ZONING Board of APPEALS
166 Boulder Drive
Fitchburg, MA 01420

MEETING MINUTES – JUNE 12, 2018

1. Call to Order LM, MM
2. Communications LM
3. Hearings

PLEDGE OF ALLEGIANCE ALL
ATTENDANCE: LM, MM, JB, JS, &JM

CASE No.	APPLICANT	PROPERTY	TIME
ZBA-2015-10	**Brenda L. Sullivan**	**58 VALLEY ST**	**6:00PM**

Review of Conditions on a Variance under §181.922 and .961 and a Special Permit under §181.34 to occupy an existing Accessory Apartment located in the Residential RA-2 District at 139/26/0

LM – Chair recused herself for this hearing

Presentation given by Brenda L. Sullivan stating that she is the one who is going be living in the accessory apartment and her daughter will occupy the main part of the house. This Special permit has been recorded with the Registry of Deeds, and she understands that the Special Permit will terminate upon the sales or transfer of the property.

Those in Support: None Those Seeking Information: None Those Opposed: None
MM- In reviewing the conditions placed upon this Special Permit:

9. You are here for a 2 year and 6 month review? BS-correct.
1. Property not to be sold or conveyed as a 2-family dwelling. BS- I understand
4. Owner's daughter will occupy the main property. BS- Correct
8. A copy of the Special Permit has been recorded with the Registry of Deeds? BS - Yes

JB – Motion on ZBA-2015-10 to grant and Approved the Review of Special Permit with the following 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 transfer or 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 single family use pursuant to the plan attached to the affidavit. Including any amendments by 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.

JS – Motion Seconded
VOTE: 4-0 APPROVE the review with Amended Conditions

ZBA-2015-02 Karen Stroparo 158 AIRPORT RD 6:05PM

Review of the Use Variance to conduct a scrap yard business for salvage and recycling of scrap metal in the Industrial District at 142/1/0

Presentation given by Karen Stroparo stating that property looks great and has been cleaned. She got a phone call from her neighbor wishing her good luck tonight. Everything has been going in the right direction stepping forward from last year, and the screening is completed.

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

LM- Lets reviewed the conditions placed on this Use Variance:

1. Not to be operated as a nuisance LM-We haven't received any complaints
2. No banners, only professional signage KS-Yes, I understand
3. Use Variance expires in 15 years – May 2030
4. Karen Stroparro or any entity under her control shall surrender Use Variance at 150 Benson St. prior to any transfer or conveyance of the property.
5. Monitor damage to screening or buildings including graffiti is to be repaired/removed within two weeks.
6. Left turn only upon exit from driveway onto Airport Road which abuts property of 68 Airport Rd.
7. No storage of materials and equipment until property is properly screened.
8. Materials and equipment shall not be stored in such a manner as to be visible from the public way or abutters.
9. Updated plan, dated 6/20/17, shows 7 employee parking spaces and 1 handicap space and locations requested at prior hearings.
10. One year Review - June 2018

MM – have a question on the fences on the right area, what happened? KS – It's fenced now, but we did parts fenced and other areas we planted trees. On the right side the trees died because of the water that comes through the neighbor's property which we can't touch according to the Conservation Commissioner. However for this reason anything we plant won't grow.

JB – No questions! I am very happy with everything they have done

MM - Motion on ZBA-2015-02 to approved the Review with the following changes to the conditions:
Adding a sunset clause to condition #3 Use Variance expires in 15 years – May 2030 and/or in the event owner transfers the property. STRIKE #4, and 10.

JB – Motion Seconded

VOTE: 5-0 APPROVE the review with Amended Conditions

1. Not to be operated as a nuisance
2. No banners, only professional signage
3. Use Variance expires in 15 years and/or upon the event sells property
4. Monitor damage to screening or buildings including graffiti is to repaired/removed within two weeks
5. Left turn only upon exit from driveway onto Airport Road which abuts property of 68 Airport Rd.
6. No storage of materials and equipment until property is properly screened
7. Materials and equipment shall not be store in such a manner as to be visible from the public way or abutters
8. Plan, dated 6/20/17, showing 7 parking spaces and 1 handicap space and locations was approved at that time

ZBA-2016-21 United Petroleum 249 KIMBALL ST 6:10PM

Review of Conditions on the Special Permit under §181.3521 for Retail Sales and under §181.313C13A for Motor Vehicle Fuel Dispensing located in the Industrial District at 41/17/0

Presentation given by Khalid Qasim stating that project is fully complete, business is up and running, and everything looks great.

Those in Support: Michael Lamkin of 117 Ashburnham St. – Looks Great
Those Seeking Information: None Those Opposed: None

LM – Looks fantastic!
LM – Planning Board decision be part of Zoning Board decision to be added on #3 condition to see attached.

