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Debby Willis, Chairperson
Angelia Christopher, Administrative Assistant

**PLANNING BOARD
MEETING MINUTES
April 13, 2021 6:00 PM
VIA Virtual Conferencing**

*In accordance with An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency, as enacted to read: Sec. G-1 1 MRSA §403-A
Public proceedings through remote access during declaration of state of emergency due to COVID-19*

1. Call the Meeting to Order: Chair Willis called the meeting to order at 6:05 pm

2. Roll Call- Lisa St. Hilaire, Justin Young, Chair Debby Willis, Pam Mitchel, Zachary Hanley, Shawn Dolley, Adam Lemire. Jon Pottle- City Solicitor, Mark Eyeran- City Planner, City Staff- Tracey Desjardins- Economic Development Director, Kris McNeill- Code Enforcement Officer, Mayor Pat Hart, Applicants Paul Boghossian, Mark Chrisos, Jeff Lord, Eben Baker, Brooke Barnes, Mark Nelson, Jessica Lowell- Central Maine Newspapers, Allaina Murphy, Auta Main, Cheryl Clark, Mike Gent, Della Sutherburg, Gil Raviv, Helen Stevens, Mike Lane, Marc Inman, Phyllis Gardiner, Ian Burnes, Patrick Wright, Barbara Estabrook Colin Frey- City Councilor.

3. Review of the March 9, 2021 meeting minutes- Pam Mitchel had a small change- a letter at the top of page 5 – should read they not the. Justin Young requested a change in wording on page 3. The statement should read ‘neither he nor his attorney’. Chair Willis asks for a motion on the 3/9/2021 minutes. Pam Mitchel makes a motion to accept the minutes with the small changes suggested. Justin Young seconds the motion. Roll Call vote- Lisa St. Hilaire- yes, Adam Lemire- yes, Zachary Hanley, yes, Shawn Dolley- yes, Justin Young- yes, Pam Mitchel- yes, Debby Willis- yes. March 9, 2021 minutes approved. All in favor

4. Public Hearing- Con Edison Amendment- De Minimis changes to the previously approved (10/13/2020) project. City Tax map 25 Lot 12 in the Rural zone.

This application was approved with conditions in October of 2020. Con Edison is coming back with changes to the footprint of the project, and to the landscaping/screening plan.

After the meeting last October, representatives from Con Edison held individual meetings with abutters to discuss how to screen this project more effectively. Mark Chrisos states that the project is going to be moved further southwest on the property, away from abutting neighbors. The transmitter will be moved to the center of the project, and the wires will run underground as opposed to running utility poles. There have also been over 440 additional plants added to the landscaping/screening plan. Moving the panels further southwest will make screening the project from abutting neighbors easier, but it will also have more impact on the wetlands. DEP is aware of this change and the NRPA application was accepted on 3/17/21 and is currently under review.

Chair Willis asks if the Board can hear this in an unbiased manner. Justin Young, board member, has recused himself due to being an abutter of the project. Lisa St. Hilaire states that she has commented on this application in her professional capacity, but feels she can hear this without conflict. Chair Willis asks City Staff if there was any interest from the public. No. City staff did not obtain any outside services for this application.

Chair Willis opens the meeting for public comment and states that questions should be regarding the amendment to this project only. Gil Raviv is an immediate abutter to the project. Mr. Raviv questions this amendment to the application when the original application is based on a conditional approval that he feels has not been met. He states that according to the ordinance, when a non-residential use comes to a residential lot, that full screening needs to be put in place- Not the partial screening that Con Edison is offering. He expresses there needs to be canopy trees, as proposed in the ordinance in order to screen this project effectively. His property is 35' above this project, and there needs to be canopy trees for screening. Con Edison was supposed to provide mock ups of what abutting properties would look like with the proposed screening, and they did not. Con Edison wanted to use deciduous trees, which would lose their foliage and not help with screening. After much discussion, the screening plan will use evergreens instead. They are not following the ordinance; they did not meet conditions, which means that they do not have approval to move forward.

Chair Willis asks if there is anyone else that would like to speak. There is a question in the Q+A from Della Sutherburg, also an abutter. She inquires about the height of the trees, and if they will be as tall as the panels. Jeff Lord- Con Edison states where the trees are planted will be more important than how tall they are. Ms. Sutherburg states that she would like pictures of what the project will look like from her property, as she has not seen any photos or renderings. Con Edison showed meeting attendants several renderings of what the landscape plan will look like when planting is done and when plants are mature.

Chair Willis closed the public hearing, and the Planning Board will review the application. This application has been approved with conditions; this is solely being considered as an amendment.

