

From Mark Eyermann

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. **Attached to this submission**
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. **None applicable**
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. **None applicable**
4. Section 6.3.2.7.2.3 calls for the floor elevations of buildings. I do not believe these are shown. **Included with this submission a revised survey with the requested information**
5. Section 6.3.2.7.2.6 requires information on any signs proposed to be installed or altered. This is not addressed. **Included with this submission a revised survey with the requested information. The current sign will be kept in its existing location with just a change of presentation info.**
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. **Not applicable –existing lighting will be reused with no changes**
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. **Attached to this submission a buffering plan done by Jim Coffin**
8. Description of land clearing and debris removal. **No land clearing. Debris removal from the site by dumpster**
9. 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. **As below:**

If you look at the project's Concept Rendering in Appendix I you will notice that the circulation has been adjusted in five major areas:

1. The Site has been reconfigured to create a vehicular East/West Drive that separates the residential structures to the South from the additional parking to the North. Some of the pavement in the residential district has been removed and converted into gardens. There is now only one North South thoroughfare that goes from an existing North Drive to the existing South entrance road to the Alzheimers facility.
2. A new drop-off entrance circle has been provided off of Dresden Avenue for Buildings #5 & #6. The new ADA front door is being created at the juncture of the rehabilitated buildings.
3. In that drop-off area, asphalt paving will be removed and new pervious pavers installed (wherever possible) to mitigate storm water run-off and to keep more drainage onsite.
4. A new English Garden is being proposed between buildings 5,6 & the Boiler Plant
5. There is a new pool proposed to the south of the rehabilitated Gardiner Family Medicine Building

With respect to facade and roof materials, there are four separate structures on the existing site and most will be expanded (without adding footprint) and totally rehabilitated. The four buildings include Building 5, Building 6, Boiler Plant and the Gardiner Family Medicine Building:

1. Building #6, the main hospital building, is located on the northwest quadrant of the site and has a roughly 10,000 gsf floorplate (by three stories) for a total of 30,000 gsf. The existing structure (ca 1970) was constructed with a steel structure and cast-in-place concrete exterior framing with profile block infill. We propose to remove much of the profile block and introduce a more modernist aesthetic (reminiscent of the Salk Institute as designed by Louis Kahn) through the introduction of large glass curtain walls and cantilevered precast decks with glass and stainless steel balusters. There will be a mix of wood, steel and concrete and the effect will be open and streamlined. Areas of the lower level will be changed from a basement print shop and maintenance/storage and be incorporated into the project as residential units with walk-out access to a newly created English sunken garden.  
After renovation, this building will house 34 luxury residential apartments averaging 620 sf. All apartments will have upscale finishes like stone counters and stainless appliances. Most will have an outdoor deck or patio. We anticipate that these units will be highly sought-after by working professionals and retirees.

2. Building #5 will be totally reclad with metal panels and will incorporate similar elements (like stainless steel and wood) proposed in the style of Louis Kahn for building #6. There will be a second story added to the existing footprint which will bring the square footage to approximately 6,000 sf. This structure will house 4 luxury residential townhouse units. Most will have a deck or outdoor patio.
3. The original Boiler Plant, the most historic of all the structures, is an early 20<sup>th</sup> century brick edifice with 6x6 double hung windows and a steeply pitched asphalt gable roof punctuated with 4 small gabled dormers. There is a tall masonry chimney centered on the North elevation and the overall scale of the structure is nicely proportioned in its modest scale. There is a basement that has been exposed as earth was removed from the south elevation of the building. We propose to keep with the Colonial Revival aesthetic and create a cross gable where there is presently a plateau to the East. The brick will be kept but likely be whitewashed to soften its juxtaposition with the new clapboarded cross gables. We are incorporating two luxury townhouse residential units in the expanded structure.

The existing Gardiner Family Medicine building is a profile block and steel frame ca 80's commercial structure that has commercial casement and double hung windows. We propose to keep to the building's footprint and to convert the lower level facing south into garages with 11 townhouse units housed above on the first floor and a newly configured roof with a steeper pitch and gables. We will re clad the building in wood clapboard siding and add bays and porches to give the boxed structure more of a residential feel. Market permitting, we would like to incorporate a pool and patio amenity to the south where there was once a parking lot.

