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

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GOVERNOR

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EXECUTIVE DIRECTOR

AMENDMENT B TO BUILDING PERMIT BP 8788
ENFORCEMENT CASE EC 2015-16

The Staff of the Maine Land Use Regulation Commission, after reviewing the application and supporting documents submitted by Brian & Aldina Cote for Amendment B to Building Permit BP 8788, finds the following facts:

1. Applicant: Brian & Aldina Cote
   155 West Logbridge Road
   Coventry, RI 02816

2. Date of Completed Application: May 11, 2015

3. Location of Proposal: Benedicta Township, Aroostook County
   Lot #14 on Plan 03, Map AR107

4. Zoning: (D-RS) Residential Development Subdistrict

5. Lot Size: 0.85 Acres (owned)

6. Principal Building: Existing Two Story Dwelling (18ft. by 24ft.)
   w/ Attached Unauthorized Lakeside Deck (16.5 ft. by 8 ft.)
   Existing One Story Addition (18 ft. by 20 ft.)

7. Accessory Structures: Existing Unauthorized Shed (8 ft. by 10 ft.)
   Existing Unauthorized Shed/Ice Shack (8 ft. by 12 ft)
   Existing Storage Trailer (8 ft. by 40 ft.)

8. Sewage Disposal: Existing Shared Combined Wastewater Disposal System by Variance

9. Soil Type: 3-D per the Maine State Plumbing Code.

10. Affected Waterbody: Plunkett Pond

    The Commission has identified Plunkett Pond as a management class 7, resource class 2 lake with significant fisheries resources.

Background

11. The applicant's lot had historically been developed with a pre-Land Use Regulation Commission trailer. The trailer was set back approximately 55 feet from the normal high water mark of Plunkett

Pond and 66 feet from the access road. That trailer was removed from the lot in 1992 and an 18 foot by 24 foot seasonal camp constructed without a permit from the Commission by a prior owner.

12. On November 29, 1994, Commission staff issued Building Permit BP 8788 to Herbert C. Willett, a former landowner of the property, granting after-the fact approval for the construction of an 18 foot by 24 foot two-story, seasonal camp [*Reference: Enforcement Case EC 94-237, Resolved*]. Building Permit BP 8788 also authorized the installation of a shared combined sewage disposal system. The camp is set back approximately 61 feet from Plunkett Pond and 48 feet from the access road.

13. On June 3, 1999, Commission staff issued Building Permit BP 8788 to Herbert C. Willett, a former landowner of the property, authorizing the construction of an 18 foot by 20 foot one-story addition to the camp. The addition would be setback 61 feet from Plunkett Pond and 48 feet from the access road.

Proposal

14. The applicant now proposes to install a 18 foot by 44 foot permanent foundation under the existing 18 ft. by 24 ft. two-story dwelling and 18 ft. by 20 ft. one-story addition. The dwelling with proposed permanent foundation would be set back 61 feet from the normal high water mark of Plunkett Pond, 48 feet from the access road, a minimum of 15 feet from property boundary lines, and will be 25 feet or less in height. The applicant states that the existing dwelling cannot be reconstructed further back from the normal high water mark of Plunkeett Pond due to an existing utility pole and septic pump station directly behind the structure.

15. The applicant further seeks After-the-Fact approval for an existing unauthorized 16.5 foot by 8 foot lakeside deck, constructed by the prior landowner, to be relocated to the side of the dwelling at a minimum of 61 feet from the normal high water mark of Plunkett Pond, 48 feet from the access road, and a minimum of 15 feet from property boundary lines. The applicant also proposes to relocate an existing unauthorized 8 foot by 10 foot shed, constructed by the prior landowner at 85 feet from the lake, and an existing 8 foot by 12 foot shed/ice shack, currently located 0 feet from the property boundary line, to a location across the access road to be setback greater than 100 feet from the lake, a minimum of 50 feet from the access road, and a minimum of 15 feet from all other property boundary lines [*Reference: Enforcement Case EC 2015-16*]. An existing 8 foot by 40 foot storage trailer is currently located greater than 100 feet from the lake, 50 feet from the access road, and a minimum of 15 feet from other property boundary lines.

16. The total combined footprint of all existing and proposed structures within 100 feet of Plunkett Pond will be 920 square feet.

