

**Town of Freetown
Zoning Board of Appeals**
Minutes of the Wednesday June 7, 2023
Held at the Multi-Purpose Senior Center, 227 Chace Road

RECEIVED
FREETOWN TOWN CLERK
2023 JUL 20 PM 1:37

Present: Nicolas Velozo, James Frates, and Robert Jose.

Absent: Swede Magnett.

Call to Order: Nicolas Velozo called the meeting to order at 5:00 p.m.

Continued Case #601 – 11 & 13 Ridge Hill Road

Mr. Velozo called the hearing back to order. Mr. Velozo, at the last meeting, wanted clarification from Town Counsel, which he did receive. The Zoning Enforcement Officer's letter did state the 2 acres that were cleared. It was his impression that Steven Nassr said he would be using that area. However, in the appeal, Attorney Jonathan Silverstein stated his client would not be using the area. Town Counsel has agreed that a special permit or site plan review is not required if the applicant will not be using that cleared area. Mr. Velozo just wanted to state this for the record. Mr. Velozo mentioned the Board received a letter from Mr. Nassr that described the history of the land, which was already outlined in the packet, just with a little more information. Mr. Velozo noted the Board would not be taking public input tonight as it was given at the last meeting. It would need to be very precise for the appeal of the order only.

Pedro Neves, 9 Alexandra Drive, noted Mr. Nassr provided satellite images from 2018 where they had trucks. Mr. Neves went on Google and couldn't find any of those images. He did find videos and had taken pictures in the back of his property which shows vegetation. He wants to know how they verified the images from the last meeting, as anyone can put a time stamp on it. Mr. Neves says his pictures and the videos he found prove nothing was there. It proves it was a significant expansion of their operations.

A motion was made by Robert Jose, and seconded by James Frates, to close the public hearing. The motion carried unanimously.

Mr. Velozo said Town Counsel explained a permit or site plan was not required if they're not using the land. The clearing of the trees didn't require one. Also, the case law provided by Attorney Silverstein notes the land is non-conforming use and is within the code and regulations of the state. Carl Bizarro, the Building Commissioner/Zoning Enforcement Officer, asked if the Board would be looking at his whole letter or just the expansion. Mr. Frates confirmed they'll discuss the whole letter in part of the deliberation process. Mr. Velozo said as far as the non-conforming use of it, Mr. Nassr has owned the property since the 1970's and it's always been, by the new definition, a truck terminal. The letter encompasses both 11 & 13 Ridge Hill Road. The main focus was 11 Ridge Hill Road, and after the Town Counsel's suggestions, Mr. Velozo finds that the non-conforming use, as long as the property with the two acres cleared out, is not touched. Mr. Velozo believes that they're still operating under their non-conforming use. The difficulty is determining the 2-acre area. Mr. Velozo knows they offered a fence but he doesn't believe it would be necessary for this. If the owners choose to use the area, they would need to come back for a special permit. Mr. Frates believes this can be addressed in two different pieces. The first being 13 Ridge Hill Road (the south parcel), which is part of the letter but not in contention at this time. It can be voted on separately from 11 Ridge Hill Road (the north parcel) in order to have a more detailed discussion. Mr. Velozo entertained a motion to separate the two parcels.

A motion was made by Robert Jose, and seconded by James Frates, to recognize lot 13 as pre-existing, non-conforming as a truck terminal as it was in effect and in use prior to 2018 changes. The motion carried unanimously.

Mr. Velozo noted in the application, the owner said they wouldn't use the cleared area but the Board doesn't have something sworn. Attorney Silverstein is happy to provide a letter confirming there will be no expansion of use on the cleared area. Mr. Velozo asked if there would be some kind of delineation monument or fence. Attorney Silverstein asked what the Board suggests. Mr. Velozo stated something that would hinder trucks from going in that area. Mr. Jose suggested something that, if there was an expansion, the Zoning Enforcement Officer can go back and say here's the monument, you've expanded 50 feet beyond the monument. Whether it's iron plank or something that's surveyable or permanently fixed, like a fence. Mr.

