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May 10, 2018

City of Auburn
Zoning Board of Appeals
c/o Eric Cousens, Deputy Director
Economic and Community Development
60 Court Street
Auburn, ME 04210

Re:	Property ("Property"):	375 Merrow Road, Auburn, Maine
	Owners:	Kevin and Kelly Lauze
	Abutting Property Owner:	Leonard E. Vanasse (Prior Owner)

Dear Mr. Cousens/Board:

I represent Kevin and Kelly Lauze. I am writing to request that the Board consider a variance regarding their Property, to the extent the Property is flagged and is subject to a building permit hold.

The Property is conforming; it is the abutting lot that is non-conforming. The creation of the Lauze's Property resulted in the abutting lot being non-conforming. The Lauzes are being wrongly penalized as a result. They are facing a present hardship as a result; even though the problem is really with the abutting lot, the result is that their Property is rendered unmarketable too, due to the penalty of the Property being marked with a building permit hold. A variance would allow my clients to sell the Property, which is what they need to do ASAP. They have to move to another property outside of the City of Auburn; they cannot afford the upkeep for two homes. The Property is under contract, but the buyers may not close the purchase due to the City of Auburn having marked the Property.

We ask that the City remove the mark on the Lauze Property and lift or waive the building permit hold, given that the Property is conforming. There would be no impact on the neighborhood or on any third parties. The factors for variances weigh in the Lauze's favor in this case:

Under Section 60-1187 of the City's Ordinances, the "board of appeals may grant a variance … where the strict application of the ordinance .. would cause undue hardship based on" the following factors from the Variance Ordinance, addressed below in bold text:

(1) The land in question cannot yield a reasonable return unless the variance is granted;

Here, the Property is "flagged" and there is a building permit hold; therefore it is not marketable. The Lauzes cannot afford to keep it, so it may end up in foreclosure if it cannot sell. Either way, the Property will likely deteriorate.

(2) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

This request does not at all relate to the "general conditions of the neighborhood;" in fact, the situation and need for a variance is unique to the Property because the prior owner retained an abutting parcel for his daughter. When the Lauze's bought the Property, *nobody handling the closing - including lawyers and title insurance professionals - noticed that there would be any problems with doing so - for the seller, for the Lauzes, for the lender, etc.* As was the case with respect to the variance given to Gary MacFarland (1863 Pownal Road, Auburn, Maine, March 30, 2017), neither the prior owner nor my clients are responsible for the error that resulted in this hardship. Whoever was charged with ensuring marketability and municipal compliance created this hardship, and we have not been able to get it fixed through private or judicial channels.

(3) The granting of a variance will not alter the essential character of the locality; and

The variance involves nothing more than lifting the building permit hold and removing the "flag" on the Property. This has no impact at all on the essential character of the locality. The variance will preserve the existing character of the home and neighborhood and prevent the negative impacts to surrounding property values associated with deteriorated or vacant homes. If, however, a variance is not granted, the essential character of the locality is at risk because the Property may end up in foreclosure.

(4) The hardship is not the result of action taken by the appellant or a prior owner.

In *Twigg v. Town of Kennebunk*, the Law Court comprehensively examined the law concerning self-created hardships in the context of a request for a variance. 662 A.2d 914, 918 (Me. 1995). The Law Court held that "actual or constructive knowledge of the zoning ordinances prior to purchase of the property … is not determinative" of a self-created hardship. *See also Rochelau v. Town of Greene*, 1998 ME 59, ¶5, 708 A.2d 660 (Me. 1998).

Here, the hardship was created upon sale to the Lauzes. Like Gary MacFarland, the parties relied on professionals and work product of professionals. With respect to Gary MacFarland (1863 Pownal Road, Auburn, Maine, March 30, 2017), the hardship was created from reliance on an erroneous survey. A variance was granted in that case; the same result should apply here. The hardship requiring the variance is a result of reliance upon closing agents and attorneys to ensure that a conforming property was being conveyed.

In fact, in *Wiper v. City of South Portland* (October 31, 2001), the Cumberland County Superior Court suggested that, to properly deny a variance request based on the self-created hardship factor, there needs to be evidence that the "prior owner took affirmative action that resulted in the creation of the practical difficulty requiring a variance." In this case, there is no evidence of that necessary personal affirmative action by the prior owner that would justify denying a variance based on this factor.

