

## **Auburn Zoning Board of Appeals**

October 30, 2014

### Agenda

6:00 P.M. – City Council Chambers (Auburn Hall)

#### **ROLL CALL**

#### **MINUTES:**

Review and Approval request of the September 11, 2014 Zoning Board of Appeals meeting minutes.

#### **PUBLIC HEARINGS:**

Variance Appeal 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 and section 60-85. The proposal is in compliance with the standards for rehabilitation and less than 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.

**OLD BUSINESS:** None

**NEW BUSINESS:** None

**MISCELLANEOUS:** None

**ADJOURNMENT** 

# **Auburn Zoning Board of Appeals Meeting Minutes September 11, 2014**

#### Roll Call

**Full Members present:** Lane Feldman, Courtney McDonough, Michael Dixon; Presiding, Kenneth Sonagere and Elizabeth Shardlow.

**Associate Members present:** Dan Curtis Jr. and Maureen Aube

**Full Member absent:** Bruce Richardson and Christopher Gendron

**Also present representing City staff:** Dan Stockford, Esquire and Eric Cousens, Deputy Director of Planning & Development.

Chairperson Michael Dixon, called the meeting to order at 6:00 pm and asked each Board member to state their name. He asked Eric to summarize the August 7, 2014 meeting minutes.

Eric stated the minutes were posted on the City's website and a copy was given to each Board member. He suggested they state any changes they would like to make to the minutes to accurately reflect what was said at the last meeting so staff could make the necessary changes if needed.

Chairperson Dixon invited Daniel and Marie Herrick to the microphone to give their opinion on the minutes.

#### (02:11 on DVD)

**RMR** 

Daniel Herrick, owner of 240 Hatch Road and 470 Hatch Road stated the problem with these minutes was that he was told that night that the meeting was going to be taped with audio which he said they weren't. He said it was disturbing because he would have liked to have everyone's suggestions, which some were good and some not so good. He didn't think this Board got the proper information that it needed to make any decision that night. It got a decision from basically a Planning and Permitting Deputy Director. Mr. Herrick said he had nothing but untruths and misdirection's given to him. He said he served on this City for 4 years and wouldn't have allowed this.

Chairperson Dixon asked Mr. Herrick if he had any specific comments about the minutes. Mr. Herrick asked who made these minutes since there's no audio. Eric replied that Rhonda Russell prepares minutes for the Planning Board and the Board of Appeals. Eric added that we typically get more details on the minutes but since there was no audio, we relied on the notes taken from the meeting.

Chairperson Dixon asked Mr. Herrick if there were things that were said that are missing from the minutes. Mr. Herrick replied there were a lot of things said and stated that Mr. Dixon said a lot of things that shouldn't have been said. Mr. Herrick continued saying that the Board, the

Attorney and Mr. Cousens all commented that he only paid \$9,500 for this place, so what did he expect. Mr. Herrick added that the attorney should have known that if you purchase a property from someone who is 60 or older, you have to have an affidavit.

Mr. Herrick read the beginning of the sworn statement from Barbara P. Lander of Auburn to demonstrate he did not take advantage of her when purchasing the property. Mrs. Herrick added that it felt like the Board members were insinuating that they, (the Herricks) took advantage by the price they paid and everyone she spoke to who was at that meeting felt the same way. She said it was nobody's business what was paid for the property. It is public record but doesn't have to be brought up in every situation. It wouldn't have made a difference if we paid \$95,000 according to Planning & Permitting. The rudeness of the Board during that meeting is not well recorded in these minutes. Mrs. Herrick also mentioned that the Board took to task referring to the 3 Councilors who were here, as Councilors. They were not here as Councilors and didn't introduce themselves as Councilors but as Auburn residents but the Board told them they as Councilors put the laws in place and were here to break them and should be ashamed. She said the Board had no right to do that as that is not the Board's position.

#### (07:18 on DVD)

Mrs. Herrick said this whole process was a farce. We were misled, told by Eric's boss Roland Miller that we shouldn't have even been brought here. We sat here for 2 hours with people parading up and down speaking and after 2 hours Mr. Sonagere said according to State law we cannot legally approve this. She asked why did you make us parade here for 2 hours?

Ken Sonagere replied you do have remedy; you can go to Superior Court and bring your case before a judge and that is the next step. He said it's not our right to say you cannot come here, you have no case. We have to let you go through the process. It's not our position to say, don't say a word because we aren't going to approve it anyway.

Mr. Herrick stated he knows the Board followed the law. He said he knows the law, knows the ordinance, knows the land and knows what was going on. The problem is we were misdirected. He said he knows you can't build in the Ag & Resource Protection zone unless you farm it and have more than 10 acres and make 50% of your living. But this house has been there for 21 years and fell through the cracks. He said a good point was brought up by a few of the Board members when they asked what's wrong with the house that's there today. This got him thinking that he should never have pulled a permit as he was requested to do by Eric. Instead, Eric should have said, Mr. and Mrs. Herrick, we have to make this a legal home on a non-conforming lot. That would have been the first step. Mr. Herrick asked how do you do that, he didn't know. The next step is something that's been done numerous times in the City; go in front of the Planning Board, prove that there's a hardship between the home that's there, demolish it and build one beside it or anywhere on that property. It was done on Hatch Road, 3 times in South Auburn and it was done in North Auburn. It happens all the time. Mr. Herrick said he didn't have a problem going through the process. But we were misdirected, misinformed in error by the City of Auburn on this property. He explained he didn't know there was a permit issued when he bought this property. He thought they (former owners) built a shed and just moved into it. When he called Eric to make sure what he wanted to do was fine, Eric said it was an illegal residence. That's when he said he found out it was a residence.

