

# **Town of Raymond, Maine Zoning Board of Appeals (ZBA)**

## **Findings and Decision**

### **January 25, 2022 ZBA Meeting:**

- In Attendance: Greg Dean, Tom Hennessey, David Murch
- Absent: Patricia Beaton

### **Application:**

- Appeal Request: Setback Variance
- Appellants: Sarah & Matthew Holland
- Property Owner: Sarah Holland
- Property Address: 0 Jordan Lane, Raymond, Maine
- Map/Lot/Block: 035/010/000
- District: Limited Residential/Recreational I (LRR1)

### **Background:**

On Tuesday, January 25, 2022, the Town of Raymond ZBA held a public hearing on a setback variance appeal in the Limited Residential/Recreational I District (LRR1). This property is a legal, nonconforming lot. The property is an empty lot, and it is a waterfront property that is located on Panther Pond. The property owner is looking to build a single-family residential structure on the property, and in conjunction with that, is seeking a 15 foot front setback reduction and 10 foot southside setback reduction. The appellants have indicated that the property's current building envelope is approximately 6 feet 6 inches by 80 feet.

A site walk for this property took place on Saturday, January 15, 2022 at 9:00 AM. Those in attendance included Tom Hennessey (ZBA) and Sarah Holland (appellant). Patricia Beaton (ZBA), Greg Dean (ZBA), David Murch (ZBA), and Matthew Holland (appellant) were unable to attend the site walk. Tom Hennessey presented a verbal site walk report during the public hearing.

### **Discussion:**

ZBA discussion took place following the public hearing. Refer to the video record accessible online through the Town of Raymond website or by DVD from the Raymond Town Office.

### **Findings of Fact and Conclusion of Law:**

#### **TOWN OF RAYMOND, LAND USE ORDINANCE**

#### **ARTICLE 2 – ESTABLISHMENT OF DISTRICTS**

##### **A. Districts**

To implements the provisions of this Ordinance, the Town of Raymond is hereby divided into the following districts:

## Established Districts

[...]

5. Shorelands – This district is hereby divided into the following sub-districts.

- a. Resource Protection District (RP)
- b. Stream Protection District (SP)
- c. Limited Residential - Recreation District I (LRR1)
- d. Limited Residential - Recreation District II (LRR2)

[...]

*Comments: The LRR1 district has been established as a Shoreland district.*

## ARTICLE 6 – BOARD OF APPEALS

### B. Powers and Duties

3. Appeals from decisions under the Shoreland Zoning provisions and variances from the Shoreland Zoning provisions are governed by the appeals and variance procedures contained in the Shoreland Zoning provisions and are not governed by Article 6 of the Land Use Ordinance.

*Comments: Variance appeals for properties in the Shoreland districts are governed by the information found in the Shoreland Zoning Provisions.*

## TOWN OF RAYMOND, SHORELAND ZONING PROVISIONS

### SECTION 16: ADMINISTRATION

#### G. Appeals

##### 1. Powers and Duties of the Board of Appeals

b. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in these ordinance provisions.

*Comments: The ZBA has the authority to approve a variance appeal.*

##### 2. Variance Appeals – Variances may be granted only under the following conditions:

a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements

*Comments: This variance appeal is for a reduction to the front setback requirement and for a reduction to a side setback requirement.*

b. Variances shall not be granted for establishment of any uses otherwise prohibited by these ordinance provisions.

*Comments: The appellants are seeking setback reductions for the purpose of building a single-family residence. Single-family residences are an allowed use in the LRR1 district under Shoreland Zoning Provisions, Section 14(B), table item 15A.*

c. The Board shall not grant a variance unless it finds that:

1) The proposed structure or use would meet the provisions of Section 15 after for the specific provision which has created the non-conformity and from which relief is sought; and

*Comments: Based on the documentation and testimony provided by the appellants as well as from the Code Enforcement Office, there is no indication that the proposed structure would not meet the provisions of Section 15 of the Shoreland Zoning Provisions.*

2) The strict application of the terms of these ordinance provisions would result in undue hardship. The term "undue hardship" shall mean:

i. that the land in question cannot yield a reasonable return unless a variance is granted;

