

**Town of Freetown  
Zoning Board of Appeals**

Minutes of the Wednesday May 17, 2023  
Held at the Multi-Purpose Senior Center, 227 Chace Road

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**Present:** Nicolas Velozo, James Frates, and Robert Jose.

**Absent:** Swede Magnett.

**Call to Order:** Nicolas Velozo called the meeting to order at 6:01 p.m.

**Minutes**

A motion was made by James Frates, seconded by Robert Jose, to approve the 05.03.2023 meeting minutes, with an amendment to correct the spelling of Nicolas. The motion carried unanimously.

**Discussion on Accessory Apartment By-law**

Mr. Velozo stated the discussion is regarding the Health Review Sheet only. Victoria D'Antoni, the Planning & Land Use Administrator, said it's similar to the Planning Board's Form L internal department review. The Health Review Sheet would go to the Board of Health to review only for accessory apartments. Mr. Frates suggested adding a couple lines to include the number of bedrooms, and the number of rooms currently in the house to ascertain the required septic system.

A motion was made by James Frates, seconded by Nicolas Velozo, to approve the Health Review Sheet, with the amendments noted above. The motion carried unanimously.

*Mr. Velozo called a 10-minute recess at 6:06 p.m. in order to wait for the applicant's representative.*

*Mr. Velozo called the meeting back to order at 6:17 p.m.*

**Case #601 – 11 & 13 Ridge Hill Road**

The applicant's representative can't make the meeting until 6:35pm as he's stuck in traffic. Steven Nassr from 7 Marsh Point Lane, Isle of Palms, South Carolina preferred to take another recess until his representative can be present.

Charles Sullivan, 46 High Street, doesn't feel it's fair to drag this on as the applicant requested a continuance at the last meeting. He believes Mr. Nassr should start the presentation. Mr. Velozo noted if a recess isn't given, the applicant could ask for another continuance. Mr. Sullivan said it's unfair to grant another continuance since everyone else is here. Pedro Neves, 9 Alexandra Drive, agrees it's poor planning on the applicant's part. Joseph Branco, 7 Alexandra Dr, stated Route 24 always has traffic and it's poor planning and it feels like they don't care. Joseph Travassos, 15 Alexandra Drive asked if the residents can still voice their concerns if there's another recess. Mr. Velozo stated yes, they would be given the opportunity to speak after the presentation.

*Mr. Velozo called a 10-minute recess at 6:25 p.m. in order to wait for the applicant's representative.*

*Mr. Velozo called the meeting back to order at 6:35 p.m.*

Mr. Velozo reminded everyone the meeting is being recorded, to please be respectful, and all questions need to come to the board first. Mr. Nassr will start the presentation. Mr. Nassr is half owner of the Nassonet Corp. He received an undated letter from Freetown's Building Commissioner stating the rear section of their parcel should not be allowed to continue unpermitted as a trucking terminal without a special permit. Mr. Nassr said the letter doesn't refer to any property address, so he's unsure if it's 11 or 13 Ridge Hill Road. Carl Bizarro, Freetown's Building Commissioner, stated the date was from February 24, 2023 and it applies to both parcels. Mr. Nassr stated they've been a trucking company since 1972, and in the 1980's the Nassonet Corp. was formed as a land owning & rental properties company. In 2017, a new law stated if a trucking company isn't used for two years, they lose their grandfathering rights. Mr. Nassr noted they've had contracts since 2015. Within those contracts, they've always had trucks on the property. Mr. Velozo asked Mr. Nassr to point out the

properties on the presented exhibit. It was determined 11 Ridge Hill is North, and 13 Ridge Hill is South. Mr. Nassr asked Mr. Bizarro if he'd like to answer the question of use and grandfather status. Mr. Bizarro mentioned the Town never said they couldn't do it; however, a special permit is required. The change that occurred is the 24/7 usage of the parcels. Another change to the property is live storage. Mr. Velozo asked what is dead or live storage? Mr. Bizarro replied a dead storage example is dropping off a trailer for a few days and picking it up the next week, and live storage is running 24/7 meaning someone could pick up a trailer at 2:00am. Mr. Bizarro's not saying it can't be done, but a special permit is required.

