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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
106 HOGAN ROAD, SUITE 8
BANGOR, MAINE 04401

WALTER E. WHITCOMB
COMMISSIONER

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April 21, 2016

Via U.S. Mail and Email

Anthony M. and Tracy Vance
4 Raspberry Way
Windham, Maine 04062

amvance35@yahoo.com

Subject: **ADVISORY RULING AR 16-03**, Dallas Plantation Tax Map 02, Portion of Lot 24,
Franklin County, Maine

Dear Mr. and Ms. Vance:

Thank you for the information provided in your request for an Advisory Ruling. You have asked our opinion on a proposed division of land you own in Dallas Plantation. We will attempt to provide our view on the matters as we understand them, pursuant to 5 M.R.S. § 9001 and the Commission's *Land Use Districts and Standards*, version December 07, 2015 (Standards or *Ch.*) I want to caution, however, this is an informal response and not a legal determination. In providing our views on these matters, we have relied upon the facts as you have presented them to us in your application and through conversations with staff, supplemented by our research of permit files and records available through the Franklin County Registry of Deeds.

You currently own a 3.00 acre lot in Dallas Plantation. You acquired this lot (the "Vance Lot") by deed from Spotted Mountain, LLC, and dated August 24, 2015 and recorded in Franklin County Registry of Deeds at Book 3762, Page 17. Presently, the Vance Lot is not shown on the plantation tax maps; it is included within the larger parcel (the "Parent Parcel") identified as Lot 24 on Tax Map 02 in Dallas Plantation. The Vance Lot has 298 feet of road frontage on the northerly side of Dallas Hill Road, is located in a Community Residential Development Subdistrict (D-RS2), and is currently developed with a pre-1971 dwelling unit, a residential driveway, a septic system and a drinking water well.

It is our understating that you have asked whether you can divide the Vance Lot 5 years from the date of purchase noted above, into two lots. One lot would be approximately one acre in size (at least 40,000 square feet), have 110 feet of road frontage on Dallas Hill Road, and be developed with the pre-1971 dwelling unit and appurtenances. The other lot would be approximately 2 acres in size (the remainder of the lands described in the above deed) and would have 188 feet of road frontage

on Dallas Hill Road. You propose to subsequently develop this lot with a residential dwelling and ask if the proposed site plan and proposed lot layout meet our residential requirements.

Relevant 20 Year Land Division History

Original parcel from which the Vance Lot was later created:

- *May 17, 1955; Book 335, Page 416:* Rangeley Trust Company to Willard N. Munroe, Jr. (a.k.a. Willard N. Munroe, III) and Mary H. Munroe.

Note: Divisions of this original parcel more than 20 years prior to the date of this Advisory Ruling are not listed here. Additionally, between May 17, 1995 and February 12, 2002 various interests in this original parcel were conveyed, resulting in Willard N. Munroe, III (or his estate) being the sole owner of the parcel from which the Vance Lot ultimately was created. This original parcel was approximately 30.2 acres in size at the time of the first division noted below.

February 12, 2002; Book 2119, Page 120: Estate of Willard N. Munroe, III (Bruce A. Munroe, PR) to Mark Heibert and Cindy Heibert (conveying a 3.2 acre lot; 27 acres retained by Estate of Willard N. Munroe, III).

August 09, 2002; Book 2170, Page 309: Mark Heibert and Cindy Heibert to Skender Liedl (all of Book 2119, Page 120; approximately 3.2 acre lot).

October 10, 2002; Book 2225, Page 223: Estate of Willard N. Munroe, III (Bruce A. Munroe, PR) to Willard N. Munroe, IV, David Hills Munroe, Bruce Allen Munroe, Elizabeth Munroe Roberts and Susan M. Gruenberg (conveying approximately 27 acres).

October 16, 2007; Book 2974, Page 107: Bruce Allen Munroe, Willard N. Munroe, IV, Elizabeth Munroe Roberts, David Hills Munroe and Susan M. Gruenberg to Katherine Ann Clyne, Branwen E. Kelly and John Rob Bruce (conveying approximately 3.1 acres of the 27 acre parcel described in Book 2225, Page 223; approximately 23.9 acres retained by sellers).

November 15, 2007; Book 2974, Page 110: Katherine Ann Clyne, Branwen E. Kelly and John Rob Bruce to Skender Liedl (transferred a portion of 3.1 acre lot described in Book 2974, Page 107 to an abutter).

