



**SOUTH KINGSTOWN PLANNING DEPARTMENT
PROJECT REVIEW MEMO**

HEMMERLE SUBDIVISION

Major Subdivision – Combined Conceptual Master & Preliminary Plan

July 26, 2022

Project Type:	Major Subdivision – Flexible Frontage		
Review Stage:	Combined Conceptual Master & Preliminary Plan		
Address:	350 Ministerial Road		
Plat:	74	Lot:	7
Parcel Size:	~ 7.8 acres (339,768 sf)	Zoning District:	R-80
Applicant:	Lee G. Hemmerle Trust	Owner:	Same
Current Plan Set:	<i>Proposed Two-Lot Major Subdivision, Prepared for Lee G. Hemmerle Trust, 350 Ministerial Road, Assessor’s Plat 74 Parcel 7, South Kingstown, Rhode Island, Sheets 1 through 8, dated April 26, 2022, prepared by Alfred W. DiOrio, RLS, Inc.</i>		

Property Characteristics

The property is approximately 7.8 acres (339,768 square feet) in total area and contains all upland area. This property is located on Ministerial Road, a state road that has been recognized as a Scenic Roadway. Currently one (1) existing single-family residence exists on this parcel with access via a driveway off of Ministerial Road.

Project Description

The applicant is proposing to utilize the flexible frontage provision of the Zoning Ordinance (Sec. 502.2 - *Lot frontage and width, flexible provisions*) to create a 2-lot subdivision. The applicant has provided a conceptual *Yield Plan* depicting a 3-lot conventional subdivision with the construction of a roadway which confirms the ability of the parcel to utilize the flexible frontage provision. As a 2-lot residential subdivision, this project would generally be considered a Minor Subdivision, however, waivers are required when proposing to utilize the flexible frontage provision of the Zoning Ordinance and is thereby considered a Major Subdivision.

The total area and frontage of the proposed lots to be created are as follows:

	Area (square feet)	Frontage (feet)
Lot 1	129,638	225'
Lot 2	214,197	99.01'

Lot 1 will support the existing dwelling, well, onsite wastewater treatment system (OWTS) and a portion of the driveway. Lot 2 will be serviced by a proposed new well and OWTS, as well as a new driveway. The driveway will be proposed as a shared configuration and will utilize the existing curb cut on Ministerial Road which will help to preserve the requisite 50' vegetated buffer along the roadway.

Revisions to Date

In response to comments made at the Planning Board meeting on June 28, 2022 the applicant has revised the proposed subdivision plan by relocating the proposed house, well and roof drainage infiltration areas and relocated the infiltration basin out of the buffer area along Ministerial Road.

Waivers Requested

The applicant proposes to utilize the flexible frontage provision of the Zoning Ordinance to provide less than the required lot frontage in the R-80 zoning district. Section 401 (Dimensional Regulations – Schedule of dimensional regulations) of the Zoning Ordinance requires parcels to provide 200' of frontage. As proposed, Lot 1 will contain 225' of frontage and Lot 2 will contain 99.01'.

Decision Deadline

This application was Certified Complete on May 9, 2022. The Planning Board has until **August 7, 2022** (90 days from date of completion) to render a decision. There are two (2) additional regular meetings of the Planning Board currently scheduled between now and the deadline.

Regulatory Considerations

Zoning Ordinance – Article 5, Sec. 502.2: Supplemental dimensional regulations.

Section 502.2 of the Zoning Ordinance outlines the flexible frontage provision in creating lots with less than the frontage required per the Dimensional Regulations.

502.2 Lot frontage and width, flexible provisions. Upon approval by the Planning Board, through a request for waiver pursuant to the Town's Subdivision and Land Development Regulations, the following lot frontage and lot width variations may be permitted:

- A. In residential zones R-10 to R-200, the Planning Board is authorized to reduce the lot frontage and lot width of newly created lots in a subdivision on any public or approved private street to a minimum of 20 feet.
- B. The Planning Board must, before approving such flexible lot frontage and lot width, make findings of fact that:**
 - (1) Using flexible zoning is in the best interest of good planning design as evidenced by consistency with the Comprehensive Community Plan and the Zoning Ordinance; and,**
 - (2) Would result in a better use of the land than permitted under conventional zoning.**
- C. Open space lots, within an approved cluster subdivision, may have zero frontage on a street, as long as the Planning Board approves private access to the open space by easement.
- D. As part of the application to the Planning Board for flexible lot frontage and width, a "yield plan", as defined in Article 12 shall be required. No more buildable lots shall be allowed using flexible frontage and width provisions than are allowed by using the conventional frontage and width provisions.

