



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
106 HOGAN ROAD, SUITE 7  
BANGOR, MAINE 04401

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

COMMISSION DECISION  
IN THE MATTER OF

Jeffrey C. and Theresa A. Harriman

Findings of Fact and Decision

ZONING PETITION ZP 745

The Maine Land Use Planning Commission, at a meeting of the Commission held February 12, 2014, in Brewer, Maine, after reviewing the petition and supporting documents submitted by Jeffrey C. and Theresa A. Harriman for Zoning Petition ZP 745, agency review and staff comments and other related material on file, finds, pursuant to 12 M.R.S. section 681 *et seq.* and the Commission's Standards and Rules, the following facts:

1. Petitioners: Jeffrey C. and Theresa A. Harriman  
P.O. Box 100  
Burlington, Maine 04417
2. Date of Completed Petition: January 6, 2014
3. Location of Proposal: Grand Falls Township, Penobscot County, Maine  
Maine Revenue Service Map PE037, Plan 03, Lot 3  
Penobscot County Registry of Deeds: Book 13098, Pages 132-133
4. Acreage of Parcel: 70 <sup>±</sup> acres (owned)
5. Acreage to be Re-zoned: 1.0 <sup>±</sup> acre
6. Present Subdistricts: The Land Use Planning Commission's zoning map for Grand Falls Township indicates that the petitioners' parcel is zoned (P-FP) Flood Prone Area Protection Subdistrict, (P-SL1) Shoreland Protection Subdistrict, (P-WL1 and P-WL3) Wetland Protection Subdistricts and (M-GN) General Management Subdistrict. This zoning petition specifically addresses a one (1) acre area adjacent to the Passadumkeag River which has an overlapping (P-FP) Flood Prone Area Protection and (P-SL1) Shoreland Protection Subdistrict.
7. Proposed Subdistrict: (P-SL1) Shoreland Protection Subdistrict
8. *Background.* Jeffrey C. and Theresa A. Harriman are joint tenants of a parcel of land located adjacent to the Passadumkeag River in Grand Falls Township, Penobscot County, Maine. Their 70 acre lot has over 100 feet of road frontage on State Route 188 and over 200 feet of water frontage on the Passadumkeag River.

9. *Petition.* The petitioners request the rezoning of one (1) acre of their property from overlapping (P-FP) Flood Prone Area Protection and (P-SL1) Shoreland Protection Subdistrict to solely (P-SL1) Shoreland Protection Subdistrict to allow for the construction of a residential dwelling and its appurtenances, as shown on the attached map dated January 22, 2014.

10. *(P-FP) Flood Prone Area Protection Subdistrict.* Pursuant to section 10.23,C,2 of the Commission's Land Use Districts and Standards ("Commission's Standards"), the (P-FP) Flood Prone Area Protection Subdistrict includes areas located within the 100-year frequency floodplain, as determined by the Commission after reviewing relevant data. Section 10.23,C,3,d,(4) of the Commission's Standards allows for the construction of single family residential dwellings within a (P-FP) Flood Prone Area Protection Subdistrict by special exception if, among other things, the applicant shows by substantial evidence that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant. There are multiple locations on the 70 acre lot which are both suitable for the construction of a residential dwelling and its appurtenances and readily available to the petitioners which are not located in a (P-FP) Flood Prone Area Protection Subdistrict, including an area adjacent to the Passadumkeag River. However, the petitioners prefer to construct in a location that has an overlapping (P-FP) Flood Prone Area Protection and (P-SL1) Shoreland Protection Subdistrict. As such, the petitioners opted to determine the base flood elevation of the Passadumkeag River and use that elevation data to refine the boundary of the (P-FP) Flood Prone Area Protection Subdistrict in the preferred location.

11. *Elevation Data.*

A. *Federal Emergency Management Agency (FEMA) Maps, Studies, and Base Flood Elevations.* There are no historic, effective, or future Federal Emergency Management Agency, Flood Insurance Rate Maps, Flood Hazard Boundary Maps or Flood Insurance Studies for Grand Falls Township in Penobscot County, Maine. FEMA base flood elevation data was not found for the Passadumkeag River in Grand Falls Township. However, the abutting downstream Town of Burlington has an effective Flood Insurance Rate Map and a base flood elevation of 193.0, NGVD 29, has been determined for Saponac Pond. Saponac Pond is approximately four (4) miles downstream of the zoning petition site and is considered a "widening" of the Passadumkeag River.

