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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
45 RADAR ROAD
ASHLAND, MAINE 04732-3600

WALTER E. WHITCOMB
COMMISSIONER

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EXECUTIVE DIRECTOR

PERMIT

AMENDMENT H TO
DEVELOPMENT PERMIT DP 3699; EC 07-16

The staff of the Maine Land Use Regulation Commission after reviewing the application and supporting documents submitted by Graydon Mahoney for Amendment H to Development Permit DP 3699, finds the following facts:

1. Applicant: Graydon Mahoney
PO Box 38
Caribou, Maine 04736
2. Date of Completed Application: March 7, 2016
3. Location of Proposal: Sinclair Twp., Aroostook County
Taxation Lot #60 on Plan 06
4. Zoning: (D-GN) General Development 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
(P-WL1 & 3) Wetland Protection Subdistrict by Virtue of Prior Delineations
5. Lot Size: 5.7 Acres (owned)
6. Existing Development: Recreational Lodging Facility – Level C – Expanded Access
 - A. Principal Buildings: Existing Dwelling Unit (22 ft. by 40 ft.)
with Existing Attached Lake-Side Porch (8 ft. by 40 ft.)
Existing Multiple-Purpose Building (Restaurant, Shower House, Store,
Meeting Hall, Laundromat, Canoe/Kayak Rentals, (30 ft. by 90 ft.)
with Existing Roof Enclosure of Existing Attached
Deck/Wheelchair Ramp (8 ft. by 90 ft)
 - B. Accessory Structures: Existing Sleep Cabin #1 (10 ft. by 16 ft.)
Existing Sleep Cabin #2 (9 ft. by 10 ft.)
Existing Sleep Cabin #3 (9 ft. by 10 ft.)
Existing Sleep Cabin #4 (9 ft. by 10 ft.)
Existing Sleep Cabin #5 (9 ft. by 10 ft.)
Existing Sleep Cabin #6 (9 ft. by 10 ft.)
Existing Sign (4 ft. by 8 ft.)



(B. Accessory Structures cont.)

Existing Fence (1,420 ft. long)
41 Existing Recreational Vehicle (RV) Campsites
15 Existing Tent Campsites

7. Proposed Development: Proposed Conversion of 3 Tent Campsites to RV Campsites
8. Sewage Disposal: Existing Combined System (serving Dwelling unit)
Existing Force Main Sewage Line and Gravity-fed Collection System, and
Septic Tank with Pump Station and Dump Station (Sinclair Sanitary District)
9. Affected Waterbody: Mud Lake

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

Proposal

10. The applicant seeks amendment approval to convert 3 of the existing tent campsites into RV sites at his existing Level C– Expanded Access Recreational Lodging Facility. The RV sites would be served by proposed hook-ups to the existing sewer collection system and all wastewater would be transported to the Sinclair Sanitary District. The District holds a wastewater discharge license with the Maine Department of Environmental Protection. The new RV sites would be set back approximately 200 feet from the normal high water mark of Mud Lake, at least 75 feet from Route 162, and at least 25 feet from the nearest property boundary line. The RV sites are located within the D-GN Subdistrict and not within the P-FP or P-WL Subdistricts.
11. Recreational Lodging Facility Factors. Information relevant to the categorization of the Facility (10.27,Q, Table A):
 - a. *On-site recreation activities, features, and/or services.* The facility is an existing commercial campground with a main dwelling, multipurpose building with showers, laundry and store, 6 sleep camps, RV campsites and tent campsites. The facility primarily caters to RV campers that come to swim, boat, kayak, and fish. The commercial campground is identified as partially screened by fencing and generating low noise or odor.
 - b. *Utilities.* The facility is served by public utilities. The main lodge provides flush toilets and showers. Water, sewer, and electric hook-ups are available at the RV campsites and water and electricity is available at the tent campsites.
 - c. *Floor area of principal buildings.* The floor area of all principal buildings is approximately 5,230 square feet.
 - d. *Footprint of clearing within 250 feet of waterbodies.* The facility currently includes approximately 77,000 square feet of cleared area within 250 feet of Mud Lake.
 - e. *Retail.* The facility includes a retail display area of approximately 125 square feet.
 - f. *Dining Amenities.* There are no current dining amenities at the facility. An 80 seat restaurant open to the public was permitted at this facility in 2007 and operated for a brief period of time. The restaurant has not been in operation since approximately late 2007.
 - g. *Fuel Sales.* Fuel is not available for sale at the facility.
 - h. *Recreation amenities.* Amenities are available to overnight guests only.
 - i. *Overnight occupancy.* The facility is currently limited to 158 guests per night, utilizing the dwelling, 6 sleep cabins, and 56 campsites.

