

## PLANNING BOARD

DATE: March 24, 2022

TIME: 6:00 P.M.

PLACE: Zoom Virtual Meeting

FOR: Regular Meeting

PRESENT: Brandee Nelson, Chair; Malcom Fick; Jonathan Hankin; Jeremy Higa;

Pedro Pachano

Chris Rembold, Assistant Town Manager/Director of Planning and Development

Ms. Nelson called the meeting to order at 6:00 P.M. She read the opening statement, revised by Governor Baker on February 12, 2022, from the agenda. She said the meeting was being recorded.

She called for roll call attendance:

Mr. Hankin, present; Mr. Pachano, present; Mr. Fick, present; Mr. Higa, present; Ms. Nelson, present

### **FORMS A:**

There were no Form A's presented.

### **MINUTES: MARCH 10, 2022**

Mr. Hankin made a motion to approve the minutes of March 10, 2022 as amended, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

### **SPECIAL PERMIT & SITE PLAN REVIEW: 362 MAIN STREET**

Betsy Andrus Executive Director of the Southern Berkshire Chamber of Commerce was present to discuss the application for a new visitor's booth located in the Village Center Overlay District at 362 Main Street. The Board will make a recommendation to Selectboard on the special permit and they will decide on Site Plan Review.

Ms. Andrus said the current booth is 40 years old. There are structural issues with the building; specifically the back sill is rotted. Ms. Andrus said the building is not able to be repaired. She said it was very clear during COVID that the building was too small and inadequate as there wasn't enough room for visitors to keep distance from each other. She said it was decided to replace the building and to add a second floor to provide office space for the Chamber. She said having office space in the visitor's booth would allow the Chamber to serve citizens seven days a week.

Ms. Andrus said the existing slab is not adequate for a new building. She asked the Board to consider allowing the building to be moved back to make it easier to pour the frost footing and slab.

Mr. Rembold shared the plans.

Ms. Andrus said many people say they don't notice the building. The intent is to make the building noticeable so people will gravitate to it. She said a storage area will be added to the south end that will eliminate separate storage charges.

Ms. Andrus said the plan shows a door at the north end of the building. If the building is moved back five feet the side door will be moved to the second window (from the right) in the front with the window being moved to the north end.

Ms. Andrus said the business entrance will be in the back of the building. She said McCormick, Murtaugh and Marcus and the Days Inn will allow employees to use their parking lots.

Ms. Andrus said the back of the building will have a four foot overhang. She said there will be two offices on the second floor with a restroom on the north end of the building. She said the second floor will be 40 feet long and 16 feet wide.

Ms. Andrus said the south end of the building will have colorful maps painted on a sheet of metal that will be screwed onto the side of the building. The metal sheet will hide the access door to the storage area.

Ms. Andrus said currently the building sits on a slab. She said she hoped to be able to save the slab but it has been determined that the slab won't support a two-story building. She said she hopes the new slab can be moved back five feet. She said even with moving the building back five feet there will still be 11-12 feet to the property line of CVS. She said the sidewalk is higher than the building. If the building is moved back five feet there can be an ADA compliant sidewalk to the front door. She said there can be some landscaping added.

Mr. Rembold said the property line is on the other side of the sidewalk.

Ms. Nelson said the building is in the Town's right of way.

Mr. Rembold said yes. He said in the 1970's the Town granted the land for the use. He said it is a unique area for zoning as it is not a parcel.

Ms. Nelson said the property line is being treated as a setback line.

Mr. Rembold said yes.

Ms. Andrus said in 1929 the Selectboard allowed the Chamber of Commerce to use land on the east side of the street. The Chamber had an area in the wall of Searles Castle. In the 1970's a building was allowed to be in the current location. She said in 1981 the building was expanded,

Ms. Nelson confirmed that the Board needs to make a recommendation on the special permit and then when the special permit has been granted the Board will do site plan review.

Mr. Rembold said that is correct. He said the Board should also make a recommendation on the finding for the parking waiver request.

Ms. Nelson asked the Board had any questions.

