



TOWN OF FREEPORT, MAINE

Planning Department

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Freeport, ME 04032

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TO: FREEPORT PLANNING BOARD

FROM: CAROLINE PELLETIER, TOWN PLANNER

RE: AGENDA ITEM II: Zoning Ordinance Amendment (Sections 104 & 201) – PUBLIC HEARING

DATE: WEDNESDAY, JANUARY 6, 2021

ITEM II: Zoning Ordinance Amendment (Sections 104 & 201) – PUBLIC HEARING

This will be a public hearing regarding amendments to Section 104 (Definitions) and Section 201 (General Restrictions). A new definition of “Lot, oversized” will be added, in addition to standards to allow oversized lots, within certain zoning districts and partially in the Shoreland Zone, but that do not have sufficient shore frontage or lot width (under Section 507.I.1), to possibly be divided. *Note: This amendment is being brought forward by staff with input from the Town Attorney and the Maine Department of Environmental Protection.*

Background: This amendment is being brought forward by staff with input from the Town Attorney and the Maine Department of Environmental Protection (DEP). It is intended to address situations when parcels are partially located in the Shoreland Area but unable to meet the actual shore frontage and/or lot width requirements. There are some lots that were previously created and are in this situation, and there are some large lots that cannot be divided due to this same issue.

This happens in cases when parcels are located within 250 feet of a regulated resource (ie: highest annual tide line on tidal waters), however the parcels are located mostly outside of the Shoreland Zone on the upland side; in some cases there is a public road between the parcel and the shore. Since these parcels are partially located within the Shoreland Zone, but do not abut the shore, they physically cannot comply with the minimum shore frontage and/or lot width requirements for Shoreland Zoning.

The interpretation of both the Codes Enforcement Officer (CEO) and DEP is that such lots would be considered non-conforming lots even though they are located on the upland side of a road and even if most of the lot area is located outside of the Shoreland Zone. This amendment, which has been reviewed by the DEP, would add a new definition for “lot-oversized” and allow such lots (in certain zoning districts) that do not have sufficient shore frontage and/or lot width to potentially be divided when certain conditions can be met. It will also affect any “lot - oversized” inadvertently split on or after January 1, 1990 (or a lot previously created from a lot - oversized) and which did not meet shore frontage and/or lot width requirements, to become conforming if the applicable conditions can be met.

A letter from the Town Attorney, a letter from DEP and draft amendment language are attached.

Proposed Motion: Be it ordered that the Freeport Planning Board recommend to the Freeport Town Council amendments to Section 104 and 201 of the Freeport Zoning Ordinance pertaining to the possible division of oversized lots in the Shoreland Zone, in that the Board finds that based upon the letter from the Town Attorney and the letter from the Maine Department of Environmental Protection, the proposed amendments would be consistent with the State of Maine Mandatory Shoreland Zoning Act.

**Chapter 21 – Town of Freeport, Maine Zoning Ordinance
Proposed Amendments**

Note: Proposed new text is shown in red with underline

ARTICLE I

TITLE, PURPOSE AND DEFINITIONS

Section 104. Definitions

Lot, Oversized*: a lot with total area more than twice the minimum size required in the district in which the majority of the area of the lot is located.

**Chapter 21 – Town of Freeport, Maine Zoning Ordinance
Proposed Amendments**

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ARTICLE II

GENERAL USE REGULATIONS

Section 201. General Restrictions

- A. No building or land shall hereafter be used or occupied, no new lot shall be created, and no building or part thereof shall be erected, moved or structurally altered, as defined in the current building code adopted by the Town of Freeport, except in conformity with the regulations herein specified for the district within which it is located and in conformity with the regulations contained within the definitions set forth in Section 104 of this Ordinance. Except as otherwise provided in the District Regulations, accessory uses and structures, home occupations; a lemonade stand operated by a minor on the parent's property; agricultural farm stands; peddler trucks; peddler activities including the sale of goods, as well as the preparation, sale and service of food, conducted by Freeport-based religious, charitable, educational and other non-profit institutions; forest management activities, state granted snowmobile trails and open space uses are permitted in every district. *{Amended, Effective 10/03/17}*

The operation of a lemonade stand, an agricultural farm stand, a peddler truck or a peddler activity pursuant to this Section 201-A shall not be considered a permanent use of the property and shall not acquire the status of a lawful non-conforming use in the event of subsequent changes to this Ordinance.