This amendment shows Con Edison's plan to screen the panels, with shorter and thicker plantings. A solar panel is approximately 10'-12' the fencing will be approximately 7'. Canopy trees are part of the buffering requirement in the Ordinance. Canopy trees grow straight, tall, and leaf out at the top. They will not offer any shielding to this project, as they will be too tall. The proposed plans include approximately 9 ½ trees and 12 shrubs per 100'. This planting plan offers more than double the original amount of trees.

The Planning Board reviewed the application, found this amendment in order and feel that it meets all criteria of the LUO. The amendment is for the changes to the landscaping screening plan, and to show the shift in the location of the array. Board members feel that the buffering screening plan offered in this amendment is sufficient for this project.

Chair Willis asks the Board to make a motion on this specific adjustment. Pam Mitchel makes a motion to allow the change in screening materials as proposed by the applicant because it offers greater density and provides a better screen than canopy trees would provide. Shawn Dolley seconds the motion. Chair Willis asks if there is any further discussion. Lisa St. Hilaire would like to address the assurance that after the buffer has been planted, it will thrive at that location. The Board feels that when this application comes to permitting, that maintenance of the plantings be part of the conditions of the permit. Adam Lemire states that the renderings of the screening plan should be shared with the abutters and the city for a record of what the intent is. No further

discussion. Roll Call vote- Lisa St. Hilaire- yes, Adam Lemire- yes, Zachary Hanley, yes, Shawn Dolley- yes, Justin Young- yes, Pam Mitchel- yes, Debby Willis- yes

Pam Mitchel has a couple of conditions for the approval of this amendment. One is that the City will receive a copy of a written guarantee from the landscaper that plantings will be maintained. Also the condition that the renderings be sent to the City, and to abutters for record. In addition, the NRPA permit needs to be received. All agree on these conditions.

Pam Mitchel makes a motion that this application meets all applicable standards in the ordinance with the conditions that the applicant receive the DEP/ NRPA permit and that the applicant add the landscaped renderings to the application. She would also note that the City's LUO, in section 8.11.3.5, requires maintenance of the screening by the applicant, and a further note that the Planning board allowed an alternative design to the screening of the project. Shawn Dolley seconds the motion. Further discussion-Lisa St. Hilaire asks about 8.11.3.5 referring to the owner being responsible for the maintenance of the landscaping. Pam Mitchel and Chair Willis explain that the applicant is leasing the property, therefore they will be responsible for the maintenance of the screening vegetation. The Board decided that the motion should be worded to be clearer. Shawn Dolley withdrew his motion, as does Pam Mitchel so the motion can be rephrased.

-Pam Mitchel moves that this application meets all applicable standards of the LUO with the condition that the DEP/NRPA permit be received- With the condition that the renderings of the landscaping be added to the application and *sent* to abutters- that the applicant be responsible for the maintenance of screening, and a notation that the planning board allowed an alternative to the screening per 8.11.4.4. Lisa St. Hilaire seconds. No further discussion. Roll call vote- Lisa St. Hilaire- yes, Adam Lemire- yes, Zachary Hanley, yes, Shawn Dolley- yes, Justin Young- yes, Pam Mitchel- yes, Debby Willis- yes. Chair Willis asks what the Board would like to do with this application.

-Pam Michel moves that we approve this application with the three previously mentioned conditions. Adam Lemire seconds. No further discussion- Roll Call vote- Lisa St. Hilaire- yes, Adam Lemire- yes, Zachary Hanley, yes, Shawn Dolley- yes, Justin Young- yes, Pam Mitchel- yes, Debby Willis- yes

-All in favor- application approved.

150 Dresden Ave. City Tax map 032 Lots 023-023A in HDR. Due to the information in this application, City Solicitor, Jon Pottle is present to assist as well as City Planner- Mark Eyerman.

Lisa St. Hilaire- Board member, has recused herself from this application. She will be speaking as a resident of the neighborhood.

The biggest areas of concern will be addressed individually. They have been identified as-

Completeness of Application

Open Space Design

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

Character of the Neighborhood

Lighting Plan

Phased Development

Completeness of Application

Chair Willis feels that the first question that needs to be addressed is does the Board feel if this application is complete. Pam Mitchel has concerns about information that will be on the Site Plan map that eventually is signed by the Board and recorded. Her concern is that this map does not show all of the proposed development for the project. Pam Mitchel inquired if this would be ok to submit as a final plan and Attorney Pottle has suggested that there may be problems if this version is submitted for recording. There are some changes in the parking, sidewalks have been added, gardens, and even a pool. There seems to be some discrepancies because the information on the maps presented is not consistent. Pam Mitchel states that if this is going to pose a problem when recorded, then the application is not complete. Attorney Pottle feels that there is enough flexibility from his point of view that there is some flexibility in regards to this. If the parking plan is not critical for a plan that will be registered at the registry of deeds, then it should be ok to move forward. Perhaps it would be best to ask the developer what has been submitted and what has been revised. In regards to proposed elevations, Mr. Boghossian states that he has submitted a concept of what the site will look like, and will submit more information when the project is approved. He is hoping for a general agreement for the project before investing a significant amount of money in design plans. His goal is to make this site into a much nicer, greener, more useful property. He tells the Board that he wants to be a good neighbor to the neighborhood. After more discussion about the maps, Chair Willis asks if the Board feels the application is complete- Board members feel that they can proceed to hear the application.

