

City of Augusta, Maine
DEPARTMENT OF DEVELOPMENT SERVICES

AUGUSTA STATE AIRPORT
CODE ENFORCEMENT
ECONOMIC DEVELOPMENT



ENGINEERING
FACILITIES & SYSTEMS
PLANNING

Findings of Fact, Conclusions of Law, and Certificate of Approval
February 3, 2016

Variance Granted/Denied.

FINDINGS OF FACT

1. **Owner:** Employment Specialists of ME, Inc
2. **Applicant:** Motivational Services, Inc.
3. **Location:** 66 Winthrop Street
4. **Registry:** Book 6007, Page 165
5. **Zoning:** Business/Professional/Institutional (BP)
6. **Tax Map Number:** Map 33, Lot 201
7. **Existing Land Use:** Parcel currently has an office use on it.
8. **Proposed Land Use:** Applicant requests a variance from Section 3.6.1.2.2.b of the Land Use Ordinance requiring 2,500 square feet of land per dwelling unit. The applicant requests that the standard be reduced to 1,887 square feet of land per dwelling unit to enable the site to accommodate six, rather than four, dwelling units, plus office space to staff the facility 24/7. The applicant also requests a variance from Section 5.1.14.2 of the Land Use Ordinance to reduce the required 24 parking spaces to 14 spaces.
9. **Acreage:** 0.24 acres
10. The following material was date stamped by the Department of Development Services on January 13, 2016:
 - a. A completed Application for Variance or Appeal form to Board of Zoning Appeals filled out by Motivational Services, Inc. as the applicants.
 - b. Plans showing the property location and the floorplan of the building.
 - c. A check for \$100 to cover the cost of the application fee.

_____ CHAIR INITIALS

11. City Staff provided the following:
 - a. A detailed memo on January 27, 2016, analyzing the proposal relative to the zoning district and the variance criteria.
12. A Notice of Public Hearing was authorized by Peter Fortunato, the Acting Chair Augusta Board of Zoning Appeals.
13. A Notice of Public Hearing was advertised in the Kennebec Journal on January 23, 2016.
14. A copy of the Notice of Public hearing was mailed via First Class mail to all property owners with property within 500 feet of the boundary of the subject parcels.
15. The Board of Zoning Appeals held a public hearing regarding the application on February 3, 2016. At that meeting Matthew Nazar, Deputy Director of Development Services, and Robert Overton, Code Enforcement Officer, provided a detailed review of the proposal as submitted and how it is affected by the Land Use Ordinance. The review included an analysis of the variance criteria relative to the request and the standards of the Business/ Professional/Institutional (BP) zoning district.
16. XXX individuals testified, besides the applicant/applicant's agent, at the February 3, 2016, public hearing.

CONCLUSIONS OF LAW:

1. The facts are:
 - a. The applicant requests a variance from Section 3.6.1.2.2.b of the Land Use Ordinance requiring 2,500 square feet of land per dwelling unit. The applicant requests that the standard be reduced to 1,887 square feet of land per dwelling unit to enable the site to accommodate six, rather than four, dwelling units.

The applicant also requests a variance from Section 5.1.14.2 of the Land Use Ordinance to reduce the required 24 parking spaces to 14 spaces.
 - b. Tax Map 33, Lot 201, is under a Purchase and Sale Agreement dated January 14, 2016, for purchase by Motivational Services, Inc. The agreement is valid through February 8, 2016.
 - c. Tax Map 33, Lot 201 has a building currently used as offices for Employment Specialists of ME, Inc.
2. The Board of Zoning Appeals concludes from the evidence submitted that they do not have the authority to grant a variance from Section 5.1.14.2 of the Land Use Ordinance to reduce the required 24 parking spaces to 14 spaces. Section 5.1.14.2.1.e.i of the Land Use Ordinance grants the Planning Board the authority to reduce parking standards by up to 50% of the required parking outlined in the ordinance.

3. The Board of Zoning Appeals has reviewed the application, held a publicly noticed hearing, and reviewed the criteria for a variance in the Augusta Land Use Ordinance and concludes the following:

- a. Standing: Does the applicant and the applicant's agent have the legal standing to bring the application to the Board for approval?

The applicant has a valid Purchase and Sale Agreement for the subject parcel and therefore **has/does not have** standing to request this variance.

- b. Variance Criteria 1: Section 6.6.2.2.1.a of the Land Use Ordinance states that the applicant must demonstrate to the Board:

"That well documented, exceptional conditions affect the particular land or building which do not generally affect other properties in the district."