With respect to neighborhood compatibility, we acknowledge that the Dresden Avenue neighborhood is a lovely, leafy and quiet neighborhood. We appreciate this fact and strongly maintain that our project will add to this character, not detract from it.

Certainly, no one could credibly argue that the buildings and hospital site, as they currently present to the neighborhood, are, in any way, attractive. Only the boiler building, buried deep in the site, has any architectural redeeming value. And the site itself is substantially asphalt and devoid of landscaping and buffering.

Our proposal, we believe, will be a boon to the neighborhood. First of all, the buildings will become much more aesthetic and add to the neighborhood character. Even the contemporary reimagining proposed for building five and building six will be a significant improvement over what currently exists. And the cottage/ gabled Victorian execution for the boiler building and the Gardner Family Medicine building fits in nicely with the traditional feel of the neighborhood. Secondly, we will be buffering and landscaping extensively such that the site will be more park-like and buffered from the street and

adjacent properties. It will have more extensive green areas and an improved stormwater management system.

Lastly, we know that the intensity of use will be substantially less than what existed onsite, even in the very recent past. Just last year over 100 patients per day were traveling to and from the GFM building alone. And the existence of XRay, the AIDS clinic and other hospital services in the main hospital building generated substantial traffic as well. We know that our use will be much more benign with a stable and mature clientele.

# Memorandum

**To:** Gardiner Planning Board  
**From:** Kris McNeil, Mark Eyerman, and Jon Pottle (collectively "Staff")  
**Date:** April 9, 2021  
**Re:** Gardiner Green Project; Memorandum on Open Space Issues and Other Items

---

At its last meeting, the Planning Board invited submissions on open space issues (and any others the Applicant or interested persons desired to raise) with a request for a Staff Memorandum on these in advance of the April 13, 2021 meeting.

In response to this request, Staff is pleased to present this memorandum to the Planning Board for its consideration as it continues to review the Gardiner Green Project.

Staff recommends the Board address completeness of the submittal first. If the Board finds that the application is complete it should move to the threshold questions as to how the ordinance provisions apply to the proposal. Once the threshold questions have been resolved, the Board should then address the application's compliance with the Open Space Development standards and the site plan review standards. Staff recommends the Planning Board address these issues and resolve them if possible prior to making a final decision on the project.

## OPEN SPACE ISSUES

### I. Open Space Design - Introduction

LUO Section 10 "Special Activity Performance Standards" sets forth specific standards regarding new multi-family dwellings. *LUO § 10.16.3*. In this respect, section 10.16.4 states existing structures converted or expanded into a multi-family dwelling must meet the dimensional, density, and performance standards for new multi-family dwellings. *LUO § 10.16.4*. The Gardiner Green Project must therefore satisfy the "dimensional, density, and performance standards" for new multi-family dwellings, which state:

- All new multi-family dwellings shall meet the lot, dimensional, and density requirements for the zone in which they are located and the following criteria:
  - Minimum road frontage of not less than 200 feet (with exceptions not applicable here)
  - Minimum rear setback of at least 30 feet (with exceptions not applicable here)
  - 2 parking spaces for each dwelling unit
  - No accessory building or parking area shall be located in the front yard (with exceptions not applicable here)
  - All parking spaces, driveways, and access ways shall be paved (with exceptions not applicable here)

- Common trash receptacles shall be provided
- Minimum open space area of 1,000 square feet per dwelling unit consisting of a yard, garden or playground areas shall be provided

*LUO § 10.16.3.1-9.*

The Special Activity Performance Standards also include provisions for Open Space Design. *LUO § 10.23.* The Open Space Design “purpose” statement is:

The purpose of these provisions is to allow for new concepts of development where variations of design may be allowed, if the net residential density is no greater than is permitted in the area in which the development is proposed. Notwithstanding other provisions of this Ordinance relating to dimensional requirements, the Planning Board, in reviewing and approving proposed residential developments, may modify said provisions related to dimensional requirements to permit innovative approaches to housing and environmental design in accordance with the following standards: ...

Open Space Design is a mandatory requirement for certain developments – for example, all subdivisions in the Rural District.