Nassr mentioned laying down telephone poles as an option. Mr. Velozo wants something that looks permanent. Mr. Jose was looking for something the Board could say this is where the expansion was, and this is the new area that they're expanding into. That way, the owner knows it's off limits unless they come for a permit or site plan review. Mr. Bizarro asked if they're asking to replicate what was there, by clearing the land, it was made more non-conforming due to noise, travel, lights, and dust. It was a buffer area and now it's gone. Mr. Jose agreed clearing the land can be done, it's within the owners right to do so as it's not an expansion. He's not opposed to the telephone poles as they'll keep the trucks out of there.

Mr. Velozo called a 5-minute recess at 5:16 p.m.

Mr. Velozo called the meeting back to order at 5:21 p.m.

Mr. Jose was looking for some type of separation of what is existing and what the expansion was. Mr. Nassr believes the telephone poles are good, and they're on the property now. Mr. Nassr said he's planning on dragging them over with a pick-up truck and lining them up to separate the two acres that wasn't used. Mr. Frates doesn't mind the idea of the telephone poles; it would just need to be permanent and it would be a little extra for the neighbors. Mr. Jose, they can drill a hole and put in some rebar to hold them in place for permanence. It needs to be done in conjunction with the zoning enforcement officer so he can make sure they're being put where they need to go. Attorney Silverstein agreed. Mr. Jose's concern is where they are and where they belong. The owner may know where the new expansion is but in three years no one will know where this expansion was versus the old expansion because vegetation would cover it. Mr. Velozo asked if they're allowing the vegetation to grow back or throwing some seeds on it. Attorney Silverstein said it's already growing. Mr. Velozo asked if there was a dust issue as complaints were brought to the Board of Health's office. Attorney Silverstein wasn't aware of any dust issue. Mr. Jose asked if the complaints were from when they were moving the dirt. Attorney Silverstein believes this is the case. Mr. Velozo asked if there's still a dirt pile there. Mr. Nassr stated it's been there for over 20 years. Mr. Jose said the vegetation will bring the dust down as it grows, and as long as they're not moving things. Mr. Frates asked about putting in a corner post or stake. Mr. Velozo doesn't think it's necessary.

A motion was made by Robert Jose, and seconded by James Frates, that 11 Ridge Hill Road, prior to the new expansion area, is pre-existing non-conforming. The new expansion area is outside the pre-existing, non-conforming area. Any expansion into that area would require a site plan review and special permit. Furthermore, that the applicant has agreed to and shall place a permanent bound between the old section and what's currently the new section to it the telephone poles will be permanently affixed to the soil rebar in collaboration with the Zoning Enforcement Officer as he sees where the new cleared area was. The applicant agrees to allow the area to revegetate over naturally. The Board isn't requiring them to do any overseeding on top of that. The motion carried unanimously.

Attorney Silverstein wanted to clarify these motions result in overturning the enforcement order. Mr. Velozo stated yes as long as they meet the three conditions.

Discussion on Accessory Apartment By-law

Mr. Velozo stated at the last meeting, Ms. Alfaro asked to add the existing number of bedrooms and proposed number of bedrooms for the proposed new accessory apartment form. Ms. Alfaro said she would need to contact the applicant or have them include it on their applications since the new form is for internal use only. Mr. Velozo doesn't think we need to ask the applicant since the Board of Health will end up with the new form in their office. Mr. Velozo entertained a motion to approve the form provided by Ms. Alfaro.

A motion was made by Robert Jose, and seconded by James Frates, to approve the new Zoning Board of Appeals form for accessory apartment applications, submitted by Ms. Alfaro, as written on 05/08/2023. The motion carried unanimously.

Case #602 – 22 Keene Road

A motion was made by James Frates, and seconded by Robert Jose, to waive the reading of the public hearing notice. The motion carried unanimously.