Based on the evidence submitted, the Board concludes that the parcel **has/does not have** well documented, exceptional conditions affect the particular land or building which do not generally affect other properties in the district.

- c. Variance Criteria 2: Section 6.6.2.2.1.b.i of the Land Use Ordinance is related to "undue hardship" criteria and states that the applicant must demonstrate to the Board:

"That the land in question cannot yield a reasonable return unless a variance is granted."

Based on the evidence submitted, the Board concludes that the parcel and existing building **can/cannot** yield a reasonable return without the granting of a variance.

- d. Variance Criteria 3: Section 6.6.2.2.1.b.ii of the Land Use Ordinance is related to "undue hardship" criteria and states that the applicant must demonstrate to the Board:

"That the need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood."

Based on the evidence submitted, the Board concludes that the parcel **has/does have** exceptional conditions that affect primarily this parcel in this zoning district.

- e. Variance Criteria 4: Section 6.6.2.2.1.b.iii of the Land Use Ordinance is related to "undue hardship" criteria and states that the applicant must demonstrate to the Board:

"The granting of a variance will not alter the essential character of the locality."

Based on the evidence submitted, the Board concludes, that the variance **would/would not** alter the essential character of the West Side Neighborhood.

- f. Variance Criteria 5: Section 6.6.2.2.1.b.iv of the Land Use Ordinance is related to “undue hardship” criteria and states that the applicant must demonstrate to the Board:

“That the hardship is not the result of action taken by the applicant or prior owner.”

Based on the evidence submitted, the Board concludes that there **was an/was no** action taken by the applicant or a prior owner to require a higher dwelling unit density at this property.

- g. Variance Criteria 6: Section 6.6.2.2.1.c of the Land Use Ordinance states that the applicant must demonstrate to the Board:

“That a variance from the particular terms of this ordinance can be granted without detriment to the public interest or the health, safety, or general welfare of the residents of the municipality, and without impairment of the integrity of the comprehensive plan for municipal development, or of the purpose and intent of the ordinance.”

Based on the evidence submitted, the Board concludes that the granting of the variance **will/will not** be a detriment to the health, safety, or general welfare of the public.

- h. Variance Criteria 7: Section 6.6.2.2.2 of the Land Use Ordinance states that:

“Limit on variances. No variance shall be granted for placement of a structure less than five (5) feet from the property line unless the abutting owner gives a construction, maintenance and repair easement which shall be recorded with the Kennebec County Registry of Deeds. No variance shall be granted which does not provide for a snow storage area of a minimum of five (5) feet from the right-of-way line. In shoreland areas, the minimum setback from the normal high water mark for subsurface sewage disposal facilities shall not be reduced by variance.”

Based on the evidence submitted, the Board concludes this criterion is not applicable because no new structures are proposed.

- i. Variance Criteria 8: Section 6.6.2.5 of the Land Use Ordinance states that:

“In granting appeals, the board may impose such conditions and safeguards regarding the location, character, fencing, screening, landscaping, or other features as it may deem advisable in furtherance of the intent and purpose of this ordinance, and may require posting of bonds to assure performance. The issuance of any variance shall be contingent upon the applicant's agreeing in writing to indemnify and save harmless the city against all loss, cost, damage or expense occurring by reason of the erection

or maintenance of a structure and upon his or her filing with the City Clerk a certificate of public liability insurance covering property damage up to one thousand dollars (\$1,000.00) and bodily damage with a coverage of ten thousand to twenty thousand dollars (\$10,000.00 to \$20,000.00) minimum limits.”

Based on the evidence submitted, the Board concludes that this criterion is not applicable to this application because no new structures will be constructed as a result of this request.

CONDITIONS OF FINAL APPROVAL

The following conditions shall be met:

1. **NONE.**

IN WITNESS WHEREOF, I have hereto set my hand and seal this _____ day of _____, 2016.

Peter Fortunato, Chair
Board of Zoning Appeals

STATE OF MAINE
KENNEBEC, SS

Then personally appeared the above named Peter Fortunato and acknowledged the above certificate to be hi free act and deed in his capacity as Chair of the Augusta Board of Zoning Appeals.

My commission expires:

Notary Public (Printed or typed name)

This certificate must be recorded in the Kennebec County Registry of Deeds within 90 days of the date of the final written approval of the variance for the variance to be valid pursuant to 30-A M.R.S.A. 4353(3).