



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

July 14, 2023

Readfield Board of Appeals
8 Old Kents Hill Rd
Readfield, ME 04355

Attn: Board of Appeals Chair

Subject: Daniel and Connie Roy Appeal 86 Torsey Shores Rd., Map 106 Lot 089

Dear Board of Appeals Chair and Members of the Board of Appeals:

The Department of Environmental Protection (Department) has received materials regarding the variance request of Daniel and Connie Roy (appellants), whose property is located at 86 Torsey Shores Rd. in the Town of Readfield. The appellants are seeking a variance from the dimensional requirements, to construct an 8' X 10' Shed with a height of 10' 87" from Torsey Pond, which does not meet the height requirement of 8' established in Section 4 H the Land Use Ordinance of the Town of Readfield. Comments from the Department must be considered by the Board of Appeals (Board) according to 38 M.R.S. § 438-A (6-A).

In accordance with the Ordinance, a variance from the dimensional requirements can only be granted if the Board finds that the applicant would be subjected to "undue hardship" if the variance was not granted. To determine whether the applicant is subjected to undue hardship, the applicant must convince the Board that *all* of the following criteria are met:

1. The land in question cannot yield reasonable return unless the variance is granted;
2. The need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood;
3. The granting of the variance will not alter the essential character of the locality;
4. The hardship is not the result of action taken by the applicant or owner.

If the Board finds that the appellants fail to meet even one of the above criteria, the variance must be denied, as required under your Ordinance. The Department believes the application submitted does not meet number one from the criteria listed above.

It is our opinion that the existing development on the parcel already yields a reasonable return in its current state. The Maine Supreme Court has consistently held that reasonable return does not mean maximum rate of return. In *Barnard v. Yarmouth*, 313 A.2d 741 (Me. 1974), the Law Court found that although the denial of a variance would prohibit the property owner from increasing the value of their property by being able to construct a second dwelling unit, that the "appellant need not be accorded every conceivable opportunity to maximize her return, or

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

potential return, in derogation of a duly enacted and legitimate zoning ordinance.” Simply put, reasonable return does not equal maximum return.

Further, the Court stated in *Wyer v. Board of Environmental Protection*, 2000, 747 A.2d 192, that denial of a variance, which does not render the property substantially useless but allows for recreational use of the property, is not a taking.

Since the owner currently has a beneficial use of the land in its existing condition the land can clearly yield a reasonable return without the granting of a variance. Therefore, the Department suggests that the Board deny the variance application on the basis that the applicant cannot reasonably demonstrate undue hardship.

Thank you in advance for thoughtfully considering our comments. Please contact me if you have any questions or seek further clarification in this matter. I may be reached by telephone at 441-7419 or via email at Colin.A.Clark@maine.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Colin A. Clark', written in a cursive style.

Colin A. Clark
Shoreland Zoning Program
Bureau of Land Resources