

Draff findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

### **Findings in red**

**Jurisdiction** – All marijuana uses requiring a Site Plan Review Permit are Tier II, unless they meet the requirements of a Tier III application. Article 10. B),2),c),(v)

**The Planning Board does not have jurisdiction to approve expansions of nonconforming buildings. Variances from standards in Article 5 (Land Use Districts), would be the jurisdiction of the Board of Appeals. See Article 3. C), and 12. C) 2).**

### **Village I District**

#### **1) Dimensional Requirements:**

- a) Minimum Lot Size – 20,000 sq. ft. The site plan shows a lot that is 135' max by 80' max which would be 10,800sf. The town assessing records indicate the lot is .21acres. A conforming lot of 20,000 sf would be .4591ac. The existing lot size was in existence before the minimum lot size was established, and new uses are not prohibited.
- b) Minimum Lot Size for Subdivisions with Community Subsurface Wastewater System – 10,000 sq. ft.4 Not a subdivision
- c) Maximum Residential Density – 20,000 sq. ft.
- d) Minimum Road Frontage - 75 feet. Applicant has provided a survey showing adequate frontage.
- e) Minimum Setbacks for Buildings –
  - (i) Front Yard - 20 feet Pre-existing structure does not adhere to the 20' setback. It is therefore non-conforming. The applicant is proposing to expand a non-conforming structure which will require a variance from the Board of Appeals.
  - (ii) Side Yard - 10 feet the downhill side is shown on the plan and appears to show adequate setback. The site plan indicates the side setback on the downhill side is adequate. The uphill side is noted as 7'6". It is nonconforming. The applicant is proposing to expand a non-conforming structure which will require a variance from the Board of Appeals.
  - (iii)Rear Yard - 10 feet The site plan indicates the rear setback is adequate.
- f) Maximum Building Height – 35 feet The applicant has an expired permit for a building height of 39.5'. The site plan indicates the proposed structure maximum building height is 45 feet 3 inches. It is a proposed expansion of a nonconforming building, and will require a variance from the Board of Appeals.

The 39.5' elevation that the building was previously permitted to, was not adhered to.
- g) Structures shall not cover more than 30% of any lot. Lots legally non-conforming due to lot size may have up to 50% structure coverage. The Site Plan indicates that % of structure coverage is 31.3 % It must be less than .105ac (50% of .21ac) in order to comply with Article 5,E,1)g).

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

**Land Use** (Table 5.1): Marijuana Establishment. Allowed in the Village I District contingent upon a Site Plan Review permit and Annual License from the Select Board.

Site Plan Performance Standards:

1) **Vehicular Access** –

- a) Adequacy of Road System - Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. A Traffic Impact Study may be required by the Planning Board if deemed necessary by the Director of Public Works or the Road Commissioner.

The Road Commissioner has expressed concerns over the adequacy of the driveways to be used for a new commercial entrance, stating that the traffic estimate should be verified, and stating that School Street is a narrow street with a steep hill, so safety with traffic and larger vehicles is a concern.

Staff note there are limited road and driveway spaces for turning movements, especially large delivery and emergency vehicles. There is not much queuing distance on the street and limited traffic movement options on the site.

A traffic impact review provided by the applicant states that “Total trips = 35.12 (PM peak hour)

- b) Access into the Site - Vehicular access to and from the development must be safe and convenient.

- (i) Any driveway or proposed street must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards.

Applicant states sight distance minimums are 155’ toward Main St. and sight distance 185’ toward Spring St. from the uphill driveway.

Minimum sight distance required is 175ft.

The sight distance information, and indicated location of measurements, do not adhere to the Sight Distance Criteria in the Land Use Ordinance performance standards

- (ii) Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.

Because of the anticipated volume of customer and delivery traffic, lack of provision for turnaround space, and limited amount of parking, it is likely the proposed development would result in more vehicles backing into the existing travel lanes of School Street.

- (iii) The grade of any proposed drive or street must be not more than 3% for a minimum of forty (40) feet, from the intersection. The Planning Board may require a greater distance if deemed necessary by the Public Works Director.

The applicant is proposing to meet the standard at both the north and south entrances.

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

- (iv) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.

Because of the surrounding uses that encourage pedestrian traffic, and the limited sight distances, tight turning movements and additional volume of traffic.

Pedestrian crossings will be installed at the entrances of the accessways.

c) Accessway Location and Spacing -

- (i) Private entrances/exits must be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

The applicant indicates that the distance to Main St is 360' and the distance to Spring St is 185'. These distances are stated in the narrative and it is not clarified if it is referring to the uphill or downhill accessway.

- (ii) Private accessways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

The existing driveways are 43' apart. Staff were not able to locate on the site plan the proposed wayfinding signage to direct traffic to appropriate parking areas that is noted in the narrative. In the March 14, 2022 version of the site plan includes a sign detail with a sign that is called out as "wayfinding signage" that says "Side entrance." Where both entrances are side entrances, it may not be clear.

2) Internal Vehicular Circulation –

- a) All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding areas of excessive grading and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

Where the site is relatively confined, the applicant should indicate how vehicles, cyclists, and pedestrians will interact on site, how snow storage will be managed, and how pedestrian circulation is intended to work during the winter months.

The applicant shows the vehicles operating the delivery service will park and load up.

