

PLANNING BOARD MINUTES

WEDNESDAY, APRIL 21, 2021

REMOTE MEETING – 6:30 P.M.

Present: Jud McIntosh, Christa Schwintzer, Dave Thompson, Michael Costello, Lisa Buck, John Beckett, Phil Ruck

Absent: None

Town Staff: Kyle Drexler, Jessica Chadbourne

Acceptance of the Agenda

Phil Ruck asked for a motion to accept the agenda.

Motion: Michael Costello

Second: Lisa Buck

Mr. Ruck recommended that the Board address the new business item on the agenda before addressing this month's old business, reversing the order on the meeting agenda as written, and asked if the Board had any objections. Hearing none he then asked Jessica Chadbourne to take a roll call vote. The vote to accept the agenda passed with seven for, none against.

Approval of the Minutes of the February 17th and March 17th Planning Board Meetings

Mr. Ruck asked for a motion to approve the February and March Planning Board Minutes.

Motion: Christa Schwintzer

Second: Michael Costello

Mr. Ruck then asked for comments on or corrections to the February meeting minutes. Hearing none he asked Ms Chadbourne to take a roll call vote. The vote to approve the February meeting minutes passed with six for and one abstaining.

Following the vote Mr. Ruck asked if there were any comments on or corrections to the March meeting minutes. Christa Schwintzer suggested a few corrections, then Mr. Ruck asked Ms. Chadbourne to take a roll call vote. The vote to approve the March meeting minutes, with the noted corrections, passed with four for and three abstaining.

New Business

Item A: A major site plan review for Dysart Realty, Co, located at 17 Stillwater Ave (Tax Map 11, Lots 59 and 60) in the Commercial-1 District, to expand the existing fuel station and convenience store use.

Mr. Ruck invited the applicant to present their proposal to the board. Mr. Thompson interrupted briefly to remind Mr. Ruck that as an abutter he would be abstaining from the vote for this project, Mr. Ruck acknowledge that Mr. Thompson would be abstaining and invited him to still participate in the discussion. Mr. Scott Braley introduced Dysarts proposed expansion project, the intent being to update and improve the current site. They will be constructing a new convenience store behind the existing convenience store, keeping the existing store in operation during construction, then tearing down the old store. They will also be adding a car wash, and replacing the current fuel canopy with a new one. All of this will move the building and the canopy slightly back from Stillwater Ave. This project will actually make improvements to the existing sewer system as the service for the site

currently comes across lot 12 from Godfrey and in talking with Joe Madigan at the wastewater treatment facility he expressed his interest in moving away from the that model so the new sewer service will now connect to the manhole down on Godfrey. This will include an oil/water separator at the car wash as well as a grease trap for the deli in the store itself. The underground tanks for the fuel have not been in place that long so they will remain and be reconnected to the new pumps and canopy.

Dysart will not be adding to the number of pumps on site. One thing they are doing, to improve the flow of traffic through the site, is creating a separate fueling island for diesel trucks. They will enter on Stillwater and exist around the back of the site, out onto Godfrey. There will also be truck parking behind the building to keep them out of the flow of passenger car traffic, and a few spaces closest to the Stillwater edge of the lot, though one or more of those may be removed to make room for car wash queuing as needed.

The new store, including the outdoor coolers and freezers, will be about 6100 sq ft. There is perimeter drive with a drive-thru window and an exit only out the back. To the left of the building, parking spaces 17 through 21 will be wired for electric vehicle charging, which is something that is becoming necessary from a business perspective. The dumpster for the building will be in the back next to parking spaces 26-31, it will be screened with a six foot chain link fence slatted with vinyl inserts. There will also be a series of plantings in the right of way along Godfrey to provide additional screening. There is currently no tenant for the drive-thru window, no intended retailer. Given the ongoing pandemic situation, Dysarts may choose to use the window for their own drive-thru pick-up service but there is no intention of leasing that space to another business at this time.

The services at the site will remain the same as they currently are, they are simply increasing the square footage because they need the additional space to accommodate their business.

Mr. Ruck asked Mr. Drexler to provide his report to the Planning Board for the Dysarts extension. The project is located in the Commercial-1 District. The existing use of the fuel station and convenience store is allowed in the district. The car wash would be considered an accessory use to them and also allowable. If in the future Dysarts should choose to lease out space in the store for a vendor to operate the drive-thru, they would have to return to the Planning Board to get approval for that use.

