

- **Appendix L- Contributing Documents**

Neighborhood Comments- 11/09/2020

Emails from Planner Mark Eyerman

Email from City Solicitor Jon Pottle.

Hello, our names are Lisa St. Hilaire (63 River Ave, abutter) and Ian Burnes (17 Cottage Street, neighbor). We represent about a dozen residents in the neighborhood adjacent to the proposed project. The neighborhood appreciates the Planning Board's time, and so has asked that only a few of us be the voice for the neighborhood. We have shared these comments with you ahead of time so you have a copy to refer to, and appreciate the opportunity to share them now for this public hearing as you consider the merits of the project.

We recognize that something needs to happen with this property, because nobody wants it to sit abandoned, however, we find the submission lacking in detail, and have significant concerns about the impact that the project will have on our neighborhood. Our understanding is that tonight's hearing will only address the subdivision portion of the required approval, and that much more detail will be required to be provided for Site Plan approval at a future date. We have many concerns about how this proposal might impact the character of the neighborhood, and respectfully request that you require several additional key components that are not currently in the application package before finding the final subdivision and site plan application complete. Given that we do not have these details tonight we have limited our remarks on the site plan to what we hope will be in that application and assume that we will have an additional opportunity at the next public hearing to address the specifics of the site plan.

Our comments will be comprised of two sections: responses to the subdivision application materials as presented, and items important to the neighborhood that we hope to be able to react to prior to final subdivision and site plan approval.

Issues with subdivision as proposed:

1. Unit Count

- 1. A - Affordable Housing Density Bonus-** The application requests a 20% low-income density bonus, but no details are provided to clarify what low income means for these units, or how that designation will be enforced. Given that the applicant has previously stated that they are not using any federal or state funds, nor does the application include this information, it seems that the density bonus requested is only a means to increase the number of units allowed rather than a true desire to provide affordable housing to low income residents. The Gardiner Land Use Ordinance provides for clear reference to State and Federal Definitions of Affordable housing. The burden should be on the applicant to provide specific measures of affordability for specific units, and the board needs to place provisions that are enforceable by the CEO if the density bonus is granted.

- 1. B - Flag Lot –** We believe that the current configuration of the lot as submitted meets the definition of a “flag lot”, which is expressly prohibited in the Land Use Ordinance Section 8.1.4 under general lot requirements. It states that flag lots and other 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 other requirements in this section, which this lot does not appear to meet. The “flag” at the rear (east end) of the property is very steep, and would seem undevelopable, and appears to have no practical purpose for the development except to provide more acreage in order to be able to achieve the number of units he would like to build, and therefore, meet the minimum lot-size requirements for density in the HDR district.

Excluding the flag lot would cap the number of units at 39 units, and the neighborhood would not be unhappy to see this reduction. In an effort to work toward compromise, we strongly encourage the planning board to refuse the density bonus and to cap the number of units allowed at no more than 43 units (vs 52), permitted based on the 5.02 acre lot including the flag lot.

The application notes that 68 units will be developed if additional land is secured. This reference should be removed from the application. If additional land is secured, the applicant can always come back before the planning board with a new proposal.

2. Stormwater

Though the application (page 6) notes that existing stormwater system will be maintained, this proposal represents a change of use, an event that should trigger a thorough review of existing facilities, and upgrades, if needed. The Land Use Ordinance requires a stormwater plan be submitted with the application. Performance standards 6.3.2.7.2 states that evidence of stormwater adequacy is part of the basic information for all applications, and 6.5.1.7 states that the proposal will provide for adequate stormwater management. There are known issues with washout on and below this steep site. According to the application, there is over an acre of impervious area on the site. We know that the site has been developed piece-meal over decades, and there is no indication that the stormwater facilities on site are adequate. We encourage the planning board to require a stormwater control plan, designed by a professional engineer, as per Section 9.10, stormwater management design standards. Part of this plan should include the study of downstream drainage requirements, including any drainage into the steep ditches and streams at the back of and behind the property (to the east). A proper storm water management plan will satisfy requirement 14.4.16.

