

Bowdoinham
Board of Appeals
MINUTES



Date: Meeting Date September 8, 2022

BOA Meeting/Public hearing called to order by Dave at 6:30.

Board has a quorum (at least 3) with members Bill Bryan, Ed Friedman, Sylvia Hultman and David Jones present. Also present was Town Clerk/staff Tina Magno

Also attending: Besides applicant Scott Gallant and his architect Travis Nadeau from Platz Assoc., there were Nate Drummond and Al Acker from the Planning Board and about eight members of the public including several abutters.

Minutes of the Board of Appeals Meeting of August 17, 2022 were reviewed and approved

Dave read through the following from our agenda: summarizing Rules & Procedures for the meeting:

- As the Chair, Dave read a statement of the case and identified all correspondence and reports the Board members have received.
- The Board will then determine whether we have jurisdiction to hear the case.
- If the Board accepts jurisdiction, we will have the appellant and/or their representative present the appeal. I would like to emphasize, the burden of proof is on the appellant to demonstrate his/her case, so this presentation is very important. During the presentation or after the presentation, the Board members may ask questions or request clarification.
- Once the appellant's presentation is complete, the Public Hearing will be opened, during which interested members of the public may speak. Any questions raised by the public will be directed to the Chair or the Board members and not the appellant. This is not to be an open discussion between the public and the appellant but is an opportunity for the public to ask questions and voice support or opposition of the appeal.
- After members of the public have completed their remarks, the appellant will have an opportunity to respond.
- Once all public comments have been heard, the Public Hearing will be closed and no further comments from either the appellant or the Public will be allowed during the deliberations of the Board.
- The Board will, time permitting deliberate and decide if they have enough information and if so, will vote on the appeal.

Note: The Board may Waive any of the above rules if Good Cause is Shown.
Any questions?

Statement of the Case:

Scott Gallant submitted an Administrative Appeal of decisions made by the Bowdoinham Planning Board during their meeting on June 23, 2022. Specifically, the appeal claims the Planning Board decisions on a Site Plan Review - Tier II Application for development of a marijuana establishment and

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apartment on 17 School St (U01-017) were based upon a misinterpretation of the materials provided in support of the development and the misapplication of standards that do not apply to the project.

Here Dave read the specific Planning Board findings being appealed which to avoid listing twice I have detailed below as they were presented at the meeting.

Correspondence and Reports

The Board members have all received and have copies of:

1. The application for Administrative Appeal, including a July 21, 2022 letter signed by Travis Nadeau of Platz Associates. The letter provides a written record of the request along with several enclosures.
2. Planning Board letter dated June 24, 2022 Re: Site Plan Review and Denial of U01-017 - Marijuana Establishment and Apartment.
3. Planning Board minutes for their meetings on February 25, 2021, March 25, 2021, April 29, 2021, July 1, 2021, August 26, 2021, September 23, 2021, June 14, 2022, and June 23, 2022.
4. A history from 2009 to current for 17 School St property
5. All legal Notices to abutters and affected parties of the Board of Appeals meeting/hearing for the appeal.

Presentation of the Appeal by the Appellant or their representative.

Questions from the Board

Open Public Hearing

Response to Public Comments from Appellant

Questions from the Board

Close Public Hearing No further comments will be heard from the Public or the Appellant

Board of Appeals Deliberates and decides on action.

Jurisdiction

The Board of Appeals determines whether it has jurisdiction over the appeal. There is some discussion over this including a number of reasons suggested by Sylvia and agreed to by Bill, examples being building height, stop work orders and permit expiration they feel have not yet been resolved or otherwise satisfactorily dealt with by the Planning Board. Their thoughts are these may preclude our jurisdiction. A motion and subsequent vote to accept jurisdiction is made and fails with Ed and Dave voting aye and Sylvia and Bill voting nay.

Scott tells us Darrin our CEO amended his building permit on 10/24/16 to allow a 40' height issuing a revised permit. Unsure of permit expiration.

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(F(2) Unless otherwise specified by the Planning Board/Code Enforcement Officer in their approval substantial start of the improvements covered by any site plan approval must be completed within twelve (12) months of the date upon which the approval was granted. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project.)

