



TOWN OF FREEPORT, MAINE

Planning Department

30 Main Street

Freeport, ME 04032

Phone: 207-865-4743

www.freeportmaine.com

TO: FREEPORT TOWN COUNCIL

FROM: CAROLINE PELLETIER, TOWN PLANNER

**RE: FREEPORT DESIGN REVIEW ORDINANCE- DRAFT AMENDMENTS
PERTAINING TO ACCESSORY, SEASONAL OUTDOOR SEATING**

DATE: TUESDAY, DECEMBER 21, 2021

Background: At the Wednesday, December 1, 2021, Planning Board meeting, the Planning Board made recommendations to the Town Council for proposed Zoning Ordinance amendments pertaining to seasonal, accessory, outdoor seating. Along with those recommendations, the Board provided input to the Town Council that the Town Council consider making such accessory outdoor seating exempt from Design Review, for parcels in the Freeport Design Review Districts. In cases where outdoor seating is being added, it is reviewed under the Design Review standard for site features. The attached language provides a suggested provision the Council could consider if they decide they want to exempt the seasonal outdoor seating from Design Review.

DESIGN REVIEW ORDINANCE CHAPTER 22

Section I Purpose

A. General Purpose

The center of the Town of Freeport is a mixed residential and business use district. District 1 is comprised predominantly of buildings which were constructed before 1930. It includes the Main Street Historic District, many significant historic buildings representing a variety of architectural styles, other buildings which contribute to the historic setting, and a number of contemporary buildings. District 2 is predominantly residential with a few businesses and is wedged between the Main Street Historic District and the Harraseeket Historic District. The purpose of this Ordinance is to promote the educational, cultural, economic and general welfare of the Town of Freeport, to provide for the protection and preservation of buildings, structures and places of historic value, and to promote design which is compatible with the present character of Freeport, pursuant to the provisions of Title 30 M.R.S.A. Section 1917 as amended.

B. Specific Intent

It is the specific intent of this Ordinance to:

1. Encourage the continued use of existing historically or architecturally important buildings and those which contribute to the character of the Districts and discourage their demolition and removal;
2. Prevent inappropriate alterations of buildings of historic value;
3. Assure that new buildings are designed and built in a manner compatible with the character of the Districts in terms of scale and visual effect;
4. Assure that changes to contemporary buildings and new construction do not detract from adjacent historic buildings.

Section II Definitions

Architectural Significance

A building or structure shall be determined to have architectural significance if it embodies distinctive characteristics of a type, period or method of construction, represents the work of a master architect or builder, or possesses high artistic values.

Building

Wherever the word "building" is used, it also refers to all structures and places (i.e. cemeteries, parks, etc.) which may or may not have buildings located on them and which are classified under this Ordinance.

Demolition

The permanent removal, dismantling or destruction of all or any portion of an existing building or structure or any related attachment, appurtenance or accessory to that building.

Districts

In this Ordinance, Districts refers to the Freeport Design Review Districts.

Historical Significance

A building or structure shall be determined to have historical significance if it is associated with events which have contributed to the formation and development of the Town of Freeport, if it is associated with the lives of people who have been important to the community or if it has made a contribution to the broader patterns of our common history.

Material Change

Material change is defined as a modification to the architectural style, general design and general arrangement of the exterior of a building or structure, including but not limited to the kind of texture of the building materials and the type and style of all windows, the colors of a building, doors, light fixtures, other appurtenant fixtures and other features such as walks, walls, fences, signs, driveways and parking areas. In addition, all activities that affect the exterior of the building and require a building permit are also included in this definition.

Neighborhood Significance

A building shall have neighborhood significance if it contributes to the creation of a physical setting representing a period important in the evolution of the Town. It is understood, in this case, that the physical setting, which is composed of buildings, landscape features and open space, and other natural and architectural features, can transcend the sum of its parts in creating a sense of history.

Some examples of situations in which a building would have neighborhood significance are: it is one of a group of similar buildings constructed and/or designed by an individual important in Freeport history; it is a compatible element in a group of buildings of similar or equally important significant architectural styles; its location (i.e., on a corner lot, on a rise of land, or a curve, on a large parcel of land, as the first building to visually introduce an important group of buildings) makes it an important element in the neighborhood; its size gives it a dominant place in the neighborhood.

