

READFIELD BOARD OF APPEALS

Minutes of Thursday, November 29, 2018

Appeals Board Members: John Blouin, Peter Bickerman; Chair, Frances Zambella, Holly Rahmlow, Henry Whittemore, and William Gagne Holmes

Others Attending: Robert Bittar (Appellant), Eric Dyer (Town Manager), Gary Quintal (Code Enforcement Officer), Kristin Parks (Board Secretary), Ken Mason, Joanne Mason, Rayma Ashby, Jack Comart, Linda Tukey, James Tukey, Bonnie Harris, Casey Coyne, Paula Clark, Milton Wright, Clifford Buuck, Grace Keene, Pamela Osborn, Jerry Bley, Richard Parkhurst

Meeting called to order at 6:31 pm by Peter Bickerman.

Peter Bickerman gave a brief introduction on the purpose of the Public Hearing and reviewed the minutes of the Board of Appeals Organizational meeting that was held on November 8, 2018 (page 2) and the Board of Appeals Public Hearing notice pertaining to the items for discussion for the public hearing. The minutes of the November 8, 2018 Board meeting were approved as amended.

Please take note that Cliff Buuck is not participating in this hearing as he has recused himself from this matter.

1. Mr. Bittar has appealed from an action taken by the Readfield Code Enforcement Officer revoking a single family occupancy permit previously granted with respect to 26 Mill Stream Road.
2. Mr. Bittar also had appealed from a decision of the Readfield Planning Board recommending against a proposal by Mr. Bittar to rezone 26 Mill Stream Road and adjacent parcels from their current placement in the Rural Residential District to the Rural District.

Item 1: Revocation of Occupancy Permit by Readfield Code Enforcement Officer

- Gary Quintal, Readfield Code Enforcement Officer was sworn in.
- Gary Quintal went over the timeline and informational packet that was provided relating to 26 Mill Stream Road property starting with 6/12/2014 and ending 11/13/2018.
- CEO #13 – Notice/Order Occupancy Permits Revoked:
 - Fire extinguisher installed improperly per State Fire Marshal
 - Postings for multiple events to be held at “Helen’s Barn” / Community Center
 - Use from Residential to Commercial Overlap
 - Based on that the use isn’t permitted for the property
 - Multiple attempts to get Mr. Bittar to confirm that the property would be used as a single family residence and not as an entertainment facility.
- CEO #14 – Permit Reinstatement/Consent Agreement
 - No signatures done to reinstate the permit – Draft form; never executed. Unable to come to an agreement.
- Robert Bittar was sworn in.

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- Mr. Bittar spoke on the fire extinguisher. Stated that it is an Ansul System and that every restaurant has one as they are required to have this kind of system.
- Second stop work order notice (CEO#6) – The state water assessment on the well at “Readfield Country Club”; Mr. Bittar says that it was never put in place just tested the water/well.
- Mr. Bittar said that there was 1 issue with the electrical and 1 issue with the plumbing that he has since fixed.
- John Blouin spoke regarding The Emporium Restaurant's social media posts and signs on Route 17 advertising music events at 26 Mill Stream Road. Mr. Blouin indicated that these elements indicated that Mr. Bittar intended to use 26 Mill Stream Road for commercial use and/or as a new home for The Emporium. Mr. Blouin asked Mr. Bittar about Mr. Bittar's stated plans on moving The Emporium restaurant to 26 Mill Stream Road. Mr. Bittar denied making statements about his desire to move the Emporium to 26 Mill Stream Road. Mr. Blouin read word-for-word an electronic communication from the Emporium, which appeared to be written by Mr. Bittar and which indicated Mr. Bittar's desire to move The Emporium to 26 Mill Stream Road. Mr. Bittar then indicated that he plans on moving The Emporium to 26 Mill Stream Road. Below is the post from Facebook that John Blouin read:

“Christine, please send an email or some word with friends. it is critical for the Emporium survival that we find winter employment for our staff. The Emporium building is no longer able to sustain itself efficiently through the winter. It is too costly. the Mill Stream Building is the place where they were to migrate during winter months. The Emporium requires extensive repairs to the and hopefully the movement of the staff will make that possible. It is hard for everyone to know about all this but local winter receipts usually leave us with a 20,000 deficit. Hopefully the smaller tighter area of the kitchen/ dining room will be able to sustain a winter place for readfield residents to gather. The petition vote is essential. If it is not successful, we may not continue. As it is now, Leah and Alex and the others have been told that November 1st may be the last day. I hope the town will understand.”

