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GOVERNOR

STATE OF MAINE
DEPARTMENT OF CONSERVATION
LAND USE REGULATION COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PATRICK McGOWAN
COMMISSIONER

PERMIT

AMENDMENT C TO BUILDING PERMIT BP 7013 BY SPECIAL EXCEPTION; EC 07-10

The staff of the Maine Land Use Regulation Commission after reviewing the application and supporting documents submitted by Francine S. Hewitt for Amendment C to Building Permit BP 7013, finds the following facts:

1. Applicant: Francine S. Hewitt
212 Lombard Road
Caribou, Maine 04736
2. Date of Completed Application: January 23, 2007
3. Location of Proposal: Sinclair Twp., Aroostook County
Taxation Lot #224 on Plan 06
4. Zoning: (D-RS) Residential Development Subdistrict
(P-WL3) Wetland Protection Subdistrict
(P-FP) Flood Prone Area Protection Subdistrict by Virtue of Section 10.23, C, 2 of
the Commission's Land Use Districts and Standards
5. Lot Size: 1.38 Acres (owned)
6. Principal Building: Proposed Recreational Vehicle for Transient Occupancy (8 ft. by 37 ft.)
7. Accessory Structures: Existing Shed/Proposed Utility Building (20 ft. by 24 ft.)
Proposed Instant Garage (20 ft. by 25 ft.)
8. Sewage Disposal: Proposed Combined System
9. Affected Waterbody: Long Lake

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

Background

10. In October of 1989, Building Permit BP 7013 was issued to Herman E. and Leona M. Roy granting after-the-fact approval for an 8 foot by 12 foot tent platform and summer use of a self-contained tent-type camper trailer on a pre-Commission lot with 152 feet of shoreline frontage on Long Lake [Reference: Enforcement Case EC 89-247; Resolved].
11. In December of 1989, Amendment A to Building Permit BP 7013 was issued to Herman E. and Leona M. Roy authorizing year-round storage of the tent-type camper trailer on the lot and continued seasonal use.
12. In August of 1992, Amendment B to Building Permit BP 7013 was issued to Herman E. and Leona M. Roy authorizing the tent-type camper trailer to be replaced with an 18 foot by long self-contained camper-style mobile home. The tent-type camper trailer was authorized to be used for storage.

13. In the 1990s, Herman E. and Leona M. Roy constructed an 8 foot by 12 foot shed on the lot without prior approval from the Commission [Reference Enforcement Case: EC 07-10]. Both authorized camper trailers and the platform have been removed from the lot.

Proposal

14. The applicant now seeks after-the-fact approval for the 8 foot by 12 foot shed and proposes to expand it to 20 feet by 24 feet in size, relocate it, and convert it into a utility building with a sink, washer and dryer. The applicant also proposes to install an 8 foot by 37 foot recreational vehicle (RV), a 20 foot by 25 foot instant garage, and a combined sewage disposal system to serve the RV when it is on site and the utility building. The RV would be on site for fewer than 90 consecutive days, and be fully licensed and ready for highway use. All structures, including the RV would be set back at least 100 feet from the normal high water mark of Long Lake, approximately 300 feet from Baie Creuse Road, and at least 15 feet from the nearest property boundary line. All proposed development, except for the combined sewage disposal system, would be located outside the P-WL3 Wetland Protection Subdistrict.
15. The applicant proposes to alter approximately 3,000 square feet of mapped P-WL3 Wetland Protection Subdistrict in order to install the combined sewage disposal system. They have submitted Army Corp of Engineers Permit #NAE-2006-2431, authorizing fill of approximately 720 square feet of freshwater wetland, however, they did not consider the leachfield as being within a wetland based on soils information.
16. The proposed utility building and instant garage would be less than 500 square feet and have a value less than \$3000; have unfinished interiors and not be used for human habitation; have hydraulic openings in at least two different walls of the accessory structure; be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and have only ground fault interrupt electrical outlets. Any electric service disconnect would be located above the base flood elevation. The property is not located within a floodway as it is adjacent to a great pond.
17. Although the Commission's Land Use Guidance Map for Sinclair Twp, identifies the applicant's property as being within a (D-RS) Residential Development Subdistrict and (P-WL3) Wetland Protection Subdistrict, according to the Federal Emergency Management Agency's (FEMA) Flood Insurance Agency (FIA) Flood Hazard Boundary Map or Flood Insurance Rate Map (FIRM) for Sinclair Twp., Aroostook County, the applicant's lot is partially located within an area of 100 year flood (reference the National Flood Insurance Act of 1968 P.L. 90-48, as amended). The portion of the applicant's lot not located in an area of 100 year flood is zoned P-WL, where except for the sewage disposal system, the proposed development is prohibited.

Review Criteria

18. Under the provisions of Section 10.23,C,2 of the Commission's Land Use Districts and Standards, the Flood Prone Protection Subdistrict is described as: "Areas located within the 100-year frequency floodplain, also known as areas of special flood hazard, as identified by the Commission after consideration of relevant data including, without limitation, areas determined to be flood prone by state or federal agencies, including the Flood Insurance Studies and accompanying Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by the Federal Emergency Management Agency, historical data, and the National Cooperative Soil Survey.

The areas identified by FEMA as areas of special flood hazard (Zones A, AE, A1-30, VE) on Flood Insurance Rate Maps or Flood Hazard Boundary Maps for townships, plantations, or towns qualify as flood prone areas appropriate for protection within this subdistrict. The Commission adopts the FEMA maps as listed in Appendix E, and a note on the Official Land Use Guidance Map shall refer to maps so adopted. In any case where the boundaries of the P-FP subdistrict on the Commission map differ from the boundaries of the FEMA zones, the FEMA boundaries shall apply. The FEMA zones shall be regulated according to the provisions of the P-FP subdistrict."

