

**MINUTES**  
**FREEPORT PROJECT REVIEW BOARD**  
**FREEPORT TOWN HALL COUNCIL CHAMBERS**  
**WEDNESDAY, SEPTEMBER 21, 2022**  
**6:00 PM**

**Attending:** Guy Blanchard, Chair, Linda Berger, Jason Donahue, James Monteleone, Ford Reiche, Tod Yankee and Caroline Pelletier, Town Planner

**On Zoom:** Lynn Hamlen

After a Site Walk of the proposed Freeport Village Apartments Multiple-family project at 22 Main Street, Chair Blanchard called the meeting to order at 6:07 p.m. Since this is a hybrid meeting, he mentioned that the motions will need to be read in full.

**ITEM I: Information Exchange**

1) Update on Staff Approvals

Ms. Pelletier advised that the Staff Approvals were in the Board's digital packets. She had a Staff Approval for some signage at Good Fire that was before the Board maybe a year ago. They have been under construction in the former Conundrum/Old World Gourmet building on Route One South. They will be adding halide lit signs on the building. The second Staff Approval was at the Car Wash on U.S. Route One South that was also before the Board in the last couple of years. They made some drainage changes but no substantial changes to the site. The third Staff Approval was for sign face replacement for Irving on Mallet Drive. They changed the Circle K logo.

2) Update on topics reviewed by the Planning Board

Ms. Pelletier noted that they continue to review the uses of cannabis manufacturing and processing and cannabis cultivation. They have not yet finished up the Site Plan changes that was sent to the Town Attorney. There was a bit of a delay there. They have been doing some Zoning Ordinance clean-up regarding language to non-conforming structures. They will be having a special meeting to deal with non-conforming lots this week. They recently made recommendations to change the parking requirements. That went to the Council last night for a public hearing. The parking requirements for multi-family housing in the VC-I was reduced. It is not reflected in any of the applications before the Board. Figuring out final parking is usually a condition of approval as it would be with anything else we do in the village but the applicants would have the ability to meet parking either through shared parking or they could meet it through restricted parking that says parking for so and so only. As with the current parking requirements to encourage the use of shared parking, having it open for anyone to use. If you do shared, you have a lower requirement than if you do non-shared.

3) Update on the Downtown Vision Task Force Implementation Group

Ms. Berger was the only Board member that attended the meeting and recalled that the Group has been narrowing down the list to bring to Council. Ms. Pelletier added that some things are already happening such as looking for downtown housing, looking to change the parking, and adding new events to the downtown. There will be a presentation to the Council on October 11 like an Open House Workshop to get an update for the community to hear the priorities coming out of the Vision Implementation Group. Last night the Council had a workshop on housing. There has been a lot of interest in Freeport on housing diversity and affordable housing specifically. It was geared to hear from different groups and organizations in what people are thinking and what they think we need. They are all public workshops and anyone is welcome to attend. They will be posted on the Council website as they are scheduled.

**ITEM II: Review of the minutes from the August 17, 2022 Project Review Board meeting.**

Ms. Berger advised that she was not at the meeting but listened on YouTube after the fact. She will not be voting on it.

**MOVED AND SECONDED:** To approve the Minutes as read and written. (Yankee & Donahue). **ROLL CALL VOTE:** (5 Yes) (2 Abstentions-Berger & Reiche) (0 No)

**ITEM III: Continued Reviews****Freeport Station Apartments – Multiple-Family Dwelling**

The applicant is seeking final approval for an 18,600 sf (footprint) three-story building, with 67 dwelling units on a parcel of land currently used as a parking lot and located at the corner of Mill Street and Depot Street. Vehicular access to the site will be from an existing access way off of Depot Street. Design Review, Site Plan Review and Subdivision Review are required. Zoning District: Village Commercial I (VC-I), Design Review District One – Class C & Color Overlay District. Tax Assessor Map 11, Lots 127 & 128 (0 Depot Street & 8 Mill Street). 10 Depot Street, LLC, applicant; L.L. Bean, owner; Daniel Diffin, PE, Sevee and Maher Engineers, representative.

Ms. Pelletier advised that the Board has an updated recording plan for the Freeport Station Apartments and as with recording plans, there are always some notes that have to be addressed at the last minute when they have to put some conditions or some minor clean-up. They updated the map and lot. They added two corner property pins to be set and added a note regarding the access. Otherwise, there was no change to the layout and the site was just minor clean-up. The Board received a letter of public comment from a resident of West Street who is providing written comment from Freeport Village Apartments.

Ms. Pelletier reviewed where we are at as a community. There was a lot of topics and a lot of discussion at the last meeting and a lot to do with housing. In the purview before the Board, you have a very specific charge to review applicants under the ordinances we have in place. You need to review them under the current ordinances, the permitted use and the space and bulk standards in there. In this case, these would also trigger the Design Review Ordinance and the Subdivision Ordinance. She thinks it is great to hear the revision to the Vision because the community has been so vested in that public process. There is definitely some overlap with some of our standards in some of the things we identified as part of the Vision. We want to retain our charming New England character and we want to retain housing. Some of the things shown in the Vision that we can't do is approve a six-story building. It is important that we focus on the ordinances that we have in place today. We also heard a lot about affordable housing at the last meeting. Affordable housing is great if the developer wants to do it. We currently do not have an ordinance that requires a developer to provide any number of affordable housing units and it is not something you can consider as a factor. As we change, there have been a lot of ideas of what people want to see on some of these lots. Again, the Board has to work with the Ordinance and the permitted uses that are allowed that any property owner has a right to apply for what is allowed under Zoning.

Mr. Monteleone asked if Ms. Pelletier suspected that a proposed ordinance relating to affordable housing issues or long-term Vision issues could be before the Town Council in the next six months. She did not know but added that we are heading into Elections and there is usually a bit of lull. There will continue to be talk about housing and affordable housing and what it means to Freeport and what kind of standards we want. She could not predict whether there will be an ordinance in front of the Council in six months. She knows there is a lot of desire to do that and also a desire to clean up our Design Review Ordinance. We are trying to do the best that we can but it is hard to keep up. Ms. Berger noted there is a request to the Council to create a specific committee to work on the ordinances to try to get things done in a more timely and much faster time frame but it hasn't been done yet. There is no committee and no set timeline. She understands that when we get an application, it has to be applied to the existing ordinances that are there at the time of the application so she believes she heard on a site walk that if there is a change in the parking requirements last night, an existing application could change. We could ask them or they could require the change to that ordinance before they get their actual final approval. Ms. Pelletier explained that parking is fluid and it changes all the time depending on tenants, the build out. We recalculate it once they are approved so they would meet whatever standards are in place when they go to build it.

Ms. Pelletier mentioned that the Freeport Station Apartments have been before the Board for a concept and at the last meeting, you reviewed the preliminary plan and had a public hearing. This project requires Site Plan Review, Subdivision Review and Design Review, all of which you conduct at the same time. They had already submitted capacity letters. Their lighting plan has been tweaked a bit. They changed fixtures in order to comply with the

Ordinance requirements. Access and circulation remain unchanged. They don't have a road but they have access over an abutting property so they are trying to finalize an agreement on that. Going back in deed research, there were some rights that they didn't meet today's clearly built standards so that is something that is pending and it is noted on the plan as a condition of approval. They can't do any site work until we get the final legal document and reviewed by the Town Attorney. They are going to have 24 parking spaces on site. If they need to get parking off site, they can do that through the shared parking pool. Again, it will be calculated at the requirement at that point in time. There has not been any change to stormwater management. They are making minor tweaks to the building which she will let the applicant address. Really, there is nothing outstanding from a Staff perspective with this project.

Ms. Berger noticed that on C-102.A she noticed it says condominium units and she knows in the document it says rental. She thinks it still needs another change to it. Ms. Pelletier advised that if the Board wants to take action, they could take action with a note that that get cleaned up and the Board could sign the plans at the next meeting.

David Latulippe pointed out that he is sorry for that typo. They have no desire to do condos so it will be easy to clean it up. He mentioned that the Board gave them three or four things to work on at the last meeting. They all felt that the three entrances they added on the side of Depot Street were private entrances so they added in some railings and he likes how they followed up more like the Bartol Library where the granite comes down and flares. It has a nice feel to it. They added

A couple of layers of brick above the first floor to break that up and give that a nicer feel. On the retaining wall, it is more of a residential flat rock that they have used in other projects and he feels it will look really good. They have gone through the extensive Staff Review and they meet all the criteria. He offered to answer questions.

Mr. Reiche noted that he knows there are not enough parking spaces on site and there was a parking change made last night in the Ordinance. Ms. Pelletier explained that there was a change made last night. There is a standard if you want to use shared parking so if they want to have all of their parking on site and off site not signed for their specific use only, they would have to provide .75 parking space per unit. If they want to say for Freeport Station Apartments only, the parking would be calculated at one. If they want to meet some on site and have it be restricted, we would calculate a combination of the shared and non-shared to figure out what the requirement is going to be. The highest they would need there for one per unit would be 67 spaces. Mr. Latulippe advised that L.L. Bean has extra parking throughout Freeport so the developer will enter into an agreement with L.L. Bean or the parking garage. The developer wants to make sure there is plenty of parking for the tenants. Ms. Pelletier pointed out that the developer will have to show that they meet the parking before they get their permits. They also have the option to buy a parking lot. Whoever has the extra spaces has to sign an agreement with the Town and put the spaces in the leased parking pool and would have to go through the leased parking system like everybody else so we can make sure the parking requirement is met.

Mr. Donahue asked about the brick that will be used. Mr. Latulippe advised that it is a standard traditional Morin brick that you would see in Maine. They are planning on sourcing it locally. Mr. Donahue mentioned that the street trees are not shown on the landscape plan. Ms. Pelletier advised that they do show some improvements in the public right-of-way. Anything shown in the public right-of-way is beyond the purview of the Project Review Board and would require review and approval from the Town Council. Mr. Latulippe added that it is the desire of the applicant to do street scaping and the trees there are in pretty rough shape and need to be replaced. They will work with the local arborist to make sure they are not invasive and will do well in Freeport. Mr. Latulippe explained that they are aware that they need permission from the Town Council to plant a tree on Town property and it is their desire to do that. Ms. Pelletier added that right now we do not have a requirement for street trees. She is not concerned if the Board wants to share their thoughts on street trees but we typically do not send something and say, we want this. Mr. Latulippe assured the Board that they would make the request. It is a beautiful building and it needs trees.

Ms. Hamlen complimented the design people for responding to our comments at the last meeting. The jut outs and stairways break it up nicely and makes it look less like one long building. She feels it is nicely done.

There were no public comments provided.

**Design Review Ordinance: Chapter 22 Section VII.C.**

1. **Scale of the Building.** The scale of a building depends on its overall size, the mass of it in relationship to the open space around it, and the sizes of its doors, windows, porches and balconies. The scale gives a building "presence"; that is, it makes it seem big or small, awkward or graceful, overpowering or unimportant. The scale of a building should be visually compatible with its site and with its neighborhood.

*The applicant is proposing a three-story building that complies with the space and bulk requirements of the underlying zoning district. The structure incorporates design features such as bays, entrances, trim and variations in the façade setback to help minimize the scale of the structure. Based upon this information, the Board finds that this standard has been met.*

2. **Height.** A sudden dramatic change in building height can have a jarring effect on the streetscape, i.e., the way the whole street looks. A tall building can shade its neighbors and/or the street. The height or buildings should be visually compatible with the heights of the buildings in the neighborhood.

*The height of the building complies with the space and bulk requirements of the underlying zoning district. The new building will be below 35 feet in height and will be lower in height than some abutting properties. Based upon this information, the Board finds that this standard has been met.*

3. **Proportion of Building's Front Facade.** The "first impression" a building gives is that of its front facade, the side of the building, which faces the most frequently used public way. The relationship of the width to the height of the front facade should be visually compatible with that of its neighbors.