Mr. Higa said it tough because the building is in the right of way. He said the presence will be much stronger and visible. He said he is having trouble with what is presented. He said if the building was closer to the downtown corridor where the buildings are closer to the road it would be easier. He said he is having difficulty with how much larger the building will be.

Ms. Andrus said a smaller visitor center will be open Friday thru Monday. She said we get a lot of phone calls and foot traffic at the second floor office on Railroad Street. She said it is not beneficial to be on Railroad Street. She said it would be beneficial to be in one location.

Ms. Andrus said the proposed building would be below the height limit for that area. She said there are large buildings on the same side of the road. She said there are similar buildings with a similar feel on the same side of the road.

Ms. Nelson told Ms. Andrus to check with National Grid about the wires to make sure there won't be an issue with the building height.

Ms. Andrus said the wires are over the bus pull in area. She said she hasn't talked to National Grid but if the building is moved back five feet there will be more space. She said she will check with National Grid before returning for site plan review.

Mr. Higa said Ms. Andrus is right about the other buildings on the street but this building is much closer to the road. He said the proposed building would dramatically change the streetscape in that area. He said a comment to the Selectboard could be for them to consider the benefit of the building.

Mr. Fick said the intent is to consolidate the offices.

Ms. Andrus said yes. The new building would be a business center with offices and storage space.

Mr. Fick said the drawings show overhangs on the west and north side but then no overhang on the north side. He asked what the plan is.

Ms. Andrus said there should be an overhang on both sides. She said the east side of the building is where people wait for the bus. She said there will be an overhang in front to protect the brochures and maps. She said the south side overhang will protect the door to the storage area and provide a place for people to get out of the weather. She said if the door on the north side is moved to the front there will be a change to the north end of the building.

Mr. Pachano said a bathroom should be considered for the ground floor. He is not sure how to look at it in terms of zoning as it is non-conforming.

Mr. Rembold said Town Counsel was consulted when the request was made. Town Counsel advised to proceed with a special permit. He said this is a unique situation.

Mr. Hankin said he salutes Ms. Andrus for the designing the building but he said he doesn't know how the Town approaches drawings that were not drawn by a professional or an architect. He said he is concerned about no public bathroom. He said this is a missed opportunity.

Mr. Hankin said he objects to the aesthetics. He said the plan could be better. He said the overhang in the front of the building needs to be 10 feet above the sidewalk. He said a 16 foot modular second floor will require a police convoy when transporting which will increase the cost. He said there is 15' 2" dimension of the second floor that is not tied to anything.

Mr. Hankin said he fully supports the project. He said it would be good to have a visitor's center but he doesn't think the proposed plan qualifies as designed. He said he would like to see a better building that would be more user friendly. He added that flipping the building 180 degrees would make the building more welcoming. He said he supports the parking waiver.

Ms. Nelson said if we grant a parking waiver what is actually being waived as there is no onsite parking. She said there will be two offices and two employees. She asked where the employees park now.

Ms. Andrus said the employees either walk to the building, park at CVS or McCormick's.

Ms. Nelson asked how the Board members feel about waiving the parking.

Mr. Fick said he has a problem with the parking waiver. He said it is great that the Town has granted a waiver for the building to be in the right of way but they didn't grant a waiver for an office building. He said how can we say it complies with the zoning bylaws.

Ms. Nelson said it is a unique situation.

Mr. Fick said this is a change of use to an office building. He said he can't think of any other place this could happen. He asked if the building could be sold.

Mr. Rembold said he thinks there would be a restriction to prevent the building from being sold.

Ms. Andrus said in 1981 the Town granted an expansion to allow ticket sales from the building. At that time the Selectboard granted permission for that use that is similar to an office use.

Ms. Nelson asked Mr. Pachano to comment on the parking waiver.

Mr. Pachano said he doesn't know what to think about the project. He asked if there is an agreement with the abutter about parking. He said if there is an agreement he is sort of comfortable with the waiver. He said he has concerns about the bus parking being used as a parking space.

Ms. Nelson asked if there needs to be a written commitment for the shared parking.

