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July 12, 2016

Peter Fortunato, Chair  
Augusta Zoning Board of Appeals  
City of Augusta – City Center  
16 Cony Street  
Augusta, ME 04330

**Re: Appeal of the Betsy Ann Ross House of Hope Building Permit Denial**

Dear Mr. Fortunato and Members of the Board:

I represent Martha Evertt-St. Pierre and The Betsy Ann Ross House of Hope, a Maine nonprofit corporation that owns the real estate located at 8 Summer Street in Augusta. On June 30, 2016, Code Enforcement Officer Robert Overton denied a building permit application submitted for the property at 8 Summer Street. (See June 30 letter attached).

Enclosed please find 15 copies of the Application for Appeal of his decision, together with a Summary of the Facts on Appeal and a check for the filing fee of \$50.00. I am respectfully requesting that this matter be placed on the Board's agenda for the August 3 meeting.

Sincerely,



Mary A. Denison  
Counsel for The Betsy Ann Ross House of Hope

cc: Stephen Langsdorf, Esq., Counsel for the City of Augusta  
Martha Evertt-St. Pierre

# City of Augusta, Maine

## DEPARTMENT OF CITY SERVICES

BUREAUS:

Code Enforcement (207) 626-2368  
Facilities & Buildings (207) 626-2365

(207) 626-2365

BUREAUS:

Engineering (207) 626-2367  
Planning (207) 626-2366



June 30, 2016

Lake & Dennison, LLP  
C/O Mary Dennison  
PO Box 67  
Winthrop, ME 04364-0067

**Re: Betsy Ann Ross House of Hope Building Permit application  
8 Summer Street (Tax Map 34, Lot 192)**

Dear Mary:

I have reviewed the letter you sent regarding the above referenced project and disagree with your assessment of the proposed land use classification.

The Land Use Ordinance defines a "Rooming house" 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)."

The proposed use is a "Rooming house" according to the Land Use Ordinance. This use is not allowed within the RB2 zoning district. The Commercial Building Permit application is hereby denied.

You may appeal this decision to the Board of Appeals within 30 days of receipt of this letter.

Do not hesitate to contact me if you have any questions or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Overton", is written over a horizontal line.

Robert Overton  
Code Enforcement Officer

CITY CENTER PLAZA, 16 CONY STREET, AUGUSTA, MAINE 04330-5298

FAX: (207) 626-2520

TDD: (207) 626-2370

BOARD OF ZONING APPEALS

Docket # 363

APPLICATION FOR VARIANCE OR  
APPEAL TO BOARD OF ZONING APPEALS

Name of Appellant Betsy Ann Ross House of Hope

Mailing Address 86 Winthrop Street, P O Box 5661

City Augusta State ME Zip 04330 Tel. No. 626-7000

Name of Owner Betsy Ann Ross House of Hope

Location of Subject Property if Different from Above 8 Summer Street,  
Augusta, Maine 04330 Map 34 Lot 192

The undersigned requests that the Board of Zoning Appeals consider one of the following:

X 1. An Administrative Appeal: Relief from the decision, or lack of decision, of the Code Enforcement Office or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

- X an error was made in the denial of the permit
- X the denial of the permit was based on the misinterpretation of the ordinance
- there has been a failure to approve or deny the permit within a reasonable period of time
- Other \_\_\_\_\_

See attached summary of appeal

Please explain, in more detail, the facts surrounding this appeal (please attach a separate piece of paper). You should be as specific as possible so that the Board of Appeals can give full consideration to your case.

       2. A Variance:

Nature of Variance: Describe generally the nature of the variance.

\_\_\_\_\_  
\_\_\_\_\_

In addition, a sketch plan of the property to scale must accompany this application showing dimensions and shape of the lot, the size and locations of existing structures, the locations and dimensions of proposed buildings or alterations, and any natural or topographic peculiarities of the lot in question.

- a. Please describe the well-documented, exceptional conditions that affect the particular land or building which do not affect other property in the district (Augusta Land Use Ordinance, Sec. 6.6.2.2.1 (a)).

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- b. Justification of Variance: In order for a variance to be granted, the appellant must demonstrate to the Board of Zoning Appeals that the strict application of the terms of the ordinance would cause undue hardship. There are four criteria which must be met before the BZA can find that a hardship exists. Please explain how your situation meets each of these criteria listed below:

- i. The land in question cannot yield a reasonable return unless the variance is granted (Augusta Land Use Ordinance, Sec. 6.6.2.2.1 (b) i).

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- ii. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. (Augusta Land Use Ordinance, Sec. 6.6.2.2.1 (b) ii).

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- iii. The granting of a variance will not alter the essential character of the locality. (Augusta Land Use Ordinance, Sec. 6.6.2.2 1 (b) iii).

