



STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0022

JANET T. MILLS  
GOVERNOR

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EXECUTIVE DIRECTOR

## PERMIT

### BUILDING PERMIT AMENDMENT 13912-A

The Maine Land Use Planning Commission (Commission), through its staff, after reviewing the application and supporting documents submitted by Wagner Three LLC (Wagner), for Amendment A to Building Permit (BP) 13912, and other related materials on file, finds the following facts:

1. Applicant: Wagner Three LLC  
6410 Ridge Road  
Bethesda, MD 20816
2. Date of Completed Application: December 3, 2018
3. Location of Proposal: Dallas Plantation, Franklin County  
Map 3, Lot 2
4. Zoning: (D-RS3) Residential Recreation Development Subdistrict
5. Affected Waterbody: Saddleback Lake

The Commission has identified Saddleback Lake as a management class 7, resource class 2, accessible, developed lake with the following resource ratings: significant fisheries resources.

### Background

6. Wagner owns a residential dwelling referred to as Unit Number 2 of Saddleback Lake Lodge Condominium, as approved in Subdivision Permit SP 3147, issued to Saddleback Lake Partnership by the Commission on October 13, 1987. Saddleback Lake Lodge was a pre-Commission, commercial, four-season, hunting and fishing lodge and rental cabin complex located on the northerly shore of Saddleback Lake in Dallas Plantation. SP 3147 approved the conversion of Saddleback Lake Lodge into a condominium complex that includes 28 individual condominium units. Unit Number 2 is one of the pre-Commission cabins that was converted to a condo unit.
7. On May 16, 2008, the Commission accepted as complete for processing a building permit application from Marcia and Ira Wagner (Building Permit BP 13912), in which they sought to reconstruct Unit Number 2 by placing it on a permanent foundation and constructing a 19-foot by 12-foot addition. On August 27, 2008, the Commission denied the application based on the Commission staff's finding that the proposed addition did not comply with the 50-foot

setback required by *Land Use Districts and Standards*, 01-672 C.M.R. ch.10, section 10.26,D,1,c. The Wagners appealed the staff decision to the Commission on August 27, 2008, arguing that Robin's Nest Lane was a driveway for which setbacks did not apply.

8. On November 5, 2008, the Commission upheld the staff's August 27, 2008, denial finding that Robin's Nest Lane is a roadway and that the proposed addition would not meet the required road setback of 50 feet. However, the Wagners did not raise and the Commission did not consider the issue of whether Robin's Nest Lane is a roadway used for private access and thus not subject to the roadway setback.
9. On August 15, 2018, Wagner submitted a new application to reconstruct and expand the camp. In the application they state Robin's Nest Lane is not used for public and therefore the proposal satisfies the Commission's dimensional requirements. The application was accepted as complete for processing on December 3, 2018.

### **Proposal**

10. Wagner's Unit Number 2 is a pre-Commission dwelling measuring 19 feet by 25 feet with a 6-foot by 19-foot porch. The cabin is situated approximately 47 feet from Robin's Nest Lane, which is an internal road and common element of the Saddleback Lake Lodge Condominium Association. The applicant proposes to reconstruct the original cabin and add a 12-foot by 19-foot expansion to the backside of the cabin, farthest from Saddleback Lake. The proposed expanded cabin would not increase the number of bedrooms and would be located 36 feet from Robin's Nest Lane.
11. Wagner's proposal is consistent, both in size and location, with the allowable expansion contemplated in a revised plan filed with the Franklin County Registry of Deeds on November 10, 1987, (Plan 1120). The right to expand the cabin is provided by the Saddleback Lake Lodge Condominium Owners' Association reserved special declarant rights, (recorded in the Franklin County Registry of Deeds, Book 1210, Page 254). The Wagners submitted a letter from the association saying it approved of the proposed expansion.

### **Review Criteria and Standards**

12. Permit required. Pursuant to 12 M.R.S. § 685-B(1)(A), a structure or part of a structure may not be erected, changed, converted or wholly or partly altered or enlarged in its use or structural form without a permit issued by the Commission. Pursuant to 01-672 C.M.R. 10, *Land Use Districts and Standards*, (Chapter 10), section 10.21,M,c,12, a residential dwelling may be allowed within D-RS3 subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, subject to the applicable requirements Chapter 10, sections 10.25 through 10.27.
13. Dimensional requirements. Chapter 10, section 10.26,D,1,c specifies that the minimum setback for structures is 50 feet from the traveled portion of all roadways within D-RS3 subdistricts. Chapter 10, section 10.26,D,3 provides that this road setback requirement applies to any privately or publicly owned road that is used for public access, including roads used by the public for which a toll is paid.
14. Roadway. Pursuant to Chapter 10, section 10.02(188), roadway means "A public or private road including any land management road."