12. The site is located within 2 miles of Route 162, a public road; and within 10 miles of Madawaska, and Saint Agatha, and is therefore located inside the geographic allowance area.

Background

13. The applicants' 5.7 acre lot, located on Route 162 in Sinclair Township, was used as a children's camp prior to the inception of the Commission in 1971 and was developed with a dining hall/kitchen, bathhouse, and several sleeping cabins. The lot contains 429 feet of shoreline frontage on Mud Lake and 328 feet of road frontage on Route 162. The dining hall and bathhouse were served by pressurized water and a combined sewage disposal system consisting of a 750 gallon steel septic tank and a trench type absorption bed of unknown dimensions.
14. In September of 1986, Development Permit DP 3699 was issued to Walter and Arlene Pietras granting after-the-fact approval of a 22 foot by 40 foot four-bedroom duplex with an 8 foot by 40 foot porch, and use of the property as a sporting camp facility [Reference: Enforcement Case EC 85-129, Resolved]. Condition #2 of Development Permit DP 3699 required that, with the exception of the duplex, all existing structures on the property be disconnected from the existing sewage disposal system and either closed up or limited in use to storage of equipment.
15. In October of 1988, Amendment A to Development Permit DP 3699 was issued to Walter and Arlene Pietras authorizing installation of a permanent foundation beneath the former dining hall. A review of Development Permit DP 3699 found that Finding of Fact #6 of Amendment A incorrectly stated that the original Development Permit DP 3699 had authorized the dining hall building, replacement of the sleep cabins with sporting cabins, and development of 15 travel trailer sites. Development Permit DP 3699 allowed the former dining hall, former bathhouse, and sleep cabins to be used as storage only.
16. In May of 1998, Amendment B to Development Permit DP 3699 was issued to Doran and Patsy Bouchard authorizing the duplex to be relocated onto a permanent foundation, construction of an 8 foot by 90 foot deck with a wheelchair ramp on the east side of the former dining hall, construction of a 10 foot by 15 foot addition to "square off" the rear of the former dining hall, relocation of the driveway toward the west property line, construction of a fence parallel to Route 162, continued use of an existing pre-Commission 4 foot by 5 foot sign located on the property along Route 162, and selective clearing of blow downs and dead trees.
17. In May of 1998, Amendment C to Development Permit DP 3699 was issued to Doran and Patsy Bouchard authorizing relocation of the former bathhouse and one of the sleep cabins onto concrete pads set back more than 150 feet from Mud Lake.
18. In October of 1998, the Bouchards submitted an application seeking permit approval to install a proposed holding tank for sewage disposal for a proposed campground. Review of the application and on-site investigations determined that a holding tank of the size required for the campground could not be allowed under the Maine State Plumbing Code, and that no area of soils appropriate for a combined system was present on the lot. In June of 1999, Doran and Patsy Bouchard withdrew their application for Amendment D to Development Permit DP 3699.
19. In April of 2001, Amendment E to Development Permit DP 3699 by Special Exception was issued to Doran and Patsy Bouchard. Amendment E authorized development of approximately 3.7 acres with a seasonal campground (May 1 to October 31), consisting of 15 tent sites and 41 recreational vehicle (RV) campsites, and replacement of the existing 4 foot by 5 foot sign with a 4 foot by 8 foot sign. The existing large storage building (former dining hall) and 6 small storage buildings (former bathhouse and sleep cabins) were also authorized to become part of the campground and the existing

duplex with porch was to be temporarily used as a private residence and eventually used as housing for a campground manager or rented to the public.

20. In 2005, a staff site visit found several violations on the property including: filling and grading in noncompliance with the Commission's standards and Conditions of Amendment E to Development Permit DP 3699; use of the dining hall as a public restaurant, store, laundromat, arcade, and boat rental; and permanent placement of approximately 12 RVs, some registered and some not registered, and some with associated accessory structures [Reference: Enforcement Case EC 07-016; Active]. According to the applicants, the public restaurant was to be discontinued.
21. In July of 2007, Amendment F to Development Permit DP 3699 was issued to Dennis and Beatrice Jackson by the Commission as an approval in part by special exception /denial in part by variance. Amendment F authorized conversion of the meeting hall with shower house into a multi-purpose building and after-the-fact use of the building for a convenience store, laundromat, canoe/kayak rentals, and arcade for the users of the campground. Amendment F also authorized construction of a roof over an existing 8 foot by 90 foot deck with wheelchair access ramp on the multi-purpose building, a 22 inch by 28 inch lighted sign near the entrance to the campground, year-round use of the existing duplex, and operation of the multi-purpose building and sleep cabins on a year-round basis instead of only from May 1 to October 31.

The Jacksons' request to allow the recreational vehicles to remain stored at their summer sites from November 1 to April 30 was denied because the RVs would be considered dwelling units and the lot dimensions are not adequate for additional dwelling units. In addition, more than 2 dwelling units placed on a lot within a 5 year period would require subdivision approval.