Mr. Higa said if CVS doesn't have any concerns then it is ok.

Ms. Nelson asked if there has been a conversation with CVS.

Ms. Andrus said she has gone into the store and left a request to be contacted. At this point no one has responded.

Mr. Hankin said he doesn't have an issue with the parking waiver.

Ms. Nelson said she agrees this is an unusual situation. She said if the applicant can provide parking we can agree to a waiver. She said we would want proof of the agreement.

Mr. Rembold said Section 6 allows for a parking waiver. He said the Board can make a finding that can be wrapped in with a recommendation or it can be a separate recommendation.

Mr. Hankin made a motion to send a positive recommendation for the parking waiver for the Chamber of Commerce location allowing two employees to share off-site parking. The applicant needs to show proof of an agreement for the off-site parking. Mr. Higa seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, abstain; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye Motion passed 4-1

Ms. Nelson suggested 10.5 Site Plan Review can be used to fill in some unknowns. She read through SPR with the following comments.

--Work on the storm water management

--Show the site plan with the concrete pad and pedestrian movement on the site

--Addition of a bike rack

--Garbage removal to be shared. No garbage receptacle outside

--Lighting needs to be downward directed with full cut offs

Ms. Nelson asked if there will be signs for the building.

Ms. Andrus said there currently are signs on the site. She said there won't be any lighting of signs. She said the sign at the back door will say "office".

Ms. Nelson asked if there will be LED wall packs on the building we will need to see a design at the next meeting. She said we will want to see a landscaping plan. She said zoning compliance is difficult for the site.

Ms. Nelson said she would entertain a motion to send a positive recommendation to the Selectboard.

Mr. Fick asked if the Board needs to go through the special permit findings.

Mr. Pachano said we don't usually go through the findings for other special permit recommendations.

Ms. Nelson agreed. She said this is a sticky situation with a historical precedent however the use is being expanded by adding offices.

Mr. Higa said maybe the ticket office is similar to the proposed office use as there were two employees for that use. He said the argument could be made that it is an existing office use.

Mr. Fick said the original granting from the Selectboard was for a visitor's center. It is on Town property and being expanded for an office use.

Ms. Nelson agreed that it is an expansion but it is not unusual to have staff in a visitor's center. She said right now it is more like a kiosk.

Mr. Pachano asked if SPR could be waived as there is no way this Board can objectively review this application. He said the use was not granted by our laws but by a body. He said the plan is perfectly fine we would just put the decision on the Selectboard as it is within their control.

Ms. Nelson said the Selectboard typically relies on this Board for our expertise.

Mr. Pachano said there is no way to review. He said he doesn't know how to give a recommendation when building isn't allowed in a right of way.

Ms. Nelson said if the Board feels this way we would not waive SPR but we could decline to comment on the special permit.

Mr. Pachano made a motion to decline to send a positive or negative recommendation to the Selectboard because the Planning Board can't objectively give a recommendation. Mr. Fick seconded.

There was discussion of the motion.

Mr. Fick said he agrees with Mr. Pachano about not sending a recommendation.

Mr. Pachano reworded the motion.

Mr. Pachano made a motion not to send a recommendation on the current application but if the special permit is granted the applicant must return for SPR. Mr. Fick seconded.

There was further discussion.

The Board discussed that the use is supported but not the design. There is a missed opportunity to provide public restrooms. There could be a better design. The Board suggested the Selectboard be directed to review the comments of the Design Advisory Committee.

Ms. Andrus said she discussed public restrooms with the Town a few years ago. She said Chamber was willing to build the restrooms if they could be leased back to the Town for maintenance. She said the Selectboard declined the offer saying they planned to build public restrooms on the back side of the Town Hall. She said the Chamber is a non-profit organization so the funds are not there to maintain public restrooms.

Mr. Pachano said the building will be open to the public.

Ms. Andrus said yes.

Mr. Pachano suggested checking the code as a restroom might be required.

Ms. Nelson called for a vote on Mr. Pachano's motion to not send a recommendation on the current application.

