Phyllis Gardiner & Logan Johnston
114 Oaklands Farm Road
Gardiner, ME 04345

July 13, 2021

City of Gardiner
Planning Board
6 Church Street
Gardiner, ME 04345

RE: Hathaway Holdings LLC site plan review and final subdivision plan applications for "Gardiner Green" at 150-152 Dresden Avenue, Gardiner

Dear Planning Board members:

We live and work at Oaklands Farm, which is located at the end of Dresden Avenue, about 650 feet from the proposed "Gardiner Green" subdivision. We share the concerns about this proposed development that have been expressed by several of our neighbors, including written comments submitted by Lisa St. Hilaire, Auta Main and Marianne Roth, Cheryl Clark and Michael Gent, Ian Burnes, Helen Stevens, and Barbara Estabrook. We have followed these proceedings closely since last July and have reviewed all of the applicant's most recent submissions. (It would be extremely helpful to the public if the Planning Board would ask city staff to place all of the elements of the applicants' current plans and supporting documents in one location on the city's web site, however. The "final" applications posted on June 28, 2021 refer to many previously submitted plans and attachments that are not easy to locate.) This letter outlines our concerns, and we ask that it be entered into the record. We also plan to attend the meeting tonight and may wish to speak if you open a public hearing.

1. Completeness of the application

On May 11, the Board found the Gardiner Green application to be incomplete, and flagged a number of aspects for which the applicant needed to submit more details, including "a letter from a bank stating that the applicant has the capacity to secure the loan to complete this project"; "a list of construction estimates"; delineation of the open space on the plan together with a deed restriction and a plan for how the open space will be maintained; details regarding what each building will look like and the types of building materials to be used in each phase; a plan for providing water and sewer to any newly constructed townhouses; an updated stormwater management plan to address the area around the townhouses; and a landscaping plan showing more plantings in the parking areas. (*See* minutes of May 11, 2021 meeting.) With the exception of delineating the open space on the plan and providing more information on building materials and façade design for buildings 5 and 6, none of these deficiencies appear to have been fully addressed. Accordingly, the applications remain incomplete, and we would urge the Board not to proceed with substantive review until all of the missing information has been provided.

2. Phasing of the project

The applicant is seeking final subdivision approval for one project, and he should have to submit enough information to prove compliance with all the requirements applicable to that entire subdivision – even if he plans to develop it in phases. Instead, the applicant is trying to mix and match – i.e., to gain concept approval for the entire development of 56 units on 5.4 acres of land, while only supplying enough details to show compliance for the first phase of his plan for 34 units. There does not appear to be any such thing in the Land Use Ordinance as a "concept approval" of a subdivision with detailed approvals to follow. It may be permissible for a developer to build a project in phases – and even to seek amendments to an approved subdivision plan along the way – but we fail to see how the Planning Board can approve the entire subdivision without having all the pieces in place to support such an approval. Until all the required elements of the ordinance have been addressed for the whole subdivision, this application should be deemed incomplete. If the Board disagrees, please make detailed findings regarding the authority to give concept approval subject to further review.

Staff has suggested that the Board could issue a conditional approval, requiring the applicant to submit elevation drawings and a description of building materials for the buildings to be redeveloped and constructed in Phases 2 and 3 to the Planning Board as a part of a "condition compliance" filing for each of those subsequent phases, which filings would be reviewed under the same process (including public comment) as for an original application. (*See* Staff memo of April 9, 2021.) Staff adds that no building permit could be issued by the Code Enforcement Officer until after the Planning Board had issued a separate approval based on a condition compliance filing for each phase. We do not agree that this approach is permissible under the Land Use Ordinance. If the Board decides to adopt this approach, however, please clearly define the limits of what you would be approving initially, and clarify what will be required prior to development of Phases 2 and 3 so that there can be no misunderstanding by the applicant (or any future Planning Board) down the road.

3. Financial capacity

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." 14.6.7.1.13

The applicant has submitted nothing more than 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."

On its face, this does not meet the requirements of 14.6.7.1.13.

Even if the Board concludes that the letter from Mr. Butera is enough to consider the application complete for review, the letter is certainly not enough to satisfy the applicant's burden

to prove that he has the financial capacity to "complete the proposed development within the time period."

We are particularly concerned about the lack of showing of financial capacity to complete this project because we fail to see how the developer is going to be able to rent apartments as small as those shown on these plans for the monthly rental fees that he seems to be contemplating. Based on personal experience and comparing prices with local realtors and other property owners, larger or comparable apartments are currently available on the market for less money than the "affordable" rents outlined in the memo from the applicant's consultant, Dovetail Consulting. The studio apartments to be developed in Building 6, in particular, are extremely small – barely half the size of studios in the area that typically rent for $650/month, which is far below the $1,056/month that Dovetail Consulting says would qualify as an "affordable housing" rent. One-bedroom apartments in this area typically rent for $850/month and two-bedrooms for approximately $1,000/month – both far below the "affordable housing" rents quoted by Dovetail Consulting. The applicant has not specified what his market rents would be but presumably he intends to set them higher than the "affordable housing" rates. This should raise significant questions in your mind as to whether Hathaway Holdings LLC has a financially viable plan to support financing of the project.