*Comments: The appellants have indicated that a reasonable rate of return cannot be yielded as they cannot build a full-time residence without a variance.*

*The ZBA noted that with the standard of "reasonable rate of return", the appellants must show that the land is not suitable for any use permitted in the zoning ordinance. Under Shoreland Zoning Provisions, Section 14(B), table item 1 indicates that "non-intrusive recreational uses not requiring structures such as hunting, fishing and hiking" is an allowed use in the LRR1 district. The land in question is a waterfront property that borders Panther Pond. As such, the recreational use of fishing is a suitable use that is permitted for this land.*

ZBA Vote:

- *Hardship Requirement Met: 0*
- *Hardship Requirement Not Met: 3 (GD, TH, DM)*

ii. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

*Comments: The appellants have indicated that due to the setback requirements from the lake, front, and side converging, this only allows for a structure that is 6 feet 6 inches wide. The appellant also indicated that their 1/3 acre lot is typical to the neighborhood in size and dimensions.*

*Based on the documentation and testimony provided by the appellants as well as from the January 15 site walk, there is no indication that the property has any unique circumstances to be considered, and that instead, the property is consistent with other properties in the neighborhood in regard to size and dimensions.*

ZBA Vote:

- *Hardship Requirement Met: 0*
- *Hardship Requirement Not Met: 3 (GD, TH, DM)*

iii. that the granting of a variance will not alter the essential character of the locality; and

*Comments: The appellant has indicated the neighborhood is changing from seasonal cottages to full-time residences, as many of the existing camps have been upgraded/expanded to accommodate year-round living. The appellants' proposed single-family residence is a 2-story building with approximate, overall dimensions of 20 feet 6 inches by 76 feet (these dimensions take into account the request setback reductions).*

*Based on the documentation and testimony provided by the appellants as well as from the January 15 site walk, ZBA member Tom Hennessy is concerned that the proposed structure and use would be inconsistent with the residences currently in the neighborhood (seasonal cottages/camps). ZBA members Greg Dean and David Murch acknowledge that the proposed structure would be inconsistent, but not to a level of altering the essential character of the neighborhood.*

ZBA Vote:

- Hardship Requirement Met: 2 (GD, DM)
- Hardship Requirement Not Met: 1 (TH)

iv. that the hardship is not the result of action taken by the applicant or a prior owner.

*Comments: The appellants have indicated that the hardship is the result of an expansion of setbacks in recent years and of a recent ordinance change requiring an existing structure to be present on the lot in order to get a standard setback reduction (vs. a setback variance). The property was purchased in 2000.*

*The ZBA acknowledges that at the July 14, 2020 Town Meeting, Raymond residents voted to change Shoreland Zoning Provisions, Section 16(G)(2)(f)(2) such that Setback Reduction appeals may only be granted and are only available for lots with an existing residential dwelling as the principal structure. Because the property is currently an empty lot, this ordinance change now prevents the appellants from seeking a Setback Reduction appeal that would have been previously available to them at the time the property was purchased.*

ZBA Vote:

- Hardship Requirement Met: 3 (GD, TH, DM)
- Hardship Requirement Not Met: 0

#### Decision:

Based on the above Findings of Fact and Conclusion of Law, the ZBA voted to **DENY** the appellants a setback variance.

ZBA Vote:

- Grant: 0
- Deny: 3 (GD, TH, DM)

The ZBA found that the appellants **DID NOT MEET** all of the undue hardship requirements in Shoreland Zoning Provisions Section 16(G)(2)(c)(2) that are required in order to be granted a setback variance.

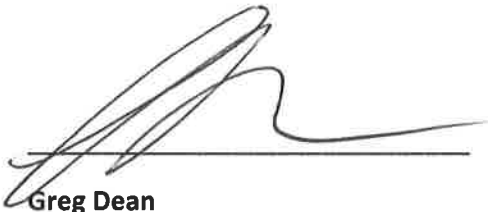


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David Murch

01/25/2022

Date



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Greg Dean

01/25/2022

Date



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Tom Hennessey

01/25/2022

Date