

Appeals Board Hearing

October 28, 2021

Members present: Chair, Peter Bickerman; Secretary, Holly Rahmlow; Clif Buuck
William Gagne Holmes; Henry Whittemore (via phone) and Francis Zambella

Excused: John Blouin

At 5 p.m. a site visit was held at 111 Mayo Road, where the owners of the property, Scott and Dawn Morash, and their surveyor explained the plans for a year-round home to replace the existing structure built in the 1970s. The surveyor had staked out the proposed placement of the new home, including the deck.

The existing approximately 2000-square-foot nonconforming structure is about 14 feet from the water's edge. The Morashes wish to build an approximately 2642-square-foot year-round home to replace it, with the eastern side of the new structure located approximately 78 feet from the water's edge. In order to construct a house of this size, they want to infringe on the road setback. The road setback requirement is 50 feet from the center of the road. They want to reduce that to 37 feet.

Members of the board walked around the property and reviewed the plans for the home, septic and landscaping. At 5:30 the board completed its survey.

Peter convened the meeting at 6:10 with introductions. In addition to members of the Board of Appeals, present were Chip Stephens, code officer for Readfield, Tom Molokie, Eric Falconer, David Hewey, Tom Gottschalk, Justin Morgan, Samantha Morash, Megan Morash, Attorney Mary Costigan, counselor for Mr. and Mrs. Morash, Janet Meyer, Keith Meyer, Rob Schumacher, David Palmer, Paula Clark, chair of the Planning Board but attending only as an observer, and others on Zoom identified only by numbers.

Twenty minutes into the meeting Peter was made aware of the fact that the Zoom connection was not working properly. After the system was up and running he repeated the introductions and repeated some of the following discussion, which was begun while Zoom was not working.

The board discussed Clif's role as interim code enforcement officer for the first half of 2021, when he was involved in the original application the Morashes made to the Planning Board. Clif said that he could not forget what he knows about the application and was not sure he could meet the de novo standard. Will noted that recusal is usually dependent on whether the person has a conflicting financial interest. The Morash lawyer noted that legally the board should vote on whether he should recuse himself. Scott Morash said he thought it might be best to have fresh eyes on the subject. Will said he saw no need for Clif to recuse himself, as a de novo hearing only means a new hearing and does not mean no prior knowledge. Peter asked Clif if he could judge the variance application fairly regardless of his prior knowledge.

Peter asked for a vote on whether Clif should be disqualified from voting on the variance. Peter, Will, Fran, Holly and Henry voted no. Clif abstained.

Peter explained why this hearing has taken so many months to come to fruition. He believed that the Planning Board had primary jurisdiction with respect to the size and placement of any house in the shoreline district. But the Planning Board believed that the Board of Appeals should proceed to act on the pending application. The Board of Appeals only has the right to rule on the variance, so even if the variance is approved the Morashes will still have to apply to the Planning Board for the plans for the home and the setback from the water.

Mr. Morash outlined the plans for a new home to replace the current structure. There are only two neighbors, the Heweys, who own the surrounding land, and the Coreys, both of whom have stated they are in favor of the project.

Mr. Morash talked about the road, which is narrow and needs work. He commits to putting \$10,000 into improving the road to keep it from washing into the lake. Mr.

Morash noted that he is already a steward of Maranacook Lake and has participated as a member of the group that worked to refit the dam at the south end of the lake and has been trained in invasive plant identification and has participated in boat inspections. He noted that these actions demonstrate his dedication to the lake's water quality.

Attorney Costigan spoke about the efforts the Morashes made to move the new home back from the water as much as possible, thus encroaching on the road. She noted that even the current building, which is smaller, if moved 100 feet from the water would still encroach on the road setback. And because the home is within 25 feet of the water they cannot expand/remodel the existing home, but must move it back.

She spoke to the unique aspects of this property and neighborhood, with lots of greatly varying sizes. She noted that the new home would not alter the quality of the neighborhood. She said this issue is not the result of any action taken by the applicants, the granting of the variance will not significantly reduce or impair the use of abutting properties,

She said that the Morashes did not create the hardship, the zoning did.

Will asked why the reasonable return standard would not apply.

Attorney Costigan said that standard does not apply, as they are applying for the variance as a year-round residence. Will pushed back, saying they are not year-round residents. Attorney Costigan said that it is a chicken-and-egg issue as the Morashes cannot live there until after the variance is granted and the home is built.

Henry asked the attorney to expand more about the issue of hardship. She noted that undue hardship is used in two different ways in the ordinance. If the home is not a single-family-home year-round residence, then the reasonable return standard applies. But if it is, then the five-prong standard she's been reviewing applies.

In the Morashes case the alleged necessity for a variance is triggered by the need to replace the existing foundation in order to either expand the existing home or build a new one. She also referred to a response from the Department of Environmental

Protection. Peter said the DEP position is ambiguous and since the writer of that email is not present, he would not base his decision on that information.

Peter asked the Morashes to explain more about why they need a larger home, which they said was to accommodate their large family, include a garage to facilitate long-term living in a harsh climate, to make room for his hobby of repairing pinball machines, and his large size (he is six feet, eight inches tall).

Peter asked whether the size of the proposed home includes the deck. Architect Justin Morgan said it did.

Fran asked Mr. Morash if after owning the property for 22 years why he didn't realize the limits of the property, which is .6 of an acre, why he didn't plan for a smaller home more suited to the property. Mr. Morash referred to the changes put in place by 911 regulations and replied that he feels that the planned home will suit both the property and the family needs and that a setback reduction of 13 feet is not a big deal.

