

**Final Decision Document on Brad Luker's application for a Special Exception Permit
under the Shoreland Zoning Ordinance for the Town of Starks
Findings of Fact, Conclusions of Law, and Decision
Planning Board, Town of Starks, Maine**

Date of Decision: January 5, 2022

1. Name of Proposed Project:

Applicant: Bradford C. Luker

Contact Person: Bradford Luker

Address: 9 Taylor Rd., Industry, ME 04938

Telephone: Cell Phone: (207) 491-7443 Email: BradfordLuker@yahoo.com

Property Owner information: See above

Proof of Right, Title and Interest. Somerset County Registry of Deeds, Book 5462, page 162.
(Warranty Deed attached)

Type Business (sole proprietor, corporation, etc.) N/A

2. Is the proposed project part of a subdivision? No, shoreland zone? YES, floodplain? No

3. Description of Project:

Location (Town Tax Maps): Map #: R4; Lot #: 23.1

Street Address: TBD Sawyers Mill Road (West Mills Rd)

Size of Parcel: 8.9 acres (392,000 sq.ft.)

Existing Use: wooded lot

Proposed Use: Construct a camp (Residential Use) and driveway

Structure (size): Camp = 1,080 sq ft (30' x 36'); Height = 24'

Size of Impervious areas: Camp and driveway = 2,040 sq ft

4. Summary of Submissions:

Application: November 6, 2021 (dated); November 24, 2021 (submitted); December 21, 2021 (updated, final)

Application Fee: \$50 (received 12/15/21)

Attachments:

 Warranty Deed

 Flood Insurance Map Town of Starks Panel 5

 Preliminary Soil Analysis

 Site map including aerial view

 Copy of Tax Map with camp location and distance from south property line identified

 Proposed structure. Detailed plans will be submitted as part of the Building Permit

 Application

 Special Exception Permit Application

5. Process:

Date Board met to consider application: December 1, 2021

Date Board determined the application to be complete for processing: December 15, 2021

List of any waivers of application requirements (findings and conclusions for each)

Date Board conducted a Site Visit: December 15, 2021

Date Board made a decision: January 5, 2022

Findings of Fact, Conclusions of Law, and Decision

Planning Board, Town of Starks, Maine

Shoreland Zoning Ordinance

Note: The following decision (and standards) is applicable to areas within the Shoreland Zoning Resource Protection District, which is the area of the subject parcel that is within 250 feet measured horizontally from the high-water mark of Lemon Stream. The remaining portions of the parcel are not subject to these standards other than the required minimum lot size of 40,000 square feet. Additionally, a building permit from the CEO will be required which means adherence to the Town's Building Ordinance – 1-acre minimum lot size, public road setback of 60 feet from the centerline, etc. will be required.

Shoreland Zoning Ordinance Section 15 - Land Use Standards

Non-Applicable Standards:

C (Piers, Docks, Wharves, etc.), D (Campgrounds), E (Private Campsites), H (Signs), L (Mineral Exploration/Extraction), M (Agriculture), and U (Archaeological Site)

Findings and Conclusions: None of these are proposed and therefore these sections do not apply to this application.

Upon a motion and second that these sections are not applicable, motion carried.

A. Minimum Lot Standards:

Findings and Conclusions: All land use activities within the shoreland zone shall conform with the following lot standards per residential dwelling unit: minimum lot area of 40,000 sq. ft. and minimum shore frontage of 200 sq. ft. The parcel is located on 8.9 acres (392,000 sq. ft.) with 1459 ft. of frontage on Lemon Stream.

Upon a motion and second that the application is in compliance, motion carried

B. Principal and Accessory Structures Standards

Findings and Conclusions: All new principle and accessory structures shall be set back at least 75 ft., horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland. In the Resource Protection District, the setback requirement is 250 feet, horizontal distance from the high-water mark, unless a Special Exception is granted pursuant to Section 16 (E) Special Exceptions. The proposed structure will be located 85' from the high-water mark.

