

MINUTES
FREEPORT PLANNING BOARD
FREEPORT TOWN HALL - COUNCIL CHAMBERS
Wednesday, August 7, 2019
6 P.M.

Present: Aaron Cannan, Chair Sam Kapala, Greg Savona, Jamel Torres, Lonny Winrich and Caroline Pelletier, Interim Planner

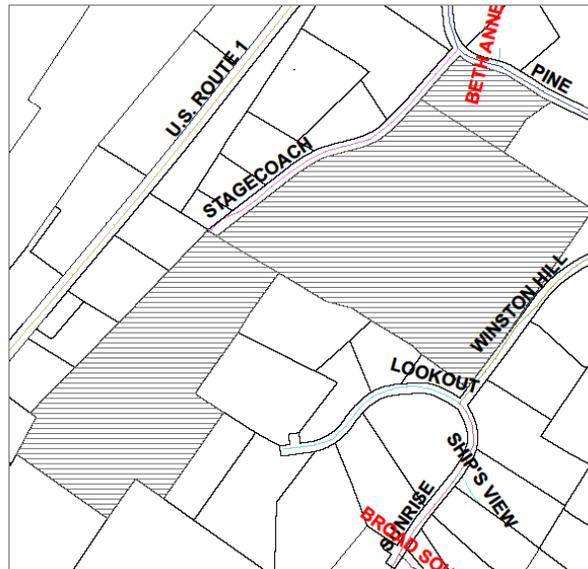
Excused: Robert Ball and Anna Child

Call to Order: Chair Kapala called the meeting to order at 6:03 p.m.

1. Information exchange

Ms. Pelletier advised that a couple of letters came in for the Board on the Retirement Community as well as a second letter regarding the second hearing. Copies are in front of the Board.

2. **Public Hearing:** The Board will hold a public hearing to discuss a request to repeal a Retirement Community Overlay District in the area of Stagecoach Road/Pine Street (See shaded area on map below - Tax Assessor Map 23, Lots 43, 45 & 49). The district was approved for Freeport Living, LLC. by the Freeport Town Council on October 17, 2006. The underlying zoning districts will remain.



Ms. Pelletier provided some background information. The request to repeal the Retirement Community Overlay District was sent to the Board by the Town Council after they received a petition from some area abutters. She noted the map she provided on the agenda showing the area being considered. The District is in a lot of zones and none of that would change. The recommendation would be to repeal the Retirement Community which would not allow this to go forward. They haven't built it. They don't have approval. They got approvals but they have expired. The property owner was notified but did not respond.

MOVED AND SECONDED: To open the Public Hearing. (Savona & Torres) **VOTE:** (5 Ayes) (2 Excused-Ball & Child)

Guy Quartrucci of South Freeport urged the Board to take positive action and approve the map amendments and recommend to the Town Council who has the sole discretion, to repeal the district. He mentioned how highly controversial the meeting to approve this district in 2006 was and that it had to be held at the Community Center. It was approved by the Council by a 6-1 vote.

Gerald Kennedy from Pine Street explained that he was against this proposal a number of years ago. He collected a number of signatures and no one said no to him. He urged the Board to follow through and turn it over to the Council.

Carter Becker of Stagecoach Road pointed out that it is time to retire the Overlay District in this zone and urged the Council to please do so. He suggested looking for a land trust to operate the land for the great town that we have.

Greg Bond of 18 Lookout Drive mentioned he is for repealing the district also. His main concern is the recharging of the aquifer there. The entire area depends on that water.

Joseph Dierley of Winston Hill advised that he is a capitalist and while he feels people should be allowed to do what they want to do if they own stuff, in this case the damage they could do to the aquifer is significant. If the owners of the property have not shown up at this meeting and the last meeting, it is clearly not as important to them as it is to the folks who live here. It matters to us and it matters to our children. He hopes the Board will take that into consideration when voting to eliminate this particular development.

Chair Kapala asked if anyone is in favor of keeping this overlay district and potentially allowing for such a development in the future. The Board has heard overwhelming support for repeal. No one indicated they were in favor. Chair Kapala thanked everyone who signed the petition and showed up here tonight. The Board has heard them loud and clear.

