STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PAUL RICHARD LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

# PERMIT

COMMISSION DECISION
IN THE MATTER OF

Denis and Velma Ouellette

Finding of Fact and Decision

**APPEAL OF APPROVAL IN PART AND DENIAL IN PART OF BUILDING PERMIT BP 15320 (ENFORCEMENT CASE EC 14-61)**

The Maine Land Use Planning Commission, at a meeting of the Commission held August 12, 2015 in Brewer, Maine, after reviewing the application and supporting documents submitted by Denis and Velma Ouellette associated with Building Permit BP 15320 and with their appeal of BP 15320, and after considering comments made by the Ouellettes and their counsel at a June 10, 2015 meeting of the Commission in Brewer and other related record materials, pursuant to 12 M.R.S. Section 681 et seq. and the Commission's Standards and Rules, finds the following facts:

1. Applicant/Appellant: Denis and Velma Ouellette
   PO Box 7845
   Grand Falls, NB, Canada E3Z 3E8

2. Date of Staff Decision: February 12, 2015

3. Date of Appeal Received: March 16, 2015

4. Location of Proposal: T17 R 3 WELS, Aroostook County
   Taxation Lot #1 on Plan 01
   Allagash Timberlands L.P. Lease #2962, Lots 80 and 80-S

5. Zoning: (D-RS) Residential Development Subdistrict

6. Lot Size: 0.46+/- Acres (leased)

7. Principal Building: Existing Dwelling (24 ft. by 28 ft. by 18 ft. high)
   w/ Attached Roofed Porch (8 ft. by 17 ft.)
   w/ Attached Lake-Side Deck (8 ft. by 32 ft.)
   w/ Detached Lake-Side Platform (19 ft. by 25 ft.)

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and Stairs (6 ft. by 7 ft.) *(pending appeal of denial)*

8. Accessory Structures: Existing Garage (13 ft. by 26 ft.)

9. Sewage Disposal: Existing Combined System

10. Affected Waterbody: Long Lake

    The Commission has identified Long Lake as a management class 5, resource class 2, accessible, developed lake with the following resource ratings: significant fisheries resources, significant scenic resources, and significant cultural resources.

**Background Information**

11. The applicants' lot was originally developed with a pre-Commission 24 foot by 28 foot dwelling with an 8 foot by 17 foot roofed porch and 8 foot by 32 foot lake-side deck. The lot was also developed with a 13 foot by 26 foot garage. The dwelling with porch and deck are set back 30 feet from the normal high water mark of Long Lake, at least 50 feet from East Van Buren Cove Road, and at least 15 feet from the property lines. The garage is set back approximately 40 feet from the normal high water mark of Long Lake, at least 50 feet from East Van Buren Cove Road, and at least 15 feet from the property lines. The development is served by a combined sewage disposal system installed and inspected by the Local Plumbing Inspector in 2009.

12. On October 30, 2014, staff discovered that the applicants had recently reconstructed an 8 foot by 32 foot lake-side deck in kind and in place without prior permit approval. In addition, the applicants had constructed a new 19 foot by 25 foot detached wooden platform with an integrated 6 foot by 7 foot set of stairs without prior permit approval [Reference: Enforcement Case EC 14-61]. The stairs are built into the platform and are effectively part of the same structure. The previously existing lake-side deck is shown on the Maine Revenue Service's property tax card as existing in 2013 along with a 12 foot by 12 foot concrete platform of unknown date of construction, shown as located between the lake and the deck. The concrete platform, if it existed and remains in place today, would be covered by the new, larger wooden platform. The reconstructed lake-side deck is setback 30 feet from the normal high water mark of Long Lake, at least 50 feet from East Van Buren Cove Road, and at least 15 feet from the property lines. The new wooden platform is setback 12 feet from the normal high water mark of Long Lake, at least 50 feet from East Van Buren Cove Road, and at least 15 feet from the property lines; the integrated and attached stairs are setback 5 feet from the normal high water mark of Long Lake. The concrete platform, if it remains, is now covered by the new wooden platform and, based on Maine Revenue Service information, would be setback approximately 18 feet from the lake.

