

**Town of Freetown  
Zoning Board of Appeals**

Minutes of the Wednesday March 20, 2024  
Held at Police Station Community Room, 15 Memorial Drive

FREETOWN CLERK  
REC'D MAY 2 2024 PM 3:49

**Present:** Nicolas Velozo, Robert Jose, Swede Magnett, and Shawn Loranger

**Absent:** James Frates

**Call to Order:** Nicolas Velozo called the meeting to order at 6:00 p.m.

*\*The meeting was a joint meeting held with the Planning Board. James Frates was present as a member of the Planning Board and did not count toward the quorum for Zoning Board of Appeals.*

**Discussion and Take Action Relative to Accessory Apartment By-law**

James Frates, Chairman of the Planning Board, explained that he had been on both Boards and this had been a discussion for a long time. The intent was to make it easier and more defined for accessory apartments. Mr. Velozo, had procedural questions on what the purpose of changing the by-law was. Mr. Frates explained that the purpose of the by-law change was the intent, to help the community and help the elderly to stay in town. Housing was expensive and had been increasing. Mr. Velozo asked how would an existing apartment setup be handled. He further explained current situations that are fairly setup for an accessory apartment. He questioned if the Building Department would inspect or require plans to make it an acceptable accessory apartment. Carl Bizarro, the Building Commissioner, stated that it would require a certificate of occupancy and inspections. Some accessory apartments already exist and those are grandfathered in. The zoning happened after 7-10 years then it cannot be touched if it was a zoning issue. An inspection would take place to see if it met the criteria but pre-existing, non-conforming does not apply to the building code. Mr. Jose stated that there are several in-law apartments and asked if those would be pre-existing non-conforming. Mr. Bizarro, stated that they would have to have proof by showing records or something that stated it was pre-existing non-conforming. Mr. Frates gave a scenario that if they had a permit for an accessory apartment and it was coming up for renewal then they would have to have it inspected by the Building Department for compliance with the new by-law. Mr. Bizarro stated to be cautious with the language so that it does not become an Airbnb.

Keven Desmarais, Board of Health agent, stated that short term rentals are a separate by-law and suggested that it be considered in the future. He stated that the language did not address that and would be a separate by-law. He shared that he had been critical about the accessory apartment by-law for a long time and always thought it was onerous and difficult for enforcement. He had seen permits be given, the space was useless for family members and then they were forced to rent it out illegally or it was looked at as a two-family home. If someone purchased it and then found out later that it was not permitted, it would cause a trickle-down effect. He stated that to a certain degree, a certain amount of by-right use would be appropriate. He shared his personal belief was that a by-right situation was attached or within an existing structure, would meet all current setbacks, and demonstrated on a plan that they have an existing septic to accommodate or means to upgrade the septic. He stated that a by-right should be a single bedroom. He agreed with what is in the by-law but did not agree with the detached structure. He suggested to change the wording to almost encourage it to be non-compliant with setbacks. He did not agree with the barn or garage. The setbacks should not be diminished with the detached structures. He stated that accessory apartments never came to the Board of Health before. Now inspections are being completed when the houses are being sold and they are finding that they are non-compliant with Title 5 requirements. He suggested that there be a requirement in the by-law or regulations that it must demonstrate compliance with Title 5 requirements on a stamped plan. The requirement should be in the by-law for when it would be presented to the Building Commissioner. In fairness to everyone, getting the information out front for what they would be looking for. Mr. Bizarro stated that the state allows for someone to legally rent two rooms and an accessory must be an accessory to the principal building. Mr. Jose stated that he was concerned with the detached accessory apartments. He asked if there would be a requirement for separate use for water and sewer. The duplex laws trigger certain things. He questioned if detached accessory apartments would require it to tie into septic that was already there. Mr. Frates asked Mr. Desmarais if it would matter where the bedrooms are, two bedrooms in the main house and one bedroom in the above garage, it still totals three bedrooms. Mr. Desmarais stated that it would depend on whichever location is looking for an occupancy permit. He would suggest that they do their own. Mr. Jose asked if an existing septic would need a new Title 5 inspection. Mr. Desmarais stated that they would not need

a new Title 5 inspection because it was not a transfer of ownership and adding bedrooms does not trigger it. Mr. Velozo asked Mr. Desmarais for clarification, if the applicant would need to prove by a stamped engineered plan the reserve area and would that be consistent with all applications. Mr. Desmarais clarified stating that it would not be required for all applications. It is currently reviewed during the application process and they work with applicants. Mr. Velozo asked if it was only for adding a bedroom. Mr. Desmarais agreed.

Mr. Velozo asked about the certificate of occupancy. Mr. Bizarro stated that it generally does not rewrite it for additional habitable space but this would. The best practice would be to obtain a letter of determination from the Building and Board of Health Departments prior to applying. Mr. Frates suggested an internal checklist to be sent between departments, similar to what Board of Health had already seen. Mr. Desmarais stated that he would want to review it before too much money was spent and then applicant can't complete it. Mr. Velozo suggested an application for Board of Health to review, similar to the zoning determinations. Mr. Desmarais stated that the Health Department started to institute that and it would be valid for six months. Mr. Desmarais stated that by-right was only eligible for septic system, if it could be demonstrated. It would be caught through the sign off process. It should be in the application for by-right or a pre-rental inspection. He stated that some communities have yearly rental inspections. Mr. Jose asked if by-right would go to the Building Commissioner and Special Permits would go to the Building and then to Board of Health for review and be caught during the process. Mr. Velozo asked if during the procedure for online permitting would it be manually checked off for who to send it to. It manually gets checked off and sent to the departments that need to sign off on it. Mr. Bizarro asked if there was a detached special permit and the owner was deceased, would the new owner need a new occupancy and inspection. Mr. Velozo and Mr. Frates agreed that the new owner would have to get a new occupancy. Mr. Desmarais suggested that they do not need another special permit if the owner is occupying it, it was given to that location, the Special Permit was recorded. It was issued for use. Something could be in the by-law about transfer of ownership. Mr. Magnett asked what if someone put their mailing address was Florida. Mr. Jose stated that it would be a red flag. Mr. Bizarro stated that it would be hard to regulate lying. Mr. Desmarais stated to define owner occupied in the by-law. Mr. Velozo contended Mr. Desmarais, who gave valuable input. Mr. Desmarais left the meeting.