MOVED AND SECONDED: To close the Public Hearing. (Winrich & Cannan) **VOTE:** (5 Ayes) (2 Excused-Ball & Child)

Mr. Cannan mentioned that it seems unusual to him that a property owner would receive entitlements in 2006 and not do anything with them. He wonders if it is because of the conditions at this location and whether it be water or soil, etc. He asked if anything was ever started. Ms. Pelletier explained that it came in under one applicant who was the original developer and then with a partnership with an out-of-state group who is now the current owner. They got the designation and went through the approval process. They renewed it once or twice and then let it lapse. She suspects that part of it was the economy but they didn't seek to renew. They never started anything. Mr. Cannan asked if there are other locations in town that would be suitable for a retirement community. Ms. Pelletier explained that that is a decision the Council and Board would have to weigh in on if it came in. There are certain areas where you could do it. There is another existing nursing home on Old County Road and they have a valid approval that they have renewed multiple times but have not yet started construction. She does not know if the Board will see another one in the future. It is a special designation with special conditions and is something the Board could put on their to do list if they want to look at it at a later date. Mr. Cannan noted he is in support of the repeal.

Mr. Winrich mentioned that in one of the documents Ms. Pelletier sent out, there was a list of conditions that had to be met in order to rescind this Overlay District. He asked if we have had the Town Attorney go over this to make sure we have fulfilled all of the demands. Ms. Pelletier did talk to the Town Attorney since this is a unique situation. His advice to the Town was for the Board to handle it as it would any other map amendment. That is why it has come to the Board. We have notified the abutters, have done the public hearings, the legal ad and there is a motion in front of the Board. She noted that the property owner has been trying to sell at least a portion of the land.

BE IT ORDERED: That the Freeport Planning Board recommend that the Freeport Town Council repeal the Retirement Community overlay District in the area of Stagecoach Road/Pine Street (Tax Assessor Map 23, Lots 43, 45 and 49) approved for Freeport Living LLC. by the Freeport Town Council on October 17, 2006 as the Board finds the following:

1. Necessary Subdivision and/or Site Plan approvals for the project were obtained, however, have since expired and not been renewed;
 2. Substantial construction did not begin on the improvements shown on the approved Subdivision and/or Site Plan within three (3) years of the Town Council's vote to create the district;
 3. The property is currently vacant, with the exception of one old dwelling which is currently uninhabited; and,
 4. The underlying zoning district as shown on the Town of Freeport Official Zoning Map adopted 02/26/13 will remain unchanged. (Cannan & Torres) **VOTE:** (5 Ayes) (2 Excused-Ball & Child)
3. **Public Hearing:** The Board will hold a public hearing on proposed amendments to the Freeport Zoning Ordinance pertaining to the Island District.
- a) Section 426.d (Island Districts) to add a restriction pertaining to the number of piers, docks and wharfs on the island or lot;
 - b) Section 104 (Definitions) to add the definition of "Individual Private Campsite"; and,
 - c) Section 507 (Shoreland Zone Regulations) to add standards for "Individual Private Campsites".

Note: *These changes are a result of a conditional approval by the Maine Department of Environmental Protection to recent changes the Town of Freeport adopted pertaining to the Island District. These required changes will make the language consistent with State Shoreland Zoning regulations.*

Ms. Pelletier explained that back in March there was an applicant-driven zoning ordinance amendment for proposed changes to the Island District. Most of the changes dealt with Bartol Island and Little Fox Island. They are islands connected to the mainland by a causeway. There was some other adjustment to the language that tweaked the purpose. She explained how it works. She noted that at the same time, we have the large project of updating our Shoreland Zoning. The island district amendments were sent to the DEP. We received notification back of a conditional approval that additional changes were needed to make it consistent with Shoreland Zoning. We are here today to make those changes they recommended. Some of the language missing from our current ordinance is the language for individual private campsites. It is not something that was proposed with the language back in March. Back in March the Board did add a use regarding an outdoor recreation school and a reference to a rustic campsite. The DEP wants their campsite language in there so it is clear that there are two distinct things in that section of the Ordinance so it will be added to the definitions and also get added to the Shoreland Zoning section of the Ordinance. The other change they are requiring is under D. Restrictions, No. 3 islands connected to the mainland by a causeway only one dwelling may be maintained. There was no provision for a dock. In most cases, under DEP standards there is only one dock allowed on each lot. They are requiring that that restriction be put back in.

