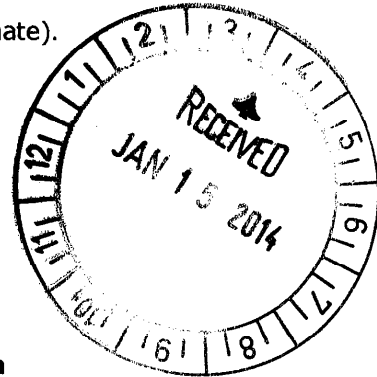


**Freetown Zoning Board of Appeals**  
Minutes of the Wednesday, November 12, 2014 Meeting  
Town Hall, 3 North Main Street, Assonet, Mass.

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

**Absent:** Robert Jose.

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



**Minutes of Previous Meeting**

The minutes of October 22nd were received.

**Case #542 – Allen A. Scott – 46 East Howland Road, East Freetown**

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

Mr. & Mrs. Scott approached the board to present their petition to operate a martial arts studio in an existing barn at 46 East Howland Road. They explained that they previously lived at the abutting property in Lakeville and operated a martial arts school at that location. After Mr. Scott's father passed away, they moved into his home in East Freetown and would like to reopen the school at that location.

Mr. Frates addressed the difference between a home occupation and a commercial use on a property zoned residential. Where this use is proposed for a detached accessory structure, he felt it did not appear to meet the criteria of a home occupation. Mr. Scott explained that the barn was built primarily to house a heating system, and now they were looking to make use of the additional space in the structure. Mr. Sawicki asked if the sawmill business was still operating at that location. Mr. Scott stated that the sawmill is still in operation and is his primary occupation and source of income. The martial arts school is more of a hobby or side business, operated for enjoyment and minimal gain and out of a common interest between Mr. Scott and his son.

Mr. Frates and Mr. Velozo addressed matters of building and sanitary codes, ADA compliance, parking, and fire suppression systems. They both acknowledged that while it was not the job of the ZBA to make any determinations, they felt that it would be wise for the applicants to meet with the Building Inspector to discuss what alterations might be necessary to the barn for it to house a business open to the public. Mrs. Scott asked what would happen if the variance was granted and then any alterations to the building proved cost prohibitive. Mr. Sawicki responded there would be no negative aspect; the variance would be approved but not executed, as opposed to the variance being denied and the applicants being barred from reapplying for the statutory length of time. Mr. Frates reiterated that he was not discouraging them from pursuing this use, but wanted them to be educated before getting too deep into a costly process.

Mr. Sawicki asked how often the school would be in session. Mr. Scott stated that in Lakeville, the school operated two nights per week and Saturday mornings. He stated he was the only instructor, but that his son may be an instructor as he gets older. Mr. Sawicki asked how many students were typically enrolled, and Mr. Scott replied that the maximum for any session was sixteen, with twelve being about average.

Distance from the road was discussed. Mr. Scott estimated the barn to be approximately 200 feet from East Howland Road, noting there were two telephone poles between the road and the barn. Mr. Velozo asked for a plan showing the accurate distance between the road and the barn.

After further discussion, all parties agreed to continue the hearing to Wednesday, January 7, 2015, at 6:30 p.m.

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

A motion was made by Mr. Velozo, seconded by Mr. Sawicki, to open the public hearing at 6:52 p.m. The motion carried unanimously. Mr. Frates read the public hearing notice.

William Madden of GAF Engineering approached the board representing the applicant, Threetown LLC / Thomas Reilly. He stated that the applicant engaged GAF to evaluate the property before purchasing it in November 2013. This property is the old Dietlin cranberry farm. The owner desires to maintain an existing main dwelling and renovate a screen house into a second dwelling, one to be for use of the owner and the other to be a caretaker's quarters. Ultimately they want to develop the property as an equestrian facility. The property is currently classified under Chapter 61A and the owner intends to continue the qualifying uses of the property.

Mr. Madden went on to state the property is accessed by a right-of-way. Researchers searched the title as far back as 1895 and found that the right-of-way existed throughout the period 1895-2014, if not earlier. He approached the former Building Inspector to initiate a conversation about this property, but she retired before rendering any opinions. He then approached the current Building Inspector, but did not learn much information beyond the property having no frontage.

