

August 26, 2020

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

Re: Updated Proposed Desert of Maine Overlay District, 95 Desert Road, Tax Map 22, Lot 8

Dear Caroline:

Enclosed please find an updated draft of the proposed Desert of Maine Overlay District (“DMOD”) ahead of the September 2, 2020 Planning Board workshop. As described in further detail below, this draft addresses concerns raised by the Planning Board and members of the public during the August 19th workshop.

Principal and Accessory Uses.

At the August workshop a concern was raised that too many new permitted uses were listed in the DMOD. The current draft has scaled back the new permitted uses to two: Tourist Destination and Art Center-Indoor. The other uses initially contemplated as permitted uses, including food trucks; local retail trade; art gallery/museum; village café; and outdoor recreation, all would be accessory uses to the permitted uses.

An “accessory use” under Freeport’s Zoning Ordinance (the “Ordinance”) is defined as “a use or structure customarily incidental and subordinate to the principal use or structure located on the same lot.” We are confident that the accessory uses we have specifically described in the DMOD would be subordinate to one of the three principal uses contemplated.

Any use of a food truck on the property would be subject to Section 526A of the Ordinance. The Ordinance has a number of restrictions regarding food trucks when used as an accessory use, including that only one food truck is allowed at any given time (except that up to three are allowed up to three times in any calendar year). Food trucks also are not allowed to have any generators or use any amplified music.

Additionally, we have amended the definition of Campgrounds (an already permitted use in the RR 1 District) to clarify that any permanent structures on a campground cannot be constructed in such a way that they would be considered dwelling units under the Ordinance.

Each of the two permitted uses in the DMOD will require site plan review.

Space and Bulk Standards.

While the underlying space and bulk standards for the RR 1 District would apply to a zoning overlay district, we have added language to make it explicitly clear such standards would apply.

We have proposed one change to the space and bulk standard from the RR 1 District in the DMOD. In an effort to address the concern that some Board members had regarding future use and owners of the property, we propose adding a minimum lot size requirement of ten (10) acres for any tourist destination, art center-indoor, or campground use. We believe increasing the minimum lot size from 2.5 acres to 10 will limit the ability of any future owners to subdivide and create more intensive commercial use on the property, while still allowing our current uses to be compliant. All other standards in the RR 1 District remain the same.

Buffering.

Our goal is for the DMOD to be respectful of the RR 1 District with the least potential for adverse impact on abutters. Therefore, we are proposing a requirement of a fifty (50) foot buffer boundary. This buffer boundary would be kept in its natural state. The buffer would not be required for any curb cuts, trails or roadways existing as of the time of the amendment or for any anticipated overflow parking lots. The goal of the overflow parking lot is to avoid any adverse effects, such as parking along Desert Road, and the overflow parking lot would be appropriately screened from view.

Parking.

As discussed briefly above, we are still in the planning phases of our parking layout and needs; however, we have provided specific parking standards in the DMOD.

- Shared parking of 50% of the sum of the requirement for individual uses. We believe 50% is appropriate as it is anticipated that the Tourist Destination and Art Center-Indoor will have little, if any, overlap in operating hours.
- The Art Center-Indoor use shall employ the same standard as Public Assembly-Indoor in calculating its parking requirement. Public Assembly-Indoor requires 1 parking space for each 3 seats or for each 100 square feet or major fraction thereof of assemblage space if no fixed seats.
- The Tourist Destination shall be required to have 22 parking spaces if not utilizing shared parking.

Other Standards.

Any uses in the DMOD will also need to meet the noise (Section 515) and lighting (Section 521.A) standards in the Ordinance.

The noise ordinance specifically applicable to the RR-1 zone is an average of 55 dBA during the daytime hours (6:00 a.m. to 8:00 p.m.) and 45 dBA during nighttime hours. These are the lowest (most restrictive) dBA levels found in the Ordinance.

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Not Illegal Spot Zoning and the Comprehensive Plan.

In our memo to the Planning Board ahead of the August workshop, we explained how the DMOD is consistent and in basic harmony with the Comprehensive Plan's direction and vision. We also explained that creating an overlay zone for this property would not constitute illegal "spot zoning," since spot zoning is not illegal unless it is not consistent with the Comprehensive Plan.

Members of the Planning Board requested additional information regarding what constitutes illegal spot zoning in Maine. The Law Court has held that in order for an ordinance to constitute illegal spot zoning it "(1) must pertain to a single parcel or a limited area-ordinarily for the benefit of a particular property owner or specially interested party-and (2) must be inconsistent with the city's comprehensive plan..." (emphasis added). *City of Old Town v. Dimoulas*, 2002 ME 133, ¶ 20, 803 A.2d 1018 (quoting *Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n*, 402 A.2d 36, 39-40 (D.C. 1979)).

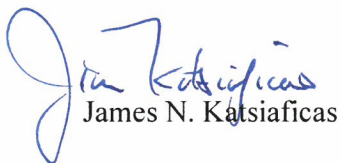
Although the DMOD pertains to a particular property, since the DMOD also is consistent with Freeport's Comprehensive Plan, it is not illegal spot zoning.

Conclusion.

By updating the proposed Desert of Maine Overlay District as described above we believe we have achieved a district that allows the use of the property for performing arts, a high-end campground, and the Desert of Maine tourist destination. It does so while making those uses available only in a limited area and respecting the intent of the RR 1 District and respecting the neighbors' rights to enjoy their properties.

We look forward to presenting this updated draft of the DMOD to the Planning Board.

Sincerely,


James N. Katsiaficas

Enclosures

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