*The applicant is proposing a three-story building that has frontage on two streets. The design incorporates features such as bays, entrances, trim in variations in the façade setback to help minimize the scale of the structure. Based upon this information, the Board finds that this standard has been met.*

4. **Rhythm of Solids to Voids in Front Facades.** When you look at any facade of a building, you see openings such as doors or windows (voids) in the wall surface (solid). Usually the voids appear as dark areas, almost holes, in the solid and they are quite noticeable, setting up a pattern or rhythm. The pattern of solids and voids in the front facade of a new or altered building should be visually compatible with that of its neighbors.

*The rhythm of solids to voids in the front facades had been designed to incorporate the patterns seen on nearby Class A and B structures. Based upon this information, the Board finds that this standard has been met.*

5. **Proportions of Opening within the Facility.** Windows and doors come in a variety of shapes and sizes; even rectangular window and door openings can appear quite different depending on their dimensions. The relationship of the height of windows and doors to their width should be visually compatible with the architectural style of the building and with that of its neighbors.

*All windows and doors will be rectangular in shape and have been designed to be an appropriate scale based upon the size and use of the building. Most windows will be standard shape and style; however the design does incorporate some bay windows. Based upon this information, the Board finds that this standard has been met.*

6. **Roof Shapes.** A roof can have a dramatic impact on the appearance of a building. The shape and proportion of the roof should be visually compatible with the architectural style of the building and with those of

neighboring buildings.

*The overall roof of the building will be flat, as seen on other structures in the Village. Based upon this information, the Board finds that this standard has been met.*

7. **Relationship of Facade Materials.** The facades of a building are what give it character, and the character varies depending on the materials of which the facades are made and their texture. In Freeport, many different materials are used on facades - clapboards, shingles, patterned shingles, brick - depending on the architectural style of the building. The facades of a building, particularly the front facade, should be visually compatible with those of other buildings around it.

*Railings were added to the entrances along Depot Street in addition to a flare being added to the proposed steps. Proposed entrance, trim and brick above first floor windows and the entrance retaining wall have all been updated. The building will be sided in clapboard style Hardie Boards and brick, PVC windows, pvc and aluminum framed doors, and window mullions between the glass. The color of the main portion of the building will be Monterey Taupe; this is a factory applied finish applied to the Hardie Board siding. Since it is not from a historic color palette, approval for the use of the color by the Board is required. The smaller roof canopies over the entrances will not be flat and will have architectural asphalt shingles. Based upon this information, the Board finds that this standard has been met.*

8. **Rhythm of Spaces to Building on Streets.** The building itself is not the only thing you see when you look at it; you are also aware of the space where the building is not, i.e., the open space which is around the building. Looking along a street, the buildings and open spaces set up a rhythm. The rhythm of spaces to buildings should be considered when determining visual compatibility, whether it is between buildings or between buildings and the street (setback).

*The site has been designed to comply with the space and bulk standards of the Freeport Zoning Ordinance and is similar in layout to other nearby commercial properties. Based upon this information, the Board finds that this standard has been met.*

9. **Site Features.** The size, placement and materials of walks, walls, fences, signs, driveways and parking areas may have a visual impact on a building. These features should be visually compatible with the building and neighboring buildings.

*The site has been designed to comply with the space and bulk standards of the Freeport Zoning Ordinance and is similar in layout to other nearby commercial properties. Landscaping has been incorporated into the setbacks and parking is located in the rear. Based upon this information, the Board finds that this standard has been met.*

10. In addition to the requirements of the Freeport Sign Ordinance, **signs** in the Freeport Design Review District shall be reviewed for the following: materials, illumination, colors, lettering style, location on site or building, size and scale. Minor changes that do not alter the dimensions or lettering style of an existing sign need not be reviewed, i.e. personal name changes for professional offices, or changes in hours of operation. See Special Publication: "Sign Application Requirements".

*A sign will be added over each of the two main entrances. The sign will be about 1'x17' and will consist of dimensional letters. 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 Design Review Ordinance.

**Findings of Fact:** Section 602.F.1 of the Town of Freeport Zoning Ordinance

- a. **Preservation of Landscape:** The landscape shall be developed in such a manner as to be in keeping with the character of the surrounding neighborhoods and in accordance with good development practice by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. If a site includes a ridge or ridges above the surrounding areas and provides scenic vistas for surrounding areas, special attempts shall be made to preserve the natural environment of the skyline of the ridge. Existing vegetation and buffering landscaping are potential methods of preserving the scenic vista.

*The applicant is seeking final approval for an 18,600 sf (footprint) three-story building with 67 dwelling units on a parcel of land currently used as a parking lot and located at the corner of Mill Street and Depot Street. There is limited vegetation existing on the site. The site design complies with the space and bulk requirements for the Village Commercial I Zoning District. New landscaping is proposed. The building has been designed to comply with the standards of the Freeport Design Review District. Based upon this information, the Board finds that this standard has been met.*

- b. **Relation of Proposed Buildings to the Environment:** The design and layout of the buildings and/or other development areas shall encourage safety, including fire protection. Proposed structures shall be related harmoniously to the terrain and to existing buildings and land uses in the vicinity which have a visual relationship to the proposed buildings. Visual compatibility, not uniformity with the surrounding area, shall be emphasized. Special attention shall be paid to the scale (mass), height and bulk, proportions of the proposed buildings, the nature of the open spaces (setbacks, landscaping) around the buildings, the design of the buildings (including roof style, facade openings, architectural style and details), building materials and signs.

If the structure is in the Design Review District, the Project Review Board shall incorporate the findings of the standards or the Design Review Ordinance in its Site Plan Review findings.

*The applicant is seeking final approval for an 18,600 sf (footprint) three-story building with 67 dwelling units on a parcel of land currently used as a parking lot. There is limited vegetation existing on the site. The building has been designed to comply with the standards of the Freeport Design Review District while providing pedestrian and vehicular connections to the nearby streets. Based upon this information, the Board finds that this standard has been met.*

- c. **Vehicular Access:** The proposed layout of access points shall be designed so as to avoid unnecessary adverse impacts on existing vehicular and pedestrian traffic patterns. Special consideration shall be given to the location, number, and control of access points, adequacy of adjacent streets, traffic flow, sight distances, turning lanes, and existing or proposed traffic signalization and pedestrian-vehicular contacts. The entrance to the site shall meet the minimum sight distance according to MDOT standards to the greatest extent possible

*Vehicular access to the site will be off an existing access-way on Depot Street. The applicant will need to submit legal documents pertaining to rights to the accessway and maintenance of this access; this has been included as a proposed condition of approval. Due to the expected number of trips generated, this project will not require a Traffic Movement Permit from the Maine Department of Transportation. Based upon this information, the Board finds that this standard has been met.*

- d. **Parking and Circulation:** The layout and design of all means of vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall be safe and convenient and, insofar as practical, shall not detract from the proposed buildings and neighboring properties. General interior circulation, separation of pedestrian and vehicular traffic, service traffic, drive-up facilities, loading areas, and the arrangement and use of parking areas shall be considered.

*The applicant is proposing 24 on-site parking spaces with four being ADA accessible spaces. The spaces have been designed to comply with the dimensional standards of Section 514 of the Freeport Zoning Ordinance. Final determination of the parking requirement and providing documentation of required parking has been added as a proposed condition of the approval. Based upon this information, the Board finds that this standard has been met.*

- e. **Surface Water Drainage:** Adequate provisions shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, down-stream conditions, or the public storm drainage system. The increase in rate of runoff in the post development condition shall be held to a zero or less percent of the predevelopment condition unless an engineering study has been performed as described in Section 529.2 above. On-site absorption shall be utilized to minimize discharges whenever possible. All drainage calculations shall be based on a two-year, ten year and twenty-five-year storm frequency. Emphasis shall be placed on the protection of floodplains; reservation of stream corridors; establishment of drainage rights-of-way and the adequacy of the existing system; and the need for improvements, both on-site and off-site, to adequately control the rate, volume and velocity of storm drainage and the quality of the stormwater leaving the site. Maintenance responsibilities shall be reviewed to determine their adequacy.

*The project is located in an Urban Impaired Watershed. Stormwater Management and Erosion Control Plans were included in the submission. Review comments from the Town Engineer are included in a memo dated 09/14/22 and he feels the standards of the applicable ordinances have been met. No permits from the Maine Department of Environmental Protection are required. Overall, there will be a slight decrease in the amount of impervious area on the site. Based upon this information, the Board finds that this standard has been met.*

- f. **Utilities:** All utilities included in the site plan shall be reviewed as to their adequacy, safety, and impact on the property under review and surrounding properties. The site plan shall show what provisions are being proposed for water supply, wastewater, solid waste disposal and storm drainage. Whenever feasible, as determined by the Project Review Board, all electric, telephone and other utility lines shall be installed underground. Any utility installations above ground shall be located so as to have a harmonious relationship with neighboring properties and the site.

*There are public utilities in this area and the applicant does intend to connect to the utilities. Capacity to serve letters from the applicable utilities were previously included in the submission; a letter from MaineWater (dated 06/22/22) and a letter from the Freeport Sewer District (dated 07/12/2022). Per the Freeport Subdivision Ordinance, utilities serving subdivisions shall be installed underground; a note indicating such has been added to the recording plan. Based upon this information, the Board finds that this standard has been met.*

- g. **Advertising Features:** The size, location, texture and lighting of all exterior signs and outdoor advertising structures or features shall not detract from the layout of the property and the design of proposed buildings and structures and the surrounding properties, and shall not constitute hazards to vehicles and pedestrians.

*A sign will be added over each of the two main entrances. The sign will be about 1'x17' and will consist of dimensional letters. Based upon this information, the Board finds that this standard has been met.*

- h. **Special Features:** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, similar accessory areas and structures, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.

*In accordance with Town of Freeport Chapter 28: Solid Waste Disposal Ordinance, the owner will be required to contract with a private waste hauler for the disposal of solid waste. Based upon this information, the Board finds that this standard has been met. Based upon this information, the Board finds that this standard has*

*been met.*

- i. **Exterior Lighting:** All exterior lighting shall be designed to encourage energy efficiency, to ensure safe movement of people and vehicles, and to minimize adverse impact on neighboring properties and public ways. Adverse impact is to be judged in terms of hazards to people and vehicular traffic and potential damage to the value of adjacent properties. Lighting shall be arranged to minimize glare and reflection on adjacent properties and the traveling public. For all proposed lighting, the source of the light shall be shielded and the light should be directed to the ground, except in the case of ground sign lighting. In the Village Commercial 1 and 2 Districts, lighting for pedestrian walkways and adjacent public sidewalks shall also be provided.

*A photometrics plan has been included in the submission and lighting has been proposed and updated to comply with Section 521.A Exterior Lighting of the Freeport Zoning Ordinance. All lighting fixtures will be full cut-off. Based upon this information, the Board finds that this standard has been met.*

- j. **Emergency Vehicle Access:** Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures at all times.

*All public safety departments heads have reviewed the plans. The applicant did submit a plan sheet to demonstrate that fire apparatus should be able to maneuver the site. Based upon this information, the Board finds that this standard has been met.*

- k. **Landscaping:** Landscaping shall be designed and installed to define, soften, or screen the appearance of off-street parking areas from the public right(s)-of-way and abutting properties, to enhance the physical design of the building(s) and site, and to minimize the encroachment of the proposed use on neighboring land uses. Particular attention should be paid to the use of planting to break up parking areas. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. Landscaping shall be provided as part of the overall site plan design and integrated into building arrangements, topography, parking and buffering requirements. Landscaping may include trees, bushes, shrubs, ground cover, perennials, annuals, plants, grading and the use of building and paving materials in an imaginative manner.

*A landscaping plan has been included in the submission and prepared by Land Design Solutions. A variety of species have been included in the design and will help soften the appearance of the building. Based upon this information, the Board finds that this standard has been met.*

- l. **Environmental Considerations:** A site plan shall not be approved unless 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 the Marine Waterfront District;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the standards of Section 306, Land Use Standards, of the Town of Freeport Shoreland Zoning Ordinance.

