



TOWN OF FREEPORT, MAINE
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TO: FREEPORT PLANNING BOARD
FROM: CAROLINE PELLETIER, TOWN PLANNER
RE: STAFF REPORT
DATE: WEDNESDAY, SEPTEMBER 2, 2020

ITEM II: Zoning Ordinance Amendment – Village Commercial I (VC-I) – Single Family Dwelling - PUBLIC HEARING

The applicant is proposing an amendment to Section 413 Village Commercial I (VC-I) of the Town of Freeport Zoning Ordinance. The change would allow existing single-family dwellings in the District to be a permitted use. *Applicants: Gary and Heather Sylvester, 19 Morse Street (Tax Assessor Map 11, Lot 49).*

Background: The applicant currently owns a property that contains a single-family dwelling and is located in the Village Commercial I (VC-I) Zoning District (see attached map of the VC-I Zoning District). Per Section 413 of the Freeport Zoning Ordinance (attached), single family dwellings are currently not permitted uses within the District. Since the use is not permitted, it is considered a non-conforming use and per Section 202 of the Freeport Zoning Ordinance, the only way the applicant is allowed to expand the use would be to seek approval from the Board of Appeals which would have the ability to grant a one-time expansion of a non-conforming use up to maximum of 15% of the gross floor area of the existing structure(s). To obtain a variance, the applicant would have to demonstrate that they have an “undue hardship” which is hard to demonstrate if they have any use of the property.

The applicant was before the Board at the July 1, 2020 meeting to discuss a possible amendment which would enable them to add an addition to the existing dwelling without requiring review and approval from the Board of Appeals. The applicant’s preference was for a text amendment which would allow their property to retain the VC-I Zoning.

Based upon discussion with the Board and then with the Town Attorney, a text amendment to Section 413 of the Freeport Zoning Ordinance is proposed. The proposal includes adding existing single family dwellings (existing as of the date of adoption) to be considered permitted uses.

It is important to keep in mind that any recommendation that the Planning Board makes to the Town Council for a Zoning Ordinance amendment must be found to be in harmony with the Freeport Comprehensive Plan. The Vision of the 2011 Freeport Comprehensive Plan is attached. The link to the entire Comprehensive Plan is here <https://www.freeportmaine.com/planning/pages/comprehensive-plan>

Process: The Board had a discussion on the item at the July 1, 2020 Planning Board meeting. A public hearing was scheduled and advertised for the August 5, 2020 meeting, however that meeting was postponed due to a power outage. A public hearing is scheduled for this meeting. Notice was circulated to abutters and as required per the Planning Board's notification policy. Legal ads ran in the Times Record on 8/21/20 and 8/24/20.

Proposed Motion: Be it ordered that the Freeport Planning Board recommend that the Freeport Town Council adopt proposed amendments to Section 413 of the Freeport Zoning Ordinance to allow existing (as of date of adoption) single family dwellings in the Village Commercial I (VC-I) District to be a permitted use in that the Board finds that the proposal is consistent with the 2011 Town of Freeport Comprehensive Plan in that _____

2011 Freeport Comprehensive Plan

The Vision

The Vision outlines the direction that the town wants to move in. While many ideas are included in this Plan they are not specific recommendations and, by no means should those ideas be considered the only way to achieve the Vision. In determining if an idea or proposal is consistent with the Plan, it is the Vision that should be kept in mind.

It is very likely that a new idea or situation will come up that is not consistent with the Vision of this Plan. If the idea is found to be a good one, then the Plan should be amended. This Vision is not static, but instead it is fluid and should be updated to meet changing needs and circumstances. It is also the document that the Planning Board uses as a guide to their decision making.

It is rarely the path of least resistance that creates a desirable change, but instead it is the difficult decisions and compromises that make a community a great place. The results of the Community Attitude Survey indicated that the Town's residents strongly identify with Freeport's "small town feel". Intelligent growth and development can benefit Freeport if they are managed in a manner consistent with this "small town" feel. This vision should be preserved, but not to the exclusion of all development.

