



**TOWN OF FREEPORT, MAINE**

Planning Department

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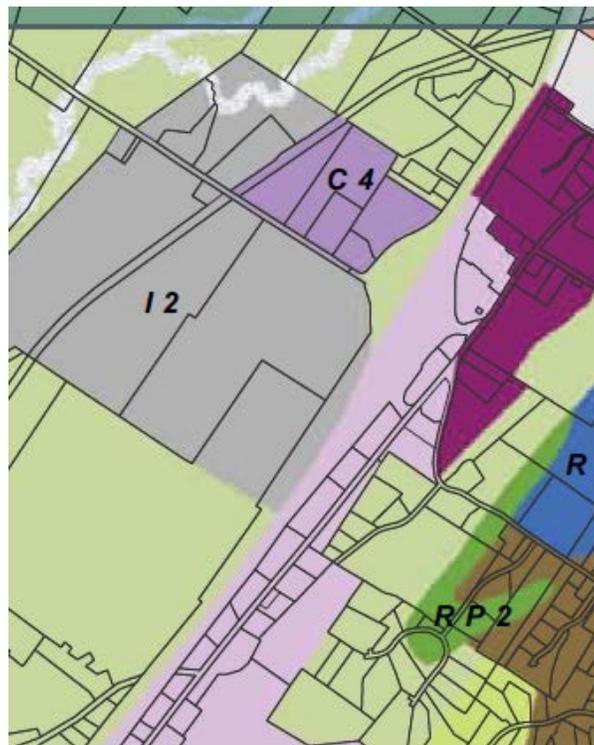
**TO: FREEPORT TOWN COUNCIL**

**FROM: CAROLINE PELLETIER, INTERIM TOWN PLANNER**

**RE: PROPOSED ZONING AND SUBDIVISION ORDINANCE AMENDMENTS – COMMERCIAL IV (C-IV)  
ZONING DISTRICT AND “SUBDIVISION – COMMERCIAL OPEN SPACE”**

**DATE: MONDAY, JULY 15, 2019**

The Freeport Planning Board recently reviewed a request from Devine Capital LLC for proposed amendments to the Freeport Subdivision Ordinance and Freeport Zoning Ordinance pertaining to a new use of “Subdivision – Commercial Open Space” and specifically permitting the use on the Commercial IV (C-IV) Zoning District); a relatively small zoning district on the west side of 295, and abutting Desert Road and the railroad. See area of “C-4” as shown below:



The Board discussed the item at their June 5, 2019 meeting and held a formal public hearing at the July 10, 2019 Planning Board meeting. A legal advertisement was run in the Brunswick Times Record on 6/26/19 and 7/2/19. Abutter notification was sent in accordance with the notification requirements outlined in the Rules of Order and Procedure of the Freeport Planning Board. There were no public comments at the public hearing.

The attached language includes a combination of the language proposed by the applicant with some minor changes recommended by staff. The language has been reviewed and approved by the Town Attorney. The language can be summarized as follows:

- a. Add definitions for “Subdivision – Commercial Open Space” and “story” to Section 104 of the Freeport Zoning Ordinance and Article 3.2 of the Freeport Subdivision Ordinance;
- b. Amend the purpose, permitted uses, space standards, and other standards sections of Section 412 Commercial District IV of the Freeport Zoning Ordinance;
- c. Add a new Section 504.D Commercial Open Space Subdivisions to the Freeport Zoning Ordinance;
- d. Amend Article 11.5.C.2.i of the Freeport Subdivision Ordinance pertaining to traffic conditions and commercial open space subdivisions; and,
- e. Other minor amendments relating to subdivisions (updating definitions of “Conservation Land” and “Required Open Space” and updating Appendix A of the Freeport Subdivision Ordinance. Note: The use of “village open space subdivision” is also added, as it was an oversight and previously omitted from these sections; the use and standards are already in effect).