We encourage the planning board to require that the stream present on or adjacent to the flag lot is identified in the application as per 14.4.15, and that the freshwater wetlands within 1,000 feet of the lot are also identified as per 14.5.8.4.4.1.2.5.5. There is a mapped NWI forested wetland less than 1,000 feet from the easterly boundary of the current hospital lot, and there is a mapped S2 (imperiled) Freshwater Tidal Marsh within 800 feet of the easterly edge of the flag lot. These wetlands are hydrologically connected to the stream that runs through (or adjacent to) that flag lot. A proper stormwater control plan will help provide some protections to this stream and the associated wetlands downstream. This Freshwater Tidal Marsh is the only mapped natural community in the City, it is considered

rare (and in fact imperiled statewide), and is a wetland of special significance regulated by the DEP. It is special. We should take care that it is protected. Section 6.5.2.5 notes that steep slopes and significant plant and wildlife habitats are environmentally sensitive and should be preserved to the maximum extent. A stormwater control plan, designed by a professional engineer, will help in this regard.

3. **Height Variance** – The application refers to a height variance for one of the buildings. We are concerned by both the substance and process related to this request. Can the chair explain how a variance in the site plan ordinance could be granted by the planning board in the context of sub-division application? We would ask that no action be taken on this request until at the very least, an elevation of the building be provided, as part of a full site plan application, to ensure that such as variance would still allow for the building to fit in with the character of the neighborhood.

Items to be required for Site Plan Review

As indicated before, the neighborhood is very concerned about how redevelopment of this site might impact the character off the neighborhood, and we hope that we will have the opportunity to react to such an application at a later date at a public hearing.

1. **Building Interior Construction Detail** - Item "r" of the application (page 4-5) describes that the first building will be rehabbed into 11 studio apartments, 14 one-bedroom, and 9 two-bedroom apartments. The average square footage (620 sq ft) and the average rent (\$1021) are listed. There should be some more detail here for Site Plan Review. This plan should include floor plans, lead and asbestos remediation plans, fire suppression and egress, as well as detailed elevation drawings, not just an artists' rendering and footprint for all buildings.
2. **Building Exterior Detail** - Appendix H shows a rendering of "Building 6" (aka the hospital building) elevation, but it is missing critical information. Land Use Ordinance section 6.3 (site plan submission requirements) state that elevation drawings will show the facade and roof of the structures, as well as identify the facade and roof materials, including color and texture (6.3.4.2). Section 6.5 (review criteria) notes that exterior building walls over 50' in length visible from a public road will have a variety of building materials and will include landscaping abutting the wall (6.5.2.10) and further specifies that building materials will match the character of those commonly found in the City (6.5.2.11). Section 7.8.4.3 states that the structures must be compatible with the established character of the neighborhood, including specifying that the style and orientation of the roof, as well as the appearance of the wall of the building facing the street, must be consistent with those of nearby buildings. There is really no information in the application that considers the character of the neighborhood. We understand that the direction to the applicant for preliminary subdivision was to provide a basic sketch, and we would like some assurance that the next iteration of the Site Plan review include all of the required components.

3. **Financial Capacity** - Section 6.3 (Site Plan Submission Requirements) states that the estimated cost of the proposal will be included with the plan. (6.3.2.5). This is missing from the application. This is important regarding the financial capacity of the applicant for the project.

Item "p" references Appendix F to show financial and technical capacity to meet the requirements of this ordinance. Appendix F is a CV of sorts of the project team with names and addresses of two bank references. We suggest the City uses Land Use Ordinance section 8.10 (Performance Guarantees), which states that an irrevocable letter of credit from a bank indicating funds have been set aside for the project, be required with the application, which would satisfy the financial requirement in section 14.5.8.4.4.2.6.28 as documentation that the applicant has financial to meet the requirements of the ordinance. In presenting this letter of credit we would like to see that the bank has reviewed the site plan application and is extending its letter of credit to cover this specific project in full knowledge of the project, including number and size of units, the site location and layout, and the condition of nearby properties.

This is presented as a phased project, with little information regarding the three proposed phases. Will all phases be completed by the estimated project end date of December 2023? As this is a phased project, the neighborhood encourages the planning board to establish the amount and form of the performance guarantee, as laid out in section 8.10.3, which states that the amount of the guarantee may be up to 120% of the estimated cost of the project.