**Permit Application and Staff Decision**

13. On December 11, 2014, the Commission received a complete Building Permit application submitted by Denis and Velma Ouellette seeking after-the-fact approval for reconstruction of an 8 foot by 32 foot lake-side deck in kind in place and reconstruction of a 19 foot by 25 foot

detached wooden platform with a 6 foot by 7 foot set of stairs. The lake-side deck is setback 30 feet from the normal high water mark of Long Lake, at least 50 feet from East Van Buren Cove Road, and at least 15 feet from the property lines. The wooden platform is setback 12 feet from the normal high water mark of Long Lake, at least 50 feet from East Van Buren Cove Road, and at least 15 feet from the property lines; and the integrated and attached stairs are setback 5 feet from the normal high water mark of Long Lake.

14. As part of their application, the applicants submitted a letter from the prior owner's son, Rick Dumond, stating that the lot was also developed with "a wooden patio covered with various tarps with a size of 20 by 24 feet, a set of stears [stairs] attach[ed] at the end of the patio going to the lake side. In the bottom of the stears [stairs], a ciment [cement] slab 8 by 3 feet with various pieces of ciment [cement]." The letter is not clear as to when this patio-type structure was constructed and exactly what it consisted of for materials. The applicants describe the patio in the application as "made of rotten wood + carpet + tarp." Co-applicant, Denis Ouellette, told staff on Dec 11, 2014 at a pre-application meeting that he removed the rotten wood, carpet, and tarps in 2005 because they were damaged and unsafe. Staff informed Mr. Ouellette that legally existing, nonconforming structures may only be reconstructed if a permit application is filed within 2 years of the date of damage or removal of the structure. After being informed of this standard, Mr. Ouellette revised his prior statement. The after the fact application seeking authorization for the 19 foot by 25 foot wooden platform with stairs stated the applicants sought to reconstruct the prior wood, carpet, and tarp covering and further stated this prior structure was removed in 2014, as opposed to the 2005 date originally provided by the applicants. The 2013 Maine Revenue Service tax card does not show a 20 by 24 feet patio or 8 by 3 feet cement slab.

15. On February 12, 2015, staff of the Commission issued Approval in Part and Denial in Part of Building Permit BP 15320.

    A. The staff decision granted after-the-fact permit approval for the existing reconstructed 8 foot by 32 foot lake-side deck 30 feet from Long Lake.

    B. The staff decision denied the request for after-the-fact permit approval for reconstruction of the prior wood, carpet, and tarp covering with 19 foot by 25 foot wooden platform with integrated 6 foot by 7 foot stairs 12 feet and 5 feet, respectively, from Long Lake. The Commission staff denied approval of the platform with stairs because the applicants failed to provide facts sufficient to demonstrate the prior existence of the wood, carpet, and tarp covering and that the new wooden platform with integrated stairs qualified as reconstruction of a previous, legally existing structure. (See Section 10.11,C,2.) . Additionally, even if the new wooden platform with stairs qualified as reconstruction of the previously existing wood, carpet, and tarp covering, the applicants failed to demonstrate that the previous covering existed within two years of the construction of the new wooden platform with stairs. (See Section 10.11,C,2.) Staff concluded the platform and stairs extended closer to the lake than the existing setback line in violation of the Commission's standards. (See Section 10.11,B,1.) Finally, staff also concluded the new wooden platform and stairs could not be allowed under Section 10.11,C,5 because the platform and stairs do not meet the waterbody setback and extend closer to the lake than the principal structure on the lot.

**Appeal of Staff Decision**

16. On March 16, 2015, Denis and Velma Ouellette, through their attorney, filed a timely appeal of the February 12, 2015 staff decision, which as described above, denies in part their after-the-fact building permit application. The appellants do not agree with the staff's denial of the portion of their application that seeks after-the-fact approval for the 19 foot by 25 foot detached lake-side platform with integrated 6 foot by 7 foot stairs. They requested that the Commission review this decision. The request, filed by their attorney, states in full:

    I represent Denis and Velma Ouellette.

