

[Off the Record Conversation] [00:00:00 - 00:00:21]

David Walker: Hey, good evening, everybody. Welcome to this special meeting for the Old Orchard Beach planning board. It's October 24. My name is Dave Walker and I'll be your chair tonight.

To begin the meeting, let's do a pledge of allegiance to the flag, please.

Group: I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

David Walker: Jeffrey, would you mind conducting a roll call, please?

Jeffrey: Ms. Dube?

Robin Dube: Yes.

Jeffrey: Mr. Kelley?

Jay Kelley: Here.

Jeffrey: Ms. Hubert?

Marianne Hubert: Present.

Jeffrey: Vice Chair Hitchcock?

Chris Hitchcock: Here.

Jeffrey: And Chair Walker?

David Walker: Present. So I'd like to publicly thank Vice Chair Hitchcock for subbing for me two weeks ago, did an excellent job. And it's very much appreciated that. And to know that if I'm absent, we have a qualified person to step up to the plate and handle it. And I also want to thank Jeffrey for putting a comprehensive review together for us to assist us with the decision making that we have to make tonight on a proposal for a conditional use: adult marijuana store. This is the conditional use review ruling. The applicant is Theory of Wellness from Maine, of Maine 4 LLC. The location is 11 Ocean Park Road, MBL: 210-10-2; Zoning in the GB1 district.

So Jeffrey, you want to get us started, please?

Jeffrey: Sure. And as we all know at this point, this proposal is a conditional use permit application for an adult use marijuana store to be located in the existing building at 11 Ocean Park Road.

The planning board began review of the conditional use application at the March meeting earlier this year. The application was determined complete at the August meeting. During September, the planning board held a public hearing, and then also during September, the planning board conducted a final review, but tabled that decision – tabled the final decision. And the reason for tabling was the planning board felt that the applicant needed to address remaining comments concerning traffic, buffer, signage, parking, and conformance with the standard related to right, title, and interest.

Now, tonight, the planning board is once again tasked for – to make a final decision. The planning board received several submissions for this evening's meeting regarding information submitted from the applicant. You received in a letter from Theory Wellness concerning their position on the right, title, and interest matter. And also, there was a revised site plan that was received.

A letter was received from the town attorney concerning right, title, and interest. Also, we received a letter from the attorney representing the other leaseholder of this building, which is – that letter was a response to the applicant's. I believe it was the applicant's 15 of October letter.

So in your staff memo, I provide comment on the applicant's compliance with the additional info requested by the board and conformance with the standard related to right, title, and interest.

Based on the public hearings, based on the information we received, based on comments that I've heard from the planning board members, it really seemed like the biggest outstanding, the primary issue was the one associated with right, title, and interest. And basically, does the applicant comply with the specific standard that deals with this, which is section – in the adult use marijuana business ordinance, standard 78-1279B. The applicant interested parties and town attorney provided comment on this, all which I mentioned before, and you have all of that in your packet this month. And the board, as I know, you always do, you consider all comment to make that informed decision. It's very important.

And with the town attorney's responsibility, because if you recall, the reason it was tabled, the primary reason regarding right, title, and interest was you wanted the town attorney's opinion on this. And so that certainly has a certain amount of weight to it, I believe. You would hope that the town attorney would guide the board to make a solid decision, especially with these more complex and legal matters. So it just seems wise to carefully consider the comments that the town attorney provides.

And so as the town attorney commented, it appears as though there is record evidence supported by the applicant concerning the issue of sufficient right, title, or interest in the property for the use for which the permit is sought. So it seems like, to me, my read of the town attorney's letter, the applicant has met their burden of proof with that.

And note though, that although – and this is something that folks have mentioned here, the applicant may have a difficult time moving forward with that because of some of the language that is in the lease. But as the town attorney states, the board does not have jurisdiction to decide these contract disputes and determine whether a party is in breach of a contract or not.

So, on page 6 and 7 of the staff memo, you'll find motions to approve, and there's motions to deny, if you choose that. If you find the application meets the required standards, the application must be approved. If you find the application does not meet one or more of the required standards, the application must be denied.

And one final note is that the adult use marijuana, the entire process to actually begin operating a business has three steps. There was the selection of the license which was the first step. Then, the second step was the conditional use review, which is where we are now. And – but it does not conclude here. If the planning board approves this proposal, the applicant still cannot go and open a store. They still must complete the final step, which is going through council.

And although the ordinance doesn't specifically identify when the applicant must go through that council, what it does identify, and if it is approved tonight, is that the – they have – the applicant has a 180 days to establish the store. So that – according to our ordinance, if it's approved tonight, that clock will begin today for that 180-day period. So the applicant would need to secure the council approval and begin their operations within that timeframe. And...

David Walker: Excuse me, Jeffrey?

Jeffrey: Yep.

David Walker: So are we making a recommendation to council?

Jeffrey: No. You're just approving or denying the conditional use permit.

David Walker: Yeah.

Jeffrey: So it's just like, really, you don't get involved with much of the licensing, but let's say if you were to approve a store, some sort of other retail store, the applicant still needs to get their applicable permits for that before they can get their license. But the license step in the adult use marijuana process isn't your typical licensing step. It's a bit more complex than your regular business licensing step. So there's definitely still some work that the applicant will have to do beyond this, but they still need that conditional use approval in order to get to that next step.

David Walker: Okay.

Jeffrey: And that's all I have. Thank you.

David Walker: All right. Thank you. I failed to mention that Win Winch was absent tonight. He's not here, but we do have a quorum, so not a problem. Anything from board members?

Male Speaker: I'd like to make a motion.

David Walker: Okay.