Roll call vote: Mr. Hankin, no; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye  
The motion passed 4-1

### **SPECIAL PERMIT & SITE PLAN REVIEW: 964 MAIN STREET**

The Board conducted a site visit prior to the meeting. The application from Meed Cannabis, LLC is for a marijuana cultivation and transportation establishment in an industrial zone at 964 Main Street.

Applicant David Ullian was present along with Jon Allard, Moshe Arazi and, Lindsay Cannovo. Mr. Allard said the application for the special permit and SPR is needed as per of the Host Community Agreement. He read through the 21 page Power Point presentation titled "Meed Cannabis, LLC Presentation to the Great Barrington Planning Board March 2022".

Mr. Ullian said the 7500 square foot building will have interior renovations and minor exterior modifications. The use will be indoor cultivation for wholesale sales and secure transporter services. There won't be any manufacturing, outdoor cultivation, retail sales, home delivery or social consumption. All activity will be in compliance with the CCC regulations.

Mr. Ullian said there will be a comprehensive security system with video surveillance.

Mr. Ullian said the existing gravel parking lot will be slightly enlarged. The business is estimated to have 10 employees. The bylaws required that 5 parking spaces be provided. The plan is for 8 parking spaces including one handicap space that will be located next to the building. He said there will be a garage door in the back with a designated area for loading and unloading.

Mr. Ullian said Peter Marks from the Water Department was contacted. The expected water usage is 3,870 gallons per day. Mr. Marks indicated there would be no issues.

Mr. Ullian said Bill Ingram from the Waste Water Treatment Plant was contacted about the sewer usage. The estimated sewer demand is 3,714 gallons per day. Mr. Ingram had no concerns about the anticipated demands.



Mr. Ullian said any solid waste containing marijuana will be ground up and mixed with other solid waste so it would not be usable. The waste will be secured in a locked receptacle. Trash will be removed by a professional hauler.

Mr. Ullian discussed fertilizer and nutrients as part of the growth process. He said no pesticides will be used in the cultivation.

Mr. Ullian said there will be odor mitigation through an MT-6 molecular filtration system. A system will be in place to keep the air from moving between the inside and outside.

Mr. Ullian said the lighting for the use will be enclosed within the building. There won't be any visible light from the exterior. He said there will be minimal exterior lighting for the camera surveillance. There won't be any glare or light pollution.

Mr. Ullian said signage will be minimal and not illuminated. A photometric plan was submitted for the one proposed pole light.

Mr. Ullian said noise from the site will be minimal, 30-50 db consistent with ordinary household appliances. He added that the plan is in harmony with the Town's Master Plan.

Mr. Hankin asked if it meets all of the setback requirements.

Mr. Allard said no the building is non-conforming. The building is within 10 feet of the back setback.

Mr. Hankin asked if the applicant should be going to the ZBA for a non-conforming structure changing use.

Mr. Rembold said it may require ZBA approval. He said he didn't realize the building didn't meet the setbacks.

Mr. Hankin asked if the mechanical equipment needs to be within the setback.

Mr. Allard said he doesn't think the equipment has to be within the setback.

Mr. Pachano commented that there is equipment shown in the rear of the building on page 25 and shown in the front of the building on page 62. He asked for clarification.

Mr. Allard said the transformer is in the rear of the building. He said the generator is on the north side of the building.

Mr. Pachano said the application the generator is shown on the east side of the building.

Ms. Nelson said she sees that too.

Mr. Allard said the configuration will be as shown on the amended plans shared on the screen.

Ms. Nelson asked that the plans be made consistent when you return for SPR.

Mr. Rembold said in his opinion he didn't think any of the alterations rise to the level that would require the ZBA to review.

Mr. Fick asked if products will be sold directly to retailers.

Mr. Arazi said the product will be packaged in zip lock bags before going to retailers.

Mr. Ullian said the use is not manufacturing. He said there are strict rules by the CCC about whom it can be sold to.

Mr. Fick asked about the transportation license.

Mr. Ullian said the transport contract is with other licensed manufacturers.