*This parcel is not within the Marine Waterfront District or the Shoreland Zone. The building will be connected to public utilities. There are not areas of flood plain identified on the site. A stormwater*



*management and erosion control plan has been submitted and reviewed and approved by the Town Engineer. No known historic or archaeological resources will be negatively impacted by this project. 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 Freeport Zoning Ordinance.**

**Findings of Fact – Freeport Subdivision Ordinance:**

**11.1 Pollution**

**A. State Standard**

**Pollution.** The proposed subdivision will not result in undue water or air pollution. In making the determination, the Board shall at least consider:

1. The elevation of the land above sea level and its relation to the flood plains;
2. The nature of soils and subsoils and their ability to adequately support waste disposal;
3. The slope of the land and its effect on effluents;
4. The availability of streams for disposal of effluents; and
5. The applicable state and local health and water resources rules and regulations.

*The parcel is located within the watershed of an Urban Impaired Stream. No wetlands, streams, or vernal pools have been developed on the site. Due to the size and nature of the project, review and approval from the Maine Department of Environmental Protection (DEP) will not be required. The Town Engineer has reviewed the submission for compliance with the applicable standards of the Freeport Subdivision Ordinance and the Freeport Zoning Ordinance in regards to stormwater. His comments are included in a memo dated 09/14/22 (attached). The applicant has obtained capacity letters from MaineWater (dated 06/22/22) and a letter from the Freeport Sewer District (dated 07/12/2022). Based upon this information, the Board finds that this standard has been met.*

**11.2 Sufficient Water**

**A. State Standard**

**Sufficient water.** The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.

*The development will be connected to the public water system. MaineWater did issue a capacity to serve letter dated 06/22/22. Based upon this information, the Board finds that this standard has been met.*

**11.3 Impact on Existing Water Supplies**

**A. State Standard**

**Municipal water supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.

*The development will be connected to the public water system. MaineWater did issue a capacity to serve letter dated 06/22/22. Based upon this information, the Board finds that this standard has been met.*

**11.4 Soil Erosion**

**A. State Standard**

**Erosion.** The proposed subdivision will not cause unreasonable sedimentation or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

*Erosion control plans have been included in the submission. Due to the size and nature of the project, a Site Location of Development (SLODA) Permit from the Maine Department of Environmental Protection (DEP) was not required. The Town Engineer has reviewed the submission for compliance with the applicable standards of the Freeport Subdivision Ordinance and the Freeport Zoning Ordinance in regards to stormwater management and erosion control. His*

comments are included in a memo dated 09/14/22 (attached). A Maintenance Agreement for a Stormwater Management System is a suggested condition of approval. Based upon this information, the Board finds that this standard has been met.

### 11.5 Traffic Conditions

#### A. State Standards

**Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

*Vehicular access to the site will be off an existing access-way on Depot Street. The applicant will need to submit legal documents pertaining to rights to the accessway and maintenance of this access; this has been included as a proposed condition of approval. The Town Engineer did review the information included in the submission regarding traffic and circulation. Due to the expected number of trips generated, this project will not require a Traffic Movement Permit from the Maine Department of Transportation. Based upon this information, the Board finds that this standard has been met.*

### 11.6 Sewage Disposal

#### A. State Standards

**Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

*The project will utilize the public sewer system. The Freeport Sewer District did issue a capacity to serve letter dated 07/12/22. Based upon this information, the Board finds that this standard has been met.*

### 11.7 Solid Waste

#### A. State Standard

**Municipal solid waste disposal.** The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized.

*In accordance with Town of Freeport Chapter 28: Solid Waste Disposal Ordinance, the owner will be required to contract with a private waste hauler for the disposal of solid waste. The location of dumpsters has been shown on the plan. Based upon this information, the Board finds that this standard has been met.*

### 11.8 Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas, or Public Access to the Shoreline

#### A. State Standard

**Aesthetic, cultural, and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

*A letter from the Maine Historic Preservation Commission (05/18/22) was included in the last submission. In the letter, the Maine Historic Preservation Commission references the abutting property which contains the First Parish Congregational Church (n/f MeetingHouse Arts) which is part of the Main Street Historic District. In the letter, the abutting building and district were noted, but no comments regarding the compatibility of the new structure were included. The letter further notes that the "project area is not considered sensitive for archaeological resources."*

*In a letter dated 06/01/22, Becca Settele from the Maine Department of Inland Fisheries and Wildlife states that "...Our information indicates no locations of State-listed Endangered, Threatened, or Special Concern species within the project area that would be affected by the project."*

*In a letter dated 05/09/22, Lisa St. Hilaire, Maine Natural Areas Program, states "...that there are no rare botanical features documented specifically within the project area..."*

*No wetlands were identified on the site. Based upon this information, the Board finds that this standard has been met.*

### **11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.**

#### *A. State Standard*

**Conformity with local ordinances and plans.** The proposed subdivision conforms with a duly adopted subdivision ordinance, zoning ordinance, floodplain ordinance, the comprehensive plan, and other ordinances included in the municipal code as appropriate. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

*The project requires a Design Review Certificate, Site Plan Review and Subdivision Review. The parcel is in the Village Commercial I (VC-1) Zoning District. The proposal includes an 18,600 sf (footprint) three-story building with 67 dwelling units. The unit types will consist of 21 studio units, 40 one-bedroom units, & 6 two-bedroom units. The submission does include a net residential acreage calculation; there are 0.64 acres of net residential acreage on the site. There is no land per dwelling unit requirement in this zoning district.*

*This is considered a Subdivision-Major (per Article III of the Freeport Subdivision Ordinance). The Board deemed the review of the Site Inventory Map, Site Analysis and Conceptual Plan complete at the June 15, 2022 Project Review Board meeting. A public hearing was held and preliminary subdivision approval was granted on August 17, 2022.*

*Based upon this information, the Board finds that this standard has been met.*

### **11.10 Financial and Technical Capacity**

#### *A. State Standard*

**Financial and technical capacity.** The subdivider has adequate financial and technical capacity to meet the standards of this section.

*The subdivision plan was prepared by Sevee and Maher Engineers, Inc. A landscaping plan was prepared by Peter Biegel, ASLA, LAAD AP – Maine Licensed Landscape Architect from Land Design Solutions. Building renderings were developed by David Sherborn, Maine Licensed Architect, Opechee Construction Corporation.*

*A letter was submitted from Goedecke & Co., LLC, dated 04/25/2022, demonstrating their experience working with JHR Development and the ability to secure funding. JHR Development will be the entity constructing the project. Based upon this information, the Board finds that this standard has been met.*

### **11.11 Impact on Water Quality or Shoreline**

#### *A. State Standard*

**Surface waters; outstanding river segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250) feet of any wetland, great pond, or river as defined in Title 38, Chapter 3, Subchapter I, Article 2-B<sup>1</sup>, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

*This parcel is not located within the watershed of a great pond or lake nor is it within the Shoreland Zone. Based upon this information, the Board finds that this standard has been met.*

### **11.12 Impact on Ground Water Quality or Quantity**

A. *State Standard*

**Ground water.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

*The development will be connected to the public water system. Based upon this information, the Board finds that this standard has been met.*

### 11.13 Floodplain Management

A. *State Standard*

**Flood areas.** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps, Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

*The parcels are in Zone C, areas of minimal flooding, on the FEMA Flood Insurance Rate Maps (FIRM). Based upon this information, the Board finds that this standard has been met.*

### 11.14 Identification of Freshwater Wetlands

A. *State Standard*

**Freshwater wetlands.** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

*No significant vernal pools or wetlands were identified on the site. Based upon this information, the Board finds that this standard has been met.*

### 11.15 Rivers, Streams, and Brooks

A. *State Standard*

**River, stream or brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, Section 480-B, Subsection 9.

*No rivers, streams or brooks have been identified on the site. Based upon this information, the Board finds that this standard has been met.*

### 11.16 Storm Water Management

A. *State Standard*

**Storm water.** The proposed subdivision will provide for adequate storm water management.

*Due to the size and nature of the project, a Site Location of Development (SLODA) Permit from the Maine Department of Environmental Protection (DEP) was not required. The Town Engineer has reviewed the submission for compliance with the applicable standards of the Freeport Subdivision Ordinance and the Freeport Zoning Ordinance in regards to stormwater management and erosion control. His comments are included in a memo dated 09/14/2022. A Maintenance Agreement for a Stormwater Management System is a suggested condition of approval. Based upon this information, the Board finds that this standard has been met.*

### 11.17 Spaghetti Lots

A. *State Standard*

**Spaghetti lots prohibited.** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond, or coastal wetland as these features are defined in Title 38, Section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five (5) to one (1).

*No spaghetti lots are proposed. Based upon this information, the Board finds that this standard has been met.*

**11.18 Phosphorus Impacts on Great Ponds**

A. *State Standard*

**Lake phosphorus concentration.** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

*The development is not within the watershed of a great pond. Based upon this information, the Board finds that this standard has been met.*

**11.19 Impacts on Adjoining Municipalities**

A. *State Standard*

**Impact on adjoining municipality.** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

*The parcels do not abut or cross the municipal boundary. 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 Subdivision**

**Ordinance.**

**MOVED AND SECONDED:** Be it ordered that the Freeport Project Review Board approve the printed Findings of Fact, Design Review Certificate, Site Plan and final subdivision plan 10 Depot Street, LLC., for the proposed Freeport Station Apartments (Tax Assessor Map 11, Lots 127 & 128) for a 67-unit multi-family residential subdivision, subdivision recording plan dated 9/20/22 and revised to remove reference to condominium building to be built substantially as proposed, finding that it meets the standards of the Freeport Design Review Ordinance, Freeport Zoning Ordinance and the Freeport Subdivision 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 any site work, including but not limited to clearing of the site, and prior to the issuance of any building permits, the applicant do the following:
  - A. Enter into a Maintenance Agreement for a Stormwater Management System with the Town of Freeport, to be recorded in the Cumberland County Registry of Deeds, with yearly stormwater reporting to the Town of Freeport being required.
  - B. Establish a performance guarantee in the amount to cover the cost of all site work associated with the project, in the amount of \$TBD, in a form acceptable to the Town Attorney. The performance guarantee, in accordance with Article 12.9 of the Freeport Subdivision Ordinance, shall cover the cost of all site work, including the road, erosion control, stormwater management, landscaping and demarcation of property lines, etc. Along with the performance guarantee, a non-refundable administrative fee, at the rate established by the Freeport Town Council, be paid.
  - C. Establish an inspection account, in the amount to be determined by the Town Engineer, to cover the cost of site for inspection of the site improvements by the Town Engineer.

- D. The developer have a pre-construction meeting with the Town Engineer.
  - E. The applicant submit a final copy of the updated legal documents (easement and maintenance agreement) pertaining to vehicular access for the accessway from Depot Street to the property, to be reviewed and approved by the Town Attorney.
- 3) Pay a Pavement Maintenance Impact Fee at the time a building permit is applied for and based upon the size of the structure and the current impact fee effective at such time.
  - 4) The final signed copy of the recording plan shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date upon which the plan is signed otherwise the plan shall become null and void.
  - 5) The applicant shall provide the Town Planner with a letter from a Registered Land Surveyor, stating that all monumentation shown on the plan has been installed.
  - 6) The applicant shall provide the Town with digital file, in a format compatible with the Assessor's records, containing the information shown on the recording plan.
  - 7) The Board approves the use of the color called "Monterey Taupe" which will be a factory applied finish applied to the Hardie Board siding.
  - 8) Prior to a building permit being issued, the applicant demonstrate that the applicable off-street parking requirement (per Section 514 of the Freeport Zoning Ordinance) for the project can be met, based upon the standards in place at such time.
  - 9) Prior to construction, the applicant obtain any applicable permits from the Freeport Department of Public Works
  - 10) Any proposed improvements in the public right of way are beyond the purview of the Project Review Board, and review and approval from the Town Council may be required.
  - 11) Any site improvements, such as landscaping, shown beyond the boundaries of the subject property will need to be agreed to by the abutting property owner and may require an amendment to the site plan for the abutting property. If such changes are not agreed to by the abutting property owner, the applicant may need to return to the Board to modify the landscaping plan for this project. (Reiche & Donahue)

**ROLL CALL VOTE:** (7 Yes) (0 No)

### **Freeport Village Apartments – Multiple-Family Dwelling**

The applicant is presenting conceptual plans for two new, three-story, multiple-family dwellings (9,300 sf footprint each) with a total of 30 residential dwelling units and associated site improvements on a vacant parcel of land located at the corner of Main Street and West Street. Vehicular access to the site would be from West Street. Design Review, Site Plan Review and Subdivision Review are required. Zoning Districts: Village Commercial I (VC-I), Design Review District One – Class C & Color Overlay District. Tax Assessor Map 11, Lot 132 (22 Main Street). LWS Development, LLC, applicant; Moser Properties, LLC, owner; Eric Dube, PE, Trillium Engineering Group, representative.