1. Hours of Operation: 5:00AM-12:00PM Monday – Sunday
2. STRIKE condition #2
3. Conditions of the Planning Board to become part of these conditions and to be attached to Zoning Board of Appeals Conditions

MM - Motion on ZBA-2017-21 to approve the Review on the Special Permit under §181.3521 and under §181.313C13A with the following conditions:

1. Hours of Operation: 5:00AM -12:00AM Monday –Sunday
2. Conditions of the Planning Board to become part of these conditions

JB – Motion Seconded
VOTE: 5-0 APPROVE the review with Amended Conditions

ZBA-2017-10 JMC Apartments, LLC 234 DANIELS ST 6:15PM
Review of Conditions on a Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 2-family dwelling located in the Residential B District at 77/15/0

At this time the Petitioner requests in writing a note to the Zoning Board asking for a continuance of the hearing to September 2018, because of family emergency reasons.

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

MM - Motion on ZBA-2017-21 to continue the Review of the Special Permit under §181.3561 to have a continuance on September 2018 per petitioner's request
JB – Motion Seconded
VOTE: 5-0 GRANT a continuance of the review on September 2018

ZBA-2016-15 Pavlos Amanatidis 1033 MAIN ST 6:20PM
Review of the Conditions on a Special Permit under §181.23 to occupy land and building for Automobile Sales and Repair Services located in the Central Business District at 18/90/0

LM – Chair recused herself from this hearing

First Call Second Call Third Call

At this time the petitioner was **not** present

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

MM – Acting as chair-person asked the board to continue the review without petitioner
JB – Motion to approve the condition review without petitioner
JS – Motion Seconded
VOTE 4-0 agreed to continue with the review

Board discussed three violation documents received through the Building Department from abutting properties that he is conducting business on. All complaints are in relation to this case.
JB – We need to be done with this case because the petitioner doesn't follow the conditions.
JS - One of the conditions was showing proof of reordering Special Permit such with the Registry of Deeds.

A. MM – The applicant was issued the Special Permit for auto motor sales and it appears that the applicant has **not** exercised accordingly. Special Permit Granted to 1033 Main St. However it is appears that the petitioner has also rented abutters lots to conduct business as an Auto retailer illegally

Zoning Board of Appeals finds that the petitioner has not followed any of the conditions that were placed upon the Special Permit at the previous hearings.

JS – Motion to Approve the Review of the Special Permit under §181.23 23 to occupy land and building for Automobile Sales and Repair Services located in the Central Business District and including all the violations listed in the Building Commission's letters issued on October 2017, February 2018 & May 2018 (Exhibit).
JM – Motion Seconded
VOTE: 0-5 DENIED -Special Permit REVOKED

ZBA-2017-26 Brett Usher & Silvia Cavillo-Hayes 162 MARSHALL ST 6:25PM
Review of Conditions on a Special Permit under §181.3561 to reinstate the abandoned/vacant building located in the Residential B District at 3/68/0

First Call Second Call Third Call

At this time the petitioners were **not** present

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

Zoning Board of Appeals agreed to give the petitioners a continuance to September 2018.

MM – Motion to Grant a continuance for the Review of Conditions on September 2018 on the Special Permit under §181.3561 to reinstate the abandoned/vacant building located in the Residential B District
JB – Motion Seconded
VOTE: 5-0 Grant a Continuance to September 2018

ZBA-2014-11 Sean Morrison 76 SUMMER ST 6:30PM
Review of a Special Permit under §181.313C10B to allow Open-Air Restaurant Sales located in the Residential C District at 70/30/0

Presentation given by Sean Morrison stating that he meet with Board of Health and they are asking to have plumbing work done prior to opening, so he is currently working with them on this matter. Also, he would like to change the operation of hours on Wednesday's to 11:00AM to 10:00PM all other days to remain the same.

LM – Review of conditions to petitioner:
Hours will be 11:00AM - 4:00PM Monday thru Sunday – Friday and Saturday re-open from 9:00PM thru 2:00AM – No plastic or vinyl banners – Not to be operated as a nuisance – Will meet the requirements from Building, Board of Health, Planning, Police, Safety and any other City Department as requested. Add a Sunset Clause Special Permit will terminate/expired upon the sale/transfer of the business from Sean Morrison

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

MM – Motion to approve the Review with the following changes to conditions
1. Hours will be 11:00AM – 4:00PM Monday, Tuesday, Thursday, Friday, Saturday & Sunday – Wednesday from 11:00AM – 9:00PM – Friday and Saturday re-open from 9:00PM thru 2:00AM
2. One review – June 2019

3. Must be owner operated not leased
4. Plan as submitted

5. No plastic or vinyl banners
6. Not to be operated as a nuisance
7. Will meet all requirements from Building, Board of Health, Police, Safety and any other City Department as requested
8. Special Permit will terminate/expire upon the sale/transfer of the business from Sean Morrison

JB – Motion Seconded

VOTE: 5-0 APPROVE Review with Conditions

ZBA-2018-04 Alan & Anastasia Wernick 65 LAUREL ST 6:35PM
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

At this time Petitioner has emailed a request for a continuance to the next meeting in **July 2018**, because of medical reasons.

