

**MINUTES
FREEPORT PROJECT REVIEW BOARD
FREEPORT TOWN HALL COUNCIL CHAMBERS
WEDNESDAY, NOVEMBER 15, 2023
6:00 PM**

Attending: Linda Berger, Fred Madeira, James Monteleone, Chair
Ford Reiche, Tod Yankee and Caroline Pelletier, Town
Planner

On Zoom: Lynn Hamlen

Excused: Jason Donahue

Chair Reiche called the meeting to order at 6:03 and noted that the Board has a quorum this evening. He requested that Ms. Pelletier provide a staff update.

ITEM I: Information Exchange

1) Update on topics reviewed by the Planning Board

Ms. Pelletier advised that this month the Planning Board had an applicant-driven agenda item regarding the solar regulations which the Board might remember we had for two years but we have somebody that wanted to propose a change in the height to ground-mounted accessory solar structures. They want to put in a tracker and proposed a height of 35 feet. The Planning Board did recommend that amendment to the Council. It will probably go to the Council in December.

2) Update on the Downtown Vision Task Force Implementation Group

Ms. Pelletier mentioned that this group has not been meeting. They have been laying low but will be regrouping in January. They will be sending out a newsletter very quickly with some updates on what the group has been on and the progress they have made on some projects.

3) Update on the Town of Freeport Climate Action Plan

Ms. Pelletier pointed out that there are fliers over on the table. They have had two workshops as they work towards completing the Climate Action Plan in process. A Community Workshop to give feedback will take place this Saturday at the Library from 10 a.m. to 12 Noon. If anyone missed it last night, you have a second chance on Saturday.

4) Update on the Freeport Comprehensive Plan Update

Ms. Pelletier mentioned that the Board probably already knows since we talked last month, that we have hired North Star Consulting that the Interview Team recommended to the Council. We are looking at them coming to the Planning Board in December for a kick-off introductory meeting. You will probably start hearing from them later in the winter once they kind of plug away at some of the behind-the-scenes inventory analysis.

Chair Reiche reminded the Board of a site walk on November 29 at 8:45 a.m. for L.L. Bean. Caroline will be sending out a reminder for that. He also mentioned that he sent a note out to everybody on the Project Review Board that there is a Planning Board meeting to review the zoning changes which came out of this consolidated group of folks working on changes. Anyone interested from the Project Review Board and the public is invited.

The meeting will be here on December 6 at 6 p.m. Ms. Pelletier added that they are working on getting those documents in a final format and as soon as they have them, they will send them to the PRB with the hope that you can participate.

ITEM II: Review of the minutes from the October 18, 2023 Project Review Board meeting.

Chair Reiche asked if there are any additions or changes to the minutes? There were none provided.

MOVED AND SECONDED: To accept the minutes as presented for the October 18, 2023 meeting.

(Madeira & Berger) **VOTE:** (6 Yes) (1 Excused: Donahue) (0 Nays)

ITEM III: Reviews

Claire Martin – 35 Merganser Way – Shoreland Stabilization

The applicant is seeking approval for a Shoreland Zoning Permit (for Shoreland Stabilization). An area of approximately seventy feet in length will be stabilized with rip rap. The area of rip rap will be about six feet below and four feet above the Highest Annual Tide (HAT) line. A set of steps will also be replaced. Zoning Districts: Medium Density Residential I (MDR-1) and Shoreland Area (SA). Tax Assessor Map 5A, Lot 11A (35 Merganser Way). Claire A. Martin, applicant & owner; Timothy Forrester, Flycatcher, representative.

Ms. Pelletier explained that the Board has seen a lot of these. It is a standard Shoreland Zoning Stabilization Permit and the Board has seen a couple of other ones in this neighborhood. There is significant erosion on the coastline and a lot of people are doing some restoration. In this case it is about 70 feet of rip rap installation. There are associated components that come under the purview of others. The Board is just looking at the rip rap. The set of stairs comes under the purview of the Codes Enforcement Officer and the dock comes under the purview of Coastal Waters. For rip rap there is about 350 feet combined wetland impacts.

They need approval from Army Corps and DEP. The Code Officer did go down to the site and look at the vegetation. They are not proposing to remove any vegetation in the upland. There is a bit of invasives that they have to remove. No trees will be coming down. There was an e-mail in your packets regarding access to the site. There is a flat and relatively clear access that they can use over the abutter's property that will not require any additional vegetation removal. They might have to do some restoration loam and seed when they are done but otherwise folks can get in and get in the winter when it will be least disruptive. Tim Forrester is here if the Board has questions.