Mr. Vanesse has been non-responsive to alternative solutions. A fast solution is needed, to avoid harm to the property and the neighborhood, as well as the Lauzes. "Few parties will be willing to purchase a nonconforming lot that cannot be developed." *Rocheleau v. Town of Greene*, 1998 ME 59, ¶5, 708 A.2d 660, 662, n.1. Therefore, the Law Court in recent years has relaxed the rules about "self-created hardships." *See Id.* The goal is to avoid "undesired development of nonconforming lots in order to facilitate their sale." *Id. See also, Lord v. Society for the Preservation of New England Antiquities, Inc.*, 639 A.2d 623, 625 n. 6 (Me.1994) (Maine has a "historical policy of protecting the alienability of real property."). *Strout v. Gammon*, 629 A.2d 43, 46 (Me.1993) (the law seeks to ensure the free transfer of land).

The hardship to the Lauzes is that they need to sell the Property or it will likely go to foreclosure. This is not a result of any action they have taken. Both the seller and the buyers relied upon financial and real estate professionals and had no idea that this present hardship would result. This hardship was caused by actions of others, who were paid and relied upon, and it was beyond my client's control.

There may be other ways to address the non-conforming abutting lot and ensure that the Lauze Property is not "flagged." The problem is that we have already made several attempts to contact Mr. Vanesse. The Lauzes have spent thousands of dollars in legal fees trying to work with him to fix this. He has not been responsive. Even though he is the owner of the non-conforming lot, the Lauzes are the ones facing the hardship. In other words, a private solution to this hardship is not attainable because of Mr.

Vanasse's not responding and it is the Lauzes' interests affected. Even though the Lauzes' lot is conforming, they have "standing" to ask for this variance, as it is their lot being flagged. The Maine Supreme Court has ruled that a variance can be requested by anyone who has some "right, title or interest" in the property. *Walsh v.* City *of Brewer*, 315 A.2d 200 (Me. 1974); *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40 (Me. 1983).

In terms of the other criteria in determining whether or not to grant a variance, the Board also looks at:

(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.

Not one of the above eight listed factors is affected in any way by the Board's granting this variance to allow us to sell our Property. For instance, the Property is not in a shoreland area within the City, nor would the variance impact traffic in any way. There is very little impact at all except to alleviate a hardship. In fact, not granting the variance puts some number of these eight items at risk, in that, if the Property becomes vacant and in foreclosure, utility and safety issues may arise. The City will benefit if the Property can be sold, but it being "flagged" has created a hardship situation in that the Property cannot yield a reasonable return unless the variance is granted.

The Lauzes really only need relief from the penalty that resulted when the creation of their lot made Vanesse's non-conforming. The penalty on the Lauzes was that their lot was flagged and there is a building permit hold. All that is being requested via the variance request is for that flag to be removed and for the building permit hold to be lifted/waived.

Because the Property is already under contract for sale, we are asking that the Board consider this request as soon as possible.

Given the current status of the law, and the fact that the Property lines have existed for more than 20 years without any adverse consequences, a variance should be granted.

Please feel free to call if you have any questions or if you need additional information.

Very Truly Yours,

Sonia J. Buck

cc: Kevin Lauze

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May 3, 2018

City of Auburn
Zoning Board of Appeals
c/o Eric Cousens, Deputy Director
Economic and Community Development
60 Court Street
Auburn, ME 04210

Re:	Property ("Property"):	375 Merrow Road, Auburn, Maine
	Owners:	Kevin and Kelly Lauze
	Abutting Property Owner:	Leonard E. Vanasse (Prior Owner)

Dear Mr. Cousens/Board:

As a follow up to the letter from Kevin Lauze to you dated May 1, 2018, I have researched the question of whether the prior owner ("Vanesse") created the hardship resulting in the need for a variance, and the legal precedent suggests that, under the circumstances, Vanesse's action, alone, did not create the hardship. Even if Vanesse knew about the lot size or setback issues, other factors need to be considered.

In *Twigg v. Town of Kennebunk*, the Law Court comprehensively examined the law concerning self-created hardships in the context of a request for a variance. 662 A.2d 914, 918 (Me. 1995). The Law Court held that "actual or constructive knowledge of the zoning ordinances prior to purchase of the property … is not determinative" of a self-created hardship. *See also Rochelau v. Town of Greene*, 1998 ME 59, ¶5, 708 A.2d 660 (Me. 1998).