    This will request that the Commission review the decision of the staff dated February 13, 2015 with regard to:

    1. The denial of the permit with regard to reconstruction of the stairs attached to the 19 foot by 25 foot wooden platform. The Ouellette's contend that those stairs were a legal non-conforming structure existing prior to September 23, 1971.

    2. The denial of the permit with regard to the 19 foot by 25 foot wooden platform. The Ouellette's contend that this platform was the second reconstruction of an existing structure consisting of wood, carpet, and tarps.

    3. The staff decision failed to recognize the existence of a non-conforming 8 foot by 3 foot cement slab at the bottom of the stairs that had existed prior to September 23, 1971.

    The Ouellette's are prepared to present evidence and photographs in support of their position.

17. On June 10, 2015, the appellant Denis Ouellette, and his attorney, William Smith, were present at the Commission's regular monthly meeting. Mr. Smith gave a presentation, largely highlighting arguments contained in a letter he presented to the Commission and staff at the meeting. The letter, dated June 9 and delivered at the June 10 meeting, included eight exhibits consisting of sketches illustrating the history and location of development on the property, a statement from the son of a prior owner of the property about historic development on the property, and undated photographs. The letter characterizes the newly constructed wood platform and integrated stairs to the shore as separate accessory structures, both of which are detached from the residential dwelling and lake side deck. The attached photograph, Exhibit 3 to the letter, said to be from the 1960s by Mr. Smith, shows stairs to the shore. The letter states the stairs were pre-Commission and a legally existing nonconforming structure. The letter then presents alternatives theories why the newly constructed stairs should be allowed and allowed without a permit. First, citing Section 10.27,P,1, a section that applies to new or expanded accessory structures, the letter asserts because the stairs satisfy this section no permit was needed for the new stairs and they should be allowed to remain in conformance with the Commission's standards. Second, in what appears to be an alternative argument, the letter cites Section 10.07,A, a section that provides for the normal maintenance and repair or renovation of

lawfully existing structures without a permit, in support of the position that the stairs should be allowed to remain and without the need for a permit.

With regard to the new wooden platform, at the time the appellants purchased the property the letter states a wood, carpet, and tarp covering was located on the property in the same location as the present platform. The letter states the wood, carpet, and tarp covering was replaced by the Ouellettes sometime after they purchased the property and replaced with brick patio stone. (Exhibit 4 to the letter shows the patio stone.) Then, in 2014 the Ouellettes built the wooden platform over the patio stone. Similar to the arguments presented with regard to the stairs, the letter cites Section 10.27,P,1 and Section 10.07,A in support of the alternative proposition that the wooden deck is allowed without a permit because it is either (a) a new or expanded accessory structure allowed without a permit or (b) the product of normal maintenance and repair or renovation of a lawfully existing structure.

18. At the June 10 meeting, Mr. Smith also verbally presented additional arguments not in the letter handed out at the meeting. He and Mr. Ouellette also made additional factual claims. Mr. Smith argued the new wooden platform with integrated stairs was not "reconstruction" of a previously existing structure, but rather was more appropriately characterized as either normal maintenance and repair or renovation of the prior brick patio, and the brick patio has been either normal maintenance and repair or renovation of the prior wood, carpet, and tarp covering. He stated that Sections 10.11,B,4 and 10.11,B,5 allow normal maintenance and repair and renovation, respectively, of legally existing nonconforming structures without a permit and, therefore, he argued the requirement to apply for a permit within two years of the date of removal, contained in Section 10.11,C,2 does not apply. He therefore asserted the new wooden platform with stairs are allowed without a permit pursuant to Section 10.11,B,4 or Section 10.11,B,5. In support of this argument and characterization of the construction of the wooden platform with integrated stairs as either normal maintenance and repair or renovation of a previous, legally existing structure Mr. Smith and Mr. Ouellette pointed to pictures attached to the June 9 letter presented at the Commission meeting. In response to questions about Exhibit 3, a photo said to be from the 1960, and what this photo showed, Mr. Smith said it showed a green platform with tarps to the left. Mr. Ouellette later stated it showed a platform smaller than the platform in place today and that sometime after the photo and prior to the Ouellettes' acquisition of the property the smaller platform shown in the Exhibit 3 photo was replaced with the addition of the tarps. In response to questions about how the new wooden platform and integrated stairs fit with in the definition of "normal maintenance and repair" or "renovation" contained in Section 10.02, Mr. Smith suggested that those definitions do not apply when applying and interpreting Section 10.11 and asserted that the activity completed by the Ouellettes was consistent with what is allowed under Section 10.11,B,4 and/or Section 10.11,B,5 of the Commission's standards.

