

TOWN OF BOWDOINHAM
PLANNING BOARD MINUTES
VIRTUAL MEETING VIA ZOOM MEDIA
April 30, 2020 – 7:00 P.M.

APPROVED 5/28/20

MEMBERS PRESENT: Nate Drummond
 Mark Favreau
 Tracy Krueger
 Justin Schlawin
 Reeve Wood

MEMBERS ABSENT: Alyson Dame, William Shippen

STAFF PRESENT: Nicole Briand, Director of Planning and Development

On Thursday, April 30, 2020, a meeting of the Bowdoinham, Maine Planning Board was held via Zoom media with everyone participating from their residences due to the Covid-19 pandemic.

1. CALL TO ORDER

Chairman Drummond called the meeting to order at 7:00 p.m.

2. DETERMINE QUORUM AND VOTING MEMBERS

It was determined that a quorum was present.

3. CONSIDERATION OF MEETING MINUTES FROM APRIL 23, 2020

Motion was made by Tracy Krueger, seconded by Mark Favreau to accept the meeting minutes of the April 23, 2020 meeting as amended. (Amendment: Pg. 2, 4th paragraph, 2nd sentence, delete “Land Use Ordinance” and replace with “State of Maine laws.”

Chairman Drummond called for an “Aye Vote” from those in favor of the motion, or a “Nay Vote” from those opposed. 100% of those voting voted “Aye” and there were no “Nay” votes, **so the motion passed unanimously.**

Planner Briand instructed citizens joining the meeting via Zoom to raise their hand if and when they wished to speak. She said the Chairman would then recognize them. Chairman Drummond said the purpose of the public hearing was to hear from members of the public regarding the proposed project. He said a number of letters and statements were received at the Planning Office and all have been entered into the public record. He said he wouldn’t read them all, but if anyone specifically wanted their letter to be read aloud, to let him know and he would do so. He asked those wishing to speak to address their comments to the Board and not to the applicants.

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PUBLIC HEARING – 7:15 P.M.

At 7:15 p.m. Chairman Drummond closed the regular meeting and declared the Public Hearing open. Following is a brief summary of comments made by interested parties:

Elaine Small, Durham – Ms. Small said she resides in Durham but owns land across from the proposed farm stand. She said she has questions regarding the letter Kate Gaudette sent to Daren regarding waving the need for a topographical map of the road and property. She asked why the Gaudette’s didn’t want to submit a topographical map. Chairman Drummond said this will be discussed during the meeting. Ms. Small also questioned why the applicants do not want to provide a two-foot shoulder on each side of the proposed road.

Attorney Paul Brunetti – Attorney Brunetti said he was having trouble with his video so he could not be seen on the screen. He said he represented Bob and Elaine Small and referenced letter dated April 20, 2020 which expressed the Small’s concerns of this development in their neighborhood. He said this has to be done right to preserve the character of the neighborhood and that it is important that we be careful to preserve the safety of the neighborhood. He added that the properties on Birchwood Lane have been quiet for a long time and the introduction of retail sales will alter that peacefulness. The Smalls have filed a suit against the landowners which is pending in Sagadahoc District Court, he said if the Planning Board has to make a call as to right, title and interest; we want to stay this application until this is resolved by the court. Birchwood Road is a deeded right of way for all the owners there and a deeded access to a 50-foot right of way. Attorney Brunetti spoke against the application, the proposed plantings, raised beds and walls. He said they don’t question that the applicant’s father owns fee to the land but they can’t use the right of way for their own purpose. Drainage has to be met. The Smalls have provided a surveyors opinion that the building they put on the property hangs over the land and into the right of way. The shed was built recently and the building itself is illegally placed. The proposed screening would be happening in the 50-foot right of way. The facts, as they presented them, show only a 2-foot buffer. The building was constructed in 2019. It was built for the retail sale business. The Board should not give consideration to grandfathering rights for this structure. There is a lot of space where they could have put this building. It should have been set back much further from the road. Neighbors need to be able to walk the street safely. Then there is the potential of smell. The building is not sighted to protect the abutters. Sewerage plan from 2016 is in excess of 1000 feet from the property. The building has no indoor plumbing to support staff. No toilet and employees won’t be able to wash their hands or relieve themselves on site. They requested a waiver from the shoulder width on Birchwood Lane which should not be granted. The road was built for a residential neighborhood. There could be as many as 60 cars coming and going during the day to this business

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The Planning Board is the last line of defense. The neighbors are asking the Board to deny the application. Chairman Drummond asked if the clients would be satisfied if the applicants moved the building and screened it. Attorney Brunetti said he received your letter and it is a matter of record, but didn't comment further.