Mr. Velozo noted the applicant's representative, Attorney Jonathan Silverstein, is now present. Attorney Silverstein stated the one issue the board needs to determine is whether there's been a change in expansion of the use that's so significant and substantial that it rises to a level of a different use. He argues that the area of property being used has always been used, aerial photographs showing that the rail spur has been used for loading and unloading stuff. It was previously used for construction vehicles, trailers, trucks, and storage of raw materials. This is hard evidence of it always being in use. The area and nature of the property hasn't changed. Even if you staked out for further use, even if you have a perimeter road, that entire area would be grandfathered. It's not an expansion even if you haven't quarried a specific area, its character and nature of use is the same. The area of improvement goes back for decades. The impact on the neighborhood is significant. In an industrial zone property, they will be impacted by the noise from industrial zones. This is a family property, the San-Man Co., has been a trucking with warehousing company since the 1970's. Attorney Silverstein acknowledged they cleared an additional area, and they did intend to expand their use, however, once it was brought to their attention it couldn't be done, they stopped the clearing and cancelled their discussions with Amazon about the expansion. They can discuss ways to revegetate the area. Attorney Silverstein noted the Board's point of view is to determine if the use has expanded. Clearing of land isn't part of the use. If a condition needs to be put that they can't expand to that area, without a special permit, they would accept that. Under case law, the entire area has been used, is currently used, and that's never changed.

Mr. Velozo questioned if they're here to talk about both 11 & 13 Ridge Hill Road, or are we here for the expanded use from the expanded area. Mr. Bizarro said both properties and the expansion. Mr. Velozo asked if 13 Ridge Hill Road has ever been a truck terminal in its life. Mr. Bizarro said not to the point where it rises to the level where it's detrimental to the neighborhood. Mr. Velozo stated if it was a truck terminal, whether detrimental or not, they can continue to do what they have been since it's always been there. Is the expansion more detrimental. Mr. Bizarro said noise is to be expected but you cross that threshold because it's now a live storage 24/7 operation. Mr. Frates asked if 24/7 is allowed. Mr. Velozo said yes, it's industrial. Mr. Velozo noted the applicant would be willing to restore the clearing to where it was. Attorney Silverstein said yes, they're not going to use the cleared land for truck storage unless they get a special permit. Mr. Jose asked if there any delineation of the land that shows this area is excluded from what you have as pre-existing, not conforming. Attorney Silverstein stated no they don't have what's being excluded. Mr. Jose said there's no plans to use the 2 acres, however, he assumes it was their intention. Mr. Nassr noted Amazon had requested an additional acre of land for one to two months, however, by the time it was cleared, Amazon no longer needed the land.

Mr. Neves asked, not including the cleared land, if the applicant is saying trucks have always been parked there. Attorney Silverstein stated there's always been trucking terminal activities there, whether it's public storage, the rails, or truck activities. The Board showed Mr. Neves the maps provided by the applicant to verify if he was referring to #11 or #13. It was noted #13 was being discussed. Mr. Neves said there wasn't anything there in 2019. Mr. Velozo showed photos provided by the applicant's attorney and Mr. Bizarro introduced maps from 2013 & 2014 to show the wooded area. Some trucks are there but not on the expansion part. Attorney Silverstein referenced case law as the trucking roads go all the way back to the rail. Clearly that was disturbed, used, and trucked on in 2013. You can have a parking lot and even if someone doesn't park there every day, it's still a parking lot. The leases go back before the zoning amendment stating this exact area is leased for truck storage. The current tenant is using it for truck storage, even if they don't currently have trucks on the property. It doesn't mean it's not an area that's been reserved and used that way. Mr. Neves moved into his property in 2012 and they didn't have trucks. Then tractor trailers started moving in. He called the Town multiple times due to the trucks being so close to his property, the stand-up lighting, and the sheer volume of the trucks on the property. There's so much noise and the lighting. It affects the residents, and the dropping of trailers and the beeping have woken his son up.

Mr. Travassos moved into his home in 2004. In 2009 he paid to have his land surveyed, through Prime Engineering, and put up a fence. He received a letter from the applicant stating he was dumping grass onto his property when clearly, he was doing so on his own land. Mr. Travassos noted Mr. Nassr states he knows the property so well and he's such a good neighbor but he never surveyed the land because when the land was cleared last June, about a dozen trees were removed from his property. Mr. Travassos contacted the Town and spoke to the former town administrator. He also sent a certified letter to the applicant but received zero response. Mr. Travassos tried to reach Mr. Nassr through one of his tenants, and through the company hired to do the clearing. He also wanted the debris from the tenants removed from his property. Mr. Nassr had the land surveyed this year, and it proves trees were cleared from his property and the rebar stakes were removed as well.

Mr. Sullivan wanted to verify if the discussion is about what has existed before or about what they've done with the trailer park they've developed over the last year or two. Mr. Velozo noted Mr. Bizarro's clarification letter included both properties and the expansion on lot #11, which is behind Alexandra Drive. Mr. Sullivan asked if they're talking about the expansion itself or about the activity in the developed part of the property. Mr. Velozo stated the expansion itself is what triggered the case before them today and the letter Mr. Bizarro sent to the applicant. Mr. Sullivan has been on his property for over 60 years. The area being talked about was a gravel pit. Mr. Sullivan stated most of those roads mentioned by Attorney Silverstein were from ATV usage. Mr. Sullivan isn't opposed with Mr. Nassr doing with their property what they can as long as they abide by the rules in this area. If they feel they won't get the value if they have to put up permanent lighting, leveling the ground to help with dust, or having their hours regulated then they don't go about it and abandon the project.