The Jacksons' request for a variance to the Commission's standards for expansions of nonconforming structures to construct an 8 foot by 90 foot roof extension on the west side of the multi-purpose building to prevent water from entering the basement was also denied because it the applicants did not demonstrate that strict compliance with the Commission's rules would cause unusual hardship or extraordinary difficulties.

22. In August of 2007, Amendment G to Development Permit DP 3699 was issued to Dennis and Beatrice Jackson for operation of a restaurant within the 30 foot by 90 foot multi-purpose building. The restaurant would serve up to 80 seats with disposable plates, cups, and utensils. The Jackson's had submitted a copy of their Eating and Lodging License for an 80 seat restaurant and a letter from the Sinclair Sanitary District agreeing to accept the waste water generated from the restaurant. The restaurant would generally be uses in conjunction with the campground, however, the license did not limit use by the general public. The restaurant would be set back approximately 25 feet from the normal high water mark of Mud Lake, at least 75 feet from Route 162, and at least 25 feet from the nearest property boundary line.
23. The current owner is not operating the 80 seat restaurant described in DP 3699, Amendment G. The duplex unit has been converted into a single family dwelling with one bedroom and one bathroom.

Review Agency Comments

24. The Maine Department of Environmental Protection (MDEP) has reviewed the application and states that the Sinclair Sanitary District has the capacity to accept the additional wastewater from the 3 proposed RV hook-ups and that modification to the District's wastewater discharge license would not be required at this time.

25. The Maine Department of Health and Human Services (DHHS), Division of Environmental Health has reviewed the application and state that when someone hooks up to a municipal sewer, the connection to the sewer main must be permitted and inspected. If the District does not do this, the LPI would issue a hookup permit. In addition, the individual site hookups are subject to permitted by the LPI, since they lie outside the District's jurisdiction.

Review Criteria and Staff Analysis

26. Under the provisions of Section 10.26 of the Commission's Land Use Districts and Standards, the dimensional requirements applicable to the proposed RV camping sites include: a minimum lot size of 40,000 square feet, a minimum shoreline frontage of 300 feet, a minimum road frontage of 200 feet, and minimum structure setbacks of 150 feet from the normal high water mark of Mud Lake, 75 feet from the traveled portion (edge) of Route 162 and 25 feet from side and rear property boundary lines.
27. Although the Commission's Land Use Guidance Map for Sinclair Twp. identifies the applicant's property as being within a (D-GN) General Development Subdistrict, according to the Federal Emergency Management Agency's (FEMA) Flood Insurance Agency (FIA) Flood Hazard Boundary Map for Sinclair Twp., approximately 200 feet of the applicant's lot, from the lake landward, is located within an area of 100 year flood frequency (reference the National Flood Insurance Act of 1968 P.L. 90-48, as amended). The multi-purpose building, sleep cabins, and dwelling are located within the 100 year flood area as mapped by the FEMA. The RV and tent sites are located outside the flood prone area.

In November of 2005, revisions to Section 10.23,C of the Commission's Land Use Districts and Standards were made to include areas within the 100 year flood area as mapped by the FEMA FIA as (P-FP) Flood Prone Area Protection Subdistricts. Also in November of 2005, development standards for activities in flood prone areas, Section 10.25,T of the Commission's Land Use Districts and Standards, were adopted. The applicants' property is subject to these standards, even though the Land Use Guidance Map identifies the property as being within the (D-GN) General Development Subdistrict. The Base Flood Elevation for Mud Lake has been determined to be 586 feet NGVD. No elevation information has been submitted for the 3 proposed RV sites because they are located outside of the flood prone area.

28. On August 5, 2013, Chapter 10 of the Commission's rules, Land Use Districts and Standards, were amended to incorporate the extensive revisions regarding recreational lodging facilities. Based on facility level determination factors in Tables A and B of Section 10.27,Q, Recreational Lodging Facilities, of the Commission's Rules, the facility is classified as a Level C – Expanded Access Recreational Lodging Facility. Specifically, the overnight occupancy is more than 150 but less than 300 people. The footprint of clearing within 250 feet of Mud Lake is more than 54,000 but less than 90,000 square feet. However, recreational lodging facilities in existence prior to July 1, 2013 can be categorized without regard to the footprint of cleared areas within 250 feet of a waterbody. The current proposal would not create additional cleared area within 250 feet of Mud Lake.

Level C – Expanded Access facilities have moderate impacts on existing resources within the development site and surrounding areas and are specifically designated by Section 10.27,Q,1, Table A and B of the Commission's standards.

