



ZONING Board of APPEALS
166 Boulder Drive
Fitchburg, MA 01420

MEETING MINUTES – SEPTEMBER 11, 2018
SENIOR CENTER, 14 WALLACE AV

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

CASE No.	APPLICANT	PROPERTY	TIME
ZBA-2017-10	JMC Apartments, LLC	234 DANIELS ST	7:00PM
<i>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</i>			

Petitioner submitted a photo of the parking area at his property, but was not in attendance at this meeting.

LM – Cars were parking along the driveway when she viewed the property and there was no way to get into the back parking area.

MM – Walked around the property, went up the stairway to the third floor. Has the appearance of living space.

*No one is in attendance in the audience for this review.

Board discussed continuing the hearing to October with added conditions that the petitioner is to submit a parking plan at the review. The repairs to the basement entryway to be completed at time of review.

AZ – Motion on ZBA-2017-10 to Continue the Review to October 9, 2018 with amended conditions

JB – Motion Seconded

VOTE: 5-0 GRANT Continuance

ZBA-2017-19	Mohammad Chaudhary	19-23 PROSPECT ST	7:05PM
<i>Review Special Permit Conditions under §181.3561 to reinstate an abandoned/vacant building as a 2-family dwelling located in the Residential B District at 18/48/0</i>			

Mark Barbadoro, Building Commissioner - This property was destroyed by Fire over the weekend. The Fire Department has not determined the cause as of yet and the petitioners have not made their intentions known at this time.

*No one is in attendance from the audience for this review.

MM – Motion on ZBA-2017-19 to Continue the Review to December 11, 2018

JM – Motion Seconded

VOTE: 5-0 GRANT Continuance

ZBA-2017-26 Brett Usher & Silvia Cavillo-Hayes 162 MARSHALL ST 7:10PM
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

LM – Note was received from the petitioner’s stating that would not be able to attend this hearing with an estimate from a construction company for removing trees on the property (Exhibit A).

AZ – The petitioners have missed 2 prior meeting and do not have patience for any more excuse for not attending their reviews, I would be inclined to have their Special Permit revoked if they do not attend at the next meeting in October.

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

MM – Motion on ZBA- 2017-26 to Continue the Review to October 9, 2018.

JB – Motion Seconded

VOTE: 5-0 GRANT Continuance

ZBA-2018-20 The Peterbilt Store, New England LLC. 215 CRAWFORD ST 7:15PM
Use Variance under §181.313C11&12 to operate a Commercial Truck Sales and Service Center in the Industrial District at 114R/6/0

Presentation given by Matt Preston stating that the business is basically a car dealership for commercial trucks with part sales and service maintenance. All repairs will remain inside the building. The lot will be cleared of debris by the Landlord. He is having the building painted this week. The Board and petitioner went over the plan at this time. The trucks for sale will be displayed along the roadside. Other spaces are for customer and employee parking. There is more parking on the lot than the business will ever use. The left side of the property slopes and will not be used for any type of parking and the left corner will be left as green space.

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

JB – Welcome to Fitchburg. You have a monumental task ahead of you. What will be your hours of operation?

LM – What are your hours of Operation? Mr. Preston – Monday – Friday 7:00AM – 5:00PM and some Saturday mornings by appointment. The Peterbilt Company is investing \$11 million in their Plainsville location. If the market here can support the store, they will then buy the property. At the present time they need more service capacity and that was the main reason to rent this space. There will be no outside storage of materials. LM – How many vehicles will be parked at the property? Mr. Preston – 5-10 new trucks for sale and 5-10 employees, we will never fill the lot.

JB – The Peterbilt Company also inspects their locations, correct? Mr. Preston – Yes, they will not put their name on it until the building and property are up to their standards. The grass will be mowed, mulch will go around the trees and the lot will be cleaned. Peterbilt takes pride in all their facilities.

MM – This is a mixed use neighborhood and it will be a good fit. Would like a 6 month review. Attorney Tree was asked if we could also add a sunset clause to end with the petitioner for a year and she said it is acceptable and with a 6 month extension if applied for before the year end.

Hearing Closed:

Deliberations:

AZ – Comfortable not requiring a parking plan as there is plenty of space on this lot. The lot is configured for the proposed business as the prior business was Ryder Rentals. The denial of this request would cause financial hardship as another site may not be as easily converted to this type of use. The use is will not be detrimental to the public as it may cause less traffic flow than the prior rental of vehicles from this site. Also, this business conforms with the character of the neighborhood.

