application.

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Board of Appeals member, Kevin Sullivan, stating that the appellants were looking at the record that was provided, and he feels that there was not enough significant information provided in this application.

In regard to the open space plan- The applicant submitted an open space plan completed by a reputable engineer. 'Did the appellants have an engineer assess the open space plan?' 'What evidence do the appellants have that says the applicant did not meet open space requirements?' The definition of open space is vague, and the Planning Board interpreted the application to have met the standards for open space. The appellants have not provided evidence that shows that the PB was erroneous in their decision making.

Kevin Sullivan states that the conditions of approval were thought out carefully. In order for the applicant to get his building permits, he needs to show financial commitment, which will be reviewed by the CEO and City Manager. After obtaining his permits, he has one year to start the project, or the permits will be void. This was covered in the Planning Board approval as a condition.

Mr. Sullivan feels that the appellants have not shown that the areas identified were contrary to the ordinance. The appellants cannot ask for the BOA opinion on the judgment of the application, they need to see facts. Board member Doug Baston has questions about the areas listed as open space. He does not feel that the trail that is identified on the plan meets the requirements of open space. Ted Potter agreed with Mr. Baston.

Chair Young opened the public hearing at 7:17 pm. There was no comment. He closed the hearing at 7:18pm.

Attorney Zachary Brandwein states that the BOA is reviewing the PB decision, and they are deciding if the application satisfied the provisions of the ordinance. The board discussed what defines open space and whether or not the applicant achieves that. Board members feel that they have the information they need to vote.

Kevin Sullivan- offered the first motion that the Planning Board did not create reversible error in their decision with respect to LUO sections 6.5.1.14 and 14.4.10- Financial and Technical capacity. Motion seconded by Doug Baston.

Attorney Brandwein asks for more specific information for the final decision. Doug Baston explained that there is sufficient evidence that the Planning Board reviewed the application and added carefully thought-out conditions of approval. There is a record that supports that. No further discussion. All members present in favor. Motion unanimously approved.

In regard to Ordinance Section 10.16.3. Open Space requirements-

Kevin Sullivan states that when considering the requirements for open space in the LUO, the record that was presented includes an engineered open space plan that clearly identifies the areas on the property that will be designated for open space. The appellants did not present concrete evidence to show that the Planning Board erred in their decision. Lester Young seconded the motion.

Discussion- Doug Baston and Ted Potter do not agree and feel this should go back to PB. Lester Young read the definition as it is listed in the Land Use Ordinance- *The area of land on a lot not occupied by the principal building.* Mr. Baston still feels it does not meet the definition.

Vote- Chair Lester Young, Glen Glazier, Guy Ferriss, Kevin Sullivan- In favor. Ted Potter, Douglas Baston opposed. Motion passed 4-2.

The Board holds that the Planning Board did not err in interpreting the open space requirements found in Ordinance Section 10.16.3.9 and its findings of fact were supported by substantial evidence in the record and were not clearly contrary to any applicable provisions of the Ordinance.

The appeal is denied as to all issues raised by the Appellants. The Planning Board's decision is affirmed.

Attorney Brandwein will draft the decision. Doug Baston moved to delegate authority to the board chair, Lester Young, to review and sign the final decision. Ted Potter seconded the motion. No further discussion. Unanimously approved.

3. **Review of October 17, 2023, meeting minutes:** Doug Baston moved to accept the 10/17/23 minutes as presented. Guy Ferriss seconded the motion. No further discussion. Unanimously approved.
4. **Other:** No other business at this time.
5. **Adjourn:** Doug Baston moved to adjourn at 8:05pm. Guy Ferriss seconded the motion. Unanimously approved. Adjourn at 8:05pm.

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