

Bowdoinham
Board of Appeals
DRAFT MINUTES



Date: September 15, 2022

Dave calls the meeting to order at 6:30.

With all four BOA members present, Bill Bryan, Ed Friedman, Sylvia Hultman and David Jones present, we have a quorum. Also present is Town Clerk and BOA staff person Tina Magno. The applicant Scott Gallant is present along with about five other members of the public including two abutters, Nate Drummond, Planning Board Chair and the town librarian.

Dave makes a motion to approve minutes for the previous meeting on September 8, 2022, which Ed has emailed out about a week ago and Tina has printed for all. The motion is seconded, and minutes approved unanimously.

Dave reads the following, summarizing our last proceedings and outlining some key points for tonight and how we will proceed-

Rules & Procedure for the meeting:

- This is a follow-up to our meeting last week on September 8, 2022. During that meeting, we:
 - Read a statement of the case and identified all correspondence and reports the Board members have received.
 - The Board determined we had jurisdiction to hear the case.
 - The appellant and his representative provided an extensive presentation of the appeal and responded to questions and requests for clarification from Members of the Board.
 - After the appellant completed his presentation, we opened a Public Hearing, during which Planning Board members and interested members of the public spoke.
 - After members of the public completed their remarks, the appellant was given an opportunity to respond.
 - Once all public comments were heard, the Public Hearing was closed with the understanding that no further comments from either the appellant or the Public would be allowed during the deliberations of the Board.
 - At that point, the Board took a five (5) minute break
 - When the Board returned, a discussion was held about continuing that night or because of the late hour, delaying the Board deliberations to another night. The appellant voiced support for delaying and a motion was made to continue the process to 6:30pm on Thursday, September 15th. This motion was approved unanimously.
 - A motion was made to adjourn, which was approved unanimously.
- Tonight, the Board will deliberate and decide if they have enough information and if so, will vote on the appeal. I will remind everyone that once we closed the Public Hearing last week, no further comments from the appellant or the public will be heard.
- As the Chair, I suggest we consider each of the Planning Board's findings and conclusions separately. If the board feels they have sufficient information, they will vote on whether to uphold the Planning Board's conclusion or to support the appeal. I will remind the Board our Land Use Ordinance states on page 226 the following:

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“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. 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.”

- Is there any discussion on the responsibility of the Board or the proposal to review each of the Planning Board’s findings and conclusions separately?
- The Board agrees this is a satisfactory way to proceed.

As I document the meeting minutes, I will use the following abbreviations:

Affirmative motion: Uphold the Planning Board Conclusion (UPBC)

Negative motion: Oppose the Planning Board Conclusion (OPBC)

Unanimous vote for a motion: All in Favor (AIF)

Planning Board Findings and Conclusions Appealed:

(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.

Finding: Sight lines identified do not meet the requirements of the performance standards

Conclusion: This standard has not been met.

Motion: UPBC, Motion-Ed, Seconded-Sylvia: Discussion-None. Vote: AIF

- 2) Internal Vehicular Circulation - The proposed site layout will provide for the safe movement of passenger, service, and emergency vehicles through the site.

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.

Motion: UPBC, Motion-Ed, Seconded-Sylvia: Discussion- Ed points out all other issues aside, there is not enough employee parking to comply with ordinance. Vote: AIF

- 4) Municipal Services - The development will not have an unreasonable adverse impact on municipal services, including municipal road systems, fire department, solid waste program,

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schools, open spaces, recreational programs and facilities, and other municipal services and facilities.

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 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.

Motion: UPBC, Motion-Bill, Seconded-Ed: Discussion-None. Vote: AIF

- 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.

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.

Motion: UPBC, Motion-Sylvia, Seconded-Ed: Discussion-None. Vote: AIF

- 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.

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.

Motion: UPBC, Motion-Bill, Seconded-Sylvia: Discussion- Ed points out egregious nature of applicant's ordinance height violations and that in a court, it would be common for a judge to find against the applicant on a count like this which would negate the need to reach a finding on any other possible counts or claims made. Nevertheless, despite the clear height violation essentially making decisions on the other findings moot from the standpoint of a possible permit issuance, the Board is considering all PB findings in its review. Vote: AIF

- 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.

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.

Motion: UPBC, Motion-Bill, Seconded-Ed: Discussion-None. Vote: AIF

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- 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.

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.

Motion: UPBC, Motion-Dave, Seconded-Bill: Discussion-None. Vote: AIF

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

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.

Motion: UPBC, Motion-Dave, Seconded-Sylvia: Discussion-None. Vote: AIF

- 14) Fire Protection - The proposed development will have adequate fire protection.

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.

Motion: UPBC, Motion-Bill, Seconded-Ed: Discussion-None. Vote: AIF

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

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.

Motion: UPBC, Motion-Bill, Seconded-Sylvia: Discussion-None. Vote: AIF

- 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.

e) Stormwater - The proposed development will provide for the collection and disposal of all stormwaters that runs off proposed streets, parking areas, roofs, and other impervious surfaces, which must not have an adverse impact on abutting or downstream properties.

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.

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Motion: UPBC, Motion-Dave, Seconded-Sylvia: Discussion- Dave opines the Town, with their parking lot up hill and adjacent to the applicant needs to address their own apparent run-off issue which may compound any the applicant has on his own. Ed concurs. Vote: AIF

Scott interjects with a question and the Chair reminds him this is not a public hearing. Ed interprets it as request for clarity in what we just decided and makes clear the Board has again supported the PB conclusion on this last finding.

f) Sedimentation & Erosion Control - The proposed development will take adequate measures to prevent soil erosion and the sedimentation of watercourses and waterbodies.

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

Conclusion: This standard has not been adequately met.

Motion: UPBC, Motion-Dave, Seconded-Ed: Discussion-None. Vote: 3 in support of the PB conclusion and motion with Bill against.

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.

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.

Motion: UPBC, Motion-Bill, Seconded-Ed: Discussion-None. Vote: AIF

A written decision letter identifying the decisions made tonight, will be prepared and sent to the appellant and the Planning Board. For the applicant this must be via certified mail or hand delivered.

At 6:55 Dave makes a motion to adjourn the meeting. Seconded by Bill and passed AIF.

After the meeting (and after Bill has left) a short discussion with applicant ensues regarding his right to request reconsideration by the Board. He appears to have 10 days to do so, and the Board must respond and meet on a reconsideration request within 45 days of tonight.

Respectfully Submitted,

Ed Friedman, Secretary