

May 13, 2020 By E-mail: cpelletier@freeportmaine.com

Caroline Pelletier, Town Planner
Freeport Town Hall
30 Main Street
Freeport, ME 04032

Re: Request for Planning Board Workshop for Zoning Options,
95 Desert Road, Tax Map 22, Lot 8 (the "Property")

Dear Caroline:

This is a request by Desert of Maine Campground, Inc. and Heestand Family Holding, LLC for a workshop meeting with the Freeport Planning Board to discuss options for amendment to the Freeport Zoning Ordinance to allow for proposed development and redevelopment of the Desert of Maine Property. We understand there is an opening for a workshop meeting on Wednesday, June 3, 2020 at 6 and we ask to be placed upon that workshop agenda.

Doug and Mela Heestand, for the LLC, have commissioned a site plan, prepared by Harriman, that demonstrates how existing uses may be redeveloped and compatible new uses may be developed in an integrated plan for the Property if zoning changes can be made to accommodate this mixture of uses. A copy of that site plan, which would require Planning Board site plan review and approval once zoning changes are accomplished, is included to illustrate the Heestands' concepts for the proposed redevelopment and development of the Property. The Heestands also have prepared a narrative vision statement for the uses on this property which is enclosed.

Existing Commercial Uses

Although the Property that houses the Desert of Maine has been zoned Rural Residential District 1 ("RR 1") since Freeport adopted zoning in the 1970s, the Property has been dedicated to commercial uses since inception of the Desert of Maine and its associated uses in the 1920s. These commercial uses have included the Desert of Maine tourist destination, campground, gift shop, and snack bar/food stand (hot dogs and other foods). Of these uses, which continue to this

day, only the campground use is a permitted use (subject to site review) in the RR 1 zone – the other uses are lawful grandfathered nonconforming uses. The Heestands propose to continue and redevelop these long-standing commercial uses so that they will be attractive in the current market for tourist destinations and campgrounds.

Proposed New Commercial Uses

The Heestands also propose to institute and develop new commercial uses.

The major new proposed use is restoration of the barn located on the Property to serve as an arts center – primarily for indoor music performance. Such a use might be included within the “Art Center – Indoor,” “Public Assembly-Indoor” and “Art Museum/Gallery” uses available under the current Zoning Ordinance. An art center or public assembly use or art museum/gallery in the barn located on the Property is a commercial use consistent with the other commercial recreational uses made of the Property since the 1920s, is consistent with the Comprehensive Plan’s direction and vision (as detailed below) to expand arts uses in Freeport, and will help generate revenue to restore the barn. That barn is a reminder of Freeport’s agricultural past, with portions dating back to the 1700s. The Heestands propose to restore this barn and to use it as a 200-seat performance space, primarily for classical and acoustic-oriented music.

Other “new” commercial uses proposed are actually contemporary variations on existing, long-standing commercial uses on the Property – café, artisan food and beverage, and food trucks rather than the traditional snack bar/food stand, and retail shop (recorded music, art, and crafts) rather than the traditional gift shop.

Consistency with Comprehensive Plan

The existing and new commercial uses that the Heestands propose to redevelop and develop on the Property are consistent with and are encouraged by the Town’s Comprehensive Plan. The 2011 Town of Freeport Comprehensive Plan contains the following statements and recommendations that support their concept and demonstrate that permitting indoor art center and public assembly uses on the Property -- and maintaining the historic barn and Desert of Maine destination -- are consistent with the Comprehensive Plan’s direction and vision:

Section 1. The Vision.

The Vision for the future is:

That Freeport would continue to be a desirable place to live by: ...

- protecting natural and historic resources,
- ...
- encouraging the expansion of the creative arts.

That Freeport's economy would remain strong and stable by:

- providing a diversity of goods and services that attracts visitors and sustains residents, again consistent with the community's character.
- ...
- promoting Freeport as a destination to visitors. (Pages 3-4)

Section 2. The Economy. The 2011 Comprehensive Plan recognizes the creative economy as an opportunity for Freeport to diversify and expand its economy beyond the retail sector. In particular, this section of the Comprehensive Plan emphasizes that:

The performing, visual and musical arts in Maine are an important part of our culture and are important to our tourism industry. Freeport is very fortunate to have a strong arts community. The presence of local arts supports Freeport's image as an 'authentic' village." (Pages 14-15)

The Comprehensive Plan recognizes that "Another role the town can play [in encouraging economic development] is to remove unnecessary barriers that might exist in local regulations." (Page 16).