Upon a motion and second to address this standard under Section 16, E, motion carried.

F. Parking Areas.

Findings and Conclusions: Parking areas shall meet the shoreline setback requirements for structures; shall be adequately sized for the proposed use; and shall be designed to prevent storm-water runoff from flowing directly into a water body and where feasible, to retain all runoff on-site. A typical parking space shall be approximately 10 ft by 20 feet. *As a condition of approval all*

parking shall be designed and maintained in accordance with Section 15 (F) of the Shoreland Zoning Ordinance.

Upon a motion and second that the application with the aforementioned condition is in compliance, motion carried

G. Roads and Driveways.

Findings and Conclusions: New driveways are prohibited in a Resource Protection District except to provide access to permitted uses or upon a finding that no reasonable alternative location is available outside the district. When a driveway is permitted, the driveway shall be set back as far as practicable from the normal high-water line of a water body. *As a condition of approval, the driveway shall be designed and maintained in accordance with Section 15, G of the Shoreland Zoning Ordinance. In addition, the applicant shall consult with the Starks Road Commissioner on the locational and drainage aspects of the driveway.*

Upon a motion and second that the application with the aforementioned conditions is in compliance with this section, motion carried.

I. Storm Water Runoff Standards.

Findings and Conclusions: All construction shall be designed to minimize storm water runoff from the site in excess of the natural pre-development conditions, and where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning. The applicant proposes to use silt fencing and hay bales prior to any soil disturbance to minimize storm water runoff.

Upon a motion and second that the application is in compliance with this section, motion carried.

J. Septic Waste Disposal.

Findings and Conclusions: The subsurface sewage disposal system shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than 75 ft., horizontal distance, from the normal high-water line of a water body and a holding tank is prohibited. Preliminary Soil Investigation of three sites was conducted by Kenneth Stratton, Licensed Site Evaluator. (Letter attached). *As a condition of approval, the applicant will submit a soil subsurface wastewater disposal design from a Licensed Soil Scientist to the CEO and obtain a subsurface wastewater disposal/plumbing permit from the CEO.*

Upon a motion and second that the application with the aforementioned condition, is in compliance with this section.

K. Essential Services.

Findings and Conclusions: No essential services (e.g., electrical, communications services) are proposed at this time. *However, as a condition of approval, any future installation of essential services must be installed in accordance with Section 15, K of the Shoreland Zoning Ordinance.*

Upon a motion and second that the application with the aforementioned condition, is in compliance with this section.

N. Clearing or Removal of Vegetation for Activities other than Timber Harvesting Standards.

Findings and Conclusions: In the Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district. Clearing and removal

of vegetation will be minimal and limited to the removal of brush and dead trees, and an area of approximately 2,040 square feet for the camp, septic system and driveway.

Upon a motion and second that the application is in compliance with this section, motion carried.

O. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal.

Findings and Conclusions: Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the requirements of Sec. 15 (O) are met. *As a condition of approval, clearing and removal of hazard trees, storm-damaged trees and dead tree removal within the Resource Protection District will be limited to that which is necessary and in accordance with Sec 15 (O) of the Shoreland Zoning Ordinance.* The applicant will remove fallen trees, alders, brush and do some tree limbing as necessary and in compliance with the shoreland zoning standards.

Upon a motion and second that the application with the aforementioned condition is in compliance with this section, motion carried.

P. Exemptions to Clearing and Vegetation Removal Requirements.

Findings and Conclusions: Certain activities, such as the removal of non-native vegetation species, are exempt from the clearing and vegetation removal standards set forth in Section 15(O), provided that all other applicable requirements are complied with, and the removal of vegetation is limited to that which is necessary. *Compliance with this section, as applicable is a condition of this approval.*

Upon a motion and second that the application with the aforementioned condition is in compliance with this section, motion carried.