#### (11:35 on DVD)

Mr. Herrick continued; the very next day after the meeting, a letter/email was written to Eric Cousens and Roland Miller from Michael Dixon. Mr. Herrick read the following portion of the letter; Based on last night's ruling, will the Herricks be issued a revised tax bill which assesses the property as an undersized lot in the Ag & Resource Protection District with an agricultural shed? We will be shooting ourselves in the foot and undermining the zoning ordinance if the tax Assessor (Collector?) doesn't make an immediate adjustment.

Mr. Herrick asked if the Board members knew about this and explained he got another letter a couple of days after that which stated that they've made the residence into an automatic auxiliary shed. Auxiliary to what he asked. He said he would bet his bottom dollar that he is the only resident that owns an auxiliary shed in the Ag & Resource Protection zone with a full bath, full kitchen, 2 bedrooms and with living space. He said this is pretty sad and must be straightened out.

#### (12:55 on DVD)

Mr. Stockford, Esq., explained to Mr. Herrick that the current issue before the Board is the minutes and suggested the Board vote on that. Mr. Herrick stated he appreciated the time and said you can vote on the minutes but you'll never get the minutes. He said he has a copy of the tape and is hoping he can find someone to read lips so we can put the minutes where they should be because those minutes were lost. He has a hard time believing the audio was lost for the whole length of time because there was a City Council meeting and those minutes were also produced and Council approved.

Mr. Stockford, Esq., explained to Mr. Herrick that he would have an opportunity to speak about the proposed findings of fact after the minutes were voted on. Mr. Herrick stated the findings of fact had not changed since the last meeting.

#### (14:35 on DVD)

Chairperson Dixon stated there was a quorum and pointed to the 5 members of the Board that would be voting. He then called for a motion on the minutes.

Mrs. Herrick asked what a quorum is for this Board. Chairperson Dixon replied that it takes 5 members. She stated some of the voting members' at the last meeting weren't even members anymore because they had termed out. Chairperson Dixon replied that that was not true and explained that Mr. Feldman was not here. He asked Eric if any members had termed out and Eric replied he did not think so but would verify that with the City Clerk. Chairperson Dixon commented that we do have a quorum tonight and we did have a quorum then.

#### (16:02 on DVD)

<u>A motion</u> was made by Ken Sonagere and seconded by Elizabeth Shardlow to approve the August 7, 2014 meeting minutes. After a vote of 5-0-1, the motion carried. (Lane Feldman abstained.)

#### **Old Business**

**Confirmation of the Findings of Facts and Conclusion of the following:** Administrative Appeal of Daniel and Marie Herrick to appeal their denial of a building permit to construct a single family home in the Agriculture and Resource Protection District at 240 Hatch Road / PID # 213-006 pursuant to Chapter 60, Article XV, Division 4, Section 60-1186. *Appeal was denied by the Zoning Board of Appeals on August 7, 2014.* 

Mr. Stockford, Esq., explained the purpose of the meeting; The Board of Appeals is meeting for the limited purpose of considering Findings, Conclusions and an Order in regards to its denial of the Administrative Appeal. Because the Hearing was closed and a vote was taken at the August 7, 2014 meeting, the Board won't be reopening the Hearing for purposes of taking new information or evidence. Before a vote is taken on the proposed Findings and Conclusions, the Board will allow the Herricks to provide any input and comments relating to the proposed Findings and Conclusions and if any members of the public wish to comment on the proposed Findings and Conclusions, they will be given that opportunity. He reiterated that the purpose of this meeting is not to rehash what took place at the first meeting but to comment specifically on the Findings that are before the Board.

#### (19:13 on DVD)

Eric presented the proposed Findings and Conclusions via Power Point and read them aloud.

#### (26:13 on DVD)

Chairperson Dixon asked the Board members if they had any questions for Staff. He then opened the floor to Mr. Herrick.

Mr. Herrick told the Board members that they did not do the wrong thing by not approving it because it is less than 10 acres and he wouldn't farm it for 50% of his income. He said it's an illegal residence so the City of Auburn according to the Findings is an accessory because they approved it. For 21 years they accepted a tax bill on that property and Eric's boss said the City was fully aware that the building was there as a residence. He said Roland Miller asked him, what do you want us to do, kick him out?

#### (28:03 on DVD)

Mr. Herrick again stated he did not blame the Board for the denial because they had to deny it under those guidelines but those guidelines don't apply to an existing dwelling. He said he has an existing dwelling on 5.45 acres that was lived in for 21 years, known by the City, taxed by the City and accepted by the City. He said he owns an accepted home on Hatch Road that's less than a half acre and another just over a half acre. They are non-conforming residences and asked the Board what the difference was. Elizabeth Shardlow replied that the difference was he requested a permit to build a new structure. Mr. Herrick responded that he understood that but that's where he says he was misguided as that was what he was told to do. He mentioned the letter that went from Mr. Dixon to Mr. Miller then to Karen Scammon and said they automatically took \$70,000 of value out of this city overnight without asking him. We lost that value but it's still a residence, not an auxiliary building.

#### (30:32 on DVD)

#### **Open Public Input**

Joseph Gray of Sopers Mill Road stated the following:

- I too am a farmer and I meet all of the rules except I don't use 10 acres and I still make 50% income
- These rules are outdated
- Mr. Herrick should never have come before the Board
- This is an approved home because the City collected taxes for 21 years as a house so he should have the right to replace the house
- Mistreated by Mr. Dixon as he was rude to Mr. Herrick
- The Board can right this wrong but doesn't seem willing to and he doesn't understand why
- Adds value to the City and doesn't hurt a damn thing so just do it.

