Scott and Dawn Morash
111 Mayo Road
Readfield, Maine 04355

Supplemental Notice of Appeal from Revised Decision of the Planning Board

Pursuant to Section 10 of the Board of Appeals Ordinance, we herewith file our notice of appeal with the Town Clerk from the revised decision reached on our application for a building permit on October 25 by the Planning Board.

In summary, the grounds for this supplemental appeal are:

1. Failure to comply with Board of Appeals' Remand. On remand, the Planning Board was directed to engage in additional fact gathering regarding whether our application meets the "greatest extent practical" standard in satisfying the 2019 Land Use Ordinance. Instead of opening the record to additional fact-gathering, the Planning Board kept the record closed, refused applicants' request to present relevant additional facts regarding relevant environmental and safety concerns, and did no additional fact gathering of its own.

2. Failure to apply the relevant 2019 Land Use Ordinance as written and as construed and applied by the Planning Board in approving other applications under that ordinance.

3. Post Hearing Change of Legal Theory. With no notice to applicants or opportunity for them to be heard on the matter, the Planning Board in its revised decision invoked state guidelines as the basis for its denial, and its altered construction of the 2019 Land Use Ordinance, but only after closing the record and precluding applicants from any opportunity to be heard on this change of legal position. The failure to give notice to appellants and to be heard on this change of legal position during the several hearings on their application violates fundamental rules of fairness and due process.

4. Mishandling of the Record. The Planning Board refused to allow appellants to supplement the record on remand, while selecting materials it wanted to add to the record to support its initial decision, again without allowing appellants to be heard on these supplemental materials or to submit contrary materials. Appellants were entitled to be heard on the relevance and and to contest the significance of those materials before the Planning Board relied on them.

5. Violation of the Freedom of Access Act. The Planning Board chair admitted at the October 25th public meeting that, instead of holding a public hearing with the full Board to gather additional facts as required by the remand, she and the Board's vice-chair met privately without prior public notice with the town attorney in a series of "back and forths" over a two-week period to discuss and revise the language of the Planning Board's initial decision. These substantive meetings violated the purposes and requirements of the State's Freedom of Access Act. See 1 MRSA §401,405.

These grounds for appeal were raised before the Planning Board voted on its revised decision on October 25th in the attached "Request for Supplemental Hearings per Board of Appeals Remand." This submission was accompanied by a letter from a qualified road builder (also attached) who commented that the slope of our property made siting the driveway higher up on the hill inadvisable from a safety standpoint and should be avoided if possible. To our knowledge, the Planning Board took no action on our request. Because of its position that the record was closed to any further participation by us, we are filing this submission as a part of the record to be sure it is considered by the Board of Appeals. We also ask that a transcript of the Planning Board public meeting on its proposed revised decision be provided to the Board of Appeals as part of the record on remand.

We intend to present further legal support for our appeal based on the full record before the Planning Board before the December 5, 2022, hearing of the Board of Appeals.

Respectfully submitted,

Dawn and Scott Morash

To: Planning Board Members
Town of Readfield

From: Dawn and Scott Morash

Re: Pending Application for Map/Lot 134-025 E-911 Address 111 Mayo Road

Date: October 25, 2022

Request for Supplemental Hearings per Board of Appeals Remand

This request relates specifically to the public meeting which the Planning Board has scheduled for this evening to consider the Board's response to the remand issued by the Board of Appeals. We were not advised of this meeting until late last week. On Friday 10/21/22, we received an email from Mr. Stephens attaching several items, one of which was a draft Revised Planning Board Decision denying our application. We were told that these materials were provided simply as a "courtesy" and that we would not be allowed to address the Planning Board at its meeting this evening.

We do not know more about the intent of tonight's meeting. However, we are very concerned that the Planning Board may actually vote on whether to adopt the revised decision this evening. We strongly object if that action is contemplated. We respectfully suggest that the Planning Board has not yet complied with the intent of the remand and that as the applicants we have a right to be heard on issues raised by the remand before the Planning Board reaches any revised Final Decision.