Zoning Ordinance – Article 5, Sec. 505.6: Ministerial Road Scenic Highway

Section 505.6 (Ministerial Road Scenic Highway) of the Zoning Ordinance

- A. Any parcel or lot, whether or not developed, having direct lot frontage or vehicular access on the Ministerial Road Scenic Highway shall conform to the following standards, compliance with which shall be confirmed prior to issuance of a building permit:

1. Where that portion of the lot adjacent to Ministerial Road Scenic Highway is already wooded or contains significant stands of natural vegetation or specimen plant materials, including but not limited to mountain laurel and rhododendron, a minimum 50-foot wide wooded buffer shall be maintained. The buffer shall be measured from the state highway right-of-way line and shall extend 50 feet into the front yard of any adjacent parcel of land parallel to the right-of-way line.
2. Except for the following activities, removal of existing vegetation within the 50-foot wide buffer required by subsection A., above, shall not be permitted:
 - a. Cutting or removal of any trees or shrubs required for disease control as certified by a licensed arborist;
 - b. Removal of dead or dying trees or shrubs;
 - c. Removal of invasive plant species;
 - d. Maintenance of a permitted use of the highway buffer, such as a driveway or path; or
 - e. Selectively removing lower limbs from trees to raise the canopy.
3. Where removal of dead or dying trees or shrubs is performed, or where removal of trees and shrubs is required for disease control, pursuant to subsection 2., above, removed vegetation shall be replaced in-kind pursuant to the standards contained in subsections 5 or 6, below, as applicable.
4. Where a new principal or accessory structure is proposed, existing vegetation along the street is minimal or absent, and such new construction will be visible from the highway due to lack of vegetation, topography or other site characteristics, planting of a natural vegetative landscaped buffer, containing plants that are consistent with the existing Ministerial Road native plant species and that will provide a year-round screen, shall be required. In such cases, the building permit application shall be accompanied by a landscape plan, prepared and stamped by a Rhode Island registered landscape architect.
5. All in-kind replacement required by subsection A.3. above, and required plantings along Ministerial Road required by subsection A.4. above, shall be of specimen quality and shall be native plant material hardy to the Plant Hardiness Zone for the Town as defined by the USDA Plant Hardiness Zone Map and the American Standards for Nursery Stock. Plant material shall be installed in accordance with the applicable requirements of the Subdivision and Land Development Regulations. Plants shall be installed at the following sizes, at a minimum, as follows:
 - a. Canopy trees shall be 1½ to 2 inch caliper;
 - b. Evergreen trees shall be 6 to 8 feet in height; and
 - c. Shrubs shall be 4 feet in height.
6. Should removal of plant material within the 50-foot wide buffer required by subsection A.1. above be due to negligence of the owner or occur without prior approval from the Town, the owner shall install in-kind specimen quality plants as defined in subsection A.5. above, excepting that replacement plants shall be installed at equal size to the removed plant or shall be sized as follows, whichever is smaller:
 - a. Canopy trees shall be 2½ to 3 inch caliper (approximately 10 feet in height);