The applicant should clarify where residential parking will be located.

The site plan indicates adequate turning movements for dumpster service.

Bike racks proposed at main entrance in the narrative. Staff could not locate them on the plan.

Draff findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

The applicant states there's a paved accessway outside of vehicle drive aisle to approach the entrance from school street. The accessway appears to extend into the right of way on School St.

- b) Proposed developments that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for the largest expected vehicles.

The application depicts turning movements for 20' vehicles. The narrative states that deliveries are expected to include 30' delivery vans.

- c) Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

The applicant stated they will provide wayfinding signage for emergency vehicles. The location of the signage and what it will show/say is not specified.

- d) The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the parking lot.

As the applicant is anticipating multiple deliveries an hour and multiple customers per hour, there are bound to be conflicts in the customer and delivery driveway and parking area as there is no through-way or secondary exit way. This seems likely to result in bottle-necks and vehicles frequently backing out onto School Street.

- e) Off-street parking must conform to the following standards:

- (i) Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the street.

Employee parking in the lower lot has adequate turning area to turn around prior to pulling out into School Street.

Diagrams on C101 depict turning movements to allow customers and delivery drivers to turn around before exiting onto School St.

- (ii) All parking spaces, access drives, and impervious surfaces must be located at least ten (10) feet from any side or rear lot line, except where standards for buffers require a greater distance. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

The Site Plan indicates that the plan will not conform to the setback on the front, rear, or uphill side.

- (iii) No parking spaces or asphalt type surface may be located within five (5) feet of the front property line; standards for buffers may require a greater distance.

- (iv) Parking lots on adjoining lots may be connected by accessways not to exceed twenty-four (24) feet in width.

- (v) Parking stalls must conform to the following standards:

Parking	Stall	Skew	Stall	Aisle
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Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

Angle	Width	Width	Depth	Width
90°	9'-0"	-	18'-0"	24'-0" – 2-way
60°	8'-6"	10'-6"	18'-0"	16'-0" – 1-way
45°	8'-6"	12'-9"	17'-6"	12'-0" – 1-way
30°	8'-6"	17'-0"	17'-0"	12'-0" – 1-way

The dimensions of the three proposed employee parking spots are given. Two are 9'x18', which meets the requirement of Article 10,D),2),e)(v) for 90 degree parking angle stalls.

The dimensions of the four proposed customer parking spaces are provided. One is 9x18', one 8x18' spot designated as an ADA space, and two overflow spots are 10x20. The 18' long spaces are depicted as being at a right angle to School Street. The 20' long spaces are parallel to Stone Hill Place. Article 10,D),2),e)(v) requires 90 degree parking angle stalls to be 9'wide by 18' long.

The overflow parking is not shown on the site plan. The applicant should address the issue of falling ice and snow with regard to the overflow parking.

(vi) In lots utilizing diagonal parking, the direction of proper traffic flow must be indicated by signs, pavement markings or other permanent indications and maintained as necessary.

None proposed

(vii) Parking areas for nonresidential uses must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.

No double-stacking proposed.

(viii) Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

The applicant is proposing adequate parking space lengths and aisle widths.

(ix) Parking areas must be designed and landscaped to create a pedestrian-friendly environment. A landscaped border must be created around parking lots. There must be at least one (1) island for every twenty (20) spaces. Landscaping must screen the parking area from adjacent residential uses and from the street.

The parking area on the downhill side will be adequately screened by a row of tall and thick evergreens.

New landscaping is shown on the southeast side and along the front.

The parking area on the west (rear) side should be screened from the adjacent residence.

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

The proposed landscaping for screening customer parking is inadequate.

- (x) Parking lots should be located to the side or rear of the building. Parking should not be located between the building and the street.

Parking lots are proposed on the sides of the building.

- (xi) Whenever the area between the street and the front of the building is used for parking or vehicle movement, a vegetated buffer strip must be established along the edge of the road right-of-way. This buffer strip must soften the appearance of the site from the road and must create defined points of access to and egress from the site.
- (xii) Any establishment which caters to and/or offers its goods, facilities or services to the general public shall maintain at least one of its required parking spaces as an accessible space for handicapped persons.

C101 shows 1 of the 2 customer parking spots is designated as handicap. It does not conform to the size requirements.

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

The applicant stated in a letter dated May 20, 2021 that the storefront will have two employees working from 9am to 6pm and that Employees will be working 8AM to 8PM. In a separate letter titled “Stone Hill General” the applicant states that “...Stone Hill Apothecary storefront shall operate during the hours of 9am-6pm subject to change. We shall typically always have a minimum of 2 staff members during operating hours to ensure compliance with all state laws. During peak cultivation times we may have up to 5 employees in our cultivation area. Cultivation area hours will typically range from 8am-8pm...”

There are two spaces labeled as designated for employee parking on the diagram labeled “Attachment E” accompanying the May 20, 2021 letter.

The site plan dated June 13, 2022 depicts 3 employee parking spots. The narrative dated June 13, 2022 states that there are 2.

### 3) **Pedestrian Circulation** –

- a) The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development.

The applicant states there’s a paved accessway outside of vehicle drive aisle to approach the entrance from school street. The applicant states that there will be a bike rack near the main entrance. The bike rack could not be located on the plan.

