



# Auburn Zoning Board of Appeals

August 7, 2014

## Agenda

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

---

### **ROLL CALL**

### **PUBLIC HEARINGS:**

- 1) 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.
- 2) Variance Appeal of Peter & Susan Bunker to reconstruct an existing structure at 167 West Shore Road / PID # 255-004 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187. 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.
- 3) Variance Appeal of Frank C. Goudreau to reconstruct an existing structure at 63 Chicoine Avenue / PID # 237-007 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187. 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.
- 4) Variance Appeal of Roland and Stacie Brown to reconstruct an existing structure at 28 Sandy Beach Road / PID # 237-017 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187. 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**

# City of Auburn, Maine

*"Maine's City of Opportunity"*

Office of Planning & Development

## **Zoning Board of Appeals**

To: Zoning Board of Appeals

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

Date: August 7, 2014

Re: Administrative Appeal of Daniel and Marie Herrick (the Petitioner) to appeal the 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.

### I. AUTHORITY/JURISDICTION

The Board has jurisdiction to hear Administrative Appeals under Section 60-1186. Administrative appeals, Of the City of Auburn Ordinances. The section reads as follows:

(a) The board of appeals may hear appeals in the administration of the zoning chapter in order to determine if the building inspector or code enforcement officer erred in granting or denying a permit. An applicant who is given no decision on a permit request, or who is denied a permit may appeal.

(b) If the board of appeals finds that the building inspector or code enforcement officer acted in error, it should order the error to be corrected.

In this case the Petitioner will present the reasons that they believe that the permit should have been granted and City Staff will present the Ordinance and the reasons that the permit was denied. The Board will need to decide if building inspector or code enforcement officer acted in error. If the Board finds that City staff did not act in error, the appeal should be denied and the decision of the building inspector or code enforcement officer should be upheld. If the Board finds that City Staff did act in error then the appeal should be granted and the decision of the building inspector or code enforcement officer should be ordered by the Board to be corrected.

### II. PROPOSAL

The City of Auburn received an appeal from Daniel and Marie Herrick to appeal the 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. Staff has provided a number of documents from the file and included them with this report. The documents are combined into a page numbered pdf file and this report references the page number at the bottom left corner of the pages.

#### Property History Summary:

1. On 12/16/1991 John J. Lander applied for a building permit to construct an agriculture and equipment building at 240 Hatch Road and the permit was approved. Copy attached on Page 17-19. Attached to the application (page 20) was a letter from John Lander that states the following, "The building will be used to store agr. products and equipment, lime, fertilizers, also for drying of herbs".
2. On 5/6/1992 John J. Lander applied for a plumbing permit to install a subsurface wastewater disposal system for an "AGRICULTURAL BLDG." and the permit was approved. Copy attached on page 13-15.
3. On 11/24/1992 John J. Lander applied for a building permit for an addition to the agriculture and equipment building and the permit was approved.
4. On April 26, 1993 John J. Lander requested an amendment to the 11/24/1992 permit that indicated that he would change the structure to include a bedroom, living area and kitchen and the request was denied on April 29, 1993 (see attached letter on page 12).
5. In March of 2014 I received a phone call from a local realtor asking about the legal status of the home prior to listing it for sale. The inquiry prompted a review of the property file and it was clear that the building was converted to a home illegally after the denial of the April 26, 1993 request to amend the earlier permit for an agriculture and equipment building.
6. Later in March I received a phone call from Daniel Herrick asking about the legal status of the property at 240 Hatch Road as he believed "it was built without permits". Staff confirmed that the home was illegal and that the City could require that it be removed or the violation be corrected in some other way. Mr. Herrick informed me that he was considering purchasing the property because he raises both pigs and turkeys and the USDA requires separation between the two types of animals for disease related concerns. Mr. Herrick explained that the location was close to his home, could easily be converted into a turkey coop and asked if that would resolve the zoning violation. After agreeing that it would resolve the violation the conversation was ended and Mr. Herrick indicated that he may purchase the property.
7. On April 1, 2014 I sent a letter to the owner of Record, John Lander Jr. (now deceased), to remind him of the violation and recorded an affidavit and a copy of the letter and attachments in Book 8887, Page 272-Page 277 of the Androscoggin County Registry of Deeds to ensure that a buyer of the parcel would be aware of the violations. A copy is attached on page 10-16.
8. On April 19, 2014 Mr. and Mrs. Herrick purchased the property at 240 Hatch Road for \$9500.00 and on April 22, 2014 the deed and affidavit related to that purchase was recorded at the Androscoggin County Registry of Deeds in Book 8898, Pages 266-267. A copy of the deeds are attached on pages 28-29.

9. In June of 2014 the Petitioner applied for a building permit for a new single-family home at 240 Hatch Road and the permit was denied because single family homes are not permitted in the Agriculture and Resource Protection Zoning District.

The Agriculture and Resource Protection Zoning District (AG/RP) covers approximately 40% of the City and serves the following purpose:

***Sec. 60-144. Purpose.***

*The purposes of this district are to allow for conservation of natural resources and open space land, and to encourage agricultural, forestry, and certain types of recreational uses. It is declared to be in the public interest that these areas should be protected and conserved because of their natural, aesthetic and scenic value, the need to retain and preserve open space lands, their economic contribution to the city, and primarily because these areas are so remote from existing centers of development that any added uncontrolled growth could result in an economic burden on the city and its inhabitants. This section shall be construed so as to effectuate the purposes outline here and to prevent any attempt to establish uses which are inconsistent with these purposes or any attempt to evade the provisions of this division.*

As is the case with each City zoning district, the AG/RP zoning district has a list of Permitted uses and a list of Special Exception Uses. Permitted Uses can be approved at a staff level and Special Exception uses require a higher standard of review and, with few exceptions, can only be approved after a public hearing and vote of the Planning Board. Uses that are not listed in a particular district are not allowed. The AG/RP zoning district has directed growth to the central area of the City where services can be provided efficiently and has discouraged growth in the rural areas since the 1960's. The AG/RP zoning district was a very forward thinking growth control that came from the 1958 City Plan before urban sprawl was a popular planning term and has served as a model for other communities and current use tax programs. Below is an excerpt from Section 60-145 Use Regulation that limits dwellings to situations where they are accessory to a farming operation. Dwellings as a primary use of property and that are not accessory to farming are not permitted. The following sections also prescribe what *accessory* means and establish the 50% income requirement that has been in place for decades.

***Sec. 60-145. Use regulations.***

- (a) *Permitted uses. The following uses are permitted:*
  - (1) *One-family detached dwellings, including manufactured housing subject to all the design standards, except the siting requirements of section 60-173, as set forth in article XII of this chapter, accessory to farming operations subject to the following restrictions:*
    - a. *No certificate of occupancy shall be issued for any such farm residence until the barns, livestock pens, silos, or other such buildings or*



*structures which are to be erected in connection with the proposed agricultural use as shown on the plans and specifications presented to the municipal officer charged with enforcement are substantially completed.*

- b. In no case shall any farm residence constructed under the provisions of this section after the effective date of the amended ordinance from which this section is derived continue to be occupied as a residence if the principal agricultural use has been abandoned or reduced in scope below the minimum requirements as shown on the plans and specifications presented to the municipal officer charged with enforcement.*
- c. Any residence constructed under this article shall not be converted to nonfarm residential use except by permission of the planning board based upon a finding that the abandonment or reduction in such use resulted from causes beyond the control of the applicant and not from any intention to circumvent the requirements of this article.*

The terms Accessory and Farm are clearly defined in Section 60-2 of the Ordinance as follows:

*Accessory use means a subordinate use of land or building which is customarily incidental and subordinate to the principal building or to the principal use of the land and which is located on the same lot with the principal building or use.*

*Farm means any parcel of land containing more than ten acres which is used in the raising of agricultural products, livestock or poultry, or for dairying. The term "farm," under the Agricultural and Resource Protection District, shall be further defined as meeting the following criteria:*

*(1) At least 50 percent of the total annual income of the farm occupant and his spouse living in the farm residence will be derived from such uses; and*

*(2) At least ten acres of the farm will be devoted to the production by the occupant of field crops or to the grazing of the occupant's livestock. For purposes of this definition, the term "poultry" means no fewer than 100 fowl and the term "livestock" means no fewer than 20 cattle or other animals being raised for commercial purposes.*

The Petitioner has not provided any written information regarding farm income and has verbally admitted that he will not earn 50% of his household income from farming. Please refer to the opinion from the City Attorneys, Dan Stockford and Anne Torregrossa dated June 19, 2014 for additional advice (page 28). The property file is clear and Mr. John Landers letter (page 20) confirms that City Staff and the property owner were fully aware that a home could not be permitted on this property.

It is City Staff and the City Attorney's opinion that issuing the permit would violate the City Ordinance and the permit had to be denied.

The Petitioner will likely argue that because the previous owner violated the Ordinance that they too should be allowed to violate the ordinance again to build a new home on the property. The fact that someone gets away with a violation of zoning or other legal requirements once does not give them permanent exception to that requirement. Any argument that the petitioner should be able to construct a building for a use that is not permitted in the zoning district must be denied.

The Board should also be aware that the decision on this case could have far reaching implications for the City and the integrity of the AG/RP zoning district. If the Board finds that the appeal should be granted and the permit issued, there could be people illegally converting agricultural buildings to residential uses throughout the AG/RP zoning district and when they are caught, instead of being required to comply with the ordinance, they could simply apply for a permit and use or replace the illegal structure with a home.

### III. RECOMMENDATION.

Staff recommends that the Board consider the following findings:

1. The parcel at 240 Hatch Road is owned by Daniel and Marie Herrick and we have a copy of the deed from the Androscoggin County Registry of Deeds Book 8898, Page 266 as evidence of that fact.
2. The parcel at 240 Hatch Road (City PID # 213-006) is located in the Agriculture and Resource Protection Zoning District as shown on the City of Auburn Zoning Map.
3. The City Zoning Ordinance, Chapter 60, Section 60-173(1) requires a minimum of 10 acres of land for a building to be erected on lots in the AG/RP zoning district.
4. The City Zoning Ordinance, Chapter 60, Section 60-2 Defines Farm as any parcel of land containing more than ten acres which is used in the raising of agricultural products, livestock or poultry, or for dairying. The term "farm," under the Agricultural and Resource Protection District, shall be further defined as meeting the following criteria:
  - (1) At least 50 percent of the total annual income of the farm occupant and his spouse living in the farm residence will be derived from such uses; and
  - (2) At least ten acres of the farm will be devoted to the production by the occupant of field crops or to the grazing of the occupant's livestock. For purposes of this definition, the term "poultry" means no fewer than 100 fowl and the term "livestock" means no fewer than 20 cattle or other animals being raised for commercial purposes.
5. The parcel at 240 Hatch Road is approximately 5.45 acres in size based on City tax records and does not meet minimum lot size requirements of the zoning district.
6. The Petitioner has not demonstrated that he/she intends to meet the income requirements of the Ordinance or the requirement to devote at least 10 acres to the production of field crops or the grazing of livestock.

7. City of Auburn Ordinances, Chapter 60-Section 145. AG/RP District Use Regulations lists One-Family Detached Dwellings as a permitted use if they are accessory to a farming operation subject to some restrictions.
8. City of Auburn Ordinances, Chapter 60-Section 145. AG/RP District Use Regulations does not list One-Family Detached Dwellings as a permitted use by itself as a principal use and allowing the use would be in conflict with the purpose of the zoning district.
9. Issuance of a permit by Staff for uses that are not permitted in a zoning district would violate City Ordinances.
10. A violation of a City Ordinance does not give the property owner the ability to repeatedly violate City Ordinances.

Based on the above findings, the Board concludes that the Petitioner did not demonstrate that the permit was denied in error. City Staff followed the requirements of the ordinance and correctly denied the permit for a new single-family home that was not accessory to a farming operation and the decision of the building inspector and code enforcement officer is upheld.

Eric J. Cousens  
Deputy Director of Planning and Development

*Dan and Marie Herrick*  
**470 Hatch Road**  
**Auburn, ME 04210**

July 6, 2014

City of Auburn  
Office of Planning & Permitting  
60 Court Street, Suite 104  
Auburn, Me 04210

**ATTENTION: Eric Cousens and Mark Stambach**

Mr. Cousens and Mr. Stambach:

This is in response to your letter dated June 25, 2014 denying our building permit application to construct a single family home at 240 Hatch Road, Auburn ME.

At this time we are submitting this written petition to you requesting that an appeals hearing be scheduled with the Board of Appeals so that we may present our request to them for their consideration.

We have enclosed a check in the amount of \$152.82 which covers the cost of the filing fee of \$150.00 and letters to the abutters at a cost of \$ .94 per letter of which we have determined there are three (3) at a total cost of \$2.82.

Please notify us immediately if this amount does not agree with your calculations or if we are required to provide any additional information at this time.