B. *Calculated Base Flood Elevation.* According to the Maine Department of Transportation and the petitioners' Professional Land Surveyor the elevation data in the "*Preliminary Engineering Study, Cripps Bridge over Passadumkeag River, Grand Falls, Maine,*" dated February 1989, outlines the expected 100-year floodplain at the Cripps Bridge crossing of the Passadumkeag River. Cripps Bridge is approximately one (1) mile upstream of the zoning petition location. Interpretation of this data by the petitioners' Professional Land Surveyor shows that the base flood elevation of the Passadumkeag River at the Cripps Bridge crossing is 202.65, NAD 27.

Utilizing the base flood elevation of Cripps Bridge as the best data available, and site-specific ground elevations at the zoning petition site, the petitioners' Professional Land Surveyor established a refined boundary line for the (P-FP) Flood Prone Area Protection Subdistrict. The petitioners' Professional Land Surveyor determined that the elevation of the one (1) acre that is proposed to be rezoned from overlapping (P-FP) Flood Prone Area Protection Subdistrict and (P-SL1) Shoreland Protection Subdistrict to solely (P-SL1) Shoreland Protection Subdistrict is above the base flood elevation of 202.65, NAD 27.

12. *Soils Data.* Soils map unit data for the proposed zoning petition location were obtained and reviewed using the U.S. Department of Agriculture's (USDA) National Resource Conservation Service's (NRCS) Soils Survey Geographical database for Penobscot County, Maine. The database shows that the soils are Podunk

Fine Sandy Loam (PY) with 0 to 3 percent slopes and moderately well drained. Site specific data provided by the petitioners indicates that the soils in the zoning petition location are classified as a loam. Further, the soils have been determined to be suitable for the installation of a subsurface wastewater disposal system, in compliance with the State of Maine Subsurface Wastewater Disposal Rules, by a Licensed Site Evaluator.

13. *Public Notice.* A notice that a petition to rezone was being filed with the Commission was sent to the Penobscot County Commissioners and to landowners within 1,000 feet of the parcel proposed to be rezoned.
14. According to 12 M.R.S. § 685-A(8-A), a land use district boundary may not be adopted or amended unless there is substantial evidence that:
  - A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
  - B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.
15. According to Section 10.23,L,1 of the Commission's Standards, the purpose of the P-SL Subdistrict is to regulate certain land use activities in certain shoreland areas in order to maintain water quality, plant, fish and wildlife habitat and in order to protect and enhance scenic and recreational opportunities.
16. According to Section 10.23,L,2 of the Commission's Standards, the description of a P-SL1 is an area within 250 feet of the normal high water mark, measured as horizontal distance landward of such high water mark, of flowing waters downstream from the point where such waters drain 50 square miles or more.
17. According to Section 10.23,L,3,c,(14) of the Commission's Standards, single family dwellings may be allowed within a (P-SL) Shoreland Protection Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-B, and subject to the applicable requirements set forth in Sub-Chapter III.
18. According to Sub-Chapter III, Section 10.26 of the Commission's Standards, the dimensional requirements for a single family dwelling include: a minimum lot size of 40,000 square feet; a minimum shoreline frontage of 200 feet for lots fronting on a flowing water draining 50 square miles or more; a minimum road frontage of 100 feet; and minimum setbacks of 100 feet from the nearest shoreline of a flowing water draining 50 square miles or more, 75 feet from the upland edge of wetlands designated as P-WL1 Wetland of Special Significance, 50 feet from the traveled portion (edge) of all roadways and 15 feet from side and rear property lines.
19. The facts are otherwise as represented in Zoning Petition ZP 745 and supporting documents.

**Based upon the above Findings, the Commission Concludes that:**

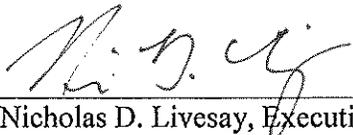
1. The information provided by the petitioners' Professional Licensed Surveyor establishes a specific base flood elevation at the upstream crossing of Cripps Bridge over the Passadumkeag River in Grand Falls Township (202.65, NAD 27). This determined base flood elevation was established utilizing the best available data in this area at this time, including the "*Preliminary Engineering Study, Cripps Bridge over Passadumkeag River, Grand Falls, Maine,*" dated February 1989. It is expected that the gradient of the base flood elevation will decrease downstream. Therefore, utilizing the Cripps Bridge location base flood elevation to establish a base flood elevation boundary line of the (P-FP) Flood Prone Area Protection Subdistrict for the zoning petition area, approximately one mile downstream, will reasonably reflect the floodplain conditions expected during the 100-year flood.