Ed asks Nate for PB clarification on permit. Nate is unclear what would happen if permit bounced back to PB?

Ed cites Article 12, C. 1. (b) from our Land Use Codes:

b) Planning Board. The Board of Appeals may hear and decide appeals from any final decision of the Planning Board, by any aggrieved party. The Board of Appeals shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Planning Board, and to the parties' arguments based on that record.

Scott introduces Travis, disputes Nate and PB saying the PB did not have amended 2016 permit.

Ed re-makes motion to accept jurisdiction and it passes 3/1 with Sylvia dissenting.

BOA has accepted jurisdiction.

Dave explains Scott can give his presentation, Sylvia notes no amended permit is in packet from Scott and Dave asks Tina to get copies of actual permit.

Travis takes the floor noting he came on board in 2021 and that it seems history of the project is a big piece of this, some of which he is familiar with and some not. He suggests the permit process has treated Scott's building as new rather than existing and that early permits may have been ignored? He hopes to improve and resolve process. At various points in evening, various BOA members and others note that ignored in the history are also repeated permit violations, building without a permit, that while height (40') may be grandfathered (Village District enacted in 2017 with 35' height restriction), change in use was not (ergo new PB application). Poor quality of early documentation drawings was also noted.

We now moved to the findings, taken in order. Each finding is followed by discussion notes. I have added page references to current Bowdoinham Codes

Specific Planning Board findings being appealed include: (from the Planning Board letter dated June 24, 2022 Re: Site Plan Review and Denial of U01-017 Marijuana Establishment and Apartment)

- 1) Vehicle Access - The proposed site layout will provide for safe access to and egress from public and private roads. (Page 191)
Finding: Sight lines identified do not meet the requirements of the performance standards
Conclusion: This standard has not been met.

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Travis & Scott: Point out higher traffic at Town Offices and Library. Street not posted 25mph minimum DOT posting to which sightlines are referenced. Suggest 15mph more appropriate for School St.

Dave with his career in public works for Lewiston points out very few or no residential streets are posted for 25mph so the fact School St. is not, is not a factor.

Travis notes curb-cuts don't match any DOT sight line requirements.

Scott remarks one can't go more than 10mph on School/Spring Streets and relates personal conversations had with DOT and their suggestions. It is pointed out to him being local roads, DOT has no jurisdiction. Scott points out the PB or BOA granted the Town curb-cut waivers in 2009 associated with redone parking area for Town Offices. It is also made clear to applicant that multiple conversations he has had with various officials regarding the project are considered hearsay and irrelevant to this appeal and Board

- 2) Internal Vehicular Circulation - The proposed site layout will provide for the safe movement of passenger, service, and emergency vehicles through the site. (Page 191)
Finding: Internal vehicular circulation has not been demonstrated to preclude the backing out of delivery vehicles and other large vehicles onto School St. Many conflicts are likely to exist between parking and delivery needs.
Conclusion: This standard has not been adequately met.

Travis details circulation patterns and space sizing.

Ed raises issue that only 2 or possibly 3 employee parking spaces are described yet wastewater system design is for up to 8 employees. There is also a reference elsewhere in our information packet to more employees and we have an ordinance requirement (Performance Standards) of 1 parking spot/employee/shift.

D. 2. E. (xiii) At least one parking space shall be provided for each employee per shift.

Scott remarks that extra parking can easily be had over his concrete wastewater tanks. He is required by the State to have 2 employees in the storefront and expects 2-3 growing his cannabis product with perhaps separate cleanup crew after hours.

- 4) Municipal Services - The development will not have an unreasonable adverse impact on municipal services, including municipal road systems, fire department, solid waste program, schools, open spaces, recreational programs and facilities, and other municipal services and facilities. (Page 193)
Finding: Applicant has not proven that the proposed project will not have undue adverse effects on fire safety and specifically concerns raised at public hearing that the town will have the ability

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for appropriate vehicles to be able to access the site in the case of a fire, due to the height of the building and layout of surrounding roads.