Commission Review Criteria

17. Pursuant to Section 10.02, (166) of the Commission's Land Use Districts and Standards, unless otherwise provided, the addition of a permanent foundation or the rebuilding of a structure after more than 50 percent by area of its structural components, including walls, roof, or foundation, has been destroyed, damaged, demolished or removed. Leaving one or two walls or the floor of a structure in place, while rebuilding the remaining structure, is considered reconstruction, not normal maintenance and repair or renovation.

18. Pursuant to Section 10.11, B, 1 of the Commission's Land Use Districts and Standards, permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in Section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. §685-B(4) and demonstrate that:

    a. the project will not adversely affect surrounding uses and resources; and

    b. there is no increase in the extent of nonconformance, except as provided in Section 10.11,B,9 or in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a water body setback.

19. Pursuant to Section 10.11,C,1,b of the Commission's Land Use Districts and Standards, an expansion to a legally existing, nonconforming structure where the expansion is set back 61 feet from the normal high water mark of waterbodies such as Plunkett Pond, shall not exceed the maximum combined footprint of 1,500 square feet for all structures not meeting the 100 foot waterbody setback.

20. Pursuant to Section 10.11,C,2,a of the Commission's Land Use Districts and Standards, reconstruction or replacement must comply with current minimum setback requirements to the greatest possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the greatest possible extent, the Commission may consider the following factors:
    - size of lot,
    - slope of the land,
    - potential for soil erosion and phosphorus export to a water body,
    - location of other legally existing structures on the property,
    - location of the septic system and other on-site soils suitable for septic systems,
    - type and amount of vegetation to be removed to accomplish the relocation, and
    - physical condition and type of existing foundation, if any.

21. Pursuant to Section 10.11,C,2,c of the Commission's Land Use Districts and Standards, the addition of a permanent foundation or the replacement of 50% or more of an existing foundation beneath a legally existing, nonconforming structure constitutes a reconstruction subject to the provisions in Section 10.11,C,2,a.

22. Pursuant to Sub-Chapter III, Section 10.26,D of the Commission's Land Use Districts and Standards, the minimum setbacks for structures include: 100 feet from the nearest shoreline of a body of standing water 10 acres or greater in size; 50 feet from the traveled portion of all roadways; and 15 feet from the side and rear property lines.

23. The facts are otherwise as represented in Amendment B to Building Permit application BP 8788, Building Permit BP 8788, Amendment A to BP 8788, and supporting documents.

Based upon the above Findings, the staff Concludes that:

1. In accordance with Section Section 10.11, B, 1 of the Commission's Land Use Districts and Standards, the proposal would not have an adverse effect on the surrounding uses and resources

in that the construction of the permanent foundation is under an existing structure, will be 25 feet or less in height, and would present no visible increase toward the lake. There would be no increase in the extent of non-conformance in that the existing dwelling with permanent foundation and attached side deck will be no closer to the lake than the existing structure.

2. In accordance with Section 10.11,C,1,b of the Commission's Land Use Districts and Standards, the maximum combined footprint of all existing and proposed structures not meeting the 100 foot waterbody setback is 920 square feet and the maximum height of all structures within this area is proposed to be 25 feet or less.

3. In accordance with Section 10.11,C,2,a of the Commission's Land Use Districts and Standards, the proposal would meet the reconstruction criteria in that the applicant would meet the current minimum setback requirements to the greatest possible extent when taking into account the existing utility pole and septic pump station located directly behind the existing dwelling on the lot. The proposal would comply with Section 10.11,C of the Commission's Land Use Districts and Standards.

4. In accordance with Sub-Chapter III, Section 10.26,D of the Commission's Land Use Districts and Standards, the proposed relocation of the 8 foot by 10 foot and 8 foot by 12 foot sheds would meet the waterbody, road and property line setback requirements in that the structures will be located greater than 100 feet from Plunkett Pond, a minimum of 50 feet from the access road, and a minimum of 15 feet from property boundary lines.

5. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

Therefore, the staff approves the application of Brian & Aldina Cote with the following Conditions:

1. ***At least one week prior to commencing the permitted activities**, the permittee or the designated agent must contact the Commission staff and notify them of the estimated date construction work will start. Notice may be provided in writing, in person, by email, or by calling. If you leave or send a message, please include your full name, telephone number, permit number, and the date the work will start.*

2. Construction activities authorized in this permit must be substantially started within 2 years of the effective date of this permit and substantially completed within 5 years of the effective date of this permit. If such construction activities are not started and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.

3. This permit is dependent upon and limited to the proposal as set forth in the application and supporting documents, except as modified by the Commission in granting this permit. Any variation is subject to prior review and approval of the Maine Land Use Planning Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Planning Commission law.

4. Temporary and permanent sedimentation control measures must be implemented to effectively stabilize all areas of disturbed soil and to catch sediment from runoff water before it leaves the

construction site so that sediment does not enter water bodies, drainage systems, water crossings, wetlands or adjacent properties. Clearing and construction activities, except those necessary to establish sedimentation control devices, shall not begin until all erosion and sedimentation control devices (including ditches, culverts, sediment traps, settling basins, hay bales, silt fences, etc.) have been installed and stabilized. Once in place, such devices shall be maintained to ensure proper functioning.

5. Effective, temporary stabilization of all disturbed and stockpiled soil must be completed at the end of each work day. All temporary sedimentation and erosion control devices shall be removed after construction activity has ceased and a cover of healthy vegetation has established itself or other appropriate permanent control measures have been effectively implemented. Permanent soil stabilization shall be completed within one week of inactivity or completion of construction.

6. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.

7. All exterior lighting must be located and installed so as to illuminate only the target area to the extent possible. Exterior lighting must not produce a strong, dazzling light or reflection beyond lot lines onto neighboring properties, water bodies, or roadway so as to impair driver vision or to create nuisance conditions.

8. The permittee shall secure and comply with all applicable licenses, permits, authorizations, and requirements of all federal, state, and local agencies including but not limited to: Air and Water Pollution Control Regulations; Subsurface Wastewater Disposal System approval from the Local Plumbing Inspector and/or Maine Department of Health and Human Services, Subsurface Wastewater Program; and the Maine Department of Transportation, Driveway Entrance Permit, a physical E-911 address from your County Commissioner's Office.

9. **By June 30, 2015, the existing 8 foot by 10 foot shed and 8 foot by 12 foot shed/ice shack must be relocated to a location greater than 100 feet from Plunkett Pond, a minimum of 50 feet from the access road, and a minimum of 15 feet from property boundary lines. [*Reference Enforcement Case EC 2015-16, Active*]**

10. **By June 30, 2015, the existing 16.5 foot by 8 foot attached lakeside deck must be removed from the front of the dwelling unit and relocated to the side, to be set back a minimum of 61 feet from the normal high water mark of Plunkett Pond, 48 feet from the access road, and 15 feet from other property boundary lines. [*Reference Enforcement Case EC 2015-16, Active]***

11. **The 18 foot by 44 foot permanent foundation and existing dwelling unit with attached 16.5 foot by 8 foot side deck authorized under this permit must be set back a minimum of 61 feet from the normal high water mark of Plunkett Pond, 48 feet from the access road, and 15 feet from other property boundary lines.**

12. **To protect the scenic quality of Plunkett Pond, the existing dwelling with permanent foundation must not exceed 25 feet in height as measured from the peak of the roof to the lowest point of the structure (including the foundation) at the original grade along the downhill side.**

13. **Nothing in this permit shall be construed to release the permittee(s) from any liability or responsibility arising from any violation, including Enforcement Case EC 2015-16, or to be considered a waiver of the authority of the Commission or the state to fully pursue or prosecute such violations.**

14. Once construction is complete, the permittees shall submit a self-certification form, notifying the Commission that all conditions of approval of this permit have been met. The permittee shall submit all information requested by the Commission demonstrating compliance with the terms of this permit.

15. All conditions of previously issued Commission permits shall remain in effect, except as specifically modified by this permit. For parcels that are part of a Commission-approved subdivision, all conditions of the subdivision permit as they pertain to the permittee's parcel shall remain in effect

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified in the above stated conditions, and remains valid only if the permittees comply 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 EAST MILLINOCKET, MAINE, THIS 18th DAY OF MAY, 2015.

By: Debra A. Kaczynski

for Nicholas Livesay, Executive Director