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April 11, 2016

Peter M. Fortunato, Chair
Board of Zoning Appeals
Bureau of Code Enforcement
City Center
16 Cony Street
Augusta, ME 04330-5298

Re: **Appeal from the denial (dated April 7, 2016) of the subdivision application of Linda S. Roderick**

Dear Fortunato:

Enclosed for filing please find (1) a notice of appeal of the decision of the Planning Board, dated April 7, 2016, denying Mrs. Roderick's application to subdivide land located on Mount Vernon Road, Augusta, (2) our check in the amount of \$100.00 to cover the cost of filing, and (3) a reduced copy of the plan showing said proposed subdivision.

If you need anything else to perfect this appeal, please let me know.

Thank you very much for your consideration.

Very truly yours,


Alton C. Stevens

ACS
p.c. Linda S. Roderick
Will Boynton



BOARD OF ZONING APPEALS

Docket # 352

APPLICATION FOR VARIANCE OR
APPEAL TO BOARD OF ZONING APPEALS

Name of Appellant Linda S. Roderick

Mailing Address 275 Airport Road

City Norridgewock State ME Zip 04957 Tel. No. _____

Name of Owner Linda S. Roderick

Location of Subject Property if Different from Above Mount Vernon Road

_____ Map 5 Lot 185A & 185

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):

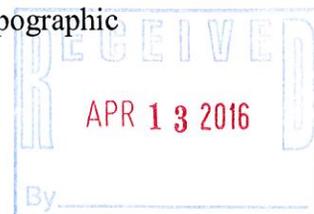
- an error was made in the denial of the permit
- the denial of the permit was based on the misinterpretation of the ordinance
- there has been a failure to approve or deny the permit within a reasonable period of time
- Other See Exhibit A attached.

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)).

- 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).

- 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).

- 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).



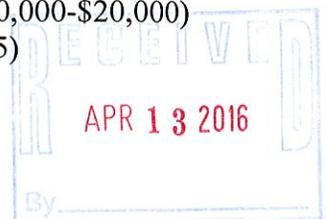
- iv. The hardship is not the result of action taken by the appellant or a prior owner. (Augusta Land Use Ordinance, Sec. 6.6.2.2.1 (b) iv).

- 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)).

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))

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 4/11/2016

Alan C. Stevens, Atty. for Linda S. Roderick
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 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.

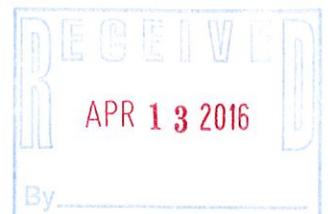
Date Fee Collected: April 13, 2016 BR Code: (CSZONE) 10356531 531010

Applicant's Signature: Bob Stevens, Atty for Linda Rodenick

Effective: May 21, 2007

Council Order 109

Revised date: February 4, 2016



Grounds for Administrative Appeal

1. The Planning Board erred in denying the subdivision application on the ground that it did not comply with certain provisions of the Comprehensive Plan. See *Nestle Waters North Am., Inc. v. Town of Fryeburg*, 2009 ME 30, ¶ 16, 967 A.2d 702, 708 and *Spain v. City of Brewer*, 474 A.2d 496, 500 (Me. 1984) (holding that a permit cannot be denied “on grounds other than those specified by statute or local ordinance”). Moreover, even if it were permissible to consider the Comprehensive Plan, it could not be relied upon if it was not made part of the record. See *City of Biddeford v. Adams*, 1999 ME 49, ¶ 10, 727 A.2d 346, 349 (“[a]n agency cannot use information that is not of record”).

2. The Planning Board erred in determining that “the driveways will not have adequate sight distance in order to be safe”.

3. Planning Board member Delaine Nye visited the site without giving prior notice to the applicant and the Board. This was improper for two reasons. First, as noted above, the Board cannot rely upon evidence not made a part of the record. See *City of Biddeford v. Adams*, 1999 ME 49, ¶ 9, 727 A.2d at 348-49. Without the applicant and the full Board present, a view of the site is not part of the record. Second, as the *Adams* case makes clear, visiting the site without notifying the applicant and giving the applicant an opportunity to be present and address any concerns violates the applicant’s right to due process. *City of Biddeford v. Adams*, 1999 ME 49, ¶s 9 & 10, 727 A.2d at 348-49.

4. The Planning Board erred in holding that it had a responsibility to “set the bar higher, as outlined in the Comprehensive Plan, than the ‘bare minimum standards allowed by law’”. If an applicant meets the standards set forth in the statutes and local ordinances, her application must be approved. Again, see *Spain v. City of Brewer*, 474 A.2d 496, 500 (Me. 1984) (holding that a permit cannot be denied “on grounds other than those specified by statute or local ordinance”).

EXHIBIT A