Ms. Pelletier noted there are some island district owners here. We received a letter on behalf of the owners of Crab Island. They were aware that this discussion was going on and they are interested in making a change to the Ordinance because they recently discovered that they have a house but they are not allowed to have a dock. They are here and can comment on that. Depending on how the discussion goes, it might be able to part of this because of the way it was advertised. She encouraged them to get it heard and they will learn how to proceed.

MOVED AND SECONDED: To open the Public Hearing. (Savona & Torres) **VOTE:** (5 Ayes) (2 Excused-Ball & Child)

Chair Kapala noted the Board is discussing State mandated changes to our Island Districts and the potential for adding a dock

Mike Morse explained that he is a private land use consultant and is representing the sole owners of Crab Island which is listed in Section 426 E.2. subject to restrictions that Ms. Pelletier provided information on. He noted he sent a self-explanatory letter to her and believes it was provided to the Board. They don't have any comments on the rest of the

amendments being proposed. He understands the DEP requirements. He apologized for making two errors in his letter. He stated that the Hewey family owned the island for the past several years when in fact, they purchased it less than a year ago. In the third paragraph he talked about Crab Island having a dwelling since early in the 20th century and that same structure still existed today. That was also incorrect. The original structure was removed and replaced in 1963 possibly. Today the Heweys enjoy the island but their access is limited to a mooring tying up their boat that has all their gear, drinking water, guests, etc. and trying to shuttle everything onto the island using a small boat. Looking around Casco Bay, a lot of the islanders have a pier, ramp and float. It is not just a convenience; it is a safety factor. The Heweys would like the benefit of being able to construct a pier, ramp and float for access to their property. Understanding that the public notification of all this and was worded broadly enough that maybe the door is open to incorporate another change, they thought it would be a great opportunity to streamline this process and see if the Board would be willing to support an additional amendment that would allow for a pier, ramp and float on Crab Island. It was developed since the early 20th century and already has a dwelling. It has been used for many years and the owners would like to continue to do that. They looked at the purposes behind Section 462 where such structures are prohibited, and recognize that some of the criteria are fairly subjective. The DEP has reviewed an application for the Hewey's pier, ramp and float and approved this project on July 6, 2019. The Heweys intend to construct the pier, ramp and float off the northwesterly corner of the island. Carter Becker evaluated the area for eel grass through the application process and determined that the eel grass is very sparse. His client is simply looking for an opportunity to apply for a permit to construct a pier and currently the Ordinance flat out restricts it. They wonder if this is an opportunity to add some language. He proposed language in Appendix A of his letter. He would prefer that the Board consider Option One since it is their preference and is the simplest.

Mr. Winrich asked if any of the other islands are in a similar situation with an occupied dwelling and used and might also want a pier. Mr. Morse advised that there is a pier on Little Bustin's Island and he is aware that there are other islands in Section 426.B.2. with some development on them. Pound of Tea has a pier and float. Ben Soule of Little Bustins advised that there are a lot of piers. There is one on Sow and Pig. On Williams there are two. There is not one on French's.

Chair Kapala mentioned it would be hard to apply a uniform standard tonight. Ms. Pelletier noted that she talked about this with the Codes Enforcement Officer and they were comfortable to allow it on Crab but the Board should take some time and see what is there. It is definitely a discussion the Board could revisit. After talking to our Codes Officer, it sounds like DEP with proper permitting, would allow most of the islands to have a dock. Chair Kapala mentioned that with most of the changes being proposed, the Board doesn't have a whole lot of choice but to vote them in. The discussion is centered on this issue now.

