

City of Augusta, Maine
DEPARTMENT OF DEVELOPMENT SERVICES

AUGUSTA STATE AIRPORT
CODE ENFORCEMENT
ECONOMIC DEVELOPMENT



ENGINEERING
FACILITIES & SYSTEMS
PLANNING

Memo

To: Board of Zoning Appeals

From: Matt Nazar, Director of Development Services
Robert Overton, Code Enforcement Officer

Date: July 27, 2016

Re: Betsy Ann Ross House of Hope

Background:

Attached please find the June 28, 2016, letter from Attorney Mary Dennison and the June 30, 2016, response from Rob Overton, Augusta Code Enforcement Officer. Additionally, please see the appeal request from Mary Dennison alleging that the Code Enforcement Officer made an error in his interpretation of the Land Use Ordinance.

Standing:

The appellant applied for a building permit at 8 Summer Street to renovate the building enabling the use of the property for multiple, unrelated individuals to live in the building. The building is proposed to have seven (7) bedrooms with common cooking and other facilities, and an efficiency apartment.

Upon receipt of the building permit application on June 24, 2016, Rob Overton contacted the applicant and stated verbally that he would be issuing a denial of the permit. On June 28, 2016, Rob Overton received a letter from Mary Dennison questioning the anticipated denial. On June 30, 2016, Rob officially issued the written denial. Section 300-606(F)(1) requires that an appeal of a decision by the CEO must be filed within 30 days of the receipt of the written denial. Attorney Dennison submitted an appeal on behalf of her client on July 12, 2016.

The appellant has standing to file the appeal, in staff's opinion.

Specifics Relevant to this Appeal:

1. Please review the details of the appellant's argument that an error was made by the CEO and the CEO's letter of denial.
2. Section 300-606(C)(1) states:
"The Board of Appeals of the City of Augusta may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the

Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this chapter.”

The appellant argues that the alleged error in this case is that the CEO has misclassified the proposed use as a “Rooming House”. In her June 28, 2016, memo, Attorney Dennison states her opinion that the use is a “Boarding Home”.

3. Section 300 Attachment 4 of the Code of Ordinances is the City of Augusta Table of Uses that outlines the uses allowed in each zoning district within the city. The use “Rooming Houses” is not an allowed or conditional use in the RB2 zoning district where this property is located. The use “Group and Boarding Homes” is an allowed use in the RB2 zoning district.

4. A Rooming House is defined as:

“A building in which three or more rooms are kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants for weekly or longer periods, with or without board, for compensation (as distinguished from hotels, motels and tourist homes in which rentals are generally on an overnight basis for transients).”

5. The CEO made the determination that this use is a Rooming House based on the following:

- a. The facility will have seven rooms maintained for individual use plus an efficiency apartment available.
- b. The facility will be available to a subset of the public (homeless female veterans) and is not strictly for the private use of the owner of the facility. A private house where friends or relatives may visit and spend a few nights or weeks is not open to the public. The only criterion for a stay in the proposed facility is that an individual be a member of a subset of the public. There is no other required connection to the property owner.
- c. Payment to support the stay of individuals in the facility will occur via donations and grants, as stated in the appeal letter from Attorney Dennison. The definition of a Rooming House does not require that payment come directly from the tenant. Payment for the tenant’s stay is being made to the facility’s owner.

The above characteristics of the use clearly fit the definition of a “Rooming House”.

6. The CEO does not believe that the use listed in the table as “Group and Boarding Home” can be parsed into two separate and very different uses – “Group Homes” and “Boarding Homes” – as suggested by the appellant. The CEO opinion is supported by the fact that when the use is parsed into two, one of the uses is not separately defined by the ordinance. It is the CEO opinion that Boarding Home is not separately defined in the ordinance because it was never intended to be a use separate and distinct from a Group Home.