- b) This system must connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project.

System connects the main entrance with parking areas and areas where future sidewalks may be built.

- c) Where an existing or planned public sidewalk is interrupted by a proposed project driveway, the sidewalk material must continue to be maintained across the driveway, or the driveway must be painted to distinguish it as a sidewalk.

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

There are no existing sidewalks, but the entrances will be striped and the grades will be relaxed to accommodate future sidewalks.

- d) The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas.

Paved accessway is proposed in the street right of way, in the access easement area, and on site.

- e) The system must be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.

The applicant states there's a paved accessway outside of vehicle drive aisle to approach the entrance from school street.

- f) The system shall be safely separated from vehicular traffic through landscape buffers and curbing.

Concrete curb-stops are depicted between parking spots and pedestrian walkway areas except for around the overflow parking spots.

#### 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.

The Road Commissioner expressed concerns about driveway standards for new commercial entrance, making sure the traffic estimate was accurate and included all three uses, and safety concerns with traffic and larger vehicles on the small street.

The Solid Waste Department noted no concerns.

The Select Board expressed concerns about parking, traffic on school street, the impact on staff time of monitoring and enforcing conditions of approval, and the driveway easement. They recommended requiring the applicant to submit all documentation to prove the standards are met and not use conditions of approval that allow compliance to be proven at a later date.

#### 5) **Visual Impact** –

- a) When a proposed development is located on a hillside that is visible from a public street, road, water body, or facility, the development must be designed so that it fits harmoniously into the visual environment when viewed by the public from public areas. In predominantly natural environments, site clearing must be minimized and vegetation must be retained or provided to minimize the visual intrusion of the development. In developed environments, the appearance of the new development, when viewed by the public from public areas, must be compatible with the existing visual character in terms of scale, massing, and height to the maximum extent reasonable.

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

The development is located on a hillside that is visible from a public street, road, water body, and multiple facilities. It is in places more than 10' higher than the district standard height.

- b) When a proposed development is located within the viewshed of an identified view from a public street or facility, the development must be designed to minimize the encroachment of all buildings, structures, landscaping, and other site features on the identified view.

The proposed development is located within the viewshed of the Town Hall, Town Office, School Street, and River Road. The proposed building is far in excess of the district maximum height and previously permitted 40' height. Additionally, the applicant is proposing new balconies on the upper floors that will be visible from the public way, water body, and numerous public facilities.

- 6) **Lighting** – All exterior lighting will be designed to avoid undue glare, adverse impact on neighboring properties and rights-of-ways, and the unnecessary lighting of the night sky.

- a) Building facades may be illuminated with soft lighting of low intensity that does not draw inordinate attention to the building. The light source for the building facade illumination must be concealed.
- b) Building entrances may be illuminated using recessed lighting in overhangs and soffits, or by use of spotlighting focused on the building entrances with the light source concealed (e.g., in landscaped areas). Direct lighting of limited exterior building areas is permitted when necessary for security purposes.
- c) The proposed development must have adequate exterior lighting to provide for its safe use during nighttime hours, if such use is contemplated.

The plan indicates “downlights” at entrance canopy and multiple full-cutoff security “downlights” and “downlight” accent lights at stonewall cap. Spec sheets were provided in plan details dated March 14, 2022.

- d) Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures must be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky. Direct or indirect illumination must not exceed 0.5 footcandles at the lot line or upon abutting residential properties.
- e) All exterior lighting, except security lighting, must be turned off between 11 P.M. and 6 A.M. unless located on the site of a commercial or industrial use which is open for business during that period.

The applicant states that lighting not related to security or life safety will be limited to operating hours which will match the store hours of 9AM to 9PM

- f) Wiring to light poles must be underground.

No light poles are proposed.

- 7) **Signage** – The proposed signage will not detract from the design of the proposed development and the surrounding properties and will not constitute hazards to vehicles and pedestrians.



Draff findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

- a) Signs should be placed at right angles to the street so as to be viewed from both directions. Simple, geometrically shaped signs set low to the ground must be used.

Proposed to be placed at a right angle to School St. It will be set low to the ground and simple forms of lettering will be used.

- b) Signs may be illuminated only by shielded, non-flashing lights. Any sign illumination must be turned off from 10 p.m. to 6 a.m., except if the business is open then the sign illumination may remain on during the hours of operation. No internal or flashing lights shall be permitted.
- c) Business/Institutional name signs shall be limited to two (2) signs per property, except for a property that contains more than one business.
- d) Properties which contain one business or institutional use.
  - (i) No name sign shall be greater than fifteen (15) square feet.
  - (ii) The total area of name signs on the property shall not exceed twenty-five (25) square feet.
- e) Properties containing more than one business or institutional use.
  - (i) May have a directory sign, which contains a name sign for the complex, as well as name signs for the individual businesses or institutional uses. The name sign for the complex shall not exceed fifteen (15) square feet and the name signs for the individual businesses or institutional uses shall not exceed six (6) square feet. The total square footage for the directory sign shall not exceed sixty (60) feet.
  - (ii) Each individual business or institutional use may have a name sign not to exceed fifteen (15) square feet.
- f) No free standing sign shall extend higher than twenty (20) feet above the ground.

- 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.

