



City of Auburn, Maine

Economic & Community Development

Michael Chamings, Director

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To: Auburn Zoning Board of Appeals

From: Megan McLaughlin, City Planner II

Re: Appeal of Constance and Harvey Barstow, owners of property at 41 Jones Street. The appellant is requesting a variance from Sec. 60-256(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 Suburban Residential Zoning District at 41 Jones Street, PID #208-133 pursuant to Chapter 60, Article XV of the City of Auburn Zoning Ordinance.

Date: July 25, 2019 Meeting

I. 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.

II. PROPOSAL

The City of Auburn has received a request from Constance and Harvey Barstow, owners of property at 41 Jones Street. The appellant is requesting a variance from Sec. 60-256(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 Suburban Residential Zoning District at 41 Jones Street, PID #208-133 pursuant to Chapter 60, Article XV of the City of Auburn Zoning Ordinance.

Staff received a building permit for the construction of two decks at 41 Jones Street. The first was for the replacement of a set of steps on the side of the property with a 10' x 4' deck which meets the side setback requirements. The second was for the replacement of a set of steps in the front of the property with a 6' x 6' deck, ramp, and roof. The Building Inspector is able to permit the deck on the side of the structure but not the deck in the front due to the 25 foot setback requirement. Therefore, the Building Permit was denied.

Due to the presence of a nonconformity, the Applicant would typically only be able to replace the steps in the current footprint. However, because of the disability, Sec. 60-79. – Change, Extension or Enlargement of Nonconforming Structures states: “*None of the limitations of this subsection shall apply to a building or structure, which requires it to be altered, extended or enlarged to satisfy life safety codes and/or handicapped accessibility.*” Therefore, Staff could issue a Building Permit for the landing and ramp required per the Building Code. The Building Code requires a 36” x 36” landing for a ramp. The Applicant is requesting to double this amount and to also add a small roof over the deck to protect it from the elements.



The attached request for appeal details how the Applicant believes the proposal meets the variance criteria. It is Staff's opinion that the proposal meets all zoning standards except the front setback requirement.

PUBLIC NOTICE AND PUBLIC FEEDBACK

A letter was sent to all directly abutting property owners and owners of properties across the street on July 15, 2019. As of Friday, July 19, 2019 we have heard from one abutter who is in favor of the proposal (please see email attached to packet).

RECOMMENDATIONS/POTENTIAL FINDINGS

Staff recommends the following findings:

1. Unless the variance is granted by the City, the Owner will only be able to construct a 36" x 36" landing with a ramp and no roof. The Board will need to determine that by not allowing the 6' x 6' deck and roof, it will deny the property owner of a reasonable return on the land.
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 determining that:
 - a. The presence of a disability necessitates the construction a 6' x 6' deck, ramp and roof overhang in the front of the home, thereby encroaching into the front setback.
3. The granting of a variance will not alter the essential character of the locality as many homes in the neighborhood are nonconforming with respect to the front setback.
4. The hardship is not the result of action taken by the appellant or a prior owner. Many homes in the neighborhood are nonconforming with respect to the front setback.
5. 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; *No Impact.*
 4. The availability of adequate sewerage facilities; *No Impact.*
 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.

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.