Chris Small – I was the first resident on the right side of Birchwood Lane. Moving the structure would not remedy the concerns. The right of way was not designed for the extra traffic. The actual road was made by well drillers in order to get to my property. Through the years we made the road wider to get excavators in there. We have a mud season in the spring and the road has become impassible over the years. We have added gravel just to make it passable. We were informed by the Town that we could be fined because emergency vehicles might not be able to get in if called for an emergency. Moving the stand is not going to solve the problem. I'm wondering what professionally is going to be done. Two cars can't pass and if someone is walking or pushing a stroller down the road there is no room. I would like to know, if this application is approved, what would happen to the road. I personally have pulled out UPS trucks that went off the road. The entire road has deep gullies. Once you go off the road, you are stuck. We have no police department near by and it can take 15 minutes to an hour to get help. Now we are bringing in an attraction for unknown individuals to use the road. Most people who came here was because it was a safe and familiar peaceful area. Everybody knew who was who.

Derek Small – As you know, right now we don't have many leaves on the trees on Birchwood Lane. The FedEx truck came up the road and there was almost a head-on collision with another car. You saw this when you took a site walk. It is difficult to say, even if the road was wider, if it could handle more traffic.

There are 9 children on the road and 8 dogs. I have a 32-foot camper which, along with my truck, measures approximately 55-feet long. When I pull out of my driveway I always drop a tire in the ditch. Chairman Drummond asked Mr. Small if his driveway was across the street from the proposed farm stand. Mr. Small said it was 55-feet from his driveway. He said there was a dumpster so close to his driveway that the mirror on this truck was just inches away from hitting it.

Bob Gaudette – Mr. Gaudette said he was the applicant's father. He said he owns a rigging and a 70-foot trailer which he drives to his sons with no problem. He said as far as Chris Small's comments, my daughter and son are fine people. They have a 3-1/2 year old daughter. There isn't anyone who cares more for the safety of children. I bought this property for my son. He said he doesn't understand why neighbors have such a problem for the proposed project.

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Heather Estabrook – Ms. Estabrook said we are covering a lot of history. The Estabrooks owned this property and used to raise blueberries, blackberries and potatoes. My husband's grandfather sold the property to the Smalls. The land was for sale for a long time. We know Kate and Bobby Gaudette and they are amazing people. The questions being asked should have been asked directly to the Gaudettes. The answers would have been given if the questions had been asked. The Small community isn't a community at all. In regards to the 50-feet, if they had asked the Gaudettes would have responded. Their intention is to run a small business and to help people.

Ali Lewis, 35 Birchwood Lane – My concern is for the safety of the road. I moved here a couple years ago. Not once have the Gaudettes come to talk to us. It would have been nice to have been informed. How do the Gaudettes plan to fix the road? How are they going to fix the drainage in front of my house? Will they move the CMP pole?

Robert Small – I have 3 children living on the road. My daughter-in-law is pregnant. I bought the land and have been deeding it off to my children. We live on a busy road. We will be smelling exhausts, hearing motorcycles, having strangers pulling into our driveways. The existing residents have rights. At least 5 households will be affected by this project. This is a poor location for putting up a farm stand and is not fair to the people who live there. If you veer off just a little on the road you will get stuck. A surveyor needs to come out there any do a proper survey. The road was simply a trail in the beginning and was roughly made by excavator operators. A couple of the neighbors work at Hannaford and the husband works at Hannaford and has to sleep during the day. He won't be able to sleep with the traffic. There are many issues with this property. The encroachment is unreasonable. The road should be surveyed and engineered to do it right.