Reconstruction

The rebuilding, or constructing again, of a building or part of a building. The reconstruction may or may not be a return to the original design of the building.

Rehabilitation

The upgrading of a building, previously in a dilapidated or substandard condition, for human habitation or use. Rehabilitation does not necessarily retain the building's original architectural features.

Restoration

The replication or reconstruction of a building's original architectural features. Restoration usually describes the technique of preserving historic buildings.

Violation

It shall be deemed a violation of this Ordinance if an applicant fails to comply with the plans and conditions as approved by the Project Review Board when it issued the Design Certificate, and/or if any activity listed in Section V is carried on without first obtaining a Design Certificate which permits the activity to proceed.

Visually Compatible

It is not the intent that all buildings in a neighborhood should look the same, but that a mix of styles, sizes, etc. that blend together well shall be allowed and that facade designs that predate 1930 in Design Review District 1 and 1950 in Design District 2 be encouraged, but not necessarily required.

Section III Name and Boundaries

A. Classifications

Within the Freeport Design Review Districts, all buildings shall be classified and designated as shown on the map annexed hereto and made a part hereof as Exhibit A. All buildings shall be divided into three classifications as follows:

1. Class A - Buildings existing in 1930 in Design Review District 1 and 1950 in Design District 2 which have major architectural, historical and/or neighborhood significance;
2. Class B - All buildings existing in 1930 in Design Review District 1 and 1950 in Design District 2 which have architectural, historical and/or neighborhood significance;
3. Class C - Buildings not classified A or B.

B. Classification Procedure

Three categories - historical, architectural and neighborhood significance - were rated for each building in the Districts. In District 1 on buildings constructed before 1930, and in District 2 on buildings constructed before 1950. A scale of 1 to 5 points, with 5 as the highest number of points, was used for each category. The maximum total number of points a building could receive was 15 and the minimum number of points was 3. All buildings receiving total scores of 12 to 15 points were rated A. All buildings receiving total scores of 7 to 11 points were rated B. All other buildings were rated C.

C. Reclassification

Buildings may be reclassified to A, B, or C upon recommendation of the Project Review Board to the Town Council. A public hearing will be held by the Council following sufficient written notice to the owners of the affected property and the posting of notice in the Council's normal manner. New buildings shall be Class C buildings regardless of prior or other classifications on a parcel without action by the Town Council.

The Council may adopt a resolution designating one or more buildings or structures A, B, or C utilizing the following criteria:

1. Architectural, historical and neighborhood significance;

Note: Proposed new text is shown with an underline and proposed text to be deleted is shown with a strikethrough.

Amended 04/23/2019

2. Suitability for preservation or restoration.

Upon adoption of the resolution, the owners and occupants of each newly reclassified building shall be given written notification of such reclassification by the Council.

D. Design Review Districts

For the purposes of this Ordinance, the following Districts are recognized:

1. Design Review District 1
2. Design Review District 2
3. Color Overlay District

The Design Review Map, which may be amended from time to time shall be the final authority as to the boundary of the Districts.

Section V Design Certificate

A. Project Review Board

In considering applications for permits, the Project Review Board shall use the guidelines appearing in Section VIII of this Ordinance. A Design Certificate shall be required before a permit to proceed is issued for any of the following:

1. Any demolition of a building classified A or B;
2. Any moving of a building classified A or B;
3. Any material change in the exterior appearance of existing buildings classified as A or B by additions, reconstruction or alteration;
4. Any new construction of a building or accessory building or structure subject to view from a public street or public right of way within the Districts;
5. Any material change in existing walks, walls, fences, signs, driveways and parking areas or construction of new walls, fences, driveways, and parking areas if subject to view from a public street or public right of way within the Districts. Public improvements by the Town of Freeport or its agents in the public right of way are exempt from this requirement;
6. Any proposed new, or material change of any type of lighting if subject to view from a public street or public right of way within the Districts;
7. Any material change in the exterior appearance of existing Class C buildings by addition, reconstruction or alteration, if subject to view from a public street or public right of way within the Districts;
8. Material changes to existing or additional signage on Class A, B, and C buildings and sites.
9. Color changes to the exterior of Class A, B, or C buildings within the Color Overlay District only if the color is not included on the palette of historical colors of any paint manufacturer.

