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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
LAND USE PLANNING COMMISSION
45 RADAR ROAD
ASHLAND, MAINE
04732

WALTER E. WHITCOMB
COMMISSIONER

PERMIT

AMENDMENT G TO DEVELOPMENT PERMIT DP 3382; EC 12-66

The staff of the Maine Land Use Planning Commission after reviewing the application and supporting documents submitted by Fieldstone Cabins, LLC for Amendment G to Development Permit DP 3382, finds the following facts:

1. Applicant: Fieldstone Cabins, LLC
Attn: Roger Roy
19 Baird Road
Caribou, Maine 04736
2. Date of Completed Application: February 12, 2014
3. Location of Proposal: Madawaska Lake Twp., Aroostook County
Taxation Lots 41.11 and 41.4 and Lot #41.311 on Plan 02
4. Zoning: (D-GN) General Development Subdistrict
5. Lot Size: 2.12 Acres (Owned)
6. Principal Building: Existing Reconstructed Cabin #1 (22.5 ft. by 31 ft. by 30 ft.)
w/ Existing Porch/Balcony (6 ft. by 22.5 ft.)
w/ Existing Lake-Side Retaining Wall (32.5 ft. long)(27.5 ft. Authorized))
w/ Existing Stream Side Retaining Wall (40 ft. long) (Unauthorized)
w/ Existing Driveway-Side Retaining Wall (40 ft. long)
Existing Cabin #2 (22 ft. by 26 ft.)
Existing Cabin #3 (27 ft. by 28 ft.)
Existing Cabin #4 (18 ft. by 30 ft.)
Proposed Reconstruction of Cabin #5 (28 ft. by 28 ft.)
w/ Proposed Deck/Ramp (6 ft. by 28 ft.)
w/ Proposed Attached Garage (28 ft. by 28 ft.)
7. Accessory Structures: Existing Canvas Storage Building #1 (10 ft. by 22 ft.)
Existing Canvas Storage Building #2 (10 ft. by 12 ft.)
Existing Storage Building (18 ft. by 22 ft.)
Existing Shed (10 ft. by 12 ft.)
8. Sewage Disposal: Existing Combined System (Serves Five Cabins, 2 beds each)
9. Affected Waterbody: Madawaska Lake and Unnamed Steam

The Commission has identified Madawaska Lake as a management class 5, resource class 1B, accessible, developed lake with the following resource ratings: significant fisheries resources, significant wildlife resources, outstanding botanical resources, significant cultural resources.

Proposal

10. The applicant proposes to construct a 28 foot by 28 foot rental cabin with a 6 foot by 28 foot deck/ramp and 28 foot by 28 foot attached garage. The proposed rental cabin with deck/ramp and garage would be connected to the existing sewage disposal system. The proposed rental cabin with deck/ramp and garage would be set back at least 150 feet from Madawaska Lake, at least 100 feet from the unnamed stream, at least 75 feet from Route 161 and Lake Shore Drive, and at least 25 feet from property boundary lines. Forested buffers would be retaining within 75 feet of the right-of-way for Route 161, within 25 feet of property lines.

Background Information

11. The applicant's lot was originally 4 acres in size and developed with a pre-Commission restaurant/bar, known as Rainbow Cove, and four pre-Commission rental cabins. The restaurant was set back 60 feet from the normal high water mark of Madawaska Lake, approximately 25 feet from the unnamed stream, 15 feet from Lake Shore Drive, 295 feet from Route 161, and at least 25 feet from the nearest property boundary line. The cabins were set back at least 100 feet from the normal high water mark of Madawaska Lake, 23 feet from the unnamed stream, 35 feet from Lake Shore Drive, 250 feet from Route 161, and at least 25 feet from the nearest property boundary line.
12. In January of 1979, Development Permit DP 3382 was issued to John Hede for installation of a combined sewage disposal system to serve the restaurant/bar, the cabins, and an abutter's seasonal camp. The system was installed.
13. In November of 1991, Ying Kit (Tony) Lam, installed two additional 17 foot by 29 foot rental cabins on the lot without prior permit approval from the Commission [Reference: Enforcement Case EC 91-270; Resolved]. Mr. Lam also installed a second combined sewage disposal system with the disposal field located on a nearby 3.03 acre leased lot along Route 161.
14. In February of 1992, Amendment A to Development Permit DP 3382 was issued to Ying Kit (Tony) Lam for after-the-fact approval of the two additional cabins and approval for construction of a 17 foot by 34 foot general store. Development Permit DP 3382 also authorized Mr. Lam to disconnect the restaurant/bar from the permitted combined sewage disposal system and connect to the system designed in 1991. The two additional cabins would be served by the previously permitted combined sewage disposal system which consisted of a 2,000 gallon septic tank and a 20 foot by 100 foot disposal area. The two new cabins and general store were to be set back at least 150 feet from the normal high water mark of Madawaska Lake, at least 100 feet from the unnamed stream, at least 75 feet from all roadways, and at least 25 feet from the nearest property boundary line. A Certificate of Inspection for the second combined sewage disposal system was issued by the Local Plumbing Inspector on September 27, 1995. The store and one of the two cabins were constructed. In the mid to late 1990s, the restaurant/bar was destroyed by fire.
15. After 1992, a 10 foot by 12 foot shed, a 10 foot by 22 foot canvas storage building, and a camper trailer were permanently installed on the lot without prior permit approval from the Commission [Reference: Enforcement Cases EC 04-4 and EC 04-028; Resolved]. The camper trailer has since been removed from the lot.
16. In 2004, the applicant, Rainbow Cove LLC, acquired approximately 3 acres of the original 4 acre parcel along with four of the cabins and the 3 acre lease lot containing the leachfield. The applicant also owns approximately 11 acres of undeveloped land abutting the 3 acre owned parcel. Therefore, the combined new owned lot is approximately 14 acres in total size with 420 feet of shorefrontage on Madawaska Lake. The remaining 1 acre, one of the pre-Commission cabins and the permitted store were retained by Kirk Ward and have been authorized to be converted into storage buildings as