For proposed developments where Open Space Design requirements are not mandatory, an applicant may elect to design their development according to its requirements in a proposal. This is by virtue of the underlying purpose of the Open Space Design provisions that “allow for new concepts of development ...” and no express language prohibiting open space design for specific proposals. If an applicant elects to do an Open Space Design, then all applicable Open Space Design requirements need to be met.

For the Gardiner Green Project, the Applicant has elected to avail themselves of the Open Space Design requirements that, if met, allows an applicant to obtain a density bonus and modification of dimensional requirements to permit innovative approaches to housing and environmental design.<sup>1</sup>

**II. Open Space Design Requirements – Density: 10,000 vs. 5,000 square feet**

A controverted issue is whether the density calculation should use 10,000 square feet or 5,000 square feet per dwelling unit for the Gardiner Green Project.

---

<sup>1</sup> Staff notes multi-family dwellings involving more than one detached structure shall conform to the requirements for clusters (see Section 10.16.3.4); however, the LUO does not appear to contain any specific cluster requirements. It is possible the drafters of the LUO intended multi-family dwellings involving more than one detached structure to meet the requirements of Open Space Design, as “cluster” land use concepts often relate to and are part of open space concepts. Since the Applicant has represented it is seeking approval pursuant to Open Space Design requirements, this is a non-issue at this time.

Staff has reviewed this issue, and recommends the Planning Board use 5,000 square feet per dwelling unit as the basis for maximum density calculations. This is because 5,000 square feet is the specific density requirement for multi-family housing in the HDR District.

One rule of ordinance interpretation is a more specific requirement will apply as opposed to a more general requirement. Here, the general requirement is a minimum lot of 10,000 square feet (with sewer) and 20,000 square feet (without sewer) as the minimum in the HDR District. Those are the general requirements. The LUO, however, states 5,000 square feet is the maximum density for multi-family. This is more specific and therefore controls.

This interpretation is further supported by the rule of ordinance interpretation that meaning must be given to each provision. If the 10,000 or 20,000 square foot was always used, even for multi-family developments, then the 5,000 square foot maximum density would be rendered meaningless.

An argument can be made that Section 10.23.2.6 in the Open Space Design Requirements requires that the maximum density should be based on the minimum lot size required in the HDR District; however, that provision is not specific to multi-family housing. Moreover, while the Dimensional Table uses the term "minimum lot"<sup>2</sup> and for multi-family it uses the term "density", they are both aimed at the same inquiry – what is the minimum lot size based upon the proposed number of dwelling units? For multi-family, the minimum lot size will directly depend on the number of proposed units that qualify as multi-family. The focus of that inquiry is the amount of area required per multi-family unit, which is 5,000 square feet.

### **III. Open Space Design Requirements – Density Bonus for Affordable Housing**

If Open Space Design requirements are met, then the number of dwelling units may be increased by 20% so long as at least 10% of the dwelling units are affordable housing<sup>3</sup> as defined by 30-A M.R.S. § 4301.<sup>4</sup>

The Applicant represents 7 units will meet the definition of affordable housing, out of 51 total, which exceeds the 10% requirement.

---

<sup>2</sup> The LUO does not define the term "minimum lot" as that is the specific term in the Dimensional Table in Section 7.7. Further, the LUO uses the terms "lot size" and "lot area" in varying context. "Lot size" is not defined. "Lot area" is defined as "the area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and the area beneath roads serving at least one other lot."

<sup>3</sup> A 20% density bonus can be obtained meeting other conditions, but those are not applicable in this case.

<sup>4</sup> Defined as "a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1931, Public Law 75-412, 50 Stat. 888, Section 8, as amended." 30-A M.R.S. § 4301.

It is unclear, however, where these affordable units will be located and when they will exist as part of the proposed phased construction.

The Applicant has further represented the units will only be affordable for 5 years.

Staff recommends obtaining clarity on where the affordable housing units will be located, and when they will be available as part of the Applicant's phased development plans. For example, does the applicant intend to have at least 10% of available units throughout development phases be affordable, or will the affordable units be front-loaded or back-loaded relative to its phased plans. Staff's recommendation is at least 10%, at any given time, be affordable housing.