- B. No part of a yard or other open space around any building required for the purpose of complying with the provisions of this Ordinance shall be included as a part of a yard or other open space similarly required for another building, and no lot shall be changed in area after the enactment of this Ordinance so as to reduce the dimensions of any lot below the minimum herein required; except that a single lot of record containing more than one principal structure that was in existence prior to February 20, 1976 and used as dwelling units may be divided so that each structure is contained on a separate lot, if the following conditions are met:
1. The principal structures were in existence and functioning as a year round dwelling unit prior to February 20, 1976 and there are no records in the Town's

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possession indicating that the structures were unlawful when originally constructed.

2. Each structure is a year round dwelling. As used in this section, the term “year round dwelling” means a structure that is (i) constructed on a permanent foundation; (ii) capable as being used as a permanent residence for one or more persons; (iii) serviced by utilities (including but not limited to, heating, water supply, sewage treatment, electricity and cooking facilities) which are functional during the full calendar year.
 3. Each new lot complies individually to the fullest extent possible with the dimensional requirements of this Ordinance.
 4. Each lot is serviced by public sewer or a subsurface wastewater disposal system in accordance with Maine law. Each lot is served by public water or a well.
 5. A plot plan, drawn to scale, showing the dimensions of the new lots and the locations of structures is submitted to the Codes Enforcement Officer.
 6. The Codes Enforcement Officer determines that the division of land complies with all of the requirements of this section and approves the plot plan.
{Amended, Effective 02/07/12}
- C. No more than one principal building and its accessory buildings as regulated by this Ordinance may be located in any one lot used as a residential lot. This section does not apply to Multi-family Developments, as defined by the Freeport Subdivision Ordinance, and which are part of an approved subdivision. *{Amended, Effective 10/03/17}*
- D. Lots which abut more than one street shall provide the required front yard setbacks along every street except as specifically provided for in the Freeport Subdivision Ordinance.
- E. The use of any building, structure or land shall comply with the performance standards of this Ordinance. The Codes Enforcement Officer, when reviewing an application for any permit required by law, shall determine that a use complies with all performance standards applicable.
- F. When a lot is transected by a zoning district boundary, the regulations set forth in this Ordinance for each district shall apply to the area of the lot in each district, except as permitted by Section 201.H below.
- G. Excavation or filling and earthmoving as described in Section 509 D.2. shall be permitted in any district unless otherwise regulated by this Ordinance. Ponds, as regulated in Section 525, and short term excavations, as regulated in Section 509, are permitted in any district unless otherwise regulated by this Ordinance.

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- H. When part of a lot is in a Resource Protection District RPI, that area in the Resource Protection I District shall be counted toward the required minimum lot area of the other District only if all other applicable space standards can be satisfied within that part of the lot which is in the other district.

- I. If residential and non-residential uses are located on the same lot, the area of the lot must equal or exceed the sum of the minimum lot sizes required for each user, except in the Village District I (V-I), Village Commercial District I (VC-I), Village Commercial District II (VC-II), Village Commercial District III (VC-III), Village Commercial District IV (VC-IV), Medium Density Residential District II (MDR II), Village Mixed Use District 1 (VMU-1), Village Mixed Use District 2 (VMU-2), Village Mixed Use District 3 (VMU-3), Commercial District I, Commercial District III, Commercial District IV, and as provided in Section 402.II.C. below. For the purposes of this section, accessory structures and facilities such as but not limited to sewage and water pumping stations, telephone electronic stations, and electrical transformers, to public utilities are considered to be residential uses. *{Amended, Effective 06/19/12}*

- J. No building or structure which is not a dwelling unit as defined in this Ordinance may be used as a residence.

- K. Public sewer pump stations are exempt from the space standards and landscape setback requirements of this Ordinance.

Public sewer pump stations shall be designed to be as unobtrusive as possible through the use of such measures as landscaping and buffering.

