



City of Auburn, Maine

Economic & Community Development

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To: Auburn Zoning Board of Appeals

From: Eric J. Cousens, Deputy Director of Economic and Community Development

Re: Appeal of Leslie and Bert Pelletier; Leslie Pelletier is the owner of property at 83 West Dartmouth Street. The appellant is requesting variance from Section 60-278(3)c of the Code of Ordinances of the City of Auburn. The intent of the appeal is to allow relief from the front setback requirement of the Urban Residential Zoning District at 83 West Dartmouth, PID# 280-024 pursuant to Chapter 60, Article XV of the City of Auburn Zoning Ordinance.

Date: April 18, 2019 Meeting

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 Leslie and Bert Pelletier; Leslie Pelletier is the owner of property at 83 West Dartmouth Street. The appellant is requesting variance from Section 60-278(3)c of the Code of Ordinances of the City of Auburn. The intent of the appeal is to allow relief from the effect of the front setback requirement of the Urban Residential Zoning District at West Dartmouth, PID# 280-024, pursuant to Chapter 60, Article XV of the City of Auburn Zoning Ordinance.

The home was originally constructed around 1920 and is legally existing. The Minimum front setback in the Urban Residential Zoning District is 25 feet and the enclosed portion of the home appears to have met that when the home was constructed. That said, there was also an existing front deck extending approximately 10 feet from the front of the home towards the street that was legally constructed and appears to have encroached into the front setback area for many years.

In 2018 the City learned that the front deck had been removed and an enclosed addition added in its place in late 2016. The addition changed the home from approximately 664 square feet to approximately 892 square feet and is still smaller than the average home in the neighborhood. Based on the Pelletier's survey, it appears that the addition extends about 2 to 2.5 feet closer to the street than the previously existing deck. If the Pelletier's applied for a permit prior to construction and retained 50% of the structural members of the deck, it would have been possible to construct the enclosed addition in the space occupied by the deck and expanding parallel to the street, but not closer to the street by 2 to 2.5 feet as it was constructed.

The street right-of-way in the area of 83 West Dartmouth Street is substantially wider than the Street. The street was constructed at 23-24 feet wide and the ROW is 50' wide leaving a substantial lawn area between the front property line and the edge of the paved portion of the street. The survey shows approximately 15' of lawn area within the ROW. The 15' combined with the existing setback gives the appearance of a 30'+ front yard area between the home and the paved portion of the street.

Constructing the addition to the west side of the home may have been possible but existing utilities, including the gas line, would need to be relocated adding cost to the project. Gas, Water and Sewer Utilities usually enter homes from the front wall of the property to reduce excavation and costs, but the gas connection extends along the West side of the home, according to the survey. The applicant has also noted that the addition would not have made use of the existing and still limited footprint of the home if constructed at a different location.

The attached request for appeal details how the applicant believes the proposal meets the Variance Criteria. It is staff's opinion that the property meets all zoning standards except the setback requirements.

PUBLIC NOTICE AND PUBLIC FEEDBACK

A letter was sent to all directly abutting property owners and owners of properties across the street on April 4, 2019. As of Friday, April 12, 2019 we have received only one inquiry about the proposed Variance from a property owner across the street. Irene Coady, owner of 78 West Dartmouth asked what the request was about. Mrs. Coady explained that she could not attend the meeting because driving after dark is difficult for her but she wanted the Board to know that she considers the property greatly improved by the addition, noted that it looks better than it has in 40 years and urged the City not to make them tear it down.

RECOMMENDATION/POTENTIAL FINDINGS

Staff recommends the following findings:

1. Unless the variance is granted by the City, the owner cannot obtain an after-the-fact permit for the structure and will need to remove the addition. The Board will need to determine if not allowing the addition will deny the property owner of a reasonable return on the land. **Options:**
 - A. Based on the information provided by the applicant, the City and the Public, the Board finds that without the front setback variance to not less than 15 feet the land at 83 West Dartmouth cannot yield a reasonable return; **OR**
 - B. The land in question can yield a reasonable return without the requested variance.
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood, by finding that:
 - A. The wide front lawn area within the ROW is unique the northern side of West Dartmouth Street, where 83 West Dartmouth is located. The constructed portion of the street is closer to the southern side of the West Dartmouth Street ROW.
 - B. The gas line extending along the western side of the home would have made construction more costly and difficult in that area.
 - C. The property is owned by the occupant's mother and the addition was constructed by the occupant's father. The neighborhood is predominantly owner-occupied single-family homes. The petition explains how this led to the failure to obtain a permit and notes that it was not intentional.
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 can be appropriately maintained. This variance will preserve the existing character of the home and is consistent with neighborhood. Many existing homes in the neighborhood are nonconforming with respect to the front setback.
4. The Petition explains that the front setback was missed accidentally and was not due to an action taken by the owner or a previous owner based on two important facts:
 - A. There is a substantial difference between the edge of pavement and the front property line on the northern side of West Dartmouth Street.

- B. After applying for an after-the-fact permit in 2018, Mr. Pelletier and a City Code Enforcement Officer located a pin initially thought to be the marker for the front property line. The survey shows that the pin initially thought to be the front property line was not, in-fact, the front property line pin.

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 public water supply will continue to serve the structure.

(4) The availability of adequate sewerage facilities; The structure is served by public sewer.

(5) Would not violate the environmental standards or criteria contained in the Overlay Zoning Districts; The property is not located in an environmental overlay district.

(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 1 is the most difficult standard to meet with this application and could be argued with support for either finding. Staff recommends that the Board consider information provided in the Petition, by the applicant at the Hearing and by any members of the Public and then consider and vote on each finding. If the Board concludes that each finding has been satisfied then the Board should approve the request; If one or more findings cannot be satisfied then the Board should deny the request.