- b. Evergreen trees shall be 8 to 10 feet in height; and
 - c. Shrubs shall be 8 feet in height.
 7. Any proposed garages visible from Ministerial Road due to lack of vegetation, topography, or other site characteristics shall have doors facing away from the scenic highway.
 8. Other than garages, proposed accessory structures shall be located to the rear of the principal structure or otherwise out of view from Ministerial Road.
 9. Commercial vehicles and boats, major recreational equipment, household appliances, junk, machinery or scrap materials, as permitted by this Ordinance, shall be located in the rear yard so as not to be visible from the street, or shall be fully enclosed and screened by means of a full landscape screen as defined in the Subdivision and Land Development Regulations. Landscape materials, firewood, outdoor furniture or play equipment or similar materials normally associated with a residential use shall be allowed. In such cases, the landscape screen shall be reviewed for compliance with the Regulations and approved by the Administrative Officer prior to initiating on-site storage of the items and materials listed above.
- B. Should the Building Official be unable to determine compliance with the standards referenced in Subsection A. above, the building permit application shall be referred to the Technical Review Committee (TRC) for an advisory opinion. The TRC shall review the application and advise the Building Official as to the application's compliance with the standards. Should the TRC find an application not in compliance, the TRC shall advise the applicant as to how compliance with the standards can be achieved, or whether a waiver from the Planning Board as described in Subsection F. below, must be obtained.
- C. Development plan review shall be required where alteration of the 50-foot wide buffer required by this section is proposed in order to construct, alter or relocate a driveway from the highway across the wooded buffer. In such cases, a single driveway not to exceed 20 feet in width for residential uses, and 26 feet in width for other permitted uses, may be constructed from the highway across the wooded buffer. Straight driveways shall be avoided and, where possible, a curved driveway shall be located so as to obstruct direct views from the road to site structures.
- D. Upon approval by the Planning Board, through application for development plan review with a request for a waiver pursuant to the Town's Subdivision and Land Development Regulations, modification of or full relief from the standards contained within this Section may be permitted. Applications for development plan review under the provisions of this section shall first be referred to the Town Conservation Commission/Tree Board for an advisory opinion prior to any approval by the Planning Board.

Review to Date

This application was reviewed with the applicant at the Technical Review Committee meeting on May 11, 2022. Upon review and discussion with the applicant's project team the TRC granted **conditional approval** of the application with the following conditions subject to confirmation by the Planning Board:

1. The applicant should consult with the Fire District to achieve compliance with the RI State Fire Code.
2. The applicant should incorporate a '*right-to-drain*' provision between the two lots associated with this subdivision.

3. The plans should note that any proposed garage shall face away from Ministerial Road should it be visible from Ministerial Road now or at any point in the future, in accordance with Section 505.6 (Ministerial Road Scenic Highway) of the Zoning Ordinance.

Required Findings

As a reminder, State law requires **for all administrative, minor, and major subdivision and land development applications**, approving authorities must make positive findings on the following standard provisions:

- (1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;
- (2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance;
- (3) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;
- (4) The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of Buildable lot). Lots with physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and
- (5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.

The approving authority must also address each of the following general purposes of zoning:

- (1) Providing for the orderly, thorough and expeditious review and approval of land developments and subdivisions;
- (2) Promoting high quality and appropriate design and construction of land developments and subdivisions;
- (3) Promoting the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment;
- (4) Promoting design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure;
- (5) Encouraging local design and improvement standards to reflect the intent of the community comprehensive plans with regard to the physical character of the various neighborhoods and districts of the municipality;
- (6) Promoting thorough technical review of all proposed land developments and subdivisions by appropriate local officials;
- (7) Encouraging local requirements for dedications of public land, impact mitigation, and payment-in-lieu thereof, to be based on clear documentation of needs and to be fairly applied and administered; and
- (8) Encouraging the establishment and consistent application of procedures for local record-keeping on all matters of land development and subdivision review, approval and construction.

With regard to waivers, the Regulations (Article VIII.B.1) require that the Planning Board find that:

- a. The waiver or modification is reasonable and within the general purposes and intents of the Regulations; and,
- b. Literal enforcement of the regulation is impracticable and will exact undue hardship because of peculiar conditions pertaining to the land in question; or waiver or modification of the regulation is in the best interest of good planning practice or design as evidenced by consistency with the Comprehensive Community Plan and the Zoning Ordinance.

Additionally, with regard to the flexible frontage provision of the Zoning Ordinance (Article 5, Sec. 502.2), the Planning Board must make positive findings that:

- (1) Using *flexible* zoning is in the best interest of good planning design as evidenced by consistency with the Comprehensive Community Plan and the Zoning Ordinance; and,
- (2) Would result in a better use of the land than permitted under conventional zoning.

Draft Motions for Consideration

Closure of Public Hearing

“The South Kingstown Planning Board hereby closes the public hearing on the combined Conceptual Master and Preliminary Plan application Hemmerle Major Subdivision.”

