

## **GARDINER PLANNING BOARD**

**July 27, 2021**

### **Review of Application for 14'x30' building at 15 Lions Way for a commercial kitchen for adult use cannabis**

**Applicant: Eric McMaster**

### **DECISION**

At the Gardiner Planning Board meeting on July 27, 2021, Eric McMaster proposed placing a 14'x30' building at 15 Lions Way – Map 029 Lot 001A in the MUV district – with the intent that it be used as a commercial kitchen for adult use cannabis. This property houses an existing cultivation facility, which is very close to a local elementary school. After this application was tabled on 7/13/21, Mark Eyerman, City Planner, was asked to clarify Section 10.29.1 of the Gardiner Land Use Ordinance (“LUO”), addressing Marijuana Establishment performance standards and proximity to protected facilities.

### **Discussion and Deliberation**

Mr. Eyerman presented a memo to the Planning Board that gave his interpretation of this provision in the LUO. The memo is incorporated by reference as part of this decision. Mr. Eyerman states in the memo that he interprets the LUO so that the proximity measurement should be from property line to property line using a straight line distance. He goes on to explain LUO provisions 10.29.1.1 and 10.29.1.2 - these provisions are included to address the limited situations where it is essentially not realistic to walk between the protected facility and the marijuana establishment. The key here is that the exception provisions are for permanent features, such as a river or interstate highway, not simply a barrier that is under the control of an applicant or other property owner. The Board was persuaded by Mr. Eyerman's interpretation of these provisions, which helped to clarify the LUO and separation distance requirements. At its last meeting, the Board did measurements from the school to the address in question. The measurements between Board members varied, but were less than the required 1000' and more than 500'.

Debby Willis chaired the meeting, and went through the application to see if the Applicant had standing. Chair Willis asked the Board if they feel that the application is complete? Yes. Could Board members hear this in an unbiased manner? Yes. There was a waiver request. The Applicant was unable to locate the public utilities map. This would not be needed for this application. Pam Mitchel asked how many employees there will be. The Applicant stated there will be 2-3 full time employees. He also plans to keep the gate/fence that is on the property locked and noted employees will need a fob or code to

get into the site and use the entrance that is closest to the Lion's Club. Chair Willis asked the applicant to stay while the Board reviews the application.

In regards to the waiver for public utilities map, the Board agreed that this building has been set up for a long time, with City Utilities. A new development/building would need a map for utilities. Pam Mitchel made a motion to grant the waiver for the lack of a public utility map. Lisa St. Hilaire seconded the motion.

No further discussion. Roll Call vote- Pam Mitchel- yes, Lisa St. Hilaire- yes, Shawn Dolley-yes, Chair Debby Willis- yes. All in favor. Waiver granted.

Chair Willis opened the meeting for public comment. There was no one present to speak for or against the application. There was no public interest at City Hall. Chair Willis closed the public hearing. The Board then turned to the applicable LUO provisions.

### **Special Activity Performance Standards (10.29 Marijuana Establishments)**

Section 10.29.1 of the LUO states:

**10.29.1** Any property line of the lot upon which a marijuana establishment is located shall be a minimum of one thousand (1,000) feet from any property line of a lot upon which a public or private school, athletic field or playground is located. A "school" includes public school, private school, or public preschool program as defined in 20-A M.R.S §1, or any other educational facility that serves children from prekindergarten to grade 12; provided however, a functional equivalent minimum setback of five hundred (500) feet may apply provided that the Planning Board finds that any of the following are met . . .

Comments from City Planner Mark Eyerman memo: *The basic standard is the 1000 foot separation from property line to property line. This is the straight-line distance. Essentially this draws a line 1000 feet from the property line of the protected facility and says a marijuana establishment cannot be located inside that line except for the specific situations addressed in 10.29.1.1 and 10.29.1.2. The section **allows but does not require** the Planning Board to reduce the separation distance down to 500 feet if the conditions are met. I think the operative word here is **may**. The objective of the separation requirement is to mitigate the possible impacts of a marijuana establishment on the users of the protected facility. The ordinance does not address these factors but they probably include things like odors, traffic and people accessing the facility.*

Chair Willis continued with reviewing the application and stated the proximity distance should be 1000' from the school. Pam Michel asked that since the distance is less than 1000', can 10.29.1.1 or 10.29.1.2 be applied?

