

**PLANNING BOARD MINUTES**

**WEDNESDAY, MAY 19, 2021**

**REMOTE MEETING – 6:30 P.M.**

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

**Absent:** None

**Town Staff:** Kyle Drexler, Jessica Chadbourne

**Acceptance of the Agenda**

Phil Ruck asked for a motion to accept the agenda.

Motion: John Beckett

Second: Lisa Buck

Mr. Ruck noted that he would be moving the discussion portion of the meeting forward ahead of the night's new business so that he could update the board on improvements made to the notification process by town staff. 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 April 21st Planning Board Meetings**

Mr. Ruck asked for a motion to approve the April Planning Board Minutes.

Motion: Lisa Buck

Second: John Beckett

Mr. Ruck then asked for comments on or corrections to the April meeting minutes. After corrections had been noted, he asked Ms Chadbourne to take a roll call vote. The vote to approve the April meeting minutes passed with seven for, none against.

**Discussion**

Per his request prior to the acceptance of the Agenda, Mr. Ruck moved the discussion portion of the meeting ahead of the night's new business so that he could update the Board on improvements made to the Planning Board notification process. He invited Mr. Drexler to explain to the Board what changes had been made. Mr. Drexler explained the changes made to the notification postcard language, and how town staff had set up an online folder where the public could view the application materials for Planning Board applications ahead of the meeting. Town staff also made changes to the agenda language to give the public a more detailed understanding of the scope of proposed projects, and added additional language to the town website explaining the role of the Planning Board.

Mr. Ruck added that he had spoken with Mr. Drexler about removing the use of the chat from the process for online meetings. Only those members of the public who raise their hands and voice comments aloud during meetings will be considered by the board and included in the written record. This procedure falls more in line with the way that in-person Planning Board meetings are run, where members of the public raise their hands and are invited to speak to the Board in an orderly fashion.

**New Business**

**Item A: A minor site plan review for Red Brick and Mortar, Inc. d/b/a Firestorm to operate a**

**Marijuana Retail Store located at 6 Stillwater Ave, Tax Map 10 Lot 19, in the Commercial-1 District. The application is for a proposed change of use of an existing storefront within the shopping center and does not involve any exterior site work or expansions to the existing structure.**

Before asking the applicant to present their project to the Board, Mr. Ruck explained that Lisa Buck had asked to recuse herself from voting on the application. Mr. Thompson, who lives across Stillwater Ave on Sylvan Dr, asked Mr. Ruck whether he should also recuse himself. Mr. Ruck asked him whether he thought he could approach the application in an unbiased manner, to which Mr. Thompson replied that he believed he could. No one on the board had any objections.

Because the Town Attorney Roger Huber was in attendance to answer any legal questions pertaining to the proposed retail store, Mr. Ruck asked him to briefly introduce himself to the Board and the public. Mr. Huber greeted the Board and explained that he had been asked to make a few remarks because this is the first retail marijuana application to come before the Planning Board. He reminded the Board and the Public that the issue of whether marijuana sales should be allowed in Orono had already been addressed and approved by the voters, and was not an issue for debate that evening. As such, any comments from the Board and the Public about the project being proposed should be directed at the criteria for approval for a retail store as determined by the ordinance, not the legality or desirability of the opening of a retail marijuana store.

Mr. Ruck thanked Mr. Huber for his input and invited the applicant to present his proposal to the Board. Sal Faro, on behalf of Red Brick & Mortar, gave the board a brief summary of the business' history in the marijuana industry and described their plans for the proposed retail store at 6 Stillwater Ave. They have a signed lease with the owner of the property to occupy the proposed storefront, have obtained their conditional license from the state, and pending approval from the Planning Board they plan to apply for an official license to operate their retail location in Orono.

Mr. Drexler then provided the Board with his summary of the applicant's project. He pointed out that in the March 9th municipal election the citizens of the town had voted to make marijuana retail stores, along with marijuana manufacturing, testing, and cultivation facilities, allowable uses in the district. Like all businesses, these facilities are required to adhere to certain performance standards. This proposed retail store is simply a change of use, there is no construction involved, so they fall under the category of abbreviated site plan review which does not require things like stormwater management because there is no new impact on the ground to be considered. The store will occupy an already existing space in the shopping center and utilize the existing parking lot. As far as specific standards for marijuana retail stores as laid out in the ordinance -design, security, waste disposal, and odors among others - the applicant has addressed these either in their original application or in the supplemental information provided in emails correspondence with the planning office.