#### (32:37 on DVD)

Ed Desgrosseilliers of 121 Hatch Rd stated the following:

- Auburn Board of Appeals should stand outside of sandbox to right this situation
- He didn't have any trouble with the sale price because he saw what Mr. Herrick did for these people over time
- City was well aware that people were living there for 23 years
- City failed in this case to apply the law when building was being built
- City wants Mr. Herrick to be the burden of the City's enforcement
- City established this wrong
- He was offended when Board said they couldn't do anything. Where does a Citizen go to present their case when you say you can't do anything?
- Instead of Board of Appeals should be called Board of Nothing
- Very displeased with this process completely

#### (39:00 on DVD)

Belinda Gerry of 143 Mill Street stated the following:

- Agrees that there are a lot of non-conforming lots in Auburn
- City Council meeting on Monday night brought up Taylor Pond homes being changed from non-conforming to year-round and those that remain non-conforming will be grandfathered in.
- Feels Mr. Herrick did the right thing to get permits to rebuild the place and maybe the outcome would have been different if he requested permits to renovate the existing property as all he wanted to do was fix up the home for his boy so he could live near him.
- After 21 years of taxing as a home he should have been grandfathered in and given the direction by the City to come forward and request permits to renovate the place.
- Saddened about what happened at the last meeting; lots of stuff was said at the last meeting that shouldn't have been said
- Not here as a Councilor but as an Auburn resident
- Sit through a 2 hour meeting and the minutes are only half there. Not faulting staff because they didn't know they wouldn't have the tape to back it up and now the only recourse is to go to Superior Court? With no audio on the tape? It's not right. The Herricks weren't given a fair shake.
- Would hate for this to happen to some other Auburn residents.

#### (43:20 on DVD)

Chairperson Dixon closed the Public Input part of the meeting.

Elizabeth Shardlow stated to Mr. and Mrs. Herrick that she didn't think there was anyone on this Board that didn't want them to build a nice beautiful new home on the 5.45 acres because we all know what value this would bring to the City, but she added, the issue at hand is that it's a non-conforming lot. To have the foresight to think about the implications of allowing people to take non-conforming residencies and build shanties throughout the City while collecting taxes, then all of a sudden you have neighborhoods popping up on farmland and we lose that farmland. The ordinances are there to protect the future of the City.

Mrs. Herrick replied there are no farmlands where you can have 50% of your income from the farm. Your spouse has to work for income and for health insurance. These are outdated rules that need to be revised. (Some comments from members of the audience that were inaudible.)

Eric reminded everyone that comments made away from the mike may not be heard on the recording. Chairperson Dixon invited the Herricks to the front if they wanted to further address the Board.

#### (45:41 on DVD)

Dan Curtis asked what is the City going to ask the Herricks to do to remedy the non-conformity of the property. He said he agreed with Mr. Desgrosseilliers when he stated the Board of Appeals' function is to listen to appeals and perhaps vote in favor of the resident to fix something that is wrong. If we can't do that then what are we doing here?

Chairperson Dixon replied that it far oversteps the bounds of the Board. He said we are here to enforce the Zoning Ordinance and people can appeal to us to make exceptions to the Zoning Ordinance under certain circumstances but this does not appear to be one of those circumstances. He said that at the risk of being accused of being rude again, the people who can change the Zoning Ordinances is City Council and hopes that message will filter back. He said he did not see this as a non-conforming issue but as an illegal use of the property and yes the ball was dropped for several years, the City collected taxes on this and kind of turned away for unknown reasons but the questions is, is it a use that's in any way conforming with the Zoning Ordinance. I don't think so, and that's why I voted the way that I did.

Dan Curtis said he agreed with everything Chairperson Dixon just said but did not know how this situation could be rectified. He applauds the courage of the Herricks for coming forth to right this and doesn't know how the Board can help other than direct them to the City Council. He said the City Council ought to take some steps to remedy this especially the Ag and R&P zoning rules and the areas that we are using in the City to isolate the farmland that is not going to be used for farming much longer.

#### (50:09 on DVD)

Lane Feldman said he was not at the original meeting and presentation and was quite confused as to how the City just looked away from John and Barbara Lander for 25 years. Now we have somebody who is trying to do the right thing and get permits but we are telling him he can't. He said his kids keep telling him they can't wait to leave here (Auburn) and we actually have

somebody (Herrick's family) who wants to move into our community and wants to spend money to make that better which would be good for our tax base. We have too many people leaving and not enough people coming in. I understand the law but as Mr. Desgrosseilliers said, we have to stand outside the sandbox.

Mr. Herrick asked Eric how many non-conforming lots existed in the Ag and Resource Protection Zone as we stand today. Eric replied he did not know the exact number but stated there was a difference between non-conforming lots which are lots that have existed since before we had the minimum lot size and then when we created the zone that required 10 acres they were allowed to continue to exist, even though they don't meet that standard. An illegal lot would be a lot created after the zoning standards are in place that doesn't meet the standards that were in place while it was created. In this case we have a non-conforming lot that his understanding is the lot itself has existed since before the 10 acre lot size so the lot is legally existing even though it doesn't conform to the 10 acre minimum. The residence was constructed without approvals from the City so that's not a non-conforming residence, it's an illegal residence. He explained had the house been constructed in 1930 and then we created the Ag Zone, we would have a process where the house could be replaced because the house would be legally created.

#### (53:00 on DVD)

Lane Feldman asked am I to assume there were never any building permits or occupancy permits taken out when this was originally built. Eric replied there were building permits issued for an agricultural herb drying shed along with plumbing and electrical permits but it was not approved as a home so the use was changed with no occupancy permit.