- a) New buildings should be compatible with the neighborhood such that they reflect the overall building bulk, square footage, dimensions, placement of the building on the lot, and rhythm of buildings and spaces along the street edge and minimize the visual impact on the neighborhood. The visual impact of a building shall be measured by its relationship to other buildings on the lot, design of the front of the building, and the rhythm of buildings and open spaces along the street. The Planning Board may require additional buffering to the road or abutting properties if the proposed building is not compatible with the neighborhood.

In the submission dated June 13, 2022, the applicant states that “The street facade is enhanced with a large entry porch element and all entrances are punctuated with traditional New England character and detailing.”

Building elevation plans amended June 13, 2022 indicate the proposed building will have a height of 48 feet, 9 inches. That is 8 feet and 9 inches more than it was ever permitted for. 48 feet 9 inches is also 13 feet 9 inches more than the district maximum building height.

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

The square footage of the building provided by the applicant, incorporating Adult-Use Retail Space (1,112sf), and Special-Purpose Industrial Space (6160sf), and Residential and Garage Space (4,060sf) totals up to 11,332sf.

The adjacent municipal office building, the largest building in the vicinity, is approximately 6,700sf. The proposed building is 169% of the square footage of the adjacent municipal building.

- b) The architectural design of the building shall be consistent with the New England vernacular and shall include such features as pitched roofs, vertical rectangle windows, and the appearance of brick, stone, log, clapboard or shingle.

In the submission dated June 13, 2022, the applicant states that: “The architectural design features an array of details that are consistent with traditional New England vernacular, including pitched roofs with shed and doghouse-style dormers, vertical rectangle windows with mullions, and a variety of traditional siding materials including trims, clapboard siding, and a stone veneer base.”

Findings from September 2021: The building elevation on Attachment D depicts a building with architectural form similar to the existing structure, which includes a pitched roof and vertical rectangle windows. The type and color of siding is only partially indicated. The design would benefit from additional windows and siding that relates aesthetically to nearby structures. Commercial structures generally have a high percentage of transparent openings (windows and glass doors) on the levels that relate to the pedestrian environment. Elevation drawings submitted in February of 2021 are not clearly labeled by which side they are depicting. They appear to depict stone façade siding near the bottom portion of the south side, no windows, and a roof deck on the municipal property (north) side. The School Street elevation has no windows or doors depicted, and no siding type or color noted.

One version of the same elevation drawings depicts solar panels on a large percentage of the roof, and water storage tanks along the sides of the building hanging off from the roof.

Article 3. C),1),a) states that “A non-conforming building shall not be added to or enlarged unless such addition or enlargement does not increase the linear extent of the nonconformance of the building or a variance is obtained from the Board of Appeals.

- (i) The proposed development could be exempt from this standard if the development will be screened so that it is not visible from the road and abutting properties; or

Applicant states that the building cannot be screened from the street.

- (ii) Depending on the tier of the application, either the Planning Board or the Code Enforcement Officer may require additional landscaping and/or screening to the road and abutting properties.
- c) Where there is a reasonably uniform relationship between the front walls of buildings and the street, new buildings must be placed on a lot in conformance with the established relationship. For buildings on corner lots, the setback relationship of both streets should be maintained.

Draff findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

- d) The main entrance to the building should be oriented to the street unless the parking layout or the grouping of the buildings justifies another approach, and should be clearly identified as such through building and site design, landscaping, and/or signage.

The applicant is proposing to have wayfinding signage in front, along School Street, and a sign over the main entrance door, which is depicted as having a wood canopy over it.

- e) In rural, uncongested areas buildings should be set back from the road so as to conform with the rural character of the area. If the parking is in front, a generous, landscaped buffer between road and parking lot is to be provided. Unused areas should be kept natural, as field, forest, wetland, etc.
- f) The site design should avoid creating a building surrounded by a parking lot.
- g) The building height shall not exceed 40 feet.

The application depicts a building in excess of 40 feet.

- 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.
  - a) Landscaping must be provided as part of site design. The landscape plan for the entire site must use landscape materials to integrate the various elements on site, preserve and enhance the particular identity of the site, and create a pleasing site character.
  - b) The landscaping should define street edges, break up parking areas, soften the appearance of the development, and protect abutting properties.

The applicant proposes to maintain the existing landscaping. The applicant should specify the landscaping that will be maintained and obtain permission from the landowners if it is not on their property.

The existing landscaping does little to protect the abutting property from the impacts of the proposed building.

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

The proposed development is surrounded by residential uses to the south, east, and west, and institutional uses to the north.

There are existing trees that are proposed to remain to the south. There is some additional landscaping proposed to the east, although it is unclear what size and type of plants are to be used.

There is no landscaping proposed to the north or west.

- a) Buffering must be designed to provide a year-round visual screen in order to minimize adverse impacts. It may consist of fencing, evergreens, berms, rocks, boulders, mounds, or a combination thereof.

An existing evergreen screen is proposed to remain to the south. No other evergreens are noted.

Draff findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

- b) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse must have sufficient setbacks and screening to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.
- c) All dumpsters or similar large collection receptacles for trash or other wastes must be screened by fencing or landscaping.

The site plan depicts a privacy fence around the dumpster.

- d) The Planning Board may require buffering from impervious areas located adjacent to residential uses.
- e) The Planning Board may require buffering to reduce the impact on abutters and the public.