## Review Criteria

19. 12 M.R.S. § 682, defines a structure as "anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited, to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats."

20. 12 M.R.S. § 682 and Section 10.02,1 of the Commission's Land Use Districts and Standards define an accessory use or accessory structure as "a use or structure subordinate to a permitted or conditional use or structure and customarily incidental to the permitted or conditional use of the structure."

21. Pursuant to Section 10.02, the definitions contained in Section 10.02 "apply to [those] terms as they appear in" Chapter 10 of the Commission's Land Use Districts and Standards.

22. Section 10.02,139 defines normal maintenance and repair as "unless otherwise provided, work necessary to maintain an improvement, structure, or docking structure in its original or previously improved state or condition, as long as there is no expansion of a nonconforming structure and less than 50 percent of a structure is replaced. This includes general upkeep, such as painting, fixing portions of the structure that are in disrepair, or the replacement of sill logs, roofing materials, siding, or windows. In-kind and in-place replacement of decking or exterior stairs is considered to be normal maintenance and repair. Normal maintenance and repair shall not include reconstruction, or change in design, change in structure, change in use, change in location, or a change in size or capacity. Activities involving a permanent docking structure constitute normal maintenance and repair only when less than 50 percent of those portions of the permanent docking structure that are above the level of the water during normal high water are maintained or repaired."

23. Section 10.02,174 defines a renovation as "restoring or remodeling a structure. Renovation includes interior modifications, and the installation of new windows, floors, heating systems, or other features, as long as there is no expansion of a nonconforming structure and less than 50 percent of the building's structural components are replaced. The introduction of plumbing to a structure may constitute a change in use that requires a permit."

24. Section 10.02,166 defines a reconstruction as "unless otherwise provided, the addition of a permanent foundation or the rebuilding of a structure after more than 50 percent by area of its structural components, including walls, roof, or foundation, has been destroyed, damaged, demolished or removed. Leaving one or two walls or the floor of a structure in place, while rebuilding the remaining structure, is considered reconstruction, not normal maintenance and repair or renovation.

25. Under provisions of Section 10.07,A of the Commission's Land Use Districts and Standards, normal maintenance and repair, or renovations of any lawfully existing structure or use do not require a permit from the Commission, except that normal maintenance and repair or renovations in areas of special flood hazard shall be regulated in conformance with the requirements of Section 10.23,C and must meet applicable development standards in Section 10.25,T, Activities in Flood Prone Areas, and all other applicable statutory and regulatory requirements.

26. Under provisions of Section 10.26,D,1 of the Commission's Land Use Districts and Standards, the minimum setback from waterbodies such as Long Lake is 100 feet, the minimum setback from roads is 50 feet and the minimum setback from property boundary lines is 15 feet for residential structures.

27. Under provisions of Section 10.11,B,1 of the Commission's Land Use Districts and Standards, permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in this section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S. Section 685-B(4) and demonstrate that the project will not adversely affect surrounding uses and resources and that there is no increase in the extent of nonconformance, except as provided in Section 10.11,B,9 or in instances where a road setback is reduced by the Commission in order to increase the extent of conformance with a waterbody setback.

28. Under provision of Section 10.11,B,4 of the Commission's Land Use Districts and Standards, a permit is not required for the normal maintenance and repair of legally existing nonconforming structures, structures associated with nonconforming uses, or structures on nonconforming lots, except that normal maintenance and repair in areas of special flood hazard shall be regulated in conformance with the requirements of Section 10.23,C and must meet applicable development standards in Section 10.25,T, Activities in Flood Prone Areas, and all other applicable statutory and regulatory requirements.