The Vision for the future is:

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

- allowing a variety of neighborhoods and housing types, at a variety of prices,
- protecting natural and historic resources,
- ensuring that workers in Freeport can afford to live in Freeport,
- maintaining large tracts of undeveloped fields and forests, and providing opportunities to enjoy these places,
- having a recognizable transition from built-up village areas to rural areas,
- preserving and enhancing waterfront resources,
- encouraging the expansion of the creative arts,
- replicating the traditional pattern of New England village neighborhoods, and traditional architectural designs while also allowing new development patterns and contemporary design
- maintaining and improving the walk ability and bike ability of the town's neighborhoods so as to encourage community health and safety

That Freeport would be responsible stewards of the environment by:

- providing incentive to develop land in ways that don't harm the environment
- ensuring an adequate supply of potable drinking water
- protecting environmentally sensitive areas
- continuing to improve air and water quality

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

- providing a diversity of commercial enterprises that provides a wide variety of jobs consistent with the community's character
- 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
- providing flexible regulations that allow creative site and building designs so as to minimize negative environmental impacts, improve traffic circulation and traffic safety, and reduce our dependence on non-renewable energy resources
- protecting and expanding local food production, both on land and in the sea

That Freeport's energy needs would be met by:

- reducing energy consumption through efficient land use and building use, efficient building design, non-car transportation opportunities, and clean waste management
- increasing the use of renewable energy resources
- organizing energy conservation including all residents

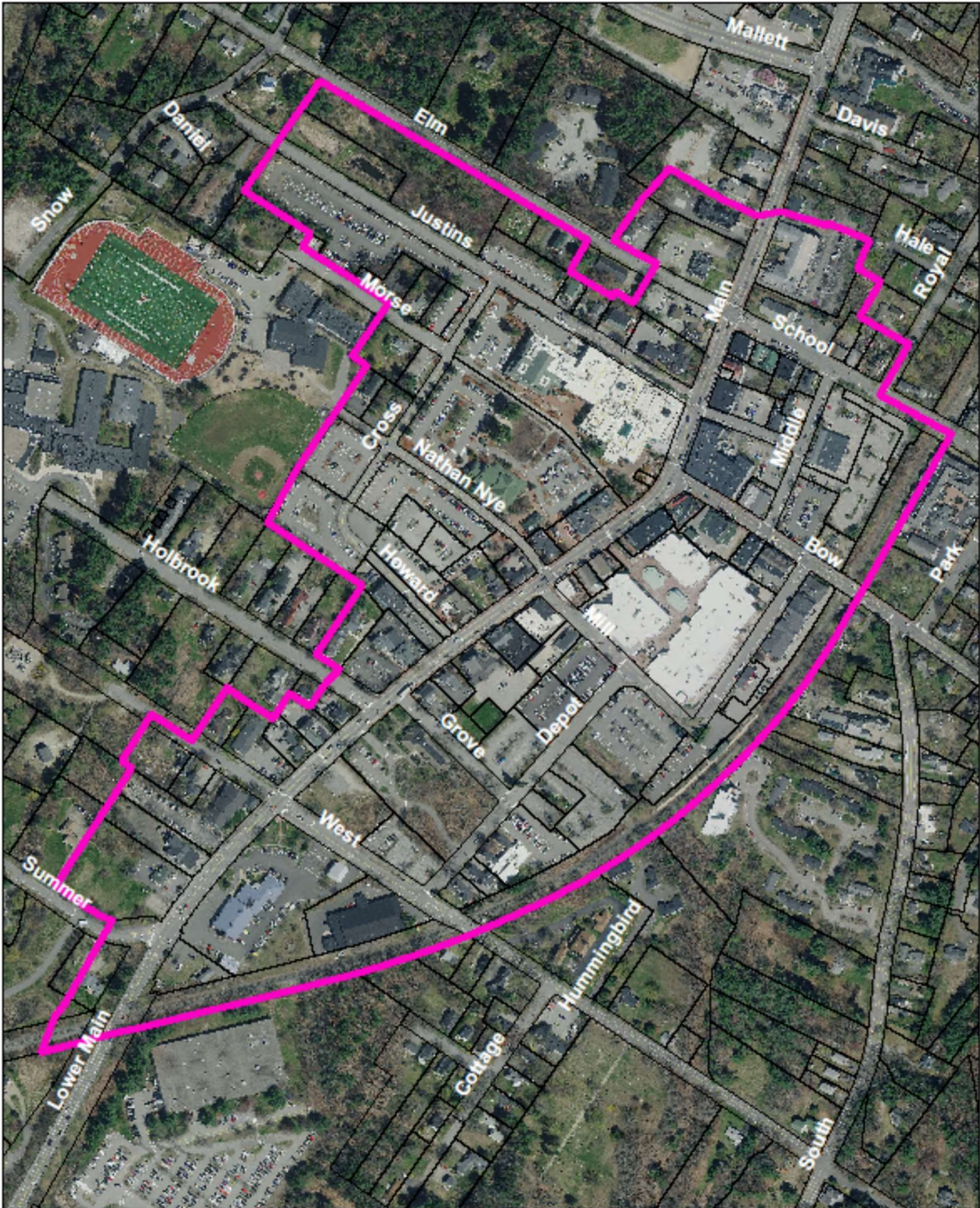
That Freeport's transportation needs would be met by:

- maintaining the existing system of roads, expanding only when necessary
- promoting a variety of alternatives to the automobile, including walking, biking, rail, buses and trains
- improving the flow of traffic both vehicular and pedestrian in the village to reduce congestion

That Freeport's tax base would best accommodate growth by:

- using infrastructure and services to plan for growth, rather than simply to react to growth pressures. Infrastructure means roads, water and sewer lines, power lines, etc. Services means schools, libraries, firehouses, and other public investments

Village Commercial I (VC-I)
Boundaries noted with the pink outline



Note: Proposed new text is underlined, proposed text to be omitted is struck through

PROPOSED AMENDMENTS TOWN OF FREEPORT ZONING ORDINANCE

Section 413. Village Commercial “VC-I”

A. Purpose:

It is the intent of this District to concentrate commercial activity within the Village Center:

B. Permitted Use

1. Single Family Dwelling (existing as of INSERT DATE OF ADOPTION)

~~CB.~~ Permitted Uses subject to site review regardless of size:

~~1.2.~~ Retail Trade

~~2.3.~~ Commercial Recreation, Indoor

~~3.4.~~ Business and Professional Offices

~~4.5.~~ Arts Center – Indoor and/or Outdoor with or without permanent structures ~~5~~

~~6.~~ Municipal Facility

~~6.7.~~ Private Assembly

~~7.8.~~ Public Assembly - Indoor-~~8~~

~~9.~~ Public Utilities

~~9.10.~~ Public or Private School-~~1~~

~~0.11.~~ Commercial School

~~1.12.~~ Outdoor Recreation School

~~1.2.13.~~ Religious Institution

~~1.3.14.~~ Peddler on Private Property subject to the requirements of Section 526 ~~1~~

~~4.15.~~ One or two dwelling units on other than the first floor

~~1.6.5.~~ Multiple Family Dwelling

~~1.6.17.~~ Restaurant

~~1.7.18.~~ Restaurant - Carry-Out

~~1.8.19.~~ Visitors’ Center

~~1.9.20.~~ Manufacturing accessory to or associated with a retail trade located in this District

~~2.0.21.~~ Bed and Breakfast Inn

~~2.1.22.~~ Day Care Center Facilities

~~2.2.23.~~ Convenience Store

~~2.3.24.~~ Parking lots to serve A & B buildings, as defined in the Freeport Design Review Ordinance in the VC-II District, which meet the requirements of Section 413.D.2.

~~2.4.25.~~ Personal Services

~~2.5.26.~~ Parking Structure subject to the standards of Sec. 413.D.7 below ~~2~~

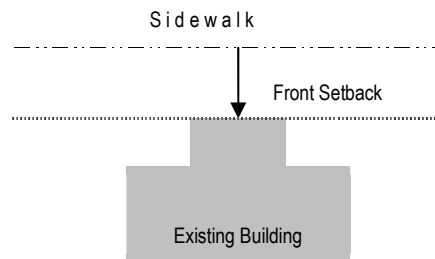
~~6.27.~~ Inn – not over 25 rooms and shall be at least two stories high