Q. Revegetation Requirements.

Findings and Conclusions: When revegetation is required in response to violations of the vegetation standards set forth in Section 15(N), to address the removal of non-native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the requirements of this Section (15(Q)). *This is a condition of this approval, as applicable.*

Upon a motion and second that the application with the aforementioned condition is in compliance with this section.

R. Erosion and Sedimentation Control.

Findings and Conclusion: All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions require a written soil erosion and sedimentation control plan. The applicant's plan indicates that silt fencing and hay bales will be installed prior to any disturbance of the soil.

Upon a motion and second that the applicant will comply with this section motion carried

S. Soils Standards.

Findings and Conclusions: All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal shall require a soils report based on an on-site investigation and be prepared by a state-certified professional. *As a condition of approval, the applicant will submit a soil subsurface wastewater disposal design to the CEO and obtain a subsurface wastewater disposal/plumbing permit from the CEO.*

Upon a motion and second that the applicant will comply with this section, motion carried

T. Water Quality Standard.

Findings and Conclusions: No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

The applicant will comply with the water quality standards

Upon a motion and second that the application complies with this section, motion carried

Shoreland Zoning Ordinance Section 16 Administration (D) - Approval Criteria

1. Maintain safe and healthful conditions

Findings and Conclusions: The proposal will maintain safe and healthful conditions.

Upon a motion and second that the application complies with this section, motion carried

2. Not result in water pollution, erosion, or sedimentation to surface waters

Findings and Conclusions: The proposal will not result in water pollution, erosion, or sedimentation into the Lemon Stream and other bodies of water. Soil erosion and sedimentation control measures will be implemented, and the existing forested areas will remain and continue to absorb stormwater runoff.

Upon a motion and second that the application complies with this section, motion carried

3. Adequately provide for the disposal of all wastewater

Findings and Conclusions: The proposal will adequately provide for the disposal of all wastewater with construction of a septic system in accordance with an on-site septic system/plumbing permit from Starks Code Enforcement Officer.

Upon a motion and second that the application complies with this section, motion carried

4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat

Findings and Conclusions: The proposal will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat due to the structure and clearing setbacks from Lemon Stream, avoidance of wetlands, and minimal clearing and alteration of the natural forested landcover. The Starks Comprehensive Plan indicates there is important wildlife habitat in the northern part of the parcel. The camp and driveway will be located at the southerly end of the parcel and will be setback from Lemon Stream to the greatest practical extent, but no less than 75 feet from its highwater mark.

Upon a motion and second that the application complies with this section, motion carried

5. Conserve shore cover and visual, as well as actual, points of access to inland waters

Findings and Conclusions: There will be very limited clearing of brush and trees, particularly within 75 ft of Lemon Stream. Structures will be setback as far as possible from Lemon Stream, and there will be no access points to Lemon Stream.

Upon a motion and second that the application complies with this section, motion carried

6. Protect archaeological and historic resources as designated in the Comprehensive Plan

Findings and Conclusions: No archaeological or historical resources were identified.

Upon a motion and second that the application complies with this section, motion carried

7. Avoid problems associated with floodplain development and use

Findings and Conclusions: There will not be any development within the floodplain; the camp/residence, parking, driveway, and the like will be located above the floodplain.

Upon a motion and second that the application complies with this section, motion carried

8. Be in conformance with the provisions of Section 15, Land Use Standards

Findings and Conclusions: The proposal will be in conformance with the applicable Section 15, with the conditions of approval.

Upon a motion and second that the application complies with this section, motion carried

Shoreland Zoning Ordinance Section 16 Administration (E) Special Exceptions

In addition to the criteria specified in Section 16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single-family residential structure in a Resource Protection District provided that the applicant demonstrates that all the following conditions are met:

Condition 1. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

Findings and Conclusions: Most of the lot is zoned as Resource Protection and given the 60 ft. building setback from the Sawyers Mills Road, the only available building site is within the Resource Protection District. The applicant proposes that the camp will be setback to the greatest practical extent, but not less than 75 ft. from the high-water mark of Lemon Stream.

