



TOWN OF READFIELD

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Town of Readfield, Maine

Board of Appeals

IN THE MATTER OF:

Safe Space Meeting House)	
26 Mill Stream Road)	Decision
Readfield, Maine)	

History of the Case

On August 25, 2020, Safe Space Meeting House (“SSMH”) began its application process for a land use permit. SSMH applied to change the use of the property located at 26 Mill Stream Road, Readfield, Maine, Map 120, Lot 13 (“the Property”) from single family dwelling to a Community Center/Club.

On June 2, 2021, after several additions to the original SSMH application, the Planning Board deemed the application sufficiently complete to commence substantive review.

On August 25, 2021, the Planning Board held a public hearing on the SSMH application.

On November 3, 2021, the Readfield Planning Board issued its decision (“the Decision”), which concluded that some of the requested uses were impermissible, denied the requested change of use from a single-family dwelling to a Community Center/Club, found that the applicant failed to meet nine site review criteria, and found that the applicant failed to meet three performance requirements and standards.

On December 6, 2021, SSMH appealed the Planning Board’s Decision.

On February 3, 2022, the Readfield Board of Appeals held a hearing to review the Planning Board’s Decision. Board of Appeals members William Gagné Holmes, Peter Bickerman, John Blouin, Clifford Buuck, Holly Rahmlow, Henry Whittemore, and Francis Zambella attended the hearing. The Board of Appeals met in a hybrid meeting with attendees appearing at the Town Hall as well as by Zoom. At the hearing, the Board of Appeals considered the request of SSMH that Clifford Buuck be recused from voting on the appeal. The Board of Appeals voted 6-0 against requiring Clifford Buuck to be recused, with Clifford Buuck not voting on the motion. Robert Bittar, Leah Hayes, and Paula Clark made oral presentations at the hearing. Following deliberations by the Board members, the Board of Appeals ended the February 3, 2022, hearing with a unanimous

vote denying SSMH's appeal of the Planning Board's Decision On February 17, 2022, the Board of Appeals met and authorized the issuance of this written decision.

Legal Standards

Appeals from Planning Board decisions are strictly appellate proceedings. Board of Appeals Ordinance §6(B). Appeals from Planning Board decisions are limited to the record of proceedings before the Planning Board. *Id.* When a Planning Board decision gets appealed, the Code Enforcement Officer provides the Board of Appeals copies of all the papers constituting the record of the decision appealed. Board of Appeals Ordinance §12. Appeals from Planning Board decisions cannot involve any new evidence which was not presented to the Planning Board. Board of Appeals Ordinance §6(B). For appeals from Planning Board decisions, the Board of Appeals receives and considers oral and written argument. *Id.* The Board of Appeals shall not substitute its judgment for that of the Planning Board on questions of fact. *Id.* The Appellant has the burden of proof. Board of Appeals Ordinance §14(D).

Nature of Planning Board Review

The Planning Board reviewed the SSMH application seeking permission for a change of use from a single-family dwelling to a Community Center/Club. The Planning Board further reviewed the SSMH application under the Site Plan Review standards applicable to a Community Center/Club use. Article 3 §4 of Readfield's Land Use Ordinance (July 14, 2020) ("LUO") requires Planning Board approval for any change of use of a non-conforming structure. Additionally, LUO Article 7 §5 requires site review from the Planning Board for a Community Center/Club use in the Rural Residential District. LUO Article 6 §3 describes most of the site review criteria applicable to land use activities that require Planning Board review, while certain other criteria are set forth in Article 8 of the LUO.

The Planning Board's 14 Findings Adverse to SSMH

1. Section V(A) of the Planning Board's Decision concluded that a portion of the subject property is in the Town's Resource Protection District, and that the proposed use of a Community Center/Club is not permitted in the Resource Protection District. To the extent that the subject property is located within the Rural Residential District, the Planning Board concluded that because of a lack of specific information provided by the applicant regarding the proposed uses of the property it was impossible to determine whether SSMH would utilize the property in a manner consistent with the LUO definition of a Community Center/Club. LUO Article 7 §§4,5, Article 11 §2.