Marie Herrick said she had asked Eric at the original meeting what would happen if we can't build a building there. Are you going to make us tear it down? She said his comment was distressing to her when he replied; we will look at it and if it's going to involve too many funds from the City we will just let it go, we will not force them to tear it down if it's going to be a large cost to the City. She said that makes her believe that rules are broken all of the time in this City and that's disturbing to her.

Dan Herrick stated that there was a septic permit issued for a two bedroom residential ranch out there. Mrs. Herrick also added that there was a shed permit issued after the house had been built and the person's residence was listed as 240 Hatch Road where prior permits listed the person's residence as Damy Court. So she said, there are some really big problems that really need to be straightened out and you will see us at Superior Court.

Mr. Stockford, Esq., suggested that if the Board is inclined to consider the proposed Findings and that its Conclusions are in order then a motion to adopt those would be in order. He then read the following draft of the motion for consideration:

#### (56:05 on DVD)

A motion to adopt the proposed Findings, Conclusions and Order with the following revisions: In paragraph 5, substitute Section 60-146(1) for Section 60-173(1) and add the following phrase at the end: with the exception of accessory agricultural buildings and in paragraph 9, substitute Section 60-146(1) for Section 60-173(1).

Mr. Stockford, Esq., explained this was just changing the references to the ordinance in the draft Findings that refer to an old section number. (Inaudible remarks were made from members of the audience)

<u>A motion</u> was made by Elizabeth Shardlow and seconded by Courtney McDonough to approve the Findings as Mr. Stockford stated with the notations to the ordinances.

After a vote of 5-0-1, the motion carried. (Lane Feldman abstained)

<u>A motion</u> was made by Ken Sonagere and seconded by Elizabeth Shardlow Courtney McDonough to adjourn. After a vote of 6-0-0, the motion carried

#### **ADJOURNMENT**

## City of Auburn, Maine

"Maine's City of Opportunity"

### Office of Planning & Permitting

To:

Auburn Zoning Board of Appeals

From:

Eric J. Yousens, 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:

- 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 AWSD 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.

Mr. Eric Cousens
Deputy Director of Planning and Permitting
City of Auburn
60 Court Street, Suite 104
Auburn, ME 04210

October 14, 2014

Re: Melissa & Tobin White 64 Waterview Drive, Auburn

Dear Eric,

I am writing on behalf of Melissa and Tobin White, owners of 64 Waterview Drive on Taylor Pond, to request a variance to the requirements of Section 60-85 of the City of Auburn Zoning Ordinance. Specifically, the Whites would like a variance from the requirement that, "A nonconforming building or structure which is being rebuilt, remodeled, reconstructed or otherwise modified shall not have is structural members (frame, flooring, roof and exterior walls) above the existing foundation or frame supports removed by more than 50 percent."

The Whites, currently of Davis, CA, purchased this property in the spring of 2014 with the intention of either renovating the existing house on the property or rebuilding a new house in its place. Tobin White grew up in Auburn, spending summers on Taylor Pond, and wants to create a home in Maine so that his three children can grow up spending summers on the pond as he did. The parcel they purchased is 11,321 sf with roughly 111 feet of frontage on Taylor Pond. Roughly 50% of the parcel is located within the shoreland zone and is subject to shoreland standards.

Our firm was retained by the Whites this past summer to assist with the design and construction of a new energy efficient home for their family. Kaplan Thompson Architects is a design studio based in Portland, Maine and a leader in sustainable design in the Northeast. We specialize in durable, high efficiency building envelopes that minimize the need for expansive mechanical systems while taking full advantage of site conditions such as solar gain and the natural slope of the land.

#### **Existing Cottage**

The existing cottage is 1,440 sf on two floors and 61% of the footprint sits in front of the Shoreland Setback. We determined early in the design process that renovating the existing building would not be feasible for several reasons:

- 1. Existing structural members are drastically undersized by today's structural code standards,
- 2. The building smells strongly of mold. Tobin White and one of the Whites' children have been diagnosed with asthma (a second has an unofficial diagnosis), which can be triggered by mold, and
- 3. The existing first floor is located minimally above grade, which may continue to add to the accumulation of moisture, and consequently further mold growth in the existing house.

#### New Design

With this conclusion reached, Kaplan Thompson worked with the Whites to design a new house that would occupy the same footprint in front of the shoreland setback and a very similar footprint behind the shoreland setback. The design was made with the goal of being able to re-use 50% of the existing structural members as required by Section 60-85. In addition, the design is respectful of Section 60-984 of the Zoning Ordinance which allows an expansion of existing area and volume in front of the shoreland setback by up to 30%.

The new design used less area and volume in front of the setback than actually allowed by the ordinance. A calculation summary is included.

Following completion of the initial design, which met all shoreland criteria, you and I met on site with structural engineer Eric Dube of Casco Bay Engineering (CBE). Upon further examining the structural members of the building, Eric Dube confirmed that the existing structural members are dramatically undersized by current structural standards and inadequate for re-use. Eric also stressed the added cost the Whites would be taking on by going through extensive acrobatics to shore up the grossly undersized structural members while also providing adequate structural support for the new house. A more detailed letter from Eric is attached.

At this point, all parties involved agreed that retaining the existing structure, which is actually useless for the new building, would add hardship through expense to the Whites' project. We base our appeal on both the hardship caused by trying to maintain and work around 50% of the existing structure and on the client's commitment to improve environmental conditions at the site.

