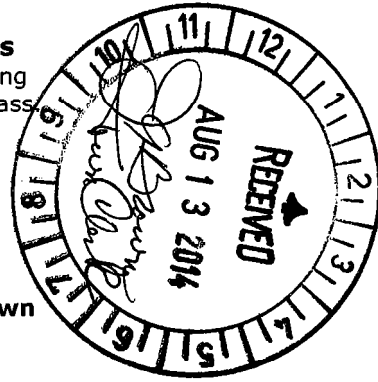


Freetown Zoning Board of Appeals
Minutes of the Friday, May 30, 2014 Meeting
Town Hall, 3 North Main Street, Assonet, Mass



Present: James Frates, Gary Guinen, and Daniel Loranger.

Call to order: Gary Guinen called the meeting to order.

Case #536 – Jan & Evelyn Domagala – 13 County Road, East Freetown
This hearing was cancelled prior to the meeting date.

Case #537 – David V. Welch – 23 Marie's Way, East Freetown

The applicant petitioned through the Town Clerk's office on April 10, 2014, for a special permit to allow an accessory apartment measuring 660 square feet in area at 23 Marie's Way, East Freetown (Assessors' Map 228, Lot 9.12). Notice of the hearing was posted in the Town Hall and advertised in the *Standard-Times*.

A motion was made and seconded to open the public hearing at 6:45 p.m. The motion carried unanimously. Mr. Guinen read the notice of the public hearing.

Mr. Welch stated that the home has a drive-under garage, and that the proposed accessory apartment would be in the basement half of the lower level. Mr. Guinen asked if the dwelling was completed or under construction, and Mr. Welch stated that it was under construction and he had been advised he could apply for the special permit while underway. Mr. Loranger asked if Mr. Welch is the builder, and he answered affirmatively. Mr. Loranger asked why Mr. Welch is building an accessory apartment, and Mr. Welch answered that the intended buyer's parents live in Florida half the year and would like to live with their children the remaining half of the year.

Mr. Welch stated that he has not typically had to appear for a special permit for an accessory apartment in other towns. Mr. Guinen explained the procedures and by-laws in place in Freetown; specifically, that it is the owner-occupant who typically applies for the special permit. Mr. Guinen expressed his preference that the intended owner be present at the hearing.

Mr. Loranger questioned why Mr. Welch was applying when he is not the intended owner-occupant. He advised that he was inclined to vote against issuing the special permit in the present circumstances. Mr. Welch questioned what his next step should be as he believed he was proceeding correctly. Discussion was held on procedure. Mr. Loranger again expressed that as presented, he remained inclined against granting the special permit. He felt that the proposed dwelling would be a duplex rather than a single-family home with an accessory apartment, as the builder is not the intended owner-occupant. Mr. Welch asked what would happen if the meeting was continued and the intended owner-occupants were present. Mr. Loranger stated he would still not be inclined to vote favorably as the permit is issued to the owner at that moment, not the intended owner. Mr. Guinen recommended that the intended owners come in, answer questions, and see where things lay at that time.

Mr. Welch requested a continuance. The board agreed to grant a continuance for a date in June to be determined.

Case #538 – Craig Cabral – 46 Forge Road, Assonet

This hearing was postponed until Wednesday, June 4th at 6:30 p.m.

Case #539 – Lorraine F. Barboza – 73 North Main Street, Assonet

The applicant petitioned through the Town Clerk's office for a use variance to allow a motor vehicle sales and rental establishment and construction of a manufactured structure at 73 North Main Street, Assonet (Assessors' Map 206, Lot 17.01). Notice of the hearing was posted in the Town Hall and advertised in the *Standard-Times*.

A motion was made and seconded to open the public hearing at 7:15 p.m. The motion carried unanimously. Mr. Guinen read the notice of the public hearing.

Atty. David Assad of Fall River was present representing the petitioner. Mr. Assad explained that the property in question is partially zoned Residential and partially zoned General Use. The Zoning Enforcement Officer determined that a variance was required because although a portion of the property is zoned General Use (which would require only a special permit from the Planning Board) the majority of the property is zoned Residential.

Mr. Assad described the lot as having adequate area and frontage, but an irregular shape and a steep topography, and expressed that the petitioner did not feel it was desirable to use the property for residential purposes. Mr. Assad also raised concerns about the soil composition and its ability to support and encourage residential use.

Mr. Assad stated that the Barboza family acquired the majority of the property in 1967, and an additional area in 2010. He stated that the lot has been used for commercial purposes throughout that time, noting heavy equipment and motor vehicle storage.