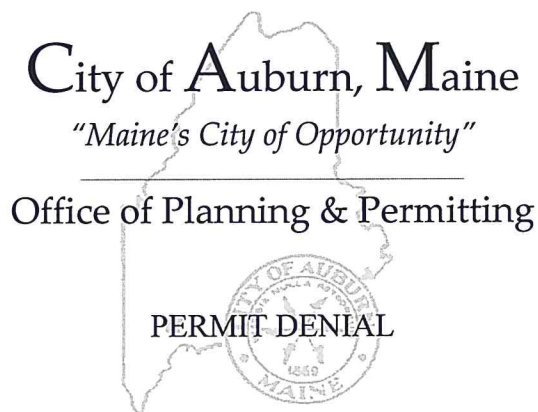
Thank you for your time. We will expect to hear from you in the immediate future with a date and time for our hearing.

Sincerely,

Daniel Herrick and Marie Herrick  
Property Owners

Cc: Clint Deschene, City Manager  
Howard Kroll, Assistant City Manager



June 25, 2014

Dan and Marie Herrick  
470 Hatch Road  
Auburn, Maine 04210

RE: 240 Hatch Road Permit Application

Mr. and Mrs. Herrick:

We are in receipt of your building permit application dated June 20, 2014 to construct a new single family home at 240 Hatch Road in Auburn. 240 Hatch Road (the "Property") is a six-acre parcel in the Agricultural Zone. In the Agricultural Zone, residential structures are only allowed if they are "accessory to farming operations." City of Auburn Code of Ordinances ("Auburn Code") § 60-145(a)(1). To meet the definition of a farm, a parcel must contain more than ten acres, and at least 50% of the annual household income must come from agricultural uses on the property per Auburn Code § 60-2(farm).

Current City staff was recently made aware that in 1993, the then-owner of the property constructed an unpermitted single family residence. At least 50% of the household income was not from farming operations, and the lot did not meet the minimum size to qualify as a farm in any event. Therefore, the residence violated the Auburn Code.

As discussed above, single-family residences are not allowed in the Agricultural Zone unless they are accessory to a farm use. The proposed residence would not be accessory to a farm use and therefore, is not allowed. For the above reasons the City cannot issue the requested permit and the application is denied. Please consider this letter as your notice that the permit has been denied based the above mentioned zoning chapter of the Auburn Code.

If you wish to dispute anything contained in this written decision to deny the permit, you may appeal to the Auburn Board of Appeals by submitting a written petition to the Director of Planning and Permitting, in accordance with Chapter 60, Section 60-1151 of the Auburn Code, within thirty (30) days of receipt of this letter requesting an appeals hearing be scheduled before the Board of Appeals. The hearing shall be held within thirty (30) days of the receipt of the petition for appeal and shall be heard as an administrative appeal. A one hundred and fifty dollar (\$150.00) filing fee plus \$.94 per required abutter notification is required at the receipt of the

60 Court Street • Suite 104 • Auburn, ME 04210  
(207) 333-6600 Voice • (207) 333-6601 Automated • (207) 333-6625 Fax  
[www.auburnmaine.org](http://www.auburnmaine.org)

written request for Appeal. Failure to appeal within thirty (30) days may deprive you of your ability to contest the contents of this denial in any subsequent legal proceedings.

If you have any questions regarding this matter please feel free to contact me at (207) 333-6601, Ext. 1154

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Cousens". The signature is fluid and cursive, with the first name "Eric" and last name "Cousens" clearly distinguishable.

Eric J. Cousens  
City Planner/Director of Planning and Permitting

A handwritten signature in black ink, appearing to read "Mark Stambach". The signature is more stylized and less legible than the one above, with some overlapping letters.

Mark Stambach  
Building Inspector





0820119 -

**City of Auburn**  
**Planning & Permitting Services Department**

**"WE WANT DEVELOPMENT!"**

- \*Appointments for permits are recommended.
- \*Please fill out any part which applies to project.
- \*Proper plans must accompany application as required.

**For Official Use Only**

Date \_\_\_\_\_  
Issued: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Zone: \_\_\_\_\_  
Map No.: \_\_\_\_\_  
Bldg. Code: \_\_\_\_\_  
Use Group: \_\_\_\_\_  
Type of Construction: \_\_\_\_\_  
Est. Cost: \_\_\_\_\_  
Fee: \_\_\_\_\_

**ADDRESS OF CONSTRUCTION:** 240 Hatch Road  
Owner: Dan & Marie Herrick Cell # 207-576-7802  
Address: 470 Hatch Rd  
CONTRACTOR: DJR Construction Cell # Same

**Project Description:** \_\_\_\_\_  
Building Dimensions: 28x36 Square Footage 1830  
Lot Size: \_\_\_\_\_  
Plans Submitted: \_\_\_\_\_  
Plan Number: \_\_\_\_\_  
Reviewed By: \_\_\_\_\_

Email Permit To: \_\_\_\_\_ Fax Permit To: \_\_\_\_\_

**Foundation:**

1. Type of Soil: See Septic Plan
2. Set Backs - Front: \_\_\_\_\_ Rear: \_\_\_\_\_ Side(s): \_\_\_\_\_
3. Footings Size: 18" to 24" 8" walls
4. Foundation Size: 28' x 36'
5. Slab Size: \_\_\_\_\_ Slab Thickness: \_\_\_\_\_ Heated? ☒
6. Other: Floor 4 to 4 1/2" Thick

**Floor:**

1. Sills Size: 2x6 PT \*\*Sills must be anchored
2. Carrying Beam Size: \_\_\_\_\_
3. Column Spacing: \_\_\_\_\_
4. Joist Size: Floor Joist 2x12 \*\*Spacing 16" O. C.
5. Floor Sheathing Type: 3/4 T&G Advantec Thickness: 3/4
6. Other Material: \_\_\_\_\_
7. Floor Coverings: Hardwood, Tile

**Exterior Walls:**

1. Studding Size: 2x6 Spacing: 16 OC
2. Corner Posts Size: 2x6 Block Built
3. No. of Doors: 2 30/6/8
4. Header Sizes: 2x8 Spans: Windows Doors
5. Bracing: YES: \_\_\_\_\_ NO: \_\_\_\_\_
6. Egress Windows: \_\_\_\_\_ Brand: \_\_\_\_\_ Model #: \_\_\_\_\_
7. Insulation Type: Batt Thickness: R-20
8. Sheathing Type: 1/2" Fir Thickness: \_\_\_\_\_
9. Siding Type: Vynle
10. Masonry Materials: Chimney
11. Metal Materials: \_\_\_\_\_
12. Other Materials: \_\_\_\_\_

**Interior Walls:**

1. Studding Size: 2x4 16 OC Spacing: 16 OC
2. Header Sizes: 2x8 Span(s): Windows Doors
3. Wall Covering Type: Sheet Rock
4. Fire Separation Wall if Required: \_\_\_\_\_
5. Other Materials: \_\_\_\_\_

**Ceilings:**

1. Ceiling Joist Size: \_\_\_\_\_
2. Type Ceilings: Rock
3. Insulation Type: Batt Thickness: R-38
4. Thickness: \_\_\_\_\_

**Roof:**

1. Truss or Rafter Size: 2x10 & 2x12 18' 22' span
2. Span: 16 OC
3. Sheathing Type: 5/8 Advantec T&C
4. Thickness: \_\_\_\_\_
5. Roof Covering Type: 30 year ark
6. Other: \_\_\_\_\_

*Ridge Pok  
2x12-*

Permit Number: \_\_\_\_\_

Address: \_\_\_\_\_

Owner: \_\_\_\_\_

Chimneys: 1. Type: Masonry

**Heating:**

1. Type of Fuel - check all that apply: Oil ☒ Propane \_\_\_\_\_ Natural Gas \_\_\_\_\_ Electric \_\_\_\_\_ Other Wood Boiler

**\*\*If Oil Fired Appliance is being installed - A Permit from the Fire Department must be obtained\*\***

2. Type of Heating Source & Number of Systems - check all that apply:

<input type="checkbox"/> FHA	# _____	<input type="checkbox"/> Unit Heaters	# _____
<input checked="" type="checkbox"/> FHW	# _____	<input type="checkbox"/> Warm & Cool	# _____
<input type="checkbox"/> Radiant Electric	# _____	<input type="checkbox"/> Solar	# _____
<input type="checkbox"/> Radiant Hot Water	# _____	<input type="checkbox"/> Complete HVAC	# _____
<input type="checkbox"/> Geothermal	# _____	<input type="checkbox"/> Package Units	# _____
<input type="checkbox"/> Electric Basebds	# _____	<input type="checkbox"/> Other _____	# _____

**Electrical:**

1. Service Entrance Size: already in place Wiring Required: \_\_\_\_\_

**Plumbing:**

1. Approved Soil Test if Required: YES: \_\_\_\_\_ NO: \_\_\_\_\_ City Sewer: already in place

2. Number of Tubs and Showers: \_\_\_\_\_ # of Flushes: \_\_\_\_\_ # of Lavatories: \_\_\_\_\_

**Swimming Pools:**

1. Type: \_\_\_\_\_ Pool Size: \_\_\_\_\_ Square Footage: \_\_\_\_\_

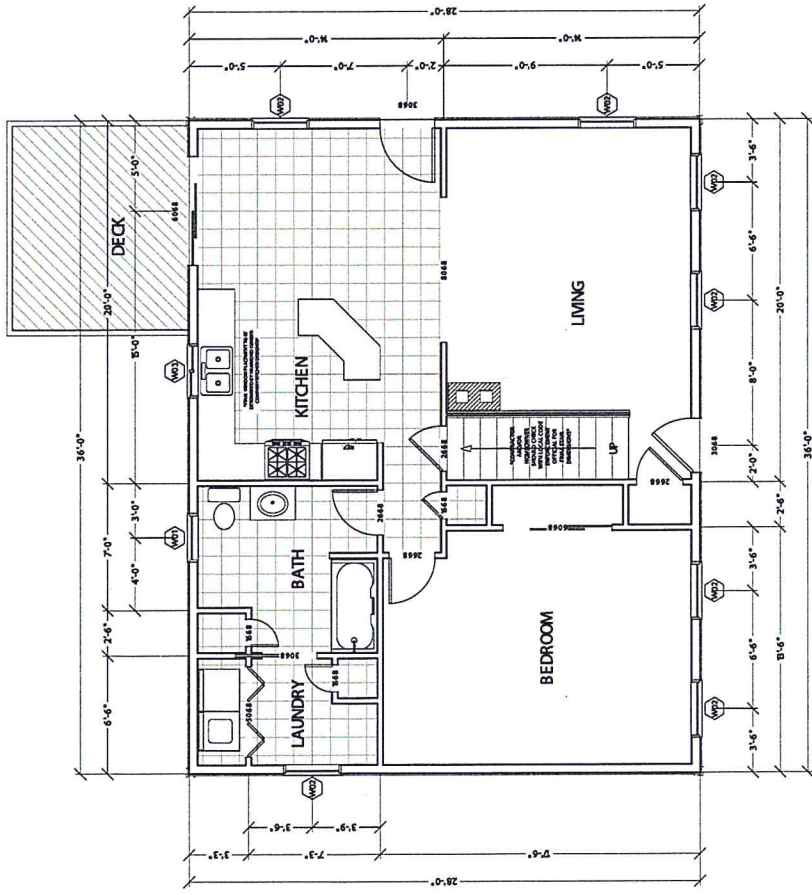
**Comments/Drawing:**

The permit holder, property owner, person or persons, firm or corporation accepting this permit agrees to comply with all the provisions of the statutes of Maine and the Ordinances of the City of Auburn regulating the construction, maintenance, use of buildings, structures and of the application on file in this department. Permit holder understands he/she is responsible for correct set backs from ALL PROPERTY LINES and from all buildings and structures.