Here, the hardship was created upon sale to the Lauzes but not as a result of action or knowledge by the prior owner, Mr. Vanesse. Like Gary MacFarland, the parties relied on professionals and work product of professionals. With respect to Gary MacFarland (1863 Pownal Road, Auburn, Maine, March 30, 2017), the hardship was created from reliance on an erroneous survey. A variance was granted in that case; the same result should apply here. The hardship requiring the variance is a result of reliance upon closing agents and attorneys to ensure that a conforming property was being conveyed.

In fact, in *Wiper v. City of South Portland* (October 31, 2001), the Cumberland County Superior Court suggested that, to properly deny a variance request based on the self-created hardship factor, there needs to be evidence that the "prior owner took affirmative action that resulted in the creation of the practical difficulty requiring a variance." In this case, there is no evidence of that necessary personal affirmative action by the prior owner that would justify denying a variance based on this factor.

Mr. Vanesse has been non-responsive to alternative solutions. A fast solution is needed, to avoid harm to the property and the neighborhood, as well as the Lauzes. "Few parties will be willing to purchase a nonconforming lot that cannot be developed." *Rocheleau v. Town of Greene*, 1998 ME 59, ¶5, 708 A.2d 660, 662, n.1. Therefore, the Law Court in recent years has relaxed the rules about "self-created hardships." *See Id.* The goal is to avoid "undesired development of nonconforming lots in order to facilitate their sale." *Id. See also, Lord v. Society for the Preservation of New England Antiquities, Inc.,* 639 A.2d 623, 625 n. 6 (Me.1994) (Maine has a "historical policy of protecting the alienability of real property."). *Strout v. Gammon*, 629 A.2d 43, 46 (Me.1993) (the law seeks to ensure the free transfer of land).

Given the current status of the law, and the fact that the Property lines have existed for more than 20 years without any adverse consequences, a variance should be granted.

Please feel free to call if you have any questions.

Very Truly Yours,

Sonia Buck

Sonia J. Buck

cc: Kevin Lauze

WARRANTY DEED

LEONARD E. VANASSE of Beaverton, Oregon, for consideration paid, grants to KEVIN N. LAUZE and KELLY A. LYNN-LAUZE of Auburn, County of Androscoggin and State of Maine, with WARRANTY COVENANTS as JOINT TENANTS, a certain lot or parcel of land, with the buildings and improvements thereon, situated in Auburn, County of Androscoggin and State of Maine, bounded and described as follows:

Beginning at a 5/8" capped rebar to be set in the ground on the assumed northeasterly side line of Merrow Road at the westerly corner of land now or formerly of William A. and Margaret A. Cox (1077/754); thence N 51°59' 05" E along land of the said Cox 290.00 feet to a 5/8" capped rebar to be set in the ground; thence N 31° 17' 52" W across land of the Grantor 312.49 feet to a 5/8" capped rebar to be set in the ground; thence S 52° 50' 17" W continuing across land of the grantor, parallel with the northwesterly side line of land of the grantor, 290.00 feet to a 5/8" capped rebar to be set in the ground on the said side line of Merrow Road; thence S 30° 15' 00" E along the said side line of Merrow Road 210.19 feet to a concrete monument found set in the ground; thence S 33° 36' 00" E continuing along the said side line of Merrow Road 106.72 feet to the point of beginning. Containing 2.09 acres.

All bearings are Magnetic of the year 1973.

This conveyance is made subject to an easement granted to Central Maine Power Company recorded in the Androscoggin County Registry of Deeds in Book 299, Page 164.

Meaning and intending to convey a portion of the premises conveyed to Leonard E. Vanasse by deed recorded in the Androscoggin County Registry of Deeds in Book 2187, Page 186.

This transfer is a conveyance for value and grantor acknowledges receipt of adequate and full consideration for the transfer.

MAINE REAL ESTATE TRANSFER TAX PAID

WITNESS my hand and seal this 21st day of May, 1998.