**10.29.1.1** The location of the buildings or areas actively used on either or both lots results in the entrance to the marijuana establishment being more than one thousand (1,000) feet from the area of the protected lot that is actively used or that provides access to the building or facilities;

Comments from City Planner Mark Eyerman memo: *This provision allows the 1000 foot minimum separation to be measured from the entrance to the marijuana establishment to the portion of the protected facility that is actively used. I think this was intended to be the straight-line distance. This was added to address the situation where a marijuana establishment or a protected facility might be located on a large lot far from the property line. For example, a marijuana facility in the middle of a large lot in a rural area might be far more than 1000 feet from the protected facility or vice versa, a nursery school on a large rural lot could block a marijuana establishment that is much more than 1000 feet from the protected facility. So this provision allows the distance from the actual locations to be considered rather than just the distance between property lines.*

**10.29.1.2** The marijuana establishment is physically separated from the protected lot by a natural or other physical feature that makes pedestrian access between the two lots impractical.

Comments from City Planner Mark Eyerman memo: *This provision was included to address the limited situations where it is essentially not realistic to walk between the protected facility and the marijuana establishment. I think the key here is that it is a permanent feature that is not simply a barrier that is under the control of an applicant or other property owner. During the ORC discussions, the provision was included to address situations such as the Cobbosseecontee or the Interstate where the 1000 foot separation around a protected facility could extend the other side of the physical feature.*

The Board noted that a barbed wire/chain link fence surrounds the property that has been there for years. The Applicants asserted that this fence is more than sufficient as a barrier, and that the 500' setback should apply. The Applicant explained that his property has a unique history of not being accessible to the public, and the fence has been there. The Applicant stated he had been using this facility for years, and has been a good tenant and noted this will not be a retail business, clarifying that the marijuana product will be made there, but sent out to another site for sale. The Applicant stated that he is responsible for maintaining the fence, and will make sure that it meets the board's requirements. It was discussed that there have been no issues, and the fence has been in use.

The Board discussed that it felt that the barrier needs to be permanent, and the fence does not qualify, as the tenant leases this property and does not own it. The Board felt there were many good things about this business/application, but the Board discussed that this request does not fit according to the LUO. Under the amended ordinance for MUV, this use would not be allowed. Under the previous ordinance, it was allowed, but whether or not it is allowed as a use is not the issue. The Board stated that the issue is the proximity distance to the school.

Chair Willis asked for a motion. Pam Mitchel made a motion that this application meets the standard 10.29.1.2 because there is an existing robust barrier, with a condition the Applicant must maintain that fence. Lisa St. Hilaire seconded the motion. During discussion Lisa St. Hilaire stated that she feels that the application does not meet the ordinance due to proximity. Shawn Dolley stated that this a unique situation and the problem is that the applicant does not own the property, therefore does not own the fence and it is not permanent. There is a likelihood that the fence will stay there, but if the land is sold, the applicant will not have control of the situation.

Roll Call vote- Shawn Dolley- no, Pam Mitchel-yes, Lisa St. Hilaire- no, Chair Debby Willis- no.

Pam Mitchel made a motion that this application does not meet the requirements of the LUO. Lisa St. Hilaire seconded.

Roll Call vote- Pam Mitchel- yes, Lisa St. Hilaire- yes, Shawn Dolley-yes, Chair Debby Willis- yes- All in favor to reject the application.

The applicant Eric McMaster thanks the board for hearing the application. He is informed of the appeal process and what steps to take.

#### **GARDINER PLANNING BOARD**

Debby Willis  
Debby Willis, Chair

Date: 8/16/2021