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 a final decision to the Planning Board to include written findings on both issues. Paul Boghossian states that as long as the land was found suitable for development then it needs to be used as such. Chair Willis asks if there is any public comment pertaining to the ‘flag lot’. Lisa St. Hilaire would like to speak about the flag lot. She feels that the planning board needs to make a clear ruling, decision, on this oddly shaped lot. Next to speak will be Cheryl Clark. Ms. Clark points out that Mr. Boghossian stated that he had bought the lot specifically to meet requirements. That is one of the concerns regarding a flag shaped lot, which it is only obtained to meet density requirements. Ian Burnes states this is a piece from another lot and was not originally connected to the proposed project. The lot has a different map and lot number, so it would need to be added to the proposed project lot, purely for the reasons that Mr. Boghossian stated in December, to meet density. Patrick Wright is working with the neighbors on Dresden Ave. to better navigate this process. He goes on to speak to the right to appeal, the importance of findings of fact and to make sure they have all the specific information needed to make this determination. Attorney Pottle states that the board fairly articulated their reasoning at the last meeting on their position on the flag lot, and agreed that it can be used to meet lot size requirements.

Affordable housing and buildable areas.

Mr. Boghossian states that 7 out of 51 of these units will be considered affordable housing. All of the units in this development will be similar in fit and design, and will be available immediately after the project is finished. All seven of the affordable units will be in the first, main, building. Pam Mitchel asks why the affordable units will only be ‘similar’ and not the same as the market price units. Pam Mitchel asks Mr. Boghossian what he will do to make the affordable units different from the higher end units. Mr. Boghossian states that most of the affordable units will be one-bedroom units. Mr. Boghossian states that the units will have the same fixtures, countertops, etc. and will be using the same materials as the market value units. Attorney Pottle asks about the

memo from Dovetail Consulting, which was presented in February. This memo identified what kind of units the affordable units would be. The memo stated that there would be 4 studios, 2 one bedroom, and one 2 bedroom. Attorney Pottle asked Mr. Boghossian if this memo reflects the intent of this project or has it changed? Paul states that this is what will be used for the 7 units. Mr. Boghossian states that after 5 years, these units will be converted to market rate, and rented at a higher rate. He goes on to say they used 5 years for a timeframe for the affordable housing units, based on the Hathaway project. Pam Mitchel states that Gardiner has a great need for affordable housing, and that 7 units will not meet this over the course of five years. Pam Mitchel feels that a person should be able to stay in their home as long as they can, and not have to leave because the time is up. The Density bonus itself is not time limited, and does not have a sunset. Board members feel that five years is not enough, that there should not be a time limit; these units should be marked affordable indefinitely. Paul states that as long as someone is in the unit, they will be covered by affordable housing. Once that tenant has left, the unit will be offered at market value. Paul expressed that the city looks to other municipalities for guidance in a time frame for the affordable housing to end. Pam Mitchel feels that Gardiner should be a leader, and should set the standard, not worry about timeframes and deadlines. Pam and Justin feel that these units should be offered with in perpetuity Mr. Boghossian has not accessed any tax credit programs, so does he really want to provide affordable housing? Chair Willis states that she feels where there is no ‘sunset provision’ in the LUO, that there is no time limit either. Attorney Pottle states that maybe the decision about how many years that the affordable units should be available for, should go before the City Council for their input. Chair Willis states that she has never seen a sunset applied in an affordable housing provision and she does not think it applies in this provision. Chair Willis asks if there is anyone to speak out about this topic. Ian Burnes, an abutting neighbor states that if the developer were interested in providing affordable housing, he would offer them without a time limit. He feels that he is using this lot, to get the Density bonus for more units.

Cheryl Clark and Mike Gent are abutters to this project and would like to address the character of the neighborhood. To speak to the purposes of density, etc., ‘Dresden Ave is not a growth area. The definition of a ghetto regardless of economics or ethnicity is a neighborhood, in a neighborhood. They feel that is what is being created with the project- a ghetto. This project would double the amount of people in this area. They want to see an appropriate project, but Dresden Ave. is not a Growth area according to Heart and Soul, to the Comprehensive Plan, and most importantly, the neighbors and residents that live on Dresden Ave. it is not a growth area according to the LUO, regardless of density bonuses or affordable housing. Michael Gent tells the board that he submitted a character study. The character study that was submitted by Mr. Gent and Ms. Clark shows 43 single houses on Dresden Ave with an average lot of approximately -22000sf per domicile. He would prefer to see the 10,000 multiplier used to calculate density.