Mr. Yankee explained that he is also on the Coastal Waters Commission and this was discussed at the last meeting. Even though these are two different approvals they are seeking, one from Coastal Waters and one from the Project Review Board, as a precaution and not setting a precedent, he is going to recuse himself. Chair Reiche thanked him.

Tim Forrester, of Flycatcher explained he is here on behalf of Claire Martin of 35 Merganser Way. He feels Caroline summed it up pretty well but one thing he will add is that this is a bit more of replacement structures. There is an existing failed timber wall underneath the whole thing. The timbers have rotted out and are pretty much failing. The proposal is to replace those with rock and it will be a typical rip rap re-bankment where the toe stones will be buried in to at least half of their diameter so they will be going down 1' or 1 ½' for bottom stones and stacking up from there and then going up to just a little bit higher than the timber wall that exists now. One of the other goals for the project is to raise that wall a little bit and raise the pier height along with it. That is why it is back to Coastal Waters. For the most part, they are using the same footprint of the timber that is there now but replacing it with stone.

Chair Reiche added that this situation looks like the last one Mr. Forrester was here for. Mr. Forrester explained that there is a fair number of projects along the coast over there with a lot of old timber walls that have finally met their match.

Chair Reiche asked if the Board or the public had any questions and noted it is not a public hearing but the Board always invites input. Ms. Pelletier invited people on zoom wanting to talk to put their virtual hand up. Ms. Berger mentioned the area from the house to the timber wall and asked if it is vegetated with anything? Mr. Forrester explained that there is planted ornamental vegetation there but their intention is to replant above the wall as well.

Section 306 of the Town of Freeport Shoreland Zoning Ordinance ([050322 chapter 65 shoreland zoning ordinance adopted.pdf \(freeportmaine.com\)](#)) has standards for the various allowable Shoreland Area land uses. These are the standards under which the Board must review the application.

In addition to municipal review, permitting from both the Maine Department of Environmental Protection (Natural Resources Protection Act Permit) and the Army Corps of Engineers are required. The applicant is aware of this and those applications have been submitted to the applicable agencies. Those agency reviews are independent of the Board's process with their own standards and should either of those agencies require substantial changes, the applicant may need to return to the Project Review Board for additional review and approval.

Proposed Findings of Fact: This project requires a Shoreland Zoning Permit. A draft version of proposed findings for the standards is presented here for Board review, consideration and deliberation. Since the findings of fact for any project are findings of the Board, these draft findings can be altered at the meeting as appropriate:

Proposed Findings of Fact – Chapter 65 Town of Freeport Shoreland Zoning Ordinance - Section 306.

Land Use Standards

Notwithstanding the standards of the underlying zoning district(s), all land use activities within the Shoreland Zone, shall also conform with the following provisions if applicable:

A. Space Standards:

Not applicable as no structures or changes to the lot are proposed. Based upon this information, the Board finds that this standard has been met.

B. Principal and Accessory Structures

Not applicable as no structures or changes to the lot are proposed. Based upon this information, the Board finds that this standard has been met.

C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland

Not applicable as no Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland are proposed. Based upon this information, the Board finds that this standard has been met.

D. Campgrounds.

Not applicable as no campgrounds are proposed. Based upon this information, the Board finds that this standard has been met.

E. Individual Private Campsites.

Not applicable as no individual private campsites are proposed. Based upon this information, the Board finds that this standard has been met.

F. Parking Areas:

Not applicable as no parking areas are proposed. Based upon this information, the Board finds that this standard has been met.

G. Roads and driveways

Not applicable as no new roads and driveways are proposed. Based upon this information, the Board finds that this standard has been met.

H. Signs:

Not applicable as no roads and driveways are proposed. Based upon this information, the Board finds that this standard has been met.

I. Storm Water Runoff

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. 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 storm waters.
2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

No changes resulting in an increase of stormwater run-off are proposed. The applicant installed rip rap to stabilize the eroding shoreline. Based upon this information, the Board finds that this standard has been met.

J. Septic Waste Disposal

Not applicable as no septic waste disposal systems are proposed. Based upon this information, the Board finds that this standard has been met.

K. Essential Services

Not applicable as no new utility connections are proposed. Based upon this information, the Board finds that this standard has been met.

L. Mineral Exploration

Not applicable as no mineral exploration is proposed. Based upon this information, the Board finds that this standard has been met.

M. Agriculture

Not applicable as no agriculture is proposed. Based upon this information, the Board finds that this standard has been met.

N. Clearing of Vegetation for Activities Other than Timber Harvesting

No clearing of trees or upland vegetation will be required for this project. Based upon this information, the Board finds that this standard has been met.