Further, Staff's review of the LUO did not reveal any "sunset" date on affordable housing where they could be converted to market units but still retain the benefit of a density bonus. Staff therefore recommends the Applicant clarify if the affordable housing units are indeed intended to be converted in 5 years, or otherwise the Planning Board impose a condition in any approval that affordable housing units remain affordable, unless and until the LUO is amended or the development no longer needs a density bonus to satisfy dimensional standards (e.g., by reducing the number of units), and that an annual certification be submitted to the Code Enforcement Office of the total number of existing affordable housing units in the development to verify compliance.

#### **IV. Open Space Design Requirements – Can the Minimum Height Standard be Modified by the Planning Board?**

The Applicant represents the Planning Board has the authority to modify dimensional requirements to permit innovative approaches to housing. This authority is stated above in the Open Space Design requirements, and exists for the Planning Board to exercise.

A more detailed inquiry is necessary, however, to determine whether "height" is a type of dimensional requirement that can be modified in this manner so it is not a "variance".

The authority to modify dimensional requirements in this way stems from 30-A M.R.S. § 4353. This statute addresses powers and duties of a zoning board of appeals, including instances when a variance is required and when it is not, and when a planning board can modify certain dimensional standards.

Specifically, 30-A M.R.S. § 4353(4-C) states a municipality may adopt an ordinance that explicitly delegates to a municipal reviewing authority [e.g., a planning board] the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage, or to provide for reduced setbacks for lots or buildings made nonconforming by municipal zoning. As long as a development falls within the

parameters of such an ordinance, the approval is not considered the granting of a variance.

In this authorizing section of the statute, it specifically defines “dimensional standards” as limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.” 30-A M.R.S. § 4353(4-C). Height is not listed as a dimensional standard a municipality can authorize a planning board to modify such that it would not be a variance, and in Staff’s opinion it does not sufficiently relate to lot area, lot coverage, frontage, or setback requirements.

On the other hand, the LUO Open Space Design standards authorize the Planning Board to modify provisions related to “dimensional requirements.” Under the LUO, dimensional requirements are defined as including height. See *LUO § 17.2.1 (Dimensional Requirements: Numerical standards relating to spatial relationships, including but not limited to setback, lot area, shore frontage and height.)* It is further noted the Open Space Design standards state “[a]ny reduction in lot size, density, setbacks or standards that are part of meeting the design criteria of this Ordinance shall be approved by the Planning Board and shall not require a variance.” *LUO § 10.23.2.4*. While height is not specifically mentioned, the term “standards” can be interpreted to include height, which is within the definition of dimensional requirements noted above, and which can logically relate to open space objectives (i.e., building up, rather than out, can conserve more open space).

Staff’s opinion is the LUO itself authorizes the Planning Board to modify height standards, when interpreting the ordinance provisions noted above.

Staff’s further opinion, however, is there is a more than likely chance this ordinance provision authorizing modification of height standards is inconsistent with 30-A M.R.S. §4353 and would be declared “in reality” a variance requiring review by the Board of Appeals. See e.g., *Perkins v. Town of Ogunquit*, 1998 ME 42, ¶ 9, 709 A.2d 106; see also *York v. Town of Ogunquit*, 2001 ME 53, 769 A.2d 172.

Staff therefore advises that the Planning Board decline to modify height requirements under Open Space Design, or otherwise condition approval on obtaining a height variance or declaration that modification of the height standard would not be a variance.<sup>5</sup>

#### **V. Open Space Requirements Standards/Findings Checklist**

Staff will prepare an Open Space Design Standards/Findings Checklist for the Planning Board in advance of its meeting as a reference document, similar to its Site Plan and Subdivision checklists.

---

<sup>5</sup> Staff further notes the authorization to modify dimensional standards uses the term “may” and not “shall”, which generally means the Planning Board has a level of discretion in authorizing modifications subject to Open Space Design requirements.

## **OTHER ISSUES RAISED**

### **I. Completeness of Application; Building Design**

At its last meeting, the Planning Board requested elevation drawings and identification of all façade and roof materials (including color and texture). The Applicant subsequently provided sketches/drawings of buildings, and requested to submit architectural drawings when each building moves forward as part of a phased development approach.

The Planning Board should determine whether the final application is complete based on completeness standards, which relates to whether the Planning Board will condition any approval and downstream issuance of permits based upon a requirement to return to the Planning Board on building design and related items which would require submission of detailed elevation drawings and identification of all façade and roof materials.

