



## TOWN OF READFIELD

8 OLD KENTS HILL ROAD • READFIELD, MAINE 04355

Tel. (207) 685-4939 • Fax (207) 685-3420

### BOARD OF APPEALS

IN THE MATTER OF )  
26 MILL STREAM ROAD ) DECISION DENYING APPEAL FROM  
 ) REVOCATION OF OCCUPANCY PERMIT

#### INTRODUCTION

On November 29, 2018, the Board of Appeals for the Town of Readfield held a public hearing on an appeal brought by Robert Bittar, the owner of property located at 26 Mill Stream Road (Map 120, Lot 13). Mr. Bittar appealed from an action taken by the Code Enforcement Officer (CEO) of the Town of Readfield, by notice dated September 28, 2018, revoking a certificate of occupancy issued on July 19, 2018 for a single family residence at 26 Mill Stream Road.

The following members of the Board of Appeals were present at the hearing: Francis Zambella; Holly Rahmlow; John Blouin; Henry Whittemore; Will Gagne-Holmes; and Peter Bickerman. Board member Clifford Buuck had previously recused himself from consideration of this appeal.

Previous to the hearing the Board received and considered extensive documentary material from Mr. Bittar and from the CEO of Readfield, Gary Quintal. Mr. Bittar and Mr. Quintal testified during the hearing and answered questions from Board members. There also were comments presented by the Town Manager, Eric Dyer, and by a Town resident, Richard Parkhurst.

#### LEGAL STANDARDS

Pursuant to Section 6(A) of the Board of Appeals Ordinance of the Town of Readfield, all appeals from a decision or determination of the CEO shall be conducted "de novo." Based on all the evidence presented, the Board must decide whether the action of the CEO constituted an error of law, a misinterpretation of the Land Use Ordinance or a misapplication of the law to the facts. Section 14(D) of the Board of Appeals Ordinance provides that the burden of proof rests with the appellant.

Article 4, Section 1(A) of the Land Use Ordinance of the Town of Readfield (the LUO) states that a permit is required for, among other activities, the construction, reconstruction or structural alteration of a building when the fair market value of labor and materials used in the work exceeds the sum of \$2,000 within a 12-month period. Article 4, Section 1(C) of the LUO also requires a permit for the expansion, resumption or change of use of a non-conforming use.

Pursuant to Article 4, Section 3(B) of the LUO, a certificate of occupancy must be obtained from the CEO upon the completion of all activities requiring a permit under Article 4, Section 1. The certificate of occupancy is issued upon proof of compliance with permit requirements and any conditions of approval.

The enforcement powers granted to the CEO under Article 2, Section 1(A) of the LUO include the authority to “revoke any permits issued in error or which are based on erroneous information.” Article 2, Section 1(A)(2)(e).

### **FINDINGS**

1. In November of 2014 the Readfield Planning Board conditionally approved the application of Robert and Helen Bittar for the construction and expansion of a non-conforming single family home structure on a lot located at 26 Mill Stream Road.
2. In a letter dated July 28, 2015, the Chair of the Planning Board reminded Mr. Bittar that “all Planning Board approvals to date have limited use of this property to single family residential, and that any change of use must receive prior approval by the Planning Board.”
3. In July of 2017, Mr. Bittar and Gary Quintal, the Town’s CEO signed a Consent Agreement with respect to 26 Mill Stream Road. The Consent Agreement stated that the property would only be used as a single family dwelling and that any prospective change in use would need to be reviewed and approved by the Planning Board.
4. On July 19, 2018, the CEO issued a certificate of occupancy to Mr. Bittar. The certificate described the structure at 26 Mill Stream Road as a “single family 2-story with attached barn.”
5. Subsequent to the issuance of the certificate of occupancy, the CEO learned of social media postings inviting the general public to attend musical performances at 26 Mill Stream Road. In a letter dated August 16, 2018, the CEO advised Mr. Bittar that if he proceeded with the advertised concerts at 26 Mill Stream Road “the Town may pursue legal action against you to enforce its ordinances.”
6. In a reply dated August 17, 2018, Mr. Bittar informed the CEO that he intended to have parties at 26 Mill Stream Road at which friends would be present, and that in his opinion “there will be no event which will require prior approval.”
7. On September 20, 2018, the CEO issued a “Notice/Order” revoking Mr. Bittar’s occupancy permit for 26 Mill Stream Road. The Notice made reference to evidence that the barn at 26 Mill Stream Road was allegedly “being used as a community center for house concerts...”
8. In an email dated November 13, 2018, following the filing of Mr. Bittar’s appeal to the Board of Appeals, the CEO proposed that Mr. Bittar sign a new Consent Agreement which would reinstate

his occupancy permit upon reaffirmation that 26 Mill Stream Road is to be used only as a single family residence and the cessation of any illegal activity at the property. Mr. Bittar responded to the CEO's proposal by stating that "I must play music at my property."

### **CONCLUSIONS**

The Board of Appeals is not a policy-making entity. It is not within the jurisdiction of the Board of Appeals to decide whether or not concerts should be allowed at 26 Mill Stream Road, or whether concerts may be permitted under certain conditions and limitations. It also is not appropriate for the Board of Appeals to instruct Town officials as to which enforcement mechanisms they should use as long as the enforcement mechanism they chose is authorized by the Land Use Ordinance.