MM – The petition meets the criteria for a Use Variance for reasons stated previously.

JB – Agree with all that has been stated.

AZ – Motion on ZBA-2018-20 to Grant a Use Variance as requested with the following conditions:

1. Review April 2019
2. Sunset Clause – Use Variance to terminate/expire upon the sale/transfer or change in operation from The Peterbilt Store, New England, LLC

JB – Motion Seconded

VOTE: 5-0 GRANT a Use Variance with Conditions

ZBA-2018-21 FBC19-62, LLC 126 PACIFIC ST/183 CEDAR ST/191 CEDAR ST 7:30PM

Appeal to Overrule the Building Commissioner's Decision for the need of a Special Permit from The Planning Board under §181.752 in a Residential B District at 13/51/0, 13/50/0 & 13/48/0

Petitioner is not in attendance for this hearing. His attorney has requested a continuance as he is not able to attend and has signed a *Mutual Agreement for Extension of Time* prior to this hearing.

Board reviewed the packet and found that the appeal was not submitted within the 30 days after the Building Commissioner's *Letter of Determination*. This is a procedural default.

The Board decided that it was appropriate to proceed with this hearing as there are many people in the audience here for this case and they should be allowed to give their testimony as the request for a continuance came after the notice of the public hearing.

Mark Barbadoro, Building Commissioner – 179 & 183 Cedar St share a common driveway. All the parcels access threw the 191 Cedar St. driveway. The shared parking area is over capacity for single family homes.

Those Seeking Information: None

Those in Support: None

Those in Opposition: Jennifer Latini of 199 Cedar St. stated that the petitioner acquired 126 Pacific St. then the owner of 191 Cedar moved out and he acquired that and 183 Cedar St. He told her that he paved the lots so that he has parking for 28 cars. He is renting out the 3 properties to college students. Vehicles enter the 3 properties by way of 191 Cedar St. There are at least 15-20 cars parked on the property most of the time.

Mary Lee Rohbach of 125 Pacific St. stated that every Friday and Saturday night 30 or more people are in back of 126 Pacific St. wandering onto her property partying. He has clean-cut and leveled all the trees and it is now blazing hot. He charges other students that do not live at these properties to park there.

Michael Latini – All green space is gone and now there is a drainage problem for the abutters. My property floods out and when he bulldozed the trees he wrecked my property. He is using these properties as boarding houses. He has put a door on the living room, dining room and the den to make more bedrooms. There are 7 cars all the time when only 5 people should be living there. Because of the way these 3 lots look, my home went from a value of \$163-165,000 down to \$130,000 -132,000 which is a huge loss for me.

Rick Dame of 167 Cedar St. stated that he agrees with all details discussed and that what the petitioner has done has changed the character of the neighborhood and depreciated the abutters property values. He also uses adjacent property for parking. He has basically done a low end housing complex with a massive parking lot. There is commercial style lighting and signage advertising the property as if it is part of Fitchburg State University.

Mike Kushmerek, Ward 4 Councilor –All of his constituents at and around these properties are in agreement that what has been done in regard to open access parking has not been in the best interest of the neighborhood and does not meet the requirements for a shared driveway. Also, this does not meet the intent and purpose of the Zoning Ordinance. The Student Housing Overlay District has made this a very congested area already.

LM – The Board members have viewed these properties.

Hearing Closed:

Deliberations:

JB – Absolute crime what has been done to these properties. Clean-cut and graveled, making drainage conditions terrible for the abutters whenever it rains or when there will be snow melt. Also, there is evidence that there are far more than the allowed persons living at these properties.

JM – With the sign, it appears that FSU owns the buildings and that is not the case. It is clear that the buildings are over populated.

AZ – I would like to thank the neighbors for their input and especially Ms. Latini for the documentation (Exhibit B).

Procedurally: The request is untimely as the determination letter from the Building Commissioner is dated November 29, 2017 and the initial Notice of Violation dated February 28, 2018. There is a 30 day time limit for filing after receiving the *Letter of Determination or a Notice of Violation*. Petitioner could theoretically challenge only the most recent Notice of Violation (which would be timely), but it would be essentially automatically upheld given the underlying determinations not subject to challenge.