The Planning Board made the following motion as they found the proposal to be consistent with the Town’s Comprehensive Plan:

“Be it ordered that the Freeport Planning Board recommend to the Freeport Town Council, the proposed amendments from Devine Capital LLC, to the Freeport Subdivision Ordinance and the Freeport Zoning Ordinance, pertaining to Commercial Open Space Subdivisions in the Commercial IV District, incorporating the changes suggested by staff, in that the Board finds that the proposal is in harmony with the Freeport Comprehensive Plan in that it promotes growth in an area close to the village and outside of the rural zones.”  
Moved and Seconded: Savona / Torres. Vote: 4 Ayes /0 Nays (3 excused)

**Proposed Amendments**  
**Chapter 25: Subdivision Ordinance Town of Freeport, Maine**

**ARTICLE 3 - DEFINITIONS**

**Conservation Land:** The portion of required open space to be set aside as part of an open space subdivision, ~~or~~ expanded open space subdivisions, village open space subdivision or commercial open space subdivision. For open space subdivisions, fifty percent (50%) of the net residential acreage shall be conservation land. For expanded open space subdivisions, sixty-five percent (65%) of the net residential acreage shall be conservation land. For village open space subdivisions, thirty percent (30%) of the net residential acreage shall be conservation land. For commercial open space subdivisions, twenty percent (20%) of net residential acreage shall be conservation land.

**Required Open Space:** The sum of the land area of conservation land and unbuildable land (primary conservation areas) as defined in net residential acreage. This land is within a subdivision with uses as permitted in Sec. 504A, Sec. 504.B and 504.D of the Freeport Zoning Ordinance and which is permanently restricted from future development. Subsurface wastewater disposal systems, or individual wells serving units within an open space or expanded open space subdivision may be located within the required open space if approved by the Project Review Board.

**Story:** that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A story is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

**Subdivision – Commercial Open Space:** a higher-density residential development in a Commercial Districts that permits higher density residential units with reduced road frontage, setbacks and lot sizes, and that maintains open space. The area of the required open space shall be equal or exceed the sum of the unbuildable land (primary conservation areas) as defined by net residential acreage plus twenty percent (20%) of the net residential acreage. The required open space must meet the standards of Section 504.D of this Ordinance.

## Article 11 – APPROVAL STANDARDS

### 11.5 Traffic Conditions

- i. Street Design Standards.
  5. Any subdivision except Commercial Open Space Subdivisions, containing more than fifteen (15) dwelling units or lots, whichever is less, shall have at least two (2) street connections with existing public streets, streets shown on an Official Map, or streets on an approved subdivision plan for which performance guarantees have been filed and accepted. In Village Open Space Subdivisions this section may be met by reserving right-of-way for future connections and offering the right-of-way to the town for acceptance as a public way.
  - 8) Dead-End Streets.

In addition to the design standards in Table 11.5-1, dead-end streets shall be constructed to provide a cul-de-sac turnaround or other turnaround approved by the Director of Public Works. Where a turning circle is used, it shall meet the following requirements for radii:

Property line:	eighty-five (85) feet	Outer edge of
pavement:	seventy-five (75) feet	Inner edge of
pavement:	fifty (50) feet	

The Project Review Board may require larger radii for turning circles on a commercial street. The island in the circle shall be landscaped in a manner requiring low maintenance. Where the turning circle is in a wooded area prior to development, a stand of trees shall be maintained within the center of the circle if possible. The Board shall require the reservation of a twenty- (20-) foot easement in line with the street to provide continuation of pedestrian traffic or utilities to the next street. The Board may also require the reservation of a fifty- (50-) foot easement in line with the street to provide continuation of the road where future subdivision is possible. If a hammerhead or T-turnaround is approved, no driveways shall enter onto the turnaround. In all subdivisions except Commercial Open Space Subdivisions, A-a dead-end street shall be limited to a maximum of fifteen (15) dwelling units (not including corner lots that gain their access from another street). The length of a dead-end shall not exceed two thousand five hundred (2,500) feet.

## APPENDIX A

### Four-Step Design Process

This process is intended to allow the developer the full potential of the legally allowable number of lots, while at the same time preserving valuable open space for the Town of Freeport. The Ordinance requires that a landscape architect or a professional engineer experienced in Civil/site engineering proposes a Site Analysis and Conceptual Sketch Plan on behalf of the applicant using the process outlined below.

#### Step 1: Delineation of Conservation Lands (does not apply to large lot subdivisions)

- A. Calculate the net residential density of the development by determining the net residential acreage of a tract or parcel. The net residential density formula for an open space, expanded open space, ~~or~~ large lot subdivision, village open space subdivision or commercial open space subdivision is provided in the district regulation section of the Zoning Ordinance for the zoning district in which a tract or parcel is located. For all other subdivisions, the net residential density is calculated by dividing the net residential acreage by the minimum lot size (or minimum land area for two-family and multiple family dwellings) in the district in which the tract or parcel is located.

