

Great Barrington Zoning Board of Appeals

Minutes of July 9, 2013, meeting.

Attending were Chairman Ron Majdalany, Kathy Kotleski, Michael Wise and Don Hagberg. Town Planner Chris Rembold was in the audience. The meeting opened at 7:30 p.m. at Great Barrington Town Hall.

On a motion by Mr. Wise, seconded by Ms. Kotleski, the board voted to accept the minutes of the May 7, 2013, meeting.

The chairman opened the public hearing on the special permit application of **Berkshire Aviation Enterprises**. Notice was properly posted at Town Hall. Abutters were sent written notice of the meeting and it was advertised in The Berkshire Record issues of June 7 and 14, 2013. Richard Solan appeared to represent the airport. Chairman Majdalany offered the applicant the opportunity to continue the hearing, as there were only four ZBA members present, and four positive votes would be necessary to approve a special permit. Mr. Solan said he wanted to go ahead with the hearing. Dr. Majdalany asked Mr. Hagberg to sit in on the meeting in place of member Carolyn Ivory.

Mr. Solan said the airport wants to construct a deck on the rear of the office building on Egremont Plain Road, and create handicapped access. The deck would be on the airstrip side, not street side, of the building. The deck would be 16 feet at its widest point, and access would be the state-mandated 5 feet wide.

Mr. Solan said the building was conforming to town bylaws when constructed, but he was unable to date the structure. The Modolo brothers operated the air field in the 1920s, but he could find no proof the building pre-dated 1932, when Great Barrington created its first zoning bylaw. He said an engineer's drawing shows the building is at least 26 feet from the highway, which exceeds the 25 feet required in the 1932 bylaw.

Town Planner Chris Rembold said the structure was non-conforming as present zoning requires a 50-foot setback. Mr. Wise asked, and Mr. Solan confirmed, the proposed deck would not be built within the front-yard setback. Mr. Wise asked if the deck would change the use of the property in any way. Mr. Solan said no. Mr. Rembold said the town kept its original setback distances until 1960. Claudia Shapiro from the audience said the Board of Assessors tax card said the building was constructed in 1950. Ms. Kotleski said if it was built in 1950, then it conformed to the requirements at the time and was legal.

Letters were read into the record from the Board of Selectmen (no recommendation), Conservation Commission (favorable recommendation with suggested condition), Board of Health (favorable recommendation with suggested condition) and Planning Board (favorable recommendation).

Ms. Shapiro and Daniel Bell, abutters to the airport, spoke in opposition to the application, attempting to make numerous points including: the list of abutters includes one inaccuracy, as one property has been sold; the applicant should have filed under Section 9.2.12, Water Quality Protection Zone; the building has been listed as residential in Assessors' records; the Planning Board chairman had a conflict of interest in speaking in favor of the project; airport personnel sent a complaint about the Bell/Shapiro home-based auto restoration business; the airport is a serious polluter, etc. The chairman asked that testimony be directly related to the special permit application for a deck. Ms. Shapiro left a packet of documents.

Mr. Rembold said under the Water Quality Protection Zone, the airport requires no additional permit because what is proposed is less than 2,500 square feet of impervious area. On a motion by Ms. Kotleski, seconded by Mr. Wise and voted unanimously, the ZBA closed the hearing and looked at necessary findings.

Members indicated the proposed deck is not substantially more detrimental than the existing non-conforming structure as it is small, is invisible from the street and there are neighboring properties with decks, so it is in character. Under Section 10.4.2, members said benefits include improving airport amenities, which in turn improve town amenities; creation of a more safe location for people to view airplanes land and take off; and improved access to the disabled. Issues of use of utilities are not applicable. Water can run through the decking, so there should be no impact on surface water flow.

Mr. Hagberg moved, and Mr. Wise seconded, to approve the special permit application of Berkshire Aviation Enterprises with the stipulations that (1) any lighting be downward directed with full horizontal cutoffs, and no light be directed toward the road; (2) that a drawing be submitted showing where the septic and well are located on the

property; and (3) that approval of the deck does not alleviate the need of the applicant to comply with or file for other appropriate town, state or federal permits.

The vote was unanimous in favor. Mr. Hagberg said he would write the decision.

In other business, on a motion by Mr. Wise, seconded by Mr. Hagberg, the board voted unanimously favorably to endorse the vote of the Board of Selectmen to reappoint John Katz as an alternate member.

The secretary read a letter from town counsel Brian J. Winner of Kopelman and Paige dated May 6, 2013, advising "the Supreme Judicial Court denied Danny Bell's Application for Further Appellate Review. Accordingly, the trial court's judgment in favor of the Town is now final and this litigation is concluded."

The meeting adjourned at 8:05 p.m.

Respectfully submitted

Bernard A. Drew