Conclusion: This standard has not been met.

Ed requests letter from Fire Chief, Road Commissioner and Water District that municipal services will not be stressed by Scott's proposal. Code Page 204:

4) **Municipal Services –**

A letter shall be requested from the appropriate Town Officials to address that the development will not have an unreasonable adverse impact on municipal services, including municipal road systems, fire department, solid waste program, schools, open spaces, recreational programs and facilities, and other municipal services and facilities.

Dave notes it is not up to us to request applicant obtain & submit new letters. We have to decide if the Planning Board erred in their finding that he did not meet the requirements.

- 5) **Visual Impact** - The proposed development will not have an adverse effect on the scenic or natural beauty of the area, including water views and scenic views. (page 194)
Finding: The proposed development and the housing proposed within it exceed the height of 40' on average and blocks an identified view from a public street and facility without making any effort to minimize the encroachment or the effect on the view.
Conclusion: This standard has not been adequately met.

Must provide year round screening. Some references to old easements from the Town-2003, 2009, 2021. Only easement provided (and copied by Tina for us) is dated 9/29/09 found at Sagadahoc registry Book 3129, Page 184. In this document the Town grants a 20' wide x 180' long easement on the north side of subject parcel for driveway access to the lot/house behind subject parcel. Easement is limited to "exclusively for driveway purposes" and will be (was) built by Grantee.

Scott discusses survey issues with there being 3 different lines surveyed for one. He claims Hardy & Hardy would not accommodate/revise earlier survey errors made and left the job.

At this point we waived normal review order to hear from Nate Drummond who needed to leave for another commitment.

Nate, speaking for PB notes:

Scott's application not filed as amendment to original Knitting Store permit. It was somewhere in between new and existing/functioning building so new application. Building that exists now significantly different than that approved previously. At 9/21 PB meeting regarding performance standards it was made abundantly clear to applicant he

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would have as much time as he needed to comply and submit supporting materials and documentation and there was no PB pressure on a timeline BUT, once he did comply with requests and requirements, PB would deliberate and decide to approve or deny applicant's permit requests.

Bill asks Nate if requested materials were forthcoming and Nate replies some yes and some no.

Bill asks why this shouldn't get kicked back to the PB to resolve issues that later documentation (since June 23 PB meeting) may have raised?

Nate says this would probably require a new application. There were an inordinate amount of meetings to get to this point with significant time, effort and resources expended by all parties and the public. Al Acker (also for the PB) later remarks the PB has approved countless Tier II cannabis growing facilities in the time the current applicant has been before the PB.

Ed points out to Board and applicant (who has waved all kinds of new documents at us) that our ordinance specifies the BOA is bound by materials in the PB record and their decision as opposed to a de novo review of the application and issue.

Scott says Covid contractor delays have been at least partly responsible for his untimely submission of materials.

Nate leaves and delegates Al to speak for the PB if necessary.

Ed reads visual specific performance standards on buffering which clearly have not been complied with.

- 8) Buildings - The proposed structures will relate harmoniously to the terrain and to existing buildings in the vicinity, so as to have a minimally adverse effect on the environmental and aesthetic qualities of the neighboring areas.(Page 195)

Finding: The scale of the building is not in proportion to the surrounding neighborhood and the effect on abutting properties is significant. The applicant has shown no evidence that the building does not exceed the required 40'.

Conclusion: This standard has not been adequately met.

Travis discusses building height and averaging methodology.

Ed has taken many detailed measurements on Travis' scaled elevations and found virtually every measurement well in excess of 40' with much of the roof height being 47-48-6'.

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Sylvia notes earlier correspondence with CEO regarding permit to remove roof, etc. and 9/2/21 stop work order.

Scott tries to explain that Nicole Briand in her early days as CEO or Planning Coordinator gave permit for 39.5' at storefront entrance so apparently Scott believed rest of building could be higher.

- 9) **Landscaping**: The proposed development will provide adequate landscaping in order to define, soften, and/or screen the appearance of parking and developed areas as well as to enhance the physical design of the buildings and the overall development. (Page 196)

***Finding:** While the proposal does offer some degree of landscaping on the south and along school street, there is none offered to the north of the property and does not appear to be within the reality of the lot to have space for landscaping on that site.*

Conclusion: This standard has not been adequately met.