In the 2 years I have been a member of this Board, this has to be the most ludicrous abuse and flagrant disregard for zoning and land use regulations. While I was on site, a gentleman skateboarded up the driveway of 191 Cedar St. to go to 126 Pacific St. It was clear that the other people on the porch were not family members, but roommates. The number of cars parked at this location at the time was not consistent with a single-family use. The parking area is also not in conformity, in that it does not have a dust free coating or striping as the ordinance requires, nor a 10' buffer strip from the lot line. The parking section for 183 Cedar St. and 126 Pacific St. annex to the 191 Cedar St. lot. Not only are the multiple lots accessed but they are used as a multiple parking area. I would ask that the Building Department seek an Administrative Warrant to gain access to the premises and structures with or without the owner's permission, to verify occupancy and issue further violations if it is found that the buildings are indeed being rented as illegal SROs/boarded houses. The issue of the signs is also not before us, but I hope they will be aggressively prosecuted for fraud or false advertising, as the clear intent and effect is to imply that these buildings are official college housing.

The Board Finds:

- A. The appeal was untimely filed.
- B. The Building Commissioner's original *Letter of Determination* sent to the petitioner on November 29, 2017 for a Special Permit from the Planning Board for a common driveway was correct. The petitioner did file with the Planning Board and was DENIED.
- C. The Building Commissioner's Notice of Violation dated February 28, 2018 was correctly issued.
- D. The petitioner has shown a flagrant disregard of zoning and land use regulations, causing multiple problems for the abutters.
- E. There is also illegal signage on these lots which is another zoning violation.

MM – The signs on these properties do not conform to our regulations in not being the proper size or type and do not properly identify the use.

AZ – Motion on ZBA-2018-21 to Overrule the Building Commissioner's Decision

JB – Motion Seconded

VOTE: 0-5 Motion **DENIED**, Building Commissioner's Decision is **UPHELD** in all respects

ZBA-2018-22 **Norman & Karen Tucker** **96 ASHBY WEST RD** **7:45PM**
*Variance under §181.414 to demolish and rebuild the garage with a small addition leaving
Approximately 20' to the front property line located in the Rural Residential District at 78R/40/0*

Mr. Tucker lives in a very old house built in 1796. He wishes to widen and make the garage longer as can only hold one car at present. There will be no living space above the garage. The façade will remain the same as the house is historical. He has been restoring the house slowly.

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

JB – This will be an improvement to the property.

AZ – Thought I would have a problem looking at this request on paper, but visiting the property, there is no problem and you have plenty of yard.

JM – Fine project. It will complement the property.

MM – Been by this property many times over the years. The current setbacks are 36' and 38' and will be reduced to 30' going from a 1-car to a 2-car garage.

Findings:

- A. This is the best location on the lot as the existing garage space will be made wider and longer.
- B. The other side of the property slopes up and it would be difficult to locate the garage there.
- C. This property is unique in its shape as it is a rounded corner lot.
- D. The enlarging of garage area will be of no detriment to the neighborhood and will be an improvement on the property.

LM – This will be a great addition to the neighborhood

MM – Motion on ZBA-2018-22 to GRANT a Variance as requested

JB – Motion Seconded

VOTE: 5-0 GRANT of a Variance

ZBA-2018-23 **Roberto Fernandez** **27 GAGE ST** **8:00PM**
*Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling
with stacked parking spaces located in the Residential B District at 31/111/0*

Presentation given by Bert Fernandez stating that he bought the property as an investment. When he looked at the listing he believed he had enough parking for a 3 family. He plans to remodel and clean the property. He will be bringing the electrical and plumbing up to code.

LM – How do you envision the parking? Mr. Fernandez - There is enough room for 2 cars in the driveway and 4 cars stacked. He will be repairing the wall.

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

AZ – Would you consider decreasing to 2 units? He didn't even know it had been abandoned until after the Building Inspector came by and informed him and that he didn't have the proper parking. AZ – We might be in favor of a 2-unit with available parking.

LM – Parking will be very difficult in the winter for 4 cars stacked. You could possibly change the parking to the side and would be conforming for 2 parking spots. Also, with stacked parking you would need a turning area and there is no room for that.

JM – 3 units is tough, even 2 will be difficult. You only have 2 legal parking spots. Once it snows, it will be a disaster with 4 cars. I would be against 3 units.