5 Minute Break ~ 8:02 – 8:07 PM

- Mr. Bittar said he would agree with the November 13, 2018 Consent Agreement if it says there is some sort of way he can play music at 26 Mill Stream Road, possibly by having a scale of limits.
- Henry Whittemore indicated to Mr. Bittar that Mr. Bittar had been ambiguous throughout the whole process, and Mr. Whittemore asked Mr. Bittar to clarify how his use of the property was residential.
- Mr. Bittar spoke on Mass Gatherings and Noise Ordinances.
- Peter Bickerman asked Mr. Bittar about posting events at a single family residence; Mr. Bittar said that he would not do that.
- Mr. Bittar said that the property has been set up for many months as a single family residence.
- Gary Quintal said that the reason why he used the fire extinguisher as a revocation of occupancy is because he was notified by the Fire Marshalls office that it was improperly

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installed. The well water testing was the first indication that the intent for the structure was to be used for something other than a single family dwelling. Planning Boards Standard Conditions says that a permit can be revoked if misused. It was never intended to be used as a single family dwelling; September 11, 2018 Facebook comment: “5 Years to build this community center”. There were also signs for events posted, Mr. Bittar was contacted and informed that the signs were not permitted and had to be removed. Mr. Bittar did remove the signs.

- Gary Quintal asked if there were donation jars placed out during the events; Mr. Bittar initially denied any donation jars. After further questioning by the Board, Mr. Bittar stated that, “Yes, there were jars at 3 of the events”.
- Gary Quintal mentioned that if there is an underground way of activity being used then it would have to be revoked. It is the use of the structure that is not permitted as it’s a single family dwelling.
- Richard Parkhurst, a resident of Readfield, expressed concern about the action taken by the CEO, as he said that he hosts events at his residence that sometimes involve music and he may choose to install a commercial grade kitchen in his home. Mr. Parkhurst asked whether this could subject him to revocation of an occupancy permit.
- Eric Dyer; Town Manager was sworn in.
- Eric Dyer spoke that Mr. Bittar has spent 5 years to turn this property/dwelling into a community center but has run into road blocks. The town was misled as he never intended to use the property as a single family dwelling. On July 18, second page; petition – says a winter place for Emporium. A deception of commercial use/single family dwelling. Right to revoke; has erroneous information.
- Mr. Bittar agrees that he did file for a single family dwelling as he did this to be able to do/build what had to be done.
- Mr. Bittar says he did not post the public invitations on Facebook as staff and others had access to the Facebook page(s).

Deliberations of Appeals Board:

- Peter Bickerman: Review of Standard Conditions if CEO followed the guidelines.
- Henry Whittemore: We should look at the facts and see if the permit was issued in error or on erroneous information. Does the CEO have the power to revoke an occupancy permit due to erroneous information pertaining to prospective use? Or, was the permit issued in error? CEO exhibit #14 indicates that the permit was issued on the basis of the premises being a single family dwelling. The consent form signed by Mr. Bittar was based on and specifically referred to a single family dwelling.

Motion made by William Gagne Holmes that the Board of Appeals affirms the Code Enforcement Officers revocations of occupancy permit, **Second** by Fran Zambella. Peter Bickerman **Amendment to Motion:** The Board of Appeals finds no grounds to reverse the decision of the Code Enforcement Officer to revoke the occupancy permit at 26 Mill Stream Road. **Second on Amendment:** John Blouin. **Roll call vote on the original motion as amended:**

Fran Zambella – Yes to motion

Henry Whittemore – Yes to motion

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Holly Rahmlow – Yes to motion
Peter Bickerman – Yes to motion
William Gagne Holmes – Yes to motion
John Blouin – Yes to Motion

MOTION PASSED 6-0

Item 2: Appealed decision of the Readfield Planning Board recommending against a proposal to rezone 26 Mill Stream Road and adjacent parcels from Rural Residential District to Rural District

- The Readfield Planning Board decision was to not recommend the rezoning of 26 Mill Stream road and adjacent parcels from Rural Residential District to Rural District.
- Peter Bickerman went over the Town Attorney, Stephen Langsdorf, November 27, 2018 Memorandum.
- Henry Whittemore feels the Planning Board did a very good job on recommendation not to approve the zoning change and agrees with the Town Attorney's memo. Holly Rahmlow, John Blouin and Fran Zambella agree as well.
- William Gagne Holmes questioned whether the Board of Appeals has jurisdiction to review the recommendation of the Planning Board. Several Board members indicated agreement with Mr. Gagne Holmes and also noted that the Board of Appeals is not permitted to substitute its judgment for that of the Planning Board on issues of fact. **Motion** made by Henry Whittemore that the Planning Boards decision to not recommend approval of the zoning change from Rural Residential to Rural appeal is not a matter appropriate for the Board of Appeals review, **Second** by Fran Zambella. **Roll call Vote:**

John Blouin – Yes to Motion
William Gagne Holmes – Yes to motion
Peter Bickerman – Yes to motion
Holly Rahmlow – Yes to motion
Henry Whittemore – Yes to motion
Fran Zambella – Yes to motion

MOTION PASSED 6-0

To do list of Board of Appeals:

- Written decision from Board of Appeals to Mr. Bittar

Meeting/Public Hearing closed at 8:57 PM

Minutes recorded by Kristin Parks, Board Secretary

Minutes Approved January 10, 2019