



ZONING Board of APPEALS
166 Boulder Drive
Fitchburg, MA 01420

MEETING MINUTES – APRIL 10, 2018

- | | | |
|-------------------|----|--|
| 1. Call to Order: | LM | PLEDGE OF ALLEGIANCE: All |
| 2. Communications | LM | ATTENDANCE: LM, MM, JB, AZ & JS |
| 3. Hearings | | |

CASE No.	APPLICANT	PROPERTY	TIME
ZBA-2014-09	Raul Lopez	19 DWIGHT ST	6:00PM
<i>Review of the Special Permit Conditions under §181.313C11 &12 to operate an Automobile Repair Service & Towing Business located in the Central Business District at 11/33/0</i>			

Raul Lopez and Joseph Brogna stated that Mr. Lopez has purchased the property and they are just waiting for a Release from the State before the paperwork can be filed.

Those Seeking Information: None Those In Support: None Those Opposed: None

MM – Concerned that the auto repair and towing business is turning into a dismantling business which we did not give a special permit for. This is a totally different concept from the business originally requested. Condition #2. No dismantled, inoperable, junk or parts vehicles; #5. No outside storage of auto parts/tires. Mr. Lopez – Accident vehicles are towed to the property, he may take an engine from one of these and place it in another car that he is repairing. The vehicle stays on the lot between one week and one month and is then towed away. These parts vehicles are kept to the left of the property.

JB – Also concerned that this does not turn into a dismantling operation. You have done a nice job with the property and it looks good.

LM – How much of your business is dismantling? Mr. Lopez – He does dismantling on the rare occasion.

LM – We don't want this part of your repairs to become an eyesore. Mr. Lopez – I don't have any parts stored outside.

Hearing Closed: Deliberations:

Board discussed keeping the existing conditions with a Review in November.

MM – Motion on ZBA-2014-09 to Approve the Review with the following amended conditions:

1. No vehicles for sale
2. No dismantled, inoperable, junk or parts vehicles
3. No auto body repairs
4. No vehicles for sale on property
5. No outside storage of auto parts/tires
6. No plastic and or vinyl banners / Professional signage only
7. Review – November 13, 2018
8. Hours of Operation: Monday-Friday 8:00AM-6:00PM Saturday 8:00AM-2:00PM Closed Sunday
9. Per parking plan submitted and revised 11/22/2016
10. Parking for 47 vehicles – 6 Customer Spaces, 6 Employee Spaces, and 35 spaces for Repair Vehicles

11. No to be operated as a nuisance

12. Sunset Clause – Special Permit to terminate/expire upon the sale/transfer of the business from Raul Lopez at 19 Dwight Street

JB – Motion Seconded

VOTE: 4-0 Approve the Review with Conditions

ZBA-2016-19 Fitchburg Public Schools 70 REINGOLD AV 6:05PM
Review of the Variance Conditions under §181.5353 for an Electronic Reader Board Sign with 6 month extension located in the Residential A-2 District at 100/32/0 (see new petition at 8:15PM for this review)

MM – Finding: The 6 month extension on this Variance has expired and the variance no longer is in effect. Fitchburg Public Schools will be heard later in this meeting for the 3 school locations that have expired which includes this site.

MM – Motion to accept the finding

JB – Motion Seconded

VOTE: 4-0 Finding Approved

ZBA-2017-15 Andrew Mercurio 38 OMENA PL 6:10PM
Review of the Special Permit Conditions under §181.3561 reinstating an abandoned/vacant building as a 2-family structure located in the Residential C District at 10/107/0

Presentation given by Andrew Mercurio stating that things are going slower than he expected or would like. He has an ongoing law suit with the plumber he had hired which has slowed things down considerably. The water is now on, power to the property, both floors have been rewired and he has installed a new gas heating system, HVAC & Hot Water, New doors and windows except in the front until it is almost ready to move into.

LM – What time frame do you have for completion of the project? Mr. Mercurio – Hopefully within the next few months.

JB – What about the parking? Mr. Mercurio – Had to buy both lots. One is paved and can be used for parking, and the other is green space and he has no intentions of paving that portion.

Those in Support: None Those Opposed: None Those Seeking Information: None

MM – The paved lot will be kept for parking, and the adjacent lot will be green space. We should have a review in November, amending condition #2.