19. Under the provisions of Section 10.23,C,3,d of the Commission's Land Use Districts and Standards, single family dwellings and associated structures may be allowed within FEMA zones A as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A §685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence the (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.
20. Under the provisions of Section 10.23,N,3,b(4) of the Commission's Land Use Districts and Standards, filling, grading, draining, dredging or otherwise altering less than 4,300 square feet of a P-WL2 or P-WL3 subdistrict is an allowed use without a permit subject to standards.
21. Under the provisions of Section 10.25,T,2,f of the Commission's Land Use Districts and Standards, all new structures within a Flood Prone Area shall have the lowest floor of each structure (the reference level floor), including the basement floor, elevated to at least one foot above the Base Flood Elevation (BFE) at that location.
22. Under the provisions of Section 10.25,T,2,i of the Commission's Land Use Districts and Standards, recreational vehicles shall either: (1) Be on the site for fewer than 90 consecutive days, and be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or, (2) Be permitted in accordance with the elevation and anchoring requirements for manufactured homes in Section 10.25,T,2,h.
23. Under the provisions of Section 10.25,T,2,j of the Commission's Land Use Districts and Standards, accessory structures, as defined, located within Zones A1-30, AE, and A, shall be exempt from the required elevation criteria if all other requirements of Section 10.25,T and the following are met. Exempt accessory structures shall: (1) Be 500 square feet or less and have a value less than \$3000; (2) Have unfinished interiors and not be used for human habitation; (3) Have Hydraulic openings, as specified in Section 10.25,T,2,1(2), in at least two different walls of the accessory structure; (4) Be located outside the floodway, as determined by the provisions of Section 10.25,T,2,k; (5) When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and, (6) Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Area of Special Flood Hazard.
24. Under provisions of Section 10.26,B,2 of the Commission's Land Use Districts and Standards the minimum shoreline frontage requirement for residential uses is 200 feet per dwelling.
25. Under the provisions of Section 10.11,E,3 of the Commission's Land Use Districts and Standards, an unimproved, nonconforming lot, legally existing as of September 23, 1971, may be developed by waiving, to the minimum extent necessary, the requirements that make the lot nonconforming. The Commission may allow for development if the lot is at least 20,000 square feet in size, has at least 100 feet of shore frontage. This waiver may only be granted if the proposed development would meet the shoreline setback requirements in Section 10.26,D,1 of the Commission's Land Use Districts and Standards.
26. The facts are otherwise as represented in Building Permit application BP 7013, subsequent amendment requests, and supporting documents.

Based upon the above Findings, the staff concludes that:

1. The applicant's proposal would be allowed in the FEMA Zone A as a special exception under the provisions of Section 10.23, C, 3, d of the Commission's Land Use Districts and Standards in that there is no suitable alternative site outside the FEMA Zone A on the applicant's lot because of a mapped (P-WL3) Wetland Protection Subdistrict, there are other residential uses in the area with

which it is compatible and other conditions such as elevation requirements under Section 10.25, T, 2, f in the FEMA Zone A have been met.

2. The proposed recreational vehicle would be in compliance with Section 10.25,T,2,i of the Commission's Land Use Districts and Standards, in that the recreational vehicles will be on the site for fewer than 90 consecutive days, and be fully licensed and ready for highway use.
3. The proposed instant garage and utility building would be exempt from the required elevation criteria under Section 10.25,T,2,j of the Commission's Land Use Districts and Standards, in that the garage and utility building would each (1) Be 500 square feet or less and have a value less than \$3000; (2) Have unfinished interiors and not be used for human habitation; (3) Have Hydraulic openings, as specified in Section 10.25,T,2,1(2), in at least two different walls of the accessory structure; (4) Be located outside the floodway, as determined by the provisions of Section 10.25,T,2,k; (5) When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and, (6) Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Area of Special Flood Hazard.
4. The proposed development would meet the provisions of Section 10.11,E,3 of the Commission's Land Use Districts and Standards in that the lot is at least 20,000 square feet in size and has at least 100 feet of shore frontage. The proposed development would meet all the setback requirements in Section 10.26,D,1 of the Commission's Land Use Districts and Standards. The minimum shoreline frontage requirement may be waived from 200 feet to 152 feet.
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 amendment request of Francine S. Hewitt 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. All authorized structures must be set back a minimum of 100 feet from the normal high water mark of Long Lake, 50 feet from Baie Creuse Road and 15 feet from other property boundary lines.
3. The permittee must minimize all filling and grading and not alter more than 4,300 square feet of mapped P-WL3 (area starting 250 feet from the normal high water mark of Long Lake to the Baie Creuse Road). The permittee must also comply with the Standards for Filling and Grading, a copy of which is attached.
4. The authorized recreational vehicle must be on the site for fewer than 90 consecutive days, and be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
5. The authorized utility building and instant garage must each be 500 square feet or less and have a value less than \$3000, and have unfinished interiors and not be used for human habitation. Both accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
6. The authorized utility building must have hydraulic openings in at least two different walls having a total net area of not less than one square inch for every square foot of the enclosed area, must have the bottom of all openings no higher than one foot above the lowest grade. The openings must permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means. The utility

building must also have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Area of Special Flood Hazard.

7. 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.
8. 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.
9. 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.
10. Nothing in this permit shall be construed to release the permittee from any liability or responsibility arising from any violation, including Enforcement Case EC 07-10, or to be considered a waiver of the authority of the Commission or the state to fully pursue or prosecute such violations.

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 Regulation 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 25TH DAY OF JANUARY, 2007.

By: 
for Catherine M. Carroll, Director