Travis focusses on School St. end of building since street view usually of most concern.

Scott says abutters agreed on a line of planted trees.

Street focus clearly not the case here with a narrow storefront on the street and massive exposure to the Town Office/Town Hall/ Library viewsheds.

Ed asks for abutter feedback on planting but abutters have generally left by this time.

- 10) **Buffering** - The proposed development will provide for the buffering of adjacent uses where there is a transition from one type of use and for the screening of mechanical equipment and service and storage areas. (Page 196)

***Finding:** The proposed development is surrounded by residential uses to the south, east, and west, and institutional uses to the north, and there's no landscaping or any proposed screening that provides year-round visual screening to minimize visual impacts to the surrounding properties.*

Conclusion: This standard has not been adequately met.

Travis says buffering appears sufficient.

Scott offers to meet with neighbors re. further buffering. Not within the scope of our appeal.

- 12) **Water Supply** - The proposed development will be provided with an adequate supply of water. (Page 197)

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Finding: The applicant has not provided the requested evidence showing that the public water supply system will not in any way be mixed with water provided by private well or cistern-based system as requested by the Water District.

Conclusion: This standard has not been adequately met.

Travis clarifies no cross contamination between town water and applicant cistern and hydroponics systems.

Dave asks if there will be enough water collected on site?

Scott says roof should collect 35,000 gallons/year. Hydroponics uses cistern water which then goes through reverse osmosis filtering and is reused.

Despite efforts to minimize use, question remains when rainfall is uneven, will there be enough water when needed?

Dave asks about letter from Water District and it seems letter was about capacity, not cross contamination.

AI -PB asked for waiver from Water District-WD suggested permit denial because letter re. cross contamination never supplied.

Dave points out again to all parties that conversations had about project aspects are considered hearsay and not part of the record.

- 14) Fire Protection - The proposed development will have adequate fire protection.(Page 197)
Finding: Applicant has not sufficiently provided written notification from the Fire Chief or Maine State Fire Marshall's Office stating that the project as proposed meets their requirements.
Conclusion: This standard has not been adequately met.

Travis outlines iterative process with Fire Marshall.

Dave notes while there is some correspondence with Fire Marshall, still no letter.

Ed asks Travis if he thinks PB requirements premature?

Travis responds yes and that in his experience Site Plan Review generally more focused on external systems rather than internal (this sounds unlike the Town's experience). Typically he suggests a Fire Marshall approval is a condition of the permit to be received before a Certificate of Occupancy will be issued.

- 15) Capacity of Applicant - The applicant meets the following criteria: (Page 197)

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Finding: Applicant has not provided adequate budget and evidence of financial capacity to meet that budget and applicant has had successive stop work orders which raises concerns about future ability to complete the project within the requirements of building permits that may be granted.

Conclusion: This standard has not been adequately met.

Travis: Suggests Right, Title & Interest in property generally enough as is letter from Bank. Most big developers using borrowed money. Scott has hired many professionals over the years also demonstrating his financial commitment/capacity.

AI points out banks don't loan or extend credit to cannabis operations. Scott says he can easily transfer funds to credit union.

Sylvia asks how project transitioned from knitting shop to cannabis and Scott relates how his brother or brother-in-law in FL was diagnosed with cancer and cannabis was what relieved the pain,

17) Environmental Impact - The landscape will be preserved in its natural state to the extent that is practical by minimizing tree removal, disturbance of soil and retaining vegetation. (Page 199- No.23)

e) Stormwater - The proposed development will provide for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other impervious surfaces, which must not have an adverse impact on abutting or downstream properties. (Page 200 No 28)

Finding: There is already reported concerns of existing stormwater runoff from the site on the ground and there is no proposed stormwater management plan to alleviate those existing issues.

Conclusion: This standard has not been adequately met.

Travis-Most water coming from Town parking lot, shows recent photos from big rain. This is primarily an off-site problem, not Scott's.