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

No Hazard Trees, Storm-Damaged Trees, and Dead Trees will be removed with this project. Based upon this information, the Board finds that this standard has been met.

P. Exemptions to Clearing and Vegetation Removal Requirements

No clearing of trees or vegetation will be required for this project. Based upon this information, the Board finds that this standard has been met.

Q. Revegetation Requirements

Vegetation removal will be limited with this project and no vegetation will be removed in the upland areas. Native plantings will be planted at the top of the rip rap and include Bar Harbor Juniper, Northern Bayberry, and Beach Plum, planted three (3) feet on center. Based upon this information, the Board finds that this standard has been met.

R. Erosion and Sedimentation Control

The applicant installed rip rap to stabilize the eroding shoreline and the shoreline will be graded as required for the project. Erosion and sedimentation controls will be in place during the project. Upon completion, and disturbed areas will be stabilized with vegetation and mulch per the Maine DEP - Maine Erosion and Sediment Control BMPs manual. Based upon this information, the Board finds that this standard has been met.

S. Water Quality

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 install rip rap to stabilize the eroding shoreline which should improve the water quality by reducing sediments runoff from the land. Based upon this information, the Board finds that this standard has been met.

T. Shoreline Stabilization

Vegetation may be removed in excess of the standards in Section 306.N of this Ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Project Review Board. Construction equipment must access the shoreline by barge when feasible as determined by the Project Review Board.

(a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than twelve (12) feet in width. When the stabilization project is complete the construction equipment accessway must be restored.

(b) Revegetation must occur in accordance with Section 306.Q

The applicant installed rip rap to stabilize the eroding shoreline. No clearing of upland vegetation will result from this project. Native plantings will be planted at the top of the rip rap and include Bar Harbor Juniper, Northern Bayberry, and Beach Plum, planted three (3) feet on center. The area used to access the site from land will be protected and repaired as needed. Other disturbed areas will be stabilized with vegetation and mulch per the Maine DEP - Maine Erosion and Sediment Control BMPs manual. Based upon this information, the Board finds that this standard has been met.

U. Soils

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, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. In addition, if an on-site investigation for a septic system is needed, a Maine Licensed Site Evaluator shall submit a required report. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed design to counteract soil limitations where they exist.

This is a shoreline stabilization project and no new land uses are proposed. Based upon this information, the Board finds that this standard has been met.

V. Archaeological Sites

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, as determined by the Codes Enforcement Officer, during the required review process, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least twenty (20) days prior to action being taken by the Codes Enforcement Officer who shall consider comments received from the Commission prior to rendering a decision on the application.

There are no known adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places. The Board finds that this standard has been met.

Conclusion: Based on these facts the Board finds that this project meets the criteria and standards of the Town of Freeport Shoreland Zoning Ordinance.

Proposed Findings of Fact – Chapter 65 Town of Freeport Shoreland Zoning Ordinance - Section 404. Administering Permits

The Project Review Board, the Coastal Waters Commission, or the Codes Enforcement Officer shall approve an application for a permit, only upon finding that the use, activity or structure

complies with all requirements of this Ordinance and that it meets the following criteria:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources as designated in the comprehensive plan;
7. Will not adversely affect existing commercial fishing or maritime activities in a Marine Waterfront District;
8. Will avoid problems associated with floodplain development and use; and
9. Is in conformance with the provisions of Section 306, Land Use Standards.

The project is for shoreline stabilization at a residential property on Merganser Way. The project was designed to minimize impacts to the coastal wetland, however resulted in about 350 square feet of impact. No vegetation was required to be removed for this project. The area behind the rip rap and any disturbed areas that will be covered with rip rap, will be loamed and native plantings will be installed per the plan included in the submission. There are no known adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places. The property is not within the Marine Waterfront District and there is no public access to the water. Based upon this information, the Board finds that this standard has been met.

Conclusion: Based on these facts the Board finds that this project meets the criteria and standards of the Town of Freeport Shoreland Zoning Ordinance.

