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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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GREENVILLE, MAINE 04441

AMANDA E. BEAL
COMMISSIONER

JUDY C. EAST
EXECUTIVE DIRECTOR

PERMIT

DEVELOPMENT PERMIT DP 5090 BY SPECIAL EXCEPTION

The Maine Land Use Planning Commission (Commission), through its staff, after reviewing the application and supporting documents submitted by Roger Lane, d/b/a Captain Rogers, LLC (Applicant) for Development Permit DP 5090, finds the following facts:

1. Applicant: Roger Lane
d/b/a Captain Rogers, LLC
P.O. Box 34
Rockwood, Maine 04478
2. Agent: Falla Consulting, LLC
Attn: Roderick Falla
795 Lily Bay Road, Unit704
Beaver Cove, Maine 04441
3. Date of Completed Application: April 21, 2021
4. Location of Proposal: Map SO033, Plan 08, Lots 20, 21, & 60, *Owned*
Map SO033, Plan 08, Lots 22 & 25 (part of), *Leased*
Rockwood Strip Twp., T1 R1 NBKP, Somerset County
5. Zoning: (D-RS) Residential Development Subdistrict
(P-WL1) Wetland Protection Subdistrict
6. Affected Waterbody: Moose River
The Moose River is a Class A water body pursuant to *Classification of major river basins*, 38 M.R.S. § 467(4)(F)(1)(e).

Background & Administrative History

7. In October of 1972, Building Permit BP 272, issued to Paul McCourtney, a former owner, authorized the construction of 90 feet of wooden cribbing on his lot along the Moose River. The four tiers of cribbing were constructed of pilings with boards fastened to the face with 14 inch spikes. A Certificate of Compliance was issued to the permittee in June of 1975.

8. On December 22, 1982, Advisory Ruling AR 19642, was issued to Paul McCartney, which stated the proposed 34 foot by 30 foot garage, accessory to a pre-Commission camp, that would meet all dimensional and setback standards, would not require a permit from the Commission.
9. On September 8, 1995, Building Permit BP 272, was issued to Paul McCartney, authorizing the replacement of portions of the cribbing on the tiers above the normal high water mark of Moose River, including some of the pilings on the top tiers and about 10 percent of the retaining boards.
10. The Applicant currently owns a 0.81-acre parcel (Plan 08, Lots 20 & 60) on the north side of the Maynard Road, which is developed with a pre-Commission dwelling and garage. The Applicant also owns a 0.21-acre shorefront lot (Plan 08, Lot 21) on the south side of the Maynard Road along the Moose River, which has approximately 123 feet of shoreline and 123 feet of road frontage. The shorefront lot is developed with a 16 foot by 40 foot boat storage shed located approximately 17 feet from the bulkhead.

Proposal

11. The Applicant proposes to use the existing permanent docking structure located on Lot 21 to run a seasonal, commercial pontoon boat rental on the Moose River in Rockwood Strip Twp., Somerset County. The Applicant states the boat rental would have between 6 to 8 pontoon boats moored 'Bow-To' along the existing 80-foot bulkhead. The pontoon boats, which are 20 to 24 feet in length, would not extend into the navigational channel. Parking would be located within an existing off-street area on the Applicant's lot located on the north side of the Maynard Road. Access to the docking structure is within an existing ATV access way and foot path. Rentals would be conducted by phone reservation and at an outdoor table set up during the rental season. The Applicant states rentals are generally done in the morning and all business is completed by 5:30 pm. No commercial services or retail sales will be available at the site. The Applicant does not propose to modify the overall distance of the docking structure into the Moose River.
12. The Applicant has leased additional shoreline and road frontage from adjacent landowners (Plan 08, Lot 22 & Plan 08, Lot 25, portion of) in order to meet the Commission's minimum lot size of 40,000 square feet, and minimum shoreline and road frontage for commercial, industrial, and other non-residential uses. The combined contiguous shoreline and road frontage of the Applicant's lot and the leased lots total 316 feet and 233 feet, respectively. Both leases on Lot 22 and Lot 25 expire on September 30, 2025. The Applicant's owned and leased lots are within a (D-RS) Residential Development Subdistrict. The Moose River is zoned as a Wetland Protection (P-WL1) subdistrict.
13. The Applicant states that the proposed marina meets the special exception criteria, in that the site is the only one reasonably available to the applicant that contains the necessary dimensional requirements for non-residential uses. The Applicant also states that the proposed operation would be seasonal and would be compatible with the larger scaled marina operations along the river in this area.