June 07, 2010; Book 3252, Page 339: David Hills Munroe, Susan M. Gruenberg, Bruce Allen Munroe, Elizabeth Munroe Roberts, and Willard N. Munroe, IV to Spotted Mountain, LLC (conveying approximately 23.9 acres, all of the sellers' remaining land; Tax Map 02, Lot 24).

August 24, 2015; Book 3762, Page 17: Spotted Mountain, LLC to Anthony M. Vance and Tracy Vance (conveying a 3.00 acre lot (the "Vance Lot") from the larger 23.9 acre parcel (the "Parent Parcel") described in Book 3252, Page 339; Spotted Mountain, LLC retained approximately 20.9 acres (the "Spotted Mountain Lot").

January 29, 2016: The Commission received Subdivision Permit application SP 4099 for the entire 20.9 acre Spotted Mountain Lot. To date, a determination on the application has not been rendered.

Statutory and Regulatory Provisions Applicable to Advisory Ruling

Division of Lot:

1. Except as provided in 12 M.R.S.A. § 682-B, “subdivision” means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing. The term “subdivision” also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period. 12 M.R.S.A. § 682(2-A) (*Ch. 10.02,(201)*).
2. A lot or parcel which, when sold, leased or developed, was not part of a subdivision but subsequently became part of a subdivision by reason of another division by another landowner is counted as a lot under the subdivision definition. The Commission, however, will not require a subdivision permit be obtained for such lot, unless the intent of such transfer or development is to avoid the objectives of 12 M.R.S.A. § 206-A (*Ch. 10.25,Q,1,c*).
3. Retained Lots. A lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:
 - (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3); and
 - (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes (*Ch. 10.25,Q,1,g,(2)*).

Residential Development:

4. Single family residential dwellings may be allowed within a D-RS2 subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. § 685-B, subject to the applicable requirements set forth in Sub-Chapter III (*Ch. 10.21,K,3,c,(16)*).
5. The minimum lot size for one single family residential dwelling unit in a D-RS2 is 40,000 square feet (*Ch. 10.26,A,1*).
6. The minimum road frontage for one single family residential dwelling unit in a D-RS2 is 100 feet as measured along the traveled portion of the road between the points of intersection of side lot lines with the traveled portion of the road (*Ch. 10.26,C,1,a and Ch. 10.26,C,4*).
7. The minimum setbacks for structures and all parking areas associated with single family residential uses in a D-RS2 include: 50 feet from the traveled portion of all roadways and 15 feet from side and rear property boundary lines (*Ch. 10.26,D,1,c and f*).

8. The maximum lot coverage in a D-RS2 shall be 30% for all uses involving one or more buildings (*Ch. 10.26,E,1*); the maximum height of residential structures greater than 500 feet from the normal high water mark of a body of standing water 10 acres or greater shall be limited to 35 feet (*Ch. 10.26,F,4,a*).

Vegetation Buffering:

9. All principal and accessory buildings in the D-RS2 subdistrict shall be visually screened by a vegetative buffer made up of native trees and shrubs. Wooded buffers shall be comprised of both under- and over story material that can be either maintained using existing vegetation or established where no such buffer exists (*Ch. 10.25,B,2,a*).
10. The width of the vegetative buffer shall be 50 feet for roadways and 15 feet from side and rear property lines (*Ch. 10.25,B,2,b*).

Analysis and Interpretation

Division of Lot:

A review of the presented deed history indicates that there have been no unauthorized divisions of the original parcel from which the Vance Lot was created within the past 20 years. When reviewing the divisions of the Parent Parcel completed within the past 5 years, only one division, which created two (2) lots, was identified. These two lots were created by the division of the Parent Parcel – the 23.9 acre lot purchased by Spotted Mountain, LLC on June 07, 2010 and presently identified as Lot 24, Tax Map 2. The Parent Parcel had remained undivided from October 16, 2007 until August 24, 2015 when the parcel owner Spotted Mountain, LLC sold the 3.00 acre Vance Lot. The second lot created by the division, was the remaining 20.9 acre lot. This lot continues to be owned by Spotted Mountain, LLC (the “Spotted Mountain Lot”).

You have asked if you may divide the Vance Lot into two lots on August 24, 2020, conveying at least 40,000 square feet to a third party along with the existing dwelling and other development and then constructing a residential dwelling on the remaining undeveloped lot. For the purpose of this Advisory Ruling, we assume no divisions of the Vance Lot other than the one asked about here.