MOVED AND SECONDED: that the Freeport Project Review Board approve a Shoreland Zoning Permit for Claire Martin, for a Shoreline Stabilization Project (approximately 70 feet in length) at a residential property at Tax Assessor Map 5A, Lot 11A (35 Merganser Way), to be built substantially as proposed in an application dated 11/1/23, finding that it meets the standards of Section 306 & Section 404 of the Town of Freeport Shoreland Zoning Ordinance, with the following conditions of approval:

- 1) This approval incorporates by reference all supporting plans that amend the previously approved plans submitted by the applicant and their representatives at Project Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions.
- 2) Prior to the start of any sitework for the project, the applicant obtain any applicable permits from the Freeport Codes Enforcement Officer. (Madeira & Berger)

Mr. Monteleone mentioned he feels Mr. Yankee's intention to abstain is inappropriate in this context. He fears it might set the wrong precedent given that it is two different applications. There is no prohibition on being on both of those Boards and the risk of that happening is high and simply acting on one application and then another second unrelated application should not be a basis to have to recuse yourself. Mr. Yankee understood and noted there is more thought he is going to be putting into this along those lines. He thanked Mr. Monteleone. Chair Reiche clarified

that for this application, will Mr. Yankee recuse himself? Mr. Yankee replied yes. Chair Reiche pointed out that in the future if there ever is a question, the Board can put it to a vote.

ROLL CALL VOTE: (5 Yes) (1 Abstention: Yankee) (1 Recused: Donahue)

Cigri Independence Drive Subdivision Amendment – Cigri Drive

The applicant is presenting conceptual plans for a one-lot amendment to the previously approved Cigri Independence Drive Subdivision. Three lots are existing, and one additional lot will be created. No open space is required. The plans will also include a design for road construction for Cigri Drive. Zoning District: Village Commercial III (VC-III), Design Review District I– Class B and C properties & Color Overlay District, and Freeport Village Overlay District. Tax Assessor Map 9, Lots 2-1 & 2-2 (0 Cigri Drive & 4 Cigri Drive). Kemal Cigri, applicant; Cigri Properties (Lot 2-1) & Kemal & Brandon Cigri (Lot 2-2), owners; Anthony P. Panciocco, P.E., Atlantic Resource Consultants, representative.

Ms. Pelletier explained that this is an interesting small application. A lot of times when we have a subdivision amendment like this and it is just one lot, they come in once and present it and we are able to hold a public hearing and do it in one meeting. This is a unique lot. It is in Village Commercial III, the Village Overlay District. It is in the Color Overlay District and is in Design Review. It was done just before we adopted the Freeport Village Overlay District standards and it was also done just before we adopted the Village Open Space Subdivision standards. They are coming in for an amendment and we had to go through it carefully. The short cliff note version of the history so they came in in the early mid-2000s for a subdivision amendment with three lots and then they were going to go to four lots but it raised some questions in other things so they went back to three lots with a multi-family unit being on Lot 1 and on Lot 2 they had a single-family dwelling that had a right-of-way but it had actual access not providing frontage over the multi-family lot and there was this big third lot that had future development potential. When they got approved for Cigri Drive, only two lots had deeded access to Cigri Drive. The Subdivision describes it as a driveway so they did not have to build a subdivision road. They had a condition that if they wanted to do further divisions, due to the timing, they had to redo the wetlands so they have redone the wetlands on the property on the back two lots and they are coming for the creation of one lot. The way the Ordinance is written, one additional lot would not trigger the Village Open Space Subdivision standards. There has been a question raised as to Lot 2, the second house and whether or not there is a second unit in there and if they want to keep that unit or get rid of it. It is something they will work with the Code Officer. If they do want to keep that second unit and add a new lot, the Board could see a slight variation where they would have to provide some open space. That is something they are going to work with the Code Officer on. By adding this lot as mentioned, they would need to upgrade Cigri Drive to subdivision standards. They are aware of that and it is something they would work with the Town Engineer on. They would have to have a slight tweak in the layout of the right-of-way. They will have to have the road and all the improvements in the right-of-way so there will be a little bit of a tweak. In all of this being said, it would not impact what they show for that new lot. There is some stuff to work out. This is a unique one and after talking to Andy, their representative and working with the applicants for years, it is on here as a concept just to raise some things and look at it. She set it up so the Board could take conceptual action if you wanted to if you feel that the new back portion of Lot 2 is in the right place but they would need to do some more work on the plan before coming back. Andy Johnston is here and can walk you through the application.

Andy Johnston with Atlantic Resource Consultants in Freeport explained that from a technical perspective, this is pretty simple but from a process perspective, it is complicated because under normal circumstances if this had been previously approved as a subdivision, this would be a lot split. It doesn't meet the definition of subdivision. There is only one lot being created here but because it was previously approved as a subdivision, it has to come