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- iv. The hardship is not the result of action taken by the appellant or a prior owner. (Augusta Land Use Ordinance, Sec. 6.6.2.2.1 (b) iv).

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- c. Additional Factors Applicable to Variances: Please address the following additional factors:

1. Explain how 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 this ordinance. (Augusta Land Use Ordinance, Sec. 6.6.2.2 (c)).

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2. 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 shore land areas, the minimum setback from the normal high water mark for subsurface sewage disposal facilities shall not be reduced by variance. (Augusta Land Use Ordinance, Sec. 6.6.2.2 (2))

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3. 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) and bodily damage with a coverage of ten thousand to twenty thousand dollars (\$10,000-\$20,000) minimum limits. (Augusta Land Use Ordinance, Section 6.6.2.5)

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4. In shore land areas, the Board of Appeals shall not grant a variance unless it makes a finding, based on clear and convincing evidence presented to it, that the proposed use would meet the provisions of the following: (as listed in section 6.6.2.3))
- a. If the proposal contains known sensitive areas such as erodible or shallow soils, wetlands, aquifers, aquifer recharge areas, floodplain or steep slopes (over 15%), what special engineering precautions will be taken to overcome these limitations?
  - b. Does the proposal conform to applicable local, State DEP and Federal EPA air quality standards including, but not limited to odor, dusts, fumes or gases which are noxious, toxic or corrosive, suspended solid or liquid particles, or any air contaminant which may obscure an observer's vision?
  - c. Does the proposal conform to applicable local, State DEP, and Federal EPA water quality standards, including, but not limited to erosion and sedimentation, runoff control, and solid wastes and hazardous substances?
  - d. Will all sewage and industrial wastes be treated and disposed of in such a manner as to comply with applicable federal, state and local standards.
  - e. Shore land and Wetland Districts: Will the proposal:
    - i. Maintain safe and healthful conditions;
    - ii. Not result in water pollution, erosion, or sedimentation to surface waters;
    - iii. Adequately provide for the disposal of all wastewater;
    - iv. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
    - v. Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;
    - vi. Protect archaeological and historic resources as designated in 1988 Growth Management Plan;
    - vii. Avoid problems associated with flood plain development and use; and
    - viii. Conform to the provisions of Section 5.3.1, Special Shore land Standards.

*I certify that the information contained in this application and its supplement is true and correct.*

Date July 12, 2016

Mary A. DeLison, Atty for  
Appellant Betsy Ann Ross House of Hope

Note to the Appellant: This form should be returned to the Chairperson of the Board of Zoning Appeals, Bureau of Code Enforcement, City Center, 16 Cony Street, Augusta, ME 04330-5298.

You will be notified of the date of the hearing on your appeal. Please submit 15 copies of application by 3 p.m.

FILING FEE: \$100.00 (non-refundable) to be paid when variance is filed.

\$ 50.00 (non-refundable) to be paid when an appeal of the Code Enforcement Officer's decision is filed.

\$100.00 (non-refundable) to be paid when an appeal of the Planning Board's decision is filed. Note: Upon being notified of an appeal from a decision of the Planning Board, city planning staff shall have prepared and transmitted to the Board of Appeals a written certified transcript of the Planning Board proceedings from which an appeal is being taken. Applicant will be charged for cost of transcript.

Date Fee Collected: JUL 12 2016 Code: (CSZONE) 10356531 531010

Applicant's Signature: *Mary A. Decker* for

Effective: May 21, 2007

*Betsy Ann Ross  
House of Hope*

Council Order 109

Revised date: February 4, 2016

## SUMMARY OF APPEAL

BETSY ANN ROSS HOUSE OF HOPE  
8 Summer Street, Augusta, Maine; Tax Map 34, Lot 192

1. Code Enforcement Officer Robert Overton made an error in his determination that the proposed use of the building located at 8 Summer Street in Augusta would be a “rooming house” which is a prohibited use in the RB2 zoning district.
2. The proposed use of the property is to provide housing for homeless women veterans. There will be bedrooms and bathrooms and a shared cooking area.
3. The Augusta Land Use Ordinance defines rooming house 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).”
4. The House of Hope will not be open to the general public but will instead be strictly limited to homeless women veterans who have had a satisfactory VA assessment performed and who have no criminal record of drug sales or violent crimes.
5. Rooms will not be provided in exchange for pay. There will be no compensation demanded as the House of Hope is run as a charitable organization funded by donors and selected grant monies, not rent. Qualified, pre-screened applicants may stay at the House of Hope free of charge.
6. All of the information recited above about the House of Hope was provided to CEO Overton by letter dated June 28, 2016 and submitted along with the permit application materials which included a stamped architectural plan of the proposed improvements to the property.
7. CEO Overton’s decision to categorize the House of Hope as a rooming house was not supported by any factual evidence in the record pertaining to the proposed use of the building and was therefore made in error.