

**Freetown Zoning Board of Appeals**  
Minutes of the Wednesday, September 23, 2015 Meeting  
Town Hall, 3 North Main Street, Assonet, Mass.

**Present:** James Frates, Robert Jose, Walter Sawicki, and Nicolas Velozo (associate).

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

**Minutes of Previous Meeting**

Minutes of September 9, 2015, were received.

**Case #553 – Lynne K. Fagan – 74 High Street, Assonet**

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

Debbie Pettey approached the board representing Mrs. Fagan. The Fagans' home was destroyed by fire earlier in 2015. As part of their rebuilding, they would like to include an accessory apartment. Ultimately, they plan to reside in the apartment with their daughter occupying the primary dwelling, but they cannot convey title to the property due to the insurance process resulting from the fire.

Board members reviewed the plans submitted. Mr. Sawicki asked if there would be a garage, and Mrs. Fagan replied that there would not. Mr. Jose asked if the applicants were aware of the restrictions on accessory apartments related to their size, length of permit life, etc., and Atty. Pettey stated they were. Mr. Fagan stated that it would be a one-story apartment with cathedral ceilings. Mr. Jose asked if the apartment would have proper egress. Atty. Pettey stated it would, and that the entire home would be new construction and therefore compliant with current building codes.

Mr. Frates asked if there were any abutters present. Mr. Lynwood "Butch" Hartford, 68 High Street, approached the board and stated his emphatic support for the proposal.

A motion was then made by Mr. Jose, seconded by Mr. Sawicki, to close the hearing.

**DISPOSITION:** A motion was made by Mr. Jose, seconded by Mr. Sawicki, to grant the special permit, noting that it would be a one-story apartment as shown on the plans. The motion carried unanimously.

**Case #552 – Tyler Tremblay – 88 Richmond Road, Assonet**

A motion was made by Mr. Sawicki, seconded by Mr. Jose, to open the public hearing at 6:45 p.m. The motion carried unanimously.

Mr. Tremblay approached the board to discuss his project. He stated he began replacing the roof on an existing garage at his grandparents' property, and intended to increase the height of the garage. He had begun the project without obtaining proper permits. Mr. Frates asked if he would be increasing the footprint of the garage, and Mr. Tremblay stated he would not; only the height would change.

The clerk noted there were sixteen abutters, and only ten green cards were returned. Mr. Tremblay stated he had not mailed the notifications to the abutters until approximately a week before the hearing. The clerk stated it was typical for the post office to attempt delivery for a month before returning unclaimed mail.

Mr. Frates asked Mr. Tremblay if he had any plans showing the proposed work. Mr. Tremblay stated he did not. Members stated they could not proceed without plans.

A motion was made by Mr. Jose, seconded by Mr. Sawicki, to continue the hearing to Wednesday, October 21st at 6:30 p.m. The motion carried unanimously.

Mr. Sawicki removed to the audience and abstained from any and all participation in the following hearing.

**Case #551 – Craig J. Cabral – 4 Gull Lane, Assonet**

A motion was made by Mr. Jose, seconded by Mr. Velozo, to open the continued public hearing at 7:00 p.m. The motion carried unanimously.

Mr. Cabral approached the board to explain his situation. He stated he purchased the property without doing due diligence as to its buildability. At that time, the property had a foundation. He stated the former Building Inspector, Paul Bourgeois, had told him the building permit issued at the time the foundation was laid had lapsed. Also, he was informed about a previous court case (Torres) that had upheld a decision that the property was not buildable due to a common ownership issue in the 1970s and 1980s.

Mr. Cabral went on to say he was a collector of classic cars, and that he originally planned to build a garage to store some of his cars. In talking with the present Building Inspector, Scott Barbato, Mr. Barbato expressed a preference that he obtain a variance and construct a single-family dwelling. Mr. Barbato felt that a dwelling would be more harmonious with the neighborhood and that larger garages tend to morph into illegal businesses many years down the road when new owners are not aware of the history. Mr. Cabral said he was happy to build a house as he could use it for one of his grandchildren in the future. He noted his sons currently live in Assonet Bay Shores, and the family amongst themselves have several houses. He stated it would be an ideal retirement situation for himself and his wife, their sons and their wives, and their grandchildren to all live near to one another. Mr. Cabral also noted that past concerns about the proximity of wells to septic systems had been alleviated by the installation of town waterlines.

Abutter Sarah Daley, 3 Gull Lane, stated she preferred a house be built on the lot rather than a garage. She was concerned about the garage turning commercial in the future. Mr. Jose stated that it would not be possible as the area is zoned Residential.

Mr. Frates asked Mr. Barbato for his opinion. Mr. Barbato explained his preference for a house rather than a garage and his concerns relative to future legal and enforcement expenses if the garage ever became commercial.

Mr. Velozo asked for the dimensions of the lot. Mr. Cabral stated the lot was 100' x 100', 100' frontage, 10,000 square feet in area.

Mr. Jose expressed his concerns that the lot had a history of coming to the board for the same variance, that the variance was denied and the denial was upheld in court. He stated that he would prefer a house be built rather than a garage, but that a decision had been made and previous owners had been bound to that decision. He was concerned of the potential liability to be faced by the Town should a previous owner challenge a reversal of previous decisions.

Mr. Jose stated he feels this matter is an example of why an additional residential zone is needed. He felt that areas such as Assonet Bay Shores, Hemlock Point, etc., that had these 10,000-square-foot lots or smaller should be afforded additional consideration as they were valid when they were created. However, he did not feel the ZBA should provide the relief; it should come through a by-law amendment.

Mr. Frates stated the board had researched whether any lots were allowed to be divided in Assonet Bay Shores before, and they were not.

Mr. Velozo echoed the concerns previously expressed by Mr. Jose relative to the history of prior attempts to obtain the same variance.

Mr. Frates expressed concern that granting this variance could invite others from Assonet Bay Shores and similar neighborhood to try and divide their merged lots.

Mr. Cabral stated he intended only to continue the work Mr. Torres had begun in the 70s and 80s. Mr. Frates asked if Mr. Torres' foundation was still present. Mr. Cabral stated he had removed it as it was cracked and in poor condition.

All members stated they would prefer to see a house, but did not believe they were in a position to permit it.

A motion was then made by Mr. Jose, seconded by Mr. Velozo, to close the hearing.

**DISPOSITION:** A motion was made by Mr. Jose, seconded by Mr. Velozo, to deny the variance. The motion carried unanimously.

Discussion continued between the board members, Mr. Cabral, and Atty. Pettey regarding common ownership mergers. Mr. Jose advocated a group of citizens get together to amend the zoning by-laws.

**Accessory Apartments**

The board discussed the matter with Mr. Barbato. The clerk stated that it was in fact the by-laws that required a new hearing after five years. It was noted that some special permits provide that the Building Inspector can renew them after five years based on a review, and that they need only to come back for a new hearing after ten years. Consensus was amend the by-law and provide for a renewal by the Building Inspector at the five-year mark, and a new hearing at the ten-year mark. Clerk to work on wording and run it by board members before turning it in, deadline noted as October 2nd.

**Meeting Adjourned**

A motion was made by Mr. Jose, seconded by Mr. Sawcki, to adjourn at 7:47 p.m. The motion carried unanimously.

This is a True Record by me.

Attest: \_\_\_\_\_, Senior Clerk