back as an amendment. As Caroline explained, the amendment we are searching for here is on Lot 3 which is the large lot in the back. It is going to be divided in two. It is a very slight amendment if you compare the existing approved subdivision plan with the newly proposed subdivision. The right-of-way hooks left a bit at the end and that is just to create the required net residential acreage on that lot that is being cut off in the top right corner. He oriented the Board to this area. He mentioned that he has one technical subject he wants to discuss with the Board tonight with this subdivision is what that road looks like in the right-of-way. It has to be a 50-foot right-of-way because it is four lots and if you look at the Village standards, it depends how flexible the Project Review Board wants to apply those standards and you obviously have the ability to waive them. If you look at the Village Overlay standards, it requires a 24' wide paved road and sidewalk. The intent of that is to obviously provide interconnectivity when you will be connecting what will be future town streets. If you look at the geography of this lot and the natural resources back on Lot 3, there is never going to be the potential of this tying into another road and becoming a through road. There is no sidewalk on Independence Drive and little traffic. There is a sidewalk on Route One. Independence Drive itself is only 20' wide so it would not make sense to bring in a minor road off Independence Drive wider than Independence Drive. They put on the plan what they think provides good enough access to those four lots. It is 18' wide paved. From his perspective, this is a simple project but if there is anything the Board sees that they can work on before coming back, they are willing to do that.

Ms. Pelletier clarified that they did spend quite a bit of time looking at this internally today. Although the dwellings could potentially trigger Design Review and would have to comply with the Village Overlay, she did ask the Code Officer to look at this and interpret whether or not he thought this one additional lot triggers the requirement in the Freeport Village Overlay District for the road. He didn't feel like based upon how it has been interpreted in the past, and the fact that this new lot is not on a public road that it triggers the road standards. She feels the Board could look at that and if you need clarification or guidance, they can get that. He did not feel the one lot in the back triggered those standards or it is not on a public road. She referred to the table in the Freeport Village Overlay document for new dwellings, Section 1 and 2 and explained that this is the one we flagged for him to look at. The other one is they are not doing a building addition that is creating more units and they are not in the Village Mixed Use so he did not feel that it triggered the road standards for the sidewalks, the street trees and the additional split. She has only seen the street standards triggered once. We have not had a ton of subdivisions done under it. The one she has seen was for the School Street extension.

Chair Reiche asked if there are any waivers the Board needs to act on tonight? Ms. Pelletier was not aware of any. Ms. Berger asked if somebody could show her which lot is which, which is being split because it has a 1, 2, 3, 4 and a bunch of other things? Mr. Johnston provided which is existing and what is being changed.

Mr. Yankee advised that it is hard for the Board to take action without more drawings of what was approved. Ms. Pelletier clarified that Lot 1 remains unchanged. Lot 2 is being cut in half and the second part now becomes Lot 4. The boundary between the right-of-way and Lot 3 gets adjusted. Mr. Madeira asked if Lot 2 has a building on it today? Ms. Pelletier advised that it does have a building as shown on the existing Subdivision Plan. She mentioned there is a question on whether there is a second unit in the house on Lot 2 so they will work with the Code Officer on that.

Mr. Yankee asked if Lot 3 would be 4.25 acres? Mr. Johnston advised that Lot 3 has a good chunk of land but a lot of it includes the pond and the wetlands. Ms. Pelletier advised that Lot 3 does not include the area of the right-of-way but they show it could get more units but they are not proposing it at this time. At some point if somebody wants to develop it, they could come back.

Mr. Monteleone asked if the purpose is not to facilitate immediate or future development of these lots and what is the need to do this further? Mr. Johnston advised that potentially a house could go on Lot 4. Lot 3 would

be a long-term proposal. They presently own Lots 2, 3 and 4. Mr. Monteleone asked if Lot 1 needs to be a party to this application given that it is an effective change of the subdivision plan? Mr. Johnston advised that it was not as he understands it because it has frontage on Independence Drive. The only slight tweak there is that Lot 2, 3 and 4 would have access off the new road.

Mr. Madeira asked if Cigri Drive ends and the new road extends beyond where the tree line is shown? Ms. Pelletier added that back in the day, they put the right-of-way in to meet the frontage requirement for Lot 2 hoping to be Lots 2 and 4 and Lot 3. They had an agreement when it was all owned by a family together. When you go by there, you can see next to the house they are repainting in the front, to get to the back lot you go over a driveway. That is just a driveway. It is not the right-of-way. Cigri Drive would actually be next to that parking lot in the access way now so when this is built, Lot 2, the new Lot 4 and the existing Lot 3 would all have access of this paved subdivision road. She pointed it out on a plan.