Mr. Madden provided a site plan, and stated his opinion that Lot 8 and Lot 9 are now one single lot due to the expiration of a Life Estate that he believed created Lot 9. He stated that no new property lines were being proposed or created as part of this process. He stated his interpretation of the Town's zoning by-laws is that as the lot existed prior to 1956 and has not been altered, it does not need to meet the current frontage requirements.

Mr. Frates asked what relief is being sought. Mr. Madden responded that the lot was created in the 1800s, at a time when the Town did not have frontage requirements. The Building Inspector's letter stated that the application was denied for lack of frontage, and the applicant does not feel that he needs to meet the frontage requirement. They are appealing the Building Inspector's denial for lack of frontage. At present they cannot appeal anything else as his letter only stated a lack of frontage as a reason. Mr. Madden stated that the Building Inspector referenced in conversation the subject of constructing a road and creating a subdivision to accommodate the second house, but the applicant does not feel he needs to do that and does not own the required land between his property and Braley Hill Road to accomplish it.

Mr. Frates questioned whether the Building Inspector was concerned about creating a second dwelling on the same lot, depending on whether he agreed Lot 8 and Lot 9 are no one and the same. He did not want to speak for the Building Inspector and was just theorizing.

Mr. Frates asked if anyone in the audience had comments. John Caron, 103 Braley Hill Road, stated he is an abutter and has no issue with using the screen house for a dwelling. He stated that the right-of-way crosses his property and asked what the requirements are for frontage. Mr. Frates explained the frontage measurements. Mr. Velozo clarified what types of roads qualify for obtaining frontage.

Discussion ensued on the subject of whether this would become a second house on one property, and whether that is permitted or prohibited under the by-laws. This was felt to be an issue in part for the Planning Board and not germane to the requested relief.

Mr. Reilly stated that the screen house has existing second-floor apartments that were used by transient workers in the farm's heyday in the 1930s. There are bedrooms, a kitchen, and a parlor area. Mr. Frates

Mr. Frates read a letter from the Cemetery Commission as abutters. The Commission expressed no opposition but requested that the record reflect that the addition would potentially be four feet from future graves, and that the applicants be encouraged to erect a fence to separate the properties.

The Byers' stated that the existing leaching field, chimney, and cooling units limited possible locations for the garage to that proposed. Mrs. Byers stated in response to the letter that if the cemetery land behind their house was cleared, they would probably erect some sort of barrier regardless of whether or not they have the garage. Mr. Frates asked how close to the property line would burials take place. Mr. McCue stated that typically burials are conducted up to about eighteen inches from the property line as there are no setback requirements for burials.

Mr. Velozo addressed the age of the house and the establishment of the existing property lines. His concern was that the applicants had essentially created their own hardship, which was not a situation from which the ZBA would typically grant relief. Dr. Byers stated if the house had been built in his preferred location, the setback would not be an issue, but the builder had in fact chosen the location as the best location on the property. He agreed to contact the builder to determine why that was. Dr. Byers noted the terrain of the property also limited location.

Discussion ensued on the size of the garage and the necessity of the breezeway. Board members questioned whether the garage could be reduced to two bays. Mrs. Byers stated the three-bay garage provided space for herself, Dr. Byers, and their daughter. It was noted that as the property is in the Village Residential zone, the setback is ten feet due to the garage being attached and part of the principal dwelling; if there was no breezeway and the garage were detached, the setback for an accessory structure would be six feet.

Mrs. Byers asked if there were any timeframe for the cemetery to expand in that area. Mr. McCue stated he expected that area to be cleared within a year's time as there is great demand for lots in the older part of the cemetery further from the expressway.

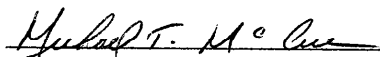
Members recommended that the applicants revisit their plans and try to make the structure conforming, either by shifting the garage seven feet or by shifting the garage three feet and eliminating the breezeway. It was agreed on consensus to continue the hearing to January 7, 2015, in the event that a variance was still necessary. If not, the application would be withdrawn without prejudice.

#### **Meeting Adjourned**

The meeting adjourned at 8:10 p.m.

This is a True Record by me.

Attest:

  
Michael T. McCue, Senior Clerk