- 2728. Parking area for open space *{Amended, Effective 12/02/14}*
- 2829. Artisan Food and Beverage *{Effective 12/17/14}*
- 2930. Community Centers and Services *{Amended, Effective 12/18/18}*

ED. Space Standards:

- 1. Minimum lot size: 8,000 s.f.
- 2. Minimum road frontage: None
- 3. Maximum building height: 35 feet
- 4. Minimum setback/front:
 - a. Where a sidewalk exists:
 - i. New Structures
 - 10 feet from the property line if roof pitches toward the sidewalk;
 - 5 feet from the property line if roof pitches away from the sidewalk;
 - ii. Additions to existing structures: the distance between the closest point of the existing building and the edge of the sidewalk closest to the building. In no instance shall the addition encroach into the public right-of-way;

Example:



- b. Where no sidewalk exists: 15 feet from property line;
- c. Landscaping or other amenities such as planters, benches or expanded sidewalk shall be required within the front setback.
- 5. Minimum setback side and rear: None if masonry construction is used and roof does not pitch in that direction. Five (5) feet if masonry construction is used and roof pitches in that direction. Fifteen (15) feet for non-masonry construction or walls with points of ingress or egress in them.
- 6. Minimum land area per dwelling unit: 2,000 s.f.
- 7. Maximum impervious surface to lot area ratio: 90%

DE. Other Standards: *{Amended, Effective 12/18/18}*

1. Parking in the VC-I District is further subject to the provisions of Section 514 as applicable of this Ordinance.
2. A Buffer Zone as required by Article V, Section 506 shall be at least 20 feet in depth, and shall be required whenever new construction or renovation requiring a building permit is applied for. Where existing structures are within the 20-foot area, no further encroachment shall be permitted.
3. Peddler trucks are prohibited.
4. Parking structures shall meet the following design standards:
 - a. Active uses such as retail, display windows, or other Permitted Uses shall be incorporated into a parking structure. At least 50% of the total pedestrian-level frontage facing streets or other pedestrian areas shall incorporate retail, display windows, or other Permitted Uses. For the purposes of this section, pedestrian areas shall mean existing or proposed sidewalks, walkways, or plazas. The required frontage incorporating retail, display windows or other Permitted Uses may be included in another structure that is physically separate from the parking structure provided that such other structure is separated by no more than 10 feet from the parking structure. If the space between such separate structures abuts a public street, other pedestrian area or parking lot, such space shall be integrated into the building design as a sidewalk or it shall be concealed from view from such street, pedestrian area or parking lot in a manner consistent with this Ordinance. Neither vehicular access to parking structures nor the parking portion of the structure shall be permitted on the street level of Main and Bow Streets. Upper levels of parking structures on these streets shall be designed to be compatible with the street level structure.
 - b. The retail, display windows or other Permitted Uses meeting the 50% frontage requirement described above may be allocated across different elevations of the structure in any manner, provided that the result of such allocations in conjunction with other adjacent uses is not to cause any street upon which the parking structure has frontage to be significantly lacking in pedestrian destinations with the result that the street is inconsistent with the character of the District.
 - c. The parking space dimension and aisle width of Section 514 of this Ordinance may be reduced to maximize the efficiency of the parking structure provided the safety of the structure is not reduced.
 - d. Parking structures may exceed the maximum impervious surface to lot area requirement; provided the required pervious land area is met on another property in the VC-1, VC-2, or VC-4 Districts provided a permanent agreement is documented publicly in a format approved by the Town Attorney.
 - e. At least 75% of the street level of the parking structure that does not include retail, display windows or other Permitted Uses shall be screened with landscaping, art work, plants that grow on vines, or other material that

softens the appearance of the parking structure. The 75% does not include entrances and exits or commercial uses. Street trees shall be provided at 1 tree for every 30' feet of parking garage clearly visible from a public street or a parking lot. If the Project Review Board determines that street trees are not appropriate in the sidewalk along the parking structure, the standard may be met at another location in the VC-1 District or at the village gateways at exit 20 and/or 21 provided a permanent agreement is documented publicly in a format approved by the Town Attorney.