Ms. Berger brought up the fact that typically when there are lots in a subdivision, there is an area that is delineated as the building area in Lot 1, 2 and 4. If Lot 3 is going to become a potential site for building, there is nothing on here that shows a buildable area. She is concerned about that. Ms. Pelletier explained that we have gotten away from that and explained that people have wanted to come in and build but given with the Municipal setbacks, because they drew an incorrect building envelope on a subdivision plan, they were tied to that so we have been leaning more towards putting the required setbacks on there and when they come in to get a permit, they show where it could be. Ms. Berger advised that she would like to understand that there is an area that is buildable because she is looking at elevation lines and the proximity to the wetlands. Obviously, it is a large lot but it has a lot of non-buildable area and we are being asked to give this approval. Ms. Pelletier pointed out that Lot 3 is already an approved subdivision lot today but they are altering the right-of way. Mr. Monteleone added that the concern Ms. Berger is raising, and he shares, is that it appears it is severing off the buildable area of what is the current lot and isolating what potentially might be a non-buildable area, it does make sense that probably not need to show the building envelope on the subdivision plan because it could cause confusion in the future about it being approved for that area. It would be helpful to see some documentation of what area you anticipate under the current ordinances and the DEP rules where the building envelope will be and to allow us to see that it is a developable lot. More discussion followed.

Chair Reiche mentioned that Mr. Johnston is coming back so he thinks the Ordinance says that for us to get through concept approval, we have to be convinced that this property is appropriate for residential development. He asked if there is any reason why Mr. Johnston could not show the Board a buildable area when he comes back? He feels it would get the Board over a hump if he could do it for the next meeting. Mr. Johnston advised that he could show the Board that there is a buildable area. Mr. Monteleone thinks it doesn't need to be on a subdivision plan. It needs to be on a separate sheet to give the Board some assurance that here is where it is buildable plus or minus. Ms. Pelletier added that it looks clearer on Lot 4 so does the Board want to see it on Lot 4 and modify Lot 3 to understand where they could fit it all in? Chair Reiche agreed.

Mr. Monteleone advised that he feels it would be helpful in the next version of the plan and ultimately the recorded subdivision plan to remove these neighboring lots that are not part of the subdivision. There is a risk of confusion about what is a subdivision lot and what is not. Mr. Johnston advised that this will be generated as a plat plan. Mr. Yankee added that he now understands what Lots 1, 2, 3, and 4 are. Mr. Johnston suspects that some of the confusion comes from some of the notations from the old plan that still show through. They will tidy up that text so the Board will see clearly that the old lines will be faded. Mr. Monteleone is mindful that the purpose of a subdivision plan is to put the world on notice what is in and what is out.

Chair Reiche advised that the reason they are here, is because we have a requirement that if you amend a

subdivision that has been previously approved, they have to come back. If you hadn't, you could have just done this and gone and got a building permit. It simplifies it in his mind the fact that Staff has not raised any questions about the road. Ms. Pelletier noted that she feels they know they have to do clean up to the plan, they have to work on stormwater and they need to do a road design. This had weird complexities to it so she thought she would bring it as a concept so the Board could see to make sure they feel Lot 4 makes sense and knowing that a lot of details need to be worked out. If you are comfortable taking action on the plan, you could and they would go away and do everything you want to see and come back or if you want to see some clean-up before you decide they have it in the right spot, you could do that as well. Again, it is a very unique application.

Chair Reiche advised that if there are deed restrictions or if there is a declaration that went with the subdivision, they may have a provision buried somewhere and they need the consent of all the original subdivision lot owners. Mr. Johnston advised that they did not find one. Ms. Pelletier pointed out that they just had a road maintenance agreement which they would need to update. Chair Reiche noted that if this is a vernal pool or any sort of a sensitive wetland, they could have complications. Mr. Johnston advised that they did a wetland delineation and determined there were no vernal pools. Chair Reiche asked if the Board could see that when they come back? Mr. Johnston agreed.

Mr. Monteleone asked which lot is going to be assigned ownership of the land beneath the driveway? Mr. Johnston advised that there will be a road maintenance agreement between Lots 2,3, and 4 that have access along that road. Lot 3 will own the road.

Chair Reiche opened the meeting up to the public. Attorney Jonathan Davis was on zoom. He advised that he is an attorney with Powers and French and is speaking about this project on behalf of his client, Melinda Sanderson. She owns the property at 8 Independence Drive, Assessor's Tax Map 9, Lot 2-A. We echo many of the comments of the project manager of the Board that conceptually this is a simple project from their perspective. They think it is an appropriate project from their perspective. They are not here as a neighbor to voice opposition to this project. Given the mixed-use character of the Independence Drive neighborhood, this is not going to make a significant change to that neighborhood. What Ms. Sanderson is concerned with is just to ensure the Board that it is mindful of its obligations regarding the installation and maintenance of utility services and depicting that on the plan. Ms. Sanderson has been having some challenges with access to utilities on the pole on her property as well as access and concerns with neighbors and the public using the road that is over her lot. She owns the right-of-way that it crosses. As the Board is considering this project, they have no objection to the project. They think it is an appropriate use and simply ask that the Board be mindful of the requirements in Appendix D, Section 14H regarding depicting where utilities are going to be as well as the approval standard in 11.5.C.2.k regarding the road design showing the location of current and proposed utility services. He clarified that they do not have an issue with the width of Cigri Drive or creating an additional lot. They want clarity on the plan about where the utilities for these lots are located. The standard says it should be in the road. Chair Reiche added that it is duly noted and it will be on the plan that Mr. Johnston brings to the Board.