Therefore, the Whites are requesting a variance from the Board of Appeals to build essentially the same fully conforming house that they could otherwise build in place, 4'-0" back from the existing footprint and without reusing 50% of the existing structural members for the following reasons:

#### Hardship

- 1. The existing structural members are not feasible for use under current building codes. Re-use and the resulting necessary repair of the existing structure simply for its own sake will add burdensome costs and complexity to the project and will compromise the White's ability to yield a reasonable return on the property because of the extra investment required.
- 2. The need for this variance is due to the combination of this property's undersized structure and the potential presence of mold. Additionally, the variance is requested in exchange for improving the environmental conditions at the site.
- 3. Granting this variance will not alter the essential character of the locality. The new building will be located in the almost the exact same area as the existing building, and will meet the requirements for expanding the existing building with regards to all other aspects of the zoning requirements and relevant building codes. In fact, with the proposal to push the new house back from the pond by 4'-0", the house will be even closer to complying with the actual shoreland setback.
- 4. In this case, the hardship is caused by strict interpretation of the ordinance, which would add burdensome cost and complexity to the project. In addition, there is a concern about mold triggered allergens that could remain in portions of the existing framing and sheathing, and their affect on the health of the new occupants.

#### **Environmental Improvements**

- 1. As new property owners on Taylor Pond, the Whites would like to make efforts improve the environmental conditions of their site. They would like to move the new house footprint back approximately 4'-0" from the footprint of the existing house, making the new building more-conforming with regards to the shoreland setback and increasing the buffer area between the new house and the water. The 4'-0" distance has been determined to be the greatest amount reasonable for pushing the new house back, due to the presence of large pine trees on the road side and the desire to stay far enough away from the trees to not risk disturbing their roots or be too close to the path that a tree could fall on during severe weather. Additionally, there is the possibility of a septic tank being located between the existing house and the road. The exact location of the tank is currently under investigation.
- 2. The Whites propose creating a vegetated buffer in the 4'-0" area of land between the new house and the pond. The 4'-0" deep vegetated strip will be on the water side of the property, at all locations that are in front of the new house and decks.

- 3. The Whites will be following all recommended best practices to minimize soil disturbance and prevent construction runoff from reaching the pond.
- 4. The Whites have begun the process of participating in the Lake Smart Program run by the Maine Lakes Society. In consultation with Lake Smart Director Maggie Shannon, we will be looking at the Best Management Practices for capturing stormwater on the property before it reaches the pond. Strategies currently under review for inclusion in the final plan and site plan include:
  - Directing all roof runoff to underground filtration by means of a gutter with downspout leading to rain gardens or a continuous drip edge with subsurface French drain
  - Limiting and clearly defining recreational space on site
  - Selecting only native and native friendly plants for both the new buffer zone and other areas of the property
  - Creating clearly delineated walking paths with pervious and/or infiltration friendly materials

In summary, the Whites would appreciate the assistance of this Board in removing the 50% structure requirement from their new house, and will in turn look forward to making improvements to the site around their new home. Please let me know if you have questions or need additional information to aid in this appeal. Thank you for your time.

Sincerely,

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Robin Tannenbaum

Project Manager, LEED AP Kaplan Thompson Architects

Delsen Tannenbaum

r' · · · ·

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424 Fore St., Portland, ME 04101 Phone 207.842.2800 Fax 207.842.2828

October 9, 2014

Ms. Robin Tannenbaum Kaplan Thompson Architects 424 Fore Street Portland, ME 04101

Re:

White Residence 64 Waterview Drive Auburn, Maine

Project Number: 14-118

#### Dear Robin:

Casco Bay Engineering performed a site visit to observe existing building conditions on September 24, 2014. The property is located on the East shore of Taylor pond in Auburn, Maine. The existing building is a one-story structure, with a daylight crawl space on the West side of the building.

During our site visit we noticed that the buildings framing systems are grossly undersized for the spans and loads prescribed for this building. The first floor is comprised of 2x4 framing and the roof and second floor is comprised of 2x6 framing. In order for the owners to comply with the 50% existing framing requirement it will take a disproportionate amount of effort and costs as compared to a new code compliant structure. New columns will need to be added through the existing structure in order to support the required loads and new framing members will need to be added to the floor, wall and roof framing systems.

I also have a major concern with the existing mold issues in the existing framing members. There will be significant costs dealing with existing mold and air quality issues in the structure.

Please contact us if you have any additional questions or concerns.

Sincerely,

Eric Dube, P.E.