Dave asks AI if this is water PB is concerned about and AI replies no. AI notes high traffic on Gallant property may exacerbate runoff.

Bill asks for confirmation on collection of roof water and Travis confirms it will be collected and routed into a cistern.

f) Sedimentation & Erosion Control - The proposed development will take adequate measures to prevent soil erosion and the sedimentation of watercourses and waterbodies. (Page 201 No. 29)

Finding: Given that stormwater issues and runoff on the site have not been resolved, they are likely to create sedimentation and erosion control issues.

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Conclusion: This standard has not been adequately met.

Travis-covered in last item. Reaffirms willingness to work with Town.

- 19) **Compliance with Ordinances** - The proposed development conforms with the provisions of this Land Use Ordinance and other ordinances and regulations of the Town of Bowdoinham. (Page 190, No. 31)

Finding: *The building height does not conform with the land use ordinance, and it does not conform with building permits that were taken out for previous construction. Additionally, the plan has not proven that it will conform with the use-specific standards related to odor-mitigation, buffering, security, or signage.*

Conclusion: This standard has not been adequately met.

Travis- Reads findings and says they were found in compliance previously.

AI says no security plan re. cannabis filed with CEO. Says this is a requirement of our ordinance so permit denied. Many other Tier 2 permits for cannabis have been issued in time this applicant before the PB.

Tina asks as a new Bowdoinham resident (out of order because Public hearing has not yet opened) why applicant doesn't just go down PB checklist and be done?

Travis reads cannabis establishment ordinance-Page 2106 20. c. -filing of security plan with Town not required-

c) All marijuana and marijuana products shall be in a secured facility that meets state requirements for the registered or licensed premises under Title 22, Chapter 558-C or Title 28-B, as applicable. Any outdoor area approved for marijuana cultivation under this ordinance must be enclosed and equipped with locks or other security devices that permit access only by a person authorized to have access to the area. The municipality shall keep confidential any security plans that are submitted as part of the application process.

Security plan not required to be filed with CEO. Only that establishment must meet state and municipal standards.

AI reiterates PB requested filing, not received.

PUBLIC HEARING OPENS

AI (for PB) says the PB made clear to applicant prior to June 2022 meeting that next time he came before the Board they would vote on his application. Took six full PB meetings just to get to Tier 2 meetings. Applicant received more than adequate opportunities for anything within PB purview. No PB discussion of overstepping bounds, all PB in

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agreement. Change in use-new permit. Apartment added part way through process. Tier 2 more rigorous than Tier 1 which is what Town Office parking lot fell under.

Doug Tourtellotte-sight distance for roads is requirement, can't make up stuff. Height standard is absolute. Claims he has had to jump through these hoops many times and everyone should be treated the same.

Tina again asks why not comply?

Scott says 3 businesses on School St. Sarah Stapler-no issues with permits for curb cut/sight lines. Town got waiver, Sarah just got permit. Two middle properties-Scott & Sarah have best sight lines on street.

Doug-Other people's projects have been rejected for inadequate sight lines.

Ed reads clarifying ordinance Article 12 C. b.

The burden of proof shall be on the appellant to demonstrate that the Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Planning Board or , if the record is not sufficient or further information needs to be provided, to remand the matter back to the Planning Board for further proceedings. The Board of Appeals shall reverse the decision of the Planning Board only upon a finding that the decision was clearly contrary to the applicable provisions of the Ordinance or that the record evidence compels a contrary conclusion.

Scott and Al get into a nasty personal interaction re. possible conflict of interest Scott claims Al has. This is gaveled down by the Chair.

Dave closes public hearing at 10pm.

We take 5 minute break before possible deliberations and discuss next steps including a possible 1 week continuance due to the late hour. The applicant is in favor of this. Most Board members can go either way.

At 10:12 the Chair moves to continue the meeting next Thursday 9/15 at 6:30 which allows just enough time for public notice. The motion is seconded and passed unanimously.

At 10:13 the Chair moves to adjourn. This is seconded and passed unanimously.

Respectfully submitted,

Ed Friedman, Secretary