### **II. Flag/Odd-Shaped Lot; Area Used to Calculate the Maximum Number of Dwelling Units (Density Calculation under Open Space Design)**

At its last meeting, the Planning Board provisionally ruled the Gardiner Green Project did not involve a flag or odd-shaped lot, and that the entire acreage was suitable for development. Staff recommends in any final decision the Planning Board include written findings on both issues.

Regarding the flag or odd-shaped lot issue, Staff understands the Planning Board determined the ownership and development history, together with the revised shape of the conveyance, did not give rise to a flag or odd-shaped lot issue requiring that area be deducted.

Further, Staff understands the Planning Board considered specific characteristics of the entire lot, and found it was suitable for development.

To the extent helpful, Staff notes that while the term "suitable" or the phrase "suitable for development" is not defined in the LUO, "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."

Words not defined in the LUO shall have their customary dictionary meaning. A customary dictionary meaning of "suitable" is "Suitable" is defined as "being fit or right for a use or group." *Merriam-Webster's Online Dictionary.*

In Staff's view, these definitions provide additional support for the Planning Board's provisional ruling the entire 5.43 acres are suitable for development.

### **III. Character of the Neighborhood**

LUO Section 6.5.2.1 requires a proposed development “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.” *LUO § 6.5.2.1*. Another related provision is found in LUO Section 7.8.4.3, which requires reconstruction of an existing principal building or structure to be compatible with the established character of the neighborhood where it is located. See *LUO § 7.8.4.3, and detailed criteria in subsections 1-5*. Further LUO sections require exterior materials to match the character of those commonly found in the City and surrounding area. *LUO § 6.5.2.11*. These provisions necessitate a review of the character of the site (e.g., existing buildings and improvements), the neighborhood and district, and City and surrounding area in the context of the proposed reuse and redevelopment of the subject property.

In Staff’s opinion, the Planning Board has information to make a partial determination as to the character of the neighborhood (e.g., as it may relate to size, bulk, and density considerations); however, absent elevation drawings with details identifying façade and roof materials it is challenging to make a complete determination on whether standards related to character of the neighborhood are satisfied.

If the Planning Board conditions the project on downstream approval of buildings based on the phased approach requested by the Applicant, Staff recommends the Planning Board further condition compliance with LUO standards related to character as part of that process as well.

### **IV. Lighting Plan**

A question has been raised on whether lighting for the existing development will be changed as a result of the proposed Gardiner Green Project.

Staff recommends the Planning Board seek clarification on whether any lighting is proposed to be altered or added as part of the Gardiner Green Project given the substantial redesign of the use of the space between the hospital building, annex, and boiler house.

### **V. Phased Development**

The Gardiner LUO states an Applicant must obtain a permit from the Code Enforcement Officer within one year from the date the Planning Board approves an application. *LUO §4.4.1*. A permit secured under the LUO expires if the work or change is not commenced within one year of when the permit is granted, and if the work or change is not substantially completed within two years of the date of the permit. *LUO § 4.7*.

The LUO does not specifically contain any details on a phased development process, nor does it expressly prohibit that approach. Staff's opinion is the Planning Board may approve a proposed development such that work is performed in phases, provided sufficient and detailed conditions are stated in a final written decision ensuring compliance with all applicable and relevant LUO standards within the scope of the condition(s) and underlying base approval. Stated differently, work would not be authorized until all condition of compliance filings have been submitted, reviewed, and approved, thereby allowing the Applicant to seek a permit from the Code Enforcement Officer to perform the approved scope of work. Further, it would be prudent that, if phased development is considered, the plan and approval clearly indicate which site improvements will be completed in each phase.

For example, elevation drawings and materials submissions could be a condition requiring the applicant to submit a condition of compliance filing to the Planning Board for review, which would include a substantive review of relevant LUO standards (e.g., character standards noted above). If the condition of compliance filing was approved, then the Applicant could proceed to request a permit from the Code Enforcement Officer for the scope of the authorized work. Staff's opinion is any condition of compliance filing would be required to follow the same process as an original application (e.g., notice, public hearing, etc.).