At this time two lots exist, only one of which counts for purpose of subdivision. The two lots are the Vance Lot and the Spotted Mountain Lot. The Vance Lot counts as the first and only lot created for subdivision purposes. The Spotted Mountain Lot, as we understand it, qualifies as an exempt “retained lot” under Section 10.25,Q,1,g(2). As a result, presently you may divide the Vance Lot. You do not need to wait until August 24, 2020 to make this division.

However, if the Vance Lot remains undivided in its present configuration and there is a single division of the Spotted Mountain Lot, this division by Spotted Mountain would count as the creation of a second lot within a five year period. Assuming Spotted Mountain, LLC continued to own the remaining land and this land continued to qualify for the retained lot exemption, no subdivision approval would be needed. Any further division of the Parent Parcel prior to August 24, 2020, including any division of the Vance Lot, would trigger the need for subdivision review.

As noted above, Spotted Mountain LLC has submitted Subdivision Permit application SP 4099, seeking approval to subdivide the Spotted Mountain Lot. The application is pending. If the application is approved, your ability to divide the Vance Lot will be no different than today. The creation of more than 2 lots within a five-year period requires subdivision approval. From the Parent Parcel a single lot – the Vance Lot – has been created that counts for subdivision purposes. (The Spotted Mountain Lot is an exempt “retained lot.”) While the Vance Lot counts for determining whether future division of the Spotted Mountain Lot requires a subdivision permit, the Vance Lot would not be subject to or authorized by such a permit. (Ch. 10.25,Q,1,c.) If Spotted Mountain, LLC’ application were approved, the Vance Lot would remain the first lot created from the Parent Parcel since August 24, 2015 that was not exempt or approved through a subdivision permit. As a result, under this scenario, within 5 years from August 24, 2015 the Vance Lot could be divided once more, resulting in 2 lots within a five-year period that count for subdivision purposes and that have not been authorized by a subdivision permit. The creation of two such lots within a five-year period is permitted without a subdivision permit. Any further division of the Vance Lot within this five-year period would trigger the need for a subdivision permit.

Finally, at the time of this Advisory Ruling a building permit application for a second dwelling on the entire Vance Lot also could be considered by staff, as the lot meets the dimensional requirements for two, single family residential dwellings (please see analysis below in *Residential Development* and *Vegetation Buffering* sections of this advisory ruling for additional comments on your proposal).

Residential Development:

A review of the site plan submitted with the application for this Advisory Ruling indicates that the dimensional requirements appear to be met by your proposal EXCEPT the parking area does not meet the current setback requirements outline under Section 10.26,D,1,c of the Commission Standards. Parking areas must be setback 50 feet from the traveled portion of all roadways and 15 feet from side and rear property boundary lines.

While the proposal appears to meet the current residential development dimensional standards, please note that any proposal submitted for building permit approval must meet the requirements applicable at the time of the completed application.

Vegetation Buffering:

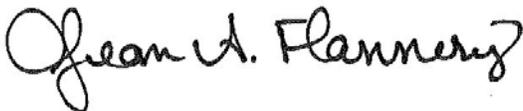
A review of the site plan submitted with the application for this Advisory Ruling indicates that the required visually screening vegetative buffer made of native trees and shrubs does not exist for the proposed dwelling unit; therefore, any application for a building permit would be required to include the establishment of a 50-foot visually screening vegetative buffer between any buildings and Dallas Hill Road, and if completed, the proposed subdivision road known as North View Lane. A 15-foot visually screening vegetation buffer would be required to be established between buildings and other property boundary lines.

Other Considerations

Please note that our interpretation is based upon the Commission's current statutes and standards. The status of the proposed land division may change in the future should relevant statutes and/or standards be amended. Lastly, please be aware that any land division activities other than those which you have described within your request may, or may not, have require(d) prior Commission review and/or rezoning, or may be prohibited under provision of the Commission's Standards. Please contact the Commission if you plan any changes.

Thank you for your cooperation throughout this process. If you have any questions regarding this Advisory Ruling, please do not hesitate to contact Ms. Karen Bolstridge at our Bangor office at (207) 941-4052 or via e-mail at: karen.bolstridge@maine.gov or should you have questions regarding the Commission's *Land Use Districts and Standards* or if we may be of any other assistance, please do not hesitate to contact Ms. Sara Brusila at our West Farmington office at (207) 670-7493 or via e-mail at: sara.brusila@maine.gov.

Sincerely,

A handwritten signature in black ink that reads "Jean A. Flannery". The signature is written in a cursive, flowing style.

Jean A. Flannery, Permitting and Compliance Manager
Department of Agriculture, Conservation & Forestry
Division of Land Use Planning

xc: Geo File, Dallas Plantation