Decision

“The South Kingstown Planning Board hereby grants Combined Conceptual Master and Preliminary Plan approval to the Hemmerle Major Subdivision, a two (2) lot major subdivision for single-family development located at 350 Ministerial Road, Lee G. Hemmerle Trust, *applicant/owner*. This approval is based upon plan entitled *Proposed Two-Lot Major Subdivision, Prepared for Lee G. Hemmerle Trust*, 350 Ministerial Road, Assessor’s Plat 74 Parcel 7, South Kingstown, Rhode Island, Sheets 1 through 8, dated April 26, 2022 with revisions through July 13, 2022, prepared by Alfred W. DiOrio, RLS, Inc. This approval is based on the following Findings of Fact and Conditions of Approval:

Findings of Fact

- A. The subdivision is consistent with the requirements of the South Kingstown Comprehensive Community Plan.
- B. The subdivision conforms to the standards and provisions of the South Kingstown Zoning Ordinance.
- C. No lot is designed and located in such a manner as to require relief from Article 5, Section 504.1 of the Zoning Ordinance as amended.
- D. There will be no significant negative environmental impacts from the subdivision as depicted on the above referenced plans, with the required Conditions of Approval.
- E. The subdivision, as proposed will not result in the creation of building sites with such physical constraints to development that building on the lots according to pertinent regulations and building standards would be impracticable.
- F. The subdivision has adequate and permanent physical access to a public street, namely, Ministerial Road.
- G. With the required Conditions of Approval, the subdivision promotes high quality and appropriate design and construction.
- H. With the required Conditions of Approval, the supports the protection of the existing natural and built environment, and the mitigation of all significant negative impacts on the existing environment.

- I. The subdivision is well-integrated with the surrounding neighborhood with regard to natural and built features, and concentrates development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure.
- J. Thorough technical review of the subdivision has been conducted by the South Kingstown Technical Review Committee.

Findings of Fact - Flexible Frontage Waiver Requested

- K. The subdivision, with waivers to reduce the lot frontage, is in the best interest of good planning design as evidenced by consistency with the Comprehensive Community Plan and the Zoning Ordinance.
- L. The subdivision will result in a better use of the land than permitted under conventional zoning by reducing the volume of impervious surface on the subdivision site by avoiding construction of individual driveways and utilizing an existing curb cut on Saugatucket Road.

Conditions of Approval

1. This approval is limited to two (2) lots in total.
2. All lots shall be serviced by private drinking water wells and onsite wastewater treatment systems (OWTS).
3. Access to Lot 1 and Lot 2, as depicted on the plan, shall be provided by a shared access driveway utilizing the existing driveway and curb cut on Ministerial Road. No other curb cuts shall be permitted.
4. The applicant shall submit a Final Plan that meets the requirements of the 'Final Plan Checklist, Major Subdivision,' as found in the Regulations. The Final Plan shall contain a draft Record Plan as required by the Checklist. The draft Record Plan shall include notation of Conditions of Approval numbered one (#1) through three (#3) above. The Final Plan shall be subject to review and approval by the Administrative Officer. Upon approval, and satisfaction of any applicable Conditions contained within the Final Plan approval, the applicant shall submit the Record Plan on polyester film to the Administrative Officer for endorsement by the Planning Board Chair, and shall record the same in the Town of South Kingstown Land Evidence Records.
5. Survey monumentation shall be installed for each new parcel boundary at any intersection or directional change. Said monumentation shall be shown on the draft Record Plan and installed in the field prior to recording. The type, number and location of the monuments shall be subject to the approval of the Administrative Officer as part of the Final Plan approval.
6. Prior to any land disturbance (*i.e.* tree clearing, grading, and/or excavation) the southerly property line, as well as the limits of disturbance, shall be staked in the field every 25', where the limit of disturbance is within 25' of the southerly property line, in order to clearly delineate the distances between the proposed driveway/limit of disturbance and said property line.
7. A Physical Alteration Permit from the RI Department of Transportation must be received prior to approval of Final Plan.
8. Soil Erosion, Run Off and Sedimentation Control (SERSC) Permit's must be issued from the Town's Department of Public Services prior to applying for any building permits on the lots.
9. **Any other conditions that the Planning Board may deem relevant.**