MM – Motion to Approve the Review with the amended conditions:

1. Newly purchased auxiliary lot is not to be used other than as per plan submitted, and this restriction is to be recorded with the Registry of Deeds
2. Review – November 13, 2018

JB – Motion Seconded

VOTE: 4-0 Approve Review with Conditions

ZBA-2018-01 Cynthia Tuomala 565 ASHBY STATE RD 6:15PM
Special Permit under §181.34 to continue the use of the Accessory Apartment located in the Rural Residential District at 320/16/0

Presentation given by Cynthia Tuomala stating that her father has passed since the last renewal of the Special Permit. She now uses that space and her son is in the main house. Nothing has changed with the footprint of the home or the accessory apartment.

JB – Beautiful home, set back from the road and is easily missed. No indication of the accessory apartment.

Those Seeking Information: None

Those Opposed: None

Those in Support: None

MM – This is the third renewal of the Accessory Apartment

MM – Motion on ZBA-2018-01 to Grant the Special Permit with our standard conditions:

1. Property not to be sold or conveyed as a 2-family
2. Special Permit expires in 5 years and must be renewed prior to expiration
3. Special Permit will terminate upon the sale/transfer of the property
4. Dwelling is to be owner occupied
5. Accessory Apartment is to be occupied by a relative of the owner
6. Upon the expiration of the Special Permit the petitioner will restore the property to a single-family use pursuant to the plan attached to the affidavit, including any amendments by the Zoning Board of Appeals
7. In all other respects, use of the accessory apartment shall comply with §181.34 of the City of Fitchburg Zoning Ordinance
8. A copy of this Special Permit shall be filed with the Registry of Deeds

JB – Motion Seconded

VOTE -

4-0 GRANT the Special Permit with Conditions

ZBA-2018-02

Karen Moffatt

191 ELLIS ST

6:30PM

Special Permit under §181.33 for a Home Occupation, to Overrule the Building Commissioner's Decision and for a Finding in regard to number of dogs overnight at the premises located in the Residential A-2 District at 105/49/0

Presentation given by Attorney C. Deborah Phillips, representing Karen Moffatt stating that she had received approval for a home occupation providing personal services. Under §181.33 Home Occupation As of Right: She provides personal services such as dog walking, grooming, giving medications to elderly and sick dogs, organize closets, and general handy person for clients. She has extended her services for a few customers to board their dogs on a temporary basis when the dogs are ill or elderly and need extra care and when her customers are on vacation or unable to take care of their pets for short periods of time. More than 3 dogs is a residential kennel and 9 or more dogs is a commercial kennel. According to State Law, commercial boarding does not include temporary boarding. She meets all the requirements under §181.33 and has a Residential Kennel License under Animal Control (4 to 9 dogs). Ms. Moffatt boards the dogs as an extended service for 2-3 dogs every other week from 2-5 days. She is requesting a Special Permit for a maximum of 8 dogs and a finding that her business is not a Commercial Kennel.

Those Seeking Information: Frank Blanchard of 237 Walton St. He is in the line of sight of the property and finds that at various times of the day there is a good deal of barking. He never complained because he was not retired until the last couple of years. Now that he is home more, it has become a disturbance limiting the ability for him to enjoy being out on his porch. Don't dogs need a certain amount of space and doesn't overnight boarding go beyond the premise stated. No opposed to the kennel as long as some corrective action is put into this if it becomes an annoyance.

Attorney Phillips – Dogs will not be caged outside at night. She has been operating her business this way for the last 6 years. The dogs stay in her home and have the run of the house. They are not regulated to one room or one space. She treats them as her own.

Those in Support: Valerie Koutrakos of 159 Ellis St – Never hear any noise and no excess amount of traffic. Karen is compassionate and has a way with animals. Dennis Frerichs owns 451 Milk St. – Walks his German shepherd in the neighborhood and did not know she even had dogs. Sally Cragin, Director at “Be PAWSitive” – Karen helped with the Fitchburg Animal Shelter. She volunteered to help people with their pets and kept them in complete control. Diane Moquin of 154 Ellis St – 4 houses down from her property on the opposite side of the street – Never hear any noise coming from her house. Tricia Sullivan of 165 Rollstone St. – She is a police officer and would not have anywhere to put her dog if not for Karen. Susan

Selander of Lancaster, Ralph Casey of Lancaster – Both stated that she does not have the dogs outside and that she is a “dog wisperer”. Holly Denike of 77 Rodiman Ave. has been adopting senior disabled doges for the last 5 years and does not know what she would do without Karen having them at her home. Dogs have free run of the house and are treated like family members. Barry and Brenda Watson of 260 Walton St. have not received any complaints about the property from their tenants. William McGraff, Mr. Oslsman of 28 Walton, Jeff Silvia of Winchendon and Beth Stevens of Ashburnham also in support of the petitioner.

