



TOWN OF READFIELD PLANNING BOARD

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Planning Board Decision

(Revised on Remand: October 25, 2022)

To: Dawn and Scott Morash
56 LedgeWood Drive
Hollis ME 04042

Location of Property:

Map/Lot: 134-025

E-911 Address: 111 Mayo Road

Decision:

The Planning Board has denied the application to:

Replace an existing structure of approximately 2100 square feet of floor area, located approximately beginning at 14 feet from the Normal Highwater Line (NHWL), with a new structure of approximately 4600 square feet of floor area located starting at approximately 75 feet from the NHWL.

Revisions on Remand

On August 28, 2022, the Readfield Board of Appeals issued a decision on the appeal of Scott and Dawn Morash from this decision of the Readfield Planning Board denying the Morash land use application. The Board of Appeals decision remanded the matter to the Planning Board pursuant to Section 6(B) of the Board of Appeals Ordinance, "for additional findings of fact regarding the Planning Board's conclusion that the proposed site of the replacement structure fails to conform to the setback requirements of Readfield's Land Use Ordinance to the 'greatest practical extent'." Further, the Board of Appeals requested "further guidance from the Planning Board regarding its view of the significance of 06-096 C.M.R. Chapter 1000, Section 12(C)(4), the State regulation which appears to apply to setbacks from Great Ponds such as Maranacook Lake."

In response to the remand order, the Planning Board offers additional information, explanation, and findings in this revised decision, all based upon materials that are part of the

existing record; no new information or evidence beyond that contained in the case record has been put forward in these revisions.

*For ease of use and identification, all revisions to this decision appear as additional language in italics and bold font within each of the sections below titled **Background, Factual Findings and Reasons for Decision.***

Background

In April 2020, Dawn and Scott Morash ("applicants") filed an application pursuant to Article 3, Section 4 (C) of the LUO to "replace or reconstruct" their current non-conforming home.

The applicants further sought to expand the "new" replacement home from the current home's 2100 square feet of "floor area" to a completed structure of approximately 4600 square feet of "floor area."

The application was filed prior to the amendment of the LUO approved by voters in November 2021. The Planning Board ("PB") substantially reviewed the application prior to the LUO amendment. The applicants were then given the choice to have their application reviewed under the "old" ordinance or the newly amended LUO. The applicants chose to have the review conducted under the old LUO.¹

Factual Findings

After several meetings to review the application, including the holding of a public hearing (with several continuations) and a site visit, the PB made the following findings of fact:

1. The existing home contains approximately 2100 square feet of floor area.² *It has an approximate footprint of 1025 square feet and approximate dimensions of 43 feet X 28 feet.*
2. The existing structure is located starting at approximately 14 feet from the Normal High-Water Line (NHWL).

¹ The 11/2/21 LUO clarifies Article 3, Section 4 of the LUO. The amendment also adds a provision, Section 4(E) which provides greater flexibility with respect to non-waterbody set-backs to allow for greater opportunity to achieve greater waterbody setbacks. The PB suggested to the applicants that they review the new LUO changes since those changes would likely allow the applicants to construct a 4600 square foot house, fully outside of the 100-foot set-back. However, the applicants rejected this option because they want to locate their home closer than 100 feet from the NHWL.

² Non-conforming structures are measured in total "floor area" as that term is defined in the LUO, Art. 11. This differs from measuring the footprint of the structure.

3. The existing 2100 square foot structure could be reconstructed or replaced with a similarly sized structure that would meet all required setbacks, including *road, sideline, and* the 100-foot set back from the NHWL.
4. A significant expansion of the new replacement structure could take place beyond the 100-foot setback from the NHWL and that expansion could meet all required setbacks. Specifically, the Planning Board finds that none of the factors set forth in Art. 3, Section 4 (B)(2), including the slope of the land, impose any significant limitation on the applicants' ability to build an enlargement to the reconstructed home that would meet all LUO set-back requirements.
5. With regard to the applicants' request to expand the replacement structure from 2100 square feet to 4600 square feet of floor area, the Planning Board did not make a final determination as to the precise size of any expansion beyond the 100-foot NHWL setback, except to note that such expansion could be significant.³
6. ***Reconstruction of the current house beyond the 100-foot NHWL setback will place the new structure on a slope of approximately 14%.***
7. ***Based on information submitted by the applicant's consultant, the Planning Board reviewed and considered all relevant factors including: size of the lot, slope of the land, height of the building, the potential for soil erosion, the location of other structures on the property or adjacent properties, the location of the septic system, the type and condition of the building's foundation, and the type and amount of vegetation to be removed to accomplish the relocation, in evaluating whether a 2100 square foot replacement structure would be in "compliance with all requirements of this Ordinance to the 'greatest practical extent' as determined by the Planning Board" as set forth in Article 3, Section 4(C) of the LUO.⁴ The Planning Board made a finding that reconstruction of the 2100 square foot structure could be set back at least 100 feet from the NHWL and otherwise meet all other applicable set-backs, meet the greatest practical extent considerations and otherwise be in full compliance with the provisions of this ordinance.***
8. ***Based upon review of the revegetation plan submitted by the applicant for a structure larger than the existing structure and given the amount of currently cleared area that***

³ The PB was unable to make any final determination as to a specific allowed expansion since the applicants maintained that any expansion must meet the desired size of their planned home, i.e., approximately 4600 square feet of floor area and that the structure must be sited to encroach upon the restricted 75-100 foot HWM zone.