Casco Bay Engineering

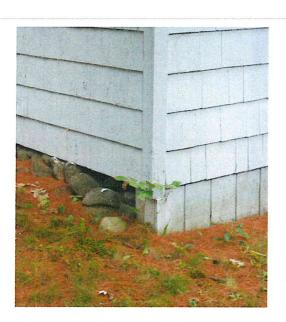




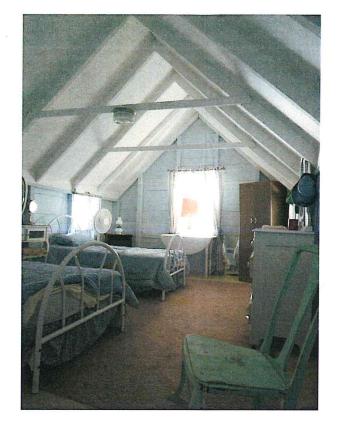


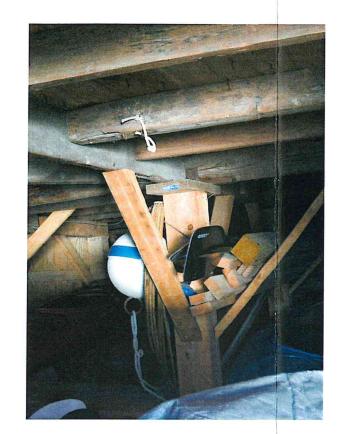








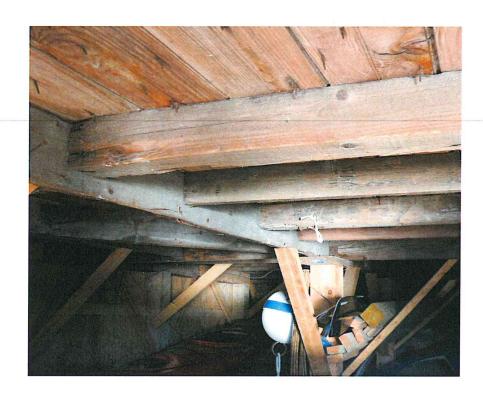






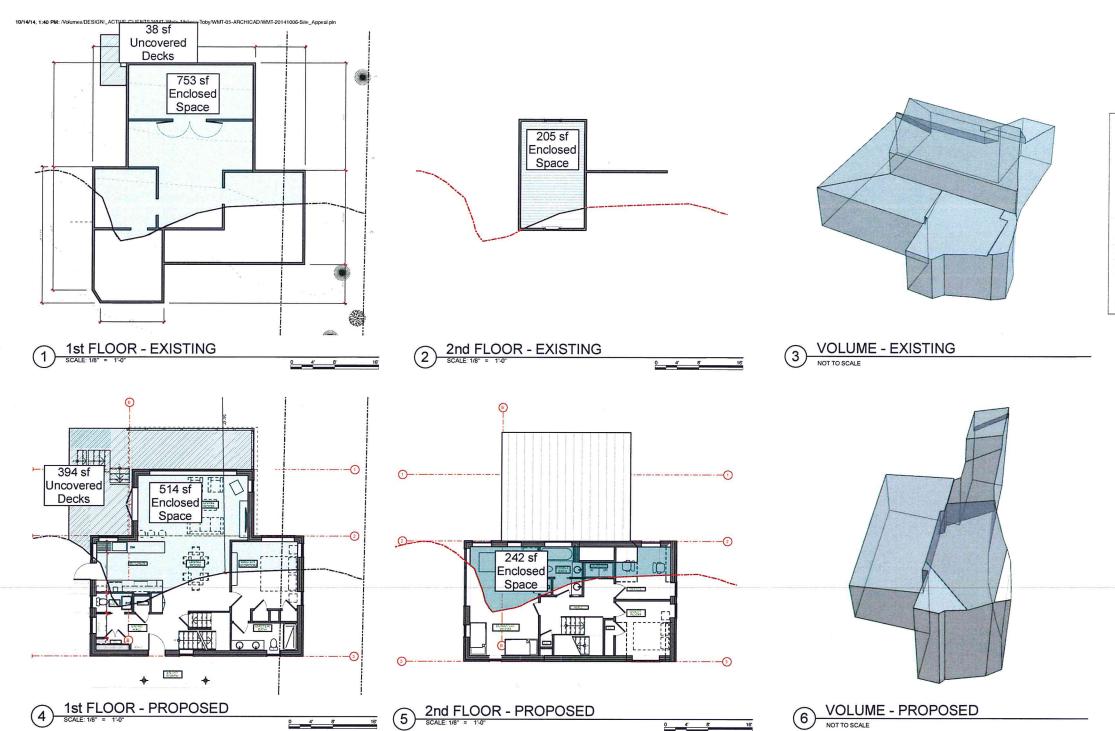








AUBURN, ME



PROPOSED FLOOR AREA & VOLUME WITHIN SHORELAND SETBACK

INCLUDES AREA TO THE INTERIOR OF FRAMING OF WALLS AND CEILING AND TO TOP OF STRUCTURE OF EXISTING FLOOR.

	AREA	VOLUME
Existing House & Decks in Shoreland Zone	996 sf	9,246 cu ft.
x30%	299 sf	2,774 cu ft.
Allowable Expansion in Shoreland Zone	1,295 sf	12,020 cu ft.
(existing + 30%)		
New House in Shoreland Zone	756 sf	9,273.8 cu ft.
New Deck in Shoreland Zone	394 sf	NA
Total New Area in Shoreland Zone	1,150 sf	NA
Difference	95 sf	2,747 cu ft.

1st FLOOR - PROPOSED

**VOLUME - PROPOSED** 

#### Notes :

- All Book and Page references as shown hereon are from the Androscoggin County Registry of Deeds.
- Lines shown and not labeled (bearings & distances) are illustrative only, they are based on tax maps and are not verified by this surveyor.
- 3. Area of property is 11,300 square feet more or less.
- Source deed Claire B. Landry to Tobin F. White and Melissa E. White by deed dated June 13, 2014, and recorded in said Registry in Book 8935, Page 280.
- 5. Property lies within the Urban Residential Zone (UR).
- Flood elevation as shown hereon (246) as shown on the Flood Insurance Rate Maps for Androscoggin County (Auburn), map number 23001C0307E, effective date of July 8,2013.
- 7. Property as shown on the City of Auburn Tax Map No. 266, Lot 16.

#### Bench Mark:

Bench Mark — Brass disk in ledge outcrop, southerly of Chicoine Avenue and westerly of Hotel road, disk stamped AU—HO—B 1979. On file at the Maine Department of Transportaion, Control Point Descriptions.

Elevation = 258.963 (NAVD88).