Agency Review Comments

14. The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposal and commented that as long as construction BMP's are adhered to, minimal impacts are anticipated.
15. The Maine Natural Areas Program (MNAP) reviewed the proposal and states that there are no rare botanical features that will be disturbed within either project site.
16. The Maine Historic Preservation Commission (MHPC) reviewed the proposal and had no comments.
17. The Somerset County Soil & Water Conservation District reviewed the proposal and had no comments.

Review Criteria and Standards

18. Permit required. Pursuant to 12 M.R.S. § 685-B(1)(A), a structure or part of a structure may not be erected, changed, converted or wholly or partly altered or enlarged in its use or structural form without a permit issued by the Commission. Pursuant to 12 M.R.S. § 682(4), "structure" means anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats.
19. Docking structure. Pursuant to *Land Use Districts and Standards*, 01-672 C.M.R. 10 (last revised May 29, 2017) ("Chapter 10"), section 10.02,53, a "docking structure" is a structure placed in or near water primarily for the purpose of securing and/or loading or unloading boats and float planes, including but not limited to docks, wharfs, piers, and associated anchoring devices, but excluding boathouses and floatplane hangers.
20. Permanent docking structures. Pursuant to Chapter 10, section 10.02,150, a permanent docking structure is a "docking structure in place for longer than seven months in any calendar year or which is so large or otherwise designed as to make it impracticable to be removed on an annual basis without alteration of the shoreline, and associated on-shore structures used to secure a permanent dock or mooring."
21. Marina allowed by special exception. Pursuant to Chapter 10, section 10.21,M,3,d(3) and section 10.23,N,3,d(5), marinas, and related accessory structures, may be allowed within D-RS and P-WL subdistricts, respectively, as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that (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 uses within the vicinity or area likely to be affected by the proposal with which it is or may be 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.

22. Dimensional requirements. Pursuant to Chapter 10, section 10.26, for commercial, industrial, and other non-residential uses involving one or more buildings, the minimum lot size is 40,000 square feet; the minimum shoreline frontage is 200 feet; and the minimum road frontage is 200 feet.
23. General criteria for approval. Pursuant to 12 M.R.S. § 685-B(4), which has been incorporated into rule in Chapter 10, section 10.24, the Commission may not approve an application unless:
 - a. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto.
 - b. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods.
 - c. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal.
 - d. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site.
 - e. The proposal is otherwise in conformance with 12 M.R.S. §§ 681 – 689 and the regulations, standards and plans adopted pursuant thereto.
20. The facts are otherwise as represented in Development Permit Application DP 5090 and supporting documents.

Based upon the above Findings, the staff concludes the following.

21. Marina allowed by special exception. A docking structure operated for commercial purposes, such as the one proposed by the Applicant, is a marina. A marina may offer additional services beyond providing boat slips, but these additional services are not necessary to qualify a facility, on a commercial basis, as a marina.

The applicant owns an existing docking structure on the Moose River and seeks to run a seasonal, commercial pontoon boat rental. The applicant has demonstrated that the site is the only one available to the applicant which has the minimum dimensional requirements needed for commercial purposes. The applicant has also demonstrated that the use will be compatible with the scenic character of this section of Moose River in that the site is surrounded by a similar mixture of residential and commercial uses. Specifically, the existing docking structure is in close proximity to a large-scale marina and is in an area where commercial barges are moored. In addition, docks and slips are common along the river and the proposed boat rental is not incompatible with other residential or commercial uses in the area. The proposed parking will occur in an existing parking area and is partly

buffered by trees and existing structural development; where visible, parking for the marina would be the same as for the other existing businesses.