**VI. Financial and Technical Capacity**

The LUO requires an applicant to demonstrate financial and technical capacity to perform a proposed development in compliance with the LUO. *LUO § 6.5.1.14.*

It is customary for applicants to have information on both of these items in the permitting stage, but not all. This is because obtaining committed financing generally requires an applicant to first obtain all necessary permits, licenses, and governmental approvals. From a technical standpoint, there may also be downstream considerations post-permitting to secure further details. Because of these practical considerations, it is typical for any approval to be conditioned upon submission of more detailed financial and technical capacity to ensure those standards are met. Such conditions are predecessors to obtaining any permits from the Code Enforcement Office. If the Planning Board approves the Gardiner Green Project, Staff recommends it impose a condition(s) of approval regarding both financial and technical capacity in this manner.

\* \* \*

Staff appreciates the opportunity to provide advice to the Planning Board on these issues, and looks forward to supporting the Planning Board at its meeting on April 13, 2021.

#####

Michael L. Lane  
mlane@preti.com  
Direct Dial: 207.791.3286

**M E M O R A N D U M**

**TO:** City of Gardiner Planning Board  
**FROM:** Michael L. Lane, Counsel for Hathaway Holdings, LLC  
**DATE:** April 6, 2021  
**RE:** **Gardiner Green subdivision and site plan approvals**

---

We are asking for 2 things: (1) final subdivision approval; and (2) site plan approval.

1. Subdivision approval. We seek Planning Board approval for a 51-unit open space design subdivision on the 5.43 acres parcel. The Final Subdivision Plan is attached (it hasn't changed since before our last meeting). The approval sought gives us the legal right to have 51 residential units on the property. It does not give us the legal right to construct 51 units. See site plan discussion below regarding approval for construction.

- a. The subdivision is located in the HDR district.

Dimensional requirements	HDR District	Gardiner Green Subdivision	Notes
Min. lot size	10,000 square feet with sewer	5.43 acres (236,530.8 square feet)	Subdivision has public sewer
Min. road frontage	75 feet	244.87 feet	
Min. road set back	25/50 feet	Not less than 25 feet	
Min. side and rear setback	10 feet	Not less than 10 feet	
Max. height	35 feet	Existing maximum height is 44 feet	Existing height on Main Hospital Building

Max. lot coverage	35%	Currently 41.6%; Proposed 36.1%	
Multi-family density	5,000 square feet	236,530.8 / 5,000 = 47.3 units plus 9.46 units (20% density bonus)  56.76 units	20% density bonus provided 10% are affordable

2. Site Plan approval. We are asking that the Planning Board approve the rehabilitation of the project to accommodate the following residential units: 34 units in the original hospital building, 4 units in the south annex building, 2 units in the boiler building, and 11 units in the Gardiner Family Medicine building. This would involve adding second stories to portions of all but the original hospital building. BUT THAT prior to the start of construction on any particular building, we would come back to you with architectural renderings, floor plans, construction schedule, and such other building-specific information as you may reasonably request for final approval. We expect subsequent reviews by the Planning Board to address only technical compliance with the Ordinance, and not rehash the basis for the overall approval. As we have said many times, it is simply too costly to prepare detailed architectural drawings, floor plans, and so on, at this stage, before the Planning Board has approved the project in concept as a whole and including the proposed building height changes/roofline changes. Likewise, this is a large project and will be undertaken in phases, likely one building at a time.

A. Open Space Discussion.

Open Space Design is defined in the City of Gardiner Land Use Ordinance as a land development project that is "comprehensively planned as a self-contained, integrated, unified development which exhibits flexibility in building siting, clustering, usable open space and the preservation of significant natural features . . . ." (Section 17.2). The stated purpose of Open Space Design is "to allow for new concepts of development where variations of design may be allowed . . . ." (Section 10.23.1).

Gardiner Green is being proposed as an Open Space Design Development. Open Space Designs are permitted in the HDR District. The project proposal meets the Open Space Design Standards of this Ordinance:

**Requirement 10.23.2.1.** Gardiner Green meets all requirements for a subdivision. See Subdivision Plan, submitted to the Planning Board February 15, 2021.