Mr. Drexler had conversations with the Town Engineer and the Public Works Director about the original stormwater plans for the subdivision on Godfrey and how that was approved by the Planning Board in the 80s. At that time there were calculations based on future development that considered a maximum impervious area of 1.5 acres per lot in the subdivisions still being managed by what was being approved at the time as far as stormwater management practices are concerned. This development would fall under that impervious 1.5 acres so it was agreed that no additional stormwater management was required.

Staff spoke with Maine DEP about the small section of wetlands that juts into the proposed extension, and the applicant will have to work with Maine DEP to arrange an in lieu fee for that impacted area, which will need to be paid for prior to the applicant receiving a building permit. Staff did not identify any other issues, and Mr. Drexler said that he would be happy to answer any questions the Board had about what was being proposed.

Mr. Braley clarified that the owners of Dysarts understand that they would have to return to the Planning Board if they decide to lease the drive-thru window to a vendor and are more than willing to do so should the occasion arrive. With regards to the wetland, they have already been in contact with

Maine DEP and are making arrangements to pay that in lieu fee so they have no issue with that being made a condition of approval.

Mr. Ruck asked about the section in Mr. Drexler's report that referenced a small underdrain soil filter as part of the stormwater management plan, noting that such a drain was absent from the final project plans. Mr. Braley explained that upon further review and consultation with Maine DEP and Town Staff it was determined that the proposed filter was unnecessary.

Mr. Ruck also asked Mr. Braley what the anticipated timeline was for the project, to which Mr. Braley replied that Dysarts, pending Planning Board approval, intended to break ground imminently. This is intended to be a summer 2021 project.

Christa Schwintzer asked if there was a planting plan in place for the right of way plantings along Godfrey Rd indicated in the site plans, as she could not find in the submitted application a list of plant materials and how they were to be arranged. Mr. Braley replied that they had not supplied specific plant selections, but if the Board had suggestions they were open to discussing possibilities. Mr. Drexler added that the screening section of the ordinance, which is the intended purpose of these plantings, talks about vegetation buffers needing to "provide for a variety and mixture of landscaping. The variety shall be based on a consideration of susceptibility to disease, hardiness for specific site location, colors, season, textures, shapes, sizes, blossoms and foliage" but does not necessarily require that specifics be provided to the Board. Mr. Thompson pointed out that the soil in that area is heavy clay soil and certain types of trees will not thrive in that environment. Mr. Ruck suggested that the Board added as a condition of approval that the applicant consult with the Tree Board about any plantings on site.

There were no more questions from the Board so Mr. Ruck announced the opening of the public hearing and invited the public to "raise their hands" in Zoom if they wished to voice opinions or ask the applicant questions.

Deb White of 11 Sylvan Rd was the first to speak. She asked what the Planning Board's role was in making sure that requirements are met following approval of projects, and wanted to know if the Board had considered the possible increase in noise and light levels following the Dysarts expansion. Mr. Ruck followed up by asking Mr. Braley to clarify what the store's anticipated hours of operation would be. Mr. Braley replied that the noise levels post expansion were not expected to increase, and that any lights installed would be can lights, and light levels would remain in compliance with town ordinance requirements. There would be no 24 hour truck parking, so parking at the store would only take place during the hours of operation which will remain the same as they are at the current store.

Mr. Ruck answered Ms. White's question with regards to the enforcement of requirements, explaining that after the Planning Board approves a project the responsibility of enforcing the Planning Boards requirements and the town ordinance requirements falls to the Code Enforcement Officer who issues the permits for the work being done.

Melanie Brooks of 3 Sylvan Rd asked about the potential increase in traffic from Dysarts. She raised the current issue of traffic on Stillwater Ave and her concern that the expansion of the store will add additional traffic to the area. She also pointed out that there are two other car washes on Stillwater and wanted to know why Dysarts felt the need to add another.

Mr. Braley replied that traffic calculations for convenience stores and gas stations are based primarily on the number of fueling islands, specifically the number of cars they can put through a fueling island in a certain amount of time. Since the number of pumps is not changing, there is not expected to be a significant increase in traffic, a conclusion supported by Town Staff who reviewed the plans prior to

the meeting. As for the car wash, it is a permitted accessory use and the owner's choice if they would like to install one and place themselves in competition with existing car washes.

