

MEMORANDUM

TO: Nathan Poore
FROM: Ethan Croce
RE: Center for African Heritage at River Point Proposal
DATE: November 9, 2011

You have asked me to review a proposal from the Center for African Heritage (CAH) to utilize portions of the Town-owned River Point parcel for various activities related to that organization's agricultural, job readiness, and leadership development training initiatives. More specifically, you asked me to review whether the uses contemplated in the CAH proposal would be permitted in light of the various existing development restrictions and zoning regulations that govern the River Point property.

1. Zoning Issues

This property is located in the West Falmouth Crossing Master Planned Development District (WFCMPDD). Portions of the property also lie within the Route 100 Corridor Overlay District and the Shoreland Zone.

a. West Falmouth Crossing Master Planned Development District (WFCMPDD)

The WFCMPDD is the underlying zoning district that governs what uses are allowed to take place on the property. The uses being proposed by CAH would likely be classified in the ordinance as "farming" and "animal husbandry" uses. Neither of these are listed as permitted or conditional uses in this zoning district. This means that a rezoning of the property would be required for the uses proposed. One possible option to allow these uses would be to add "farming" and "animal husbandry" as either permitted or conditional uses in the WFCMPDD. Another option would be to rezone the entire River Point parcel to Farm and Forest since the Farm and Forest District surrounds the River Point property to the north and to the east and since both of those uses are permitted in that zoning district.

The CAH proposal contemplates the use of a greenhouse or hoop house. Since the definition of "farming" in the ordinance excludes commercial greenhouses, a separate ordinance amendment would be required to allow that component of the project to be permitted. One option would be to amend the definition of "farming" to include commercial greenhouses.

b. Shoreland Zone

A large portion of the River Point property lies within the Shoreland Zone. The vast majority of the Shoreland Zone on the property is zoned Resource Protection, primarily due to the presence of the floodplain. There are also smaller sections of the Shoreland Zone that are zoned Limited Residential. Under Shoreland Zoning, agricultural uses are permitted in the Limited Residential District and are allowed in the Resource Protection District under certain conditions with a permit from the CEO.

c. Route 100 Corridor Overlay District

The most westerly portion of the property is located within the Route 100 Overlay District. To the extent that site plan approval may be required for the uses proposed, the Planning Board could apply the Exit 10 Design Guidelines to those portions of the project that lie within the Overlay District. Given the remote location of this site, the lack of direct visibility into the site from public ways, and the relatively low-impact nature of the uses being proposed, I would not anticipate that the Design Guidelines would have much of a bearing on the development.

2. Other encumbrances

a. Easements

In addition to the aforementioned zoning issues, certain portions of the property are encumbered by various easements that may further restrict where, and what types of, activities may take place on the property. These easements include a 50 foot wide easement to the Portland Water District Easement, a 135 foot wide easement to Central Maine Power, and a 150 foot wide easement to Central Maine Power. All three of these easements prohibit the erection of buildings or structures but may allow certain farming and grazing activities that result in minimal soil disturbance.

b. Wetlands

A portion of the property is encumbered by wetland mitigation areas associated with MDEP permitting for the adjacent shopping center and MDEP permitting of the High School. These areas are located generally in the most northerly/northeasterly portions of the property and the most southerly portion of the property. These areas generally appear to overlap areas of the site that are zoned Resource Protection.

c. Deed Restriction

The Town acquired title to the River Point parcel subject to certain restrictions contained in a document titled "Easements with Covenants and Restrictions Affecting Land". This document contains a restriction that prohibits the use of the property for commercial purposes except with the consent of River Point, LLC and West Falmouth Development, LLC (both of these entities were formerly controlled by Richard Berman and may still be), and with the consent of the owner of Lot 2 in the subdivision (currently Hannaford). This restriction expires on April 9, 2014.

3. Parking Requirements

The establishment of parking for nonresidential uses in Falmouth requires site plan review from the Planning Board. The Town's Zoning and Site Plan Review Ordinance describes how much off-street parking is required to serve different land uses. Where minimum parking requirements for certain uses are not specifically provided for in the ordinance, the Planning Board must determine the number of off-street parking spaces that will be required to serve the uses being proposed. Farming and animal husbandry uses do not have minimum parking requirements so the Planning Board, as part of the site plan review process, would ultimately need to determine how many parking spaces will be required to the serve the uses proposed by CAH.

It is my understanding that the River Point bridge is no longer capable of supporting motorized vehicular traffic. The consequence of this is that off-street parking for the proposed uses would need to be provided off-site. The Planning Board does have the authority to approve shared parking facilities with neighboring properties/uses under certain circumstances. Prior to approving a shared parking arrangement, however, the applicant would need to obtain the consent of the abutting property owner(s) with whom parking is proposed to be shared. In this instance, at a minimum, that would mean obtaining the consent of Hannaford Bros Inc. To the extent that there might already be an existing shared parking arrangement between Hannaford and the owner of the abutting multi-tenant commercial building (N/F North River 65 Gray Rd LLC), the consent of North River would also likely be required to amend an existing shared parking agreement.

The ordinance does provide the Planning Board with the discretion to waive off-street parking requirements in certain situations. However, the Board may only grant such a waiver upon a demonstration by the applicant that the parking requirements of the ordinance are unnecessary or excessive and, further, provided that an area of sufficient size to accommodate the parking spaces otherwise required can be set aside and reserved should the parking be required in the future. This would likely be a difficult waiver to obtain if vehicular access is prohibited across the bridge.

Summary

This memo is meant provide a general overview of certain known development limitations on the River Point parcel and the implication of those limitations on the CAH proposal. This represents a cursory review of issues identified to-date. Since we do not yet have a detailed proposal or map showing specifically where the uses and activities proposed by CAH are anticipated to occur on the property, it may be that many of these issues are not directly relevant to the CAH proposal.