In this case, after due consideration of the evidence and arguments, the Board of Appeals voted unanimously that there are no grounds to reverse the action taken by the CEO to revoke the occupancy permit granted with respect to 26 Mill Stream Road. There is substantial evidence in the record supporting the CEO's contention that the occupancy permit was issued based on an erroneous understanding that the subject property would be used only as a single family residence.

Accordingly, Robert Bittar's appeal from the revocation of the occupancy permit for 26 Mill Stream Road is hereby **denied**.

### **RECONSIDERATION AND APPEAL RIGHTS**

Pursuant to Section 15 of the Board of Appeals Ordinance, 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.

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 80B of the Maine Rules of Civil Procedure.

Pursuant to Title 30-A, Section 2691 of the Maine Revised Statutes and Section 17(A) of the Board of Appeals Ordinance, any judicial appeal must be initiated by filing a Complaint with the Superior Court no later than January 14, 2019.

DATED: Dec. 5, 2018



Peter Bickerman, Chair  
Readfield Board of Appeals



## TOWN OF READFIELD

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### BOARD OF APPEALS

IN THE MATTER OF MAP 120 )     DECISION DISMISSING APPEAL FROM  
LOTS 11,12, 13, 14, 16, 17, 18 )     PLANNING BOARD RECOMMENDATION

#### FACTUAL AND LEGAL BACKGROUND

Robert Bittar is the owner of property located at 26 Mill Stream Road, also known as Map 120, Lot 13 on the Readfield Town Map. On July 10, 2018, the Town of Readfield received an application from Mr. Bittar requesting a change in the zoning classification of Map 120, Lots 11, 12, 13, 14, 16 and 18. Mr. Bittar sought a change of the above-referenced lots from the Rural Residential Zone to the Rural Zone in furtherance of his desire to host a musical entertainment facility on his property.

Under Article 1, Section 8(B) of the Readfield Land Use Ordinance (the LUO), it is clear that a change in zoning boundaries is considered an amendment to the LUO. Article 1, Section 8(A) of the LUO provides that a proposal for amendment to the LUO may be initiated in one of four ways. Regardless of the method of initiation, however, the proposed amendment is subject to a Town vote. *See* Article 1, Section 8(B)(3).

In this circumstance Mr. Bittar initiated the request for a zoning change through a request to the Planning Board, pursuant to Article 1, Section 8(A)(3) of the LUO. The Planning Board held a hearing on Mr. Bittar's request which commenced on September 5, 2018 and concluded on October 3, 2018. As reflected in a written Decision dated October 22, 2018, the Planning Board voted unanimously to recommend to the Select Board and the Town that the proposed change in zoning not be approved. The Planning Board found "that the proposed zoning change is inconsistent with existing uses and surrounding zoning, and with Readfield's Comprehensive Plan."

#### THE LIMITED JURISDICTION OF THE BOARD OF APPEALS

Article 2, Section 1(C) of the LUO states that "the powers and duties of the Board of Appeals include hearing and making binding decisions on appeals in regard to **final decisions** of the Code Enforcement Officer or the Planning Board..." (emphasis added).

Section 7 of the Board of Appeals Ordinance of the Town of Readfield states, in pertinent part, that the Board of Appeals has the power to hear and determine all appeals by any person affected by any decision rendered by the Planning Board pursuant to the Land Use Ordinance "with respect to any license, permit, waiver, variance, or other required approval..." In the event that a Planning Board

action is subject to review by the Board of Appeals, this Board's jurisdiction is appellate rather than de novo, and this Board "shall not substitute its judgment for that of the Planning Board on questions of fact." See Section 6(B) of the Board of Appeals Ordinance.

### CONCLUSIONS

On November 29, 2018, following consideration of the factual background and the relevant ordinances, the Board of Appeals voted unanimously that it lacks jurisdiction to consider Mr. Bitter's appeal from the negative recommendation of the Planning Board. The action of the Planning Board with respect to Mr. Bitter's request for rezoning was neither a "final decision" as that term is used in Maine law nor a binding decision with respect to any license, permit, waiver, variance or other required approval.

Further, given that the Planning Board made factual determinations regarding the alleged inconsistency between the zoning change proposal and existing uses and the alleged inconsistency between the zoning change proposal and Readfield's Comprehensive Plan, and given that the Board of Appeals Ordinance forbids the Board of Appeals from substituting its judgment for that of the Planning Board on questions of fact, it appears that further review of this matter by the Board of Appeals would be of no practical effect.

Accordingly, Robert Bittar's appeal from the Planning Board's negative recommendation regarding his zoning change proposal is hereby **dismissed**.


### RECONSIDERATION AND APPEAL RIGHTS

Pursuant to Section 15 of the Board of Appeals Ordinance, any person 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 the Decision.

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 80B of the Maine Rules of Civil Procedure.

Pursuant to Title 30-A, Section 2691 of the Maine Revised Statutes and Section 17(A) of the Board of Appeals Ordinance, any judicial appeal must be initiated by the filing of a Complaint with the Superior Court no later than January 14, 2019.

DATED: December 5, 2018

  
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Peter Bickerman, Chair  
Readfield Board of Appeals