- L. Notwithstanding any other provision of this Ordinance, an Oversized Lot that is partially located in a RR-1, RR-2, or V-2 District and partially located in a district within the Shoreland Zone, but that does not have sufficient shore frontage or lot width under Section 507(I)(1), may be divided into two or more lots provided that the following conditions are met with respect to each lot created by the division:
 - 1. The majority of the area of the lot is located in the RR-1, RR-2 or V-2 District outside a district located within the Shoreland Zone;

 - 2. The portion of the lot located in a district within the Shoreland Zone is not used for a residential dwelling unit, for a use requiring a permit from the Project Review Board or the Codes Enforcement Officer, or for any principal or accessory building;

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3. The lot meets the minimum road frontage, minimum lot width, and minimum lot size requirements for the RR-1, RR-2 or V-2 District;
4. The driveway and utilities on the lot are not located within the minimum shore setback;
5. The driveway and utilities on the lot are not located within the portion of the lot in a district within the Shoreland Zone unless the Project Review Board makes a determination that there is no other reasonable alternative for access to the lot from a public way; and
6. Notwithstanding the provisions of 1 M.R.S. section 302, the division of the Oversized Lot is or was accomplished on or after January 1, 1990, by deed, plan or other similar legal document recorded in the Cumberland County Registry of Deeds. The lots, once so created, are not required to be held in separate ownership.

September 11, 2020

Gerald D. Reid, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Town of Freeport Request for Commissioner's Approval of Proposed Amendments to
Freeport Shoreland Zoning Ordinances Based on Special Local Conditions

Dear Commissioner Reid:

I am writing on behalf of the Town of Freeport to request your approval, as Commissioner of the Maine Department of Environmental Protection ("DEP"), of the proposed amendments to the Town of Freeport's Shoreland Zoning Ordinance attached to this correspondence as **Exhibit A** ("the Proposed Amendments").

Such an approval by the DEP Commissioner based on special local conditions is expressly contemplated in the third paragraph of the Preamble to Chapter 1000 of the DEP's rules, Guidelines for Municipal Shoreland Zoning Ordinances.

In support of this request, I would submit that the Town of Freeport has special local conditions that support such an approval in that the Town of Freeport contains miles of shoreline that was developed for single family residential and commercial purposes long before the State of Maine adopted its mandatory shoreland zoning law. In addition, the Town has miles of public roads that are located within the 250' shoreland zone and that run roughly parallel to the shore. These roads running parallel to the shore create two types of lots of parcels of land: 1) those on the shore side of the road that have shore frontage on the body of water, and 2) those on the upland side of the road that have road frontage, but no shore frontage, even though they are partially located in the shoreland zone. I have attached to this letter as Exhibit B, a partial list of such lots that has been compiled by the Town of Freeport Code Enforcement Officer.

Under the DEP's current interpretation of the Shoreland Zoning Guidelines, Chapter 1000, Section 12.E(1) entitled "Non-Conforming Lots" parcels of land that are partially located in the Shoreland Zone, but that do not have shore frontage are considered non-conforming lots even if they are located on the upland side of a road and even if most of their area is located outside of the shoreland zone.