Questions were asked about Mr. Morash's current home and employment, and he stated adamantly that his plan is to retire from his job in New Hampshire and sell his home in Hollis the minute he has an occupancy permit for the new home.

Clif asked about the basement, which includes a 2.5-car garage, and whether that's included in the square footage. It is. The old home will be removed and revegetated with buffers to protect the lake.

Clif said that he thinks one key to the quality of a neighborhood is similar-sized homes. The Coreys have a larger home of about 4,000 square foot, while the Hewey home is on a point on the water and thus small.

He also noted that there are several things the Morashes could do to establish residency and that several are quite simple. Mr. Morash said he would do whatever is needed to establish residency. Will said the ordinance requires them to be year-round residents before they could apply for a variance. Attorney Costigan said it's unreasonable to ask them to move into the current home and then move to a hotel while

the new home is built. Henry said he sees a catch 22 in that it is a bit of a chicken-and-egg problem. He has concerns about precedent setting in granting an appeal without a prior Planning Board ruling.

Peter said that if the criteria for a variance were established he would see no problem in allowing a variance conditioned upon the applicants becoming Readfield residents by a date certain.

Both Peter and Will noted that state law requires strict compliance for a variance.

Clif asked the architect for a description of the home. Henry suggested that first we discuss the approach to the home, the road, and the effect on water quality. Peter said we can't really get into the issues such as water quality, phosphorus runoff and such, as those are Planning Board issues. Our focus should be on whether the Morashes have demonstrated need.

The living space includes a master bedroom and bath, two small bedrooms with guest bath, and an open space kitchen-living-dining area on the main floor. Underneath is the garage, workshop space, mechanicals and utilities, and a half bath.

Peter asked if anyone else would like to speak. Neighboring landowner David Hewey spoke in favor of the project.

Maranacook Lake resident Keith Meyer also supports the project and spoke about Mr. Morash's dedication to the quality of the water. He questioned the way the Morashes are being quizzed about their residency and said he found it troubling.

Peter explained that Maine law has a different variance standard for those who are year-round residents, while those who are not have to meet the reasonable return standard.

Town resident Tom Molokie listed his many connections to Maranacook Lake (representative to Maranacook Lake Association and member of Cobbossee

Watershed) and said that he feels that the plans the Morashes have will better serve the lake with a quality home and new septic.

Eric Falconer said he built a place on Maranacook in 2004 and that he's dismayed by what he's seen as the Morashes have gone through the process of trying to get a variance. He asked: Will the lake be better off with the project? Yes. Will the town be better off? Yes, it will increase the tax base. Will the abutters be affected? They have spoken in favor.

Fran said he has a lot of experience with water quality issues and that he sees what they are trying to do would be a positive for that, but that he is not convinced the need is there, that it is more a matter of convenience.

Attorney Costigan noted that by law the Morashes are allowed to replace that structure, moving it as far away from the water as practical. If they are not allowed the road variance, then they will be closer to the water.

In response, Peter read the email from DEP, which suggests that the home could be located 100 feet from the water and still be within the road setback. Attorney Costigan said the drawing provided by DEP showed the residence within the setback. Peter noted that the DEP prose did not match that viewpoint, so he was not inclined to use that information as a basis for the decision.

Mr. Morash referred to another home with a similar setback issue belonging to David Palmer, who said that he did not have to get a variance for his nonconforming home. He also brought up the issue of changes to the road setbacks since the 911 road numbering system was implemented.

Dan Morneau, fiancé of daughter Megan Morash, noted that the current home has a spiral staircase which is not practical for older people or someone of Mr. Morash's size.

Clif explained the difference in the Palmer situation because the Planning Board determined their project met the greatest practical extent standard for setbacks.

Peter asked board members their opinions as to the application.

Fran said he did not believe they qualified as a hardship. He sees it as more of a convenience issue than a demonstrated need.

Henry said that he sees no negative impact from the project but that if you follow the letter of the law you have to vote no.

Will went through the various criteria and said that he too feels it's a good project, but that it just doesn't meet the letter of the law.

Clif said he can overlook the residency requirement by tying it to the building permit, but without floor plans he doesn't know if the application shows need.

Henry noted that floor plans are a matter of taste and not something we can judge.

Clif said he took Henry's words to heart, but he still voted no.

Peter went over the criteria and said that while it meets most of them, when it comes to subdivision "e" this application does not show demonstrated need.

Ultimately, most board members said they felt that it was a good project but that in order to follow the letter of the law they'd have to vote "no" except Holly, who said she'd vote yes.

Henry asked if there was a way we could decide this and instruct the Planning Board to take this on. He said he feels that we should not even be deciding on this issue before the Planning Board rendered a decision. He said that it's idiocy to handle it this way and that he'd like to go on record as objecting. He also changed his vote to yes. So the vote became 4-2.

Attorney Costigan asked that an official vote be taken.

Henry made a motion that the application be accepted with the stipulation that the year-round residency requirement be met.

Henry yes.

Holly yes.

Peter voted no.

Fran yes, based on that it will be the best thing that can be done for the lake and the dwelling and that the road is really only a lane.

Clif voted no, saying that until more information is provided the application does not meet the criteria.

Will voted no.

The final vote was 3 to 3.

Peter said that under the Board of Appeals ordinance a tie means the application fails. Peter suggested to the applicants that they return to the Planning Board and try to reach an accommodation regarding the size and location of their proposed home.

Mr. Morash objected strenuously, noting that the town has run him through the ringer and made it impossible for him to proceed with plans to replace his home.

Hearing adjourned at 8:38 p.m.

Minutes prepared and submitted by Holly Rahmlow