- accessories to an authorized single-family dwelling [Reference: Amendment A to Building Permit BP 12554]. Both the applicant and Mr. Ward have rights to use the combined sewage disposal system designed in 1991.
17. In May of 2005, Amendment B to Development Permit DP 3382 was issued to the applicant for construction of two 30 foot by 40 foot rental cabins, installation of a 10 foot by 12 foot canvas storage building, and for operation of a lodging facility and 6 site campground for transient occupancy by self-contained Recreational Vehicles (RVs) only. The six rental cabins and 6 RV sites were to be served by the combined sewage disposal system designed in 1991 and certified in 1995. The combined sewage disposal system authorized under Development Permit DP 3382 was to be abandoned. Amendment B also granted after-the-fact approval for the existing 10 foot by 12 foot shed and 10 foot by 22 foot canvas storage building, both of which were to be relocated to meet the Commission's minimum setback requirements. The two new cabins, six RV sites, two canvas storage buildings, and 10 foot by 12 foot shed were all to be set back at least 150 feet from the normal high water mark of Madawaska Lake, at least 100 feet from the unnamed stream, at least 75 feet from Lake Shore Drive and Route 161, and at least 25 feet from the nearest property boundary line.
 18. In November of 2005, Amendment C to Development Permit DP 3382 was issued to the applicant for installation of an approximately 22 foot wide (travel lane) by 86 foot long driveway off of Route 161 with at least an 8 foot by 15 foot turn-a-round per Department of Transportation requirements. The driveway was to be set back at least 150 feet from the normal high water mark of Madawaska Lake, at least 100 feet from the unnamed stream, and at least 25 feet from the nearest property boundary line.
 19. In Fall of 2007, the applicant installed a 130 foot-long culvert in the unnamed stream along with fill, which destroyed the adjacent vegetation, all without prior approval from the Commission [Enforcement Case 08-19; Resolved with Compliance Schedule]. In addition, 2 RVs have remained on the property for more than 90 conservative days in violation of the permit conditions for Amendment B.
 20. In June of 2008, Amendment D to Development Permit DP 3382 was issued to the Rainbow Cove LLC for reconstruction of Cabin #1, which was destroyed by fire in early 2008. The destroyed cabin was set back approximately 135 feet from the normal high water mark of Madawaska Lake, approximately 75 feet from the unnamed stream, 35 feet from Lake Shore Road, at least 75 feet from Route 161, and at least 25 feet from the nearest property boundary line. The replacement cabin was to be 22 feet by 30 feet in size with 2 bedrooms and 1 bathroom. The replacement cabin was to be setback at least 150 feet from the normal high water mark of Madawaska Lake, 36 feet from the unnamed stream, at least 75 feet from both the Lake Shore Road and Route 161, and at least 25 feet from the nearest property boundary line. The replacement cabin was to be served by the older sewage disposal system authorized under Development Permit DP 3382.
 21. Amendment D also authorized the addition of 2 self-contained RV sites to the existing campground. The sites were to utility the newer sewage disposal system, certified in 1995. Based on information from the Department of Health and Human Services, Division of Health Engineering, both systems are designed to accommodate the existing and proposed uses.
 22. In the application request for Amendment D to Development Permit DP 3382, Rainbow Cove LLC indicated that only one of the two cabins (Cabin #5) authorized under Amendment B is being used as a rental cabin and it was constructed at 18 feet by 30 feet instead of the authorized 30 feet by 40 feet. The other structure (authorized as Cabin #6) is being used as storage and does not contain any plumbing or lodging facilities. It is 18 feet by 22 feet in size instead of the authorized 30 feet by 40 feet. The five, 2-bed cabins are being served by the older combined sewage disposal system authorized under Development DP 3382, which has not been abandoned. The campground is served by the combined sewage disposal system authorized under Amendment A.

