

**TOWN OF READFIELD
BOARD OF APPEALS**

IN THE MATTER OF 111 MAYO ROAD
MEMORANDUM OF DECISION ON APPLICATION FOR VARIANCE

INTRODUCTION

On September 3, 2021, Scott Morash and Dawn Morash filed with the Town of Readfield an application seeking a road setback variance with respect to property they own located at 111 Mayo Road.

Mr. and Mrs. Morash (hereinafter referred to as “the Applicants”) had previously initiated a proceeding regarding this parcel of land before the Readfield Planning Board. After some discussion among Town officials regarding the proper procedure, it was decided that the Board of Appeals should proceed with a hearing on the variance application. That Board of Appeals hearing, which was preceded by a site visit, was held on October 28, 2021.

FINDINGS OF FACT

Mr. and Mrs. Morash are residents of Hollis, Maine. In 1999, they purchased a parcel of land in Readfield located at 111 Mayo Road. This is a parcel of approximately .6 acres in size, bounded on the east side by Maranacook Lake and on the west side by Mayo Road. The parcel slopes from southwest to northeast. The parcel is located within Readfield’s Shoreland Residential District.

The parcel contains a nonconforming but grandfathered house located very close to the shore of Maranacook Lake. The Applicants now wish to demolish that house and construct a new, larger house which would become their primary, year-round residence. According to the Applicants, their proposed new house would encompass approximately 2,642 square feet. The eastern side of the proposed new house would be located approximately 78 feet from the high-water mark of Maranacook Lake. The western side of the proposed new house would be located 37 feet from the centerline of Mayo Road.

In their Application Mr. and Mrs. Morash stated they need a house of the size proposed for three reasons: 1) to accommodate visits from their large extended family and friends; 2) to provide room for Mr. Morash to engage in his hobby of collecting and/or repairing pinball machines and jukeboxes; and 3) to provide greater comfort for Mr. Morash, who is 6 foot, 8 inches tall.

Under the Readfield Land Use Ordinance, Article 7, Section 6, Table 2, structures in the Shoreland Residential District must be located at least 50 feet from the centerline of an adjacent road. By seeking to locate a portion of their proposed house 37 feet from the center of Mayo Road, which is 13 feet less than the setback distance required in the Land Use Ordinance, the Applicants seek a variance equivalent to 26% of the required minimum setback.

LEGAL STANDARDS

The Readfield Planning Board has primary jurisdiction to consider issues relating to the size and configuration of structures located wholly or partially within 100 feet of the normal high-water line of a waterbody. See Article 3, Section 4(A)(1) of the Readfield Land Use Ordinance. Accordingly, regardless of how the Board of Appeals ruled on the Applicants' request for a road setback variance, the desire of the Applicants to construct a 2,642 square foot house partially located less than 100 feet from the high-water mark of Maranacook Lake remains subject to Planning Board review.

With respect to the jurisdiction of the Board of Appeals, state law empowers the Board to grant variances "in strict compliance" with the standards set forth in the statute. See Title 30-A, M.R.S. Section 4353(1)(C). State law permitted municipalities to relax those standards somewhat with respect to a request for a setback variance for a single-family dwelling which is the primary year-round residence of the applicant, and Readfield enacted an ordinance of that nature. See Section 7(D) of the Readfield Board of Appeals Ordinance.

Nevertheless, an applicant for a setback variance still must demonstrate that a strict application of the Land Use Ordinance to their property would create "undue hardship," which is defined as follows: a) that the need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; b) that the granting of the variance will not alter the essential character of the locality; c) that the hardship is not the result of action taken by the applicant or a prior owner; d) that the granting of the variance will not substantially reduce or impair the use of abutting property; and e) that the granting of the variance is based upon demonstrated need, not [merely] convenience, and no other feasible alternative is available.

DISCUSSION AND CONCLUSIONS

The written Application for the variance was supplemented by hearing testimony from the Applicants, their representatives and certain abutting landowners and community members. For a detailed summary of the discussion during the hearing, please see the Official Minutes prepared by the Board Secretary.

Six Board of Appeals members considered the evidence and participated in the hearing. The seventh member of the Board, John Blouin, was unavailable because of travel. A question was raised as to whether one Board member, Clif Buuck, should participate in adjudication because of prior knowledge of the matter he had obtained while serving previously as the Town's interim Code Enforcement Officer. The other Board members considered the question and voted unanimously that there was no basis to disqualify Mr. Buuck for any possible conflict of interest or any other reason.

After extended discussion and deliberations, the initial vote of the Board was 5 to 1 against granting the requested variance. The majority of Board members expressed sympathy for the Applicants and agreed that demolishing the existing structure and replacing it with a structure farther from the lakeshore would be beneficial. The majority also appreciated the Applicants' desire for a larger, more convenient home. With respect to Readfield residency, the majority were amenable to the concept that a variance could be granted contingent upon the Applicants establishing legal residence in the Town by a date certain, if the criteria for establishing "undue hardship" were met.

But the majority concluded that at least one of those criteria was not satisfied. In their view, the Applicants had demonstrated convenience, not need, for two adults to live in a house of the size

proposed. The reasons stated in the Application and reiterated during the hearing attempting to justify the proposed size of the structure reflected matters of convenience, not necessity. Moreover, there appears to be a feasible alternative to building a 2,642 square foot house which is 13 feet closer to the center of Mayo Road than the Land Use Ordinance permits.

Some members of the Board also expressed the view that the alleged need for the variance resulted from the general conditions in the neighborhood—land sloping down toward Maranacook Lake—rather than any unique characteristics of the particular parcel.

All of the Board members seemed to agree that the granting of a variance would not alter the essential character of the locality, that the alleged hardship was not the result of action taken by the Applicants or by a prior owner, and that the granting of a variance would not substantially reduce or impair the use of abutting property. But under state law and the Board of Appeals Ordinance, each of the hardship criteria must be satisfied in order for a variance to be granted.

There was further discussion after the initial Board vote. Two members of the Board changed their votes from negative to affirmative, resulting in a 3-3 tie. Pursuant to Sections 9(C) and 9(D) of the Board of Appeals Ordinance, decisions granting appeals or applications generally require the affirmative vote of four members of the Board. A tie vote or a favorable vote by a lesser number than 4 is deemed a rejection of the application under consideration.

Accordingly, the application for a setback variance pertinent to 111 Mayo Road is hereby **denied**.

RECONSIDERATION AND APPEAL RIGHTS

Pursuant to Section 15 of the Board of Appeals Ordinance, the Applicants may seek reconsideration of the Board's denial of their variance application by filing a written request for reconsideration with the Town Clerk no later than ten (10) days from the date of this Memorandum of Decision.

Whether or not a request for reconsideration is made, any person with legal standing who is aggrieved by the Board's action may file an appeal of the Board's 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 45 days from October 28, 2021.

DATED: November 15, 2021

Peter Bickerman, Chair
Readfield Board of Appeals