

# City of Auburn, Maine

*"Maine's City of Opportunity"*

## Office of Economic and Community Development

To: Auburn Zoning Board of Appeals

From: Eric J. Cousens, Deputy Director of Planning and Permitting

Re: Appeal of Kevin and Kelly Lauze, owners of property at 375 Merrow Road. The appellant is requesting variance from Section 60-40 of the Code of Ordinances of the City of Auburn. The intent of the appeal is to allow relief from the lot size requirement violation on the abutting parcel preventing the issuance of permits at 375 Merrow Road, PID# 195-024 pursuant to Chapter 60, Article XV of the City of Auburn Zoning Ordinance.

Date: June 7, 2018

### 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.
- (b) 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;

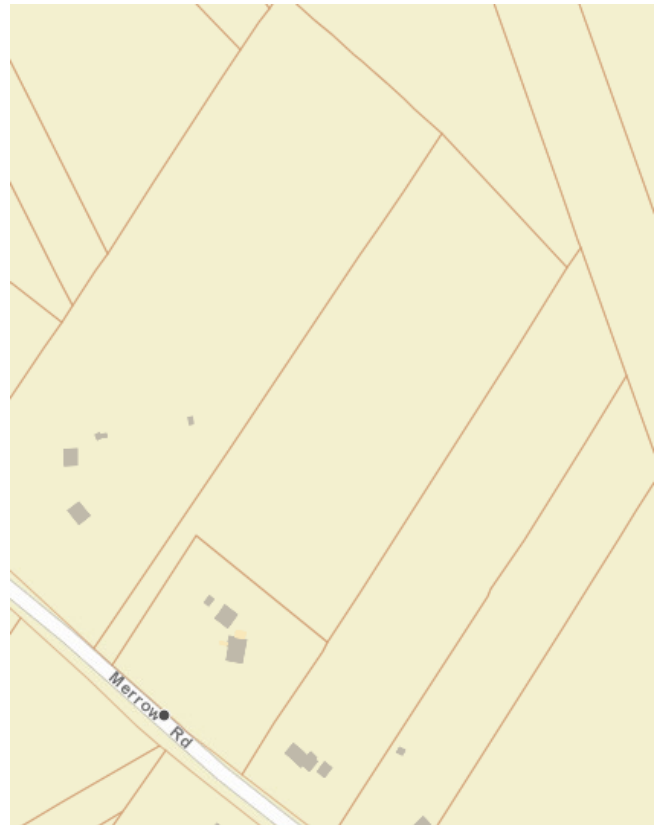
- (6) Would not adversely affect property adjoining the premises under appeal or nearby in the same neighborhood or in the same zoning district;
- (7) Would not endanger the public health, safety or convenience; and
- (8) Would not impair the integrity of the zoning chapter.

## PROPOSAL

The City of Auburn has received a request from Kevin and Kelly Lauze, owners of property at 375 Merrow Road. The appellant is requesting variance from Section 60-40 of the Code of Ordinances of the City of Auburn. The intent of the appeal is to allow relief from the effect of the lot size requirement violation on the abutting parcel preventing the issuance of permits at 375 Merrow Road, PID# 195-024 pursuant to Chapter 60, Article XV of the City of Auburn Zoning Ordinance.

The home was originally constructed around 1970 and is legally existing. The Minimum lot size in the Rural Residence District is 1 acre and the lot contained about 9 acres when the home was constructed. The attached request for appeal details how the lot frontage on the abutting parcel violation happened when the home was sold with 2.09 acres and the back land was retained by the prior owner around 1998. 375 Merrow Road meets all zoning standards. Staff believes that the homeowner, their attorneys and the financial institution financing the purchase were unaware of the abutting lots violation and how that might affect the home lot status for the issuance of permits. The variance request is for a variance from the provision of the ordinance prohibiting the issuance of permits to 375 Merrow Road.

Section 60-40. Of the City Ordinances states in part that “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.” It further states building permits cannot 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. The one exception is to resolve a serious health or safety issue with the property. Based on that provision, the zoning ordinance prohibits the City from issuing any permits for the repair, regular improvements and maintenance of the structures while a violation of the lot size requirement exists. From the beginning, staff recommended that the two property owners work together to swap land to correct the lot size violation; this option has been pursued by



the current owners and an agreement has proven to be unreachable. Now faced with the continued deterioration of the home as a likely outcome the owner has applied for a variance from the provision that prevents permits from being issued as a last resort. If a variance is granted, it would resolve the violation for 375 Merrow Road but still prohibit permits from being issued on the abutting vacant land held by the person that created the illegal lot. This would allow for the existing home to be sold, maintained and improved; It would not allow for any further development of additional homes on the abutting vacant land. We believe this is the minimum necessary variance to relieve the hardship and avoid impacts to the neighborhood.

The application details how the appellant believes the situation qualifies for a variance.

I. RECOMMENDATION:

Staff recommends the following findings:

1. Unless the variance is granted by the City, the owner cannot obtain a permit for repair, improvement or maintenance of the existing structures. Without repair and improvement the property will continue to deteriorate and the property cannot yield a reasonable return.
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. The other conforming house lots in the neighborhood are able to get building permits, able to obtain financing and to be properly maintained. This is the only home with this prohibition in the immediate area and it is preventing the sale and maintenance of an otherwise desirable home.
3. The granting of a variance will not alter the essential character of the locality as the structure will remain in the current location and could be appropriately maintained. This 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. The illegal back lot will continue to be undeveloped as an incentive to eventually combine it with an abutting parcel and resolve the violation.
4. The applicant has demonstrated that case law supports that “actual or constructive knowledge of the zoning ordinance prior to the purchase of the property . . . is not determinative” of a self-created hardship. Evidence presented also shows that the situation likely could not have been prevented by the appellant and the appellant likely would have prevented the purchase if they or the financial institution were aware of the issue. For this reason the Board should conclude that the hardship is not the result of action taken by the appellant or a prior owner.
5. The property is not located in the Shoreland zone.
6. In addition to the criteria in this section, in determining whether or not to grant a variance, the board has also taken 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 water supply will continue to serve the structure.
- (4) The availability of adequate sewerage facilities; The structure is served by a legally existing subsurface wastewater disposal system.
- (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.

It is staff's opinion that criteria 4 is the only standard that could be argued to be met or not met with substantial support for either finding. That said, the standard and the case law provide stronger support a finding that the hardship is not the result of action taken by the appellant or a prior owner. In addition, it will be harmful to the character of the neighborhood, the City and the property owner if the variance is not granted and the structure is forced into foreclosure and disrepair.

Based on the above findings, staff recommends approving the variance as requested.