Application Signature: \_\_\_\_\_

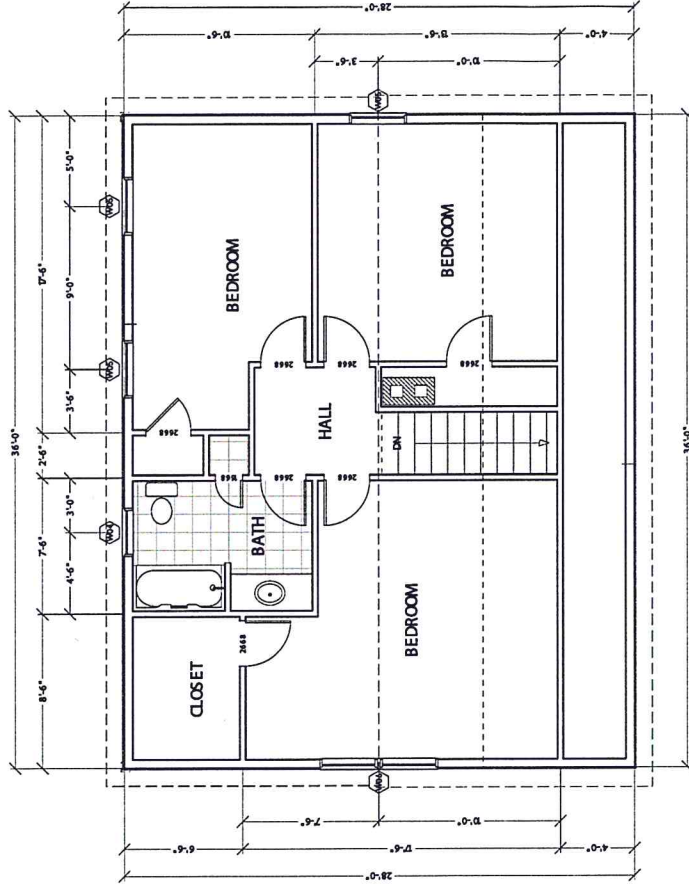
Donald R. deane





## FIRST FLOOR

LIVING AREA  
1007 sq ft



## SECOND FLOOR

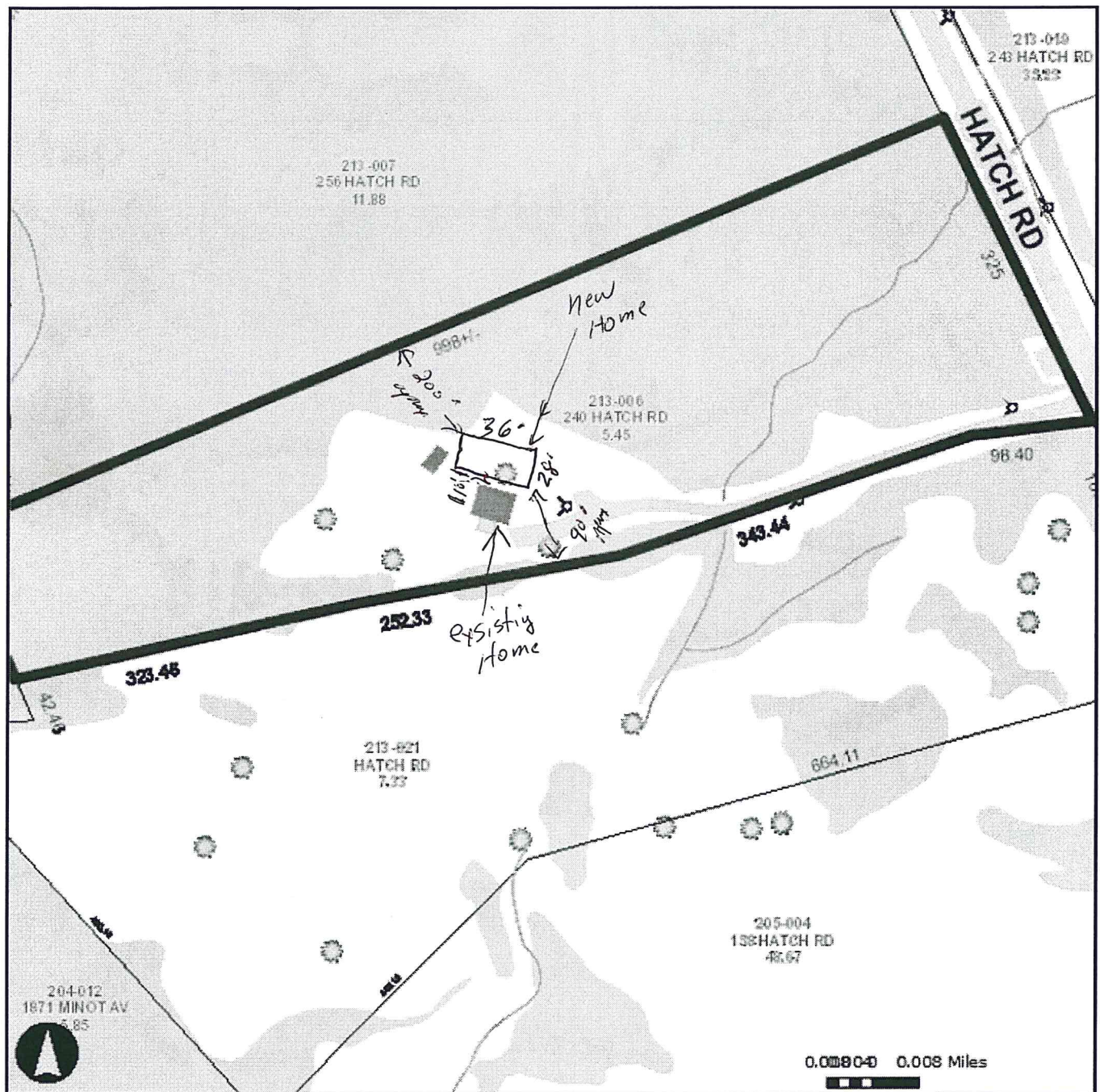
LIVING AREA  
826 sq ft

**Hammond**  
**Lumber Company**

**The Cape Cod**



# Map



Lands Drops off Behind existing Home approx. 5'  
 Intensions of Daylight Basement or possible garage





**AFFIDAVIT**

State of Maine, County of Androscoggin

I, Eric Cousens, do swear, under penalty of perjury the following:

1. I am employed by the City of Auburn, Maine as the Director of Planning and Permitting.
2. The City of Auburn Maintains property record files that include permits and violation notices.
3. The attached documents, related to the illegal use of property at 240 Hatch Road, are accurate and correct copies of records in the City of Auburn property file.
4. The property at 240 Hatch Road is or has been owned by John J. Lander Jr. as recorded in Androscoggin County Registry of Deeds, Book 842, Page 202 on 1/1/1961.

  
Eric Cousens, Director of Planning and Permitting

Sworn to and subscribed before me this 1<sup>st</sup> Day of April 2014

  
Name of Notary Public (*printed name*)

Notary Public, State of Maine

My commission expires: January 11, 2020

  
SEAL

# City of Auburn, Maine

*"Maine's City of Opportunity"*

## Office of Planning & Permitting

April 1, 2014

VIA FIRST CLASS MAIL

John Lander Jr.  
PO Box 1403  
Auburn Maine 04211-1403

RE: 240 Hatch Road Property, PID # 213-006

Dear Mr. Lander:

I am writing in regard to the above referenced property herein after referred to as "the Property." The Property is located in the the Agriculture and Resource Protection (AG/RP) zoning district as designated in the City of Auburn Zoning Ordinance (the "Ordinance") and single family homes are not permitted. It was recently brought to this offices attention that you have continued to occupy a structure illegally as a residence at the property. This letter is intended as a reminder that the building is permitted as an agricultural building and that any continued use as a residence is in violation of the Ordinance. It is also intended for recording at the registry of deeds as a public record. At this time the City is not inclined to undertake an active enforcement action or issue fines or citations but that could change at any time in the future. A copy of the original notice and permit is attached. Please feel free to contact this office with any questions or concerns about resolving this violation.

Sincerely,



Eric J. Cousens  
Director of Planning and permitting



# CITY OF AUBURN, MAINE

"MAINE'S CITY OF OPPORTUNITY"

45 SPRING STREET • AUBURN, MAINE 04210

DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING

DEVELOPMENT/REDEVELOPMENT  
PLANNING SECTIONS

ROLAND G. MILLER  
DIRECTOR

INSPECTIONS SECTION  
ECONOMIC DEVELOPMENT

April 29, 1993

John Lander  
41 Damy Dr, Apt 92  
Auburn ME 04210

Dear John:

The following letter is in regard to the request you made on April 26, 1993 to amend building permit #14939 issued on 11/24/92. The plan you submitted as part of the request indicates that the addition will be used as a bedroom and that other portions of the structure are proposed to accommodate bathroom, kitchen and living area. I presented the request to Jim McPhee for a land use review and he has responded that the intended use of the existing structure and the proposed addition are not permitted in the Agriculture and Resource Protection Zone. Please see the attached zoning review sheet for his comments. Based upon this information, I am notifying you that the above referenced building permit has not been amended to reflect your request, that the building permit for the agriculture and equipment building as shown on permit #14939 is still valid and that the property cannot be used as a residence.

I provide this information to you to ensure that you are fully aware of the limitations on development on your property. If you have any questions regarding the above issue, please do not hesitate to contact me or Jim McPhee.

Sincerely,

John Parsons  
Building/Housing Inspector

JP/cb  
Enc.



# SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Department of Human Services  
Division of Health Engineering  
(207)289-3826

## PROPERTY ADDRESS

Town Or Plantation: AUBURN  
Street Subdivision Lot #: 240 HATCH ROAD

## PROPERTY OWNERS NAME

Last: LANDER First: JOHN

Applicant Name:

Mailing Address of Owner/Applicant (If Different): 41 DAWY DRIVE APT. 92  
AUBURN, ME. 04210

## Owner/Applicant Statement

I certify that the information submitted is correct to the best of my knowledge and understand that any falsification is reason for the Local Plumbing Inspector to deny a Permit.

John Lander  
Signature of Owner/Applicant

5/6/92  
Date

## Caution: Inspection Required

I have inspected the installation authorized above and found it to be in compliance with the Subsurface Wastewater Disposal Rules.

Dwight Perkins  
Local Plumbing Inspector Signature

5/22/92  
Date Approved

## PERMIT INFORMATION

### THIS APPLICATION IS FOR:

1. ☒ NEW SYSTEM
2. ☐ REPLACEMENT SYSTEM
3. ☐ EXPANDED SYSTEM
4. ☐ EXPERIMENTAL SYSTEM

### SEASONAL CONVERSION

to be completed by the LPI

5. ☐ SYSTEM COMPLIES WITH RULES
6. ☐ CONNECTED TO SANITARY SEWER
7. ☐ SYSTEM INSTALLED - P# \_\_\_\_\_
8. ☐ SYSTEM DESIGN RECORDED AND ATTACHED

### IF REPLACEMENT SYSTEM:

YEAR FAILING SYSTEM INSTALLED \_\_\_\_\_

THE FAILING SYSTEM IS:

1. ☐ BED
2. ☐ CHAMBER
3. ☐ TRENCH
4. ☐ OTHER: \_\_\_\_\_

SIZE OF PROPERTY

6 AC ±

ZONING

AG. & NAT. RESOURCES

### THIS APPLICATION REQUIRES:

1. ☒ NO RULE VARIANCE
2. ☐ NEW SYSTEM VARIANCE  
Attach New System Variance Form
3. ☐ REPLACEMENT SYSTEM VARIANCE  
Attach Replacement System Variance Form
  - a. ☐ Requiring Local Plumbing Inspector Approval
  - b. ☐ Requires State and Local Plumbing Inspector Approval
4. ☐ MINIMUM LOT SIZE VARIANCE

### DISPOSAL SYSTEM TO SERVE:

1. ☐ SINGLE FAMILY DWELLING
2. ☐ MODULAR OR MOBILE HOME
3. ☐ MULTIPLE FAMILY DWELLING
4. ☒ OTHER AGRICULTURAL BLDG.

SPECIFY

### INSTALLATION IS:

#### COMPLETE SYSTEM

1. ☒ NON-ENGINEERED SYSTEM
2. ☐ PRIMITIVE SYSTEM  
(Includes Alternative Toilet)
3. ☐ ENGINEERED (+ 2000 gpd)

#### INDIVIDUALLY INSTALLED COMPONENTS:

4. ☐ TREATMENT TANK (ONLY)
5. ☐ HOLDING TANK \_\_\_\_\_ GAL
6. ☐ ALTERNATIVE TOILET (ONLY)
7. ☐ NON-ENGINEERED DISPOSAL AREA (ONLY)
8. ☐ ENGINEERED DISPOSAL AREA (ONLY)
9. ☐ SEPARATED LAUNDRY SYSTEM

### TYPE OF WATER SUPPLY

PLANNED WELL

## DESIGN DETAILS (SYSTEM LAYOUT SHOWN ON PAGE 3)

### TREATMENT TANK

1. ☒ SEPTIC: ☒ Regular  
☐ Low Profile
2. ☐ AEROBIC

SIZE: 1000 GALS.

### WATER CONSERVATION

1. ☒ NONE
2. ☐ LOW VOLUME TOILET
3. ☐ SEPARATED LAUNDRY SYSTEM
4. ☐ ALTERNATIVE TOILET

SPECIFY: \_\_\_\_\_

### PUMPING

1. ☒ NOT REQUIRED
2. ☐ MAY BE REQUIRED  
(DEPENDENT ON TREATMENT TANK LOCATION AND ELEVATION)
3. ☐ REQUIRED

DOSE: \_\_\_\_\_ GALS.

CRITERIA USED FOR DESIGN FLOW (BEDROOMS, SEATING, EMPLOYEES, WATER RECORDS, ETC.)