MM – Mr. Fernandez you made a good presentation and plan. As a Board we are looking at the best way to restore Fitchburg. It would be a difficult challenge to have 6 parking spaces on the lot, do not see how 2 of the vehicles could open the doors. Stacked parking is always a problem. We are dealing with a lot with very little setbacks and not much room to access the staircase. I can see the building as a 2 unit, but there is still not enough parking. We have to consider the safety of the residence and the city.

JB – This lot is 5300 sq. ft. with no place to put snow and inadequate parking on a congested street; I would be against reinstating this property as a 3-family.

AZ – Would you like to consider amending this request to a 2-unit building? Mr. Fernandez – I can ask my engineer about putting a garage on the first floor and have the 2 unit above.

LM – I believe that years ago when the house was built it was a 2 unit duplex that grew over time.

MM – We will need a new plan of the building and the parking.

Petitioner requested a one month continuance to decide how he wants to proceed and to put together new plans.

AZ – Would like to thank the petitioner for being understanding and cooperative.

AZ – Motion on ZBA-2018-23 to Continue the hearing to October 9, 2018

MM – Motion Seconded

VOTE: 5-0 GRANT a Continuance

ZBA-2018-24 Karleye Krikorian 23 WINTHROP ST 8:15PM
Variance under §181.414 to construct a single family dwelling with less than the required area for an infill lot and not meeting the requirements for the Residential C District in which it is located at 67/95/0

LM, Chair, recused herself from this hearing as she is an abutter to the property.

MM, Co-Chair is presiding.

Petitioner chose to move forward with the 4 member Board.

K. William Krikorian resides at 196 Bemis Rd. and has recently acquired this property. The plot plan shows how he will utilize the lot and building for a single family with a garage under with 2 parking spaces or a nice 2-family cape style home. It will improve the property's value.

Those in Favor: None Those Seeking Information: None Those Opposed: Jimmy and Maxine Smith of 51 Milk St. request that this appeal be denied. The Board has stated that the City is in the process of trying to reduce the congestion in the city and this request is not good for our community. This is an eyesore that he has created. This is a tight street and when we have snow it is very difficult to get through. Emergency vehicles utilize this lot just to get to the end of the street. The City has been redeveloping property in the neighborhood and that is the type of rehab that is needed. Karen Brennan – my mother lives at 24 Winthrop St and am in agreement with Mr. Smith. Cars are parking on that lot because

the street is so congested. There has not been a building in that spot for over 50 years because it is just too small for a household with 2-3 cars. Doreen Bergeron of 22 Winthrop St – this plot originally belonged to 21 Winthrop St, but after the owner died and the house was sold, the next owner sold only the house lot.

AZ – Your land is just behind the shrubbery, right?. The lot is only large enough for 2 parking spots without a house. You not only need a variance from the area requirement, but also from every requirement for a lot. When I was looking at the lot I was baffled at how a structure would fit, squeezing into a very small space. Zoning should not simply replicate old conditions, but to promote the health, safety and convenience and general welfare of the present and future inhabitants of the City. I cannot envision how this request is feasible for this lot or the neighborhood.

JM – Very small lot. We would be trying to squeeze a house in between two other houses which is not a good fit. The road is narrow and to congest it further would not benefit anyone.

JB – Everyone is allowed due process, but I am against this.

Hearing Closed:

Deliberations:

AZ – To grant a variance, we need to find that "Owing to the circumstances relating to soil conditions, shape or topography of land or structures, but not effecting generally the zoning district in which it is located, a literal enforcement would involve substantial hardship or otherwise without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of this ordinance." This "derogates" very substantially from that intent and purpose. This is exactly why we do not allow building on undersized lots

JB – A house built on this property would be of no benefit to the neighborhood or the city.

MM – I agree as well. The lot is extremely narrow. A lot below the 5,000 sq. ft. of area with 50' of frontage that can be allowed by the Planning Board is really too small to build upon.

AZ – Motion on ZBA-2018-24 to Grant a Variance as requested.

JM – Motion Seconded

VOTE: 0-4 Variance **DENIED** Unanimously

ZBA-2018-25 **Raffael DeFeo** **318 FIFTH MA TPK** **8:30PM**
Variance under §181.4214 & §181.4215 for a fence over 6' high on a corner lot located in the Residential B District at S46/6/0

First Call: No Response Second Call: No Response Third Call: No Response

Petitioner is not in attendance at this hearing. No one from the audience is in attendance for this hearing.