23. In 2010, staff inspected the applicant's lot and noted that the cabin was 22.5 feet by 31 feet in size with a 6 foot by 22.5 foot porch/balcony and a 2.5 foot high retaining wall around three sides of the structure. The cabin with porch/balcony was measured as being setback 133 feet from the normal high water mark of Madawaska Lake and 24 feet from the unnamed stream; and the retaining wall was measured as being setback 130 feet from the Lake and 19 feet from the stream in violation of the Conditions of Amendment D [Reference: Enforcement Case EC 10-17; Inactive].
24. In March of 2011, Amendment E to Development Permit DP 3382 authorized after-the-fact approval for reconstruction of a 22.5 foot by 31 foot Cabin 1 with a 6 foot by 22.5 foot porch/balcony, 40 foot long by 2.5 foot high driveway-side retaining wall, and a 27.5 foot by 2.5 foot high portion of the 32.5 foot by 2.5 foot high lake-side retaining wall, instead of the 22 foot by 30 foot cabin previously authorized under Amendment D to Development Permit DP 3382. Rainbow Cove LLC did not seek approval for the 5 feet of the lake-side retaining wall that is located closer to the stream than the cabin or the 40 foot long by 2.5 foot high stream-side retaining wall.
25. Amendment E also seeks after-the-fact approval for a change in the setbacks from the Madawaska Lake and the unnamed stream for Cabin 1, the porch/balcony driveway-side retaining wall, and portion of the lake-side retaining wall that is no closer than the stream than the cabin. The Cabin with porch and lake-side retaining wall would be set back 130 feet from the normal high water mark of Madawaska Lake, 24 feet from the unnamed stream, at least 75 feet from roadways, and at least 25 feet from the nearest property boundary line.
26. In October of 2011, Amendment F to Development Permit DP 3382 was issued to Rainbow Cove, LLC authorizing development of a new camping area for up to 20 Recreational Vehicles (RV) sites, separate from the existing campground area. The camping sites were to have water and sewer hookups that would be connected to the existing sewage disposal system. The camping area would be set back at least 150 feet from Madawaska Lake, at least 100 feet from the unnamed stream, at least 75 feet from Route 161 and Lake Shore Drive, and at least 25 feet from property boundary lines. Forested buffers would be retaining within 75 feet of the right-of-way for Route 161, within 25 feet of property lines, and within many of the camping sites.
27. In November of 2012, staff inspected the applicant's lot and noted that filling and grading activities had occurred within close proximity of the unnamed stream and with construction of the authorized new camping area did not include the required erosion control and sedimentation barriers. [Reference: Enforcement Case EC 12-66; Active].
28. In March of 2012, Rainbow Cove, LLC transfer 2.12 acres and approximately 425 feet of shoreline frontage on Madawaska Lake to the applicant, Fieldstone Cabins, LLC.

Review Criteria

29. Under the provisions of Section 10.21,C,3,c(16)(a) of the Commission's Land Use Districts and Standards, Level B Recreational Lodging Facilities are allowed within the (D-GN) General Development Subdistrict upon issuance of a permit from the Commission and subject to the applicable requirements set forth in Sub-Chapter III.
30. The proposed cabin reconstruction complies with the provisions of Sub-Chapter III of the Commission's Land Use Districts and Standards.
31. The facts are otherwise as represented in Development Permit application DP 3382, subsequent amendments, Amendment Request G, and supporting documents.

Based upon the above Findings, the staff concludes that 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 amendment request of Fieldstone Cabins LLC with the following conditions:

1. 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.
2. The Standard Clearing Conditions (ver. 10/2011), a copy of which is attached.
3. The General Standards for Filling and Grading with Guidelines for Soil Stabilization (ver. 10/2011), a copy of which is attached.
4. The permitted rental cabin with deck/ramp and garage must be set back a minimum of 150 feet from the normal high water mark of Madawaska Lake, 100 feet from the normal high water mark of the unnamed stream, 75 feet from Lake Shore Road and Route 161, and 25 feet from other property boundary lines.
5. 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. 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. Once construction is complete, the permittee 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.
7. 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 Eating and Lodging Program; and the Maine Department of Transportation, Driveway Entrance Permit, a physical E-911 address from your County Commissioner's Office.
8. 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.
9. Nothing in this permit shall be construed to release the permittee from any liability or responsibility arising from any violation, including Enforcement Case EC 12-66, or to be considered a waiver of the authority of the Commission or the state to fully pursue or prosecute such violations.
10. All conditions of Development Permit DP 3382 and subsequent amendment shall remain in effect except as modified by this amendment.

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 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 ASHLAND, MAINE, THIS 18TH DAY OF FEBRUARY, 2014.

By: Billie J. Magleam
for Nicholas Livesay, Executive Director