The Commission concludes that the applicant has shown by substantial evidence that the proposal satisfies Chapter 10, sections 10.21,M,3,d(3) and section 10.23,N,3,d(5), as a use allowed within D-RS and P-WL1 subdistricts as special exceptions.

22. Dimensional requirements. The proposal complies with the applicable requirements set forth in Sub-Chapter III of the Commission's *Land Use Districts and Standards*.
23. General criteria for approval. The general criteria for approval of a permit application are specified in Title 12, section 685-B(4) and have been incorporated into Chapter 10, section 10.24. These criteria have been met as explained below.
 - a. The applicant has demonstrated adequate technical and financial capacity based on the fact the applicant owns and/or leases the property and owns all the boats and equipment needed to operate the pontoon rental business.
 - b. The applicant has demonstrated adequate provisions for loading, parking and circulation of traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods, provided gear is transported to and from the parking area to the docking structure by foot or ATV via the footpath/ATV access way. The applicant stated there is adequate parking at the existing open field across the Maynard Road on the applicant's lot.
 - c. The applicant has demonstrated adequate provision has been made for fitting the pontoon boat rentals harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on scenic character and natural and historic resources in the area. Specifically, there are several marinas and docking structures along the Moose River, including others of a scale larger than the applicant's facility. The proposal is compatible with these other structures. No historic resources have been identified in the area that will be impacted by the boat rental. In addition, the boat rentals will not have an undue adverse effect on the existing use of the river for navigation.
 - d. The applicant's proposal does not include the development of new structures or activities that would disturb soils and therefore will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water.
 - e. The proposal, as conditioned in approving DP 5090, is otherwise in conformance with 12 M.R.S. §§ 681 – 689 and the regulations, standards and plans adopted pursuant thereto.

Therefore, the Commission approves the application of Roger Lane subject to the following conditions:

1. Prior to September 30, 2025 and any subsequent lease expiration dates, the permittee shall provide the Commission with copies of signed lease agreement renewals for Plan 08, Lot

22 and Lot 25. Failure to provide copies of the renewed lease agreements shall result in lapse of this permit and no activities shall then occur unless and until a new permit has been granted by the Commission.

2. The permittee shall be limited to a maximum of eight (8) pontoon boat rentals which shall be secured along the existing docking structure.
3. The permittee shall ensure all gear shall be transported to and from the parking area to the docking structure by foot or ATV via the footpath/ATV access way. No vehicle loading or unloading of gear or parking shall occur on the shorefront property.
4. All parking for the pontoon boat rentals must occur in the existing parking area on the opposite side of the Maynard Road. No parking on the side of the road shall be permitted.
5. Provision shall be made for vehicular access to and within the project premises in such a manner as to avoid traffic congestion and safeguard against hazards to traffic and pedestrians along existing roadways within the project area. Development shall be located and designed so that the roadways and intersections in the vicinity of the development will be able to safely and efficiently handle the traffic attributable to the development in its fully operational stage.
6. All exterior lighting must be located, installed, and directed in such a manner 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. All non-essential lighting shall be turned off after business hours, leaving only the minimal necessary lighting for site security.
7. 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.
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 of the Maine Department of Environmental Protection, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Health and Human Services.
9. To protect the water quality of Moose River, the development, or reasonably foreseeable consequences of the development, shall not directly discharge any water pollutants to Moose River which cause the surface water body to fail to meet its classification (38 M.R.S. § 467(4)(F)(1)(e)); which impart toxicity and cause Moose River to be unsuitable for its existing and designated uses; or which result in a violation of state or federal water quality laws.

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 GREENVILLE, MAINE, THIS 7th DAY OF JUNE, 2021.

By: 
For Judy C. East, Executive Director

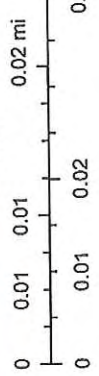
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LUPC Zoning and Parcel Viewer



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LUPC Zones



Maine Towns



D-RS: Residential

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Maine Land Use Planning Commission

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