- 11) **Utilities** –The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.

In the submission dated June 13, 2022, the applicant states that “A new underground electrical service will be provided to the building to serve the power requirements for the proposed uses, with the transformer located on the existing utility pole at the right-of-way. No other public site utilities are proposed.”

In the letter dated May 20, 2021, the applicant stated that “Fire protection/smoke detectors shall be located throughout the structure. Fire-rated double sheetrock will be utilized as required. Fire extinguishers shall be placed throughout the structure in accordance with the fire Marshall’s guidelines....”

- 12) **Water Supply** –

- a) If the project is to be served by a public water supply, the applicant must secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

The applicant stated in a submission dated May 20, 2021, that they intend to use public water for kitchen and bathrooms. “An existing well, shown on the Master Plan previously provided, will supply the water for irrigation and cultivation relating to grow activities.”

The applicant secured a letter from the Bowdoinham Water District, dated July 26, 2021. The letter states that their understanding is that the service is for domestic use only and no fire service will be required. The applicant has not yet provided evidence that the State Fire Marshall’s Office will approve of the plan without a sprinkler system.

The ability to serve letter from the Bowdoinham Water District is contingent upon the following conditions:

- Internal plumbing will have no cross connection between the private well and the public water system.
- Service will be provided consistent with the District Terms and Conditions

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

- The Bowdoinham Water District will not be responsible for limited service due to lack of capacity of the existing 3/4" service line.

The applicant should provide a plumbing plan design schematic.

The proposed development shall connect to public water, unless the applicant can show that it is economically unfeasible.

13) **Sewage Disposal** –

- a) The development must be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code and the Subsurface Wastewater Disposal Rules.

In the submission dated June 13, 2022 the applicant stated that “A private septic system has been designed by Albert Richard (dated 06/10/95) was designed to accommodate the anticipated sewer discharge volume. This system was being redesigned by Brady Frick to provide a commercial traffic-loading design. Prior to connection, a B.O.D. analysis of the sewer discharge will be performed to ensure values are within tolerable range(s).

In the submission dated June 13, 2022 the applicant submitted a subsurface wastewater disposal system application signed by licensed site evaluator Brady Frick, dated March 16, 2022. The application includes a variance request. The application is to serve one dwelling unit and a retail and grow facility, with a 575 gallon per day design flow capacity.

Findings from September 2021: The applicant stated in a submission dated May 20, 2021, that “A reverse osmosis system will be utilized to rinse and filter water runoff, to be run multiple times and filtered to remove waste.”, and “An existing 4-bedroom septic system exists on site.”

The applicant submitted three of the six pages of the septic permit issued to Stanley Durrell in 1989, as revised in 1995, on file with the Maine Department of Health and Human Services. Omitted pages include the replacement system variance request, with limitations of the replacement system, such as “4. There will be no change in use of the structure.”

Where the septic permit states that the type of water supply is “Town Water”, and the applicant is proposing to use water from the on-site well, they should document the location of the well and proximity of the septic system to the well, and that the location of the well and use of the water is approved by the Department of Health and Human Services.

The applicant should provide evidence that the existing septic complies with the State Plumbing Code and Subsurface Wastewater Disposal Rules. The evidence must incorporate the proposed usage to ensure adequacy of the system to handle the proposed uses.

- b) When two (2) or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system must be owned and maintained in common by an owners' association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

14) **Fire Protection** – The proposed development will have adequate fire protection as determined by the Fire Chief and State Fire Marshal’s Office.

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

In the submission dated June 13, 2022 the applicant stated that “The project has been submitted to the Maine State Fire Marshal's office and the initial comments from the plans reviewer have been received. The applications and Fire Marshal review comments and responses by the architect are attached.”

The applicant stated in their June 3, 2021 letter to request waivers that “The fire marshal does not provide approval until any work relating to fire code and safety has been inspected.”

The Maine Office of State Fire Marshal has a department devoted to plan review, and the website notes that “most construction projects require ... The Construction Permit application and Building Code Surcharge form. Depending on the construction project, the Barrier-Free Permit application may be required.” Staff spoke with a representative of the plan review department to ask if the proposed mixed-use (commercial & residential) project required a sprinkler system and were told that more information was needed to make the determination.

The applicant should provide determinations from both the Fire Chief and the State Fire Marshal’s Office that the proposed development will have adequate fire protection.

The applicant was advised at the meeting on September 23, 2021, that the approvals from the Fire Marshall needs to say that it does not require an internal sprinkler system and a statement from the local chief that they don’t have concerns with their ability to access and fight a fire at the site.

15) **Capacity of Applicant** – The applicant meets the following criteria:

a) **Right, Title and Interest in Property** – The applicant must demonstrate that they have the right, title and interest in the property.

In the submission dated June 13, 2022, the applicant provided a letter signed by Kathleen Gallant, dated February 14, 2022, approving of the proposed uses and the “right to pursue approvals” for them.

Findings from September, 2021:

The applicant provided a quitclaim deed for a property at Book 1419, Page 016 conveying the property to Kathleen Haggerty.

And a quitclaim deed dated October 2003 conveying the property at U1 Lot17 to Kathleen Gallant and Scott A. Gallant as joint tenants.

