



Application for Administrative Appeal to the Board of Appeals

- 1. Name of Appellant Safe Space Meeting House
- 2. Mailing Address 1146 MAIN ST  
Readfield 004355
- 3. Telephone 2074676111 e-mail address Leahcordeshayes@gmail.com
- 4. Name of Owner of Property which is subject to appeal ROBERT J. PEAR
- 5. Location of Property: 26 Mill STREAM RD  
Assessor's map # 120 Lot # 13

6. The undersigned requests that the Board of Appeals hear and consider an appeal for relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board in regard to an application for a permit. The undersigned applicant believes that (check one):

- an error was made in the denial of a permit; or
- an error was made in the approval of a permit; or
- there has been a failure to approve or deny the permit within a reasonable period of time; or
- other \_\_\_\_\_

7. What specific section(s) of the Ordinance applies to the relief you are seeking?

8. If you do not own the property that is the subject of the decision you wish to appeal, please explain how the actual use or enjoyment of your property will be adversely affected by the decision or lack of a decision. Please describe how you will be affected in a way different from the impact of the decision on the general public.

Use permit denied

Please describe in detail on a separate sheet of paper the facts surrounding this appeal, what you think is wrong about the decision which you are appealing, and what action you want the Board of Appeals to take in this matter. You should be as specific as possible so that the Board can give full consideration to your case.

There is a \$50 application fee for all applications to the Board of Appeals.

I certify that the information contained in this application is true to the best of my knowledge and belief.

Signature of Appellant Leah Hayes

Date 12/5/21

**Town of Readfield  
Planning Board**

**FINDINGS OF FACT**

Safe Space Meeting House  
Application for Community Center / Club  
26 Mill Stream Road, Map 120, Lot 13

**I. History of Application**

The above referenced application for a Community Center or Club was filed by Safe Space Meeting House ("SSMH") on August 25, 2020. The applicant engaged with the Town's Code Enforcement Officer ("CEO") through September and October of 2020 regarding information and materials needed to complete the application prior to its placement on the Planning Board's agenda. On October 21, 2020, SSMH appealed the CEO's completeness determination to the Board of Appeals. The Board of Appeals informed SSMH that it lacked jurisdiction to review the matter and did not hear the appeal.

On March 20, 2021, SSMH resubmitted its application through agent/attorney Mitchell & Davis. SSMH engaged in further discussion with the CEO regarding completeness of the application and provided supplemental materials upon request. SSMH submitted the application fee on May 3, 2021. The Planning Board considered the application at a meeting on May 25, 2021 and again at a regular meeting on June 2, 2021 at which time the application was found to have met the basic submission requirements of the Readfield Land Use Ordinance. Supplemental information was submitted by SSMH in July and the Planning Board initially reviewed that information at its July 27, 2021 meeting. A site visit was held on August 24, 2021 and a public hearing was held on August 25, 2021. A final hearing was held to complete deliberations on September 28, 2021. Chair Paula Clark, Vice Chair Jack Comart, and Members Donald Witherill, William Godfrey, Jan Gould and Henry Clauson were in attendance. Member Bill Buck was also in attendance but, due to technical troubles, was unable to participate in deliberations. These Findings of Fact were made at a meeting held on November 3, 2021. All meetings were held via Zoom or hybrid Zoom/in person in accordance with PL ch. 617 (129<sup>th</sup> Legislature) effective prior to August 1, 2021, and in accordance with the Town's remote meeting policy and 1 M.R.S. § 403-A thereafter.

**II. Summary of Project**

The property at 26 Mill Stream Road is located in the Rural Residential District and partially within the Resource Protection District. It was last lawfully used as a single-family residence.

