



CITY OF GARDINER BOARD OF APPEALS

REGULAR MONTHLY MINUTES

November 3, 2004

Roll Call: Present:

**Peter Johnson
Michael Eldridge
Kendall Holmes
Andrew MacLean
Rebecca Malinowski**

Absent:

**Judith Skehan
Frank Hillman**

Also present:

**William Najpauer, Kennebec Valley Council of Governments (KVCOG), Staff
to the Board of Appeals
Erik Stumpf, City of Gardiner Solicitor
Dorothy Morang, Recording Secretary
Scott Kaufman
Arlene Emery Kaufman
James Montell, Gardiner Planning Board
Debby Willis, Gardiner Planning Board
Rebecca Fuller
Patricia Hart, Gardiner Planning Board
Kenneth Gardiner
Hazel Ferland**

- 1.) The meeting was called to order at 6:03 PM by Peter Johnson, followed by the Pledge of Allegiance.**
- 2.) Roll call was taken.**

- 3.) Consideration of the Minutes from the August 14, 2002 & October 16, 2002 Meetings was tabled at this time.

NEW BUSINESS

Peter Johnson gave directions to all present concerning order in the meeting. He said that there would be no outbursts from anyone such as had occurred in the Planning Board Meetings concerning this proposal. He said that he would give one warning and if a second occurred, he would ask them to leave and if not, would have them removed from the meeting. Peter went over the responsibilities and role of the Board of Appeals members.

Erik Stumpf, Gardiner City Solicitor explained the purpose and process for this review. He said it was to limit this appeal to appellate review, not to rehear the facts, but to determine whether or not the facts heard by the Planning Board supported the decision that they made and whether their decision was in accordance with the ordinances that apply to the application.

- 4.) **Administrative Appeal by Scott & Arlene Kaufman of a Planning Board decision to grant a Site Plan Review Permit for a change of use to operate a business: Sunspot, Owner Hazel Ferland, within a 2-family dwelling. The property, located at 73 Cobbossee Avenue, is within a Planned Development/Shoreland Overlay Zoning District, City Tax Map 22, Lot 35A.**

Chair Johnson read the Kaufmans' letter of appeal

The Appellant, Scott Kaufman introduced himself as an abutter at 87 Cobbossee Avenue, southwest of Sunspot Tanning Salon. He indicated that the areas of contention were that the former CEO, Jeffrey Hinderliter, assumed this proposal under his authority, not a Site Plan Review, but a Home Occupation, which dictated lower standards than for a Site Plan Review. There has been no permit granted, yet still the business is open – 10 months later. He brought this to the attention of the City Manager. He went over his concerns as noted in his Application:

Aisle width – 12' entry width misinterpreted by the Board as a 12' driveway width;

Parking layout – a Board member re-designing the parking plan and placing the parking spot in the buffer zone;

Completeness of application – absent from the site plan were contours, adjacent drives w/in 300', buildings w/in 100', elevations. Former CEO Gary Quintal said that it was good enough for him. Gary also said that getting in and out of a parking space was not the Planning Boards' concern – it didn't matter how they got there, they just needed to know that there were 7 parking spots;

10' buffer – once it was confirmed by the City Solicitor, there was not room for 2-way access;

Not all Board members at all meetings – not sure if they all got all of his letters;

Misquotes; Misrepresentations; Arbitrarily moving parking spaces.

Pat Hart, a Planning Board member said that she was at the meetings - there for the two meetings where there was a vote and was the dissenting vote. She said the 2 meetings were no less than a folly or mockery of the process. People were interrupting and speaking out of order.

In the meeting where we were given what we were told was the formal plan, it was not given to the public in advance of that meeting in accordance with the Ordinances where the public should have it available 14 days in advance. It was given to us by the Applicant that night. We reviewed the Review Criteria and took our vote based on that plan which the public, including Mr. Kaufman did not have prior notice of for review. That was unfortunate. As Mr. Kaufman pointed out, that plan did not have topography, contours – it was quite difficult to decipher where the driveway was and different things. We did sort through that. There was a lot of discussion about a 1 & 2-way driveway and what Mr. Kaufman said is very true. One would think that a 2-way road means that 1 car could go in one direction and the other in the other direction and they would pass - that is what a 2-way road means. Unfortunately that night, most of the people on the Board agreed that because one car, at one time, could go one way and it could come back and then go the other way, it made it a 2-way road. It does not meet what is in the Ordinance or what is called for in this layout. It does not meet that standard.