2. Section V(B) of the Planning Board's Decision concluded that increased foot traffic, vehicle traffic and parking on the Property and along Mill Stream Road would likely have a greater adverse impact on Mill Stream and its wetlands than the existing use. Additionally, the Planning Board found that the noise and traffic associated with the events at the Property would have a greater adverse impact on abutting properties than the existing use. Therefore, the Planning Board found that the requirement of LUO Article 3 §4(D), which allows a change of use of a non-conforming structure to another use in the Planning Board determines that the new use does not have a greater adverse impact on the wetlands than the existing use, was not met. LUO Article 3 §4(D).

3. In Section V(C)(2) of the Planning Board's Decision, the Planning Board found that the proposed uses did not conform with local ordinances and plans. LUO Article 6 §3(C)(2).
4. In Section V(C)(4) of the Planning Board's Decision, the Planning Board found there would be an unreasonable financial burden on the Town due to the sidewalk that would need to be installed to provide safe pedestrian access from the off-site parking to the building. LUO Article 6 §3(C)(4).
5. In Section V(C)(5) of the Planning Board's Decision, the Planning Board found that the SSMH failed to meet the financial and technical capacity because it failed to demonstrate a management structure that would ensure compliance with the Town's ordinances. The Planning Board found that SSMH did not submit a financial cost for the project or evidence of financial resources to complete the process. LUO Article 6 §3(C)(5).
6. In Section V(C)(7) of the Planning Board's Decision, the Planning Board found that the project would likely cause additional soil compaction, associated runoff, and potential pollution of Mill Stream and the wetland. The Planning Board found that portions of the existing structure were located within the setback from Mill Stream and the associated wetlands. Based on these issues, the Planning Board found that the project did not meet the wetland criteria. LUO Article 6 §3(C)(7).
7. In Section V(C)(11) of the Planning Board's Decision, the Planning Board found that the proposed activity would have a detrimental effect on the adjacent land uses due to the proposed activities on the Property. The Planning Board found that SSMH did not meet the adjacent land use criteria. LUO Article 6 §3(C)(11).
8. In Section V(C)(13) of the Planning Board's Decision, the Planning Board found that portions of the existing structure were located within the setback from Mill Stream and the associated wetlands. The Planning Board found that SSMH's activities particularly in the parking area are reasonably likely to cause additional soil compaction, associated runoff, and potential pollution of Mill Stream and the wetland. LUO Article 6 §3(C)(13).
9. In Section V(C)(15) of the Planning Board's Decision, the Planning Board found that the stormwater criteria were not met due to SSMH failing to provide specific construction plans for off-site parking and stormwater management. LUO Article 6 §3(C)(15).
10. In Section V(C)(17) of the Planning Board's Decision, the Planning Board found that the traffic criteria were not met due to the lack of specificity as to the scope and scale of the proposed uses, the lack of a sidewalk to the proposed off-site parking, and the condition of the dirt/gravel road not being suited for heavy traffic. LUO Article 6 §3(C)(17).
11. In Section V(C)(20) of the Planning Board's Decision, the Planning Board found that ensuring safe pedestrian passage requires the installation of a sidewalk, and that because SSMH and the Property's owner do not have the required legal interest in the land to install said sidewalk the life and fire safety criteria were not met. LUO Article 6 §3(C)(20).
12. In Section V(D)(15) of the Planning Board's Decision, the Planning Board found that SSMH failed to provide any lighting plan, and therefore SSMH failed to meet the lighting performance requirements and standards. LUO Article 8 §15.

13. In Section V(D)(17) of the Planning Board's Decision, the Planning Board found that there was insufficient information to determine if the parking area(s) complied with Town performance requirements and standards. LUO Article 8 §17.