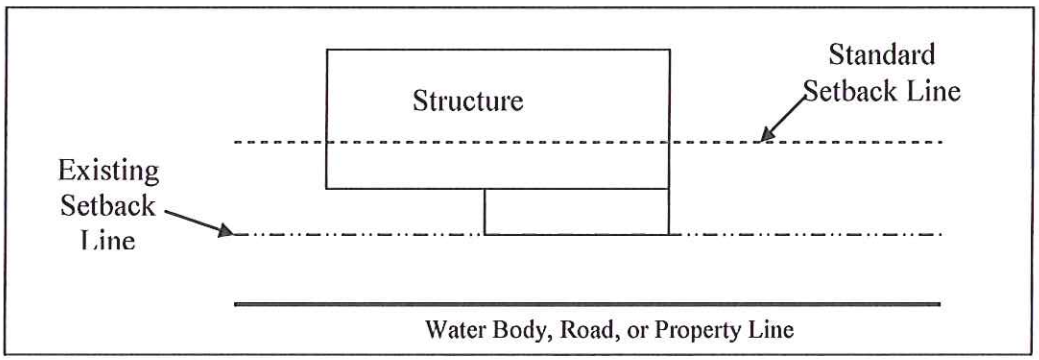
29. Under provision of Section 10.11,B,5 of the Commission's Land Use Districts and Standards, a permit is not required for renovation of legally existing nonconforming structures, structures associated with nonconforming uses, or structures on nonconforming lots, except that renovations in areas of special flood hazard shall be regulated in conformance with the requirements of Section 10.23,C and must meet applicable development standards in Section 10.25,T, Activities in Flood Prone Areas, and all other applicable statutory and regulatory requirements.

30. Under provisions of Section 10.27,P of the Commission's Land Use Districts and Standards, all new or expanded accessory structures allowed without a permit subject to standards must meet the following conditions:

    A. Be accessory to a legally existing principal structure and use;
    B. Meet the definition of accessory structure in Section 10.02,1;
    C. Conform with the General Criteria for Approval in Section 10.24;
    D. Meet the development standards in Section 10.25,B,F,H, and M, as applicable; and the activity specific standards in Section 10.27, as applicable;
    E. Conform with any applicable permit conditions, and/or deed restrictions recorded for the property;
    F. Meet all of the applicable dimensional requirements in Section 10.26,D-F;
    G. Have unfinished interiors and not be used for human habitation;
    H. Have no internal plumbing and not be supplied with water other than for a hose bib (exterior hose faucet);
    I. Not be used for a home occupation;
    J. Not be located in a flood prone area as defined in Section 10.02 and described in Section 10.23,C;
    K. Neither use in construction nor produce any hazardous or toxic materials or substances;
    L. Be consistent with the use of the principal structure and not add a new activity to those currently permitted at the site or facility; and

M. Not cause the total development on a property to exceed any gross floor area limitations related to the type of use.

31. Section 10.26,D, of the Commission's Land Use Districts and Standards establishes minimum setbacks from water bodies, roads and property boundaries. Under provisions of Section 10.11,B,2 of the Commission's Land Use Districts and Standards, Extent of Nonconformance with Respect to Setbacks, where legally existing, nonconforming structures do not meet these setbacks, an existing setback line will be established. The existing setback line will run parallel to the water body, road or property boundary at a distance equal to the closest point of the existing structure (including attached decks or porches) to the feature from which the setback is established. This is shown graphically below in Figure 10.11,B-1.




Subject to the other requirements in this section, a nonconforming structure may be expanded up to the existing setback line without being considered to be more nonconforming than the original structure. Expansions between the existing setback line and the water body, road or property boundary will be considered to increase nonconformity, and will not be allowed, except as provided in Section 10.11,B,9, Property Line Set Backs.

