

# City of Auburn, Maine

*"Maine's City of Opportunity"*

## Office of Planning & Permitting

To: Auburn Zoning Board of Appeals

From: Eric J. Cousens, Deputy Director of Planning and Permitting

Re: Appeal of Robin Tannenbaum on behalf of Melissa and Tobin White to reconstruct an existing structure at 64 Waterview Drive / PID # 266-016 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187.

Date: October 24, 2014

### AUTHORITY/JURISDICTION

The Board has jurisdiction to hear Variance Appeals under Section 60-1187, Variance, which reads as follows:

- (a) The board of appeals may grant a variance from the dimensional regulations and supplementary district regulations contained in the zoning chapter where the strict application of the ordinance, or a provision thereof, to the petitioner or property would cause undue hardship based on:
- (1) The land in question cannot yield a reasonable return unless the variance is granted;
  - (2) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - (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 appellant or a prior owner.

Variances granted under this subsection (a) shall be the minimum necessary to relieve hardship. The burden of proof is on the applicant to prove undue hardship.

- (b) The board of appeals may grant a variance for the expansion, extension or enlargement of nonconforming buildings or uses provided that:
- (1) The use being requested shall be approved by a majority of those members present (not less than a quorum being present).
  - (2) The board of appeals shall make findings that the requirements of subsection (a) of this section have been met.
- (c) In addition to the criteria in this section, in determining whether or not to grant a variance, the board shall also take into consideration the following:

- (1) Fire, electrical and police safety requirements;
- (2) The adequacy of the traffic circulation system in the immediate vicinity;
- (3) The availability of an adequate water supply;
- (4) The availability of adequate sewerage facilities;
- (5) Would not violate the environmental standards or criteria contained in the Overlay Zoning Districts;
- (6) Would not adversely affect property adjoining the premises under appeal or nearby in the same neighborhood or in the same zoning district;
- (7) Would not endanger the public health, safety or convenience; and
- (8) Would not impair the integrity of the zoning chapter.

## PROPOSAL

The City of Auburn has received a request from Tannenbaum on behalf of Melissa and Tobin White to reconstruct an existing structure at 64 Waterview Drive / PID # 266-016 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187. The proposal can meet the standards for rehabilitation and less than a 30% expansion of an existing structure; however, the existing construction is substandard and has deteriorated over time to the extent that saving the structural members is impractical. The subject property is located on Taylor Pond and is approximately .25 acres in area. The property is located in the Urban Residential (UR) zoning district, the Taylor Pond Overlay (TPO) district and partly within the Flood Plain Overlay (FPO) district.

The property owner had originally discussed rehabilitation of the existing structure with staff and proceeded to design and plan a 30% expansion as part of the rehab project. The expansion and rehab could meet the requirements of the Ordinance with a staff review, however, due to the age of the existing structure, substandard construction and water damage, the architect informed the property owner that there are concerns with the existing materials, mold and continued decay. In addition, relocation of the existing structure to improve setbacks from the pond would require the removal of additional trees and is limited by other impediments explained in the application. Considering the significant investment, the Whites have decided to request approval to replace the structure with new materials and if they cannot do that they will pursue a rehabilitation as the ordinance currently allows.

The City Ordinances regulating nonconforming buildings are below:

### **Sec. 60-85. Reconstruction, alteration or modification.**

A nonconforming building or structure which is being rebuilt, remodeled, reconstructed or otherwise modified shall not have its structural members (frame, flooring, roof and exterior walls) above the existing foundation or frame supports removed by more than 50 percent.

**Sec. 60-984. Nonconforming structures.**

- (a) *Expansions.* A nonconforming structure may be added to or expanded after obtaining a permit from the building inspector and code enforcement officer if such addition or expansion does not increase the nonconformity of the structure. Further limitations include the following:
- (1) After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30 percent or more, during the lifetime of the structure.
  - (2) Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure, provided that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the board of appeals, basing its decision on the criteria specified in subsection (b) of this section relocation: that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three additional feet.
  - (3) No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.
- (b) *Relocation.* A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the board of appeals and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the state subsurface wastewater disposal rules or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback to the greatest practical extent, the board of appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems and the type and amount of vegetation to be removed to accomplish relocation.