2. The ground elevation of the one (1) acre that is proposed to be rezoned from overlapping (P-FP) Flood Prone Area Protection Subdistrict and (P-SL1) Shoreland Protection Subdistrict to solely (P-SL1) Shoreland Protection Subdistrict is above the base flood elevation of 202.65, NAD 27.
3. The proposed rezoning of 1.0 acre from overlapping (P-FP) Flood Prone Area Protection and (P-SL1) Shoreland Protection Subdistrict to solely (P-SL1) Shoreland Protection Subdistrict is consistent with the standards for district boundaries set forth in Section 10.23,L,1 of the Commission's Standards, the Commission's Comprehensive Land Use Plan, and the purpose, intent and provisions of Title 12 M.R.S., Chapter 206-A.
4. The proposed new subdistrict designation is more appropriate for the protection and management of existing uses and resources within the affected area, given that the petitioners have shown that the proposed area is above the Base Flood Elevation of 202.65, NAD 27 and not within the 100-year frequency floodplain.

Therefore, the Commission APPROVES the petition of Jeffrey C. and Theresa A. Harriman to rezone 1.0 acre from a combined (P-FP) Flood Prone Area Protection Subdistrict and (P-SL) Shoreland Protection Subdistrict to a (P-SL) Shoreland Protection Subdistrict, as per the attached map dated January 22, 2014.

Pursuant to 5 M.R.S. § 11002 and Maine Rule of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT BANGOR, MAINE, THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2014.

By:   
\_\_\_\_\_  
Nicholas D. Livesay, Executive Director

This change in Subdistrict designation is effective on February 27, 2014.

p-w/3

# ZP 745, Harriman

Grand Falls Twp  
Penobscot County

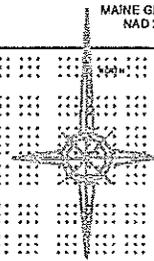
Grand Falls Twp

NOTE:  
Elevation taken on southeast corner  
bridge on Grand Falls Road over  
Madagascal Stream = 203.1'.

MAINE GR  
NAD 27

BM: 209.34  
Large

451 09.9285  
681 19.7744



FLOOD ZONE I 202 BS  
ACCORDING TO  
"CRPPS BRIDGE STUDY"  
SEE NOTE No. 4.

SITE PLAN  
FOR  
JEFFREY & THERESA  
HARRIMAN

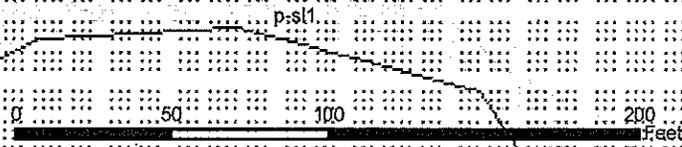
IN:  
GRAND FALLS  
PENOBSCOT COUNTY, ME  
AUGUST 22, 2013  
OCTOBER 27, 2013  
GLS FIVE JH 13 E

Passadumkeag River

Notes

1. This survey was done according to agreement with Jeffrey Harriman.
2. This plan is not subject to be amended and signed by Roger J. Coolong, PLS 1276 or Terri R. Coolong, PLS 2259.
3. Survey performed with sub-br GPS and a 5' bad dome.
4. Contour lines at 1' foot and datum generated from autonomous GPS data. Elevations on CRPPS BRIDGE were originally generated from an assumed datum of 100 feet (See Maine State project No: 003336, 01, Fall 1989). Adjustment factor: GPS to assumed is -101.16 feet.

- contours
- Elevation 202.65
- ▨ Proposed P-SL 1
- ▭ Town
- ▭ Lot
- ▭ P-FP
- ▨ P-SL1
- ▨ P-WL1
- ▭ P-WL2



ELEVATION ON NORTHWEST WING  
OF CRPPS BRIDGE IS 202.629