Ms. Pelletier advised that this application was before the Board in July with a conceptual plan. There was a lot of feedback from the Board and the public. The applicant took that feedback and made some revisions to the plans. She thinks the revisions are somewhat significant. Before they had one large building on the site and now have broken it into two smaller buildings. They have increased the number of units to 30 even though they decreased the overall square footage of the building. Typically, we don't get into a lot of detail about condominiums versus apartments but their intent with this new design is that these would be apartments. They have incorporated some new site features such as walkways and green space on the corner. Their intent is to meet the parking on site and they can do that based upon the changes to the ordinance the Council made last night. They will be connected to public utilities. Vehicular access is still as we talked about at the last meeting from West Street. There has been a lot of questions about the stone wall on that property. They intend to reuse it, repair and retain it as much as possible. She offered to let the applicant go into the details on building design. As far as process, this is subdivision, this is conceptual. If the Board wanted to take action tonight, the only thing you would be acting on is would be the conceptual subdivision. Is the building in the right space for the layout of the site? They do not have any open space requirement. There was a small pocket of wetlands so there is a proposed motion for you if you are comfortable taking action on the conceptual process. No formal action is needed on the Design Review or Site Plan component. Again, in all fairness to the

applicant, any feedback the Board could provide in this process would be helpful.

Paul Peck explained he is from North Yarmouth and is a real estate developer and an attorney. He noted he is excited to be in Freeport and feels it is a great community. He reviewed the Vision Plan and feels it is a great document but understands that they are not always easy to implement. They are costly and will take time but he feels it is a good vision that the Town came up with through the Principle Group. The Vision Plan talks about bringing 1,500 units of housing to the Village. With the project the Board just approved and his project, that is 93 units so there is a long way to go but we have to start somewhere and he is at the beginning of that process.

Mr. Peck noted there are not a lot of sites for housing when you walk around and look. There are a lot of parking lots that are in use and there are still parking requirements. He is excited for the residents to be on Main Street and within walking distance to so much that Freeport has to offer with the arts and entertainment, the train station and the bus stops that are at Town Hall. This is a great site and will be really great for residents who end up living here. He admitted that the first hearing didn't go well. There were many comments on scale and design and it was clear that their design did not meet the Board's expectations of the Design Review criteria and he feels that is fair. Before, they were trying to introduce more of a modern element to the Town and it didn't go over well so they really completely changed direction. He displayed the original site plan showing it was big in scale and there was a lot of comment about the scale not fitting in with the character of the town. The architecture didn't fit in with the character of the town. They spent a lot of time looking at the design criteria again and it boils down to it has to be visually compatible with the nearby buildings. The overall design direction is to make it visually compatible with Freeport and the square and places in town. He displayed the next slide showing two smaller buildings and occupying about 23% less square feet on the ground. They were able to add a lot of green space to the site on both the West Street side, on the Town Hall side some, and in the middle of the building. He mentioned that Freeport has lots of smaller buildings that are relatively close together and it fits more in line with the town and how the buildings look. Each building is broken into two different blocks so it is less scale but still three-stories. They are occupying about 51% of their Main Street frontage and 42% of their West Street frontage. This design allowed them to push the buildings not as far down West Street or the Town Hall side so their buildings look with the grade more like a three story. As they were coming down West Street, they had a large daylight basement which made the building look and read like a four-story building and there were public comments to that effect. They took all the comments seriously and they moved the buildings up. Each building is about 46' x 98'. It is less building and less massing and less scale and it fits in better. On the West Street side, there were a lot of comments about people entering town from the south and north on Main Street, and they would see this building. They have pushed the building over on West Street so there is more green space and proposed a small park on the corner and they will reuse their stone walls and make a nice landscaped park with a couple of benches. They feel it will make a nice focal point as you enter town with some landscaping and it could really tie in to the proposed public square on the Vision Plan across the street on the Public Works property. There already is a small park there right now but the proposal in the Vision Plan is for a much bigger public space. This would be a public space if the Town would allow them to deed rights to the public to have access to this small park and anybody could use it. He pointed out where they added an entry to the building which they really didn't need because the interior courtyard there are main entries for mostly the second floor and third floor units but they thought they needed to break up the façade even more on the West Street side because it is such a focal point so they made a nice entrance with a nice walkway up to the entrance.

They did the site walk today so the Board knows, but the public doesn't but they are proposing to retain almost all, if not all of the exposed ledge on the West Street elevation. They think they can pin their foundation to what is there. They certainly will not do blasting. He thinks the ledge is a beautiful focal point. He displayed a new slide and explained that with the surrounding buildings it really fits in with what is happening around them. They are excited about this building fitting in with the character and fabric of other prominent buildings in town and not overwhelming the site.

Mr. Reiche mentioned at the last meeting that he wanted to see the old fashion feel of the Freeport Village within their design. That is basically what the design criteria says too of how their building fits in with the A and B Buildings in

their neighborhood or immediate vicinity. He feels they came up with a traditional design which incorporates colonial and federal features which Freeport mostly has. Mr. Cook noted that historically, there are several buildings downtown that are three stories for housing. They met with Russ Preston from the Principle Group who helped with Freeport's Vision Plan and got some input from him that they felt was helpful. He liked the direction we were going in but suggested that we amp up the bay windows which they did. They are excited about the design and having green space in between the buildings. It creates a suburban/urban garden style apartment complex and the garden style apartments date back to the 1800s in England to create community. He thinks it is cool to have a courtyard in the middle.

He will invite the Architectural Team talk how this building meets the criteria and how it takes aspects from the surrounding A and B Buildings and incorporates those into their building but he wanted to talk about their four entrances on the first floor to people's units. It will activate the street and bring the community to the residents and residents to the community. They also have access points for the first-floor residents in the courtyard.

The second floor will access internally to the second-floor units. The first-floor units are all one bedroom and are all accessible. There will be 14 accessible one-bedroom apartments on the first floor. He has built other apartments and always hoped that the ADA units and the accessible units are occupied by people who need it but it doesn't always happen. They have 16 two-bedroom apartments on the second and third floor. He displayed a slide showing their West Street and their rear elevation and he explained the West Street slide. In the rear there will be a grade change and there will be some exposed foundation and walls and he would like to vegetate those with a creeping ivy-type vine. He feels it is amazing what those things do. It will be a nice feature. There will be porches on the second and third floors for the residents with parking below.

Eric Dube, Engineer mentioned the existing ledge, drainage ditch and stonewall and that Paul talked a lot about the site, the pocket park and the courtyard. He explained that they plan to slope from Town Hall down to West Street. It is a natural grade that they will be able to utilize. They have the stormwater underneath in the existing hole that is out there and they will also be able to utilize that. They will be able to contain the stormwater and will be able to treat it. He pointed out the catch basins. They have a one-way entrance that is about 18' wide and continues from there and connects to the shared town exit. He pointed out where the handicap parking is proposed. They will utilize the ramp and get up to the courtyard. They plan to add some landscaping and trees and buffering down on the end of West Street. Their utilities will all be accessed from West Street.

Patrick Booth explained that he and his associate, Josh has put together a series of slides that will help demonstrate some of the background before the design work begins. They design the building after hearing feedback from the Board. They took Freeport's ordinance to heart to make sure that all the buildings are designed and built that are compatible with the character of the district in terms of scale and visual effect. It took some time for them to go back to the drawing board and stormwater underneath see how it might work and address the scale feature. He explained the next series of slides. He feels the original building would have looked out of place with the rest of the footprints. Flat roofs exist in the downtown and bay windows help to bring down the scale especially on Main Street. He displayed slides of buildings nearby. He advised that they are not asking for any waivers. He explained the slide showing the bay windows, the courtyard and proposed green space. He offered to answer questions.

Chair Blanchard explained that the Board has three different reviews to go through for this and suggested starting with Site Plan. Mr. Donahue noted it appears there is a 5% slope up from West Street. Mr. Dube agreed it is a 5% or 6% slope except for the handicap parking spaces and essentially, we are flowing from north to south. The flat roof can be captured and internally drained and will be able to put into the stormwater system which is below parking. Right now, they have a town culvert that exits there and they will have to pick it up and rework it and go around their stormwater system to a drainage manhole and pick it up and tie back into the that and come out at a lesser rate.

Linda Berger asked for a bullet of the square footage. She is finding the numbers confusing regarding the footprint. She heard it was reduced but it is obviously more. You obviously went from 25 units to 30 units but she can't get the numbers to work. Ms. Pelletier added that the Staff Report took it from the cover letter but the cover letter was



combined, not individual so the 9,000 was an approximation for both building footprints. She advised that each building is a little over 4,500 sq. ft. Mr. Dube advised that the footprint of each building is about 4,700 or 4,800 sq. ft. and the total gross footage is less than 14,000 per building. Because the apartments are smaller than condominiums and the average unit size is smaller, it resulted in a smaller building with more units.

Ms. Berger asked where the utilities are going to be positioned around the building? Will each unit have a hear pump? Mr. Cook advised that the plan is to have heat pumps and they will all be on the roof. CMP meters will have to be placed but they haven't gotten there yet but they will be appropriately screened, if necessary, There will be utility rooms in each building that will have fire suppression equipment and will tie in to the Sewer and Water. There will be some CMP transformers. Everything will be underground on the site.

Mr. Donahue asked if the stonewalls will be reconstructed using a dry stack as they are now? He would encourage the applicants to make them look the same as they do now. Mr. Cook advised that the stonewall will be the same but tightened up. He also advised that the original owner wishes to retain the sculpture. It is not part of their contract.

Mr. Reiche referred to the building elevations and asked if they reflect actual topography? Mr. Dube advised that their site is modeled to the contours of the 10-foot slope. Mr. Reiche feels their West Street elevation was showing more grade than he sensed when the Board was out there. Mr. Dube informed him what they used for topo.

Mr. Yankee asked if the two buildings are at the same elevation? He was informed that they are dropped with the site. Mr. Monteleone noted that in talking about the West Street entrance, it was described as not required in the plan but in his opinion that 48" oak tree is a significant tree and he encouraged the developer in mapping out the plan, to any extent that tree could be retained, he thinks it would be important recognizing that there aren't that many trees of that size and scale in town.

Mr. Cook pointed out that in a perfect world they don't need that entrance. They did it because they thought the Board might want it. If you are saying you don't care about it, they can look at the tree and if that entrance makes the tree not viable, they can get rid of the entrance. They have not studied how that tree plays into this whole design, but he is happy to get rid of that entrance because it is expensive. If he can save some money and not do that entrance, he is happy to if it is not significant to the Board. It was really about aesthetics. Mr. Yankee advised that he values the tree over the entrance and Mr. Cook noted they would look at that. Ms. Hamlen thinking as a resident, she would almost always rather walk through a courtyard to her apartment rather than walk along a main thoroughfare across from the Fire Department. She votes for the tree. Mr. Cook noted he would save the tree if they can. Chair Blanchard clarified that this is a conceptual review so the Board is thinking concept. As we move along it is up to the applicant to determine what is possible.