Luke Labree of 14 Sylvan Rd, who identifies as being in the food service industry and familiar with convenience stores, claimed that the applicant was misrepresenting Dysarts expectations in expanding the store. He suggested that enlarging the store did mean that they anticipate more business, and more traffic in and out of the site. He also raised concerns about the noise of having the large trucks park at the store, claiming that the idling engines are clearly audible in the Sylvan Rd neighborhood.

Mr. Ruck asked Mr. Braley if it were possible to increase the number of plantings along the Godfrey Drive edge of the property to create more of a buffer against noise. Mr. Braley replied that during their consultation with the tree board they would definitely look at placing additional plantings to act as a buffer.

Jessica Labree, also of 14 Sylvan Rd, asked how many pumps there are on site, to which Mr. Braley answered six regular fueling pumps and two diesel and that will stay the same. She then asked how many parking spaces currently existed on site for 18-wheelers. Mr. Braley replied that there are 4 tractor trailer parking spots at present.

David Griffin, who owns the undeveloped parcel at the end of Sylvan Rd, asked about the proposed car wash. He wanted to know what kind of car wash it was and whether it would have a vacuum system, as his concern was with the potential increase in noise levels. Mr. Braley replied that it would be an automated car wash, not one with a track in the ground that moves that car through the wash but one in which the machine goes around the car. Mr. Griffin cited a sign on one of the other Stillwater car washes which limits the hours during which the vacuum can be used in order to limit noise disturbances, and asked if Dysarts would be employing something similar. Mr. Braley responded that they had not considered it as the car wash would only operate during store hours.

Mr. Ruck responded to a comment in the chat from Melanie Brooks:

“Sounds like the town has already decided this expansion is a good idea despite public comments...”

He replied that no decision has been made on the application. The Board has to review applications carefully and listen to the public comments, and this is a process in which the Board is very consistent. As to comments that the abutters had not been properly noticed, it is up to Town Staff to make sure that notice goes out and that materials for applications are available to the public upon request.

Mr. Drexler added that abutters notices are sent out based on the town's GIS map, which is updated based on the town's property records in TRIO. So in situations with multiple owners, for example, the map only lists the primary owner when the list of abutters are compiled. Ms. Chadbourne explained the process of generating the abutters list and the notice postcards which go out approximately two weeks before the meeting.

Mr. Ruck left the public hearing open and asked for additional questions from the Board. Jud McIntosh didn't have a question but he did point out that there seemed to be some confusion among the public as to the role of the Planning Board. He went on to explain that the Board is not making personally subjective decisions on projects but is instead following the guidance of the land use ordinance and approving or denying projects based on a set criteria. Mr. Ruck seconded Mr. McIntosh's point.

There were no additional comments from the board, but there was a hand raised by a member of the

public who had not yet spoken. Jeremy Wicker, a resident of Sylvan Rd, wanted to make the board aware that they had purchased their house last June and had not received any notice of the Planning Board meeting. He raised a concern about the number of trash receptacles that would be located around the new store, referencing the current issues with trash accumulation along the side of Godfrey Drive. Mr. Braley replied that Dysarts standard is to have a trash receptacle at every pump on the pump islands, receptacles on either side of the entry doors under the covered walkway, and a separate and distinct receptacle by the vacuums of the car wash.

Mr. Ruck added that trash along the roadsides, particularly around convenience stores, is a common problem. He encouraged Dysarts to be good neighbors as a request from the Planning Board, pointing out that they'd heard multiple public concerns about the trash levels. Mr. Braley noted the Board's request and added it to his list of things to discuss with the owners.

Mr. Thompson, also a resident of Sylvan Rd, pointed out that the 50 ft forested buffer stip owned by the Town was deeded to them as part of the approval process for the original construction of the site. Unfortunately those trees were planted some years ago and have grown tall enough that they don't form much of a buffer anymore. Mr. Thompson recommended that the Town and Tree Board consider what they can help to do to remedy this situation.

Mr. Ruck closed the public hearing and thanked the public for their comments, then asked for any further comments from the Board. Hearing non, Mr. Ruck read the proposed findings of fact.