The easement over and across a portion of the property owned by the Inhabitants of the Town of Bowdoinham in 2009, for the purpose of constructing, establishing, and maintaining a driveway to be used as access to both the subject property, and the adjacent lot acquired by Kathleen Gallant from Dianna J. Tibodeau in 2002, was conveyed to Kathleen Gallant.

The applicant, Scott Gallant, submitted a letter dated June 3, 2021 requesting waivers and stating that “... This will also serve as written notice that there are no other applicants relating to this permit. I am the sole applicant...”

The applicant should provide a written statement from the joint tenant and easement holder, Kathleen Gallant, affirming their consent for the proposed project.

b) **Financial Capacity** – The applicant must demonstrate that they have the capacity to carry out the project in accordance with this ordinance and the approved plan.

Draff findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

In the submission dated June 13, 2022 is a letter from Camden National Bank stating that Scott Gallant is a joint account holder having the right to deposit and withdraw funds from a personal and two business accounts.

Findings from September 2021:

The applicant submitted a letter from Camden National Bank dated March 16, 2021 stating that “Kathy Gallant is a well-known client of Camden National Bank as both a consumer and small business. Gallant Realty, LLC has the financial capacity with collected funds to make business transactions at the six figure mark...”

The applicant later submitted a letter dated June 3, 2021 requesting waivers and stating that “...This will also serve as written notice that there are no other applicants relating to this permit. I am the sole applicant...”

The applicant must provide proof of financial capacity as the prior applicant, Kathleen Gallant, is no longer party to the application.

- c) Technical Ability – The applicant must demonstrate that they have the technical capacity to carry out the project in accordance with this ordinance and the approved plan.

The applicant has received three notices of violation and stop work orders from the code enforcement officer and continues to expand the existing structure.

The site plan indicates the height of the building well in excess of the previously permitted height.

Findings from September 2021: The applicant has a history of partially constructing previously permitted projects and working without a permit. Refer to site and applicant history. Currently, the applicant needs to prove that the height conforms to the 39.5’ height approved, and that the back portion of the building conforms to the 10’ setback requirement.

In addition, please refer to Stop Work Order, Letter of Violation & Order to Correct letter from the Code Enforcement Officer dated September 2, 2021.

## 16) Special Resources –

N/A

- a) Shoreland – The proposed development will be in compliance with the Shoreland Zoning provisions of Article 5 and 7 of this ordinance if located within the Shoreland Zone.
- b) Floodplain – If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the Floodplain Management provisions of Article 8 of this ordinance.
- c) Wetlands & Waterbodies – The proposed development will not have an adverse impact on wetlands and/or waterbodies, to the extent that is practicable.
- (i) The development must not adversely affect the water quality or shoreline of any adjacent water body, to the extent practicable. The development plan must provide for access to abutting navigable water bodies for the use of the occupants of the development as appropriate.



Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

- (ii) When a proposed development is immediately visible from a river, or stream, the development must be designed so that it fits harmoniously into the visual environment when viewed from the water body. In predominantly natural environments, site clearing must be minimized, natural vegetation must be maintained adjacent to the shoreline to soften the appearance of the development, and vegetation must be retained or provided to minimize the visual intrusion of the development. In developed shoreland environments, the appearance of the new development when viewed from the water must be compatible with the existing visual character in terms of scale, massing, and height to the maximum extent possible. Storage and service areas must be screened or landscaped to minimize their visual impact.
- (iii) Activities within 250 feet of vernal pools shall meet requirements set by Maine Department of Environmental Protection's Natural Resources Protection Act.

17) **Historic & Archaeological** –

- a) If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.
- b) Proposed developments which include or are adjacent to buildings or sites on the National Register of Historic Places, Maine Historic Preservation Commission or when the Comprehensive Plan has identified as being of historical significance, shall be designed in such a manner as to minimize the impacts on the historic features. When the historic features to be protected include buildings, the placement and the architectural design of new structures shall be similar to the historic structures. The Board may require the applicant to seek the advice of the Maine Historic Preservation Commission.

The submission dated June 13, 2022 includes the statement that: the architectural design of the building's massing and detailing have been informed by the guidelines and standards of the Maine Historic Preservation Commission. These guidelines include the preservation briefs prepared by the U.S. Department of the Interior for the restoration of historic structures under the National Parks Service's historic preservation incentives program. Exterior elevations are attached to detail the proposed design features and show context within the streetscape.

The Town of Bowdoinham Comprehensive Plan dated April 2014 lists the Town Hall on School St and the John C. Coombs Municipal Building on School St as Historic Buildings and Structures in Bowdoinham of Local Importance (Pg 77).

The Board may wish to require the applicant to seek the advice of the Maine Historic Preservation Commission to guide them on designing a project in such a manner as to minimize the impacts on the historic features by making the structure similar to the historic structures.

18) **Groundwater** –

Projects that involve on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater must demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.

The septic disposal system is less than 2,000 gallons.



