

**TOWN OF READFIELD
BOARD OF APPEALS**

IN THE MATTER OF APPEAL)	
CONCERNING MAP 120, LOT 13)	DECISION ON APPEAL
)	
)	

BACKGROUND

By letter dated December 3, 2013, the Code Enforcement Officer for the Town of Readfield issued a Stop Work Order to Robert Bittar, one of the owners of the structure located at **26 Mill Stream Road (Map 120, Lot 13)**. The Code Enforcement Officer asserted that Mr. Bittar was engaged in reconstruction activity without first obtaining necessary permits as required under Article 4, Section 1 of the Readfield Land Use Ordinance.

Robert and Helen Bittar filed a timely appeal from the Stop Work Order of the Code Enforcement Officer. At the Appellants' request, a hearing on their appeal was deferred until April 2014.

On April 16, 2014, the Readfield Board of Appeals conducted a hearing on the appeal of Mr. and Mrs. Bittar. Present at the hearing were Robert Bittar, on behalf of the Appellant, and the following members of the Board of Appeals: Mary Denison; Lisa Hewitt; Eugene Murray; Tom Dunham; and Peter Bickerman. These Board members also participated in a site visit prior to the hearing. During the hearing the Board heard

presentations from Mr. Bittar and from Clifford Buuck, Code Enforcement Officer for the Town.

LEGAL STANDARDS

Pursuant to Article 2, Section 1(C) of the Readfield Land Use Ordinance, the Board of Appeals has jurisdiction to hear and decide appeals from decisions of the Code Enforcement Officer. All appeals from decisions of the Code Enforcement Officer regarding the administration of the Land Use Ordinance are conducted *de novo*. Based on the evidence and argument presented, the Board must decide whether or not the action taken by the CEO constituted an error of law, a misinterpretation of the Land Use Ordinance or a misapplication of the law to the facts.

FINDINGS AND CONCLUSIONS

1. In October 2013, the subject property was purchased by Cecelia Reardon who, according to Mr. Bittar, is an employee of one of his business enterprises. Five days after purchasing the property, Ms. Reardon transferred it by deed to Robert and Helen Bittar.

2. The subject property contains a structure which is one of the oldest residential structures in the Town of Readfield. At the time of the purchase by Mr. and Mrs. Bittar, the structure was in extreme decay. It was last lived in on a regular basis in approximately 1998. The assessed value of the structure is \$1,500.

3. In the fall of 2013, there was a discussion involving Mr. Bittar, his consultant and the Town's CEO regarding the possible need to obtain permits to pursue reconstruction of the structure. Mr. Bittar, however, did not apply for a permit.

4. The subject property is located within the Rural Residential District and abuts a Resource Protection District Zone for wildlife habitat. The structure is located less than 75 feet, horizontal distance, from the normal high-water line of Mill Stream. The structure also is located less than 75 feet, horizontal distance, from the upland edge of a wetland. Accordingly, the structure on the subject property is a “non-conforming structure” within the meaning of the Land Use Ordinance.

5. During the hearing Mr. Bittar testified that he had expended a least \$4,000 in renovation costs on the structure from the time of his purchase of the subject property until his receipt of the Stop Work Order. That work included the reconstruction of the roof and the pouring of cement to support the floor. Mr. Bittar contended that these activities constituted “normal repair and maintenance” not requiring a permit pursuant to Article 4, Section 2 of the Land Use Ordinance.

6. “Reconstruction” is defined in the Land Use Ordinance as “the replacement, repair to, or improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the structure before the start of construction of the improvement.” Article 3, Section 4(C) of the Land Use Ordinance provides that any non-conforming structure which has been damaged or destroyed, regardless of cause, by more than 50 percent of its market value may be reconstructed or replaced provided that such reconstruction or replacement is in compliance with the requirements of the Land Use Ordinance to the greatest practical extent as determined by the Planning Board.

7. Article 3, Section 4(A)(2) of the Land Use Ordinance states that whenever a new, enlarged or replacement foundation is constructed beneath an existing non-conforming structure, the development is subject to Planning Board site review.

8. A four-member majority of the Board of Appeals decided that the activities undertaken on the subject property prior to the issuance of the CEO's Stop Work Order constituted a "reconstruction", not "normal repair and maintenance". Accordingly, the majority of the Board of Appeals found that the reconstruction work could not continue without Planning Board review and approval. Mr. Bittar's appeal from the Stop Work Order was DENIED.

9. The members of the Board of Appeals were divided on the question of whether or not the pouring of cement in the subject structure constituted a "new, enlarged or replacement foundation" subject to Planning Board site review. Because of the previous finding made by four members of the Board regarding reconstruction, however, the Stop Work Order was upheld regardless of the foundation issue.

10. The denial of Mr. Bittar's appeal is not a comment by any member of the Board of Appeals regarding the merits of the reconstruction of the structure on the subject property. This Board of Appeals decision simply means that Mr. and Mrs. Bittar must seek Planning Board approval for their extensive work on the structure.

APPEAL RIGHTS

Pursuant to Title 30-A M.R.S. §2691(3)(G) and Article 2, Section 1(5)(g) of the Land Use Ordinance, Mr. and Mrs. Bittar may appeal this decision to the Superior Court

in accordance with Rule 80B of the Maine Rules of Civil Procedure by filing a complaint no later than June 2, 2014.

RULING ON MOTION FOR RECONSIDERATION

On the afternoon of May 1, 2014, Robert Bittar emailed to each of the members of the Board of Appeals a request for reconsideration of the decision made and announced by the Board on April 16, 2014.

Article 2, Section 1(5)(f) of the Land Use Ordinance states that any motion or request for reconsideration must be made within 14 days of the decision of the Board of Appeals. Mr. Bittar's request for reconsideration was emailed to the Board members fifteen days following the Board's hearing and vote. Accordingly, Mr. Bittar's request for reconsideration is untimely.

Assuming, without deciding, that the Board of Appeals may disregard the time limits set forth in the Land Use Ordinance, Article 2, Section 1(5)(e) states that the concurring vote of at least four members of the Board of Appeals is necessary in order to make a decision. Two members of the Board of Appeals have indicated that they would support further consideration of Mr. Bittar's arguments. In the absence of the four-member majority required for a new decision, Mr. Bittar's request for reconsideration is hereby DENIED.

Dated: May 9, 2014

Peter B. Bickerman, Chair
Board of Appeals