This property has a significant history that is relevant to the uses proposed by the current tenants. In 2015, the property owner, Robert Bittar, received a permit for expansion of the nonconforming single-family structure. In 2016, Mr. Bittar applied to the Planning Board for a change of use to an event and community center, which permit was denied. Mr. Bittar subsequently entered into a consent agreement with the Town in 2017, which required that the

property be used only as a single-family dwelling with any change of use to be reviewed and approved by the Readfield Planning Board. Mr. Bittar applied for a change of use to a Community Center/Club/Association in 2018, which was denied, finding that the proposed use was not consistent with the definition of "community center, club." Mr. Bittar then sought a zoning change to allow his proposed use, which was found by the Planning Board to not be consistent with the Town's Comprehensive Plan. Due to Mr. Bittar's repeated holding and advertising of concerts, the Town revoked his occupancy permit. The Kennebec County Superior Court upheld both the Code Enforcement Officer's revocation of Mr. Bittar's occupancy permit and the Planning Board's decision that the proposed rezoning violated the Comprehensive Plan by an order entered February 28, 2020.

The present application was submitted by SSMH, which holds a lease for the property from owner Robert Bittar. SSMH is a registered Maine nonprofit corporation. The initial SSMH application describes the intended use as "a historic venue for cultural events and meeting place for residents, their relatives and friends. The member's only access will provide the necessary 'safe quality of association'. It will help create a community among those people who share common interests. The historic venue will be an ideal setting for cultural events." In addition to these events, the application describes use of the space for "member meetings and activities." SSMH's Addendum to its application dated April 28, 2021 characterizes its proposed use as a "community center that will provide nonprofit, non-commercial activities and recreational opportunities for Readfield's diverse population of LGBTQ residents and other residents of diverse genders, religious affiliations, nationalities and ethnic groups; to be physically active, interact with, and support other LGBTQ residents."

During the hearings, members of the Planning Board inquired about the expected maximum occupancy for the planned uses and the applicant did not provide any specific number. The applicant proposed in application materials that parking would primarily be achieved through off-site parking located between Rte. 17 and Mill Stream Road which the applicant says would serve 35 vehicles, with additional parking to be provided on site. Materials filed just prior to the September 28 meeting depict 54 spaces in an off-site lot and 19 spaces in the on-site lot, for a total of 73 proposed parking spaces.

### **III. Jurisdiction**

The Planning Board concludes that it has jurisdiction to hear this request for change of use to a Community Center / Club by virtue of Article 6, Section 3(A) of the Land Use Ordinance ("LUO"), which requires site review of all land use activities that require Planning Board review. Article 7, Section 5 requires Planning Board review for a Community Center / Club in the Rural Residential District. This application also seeks a change of use of a nonconforming structure from single-family residence to Community Center / Club, which the Planning Board has jurisdiction to review pursuant to Article 3, Section 4.

### **IV. Standing**

The Planning Board concludes that the applicant, SSMH, has standing to apply for the requested permits pursuant to its lease with owner Robert Bittar.

## V. Findings and Conclusions

At its meeting held on September 28, 2021, the Planning Board discussed each of the relevant approval standards and came to preliminary conclusions regarding whether each had been met. This discussion is summarized and formalized in the following Findings and Conclusions, which were officially approved by vote of the Planning Board on November 3, 2021.