BASED ON APPROX.  
2 BEDROOM,  
MINIMUM  
FLOW USE

### SOIL CONDITIONS USED FOR DESIGN PURPOSES

PROFILE: 3 CONDITION: C

DEPTH TO LIMITING FACTOR:

27

### SIZE RATINGS USED FOR DESIGN PURPOSES

1. ☐ SMALL
2. ☐ MEDIUM
3. ☒ MEDIUM-LARGE
4. ☐ LARGE
5. ☐ EXTRA LARGE

### DISPOSAL AREA TYPE/SIZE

1. ☒ BED 600 Sq. Ft.
2. ☐ CHAMBER \_\_\_\_\_ Sq. Ft.  
☐ REGULAR ☐ H-20
3. ☐ TRENCH \_\_\_\_\_ Linear Ft.
4. ☐ OTHER: \_\_\_\_\_

DESIGN FLOW:

180

(GALLONS/DAY)

## SITE EVALUATOR STATEMENT

On 5-1-92 (date) I conducted a site evaluation for this project and certify that the data reported is accurate. The system I propose is in accordance with the Subsurface Wastewater Disposal Rules.

Thomas D. Taylor  
Site Evaluator Signature

SE#

217

Date

5-1-92

13  
(Local Plumbing Inspector's Signature if permit is for Seasonal Conversion.)



Department of Human Services  
Division of Health Engineering

AUBURN

Street, Road, Subdivision

240 HATCH ROAD

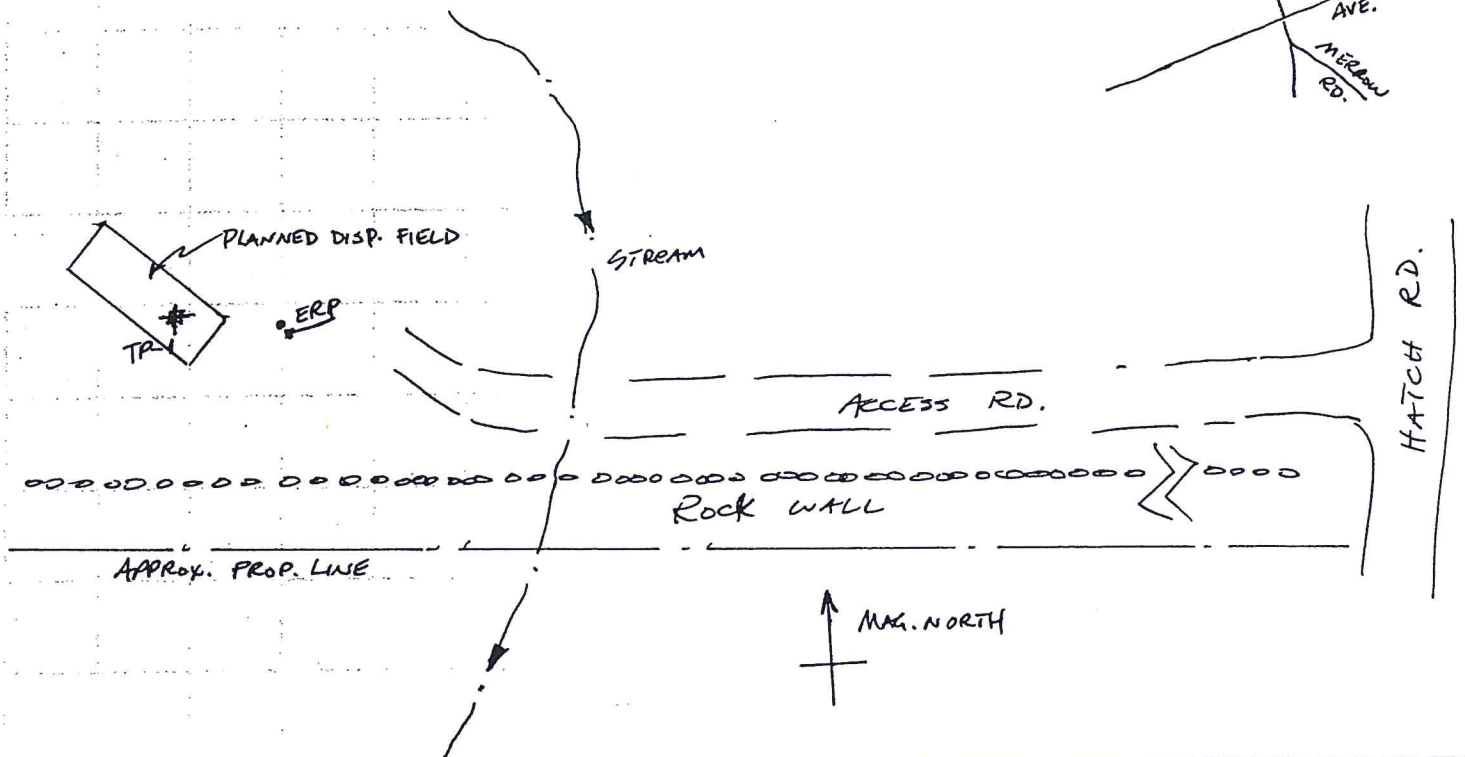
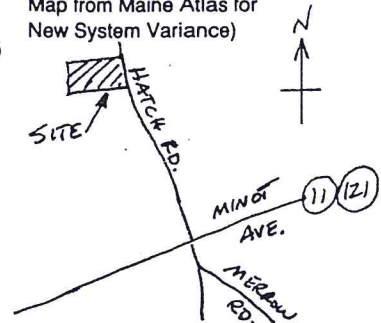
Owners Name

JOHN LANDER

## SITE PLAN

Scale 1" = 50 Ft.  
(NOT TO SCALE)

SITE LOCATION PLAN (Attach  
Map from Maine Atlas for  
New System Variance)



(Location of Observation Holes Shown Above)

Observation Hole \_\_\_\_\_ ☐ Test Pit ☐ Boring

\_\_\_\_\_ " Depth of Organic Horizon Above Mineral Soil

	Texture	Consistency	Color	Mottling
0				
6				
10				
15				
20				
30				
40				
50				

Soil	Classification	Slope	Limiting Factor	<input type="checkbox"/> Ground Water
Profile	Condition	_____ %	_____	<input type="checkbox"/> Restrictive Layer
				<input type="checkbox"/> Bedrock

14  
Site Evaluator Signature

217  
SE#

5-1-92  
Date



# SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Department of Human Services  
Division of Health Engineering

Town, City, Plantation

AUBURN

Street, Road, Subdivision

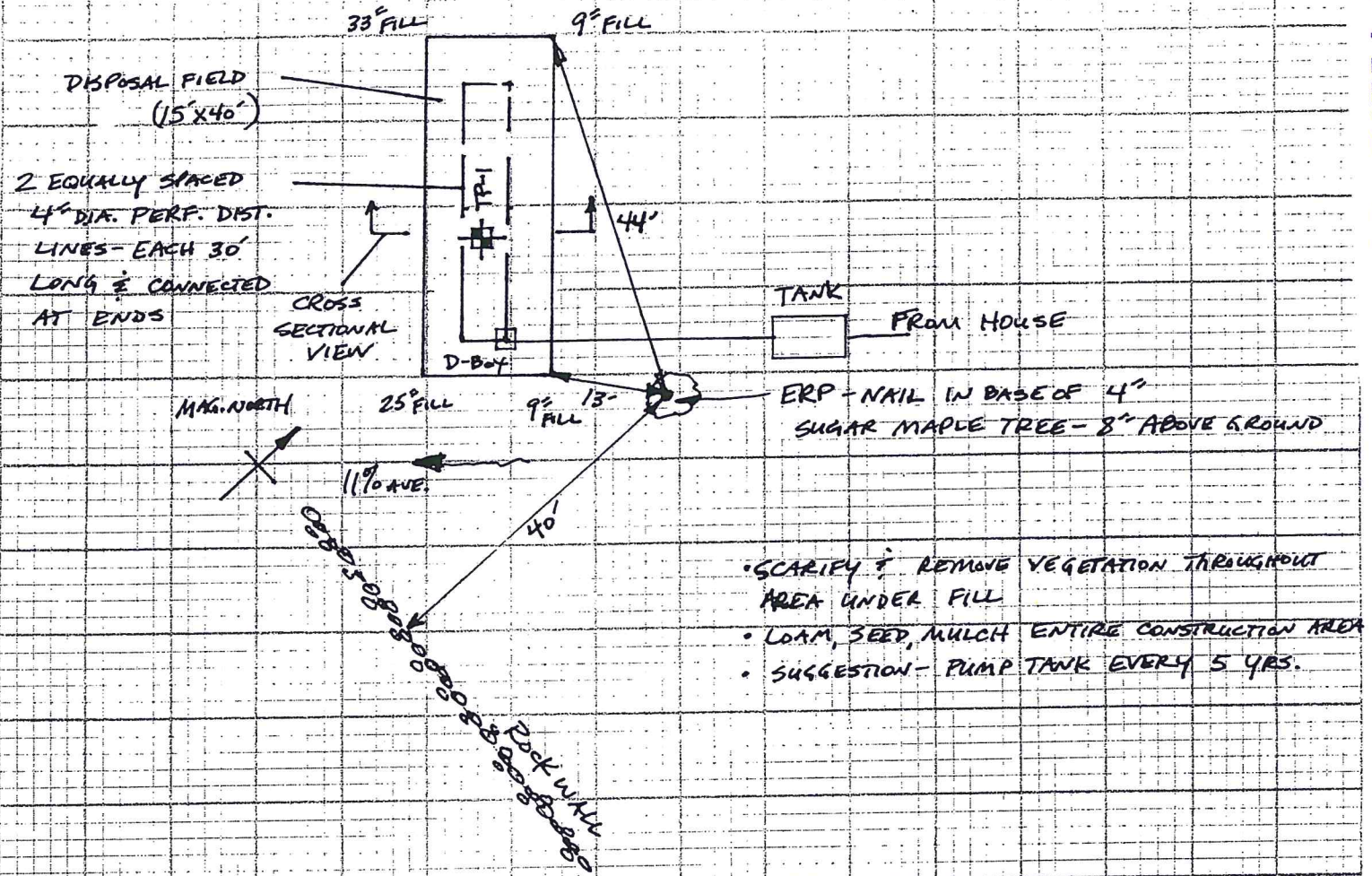
240 HATCH ROAD

Owners Name

JOHN LANDER

## SUBSURFACE WASTEWATER DISPOSAL PLAN

Scale 1" = 20 Ft.



### FILL REQUIREMENTS

Depth of Fill (Upslope)

9"

Depth of Fill (Downslope) AVE. of

29"

### CONSTRUCTION ELEVATIONS

Reference Elevation is

ASSUMED 0"

Bottom of Disposal Area

-53"

Top of Distribution Lines or Chambers

-42"

### ELEVATION REFERENCE POINT ERP LOCATION & DESCRIPTION

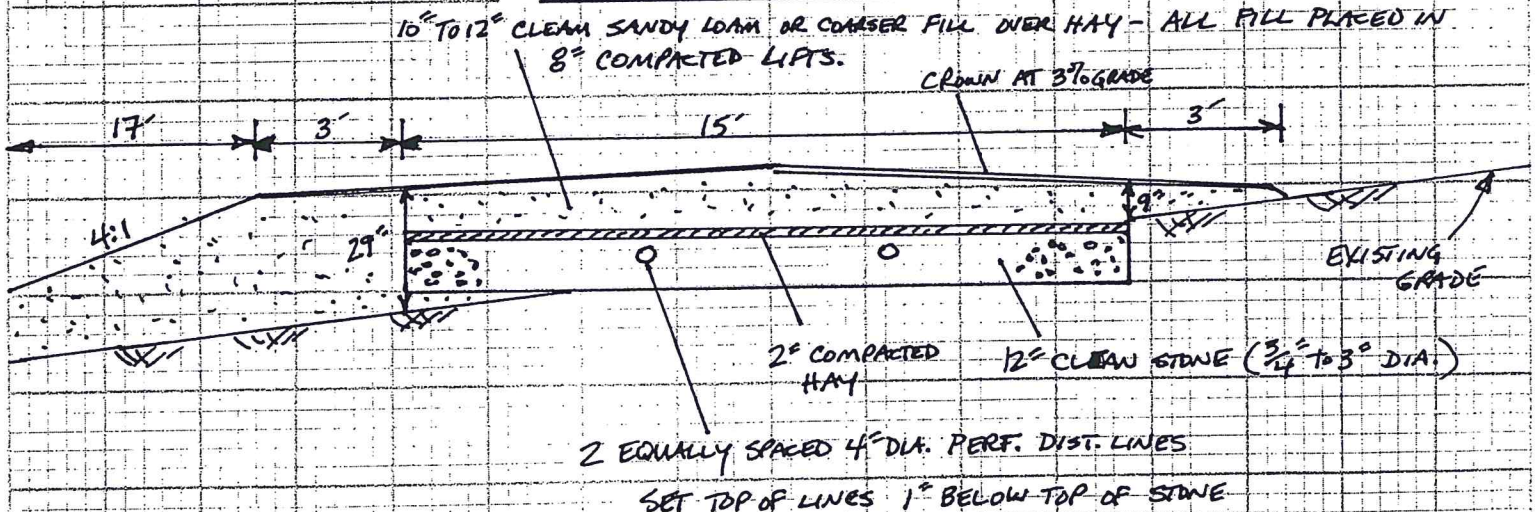
NAIL IN TREE - SEE ERP ABOVE

### DISPOSAL AREA CROSS SECTION WITH AVERAGE FILL DEPTHS & EXTENSIONS

Scale:

Vertical: 1 inch = 4 Ft.

