

**Freetown Zoning Board of Appeals**

Wednesday, November 28, 2018  
Town Hall – Assonet, Mass.

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FREETOWN TOWN CLERK

2019 FEB 21 AM 9:50

*J. Brown*

**Present:** James Frates, Bradford Paiva, and Nicolas Velozo.

**Absent:** Christopher Chapin (associate) and James Sarcia (associate).

**Call to order:** James Frates called the meeting to order at 6:32 p.m.

**Case #578 – Steven Harrison & Jennifer Arel – 132 Chace Road, East Freetown**

Mr. Frates called the hearing to order at 6:32 p.m. A motion was made by Mr. Velozo, seconded by Mr. Paiva, to waive the reading of the public hearing notice. The motion carried unanimously.

Ms. Arel described the intent, which is to construct a garage with an accessory apartment above. It was noted that the plans for the addition are still being worked on as there was an unexpected problem with the required setback from Clark Lane, but that the layout of the apartment would not change. Ms. Arel stated they had had difficulty securing the services of a surveyor to complete the revised plans.

Mr. Velozo noted the apartment would be 680 square feet, well below the 1,000-square-foot threshold.

Mr. Paiva asked the size of the lot. Ms. Arel responded 1.61 acres.

Mr. Velozo asked who would occupy the apartment. Ms. Arel stated it would be Mr. Harrison's mother. Mr. Harrison stated the house was bought with the intention of being able to move his mother in. Discussion was held on what would happen if Mr. Harrison's mother were no longer able to occupy the apartment, and Mr. Harrison agreed that it would not become a rental unit.

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to close the public hearing. The motion carried unanimously.

**DISPOSITION:** A motion was made by Mr. Velozo, seconded by Mr. Paiva, to grant the special permit, with the condition that the layout of the apartment not change and that the final, stamped site plan for the addition be provided to the ZBA prior to issuance of a building permit. The motion carried unanimously.

**Case #580 – Kathleen Paiva – 19 Jordan Lane, East Freetown**

Mr. Frates called the hearing to order at 6:40 p.m. A motion was made by Mr. Velozo, seconded by Mr. Paiva, to waive the reading of the public hearing notice. The motion carried unanimously.

At this time, Mr. Paiva stated that the applicant was his daughter, and offered to recuse himself. Messrs. Frates and Velozo thought there was no need for Mr. Paiva to recuse himself given the nature of the application; also, since the board requires the unanimous vote of three members and neither associate member was available for the hearing, a recusal would cause an unnecessary delay for the applicant.

Ms. Paiva stated the house was newly-built and had been designed to accommodate an in-law apartment, but that the kitchen area was not finished pending the approval of a special permit.

Mr. Velozo noted the apartment would be 642 square feet, and therefore compliant with the 1,000-square-foot threshold.

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to close the public hearing. The motion carried unanimously.

**DISPOSITION:** A motion was made by Mr. Velozo, seconded by Mr. Paiva, to grant the special permit. The motion carried unanimously.

**Case #579 – Jeffrey R. Tippins – 53 Locust Street, Assonet**

Mr. Frates called the hearing to order at 6:45 p.m. A motion was made by Mr. Velozo, seconded by Mr. Paiva, to waive the reading of the public hearing notice. The motion carried unanimously.

Mr. Tippins described his variance request, explaining that he and his wife first applied to build an attached garage with a breezeway and were denied due to the side setback. They moved forward with building a detached garage with the intent of applying for a variance to attach the garage using a breezeway. Due to the process of constructing the garage, turnover with building inspectors, and other issues, the matter got away from them, resulting in the garage being completed prior to their seeking the variance.

Mr. Velozo questioned why the permit for the detached garage was issued in June, but the denial letter for the attached garage was issued in October. He felt the Tippins' built the garage knowing they could not attach it. Mr. Tippins described the order in which his applications were filed and approved or denied.

Mr. Velozo believed the garage could have been built at an angle and avoided the need for a variance, and Mr. Paiva concurred.

Mr. Paiva asked how long the garage had been there. Mr. Tippins replied that it was just built. Mr. Paiva asked when Mr. Tippins was made aware that it would not meet the required setback, and Mr. Tippins replied August.

Mr. Paiva asked if the closest abutter had taken issue with the application. Mr. Tippins stated his neighbor was not opposed to the project; that he had in fact tried to do a lot line adjustment with that neighbor, but was unable to as they both had previously-existing, non-conforming lots. Mr. Frates stated that if an abutter were opposed, they should have been present, so the absence of any abutters indicated at least tacit approval.

Mr. Frates asked how much of a variance was sought. Mr. Velozo replied three feet, narrowing down toward the back of the garage.

Mr. Velozo stated he understood the subject parcel was a previously-existing, non-conforming lot, but felt that the by-laws adequately address that issue. He felt that the applicant had built the garage knowing it could not be attached, and was now seeking to attach it anyhow. Mr. Tippins replied that he understood, but that he was not familiar with the building permit process and thought he was going about the variance process the correct way. Mr. Paiva felt this was an example of putting the cart before the horse.

Mr. Frates asked Mr. Tippins if he would have built the garage even if he had known without any doubt that he could never attach it to the house. Mr. Tippins replied yes, he would have.

Mr. Velozo felt that the garage could have been built three feet closer to the house, with a smaller breezeway that still would have met code, and there would have been no need for a variance. Mr. Frates asked Mr. Velozo how he would have ruled if the applicant had come in seeking the variance prior to any construction; Mr. Velozo stated he would have looked at it differently. Mr. Velozo also expressed his understanding that the applicant and his wife have a legitimate medical hardship.

Both Messrs. Velozo and Paiva stated that they were not happy with the way this application came to be before the board, but understood the hardship.

A motion was made by Mr. Paiva, seconded by Mr. Velozo, to close the public hearing. The motion carried unanimously.

Mr. Frates stated that this would have been easier if the applicant had gone about the project in the correct order. He felt that a three-foot variance was reasonable, but that the process made it difficult.

**DISPOSITION:** A motion was made by Mr. Velozo, seconded by Mr. Paiva, to grant the variance in light of the medical hardship. The motion carried unanimously.

#### **Discussion on Expiration of Special Permits at Transfer of Ownership**

Members discussed the repeated problem of houses being advertised for sale with "permitted in-law" or other notations that were not accurate, since all special permits for accessory apartments expire upon transfer of ownership. Unanimous consensus was to request the Building Inspector to appear at the next meeting to discuss this matter.

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to adjourn at 7:16 p.m. The motion carried unanimously.

This is a True Record by me.

Attest: \_\_\_\_\_  
Michael T. McCue, Senior Clerk