Given the short notice of the public meeting provided to us, the quantity of material emailed to us, not all of which could be viewed, and the advice that our views will not be heard at tonight's meeting, we wish to explain our position in brief summary in this memorandum and ask that it be included as part of the record before the Board in any appeal of a revised Final Decision. It is also our request to the Planning Board that it defer any action on the draft decision until it has given us an opportunity to present additional facts responsive to the Board of Appeals remand and additional comments on the applicable law. We make three points in summary here:

1. Following the remand on August 15th 2022, we heard nothing from the Board regarding its intentions. The remand specifically asked for additional findings of fact regarding whether our application meets the setback requirements of the applicable 2019 LUO to the "greatest practical extent." As the minutes of the Board of Appeals meeting reflect, its members were interested in the topography of the property, the slope of the hill above and other landscape factors. Consequently, quoting from the minutes, "Henry [Whittemore] moved that we remand the issue back to the Planning Board for additional fact finding as to slope, vegetation, etc. John seconded." That, as we understand it is the intent of the remand.

We assumed that additional fact finding would involve some type of hearing where additional facts could be presented. However, we heard nothing from the Planning Board. So, late last month 9/29/22, we wrote to the chairs of the Board of Appeals and the Planning Board that we had additional factual information to present on our application relevant to the issues on remand and that we wished to have the opportunity to do so. We heard nothing back regarding our request. We then called last week to ask what was happening. Only then were we informed that the Planning Board had scheduled a public meeting for this evening on our application with no indication at that time as to what specifically would be discussed. On Friday we were told that we would not be allowed to speak at the hearing.

So the Board is aware of some of the additional factual information we want to submit, we are providing a letter from Mr. Joe Perryman, an experienced road builder, who explains that siting a driveway on slope of 14% poses a safety risk. Specifically, there is a significant loss of traction when turning on a steep slippery slope which poses a real risk of vehicles sliding off the driveway and crashing into trees or structures. With that risk there is also an undeniable risk of personal injury and property damage. More can be said on this point which would be appropriate in a hearing intended to fairly consider whether avoiding a treacherous road condition and a risk of harm to the applicants, their family members, and other visitors is a sufficient practical consideration to allow a limited exception to the 100' setback under the "greatest practical extent" standard.

This is a fundamentally important point in considering our application on remand since Mr. Comart in the appeal to the Board of Appeals and in the Q&A he recently circulated mischaracterized our position as asking for this limited exception (which is within the parameters permitted in the LUO) on the basis of "**convenience**" to the applicants. Wrong. Seriously wrong. **It is a matter of safety:** to lessen the risk of injury to people and property by not requiring a driveway and garage to be situated on the 14% slope -- especially when a lesser slope could be used that is within the 100' setback but outside the 75' line from the HWM, and therefore is permitted under the 2019 LUO. We are confident the Planning Board members do not want to knowingly require a resident to only build something that is unsafe and not recommended by knowledgeable experts when a safer alternative is available and permitted under the LUO and its greatest extent practical standard.

We specifically request that the letter from Mr. Perryman be included in the record before this Board in the event of a later appeal of a revised Final Decision. There are other additional facts we would present responsive to the questions and concerns of the Board of Appeals if our request for a hearing regarding those issues is granted, including facts responsive to concerns about the environmental impact of requiring that a larger structure be moved higher and deeper into such a steep slope.

2. As everyone agrees, our application was specifically developed to comply with the 2019 LUO which allows for a larger replacement structure to be built partially within the 100' setback if all other requirements are met to the greatest extent practical,

as they are in our case. That was the guiding legal standard at every hearing on our application. Only in our appeal to the Board of Appeals did the Planning Board reference Maine state "guidelines" for shoreland ordinances and then only for "context."

The draft Revised Final Decision basically takes the position that it doesn't matter what the 2019 LUO says or how it was interpreted and applied in the past. It argues that under state law, no structure can be approved if a structure with the same footprint as the one it replaces could be fitted beyond the 100' line. Under this view, past Planning Board decisions allowing larger replacement structures to be placed partially within that setback were in violation of state law and illegal. As Planning Board members know and its meeting minutes reflect, we provided four examples of such decisions to show precisely how the LUO had been construed by the Town for past permits. The Planning Board's belated citation of the Maine Guidelines on appeal and in the draft decision imply that the 2019 LUO and its predecessors were invalid although the State to our knowledge never challenged its wording or application.

At a minimum, we respectfully ask that we be allowed time to digest and offer our comments on the relevance of the Maine Guidelines to our permit request. It is a simple but essential aspect of due process that if the legal standard by which our application is to be decided is changed after hearings have been closed, that the hearings be reopened so we can be heard on if and how those Guidelines play into our application.

Also, the Board of Appeals stated that it could not consider precedents under the 2019 LUO unless they were presented in documentary form. Mr. Stephens and Mr. Dyer have those documents which we ask be provided to the Planning Board and included in the record of its proceedings. We summarize those four precedents in the attached Appendix.