Those Opposed: Frank Blanchard – Basic concern for protective conditions on boarding and noise. Judith Pearla of 236 Walton St a direct abutter from the back yard. She has been in the neighborhood for 38 years and at 236 Walton St. for the last 13 years. A kennel at this location is a hardship to this thickly settled neighborhood. The dogs bark day and nights. When she is in her backyard the dogs bark the entire time, they don’t know her so she understands that dogs bark, first one starts and then the other follow suit. But it make her unable to enjoy her yard. In my opinion, 191 Ellis St. is not of an adequate size for more than 3 dogs and she already owns 3 dogs. The property is in her line of sight summer and winter and there are offensive odors from the property. She is continually cleaning up others yard waste that is thrown on her property in the wooded area that is part of her property between the yards. 8 dogs sounds like a primary use, not an accessory use. Ms. Pearla is a lifelong resident of Fitchburg and does not generally come before Boards or complain about her neighbors, but in looking at the purpose of the zoning ordinance and the request for 8 dogs in a thickly settled residential district she would request the Board to deny the petition.

Attorney Phillips – The residential kennel permit allows up to 9 dogs, Ms. Moffatt is requesting 8 with an average of 6 dogs. There will be no fenced kennel and the dogs will not be left outside. The animals she takes care of have medical issues. Space and size requirements are enforced by Animal Control. If there is an issue with waste and odors, that is governed by the Board of Health. Karen Moffatt – I have 3 dogs of my own and other 6 dogs are guests.

AZ Animal Control Letter was read into the minutes showing that 4-0 dogs requires a Residential Kennel License.

Board let audience know that all information taken at this hearing is taken into consideration before the Board makes its decision.

By mutual agreement the Board and petitioner agreed to continue this hearing to next month giving the Board time to review all the information presented.

MM – Motion on ZBA-2019-02 to Continue the Hearing to May 8, 2018 at 6:45PM or Later (to be placed as the last hearing of the next meeting).

JB – Motion Seconded

VOTE: 5- 0 GRANT Continuance (7:00PM May Agenda)

ZBA-2018-03 North Central MA Chamber of Commerce 860 SOUTH ST 6:45PM
Variance under §181.5362 & .5363 for an Electronic Sign that may also be too low located in the Neighborhood Business District at 182/3/2

Presentation given by Roy Nasamento, CEO, and Christopher Mc Dermott requesting a Variance to modify the existing sign by adding an electronic sign. The Chamber of Commerce is a non-profit representing the interests of small businesses in the community. The sign will market the Chamber’s programs and services.

JB – What is your existing sign. Mr. Nasamento – it is a lit sign on a timer. It will be an LED sign canging programs at 45 second intervals. There will be no more than a dozen messages including community events and economic development. The sign will not be a distraction, no flashing or video with the messages. It will be approximately the same size as the existing sign and will be below it on the same pole.

MM – Have concerns since we do not actually have any dimensions of the sign and this is an active commercial area of South St. Looking to minimize the distraction. It is not a dense residential neighborhood.

AZ – I currently live a block from the Chamber and earlier lived in the neighborhood. Do not believe this sign will be a distraction and will be an average height.

JS – Two on one pole does not seem a good fit. Would rather see one sign that does both functions.

AZ – There is a wooded area across the street and the sign is located on a straight-a-way part of South St.

MM – Petitioner has not spoken to the requirements of a variance and am not in favor of 2 signs.

LM – What would be the hours of operation? Mr. Nasamento – 6:00AM to 10:00PM.

Hearing Closed:

Deliberations:

JB – Would like to see our standard conditions, Hours of Operation 6:00AM – 10:00PM, sunset clause, not to be operated as a nuisance and height requirement no less than 8’ above mean level of street.

