

GARDINER PLANNING BOARD

July 27, 2021

Review of Application for use of partial space at 333 Brunswick Ave for Adult Use

Marijuana Cultivation – Map 029 Lot 001

Applicant: Robert Wheelock Jr.

DECISION

Robert Wheelock Jr. proposed to use part of the space for Adult Use Marijuana Cultivation at 333 Brunswick Ave. Map 029 Lot 001 in the MUV district – with the intent to block off the area that will continue to house an existing medical marijuana cultivation operation, leaving two separate cultivation facilities. This building 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.

Pam Mitchel asks how many employees the Applicant would have; he answered 3-5 and clarified that the adult use cultivation would be on the backside of his property and

that there is a chain link barbed wire topped fence surrounding the property. The Applicant noted he owned the building and is responsible for the fence.

Pam Mitchel asked how they will dispose of dirt and water that has been used for the plants. Mr. Wheelock informed the board that most of their product is organic, and all water and dirt is recycled, so it would not enter the City's systems. Mr. Wheelock explained that the entrance will be in the back, near Lions Way and that the gate will be locked at all times, and employees would need a fob or passcode to get in. There were no requests for waivers in this application.

Chair Willis opened the application for public comment. There was no one present to speak for or against the application. Chair Willis asked if there was any interest at City Hall. No. Chair Willis closed the meeting for public comment.

Mr. Wheelock would need an updated caregiver card, or a conditional license in order for this to be a complete application. There was a discussion about the responsibility of the fence. Mr. Wheelock reiterated that the fence is there to keep the buildings secure and both he and Mr. McMaster are responsible for maintaining them. Pam Mitchel made a motion that the application was complete, with the conditions that the correct property boundaries be added and that an updated caregiver card be provided. Shawn Dolley- second 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. 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 determined the Board would start with Section 10.29.1 of the LUO. Chair Willis stated this application has the same proximity issues as the previous (McMaster) one did. The building in which this adult use marijuana cultivation is proposed for is less than 1000', but more than 500', from a local school. Board members discussed that the application did not meet the distance issue.

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.*

Lisa St. Hilaire stated she would find that this application does not meet the requirements of Sections 10.29.1.1 or 10.29.1.2 of the LUO. The Board discussed that it felt the fence is not a permanent feature that would allow this type of development to follow the 500' setback as opposed to the 1000' setback. It does not matter that Mr. Wheelock owns the property, it is a matter that the fence is not a sufficient, permeant physical feature to allow for it to be less than 1000' from the school.

Pam Mitchel made a motion that the application does not meet section 10.29.1 of the LUO because the fence is not a permanent physical feature. 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 to reject the application. Application denied.

Chair Willis informed the Applicant of the appeal process.

GARDINER PLANNING BOARD

Debby Willis
Debby Willis, Chair

Date: 8/16/2021