4. **Lighting Plan** - A lighting plan is required (section 8.7.4) per the general performance standards. There is no lighting plan included in the application. One of the many wonderful things about this neighborhood is our night sky. The stars are bright, and on many nights, we can see the Milky Way. Increased lighting would change our night sky. We encourage the planning board to require a lighting plan with the application, and to specify lighting that will not brighten the night sky in the neighborhood while providing adequate safety on the campus.
5. **Screening** - Item "o" on page 4 of the application notes that there will be a designated trash and recycling area, and that a private hauler will be contracted. Section 8.9.1 (exterior material storage) of the ordinance states that all dumpsters will be screened. Details of the dumpster location and screening should be included with the application. In addition, Section 9.5 (solid waste) states that at the time of the application, the applicant shall specify the amount and exact nature of all waste to be generated.
6. **Other Misc. Items of Interest** - Other items that appear to be missing from the application include a topographical map of the lot that overlays with the buildings that is more useful than what is currently provided in the Appendix, signage, proposed flow of vehicular and pedestrian traffic, and landscaping and buffering details. We encourage the planning board to require specifics regarding screening and landscaping, and that the applicant heed

guidelines and rules about not planting invasive species and that state horticultural quarantines are heeded. Links are below for your reference.

I am sure that you understand why we love our quiet neighborhood, and have chosen to live, raise our families, and/or retire here. We understand that change is inevitable and understand how a viable re-use of this site benefits the City. We look forward to welcoming potential new neighbors. We only ask that the Planning Board balances progress with reasonable accommodations to ensure that any development is consistent with the protections afforded by the Gardiner Land Use Ordinance and the vision reflected in Gardiner's Comprehensive Plan. Page 70 of the Comprehensive Plan directs that the city "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." We look forward to hearing how the Planning Board will ensure this is accomplished.

Thank you for your time.

Lisa St. Hilaire
Ian Burnes
Neighbors and Abutters along Dresden Ave and River Ave

Links FYI:

Maine Invasive Plant Do Not Sell List:

<https://www.maine.gov/dacf/php/horticulture/invasiveplants.shtml>

Maine Invasive Plant Advisory List:

https://www.maine.gov/dacf/mnap/features/invasive_plants/invsheets.htm

Maine Plant Quarantines:

<https://www.maine.gov/dacf/php/horticulture/importingplants.shtml>

Angelia Christopher

From: Mark Eyerman < . . . >
Sent: Tuesday, February 16, 2021 3:17 PM
To: Kristopher McNeill; Tracey Desjardins; Angelia Christopher; Debby Willis @ home
Subject: Gardiner Green - Site Plan Review Application

Kris:

I reviewed the Gardiner Green application for conformance with the submission requirements in Sections 6.3.2 and 6.3.3 of the Land Use Ordinance. In many cases the information required is covered by the companion subdivision application. Generally the submission conforms to the ordinance requirements. There are a few important areas that need to be addressed:

1. Section 6.3.2.5 calls for cost estimates and a construction schedule. I do not believe those are included in the application.
2. Section 6.3.2.6 deals with state and federal approvals or permits. This is not addressed but as noted for the subdivision application, there may be none that apply.
3. Section 6.3.2.7.1.3 requires that required setbacks be shown. Since this project involves the reuse of existing buildings, this requirement is moot but the Board may want to formally waive it or otherwise make note of it.
4. Section 6.3.2.7.2.3 calls for the floor elevations of buildings. I do not believe these are shown.
5. Section 6.3.2.7.2.6 requires information on any signs proposed to be installed or altered. This is not addressed.
6. Section 6.3.2.7.2.7 requires information on proposed exterior lighting. The subdivision plan shows existing light poles but no additional information is provided. Section 8.7 addresses the exterior lighting requirements. Section 8.7.4 requires the submission of a lighting plan when 3 or more units are created in a building.
7. Section 6.3.2.7.2.8 addresses provisions for landscaping and buffering. In a response to the standard of 6.5.2.3 the applicant says that buffering and landscaping are shown on the site plan but I'm not sure what this means. I do not find any specific provisions except for a lot of tree stamps. Section 8.11 establishes standards for buffering that apply to multi-family structures. There is nothing in the application that addresses compliance with these standards.
8. Section 6.3.4.2 requires elevation drawings including specification of all facade and roof materials including color and texture. The renderings sort of show some of this. In addition the requirements of the HDR District address neighborhood compatibility (Section 7.8.4.3) and that the application must address this.