Horizontal: 1 inch = 4 Ft.



Thomas D. Kugler

City Engineer Signature

217

SE#

5-1-92

Date



12/16/91

**City Of Auburn**  
**Community Development Department**  
**Building Inspection Division**

Appointments for permits are recommended.  
 Please fill out any part which applies to job.  
 Proper plans must accompany application as required.

**For Official Use Only**

Date: 12/16/91  
 Telephone: 798-6310  
 Ward: 3  
 Zone: AG  
 Map No.: 3-80A  
 Bldg Code: BOCA  
 Use Group: AG-STORAGE  
 Type of Construction: 5-B  
 Time Limit: 1 YEAR  
 Estimated Cost: 5000.-  
 Fee: 39.-

Permit Number 14458

5,000

Owner: John J. Lander  
 Address: 41 Denny Dr. apt 92 Auburn, Maine  
 ADDRESS OF CONSTRUCTION: 240 Hatch Rd

CONTRACTOR: self

Plans Submitted: \_\_\_\_\_  
 Plan Number: \_\_\_\_\_

Project Description: AGRICULTURE - Equipment storage shed 14' x 32'

Building Dimensions: 24' x 32' Square Footage: 808 Lot Size: 6-A

(5-15-92 24 x 36)  
 Foundation: CHANGE

1. Type of Soil: Loam y  
 2. Set Backs-Front: 57'5" Rear: 45'5" Sides (s): 250' x 50'  
 3. Footings Size: GRANITE  
 4. Foundation Size: CONCRETE BLOCK  
 5. Other: \_\_\_\_\_

**Floor:**

1. Sills Size: \_\_\_\_\_ Sills must be anchored.  
 2. Girder Size: 3-2x10  
 3. Lally Column Spacing: \_\_\_\_\_  
 4. Joists Size: 2x10 12 SPAN Spacing 16" O.C.  
 5. Floor Sheathing Type: Plywood + boards Size: 5/8" 4x8"  
 6. Other Material: \_\_\_\_\_

**Exterior Walls:**

1. Studding Size: 2x6 Spacing: 16" OC  
 2. No. Windows: 6  
 3. No. Doors: 2 passage door  
 4. Header Sizes: 2x10 Span (s): \_\_\_\_\_  
 5. Bracing: Yes: ☒ No: ☐  
 6. Corner Posts Size: \_\_\_\_\_  
 7. Insulation Type: \_\_\_\_\_ Size: \_\_\_\_\_  
 8. Sheathing Type: TPX 1-1/1 Size: 5/8 4x8  
 9. Siding Type: \_\_\_\_\_  
 10. Masonry Materials: \_\_\_\_\_  
 11. Metal Materials: \_\_\_\_\_  
 12. Other Materials: \_\_\_\_\_

**Interior Walls**

1. Studding Size: 2x4 Spacing: \_\_\_\_\_  
 2. Header Sizes: \_\_\_\_\_ Span (s): \_\_\_\_\_  
 3. Wall Covering Type: \_\_\_\_\_  
 4. Fire Separation Wall if required: \_\_\_\_\_  
 5. Other Materials: \_\_\_\_\_

**Ceiling:** NONE

1. Ceiling Joists Size: \_\_\_\_\_ 3. Insulation Type: \_\_\_\_\_ Size: \_\_\_\_\_  
 2. Type Ceilings: \_\_\_\_\_

**Roof:**

1. Truss or Rafter Size: 2x8 x 2x6 Span: 16'  
 2. Sheathing Type: Plywood Size: 5/8 4x8  
 3. Roof Covering Type: Asphalt shingles  
 4. Other: \_\_\_\_\_

ANDROSCOGGIN COUNTY  
 TINA M CHOUINARD  
 REGISTER OF DEEDS

Building Inspection Record - City of Auburn, Maine

Owner: Lander John J.  
240 Hatch Rd - Map # 3-80A

11/12/182-NF-COMPLETED



City Of Auburn  
Community Development Department  
Building Inspection Division

For Official Use Only

Date: 12/16/91

Telephone: 795-6310

Ward: 3

Zone: AG

Map No.: 3-80A

Bldg Code: BOCA

Use Group: AG-STORAGE

Type of Construction: 5-B

Time Limit: 1 YEAR

Estimated Cost: 5000.-

Fee: 39.-

Appointments for permits are recommended.  
Please fill out any part which applies to job.  
Proper plans must accompany application as required.

Owner: John J. Lander

Address: 44 Denny Dr. Apt 92 Auburn, Maine

ADDRESS OF CONSTRUCTION: 240 Hatch Rd

CONTRACTOR: self

Plans Submitted: \_\_\_\_\_

Plan Number: \_\_\_\_\_

Project Description: AGRICULTURE EQUIPMENT STORAGE PREVIOUS TO 14' x 32'

Building Dimensions: 24' x 32' Square Footage: 800 Lot Size: 6-A

Foundation: CHANGE (5-15-92 24' x 36') 38.40 10.00 39 -

1. Type of Soil: LOAMY -
2. Set Backs-Front: 5' 5" Rear: 4' 5" Sides (s): 25' 0" x 50' 0"
3. Footings Size: GRANITE
4. Foundation Size: CONCRETE BLOCK
5. Other: \_\_\_\_\_

Floor:

1. Sills Size: \_\_\_\_\_ Sills must be anchored.
2. Girder Size: 3 - 2x10
3. Lally Column Spacing: \_\_\_\_\_
4. Joists Size: 2x10 12 SPAN Spacing 16" O.C.
5. Floor Sheathing Type: Plywood + Boards Size: 5/8" 4x8"
6. Other Material: \_\_\_\_\_

Exterior Walls:

1. Studding Size: 2x6 Spacing: 16" OC
2. No. Windows: 6
3. No. Doors: 2 Passage door
4. Header Sizes: 2x10 Span (s): \_\_\_\_\_
5. Bracing: Yes: ☒ No: ☐
6. Corner Posts Size: \_\_\_\_\_
7. Insulation Type: \_\_\_\_\_ Size: \_\_\_\_\_
8. Sheathing Type: T&G 1-1/2" Size: 5/8 4x8
9. Siding Type: \_\_\_\_\_
10. Masonry Materials: \_\_\_\_\_
11. Metal Materials: \_\_\_\_\_
12. Other Materials: \_\_\_\_\_

Interior Walls

1. Studding Size: 2x4 Spacing: \_\_\_\_\_
2. Header Sizes: \_\_\_\_\_ Span (s): \_\_\_\_\_
3. Wall Covering Type: \_\_\_\_\_
4. Fire Separation Wall if required: \_\_\_\_\_
5. Other Materials: \_\_\_\_\_

Ceiling: None

1. Ceiling Joists Size: \_\_\_\_\_
2. Type Ceilings: \_\_\_\_\_
3. Insulation Type: \_\_\_\_\_ Size: \_\_\_\_\_

Roof:

1. Truss or Rafter Size: 2x8 + 2x6 Span: 16'
2. Sheathing Type: Plywood Size: 5/8 4x8
3. Roof Covering Type: Asphalt Shingles
4. Other: \_\_\_\_\_

11/12/92 - NF - COMPLETED

Permit Number 14458  
Building Inspection Record - City of Auburn, Maine

Owner: Lander John J.  
240 Hatch Rd - Map # 3-80A



**Chimneys:**1. Type: 1 Metal**Heating:**1. Type of Heat: Wood + oil**Electrical:**1. Service Entrance Size: 100 AMP Wiring Required: \_\_\_\_\_**Plumbing:** NONE1. Approved soil test if required: Yes: ☒ No: \_\_\_\_\_ City Sewer: NO  
2. No. of Tubs or showers: \_\_\_\_\_ No. of flushes: \_\_\_\_\_ No. of Lavatories: \_\_\_\_\_**Swimming Pools:**

1. Type: \_\_\_\_\_ Pool Size: \_\_\_\_\_ Square Footage: \_\_\_\_\_

**Comments:** STORAGE BLDG TO BE PLACED ON WOOD PLATFORM1/14/92-NF- lot is cleared, no other work done yet,4/17/92-NF- no change6/23/92-NF- job has been abandoned. Owner will call us to  
revise his plan to be a small storage shed, possibly under  
120 sq. ft.7/28/92-NF- Owner does not want to abandon project  
however there still is no work done other than clearing lot,9/21/92- 14'x35' deck in place on pt. beams  
floor frame O.K. for shed11/12/92-NF- Const as a utility bldg is complete, permit  
has been revised several times and is now a 14'x32'  
shed on wood floor on cinder blocks.

The permit holder, property owner, person or persons, firm or corporation accepting this permit agrees to comply with all the provisions of the statutes of Maine and of the Ordinances of the City of Auburn regulating the construction, maintenance, use of the buildings, structures and of the application on file in this department.

Applicant Signature

John J. Lander

DISPLAY THIS CARD ON PRINCIPLE FRONTAGE OF WORK

CITY OF AUBURN  
COMMUNITY DEVELOPMENT DEPARTMENT  
BUILDING INSPECTION DIVISION  
NO.

# BUILDING PERMIT

This is to certify that *Robert W. Sanders*  
has permission to *Place driveway behind & equipment storage shed*  
at *290 Alabach Rd.*  
provided that the person or persons, firm or corporation accepting this permit shall comply with all the provisions of the Statutes of Maine and of the Ordinances of the City of Auburn regulating the construction, maintenance and use of buildings and structures, and of the application on file in this department.

Date *12-16-91*  
Work must be started within *3* months  
and completed by *12-16-92*  
.....  
Set Backs must be at least  
Front *2.5'* Rear *2.5'* Side *7.5'*.....

# B

ZONE *AG*  
MAP # *3-80*  
.....

*William J. Parsons*  
INSPECTOR OF BUILDINGS

PENALTY FOR REMOVING THIS CARD

CMVTL-3M-10/87



Dec. 12, 1991

James P. McPhee  
Code Enforcement  
City of Auburn.  
Community Development Dept.  
Building Inspection Div.

This letter is being written at the request  
of James P. McPhee in reference to the  
proposed use of a Agr. & Equip Storage Bldg.  
to be located on lot 3-80 Hatch Road Aub. Me.

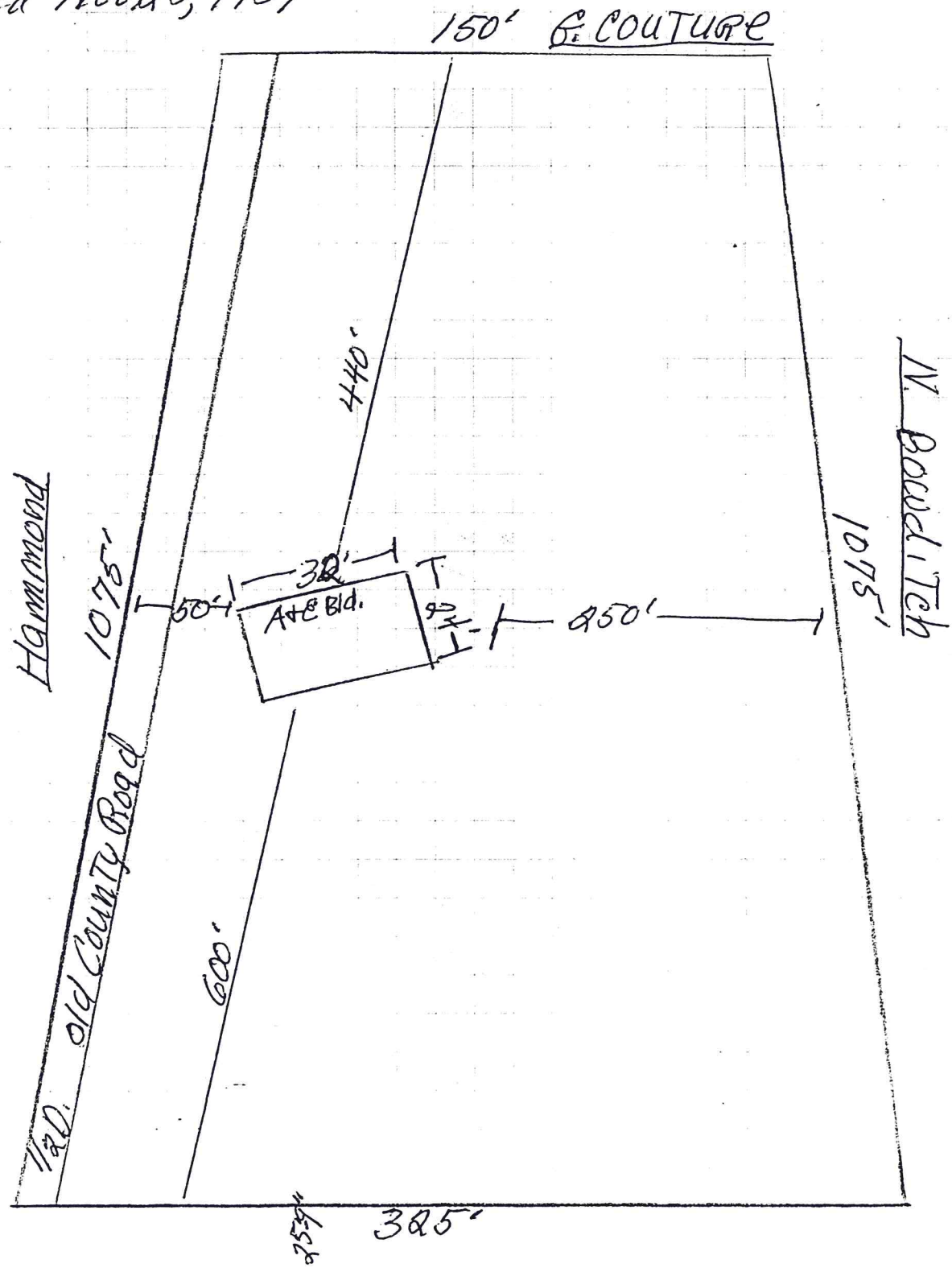
The building will be used to store Agr. Products  
and Equipment, lime, Fertilizers, also for drying of  
herbs. Any unused space will be used for storing  
personal items.