Ms. Pelletier asked if the Board wants to discuss the letter and consider making changes for Crab Island. If so, does the Board want to look at Option One which would add Crab Island to have one dwelling, one accessory structure and a pier, dock and float. If approved by the Council, it would allow them to follow the proper permitting processes that are in place and seek a permit. Option Two would be to allow it on every island.

Mr. Torres noted that given there is an existing dwelling on Crab Island, he is comfortable with Option One. Chair Kapala advised that the only problem he has with Option One is the potential for somebody, presumably not someone who owns land on an island, but some other member of the public coming back and saying, "wait a second, this happened very quickly without notice and now I am out there on my boat and I used to love motoring across Crab Island and now there is a huge pier. I don't like the way it looks and it is ruining the look." Ms. Pelletier added that the applicants will have to go to the Coastal Waters Commission. They would have to get Army Corps permitting and being in the island district, they will have to go through Site Plan Review. There is a process in place. This was a notice of public hearing and they noticed that we were talking about the Island District and that the Board was talking about restrictions. She is comfortable with this.

Mr. Cannan noted that he is comfortable with accommodating this property owner within this proposed amendment. He likes Option One in Mr. Morse's letter where we move Crab Island into the other section of islands and he is comfortable with the other standards that are in place behind this in the permitting process for a dock.

Carter Becker pointed out in Option Two there are very small ledges that are considered islands that do need the restriction of No. 2-no piers so leaving 2 alone as it is, and only dealing in No. 1 shifting Crab does save those small islands from development which he believes is our intention. Hearing No. 1 is preferably the Board's, choice, he endorses it. Chair Kapala noted he would be comfortable with No. 1 and uncomfortable with No. 2.

Ms. Pelletier noted that Mr. Becker pointed out an existing typo in the language so she suggested correcting it. Under B. Permitted Uses, 5 D.3. should be corrected to 426.D.4.

MOVED AND SECONDED: To close the Public Hearing. (Cannan & Torres) **VOTE:** (5 Ayes) (2 Excused-Ball & Child)

BE IT ORDERED: That the Freeport Planning Board recommend that the Freeport Town Council adopt the proposed amendment to Sections 104, 426.d and 507 of the Freeport Zoning Ordinance pertaining to the Island District in that the amendments are a result of conditional approval by the Maine Department of Environmental Protection to recent changes the Town of Freeport adopted pertaining to the Island District; the amendments will make the language consistent with State Shoreland Zoning regulations; and, are in harmony with the Vision of the 2011 Town of Freeport Comprehensive Plan for "protecting environmentally sensitive areas." This motion is as presented in Caroline's memo with the correction to a typo, Section 426.b.5 references 426.d.3 when it should reference 426.d.4 and with the edit that 426.d in Section 2, strike Crab Island and in Section D.1, add Crab Island as a result of discussion during a public hearing. (Cannan & Savona) **VOTE:** (5 Ayes) (2 Excused-Ball & Child)

Ms. Pelletier explained that the Planning Board makes a recommendation to the Town Council and the Town Council will schedule a public hearing and they will hold a public hearing two weeks later. She intends to forward these to the Town Manager tomorrow or the beginning of the week in hopes that if their schedule permits, they can take them up at their first September meeting. She wanted everyone to know there are more steps to the process and they should follow through and keep participating.

Chair Kapala asked if there is any language about grandfathering such as with Bustin's that does have piers now. He recalled there was some confusion. Ms. Pelletier advised that some corrections were made in the Shoreland Zoning. Chair Kapala mentioned it will get dealt with.

NOTE: The Recording Secretary was excused at 6:45 p.m.

4. Discussion of a request from the Freeport Town Council for the Planning Board to study adding a definition and allowed zoning districts for the use "Community Solar Farm" to the Freeport Zoning Ordinance
5. Continued discussion regarding updating the Vision of the Freeport Comprehensive Plan.
6. Discussion of upcoming Planning Board workshop on September 4, 2019
7. Adjourn

Recorded by Sharron Coffin