**Proposed Amendments**  
**Chapter 21: Town of Freeport Zoning Ordinance**

**Section 104. Definitions**

**Conservation Land:** The portion of required open space to be set aside as part of an open space subdivision, ~~or~~ expanded open space subdivisions, village open space subdivision or commercial open space subdivision. For open space subdivisions, fifty percent (50%) of the net residential acreage shall be conservation land. For expanded open space subdivisions, sixty-five percent (65%) of the net residential acreage shall be conservation land. For village open space subdivisions, thirty percent (30%) of the net residential acreage shall be conservation land. For commercial open space subdivisions, twenty percent (20%) of net residential acreage shall be conservation land.

**Required Open Space:** The sum of the land area of conservation land and unbuildable land (primary conservation areas) as defined in net residential acreage. This land is within a subdivision with uses as permitted in Sec. 504A, Sec. 504.B and 504.D of the Freeport Zoning Ordinance and which is permanently restricted from future development. Subsurface wastewater disposal systems, or individual wells serving units within an open space or expanded open space subdivision may be located within the required open space if approved by the Project Review Board.

**Story:** that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A story is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

**Subdivision – Commercial Open Space:** a higher-density residential development in a Commercial Districts that permits higher density residential units with reduced road frontage, setbacks and lot sizes, and that maintains open space. The area of the required open space shall be equal or exceed the sum of the unbuildable land (primary conservation areas) as defined by net residential acreage plus twenty percent (20%) of the net residential acreage. The required open space must meet the standards of Section 504.D of this Ordinance.

## Section 412. Commercial District IV “C-IV”

### A. Purpose:

This District is intended to provide suitable locations for a variety of higher density residential and commercial uses which require benefit from nearby major highway connections and existing public utilities services. Open space and/or buffers are required to provide a buffer between higher density development and adjacent lower density residential properties and to protect environmentally sensitive areas. ~~Uses are designed to serve both local and regional markets and regulations are included to protect abutting residential uses and districts.~~

### B. Permitted Uses:

~~1. One single family dwelling per Lot of Record as of November 1, 1995~~

The following uses are subject to site plan review regardless of size:

1. Two-Family Dwelling
2. Multiple-Family Dwellings
3. Public or Private School
- ~~7.~~ 4. Commercial School
- ~~8.~~ 5. Outdoor Recreation School
- ~~9.~~ 6. Local convenience goods stores accommodating local needs such as but not limited to retail bakeries, delicatessens, candy, nut and fish stores, fruit and vegetable stores, grocery and food stores, 5 & 10 stores, hardware stores, auto parts supply, book stores, branch banks, dry goods stores and florist shops;
- ~~10.~~ 7. Personal service stores such as but not limited to beauty and barber shops, laundromats, cleaners, photography studios, shoe, jewelry and household appliance repair services and alterations services;
- ~~11.~~ 8. Supermarket
- ~~12.~~ 9. Business and Professional Offices
- ~~13.~~ 10. Commercial Recreation - Indoor
- ~~14.~~ 11. Commercial Recreation - Outdoor
- ~~15.~~ 12. Municipal Facilities
- ~~16.~~ 13. Public Utilities
- ~~17.~~ 14. Warehouse and Storage Facilities
- ~~18.~~ 15. Commercial Sales and Service
- ~~19.~~ 16. Truck Facility
- ~~20.~~ 17. Manufacturing and Processing which does not involve the basic refinement of bulk raw material
- ~~21.~~ 18. Hotel/Motel
- ~~22.~~ 19. Day Care Center Facilities
- ~~23.~~ 20. Convenience Store with Gas Pumps
- ~~24.~~ 21. Auto Service Station
- ~~25.~~ 22. Auto Repair Service Garage

- ~~26-23~~. Restaurant
- ~~27-24~~. Restaurant - Carry Out
- ~~28-25~~. Restaurant - Drive-up
- ~~29-26~~. Construction Services
- ~~30-27~~. Public Assembly
- ~~31-28~~. Private Assembly
- ~~32-29~~. Wireless Telecommunication Facility (See Sec. 528)
- ~~33-30~~. Parking area for open space *{Amended, Effective 12/02/14}*
- ~~34-31~~. Artisan Food and Beverage *{Effective 12/17/14}*
  - a. food truck(s) as an accessory use is allowed subject to the provisions of Sec. 526A – Food Trucks
- ~~35-32~~. Medication Assisted Treatment Facility for Opioid Addiction *{Effective 10/04/16}*

The following uses are subject to subdivision review:

- 33. Commercial Open Space Subdivision for two-family and/or multiple-family dwellings.