owner  
John J. Lander

John J. Lander - owner  
240 Hatch Rd. - Location  
Auburn, Maine

John J Lander  
41 Damsy Dr. Apt. 92  
Auburn, Maine 04210  
995-6310

Reg Deeds Andro County  
Book 842 Pg 202  
Purchased NOV 25, 1959



Hatch Road → 352° North



ZONING APPROVAL OR DISAPPROVAL

Date 12-2-91 Tax Map # 3-80

Address: HATCH RD. Owner: JOHN LANDER

Zoning District: AG+RP Proposed Use: AGR. + EQUIPMENT STORAGE BLDG

Comments: This building is allowed pursuant to 3.31.B.1.b. - Principle use of property is the growing of herbs.

Required Setbacks: Front 25 Rear 25' Side 15'

Comments: \_\_\_\_\_

Flood Plain Zone: Yes \_\_\_\_\_ No X Flood Map # \_\_\_\_\_

Comments: \_\_\_\_\_

Parking: Acceptable X Unacceptable \_\_\_\_\_ # of required spaces 0

Does it meet green space requirement? Yes \_\_\_\_\_ Not applicable

Comments: \_\_\_\_\_

PLANNING BOARD APPROVAL REQUIRED: Yes \_\_\_\_\_ No X

Approved \_\_\_\_\_ Denied \_\_\_\_\_ Date: \_\_\_\_\_

Upon review of project, it appears that the zoning requirements

Have been met X Have not been met \_\_\_\_\_

Comments: \_\_\_\_\_

Zoning Representative: (Signature) James P. McPhee

# ENGINEERING DIVISION SIGN-OFF SHEET

Address 240 Hatch Road Date 12/11/91

Project Ag + Equip. Bldg.

	Y	N	N/A
Chapter 27			
Drive Opening Approval	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Excavation Approval:			
Private Property	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Public Street Right-of-Way	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

NOTE: Excavation is not allowed in streets restricted by a 5 year new pavement moratorium unless an emergency condition (as per Chapter 27) exists.

Comments:

Chapter 32			
Performance Guarantee Posted	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Inspection Fee Paid	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Plans Submitted	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Construction Schedule Submitted	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

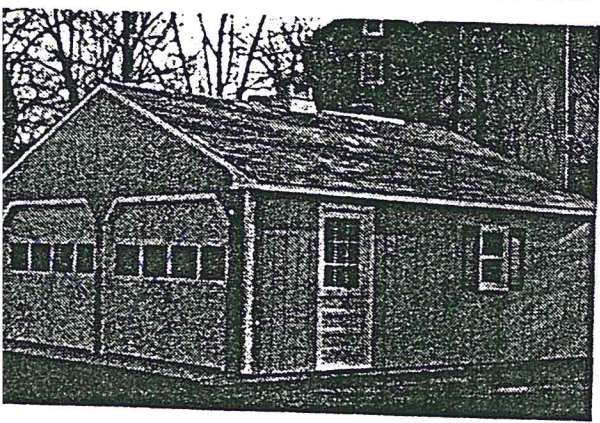
Comments:

Chapter 34			
Fill Permit Approval	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

	Signature	Date
Chapter 27	<u>John M. Seng</u>	<u>12/11/91</u>
Chapter 32	<u>Michael O'Brien</u>	<u>12/11/91</u>
Chapter 34	<u>Thomas J. Feeley</u>	<u>12/11/91</u>

# Choose One Of The Prefabricate Your I



## TWO CAR

Because two cars are a part of many homes, this type garage is very popular and is offered in any size.

24 x 32 36

Wame Wad Enterprises, Inc.  
P.O. Box 2106  
Augusta, Me 04338-2106



tel-795-6310

JOHN J. LANDER, JR.  
BARBARA P. LANDER  
41 DAMY DRIVE, APT 92  
AUBURN ME 04210

0437

52-2 61  
112

Dec. 16 19 91

PAY TO THE  
ORDER OF

*City of Auburn, Maine*  
*Portfollio 50*

\$ 39.00

DOLLARS

**Casco Northern Bank, N.A.**

WATERVILLE, MAINE 04901

a BANK OF BOSTON company Member FDIC

Portfollio 50

MEMO

*Bligh Emmet - Waterford*  
*John J. Lander*

010110000221

6111811411

0137

HARLAND 1988

MEMO

To: Steve Lewis

From: James McPhee

Re: Chronology of Issues at Property of  
John Lander, Tax Map Parcel 3-80A

Date: May 12, 1993

For your review, I have compiled the attached information pertaining to the John Lander property. This material can be found in the Building Permit files maintained in John Parsons' office. To aid you in your review, I will attempt to provide some background and explanation of the assembled material.

First, a brief background on the requests from Mr. Lander may provide a more complete picture. Mr. Lander has owned property on Hatch Road since 1953. He maintained a residence on Tax Map Parcel 3-80 until 1979 when he sold the property to Steve Wright. A parcel (3-80A) was purchased in 1961 which Mr. Lander retained. This parcel is 6 acres in size and is the lot in question. There is a possibility that this is an illegally created lot because it was created when the Zoning Ordinance required a minimum of a 10 acre lot. More research would have to be done to be definite on this point.

Over the past several years, Mr. Lander has spoken to me and others about his desire to build a residence on this lot. He has stated his disagreement with the Agriculture and Resource Protection Zoning and its restrictions on residential development. He has suggested seeking a rezoning of the area to a residential zone, but has not pursued this idea. I have informed him that the Comprehensive Plan would not support such a rezoning, that others have petitioned unsuccessfully to rezone other portions of Hatch Road and that this Department would not support such a request. I have advised him that if he did want a rezoning that we would assist him in any manner possible to bring this idea forward.

In December of 1991, Mr. Lander approached John Parsons regarding the desire for a building permit for an accessory building on the property. The intended use of the building was defined as being an agricultural utility building that would be used for the storage of equipment and for drying of herbs and other agricultural products grown on the property. Without coming directly out and stating that his real intentions were to circumvent the Ordinance and establish a residence, Mr. Lander did elude to that purpose. He was informed of how the property could be used and urged to direct his activity to that end. (See John Parsons' handwritten notes dated 12/2/91 through 12/12/91.)

Mr. Lander was issued a building permit on 12/16/91 for an agriculture and equipment storage building. Prior to this permit being issued, Mr. Lander was required to submit a letter of intent as to the proposed use of the building (please see letter to James McPhee dated 12/12/91).



In November of 1992, Mr. Lander again contacted John Parsons regarding the transfer of electric power from a temporary pole site to the building and his intention to connect the building to a septic system. He also mentioned at this time his future plans to add an addition to the building. A plumbing permit was issued for the septic system which has been installed but not connected to the building (see John Parsons notes dated 11/23/92).

Mr. Lander and his wife brought a new floor plan into the office on 4/26/93. The new plan showed an obvious change from an herb drying shed to a dwelling. He was informed that a permit for a dwelling could not be issued. A letter to this effect was hand delivered to Mr. Lander when he was in the office on 4/29/93 (see letter from John Parsons dated 4/29/93).

During this course of events, John Lander continued to elude to his desire to have this property as a residence. Both John Parsons and myself continued to inform him that the property could not be used for that purpose. In April, 1993, Mr. Lander had discussions with the Tax Assessor's office regarding the assessment of his property. It was at this time that Mr. Lander first disclosed his floor plan showing an addition for a bedroom and other areas of the building identified for kitchen and living area and for a bathroom. Based upon this information, the Assessor's office modified the assessment of the property to reflect its residential character. Mr. Lander stated his confusion over how the two departments view the same building and that confusion has led to the scheduled meeting with you.

**BRANN & ISAACSON**  
ATTORNEYS AND COUNSELORS AT LAW

GEORGE S. ISAACSON  
MARTIN I. EISENSTEIN  
MARTHA E. GREENE  
DAVID W. BERTONI  
PETER D. LOWE  
BENJAMIN W. LUND  
DANIEL C. STOCKFORD  
PETER J. BRANN  
KEVIN R. HALEY  
DANIEL A. NUZZI

MATTHEW P. SCHAEFER  
DAVID SWETNAM-BURLAND  
STACY O. STITHAM  
KENLEIGH A. NICOLETTA  
LYNN B. GELINAS  
BARBARA J. SLOTE  
ANNE M. TORREGROSSA  
NATHANIEL A. BESSEY  
MICHAEL S. MALLOY  
CONNOR J.K. BEATTY

184 MAIN STREET  
P.O. BOX 3070  
LEWISTON, MAINE 04243-3070  
(207) 786-3566  
TELECOPIER (207) 783-9325  
WEB PAGE: <http://www.brannlaw.com>

*Portland Conference Office*  
148 MIDDLE STREET  
SUITE 502  
PORTLAND, MAINE

IRVING ISAACSON, Of Counsel

LOUIS J. BRANN 1948  
PETER A. ISAACSON 1980

**MEMORANDUM**

**TO:** Clint Deschene, Eric Cousens  
**FROM:** Dan Stockford, Anne Torregrossa  
**DATE:** June 19, 2014  
**RE:** 240 Hatch Road

---

240 Hatch Road (the "Property") is a six-acre parcel in the Agricultural Zone. In the Agricultural Zone, residential structures are only allowed if they are "accessory to farming operations." City of Auburn Code of Ordinances ("Auburn Code") § 60-145(a)(1). To meet the definition of a farm, a parcel must contain more than ten acres, and at least 50% of the annual household income must come from agricultural uses. Auburn Code § 60-2(farm).

In 1993, the then-owner of the property constructed an unpermitted single family residence. At least 50% of the household income was not from farming operations, and the lot did not meet the minimum size to qualify as a farm in any event. Therefore, the residence violated the Auburn Code.

On April 1, 2014, the City issued a letter to the owner of the property, reminding him that the use of the building as a single family residence violated the Auburn Code. The same day, that letter, along with several other documents relating to the property, was recorded in the Androscoggin County Registry of Deeds. Shortly thereafter, the City was approached by a potential purchaser. The purchaser understood that the residence was in violation of the Auburn Code and represented that he intended to use the Property for an agricultural use, which would cure the violations. At no time did a representative of the City indicate that the use of the Property for a single family residence was allowed.

Recently, however, the purchaser has indicated that he wishes to demolish the existing structure and build, instead, a new single-family residential structure on the Property, with no attendant agricultural use. You have asked whether the City has any obligation to grant him a permit to do so.

As discussed above, single-family residences are not allowed in the Agricultural Zone unless they are accessory to a farm use. The proposed residence would not be accessory to a farm use and therefore, is not allowed. The fact that the City has not taken enforcement action against this Property does not change that analysis, particularly in light of the fact that the purchaser bought the Property with full knowledge that the existing residential use was illegal.



\*12RETTD\*

**RETTD**

00

**MAINE REVENUE SERVICES  
REAL ESTATE TRANSFER TAX  
DECLARATION**

TITLE 36, M.R.S.A. SECTIONS §§4641-4641N

TUE Apr 22, 2014 @ 01:15p #5594  
Transfer tax of \$41.80  
State of Maine Transfer Tax  
ANDROSCOGGIN COUNTY, MAINE**1. County**

ANDROSCOGGIN

**2. Municipality/Township**

AUBURN

**3. GRANTEE/  
PURCHASER**

3a) Name, LAST or BUSINESS, FIRST, MI

HERICK, MARIE B.