Mr. Monteleone asked if the existing units are connected to the utilities via the power line crossing the driveway now? He noted that the power line looks like it is not connected to this lot. He asked if that is the line that connects the two units or if there is an additional line that we are not seeing. Attorney Davis added that if the Board looks at this plan, they will see that there is a pole down in the corner of the most southeastern part of Lot 1. Again, it is Ms. Sanderson's pole No. 24.1 per the CMP plan. It currently provides power service to the building on Lot 1. They have not been able to find an easement for that and they are working with the neighbor as they are doing their development to come up with a satisfactory agreement to memorialize usage to that pole. The pole provides power to Lot 1. It is not on the subdivision. It is on the Sanderson's lot. Ms. Pelletier noted they do not own Lot 1 and the utilities for the new subdivision lot would have to be underground. Mr.

Johnston advised that they are already working with CMP on that and will provide more information when he returns to the Board.

Chair Reiche pointed out that the Board has the opportunity to approve this as a conceptual design if we find that the areas are appropriate for development and open space have been satisfactorily explained. He called for a motion.

MOVED AND SECONDED: Be it ordered that the Freeport Project Review Board determines that based upon the information submitted by the applicant, submission dated 10/10/23 that the review of the Site Inventory Map, Site Analysis and Conceptual Plan for Kemal Cigri for a proposed residential subdivision (Tax Map 9, Lots 2-1 & 2-2) is considered complete as the Board finds that the appropriate areas have been determined for development and no open space is required. (Yankee & Hamlen)

Mr. Monteleone pointed out that he would oppose the motion because he doesn't think the Board has sufficient information yet to reach that finding. That is the very information the Board is looking to get with some supplemental information about the buildable area. He emphasized that his position on this motion tonight has no reflection about his concern about the project or anything of that nature but the Board needs that information to meet that minimum bar that the Ordinance requires us to. Ms. Berger agreed with Mr. Monteleone that the Board needs to see further information. Mr. Madeira added that he is less confused than he was starting. He thanked Mr. Johnston for all the information but he is still a bit confused and getting clarity on all of this would make him feel better about voting yes. He does agree with the concept.

Ms. Pelletier read the finding requirement the Board has in order to approve for conceptual. Mr. Johnston pointed out that this is unique because they are just amending the right-of-way to create an additional lot.

Mr. Yankee feels overall the Board will get there. Being able to show the utilities issues with the right-of-way and making sure it can all fit. Ms. Pelletier clarified that one of the things the Board asked for was building envelopes on 3 and 4. Although 3 is a buildable lot today, they are shifting that right-of-way over, they have updated the wetlands so there is a smaller building envelope. Does the Board want to see what it could potentially be on Lot 4, see the wetland report, clarity on the lots and how they would bring the utilities in. Mr. Yankee noted this is conceptual and they would need to come back for final. Ms. Pelletier asked the Board if the applicants brought back some modified plan including those things and a little more information, does the Board feel it would have what it needs to make that decision so they can go and work on the full road design and all that?

Ms. Berger noted that there is nothing that stops us from approving a conceptual and a design in the same meeting. Chair Reiche agreed that there isn't. Ms. Pelletier mentioned that we don't usually. The point of concept is to have a rough plan and you don't have a ton of engineering done. In the case of an amendment, they come in with a lot more information than what we actually require. She feels it would be awkward. We have never done a concept and final in one meeting. She feels it would be more efficient for them to come back. Mr. Johnston asked if they need concept approval before they come back? Ms. Pelletier advised that she is happy to look through and see if they can do concept and final in one meeting even though we have never done it that way. She warned that if the Board has a problem, it is a big expense for the applicant to go through.

Based on that Mr. Yankee pointed out that he can see both sides but now feels more comfortable moving forward with conceptual approval. Ms. Hamlen added that as the person who seconded the motion, she stands by her second. Mr. Yankee suggested getting a straw vote. Chair Reiche added that he is ready to approve personally concept. If the Board thinks there are some unanswered questions, those are the blanks that get

filled in between concept and final. He asked if there is any further discussion before a Roll Call Vote?
No comments were provided.

