

Appeals Board Meeting

August 15, 2022

Members present: William Gagne Holmes (Chair), Peter Bickerman (Vice Chair), Holly Rahmlow (Secretary), John Blouin, Clif Buuck, Henry Whittemore

Also in attendance: Chip Stephens (CEO), Kristin Parks (Town Clerk), Scott and Dawn Morash (Appellants), Keith and Janet Meyer, Tom Molokie, Paula Clark (Planning Board Chair), Jack Comart (Planning Board Vice Chair), Rob Schumacher, Dave Hewey, Tom Gottschalk, Megan ??, Eric Falconer, Karen Bickerman, Marilyn & David Palmer, Local Resident (unknown)

Will called the meeting to order at 6:01 at the Town Office and via Zoom.

The first issue was the approval of the minutes from the Feb. 17, 2022, meeting via Zoom. Henry moved that the committee adopt the minutes as presented. Peter seconded. Everyone voted in favor.

The next topic was the election of officers. The current officers agreed to continue in their roles. John moved that we so continue. Clif seconded. All voted in favor. Officers are as follows: Chair – Will Gagne Holmes, Vice Chair – Peter Bickerman, Secretary – Holly Rahmlow

Will introduced the main topic and noted that this hearing will only consider the facts presented to the Planning Board in May and not any new information as in a de novo hearing. Any new documents will be considered as argumentative.

Before proceeding Will noted that there was an issue with proper notification of abutters and the Planning Board of the hearing. They did not receive 10 days of notice as required. All the involved parties were asked if they were willing to proceed despite the notification failure and all expressed their willingness to continue with the hearing.

The hearing began with Mr. Morash presenting his argument that the Planning Board decision was improperly decided. He presented both orally and via documents provided to the Appeals Board before the meeting some information that was not documented in the original Planning Board meeting. Will said that if those documents are not part of the Planning Board record they cannot be considered.

Mr. Morash said that the Planning Board has been inconsistent in whether it includes basements, decks and garages in assessing the expansion of nonconforming homes. He said that he feels the Planning Board has been arbitrary in dealing with their application to replace their current 2,100-square-foot home with a larger home. He argues that the difficulty of the site means that moving the proposed home back further would cause more damage to the land and water than if they are allowed to build within the 100-foot high-water mark. He notes that his family has been in Readfield for 23 years and seen several other homes replaced closer to the water than his proposal.

Will asked if there were any questions. Henry said that he is having difficulty determining what information is within the limits of the appeal or is de novo. He asked rhetorically why the process has not been more collaborative.

It was noted that there has been a lot of turnover in code enforcement officers, which may have contributed to a lack of continuity.

Will next turned to the abutters, who have expressed support for the project. He asked them to be specific as to what exactly in the decision with which they disagree.

Paula Clark, the chair of the Planning Board, spoke as to the board's role. She said two factors are considered. One is that if a nonconforming structure is to be replaced it must attempt to follow the standards to the greatest practical extent. The other is related to the size of the replacement structure.

Paula noted that the Morash application was opened under the land use ordinances before the 2021 update which clarified some of these issues. She said that the Morash's were given an opportunity to revise their plans to meet the 100-foot setback and size limitations.

She and Jack provided the state statute on this issue to the Board of Appeals. Although it was not used as the rationale for the decision, that statute says that if the footprint of the original structure can be relocated or reconstructed beyond the setback, then it must not violate the setback.

Henry asked about the meaning of the greatest practical extent. The topography of the property, the slope of the hill above and other landscape factors were discussed at length.

Jack spoke that the great practical extent doesn't have to do with inconvenience to landowners.

Planning Board members focused on the fact that the current structure could be moved back 100 feet and that at that point the Morash's could build a bigger home. But the Morash's argue that the slope of the land make that infeasible.

Clif asked some questions about the square footage of the home and how much of it would fall into the 75-100 setback area. Mr. Morash said it is exactly 1500 feet to meet the regulations.

Peter asked Paula about the variance that was brought before the Board of Appeals earlier when clearly the size of the house was the issue.

Tom Molokie spoke in favor of the Morash's, as did Mr. and Mrs. Meyer. Mr. Meyer expressed his dismay over how the process has been handled. Mr. Gottschalk said that all of us are concerned with the quality of the lake and that the town has everything to gain and nothing to lose by allowing the Morashes to build the house they want, including more tax revenue, protection of the lake, and great new residents. Eric Falconer said that the Planning Board has failed in several ways by failing to keep adequate records, by saying that the approval of the Morash plan would set a precedent after arguing that the previous applications are not relevant, and by changing their arguments regarding what factors, such as old-growth forest, are to be considered.

The Morash's spoke about how they have tried to meet the requirements put forth by the Planning Board and feel they have been stymied at every turn.

It was moved and approved to end the hearing and begin deliberations.

John asked if the Morash's went back to the Planning Board would that application fall under the 2020 ordinance or the 2021 ordinance. Peter said that it would be up to the Planning Board, but as a lawyer he thinks that a new application would fall under the 2021 rules, which he said are not that different.

Henry said that he can't fault the Planning Board for their decision but that he is troubled by the term greatest practical extent and how it was applied.

John said he is troubled by the fact that other applications that were approved supposedly were allowed to proceed within the 100-foot line while the Morash's were not.

Henry said he feels like our hands are tied by the limits of the Appeals process and that it seems like these issues should have been worked out in the Planning Board and doesn't really fit us.

John said he understands that we are limited by the rules, but that it seems like the Morash's should be able to go back to the Planning Board, that as an applicant he would expect the same considerations as the other projects that were approved.

Clif commented on finding No. 3, noting that with the setbacks required that if they move the house back 100 feet there would be inadequate room to build the size of the house that the Morash's wish and thus the Planning Board is limiting the size of the house.

The board had an extended discussion on what basis the Planning Board made their decision and whether they had leeway or had to follow the 100 foot setback as regulated by the state.

Holly asked what options the Morash's have if Appeals upholds the Planning Board's decision. Peter said they could go to Superior Court or go back to the Planning Board with a new application or apply for a variance.

More discussion ensued about the wording of the LUO and how it was applied.

John moved that deliberations end; Peter seconded. All agreed.

Peter moved based on our limited standard of review and therefore we feel we must deny the appeal. Will seconded.

Henry said that he feels there should be a codicil stating that the Board of Appeals be made de novo or some other statement that highlights the absurdity of this process.

Several board members expressed their concern over the Planning Board's decision and discussed remanding the issue back to the Planning Board.

Will, Peter and John voted in favor. Henry, Clif and Holly voted against.

Henry moved that we remand the issue back to the Planning Board for additional fact finding as to slope, vegetation, etc. John seconded.

Jack asked if we are remanding the 2100-square-foot or the 4600-square-foot back to the Planning Board.

Mr. Morash said they've never submitted an application for a 2100-square-foot.

Henry, John, Clif and Holly voted to remand. Will and Peter against.

Henry moved we adjourn, John seconded. Meeting adjourned at 8:47 p.m.

Minutes prepared and submitted by Holly Rahmlow & Kristin Parks