

**Bowdoinham
Board of Appeals
DECISION**



Date: September 16, 2022

Scott Gallant submitted an Administrative Appeal of decisions made by the Bowdoinham Planning Board during their meeting on June 23, 2022. Specifically, the appeal claimed the Planning Board decisions on a Site Plan Review - Tier II Application for development of a marijuana establishment and apartment on 17 School St (U01-017) were based upon a misinterpretation of the materials provided in support of the development and the misapplication of standards that do not apply to the project.

The Board of Appeals (BOA) scheduled a meeting to be held on August 17, 2022 to hear the appeal, however the Appellant requested a continuance due to personal reasons, which was granted. The hearing was rescheduled for September 8, 2022 and the Board met that night with the Appellant and several members of the public including members of the planning board. The Appellant and his representative provided an extensive presentation of the case and responded to questions and requests for clarification from the BOA. A Public Hearing was held and members of the Planning Board and the public were provided the opportunity to speak regarding the appeal. The Appellant was then given the opportunity to respond. After all had an opportunity to speak, the Public Hearing was closed. Because of the late hour, the BOA decided (with the consent of the Appellant) to continue the meeting on August 15, 2022 for the BOA to deliberate and decide the issues.

The Bowdoinham Land Use Ordinance states on page 226 the following:

"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."

In addition to the testimony during the September 8, 2022 meeting, the BOA also reviewed and considered:

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

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5. All legal Notices to abutters and affected parties of the Board of Appeals meeting/hearing for the appeal

Specific Planning Board findings appealed include:

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

- 1) Vehicle Access - The proposed site layout will provide for safe access to and egress from public and private roads.
Finding: Sight lines identified do not meet the requirements of the performance standards
Conclusion: This standard has not been met.
BOA Action: Planning Board Findings and Conclusion were upheld. All in Favor (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.
BOA Action: Planning Board Findings and Conclusion were upheld. (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, 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.
BOA Action: Planning Board Findings and Conclusion were upheld. (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.
BOA Action: Planning Board Findings and Conclusion were upheld. (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.

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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.

BOA Action: Planning Board Findings and Conclusion were upheld. (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.

BOA Action: Planning Board Findings and Conclusion were upheld. (AIF)

- 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.

BOA Action: Planning Board Findings and Conclusion were upheld. (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.

BOA Action: Planning Board Findings and Conclusion were upheld. (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.

BOA Action: Planning Board Findings and Conclusion were upheld. (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.

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BOA Action: Planning Board Findings and Conclusion were upheld. (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 stormwater that runs off proposed streets, parking areas, roofs, and other impervious surfaces, which must not have an adverse impact on abutting or downstream properties.
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.

BOA Action: Planning Board Findings and Conclusion were upheld. (Voted 3-1)

- 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.

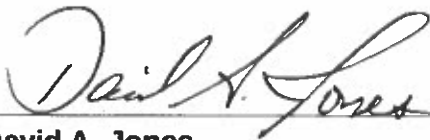
Conclusion: This standard has not been adequately met.

BOA Action: Planning Board Findings and Conclusion were upheld. (Voted 3-1)

- 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.

BOA Action: Planning Board Findings and Conclusion were upheld. (AIF)



David A. Jones
Chair



Ed Friedman
Secretary



Sylvia Hultman



William J. Bryan