LM – This is a wooden structure with lattice above.

AZ – The site is a corner lot and would need to be set back at the corner and tapered down for traffic flow and safety.

JM – The fence does not conform in any way to our regulations.

Hearing Closed:

Deliberations:

MM – Would not be in favor of granting the variance from height due to safety issues and there is no aesthetic value to the lattice work above.

JB – What has been done is to construct a fence against all regulations and it should be taken down and done properly.

MM – Motion on ZBA-2018-25 to Grant a Variance as requested

AZ – Motion Seconded

VOTE: 0-5 Variance **DENIED** unanimously

**ZBA-2018-26 Joel Rubiera/Edge Real Estate 13-15 CHESTNUT ST 8:45PM
Investment LLC**

Special Permit under §181.3564 of the vacant/abandoned property located in the Residential B District at 18/107/0

Presentation given by Joel Rubiera, Rod Rivera, and Bibiana Gonzalez Viana stating that they will not be removing any walls. They are coming up with a design to relocate the kitchens. There will be 4 units. 2 on the first and second floors with 3 bedrooms and 1 unit on the third floor with 4 bedrooms. They are in the process of purchasing 19-21 Chestnut for parking if the Special Permit is granted.

AZ – You are requesting that this building be requested as a 5-unit dwelling? Mr. Rubiera – Yes. We will be remodeling the bathrooms, up-grading the plumbing, new kitchens and cleaning out the basement. They will be replacing the fence and cleaning up the yard. He wants to make it look like it belongs to the rest of the neighborhood.

LM – Your overall investment in the property is in remodeling. Rod Rivera – If this request is approved by the Board there will be an onsite manager. One of the tenants would have reduced rent for maintaining the building and property.

Those Seeking Information: None Those in Support: None Those in Opposition: Beth Chandonait of 42 Arlington St. – This corner is very congested. If a car parks along the street, other vehicles cannot pass through. Even if they can use the entire lot at 19-21 Chestnut for parking, where will their visitors park? The other problem is winter. Where will they put the snow? This property has been a nightmare for the last 40 years.

AZ – The only place that is free is close to the stairs to put the snow. This will cause a skating rink for tenants to get to their apartments. Rob Rivera – The manager of the building will take care of that.

At a show of hands, there are 7 abutters in opposition.

Robert Talbot of 16 School St., direct abutter in rear – This request fails to meet the Intent and Purpose of the Zoning Ordinance by adding more congestion to the neighborhood. This building is overcrowding the land and it is an over population for the neighborhood. He is unable to obtain insurance for his home because of this building. The building is on the City’s pending demolition list for next year and has been abandoned for about 7 years. Emergency vehicles have problems getting up this street because it is so narrow.

Ann DeSaulnier of 22 School St – Parking lot seems to be against my house. There is a huge parking problem in this area, but this will put lights and noise right against her bedroom windows.

Catherine Healey of 17 Arlington St. - Agree with all reasons stated. Believe that 5 units is very ambitious and will overcrowd the structure as well as the parking issue. It is not a comfortable fit for this neighborhood or for safety reasons. Would like to see the building improved, but in reality the lot even with the parking added is just no large enough.

Liz Roden-Hall of 22 School Street – Concerns for the noise and congestion 5 large units will add.

Joel Rubiera – As the building is now, it is a detriment. Fixing it up would be an improvement.

Judy Bearfield of 9 Chestnut St. – Very congested. Chestnut is a one way street and you cannot park along it because it is so narrow and there is almost never anywhere to park on Arlington St. because the houses on that street take up the entire street.

Joseph Smeraldi of 18 Chestnut St. – Before he bought this home he looked into this building and it has been abandoned since 2011. There are at least 3 building close by that have absentee landlords and it just adds to the neighborhood's problems. We need building to be owner occupied and invested in the community. When the petitioner parked on the street to visit the property, I had to ask him to move his vehicle because I couldn't get out of my driveway. That's how congested it is.

MM – Were you aware of the type of parking plan and floor plans that you would need to present at this hearing?

JB – Where will you put the dumpster? With a building of more than 3-units you need to have a dumpster. Also, you need a 10' buffer around the parking area from the abutter property lines, not just from their structures. This would only leave you about 4-5 spaces for parking and then you lose another space for the dumpster. This would perhaps give you enough parking for a 2-unit building.

