



A meeting of the Town of Freetown **Zoning Board of Appeals** was held on **June 4, 2014** at the Freetown Town Hall, 3 North Main Street, Assonet, MA. Members present were Chairman Gary Guinen, Daniel Loranger and James Frates.

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A quorum of the Board being present, the meeting was called to order at 6:30 PM

A petition submitted by Corey and Craig Cabral to add a second structure to the property of Craig Cabral located at 46 Forge Rd Assonet.

This is a continuation of the hearing from May 30, 2014. The Chairman read the public hearing notice; the hearing commenced at 6:36 PM

Craig Cabral approached the board. He had purchased the building on Forge Road with intentions of building a house for his son. There is a recreation hall already on the premises, which was a former camp. The building was renovated and he pulled the necessary permits with the prior Building Inspector (BI). When asked by the BI what his intention was, he told the BI it was to fix up for family parties, etc. until he was ready to build the house. The BI told Mr. Cabral that when his son's house is constructed, this building could be classified as a garage again, and issued the permits Mr. Cabral needed under "Residence". Mr. Cabral stated that he followed the BI's instructions for septic etc. and the permits obtained say "Residence" but it was never used as such. The current BI's determination is that this building is a "Residence" and you cannot build another and have 2 dwellings on one lot. Mr. Cabral informed her this was not a house, never used as such, and only classified as such on building permits, because the former BI advised him to do so and for insurance purposes. The current BI inspected the property; Mr. Cabral states that upon inspection, she agreed it is not a residence because there are no bedrooms.

Mr. Frates stated that he spoke with the BI, and she informed him that there are rooms with a closet, 2 bathrooms, and a kitchen, which sounds like a residence. Mr. Cabral stated they are just storage rooms, he does not intend this to be a residence; the property is taxed as a residence but his mortgage lender does not consider it such. He states there is no egress window, so it cannot be sold as another dwelling unit; he has no intentions of living there, and is fine with having it classified as a garage.

Neighbor Mike Timberlake (48 Forge Rd) stated that he is a longtime resident, and was living on Forge Rd when the camp was built. He stated that the building has always had 2 baths and a kitchen, and no one has ever lived in the structure.

After some discussion, members of the Board expressed sentiments that with minor changes, this building could easily be considered a residence, and that the Board lacked the authority to change a classification to a garage or accessory building at this hearing. The consensus of the Board was that the applicant should work with the BI to figure out a way to have the building classified as something other than "residence"; if he is truly not using it as such, then the Board shouldn't grant a variance to have 2 "residences" on the same lot. Mr. Cabral stated that he has already had this discussion with the BI, and that she told him that she cannot unclassify what the prior BI had already labeled as "Residence". The Board advised the applicant that if his variance request is denied, that he cannot apply again for another 2 years. After some discussion, the applicant stated he was going to withdraw his application without prejudice and will attempt to work with the current BI and/or her replacement, since she is retiring on 6/30/14. The Board accept the withdrawal of the application.

A petition submitted by Atty. David Assad on behalf of Lorraine Barboza to grant a use variance for motor vehicle sales and rental and construction of manufactured structure on the premises of 73 North Main Street, Assonet

At 7:35 p.m. Dan Loranger made a motion to open the hearing, seconded by James Frates; all in favor. The Chairman read the public hearing notice; this is a continuation from hearing that started on May 30th at 7:15 PM.

Atty. David Assad with offices at 326 Pine St. in Fall River approached the Board. He provided pictures of the proposed manufactured building to be used as the business office at the request of the Board from the previous hearing. In response to some comments by Atty. Jim Donnelly concerning his client Mr. Miranda's property, the applicants have amended their plan. The revised plans show all business activity is now limited to first 180 ft of property, back from North Main Street. No cars or related uses are proposed to be in rear of property; Atty. Assad stated that Mr. Miranda's views would be untouched and left in their natural state. He stated that upon examination of the lot's topography, aerial photos show a downward sloping arc away from both the Miranda and Barboza properties, and so runoff would not be an issue when the asphalt is put on. The proposed hours of operation will be Mon – Sat 10 am to 6 pm. No large display lights or intrusive illumination are contemplated and lighting would be shut off when business hours cease. The Chairman opened the hearing up to public comment.

Mr. William Simmons, abutter inquired as to the number of cars proposed for sale on the lot; Atty. Assad stated the plan calls for 50, unless it is limited by the licensing board. Mr. Simmons stated his understanding was that the property was acquired to build a residence. Atty. Assad stated that the Barbozas purchased the property in 1967, when there was no zoning, which was at some point zoned as General Use before a recent change to "Residential". They now want to use this land as a car lot, being consistent with other commercial uses in the neighborhood. There are no deed restrictions on this property that it only be used as residential.

Atty. Donnelly asked why a residential building could not be constructed in the same footprint as the proposed car lot. Atty. Assad responded that engineers have told the applicants that in order to put in a foundation and building, fill from the steep grade would need to be removed, and there wouldn't be much lateral support. Atty. Donnelly asked the Board if they could condition the lights be shut off after 6 pm. The Chairman stated that is not in their jurisdiction, the Board is only considering the variance in use before them.

Atty. Assad stated the lot is split into 2 different zoning classifications, with the majority in the Residential zone, and a smaller portion being General Use. He drew on a map the approximate zoning line. He read field cards of abutting properties that were in the General Use district. Mr. Loranger remarked that it appeared 80% of the lot is in the Residential district.

Mr. Robert Raymond, Town resident asked the applicants what the hardship was. Mr. Guinen stated that it was mentioned at the last hearing that because of the steep slope, the applicants stated a residential foundation would be difficult to construct and would require more intensive engineering. After some discussion with the Board and abutters, the question arose of why an office could be built but a residence could not. Mr. Frates stated that if an office could be built he couldn't see why a residence couldn't as well.

Atty. Donnelly, with offices at 275 Martine Street in Fall River, representing the Mirandas stated that in looking at Mrs. Barboza's current residential property on 75 N Main, there is a big drop off behind the house. The residence is close to road; they were able to put a property there even with large topographic slope. He states he believes a house could be put on the 73 N Main lot, and his clients wouldn't object to a variance to put the residence closer to the street, and that it would be more in keeping with neighborhood. He stated that the proposed lot is an intensive use as opposed to other existing commercial uses in nearby General Use district.

Ione Deane, owner of 78 N Main Street stated that her nephew is the owner of the corner lot abutting the Rt 24 exit ramp. That lot is being sold for \$750,000, is located directly across the street and is zoned General Use. She stated that she couldn't see how the proposed car lot is not in keeping with other neighborhood commercial uses such as the tire business and massage place. She did not see how the applicants could be denied the use variance.

Dan Loranger motioned to close the public hearing; James Frates seconds; all in favor.

The Chairman entertained a motion to grant the use variance for the applicants to operate a motor vehicle sales lot. Dan Loranger states that he feels that this use would be detrimental to a neighborhood that has a majority of residences; motions to deny the variance. Jim Frates seconds; all in favor. The variance is denied.

Meeting adjourned at 7:40

Respectfully submitted,
Lauren Moreau