Witness

Leonard E. Vanasse by John E. Wilkinson, his attorney-in-fact under a Power of Attorney dated May 11, 1998 to be recorded simultaneously herewith

STATE OF MAINE
ANDROSCOGGIN, SS. May 21, 1998

Personally appeared the above-named John E Wilkinson in his capacity as attorney-in-fact for Leonard E. Vanasse and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me,

SEAL

Notary Public/Attorney-at-Law
Print Name:

Jeane Jandreau, Notary Public
My Commission Expires February 10, 2004

RECEIVED
ANDROSCOGGIN S.S.
98 MAY 22 AM 9: 13
ATTEST:
REGISTER OF DEEDS

24\4561LA~1.WPD

BOOK 1011 PAGE 489

Know all Men by these Presents.

THAT I, JOSEPH L. LATULIPPE of Auburn, in the County of Androscoggin and State of Maine,

in consideration of one dollar and other valuable considerations,
paid by LEONARD E. VANASSE and TINA G. VANASSE, both of said Auburn,

the receipt whereof I do hereby acknowledge, do hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY unto the said LEONARD E. VANASSE and TINA G. VANASSE

as joint tenants, and not as tenants in common, to them and their heirs and assigns, and the survivor of them, and the heirs and assigns of the survivor of them, forever.

A certain lot or parcel of land situated in Auburn, County of Androscoggin and State of Maine, bounded and described as follows:

Beginning on the Northeasterly side of the Merrow Road at the Southerly corner of land of Ansel Verrill which point is also said to be three hundred eighty-two (382) feet from the Bergeron lot; thence in a Southeasterly direction along the Merrow Road three hundred fifty (350) feet to the Westerly corner of land conveyed by Benjamin A. Turner to Florida M. Poulin by deed dated July 13, 1961 and recorded in Androscoggin County Registry of Deeds, Book 855, Page 166; thence in a Northeasterly direction along the line of said Florida M. Poulin's lot eleven hundred (1100) feet, more or less, to land of Russell Hammond; thence in a Northwesterly direction along Hammond's line three hundred fifty (350) feet to land of Ansel Verrill; thence in a Southwesterly direction along the line of Ansel Verrill to the point of beginning.

Being the same premises conveyed to Joseph L. Latulippe by Rosaire Poulin et al by deed of even date herewith to be recorded.

Stamps $4.40

TO HAVE AND TO HOLD the aforegranted and bargained premises with all the privileges and appurtenances thereof to the said LEONARD E. VANASSE and TINA G. VANASSE as joint tenants, and not as tenants in common, to them and their heirs and assigns, and the survivor of them, and the heirs and assigns of the survivor of them, and their use and behoof forever.

AND I do COVENANT with the said Grantees, as aforesaid, that I am lawfully seized in fee of the premises, that they are free of all encumbrances;

that I have good right to sell and convey the same to the said Grantees to hold as aforesaid; and that I and my heirs shall and will WARRANT AND DEFEND the same to the said Grantees, their heirs and assigns and the survivor of them, and the heirs and assigns of the survivor of them forever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the said JOSEPH L. LATULIPPE and I, LINDA L. LATULIPPE, wife of said Joseph L. Latulippe,

joining in this deed as Grantor, and relinquishing and conveying my right by descent and all other rights in the above described premises, have hereunto set our hand s and seal s, this 6th day of December in the year of our Lord one thousand nine hundred and sixty-nine.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

Joseph L. Latulippe

Linda L. Latulippe

STATE OF MAINE, Androscoggin ss. December 6, 1969. Personally appeared the above named Joseph L. Latulippe and acknowledged the foregoing instrument to be his free act and deed.