Motion: Jud McIntosh motioned that the board approve the major site plan review for Dysart Realty, Co, located at 17 Stillwater Ave (Tax Map 11, Lots 59 and 60) in the Commercial-1 District, to expand the existing fuel station and convenience store use, with the following four recommendations:

1. That the applicant supplies any necessary federal or state licenses and permits to the Code Enforcement Office prior to the receipt of a building permit. This includes DEP approval.
2. That the applicant consult with the Orono Tree Board to come to agreement on a planting plan that includes plantings in the island northeast of the building, the goal being screening and reduced noise.
3. That the drive thru cannot be used by a third party without a site plan amendment via the Planning Board.
4. That the project will follow any and all other applicable requirements of the Town of Orono Land Use Ordinance.

Second: John Beckett

Mr. Ruck asked Ms. Chadbourne to take a roll call vote. The vote to approve Dysarts expansion application passed with six for and one abstaining.

Other New Business

There was no other new business.

Old Business

Item A: A draft Land Use Ordinance amendment to create Sec. 18-153, Solar Energy Systems, amend Sec. 18-106, Schedule of Uses, and amend Sec. 18-31, Definitions, to define, zone, and create performance standards for solar energy systems in the Town of Orono.

This was tabled at the previous meeting so Mr. Ruck reopened the public hearing and asked Mr. Drexler to present the new changes to the board. Mr. Drexler recapped his introduction from the March Planning Board meeting with regards to the intentions of the proposed ordinance amendment,

and reviewed the changes the Board had recommended at that time.

In Section 4.e the phrase “removal of significant volume of topsoil” was considered to vague as it would require the Board to determine what constituted a “significant volume” for each application rather than having a set standard. Mr. Drexler added some language in that section to give the Planning Board an option: “the Board may require and applicant to submit their vegetation management plan to the Penobscot County Soil and Water Conservation District for review and a recommendation that the states the project will create the lowest possible impact possible on the soil.” This language was borrowed from the earthwork ordinance language which has a similar clause that allows the Board to make PCSWC approval a requirement for a project.

In Section 5.a, which discussed the placement ground-mounted solar projects to the side and rear of the lot, was amended following the Board’s recommendations to make the language less vague. He added in clarifying language stating that if it is determined, based on the topography or other natural features of the site, that the only feasible location to place the solar system is in the front yard measures should be taken by the applicant to screen the system from the street to the maximum extent practicable as determined by the permitting authority. That line was meant to address a situation in which there is vegetation present at a site that would block the sun and restrict the reduce the functionality of the solar panels, and to give the Board and Code Officer some leeway with regards to system placement.

The final change addressed the concerns of the Board that Section 3 of the proposed amendment was unclear because it required the reader to refer back to Section 1 for certain definitions. To improve the clarity of this section, Section 3.A on height requirements no longer refers to accessory and principal uses. Instead it now identifies specifically which types of ground-mounted systems had to meet those requirements.

Mr. Ruck suggested a small change to the language in Section 5.a, in order to clarify that in this instance the phrase “accessory use” refers specifically to ground-mounted solar systems. Mr. Drexler agreed to adjust the language so that it’s more apparent to which kind of system 5.a is referring.

Mr. Ruck opened the public hearing so that the Board could hear comments on the proposed solar amendment. Jeremy Dill raised concerns about section 2.e the schedule of uses, and in particular the standards for the University District. He believed that it was a potential oversight to be so liberal with the University District, which allows for medium and large scale solar systems to be approved without site plan review unless they are within 500 ft of College Ave. According to him, the stronger zoning stance would be for an array that was 1500 sq ft (the minimum square footage for a medium size installation) or larger to not be permitted at all within 500 ft of College Ave, and then require site plan review outside of 500 ft.

Mr. Drexler agreed that it was a valid point, and pointed out that there are other land uses in the University District that have similar requirements with regards to site plan review of potential projects, so there is precedent.

Mr. Ruck asked if there were comments from the Board with regards to Mr. Dill’s concerns. Ms. Schwintzer agreed that there should not be an option for large scale systems to permitted without site plan review, that option should be retained only for small or medium scale systems.

Mr. Ruck asked if there were any additional comments from the public or the Board and there were none. He then asked for a motion for the Board to recommend the amended solar ordinance to the Town Council with the suggested changes.

Motion: Jud McIntosh moved that the Planning Board agree with the amendment to the Orono Code

of Ordinances to implement standards for solar energy systems with two edits to the edited document:

1. That large scale ground-mounted systems in the University District so require site plan review by the Planning Board for approval.
2. Changes to Section 5.a to clarify that “accessory use” as a term applies to ground-mounted systems.