19) **Wildlife Habitat** –

N/A

- a) If any portion of a property lies within areas identified and mapped by the Department of Inland Fisheries and Wildlife, the applicant shall demonstrate that there shall be minimal impacts on the habitat and species it supports. The plan shall provide for protection of the identified resource in a manner acceptable to the Maine Department of Inland Fisheries and Wildlife or in accordance with the recommendations of a wildlife biologist with demonstrated experience with the wildlife resource being impacted and approved by the Board. In the latter situation, the report prepared by the wildlife biologist shall assess the potential impact of the development on the significant habitat and adjacent areas that are important to the maintenance of the affected species and shall describe appropriate mitigation measures to ensure that the development will have minimal impacts on the habitat and the species it supports. These areas include:
- (i) Habitat for species appearing on the official state or federal lists of endangered or threatened species;
  - (ii) High and moderate value waterfowl habitats, including nesting and feeding areas; or
  - (iii) A high or moderate value deer wintering area.

20) **Natural Areas** –

N/A

- a) If any portion of the property is located within an area designated as a unique natural area by the Comprehensive Plan or the Maine Natural Areas Program, the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation. The Board may require the applicant to seek the advice of the Maine Natural Areas Program.
- b) The Planning Board may require a survey from a qualified professional of the area in question if it has not been previously surveyed.

21) **Environmental Impact** –

- a) The landscape will be preserved in its natural state to the extent that is practical by minimizing tree removal, disturbance of soil and retaining existing vegetation.

The applicant states that the natural vegetation will be maintained and improved to the maximum extent possible, with no anticipated tree removals.

- b) Extensive grading and filling must be avoided as far as possible.

The applicant states that there will be little soil disturbance due to the small lot size and existing at-grade connections at all sides of the building.

- c) The proposed development will not cause a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

The applicant stated that "The proposed development is a low-intensity collection of uses that proposes to use light-commercial/residential septic design. Any greywater collection

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

will be processed through a reverse-osmosis filtration system that will purify the water for reuse as irrigation water, and the collected solids will be composted and/or disposed off-site by a qualified private contractor.”

- 22) **Solid Waste Management** – The proposed development will provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project’s wastes.

In the submission dated June 13, 2022, the applicant states that: All solid waste that doesn't qualify for organic composting will be stored in a dumpster within a fenced enclosure with a locked gate. This solid waste would then be hand-delivered to the street for removal/disposal by a private trash company. Organic waste such as soils and other organics will be collected in a compost bin, also situated within the secure dumpster enclosure, and turned daily for eventual reuse. Snow accumulation will be pushed to the side of the parking areas in grass to allow percolation.”

Findings from September 2021:

The applicant stated in a letter dated May 20, 2021 that “Organic solid waste will be composted and utilized in the grow. All other solid waste will be disposed of in a dumpster, to be provided by a contractor who will empty it.” Dumpster and compost areas are shown at the edge of the area designated for employee parking on “Attachment E” submitted with the letter.

Compost area should be shown on the plan. The applicant should provide more detail on the composting process.

- 23) **Hazardous, Special & Radioactive Materials** –

- a) Hazardous, Special and Radioactive Materials - The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies.
- b) No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. For the purposes of this section, bulk storage shall be considered one thousand (1,000) gallons or greater. All materials must be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.
- c) A Spill Prevention, Control, and Countermeasure Plan (SPCC) or Hazardous Waste Prevention Plan may be required to:
  - (i) Ensure materials are handled according to State & Federal rules and best management practices;
  - (ii) Minimize spills and contamination; and
  - (iii) To ensure prompt clean-up.
- d) The Planning Board may require Pollution Insurance to ensure the proposed development has the resources necessary to clean-up any possible pollution due to hazardous, special and/or radioactive materials.

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

The applicant states that: “N/A~ no hazardous materials will be used within the marijuana production or processing facilities”

24) **Air Quality** –

- a) The proposed development will meet the Maine Department of Environmental Protection and U.S. Environmental Protection Agency standards.
- b) The proposed development will not negatively impact abutters or the public with undue odors.

In the submission dated June 13, 2022, the applicant states that: All standards and requirements of the Maine Department of Environmental Protection and U.S. Environmental Protection Agency will be followed, in addition to the special air quality standards and requirements of the Maine Office of Marijuana Policy and the Town of Bowdoinham Land Use Ordinance.

Finding from September 2021: The applicant must provide an odor mitigation plan and provide evidence that they will not negatively impact abutters or the public with undue odors.

25) **Water Quality** –

- a) No proposed development shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwater so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.
- b) All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshall's Office.
  - (i) A Spill Prevention, Control, and Countermeasure Plan (SPCC) may be required to ensure every effort is made to prevent spills and clean them up promptly once they occur.
- c) If the project is located within the direct watershed of a ‘body of water most at risk from development’ or ‘a sensitive or threatened region or watershed’ as identified by the Maine Department of Environmental Protection (DEP), and is of such magnitude as to require a stormwater permit from the DEP, the project must comply with the standards of the DEP with respect to the export of total suspended solids and/or phosphorous. If the project does not require a stormwater permit from the DEP, it must be designed to minimize the export of phosphorous from the site to the extent reasonable with the proposed use and the characteristics of the site.

In the submission dated June 13, 2022, the applicant states that “NIA~ private on-site septic system is proposed and no discharges of liquids or materials that may contaminate or pollute the ecosystem.”