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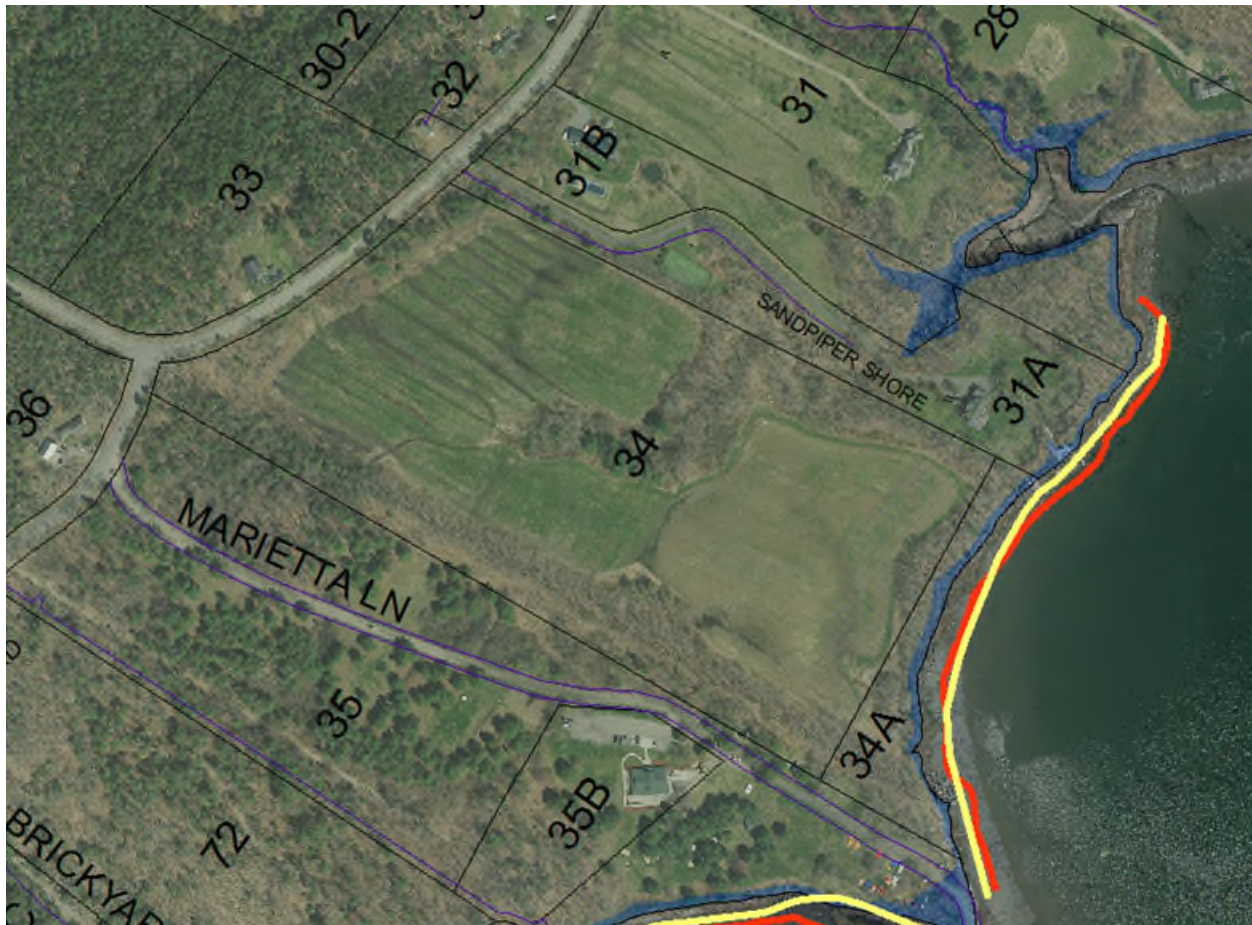
No matter what their size and no matter how much of their area is located outside the shoreland zone, as a result of the DEP's interpretation, these lots may not be divided or subdivided and they may not be developed for more than one single principal use.

As applied to the unique land use patterns and road configurations in the Town of Freeport, the DEP's interpretation of Section 12.E(1) has resulted in unwarranted hardship on affected property owners in Freeport and significant problems for the Town in the areas of zoning, land use and code enforcement, with no commensurate, or even negligible, resulting protection for the natural resources located in the Town's shoreland zone areas. The unwarranted restrictions on land uses located outside of the shoreland zone have become a significant public issue in the Town of Freeport and are undermining the public respect and support to the Town's diligent efforts to protect its important natural resources.

We have provided a number of illustrative examples of the special local conditions in the Town of Freeport in the pages that follow:

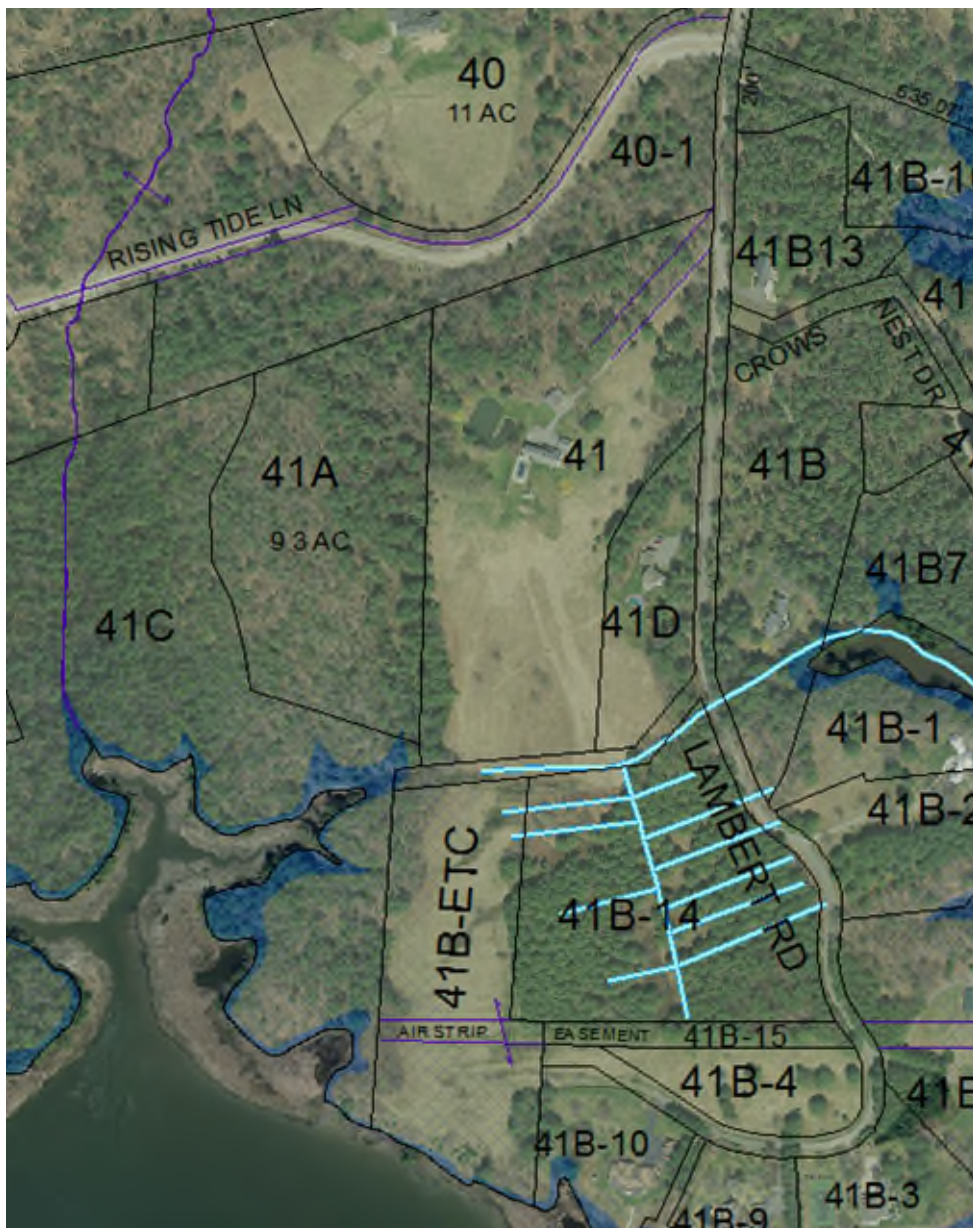
2) Tax Map 19, Lot 34:

This property is located on the upland side of Flying Point Road, has a total area of 34 acres, only three (3) of which is located in the Shoreland Zone. This parcel has no shore frontage but 31 acres of the parcel are located outside the Shoreland Zone in the Rural Residential – 1 District under Freeport’s Zoning Ordinance. Under normal circumstances, the portion of this property located outside the shoreland zone could be subdivided into 12 lots, each of which could be used for a single family residence. Under the DEP’s interpretation of Section 12.E(1), however, this parcel of land may not be divided and it can only be used for one single family house