AZ – Motion on ZBA-2018-03 to Grant the Variance for an electronic sign with conditions as stated:

1. No flashing/blinking, animation or video of sign
2. Alpha/Numeric/Symbolic Picture display only
3. Public Service announcements to be included in the text, such as, time, temp, and amber alerts
4. Signs to be maintained and in good condition and repair
5. Sign to meet D.O.T. standards – not less than 8 second display change
6. Hours of Operation: 6:00AM – 10:00PM
7. Not to be operated as a nuisance
8. Height of sign not to exceed 24’ and not be less than 8’ above the mean ground level subject to possibility of modification
9. Review in 6 months – November 13, 2018
10. Sunset Clause – Variance will terminate/expire upon the sale/transfer of the property/business from the North Central MA Chamber of Commerce

JB – Motion Seconded

VOTE: 4-1 GRANT of the Variance with Conditions -JS

ZBA-2018-04 **Alan & Anastasia Wernick** **65 LAUREL ST** **7:00PM**
Use Variance under §181.313A4 for multi-dwelling units and under §181.313C10 for retail sales and services located in the Industrial District at 55/41/0

Presentation given by Alan Wernick stating that he wishes to move upstairs from his restaurant and has 3 adult children who will be living in the other apartments. He also wants to rent the empty space not used by the Pizza Shop on the first floor for meetings and business conferences. He had made some bad investments and now has to sell his home and would like to reside over his business, not only to save money, but to keep have better control of the property. His family are also his employees.

MM – How much of a financial investment are you planning on making into this property? Mr. Wernick - \$100,000 – 150,000. MM – Would like to see a parking plan and a floor plan of how this will work.

Those Seeking Information: None Those Opposed: None Those in Support: Sally Cragin, School Committee stating that she has used their back room for meetings at various times.

A continuance to the June Meeting was discussed at this time in order for the petitioner to get a parking plan and floor plans to submit to the Board.

AZ – Motion on ZBA-2018-04 to Grant a Continuance to the June 12, 2018 meeting

JB – Motion Seconded

VOTE: 5-0 GRANT a Continuance

ZBA-2018-05 **Joseph Tisa** **30 CATHY ST** **7:15PM**
Special Permit under §181.355 for a garage addition leaving 7' to the side property line located in the Residential A-1 District at 145/8/0

Presentation given by Steve Chiavaras, Contractor, representing Joseph Tisa, stating that he is looking to build a 20' x 32' two car garage moving 6' into the front and 7' to the side property line.

Those Seeking Information: None Those in Support: None Those Opposed: None

Steve Chiavaras – Have been building custom homes for 40 years. The garage will be 7' away from trees that separate the property from the abutter. The garage is not only for convenience, but safety as well.

AZ – What makes this lot unique? Mr. Chiavaras – The existing house has been there for over 25 years and because of its location on the lot, this would be the most appropriate place for the garage. Mr. Tisa is concerned for the safety of his wife and child especially during the winter months.

JB – There are no abutters in opposition to the request and it is the most likely placement for the garage.

MM – Is there some type of landscaping the abutter would like to see? Timothy Leger, direct abutter – would like a wall or a fence at the property line. Will there be windows on that side of the garage?

Mr. Chiavaras – Option 1 is to have the same roof pitch and height as the existing building.

Option 2 is a gable end 6' from the front of the house which then turns the garage.

MM – We need to see plans.

MM – Motion on ZBA-2018-05 to Grant a Continuance to May 8, 2018 at 6:45PM

AZ – Motion Seconded

VOTE: 5-0 GRANT a Continuance

ZBA-2015-08 **Timothy Pomerleau** **150 BENSON ST** **7:30PM**
Request for a Change of Conditions for a Special Permit under §181.313D6 and a Variance under §181.313E2 to conduct a Vehicle Recycling and Salvage Business located in the Industrial District at 183/15/0

Presentation given by Timothy Pomerleau stating that they have done a great deal of landscaping giving them a good deal more parking on the upper level. He needs condition #2. 10 display vehicles changed to 100 and #3. 126 cars for sale changed to 320 cars awaiting dismantling.