B. Administrative Review

The Town Planner shall have the authority to review and make a decision on the following proposed minor modifications to a project in the Design Review Districts. Both the Town Planner and the applicant may request that the application be reviewed by the Project Review Board. The Town Planner shall make a decision on the application within 14 days of submittal of a complete application.

1. Minor modifications to previously approved signs which do not change the visual appearance of the signs. Examples would be substitution of a name or modest color and/or design changes.
2. Minor additions of signage which will not materially change the visual appearance of the site. Examples would be the addition of new directional signs and non-business residential name signs.

Section VI Project Review Board

- A. Four members of the Board shall constitute a quorum. The Board shall act on an application by voting on a motion to approve (with or without conditions) or a motion to deny. A motion to approve prevails and the application is approved unless four members vote against the motion. A motion to deny fails and the application is approved unless four members vote in favor of the motion. An application is denied only if four members vote against a motion to approve or in favor of a motion to deny. The Board shall adopt rules for the transaction of its business and consideration of applications which shall provide for the time and place of regular meetings and for the calling of special meetings.
- B. The Board may from time to time issue publications describing design guidelines or standards which further the purposes of this Ordinance.
- C. The Board, subject to the Town Council's prior consent, shall have the right to retain and pay for the services and expenses of professional help required in carrying out the purposes of this Ordinance. The cost of such services shall be borne by the applicant.
- D. The Board shall hold a public hearing on a Category I application. Notice requirements shall follow the regulations required by the Freeport Zoning Ordinance for Site Plan review by the Freeport Project Review Board.

Section VII Action on Applications for Design Certificate

- A. The application for a Design Certificate shall be made in the Town Office on forms provided thereof. For Category I applications, a pre-application conference with the Town Planner is required. If Site Plan Review is also required, the pre-application conference shall be with the Town Planner. Each application shall be accompanied by such sketches, drawings, photographs, descriptions or other information showing the proposed alterations, additions, changes or new construction as may be required for the Board to make a decision.

Note: Proposed new text is shown with an underline and proposed text to be deleted is shown with a strikethrough.

Amended 04/23/2019

- B. The staff shall transmit the application for a Design Review Certificate, together with the supporting information and material, to the Board at its next meeting for examination and approval. The Board shall act within 60 days from the date the applicant files a completed application and pays all required application fees and outside professional services deemed necessary. If the Board does not act within 60 days, the application is deemed to be approved and a Design Certificate shall be issued.
- C. Nothing herein shall prohibit an extension of time, by a formal action for a specific period of time, for review and approval of the application if the parties have mutually agreed that more information and/or discussion is required. Unless the Board disapproves an application, a Design Certificate shall be issued with or without conditions. When the Board disapproves an application, its reasons shall be issued to the applicant in written form.
- D. If an activity regulated by this Ordinance also requires a building permit, the permit shall not be issued until the Design Certificate is granted.
- E. The Project Review Board shall conduct a simultaneous review if Site Plan review is required.

Section VIII Design Guidelines

- A. Buildings Classified as A or B
 - 1. A or B Buildings: Any building classified as A or B, or any part of appurtenance thereof, including but not limited to walls, fences, light fixtures, steps, driveways, parking areas and paving shall only be moved, reconstructed, altered or maintained in a manner that will preserve its historical, architectural and neighborhood significance. When making that determination, recognition shall be given to the design and placement of buildings previously on the site and their past relationship with surrounding buildings.
 - 2. Demolition or Removal of A or B Buildings: Should a property owner want to demolish or remove all or any portion of a building classified A or B, a four (4) month notice of the proposed demolition or removal shall be given before a demolition or removal permit is issued. The owner of the affected building shall cause notice to be published in a newspaper of general circulation at least three (3) times prior to demolition or removal. The first notice shall be published no later than fifteen (15) days after the application for a permit for demolition or removal is filed and the final notice shall be published approximately fifteen (15) days prior to the date of the Project Review Board meeting where action on the application is expected. The purpose of this section is to further the purposes of this Ordinance by preserving buildings classified A or B which are important to the architectural, historical and neighborhood significance of the Town, and to afford the Town, interested persons, historical societies or organizations the opportunity to acquire or to arrange for preservation of such buildings. The notice of the proposed removal shall be forwarded to the Freeport Historical Society, the Freeport Town Council and the Freeport Planning Board. The Project Review Board shall conduct a public

hearing prior to its vote on an application to provide an opportunity for public comment of the proposed demolition or removal.