⁴*At the Board of Appeals hearing, there was discussion about whether the 2100 sq. ft. replacement structure might violate the limits on cleared openings in the shoreland residential zone. See Article 8, Section 19. To the extent that this is an issue, the LUO clearly requires that any removed trees must be replaced with trees "planted no further from the water or wetland than the trees that were removed." (Art. 3, Section 4(B)). As the site plan demonstrates there is ample area for replanting trees, if that were necessary to keep the total canopy opening within the stated limits.*

could be used for revegetation, the Planning Board finds that relocation of the existing structure would not cause a violation of the requirements regarding cleared openings or total cleared area. To the extent that further revegetation might be desirable or necessary, the Planning Board finds that there is ample area available to do so.

Reasons for Decision

The LUO permits the replacement or reconstruction of a non-conforming structure, provided that such reconstruction "is in compliance with all requirements of this Ordinance to the greatest practical extent **as determined by the Planning Board.**" Art. 3, Section 4 (C)(l) (emphasis added).

In this case, the Planning Board found that a 2100 square foot replacement or reconstructed structure could be sited to meet the 100-foot NHWL set-back requirement and otherwise meet all setbacks and otherwise be conforming, e.g., lot coverage, etc.

Having determined that the replacement structure could be constructed to be "conforming", then there would be no right under the "expansion" provision of the LUO, Art. 3, Section 4 (A)(l) to allow a structure that could otherwise be made conforming to instead, through expansion, remain a non-conforming structure by being placed at 75 feet from the NHWL.

Allowing such a use of the 100-foot set-back area, particularly when the applicants have plenty of space to add onto their new replacement structure outside of the 100-foot setback, is not permitted.

The Planning Board determined that the LUO's provisions governing reconstruction/ replacement of a non-conforming structure in the shoreland residential zone allow a replacement structure of the same size as the original structure, located to meet setback requirements to the greatest practical extent, as determined by the Planning Board.

In this case, the Planning Board, employing the "greatest practical extent" criteria, made the factual determination that a true replacement structure could be fully sited behind the 100-foot NHWL setback and meet all other requirements of the LUO. Since such a structure would meet setback and other requirements, it would no longer be "non-conforming" and therefore its expansion would no longer be subject to the restrictions of Article 3(A) (Expansion of Non-Conforming Structures).

The interpretation of the LUO, as set forth above, is consistent with, and required by, the State's "Guidelines for Municipal Shoreland Zoning Ordinances (06-096 C.M.R. Chapter 1000). The Guidelines permit municipalities to "adopt more stringent ordinances, or ordinances which are completely different from the guidelines, provided that such ordinances

***are equally or more effective in achieving the purposes of the Act” (Preface to Chapter 1000).
Municipal ordinances are subject to DEP review and approval.⁵***

The Guidelines expressly address the issue that is before the Planning and Appeals Boards, in that they state:

“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 of a new structure”. (06-096 C.M.R. Chapter 1000 Section C(4))

The Readfield LUO, while worded a bit differently than the State rules, must be interpreted in view of that State requirement.

In the case of the Morash application, the Planning Board made a factual finding (#3) that the footprint of the original structure (i.e. the existing 2100 square foot structure) can be reconstructed beyond the 100 foot setback. Therefore, in accordance with State rules, no portion of the reconstructed structure or proposed expansion may be located less than 100 feet from the NHWL. Only in cases where the original non-conforming structure could not be fully reconstructed beyond the setback, following a determination of conformance to the “greatest practical extent”, would an incursion into the setback be allowed.⁶

⁵ At the Board of Appeals hearing, some question arose as to whether the “Guidelines” have the force of law or are merely advisory. Attached to this decision is the Rulemaking Cover Sheet attesting to their adoption through the State APA rulemaking process. These “rules” are set forth in the Code of Maine Regulations at 06-096 Chapter 1000. The Guidelines are not advisory. See also 38 M.R.S § 438-A(1), which requires DEP to adopt minimum guidelines to include “provisions governing building and structure size, setback and location ...; and § 438-A(2), which provides that “municipalities shall prepare and submit to the commissioner zoning and land use ordinances that are consistent with or are no less stringent than the minimum guidelines adopted by the board.”

⁶ Colin Clark, the Shoreland Zoning Coordinator in the Bureau of Land Resources of the Maine Department of Environmental Protection, reviewed the decisions of the Planning Board and the Board of Appeals in this matter and stated the following: “Please pass on my praise to the PB for reviewing this project the way they did, this was done exactly right.” See email date 9/1/22 from Colin Clark to Chip Stevens, CEO, attached hereto. Mr. Clark also attached a copy of the Maine Shoreland Zoning News that helps to explain this issue clearly: “Step 1: Determine where the existing building footprint can be located to meet the setback requirement to the greatest practical extent. Step 2: If the entire footprint is beyond the minimum setback, then no portion of the structure or additions can be added within the buffer area”.

Paula W. Clark
Chair, Town of Readfield Planning Board

6/14/2022
Date

Paula W. Clark
Chair, Town of Readfield Planning Board

10/25/2022
Date of Revised Decision

cc: Dirigo Surveying