No one is in attendance in the audience for this hearing:

LM – How else has the property changed? Mr. Pomerleau - Have cleared brush and unwanted trees creating a new place to display the cars for sale. The buildings have not moved, but they have added a canopy building. Ramp was pushed out, debris and trees removed, wall erected which made more usable space. He has every intention of continuing to grow. Transportation costs are down and is looking to purchase more land in the city to expand his business. The canopy building is an export business. Scrap metal is shipped out each day at 3:00PM. There are no more than 6 loads at any one time. Where the 10 cars for sale were originally is now employee parking. The lower level is the sale display area for the cars. Hours of Operation will be fine.

MM – You've done a nice job cleaning up the lot. Mr. Pomerleau – There were 6 different businesses running out of this property before, have plenty of room for our business. I have invested \$500,000 in the

property just since last year. MM – Would like a review in September to see how things are going. Would also like to add a condition that any conditions of the Planning Board become part of this Special Permit.

MM – Motion on ZBA-2015-08 to Approve the Review and amending the conditions as follows:

1. Hours of Operation: 7:00AM-5:00PM Monday-Saturday Closed Sunday
2. Maximum of 100 vehicles on display for sale
3. Maximum of 320 vehicles awaiting dismantling
4. Business not to be operated as a nuisance
5. All conditions of the Planning Board to become part of this Special Permit
6. Sunset Clause – Special Permit to expire July 2030 or upon sale/transfer of the property or change in ownership/operation by Timothy Pomerleau

JB – Motion Seconded

VOTE: 5-0 APPROVE the Review with Amended Conditions

ZBA-2014-11 Sean Morrison 76 SUMMER ST 7:45PM

Review of a Special Permit under §181.313C10B to allow Open-Air Restaurant Sales located in the Residential C District at 70/30/0

Petitioner is not in attendance for this hearing and the Board chose to have the review at the June 12, 2018 meeting.

MM – Motion on ZBA-2014-11 to Continue the Review to June 12, 2018

JB – Motion Seocded

VOTE: 5-0 GRANT a Continuance

ZBA-2017-28 Jeffrey Summers 4 BRIGHAM ST 7:50PM

Review of a Special Permit under §181.3561 reinstatement of a single family building located in the Residential C District at 67/114/0

Presentation given by Jeffrey Summers stating that he has owned the building for 2 years and it is still not ready. The kitchens, dining rooms, are complete, hard wood floors, and electrical. Next year he will be doing the siding and windows, not doing the decks. These conditions are ludicrous. As he works on the project the debris is removed.

MM – When do you anticipate occupying the building? Mr. Summers – Hopefully within the next few months. If you are going to occupy within the next few months, completing the project in another year is pushing it way out. All the conditions of the Special Permit should be met before occupancy can be granted.

Those Seeking Information: None Those in Support: None Those Opposed: None

MM – Motion on ZBA-2017-28 to Approve the Review with change of #1. Review April 9, 2019 and add #7 as follows:

1. Review – April 9, 2019 with all conditions to be completed at that time
2. Structure will have vinyl siding to replace existing asbestos siding
3. Deck, porches, and stairs to be replaced, and windows and doors to be repaired or replaced as needed
4. Not to be operated as a boarding house or group home
5. Not to be operated as a nuisance
6. Project to be completed and all debris removed from the property before any sale or transfer thereof
7. All above conditions above to be met before occupancy of the building may be granted

JB – Motion Seconded

VOTE: 5-0 APPROVE the Review with Amended Condiitiions

ZBA-2017-26 **Brothers Parking Lots & Roads** **126 JACKSON AV** **7:55PM**
Review of the Use Variance under §181.313A1 granted July 11, 2017 to construct a single-family home and a Special Permit under §181.332 for a home office located in the Industrial District at 59/9/0

The petitioner is not in attendance this evening because he is not going forward with this request. The decision was not recorded with the Registry of Deeds. The petitioner has a hearing on this property at the next Meeting with a different request.

AZ – Motion on ZBA-2017-26 to Nullify/Revoke the Use Variance and Special Permit granted July 11, 2017.