(Ord. of 9-21-2009, § 5.4C)

The applicants are proposing to demolish the legally existing camp and replace it with a new camp. The new residence will be larger than the existing structure but will not exceed the 30% expansion in area or volume as required by Ordinance within the setback area. The setback has been determined to be 56' based on the 50% lot depth allowance of the ordinance. The application indicates that the existing footprint of the home is 1,232 square feet (sf) in area with 996 square feet of floor area within the shoreland zone setback. The 30% expansion within the setback area would allow for 1,295 sf in area to be constructed (total of existing and expansion) within the setback area. The proposed

footprint of the structure is 1,125 sf in area with 1,150 square feet in area within the shoreland zoning setback noted above. The volume proposed is also detailed in the application and is well within the allowance for a 30% expansion of the structure within the setback area.

The application details how the strict application of the ordinance would require removal of additional trees, soil disturbance and may not require the improvement in the setback that can be accomplished with a new structure. The applicants are proposing to construct a new foundation for the structure. The applicants will construct the new structure outside of the mapped 1% annual chance flood zone, although the existing structure is very close to being on the flood boundary line.

In past requests that were similar to this, the Board has gained some setback distance as part of an approval. The current proposal includes an improved setback from Taylor Pond as well as an improved buffer. The proposed construction can be accomplished in compliance with the ordinance by saving more than 50% of the existing structure and will likely be completed in either case. However, the reason for the request is that it would take more labor and increase costs to elevate and repair the existing structure than it would to replace it. The final product is also more reliable and efficient with new materials and of higher value for assessment purposes.

I. RECOMMENDATION:

Staff recommends the following findings:

Strict application of the Ordinance to the White's property would cause undue hardship for the following reasons:

1. Unless the variance is granted, the property cannot yield a reasonable return because the strict compliance would cause impractical costs to accomplish the same outcome with 50% of the framing in place. Repair or renovation of the existing structure is not economically feasible because of the structural defects under current building codes.
2. Many homes within the neighborhood have already been replaced with newer year round homes and the need for this variance is due to the seasonal and remaining substandard construction and suspected presence of mold at the property and not the general conditions in the neighborhood. Environmental conditions for Taylor Pond can also be improved with a new structure, buffer and improved setback.
3. Since the new structure will simply replace the existing structure in the same general area but with an improved setback, the granting of this variance will not alter the essential character of the locality. If the variance is not granted, the building can be repaired at the existing location.
4. In this case, the hardship is caused by strict interpretation of the ordinance which would allow the same expansion of the existing structure with uncertainty of mold and indoor air quality and would not require the buffer or improved setback.

5. In addition to the criteria in this section, in determining whether or not to grant a variance, the board has also take into consideration the following and found that the proposal meets the requirements:
- (1) Fire, electrical and police safety requirements; New construction will be code compliant and safer.
  - (2) The adequacy of the traffic circulation system in the immediate vicinity; No Impact.
  - (3) The availability of an adequate water supply; Seasonal water is available and year round water can be provided by a private well.
  - (4) The availability of adequate sewerage facilities; The structure will be connected to public sewerage services. The AWSO has confirmed that they have capacity to continue to serve this dwelling.
  - (5) Would not violate the environmental standards or criteria contained in the Overlay Zoning Districts; The building replacement allows for less environmental impact with an improved buffer and setback than improving the existing structure with 50% of the structural members in place.
  - (6) Would not adversely affect property adjoining the premises under appeal or nearby in the same neighborhood or in the same zoning district; The proposal improves the appearance of the structure and moves it further from Taylor Pond.
  - (7) Would not endanger the public health, safety or convenience; and
  - (8) Would not impair the integrity of the zoning chapter.

The original plans to remodel the existing home can be constructed in conformance with the City's Zoning Ordinance. Saving the structure, however, will add to costs and unknowns to the project and sacrifice efficiency and value. Staff, based on previous Board approvals and the above findings, is supportive of allowing the Whites to remove the entire structure and build the new structure utilizing new construction materials provided that the following conditions are met:

1. The new structure is setback as shown on the plans.
2. The buffer is improved as described in the plans and with some of the Lake Smart improvements described in the cover letter. The Board should get more specifics on this at the hearing to document for the file.
3. Proper erosion and sediment controls are used during construction.