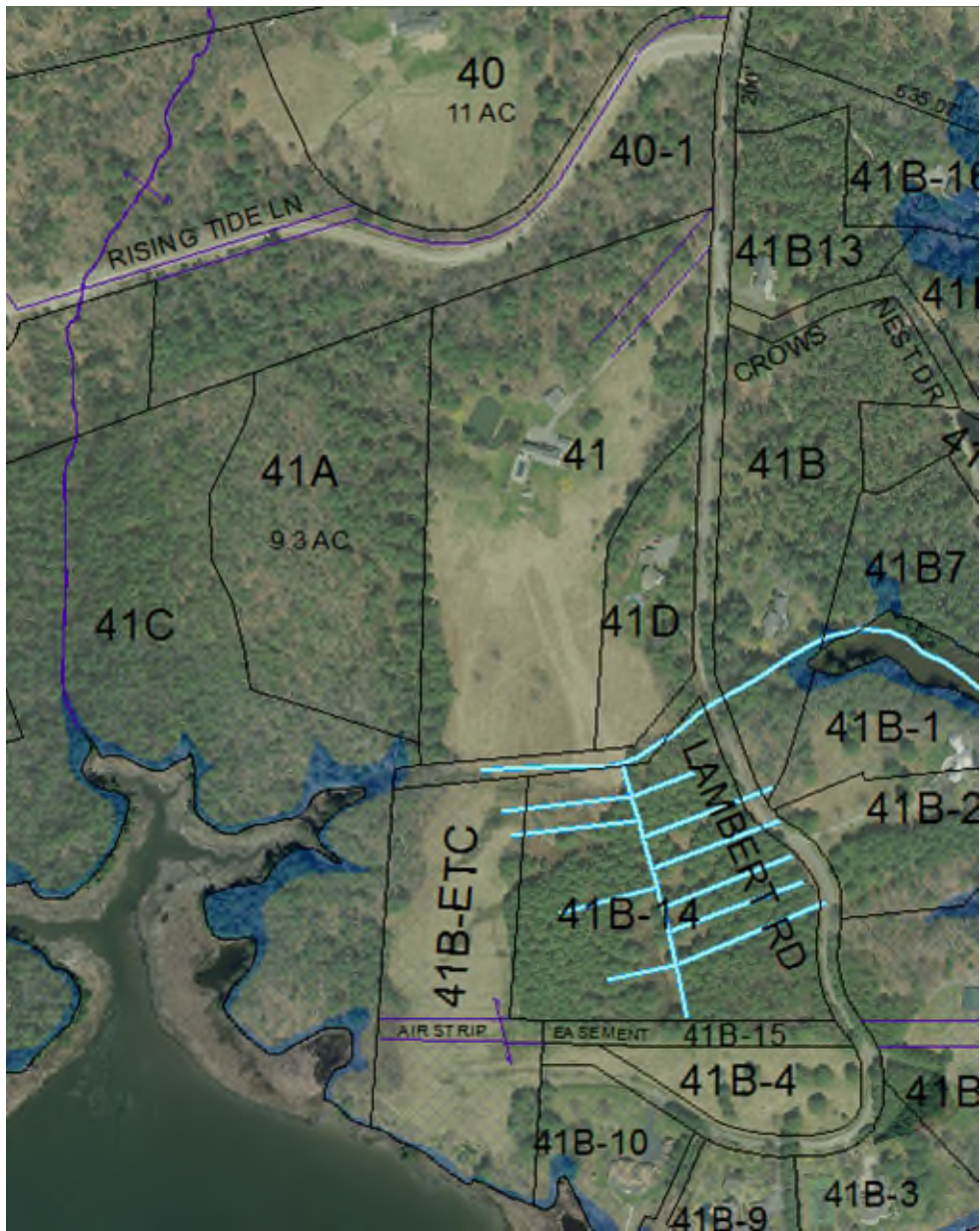
3) Tax Map 25, Lot 41:

This property is located on the upland side of Lambert Road, has a total area of 17.5 acres, only 0.25 of which is located in the Shoreland Zone. This parcel has no shore frontage but 17.25 acres of the parcel are located outside the Shoreland Zone in the Rural Residential – 1 District under Freeport’s Zoning Ordinance. Under normal circumstances, the portion of this property located outside the shoreland zone could be subdivided into 6 lots, each of which could be used for a single family residence. Under the DEP’s interpretation of Section 12.E(1), however, this parcel of land may not be divided and it can only be used for one single family house.