Upon a motion and second that the application complies with this section, motion carried

Condition 2. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.

Findings and Conclusions: The lot (Property Tax Map R4, Lot 23.1) was established and recorded in 1974, prior to the adoption of the Resource Protection District (See attached Deed).

Upon a motion and second that the application complies with this section, motion carried

Condition 3. All proposed buildings, sewage disposal systems and other improvements are:

- a. Located on natural ground slopes of less than 20%; and
- b. Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable Starks Floodplain Management Ordinance.

Note: If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be ½ the width of the 100-year flood-plain.

Findings and Conclusions: Structures and sewage disposal systems will be located on ground slopes of less than 20%. There is a mapped FEMA 100-year floodplain on the property along Lemon Stream. The letter dated November 19, 2021, from Ken Stratton, Licensed Site Evaluator, indicated that the floodplain maps were incorrect and that he “saw no evidence in any of the vegetation to support flood zone designation, except for the lowest areas along Lemon Stream, but not up on the higher hillside” and will be located outside the 100-year floodplain. The Board conducted a site visit and agreed with Mr. Stratton’s observation.

Upon a motion and second that the application complies with this section, motion carried

Condition 4. The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

Findings and Conclusions: The proposed total footprint of the camp will be less than 1,500 sq. ft.

Upon a motion and second that the application complies with this section, motion carried

Condition 5. All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

Findings and Conclusions: The camp shall be setback to the greatest practical extent, but not less than 85 ft. from the high-water mark of Lemon Stream. (See Application Site Plan).

Upon a motion and second that the application complies with this section, motion carried

Final Decision

Conditions of Approval:

The following conditions of approval are in addition to those conditions specified under the standards and criteria above:

1. The applicant will comply with the Shoreland Zoning Ordinance Section 15 standards, as applicable.
2. Any changes to the approved plan will require Code Enforcement Officer approval to include, but not limited to:
 - a. any expansion of structures or construction of new structures (e.g., buildings, decks, parking, driveways and the like).
 - b. installation of essential services (e.g., power, communications)
 - c. Installation of a well, septic system, or the like
 - d. clearing of trees or vegetation beyond what is proposed except non-native vegetation
3. The applicant shall provide preconstruction photographs to the CEO within 30 days of this approval, and no later than 20 days after completion of the development, postconstruction

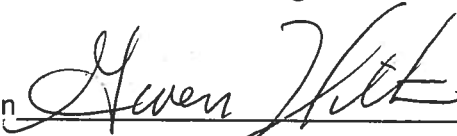
photographs of the shoreline vegetation and development site, pursuant to 38 M.R.S. § 439-A(10) *Photographic record required.*

4. Expiration of Permit. The permit shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire. (See Section 16 (F).

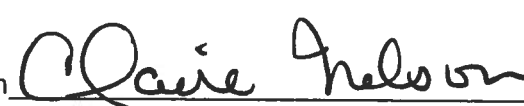
Based on the Findings of Fact, Conclusions of Law, and conditions of approval set forth in this document, the Starks Planning Board concludes that Bradford C. Luker's application has demonstrated that his proposed land use will conform with the Shoreland Zoning Ordinance for the Town of Starks.

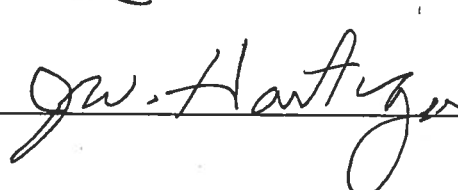
Upon a motion and second to approve the application and grant the Special Exception Permit under the Shoreland Zoning Ordinance the motion carries.

Approved: Town of Starks Planning Board

Gwen Hilton  Date 1/19/22

Ken Lust  Date 1/19/22

Claire Nelson  Date 1-19-22

Joe Hartigan  Date 1.19.22

Leigh (Eric) Hoar _____ Date _____