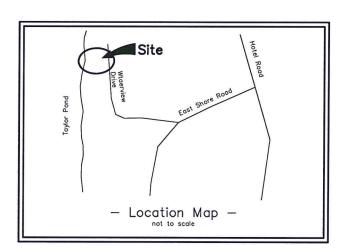
TBM #1 Mag Noil in Pole CMP #8.3 (as shown hereon).

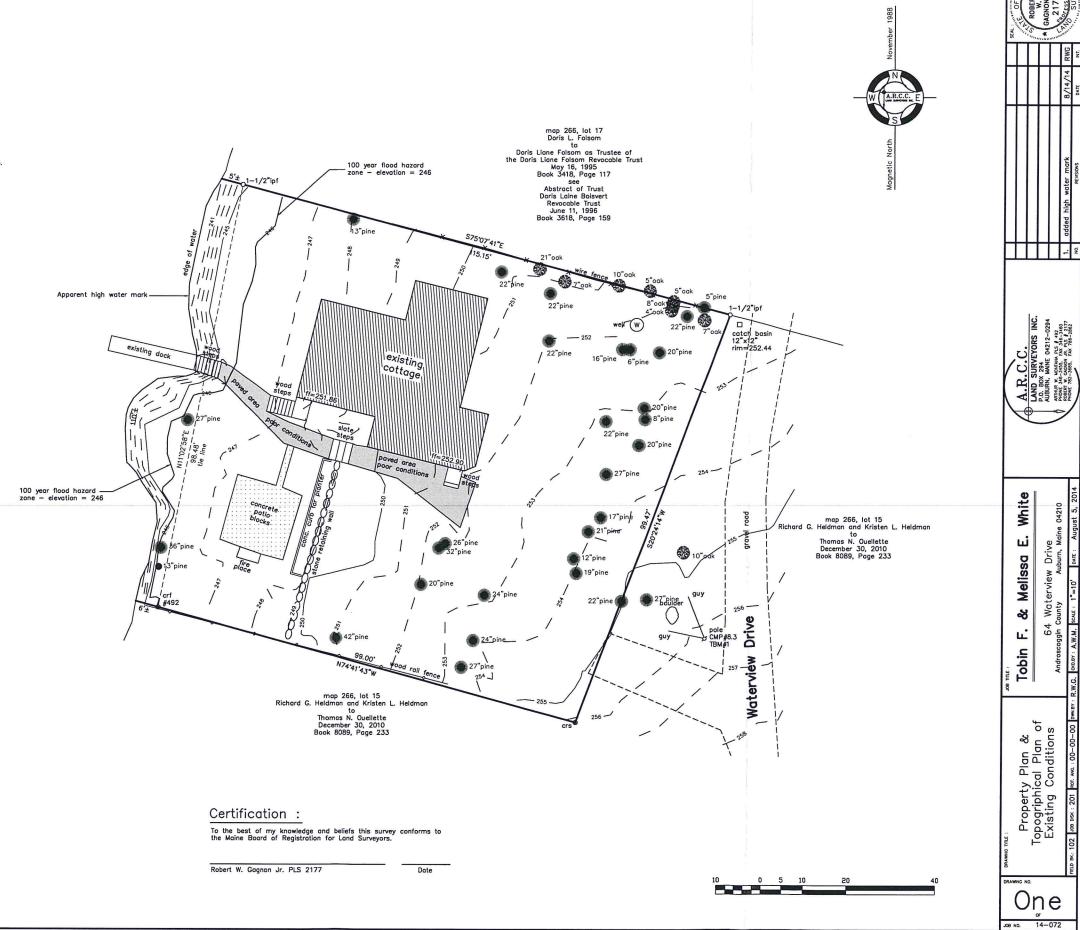
Elevation = 257.70 (NAVD88).

#### Legend:

iron pipe found

capped 3/4 inch rebar found I.D. #2177





## IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA

11,321 SF

(20% = 2,264 SF ALLOWED TO BE IMPERVIOUS)

