



CITY OF GARDINER BOARD OF APPEALS

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ADMINISTRATIVE APPEAL APPLICATION

☐ Code Enforcement ☐ Historic Preservation Commission ☒ Planning Board

Applicant Information:

Name: Eric McMaster Tel #: 207-215-7516

Mailing Address:
13 Independence Drive, Brunswick, Maine 04011

Property Owner Information

Property Owner as evidenced by deed recorded:

Deed Book Number 12132 Page 0201

Dated

Name: Robin Spencer Tel #:

207-242-0030

Mailing Address:
PO Box 573 Gardiner, Maine 04345

Property Information:

Location:
15 Lions Way Gardiner, Maine 04345

City Tax Map: 029 Lot: 001A Zoning District

MUV

Lot size (acres): 1.11 Road frontage: 270 ' Shoreland frontage: 0 '

Existing use of property:

Storage

Abutting Property uses:

North: 69-Business South: 1-Business

East: 3-Personal West: 67-Business

3B-Personal

68-Business

3C-Personal

2-Business

Please describe the action taken by the Code Enforcement Officer, Historic Preservation Commission or the Planning Board that you are appealing:

Applicant is appealing the Planning Boards denial of application to place a 14' x 30' wooden prefab building with the intent of being a commercial kitchen for Adult-Use. The Planning Board applied the wrong ordinance, and states "under previous ordinance, it was allowed." Applicant filed the application prior to the applicability of the new LUO, therefore the standard that should apply should be the older LUO, as applicant is "grandfathered" under old LUO. Additionally, applicant has sufficient control over the fence and can maintain the same as a condition to licensure. Applicant's application should have been approved. Proximity also should have been under prior LUO. Legal rights provided adequate protection.

Appellant's Signature: JD

Property Owner's Signature: Robin Strever

Dated: 8/20/21

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2.4.4 Appeal Procedure

2.4.4.1 In all cases, a person aggrieved by a decision of the Code Enforcement Officer or Planning Board shall commence his/her appeal within 30 days after a final decision is made. The appeal shall be filed with the Board of Appeals on forms approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.

2.4.4.2 Following the filing of an appeal, the Board of Appeals shall hold a public hearing on the appeal within 45 days. The Board of Appeals shall notify the Municipal Officers, Code Enforcement Officer and the Planning Board, at least 14 days in advance, of the time and place of the hearing. The applicant shall publish notice of the hearing not less than 14 days in advance in a newspaper of general circulation in the area.

2.4.4.3 The applicant shall notify the Code Enforcement Officer and by certified mail the owners of all property within 100 feet of the property involved if the property is in a Residential or Central Business district and within 200 feet of the property in all other districts, at least 14 days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing, and shall furnish proof of such notification.

2.4.4.4 The owners of property shall be considered those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.

2.4.4.5 At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause.

2.4.4.6 The Code Enforcement Officer or designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he/she deems appropriate for an understanding of the appeal.

2.4.4.7 The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.

2.4.4.8 Within 20 days of the public hearing, the Board of Appeals shall reach a decision on an appeal and shall inform, in writing, the appellant, the Code Enforcement Officer, the City Manager, the Mayor and the Chairman of the Planning Board.

2.4.4.9 Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall forthwith issue a building permit in accordance with the conditions of the approval.

2.4.5.1 Administrative Appeals

The Board of Appeals shall hear and decide where it is alleged there is an error in any order, requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this Ordinance or in the City's adopted building code. The Board may waive any portion of the building code only if such waiver (s) fully complies with good, sound engineering practices. If a waiver is granted, the waiver shall only apply to that particular project. The action of the Code Enforcement Officer may be modified or reversed by the Board of Appeals, or a waiver granted from the building code, by a concurring vote of at least 4 members of the Board.

2.4.5.2 Planning Board and Historic Preservation Commission Appeals

The Board of Appeals shall hear and decide the appeal of any person aggrieved by the final action of the Planning Board or Historic Preservation Commission with respect to a Planning Board review, site review, subdivision review or certificate of appropriateness in accordance with the following procedure:

2.4.5.2.1 The appeal shall be limited to a review of the action of the Planning Board or Historic Preservation Commission with respect to the record of the hearing before the Planning Board or the Historic Preservation Commission. No new evidence may be introduced by any party except as provided below:

2.4.5.2.1.1 The Board of Appeals may take evidence with respect to the standing of any party to maintain an application or appeal.

2.4.5.2.1.2 By agreement of all parties, the Board of Appeals may receive additional materials necessary to complete the record of action taken by the Planning Board or Historic Preservation Commission, not included in the record as forwarded by the Planning Board or Commission.

2.4.5.2.2 Conditions attached to approval of a Planning Board, site plan or Subdivision application or Certificate of Appropriateness may be appealed.

2.4.5.2.3 The Board of Appeals may modify or reverse the action of the Planning Board or Historic Preservation Commission only where the Board of Appeals finds that the action of the Planning Board or Commission is clearly contrary to the applicable ordinance. The parties appealing the action of the Planning Board or Historic Preservation Commission shall have the burden of persuasion as to all issues on appeal.

2.4.5.2.4 In the event that the Board of Appeals finds that the action of the Planning Board or Historic Preservation Commission fails to address required issues under the applicable ordinance, or that the decision or record of proceedings before the Planning Board or Commission as forwarded to the Board of Appeals is incomplete, the Board of Appeals shall refer the matter back to the Planning Board or Commission for further proceedings or completion of the decision or record, as appropriate. Upon referral back by the Board of Appeals, the Planning Board or Commission shall complete necessary further proceedings within 60 days. No matter appealed to the Board of Appeals shall be referred back to the Planning Board or Commission more than twice, over the objection of any party.