4) Tax Map 25, Lot 41A:

This property is located on the upland side of Lambert Road, has a total area of 9.5 acres, only 0.70 of which is located in the Shoreland Zone. This parcel has no shore frontage but 8.8 acres of the parcel are located outside the Shoreland Zone in the Rural Residential – 1 District under Freeport’s Zoning Ordinance. Under normal circumstances, the portion of this property located outside the shoreland zone could be subdivided into 4 lots, each of which could be used for a single family residence. Under the DEP’s interpretation of Section 12.E(1), however, this parcel of land may not be divided and it can only be used for one single family house.



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The Proposed Amendments (attached as Exhibit A) are designed to address this problem in a practical, common sense manner while still providing the full measure of protection to the natural resources intended to be protected by shoreland zoning. Your approval of the Proposed Amendments based on the special local conditions described in this letter would relieve the unnecessary hardship being experienced by Freeport residents and the Town and would go a long way toward restoring public confidence in the administration of the State's shoreland zoning laws.

If you have any questions about this request, or if we can be of further assistance, please contact me or Nick Adams, the Town's Code Enforcement Officer.

We hope that you will look favorably upon this request.

Sincerely,



Amy K. Tchao

Richard A. Spencer

Town Attorneys for Town of Freeport

Cc: Nick Adams, Freeport Codes Enforcement Officer
Peter Joseph, Freeport Town Manager
Colin Clark, Maine Department of Environmental Protection
Kate Tierney, Maine Attorney General's Office

EXHIBIT A

Amend Section 201 of the Town of Freeport Ordinance by adding thereto a new paragraph L as follows:

L. Notwithstanding any other provision of this Ordinance, an Oversized Lot that is partially located in a RR-1, RR-2, or V-2 District and partially located in a district within the Shoreland Zone, but that does not have sufficient shore frontage or lot width under Section 507(I)(1), may be divided into two or more lots provided that the following conditions are met with respect to each lot created by the division:

1. The majority of the area of the lot is located in the RR-1, RR-2 or V-2 District outside a district located within the Shoreland Zone;
2. The portion of the lot located in a district within the Shoreland Zone is not used for a residential dwelling unit, for a use requiring a permit from the Project Review Board or the Codes Enforcement Officer, or for any principal or accessory building;
3. The lot meets the minimum road frontage, minimum lot width, and minimum lot size requirements for the RR-1, RR-2 or V-2 District;
4. The driveway and utilities on the lot are not located within the minimum shore setback;
5. The driveway and utilities on the lot are not located within the portion of the lot in a district within the Shoreland Zone unless the Project Review Board makes a determination that there is no other reasonable alternative for access to the lot from a public way; and
6. Notwithstanding the provisions of 1 M.R.S. section 302, the division of the Oversized Lot is or was accomplished on or after January 1, 1990, by deed, plan or other similar legal document recorded in the Cumberland County Registry of Deeds. The lots, once so created, are not required to be held in separate ownership.

Amend Section 104 of the Town of Freeport Zoning Ordinance by adding the following definition of “Lot, Oversized” after the definition of “Lot of Record”:

Lot, Oversized: a lot with total area more than twice the minimum size required in the district in which the majority of the area of the lot is located.



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
ACTING COMMISSIONER

November 2, 2020

Amy Tchao & Richard Spencer
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480

Subject: Town of Freeport's Proposed Shoreland Zoning Amendments

Dear Ms. Tchao & Mr. Spencer:

Thank you for submitting the draft zoning amendments to the Department. We appreciate the work that has gone into preparing the potential revisions and understand that your firm and the Town have been working with the Office of the Attorney General, as well as Department staff, in preparing the proposed amendments. The Department's Shoreland Zoning Staff have completed a preliminary review of the proposal and encourage the Town of Freeport to go through the local adoption process and submit the ordinance amendments for official review and approval.

If you or Town officials have questions about the relationship of the proposed amendments to shoreland zoning requirements, you may contact our regional shoreland zoning staff member, Jeff Kalinich, via email at Jeffrey.C.Kalinich@maine.gov or by phone at (207) 615-7044.

Sincerely,

Melanie Loyzim
Acting Commissioner

cc: Colin Clark, DEP
Jeff Kalinich, DEP

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