Second: Lisa Buck

Mr. Ruck asked Ms. Chadbourne to take a roll call vote. The vote to recommend the proposed ordinance amendment to the Town Council passed with seven for.

Discussion

Mr. Ruck asked Mr. Drexler what was on deck for the May Planning Board meeting and Mr. Drexler gave the Board a brief overview of the pending project, a marijuana retail store approval in the C1 District. There are also one or two other projects that may make it in time for the May meeting.

Mr. Ruck then expressed his concern about the comments from the public with regards to not receiving notices from staff about upcoming Planning Board meetings. He encouraged Town Staff to step up their efforts to make sure that the public is duly notified. Mr. Drexler assured him that they would look for areas of improvement.

Mr. Ruck also announced that there are three applicants for the vacant Associate Member positions on the Planning Board.

Mr. McIntosh asked Mr. Drexler if he was allowed to tell them the location of the potential marijuana retail store. Mr. Drexler confirmed that it was public information, and informed the Board that the store would be located in the University Mall at 6 Stillwater Ave.

Adjournment

Mr. Ruck asked for a motion to adjourn the April meeting of the Planning Board.

Motion: John Beckett

Second: Lisa Buck

Ms. Chadbourne took a final roll call vote. The motion to adjourn the meeting passed seven four, and the meeting was adjourned at 8:47 pm April 21, 2021.

Attachment A

**PROPOSED FINDINGS OF FACT
DYSART REALTY, CO.
SITE PLAN REVIEW
April 21, 2021**

Pursuant to Article VI, Section 18-177, of the Orono Code of Ordinances, the Orono Planning Board has considered the application of Dysart Realty, Co for the expansion of the convenience store and fuel station use located at Tax Map 11-0 Lots 59 and 60 in the Commercial-1 District, and, based on all evidence presented by the applicant, reviewing agencies, town departments, and the public, found the following:

1. **Requirements of the district:** That the proposed use is an allowable use in the Commercial-1 District, and that the proposal complies with the applicable dimensional requirements of the district.
2. **Compliance with Town ordinances and codes:** That the proposed use, structures, setbacks, buffers, and layout meet the provisions of applicable regulations of the Town, including all pertinent sections of Chapter 18, Land Use Ordinance.
3. **Utilization of the site:** That this construction is within the natural capabilities of the site, is located in a suitable area of the site, fits with the existing topography of the site, and can accommodate any drainage associated with the construction.
4. **Traffic and pedestrian access:** That the expansion of the use will provide more room for parking, decrease the width of an existing curb cut, allow for more room for maneuverability, and provide dedicated parking for truck traffic.
5. **Storage of materials:** That there will be no exposed storage of materials.
6. **Stormwater management:** That adequate provision has been made for the collection and disposal of all stormwater due to the fact that the Planning Board had approved the original subdivision along Godfrey Drive based on future development calculations that anticipated a maximum of 1.5 acres of impervious area per lot in the subdivision, and that the proposed impervious area of this project is only a net increase of 1.13 acres.
7. **Erosion control:** That the applicant has provided an erosion and sedimentation control plan and will follow any applicable best management practices.
8. **Water supply and sewage disposal:** That the site can be served by off-site water supply and sewage disposal.
9. **Utilities:** That adequate provision has been made for all utilities.
10. **Natural features:** That natural features are preserved on the site insofar as practical; and that a vegetated buffer shall be provided on the eastern portion of the lot; and that the developer will work with Maine DEP to mitigate any impact to wetlands on the lot via an in lieu fee.
11. **Groundwater and surface water quality protection:** That the proposed development and use will not adversely impact the quality or quantity of groundwater available to abutting properties or to public water supply systems.
12. **Hazardous, special, and radioactive materials:** That the use of the site does not involve the handling, storage, or use of hazardous, special, or radioactive materials.
13. **Shoreland relationship:** That the site is not within a shoreland area.
14. **Solid waste management:** That no changes to solid waste management are proposed, and the dumpsters will be located in a fenced area, screening them from view.
15. **Historic and archaeological resources:** That the site is not known to contain historic or archaeological resources.
16. **Financial capacity:** That the applicant has the financial capacity to carry out the project.
17. **Noise and lighting:** That the facility will operate within the noise and lighting standards in Town ordinances.