LM – I did some research through the public records of this property and I believe that years ago this was a 2-unit duplex structure that unfortunately for the City, just grew over time. In doing some quick calculations, I cannot see that you would have adequate parking on the empty lot for this project.

JM – Chestnut St. is very narrow and makes parking very difficult. The property would need all its parking to be off-street to reinstate. This property has been vacant for way too long. It will need considerable upgrading and do not see a 5 unit as a good fit. These are the properties that should not be allowed to be sold. Would hate to see the petitioner throw good money into this project as I don't see it as being feasible.

AZ – We are coming hard at the concept, not at you personally. You have done a great presentation and are pleased that you want to invest in Fitchburg. There are many properties that would be a better investment and fit than this one. It should probably be torn down and make a small 2-family with the other lot for parking.

LM – Correspondence received from Gloria Spadaro who owns 19-21 Chestnut in favor of a 3-unit going into 13-15 Chestnut St. was read at this time.

Hearing Closed:

Deliberations:

MM – Once you add in the buffer required and the space for a dumpster, the parking is not adequate for what is being requested. I know this neighborhood intimately and Chestnut St. is so narrow it difficult to get a Fire Truck up it. This request has been denied before by City Council. I cannot see any benefit to the neighborhood or the City and since the petitioner has not yet purchased the properties, it is of no great hardship if the request is denied. There are virtually no setbacks on this property, the structure takes up the entire lot. It is an obsolete building that really needs to come down. We have to restore the neighborhoods in the city. We appreciate you effort, but I would not be in favor of reinstating this property.

JB – I have seen how much of an impact bringing back some of these houses has had on already congested neighborhoods and I would not be in favor of reinstating this building and it does not have adequate parking. We do appreciate you interest in Fitchburg and there are plenty of good properties that would be a better investment for you.

LM – I also agree with my colleges.

MM – Motion on ZBA-2018-26 to Grant a Special Permit as requested.

AZ – Motion Seconded

VOTE: 0-5 Special Permit **DENIED** unanimously

ZBA-2018-27 Elias DaRocha 142 DAY ST 9:00PM
Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling located in the Residential C District at 32/7/0

Presentation given by Elias DaRocha stating that he owns the property.

The Board reviewed the petitioner's plot plan and had concerns with the width of the driveway and the need for parking to not be in tandem. The Board and petitioner discussed a continuance to October 9, 2018 in order for Mr. DaRocha to weigh his options to accommodate the parking and driveway concerns.

Mutual Agreement for Extension of Time was signed at this time.

AZ – Motion on ZBA-2018-27 to Continue the hearing to October 9, 2018.

JB – Motion Seconded

VOTE: 5-0 GRANT a Continuance

* JM – Recused himself from this hearing.

ZBA-2018-12 210 Upham Street Realty Trust/Phillip J Albert, Trs. 210 UPHAM ST 9:15PM
Continuance:

Appeal to Overrule the Building Commissioner's Decision for the need of/or for a Special Permit under §181.313D5 for a Construction Yard located in the Industrial District at 58/44/C

(Board members have viewed the site and the neighborhood).

Counsel and Petitioner both agreed to move forward with 4 member Board.

Attorney Jeffrey Aveni submitted photos of the site and surrounding neighborhood showing that is mainly businesses and businesses dealing in some type of construction, repair companies and welding company. It is a diverse neighborhood. Attorney Aveni reiterated his position and began going over the points made at the last hearing. At this time:

AZ – With respect, let me interrupt you at this time, so you do not have to go further. I have studied all the materials you have submitted, listened to this argument and done research on my own and I would not be in favor of overruling the Building Commissioner's Decision. With my dissenting vote that part of the request will not pass.

Attorney Aveni was upset at being interrupted and wanted to continue with his presentation. This was a reiteration of his arguments made at the previous meeting and presented to the Board in written form, including an argument that the use would be classified as a "business" under federal industrial classification rubrics.

AZ – We are interpreting our Zoning Ordinance, not federal law.

Assistant City Solicitor – The Board may interpret the By-Law on its own merits, and by precedent, a reasonable interpretation by the Board of its own ordinance will be deferred to by the court. It is her opinion that a Special Permit is required for this property, and that we do not need to expressly articulate every element of the reasoning behind this decision during the deliberation, but may elaborate in the written decision.