C. Space Standards for Lots which are Not Within Subdivisions as Listed in Section D below:

1. Minimum Lot Size:
  - 20,000 s.f. provided curb cuts on Hunter Road or Desert Road are at least 300 feet apart on the relevant side of the road; otherwise the minimum lot size is 1 acre.
  - The minimum lot size of lots having frontage on roads other than Hunter Road or Desert Road is 20,000 s.f. provided that access to the lot is on a driveway serving 2 or more lots; otherwise the minimum lot size is 1 acre.
2. Maximum Building Height: 35 feet
3. Minimum Road Frontage:
  - a. Minimum Road Frontage for Lots that have one or more access(es) that is not shared with other lots: 100 feet
  - b. No Minimum Road Frontage for lots that share an access with one or more other lots.
4. Maximum Impervious Surface to Lot Area Ratio: 70%
5. Minimum Setback:
 

front:	25 feet
side:	25 feet
rear:	25 feet
6. Maximum Height - Wireless Telecommunication Facility (single user): 75 feet  
 Wireless Telecommunication Facility, Co-located: 125 feet

D. Space and Bulk Standards for Lots in Open Space Commercial Subdivisions approved after (insert date of adoption)

1. Net residential density per dwelling unit; two family and multiple family –  
1 unit per 2,904 s.f. (15 units per acre) of net residential acreage
2. Maximum impervious surface to lot area excluding designated open space 90%
3. Allowable number of stories 3 stories

4. Setbacks for developments with property in common ownership front: 25 feet  
 rear: 50 feet  
 side: 25 feet

For developments that will be divided into individual lots:

4. Minimum lot area per dwelling unit; two family and multiple family - 4,000 s.f.  
 5. Minimum road frontage 30 ft.  
 6. Minimum setback for commercial open space subdivisions front: 10 feet  
 rear: 10 feet  
 side: 5 feet

D.E. Prohibited Uses:

1. Manufacture, fabrication, disposal or any use of asbestos products
2. Paper Manufacturing
3. Petroleum and petrochemical refining and reprocessing
4. Production of lubrication oils and grease
5. Manufacture of explosives including, but not limited to, ammunition and fireworks
6. Offal or dead animal disposal and reprocessing
7. Abattoirs and slaughterhouses

E.F. Other Standards:

1. For developments that require open space, the open space shall be delineated by using the following priority system:
  - a. first priority – establish buffer of at least 50 feet where the Commercial District is adjacent to the Rural Residential District.
  - b. second priority – open space includes primary conservation areas to the greatest extent practical
  - c. third priority – at the discretion of the owner
2. If open space is not required, a 25 foot buffer shall be required where the adjacent property within this District is presently used for residential purposes. A 100 foot buffer strip shall be required where it abuts residential districts
- ~~2~~3. Landscaping is required in the front setback as per Section 527.E.
- ~~3~~4. The Performance Standards of Section 527 are applicable. *{Amended, Effective 01/02/18}*

## **Section 504D. COMMERCIAL OPEN SPACE SUBDIVISIONS**

### **504D.1 Purpose**

The purpose of these provisions is to encourage flexibility in the design of subdivisions in commercial districts, to preserve a buffer where commercial districts are adjacent to residential districts and to protect environmentally sensitive areas.

### **504D.2 Applicability**

1. This Section - 504D shall apply to:
  - a. all applications for approval of subdivisions within the Commercial Districts where allowed submitted after (Insert date of adoption), whether or not any such application would be deemed a "pending proceeding" under 1 M.R.S.A §302.

### **504D.3 Design and Construction Standards**

The Project Review Board shall be authorized to approve Commercial Open Space Subdivisions, which conform to the requirements of this Ordinance, the Subdivision Ordinance of the Town of Freeport, and all other applicable ordinances of the Town of Freeport.

### **504D.4 Uses Permitted on required Open Space Land**

1. Trails for non-motorized uses such as but not limited to pedestrians, bicyclists, skiing, and snowshoeing
2. Controls that are part of the stormwater management system
3. Easements for drainage and or utilities

### **504D.5 Ownership Options for Open Space**

Open space shall meet the ownership options outlined in Section 504A.5