14. In Section V(D)(19) of the Planning Board's Decision, the Planning Board found that the new/expanded parking area extended into the Resource Protection District and within 75 feet of the normal high-water mark of Mill Stream. The Planning Board found that the proposed parking area could not be built without obtaining a State Natural Resources Protection Act permit. The Planning Board found that the parking plan did not demonstrate conformance with the cutting and clearing requirements. The Planning Board found the performance requirements and standards of LUO Article 8 §19 were not met.

Conclusions of Law

After consideration and deliberation of the Planning Board's record as well as the written and oral arguments submitted, the Board of Appeals concludes as follows.

1. The Planning Board's conclusion found at Section V(A) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. Substantial evidence in the record supports the finding that SSMH seeks approval for uses that are not permitted in the Resource Protection District. Substantial evidence in the record supports the finding that SSMH's proposed uses within the Rural Residential District do not fall within the definition of a permitted Community Center/Club. SSMH's lack of specificity in SSMH's initial application from August 25, 2020, and from April 28, 2021, as well as Code Enforcement Officer Clifford Buuck's letter dated April 16, 2021, amount to substantial support of the Decision's finding in Section V(A)(6). Testimony from Rexford Tychan and Matt Nazar from August 25, 2021, as well as written submission from Will Harris dated September 7, 2021, establish that substantial evidence supports the Planning Board's findings in Sections V(A)(4) and V(A)(5). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(A) of the Planning Board's Decision.

2. The Planning Board's conclusion found at Section V(B) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. Substantial evidence in the record supports the findings that SSMH's change in use of this non-conforming structure would have greater adverse impacts to Mill Stream and its associated wetland as well as to the abutting residential properties than the existing use. Written testimony from Jerry Bley dated August 25, 2021, written testimony from Carol Doorenbos dated September 6, 2021, written testimony from Willard Harris dated August 25, 2021, written testimony from John Knox, written testimony from Matthew Nazar dated August 14, 2021, written testimony from Matthew Nazar dated August 31, 2021, and written testimony submitted by SSMH for the Planning Board's September 28, 2021 meeting, establish that substantial evidence supports the Planning Board's finding in Section V(B). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(B) of the Planning Board's Decision.

3. The Planning Board's conclusion found at Section V(C)(2) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. The record evidence listed above for Decision Section V(A) and Decision Section V(B) establish that substantial evidence supports the Planning Board's

finding in Section V(C)(2). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(C)(2) of the Planning Board's Decision.

4. The Planning Board's conclusion found at Section V(C)(4) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. Fire Chief Lee Mank's email dated July 27, 2021, as well as the lot maps of the surrounding properties establish that substantial evidence supports the Planning Board's findings in Section V(C)(4). By a vote of 6-1, the Board of Appeals concurred with the conclusion of Section V(C)(4) of the Planning Board's Decision.

5. The Planning Board's conclusion found at Section V(C)(5) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. SSMH's lack of specificity in SSMH's initial application from August 25, 2020, as well as SSMH's information provided on April 28, 2021, establish that substantial evidence supports the Planning Board's findings in Section V(C)(5). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(C)(5) of the Planning Board's Decision.

6. The Planning Board's conclusion found at Section V(C)(7) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. SSMH's written document about the new parking lot, Matthew Nazar's letter dated August 14, 2021, as well as maps of the Property establish that substantial evidence supports the Planning Board's findings in Section V(C)(7). By a vote of 6-1, the Board of Appeals concurred with the conclusion of Section V(C)(7) of the Planning Board's Decision.

7. The Planning Board's conclusion found at Section V(C)(11) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. Written testimony from Jerry Bley dated August 25, 2021, written testimony from Carol Doorenbos dated September 6, 2021, written testimony from Willard Harris dated August 25, 2021, written testimony from John Knox, written testimony from Matthew Nazar dated August 14, 2021, written testimony from Matthew Nazar dated August 31, 2021, and written testimony submitted by SSMH for the Planning Board's September 28, 2021 meeting, establish that substantial evidence supports the Planning Board's findings in Section V(C)(11). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(C)(11) of the Planning Board's Decision.