3. Finally, we were surprised to see reference to an email from Mr. Colin Clark of the Maine DEP in the draft decision. The draft decision states that Mr. Clark "praised" the Planning Board for its review of our project. We still do not have a copy of that email. But, we suspect that Mr. Clark was not told that moving the replacement structure entirely behind 100' line would pose a serious safety risk to people and property, or that DEP personnel had previously inspected the site and explicitly warned steep slopes be avoided to the greatest extent practical. This field determination is specifically relevant to the issues the Board of Appeals wanted the Planning Board to do further fact-finding on. The field evaluation from DEP from 7/6/20 is already on file with our application. Perhaps, Mr. Clark would want to qualify his views if he were told what our position actually is and what the realities of our parcel actually are. In any event, we have had no chance to comment on or counter his statement.

We again respectfully ask the Planning Board to reach no decision on how to respond to the remand until it has held a hearing on supplemental facts responsive to the issues on which further fact finding was requested and on our views of how if at all the Maine Guidelines relate to our application.

APPENDIX

The Board of Appeals surprised us when it said we could not cite other decisions by the Board of Appeals even though they were the principal support for our legal position that the Town of Readfield had previously approved and issued permits under the 2019 LUO for projects which involved houses that were much larger than those being replaced and which were allowed to extend partially or even wholly within into the 75' to 100' setback zone. We understand that our application has to stand on its own merits with respect to whether we meet the greatest practical extent standard in our proposed project. We agree that what prompted past Planning Boards to decide that each of those projects met the greatest extent practical standard is not subject to review in our application process. But, what is clearly relevant to our application is the precedent they created in permitting such larger structures to be built when presumably the greatest practical extent standard under the LUO was met. They reflect the past interpretation and application of the LUO and cannot be dismissed as irrelevant, any more than past judicial interpretations and rulings of the law cannot simply be ignored.

The four precedents which we rely on and for which full documentation was provided through the Town Manager and the Chief Enforcement Officer for transmission to the Planning Board and Board of Appeals are:

Resident/Lot/Date	Old Structure	New Structure
Priest/106-054/2020	1502sf/35' from water	4161sf/50' from water
Smart/134-098/2020	~1500sf/55' from water	4768sf/89' from water
Bayer/120-148/2018	864sf/16' from water	1584sf/80' from water
Baker/140-27/2018	1197sf/35' from water	1862sf/all within 75' of water

There undoubtedly were other similar approvals over past years where a structure larger than the original one was permitted to be built partially or totally within the 100' zone under the LUO. All we are asking is for similar treatment assuming we have shown that we have complied with all requirements including setbacks to the maximum practical extent possible -- which we have.

St. Laurent and Son, Inc.
20 Highland Spring Road
Lewiston, Maine 04240
Office: (207) 784 7944
Fax: (207)784 6592

To: To Whom It May Concern:

Date: 9/28/22
Re: Morash Residence
From: Joe Perryman

1. My name is Joe Perryman. I am a general contractor and road builder doing business under the name St. Laurent & Son. This has been my profession for 15 years.

2. I was asked to comment on the proposed location of the driveway and garage entrance for a house proposed to be built at 111 Mayo Road. Specifically, Mr. and Mrs. Morash asked me to provide my opinion as to whether I would recommend that the driveway and garage be moved 25 feet further from Maranacook lake than the location the Morashes identified on their plans. I would not.

3. Specifically, I understand from Mr. Morash that moving the driveway and garage 25' farther back from the location they propose would put the driveway further up a hill at a gradient of 12 to 14%. Mr. Morash advised me that their preferred location for the driveway reduces the slope significantly to 6 to 8%.

3. As a roadbuilder, I would not recommend or design a driveway which required turning from a road into it on a slope as great as 12 to 14%. The potential for loss of control and departure from the road and driveway would present a significant risk to drivers and occupants of vehicles attempting that turning maneuver, especially in wintery conditions of ice and snow. Turning reduces the available traction which makes loss of control all the more likely on such a steep grade. The potential for injury to occupants and damage to a vehicle due to a loss of control would be much less on a grade of 6 to 8%

4. I believe most if not all experienced roadbuilders would always advise not locating a driveway on such a steep slope especially when there is a much less steep and much less dangerous location available on the property.

5. I have agreed that my professional opinion may be presented to the relevant Town of Readfield boards which are reviewing the permit application submitted by Mr. and Mrs. Morash.

Sincerely Yours,

Joe Perryman