Chris Hitchcock: I'd make a motion to determine Theory Wellness of Maine 4 LLC conditional use application proposing an adult use marijuana store at 11 Ocean Park Road, MBL: 210-10-2 is in compliance with the Town of Old Orchard Beach, conditional use standards in Section 78-1240 and complies with a standard set forth in adult use marijuana business Section 78-1279.

David Walker: Motion by Chris.

Robin Dube: Second.

David Walker: Second by Robin. Do you want to call for a vote, please?

Jeffrey: Sure. Mr. Kelley?

Jay Kelley: Yes.

Jeffrey: Ms. Dube?

Robin Dube: Yes.

Jeffrey: Ms. Hubert?

Marianne Hubert: Yes.

Jeffrey: Vice Chair Hitchcock?

Chris Hitchcock: Yes.

Jeffrey: And Chair Walker?

David Walker: Yes. That motion carries 5-0.

Male Speaker: I'd like to make a second motion.

David Walker: Please.

Male Speaker: To approve Theory Wellness of Maine 4 LLC, conditional use application proposing an adult use marijuana store at 11 Ocean Park Road, MBL: 210-10-2 with the following conditions and as documented in the findings of fact dated 24 October, 2024.

Robin Dube: Second.

Male Speaker: No. I'm not finished...

David Walker: No, there's some conditions.

Chris Hitchcock: There's conditions. The first one, certain parties have asserted that the applicant does not have a valid lease for the property due to other private contractual lease obligations. The dispute is currently the subject of litigation. The planning board does not have jurisdiction to determine the rights of the parties to deeds or private contractual agreements, nor can this approval create or affect any such rights. Should it be determined by a final non-appealable court judgment that the applicant does not have the legal right to use the land as proposed in the application, this approval shall no longer have any force or effect.

Two, on or before the applicant secures an occupancy permit from the Town of Old Orchard Beach, the applicant shall secure applicable approvals and secure the labor to apply yield pavement markings on Ocean Park Road in accordance with Maine Department of Transportation rules. Should Maine Department of Transportation not allow yield pavement markings, the applicant shall provide the planning department with documentation, which establishes MDOT's position, and this condition will no longer be applicable to the approval of this project.

Three, parking spaces shall be identified and reserved for each use with three parking spaces adjacent to the Ocean Park Road and the two-story building prohibited from use by marijuana store customers. Marijuana store employees and those who use – occupy the two-story building are allowed to use these three spaces.

Four, sight line shall remain clear along the frontage abutting Ocean Park Road.

And five, Theory Wellness of Maine 4 LLC shall secure applicable state and town licensing approvals before any on-site operations begin.

Robin Dube: Again, second.

David Walker: Motion by Chris, second by Robin. Want to call for the vote, please.

Jeffrey: Mr. Kelley?

Jay Kelley: Yes.

Jeffrey: Ms. Dube?

Robin Dube: Yes.

Jeffrey: Ms. Hubert?

Marianne Hubert: Yes.

Jeffrey: Vice Chair Hitchcock?

Chris Hitchcock: Yes.

Jeffrey: And Chair Walker?

David Walker: Yes. That motion carries 5-0. Okay. Congratulations. You have a lot of work to do still.

Male Speaker: Yeah.

David Walker: Yeah? Okay. And other business?

Tom Mourmouras: Good evening. Tom Mourmouras, 11 Ocean Park Road. So I – Jeffrey briefly touched on. He said there's a 180-day window. The ordinance says once the council gives approval, they have 180 days to open. There's nothing in the – after the planning board, I guess there's nothing saying how long they have until they have to go to the council. I'm hoping that can be clarified. And just in general, any conditional use, if there's an approval, how long do they have before they have to go to the council?

And then with cannabis, usually you have to have a certificate of occupancy, and then you schedule an inspection with OCP, you then get a local authorization, and then you go for your license. So is the town going to allow Theory, just again, procedurally, to go to the council for a license before they secure any of that with the Office of Cannabis Policy?

So again, just repeat, so number one is how long do they have before they have to go to the council? And two, can they just go get a license without having any of OCPs approvals?

David Walker: Okay.

Tom Mourmouras: Thank you.

David Walker: You're welcome. So Jeffrey, we can notify him of answers to those questions at some point, so...

Jeffrey: Mm-hm.

David Walker: All right. Thank you.

Tom Mourmouras: There's no answer tonight?

David Walker: Huh?

Tom Mourmouras: There's no *[inaudible]* [00:15:56]?

Jeffrey: No. Sorry, I don't...

Tom Mourmouras: *[Inaudible]* [00:15:59].

David Walker: Yeah.

Tom Mourmouras: You know that *[inaudible]* [00:16:01].

Robin Dube: We're actually done with this. It's up to the council to decide from there.

Tom Mourmouras: No. He said a 180 days, so it's in his impression that he made a fact that they have a 180 days and now you're saying I'm going to be notified later that it's something different. I'm just confused.

Jeffrey: Yeah, maybe I was wrong, Tom. So I'll certainly check on that.

Tom Mourmouras: Okay. Great.

Jeffrey: Yeah.

David Walker: You'll get an answer to your questions.

Tom Mourmouras: *[Inaudible]* [00:16:23].

David Walker: Have a good night, guys. Good to see you as usual. Bye-bye. All right. Any other good and well fair?

Jeffrey: Thank you all. I appreciate your work with me on this one.

David Walker: Okay. Motion to adjourn?

Jeffrey: And thank you to the applicants.

David Walker: I think that's unanimous. Everybody stick around, because we do have to sign something for...

Jeffrey: Yes, for *[overlapping conversation]* [00:16:47].

David Walker: For Jeffrey, okay? And that's the end of the meeting. Good night.

Male Speaker: Good night. Thank you.

Robin Dube: Have fun.