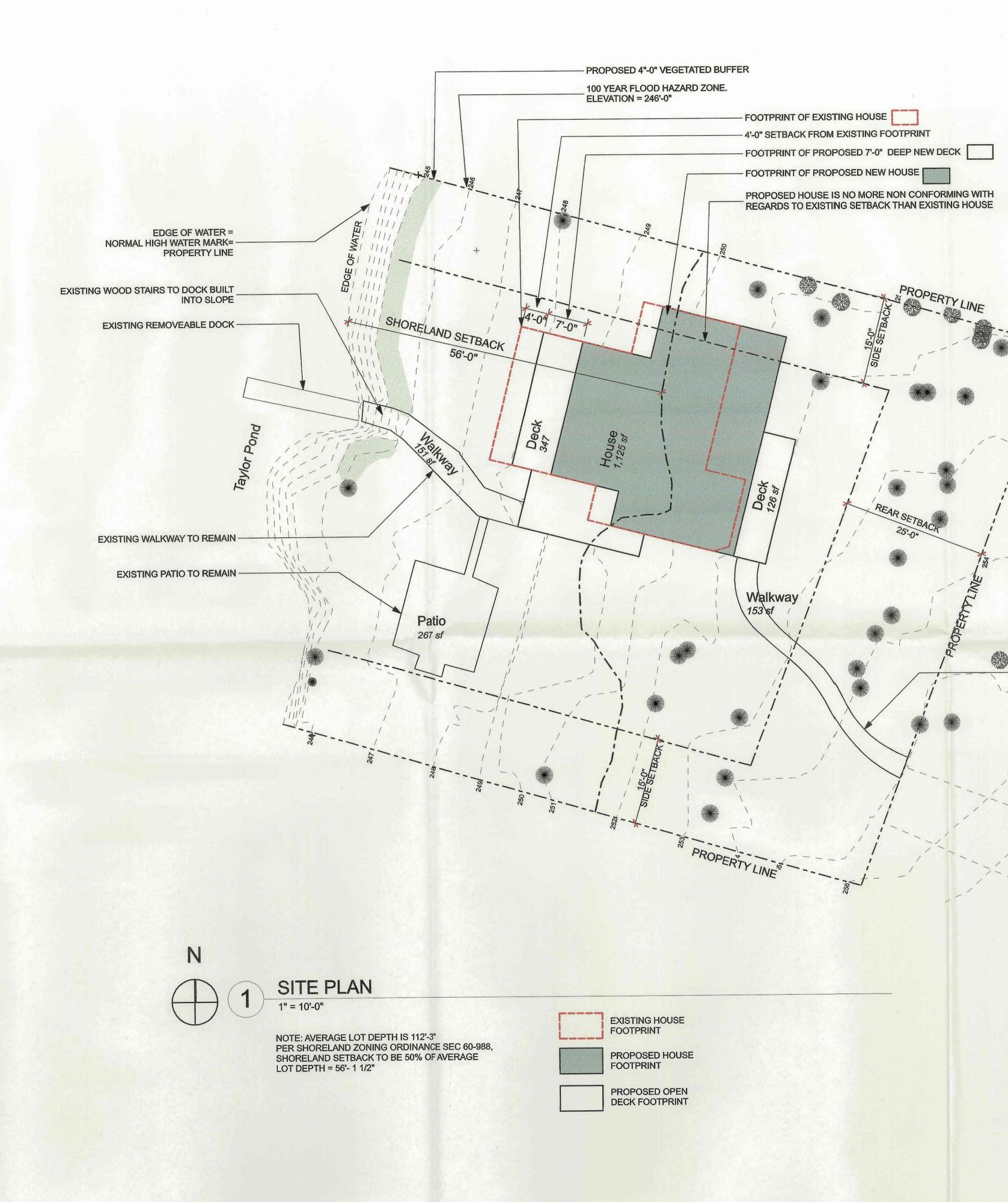
EXISTING BUILDING	1,232 SF
EXISTING UNCOVERED DECKS	53 SF
EXISTING PATIO	266 SF
EXISTING WALKWAYS	379 SF
EXISTING STONE WALL	53 SF
TOTAL EXISTING IMPERVIOUS	1,983 SF

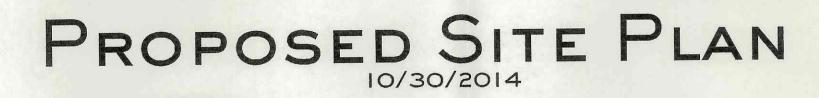
TOTAL EXISTING IMPERVIOUS 1,315 SF
IN SHORELAND ZONE

PROPOSED BUILDING	1,125 SF
PROPOSED UNCOVERED DECKS	473 SF
EXISTING PATIO	266 SF
EXISTING WALKWAYS RETAINED	151 SF
PROPOSED NEW WALKWAYS	153 SF
EXISTING STONE WALL RETAINED	53 SF
TOTAL PROPOSED IMPERVIOUS	2,221 SF

TOTAL PROPOSED IMPERVIOUS 1,205 SF IN SHORELAND ZONE

205 8

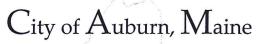






ParcelI D	Loc	Owner1	Owner2	BillingAddress	City	State	Zip
266-017	70 WATERVIEW DR	BOISVERT DORIS LIANE TR OF THE	DORIS LIANE BOISVERT REVOCABLE	70 WATERVIEW DR	AUBURN	ME	04210- 9022
266-016	64 WATERVIEW DR	LANDRY CLAIRE B		160 NORTH COMMON RD	WESTMINSTER	MA	01473
266-062	WATERVIEW DR	OUELLETTE THOMAS N		54 WATERVIEW DR	AUBURN	ME	04210
266-061	122 TAYWOOD RD	SASSEVILLE GAIL L		PO BOX 136	STANDISH	ME	04084
266-063	51 WATERVIEW DR	UPTON REBECCA L NEWMAN DAVID M	UPTON LEE O JR & STEPHANIE N	1016 S. INDIANA ST	GREENCASTLE	IN	46135

Updated new ownership and mailed letter to the Whites in California.



"Maine's City of Opportunity"

## Office of Planning & Development

October 15, 2014

To Whom It May Concern,

This letter is to inform you that the Auburn Zoning Board of Appeals will hold a Public Hearing on Thursday, October 30, 2014 at 6:00 pm in the Council Chambers of Auburn Hall, 60 Court Street, Auburn, Maine on the following:

1. Variance Appeal 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 and section 60-85. The proposal is in compliance with the standards for rehabilitation and less than 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.

Please do not hesitate to contact me at 333-6601, ext: 1154 if you would like additional information.

Sincerely,

Eric Cousens

Deputy Director of Planning & Development

**LEGAL NOTICE** City of Auburn The Auburn Appeals Board will hold a Public Hearing on Thursday, October 30, 2014 at 6:00 p.m. in the City Council Chambers of Auburn Hall, 60 Court Street, Auburn Maine.

requiring that 50% of the structural members

The following appeal will be heard: Variance Appeal of Melissa and Tobin White to reconstruct an existing structure at 64 Waterview Drive / PID # 266-016 without

remain in place pursuant to Chapter 60. Article XV, Division 4, section 60-1187 and section 60-85. The proposal is in compliance with the standards for rehabilitation and

less than 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.

Further information may be obtained from the Department of Planning and Development.

Deputy Director of Planning & Development

Eric I. Cousens