Patrick Wright –tells the board that he wished the LUO was clearer on this issue and that there is some ambiguity as to whether the denominator should be 10,000 or 5,000. The Gardiner Comprehensive plan clearly defines areas of growth in the City. Dresden Ave. is not one of the areas as it sits in HDR, which is in a limited growth area. Mr. Wright points out that this development does not meet Gardiner’s Comprehensive Plan, and there could be legal issues at some point if the project goes through.

The Planning Board is bound by the ordinances, and the LUO states that the denominator is 5000sf, which is what the Board will need to follow. This application brings up the topic of the Comprehensive plan vs the Land Use Ordinance. There is conflicting info between the plan and the LUO, but the Planning Board is bound by the ordinance to follow the LUO.

Affordable housing bonus- if the density bonus is being received for affordable housing units, and if affordable housing goes away, then the density bonus should go away. All board members agree that there is no sunset on the affordable housing bonus.

Character of the Neighborhood.

Cheryl Clark and Mike Gent spoke earlier in the meeting, about the character of the neighborhood. Mr. Boghossian is proposing to raise the height of the buildings, with roofs that will be more Victorian in appearance. The character of the neighborhood represents the physical aspects, not the personal aspects. The only thing we can really control is the aesthetics of the buildings. The main hospital building is large, and uncharacteristic to the neighborhood. This building will be renovated in phase 1, and it would be reasonable for the planning board to ask for information on the façade of this building, to appear to present units that are more individual. This would help the building look less looming. Even if the building is kept contemporary, it can still fit in more characteristically to the neighborhood, if done properly.

Mr. Boghossian has asked for a waiver for max height requirements. He is seeking approval to increase the height of the buildings to have a second story, and make the pitch of the roof more Victorian in appearance. The question of whether or not the Board can waive the max height requirements came about. There are two sources of authority, LUO and State of Maine statutes. The height cannot be modified- state law will override the ordinance. Attorney Pottle, Mark Eyerman and board members feel they cannot approve the height variance. That it will need to go to Appeals for a variance. Board of Appeals can only act on something that the board has denied. The legal opinion is that it would be unwise to approve the height increase. Chair Willis asks if the board can waive the max height requirement. The majority of the board feels that they should follow the guidance of the legal experts and leave the roof decision to the Board of Appeals. Chair Willis thinks the board cannot waive that height requirement. The Board of Appeals will require a written decision from either the CEO or the PB.

Lighting Plan

Mr. Boghossian tells the Board that he was under the impression that because there are existing lights, they would not need a lighting plan. The Ordinance states there the project needs to follow the LUO and use dark skies night lighting. All new or resigned lighting needs to be designed to use only the minimum amount of lighting needed. Lisa St. Hilaire asks if the existing lighting will be adequate for safety. There will be more light at the facility due to the people living there, as each unit will have lighting on the deck. Ian Burnes points out that it is hard to comment on a lighting plan, without really knowing what the buildings will look like. If new exterior lights are installed, it will require a lighting plan. Mr. Lane states that each phase would have a lighting design plan, and they can bring that back to part of the phased development.

Phased development The applicant needs show the Phased development, including details on architecture, building materials, etc. The planning board needs to have enough development details to effectively hear this application and know how the phases will work together. The Board is requesting information on what each phase is, and what work will be done on each phase.

Financial technical capacity- There was a public comment submission stating issues with a property that Mr. Boghossian owns in Bethel Maine. The report included the property being obtained by Mr. Boghossian, approved by the Planning board for development, and has sat, undeveloped, for many years. Mr. Boghossian

submitted a reference for financial capacity as part of his application. This reference did not come from a bank. The Board will need to see financial capacity to approve this application.

Attorney Pottle states that the Board has worked at this meeting to obtain answers to the key threshold issues. There needs to be a clearer plan, showing the correct number of units. The height increase of the buildings cannot be approved by the Planning board and will need to go to the Board of Appeals. The phases need to be clearly identified, discussing the extent of the work for each phase.

At the next meeting, there will be a public hearing, giving the community a chance to speak about the project. The next available meeting will be May 11, 2021

Other: Due to the late hour, the Board did not address the proposed amendments to the Land use Ordinance relative to medical and adult-use Marijuana Establishments. This will be added to the May 11, 2021 Planning Board meeting agenda.

Adjourn: Chair Willis asks for a motion to adjourn.

Pam Mitchel makes a motion to adjourn, Justin Young second. Roll Call vote- Lisa St. Hilaire- yes, Adam Lemire- yes, Zachary Hanley, yes, Shawn Dolley- yes, Justin Young- yes, Pam Mitchel- yes, Debby Willis- yes
All in favor- adjourn at 11:40pm