



### Zoning Board of Appeals Minutes – January 13, 2021

A meeting of the Town of Freetown **Zoning Board of Appeals** was held on **January 13, 2021** virtually over Zoom. **Present:** Chairman James Frates, Nicolas Velozo, and Robert Jose  
**Absent:** Swede Magnette

**Chairman Frates** read the opening virtual meeting statement

### Continued Public Hearing – 28 Huron Ave

**Chairman Frates** called the public hearing back to order.

**Chairman Frates** said that last time the Board asked my Hutchens to have a stamped plan & produced showing the showing the proposed work, which was done and sent to the Board.

Elroy Hutchens, applicant, said there is not a whole lot to add except for the engineered plan.

**Chairman Frates** said when Mr. Hutchens variance request was denied in 2010 the back corner was only a ½ foot away from the road and now the opposite corner is only 1 ½ feet away from the road.

**Mr. Jose** said the proposed plan still shows a distance of 0.47 feet to the road and the locust plan shows 7.7 feet to the road. Mr. Hutchens said the foundation would still be 0.47 feet away but the wall would 7.7 feet away. **Mr. Jose** asked if they are proposing to remove the foundation and only build 7.7 feet away from the road. Mr. Hutchens said they would only build 7.7 feet away but the retainer wall has to stay 0.47 feet away from the road because it retains his neighbors property.

**Chairman Frates** said he is still quite concerned with the safety of that corner. Mr. Hutchens said it's just the way the road has been and that the retaining walls were always that close to the road. Mr. Hutchens said the paved roadway is about 4 feet away from the retaining wall.

**Mr. Velozo** asked for clarification if the property line is the roadway or if the roadway is further off the property line. Mr. Hutchens said according to the engineering of the original road it was engineered at 20 feet but the actual road width varies depending on the properties on either side. Mr. Hutchens added that the neighbors are jointly coming together and rebuilding the road in the spring.

**Mr. Velozo** asked what Mr. Hutchens' hardship is and what was on his property where the retaining wall currently is. Mr. Hutchens said there were diseased Birch or Beech trees that had to be removed. Mr. Hutchens said his hardship is more of an emotional hardship in seeing a slab of concrete as he drives down the road.

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Jeffrey Chandler, Town of Freetown Building Inspector and Zoning Enforcement Officer, said the plan he saw today showed a connection to a house which he sees as an addition, not a shed. Mr. Hutchens said there would not be access to the house from the shed. Mr. Chandler said the plan showed a window going to the house and a full wall that connects to the house. Mr. Chandler said whether it is an addition or a shed, it still requires a setback of 30 feet. Mr. Chandler said the house is grandfathered in, so it does not need a setback of 30 feet. Mr. Chandler said that if the shed is considered an addition then it would make a non-conforming structure more non-conforming and if it is detached it would be encroaching on a setback.

**Mr. Jose** made a motion close the public portion of the public hearing. **Mr. Velozo** seconded. The motion passed unanimously.

**Mr. Jose** said if the building is not detrimental to the neighborhood that the Building Inspector/ Zoning Enforcement official can make a determination that the building is buildable. **Mr. Jose** said that his concern is the same safety concern that he has had in the past with the foundation being only 1.5 feet away from the road. **Mr. Jose** added that he understands that the actual road is farther away but given that the road will be upgraded the road could be anywhere within that road layout and the Town could take potentially take over the road at Town Meeting. **Mr. Jose** said his concern is still a safety concern that a structure would be only a 1.5 feet away from the road layout. **Mr. Jose** said it's currently a low speed road but that could change in 5-10 years and that has to be considered. **Mr. Velozo** said he shares **Mr. Jose's** safety concerns.

**Chairman Frates** entertained a motion to deny the variance request for 28 Huron Ave. **Mr. Velozo** moved and **Mr. Jose** seconded with discussion. **Mr. Jose** said the reason he is seconding the motion for denial is the safety concern of a structure being a 1.5 feet from the road layout and the lack of a true hardship. The motion passed unanimously.

#### **Public Hearing – 10 Wordell St**

**Chairman Frates** entertained a motion to waive the reading of the public hearing notice. **Mr. Velozo** moved and **Mr. Frates** seconded. The motion passed unanimously.

Tracie Heather, applicant, said her and her husband just purchased the family home from the parents who have lived in the home since 1974. Ms. Heather said they would like to add an accessory apartment so that her parents can stay in town and so it will be easier to take care of them.

**Chairman Frates** said this is what the by-law is for and everything looks like it meets the specifications laid out in the by-law. **Mr. Velozo** said the application says the apartment will be 870 square feet but the opening and the family room makes it all essentially one house.

Ms. Heather said it is a sun room that is currently being used as a common space. **Mr. Velozo** asked if it could be considered a mud room. Ms. Heather said no, the plans propose to put a

shared mud room/laundry room in. Ms. Heather said their architect labeled it as a family room on the plans but it is 3-season and unfinished on the inside.

**Mr. Velozo** asked if the opening into the sun room makes that area count towards the square footage of the apartment. Mr. Chandler said originally they had a door there so he considered it as part of the apartment but with a case opening he considers it as a common area code wise and does not see an issue with it zoning wise.

**Mr. Jose** asked Mr. Chandler what the building code is for a simple in-law apartment. Mr. Chandler said it is not really written down and that having a separation makes it as a separate dwelling. **Mr. Jose** said the town by-law specifically points to a separate kitchen making something an accessory apartment.

**Chairman Frates** entertained a motion to close the public hearing. **Mr. Velozo** moved and **Mr. Frates** seconded. The motion passed unanimously.

**Mr. Velozo** made a motion to approve the accessory apartment for Ms. Heather with the condition **Mr. Jose** mentioned that the family room not count towards the square footage of the accessory apartment. **Mr. Jose** seconded. The motion passed unanimously.

#### **Any other Business to Properly Come Before the Board.**

**Mr. Velozo** asked if the Board can discuss the definition of an in-law apartment. **Mr. Jose** said technically it's outside the scope of the meeting and should be on an agenda.

**Chairman Frates** said he does not think there is any issue discussing it, they just cannot make any deliberations on it.

**Mr. Velozo** disagreed that it said in the by-laws that a kitchen was what defined an area as an accessory apartment and that there is nothing that stops him from putting multiple kitchens on his house.

Mr. Chandler said according to the Building Code you have to have a shower, a refrigerator, a cooking appliance, and a living area.

**Mr. Velozo** said the by-law has to be a little more clear and the total goal is to not have it being rented out to just about anybody.

#### **Minutes from December 9, 2020**

**Mr. Velozo** made a motion to approve the minutes from December 9, 2020. **Mr. Jose** seconded. The motion passed.

**Mr. Jose** made a motion to adjourn. **Mr. Velozo** seconded. The motion passed unanimously.

Respectfully Submitted,  
C. Nils McKay