

Public Comment regarding Gardiner Green

Site Plan Hearing March 9, 2021

I appreciate the opportunity to submit the following technical questions on behalf of a group of neighbors who live in the vicinity of the project. I have been advising this loosely organized association and have worked to translate what I understand of their concerns by considering options and protections that the Gardiner Land Use Ordinance provides. We would like to ask that as you weigh the merits of the project, and make Findings of Fact, that the Planning Board makes specific findings on the following provisions and circumstances, and that those findings be included in the minutes of the meeting and/or included as a separate document along with any approval or denial of the application. We would like to respectfully ask that you make findings specific to our interpretation of the ordinance language, below. We believe that as presented, the proposal does meet these provisions of the ordinance. If you come to a different interpretation, we respectfully ask that you describe how you interpret the language differently. In order to help organize your review of our comments, I have included these issues in the order in which they appear in the Land Use Ordinance.

### **Section 8 – General Performance Standards**

***8.1.4 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.***

My clients and I have read the City Solicitor's response to the question regarding flag lots. Though we have an opinion on the matter, it is clearly up to the Planning Board's judgment as to whether or not the lot being created constitutes an odd-shaped lot, as defined. To that end, rather than make an argument one way or another, we would simply like to request that as suggested by the solicitor, you make clear the specific development purpose or other bona fide "facts and circumstances" that lead you to believe that the inclusion of this portion of the lot is to accomplish something other than meeting dimensional standards of the ordinance.

### **Section 10 – Special Activity Performance Standards**

The Developer is proposing to create 51 new dwellings in the HDR district – this section establishes that specific performance standards in the section apply -

***10.16.3 New Multi-Family Dwellings:*** *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:*

There are several criteria, many of which the proposal seems to meet, but many of which the proposal does not seem to meet.

***10.16.3.4 Multi-family developments involving more than one detached structure shall conform to the requirements for clusters except in the Cobbesee Corridor District.***

Since this development includes more than one detached structure, it must adhere to the standards of for clusters and subsequent "Open Space Design" requirements. The ordinance seems to recognize how a significant project like this one might have an outsized impact on a neighborhood,

and so, to allow a more context-sensitive design, it allows for more specific standards – and more flexibility – some of which the developer seems to be benefitting from, and others that help protect the character of the neighborhood. I’ll address the specific standards in the appropriate section, below.

**10.16.3.6** *Except in the Downtown Area as defined and the Cobbossee Corridor District, no accessory building or parking area shall be located in the front yard.*

The Site Plan drawings all seem to show some parking within the “front yard” located between the building and Dresden Av.

**10.16.3.9** *Except in the Downtown Area as defined and the Cobbossee Corridor District, a minimum open space area of 1,000 square feet per dwelling unit consisting of a yard, garden or playground area shall be provided.*

Notwithstanding other provisions listed in the “Open Space Design”, below, to meet this standard, the proposal should calculate and show on the plan that sufficient open space is provided as required.

**10.16.4 Multi-Family Conversion:** *Any existing structure to be converted or expanded into a multi-family dwelling shall meet all the dimensional, density and performance standards for new multi-family dwellings.*

In case there was any question as to whether these standards apply to a change of use or conversion of an existing building, the ordinance clarifies that conversions are required to follow the same standards as new construction.

## **10.23 Open Space Design**

As indicated previously, the specific performance standards in 10.16.3.4 require that this development follow the “Open Space Design” section which allows for subdivisions to cluster lots and buildings to allow for flexible dimensional standards while still maintaining a well balanced and livable site and neighborhood. The developer seems to be following – and benefitting from part of these standards, but not following all of them.

**10.23.2.4** *Any reduction in lot size, density, setbacks or standards which are part of meeting the design criteria of this Ordinance shall be approved by the Planning Board and shall not require a variance.*

The applicant seems to have asked to exceed the maximum height variance in order to add a 2<sup>nd</sup> floor to the former Gardiner Family medicine building (plan shows height of 42’11”, maximum height in district is 35”). This section seems to allow the Board to approve this under Open Space design without a variance. While we don’t have an issue with this particular variance, if the developer is going to benefit from the Open Space Design, he cannot pick and choose which components to use; he must follow all of the Open Space Design requirements.

**10.23.2.6** *To determine the maximum number of dwelling units or structures permitted on a tract of land, the land suitable for development shall be divided by the minimum lot size required in the district in which it is located.*

To our knowledge, the total developable land figure has not been found, but even if the entire parcel was found to be developable, the maximum allowable units should be calculated per 10,000 s.f. – the minimum lot size in the district- rather than 5,000 s.f. per unit as shown in the Land Use Table in Section 7. It seems as though the authors of the Land Use Ordinance wished to place this additional burden upon multi-family developments that are comprised of more than one building, and/or those that propose making use of any of the other Open Space Design provisions.

### **10.23.5 Density Bonus**

**10.23.5.1** *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 one of the following conditions is met:*

**10.23.5.1.1** *At least 10% of the dwelling units are affordable housing as defined by 30-A M.R.S.A. Section 4301.*

Though the application does not say the developer is using this provision specifically to achieve the 20% affordable housing bonus, we were not able to find a density bonus in any other section of the ordinance, though it certainly could exist. We would appreciate it if the developer and/or Planning Board could specify which portion of the ordinance they are applying the 20% density bonus from if not from this Open Space Design provision. Again, if this Open Space Design density bonus provision is used, we believe that the proposal should meet all of the Open Space Design provisions.

### **10.23.4 Dedication and Maintenance of Common Open Spaces and Facilities**

**10.23.4.1** *Common open space shall be dedicated upon approval of the project. There shall be no further subdivision of this land, which shall be used only for noncommercial recreation, agriculture or conservation. However, easements for public utilities or utility structures may be permitted.*

**10.23.4.2** *The common open space shall be shown on the development plan with the notation on the face thereof to indicate:*

**10.23.4.2.1** *The common open space shall not be used for future building lots.*

Common open space is not shown on the plan, nor is any deed restriction or note on the subdivision or Site Plan.

In closing, it is important to remember that the 2014 Gardiner Comprehensive Plan, which lays out the vision and the foundation for the Gardiner Land Use Ordinance. In the Future Land Use Plan of the document, the vision provides two zoning districts for residential growth – Residential Growth Zone and Cobbossee Planned Development zone. The HDR area allows for some “limited growth”. Regarding the “limited growth” concept, the plan says:

*Limited Growth Areas* – These are areas that are either essentially fully developed and, therefore, have limited development potential or that have vacant or under-utilized land where the City desires a limited amount of growth and development over the next ten years. Limited Growth Areas include 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. (Page 90 City of Gardiner Comprehensive Plan)

The Comp plan suggests that the designated “High Growth” areas should allow densities as high as 7,500-5,000 s.f. per unit. It make sense, then that in the “Limited Growth” areas, high impact developments, including multi-family projects containing more than one detached structure, should

revert back to the prevailing overall density of the zone, and the existing development pattern. The 10,000 s.f. per unit density is consistent with the Comprehensive Plan, and is a unit density that most neighbors feel is more appropriate for the area than what has been proposed. The calculation of 5,000 s.f. per unit plus a 20% bonus does not seem consistent with the Comprehensive Plan, nor does it seem to be congruent with the provisions of the Land Use Ordinance. My clients in the neighborhood would be much more amenable to the unit density that both the Land Use Ordinance and Comprehensive Plan seem to support, which might allow up to 28 units on the lot in question.