

February 14, 2023

VIA EMAIL ONLY: town@lamoine-me.gov

Jon VanAmringe, Chair
Board of Appeals
Town of Lamoine
606 Douglas Highway
Lamoine, ME 04605

Re: Towne Appeal

Dear Chair VanAmringe:

This brief letter sets forth Terry and David Wilson's position in this matter.

1. Mr. and Mrs. Wilson own lot 25 as shown on Tax Map 14.
2. On January 9, 2023, the CEO issued Mr. and Mrs. Wilson a building permit to construct a two-story 28'x32' building containing a garage and apartment; a 12'x26' shop along with a 6'x12' covered porch and 8'x13' deck on the apartment.
3. The construction described in #2 is occurring on a portion of lot 25 that has been previously developed. In 2010 a driveway and gravel pad of approximately 4,300 sq. ft. was installed as well as a utility pole and meter to serve improvements on the parcel.
4. The lot is designated Limited Residential on the Town's Shoreland Zoning Map. The proposed use of the lot as described in #2 is permitted in the LR District.
5. The lot is one of many in a residential subdivision known as Bar Harbor Highlands which was registered more than 50 years ago in the Hancock County Registry of Deeds, in Map Book 11 at Page 57 on March 7, 1969.
6. Bar Harbor Highlands is a well-developed, mature subdivision with many shorefront parcels improved with residential buildings. (See the CEO's 2/7/23 submission for a partial list of improved (developed) parcels.

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ARGUMENT I

Lot 25 is a developed parcel. While Mr. Towne contends that this parcel is in the Resource Protection District, his argument is misplaced.

The Lamoine Shoreland Zoning Ordinance, Section 13E, states that the Resource Protection District specifically excludes “areas which are currently developed.” The Ordinance defines Development as “a change in land use involving alteration of the land ... or other construction not naturally occurring.”

Plainly the subdivision itself, including road construction, makes the area developed. More importantly, the development of this lot specific in 2010, pursuant to DEP authorization takes the parcel, or at least the previously developed portion of approximately 4,300 square feet, out of any Resource Protection designation and makes the Limited Residential designation applicable.

ARGUMENT II

The Town’s Shoreland Map plainly designates the lot as LR, but contains language similar to the Ordinance which might sweep up any land in any part of Town and make it Resource Protection. Mr. Towne relies on this dubious approach to land use regulation to argue that the subject parcel is within 250’ of an area the Maine DEP has designated as an area of significant wildlife habitat. In support of his contention, Mr. Towne submitted a map entitled, “Lamoine Significant Wildlife Habitat – Shoreland, Tidal, and Waterfowl Habitats.” This document contains the following disclaimer:

“All information on this map should be field checked by qualified individuals for a determination regarding whether your property is affected.”

Mr. Towne is not, to my understanding, “qualified” to field check the property in question to determine whether it is affected. On the other hand, the Town’s CEO did go to the trouble of checking with both the DEP and IFW, and as reported on Exhibit F of her 2/7/23 submission, was advised that the “area” has a Shore bird feeding site with a 100-foot buffer along the shore, but as long as there is no construction within that 100 feet there should be little to no impact on the Shore bird feeding area and they, meaning the Wilsons, should be all set on that point.

CONCLUSION

The portion of the parcel recently permitted for construction is already “developed” and is specifically excluded from any inference of Resource Protection designation, therefore, construction is allowed, under Section 13E.

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The inference that the lot is to be considered Resource Protection based on a map provided by Mr. Towne, fails because it has not been field tested as required by the Map itself, except by DEP and IFW personnel contracted by the CEO who concluded construction is environmentally acceptable.

It is textbook law in Maine that any ambiguity in laws that seek to regulate what people may do with their property is to be construed in favor of the landowners. With this in mind, the Board should deny the appeal and affirm the CEO's decision to issue a permit to Mr. and Mrs. Wilson.

Sincerely,

Edmond J. Bearor

Edmond J. Bearor

EJB/leb

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