Mr. Assad stated that the hardship to be taken under consideration was the undesirability of the lot as a residential lot, and that also to be taken under consideration was the surrounding General Use district and the neighboring businesses, particularly P.J.'s Tire on lot 14 (65 North Main Street).

Mr. Assad stated that the plan submitted shows 70 parking spaces, and that the town's regulations require 1,000 square feet per car for parking. The petitioners are not requesting that 70 cars be on the lot, only demonstrating sufficient area. Mr. Assad also addressed the office building, which was to be a manufactured structure and not a trailer as some had suggested. The building would be modular and on a foundation, with utilities, lavatories, and septic, and the proposed size would be 28'x44'. Setbacks would be consistent with surrounding residential uses. The petitioner desires a Class II auto dealer's license.

Mr. Assad stated that signage, while desired, is a matter for the Planning Board. Mr. Guinen agreed.

Mr. Assad noted concerns had been expressed by Mr. Miranda (1 Miranda Drive; Assessors' Map 205, Lot 2.03), an abutter for approximately 160 feet. Mr. Assad suggested the board could require a vegetative border or limit or prohibit activity in the vicinity of Mr. Miranda's property to try and assuage his concerns.

Mr. Guinen asked if any plans were available for the proposed structure, and the answer was in the affirmative. Mr. Guinen stated it appeared that variances were needed for front-yard and side-yard setbacks for the structure; the requirement for commercial use is a 40-foot setback, and the plans appeared to show a 20-foot setback appropriate for a residential use. Mr. Assad stated that the setbacks were designed for a residential use as the property is zoned Residential, but that the petitioner would be amenable to changing the setbacks to the commercial setbacks upon allowance of a commercial use. Mr. Guinen clarified that only the use would be changed, because a zoning change would require Town Meeting action. Mr. Guinen noted that the 20-foot setback was due to the structure being in a residential district. He questioned how far the front setback was, and it was determined to be 60 feet.

Mr. Loranger questioned if the zoning had previously been General Use, and Mr. Assad stated that his research showed the whole area was previously zoned General Use and that Town Meeting subsequently changed portions of it to Residential. Mr. Guinen specifically that the Simmons property was formerly all General Use and subsequently became majority Residential.

Mr. Guinen opened the floor to questions from the audience. Atty. James Donnelly of Fall River, representing the Miranda family, asked how much of the area of the parcel would be blacktopped or made impervious. The response was that a portion of the property toward the front would be gravelled.

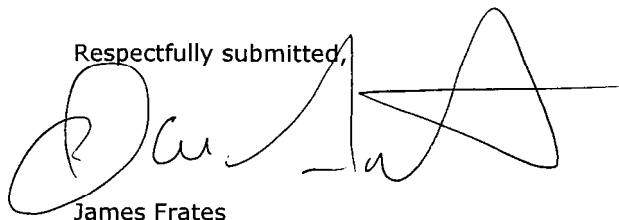
Mr. Assad clarified that the 70 parking spaces shown was the maximum the parcel could accommodate in total, including patron parking. The matter of the number of cars for sale or rent on the property would be for the Board of Selectmen to determine during the licensing phase, unless the Zoning Board of Appeals made a particular number a condition of the variance.

Mr. Donnelly stated that the Miranda family had to fill and grade their property in order to construct their home. He felt that this negated the concern that the Barboza property was not suitable to residential development, as the issue had been overcome by the Mirandas. He also argued that the proposed use was not in keeping with the character of the neighborhood, and would be a detrimental development. Impervious surfaces and commercial lighting were noted as not in keeping with the residential character of the parcel in question and its immediate neighbors. In summary, Mr. Donnelly's clients do not feel that there is a hardship in play and request that the variance be denied.

Mike Macedo, 71 North Main Street, addressed the board to comment on the view from his property. In response, it was suggested that a fence or vegetative border could be used to reduce the impact. Mr. Macedo noted that his well is in the lowest part of the property, and he was concerned about any impact on his well. He also stated that while Mr. Miranda had valid concerns, it would be his house that would be directly adjacent to a car lot.

A motion was made by Mr. Loranger to close the public hearing. Mr. Frates stated a preference to continue the hearing to allow more time for review and to walk the property. Mr. Loranger stated he would second Mr. Frates' desire to continue. Mr. Guinen called for a vote. The motion carried unanimously. The hearing was continued to June 4th.

The above record was transcribed by M. T. McCue from an audio recording provided by members in attendance.

Respectfully submitted,

James Frates