### A. Requested Use

1. SSMH requests approval as a community center/club. That use is defined as: "A building that houses any voluntary association of persons organized for social, religious, benevolent, literary, scientific, or political purposes; whose facilities, especially a clubhouse, are open to members and guests only, and not the general public, and are not engaged in activities customarily carried on by a business for pecuniary gain."
2. The uses of "Civic, Convention Center" and "Indoor Theater" are prohibited in the Rural Residential District.
3. The uses of "Community Center/Club," "Civic, Convention Center" and "Indoor Theater" are prohibited in the Resource Protection District. SSMH leases the entire structure, including the portion which falls within the Resource Protection, and has not suggested that its activities could or would be constrained to areas of the building or property that fall outside of the Resource Protection District. The on-site parking proposed by SSMH is located within the Resource Protection District, as are portions of the property on which SSMH indicated it would be holding outdoor events.
4. SSMH intends to offer concerts, dances and similar events to an unspecified number of people. It was unable to articulate during the hearings any way in which it would constrain these events to members and bona fide guests in a way that was commensurate with the scale of the targeted membership for Readfield's LGBTQ residents. Public comments from the property owner indicate that the intent is to serve and entertain all Readfield residents.
5. The Planning Board cannot ignore the fact that the owner of the property has throughout the application process been sending town-wide mailers promoting approval of the present application so that weddings, music festivals and concerts, dances and food events could be held at the property. Given the long history of attempts to use this property as an event center and concert hall, these statements seem indicative of the true intended use of the property, and appear to elaborate upon the types of "cultural events" alluded to in the application. Such events more closely fall under the terms "Civic Center" or "Indoor Theater," which are not permitted in the Rural Residential Zone. It is noted that Article 7, Section 5 provides that uses similar to prohibited uses are prohibited.

6. While there may be intended use of the property that is more in keeping with the definition of "Community Center / Club," the Board finds it impossible given the applicant's lack of clarity as to the day-to-day functioning of the club to distinguish which types of planned activities would appropriately fall under this definition and which would not. As such, it is impossible to grant partial or conditional approval for the application in a way that would give adequate clarity to the applicant and the Town.

Conclusion: The Planning Board therefore finds and concludes that the application seeks approval for uses that are not permitted in the Resource Protection District, and that its proposed uses within the Rural Residential District do not fall within the definition of a permitted "Community Center/Club." The application must therefore be denied on these grounds.

#### **B. Change of Use of Nonconforming Structure (LUO Article 3, Section 4)**

1. Article 3, Section 4(D) allows a change of use of a non-conforming structure to another use only if the Planning Board "determines that the new use shall not have a greater adverse impact on the water body, tributary stream or wetland, or on the subject or adjacent properties and resources than the existing use."
2. The subject structure is legally nonconforming due to its failure to meet the required setback from Mill Stream and its associated wetland, and from Mill Stream Road. These facts were conceded to by the property owner, Robert Bittar, in 2015 when he requested and received approval for expansion of the nonconforming single-family structure.
3. The application proposes substantial vehicle and foot traffic to the property, with parking to occur within the required setback from Mill Stream and within the setback from Mill Stream Road. The proposed use of this area for parking would, with reasonable certainty, have a greater adverse impact on Mill Stream than the existing use through soil compaction, additional runoff and potential pollution from vehicle fluids. It would also increase the intensity of use within the setback from Mill Stream Road. Even with noise mitigation in place, the noise caused by the proposed events, and noise and nuisance caused by vehicles and traffic going to those events, will cause greater impacts to the abutting residential properties than the existing use. Direct abutters as well as other property owners in the vicinity, noted that noise from prior events was disruptive and expressed reasonable concern about traffic, trash and other nuisances.

Conclusion: For the foregoing reasons, the application fails to meet the approval standards under Article 3, Section 4(D).

#### **C. Site Plan Review Criteria (Art. 6, Sec. 3(C))**

As to the site plan approval criteria in Article 6, Section 3(C)), the Planning Board finds and concludes as follows:

