

Freetown Zoning Board of Appeals
Minutes of the Wednesday, May 6, 2015 Meeting
Town Hall, 3 North Main Street, Assonet, Mass.

Present: James Frates, Walter Sawicki, and Nicolas Velozo (alternate). Robert Jose arrived at approximately 6:33 p.m., but did not participate in the meeting.

Call to order: James Frates called the meeting to order at 6:30 p.m.

Minutes of Previous Meeting

Minutes of February 11, 2015, were received.

Case #549 – David W. Brown – 3 Quitticus Avenue, East Freetown

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to open the public hearing at 6:30 p.m. The motion carried unanimously. A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to waive the reading of the public hearing notice. The motion carried unanimously.

David Brown approached the board to discuss his proposal. Mr. Brown purchased the property at 3 Quitticus Avenue with the intention of gifting a portion of the property to his daughter. The property formerly consisted of three parcels that are bounded by Quitticus, Long Pond, Spring Hill, and Elm avenues. Mr. Brown approached the Planning Board late in 2014 to seek a reduction of the three parcels to two parcels as part of his plan to gift a lot to his daughter. The Planning Board endorsed an "approval not required" (ANR) plan that reduced the number of lots from three to two ("3 Quitticus Avenue" with the existing structures and "5 Quitticus Avenue" as a vacant parcel), while also adjusting the lines around the existing structures to create setbacks from the new property lines. Subsequently, when applying for a building permit, Mr. Brown learned that the ANR plan did not cure existing zoning problems on the property; specifically, the three parcels had merged into one for zoning purposes and already had two dwellings. The Building Inspector ruled that the total property was entitled to two dwellings, but construction of a house at 5 Quitticus Avenue without remedy of the two houses at 3 Quitticus Avenue would be a violation. Mr. Brown is now seeking a variance to approve the lots as they currently exist and permit construction at 5 Quitticus Avenue.

Scott Barbato, Building Inspector/Zoning Enforcement Officer, was present to discuss the proposal. Mr. Barbato explained that the original three lots had been held in common ownership for many, many years and had thus merged into one property for zoning purposes. He further explained that an ANR plan, while it can divide the property, cannot exempt it from meeting zoning requirements. He stated this was a matter of infectious invalidity, that although the property now called 5 Quitticus Avenue was by itself a conforming lot the manner of its creation and its relationship to 3 Quitticus Avenue renders it unbuildable. He stated the situation was worsened by the fact that the creation of 5 Quitticus Avenue involved altering the dimensions of 3 Quitticus Avenue, removing a layer of grandfathering. He suggested the board entertain altering the lot lines to make 3 Quitticus Avenue more conforming.

Mr. Brown stated that the Planning Board had approved the lot lines as they exist. He did not wish to have the dimensions of 5 Quitticus Avenue altered. Mr. Frates agreed the Planning Board had approved the lot lines but that did not necessarily fix the problems. Mr. Barbato stated an ANR plan does not guarantee buildability; a Planning Board must endorse an ANR plan if it meets certain requirements, whether it's buildable or not.

Mr. Frates asked what Mr. Barbato felt the board should do. Mr. Barbato felt the board should revise the lot lines. In addition, he stated Mr. Brown could cure the problem by either razing the second structure at 3 Quitticus Avenue, or by reverting the second structure to a garage that could not be inhabited as a dwelling. Mr. Frates questioned altering the lot lines. Mr. Barbato stated the property at 3 Quitticus Avenue could be

made larger but not smaller, and that the property at 5 Quitticus Avenue could be made smaller and remain buildable since the overall property is entitled to two dwellings.

Mr. Brown stated he was amenable to demolishing the second dwelling if absolutely necessary to allow a dwelling at 5 Quitticus Avenue. Mr. Frates asked what options were available to Mr. Brown in the opinion of Mr. Barbato. Mr. Barbato preferred that the second dwelling be demolished, but agreed that if the second dwelling were converted back to a garage, he could then allow the construction of a dwelling at 5 Quitticus Avenue. If the second dwelling were converted back to a garage, it would need to be inspected by the building, electrical, and plumbing inspectors to ensure compliance before construction began at 5 Quitticus Avenue. Mr. Barbato also suggested that the board endorse a plan showing the lot lines however they end up appearing.

Mr. Frates asked if any of the abutters wished to speak. One general comment was made, but it was neither in favor nor opposed to the proposal.

Mr. Frates stated he would prefer to continue the hearing to allow time for Town Counsel to clarify the board's options with regard to the proposal. A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to continue to hearing to May 20th at 6:30 p.m. at the Town Hall. The motion carried unanimously.

Case #543 – Threetown, LLC – 6 Braley Hill Road, East Freetown

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to open the continued public hearing at 7:40 p.m. The motion carried unanimously.

The clerk stated the applicant's representative had e-mailed earlier in the day to request another continuance. The letter was reviewed. Discussion was held on whether to continue the hearing or to move forward without the applicant present. Ultimately it was agreed to continue the hearing to May 20th.

A motion was made by Mr. Sawicki, seconded by Mr. Velozo, to continue the public hearing at the request of the applicant to May 20th at 7:00 p.m. at the Town Hall. The motion carried unanimously.

Meeting Adjourned

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to adjourn at 8:00 p.m. The motion carried unanimously.

This is a True Record by me.

Attest: _____
Michael T. McCue, Senior Clerk