Mark Eyerman

Angelia Christopher

From: Mark Eye
Sent: Tuesday, February 16, 2021 2:12 PM
To: Tracey Desjardins; Kristopher McNeill; Angelia Christopher
Subject: Gardiner Green Subdivision Application

Kris:

I reviewed the Gardiner Green submission for final subdivision approval using Section 14.5.8.4.4.3. I think the application is complete and ready for Planning Board consideration with the following questions:

1. Section 14.5.8.4.4.3.2 calls for the submission of any required state or federal permits or approvals. I do not think any are required but the applicant should confirm this in writing.
2. Section 14.5.8.4.4.3.4.2 requires that the address of the record owner be on the subdivision plan. I do not find an address for MaineGeneral Medical Center on the plan. I believe this is a requirement for recording under state law.
3. Section 14.5.8.4.4.3.4.19 calls for providing a description of provisions for land clearing and construction debris. This should be addressed by the applicant.

Mark Eyerman

Angelia Christopher

From: Pottle, Jonathar.
Sent: Tuesday, December 22, 2020 9:49 AM
To: Angelia Christopher
Subject: Flag or Odd Shaped Lots; Dimensional requirements

Dear Angie,

I am writing with respect to the issue of “flag lots” or “odd shaped lots” and their relevancy to minimum lot-size requirements and related dimensional standards.

Section 8.1.4 of the General Performance Standards of the Gardiner LUO states that “Flag lots and other 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 LUO contains minimum lot standards relative to the density of a proposed activity. (See Section 7.7, Dimensional Requirements.)

Section 8.3 is instructive to interpreting Section 8.1.4, as it sets forth criteria for when flag or other odd-shaped lots are acceptable – specifically, when the lot conforms to all dimensional requirements (except road frontage), has a dedicated ROW of 50’, the ROW does not reduce the existing road lot’s ability to meet minimum road frontage, all building and structure setbacks are met, and the access is not within 100’ of another rear lot. These criteria are all focused on access to rear lots. Odd shaped lots or flag lots that whose purpose is not access would fall outside of Section 8.3.

I note that the “facts and circumstances” of any potential or proposed odd shaped lot or flag lot should be carefully examined when the reviewing authority (e.g., the Planning Board) is determining what import those areas have, or do not have, in satisfying dimensional standards related to minimum lot size. For example, abutters often transfer property or adjust boundary lines for bona fide purposes other than access, which are not designed to primarily address dimensional standards of the LUO. On the other hand, facts and circumstances can exist where transfers between property owners creating flag or odd shaped lots objectively demonstrate the primary purpose is with respect to dimensional standards other than access. In these latter circumstances, the lot itself may violate the LUO, or the portion of the lot representing the odd or flag shape may not be counted towards dimensional requirements relative to minimum lot size.

Factors to consider include, without limitation, the 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.

Ultimately, the reviewing authority is tasked with examining the facts and circumstances in the context of a specific application, and making a determination on whether or not a flag or odd shaped lot (or portion thereof) may count towards minimum lot size requirements and related dimensional standards. If the reviewing authority finds that such land areas should not count, then it would be prudent to articulate the justification for discounting those areas. Conversely, if the reviewing authority finds the odd shaped or flag land areas should count, it would similarly be prudent to justify why those areas may be included. The LUO justifies either outcome, depending on the specific facts and circumstances presented and the reviewing authority’s examination of those.

I hope this email is helpful to Gardiner reviewing authorities (e.g., Planning Board) when faced with this issue. In short, the facts and circumstances before the reviewing authority will ultimately determine whether or not a flag or odd shaped lot (or portion thereof) may be counted towards minimum lot size requirements and related dimensional

standards. I would recommend considering the above factors as part of this analysis, within the framework of the LUO sections noted above.

Best Regards,
Jon

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