

BOARD OF ZONING APPEALS

Docket # 358

APPLICATION FOR VARIANCE OR
APPEAL TO BOARD OF ZONING APPEALS

Name of Appellant Susan A Loesin

Mailing Address 16 Sanctuary Lane

City Augusta State Me Zip 04330 Tel. No. 207-446-9712
207-622-9476

Name of Owner E. N. Brown

Location of Subject Property if Different from Above 362 Riverside Drive

Augusta, Me Map 49 Lot 182

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

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):

- an error was made in the denial of the permit
- 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 Relief from the decision of the Planning Board

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:

a. 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.

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. 6.4.2.2.1 (b) i)

ii. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. (30 MRSA 4963, Subsec. 3B)

It must be shown that well-documented, exceptional conditions affect the particular land or building which do not generally affect other property in the district. (Augusta Land Use Ordinance, Sec. 6.4.2.2 1 (b) ii)

iii. The granting of a variance will not alter the essential character of the locality. (Augusta Land Use Ordinance, Sec. 6.4.2.2 1 (b) iii)

iv. The hardship is not the result of action taken by the appellant or a prior owner.

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. 6.4.2.2)

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. 6.4.2.2 (2))

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 6.4.2.5)

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 6.3.4 (5) a)

- 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, dues,

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 with 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 3-20-13

Susan A. Loesin
Appellant

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 14 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.

MAR 22 2013

Date Fee Collected: _____ Code: (CSZONE) 10356531 531010

Applicant's Signature: Susan A. Loesin
Effective: December 26, 2003 3/22/13 Council Order 160

BOARD OF ZONING APPEALS

Relief from Augusta Planning Board Decision

I am requesting that C.N. Brown's proposal for Major Development at 362 Riverside Drive be denied because it will cause major health and financial hardships to myself and my property. My concerns about the petroleum pollution in the ground water which had previously occurred and appears to be inevitable in the future were not addressed by the Planning Board or by the C.N. Brown representatives.

In 1996, I built a new home on my property which abuts C.N. Brown map #49 lot# ___. When I built this home C.N. Brown was only using the property for fuel storage and had a small heating oil sales office in a larger empty building. The construction of my home was based on my future retirement plans and included both a well and septic systems. In August of 1997, a contractor noticed petroleum sheen on the water surface. Calls were made to Department of Environmental Protection in Augusta. A DEP representative, J. Andrews noted both odors at kitchen and tap, and water samples confirmed the presence of diesel range hydrocarbons. In his report, he mentioned the proximity of a bulk oil terminal which had a historical contamination issue and is 1000 feet from my well. This referred to the C N Brown Bulk Terminal. A recommendation for DEP technical assistance was made, but the DEP representative left on six weeks of sick leave and my concerns were not addressed. Knowing that MBTE was a water soluble carcinogen, I took matters into my own hands. I researched information on water filtration systems that dealt with volatile organic compounds. At a significant expense to me, I bought a filtration system and had it installed by Water Treatment, Inc. Yarmouth, Me. who often works with D.E.P. I continued paying for the state water testing to monitor the efficacy of the filtration system. At one point the State/DEP took over the costly testing, and I am waiting for the archival copies of those results to show the continued contamination of the ground water.

There were two significant spills #A-504-96 and A-0345-96, one which resulted in the stockpiling of contaminated soil at the back edge of the property. Including the two 1996 spills there have been twelve reported spills, some resulting in need for excavation of over 75 tons of contaminated soil. In 1996, on 7/31 and 11/14, contaminated soil was excavated but no tonnage was reported. The same contamination occurred in 2005; again no tonnage reported. At a Public Planning Board Hearing on February 12, 2013, I brought copies of the D.E.P. reports of spills and shared that information. I am enclosing copies of these reports for your perusal.

The past soil/ground water contamination occurred when C.N. Brown employees had accidents and equipment failures. I am concerned about future spills rising exponentially with: the proposed increased hours of business; new excavation and addition of new underground tanks; use and retail sales from 13 new gas/diesel pumps. At the hearing no one addressed the spillage issues by customers.

In March 2013, Water Treatment Systems of Yarmouth could not guarantee that if increased spillages occurred that my filtration system would not be overwhelmed and my well compromised.

In conversations with DEP representative Peter Blanchard in March 2013 about notification when and if future spills occurred, he stated that because of the number of people involved that would not be possible. He told me that he had contacted CN Brown prior to the February 12 planning board meeting and told them to contact me, but no one from the company up to now has ever contacted me.

I have lived on this land since 1977 and have enjoyed the 5.5 acres of land on which I pay taxes, but my property will be without value if I do not have potable drinking water. Based on testing results done on March 13, 2013 in my ground water I have these petroleum based carcinogenic chemicals: **Benzene, Ethylbenzene, Methyl tert-butyl ether, toluene, m.p-Xylene, oXylene.** These chemicals need to be eliminated from the ground water. This will never be able to happen if this massive CN Brown expansion takes place.

As you consider this appeal, I encourage you to put yourselves in my shoes, or rather in my kitchen sharing my water with my grandchildren and loved ones.

Susan A. Lousin

CITY OF AUGUSTA
16 CONY STREET

MISCELLANEOUS PAYMENT RECEIPT# 682795

DATE: 03/22/13 TIME: 09:59
CLERK: cheryl RPT: CODE
CUSTOMER#: 0

PARCEL: RZA MAY 1 APPEAL TO

CHG: CSZONE ZONING PERMIT 100.00

PAID AMT

ID PAID BY NAME
SUSAN LOCSIN PAY RETROD
CHECK
9489/CAFU

AMT TENDERED:
AMT APPLIED: 100.00
CHANGE: 100.00

SUSAN LOCSIN
PH. 207-622-9470
16 SANCTUARY LANE
AUGUSTA, ME 04330-3728

9489
52-8732/2112

3/22/13
Date

Pay to the Order of City of Augusta \$ 100.00

one hundred and 00/100 Dollars

 **CAPITAL AREA
FEDERAL CREDIT UNION**
AUGUSTA, ME 04330

For BZ Appeals Susan Locsin NP

⑆ 211287324⑆ 700650425940⑆ 9489

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