Mr. Higa asked if any light will bleed out of the building.

Mr. Arazi said no the building will be sealed tight.

Mr. Hankin said 5.3.2 requires a special permit from the ZBA for a use that is substantially different from a by-right use.

Mr. Rembold said the first sentence needs to be read. He said he read that section.

Mr. Hankin said he thinks Town Counsel should be asked.

Ms. Nelson asked about the lighting and the photometric plan. She asked that a cut sheet be provided for the SL-4 light. She asked that the mounting height also be included. She asked for detailed information.

Ms. Nelson asked about the stockade fence. She asked for a description of the fence for the SPR discussion.

Ms. Nelson asked about disposal of the marijuana waste. She asked if it will be mixed and ground up with other waste.

Mr. Arazi said yes. He said there is a piece of equipment that grinds all the waste.

Mr. Hankin said the fence shown was described at the site visit as being 8 feet in height. He said a fence that high is considered a structure and cannot be built in the setback as is proposed. He suggested a six foot fence would be permissible where shown.

Ms. Nelson said the Board will run through SPR criteria.

Mr. Hankin said a member of the business he works for is representing the seller of this property. He wanted to make clear, in case there is an appearance of conflict of interest, that he has nothing to do with the property or the transaction.

Ms. Nelson said Mass DOT has no concerns about traffic at the site. She asked the Board if it was willing to waive the traffic study.

Mr. Hankin made a motion to waive the traffic study for the application, Mr. Fick seconded. Roll call vote: Mr. Hankin, aye; Mr. Fick, aye; Mr. Pachano, aye; Mr. Higa, aye; Ms. Nelson, aye

The Board reviewed the SPR criteria. The review resulted in requesting the applicant to provide information about the screening around the dumpster; details about the fence and additional lighting details when they return for SPR.

Ms. Nelson said she didn't see the waiver request for landscaping.

Mr. Rembold said there were other waiver requests as part of the special permit application including site drainage, landscaping, security plan and technical details.

Mr. Fick asked if there is a requirement for planting trees.

Mr. Hankin said there is no frontage. He said there might need to be a waiver request for this too.

Mr. Rembold said two trees would be required.

Mr. Fick said 6.2.8 allows the SPGA the right to grant a deviation from the requirement.

Ms. Nelson said personally and practically there could be a suggestion to have the applicant donate two trees to be planted somewhere.

Mr. Hankin made a motion to send a positive recommendation to the Selectboard for the proposed use with a suggestion that the requirement for two trees be met somewhere else, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

### **PUBLIC HEARING FOR ZONING AMENDMENTS:**

Mr. Hankin made a motion to open the public hearing, Mr. Pachano seconded.

Mr. Fick said he viewed the video from the last meeting as well as the official transcript and submitted materials. He said he filed a notice with the Town Clerk so he could participate in the discussion.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

The public hearing was opened at 8:04 P.M.

Mr. Rembold said there are three zoning amendments continued from the March 10 public hearing. He said there is one additional amendment to be discussed during the public hearing.

Mr. Rembold said three amendments discussed at the last meeting were the changes to the Flood Plain Overlay District, the change to ADUs to allow the units to be measured by net usable square feet and the last topic was how the bylaw deals with Tourist Homes and Lodging Houses.

Mr. Rembold said Town Counsel provided comments. He said there was a general consensus about the Flood Plain Overlay language and the ADU language with the exception of a few typos there were no other comments. He said Town Counsel pointed out that Tourist Homes and Lodging Houses are different things. He said the bylaws for many years have had the two uses in the same row but they are not the same thing. He said the revised language is trying to define them as the same and regulate them as the same and this will cause issues. He said Town Counsel recommended leaving the language as it is with no changes. Town Counsel recommended that the item not be included on the warrant.

Mr. Pachano said if we pass over this we need to pick it up later. He said there are inconsistencies with the bylaw. He said he would like to discuss it for next year.

Ms. Nelson asked if there are comments from the public. No hands were raised.

Ms. Nelson said the new item would allow a two-family use in separate structures on a single lot.