Ms. Hamlen added that if we are talking about trees, she is looking at the view from across the street, dead on the front of both buildings and her question is if behind those walls, is there any way to break up the center of those two buildings with some sort of ornamental tree. They don't have to be huge but it seems they have their jut outs with the nice bay windows and the entry way and it seems like a small tree between those if it is their land and there is room to do it. She loves the courtyard and the trees outside the building but if there is something that could break up that façade. Mr. Cook advised that they have not yet brought in a landscape architect so there is no final landscape plan. He agreed that Ms. Hamlen's idea is a fine idea and will bring it to the landscape architect. Mr. Reiche requested that as the Board goes through this process, he would like to understand what we will have in year two. He was assured the building will be there for 100 years and the tree will start small and eventually grow bigger.

Chair Blanchard suggested moving on to Subdivision. There were no Board questions about subdivision. He then suggested moving on to Design Review. Mr. Reiche thanked the applicant for being sensitive to the Board's comments. He personally thinks this is a real improvement. His question is still scale. The comparisons shown are a bird's eye view and he would like to see some vertical comparisons at the next meeting, just something that shows us true vertical scale. A couple of the buildings the applicant characterized as three stories are only three stories at the peak such as

the building across the street. He suggested a view from the other side of Main Street looking down Main Street northly, picking up the heights of those buildings with flat roofs and a couple of the other buildings which will be smaller but will show the Board scale. He thinks this whole plan is more in line with what he was hoping for. Ms. Pelletier explained that we calculate on all sides of the building and take an average and go a third of the way up. Mr. Reiche clarified that he is suggesting at the Main Street point ground up. Mr. Booth explained that this building will not work at two stories. It has to be three stories because of the economics of it and they found that the flat roof is the most successful form they found and the only thing they feel could be challenged about that is that the context around the building does not show a lot of flat roofs. More discussion followed.

Mr. Monteleone mentioned that the façade would be a stone-based type. He was informed that they plan to use fiber cement which is a different material. For the top two stories they are indicating a clapboard material with a 5-inch exposure which is common. The lower base they are showing as a shiplap material which doesn't have an overlap. They saw some of the buildings on Depot Street that have that shadow line that is cast that gives a little sense of detail. They think that is more successful than having too many ins and outs of the building. Mr. Monteleone asked if there is an example of fiber cement used in Freeport. Ms. Pelletier advised that it is used on the Freeport Crossings Building as well as the Hampton Inn on Lower Main Street. It is pretty common and was accepted by Boards in the past. Mr. Booth added that it is not plastic.

Mr. Reiche complimented them with where they are right now. For him, it is all about scale and he wants to make sure he is comfortable with the scale. He asked what if the applicant stood in the middle of the intersection of West Street and Main Street facing north to Main Street and took a photo right down the middle that picks up the two buildings on the left, Town Hall and the buildings on the right and photoshopped this in there. He asked if it would be possible? As part of their process the applicants advised that they would essentially turn this into colored renderings and one will be looking down Main Street so the Board can understand how that approach is as you enter into town.

Mr. Donahue asked what materials will be used for the balconies and railings? While that has not yet been determined, Mr. Booth noted they most likely will be made of aluminum. Mr. Donahue feels the applicants have done a great job. Ms. Berger asked for a view from the north side of the north building facing Town Hall? Is it pretty much like what the West Street side would be other than now the West Street side still shows that entryway? While they do not have one prepared for tonight, Mr. Booth advised that yes, it will be pretty similar to the West Street elevation. Ms. Berger mentioned talking about tree versus no tree, she feels it would be helpful to see that side with the entrance and one without. She was informed by Mr. Booth that they plan to do that as part of the next step.

Ms. Hamlen advised that she loves the design with the bay windows and pillared entrances, the pocket park and the courtyard. She feels it is brilliant. She is appreciative that the applicants listened and responded in such a good way. She thanked them. Chair Blanchard echoed the comments of the Board and that they definitely thought about our comments from the last meeting. It makes our job a lot easier when it is obvious, they looked at the Ordinances and the buildings in the vicinity and did some analysis and this is what they came up with. It is a very successful design.

Mr. Yankee echoed what everybody else said and this plan is amazingly different with the trees, the pocket park, the courtyard, and breaking up the facades. Going back to Ford's comments, he thinks it would be helpful because of China Rose which is opposite and goes right up to the sidewalk, It would be helpful to see if they could photoshop in renderings from both sides to add that scale. Right now, we have one side that is close to Main Street and then we are going to be bringing the other side close so it would be helpful to see what that looks like. Mr. Booth noted that approaching L.L. Bean all the buildings are pretty close to the sidewalk and that is successful because it creates a street wall. They are creating a street wall on Main Street and it is unfortunate that no buildings particularly adjacent to them has yet done that if buildings were going to be lost in time or developed. They think this is the best long-term strategy for maintaining that entry into downtown Freeport.

Chair Blanchard opened the public portion of the meeting. Margaret Morfit, Freeport resident echoed what has been said. The changes made are really a lot better but for her, the corner of Main Street and West Street is really the

entrance to downtown Freeport. It is historic in some ways and adds a sense of stability. She knows there is no way a designed apartment can reach that and she does not expect that. She hopes that this design will stabilize some of these ideas. It is all about the entrance to the town and she feels we will be losing a lot from what we already have. Like Ford, she is really worried about the height of these buildings. She feels a flat roof, three-story building on a site will not look like the surrounding buildings. It will look like two tall blocks. She doesn't believe the China Rose is a three-story building at all and mentioned others. She feels this will really stand out as being different and it is the entrance to the town. It won't look like a welcoming rural- looking town anymore. As a citizen, she wants to represent that there are a lot of reasons to think about this place and hopes they can reconsider parts of the design in some way to make it better in scale from what is already existing in town.

On zoom, Eric Smith from the Freeport Historical Society wanted to echo some of the Board comments in terms of thanks for how much more it seems clearly that the applicant looked at the ordinance and really took a careful look at the surrounding buildings on Main Street. He thanked the Board for being very focused on the intention as well as the letter of the ordinance and helping to push this along to the place it is now. He thinks that some of his concerns he voiced at the last meeting have been addressed. He was surprised that breaking it up into two buildings in a lot of ways mirrors the buildings that were on that site which were 2 ½ story narrow, deep white Victorian buildings and this really does echo that. He hears the concerns about scale and thinks an additional rendering looking at those nearby buildings will be helpful. He appreciates the looking at some of the other historic three-story buildings with flat roofs which were most of downtown Freeport in the commercial section. They were mostly in the center of town but he appreciates this is a residential area and the scale is a concern. He mostly wanted to express his appreciation for everyone in this process.

Mary Davis, President of FEDC noted she heard a lot last night about people saying they would like to stay in Freeport and be able to sell their houses and stay in Freeport. There is the whole business that they want to be able to age in place. She looked at these places and feels they are places some of those people would like to live in. She thinks the developer has done a wonderful job in responding to what we talked about. She understands the economics of a three-story building which would allow them to be more affordable for renting. She thanked the developers for all their work.

Andrew Arsenault, Freeport resident feels the developer has done a great job turning this project around. He supports the three-story concept because it makes it more affordable. He recalled what used to be on this site. He doesn't think this is so far out of character and fits well on the site. With the economics going on downtown, this will be a benefit for us because we will get tax dollars from all these units. He really likes these buildings and if Mr. Peck can do away with the side entrance, he is all for it.

Gordon Hamlen, Freeport resident commended the developer for the changes made to the plan. He would reinforce what was said to focus on the view coming up Main Street from the south. This property is really the entrance to Freeport. We want it to be representative of the entire town and sensitive to the values we all have. He appreciates all the changes made from the initial plan. He appreciates that they added more open space on the corner of West Street and Main Street and make it look as inviting as possible to people coming to Freeport.

Ms. Berger mentioned the first-floor apartments and that they are all direct entry. Is there a sidewalk that goes around the building on the first-floor level so that maybe people in a wheelchair can get into their house other than going upstairs?

Mr. Booth informed her that yes, all the first-floor units will have an entry without a step. They will try for the next meeting to clarify these types of questions. He displayed a slide showing the bottom scheme and explained it There will be fully ADA accessible units they have to build according to the ordinance and the others will have no steps. Some will be completely ADA accessible and others will be accessible. There is a difference between the two.

There were no other questions or comments provided. Chair Blanchard requested that someone make a motion.

**MOVED AND SECONDED:** Be it ordered that the Project Review Board determines that based upon the information submitted by the applicant, submission dated 8-30-22 that the review of the Site Inventory Map, Site Analysis and Conceptual Plan for LWS, LLC for a proposed residential subdivision (Tax Map 11, Lot 132) is considered complete as the Board finds that the appropriate areas have been determined for development and no open space is required.

(Yankee & Donahue) **ROLL CALL VOTE:** (7 Yes) (0 No)

**ITEM IV: New Applications**

**Ingwersen 2007 Living Trust – Cunningham Road – Shoreland Stabilization**

The applicant is seeking after-the-fact approval for a Shoreland Zoning Permit (for Shoreland Stabilization).

Approximately 45 feet of shoreline was stabilized with rip rap. Zoning Districts: Medium Density Residential I (MDR-1) and Shoreland Area (SA). Tax Assessor Map 5A, Lot 31 (40 Cunningham Road). Helen Ingwersen, applicant; Helen S. Ingwersen 2007 Living Trust, Helen Shaw Ingwersen, Trustee, owner; Timothy Forrester, Atlantic Environmental, LLC, representative.

Ms. Pelletier explained that the Planning Board within the past year updated our Shoreland Zoning Ordinance and one of the things in there is that shoreland stabilization projects come to the Project Review Board so you are having two this month. She suspects the Board will have another one next month. You have been seeing more shoreland applications because the State requires that they go through the public process before the Board. In this case, it is an after-the-fact approval. The applicant installed about 45 feet of riprap to stabilize an eroding bank. Permits from DEP and Army Corps of Engineers are required and the applicant has applied for those. The area of the riprap is about one foot below the HAT line and three feet above. There was a little wetland impacting about 45 square feet to the coastal wetland. The abutting property worked with the applicant to stabilize the bank in that area. This project did not require the removal of any vegetation and they retained the vegetation at the top of the bank. No new plantings are proposed but a procedural thing, this comes under the Shoreland Zoning Ordinance Section 306 that has about 20 or so standards that the Board needs to do findings on but many in this case are not applicable. It is mostly stabilization, soils and vegetation. In the Staff Report she only put the full details of the standards that are applicable so if the Board has any feedback on that for the future, she would welcome that. Under Shoreland Zoning there is another section with nine standards that the Board uses for every single project in the shoreland such as will it handle water pollution, will it handle waste water, historical impact? She wanted to point that out. Staff does not have any unresolved issues and Tim Forrester is here to represent the applicant tonight.

Tim Forrester introduced himself and noted that the Planner did a great job in summarizing what has happened here. A couple of years ago an adjacent parcel was adding some riprap to stabilize their soils. This particular cove facing northwest is very well shaded. There is an overstory of pine and hemlock and essentially the ground cover on the clay soil was starting to erode out. They did what they thought was the right thing and added some stone to keep that from happening but didn't recognize that permits were needed. Subsequently, they moved forward with some additional work on the property that triggered additional permitting so they wanted to replace their pier. When he was on site, he asked if the riprap was permitted and was told no. That is how they ended up here. He feels the job they did is adequate. The stone size varies from a 6 to an 18-inch diameter stone. He generally likes to use a larger stone so it doesn't move around but this has been in place for two years and hasn't really shifted so he thinks what is there is adequate and resolves the issues. The after-the-fact applications with the Army Corps of Engineers and the Maine DEP are pending. As Caroline said, there was no vegetation removed to do this. It was all brought in by hand. Ms. Pelletier clarified that this is two separate applications and two separate properties.