32. Under provisions of Section 10.11,C,2,a of the Commission's Land Use Districts and Standards, a legally existing, nonconforming structure may be reconstructed or replaced with a permit, provided that the permit application is completed and filed within two years of the date of damage, destruction or removal, and provided that the structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal. Reconstruction or replacement must comply with current minimum setback requirements to the greatest possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the greatest possible extent, the Commission may consider the following factors: size of lot, slope of the land, potential for soil erosion and phosphorus export to a waterbody, location of other legally existing structures on the property, location of the septic system and other on-site soils suitable for septic systems, type and amount of vegetation to be removed to accomplish the relocation, and physical condition and type of existing foundation, if any.

33. Under the provisions of Section 10.11,C,2,b of the Commission's Land Use Districts and Standards, decks attached to a legally existing, nonconforming structure may be reconstructed in place with a permit, except that replacement of any portion a deck that extends into or over the normal high water mark is prohibited.

34. Under provisions of Section 10.11,C,5 of the Commission's Land Use Districts and Standards, the construction of new, detached accessory structures that do not meet waterbody setbacks is allowed with a permit only if the structure cannot be physically sited on the lot to meet the waterbody setback requirement. In this case, the new accessory structure shall meet setbacks to the maximum extent possible, shall not be located closer to the normal high water mark than the principal structure, shall not be located within 25 feet of the normal high water mark, shall not be located closer than 20 feet to the road in conformance with the provision of Section 10.11,B,6, and shall be of size and height that, when combined with legally existing principal buildings will not exceed the size and height requirements of Section 10.11,C,1,b.

35. The facts are otherwise as represented in the original building permit application, this Appeal of the Denial in Part of Building Permit application BP 15320, and supporting documents.

**Based upon the above Findings and following discussion, the Commission concludes:**

***8'x32' Lake-Side Deck***

1. The reconstruction of the lake-side deck 30 feet from Long Lake does not comply with the 100 foot setback from the normal high water mark contained in Section 10.26,D,1 of the Commission's Land Use Districts and Standards. The reconstructed lake-side deck, however, replaced a pre-Commission, legally existing, nonconforming deck. The new deck was reconstructed within 2 years of removal of the previously existing deck and the previous deck was in regular use prior to removal. Additionally, the reconstructed deck is an in-kind and in-place replacement of the prior deck and no portion of the new deck extends into or over the normal high water mark. As a result, the after-the-fact reconstruction of the attached lake-side deck complies with Section 10.11,C,2 and 2,b of the Commission's Land Use Districts and Standards.

2. The reconstruction of the attached lake-side deck is in compliance with Section 10.11,B,1 in that it does not increase nonconformance and will not adversely affect surrounding uses and resources and meets the Criteria for Approval, 12 M.R.S. § 685-B(4).

***19'x25' Wooden Platform with 6'x7' Stairs***

3. The Ouellettes have not demonstrated that construction of the wooden platform with integrated stairs complies with the Commission's Land Use Districts and Standards governing normal maintenance and repair or renovation, specifically Sections 10.07,A; 10.11,B,4; and 10.11,B,5. Accepting for the sake of discussion the facts as presented by the Ouellettes in their appeal – that they removed the wood, carpet, and tarp covering and replaced it with brick patio stone and then built the wooden platform with stairs over the brick patio – this activity is neither (a) normal maintenance and repair nor (b) renovation.

    A. "Normal maintenance and repair" is a defined term and this definition applies throughout Chapter 10 where the term is used. To qualify as normal maintenance and repair the work must be necessary to maintain an improvement or structure in its original or previously improved state. Additionally, there may be no expansion of a nonconforming structure and less than 50 percent of the structure is all that may be replaced.

1. When the Ouellettes replaced the wood, carpet, and tarp covering with brick patio stone they did not maintain the original or previously improved state of covering. Instead, they changed the covering, removing and replacing 100 percent of it with the brick patio stone. When dealing with the replacement of decking or exterior stairs, 100 percent replacement may qualify as normal maintenance and repair, but only in the case of in-kind and in-place replacement. Such replacement did not occur here when the wood, carpet, and tarp covering was replaced with brick.