1. Aesthetic, Cultural and Natural Values. Although there was some discussion in the hearings regarding how this proposal might impact plans to designate Factory Square as a historic location, this designation has not been made. The Board concludes that this criterion is met.
2. Conformity with Local Ordinances and Plans. As found above, the proposal requests uses that are not permitted in the Rural Residential District or Resource Protection District. It also does not comply with Article 3, Section 4(D). The Board concludes that this criterion is not met.
3. Erosion. No issues were raised regarding the potential for soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results. The proposal does not call for significant earth moving. The Board concludes that this criterion is met.
4. Financial Burden on Town. The Fire Chief recommended that a sidewalk be installed at least 10 feet from the traveled edge of the road in order to provide safe pedestrian access from the off-site parking to the building. Whereas the owner and tenant do not have rights to the property on which this work would be required, the financial burden of installing the sidewalk would fall on the Town. The proposal would also cause excessive wear and tear on Mill Stream Road, a gravel/dirt road, for which the maintenance responsibility and therefore financial burden would fall on the Town. The Board concludes that this criterion is not met.
5. Financial and Technical Capacity. Because of the nuance in what uses might be permitted as a Community Center/Club and what uses would not be permitted in this District, it would take a high level of planning, oversight and control to ensure that no violations of the Ordinance occur. The applicant has not demonstrated the existence of a management structure, particularly for events, that would help ensure that they are kept strictly to members and bona fide guests. Further, the applicant has not provided the estimated cost of this project nor evidence of financial resources to ensure its ability to build out the required parking areas. The applicant submitted proof of \$3,000 in its checking account which does not meet the reasonable expectation of what that work may cost. The Board concludes that this criterion is not met.
6. Flood Areas. The property is not in a designated flood zone. The Board concludes that this criterion is met.
7. Wetlands. While there will be increased activity on the site, there is no evidence that it will have a direct effect on wetlands. The Board concludes that this criterion is met.
8. Groundwater. The applicant submitted a statement from a well driller that an existing well will provide adequate water supply. There is no reason to believe that this well will cause adverse effects on the quality or quantity of groundwater. The Board concludes that this criterion is met.
9. Municipal Solid Waste Disposal. No evidence was provided that the proposed use would generate an unusual quantity or quality of waste. The municipal transfer station will be used. The Board concludes that this criterion is met.



10. Water Supply. The proposed use is adequately served by an existing private well, with no expected effects to water quantity or quality. The Board concludes that this criterion is met.

11. Adjacent Land Uses. Although the applicant states that it has installed soundproofing, the types of concerts, dances and other events proposed by the applicants would undoubtedly cause noise to travel to the closely abutting residence on Mill Stream Road as well as to other adjacent properties. Testimony from these owners demonstrated that prior events had caused nuisance noise. There will also be noise and annoyance caused by substantial foot and vehicle traffic going by the closest abutting residence, none of which was previously a concern for this abutter due to its location on a quiet road with only two residences. The Board notes the stated purposes of the Rural Residential District as being "more restrictive in terms of allowable uses, and primarily seeks to accommodate low density residential use, agriculture and forestry operations which are compatible with the preservation of Readfield's rural character and which are protective of sensitive natural resources and scenic / visual quality." (Art. 7 Sec. 4(A)(4)). The applicant proposed no constraints on the type or frequency of events, or on the number of attendees, that would assure the Planning Board that those events would be of a scope or scale in keeping with the District and the neighborhood. The proposed use and its off-site parking would surround the closest abutting residence with higher impact uses and have an adverse impact on other abutting properties. The Board concludes that this criterion is not met.

12. Pollution. No evidence was presented as to the application's inability to meet the standards of this section. The proposed use does not involve activities that would reasonably be expected to cause pollution. The Board concludes that this criterion is met.

13. Waterbodies. While the planned parking at the building would be near Mill Stream, there is no evidence that it would cause "undue impacts" on Mill Stream. Further, since that parking is not allowed in the Resource Protection District, it is forbidden from the areas closest to Mill Stream. The Board concludes that this criterion is met.

14. Wastewater Disposal. The applicant submitted that it would be installing a new subsurface wastewater disposal system which would be in conformance with the standards for "dance barns." The system was designed for a maximum capacity of 351 people, which the applicant states it would never have on the property at one time. The Board concludes that this criterion is met.

15. Stormwater. The applicant provided no specific construction plans for the off-site parking and no plan for stormwater management. The Board concludes that this criterion is not met.

16. Sufficient Water. See finding #8. The existing well provides ample water for the proposed use at any scale. The Board concludes that this criterion is met.