Ms. Berger clarified that Mr. Forrester is not planning to do any other further stabilization or changing anything? The pictures in the application are current and what are proposed to be current? Mr. Forrester advised that there is no additional work being proposed than what is seen here. Ms. Berger advised that when she looks at these pictures, it looks like there has already been erosion on the top of the banks. In photograph 3 it looks like there is erosion and there were stumps that were cut and some of the stones have fallen down towards the water side. She wonders if this

is something that should be kept in this condition and not rebuilt to be a more stabilized riprap protection area with the right sized stones. It bothers her that it is this way and is expected to stay this way. Mr. Forrester noted it was the first thing he looked at when he saw this and thought that the rock size was a bit small but it has been in place over two years. There are a couple of rocks that have fallen down but the orientation of this cove being northwest, it doesn't take a storm surge. It is just a fluctuating water level. On the upland side, because it is so shaded in there, there is no ground cover so even an attempt to plant a ground cover is going to be very challenging. It is all clay soil and there is nothing on top of it. The fallen pine needles that provide the acidic soil type hinders the growth of other vegetation and is under a very shaded canopy. They could put in some juniper on top of the rock face that would probably be the most successful thing. In terms of the rock, he does not think it is going to move around. This particular parcel has a dock around the other side so their access is actually over there.

Ms. Pelletier advised the Board that it has no purview over steps. As far as the riprap, the Board has the Shoreland standards before you and just like you have a Site Plan, you need to show that they meet all of those. There is one specifically for Shoreland Stabilization. Most of it is really related to the vegetation and there is one on soil. If you feel it didn't meet one of these standards, you would have to make that finding. Ms. Berger noted that if this applicant had come to us in advance of doing this, and they said they wanted to put in riprap to protect the area and it would be a smart thing to do, most likely she suspects we would have had a different design and personally does not know what to do with this. She suspects this would not be the outcome for a permit we would have given so she has a hard time saying, sure, it is fine because it is what it is but maybe that is the only way to go. Ms. Pelletier mentioned she is not sure of anywhere that gives guidance on the details of rocks. Mr. Forrester explained that the only standards in terms of riprap are that they are irregular shaped rocks and you are not using round. Its build is correct in terms of the pitch. Essentially it is a 1 to 1 slope so the intent is that any water or wave action that comes up against a riprap wall is dissipated out by the irregular shape of the rock. It is vertical and it just smashes into it. They have met all of that. In a typical project that usually uses bigger stone, bigger stones have larger voids in between them and he doesn't see this site as receiving a direct storm surge that would dislodge the rock that is there. It clearly has been working correctly for a couple of years. He does not personally have a problem with how it is functioning.

Mr. Monteleone advised that this would have been brought to the Codes Officer before the work was done in 2020 and this Board would not have reviewed it or issued the permit. Ms. Pelletier agreed because that is how our Ordinance was set up. Now they are supposed to come to this Board. Mr. Monteleone clarified that what is being sought here is a retroactive permit after-the-fact. Ms. Pelletier agreed and explained that it needs to be permitted under DEP standards. We had a conflict between our Ordinance and the DEP's standards. Now that we have corrected it, they couldn't get a permit from the Codes Officer because our Ordinance doesn't say that so they are coming in with what we have now which means they have to come to this Board. They need a permit from somebody now after-the-fact because they didn't permit it under who our Ordinance said they should have at the time. It is coming before you and you don't have any standards here regarding detail of the appearance of the riprap or the size of the rock stabilizing the vegetation and the soils and the removal, and the revegetation so a lot of these are N/A. Ms. Berger wanted to clarify that we are not giving a permit now that is going to be backdated. We are giving a permit today which just happens to be after-the-fact. Ms. Pelletier agreed and mentioned the proposed motion is an after-the fact approval for a shoreland stabilization project. Ms. Berger added that this doesn't look like what she would have anticipated a riprap wall to look like and she would probably have had a lot of issues and would not have been agreeable to approve it. Ms. Pelletier pointed out that she cannot design it. She is reacting on the information the applicant submitted to you. Just because it is after-the-fact, you don't have to approve it if it doesn't meet the standards, make a finding as such and the Board doesn't approve it. It is the same standard and even though it is after-the-fact, they still have to meet it. In this case, there is nothing here although if you were designing it, it sounds like you would design it differently. We don't have a standard saying exactly how they need to design that riprap. Ms. Berger pointed out that she is not saying how to design it. She would have seen an application come in and it would have had some drawings from the engineer and it would have been shown with the existing condition and the type of wall and we would have been asked to approve the wall but not design it. If they had showed us that this is the anticipated end result, she would have said it is not an appropriate riprap wall. It is her opinion right now and she has a hard time approving it because she would not have approved it if it was in front of her without her seeing pictures. If

they said, this is what it is going to look like and this is what it is looking like, she would have said they need to redesign it. It almost looks like someone stood there and dumped a wheelbarrow and kind of pushed things around to make it look like a riprap wall. To her, it is not a riprap wall from her experience. Mr. Reiche pointed out that we are dealing with something that is in the ground already. He knows that Tim Forrester is the go-to authority in the private sector on this stuff and for it to be in the ground and for him to be saying it is adequate, it is the most he could hope for. Mr. Monteleone asked about penalties. Ms. Pelletier advised that this is not something that is under the purview of this Board but if someone comes in after-the-fact for something, we have not charged them a double fee or anything like that. If they don't take care of it, they could get a notice of violation and a court proceeding. It is a good faith effort coming in after-the-fact late realizing they should have gotten approval first and trying to get approval to show the standards.

Mr. Reiche noted he is still trying to understand what we add to this process. What do we cover that isn't covered by the intense scrutiny by the DEP and Army Corps? Mr. Forrester advised that the Board has a set of standards before you that are somewhat general in what they ask and if it were him, he would be looking to make sure are they not putting in more stone than is necessary. Are they not removing any additional vegetation? Are they maintaining Shoreland Zoning Standards? They are allowed a point of access to do the work and are they going to revegetate those areas correctly? Mr. Reiche asked if we didn't look for them, wouldn't DEP and Army Corps be looking for the same things? Mr. Forrester answered yes. Ms. Pelletier pointed out that we have our own standards and we, as the municipality, are the ones that have to look at the Shoreland Zoning standards which you have before you. DEP has a NRPA permit which is a separate branch of DEP. They might have overlapping standards but they have their own separate set of standards and then yes, Army Corps also has their own separate standards and they could overlap here with the Shoreland Zoning Standards. Mr. Monteleone mentioned that the DEP applies Shoreland Zoning Standards too to these Stabilization projects. Mr. Forrester noted it is an interesting one. Before the State you are applying for a NRPA. You are not following Shoreland Zoning Rules. The Shoreland Zoning Coordinator does look at the NRPA application and may make comments on it but then it shifts Shoreland Zoning back to you. They are getting a permit where they technically have to follow the NRPA rules not the Shoreland Zoning Rules. They are pending permits from DEP and Army Corps. Mr. Donahue feels the riprap generally looks good when it goes in and then it is in a declining process when nature takes over after that. This shows the evidence of nature having its effect. It doesn't seem like it is inconsistent with reality to him. Mr. Monteleone advised that he had to do some shoreline stabilization himself and feels it was a horrendous process in which DEP and Army Corps Engineers are actively involved and have professionals with expertise in this area. This Board has no expertise or familiarity with this issue. With that in mind, he would move for approval of the permit expressly subject to issuance from DEP and Army Corps of Engineers in this case because it is an after-the-fact review and also subject to a review by the Codes Enforcement Officer to determine whether or not any type of penalty review should apply at his discretion. Ms. Pelletier pointed out that it is after-the-fact, but they have not been cited with a violation or anything like that and she does not feel it is our job to get involved whether or not the Town foresees giving somebody a penalty or double fees. That is beyond us. The outside agency reviews are fine but they are independent of your review and your standards. Them denying something is what standard is that going to change here that you are going to find they don't meet? Mr. Monteleone clarified that he is saying that if the DEP denies the project, the project cannot go forward so if the project can't go forward through DEP, then this Board should not be signing off on something that otherwise has been rejected. In these circumstances he feels we should put some deference to these agencies that actually have expertise in this area. Ms. Pelletier added that essentially if this Board decides this meets the standards before you tonight and you take action, they know they are still responsible to get permits from other agencies that require permits. If those agencies deny it based on something and they are going to have to change it, they will have to come back to you and amend what you approve tonight. Ms. Berger referred to No. 2 in the proposed motion where it says: Prior to the start of any sitework for the project, the applicant obtain any applicable permits from the Freeport Codes Enforcement Officer. She asked why we would not be including the Army Corps of Engineers and the DEP in that sentence? Ms. Pelletier thinks the Board can but she wanted to be clear that we can't rely on them to review applications that we are reviewing under our own standards on our own behalf. As long as everyone is clear with that and the Codes Officer has gone through these. He hasn't issued any permits but as soon as they come in, he is the Shoreland Zoning expert in the building so he has gone through them. Mr. Forrester added that whether we are saying it or they are saying it, we all know they have to get

their permits and they all have to agree or you are in violation. Mr. Yankee added that this is the way Coastal Waters works as well.

Mr. Monteleone clarified that he is saying that he would encourage this Board to insist that those DEP and Army Corps of Engineers permits be issued and in hand before parties come to us to seek this much more general standard that we must apply. Ms. Pelletier added that it is not a requirement today in the Shoreland Zoning Ordinance but feels we can make that requirement. Mr. Monteleone moved that we approve it subject to the issuance of all required permits. Mr. Reiche asked if Mr. Forrester needs Town approval to get a permit from Army Corps or DEP? Mr. Forrester advised that he does not. Ms. Pelletier suggested making it a condition and make it aware on record. Mr. Reiche feels it will give guidance to people in the future to come to us last. Ms. Pelletier advised that the Board cannot deny people on that because we don't have a standard that says you need to. Coastal Waters has a standard pertaining to that. Mr. Reiche added that if we tell them to come last, they will just come last. Ms. Pelletier noted that as we try out these Shoreland Standards and see all these new applications like stream crossings for example, we will find that we want to make changes to the Ordinance to improve our process and documentation. They are all great comments and we need to look at them but we don't want unclear ordinances and unclear submissions because we have enough of those.

Mr. Forrester explained what he has to go through to get approvals from everyone involved. Most of this work is done in the winter time and sometimes the delays can kick it out to a whole other year and the applicant could lose 5 to 10 feet of frontage. It should be done correctly. He always tries to get it to happen closer together than spreading it out.

Ms. Berger referred to the proposed motion and recommended some changes in the wording. Ms. Pelletier advised that it is fine to tack it on as long as everyone is aware that there are three different bodies and three different things with some overlap. You can only look at what is before you. They are not looking at your standards for you so as long as you are making findings on those things to the best of your ability and as we find areas that we need to clarify or get additional training on, we will go ahead and do that. She noticed that we did use our standard language in the proposed motion but the standard language is before the sitework so we want to strike that. Ms. Berger feels that No. 1 should be changed since there have not been any previously approved plans.

