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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
191 MAIN STREET
EAST MILLINOCKET, MAINE 04430

WALTER E. WHITCOMB
COMMISSIONER

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EXECUTIVE DIRECTOR

January 6, 2015

Carl Bamford
4581 River Thames way
Mason, OH 45040

Subject: ADVISORY RULING AR 14-9, Seboeis Plt., Penobscot County

Dear Mr. Bamford:

Thank you for the information provided in your request for an Advisory Ruling. You have asked our opinion on some complex issues with respect to land use rules. We will attempt to provide our view on the matters as we understand them, pursuant to 5 M.R.S.A. 9001. I want to caution however, this is an informal response and not a legal determination. Of course, in providing our views on these matters, we have relied entirely upon the facts as they have been presented to us.

Proposal/Inquiry

You have asked the Land Use Planning Commission to document that an existing parcel of land may be developed with a residential dwelling in accordance with Chapter 10 of the Commission's Land Use Districts and Standards.

Background Information

It is my understanding that you are the owner of a 15,000 square foot lot in Seboeis Plt. The lot measures 150 feet in depth and has 100 feet of frontage on the "Lake Road". The lot was created by deed on June 15, 1972 as a single division from a larger 67.12 acre parcel. Based on the information you have provided, the original 67.12 acre lot has not been further divided beyond the conveyance of the subject 15,000 square foot lot in 1972. The subject lot is located in a (M-GN) General Management Subdistrict. You have proposed to construct a residential dwelling of as-yet undetermined dimensions, to be set back 30 feet from property boundaries and 40 feet from the Lake Road. There are no waterbodies or wetlands present on the subject lot.

Review Criteria

Under Section 10.22,A,3,c(14) of the Commissions Land Use Districts and Standards, single and two family dwellings are a use allowed upon issuance of a permit by the Commission.

Under Section 10.26,A,1 of the Commissions Land Use Districts and Standards, the minimum lot size for residential uses is 40,000 square feet per dwelling unit or residential campsite except where each dwelling

unit is to use a common or community sewer and not on-site subsurface waste water disposal, the minimum lot size shall be 20,000 square feet per dwelling unit.

Under Section 10.26,A,1 of the Commission's Land Use Districts and Standards, the minimum setbacks for structures, other than those described in Section 10.26,D,2 and except as provided in Section 10.26,G are:

- a. 75 feet from the nearest shoreline of a flowing water draining less than 50 square miles, a body of standing water less than 10 acres in size, or a tidal water, and from the upland edge of wetlands designated as P-WL1 subdistricts;
- b. 100 feet from the nearest shoreline of a flowing water draining 50 square miles or more and of a body of standing water 10 acres or greater in size;
- c. 50 feet from the traveled portion of all roadways except as provided for in Section 10.26,D,1,d and e or Section 10.26,D,5 below;
- d. 75 feet from the traveled portion of the following roadways: Routes 1, 2, 2A, 4, 9, 27, 163, 201, 161 from Caribou to Fort Kent, 157 in TA R7 (Penobscot County), and 6 in Orneville Township (Piscataquis County), except as provided for in Section 10.26,D,5;
- e. 20 feet from the traveled portion of all roadways on coastal islands; and
- f. 15 feet from side and rear property lines.

These setbacks also apply to all parking areas associated with single-family residential uses, parking areas for trailered ramps or hand-carry launches, those structures within a recreational lodging facility constructed solely for the housing of guests, and residential campsites.

Under Section 10.26,C,1, Minimum Road Frontage, of the Commission's Land Use Districts and Standards, except as provided in Section 10.26,C,6, the minimum road frontage shall be: (a) 100 feet per dwelling unit for residential uses.

Under Section 10.11,E,4, Development of Other Nonconforming Lots, of the Commission's Land Use Districts and Standards, When a lot was lawfully created after September 23, 1971, in conformity with LURC dimensional requirements applicable at the time, the Commission may waive, to the minimum extent necessary the current dimensional requirements. Waived setbacks shall not be reduced below those in effect at the time of creation of the lot.

Under Section 10.25,H, Subsurface Wastewater Disposal, No permit will be issued for a project with subsurface waste water disposal unless an acceptable plan to construct the absorption area is prepared. Where waste water is to be disposed on-site by a subsurface waste water system, the system shall be designed by a licensed site evaluator or a Maine Licensed Professional Engineer, in accordance with the Subsurface Waste Water Disposal Rules.

Analysis

Based upon the information that has been provided, the subject lot could not comply with section 10.26,A,1 of the Commission's Land Use Districts and Standards in that the lot is only 15,000 square feet in area.

Because the lot was lawfully created in 1972 when the Commission's Land Use Districts and Standards did not require a minimum lot size for residential development, the Commission finds that the lot was lawfully in conformity with LUPC dimensional requirements applicable at the time, and that the Commission may waive, to the minimum extent necessary the current minimum lot size requirement of 40,000 square feet. Waived setbacks shall not be reduced below those in effect at the time of creation of the lot.

You have not submitted evidence to support that the proposed residential dwelling could not be constructed such that the minimum setback of 50 feet from the roadway is met. Since the lot measures 150 feet in depth, the Commission finds that it is reasonable that a residential dwelling could be constructed such that the current minimum road setback requirement of 50 feet can be met and therefore, unless presented with further evidence to the contrary, the Commission could not waive the 50 foot minimum road setback.

The Commission may only issue a permit for a residential dwelling if an acceptable plan to construct a subsurface wastewater disposal system is prepared. Where waste water is to be disposed on-site by a subsurface waste water system, the system shall be designed by a licensed site evaluator or a Maine Licensed Professional Engineer, in accordance with the Subsurface Waste Water Disposal Rules. In order to apply for a building permit, you will be required to submit a copy of a permit for a subsurface wastewater disposal system, signed by the Local Plumbing Inspector acting as agent for the Maine Department of Human Services, Wastewater and Plumbing Control Program.

I hope that this Advisory Ruling addresses your inquiry. Should you have any further questions on this matter, please contact me at our East Millinocket Office at (207) 746-2244.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marcus C. Russell', with a large, stylized flourish extending from the end of the signature.

Marcus C. Russell, Senior Regional Representative
Permitting and Compliance Division