Mr. Rembold said the intent is to clarify and remove the requirement for a lot to be twice the minimum size. He said the last sentence would be removed from 4.2.1 and 8.1.1.

Ms. Nelson said the objective was not to require doubling requirements but to allow density.

Mr. Fick asked when the change was made.

Ms. Nelson said 2014.

Mr. Fick said the change didn't intend for two principal structures.

Mr. Rembold said the change in 2014 did not include an area requirement but it eliminated the requirement for twice the frontage. He said the 2014 change kept the twice the lot size requirement this change would eliminate it.

Mr. Fick said he opposes the change. He said he thinks the double lot size should be kept.

Mr. Hankin said all setbacks and lot coverage requirements remain. Building would have to meet lot coverage.

Mr. Pachano said what is the problem with it?

Mr. Fick said the Town has made efforts to create zones with lot requirements.

Mr. Pachano said the intent is to make people's lots more flexible.

Mr. Hankin added to create additional housing.

Mr. Fick said the zoning allows a two-family use with a principal structure and an ADU not two principal structures.

Mr. Higa said a duplex could be allowed, this would allow them to be separate.

Mr. Fick said there could be unintended consequences that could come of the change. He said he doesn't think it is right.

Mr. Pachano said there is a building envelope on a lot. He said it doesn't matter if there is one building or two.

Ms. Nelson allowed a comment from Claudia Shapiro.

Ms. Shapiro read a statement opposing the Flood Plain Overlay bylaw. She asked that her statement be made part of the record.

Ms. Nelson asked if there were any additional comments from the Board or the public.

Mr. Higa said he remembered Mr. Fick raising concerns about the two-family during the previous discussions.

Mr. Fick said this is opening a can of worms.

Mr. Hankin made a motion to close the public hearing for both rounds of bylaw discussions, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

The public hearing was closed.

The Board continued its discussion to make recommendations to the Annual Town Meeting.

Mr. Hankin made a motion to send a positive recommendation to the Annual Town Meeting for the Flood Plain Overlay language, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

Mr. Hankin made a motion to send a positive recommendation to the ATM for the change to the ADU language, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

Mr. Hankin made a motion that the language for Lodging Housing and Transient Homes be passed over, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

Mr. Rembold asked that the item not be placed on the warrant.

Mr. Hankin made a motion to request the Selectboard to remove the article from the warrant, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

Mr. Hankin made a motion to send a positive recommendation to the ATM for the Two-Family amendment, Mr. Pachano seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, no; Mr. Higa, no; Ms. Nelson, aye  
The motion passed 3-2.

The Board took a five minute break resuming the meeting at 8:36 P.M.

#### **SITE PLAN REVIEW: 70 EGREMONT PLAIN ROAD**

The Board continued its discussion from February 24 of Berkshire Aviation's SPR application to demolish the existing airport office building and reconstruct a new building on the same footprint at 70 Egremont Plain Road.

Michael Valenti was present to continue discussion of the plan. Mr. Hankin said he is an abutter and recused himself from the discussion. He turned off his microphone and his video.

Ms. Nelson asked Mr. Valenti for the additional information requested at the previous meeting.

Mr. Valenti gave a brief review of the plan to demolish the existing building then rebuild a new building on the same footprint. He said he reviewed the letter sent by Town Counsel. He said there was some confusion at the last meeting about the number of trees to be removed and replanted. He said three trees will be removed. The updated plan shows the location of trees to be removed and where they will be replaced. He said one of the trees will be removed because of sight line issues; one will be removed because it won't survive the construction and the other tree being removed is in bad condition.

Mr. Valenti said three trees will be planted with a minimum of a 3 inch caliper as requested at the last meeting. He said also as requested at the last meeting, some extra attention will be given to the tree in the parking lot.

Mr. Valenti talked about the number of enplanements at the airport. The calculation was used to determine the number of parking spaces required for the site. He said he used the ITE trip generation manual to determine that 43 parking spaces are required. He said 44 parking spaces are provided.