Mr. Velozo asked what would be done if they put that they live in Florida. Mr. Bizarro stated to go back to the by-law, they could show a bill. Mr. Velozo stated that he would not want to go through someone's home and showing a license or utility bill would be prove of address. Mr. Bizarro stated that the permit could be rescinded if fraud information was given. Mr. Jose asked about the purpose and stated that attached is like a duplex. Mr. Frates reference that only one was denied at ZBA and it was due to being too large. Mr. Jose stated that there are no age restrictions and anybody could rent the housing unit. Mr. Bizarro stated that it still has to be an accessory to the main building. Mr. Jose stated that the by-law does not speak to undersized lots. Mr. Frates stated that it would still have to make sure it met all of the requirements. Mr. Jose had occupancy questions and referenced the by-law. Mr. Velozo suggested that the by-law should expand on the owner definition to make it clearer. Mr. Jose suggested to put live instead of occupy under section C.b. in the by-law. Mr. Jose reverted back to duplex. He asked if the duplex by-law supersedes the accessory apartment by-law and stated that the accessory apartment by-law would be in conflict with the duplex by-law. Mr. Velozo stated that he understood the point but it essentially made it a duplex through Special Permit through ZBA and that he had concerns with the regulations. Mr. Jose asked about duplex regulations, if Mr. Bizarro would track accessory apartments as a duplex for code enforcement. Mr. Bizarro stated that accessory is to the principal building and to be careful how it is done. A door that is operable from both sides would be needed. Mr. Frates stated that Victoria Alfaro, Planning & Land Use Administrator, did research on how many property owners do it and it showed that a small amount actually do even if by-right. Mr. Jose stated that if the intention was duplexes then include that. Mr. Frates stated that in duplexes, utilities are separate, still combined, but different.

Mr. Velozo stated that there are pros and cons. A pro was that there was no 55+ housing and now they can rent and stay in Town. The con is renters have rights, the train is coming in and people would flood into Town. This by-law will help multiple people during different stages of their lives. Mr. Frates stated that they can take out the detached accessory apartments altogether. Mr. Velozo suggested that the by-right be one bedroom. Mr. Velozo stated that the pros outweigh the cons for having the one bedroom by-right and special permit for two bedrooms. Mr. Frates stated to not have it tied to family members living in the unit. Mr. Jose expressed that he had concerns for the school system and with the MBTA community. Mr. Frates stated that it would take about 20 years to be built out for the possible 750-units. Mr. Magnett stated that if it is not limited it is going to compound that. Mr. Frates stated that in his opinion, most people would not want people they do not know to live in their house or to live on their property. Mr. Loranger stated that if it was based on the difficulty

of affordability then he would imagine most people would rent that and not think of the person living in the same home as them. Mr. Bizarro stated that it could subsidize mortgage. Mr. Velozo stated that it should have by-right for one bedroom. Mr. Jose stated to get to what the point of this was. Mr. Frates stated that the point is for the purpose and intent section of the by-law. The Boards discussed how many bedrooms for the by-law. Mr. Velozo stated that he looked at other towns that made it by-right and a lot were one bedroom. Chad Carvalho, Member of the Planning Board, shared that he was in one of the in-law apartments, he was not a family member but it was a great help for him and for the people that owned the place. Mr. Magnett stated that there are well over 100 illegal apartments in the Town. Mr. Carvalho stated that he is not a fan of the detached accessory apartments. Mr. Frates asked the Zoning Board if they wanted to remove the detached section in the proposed by-law. Mr. Velozo agreed to have it removed. The Boards further discussed detached accessory apartments. Christopher Mello and Steven Tripp, Members of the Planning Board, and Mr. Magnett agreed to get rid of the detached section in the proposed by-law. Mr. Frates asked if it would be by-right for one bedroom. The Boards agreed. Mr. Velozo stated to include off-set language, one bedroom by-right and no two bedrooms at all. Mr. Frates stated that one owner must reside in one of the two units, to be included in the proposed by-law. Mr. Velozo asked about language regarding trusts. The Boards discussed properties being in trusts.

Mrs. Alfaro agreed to make the changes based on the discussion between the Boards. She would email the final draft to the ZBA and the ZBA would vote on the recommendation for the accessory apartment by-law at the next scheduled meeting on April 10, 2024.

### **Minutes**

The Board will discuss the minutes at the next meeting.

### **Meeting Adjourned**

A motion was made by Robert Jose, seconded by Swede Magnett to adjourn. The motion carried unanimously, and the meeting was adjourned at 7:59 p.m.

This is a True Record by me.

Attest: \_\_\_\_\_  
Nicole DeMoranville, Senior Clerk