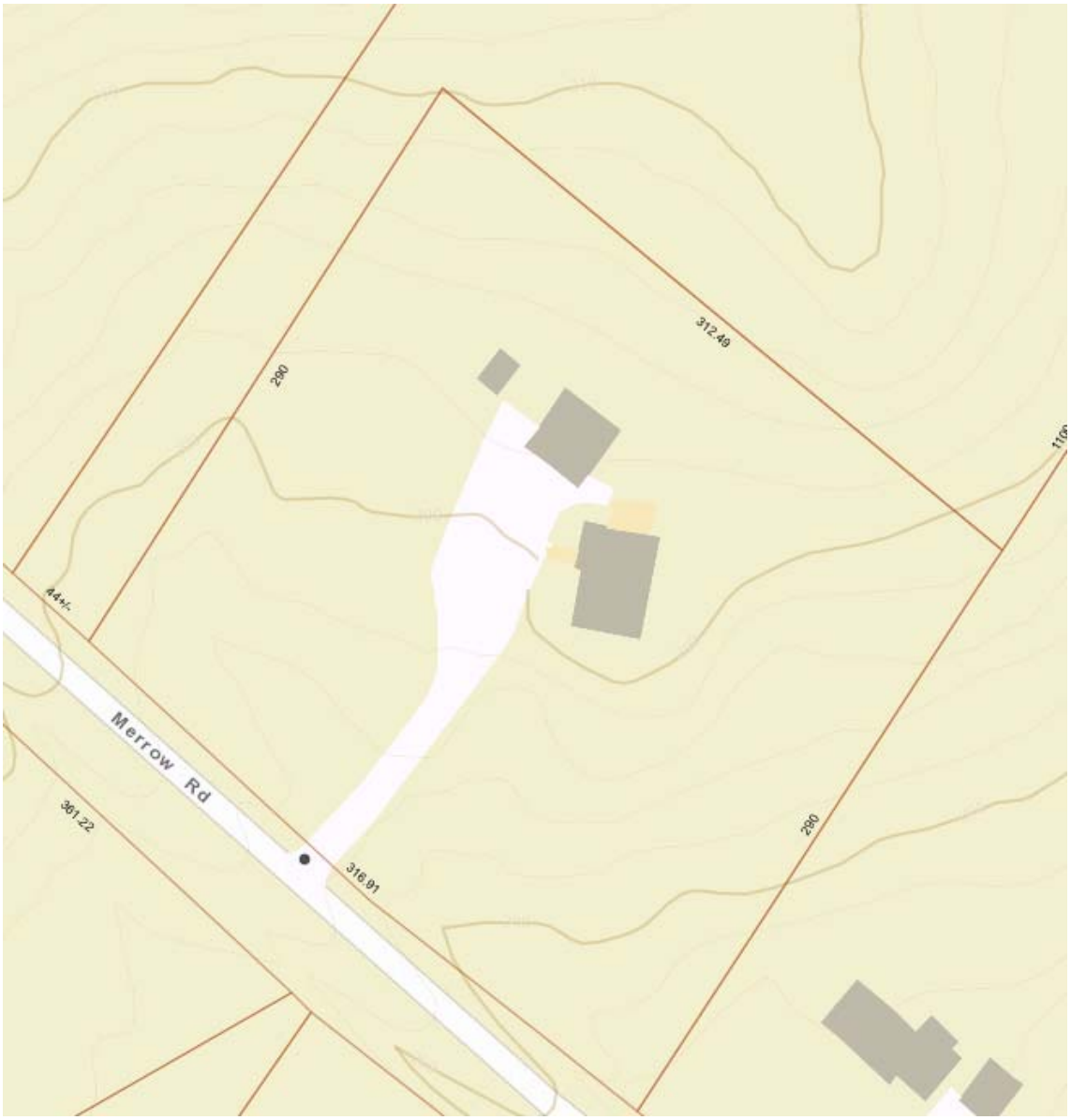
Before me,

Justice of the Peace ~~Notary Public~~

STATE OF MAINE, ANDROSCOGGIN ss. REGISTRY OF DEEDS

Received DEC - 8 1969 at 11 H. 51 M. 11 M., and recorded from the original in Book 1011 Page 489

ATTEST ..... REGISTER



Sec. 60-40. - Reduction in dimensional regulations.

No lot (except as allowed by the planning board at the time of final approval of a subdivision or development plan) shall be reduced, subdivided, conveyed, divided or otherwise transferred that violates, or creates a lot that violates, any minimum or maximum dimensional regulation of this chapter. No building permit or other municipal permit or license shall be issued to any of the land so transferred or to the land retained until all of such land or lots are in conformance with all dimensional regulations. If a serious health or safety issue with the property should arise, the director of planning and permitting services shall determine if a permit should be issued to correct the problem. This provision shall not allow further nonconformity to occur in order to achieve the corrective action necessary. Any land taken by eminent domain or conveyed for a public purpose shall not be deemed in violation of this provision. Any setback or lot that is reduced below the minimum or extended beyond the dimensional requirements as a result of land taken by eminent domain or conveyed for a public purpose shall not be deemed nonconforming. Setbacks for the enlargement of any existing building located on such a lot shall be referenced to the property line as it was located prior to the eminent domain action or the conveyance for a public purpose.


Merrow Rd