Frances Harris, 37 Birchwood Lane – We moved here 6 months ago. What happens if a transaction goes bad? I have 2 kids.

Board member Tracy Krueger – Was wondering if the members of the public were more concerned of having a business on the road, or specifically a business with marijuana products.

Derek Small – Heard Nate mention buffering by the State. Any type of business is going to cause traffic problems with traffic on the road. There are always a couple of bad apples and having a business just down the road is a bad idea.

Elaine Small – My concern is not just a business. There are numerous indications that there is a lot more of this business that isn't being said. Growth of marijuana is in the works. The size of the shed has gone from 10x10 to 10x12 and now it is showing up as 10x20. There is going to be more sales going on in there. The number of green houses on the property is a concern. There are two greenhouses there now. I question if there

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will be more. There is a large area for new growth to be had. I believe there is already a business going on. There has never been an invitation to go see their operation up there. Is there a reason they don't want to show a topographical map?

Chairman Drummond – The application we are reviewing deals with the farm stand. If they do more, they will have to come back to the Board with an amendment. They can only go to 250 square feet and they are showing 240 square feet. To expand they would have to come back before the Board.

Ali Lewis, 35 Birchwood Lane – It doesn't matter what they are selling. I moved to a quiet neighborhood.

Robert Small – I agree with Ali. We have no prejudice on marijuana. I tried the CBD oil but it didn't work for me. It's not the product. The road needs about \$10,000 of work to fix it and \$2,000 a year to maintain it.

Andrea Blunda, 41 Birchwood Lane – I'm not OK with any kind of business on this road. I live with my husband. If I had known there was a business coming in I would not have moved here. I'm concerned about safety. I won't be able to walk the road if there is a business here.

Elaine Small – As far as the safety goes, I come up here at 3:30 p.m. to meet the bus to get my granddaughter. We would pull up to the gate. My son has a gate. The applicant was working on his shed when I got out of my vehicle to unlock the gate and it was not a good feeling to get out of your car and have eyes looking at you right across the road. I don't feel safe there with strangers watching me knowing I go there at the same time each day. That worries me.

Paul Bernett – I want to follow up on the 240-foot square foot stand. The overhang and ramp makes the stand exceed the 250 square foot limit.

With no one else wishing to comment, the Public Hearing was declared closed and the regular Planning Board meeting reopened.

- SITE PLAN REVIEW – TIER 2 APPLICATION – ROBERT AND KATE GAUDETTE ARE PROPOSING A FARM STORE THAT WOULD INCLUDE MEDICAL MARIJUANA, HEMP AND HERBAL APOTHECARY PRODUCTS AT 50 BIRCHWOOD LANE IDENTIFIED BY MAP R02, LOT 052**

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The Board held a discussion considering the comments made during receipt of testimony. Board member Krueger said there was a lot of different issues to consider; a set back issue based on the abutters property lines as far as evaluating setbacks from the back lot.

The setback needs to be 50-foot back. There is a legal issue about whether or not the deeded right of way is being encroached upon as it exists now or would be encroached by the proposed plantings. There is an issue of right, title and interest to utilize that part of the property; as a Board, we need to have that legally resolved. The applicant needs to show that they do have right, title and interest.

Mr. Schlawin questioned if this qualified as a farm stand or is it a farm store. It was noted there is not a definition for a farm store in the ordinance. Does this fall under farm stand or a retail business? Agricultural businesses are exempt from some sections and it may or may not weigh in.

Mark Favreau expressed concern that the letter received from Robert Gaudette, Jr. is not a legal document as it is not dated or notarized. **Mr. Gaudette** responded that he gave the land to his son and that his son can do anything he wants with the land. Reeve Wood said the letter submitted does not convey any interest as it stands. **Kate Gaudette** added that they are opening a retail store to sell farm products that are made on site.

Robert Gaudette said no one has mentioned the contract we have with Doug Tourtelotte to replace the culverts and grade them out. Chairman Drummond said the Board needs a detailed contract of all the intended road repairs from Mr. Tourtelotte.