Mr. Velozo said the Building Commissioner, Mr. Bizarro, sent a letter to the owner stating the property was a general use zone. He has corrected that, and stated it's a residential zone. The applicant/owner, Nathan Dellecese, is asking for a commercial permit of his garage which is located in a residential zone. He's lived in

Freetown since 2015 and started construction of the garage shortly after, and it was completed in the beginning of 2016. The two previous Building Inspectors informed him the property is zoned for residential use only. Mr. Dellecese explained to the Board that his business is service oriented. The work is conducted out of his trucks, at people's houses, no one comes to his garage to have something worked on. He had been fine with the residential zoning until having private investigators looking for commercial activities on his property and being charged commercial rates on his property. Mr. Dellecese tried to abate his taxes with the Assessors' office but has been denied an abatement. The percentage of commercial tax has gone down from 50% to 5%. He stated no one has been to his house to inspect this except for Mr. Bizarro. On his recent abatement request, he was told the assessors would come out to view the property. Mr. Dellecese said he wasn't invited to the appointment and they voted on the appeal without being informed. If the Town wants to charge him a commercial rate, even if his business isn't on the property, then he'd like to be allowed to conduct commercial activity. There's no public access to the building, no advertising on the property, and he feels there's very little burden on the neighborhood. Mr. Dellecese has been paying taxes for the past 8 years in both Acushnet and Freetown.

Mr. Jose asked where his business license is out of. Mr. Dellecese stated it's a corporation but it's out of Acushnet. Mr. Velozo spoke to the assessors and was told Mr. Dellecese had a different LLC registered at this home address. Mr. Dellecese explained he just picked up on the LLC but has been charged with mixed use property for the past three years. Mr. Dellecese is asking the Board to issue him a commercial permit for the garage since he's been paying commercial tax for years. Mr. Velozo said we're here tonight because Mr. Bizarro wrote a zoning determination letter, and they need to decide whether they agree with it or not. Mr. Jose said this is outside the Board's scope. Mr. Velozo understands the Assessors' issues but agreed with Mr. Jose. It's zoned for residential and limited commercial uses in residential zones based on the by-laws it doesn't fit a home office. Mr. Jose verified Mr. Dellecese is appealing the decision made by the zoning officer. Mr. Jose said if it's zoned residential, is it an allowed use. Mr. Bizarro wouldn't allow it as it's in a residential zone.

Joann Ashley, 20 Keene Road, said the garage can be seen from Middleboro Road, and she would like it to remain residential with no trucks. John Laronda, 26 Gurney Road, said Mr. Dellecese keeps his property neat and the building was originally built for recreational use and he only runs his business out of his truck. Mr. Laronda was on the Assessor Board for 17 years and said it's not appropriate to charge a commercial tax if he's not running the business out of his home. Irene Ashley, 24 Keene Road, said she never hears noise and has no issues with Mr. Dellecese as he only drives his work truck home. Mr. Velozo stated zoning has rules and regulations, and they're very clear. It's not a reflection of the property. Mr. Velozo noted the Zoning Board doesn't decide commercial tax. Mr. Dellecese wanted to know who could answer questions regarding business certificates. Mr. Bizarro said the Town Clerk's Office could and Home Occupation Permits are issued though the Building Department. Mr. Velozo said Mr. Dellecese should speak with the Selectmen or the Town Administrator. The Zoning Board can't change the decision.

A motion was made by Robert Jose, seconded by James Frates, to deny the request of appeal of the Zoning Officer's decision. The motion carried unanimously.

A motion was made by Robert Jose, seconded by James Frates, to close the public hearing. The motion carried unanimously.

Meeting Adjourned

A motion was made by Robert Jose, seconded by James Frates, to adjourn. The motion carried unanimously, and the meeting was adjourned at 6:09 p.m.

This is a True Record by me.

Attest: _____
Deanna Hayes, Senior Clerk

