

Town of Readfield, Maine
Board of Appeals

IN THE MATTER OF:

Daniel and Connie Roy)
86 Torsey Shores Road) Decision
Readfield, Maine)

History of the Case

In or around late 2022, Connie and Daniel Roy replaced a 6 foot by 8 foot by 8 foot high shed with an 8 foot by 10 foot by 10 foot high shed. The Roys made this replacement without getting a permit and despite the Code Enforcement Officer's advising against making such replacement without a permit. On or around December 2, 2022, the Roys filed an after-the-fact permit application for the shed replacement. The Planning Board is still considering this after-the-fact permit application.

On or around June 28, 2023, the Roys applied to the Readfield Board of Appeals for a variance. The Roys requested a 2 foot relaxation of the height limit for a shed on their property at 86 Torsey Shores Road. The Roys 10 foot tall shed is 2 feet higher than the Readfield Land Use Ordinance allows.

On August 17, 2023, the Board of Appeals held a hearing to review the Roys' variance application. Board of Appeals members William Gagné Holmes, John Blouin, Holly Rahmlow, and Nate Rudy attended the hearing.

Legal Standard

The Board of Appeals has original jurisdiction to hear and decide variance applications. Board of Appeals Ordinance §7(B). A variance is a relaxation of limited sections of the Land Use Ordinance for specific cases. *Id.* For a variance to occur, the applicant must establish all 4 of the following factors: (1) the land in question cannot yield a reasonable return unless a variance is granted; and (2) the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood; and (3) the granting of a variance will not alter the essential character of the locality; and (4) the hardship is not the result of action taken by the applicant or a prior owner. *Id.* The Appellant has the burden of proof. Board of Appeals Ordinance §14(D).

Findings of Fact

The Roys live at 86 Torsey Shores Road in Readfield, Maine. The lot is around .35 acres. The home is around 800 square feet. The land and the home are worth more than \$100,000. The Roys can access their property by car and by boat.

In or around late 2022, the Roys replaced a 6 foot by 8 foot by 8 foot high shed with a 8 foot by ten foot by 10 foot high shed. The shed is about 80 feet from the high water line of Torsey Pond. The shed is a non-conforming accessory structure within the meaning of Readfield Land Use Ordinance Section 4(E).

A non-conforming shed closer than 100 feet to the high water line cannot exceed 8 feet in height. Land Use Ordinance Section 4(E).

Prior to this replacement, the Code Enforcement Officer told the Roys that they should not expand or move their old shed without first getting a permit.

The Roys made this replacement without getting a permit.

On or around December 2, 2022, the Roys filed an after-the-fact permit application for the shed replacement.

Reasoning Behind This Order

A variance is allowed if the applicants can prove all 4 of the following elements: 1) the land in question cannot yield a reasonable return unless a variance is granted; and (2) the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood; and (3) the granting of a variance will not alter the essential character of the locality; and (4) the hardship is not the result of action taken by the applicant or a prior owner. Board of Appeals Ordinance Section 7(B)(1).

In this case, the Board of Appeals concludes that the Roys have beneficial use of their land without any consideration of the shed in question. A year-round home that can be accessed by boat or car amounts to yielding a reasonable return.

The Board of Appeals also concludes that any hardship is the direct result of the Roys' actions because the Roys moved and expanded their shed without a permit even though the Code Enforcement Officer expressly told them not to.

Accordingly, the Board of Appeals finds that the Roys did not establish all 4 elements required for a variance pursuant to Board of Appeals Ordinance Section 7(B)(1).

Conclusion

The Roys' variance application dated June 28, 2023 is denied.

Reconsideration and Appeal Rights

Any party aggrieved by this Decision may seek reconsideration of it by filing a written request for reconsideration with the Town Clerk no later than August 27, 2023. Board of Appeals Ordinance §15(A). Whether or not a request for reconsideration is made, any party aggrieved by this Decision may file an appeal of this Decision with the Superior Court for Kennebec County in accordance with Rule 80(B) of the Maine Rules of Civil Procedure by the later of forty-five days after August 17, 2023, or within 15 days after the vote by the Board of Appeals on any reconsideration. 30-A M.R.S. §2691(3).

Dated: August 21, 2023

On behalf of the Board of Appeals

William Gagné Holmes

*WMP
8-21-23*

William Gagné Holmes, Chairperson