3c) Name, LAST or BUSINESS, FIRST, MI

HERRICK, DANIEL R.

3e) Mailing Address

470 HATCH ROAD

3f) City

AUBURN

3g) State

ME

3h) Zip Code

04210

**4. GRANTOR/  
SELLER**

4a) Name, LAST or BUSINESS, FIRST, MI

LANDER, BARBARA P.

4c) Name, LAST or BUSINESS, FIRST, MI

4e) Mailing Address

240 HATCH ROAD

4f) City

AUBURN

4g) State

ME

4h) Zip Code

04210

**5. PROPERTY**

5a) Map

213

Block

0

Lot

6

Sub-Lot

5b) Type of property—Enter the code number that best describes the property being sold (See Instructions)→

Check any that apply:

☐ No tax maps exist☐ Multiple parcels☐ Portion of parcel

5d) Acreage

5c) Physical Location

240 HATCH ROAD

**6. TRANSFER TAX**

6a) Purchase Price (If the transfer is a gift, enter "0")

6a

9500.00

6b) Fair Market Value (enter a value only if you entered "0" in 6a) or if 6a) was of nominal value)

6b

.00

6c) Exemption claim—☐ Check the box if either grantor or grantee is claiming exemption from transfer tax and explain.**7. DATE OF TRANSFER (MM-DD-YYYY)**4 19 14  
MONTH DAY YEAR

8. WARNING TO BUYER—If the property is classified as Farmland, Open Space, Tree Growth, or Working Water-front a substantial financial penalty could be triggered by development, subdivision, partition or change in use.

☐ CLASSIFIED

9. SPECIAL CIRCUMSTANCES—Were there any special circumstances in the transfer which suggest that the price paid was either more or less than its fair market value? If yes, check the box and explain:

10. INCOME TAX WITHHELD—Buyer(s) not required to withhold Maine income tax because:

- ☒
- Seller has qualified as a Maine resident
- 
- ☐
- A waiver has been received from the State Tax Assessor
- 
- ☒
- Consideration for the property is less than \$50,000
- 
- ☐
- Foreclosure Sale

**11. OATH**

Aware of penalties as set forth by Title 36 §4641-K, we hereby swear or affirm that we have each examined this return and to the best of our knowledge and belief, it is true, correct, and complete. Grantee(s) and Grantor(s) or their authorized agent(s) are required to sign below:

Grantee Marie B. HerickDate 4-19-14Grantor Barbara P. LanderDate 4-19-14Grantee Daniel R. HerrickDate 4-19-14

Grantor

Date

**12. PREPARER**

Name of Preparer Thomas F. Smith

Phone Number (207) 583-4555

Mailing Address P.O. Box 98, Harrison, ME 04040

E-Mail Address tsmith@myfairpoint.net

Fax Number

The above named Marie B. Herick appeared before me on 4/19/14 I witnessed them sign in my presence.Belinda A. Perry  
Belinda A. Perry  
Notary Public  
State of ME Commission  
expire 1/30/20



WARRANTY DEED

BARBARA P. LANDER, of Auburn, County of Androscoggin and State of Maine, for consideration paid, grants to MARIE B. HERRICK and DANIEL R. HERRICK, both of Auburn, County of Androscoggin and State of Maine, with WARRANTY COVENANTS, as joint tenants, the land, with any buildings thereon, situated on the westerly side of the Hatch Road in the City of Auburn, County of Androscoggin and State of Maine, bounded and described as follows:

Beginning on the westerly side of the Hatch Road at a point opposite and about fifty (50) feet southerly of the southerly wall of the present residence of Landers, which point marks the intersection of the westerly line of the Hatch Road with the northerly line of an old county road; thence in a general westerly direction, one thousand seventy-five (1075) feet, more or less, to an iron post and land of one Couture; thence in a general northerly direction, one hundred fifty (150) feet to an iron post; thence in a general easterly direction, one thousand seventy-five (1075) feet, more or less, to an iron post and the Hatch Road; thence in a general southerly direction, three hundred twenty-five (325) feet by the Hatch Road to the point of beginning.

For title of the Grantor, reference is made to a Deed of Distribution of Barbara P. Lander as Personal Representative of the Estate of John J. Lander, Jr. to the said Barbara P. Lander, dated October 9, 2013, and recorded in the Androscoggin County Registry of Deeds in Book 8792, Page 97.

Also hereby conveying all rights, easements, privileges and appurtenances belonging to the premises hereinabove described.

WITNESS my/our hand(s) and seal(s) this 19 day of April, 2014.

Belinda A. Gerry  
Witness

Barbara P. Lander  
Barbara P. Lander

STATE OF MAINE  
County of ~~Cumberland~~  
Androscoggin

Personally appeared the above named Barbara P. Lander, known to me, this \_\_\_\_ day of April, 2014 and acknowledged before me the foregoing instrument to be his free act and deed.

ANDROSCOGGIN COUNTY  
Tina M. Chaumond  
REGISTER OF DEEDS

Belinda A. Gerry  
Notary Public/Attorney at Law

Print or type name  
My commission expires: 1/30/20

BELINDA A. GERRY  
NOTARY PUBLIC  
STATE OF MAINE  
MY COMMISSION EXPIRES 1/30/2020

MAINE REAL ESTATE  
TRANSFER TAX PAID

**AFFIDAVIT**

I, BARBARA P. LANDER, of Auburn, in the County of Androscoggin and State of Maine, having been duly sworn, do hereby declare, depose and state as follows:

1. I am an elderly person as defined by 33 M.R.S.A. Section 1021, having attained the age of sixty (60) years or older;
2. I recently knowingly and voluntarily conveyed my real estate at 240 Hatch Road, Auburn, Maine, to Daniel R. Herrick and Marie B. Herrick, both of Auburn, in the County of Androscoggin and State of Maine.
3. I am not dependent upon said persons for care or support as set forth in 33 M.R.S.A. Section 1021.
4. I was not under the influence of the said Daniel R. Herrick and/or Marie B. Herrick at any time before or during said transfer.
5. I state these facts from personal knowledge.

DATED at Auburn, Maine this 19 day of April, 2014.

Barbara P. Lander  
Barbara P. Lander

STATE OF MAINE  
~~CLIMBERLAND~~, ss.  
Androscoggin

April 19, 2014

Personally appeared the above-named Barbara P. Lander and made oath that the within statements are true to the best of her knowledge and belief.

Before me,

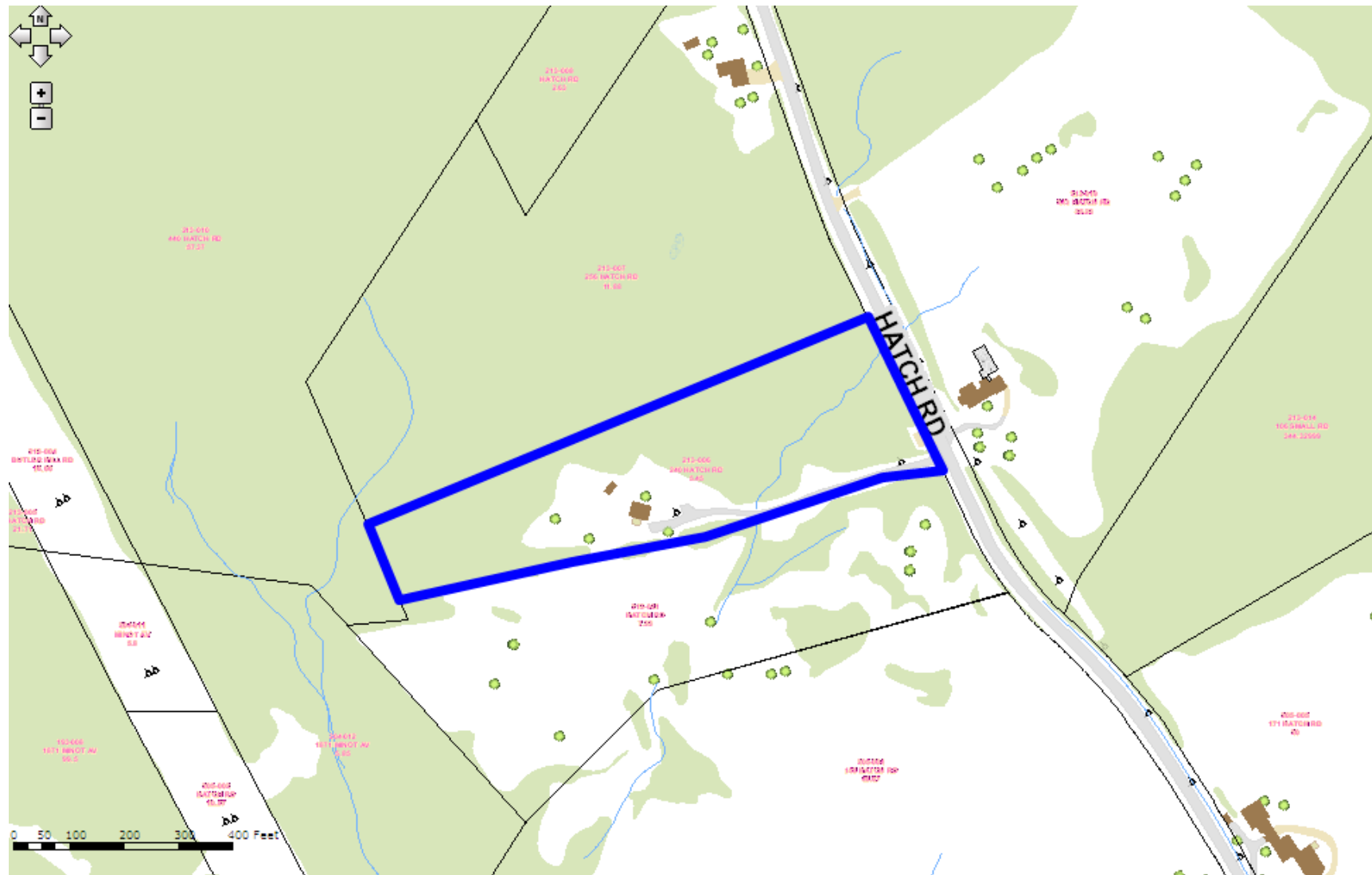
Belinda A. Gerry  
Notary Public/Attorney at Law

Belinda A. Gerry  
Print or type name

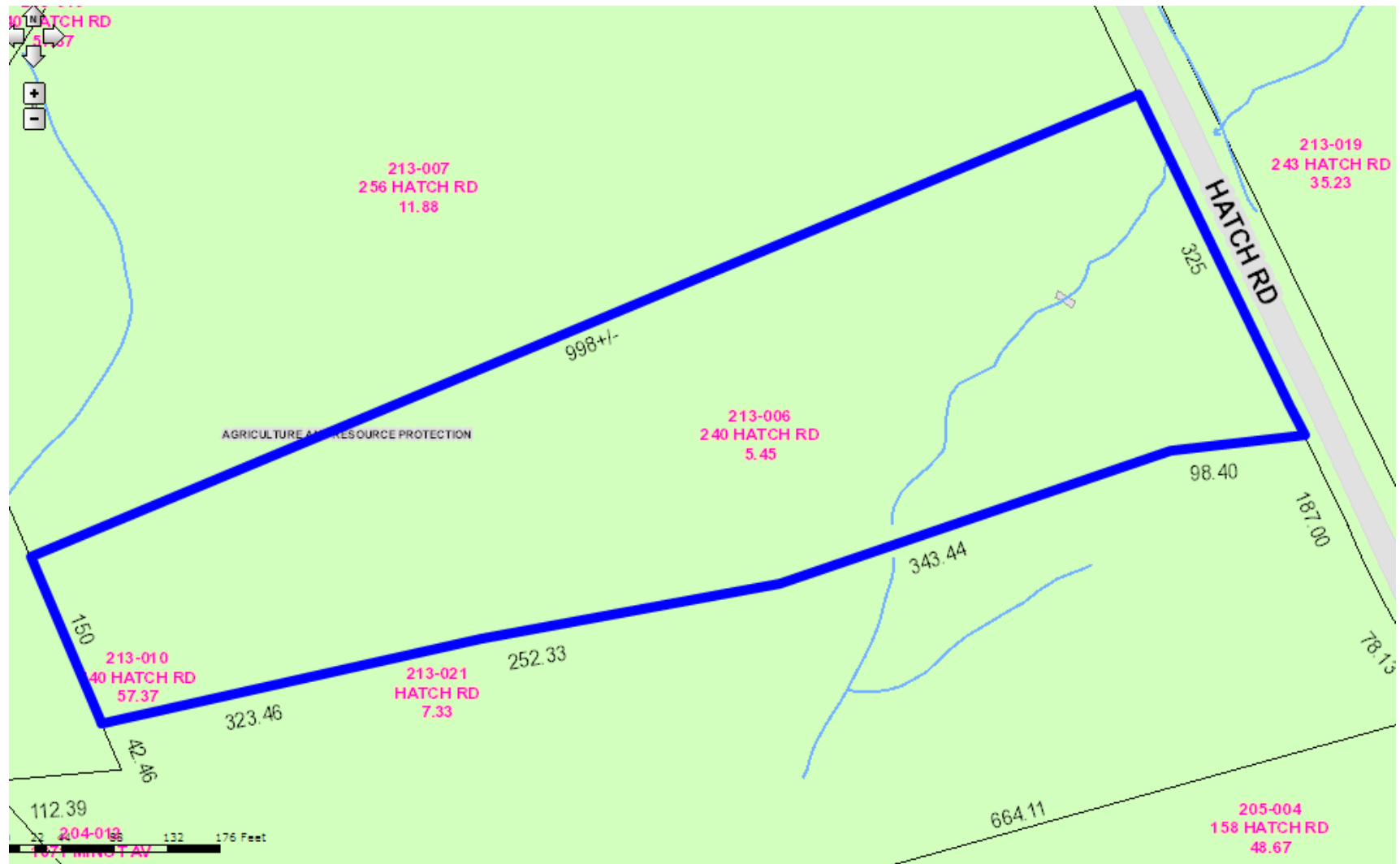
My commission expires: 1/30/20

BELINDA A. GERRY  
NOTARY PUBLIC  
STATE OF MAINE  
MY COMMISSION EXPIRES 1/30/2020  
ANDROSCOGGIN COUNTY  
TINA M CHOUINARD  
REGISTER OF DEEDS