Before opening the public hearing for comment, Mr. Ruck asked the applicant about the locked dumpster referenced in their application, specifically whether it would be a new dumpster, whether it will be issued by the landlord, and where it will be located. Mr. Faro replied that he thought the dumpster was marked on the plan, and that it would be located at the rear of the building. Mr. Drexler noted that the dumpster was not marked on the plan, and reminded the board that they could make a locked dumpster a condition of approval.

There were no questions from the board for the applicant or for Mr. Drexler, so Mr. Ruck opened the public hearing. Tim White was first to raise his hand. Mr. White lives on Sylvan Dr, across Stillwater Ave from the University Mall, and had four items he wanted to address.

1. He asked the Town's Attorney if the Town was opening itself up for liability because the State and Town have approved the retail sale of marijuana, but the federal government has not.
2. He remarked on the fact that the store is proposing to open in the same building as the trampoline park, which he identified as a child-based business.
3. He pointed out that the field on the other side of I-95 is farmland owned by the University, and that the shop was not supposed to be within 500 feet of University property.
4. He raised issue with the fact that the store is not supposed to be within 500 feet of a place of worship, but there is a church that rents space in the adjacent movie theater on Sunday mornings.

Mr. Huber responded to Mr. White's question about state vs federal approval. He explained that the town is not becoming involved in the sale of marijuana, it is merely approving (should the Board approve the application) an accepted land use. Therefore the town will have no liability even if the sale of marijuana should become illegal again.

Mr. Drexler responded to points 2, 3, and 4. He explained that the staff had had a discussion about the setback of the proposed store from a place of worship, and that specifically that clause pertained to spaces permitted as places of worship. The movie theater is permitted as a movie theater, regardless of who rents space in it during the week. As for the trampoline park, Mr. Drexler explained that the Council had had an involved discussion about what types of businesses to include in the setback policy, and they decided upon schools, childcare, places of worship, and the university. Other business or spaces young people might go, but did not have to go (for example: the movie theater, the trampoline park, etc.), were determined not to be uses that fell under the required setback.

As for the adjacent University property, Mr. Drexler explained that the setback from the store to that property would be 500 ft from the store itself to the field, not from the property line to the field. To his knowledge there was not University building or land within 500 ft of the proposed retail space.

Mr. Ibrahim, who works with Firestorm and Red Brick & Mortar, agreed with Mr. Huber that yes there is currently a conflict between federal and state law regarding marijuana, but should the sale of marijuana become illegal again the town, as it does not take any part in the sale of marijuana, would have 0 liability criminally or civilly.

There were not further comments from the public, so Mr. Ruck closed the public hearing. He asked for final comments from the board and hearing none he read into record the proposed findings of fact (Attachment A).

Jud McIntosh asked Mr. Drexler to confirm that the proposed retail space is in fact 500 ft from the field used by the University of Maine. Mr. Drexler confirmed that it was, and pointed out that the clause was really meant to apply to the University as a land use, not to any property owned by the University.

With no other comments from the Board, Mr. Ruck asked for a motion.

Motion: Mr. McIntosh moved that the Board approve the site plan review application for Red Brick and Mortar, Inc. d/b/a Firestorm to operate a Marijuana Retail Store located at 6 Stillwater Ave, Tax Map 10 Lot 19, in the Commercial-1 District with two conditions:

1. That the applicant obtains all necessary State and local licenses and permits prior to operating the business.
2. That the locked disposal dumpster is added to the site plan.

Second: John Beckett

Mr. Ruck asked if there was any further discussion to be had. Hearing nothing from the Board, he asked Jessica Chadbourne to take a roll call vote. The vote to approve the application passed with six for and one abstaining.

### **Other New Business**

Mr. Ruck informed the board that two new associate members have been interviewed and appointed by Council. Mr. Drexler had invited them to attend to meeting to observe and meet the board, and Mr. Ruck asked Town Staff to elevate the new members for introductions. Bob Bayer had already left the meeting, but Ashley Case was still in attendance and took a moment to introduce herself to the rest of the Planning Board.

### **Old Business**

There was no old business.

### **Adjournment**

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

Motion: Lisa Buck

Second: Michael Costello

Ms. Chadbourne took a final roll call vote. The motion to adjourn the meeting passed seven for, and the meeting was adjourned at 7:43 pm May 19, 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.