The letter from a bank should reflect that the bank has reviewed all the details of the applicant's proposal, including the proposed rents for all of the apartments that the applicant intends to develop, compared to other rents in the area.

In addition, as noted above, since the subdivision approval requested here is for the entire development – not just one phase – the applicant should have to demonstrate financial capacity to complete the entire development – i.e., all three phases – within the timeframe specified in his application. If the Board nonetheless decides to pursue the procedural alternative offered by Staff and allow the applicant to submit proof of financial capacity for Phases 2 and 3 through subsequent "condition compliance" filings, then the applicant must be required to prove financial capacity to complete Phase I alone at this point, without including any revenue from the sale of condos in future phases. The applicant should not be able to proceed as if he had approval for subsequent phases if he has not yet met the requirements for all those phases.

4. Whether the parcel meets the minimum size for Open Space Design:

We believe the Board should reconsider its preliminary, non-binding conclusion that the section 8.1.4 does not apply and that the parcel meets the threshold for consideration under Section 10.23 - Open Space Design.

Section 8.1.4 provides that "odd-shaped lots in which narrow strips are joined to other parcels to meet minimum lot-size requirements are prohibited except for rear lots meeting the requirements of 8.3." The triangle shaped lot with the long skinny tail that Hathaway Holdings LLC is proposing to acquire from MaineGeneral Rehabilitation and Long Term Care as a second parcel is plainly an odd-shaped lot. Mr. Boghossian also acknowledged in testimony on Dec. 8, 2020, that this .9 acre lot was being tacked on to the 4.52 acre parcel from MaineGeneral proposed for residential development for the sole purpose of meeting the 5 acre minimum for

Open Space Design, which in turn was for the sole purpose of qualifying for a density bonus. (*See* minutes of Dec. 8, 2020 meeting.)

Under Open Space Design, the minimum land area necessary is "5 acres of suitable land." (10.23.2.3) Land is not "suitable" to be included if it is a prohibited odd-shaped lot tacked on for the sole purpose of meeting the minimum. The only exception to the prohibition in 8.1.4 is if the odd-shaped lot fits the criteria outlined in 8.3, and those criteria do not apply to the facts of this situation.

The Board's inquiry should end there. The odd-shaped lot is prohibited by section 8.1.4 and thus is not "suitable" land that can be included in this development.

If you disagree, please make specific findings to explain why you think the second parcel is not an odd lot prohibited by section 8.1.4.

5. Compliance with the Comprehensive Plan and with all ordinances

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."

This means that to approve the project, the Board must make an affirmative finding that the proposed subdivision complies with the Comprehensive Plan. It is not enough to make findings of compliance with the ordinances alone.

The Comprehensive Plan designates our neighborhood as a "limited growth area" 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." (p. 90, 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." (p. 90, emphasis added.) References in the Comprehensive Plan to new housing are only for the "designated growth areas."

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." It certainly cannot be construed as "modest infill development" given that it would more than double the number of dwellings on the street.

Given the density and intensity of this development, we fail to see how the Board can make a positive finding of compliance with the Comprehensive Plan. Requiring only 5,000 square feet of lot area per dwelling unit already pushes the limits of what could be considered "modest infill development" at this location, but allowing this applicant to add 20% more units by approving a density bonus in a "limited growth area" would thwart the land use objectives set forth in the Comprehensive Plan.

6. Compatibility with the established character of the neighborhood

The site plan review criteria in Section 6.5.2.1 also 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 doesn't say "according to" the district-specific design standards. Thus, your evaluation of sensitivity to the character of the neighborhood need not 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 allows for a broader inquiry, similar to the determination about compliance with the Comprehensive Plan. Indeed, in their memo of April 9, 2021, 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 design details to determine whether the specific district standards have been met. Many of our 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. We share their views, which support a finding that this project as proposed is not in keeping with the character of the neighborhood.

There is also a problem with this proposal 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 wants you to focus on the appearance of the existing buildings and conclude that almost anything he might do to try to improve that look would make the project compatible. But that is the wrong comparison. Whether the appearance of the existing building is consistent with the predominant pattern in the immediate neighborhood is not the test – the finding you would have to make to approve this application 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. It is difficult to see how the Board could make that finding based on the evidence in this record. (*See* photographs of the houses on Dresden Avenue submitted by Michael Gent, along with testimony from other members of the public.)

Thank you for the long hours and diligent work you have put into reviewing the applications for this complex and evolving project over the course of the past year, and thank you as well for considering these comments.

Sincerely,

Phyllis & Logan

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