29. Under the provisions of Section 10.21,C,3,c,(16),(c) of the Commission's Land Use Districts and Standards, Level C – Expanded Access Recreational Lodging Facilities (inside or outside the geographic allowance area) may be allowed within the D-GN Subdistrict upon issuance of a permit

from the Commission pursuant to 12 M.R.S. §685-B, and subject to the applicable requirements set forth in Sub-Chapter III.

30. Level C – Expanded Access recreational lodging facilities are prohibited within the P-FP Subdistrict (*Ch. 10.23, C, 3, f*). Prior to November of 2005, this facility was not designated as being located within a P-FP and only became a nonconforming use when areas within the 100 year flood area as mapped by the FEMA FIA were designated as (P-FP) Flood Prone Area Protection Subdistricts. At this time the facility was categorized as a commercial facility having a gross floor area of more than 2,500 square feet, an allowed use within the D-GN Subdistrict.
31. Pursuant to the August 5, 2013 Chapter 10 revisions regarding recreational lodging facilities, the facility remains categorized as a legally existing nonconforming use, now a Level C – Expanded Access Recreational Lodging Facility. The Commission’s general policy is to limit the expansion of nonconforming facilities, provide appropriate opportunity for growth, and to improve conformance over time. In order to increase conformance, some facilities may rezone to an appropriate subdistrict that can accommodate them. However, it is not possible for a facility that is located partly in a FEMA zone to rezone. Therefore, it would be impractical to make that facility become fully conforming prior to expansion. Expansion would be possible provided the facility is conforming as to use in all respects other than being partially located in the FEMA zone (e.g. allowed use in all other subdistricts that apply). However, the portion of the facility located in a FEMA zone would remain legally existing, nonconforming, and be subject to provisions for expansion of legally existing nonconforming structures (Chapter 10, Section 10.11, C).
32. Under the provisions of Section 10.23, C, 2 of the Commission’s Land Use Districts and Standards, the Flood Prone Area Protection (P-FP) 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 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. 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.”
33. Under the provisions of Section 10.11, D, 3 of the Commission’s Land Use Districts and Standards, extension, enlargement or expansion of nonconforming uses requires a permit.
34. Under provisions of 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 this section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. Section 685-B(4) and demonstrate that the project will not adversely affect surrounding uses and resources and that there is no increase in the extent of nonconformance, except in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a waterbody setback.

35. The facts are otherwise as represented in Development Permit application DP 3699, subsequent amendment requests, Amendment Request H, and supporting documents.

Based upon the above Findings, the Commission concludes that:

1. The existing Level C – Expanded Access Recreational Lodging Facility would be an allowed use in the (D-GN) General Development Subdistrict under the provisions of Section 10.21, C, 3, c,(16),(c) of the Commission’s Land Use Districts and Standards.
2. Although a prohibited use within the FEMA Zone A and (P-FP) Flood Prone Protection Subdistrict under 10.23, C, 3, e, of the Commission’s Land Use Districts and Standards, the expansion of the legally existing nonconforming use would be allowed with a permit under Section 10.11, D, 3 and would meet the provisions of Section 10.11, B, 1, in that the expansion would not add new services or amenities, the expansion would not be located within the P-FP Subdistrict, and the Sinclair Sanitary District has the ability to handle the additional waste water.
3. The proposed RV sites would comply with the dimensional requirements of Section 10.26 of the Commission’s Land Use Districts and Standards.
4. 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 Graydon Mahoney with the following Conditions:

1. **At least one week prior to commencing the permitted activities**, the permittee must contact the Commission staff and notify them of the date construction will start. **If these activities include a permanent foundation**, the permittee must notify staff **of the date the forms will be set**. This will allow staff time to arrange a pre-construction site visit to review the applicable standards and requirements of the permit with the permittee. (**If you leave a telephone message**, please include your full name, telephone number, permit number, and the date/s the work will start.)
2. The enclosed permit certificate must be posted in a visible location on your property immediately after receipt and during development of the site and construction of the structures and activities approved by this permit.
3. 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.
4. The permitted RV sites must be set back a minimum of 200 feet (outside the Flood Zone) from the normal high water mark of Mud Lake, 75 feet from the traveled portion (edge) of Route 162 and at least 25 feet from side and rear property boundary lines.
5. The permitted camping devices must not be located on the lot for more than 120 days in a calendar year.. The permitted campers, trailers, and recreational vehicles must be registered and road ready.
6. 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.

7. The permittee shall secure and comply with all other applicable licenses, permits, authorizations and monitoring requirements of all federal, state and local agencies including, but not limited to, the Maine Department of Health and Human Service's Division of Environmental Health's, Subsurface Wastewater Unit and Health Inspection Program.
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. All conditions of Development Permit DP 3699 and subsequent amendments remain in effect except as specifically modified by this permit.

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 8TH DAY OF APRIL, 2016.

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