- 26) **Stormwater** – Adequate provisions must be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

In the submission dated June 13, 2022, the applicant states that “All roof runoff will be collected and stored in a rainwater cistern system for reuse as irrigation water for the plants, with automatic cutoffs that will eject overflow to the grassy areas with a rain leader. From the collection cistern located in the basement, the water will flow through a reverse-osmosis filtration system and be used when available, with supplemental water from the existing public water service.

- a) To the extent possible, the plan must retain stormwater on the site using the natural features of the site.

In the submission dated June 13, 2022, the applicant stated “All of the existing stormwater swales and dispersion fields on the site will be maintained and improved to offer greater capacity. Additional landscaped areas designed to enhance the appearance of the development also serve to improve the filtration and uptake of stormwater into the site.”

- b) Unless the discharge is directly to the ocean or major river segment, stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.

In the submission dated June 13, 2022, the applicant stated “With improvements to the filtration quality and flow capacities of the existing stormwater runoff systems, including greywater recycling and a new septic field, the rate of flow from the site after development should meet or be reduced from the predevelopment rates.”

- c) The applicant must demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to, flooding and erosion of shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.

In the submission dated June 13, 2022, All existing impervious areas are proposed to be maintained, so no additional storm water runoff is anticipated from on-site activities. The site is situated downstream of the Town Hall parking lot and the exiting retaining wall structure and swale along the lot line of the access easement is proposed for improvements.”

- d) All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review.

In the submission dated June 13, 2022, the applicant stated “All exiting natural drainage ways will be maintained and improved to provide greater capacity and performance, and will remain "open" systems.”

- e) The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.

In the submission dated June 13, 2022, the applicant stated “Although the primary stormwater drainage feature is an existing swale along the access easement, the development proposes to improve the performance of the system to further protect downstream streets and properties.”

- f) The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or through the site to be developed and provide for this movement.

In the submission dated June 13, 2022, the applicant stated “A well vegetated buffer exists between the adjacent upland areas with Town Hall, and the existing drainage swale along

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

the access easement would be improved for additional resiliency against stronger storm water surges.”

Staff note that proposed changes should be noted on the site plan.

- g) The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source, or a great pond.

In the submission dated June 13, 2022,” With the site being previously-developed, and reuse of the existing driveways, the stormwater runoff will not be impacted by the proposed project. The existing drainage swale along the access easement with the Town Hall would be improved with additional rip-rap and landscaping.

The applicant stated in the letter dated May 20, 2021; “We will be capturing water than comes off the roof; cleaning it through the reverse osmosis system, and using the clean water to irrigate the plans, in addition to the well water. There is zero erosion on the property –the structure exists and silt fencing is in place. There is adequate drainage.”

The planning board may consider requesting the applicant to provide additional information about how roof water will be collected, what the maintenance protocol will be for the rainwater collection system, where and how the silt fence was installed and if it is intended to be a permanent stormwater management tool. The board may also wish to request more information.

The applicant should clarify what the system will look like, where components will be located, and how it will tie into the plumbing system.

## 27) **Sedimentation & Erosion Control** –

- a) All building, site, and roadway designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity must be kept to a minimum. Parking lots on sloped sites must be terraced to avoid undue cut and fill, and/or the need for retaining walls. Natural vegetation must be preserved and protected wherever possible.

In the submission dated June 13, 2022, the applicant stated “Due to the reservation and reuse of the existing driveway and parking areas, and the grade-level connections of the entrances around the building, there will not be any substantial grading or earth moving activity. The natural vegetation will be protected and preserved throughout the site, and improved around the perimeter of the site and at the building exterior to provide buffering and an enhanced streetscape.”

- b) Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active program meeting the requirements of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 2003.

In the submission dated June 13, 2022, the applicant stated “Any soil erosion and other environmental controls will be designed and installed to meet the best management practices of the Maine Erosion and Sediment Control Handbook for Construction.”

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

28) **Noise** –

- a) Noise levels on a site abutting any residential use shall be kept to a minimum between the hours of 9 p.m. and 6 a.m.

In the submission dated June 13, 2022, the applicant stated “Business hours are proposed between 8am and 9pm, seven days a week.”

- b) The Planning Board may specify an activity or business’s hours of operation to address the level of noise, if necessary.

In the submission dated June 13, 2022, the applicant stated “The applicant would be amendable to addressing business hours of operation with the Planning Board or Town officials if the proposed hours of operation generate noise complaints.”

**B) Use-Specific Performance Standards**

17) **Marijuana Establishments -**

- a) The establishment shall have and implement an odor mitigation plan that is sufficient to eliminate the smell of marijuana so that it is not be detectable offsite, i.e., must not be detected at premises that are not under the custody or control of the establishment.

The applicant has not submitted an odor mitigation plan.

- b) Buffering or other measures may be required to address the establishment’s impact on abutters and the public.

The planning board might consider a minimum setback of the cultivation facility from residential and public uses.

- 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.

The applicant has not provided plans for security.

- d) The establishment may not be located within 500ft of a school

The 500’ abutters list (as determined by the assessing records) does not include a school.

- e) The signage for the establishment may not contain any graphics of marijuana or marijuana accessories.

The applicant should submit design details for any proposed signs. Signage detail is shown on the

Draft findings for the Bowdoinham Planning Board of the marijuana establishment project proposed at U01-017 by Scott Gallant.

- f) No drive up/through service shall be allowed.