## 240 Hatch Road Tax Map



## 240 Hatch Road - Zoning



# City of Auburn, Maine

*"Maine's City of Opportunity"*

## Office of Planning & Development

To: Auburn Zoning Board of Appeals

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

Re: Variance Appeal of Roland and Stacie Brown to reconstruct an existing structure at 28 Sandy Beach Road / PID # 237-017 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187.

Date: August 7, 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:

60 Court Street • Suite 104 • Auburn, ME 04210  
(207) 333-6600 Voice • (207) 333-6601 Automated • (207) 333-6623 Fax  
[www.auburnmaine.gov](http://www.auburnmaine.gov)

- (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 Roland and Stacie Brown to reconstruct an existing structure at 28 Sandy Beach Road / PID # 237-017 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187. This proposal is unique because the building already has a full basement foundation that is in good condition and part of the structure is within the required setback and part of it is outside of the setback area. The setback requirement for this lot is based on Chapter 60, Section 60-988 and is 50% of the lot depth which staff determined to be 52'. The proposal is in compliance with the standards for rehabilitation and less than 30% expansion of an existing structure within that setback; 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 adjacent to Taylor Brook and is approximately .18 acres in area. The property is located in the Urban Residential (UR) zoning district and a portion of it (not the structure) in the Flood Plain Overlay (FPO) district. The property is not located the Taylor Pond Overlay (TPO) district or Taylor Pond watershed because it is downstream from the pond and drains towards Taylor Brook which flows to the Little Androscoggin River.

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. He permitted and then began work on the rehab project and met with staff to discuss the requirement to retain 50% of the structural members. The property owner intended to complete the project with 50% of the structural members in place but after the walls were opened up and the framing was exposed, staff recommended that he consider this request because of the condition of the framing. The permitted expansion and rehab meets the requirements of the Ordinance, however, due to the age of the existing structure, substandard construction and water damage, retaining the structure is not recommended. In addition, relocation of the existing structure to improve setbacks from the brook would require the removal of the existing full basement foundation, substantial soil disturbance and would encroach in the opposite setback along Sandy Beach Road. Considering the significant investment and knowing that the rehabilitation will happen anyways, Staff is hopeful that the Board can offer some relief from retaining 50% of the structural members. The proposal includes expanded volume on the second floor due to higher ceilings but minimal expanded floor area within the 52'



shoreland zoning setback. Although reuse of the foundation does not improve the setback, it does allow for a reduction of roof/impervious area adjacent to the brook by removing the existing porch on the south west side of the building. That area and the area between the building and Taylor brook can be vegetated and remain as a buffer.

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)

As required by Ordinance the applicants will construct the building so that the structure remains above the 100 year flood elevation and outside of the mapped 1% floodplain.

In past requests that were similar to this, the Board has gained some setback distance as part of an approval. The current proposal includes a reduction of building footprint near Taylor Brook and the Board could consider requiring the area between the building and the brook to remain as a buffer; however, the area is already in a very natural state and staff would not recommend disturbing it. The proposed construction can be accomplished in compliance with the ordinance by saving more than 50% of the existing structure and will be completed in either case. However, Staff recommends replacing the wood portions of the structure above the foundation.

I. RECOMMENDATION:

Staff recommends the following findings:

Strict application of the Ordinance to the Bunkers' 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 will be substandard based on current code requirements and is not recommended by staff. In addition, replacing the existing foundation would increase soil disturbance and would not result in any environmental improvement.
2. The need for this variance is due to the unique circumstances of the property and not the general conditions in the neighborhood. The foundation was substantially replaced years ago and the wood framed structure above grade has since been neglected and has now deteriorated. Relocating the existing foundation would be impossible and replacement would require substantial costs and increased environmental impacts.
3. Since the new structure will replace the existing structure on the same foundation, the granting of this variance will not alter the essential character of the locality other than removing an eyesore and improving the quality of the building.
4. In this case, the hardship is caused by strict interpretation of the ordinance which would cause more damage to the property and potentially to Taylor Brook. Not granting the variance will allow the same project to proceed with substandard materials.
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; Updated systems will be safer.

- (2) The adequacy of the traffic circulation system in the immediate vicinity; No Impact.
- (3) The availability of an adequate water supply; The structure will be connected to public water supply.
- (4) The availability of adequate sewerage facilities; The structure will be connected to public sewerage services.
- (5) Would not violate the environmental standards or criteria contained in the Overlay Zoning Districts; The building replacement on the existing foundation allows for less environmental impact than replacing the foundation.
- (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.
- (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 Browns build the new structure utilizing the existing foundation provided that the following conditions are met:

- 1. The buffer between the building and brook is maintained in a natural state as it exists today. This should be documented with photos of existing conditions.
- 2. Proper erosion and sediment controls are used during construction.

# 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 Development

Re: Variance Appeal of Frank C. Goudreau to reconstruct an existing structure at 63 Chicoine Avenue / PID # 237-007 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187.

Date: August 7, 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 Frank C. Goudreau to reconstruct an existing structure at 63 Chicoine Avenue / PID # 237-007 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187.

The subject property is located on Taylor Brook and is approximately .24 acres in area. The property is located in the Urban Residential (UR) zoning district and on the boundary of the Taylor Pond Overlay (TPO) district but the structure is outside of the district and located on the portion that drains to Taylor Brook.

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, as construction proceeded, the property owner encountered substandard construction and water damage and removed and replaced more than 50% of the structure. Staff placed a “stop work order” on the project and encouraged the property owner to apply for a variance. The property owner will either need to remove the structure as it was constructed without a permit for replacement or obtain Board approval and permit the structure after-the-fact.

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 legally existing camp has been substantially demolished and replaced with a new camp. The new residence will be substantially the same size, but slightly smaller than the previously existing structure and will not exceed the 30% expansion in area or volume as required by Ordinance. The application includes floor plans and elevations but did not include floor area or volume calculations. Staff has verified that the existing floor plan matches City records and calculated floor area and volume to be 755 sf and 6740 cubic feet (cuft) respectively. The allowed expansion if 50% of structural members were retained would be a total of 981 sf in area and 8762 cuft in volume. The proposed structure is 752 sf in area and the volume will be 7336 cuft. The area and volume proposed is compliant with the ordinance.

As required by Ordinance the applicants will construct the building so that the first finished floor will be situated more than one (1) foot above the 100 year flood elevation and outside the mapped 1% flood plain area.

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 brook of 1 foot; however, moving the structure back would encroach into the 25' setback from the street. Staff recommends that the Board require an improved buffer between the building and Taylor Brook if the proposal is approved. The proposed construction could have been accomplished in compliance with the ordinance by saving more than 50% of the existing structure but the final product would have been substandard.

I. RECOMMENDATION:

Staff recommends the following findings:

Strict application of the Ordinance to the Goudreau 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 feasible because of the structural defects and deteriorated condition.
2. The need for this variance is due to the unique circumstances of the property ownership and not the general conditions in the neighborhood. Relocating the existing structure would encroach into the street setback.
3. Since the new structure will simply replace the existing structure in the same general area, the granting of this variance will not alter the essential character of the locality.
4. In this case, the hardship is caused by strict interpretation of the ordinance which would prevent even a small structure of normal proportions from being replaced on the property.
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; No Impact.
  - (2) The adequacy of the traffic circulation system in the immediate vicinity; No Impact.
  - (3) The availability of an adequate water supply; The structure will be connected to public water.
  - (4) The availability of adequate sewerage facilities; The structure will be connected to public sewerage services.
  - (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; The proposal improves the appearance of the structure and moves it slightly further from Taylor Brook.
- (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 could have been constructed in conformance with the City's Zoning Ordinance. Staff, based on previous Board approvals and the above findings, is supportive of allowing Mr. Goudreau 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 distance designated by the Board is designed in a way that is consistent with Lake Smart Standards and written plan is provided by Mr. Goudreau and approved by staff within 30 days of the issuance of a building permit.
3. The buffer is installed prior to a Certificate of Occupancy being issued.
4. Proper erosion and sediment controls are used during construction.

City of Auburn, Maine  
*"Maine's City of Opportunity"*  
Office of Planning & Development

To: Auburn Zoning Board of Appeals

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

Re: Appeal of Michael Gotto on behalf of Peter and Susan Bunker to reconstruct an existing structure at 167 West Shore Road / PID # 255-004 without requiring that 50% of the structural members remain in place pursuant to Chapter 60, Article XV, Division 4, section 60-1187.

Date: August 7, 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 Michael Gotto on behalf of Peter and Susan Bunker to reconstruct an existing structure at 167 West Shore Road / PID # 255-004 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 1 acre in area. The property is located in the Low Density Country Residential (LDCR) zoning district, the Taylor Pond Overlay (TPO) district and 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 them that there are concerns with the existing materials 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 Bunkers 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 should not exceed the 30% expansion in area or volume as required by Ordinance, within the 100' setback area. The application indicates that the existing structure is 580 square feet (sf) in area and the allowed expansion could increase the area to a total of 754 sf in area. The proposed structure is 756 sf in area and exceeds the allowable area by 2 sf and staff recommends that the Board require compliance by reducing the

deck area by at least 2 sf. The applicant has agreed that they can accommodate this minor adjustment. The volume proposed is compliant with a 30% expansion of the structure.

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. As required by Ordinance the applicants will construct the foundation so that the first finished floor will be situated more than one (1) foot above the 100 year flood elevation. All utilities will be elevated at least one foot above the 100-year flood level and will require an elevation certificate prior to construction.

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 and 2 replacement trees for trees that need to be removed for the reconstruction. 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 Bunkers' 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. In addition, moving the existing structure would increase soil disturbance and tree removal needs.
2. This building was located mostly on the abutting lot until last year. The Bunkers purchased the building from the new owner of that parcel so they could rebuild it. The need for this variance is due to the unique circumstances of the property ownership and not the general conditions in the neighborhood. Relocating the existing structure would cause significant damage to the existing ground cover and create a large opening in a very mature tree canopy which currently shelters the existing building site.
3. Since the new structure will simply replace the existing structure in the same general area, the granting of this variance will not alter the essential character of the locality. Given the unique layout and maturity of the trees on this property, under the proposed plan to demolish the building in place to retain most the mature tree canopy and to rebuild under that existing canopy farther from the pond, the essential character of the area will be retained. If the variance is not granted, the building



can be moved back and repaired at the same location, but the mature tree canopy will be lost changing the essential character of the area for many years to come.

4. In this case, the hardship is caused by strict interpretation of the ordinance which would cause more damage to the property and potentially to Taylor Pond. Not granting the variance would result in unnecessary ground disturbance adjacent to the pond by moving equipment and removal of a number of large trees with a mature canopy that help protect the pond in order to relocate this structure, when repair and renovation of that structure is impractical under current building codes.
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; No Impact.
  - (2) The adequacy of the traffic circulation system in the immediate vicinity; No Impact.
  - (3) The availability of an adequate water supply; The existing well will serve the structure.
  - (4) The availability of adequate sewerage facilities; The structure will be connected to public sewerage services.
  - (5) Would not violate the environmental standards or criteria contained in the Overlay Zoning Districts; The building replacement allows for less environmental impact that relocating and 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 Bunkers 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 not mowed more than twice a year.
3. Trees are replaced as shown on the plan.
4. Proper erosion and sediment controls are used during construction.