The parking stall that Mr. Kaufman talked about was re-tooled by a member of the Planning Board, which was also inappropriate. On September 28, 2004, after the Site Walk we came back here. We had already voted on the individual Review Criteria on September 15, 2004, but we still had a lot of discussion on the parking, so at that time we agreed on a site visit. But before we got to the decision of having a site visit, the Code Enforcement Officer at the time, Mr. Quintal, challenged individual members of the Board. He challenged us and said we had no right to question the Application or the Applicant or anything about parking. The meeting fell apart at that point and became very disorderly to which we need to apologize to the Applicant and to the Abutter because it just completely fell apart and was out of order. We had already voted on the individual Review Criteria before we did the site visit, so everything had already been decided. The only thing that we could do was to consider the whole application after we did the site walk. We did drive to the Applicant's house. As Mr. Kaufman said, none of us could pull up into the parking because – we didn't want to for one thing because it looked kind of precarious, but the spots were already taken. It was clear to her that some of the parking spots, the front of the car and the rear of the car were at quite different elevations. She was surprised because by looking at the map with no contours, no one would have any idea that parking spots (cars) were at quite an angle. The other thing we noticed was the other parking stalls were right up against the house - you couldn't even open the doors, they were touching the building. It was not a place where I would want to back out of. Unfortunately, the new ordinances are going through some growing pains – it's not clear how much space we need in an unusual setting like this, but this didn't pass the straight face test in her mind. Her colleagues on the Board did not support that. We did vote on the overall application, but did not have a chance to go back to the individual Review Criteria

because we had already voted on those and we were in a procedural bind at that point. The majority of the Board approved that application. She said she thinks that the process was not followed, that it was not a fair review. She doesn't think the application is complete, she felt that they were intimidated by the CEO, someone who was supposed to be an employee and he was challenging us on the Board – he had undue and unfair influence and he was woefully uninformed – she had to read the ordinances to him to get him to stop telling us that what we were doing was wrong.

Deborah Willis, a member of the Planning Board said she chaired some of those meetings that weren't all that pleasant. She mentioned the driveway width. She said Pat's interpretation was one and the others did not have the same. We made the best judgment we could based on what we thought was right. The parking layout was a nightmare. We went there and looked and she thought it was doable.

The hours of operation – the Planning Board does not get to set nor did we put them in as criteria. She agreed with everything that Pat said about the site walk. When we got there the spaces were already filled. As Mr. Kaufman said it defeated the purpose, we sure couldn't give it a try to see if it worked. We did ask the land surveyor about parking, he answered the questions that we had. The acting CEO, as Pat spoke about – it was one of the most difficult meetings. The no topography or contours as required by the Site Plan Review - she left that question up to Ed Lawrence, our land surveyor on the Board and whatever answer he gave, she thought it was alright.

The Applicant did call the Board members and Deborah did call the City Solicitor. He told her what should be done. She polled the members at the meeting to see if that had caused influence to them. She was not aware of a Planning Board member speaking with the Applicant during the breaks.

We did the best we could with what we had. Pat is right, we got ourselves into a procedural bind and would like to see our application process mirror the Performance Standards. What happened is, with the process, in the beginning we ask will this comply but when you do the application, you gather more information and I make my notes there that I want to discuss. We started on the first night and our voting stopped. That was a question we wanted in the end. As Pat said we finally got to that question at the end, but by that time, we were already done with the other criteria a-q and had voted on them individually. We got ready to vote on the plan as a whole and it didn't go, we ended up with a site visit. I don't think I like our process. We did the best we could. We applied what we had to the rules and came up with this decision.

