

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.