Section 8. Historic and Archaeological Resources. The Comprehensive Plan recognizes the Maine Growth Management Act's directive that municipalities work "To preserve the State's historic and archeological resources." It adds:

The past becomes part of the present in Freeport through the historic structures and places that are located throughout the Town. Townspeople recognize that these structures and places are a natural element of Freeport's 'community character' and they are an important part of our 'creative economy.'" (Page 24)

Also, modifying the RR 1 through an overlay district to make the Zoning Ordinance consistent with activity on the Property for the last 100 years follows the Comprehensive Plan recommendation of "adjusting rules and standards within the existing districts is proposed to keep up with our changing economy." (Page 24)

Options to Permit Proposed Redevelopment/Development Concept

Contract zoning would be the ideal solution to address the history of this unique Property, but contract zoning is not authorized in the RR1, and so that zoning technique is not available here.

Rezoning the Property to an existing Town district would create problems, since existing permitted uses such as the campground would become nonconforming if the Property were rezoned to a Commercial or Village Center District that permits retail (gift shop), café, food trucks, art center, art museum and public assembly uses. Also, the Property is not located in the Village Center, and the Heestands do not wish to open up the Property to the broad range of uses

available in the Commercial and Village Center districts – they simply want to be able to make a few specific commercial uses that have been lawfully conducted on the Property and are related to those uses, and one that is new to the Property and is supported by the Comprehensive Plan. The availability of other uses within those districts made possible by such a rezoning could lead to reasonable concerns and opposition by abutters about what else might occur on the Property.

While for the above reasons, contract zoning and rezoning to an existing district cannot solve the issues here, there are two zoning options that could to achieve the desired end.

Overlay District

One way to amend the Zoning Ordinance to permit the proposed redevelopment/development concept is to enact a zoning overlay district -- the Desert of Maine Overlay District (“DMOD”). Such an overlay district would continue the existing commercial uses on the Property as permitted uses, and would add the Art Center - Indoor/Public Assembly – Indoor/Art Museum/Gallery uses and the related food and retail uses. This technique is narrowly tailored to permit the requested uses in a manner consistent with historic uses and the comprehensive plan, but with the least potential for adverse impact on abutters in the RR 1.

This proposed overlay district would permit the historic commercial uses -- the tourist destination, the gift shop and a café -- to continue on the Property as permitted uses. The underlying RR 1 uses, including the campground, would remain available.

The DMOD uses therefore would include:

- Tourist Destination
- Art Center-Indoor
- Public Assembly-Indoor
- Local Retail Trade
- Village Café
- Food trucks
- Artisan Food and Beverage
- Art Museum/Gallery

However, this overlay district and its uses would not be available throughout the RR 1 District townwide – just within the DMOD. Also, modifying the RR 1 through an overlay district to make the Zoning Ordinance consistent with activity conducted on the Property for the last 100 years follows the Comprehensive Plan recommendation of “adjusting rules and standards within the existing districts is proposed to keep up with our changing economy.” (Page 24)

Separate Zone

Another option is to enact a complete zoning district just for this Property – a Desert of Maine District that lists the specific permitted and conditional uses and performance standards

necessary for realizing the Heestands' concepts for redevelopment and development of the Property. Adopting a Desert of Maine District to make the Zoning Ordinance consistent with activity conducted on the Property for the last 100 years also follows the Comprehensive Plan recommendation of "adjusting rules and standards within the existing districts is proposed to keep up with our changing economy." (Page 24) However, this option creates a break in the RR 1 District, while the overlay approach retains the underlying and neighboring RR-1 District, adding only those uses necessary for the proposed development and redevelopment of the Property.

Not Illegal "Spot Zoning."

Finally, neither the creation of an overlay zone nor the creation of a separate zone for this Property would constitute illegal "spot zoning," since 1) spot zoning is not illegal unless it is not consistent with the Comprehensive Plan, and 2) as stated above, this overlay and separate district uses are consistent with the Comprehensive Plan

We look forward to discussing this matter with the Planning Board in a workshop session. We are submitting this request electronically – please let me know if you or the Board would like us to submit paper copies of this letter and/or the plan.

Sincerely,

James N. Katsiaficas

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JNK/ems

Enclosures

cc: Peter Joseph, Town Manager
Nick Adams, Code Enforcement Officer
Keith McBride, Economic Development Director
Mela and Doug Heestand
Hannah Gathman
Judy Johnson, Harriman