The Board then reviewed the Site Plan Review – Tier 2 General Performance Standards in an open discussion. A lengthy discussion was had regarding vehicular access and the adequacy of the road system. All agreed that they were considering an unusual situation which is unique to this application.

All also agreed the Board needs to see a complete plan from Mr. Tourtelotte explaining where the shoulders are, what he will do to improve the road, including the measurements, culvert replacement, and product to be used to put the road in order and where the CMP pole will be moved. The Board cautioned to be sure widening the road would not affect any of the landowner's property. The applicant stated that fixing the road was their first priority.

The applicant said they will ask for a waiver from the 2-foot sideline as they are already widening the road to 18 feet. The Board explained they were uncomfortable considering the waiver due to the steep drop offs on the road. The Board asked to see a diagram of the 3,000 foot parking area be added to Mr. Tourtelotte's submission. A sketch should also include where the dumpster will be placed. The Board also asked for an on-going Maintenance Agreement for the road.

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Wetland area was questioned and the applicant said he walked the whole area with Dustin Dorr from the DEP who did not see a problem with the road. The Board requested a letter from Mr. Dorr stating same.

The Board talked about buffering of the farm stand and asked to see a sketch of what the applicants plan to use for screening. There were no issues concerning the lighting as the applicant said just regular lighting will be used and will face onto the property and not reflect on any abutters.

The Board asked when the stand was constructed. The applicant responded that the stand was a work in progress and was built before submitting the application. The applicant was asked if they obtained a building permit for the stand. Response was they didn't need to obtain a building permit due to the small size of the stand. The applicant said he did not realize that the overhang would be included in the measurements. The Board reiterated that they would need a Landscaping Plan showing what would be planted and where. The applicant said that they are considering putting up a fence and will discuss further with the Planning Office.

Question arose concerning if the applicants would be hiring employees. They responded that they plan to run the stand themselves and not hire any employees. They said if they hire employees it will be for other work on the farm and not involve the farm stand. The Board made it clear that if they do hire employees who will work at the stand that they will have to incorporate some sort of bathroom facilities and a place to wash their hands.

The applicant said they will run the stand by themselves, that the produce will be well packaged and not opened on the site. The Board talked about making it a condition of approval that if help is hired, bathroom facilities would have to be included. If a porta potty will be considered it needs to be shown on the sketch plan.

Concerning right, title and interest, the Board made it clear that a notarized writing from Robert Gaudette, Sr. would be required to demonstrate that he have given the applicant the right to undertake the proposed improvements. The Board also noted that if the Court found out the proposed improvements obstructed abutters use of the deeded right of way, the applicants will be required to relocate their improvements; they would likely need to go through the site review process again.

In discussing the hours of operation, Chairman Drummond inquired if the applicants felt they needed to be open until 9:00 p.m. They said usually they wouldn't be open that late

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but once in a while they might need to serve customers who worked late. They will give consideration to their hours and discuss at the next meeting.

It was agreed that an Odor Management Plan would not be needed for the farm stand as the product is packaged securely and not opened at the site. Chairman Drummond reviewed what was needed from the applicant (all stated above in these minutes)

- Detailed design on the road plan
- Show 2-foot shoulders
- Detailed Landscaping Plan
- Detailed buffering plan
- Show final location of the stand
- Letter from Dustin Dorr concerning the road
- Road Plan to include turning radius, and exit
- If employees will be hired for stand, a bathroom facility plan
- Or state no employees

5. **SITE PLAN REVIEW – TIER 2 APPLICATION – APPLICANT, WILL ZELL, D/B/A SOULHAVEN, LLC, IS PROPOSING TO CREATE A WEDDING AND EVENT VENUE AT 22 BATCHELDER ROAD, MAP R05, LOT 043**

The time being 10:30 p.m., the Board asked Mr. Zell, who was waiting to make his presentation, if he would consider scheduling his applicant to a future date. Mr. Zell was in favor and the Board scheduled Friday, May 8, 2020 at 7:00 p.m. to hold a Zoom meeting to consider the Tier 2 Application of Will Zell.

6. **OTHER BUSINESS** – None noted.

7. **ADJOURNMENT** – The meeting was adjourned at 10:31 p.m.

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