JB – Motion Seconded

VOTE: 5-0 NULLIFY/REVOKE the Use Variance & Special Permit

ZBA-2018-06 **James Cormier & Michelle Woodard-Cormier** **612 ELM ST** **8:00PM**
Variance under §181.414 to erect a 20' Round Pool in the front of the property located in the Residential B District at 168/23/0

Presentation given by James & Michelle Cormier and Denis Piper of Surfside Pools stating that due to the placement of the existing deck they are unable to meet the setback requirements for the pool. They have 3 children 18, 11 and 4 years of age. The property has vinyl fencing and there is no access to the property from the other street. Dennis Piper – The property slopes and the location for the pool is the most appropriate site and best possible location. Because the property is a corner lot and has 2 fronts they have always used this as their back yard.

JB – The pool will be a wonderful addition.

MM – If it was a side yard and not considered frontage, it would only need to be 6' from the property line. Would like a sunset clause if the property is ever sold.

AZ – Findings: Not a permanent structure, minimal request, and the yard is completely fenced.

LM – Would be in favor with a Sunset Clause and the fence to remain 6'.

MM – Motion on ZBA-2018-06 to Grant the Variance with the following conditions:

1. 6' fence to remain around the property
2. Sunset Clause – Variance to expire/terminate upon the sale/transfer of the property from James Cormier & Michelle Woodard Cormier

JB – Motion Seconded

VOTE: 5-0 GRANT the Variance with Conditions

ZBA-2018-07 **Fitchburg Public Schools** **70 REINGOLD AV** **8:15PM**
Variance under §181.5353 to erect an Electronic Reader Board Sign located in the Residential A-2 District at 100/32/0

Presentation given by Tom Peterson, School Building Maintenance, and Sally Cragin of the School Committee, stating that these types of signs are time saving and informative. They are a great way to get information to parents and students alike and a benefit to the community.

No one is in attendance in the audience for this hearing.

AZ – This case and the next 2 cases were before the Board 1½ years ago and were granted, the time lapsed before the funding and erection of the signs could take place and a new petition request was required.

AZ – Motion on ZBA-2018-07 to Grant the Variance with the prior conditions as follows:

1. No flashing/blinking, animation or video of sign
2. Size and location of sign as per plan submitted
3. Alpha/Numeric/Symbolic Picture display only
4. Public Service announcements to be included in the text, such as, time, temp, and amber alerts
5. Signs to be maintained and in good condition and repair
6. Sign to meet D.O.T. standards – not less than 3 second display change
7. Review in one year – April 9, 2019
8. Hours of Operation: Monday-Friday 7:30AM –5:00PM Special Events: to close at 8:30PM

JB – Motion Seconded

VOTE: 5-0 GRANT the Variance with Conditions

ZBA-2018-08 Fitchburg Public Schools 376 SOUTH ST 8:20PM
Variance under §181.5363 to erect a new Electronic Reader Board Sign located in the Residential A-2 District at 107/33/0

No one is in attendance in the audience for this hearing.

Board is familiar with the location and the variance requested.

AZ – Motion on ZBA-2018-07 to Grant the Variance with the prior conditions as follows:

1. No flashing/blinking, animation or video of sign
2. Size and location of sign as per plan submitted
3. Public Service announcements to be included in the text, such as, time, temp, and amber alerts
4. Signs to be maintained and in good condition and repair
5. Sign to meet D.O.T. standards – not less than 3 second display change
6. Sign to be vandal proof
7. No to operated as a nuisance
8. Hours of Operation: Monday-Friday 7:00AM –9:00PM

JB – Motion Seconded

VOTE: 5-0 GRANT the Variance with Conditions

ZBA-2018-09 Fitchburg Public Schools 615 ROLLSTONE ST 8:25PM
Variance under §181.5363 to erect a new Electronic Reader Board Sign located in the Residential A-2 District at 104/3/0

No one is in attendance in the audience for this hearing.

Board is familiar with the location and the variance requested.

AZ – Motion on ZBA-2018-07 to Grant the Variance with the prior conditions as follows:

1. No flashing/blinking, animation or video of sign
2. Size and location of sign as per plan submitted
3. Public Service announcements to be included in the text, such as, time, temp, and amber alerts
4. Signs to be maintained and in good condition and repair
5. Sign to meet D.O.T. standards – not less than 3 second display change
6. Sign to be vandal proof
7. No to operated as a nuisance
8. Hours of Operation: Monday-Friday 7:00AM –9:00PM

JB – Motion Seconded

VOTE: 5-0 GRANT the Variance with Conditions

4. MISCELLANEOUS

5. ADJOURNMENT