2. Similarly, the Ouellettes' construction of the wooden platform with integrated stairs over the brick patio stone is not normal maintenance and repair. No maintenance or repair-type activity occurred. The Ouellettes have not alleged any work was done to the brick. Instead a brand new structure was constructed over the brick, leaving the brick in place. This is not in-kind and in-place replacement, but rather is a change in design and structure and, activity that by definition, is not normal maintenance and repair.

B. "Renovation" is defined as restoring or remodeling a structure. In the context of renovating a building, the definition of this term establishes that if 50 percent or more of the building's structural components are replaced the activity is not renovation. When evaluating whether improvements to an accessory structure that is not a building constitute restoration or remodeling such that the activity would qualify as renovation, the Commission finds the 50 percent threshold that applies to buildings to be informative, especially when read in conjunction with the definition of "reconstruction."

1. When the Ouellettes replaced the wood, carpet, and tarp covering with brick patio stone they did not engage in renovation. There was no restoration or remodeling of what previously existed. Rather, what previously existed was replaced, 100 percent, by something new and different, brick patio stone. This activity is not renovation as defined by the Commission's standards.

2. Building the new wooden platform and integrated stairs over the brick patio stone was not renovation either. This new construction did not involve restoring or remodeling of the existing brick patio stone and therefore does not fall within the definition of renovation. Even if it did, the Commission's Land Use Districts and Standards permit renovation only of legally existing nonconforming structures . The brick patio stone, however, was never permitted and is an illegal structure.

4. The Ouellettes have not demonstrated that construction of the wooden platform with integrated stairs complies with the Commission's Land Use Districts and Standards governing reconstruction or replacement. Under the Commission's standards, a legally existing nonconforming structure may be reconstructed or replaced with a permit, provided certain other requirements are satisfied, including submission of a permit application within two years immediately following the removal of the prior structure. Additionally, the reconstructed or replacement structure may not involve expansion within 25 feet of the normal high water mark of the lake and must comply with the current minimum setback requirements to the maximum possible extent.

A. Assuming for the sake of discussion that changing from a wood, carpet, and tarp covering to brick patio stone to a wooden platform with stairs qualifies as reconstruction or replacement, the Ouellettes must demonstrate that the original covering existed legally and that the subsequent patio stone also existed legally. In support of their position that the wood, carpet, and tarp covering was legally existing, the Ouellettes have claimed the covering was installed prior to establishment of the Commission and, therefore, was a legally existing, nonconforming structure. Their after-the-fact permit application for the wooden platform states the platform replaces a 1961 structure. However, exactly what existed on the property in the 1960s is unclear. The Ouellettes' attorney stated there was a detached wooden deck or patio with the wood, carpet, and tarp covering immediately adjacent to the wooden deck/patio. He indicated that together these structures historically were located in the place of the current wooden platform with stairs. Exhibit 3, the presumed 1960s photo, shows what appears to be a wooden walkway or patio running from the camp to the stairs leading to the shore. The attorney for the Ouellettes suggested the wood, carpet, and tarp covering was located to the side of the wooden walkway. Mr. Ouellette suggested the wooden walkway was removed by the prior owner before he and his wife purchased the property and the wood, carpet, and tarp covering replaced and expanded the wooden walkway. When this change might have occurred is not clear. A letter from the prior owner's son states the camp was built in 1960 and that it included a wooden patio covered with tarps, measuring 24 feet by 28 feet. This description differs from the description offered by the Ouellettes' attorney and differs from what appears to be shown in the Exhibit 3 photo, which shows a much narrower wooden walkway. The Commission finds there is insufficient evidence to support a determination that a structure or wood, carpet, and tarp covering, comparable in size to the wooden platform in place today, existed on the property at the time the Commission was created. The best evidence, the Exhibit 3 photo, suggests a smaller wooden walkway existed sometime in the 1960s and that at a later, unknown date, perhaps after the Commission was created, the larger wood, carpet, and tarp covering was added. In sum, the record does not support a finding that the wood, carpet and tarp covering removed by the Ouellettes in 2005 was a legally existing, nonconforming covering by virtue of having existed since prior to establishment of the Commission.

