

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.