Luiz Tavares, 17 Alexandra Drive, said the applicant stated they don't provoke the neighbors, then why were the big rocks put on his property. Mr. Velozo said if something was done illegally, it's for the police department or for a civil suit, not the Zoning Board.

Mr. Branco has lived at his property since 2003 and the traffic seemed limited up until 4-5 years ago. It's become an overnight 24/7 operation. The concern is the noise level, and lights shining in his home. Picking up and dropping off trailers and the beeping noise is one thing but this happening at 2-3am is another. Mr. Jose stated the property has been pre-existing, non-conforming since 1972. In 2016 Mr. Nassr could use this land as a truck terminal as the terminology wasn't added until 2017. When the town passed the by-law in 2017, the town defined what a truck terminal is.

Attorney Silverstein noted you only get to the question of something is detrimental if there's been an expansion. There's not been an expansion. There's not been a change of use and there hasn't been a substantial extension of the use. If the board wants them to put up a fence or some other demarcation to make it crystal clear that the recently cleared land isn't available for truck parking, they would do that.

Mr. Branco asked why they didn't apply for a special permit. Mr. Nassr said it's because they no longer intend to use the land. Mr. Velozo asked what is the expansion. Mr. Bizarro stated he's talking about #13 as well making the clearing of the land detrimental to the neighborhood. Mr. Velozo asked if Mr. Bizarro was referring to more trucks being there as an expansion on that property. Mr. Bizarro said the point about needing facilities is we were expecting a parking lot but the parking lot is an accessory to a building. If there's 100-150 trailers, you need to have some facilities. They were more detrimental to the neighborhood with the lighting, dust, and noise. That's a nuisance, it's not contained in their foot print. Attorney Silverstein stated in 2015 land was cleared and leased to a trucking company doing truck storage, vehicle storage, material storage, and staging. The area since then has been leased, without any breaks, to one company or another. Attorney Silverstein said expansion means, to him, you're expanding onto an area of property that has never been used in connection of that use, and the applicant hasn't done that. When the town contacted them, they stated they're not expanding, so there's no expansion from their point of view. Mr. Bizarro noted an expansion requires more lighting, more utilities brought in, and that did happen. Attorney Silverstein stated the case law is clear, just because you bring in more equipment, or different equipment, doesn't constitute expansion. If a pre-existing non-conforming gas station puts up a canopy, they're not expanding, they're catering to the times. When their tenant requested lighting, they put up lighting. When there was push back, they took the lighting down. Mr. Bizarro asked by clearing the land, was it their thought that maybe now it could have created a nuisance. Attorney Silverstein stated the Board of Health deals with nuisances not the Zoning Board. It's not a public nuisance, it's a private matter between two property owners. They're zoned industrial and they're not using the land in an unreasonable way.

Mr. Sullivan wanted to know if someone leases the land in 2015 and puts trucks there, then leaves in 2017 yet their lease doesn't expire until 2019. If they lease it to someone else and it's not acted upon for 2-3 years, is that still continuous use. Mr. Velozo stated it would technically if they had pulled a special permit. It would be no different if a restaurant closes for a few years but their business license is still in effect. If it goes past 2 years, they'd lose that and it would go to the new zoning laws. If they expand the foot print while expanding their business, then it would trigger a site plan review and possibly a special permit as they're adding on or doubling their size.

Mr. Velozo stated a lot of information was given tonight and the case law mentioned. He spoke to the Town Administrator asking for town council to provide a comment regarding the expansion and the case law. Ms. D'Antoni read a letter, into record, from the Medeiros family, 11 Alexandra Dr., addressing their concerns. Mr. Bizarro addressed that this has affected people, their quality of life, safety, and health. Mr. Velozo would like clarification from Town Counsel regarding the expansion. Mr. Velozo would like to continue the case after he gets clarification on those issues.

A motion was made by James Frates, seconded by Robert Jose, to continue the case until the June 7<sup>th</sup> meeting. The motion carried unanimously.

### **Meeting Adjourned**

A motion was made by James Frates, seconded by Robert Jose, to adjourn. The motion carried unanimously, and the meeting was adjourned at 8:21 p.m.

This is a True Record by me.

Attest: \_\_\_\_\_  
Deanna Hayes, Senior Clerk