

To: Board of Appeals
From: Chair and Vice-Chair of the Planning Board
Re: Appeal of Denial of Application for Morash Property: Why State Law Requires the Denial of the Morash Application
Date: 8/14/33

We believe that providing some of the legal underpinnings for the decision of the Planning Board in this matter is both important to the deliberations of the Board of Appeals and determinative of the decision in this matter.¹

Background:

Readfield's LUO is authorized and adopted, in part, pursuant to the authority provided under the Maine Mandatory Shoreland Zoning Act, 38 M.R.S.A. Section 435 et. seq. See Article 1, Section 2 of the LUO.

State regulations implementing the Zoning Act "require all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds," Rule of the Department of Environmental Protection, 06-096 C.M.R. Chapter 1000 (Preface), *available at* <https://www.maine.gov/sos/cec/rules/06/chaps06.htm>. Those regulations provide that "The Act requires that municipalities adopt shoreland zoning ordinances *consistent with, or no less stringent than*, those minimum guidelines." (emphasis supplied) (See Ch. 1000, Preface)

State Regulation of Reconstruction and Expansion of Non-Conforming Structures within the Shoreland Zone:

Section 12 of Chapter 1000 provides the "minimum" guidelines. Those guidelines match up pretty consistently with the provisions in the LUO and are attached hereto. Readfield's LUO varies in one important way. Readfield has adopted square footage limitations rather than percentage allowances for expansions. That is, under older versions of the LUO, structures within the 100- foot zone were permitted to expand in volume by up to 30%. Instead, Readfield adopted limits on the allowed square footage expansions that are absolute numbers, e.g. 1500 square feet within the 75-100 foot zone. In addition, rather than use the square footage of the footprint of the structure, Readfield adopted "floor area" as the

¹ Normally, decisions of the Planning Board do not make reference to state laws or regulations. Therefore, none were cited in the decision. However, since State laws and rules are controlling, we thought a brief review of those provisions would be of assistance to the Board of Appeals to assist the Board in taking notice of those applicable laws and rules.

measuring tool. Again, as mentioned above, towns, such as Readfield, are permitted to adopt rules that are more stringent than the “minimum” guidelines.

How the State rules govern reconstruction or replacement:

The state rules governing the replacement or reconstruction of non-conforming structures in the shoreland zone provide the following:

“Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. **If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.** When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) above.”²

06-096 C.M.R. Chapter 1000, Section 12 (C)(4) (emphasis supplied)

² If placement beyond the 100-foot mark is not possible, then there is the opportunity to use the 1500 feet of floor area within the 75-100 foot zone, although the 1500 square foot limit would necessarily limit the overall size, i.e. to 1500 square feet overall, within the 75-100 foot set back zone. (See sentence immediately preceding the bolded sentence, above.) Again, any such determination would depend on the applicant meeting the “greatest practical extent” test, and then only when the determination has been made that reconstruction of the original sized unit beyond the 100-foot mark is not possible.

What is clear is that once the determination is made that the footprint of the original building can be relocated or reconstructed beyond the required set-back, i.e. the 100 foot setback, then no portion of the new structure may be located closer than 100 feet.

Application of State Rules to the Morash Application

The Planning Board made a factual determination that the total footprint of the existing non-conforming structure is approximately 2100 square feet of living area. Importantly, the Planning Board also made the factual determination that the total footprint of the existing structure can be relocated or reconstructed beyond the required 100-foot set-back.³ Therefore, and in accordance with state rules (and the LUO): “no portion of the relocated or reconstructed structure shall be placed at less than the setback required for a new structure” i.e. 100 feet from the normal high water line. Therefore, the application must be denied.

We hope that this memo assists the Board in its decision-making process.

³ Neither Mr. Morash or his representative disputed the factual determinations that the existing structure is approximately 2100 square feet nor that that 2100 square foot structure can be relocated or reconstructed beyond the 100 foot line.