In addition, the property owner shall also submit a statement to the Board describing the need for demolition and why the building can't be saved or renovated for another use.

3. Negotiation to Avoid Demolition: During this four (4) month period, the Board may negotiate with the owner of the property and with any other parties in an effort to find a means of preserving the property. Such negotiations may include relocation to a new site, recommendation for a historic easement pursuant to Section XI of this Ordinance, adaptive re-use of the structure, or inducements to interested third parties to purchase the property for the purpose of preserving it. The Project Review Board may issue a permit to remove a building prior to the expiration of the 4 month notice period if adequate provisions are made to move the building for the purpose of preserving it.

B. Buildings Classified as C

The construction, reconstruction, alteration, or moving of any building and its appurtenances classified as "C" shall be generally of such design, size, building material, texture, and location on the lot as will be compatible with other buildings in the Districts and particularly those designated "A" or "B".

The intent of this section is not to require that a contemporary or "C" building be constructed or altered to meet a specific architectural style (i.e., colonial, federal, etc.). Rather, compatibility with other buildings shall be determined by factors such as: type and style of buildings previously on the parcel, historical design of the buildings and relationship with surrounding buildings.

- #### C. Design Guidelines for All Buildings Within the Districts Newly constructed or reconstructed buildings as well as existing buildings and their appurtenances, which have been altered, repaired or moved, shall be visually compatible with the buildings, squares and places to which they are visually related and specifically with nearby and/or adjacent "A" or "B" buildings in terms of the following factors:

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.
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 of buildings should be visually compatible with the heights of the buildings in the neighborhood.
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.
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.
 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.
 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.
 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 and colors 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. In the Color Overlay District colors shall be compatible with historic buildings and the colors should not dominate the architectural features of the building and other buildings around it.
 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).
 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.
 10. In addition to the requirements of the Freeport Sign Ordinance, signs in the Freeport Design Review Districts 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".

Section IX Appeals

Appeals from a decision of the Project Review Board under this Ordinance may be taken to the Board of Appeals.

1. Administrative Appeals

- a. Any person who has participated before the Project Review Board and can demonstrate particularized injury may appeal the final decision of the Project Review Board on an application for a Design Certificate to the Board of Appeals within 30 days after the Project Review Board has issued its written decision. The appeal must be in writing and must be accompanied by a filing fee which shall be established by the Town Council
- b. The Board of Appeals shall consider the appeal at a meeting held within 60 days of receipt of the written request for an appeal. The Board of Appeals shall publish the time, date, and place of the meeting in a newspaper of area-wide circulation a minimum of 7 days prior to the meeting. Written notice of the meeting shall be sent to all owners of property within 200 feet from the property which is the subject of the appeal a minimum of 10 days prior to the meeting. The meeting is a public proceeding as defined by law.
- c. The Board of Appeals shall not conduct a de novo hearing, but shall review the record of the proceeding before the Project Review Board. If the Board of Appeals finds the Project Review Board record to be insufficient, the Board of Appeals may remand the matter to the Project Review Board for findings and conclusions or for further proceedings, findings and conclusions.
- d. The Board of Appeals may allow persons to present their positions orally or in writing, based on the record of the proceedings before the Project Review Board. The Board of Appeals shall not receive new evidence, including testimony or exhibits, which is not part of the record of the proceedings before the Project Review Board.
- e. The Board of Appeals may reverse the decision of the Project Review Board, in whole or in part, only upon a finding that the decision is contrary to the provisions of this Ordinance or that the decision is unsupported by substantial evidence in the record.
- f. The decision of the Board of Appeals shall be in writing and shall contain findings and conclusions that clearly state, on all relevant factual and legal issues, the action taken by the Board and the reasons for such action. The Board of Appeals shall adopt its written decision within 21 days of the meeting, unless the Board makes a finding that it is unable to do so, or unless an extension has been agreed upon amongst the parties.