#### **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 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 vegetation resulted from 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 were 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 vegetation resulted from this project. Based upon this information, the Board finds that this standard has been met.*

**Q. Revegetation Requirements**

*No clearing of vegetation resulted from this project and therefore revegetation is not required. 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. No other erosion control was installed for this project. 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 installed 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 vegetation resulted from this project and therefore revegetation is not required. 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.**

#### **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 after-the fact shoreline stabilization at a residential property on Cunningham Road. This work was completed in 2020 to stop continued erosion and protect the structures existing on the site. About 45 feet of shoreline was stabilized, with the area extending from about one foot below the highest annual tide (HAT) line to three feet above the highest annual tide line. The project was completed to minimize impacts to the coastal wetland, however resulted in about 45 square feet of impact. No vegetation was required to be removed for this project. Existing vegetation on the top of the bank was retained. No new plantings are proposed. 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:** Be it ordered that the Freeport Project Review Board approve a Shoreland Zoning Permit for Helen S. Ingwersen 2007 Living Trust, Helen Shaw Ingwersen, Trustee, for an after-the-fact Shoreline Stabilization Project (approximately 45 feet in length) at a residential property at Tax Assessor Map 5A, Lot 31 (40 Cunningham Road), to be

built substantially as proposed in the application dated 08/10/2022, 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.
- 3) This approval is subject to approval by the Maine Department of Environmental Protection and the Army Corps of Engineers. (Yankee & Donahue) **ROLL CALL VOTE:** (7 Yes) (0 No)

### **Ellen Zdyb– Cunningham Road - Shoreland Stabilization**

The applicant is seeking after-the-fact approval for a Shoreland Zoning Permit (for Shoreland Stabilization). Approximately 65 feet of shoreline was stabilized with rip rap. Zoning Districts: Medium Density Residential I (MDR-1) and Shoreland Area (SA). Tax Assessor Map 5A, Lot 32B (34 Cunningham Road). Ellen Zdyb, applicant; Ellen M. Zdyb, owner; Timothy Forrester, Atlantic Environmental, LLC, representative.

Ms. Pelletier advised that this application is different. They stabilized approximately 65 feet which is a bit longer than the previous one. They went 1 ½ feet below the HAT and 3 feet above. They did have a little more wetland impact on this one. It was 97 ½ square feet. They didn't have to remove any large vegetation but they did remove some smaller vegetation to access the site. They will need to do some restoration. They retained much of the vegetation that was on the top of the bank. There is an existing area of riprap higher on the slope that they are removing and revegetating with shrubs. Mr. Forrester can verify the vegetation removal and replanting and talk a bit about why they are removing the riprap. There also is a set of stairs with this project but the Board does not have purview over that. That comes under the purview of the Codes Enforcement Officer.

Tim Forrester with Atlantic Environmental noted he is here on behalf of Ellen Zdyb. This project is the beginning of what happened here and it feathered into the other piece as well. While they did this they said, hey, we might as well do this on your side so that it is all done. That is how that part happened. He referred to Photograph 2 and pointed out that there is some riprap that extends up to the top of the bank. That is where the stone was actually brought down to the shore and moved along the shoreline and put in place and they stopped at that point. That is unnecessary rock. They typically will go 2-3 feet above the HAT which allows for storm water surge and to help stabilize that section. That area of stone needs to be removed and in place of that we have exposed soils and that area will be replanted as well. Again, typical plants that work well are juniper and creeping juniper above the top of the riprap tends to get a good foothold and will cascade down the rock face to help hide it a bit. Moving uphill from there, he usually tries to encourage a lot of people to go with a lot of bayberry that is low growing and has a good root structure. Both of those generally do well in poor soils or real acidic soils.

This project was triggered by the replacement of the pier and at that point he said, hey, you have some other things going on here that clearly are not permitted. Forthcoming, let's go meet the Codes Officer and say here is what we have and we want to resolve this and we are coming to the Board. They provided them with a laundry list of to do's which they have done a great job of taking care of. A path had pea stone on it and the pea stone has been removed and replaced with an erosion control mulch. They had fire rings with pea stone around that and those were considered structures in the Shoreland Zone and that has been removed as well. The stairs are not under the Board's purview. There was an old ramp and float that was left on the shore and that has been hauled away. He feels the applicant has done a great job in bringing everything back into compliance.

Mr. Monteleone asked if there were trees cut as part of this work that was done. Mr. Forrester advised that there was one dead tree that was cut at the top of the hill. The stump is shown in Photograph 2. He did not know if the Codes Officer gave permission to remove it. Typically, you are allowed to remove dead hazard trees and there is no permit to remove them but you need to meet the standards. Mr. Forrester advised that he always has a dialogue with the Codes

Officer so he has a record.

There were no comments or concerns voiced by the Board or the public. Chair Blanchard requested a motion.

**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 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.*

**J. 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 large vegetation was required to be removed for this project. Some smaller vegetation was removed to be able to access the site and that area will be restored with vegetation. Much of the other existing vegetation on the top of the bank was retained. There is an existing area of rip rap higher up on the slope. This area of rip rap will be removed and the area will be revegetated with shrubs. 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 were 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 large vegetation was required to be removed for this project. Some smaller vegetation was removed to be able to access the site and that area will be restored with vegetation. Much of the other existing vegetation on the top of the bank was retained. There is an existing area of rip rap higher up on the slope. This area of rip rap will be removed and the area will be revegetated with shrubs. Based upon this information, the Board finds that this standard has been met.*

**Q. Revegetation Requirements**

*No large vegetation was required to be removed for this project. Some smaller vegetation was removed to be able to access the site and that area will be restored with vegetation. Much of the other existing vegetation on the top of the bank was retained. There is an existing area of rip rap higher up on the slope. This area of rip rap will be removed and the area will be revegetated with shrubs. 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. No other erosion control was installed for this project. 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 installed 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 large vegetation was required to be removed for this project. Some smaller vegetation was removed to be able to access the site and that area will be restored with vegetation. Much of the other existing vegetation on the top of the bank was retained. There is an existing area of rip rap higher up on the slope. This area of rip rap will be removed and the area will be revegetated with shrubs. 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.

### 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 after-the fact shoreline stabilization at a residential property on Cunningham Road. This work was completed in 2020 to stop continued erosion and protect the structures existing on the site. About 65 feet of shoreline was stabilized, with the area extending from about one foot below the highest annual tide (HAT) line to three feet above the highest annual tide line. The project was completed to minimize impacts to the coastal wetland, however resulted in about 97.5 square feet of impact. No vegetation was required to be removed for this project. Existing vegetation on the top of the bank was retained. No new plantings are proposed. 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:** Be it ordered that the Freeport Project Review Board approve a Shoreland Zoning Permit for Ellen M. Zdyb for an after-the-fact Shoreline Stabilization Project (approximately 75 feet in length) at a residential property at Tax Assessor Map 5A, Lot 32B (34 Cunningham Road), to be built substantially as proposed in an application dated 08/10/2022, 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.
- 3) This approval is subject to approval by the Maine Department of Environmental Protection and the Army Corps of Engineers. (Yankee & Reiche) **ROLL CALL VOTE:** (6 yes) (1 Abstention-Monteleone) (0 No)

### **Desert of Maine –Site Plan Amendment**

The applicant is seeking approval for a Site Plan Amendment at the Desert of Maine. Proposed changes include alterations to the previously approved guest cabins and the addition of a 20'x40' seasonal tent to supplement programming. Zoning Districts: Rural Residential I (RRI) and Nature-Based and Art Overlay District (NBAOD). Tax Assessor Map 22, Lot 8 (95 Desert Road). Heestand Family Holding, LLC (Mela and Doug Heestand), applicants and owners; Doug Heestand, representative.

Ms. Pelletier pointed out that the Desert of Maine has been before the Board a number of times and at the most recent time they got approval to do some alterations to some of the campsites that have been there for years. Previously you gave approval for 18 cabins. They built six of them and have decided that the design of the A-frame cabin needs to be changed. They are switching to a new design of cabin. There is actually a decrease in the number of cabins but not the number of campsites. They are going to switch one of them to a tent/RV site and will go down to 17 cabins instead of 18. Overall, on site this will still be a decrease in the amount of impervious area so didn't require any changes to stormwater. There should be no change in traffic from this and again, no new campsites are being created. This season they did some temporary activity permits. They are restoring the Tuttle Barn that they will use for performances. The barn is still being restored so they had a tent and did some programming in the tent and a few concerts. They want approval to leave the 20' x 40' tent on site seasonally so they can use it to supplement their programming. It would be located on the desert. She received a comment from Alpha One when they looked over the proposal. This isn't in application today but Alpha One did flag that it doesn't appear there is an accessible route from the end of the boardwalk to the tent so that is something they flagged. Maybe they can put a beach mat down to make sure they are maintaining that. Mr. Yankee asked about Alpha One and Ms. Pelletier explained that they do consulting for accessibility issues and they watch all our agendas and give feedback if there are areas for alterations an applicant could make. We need a little more information on their proposal to have this 20' x 40' tent and are proposing to use it seasonally. She doesn't know what the intent is and if they are going to continue to do music. Obviously, we have some abutters nearby and we have standards for noise that are more strict in the residential area so that is an outstanding question we could use a little more information on.

Doug Heestand pointed out that he planned to do this in two parts just starting with the tent and he then would introduce his architect, Tracy Reed to discuss the cabins. He explained that the tent was an experiment this year and was primarily used for their affiliated non-profit which operates onsite of the Desert of Maine, Center for Arts and Ecology. The primary use this year has been receiving over 25 different school groups that came to learn about the ecology at the Desert and some of the history. It is a great place to gather students out of the sun and there is instruction and some activities before they go out on the property. That has been the primary use. This year they are waiting for their barn on site to be restored. They anticipate it will go up over the winter. That has been the plan all along.

They did a short summer series for acoustic concerts in that space. That is not the primary intent of the space. It is mainly for hosting school groups. Once the barn goes back up, he thinks there is a chance they will continue to use the tent for occasional events but the reason they are rebuilding the barn is primarily for musical events. They want to make it a permanent part of their site plan since it has been a very successful addition to their property. The intent is that it will be permanent even after the barn goes back up. It is easy to get to it and contains the kid's energy better than the barn with a stage and seats can.

Mr. Yankee asked if the tent was brought to us before? Ms. Pelletier advised that they received a temporary activity permit from the Codes Officer this past year. Mr. Yankee advised that there have been other tents in Freeport that go up seasonally at Wolfe Neck Farm. Have they also been required or is it a district issue? Ms. Pelletier suggested focusing on the application before the Board tonight but added that we do not permit temporary structures. We would only treat them as a permanent structure because temporary is not allowed even though we know this is going to stay up. It is a change to their approved site plan. They had no structure there before and it is significant square footage and it will be a change to the way they are doing things.

Ms. Berger asked if there is a definition of a structure? A tent has no floor and is it called a structure? Ms. Pelletier offered to look the definition up.

While she was looking it up, Mr. Yankee asked if there have been any comments from the neighbors about noise. Mr. Heestand explained that they received a note from their closest neighbor requesting that they come and sit in her driveway and hear how the concert sounds from her house. He felt it was very pleasant music but agreed it was loud.



It was 40 decibels so it was 10 below what is required. They have worked closely together on these issues because anything that happens at the Desert impacts her the most. If we continue to be an ongoing use and do outdoor concerts, she would like them limited in number and they talked about doing a three-month season and she would like to see no more than six which seemed fair to them. On nights when they have a concert, they try to give her adequate notice so she is not inviting dinner guests over. They offer to send her out to dinner on those nights. He feels they are working well together. Ms. Pelletier noted that regarding noise, we have standards and in the daytime hours, it is 55 decibels. They have to meet any noise requirements we have and they also need to comply with (not regulated by this Board) Noise and Curfew Ordinance that they have to adhere to for hours of certain things that go on in town.

Ms. Berger mentioned her concern with allowing this tent for concerts because we had so much discussion about the use in the barn for concerts and we all agreed that was a good location but now they have concerts at night when sound seems to travel faster and it is an open venue. She doesn't see right now that it is necessary but seems like it is an excessive use for something that was creating questions before the Board gave them a permit for an indoor activity. Mr. Yankee asked if Ms. Berger would be comfortable if the approval was while the barn was under construction? Ms. Berger feels that temporary makes sense. Mr. Heestand explained that the problem with the temporary permit that they got is putting it up and taking it down. It takes a significant amount of effort. They would like to leave the structure up. Ms. Berger advised that she is not concerned with the structure being up. She is concerned about the use of the structure that would create additional impact at certain times when they have concerts in an outdoor structure permanently allowed. Once the barn is ready, they can do concerts whenever they want. Mr. Reiche pointed out that they have been doing it and it hasn't been a problem. The only neighbor who raised a concern has been satisfied and is not here tonight. He doesn't know if we need to go beyond this. Ms. Pelletier advised that we do hear from the neighbor regularly. She has been involved in the process and has been at meetings here. Again, we have standards and they need to demonstrate that they are meeting those standards. If there is concern for the noise level, we could have them provide their decibel tests to show that they are complying. If there are concerns for traffic and if they are going to increase the use, the Board could address that. Mr. Heestand noted they became aware that they need to add this to their site plan and put it before the Board. They want to make sure they go through the process as required. They are not proposing that they have this new outdoor concert as a regular thing. He thinks it will take some time for their barn to be built so that is what they did this year. Their concerts were small with about 40 people attending so there was no large impact on traffic. They think the barn will likely be up by next year but they are not sure they will be able to have concerts in the barn next year because of making it accessible with fire suppression and that will take time to put in place before they can invite the public in that space. They think it will be another season before we will be able to hold concerts in the barn.

