

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:

- (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.