Mr. Valenti said at the last meeting the Board discussed the parking that is on the grass area. The parking in that area won't be needed very often. He said there will not be timber wheel stops as they are unsightly. He said when/if the parking is required the ground can be marked.

Mr. Valenti said the lighting is shown. He said fixture "A" is a nighttime friendly light. The manufacturer uses that term in place of night sky compliant. He said the light in the back of the

building will be kept at a 45 degree downward directed angle. If there is an issue with the light it can be replaced with fixture “A”.

Mr. Valenti said he hoped the Board will give a positive review of the plan.

Ms. Nelson asked if there were questions from the Board.

Mr. Higa asked if a tree replacement plan has been requested.

Ms. Nelson said yes. She said it is shown on page 3 of 3 of the plans.

Ms. Nelson said we have received and reviewed the letter from Town Counsel dated March 23, 2022 *re: Application of Berkshire Aviation Enterprises Inc. for Site Plan Approval, 70 Egremont Plain Road*. She said in Town Counsel’s opinion the Board can make a decision on this application. She said we have already gone through SPR criteria. She said the public can comment.

Tad Heuer, attorney for Holly Hamer, Anne Fredericks and Marc Fasteau, responded to the letter from Town Counsel. He said he didn’t have much time to review and respond but he sent a reply earlier today. The letter is dated March 24, 2022 *Re: 70 Egremont Plain Road—Site Plan Review Application 139-22*

Mr. Heuer said his clients were concerned about the timing between receiving the letter and the short time to reply. He said the primary issue is the use of the building. He said the ZBA will hold a hearing on the use on April 5. He said the ZBA’s decision will have an impact on the comments from Town Counsel. He suggested the Board delay making a decision until after the ZBA’s hearing. He said Town Counsel advises the Board that it is dealing with land use. He said the Board needs to consider and comply with the entire bylaw. He said there are two non-conformities with the plan that being dimensional and use. He said the legal issue is not with the dimensional non-conformity but the unlawful use of a previously residential structure. He said the Board can’t grant SPR approval without approvals from the ZBA and Selectboard.

Holly Hamer, 99 Seekonk Cross Road, asked if Mr. Valenti has met with the Tree Warden to determine if any of the trees to be removed are in the public way. She said if a tree is in the public way the applicant will need approval from the Selectboard before removal.

Mr. Valenti said he has not contacted the Tree Warden.

Ms. Hamer asked if there can be a condition requiring the Tree Warden be contacted.

Ms. Nelson said yes.



Mr. Valenti said he believes the trees are on the Airport property but he will verify with another body if necessary.

Ms. Shapiro read a letter regarding a survey and an approximate property line. She said her property line is 20 feet from the end of the runway. She maintains that area at the end of the runway. She said the trees to be planted will be within 1,000 feet of the end of the runway.

Ms. Nelson said she does not see where the comments pertain to the discussion of SPR for the building.

Ms. Shapiro said there is a security fence referred to and accessory structures and waste items. She said 5.0 states the non-conformity predates the Water Quality Protection Overlay District.

Ms. Shapiro said a decision on the SPR must be made by March 29. She asked if there will be an extension granted. She also referred to a variance granted in 2013, a terminal building and an agency number. She said she will send a copy of her comments with a return receipt to all officials. She wanted everyone on notice.

Mr. Hankin, 43 West Plain Road, speaking as an abutter not as a member of the Planning Board, said he fully supports the application.

Anne Fredericks said there are irregular things about the enplanement information. She said the Town should be more aware of what is happening at the airport.

There were no other comments.

Ms. Nelson said this application has more complicated issues than typical. She said the Board has received comments from Town Counsel advising that the Board can proceed with SPR although there is conflicting information from Mr. Heuer. She said she is satisfied with the additional information submitted by Mr. Valenti. She said she feels the Board can proceed per Town Counsel's advice.

Mr. Fick agreed.

Mr. Pachano said the application makes sense. He said Mr. Heuer said the building wasn't in existence at the same time the airport came into existence. He said if that doesn't matter we can move forward. He said if it has been allowed to function for more than 20 years as a non-conformity then it would be deemed legally non-conforming.