Comments have been made regarding project building heights. As previously outlined, the plans involve adding second stories to portions of all but the original

hospital building. With respect to the Gardiner Family Medicine building, the Plans do not propose to add an additional story to this building, merely to change the roofline and add gables/dormers to gain an additional floor. To the extent that the Planning Board still finds that a "variance" is required for the change in height (which is permitted under Open Space design), the Planning Board, "in reviewing and approving proposed residential developments, may modify said provisions related to dimensional requirements to permit innovative approaches to housing," (Section 10.23.1), and has full authority to approve "any reduction in lot size, density, setbacks or standards which are part of meeting the design criteria of this Ordinance" which does "not require a variance." (Section 10.23.2.4.).

**Requirement 10.23.2.2.** Gardiner Green meets this standard. Each proposed building site and building is an element of the Gardiner Green Site Plan. The placement of buildings and treatment of spaces, roads, and parking are illustrated on said Site Plan. See Site Plan, submitted to Planning Board on April 5, 2021.

**Requirement 10.23.2.3.** Gardiner Green meets this standard. Gardiner Green sits on 5.43 acres, well above the minimum land area of 5 acres.

**Requirement 10.23.2.5.** Gardiner Green meets this standard. At the public meeting on March 8, 2021, the Planning Board concluded that all 5.43 acres of land would be considered "suitable for development" under the Ordinance.

**Requirement 10.23.2.6 and Density Bonus (10.23.5).** In order to determine the maximum number of dwelling units permitted at Gardiner Green, the developer must divide the land suitable for development by the minimum lot size required in the HDR district. Here, that is 5.43 acres (see above) divided by 5,000 square feet, a number clearly outlined in Note 5 to the table in Section 7.7 on page 7-24 of the Ordinance. Additionally, Gardiner Green is permitted a Density Bonus. Section 10.23.5.1 provides that "the number of dwelling units may be increased by 20% over the number of units allowed in the district in which the development is located," provided that "at least 10% of the dwelling units are affordable housing as defined by 30-A M.R.S.A. Section 4301." (Section 10.23.5.1.1). Gardiner Green meets this requirement. See App. K, submitted to Planning Board February 15, 2021. These calculations provide for a maximum allowance of 56.76 units.

Some abutters and neighbors argue that the 5.43 acres must be divided by 10,000 square feet and therefore the proposed number of units cut in half. This argument is disingenuous and nonsensical under the Ordinance. Based on the plain language of the provision, the density bonus is intended to be a bonus "against the density that would otherwise be allowed in that district." (Section 10.23.5.1). The density that would otherwise be allowed in the HDR district is 5,000 square feet per unit. (Section 7.7, n.5). A density bonus is intended to allow a developer to have more units, despite the lot size, as long as the project meets the criteria.

A requirement that the land suitable for development be divided by 10,000 square feet for a multi-family development would lead to absurd results. The math would always come out such that a multi-family development would never be allowed a density bonus, regardless of the district. The Ordinance very clearly intended to allow density bonuses for multi-family developments. This becomes clear when one looks at the Dimensional Requirements Chart of Section 7.7. Here, the Multi-Family Density Square Feet requirement for nearly all districts is clarified by a footnote setting forth reduced square footage requirements for multi-family developments. See 7.7 n.5 ("The multi-family dwelling density in the High Density Residential District is 5,000 square feet for the first unit and 5,000 square feet for each additional unit."); n.6 ("The multi-family dwelling density in the Rural District is 80,000 square feet for the first unit and 40,000 square feet for each additional unit."); n.7 ("The multi-family dwelling density in the Professional Residential District is 7,500 square feet for the first unit and 2,500 square feet for each additional unit."); n.8 ("The multi-family dwelling density in the Shoreland Overlay Limited Residential District is 5,000 square feet for the first unit and 2,500 square feet for each additional unit."). If what the abutters contend is true, no multi-family development in any of these districts would be permitted a density bonus.

**Requirement 10.23.2.8.** Not applicable.

**Requirement 10.23.2.9.** Not applicable.

**Requirement 10.23.2.10.** Gardiner Green meets this standard. No individual dwelling unit has direct vehicular access onto a public road currently existing.

**Requirement 10.23.2.11.** Not applicable.

**Requirement 10.23.2.12.** Not applicable.

**Requirement 10.23.2.13.** Gardiner Green meets this standard. Buildings at Gardiner Green are oriented with respect to natural landscape features, topography and natural drainage areas, in accordance with an overall Site Plan.

