

Freetown Zoning Board of Appeals
Minutes of the Wednesday, December 9, 2015 Meeting
Town Hall - Assonet Mass.

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Present: James Frates, Walter Sawicki, and Nicolas Velozo (associate).

Absent: Robert Jose.

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

Minutes of Previous Meeting

Minutes of October 21, 2015, were received.

Case #552 – Tyler Tremblay – 88 Richmond Road, Assonet

A motion was made by Mr. Sawicki, seconded by Mr. Frates, to reopen the continued public hearing at 6:30 p.m. The motion carried unanimously.

Mr. Frates asked Mr. Tremblay if he would consent to a further continuance as Mr. Jose was absent due to a family illness. Mr. Tremblay consented, and asked that the continuance be sooner than February.

Mr. Tremblay also presented a folder with sketches as requested at the last meeting. The clerk was asked to distribute copies to the members prior to the next meeting.

A motion was made by Mr. Sawicki, seconded by Mr. Frates, to continue the hearing to Wednesday, December 16th at 6:30 p.m., with the understanding that it will be continued to January if Mr. Jose is still not available. The motion carried unanimously.

Case #554 – Susan Fernandes – 35 County Road, East Freetown

A motion was made by Mr. Velozo, seconded by Mr. Frates, to open the continued public hearing at 6:40 p.m. The motion carried unanimously.

A letter was received from Atty. Deborah Pettey, the applicant's representative, stating the applicant Mrs. Fernandes wished to withdraw her application.

DISPOSITION: A motion was made by Mr. Velozo, seconded by Mr. Frates, to accept the applicant's request to withdraw without prejudice. The motion carried unanimously.

Case #559 – Henry Alves, Jr. – 3 Westgate Lane, East Freetown

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to open the public hearing at 6:50 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.

Henry and Darlene Alves were present to discuss the proposal, which was to renovate space above the existing attached garage for use as an accessory apartment for Mrs. Alves' parents. The proposed area is 976 square feet. Mr. Alves stated the living space is sealed off from the garage and insulated as the space is heated. Mr. Velozo asked if there was a second point of egress aside from the door into the main living space, and Mrs. Alves stated the deck shown off the proposed apartment had stairs to the ground level.

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to close the hearing.

DISPOSITION: A motion was made by Mr. Sawicki, seconded by Mr. Velozo, to approve the proposal as submitted and grant the special permit. The motion carried unanimously.

Case #560 – Paul Cisek / 120 Braley Road, LLC – 120 Braley Road, East Freetown

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to open the public hearing at 7:00 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.

Mr. Cisek approached the board to describe the proposal, which consisted of constructing a mechanical room as depicted on plans provided. The mechanical room would be set back eighteen feet from the layout of Braley Road, whereas the by-laws require a fifty-foot setback. Mr. Cisek explained that Heat Transfer Products would like to move existing compressors and miscellaneous storage out of their current area to clean up the interior of the building and provide a safer working environment. He stated he had discussed the plans with the Building Inspector, Scott Barbato, and that Mr. Barbato was satisfied with the proposal.

Mr. Frates asked what prevented the mechanical room from being added to the north side of the building, and Mr. Cisek stated they are already at or within the setback on the north side, so it would have needed a variance just the same. Mr. Velozo asked about the south side of the building, and Mr. Cisek replied that there are a variety of loading docks on that side of the building that could not be relocated. Mr. Cisek also stated that the west (rear) of the property was predominately wetlands and could not accommodate any expansion. He stated they would love to expand in that direction but are constrained.

Mr. Velozo asked if the project could be accommodated with a twenty-foot setback rather than an eighteen-foot setback. Mr. Cisek stated they likely could, but he was not entirely certain. A general note was made that the parking areas as they exist are already encroaching into the layout of Braley Road, and this was thought to possibly relate to the widening of Braley Road in about 1978.

A motion was made by Mr. Sawicki, seconded by Mr. Velozo, to close the hearing.

DISPOSITION: A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to grant the variance, stipulating that the addition be no closer than eighteen feet to the layout of Braley Road. The motion carried unanimously.

Case #561 – DLR Properties, LLC – 93 (Rear) South Main Street, Assonet

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to open the public hearing at 7:10 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.

Atty. Pettey was present and provided a history of the project, up through and including the denial letter from the Building Inspector. She stated the proposal was for a 14' x 48' double-sided electronic billboard, 50' high, put to the rear of the property abutting Route 24 southbound. Atty. Pettey stated this property was unique in that it was the only property in town that could have such a billboard by state standards.

Mr. Frates stated billboards are expressly prohibited by the zoning by-laws. Atty. Pettey stated she did not feel the intent of the prohibition was for billboards facing on Route 24, but rather for billboards facing on local highways such as South Main Street.