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

AZ - Motion on ZBA-2018-04 to **Grant** a continuance in July 2018 at the express request from the petitioner
JB – Motion Seconded
VOTE: 5-0 GRANT a Continuance to **July 2018**

ZBA-2018-12 210 Upham Street Realty Trust 210 UPHAM ST 6:45PM
Philip J Albert, Trustee
Appeal to Overrule the Building Commissioner's Decision for the need of a Special Permit under §181.313D5 for a Construction Yard located in the Industrial District at 58/44/C

On this hearing petitioner's attorney has requested a continuance and signed a mutual agreement for extension to: July 2018

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

Board of Appeal had accepted the request extension agreement to give petitioner the opportunity to appear on July 2018

MM – Motion to continue hearing to July 2018
JB – Motion Seconded
VOTE: 5-0 GRANT a Continuance to **July 2018**

ZBA-2018-13 Nadel Antonio 20 WALNUT ST 7:00PM
Special Permit under §181.355 to change from a single-family structure to a two-family and a Variance under §181.414 to add a second means of egress from the second floor leaving approximately 1' to the property line located in the Residential C District at 68/43/0

Presentation given by Nadel Antonio stating that he is planning to fix the house to move in and have his mom live on the second floor. There is a retaining wall that can be pushed back a little so he can have 4 parking spaces. He has his architect drawing the plans. Currently he has a Building Permit to fix the foundation only, He is an electrician and will be upgrading all electrical as needed.

LM – City Zoning requires 2 parking spaces per unit that isn't stacked parking. I think we can give you another opportunity to come back with a parking plan.
MM – Back on 2012 Planning Board approved this property to be reinstated as single family home.
LM – Have you thought to reinstate structure as a single family home with an accessory apartment? NA – No, but I can think about it.
NA – I am going to explore the parking options first and see if I can get a written agreement from one of my abutting neighbors or I may go for the accessory apartment.
LM – How long do you think you may need for updating the plan? NA – Couple days

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

AZ – Motion to continue on **July 2018** at the end of the agenda with the following condition: Petitioner to provide a parking plan
VOTE: 5-0 GRANT a Continuance to **July 2018**

ZBA-2018-14 Michael Lamkin 110-112 ASHBURNHAM ST 7:15PM
Special Permit under §181.3561 for a vacant/abandoned building and a Special Permit under §181.3555 to extended the nonconformity from 2-units to a 4-unit structure located in the Residential B District at 174/27/0

Presentation given by Michael Lamkin and Deb Lafleur stating that this will look great as a 4-units dwelling, planning to make as 1-bedroom apartments and rented to retired couple so there won't be kids living in these unit. They were already been approved by Planning Board for the driveway and parking, but we still need Zoning Board approval to start with this project.

LM – Is anybody seeking information related on this case?
Those in Support: Joyce Helmer Those Seeking Information: None Those Opposed: None

MM – Have you considered a 3-units dwelling? ML – No. MM – Why do you want 1-bedroom apartments? ML – because they are easy to maintain. MM – How long would take to complete this project? ML – Once I can get the permits will be 12 – 18 months.
AZ – Will need to see an updated plot plan with dimensions of the parking spaces for our records.
LM – Do you want to have a continuance? ML – Yes

LM – Motion to Grant a continuance to July 2018
JB – Motion Seconded
VOTE: 5-0 GRANT to Continuance on **July 2018**

ZBA-2018-02 Karen Moffatt 191 ELLIS ST 7:30PM
Continuance:
Special Permit under §181.33 for a Home Occupation, to Overrule the Building Commissioner's Decision and for a Finding in regard to the number of dogs overnight at the premises located in the Residential A-2 District at 105/49/0

JM – Recused himself from this case
LM – Not taking any information in this case, the Zoning Board of Appeals will deliberate and make their decision on this hearing.

AZ – Have reviewed this case intensely. After studying the City Ordinance, it defines commercial kennels as an establishment where dogs, cats or other kinds of pets would be for sale, training or boarding care. The State also defines it as an establishment used for holding animals, daycare, overnight stays or training of the

animals that are not the property of the owner's establishment at which such services are rendered in exchange for consideration and in the absence of the owner of any such animal. Providing however, that the commercial boarding or training kennel is an individual who temporarily, and not in the normal course of business, boards or cares for animals owned by others. The question is whether the purpose of the boarding is commercial in nature? This seems very clear, because its only providing to client pets, whether providing as a complementary services or not, it doesn't really matter because something that is provided for free to paying customers only is still a commercial service. That renders the nature of the boarding here as commercial, and commercial kennels in this district does not comply with the use requirement for an accessory use as a home occupation. You are not allowed this use in a Residential District. Therefore, with my research and considered opinion that the Board is not empowered to Grant this Special Permit.
JS – Dogs sleeping over to me is it a commercial license, no matter what.

AZ – Motion to Overrule the Commissioner's Decision regarding the fact that this is a commercial kennel
MM – Motion Seconded
VOTE: 0-5 **Motion DENIED**

AZ – Motion to Grant the Special Permit as stated
MM – Motion Seconded
VOTE: 0-5 Special Permit **DENIED**

4. MISCELLANEOUS

Zoning Board of Appeals had spoken with Mayor's office to start hearing meetings at 7:00PM, starting on September 2018

5. ADJOURNMENT