Mr. Rembold said MGL provides some protection. He said the building could stay if it didn't legally exist. He said the structure was previously deemed a pre-existing non-conforming structure.

Mr. Pachano said he is happy to move forward.

Ms. Nelson asked if there are any other questions for the applicant.

Mr. Heuer replied to Mr. Pachano saying there is a 6-10 year limit for unlawful structures. He said the airport is allowed to keep the structure but it doesn't apply to unauthorized uses if the use wasn't in use in 1932 there needs to be authorization by the ZBA and Selectboard.

Ms. Nelson said, not being attorneys, we are clearly at a disadvantage but we are not making a determination on use.

Mr. Rembold said the ZBA is considering the legality of the use. He said he thinks the Board can make a decision about the structure.

Ms. Nelson said we are limited to the structure.

Mr. Pachano said he is happy to move forward.

Mr. Higa said the SPR is not about use.

Mr. Pachano said he didn't think SPR addresses use.

Mr. Rembold said the use that is there is not changing because of the building. He said the Board can review. The Board is not judging the use.

Ms. Nelson said the SPR is specific to the structure. She said the Board reviewed 10.5 SPR previously do we need to go through it again.

Mr. Fick asked if there are conditions.

Ms. Nelson said lighting and trees with a larger caliper than required by the bylaw.

Mr. Valenti said he didn't recall conditions. He said there are two light fixtures in the rear of the building. He said those lights are security lights on a motion sensor. The lights are not dark sky compliant but they can be kept at a 45 degree angle. He said the lights could be changed to fixture "A".

Ms. Nelson said she didn't realize the lights were on motion sensors. She said she is less concerned if the lights are on only conditionally.

Mr. Fick said there is no light spill.

Ms. Nelson said there is no light spill. She thinks what is proposed is fine.

Mr. Valenti said the lights are intended to be on motion sensors.

Mr. Rembold said the Board usually addresses color temperature, tree species and it was discussed to verify that the tree(s) to be removed are on private property.

Mr. Fick made a motion to approve SPR with two conditions: the applicant visit the Tree Warden to discuss the existing trees to be removed and the trees that are replaced, as shown on the updated plan, will be replaced if they die, this condition goes in perpetuity. Mr. Pachano seconded.

Roll call vote: Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

Mr. Hankin rejoined the meeting at 9:25 P.M.

#### **AFFORDABLE HOUSING:**

Mr. Rembold said he doesn't have any new information. He said this is a standing agenda item. He said he hasn't heard anything about the technical assistance grants.

#### **BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:**

Mr. Pachano said he has scheduled a meeting with the Housing Sub-Committee. He said the Committee will discuss lighting and parking.

Mr. Pachano said he looked back at the 2019 warrant, article 22 that grouped two-family uses and land areas. He suggested the Board review that article as it might be a housekeeping item for next year. He said the article struck out the lot area requirement.

Mr. Higa said he is in favor of the change if it only pertains to residential uses. He said there could be unintended consequences if not only non-residential.

Mr. Fick said he will look at the article.

Mr. Higa said there will be a CPC meeting on Tuesday.

Ms. Nelson said the Lake Mansfield Improvement Task Force met a week or so ago and discussed the parking lot and park improvements. She said the process is moving forward.

Ms. Nelson said the Board is still looking for an Associate Member. She said she has contacted Dan Bailey and Eric Gabriel to see if they could suggest a resident from Housatonic who might be interested. She said she hasn't heard back from either yet.

**TOWN PLANNER'S REPORT:**

Mr. Rembold said next week's special meeting on March 31 will deal with the SPR for 183 Division Street; the continued discussion of the rear lot. He said there is nothing else right now.

**CITIZEN'S SPEAK TIME:**

No one spoke.

Having concluded the business, Ms. Nelson adjourned without objection at 9:33 P.M.

Respectfully submitted,

*Kimberly L. Shaw*

Kimberly L. Shaw  
Planning Board Secretary