Mr. Frates asked whether there was any particular hardship. Atty. Pettey stated the by-law is almost discriminatory against this one property as it is the only property that could sustain such a billboard. She also stated the billboard would benefit the town by offering a venue for public service announcements such as Amber Alerts.

Mr. Velozo asked how the billboard would be controlled. Peter McClary, representing the company that would own and operate the billboard, stated the billboard message would be controlled via the Internet. A message

could be altered and posted in as little as two minutes. He continued by explaining that regulations require these billboards to provide public service announcements for a minimum amount of time. He stated they have been used for public safety alerts, public health alerts, civil defense purposes, etc., in approximately forty cities and towns where these types of billboards now operate.

Mr. Frates expressed his concern that the townspeople have voted not to have billboards at all, adopting a zoning by-law that expressly prohibits billboards.

Mr. Velozo asked why this property was the only property in town that could sustain a billboard. Atty. Pettey stated it is the only site that will meet state regulations. Mr. McClary stated that the billboards must be at least 500 feet from any on-ramp or off-ramp, must be within 500 feet of at least two businesses, must be in a commercial area, and must meet two other criteria that he could not immediately bring to mind. In total, the billboards must meet five strict criteria for the state to permit them along the expressways. If they did not meet those criteria, the state would not allow the billboards regardless of whether or not the towns allowed them. He reiterated that this was the only location in town along Route 24 that would meet all five criteria.

Mr. Sawicki stated he had no questions, but that he felt the by-laws clearly prohibit billboards. He believed the applicants would be better off seeking relief through amending the by-laws at a town meeting. He also stated that if the ZBA were to approve the variance, he felt it would still need to go to the Planning Board before it could be erected. Atty. Pettey stated that the Planning Board is not empowered to grant variances, so the first step had to be through the ZBA. Mr. Frates stated it would be a variance for use. Mr. Sawicki felt that if the Planning Board approved the sign, but there needed to be setbacks variances, then it would be less unusual to come before the ZBA.

Mr. Frates referenced an opinion from Jonathan Silverstein, Town Counsel, stating that the zoning by-laws permit the ZBA to grant a variance for use, provided the usual conditions for a variance (hardship, etc.) are met. Atty. Pettey reiterated that this property is unique in that it is the only property that can sustain a billboard, and that she felt the by-laws are discriminatory against this one property. She stated she felt the townspeople adopted the sign by-law as a package and did not vote specifically to prohibit billboards, and likely would not do so if asked to vote on billboards alone. Mr. McClary believed the townspeople were probably voting against older-style, "wallpaper" billboards and not modern electronic billboards. He believed the intent was based on the then-present, not what the future might provide and has provided. He noted that Massachusetts was the 35th state to approve electronic billboards. Atty. Pettey stated the ZBA was empowered to grant the variance regardless of the prohibition against billboards in the by-laws.

Mr. Velozo asked if the assertion that this was the only location in town that could sustain a billboard was specific to Route 24 or if it also included Route 140. Mr. McClary stated they did not even consider Route 140 as it has an insufficient volume of traffic to warrant a billboard. He stated the billboards cost over \$700,000 to erect and the payoff would not be worth it other than with Route 24. He added that use variances for these billboards have been granted in other towns. He also noted that the industry standards have changed in the last two years; two years ago he would have proposed this purely for profit-making as there was no public access requirement, but now there was a public access benefit to the billboards.

Mr. Frates informed the applicants that they had the option of withdrawing the application without prejudice or proceeding to a vote. It was clarified at this time that the board consisted of three members and that a unanimous vote was required for approval rather than a majority vote.

Mr. McClary asked what the board members' inclinations were. Mr. Frates stated that he felt town meeting was a better forum to resolve this matter. Mr. Velozo felt that the opinion received from Atty. Silverstein was somewhat vague and that he might benefit from further review. Atty. Pettey reviewed the opinion of Atty. Silverstein. Mr. Frates explained that the board sought the opinion as they were initially unclear if they could

even act on the petition where billboards are expressly prohibited. Mr. McClary stated that it sounded to him like the board was not necessarily opposed to the project, but felt the forum for relief was wrong.

Mr. Frates stated he felt the by-laws were vague and did not properly address what even constitutes a billboard; what is universally recognized as a billboard could have been referred to as a free-standing sign and might have been sent to the Planning Board to begin with. Atty. Pettey stated she did not feel the billboard was detrimental to the neighborhood. She stated the sign by-law is poorly written and often unclear. The members of the ZBA did not disagree. Mr. Velozo stated the Planning Board has been attempting to update the sign by-law but has been unsuccessful to date.

At this time, Mr. McClary stated his preference was to withdraw the application.

DISPOSITION: A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to accept the applicant's request to withdraw without prejudice. The motion carried unanimously.

Meeting Adjourned

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to adjourn at 7:47 p.m. The motion carried unanimously.

This is a True Record by me.

Attest: _____, Senior Clerk