Peter Johnson apologized about what everyone had been put through because of the mistake the CEO had made earlier. Bill Najpauer said that what the Board is being asked to do tonight is to review the decision of the Planning Board.

Hazel Ferland, Applicant and owner of Sunspot, said she thinks one reason this is all happening is because the Kaufmans aren't happy about the tanning salon being there. She said there wouldn't have been any trouble if she didn't have a neighbor who didn't like having a tanning salon there.

She questioned whether the article was in the paper 14 days in advance and if the Kaufmans paid the \$100. fee for the appeal. Bill Najpauer said the \$100. fee was for insurance coverage, not applicable to this. Hazel also said she didn't get her letter certified. She only got it on Monday and that the meeting was tonight. Dorothy Morang said that in the interest of time and because the date required for receipt of the application is on the 14th day, it does not give us the 14 days in advance window for notification, so the City sent the letters out. We did not get any back. Peter said that the certification was to ensure that they were sent.

Hazel asked if the new letter by the Kaufmans was part of the decision making. She thought it was supposed to be all old information. Peter explained that this is the Kaufmans' appeal. She asked if the members had all of the Kaufmans' letters filed at each meeting. She said each meeting the Kaufmans come and try to get it so that she can't have the tanning salon there. She said that she thinks that the Planning Board listened to the Kaufmans and each letter that they wrote and talked about each complaint that they had and looked at the ordinances and did a really good job – very strict job. They even brought Bill (Najpauer) in for the next Planning Board meeting and had him clarify a few things and talked with Erik and there have been four separate meetings for this. The Planning Board didn't just have one meeting for this, they had 4 separate meetings for this. It was looked over a lot and they did pass my application.

My business is allowed in this zone, Planned Development, not a new structure. Some of the things the Kaufmans point out in their letter apply to new structures. The house has been there for over 130 years. I'm also not in commercial/industrial, I'm in commercial/residential, which makes a big difference. She has had 5 different CEOs come and talk to her about this and she thinks it has been looked over many many times. The house use to be Webster's Powerhouse, with a lot of traffic coming and going and other businesses since have been there. She's not trying to start a business in a house that didn't have a business before.

Erik Stumpf, the City Solicitor, spoke to the issue that Ms. Ferland brought up about whether she was given adequate notice for tonight. He read from the Ordinance, the Appeals Procedure referencing the 14 days notice and asked if it had been met. If not, would Ms. Ferland waive it. Dorothy said it had not been met because of the time frame that the application can come in. There isn't time to do the notification 14 days in advance. You are on the 14th day at that point. Chair Johnson read the Ordinance. Erik said the parties here could waive that requirement. The abutter on the other side, said that she got her notice last week. Dorothy said they were sent out right away.

Erik asked if all of the parties were here. Dorothy said no. The list of abutters was for those within 200' and some of them are not here. Peter asked if they could poll those that were here? Erik said yes, but it does create the risk that an abutter who is not here could file an appeal with the Superior Court. It does create risks for everyone in the process.

Chair Johnson said he would poll the members here. Hazel Ferland said she would not waive the requirements.

Chair Johnson said they would have to move for a continuance for a special meeting. A date was set for Tuesday, November 23, 2004 at 6:00 PM to allow for the required 14-day notice in advance of the meeting requirement and still be within the required review time of 45 days.

Rebecca Malinowski made a motion to hold a Special Appeals Board meeting on November 23, 2004. Mike Eldridge seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Chair Johnson thanked everyone.

Mike Eldridge made a motion to approve the minutes from the August 14, 2002 and October 16, 2002 meetings. Andy MacLean seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

5.) Other Business

Dorothy mentioned that there is training available through KVCOG for this group along with the Planning Board and where so many were new, we had tried to schedule it earlier this Fall. Bill Najpauer said that a class that covers basic zoning could be held here on January 12, 2005 from 6:00 – 9:00 PM. The Board members settled on that date.

6.) Adjourn

Rebecca Malinowski made a motion to adjourn. Kendall Holmes seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Meeting adjourned at 7:10 PM