8. The Planning Board's conclusion found at Section V(C)(13) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. SSMH's written document about the new parking lot, Matthew Nazar's letter dated August 14, 2021, as well as maps of the Property establish that substantial evidence supports the Planning Board's findings in Section V(C)(13). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(C)(13) of the Planning Board's Decision.

9. The Planning Board's conclusion found at Section V(C)(15) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. The Board of Appeals found that SSMH provided no specific construction plans for the off-site parking and no plan for stormwater management. This lack of evidence in the record establishes that substantial evidence supports the Planning

Board's findings in Section V(C)(15). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(C)(15) of the Planning Board's Decision.

10. The Planning Board's conclusion found at Section V(C)(17) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. The Board of Appeals found no support in the record for the following finding: "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 of Appeals found that this was harmless error, however, because Fire Chief Lee Mank's email dated July 27, 2021, the lot maps of the surrounding properties, and Matt Nazar's letters dated August 14, 2021, and August 31, 2021, establish that substantial evidence supports the Planning Board's remaining findings in Section V(C)(17). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(C)(17) of the Planning Board's Decision.

11. The Planning Board's conclusion found at Section V(C)(20) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. Fire Chief Lee Mank's email dated July 27, 2021, the lot maps of the surrounding properties, and Matt Nazar's letters dated August 14, 2021, and August 31, 2021, establish that substantial evidence supports the Planning Board's findings in Section V(C)(20). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(C)(20) of the Planning Board's Decision.

12. The Planning Board's conclusion found at Section V(D)(Section 15) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. The Board of Appeals found that SSMH provided no specific lighting plan to establish that there would be adequate lighting for nighttime hours. This lack of evidence in the record establishes that substantial evidence supports the Planning Board's findings in Section V(D)(Section 15). By a vote of 6-1, the Board of Appeals concurred with the conclusion of Section V(D)(Section 17) of the Planning Board's Decision.

13. The Planning Board's conclusion found at Section V(D)(Section 17) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. SSMH's lack of specificity in SSMH's initial application from August 25, 2020, and from April 28, 2021, Code Enforcement Officer Clifford Buuck's letter dated April 16, 2021, and the parking plans provided by SSMH establish that substantial evidence supports the Planning Board's findings in Section V(D)(Section 17). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(D)(Section 17) of the Planning Board's Decision.

14. The Planning Board's conclusion found at Section V(D)(Section 19) of the Decision is supported by substantial evidence, contains no error of law, is not arbitrary, is not capricious, and is not an abuse of discretion. Matt Nazar's letters dated August 14, 2021, and August 31, 2021, as well as the parking plans provided by SSMH establish that substantial evidence supports the Planning Board's findings in Section V(D)(Section 19). By a unanimous vote, the Board of Appeals concurred with the conclusion of Section V(D)(Section 19) of the Planning Board's Decision.

Decision

By a vote of 7 to 0, the Board of Appeals denies SSMH's appeal from the denial of the Permit Application for 26 Mill Stream Road.

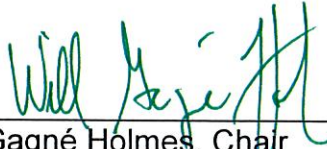
Reconsideration and Appeal Rights

Any party aggrieved by this Decision may seek reconsideration of it by filing a written request for reconsideration with the Town Clerk no later than ten (10) days from the date of this Decision. Board of Appeals Ordinance §15.

Whether or not a request for reconsideration is made, any party aggrieved by this Decision may file an appeal of this Decision with the Superior Court for Kennebec County in accordance with Rule 80(B) of the Maine Rules of Civil Procedure by the later of forty-five days after the Decision of the Board of Appeals or within 15 days after the vote by the Board of Appeals on any reconsideration. 30-A M.R.S. §2691(3).

Dated: February 18, 2022

For the Board of Appeals:



Will Gagné Holmes, Chair
Readfield Board of Appeals