Ms. Berger asked if once the barn is functional, they might have two different concerts going on at the same time? Mr. Heestand replied that they would never do that. He mentioned that it is an incredibly beautiful place to see an outdoor concert and it is something they would like to have a few as part of a summer art series. To have an outdoor concert is really great for kids and families. Primarily they would have everything in the barn but if Ms. Berger is asking that once the barn is built, they would have no more, their preference is that they be allowed to do a few.

Chair Blanchard suggested moving on to the cabin discussion. Mr. Heestand introduced Tracy Reed, architect. She pointed out that as Doug mentioned, they are also doing an amendment for cabins and as the Board looked at it last year, there were 18 cabins in their site plan. The redesign dropped it down to 17. She displayed a slide showing the cabins. There are 3 large cabins and 3 smaller ones built. The next slide showed a comparison between the existing previous site approval on the left and their proposal at right. Campsite 5 is the one that is being reduced. They will keep it as a campsite/RV site. They have a couple of different designs trying to capitalize on the natural elements. Two of the sites are not on the road and they require a walk in and due to some of the topographical features, those will not have bathrooms. The other ones will. She noted they are moving away from the A-frame design. She noted that perpendicular walls are helpful. One is full ADA compliant. They are not going to have a heating/cooling element but they will have a small electric hot water heater. They have some large fixed windows and awnings and a sliding glass door so people can enjoy the outside without the outside coming in at night. They have moveable firepits.

The difference between the Eastern Pine and Juniper cabins are the ramp and grabbers in the bathrooms. The Spruce does not have a bathroom on the remote site. The Balsam Fir prioritizes views to nature. They are reducing the impervious surface by trying to better situate these on the existing impervious RV pads. The amount of impervious surface is being reduced by 368 square feet.

After a year of operation, they are trying to get some feedback from guests and maintenance and sometimes it turns out that

Perpendicular walls are preferred in real life. Mr. Heestand noted that these also sit lighter on the land. Their A-frames required huge footers that were very heavy. These will be less impact to actually take the foundation. Ms. Reed advised that on the existing site there is a bathhouse so the two that don't have bathrooms are close to the bathhouse.

No public comments were provided.

**Findings of Fact:** (Section 602.F. of the Freeport Zoning Ordinance)

**a. Preservation of Landscape: The landscape shall be developed in such a manner as to be in keeping with the character of the surrounding neighborhoods and in accordance with good development practice by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. If a site includes a ridge or ridges above the surrounding areas and provides scenic vistas for surrounding areas, special attempts shall be made to preserve the natural environment of the skyline of the ridge. Existing vegetation and buffering landscaping are potential methods of preserving the scenic vista.**

*The parcel is in the Rural Residential I Zoning District and the new Nature-Based and Art Overlay District (Section 428 of the Freeport Zoning Ordinance). Proposed changes include alterations to the previously approved guest cabins and the additional of a 20'x40' seasonal tent to supplement programming. Overall there will be a decreased in the number of cabins by one. No new camping sites will result and no new clearing is proposed. The Based upon this information, the Board finds that this standard has been met.*

**b. Relation of Proposed Buildings to the Environment: The design and layout of the buildings and/or other development areas shall encourage safety, including fire protection. Proposed structures shall be related harmoniously to the terrain and to existing buildings and land uses in the vicinity which have a visual relationship to the proposed buildings. Visual compatibility, not uniformity with the surrounding area, shall be emphasized. Special attention shall be paid to the scale (mass), height and bulk, proportions of the proposed buildings, the nature of the open spaces (setbacks, landscaping) around the buildings, the design of the buildings (including roof style, facade openings, architectural style and details), building materials and signs.**

**If the structure is in the Design Review District, the Project Review Board shall incorporate the findings of the standards or the Design Review Ordinance in its Site Plan Review findings.**

*The parcel is not within the Design Review District. All new or replacement structures will comply with the setback requirements of the applicable zoning districts. The site is currently used as a campground and nature-based commercial enterprise. All cabins will be located in previously approved sites, with an overall decrease of one cabin. The tent will be located in the ground and in an area that is already cleared. Based upon this information, the Board finds that this standard has been met.*

**c. Vehicular Access: The proposed layout of access points shall be designed so as to avoid unnecessary adverse impacts on existing vehicular and pedestrian traffic patterns. Special consideration shall be given to the location, number, and control of access points, adequacy of adjacent streets, traffic flow, sight distances, turning lanes, and existing or proposed traffic signalization and pedestrian-vehicular contacts. The entrance to the site shall meet the minimum sight distance according to MDOT standards to the greatest extent possible.**

*Vehicular traffic to the site will not be altered and is existing from the end of Desert Road. Based upon this information, the Board finds that this standard has been met.*

- d. Parking and Circulation:** The layout and design of all means of vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall be safe and convenient and, insofar as practical, shall not detract from the proposed buildings and neighboring properties. General interior circulation, separation of pedestrian and vehicular traffic, service traffic, drive-up facilities, loading areas, and the arrangement and use of parking areas shall be considered.

*No changes to parking are proposed. Based upon this information, the Board finds that this standard has been met.*

- e. Surface Water Drainage:** Adequate provisions shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, down-stream conditions, or the public storm drainage system. The increase in rate of runoff in the post development condition shall be held to a zero or less percent of the predevelopment condition unless an engineering study has been performed as described in Section 529.2 above. On-site absorption shall be utilized to minimize discharges whenever possible. All drainage calculations shall be based on a two year, ten year and twenty-five year storm frequency. Emphasis shall be placed on the protection of floodplains; reservation of stream corridors; establishment of drainage rights-of-way and the adequacy of the existing system; and the need for improvements, both on-site and off-site, to adequately control the rate, volume and velocity of storm drainage and the quality of the stormwater leaving the site. Maintenance responsibilities shall be reviewed to determine their adequacy.

*There will be an overall decrease in impervious area. Stormwater management and erosion control plans were prepared and included in the original submission and no changes are proposed. Based upon this information, the Board finds that this standard has been met.*

- f. Utilities:** All utilities included in the site plan shall be reviewed as to their adequacy, safety, and impact on the property under review and surrounding properties. The site plan shall show what provisions are being proposed for water supply, wastewater, solid waste disposal and storm drainage. Whenever feasible, as determined by the Project Review Board, all electric, telephone and other utility lines shall be installed underground. Any utility installations above ground shall be located so as to have a harmonious relationship with neighboring properties and the site.

*No changes to utilities are proposed. Based upon this information, the Board finds that this standard has been met.*

- g. Advertising Features:** The size, location, texture and lighting of all exterior signs and outdoor advertising structures or features shall not detract from the layout of the property and the design of proposed buildings and structures and the surrounding properties, and shall not constitute hazards to vehicles and pedestrians.

*No new signs are proposed. Based upon this information, the Board finds that this standard has been met.*

- h. Special Features:** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, similar accessory areas and structures, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.

*There are no special features associated with this project. Based upon this information, the Board finds that this standard has been met.*

- i. **Exterior Lighting:** All exterior lighting shall be designed to encourage energy efficiency, to ensure safe movement of people and vehicles, and to minimize adverse impact on neighboring properties and public ways. Adverse impact is to be judged in terms of hazards to people and vehicular traffic and potential damage to the value of adjacent properties. Lighting shall be arranged to minimize glare and reflection on adjacent properties and the traveling public. For all proposed lighting, the source of the light shall be shielded and the light should be directed to the ground, except in the case of ground sign lighting. In the Village Commercial 1 and 2 Districts, lighting for pedestrian walkways and adjacent public sidewalks shall also be provided.

*New lighting is proposed for the cabins and all lighting will be required to be full cut-off fixtures compliant with Section 521.A of the Freeport Zoning Ordinance. Based upon this information, the Board finds that this standard has been met.*

- j. **Emergency Vehicle Access:** Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures at all times.

*All public safety department heads have reviewed the plans. Based upon this information, the Board finds that this standard has been met.*

- k. **Landscaping:** Landscaping shall be designed and installed to define, soften, or screen the appearance of off-street parking areas from the public right(s)-of-way and abutting properties, to enhance the physical design of the building(s) and site, and to minimize the encroachment of the proposed use on neighboring land uses. Particular attention should be paid to the use of planting to break up parking areas. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. Landscaping shall be provided as part of the overall site plan design and integrated into building arrangements, topography, parking and buffering requirements. Landscaping may include trees, bushes, shrubs, ground cover, perennials, annuals, plants, grading and the use of building and paving materials in an imaginative manner.

*No changes to the previously approved landscaping plan are proposed. Based upon this information, the Board finds that this standard has been met.*

- l. **Environmental Considerations:** A site plan shall not be approved unless it meets the following criteria:

- (1) The project will not result in water pollution, erosion or sedimentation to surfacewaters;
- (2) The project will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
- (3) The project will conserve shoreland vegetation;
- (4) The project will conserve points of public access to waters;
- (5) The project will adequately provide for the disposal of all wastewater;
- (6) The project will protect archaeological and historic resources;
- (7) The project will not adversely affect existing commercial fishing or maritime activities in the Marine Waterfront District.

*This parcel is not within the Marine Waterfront District or the Shoreland Zone. The Desert of Maine is a public water supplier licensed through the State of Maine. Wastewater disposal will be through private*

systems. 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 Freeport Zoning Ordinance.**

**MOVED AND SECONDED:** Be it ordered that the Freeport Project Review Board approve the printed Findings of Fact and a Site Plan Amendment for Heestand Family Holding, LLC for a Site Plan Amendment with changes to include changes to the design of previously approved guest cabins and the addition of a tent, to be used seasonally, at the Desert of Maine (Tax Assessor Map 22, Lot 8), to be built substantially as proposed, application dated 08/31/2022, finding that it meets the standards of the Freeport 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 construction, the applicant obtain any applicable permits from the Freeport Codes Enforcement Department.
- 3) The conditions of approval from the past approvals are still applicable. (Reiche & Donahue)

Ms. Berger pointed out that she is not happy about the open-ended tent addition without any constrictions on it so her vote may appear harsh.

**ROLL CALL VOTE:** (6 yes) (1 Nay-Berger)

**ITEM V:** Persons wishing to address the Board on non-agenda items.

Chair Blanchard encouraged Board members that have questions as they are reviewing applications about ordinances, or questions about particular ordinances we are working with to reach out to Caroline and talk through some of this with her. He thinks it will help us save time in the room trying to work through some of the intricacies of why these are before us and it is sometimes helpful to just have a conversation with Caroline who loves hearing from us during non-meeting times. Ms. Pelletier added that as long as it is not specific detailed on the application or procedural or ordinance related, but you can ask her anything and if she doesn't feel she can answer it, she will tell you to ask her in the Board room. She mentioned that when Jim first joined, he asked her great questions and there were great questions raised tonight. Chair Blanchard mentioned that if we have the opportunity for Caroline to figure out the answers and present that to us during the meeting, it helps resolve some of the issues. He asked the Board to think about that and move forward. It will be helpful for everybody.

**ITEM VI:** Adjourn.

**MOVED AND SECONDED** To adjourn at 9:07 p.m. (Yankee & Berger) **ROLL CALL VOTE:** (7 Yes) (0 No)

Recorded by Sharon Coffin