ROLL CALL VOTE: Berger: No, Hamlen: Yes, Madeira: No, Monteleone: No, Yankee; Yes, Reiche: Yes and Excused: Donahue)

Mr. Pelletier suggested taking a 5-minute break so she could clarify the next steps before the applicants leave. The Board discussed options while Ms. Pelletier was checking with the Town Attorney. She reported that where somebody made a motion to approve that didn't pass, if somebody wants to make a second clean motion to table it until the additional information is provided. Ms. Berger clarified that her vote was not to deny this. Her vote was to not approve the conceptual plan. She feels she would not have been agreeable if we denied this application and they have to start from scratch.

MOVED AND SECONDED: To table the conceptual plan approval for Kemal Cigri for a proposed residential subdivision, Tax Map 9, Lots 2-1 and 2-2. (Yankee & Berger)

Ms. Pelletier added that the Board will be looking for information showing building envelopes, the wetlands report, clarity in the definition of which lots are in the subdivision and which lots are not in the subdivision and information on utilities.

ROLL CALL VOTE: (6 Yes) (1 Excused: Donahue)

ITEM IV: Discussion of the work of the Central Core Working Group

Ms. Pelletier encouraged everybody to come to the Planning Board meeting on December 6 at 6 p.m. The finalized draft will be sent out as soon as it is ready.

ITEM V: New Business

Mr. Yankee mentioned that he had a question for the Board to think about is how some of the decisions we have made based on the information we had and based on the ordinances at the time that he has not lost sleep over. Going forward, looking at some of the decisions that have come before this Board, it would be nice if we had tighter standards for our evaluation criteria, not the process. Two things come to mind right now. One is fairly recent and that is the Gritty's sign and the amount of light it emits. We were given assurance that it was going to be automatically metered. He knows that it is very relative and subjective. He feels it is incredibly bright. As we are working through ordinances and standards, if we can work in a more comprehensive signage or lighting standard, something along those lines.

The second one is, he was not on the Board at the time, the Casco Bay Ford development down at the end which has turned out to be a big truck parking lot with trucks all over the place. He does not know if what is going on down there is consistent or not consistent with what can happen after it has been approved and built. Clearly, he thinks that is not something he would like to see at all and suspects that people who were involved in that decision at the time may want to reconsider or find other ways to address that. Ms. Pelletier pointed out that that one is tough from enforcement that vehicles are parking on a private road. She does not know where it stands but she can revisit. There are attached conditions but with one Code Officer, sign violations for example take a long time to get to. Mr. Yankee feels that goes to that factor as well. We are a town of 7,000-8,000 people with one Code Officer. Do we need to encourage the Town Council to look at supplementing? Ms. Pelletier advised that we have tried but if anyone wants to be a Code Officer, we are

always taking applications. Mr. Monteleone added that in the interim, provide some direction or guidance in terms of enforcement priorities. Chair Reiche mentioned he planned to make that point with Ms. Pelletier. We have a long list of enforcement issues that it is hard to get to. He feels that when it is an enforcement issue from a Town Board, it ought to take a different priority towards enforcement.

Mr. Yankee feels this ought to go back to the Central Core Working Group and the workshop that was held a couple of months ago at the Library where there was the perception that our role slows down or deters development and in reality, what he hears is we can't get building permits because we can't get the Code Officer to do the review or come out and do his due diligence to issue or answer the questions we need so we can do our submittal properly. He thinks that is part of the whole big picture is all of that.

Chair Reiche advised Ms. Pelletier that while she was out of the room, some Board members shared the long list of enforcement actions, and it would be nice to have a policy in Town Hall that if it is an enforcement action related to a Town Board, it should be a priority for action. Ms. Pelletier warned that it would not cut ahead of life safety. Chair Reiche agreed but added that there are a lot of others we might want to cut ahead of. Ms. Pelletier explained that the Board could fill out an official complaint form.

Mr. Monteleone pointed out that the Board is scheduled for a site walk on November 29 at 8:45 a.m. at L.L. Bean and he has since had a hearing set for that morning so he will not be able to participate. He wanted to provide that notice in case it affects the Board's quorum. Ms. Pelletier verified that the site walk is scheduled on November 29 at 8:45 a.m. We do need a quorum but she will send out a notice. She suggested planning an hour.

ITEM VI: Adjourn.

MOVED AND SECONDED: To adjourn at 7:25 p.m. (Yankee & Madeira) **ROLL CALL VOTE:** (6 Yes) (1 Excused-Donahue) (0 No)

Recorded by Sharon Coffin