2. Appeals to Superior Court

Appeals of decisions of the Board of Appeals under this Ordinance shall be to Superior Court according to the provisions of the Maine Rule of Civil Procedure 80B.

Section X Acquisition of Historic Easements

The town may acquire, by purchase or donation, historic easements in any area within its jurisdiction wherever and to the extent that the Town Council, upon the recommendation of the Board, determines that the acquisition will be in the public interest. For the purpose of this section, the term "historic easement" means any easement, restriction, covenant or condition running with the land, designed to preserve, maintain or enhance all or part of the existing state of places of historic, architectural, or neighborhood significance.

Section XI Ordinary Maintenance Allowed; Public Safety

- A. Nothing in this Ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior feature in the Districts which does not involve a change in design, material, or outer appearance.
- B. Nothing in this Ordinance shall prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the Codes Enforcement Officer shall certify is required by the public safety because of an unsafe or dangerous condition.

Section XII Exceptions

This ordinance does not apply to:

- 1) signs erected and maintained by a governmental entity pursuant to and in discharge of a governmental function, or
- 2) signs otherwise required by law, ordinance or governmental regulation, and
- 2)3) ~~seasonal, accessory, outdoor seating as permitted by Section 409.D, Section 411.E, Section 413.E, and Section 414.E. of Chapter 21 Town of Freeport Zoning Ordinance.~~

Section XIII Enforcement

- A. It shall be the duty of the Codes Enforcement Officer to enforce the provisions of this Ordinance. If the Codes Enforcement Officer shall find that any of the provisions of this Ordinance are being violated, he shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it, including but not limited to the discontinuance of the activities undertaken without obtaining a Design Certificate as required by the Ordinance.
- B. The Codes Enforcement Officer shall inspect, from time to time, those buildings, structures and any appurtenances for which a Design Certificate has been issued to ensure compliance with the terms contained in the Certificate. If the Codes Enforcement Officer shall find that any of the terms contained in the Certificate are being violated, he shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.

Note: Proposed new text is shown with an underline and proposed text to be deleted is shown with a strikethrough.

Amended 04/23/2019

- C. When any violation of the provisions of this Ordinance shall be found to exist, and the violation is not corrected after order of the Codes Enforcement Officer pursuant to Paragraphs A or B of this section, the Codes Enforcement Officer shall notify the Town Manager, who shall then initiate any and all actions to be brought in the name of the Town. The Town Manager shall notify the Town Council before any formal action begins.
- D. A Design Certificate, secured under the provisions of this Ordinance, shall expire if the work is not commenced within two (2) years of the date on which it is granted, An extension of one (1) year may be granted by the Board provided the extension is applied for before the approval expires.
- E. Failure to obtain a Design Certificate before construction commences shall result in a fine of One-Thousand Dollars (\$1,000.00).

Section XIV Penalties

- A. Any person who violates any provision of this Ordinance shall be guilty of a civil violation and shall be punished by a fine of not more than One-Thousand Dollars (\$1,000.00) and not less than One-Hundred Dollars (\$100.00).
- B. For the purpose of this Ordinance, each day during which there exists any violation of any provision herein shall constitute a separate violation of such provisions.

Section XV Separability

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this Ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section XVI Fees

All applications for design review approval shall be accompanied by a fee as described below:

Category I - \$165.00

Renovations or new construction of significant scale to require a normal review by the Board.

Category II - \$55.00

Renovations or new construction of a minor scale that would require limited review by the Board.

The staff person for the Project Review Board will determine the Fee to be paid. Any applicant aggrieved by the staff person's decision may appeal to the Project Review Board. The Board can overturn the staff person's decision by a majority vote of the entire Board.

Section XVII Conflict with Other Ordinances

Note: Proposed new text is shown with an underline and proposed text to be deleted is shown with a strikethrough.

~~Amended 04/23/2019~~

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law.

Where this Ordinance imposes a greater restriction upon buildings or structures, the provisions of this Ordinance shall control.

Amended 04/23/2019 adding section XII Exceptions