**Requirement 10.23.2.14.** Gardiner Green meets this standard. The location of subsurface wastewater disposal systems and an equivalent reserve area for replacement systems are shown on the plan. The reserve area, which in this case is 1,230 square feet for stormwater mitigation, will be restricted so as not to be built upon.

**Requirement 10.23.3.1.** Gardiner Green meets this standard. The Open Space area will be the wooded area north of the large parking lot, as shown on the Site Plan submitted to the Planning Board on April 5, 2021. This is acceptable pursuant to Section 10.23.3.1.6, "[e]xisting undeveloped forest areas."

**Requirement 10.23.3.2.** Gardiner Green meets this standard. The Open Space area proposed above conforms with this section as it is a continuous tract of land.

**Requirement 10.23.3.3.** Not applicable, all of the 5.43 acres are suitable for development. (See Requirement 10.23.2.5. above).

**Requirement 10.23.4.1.** Gardiner Green meets this standard. The common open space is shown on the subdivision plan as "Wooded Area". Upon approval of the project, and closing of the acquisition by the developer, the developer will execute and record an appropriate declaration of open space declaring that the open space may not be used for future building lots.

**Requirement 10.23.4.2.** Gardiner Green meets this standard. No part of the open space is proposed to be dedicated to the City.

**Requirement 10.23.4.3.** Gardiner Green meets this standard. The unit owners' association shall be responsible for the maintenance of the open space.

**Requirement 10.23.4.4.** Gardiner Green meets this standard. Specific maintenance responsibilities will be set forth in the association's organization documents.

**Requirement 10.23.4.5.** Gardiner Green meets this standard. Specific assessments for maintenance of the open space will be set forth in the association's organization documents.

As outlined above, Gardiner Green meets all applicable requirements for an Open Space Design. Gardiner Green should be permitted all 51 units (44 Market; 7 Affordable) proposed pursuant to 10.23.2.6 and 10.23.5.

#### B. Financial Capacity.

This project will be completed in phases; likely one building at a time. Applicant has provided evidence of financial capacity for the planning and permitting of the project. Once architectural renderings, floor plans and other construction details for each building are prepared, including cost and pricing estimates, the applicant will provide evidence of financial capacity (e.g. mortgage loan; equity raise and so on) for each phase. We ask that the site plan approval be conditioned upon the Planning Board's receipt and review of sufficient evidence of financial capacity. As with the phased construction discussed above, we expect subsequent reviews by the Planning Board to address only financial capacity, and not rehash the basis for the overall approval. It is unreasonable and contrary to the plain language of the Ordinance for the Board to insist that the applicant spend hundreds of thousands of dollars preparing construction blueprints, drawings and specifications for a project the Board has yet to approve. It simply is too soon to provide meaningful financial capacity. We are not asking for some special dispensation. We will give you financial capacity and the Board will have ample opportunity to consider it before allowing the applicant to start construction.

Helen Stevens submitted a letter today comparing the Gehring mansion in Bethel to the abandoned nursing home on Dresden Avenue. Such a comparison is patently unfair. First, the Gehring house is weathertight, sprinklered and alarmed. None of that applies to the site on Dresden Avenue. Taxes assessed against the Gehring house are fully paid and the property is owned free and clear without debts of any kind.

The Gehring house project has proved to be challenging to finance, but with a debt-free balance sheet in the offing, Mr. Boghosian looks forward to self-financing that project and finally getting it underway. It has not lain fallow. Historic tax credit approval was applied for and approved in 2018-19 and that will serve as the basis to propel the project forward. Yes, Mr. Boghosian will have to go back to the planning board to get approval for the new construction townhouses, but the rehab of the mansion into apartments requires a simple building permit. Not zoning approval.

To be fair, the board should also consider the very successful Hathaway project in Waterville; a \$30,000,000.00 mill rehab that transformed the downtown and started a building boom in Waterville that continues to this day. Formerly abandoned, the Hathaway now has 600+ people living and working in it.

Attachments:

1. Proposed site plan dated April 5, 2021; and
2. Wetlands mapping dated April 2, 2021.