- f. The façade of the parking structure along the street or sides of the structure that are clearly visible from a road, other pedestrian area or parking lot shall consist of materials found on nearby buildings such as brick, stone, or wood-like material; or shall have a functional use such as a climbing wall.
- g. The façade of the structure along sides other than those described in paragraph f. above shall be treated to soften the stark appearance of concrete, for example red sand mixed with the concrete provides a brick-like color and texture to the minimally visible walls.
- h. On the side of the structure facing the street or sides of the structure that are clearly visible from a road, other pedestrian area or parking lot, the façade shall have vertical elements that cover support columns and shall be done in such a way to mimic window openings similar to nearby buildings, while providing proper ventilation, such as grill work, window boxes or other types of adornment that soften the look of the structure. The sides of the structure along other buildings shall maximize the openings between floors to improve ventilation.
- i. Pedestrian access is required on all sides of a parking structure that run along a public street, sidewalk, other pedestrian area or parking lot and shall be clearly marked.
- j. At no point shall a parking structure exceed 40 feet in height.
- k. A plan for providing security to parking structures is required. This plan shall include provisions for interior lighting and provisions for protecting the public such as but not limited to: surveillance cameras, regular patrol, etc.
- l. The Project Review Board may allow minor reductions to any of the standards listed above if strict compliance with the standard would result in the need for a mechanically ventilated parking structure. The Board may only allow a reduction up to the point where the standards of an open parking structure are in accordance with the current building code being enforced by the Town of Freeport. *{Amended, Effective 10/03/17}*

ITEM III: Zoning Ordinance and Map Amendment – Desert of Maine Overlay District

The applicant is proposing a new section of the Town of Freeport Zoning Ordinance and associated map amendment, to create a new Desert of Maine Overlay District at their property at 95 Desert Road (Tax Assessor Map 22, Lot 8). Amendments to Section 104 (Definitions) are also proposed. *Applicants: Desert of Maine Campground, Inc. and Heestand Family Holding, LLC; James Katsiaficas, Perkins Thompson, representative.*

Background: The applicant was before the Board at the August 19, 2020 Planning Board meeting to discuss the application. Based upon initial feedback from staff and at the Board meeting, the proposed language has been updated. An updated copy of the proposal has been included in the Board packets. The proposed boundaries of the new district remain unchanged from what was proposed at the last meeting.

ITEM IV: Zoning Ordinance Amendment – Village Commercial I (VC-I) - Setbacks

The applicant is proposing an amendment to Section 413 Village Commercial I (VC-I) of the Town of Freeport Zoning Ordinance. The change would change the word “masonry” to “non-combustible” with regards to measuring side and rear setbacks (Section 413.C.5). *Applicant: Jim Cram, Freeport Historical Society, 45 Main Street (Tax Assessor Map 11, Lots 26, 26A & 29).*

Background: This is a new application to the Planning Board for a text amendment to amendment to Section 413 Village Commercial I (VC-I) of the Town of Freeport Zoning Ordinance. The change would change the word “masonry” to “non-combustible” with regards to measuring side and rear setbacks (Section 413.C.5).

From a review of the municipal record and old Zoning Ordinances, in 1982, the side and rear setback requirement in the Village Commercial District read as follows: “None, if fire rated per Building Code; 15 feet if not rated”

Sometime between 1982-1984, the standard was amended to read as it is today: “4. “Minimum setback side and rear: None, if masonry construction is used and roof does not pitch in that direction. Five (5) feet if masonry construction is used and roof pitches in that direction. Fifteen (15) feet for non-masonry construction or wall of ingress or egress in them.” In the public record from when the change went before the Planning Board and Council, there was no discussion as to why the change was made.

For reference, the current Maine Uniform Building and Energy Code has the following definitions:

“ **MASONRY.** A built-up construction or combination of building units or materials of clay, shale, concrete, glass, gypsum, stone or other *approved* units bonded together with or without *mortar* or grout or other accepted methods of joining.”

Noncombustible construction: The construction type of the building or structure as classified by the Building Code.

NONCOMBUSTIBLE MATERIAL. A material that, under the conditions anticipated, will not ignite or burn when subjected to fire or heat. Materials that pass ASTM E 136 are considered noncombustible materials.”