17. Traffic. While the specific number of vehicle trips is impossible to calculate given the lack of specificity as to the scope and scale of the planned uses, it is not unreasonable to expect dozens of vehicle trips during events. The Fire Chief indicated that without an installed sidewalk, access for pedestrians would be unsafe. Further, the number of vehicles on Mill Stream Road would be unreasonable given the residential location and the fact that the

dirt/gravel construction is not suited for heavy use. The Road Commissioner also indicated that having a large volume of vehicles entering a five-way intersection from Mill Stream Road was hazardous. The Board concludes that this criterion is not met.

18. Legal Access. The property is served by a town road, which provides legal access to the property. The Board concludes that this criterion is met.

19. Impact on Adjoining Municipality. The property is solely within Readfield. The Board concludes that this criterion is met / not applicable.

20. Life and Fire Safety. The Fire Chief commented on the proposed application and stated that Mill Stream Road is really a carriageway that is insufficient for emergency vehicles. He commented (as stated above in #17) that safe pedestrian passage would require installation of a sidewalk at least 10 feet off the edge of the traveled way to allow for safe passage of emergency vehicles. Because the applicant does not have the required legal interest in the land where such a sidewalk would be installed, the Board concludes that the Fire Chief's recommendations cannot be met.

21. Violations. While the property has been the subject of a Stop Work Order and rescinded occupancy permit, the violations that led to these actions are not presently occurring. The Board concludes that this criterion is met.

22. Compliance with Timber Harvesting Standards. The Board concludes that this criterion is met / not applicable.

23. Road Construction. The proposal does not include road construction. As such the Board concludes that this criterion is met / not applicable.

#### **D. Article 8 Applicable Criteria**

Section 15. The applicant presented no specific lighting plan to demonstrate that there would be adequate exterior lighting to provide for its safe use during nighttime hours. There was no discussion of whether or how the off-site parking would be lighted for safety. The Board concludes that this criterion is not met.

Section 16(B)(1). The applicant did not indicate where solid waste would be stored or demonstrate how it would be shielded from public view. The Board concludes that this criterion is not met.

Section 17. Section 17(B)(1) requires parking areas to meet setback requirements to the greatest practical extent. Despite several requests from the Planning Board for additional information, the parking plan is not sufficiently clear to allow the Board to determine if the parking area(s) comply with Town standards. Section 17(B)(2) requires parking areas to be adequately sized for the proposed use. Without knowing the anticipated maximum size of events, the Board cannot determine whether the proposed parking is adequately sized for the proposed use. The parking



plan also does not legibly depict where individual spaces or aisles would be located. The Board concludes that this criterion is not met.

Section 18. This section pertains to new development (physical changes to the land). The proposal does not involve new construction of driveways. As such, the Board concludes that Section 18(C) is met / not applicable.

Section 19. Resource Protection Standards. The applicant proposes a new/expanded parking area at the structure which appears to stretch into the Resource Protection District and within 75 feet of the normal high-water mark of Mill Stream. That parking area therefore cannot be constructed without obtaining a State Natural Resources Protection Act ("NRPA") permit. The submitted parking plan does not demonstrate conformance with the cutting and clearing requirements of Section 19. The Board concludes that Section 19 is not met.

#### DECISION

Based on the above findings of fact and conclusions of law, the Planning Board finds that the relevant approval standards have not each been satisfied, and hereby DENIES the application by motion and vote of \_\_\_ to \_\_\_.

#### NOTICE OF APPEAL RIGHTS

This denial may be appealed pursuant to Section 7(A) of the Town of Readfield Board of Appeals Ordinance by filing a written notice meeting the criteria of Section 11 of said Ordinance within 45 days of the date of this written decision. The applicant or other interested party seeking to file an appeal is strongly advised to consult the Board of Appeals Ordinance for further guidance in making an appeal.

Duly authorized by vote of the Planning Board taken on November 3, 2021, at which the Chair was directed to sign and transmit the above as the official Findings and Conclusions of the Planning Board on this matter.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Paula Clark, Chair