15. General criteria for approval. Pursuant to 12 M.R.S. § 685-B(4), which has been incorporated into rule in Chapter 10, section 10.24, the Commission may not approve an application unless:
- a. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto.
  - b. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods.
  - c. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal.
  - d. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site.
  - e. The proposal is otherwise in conformance with 12 M.R.S. §§ 681 – 689 and the regulations, standards and plans adopted pursuant thereto.

**Based upon the above Findings, the Commission staff concludes the following.**

16. Robin's Nest Lane is a roadway. At the center of the Commission's August 27, 2008, decision to deny the Wagners' permit application was an evaluation of whether Robin's Nest Lane is a roadway or merely a driveway. The Commission concluded, both in its staff decision and later in upholding that decision on appeal, that Robin's Nest Lane is, in fact, a roadway. Consequently, a permit was never issued to approve construction of the proposed addition of Unit Number 2 closer to Robin's Nest Lane. The current definition of roadway is unchanged from that in effect when the Commission's prior decisions were made on the Wagners' application and appeal. Robin's Nest Lane is a roadway.
17. Robin's Nest Lane is a private roadway not used for public access. Robin's Nest Lane is a narrow, privately-owned, dead-end dirt road, internal to the condominium and serves approximately twelve existing, pre-Commission camps. The condominium association owns the road, along with all the land within the condominium, including under the cabins. Some condominium units are closer to the road than the applicants' proposed addition. Signs posted at the entrance to the Saddleback Lake Lodge Condominium identify that the development is a private community for owners and guests only. The remote location of the development suggests that little or no public vehicular or pedestrian traffic is expected, and Robin's Nest Lane does not provide public access to nearby Saddleback Lake. This is supported by statements from the Town of Dallas Plantation (July 27, 2018) and the Saddleback Lake Lodge Condominium Association (July 18, 2018), provided by the applicant. The road is not a through road that provides access beyond the condominium and given its layout within the condominium is unlikely to be extended or modified to become a through road.

As a result of this unique combination of factors, notable among them that Robin's Nest Lane is a private, internal, condominium road, the Commission concludes the road is not used for public access.

18. The proposal is consistent with the existing development. The existing development predates the Commission and includes numerous camps and other structures that are within 50 feet of Robin's Nest Lane. While some setback from all roadways is prudent for safety and necessary to ensure traffic circulation will not result in unsafe conditions (12 M.R.S. § 685-B(4)(B)), a number of structures within the existing condo development are located within a foot or two of the traveled portion of Robin's Nest Lane. The applicants' proposal would maintain a setback of 36 feet from Robin's Nest Lane and be consistent with the character of the community and not adversely affect existing uses (12 M.R.S. § 685-B(4)(C)).

The proposed expansion of Unit Number 2 does not increase the number of bedrooms and has no appreciable impact on resources, including wastewater disposal and Saddleback Lake, located approximately 175 feet away. The Saddleback Lake Lodge Condominium Association's Board of Directors approved the proposed reconstruction and expansion of Unit Number 2, noting in their approval letter of July 20, 2018, that the Wagners have "gone to great lengths to design a cottage that will blend well with others in our community." The letter continues, "We have verified that your plans meet the specifications of our building guidelines and do not exceed your existing footprint and granted rights of expansion."

The Commission concludes the character and nature of the existing development and use of Robin's Nest Lane are such that the proposed reconstruction and expansion of Unit Number 2 will fit harmoniously into the existing natural environment without undue adverse effect on existing uses, scenic character and natural and historic resources.

19. General criteria for approval. The Commission staff concludes that the general criteria for approval at 12 M.R.S. § 685-B(4) have been met.

**Therefore, the Commission staff approves the application of Wagner Three LLC, subject to the following conditions:**

1. The Standard Conditions for All Building Permits (ver. 4/04), a copy of which is attached.
2. Erosion and sedimentation control devices, such as erosion control mixes, staked hay bales, and silt fence, must be installed, where necessary.
3. This permit is approved upon the proposal as set forth in the application and supporting documents, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law.

In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT AUGUSTA, MAINE, THIS 20<sup>th</sup> DAY OF MARCH 2019.



For: Nicholas D. Livesay, Director