B. The brick patio stone, subsequently covered by the wooden platform with stairs, is not a legally existing structure. The Ouellettes first mentioned the existence of this structure in their appeal; no permit has been issued for installation of these stones. Additionally, after-the-fact approval is not an option. As noted above, the record does not support finding that the brick patio stones replaced a legally existing structures. Even if it did, however, the patio stones appear to have been installed more than two years after removal of the wood, carpet, and tarp covering. In the course of their appeal, the Ouellettes indicated they removed the covering in 2005 at the same time they renovated the camp. Their lawyer stated the brick patio stone was added in 2007 or 2008; Mr. Ouellette said it was added in 2008. If the Commission accepts these facts as presented by Mr. Ouellette, this 2008 activity occurred outside the two-year window during which reconstruction may be applied for. The brick patio stone was installed in violation of the Commission's Standards and the record evidence does not support after-the-fact permitting of this structure.

C. The construction of the wooden platform with integrated stairs 12 feet and 5 feet, respectively, from Long Lake does not comply with the 100 foot setback from the normal high water mark contained in Section 10.26,D,1 of the Commission's Land Use Districts and Standards. Unlike the lake-side deck, the applicants have not demonstrated that the platform and stairs previously existed or that the new platform and stairs constitute reconstruction or replacement of previous, legally existing, nonconforming structures. As a result, the Ouellettes have failed to satisfy Section 10.11,C,2 of the Commission's Land Use Districts and Standards.

5. The after-the-fact wooden platform with stairs is not in compliance with Section 10.11,C,5 of the Commission's Land Use Districts and Standards in that the platform with stairs is located closer to the water body than the principal structure.

6. The after-the fact wooden platform with stairs in not allowed without a permit under Section 10.27,P of the Commission's Land Use Districts and Standards. While the detached platform with integrated stairs is an accessory structure, the platform does not satisfy all the requirements of Section 10.27,P, specifically Section 10.27,P,6, which requires the accessory structure to comply with all the applicable dimensional requirements in Section 10.26,D-F. The platform with stairs does not meet the shoreline setback in Section 10.26,D.

7. The after-the-fact wooden platform with stairs does not meet the Criteria for Approval, Section 685-B(4) in that they do not comply with the Commission's regulations.

**Therefore, the Commission denies the appeal for the staff's partial denial of Building Permit 15320 and DENIES that portion of the applicants' application, specifically in regard to the appellants' request for after-the-fact permit approval of the existing, unauthorized 19 foot by 25 foot wooden platform with 6 foot by 7 foot stairs within 100 feet of Long Lake.**

**Therefore, the Commission affirms the staff's partial approval of Building Permit 15320 and APPROVES that portion of the applicants' application, specifically in regard to the appellants' request for after-the-fact permit approval for the existing reconstructed 8 foot by 32 foot lake-side deck 30 feet from Long Lake with the following conditions:**

1. This permit is dependent upon and limited to the proposal as set forth in the application and supporting documents, except as modified by the Commission in granting this permit. Any variation is subject to prior review and approval of the Maine Land Use Planning Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Planning Commission law.

2. The 8 foot by 32 foot lake-side deck must be set back a minimum of 30 feet from the normal high water mark of Long Lake, 50 feet from East Van Buren Cove Road and 15 feet from other property boundary lines.

3. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.

4. The permittees shall secure and comply with all applicable licenses, permits, and authorizations of all federal, state and local agencies, including, but not limited to, natural resources protection and air and water pollution control regulations and the Subsurface Wastewater Disposal Rules of the Maine Department of Environmental Protection and the Maine Department of Human Services.

5. Nothing in this permit shall be construed to release the permittees from any liability or responsibility arising from any violation, including Enforcement Case EC 14-61, or to be considered a waiver of the authority of the Commission or the State to fully pursue or prosecute such violations.

In accordance with 5 M.R.S. section 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT BREWER MAINE, THIS 12TH DAY OF AUGUST, 2015.

By: _____
Nicholas D. Livesay, Executive Director