Those In Support: None Those Seeking Information: None Those Opposed: Linda Reyes-Flores stating that they are directly impacted by the parcel of land that has been clear cut. Photos were

submitted. When she bought the house she had no issue. Didn't know they even existed until they started moving soil and rocks down the slope and parking the construction vehicles on the property and starting them all times of the day and night.

MM – You own several pieces of land and your business at 210 Upham St. is utilizing all of these properties. Even though your Attorney has stated that the properties are owned under different names, they are all being utilized by the same business.

AZ – Even though the parcels are owned in different names for tax and other purposes, the business is impacting the abutter. We could put a condition on the Special Permit of no nighttime activity except for snow plowing. Phil Albert – There is also paving going on at night.

MM – Getting a Special Permit protects you when and if you ever decide to sell. Your permit would be in place, rather than having to get multiple Special Permits for each lot. Your business has been in the City for a long time and we want you to continue to be successful, but we also want the abutter to have some consideration. Phil Albert – We are going to be putting up a fence along their property.

Attorney Aveni – He will be putting up a barrier - a fence and vegetation for the abutter. Their house is over 300' from 210 Upham St.

LM -Since the hour is so late, we will have to continue this hearing to next Tuesday.

AZ – Motion on ZBA-2018 to Continue the hearing to September 18, 2018 at 5:00PM

JB – Motion Seconded

VOTE: 4-0 GRANT a Continuance

ZBA-2018-16 Nassif Hayek 0 KIMBALL ST 9:30PM

Continuance:

Use Variance under §181.313C11 for an Automotive Dealership located in the Industrial District at 41/17/5, 6, 7 & 8

Petitioner is not present for this hearing.

No one is present in the audience for this hearing.

The Board was not notified that the petitioner would not be attending and there has been no *Mutual Agreement for Extension of Time*.

Hearing Closed:

Deliberations:

Petitioner also did not attend the hearing in July and we are not able to reach him with the phone number he gave on his petition.

MM – Motion on ZBA-2018-16 to Grant a Use Variance as requested.

JB – Motion Seconded

VOTE: 0-5 Use Variance **DENIED** unanimously

ZBA-2018-17 Bienvenido Vicioso 18-20 BEEKMAN ST 9:45PM

Continuance:

Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling located in the Residential B District at 95/19/0

AZ – Motion on ZBA-2018-17 to Continue the hearing to the September 18, 2018 beginning at 5:00PM

JB – Motion Seconded

VOTE: 5-0 GRANT a Continuance

ZBA-2018-13 Nadel Antonio 20 WALNUT ST 10:00PM

Continuance:

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

AZ – Motion on ZBA-2018-13 to Continue the hearing to the September 18, 2018 beginning at 5:00PM

JB – Motion Seconded

VOTE: 5-0 GRANT a Continuance

4. MISCELLANEOUS

5. ADJOURNMENT



ZONING Board of APPEALS
166 Boulder Drive
Fitchburg, MA 01420

MEETING MINUTES – SEPTEMBER 18, 2018
SENIOR CENTER, 14 WALLACE AV

- 6. Call to Order: LM PLEDGE OF ALLEGIANCE: All
- 7. Communications: LM ATTENDANCE: LM, MM, AZ, JB, & JS
- 8. Hearings

CASE No.	APPLICANT	PROPERTY	TIME
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ZBA-2018-12	210 Upham Street Realty Trust/Phillip J Albert, Trs.	210 UPHAM ST	9:15PM
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Continuance:

Appeal to Overrule the Building Commissioner’s Decision for the need of/or for a Special Permit under §181.313D5 for a Construction Yard located in the Industrial District at 58/44/C

Attorney Aveni chose to move forward with the 4 member Board voting. JS was not at the prior meeting.

LM – Board received a letter from the Legal Department (Exhibit A) which was read into the meeting. Summary- Assistant City Solicitor, Christine Tree’s legal opinion ... the Board is within its right to deny the appeal to overrule the Building Commissioner’s Decision in regard to the Special Permit. She would however be in support of the issuance of a Special Permit with appropriate conditions to monitor and alleviate any impact of this business on the surrounding properties that the Board deems reasonable, review, limitation of the term or prohibiting transfer. She would not limit his hours of operation as this is a business of longstanding in the community within a mixed-use neighborhood.

Letter from the abutter, Lena Reyes-Flores of 51 Kelley Ave (Exhibit B) restating her family’s concerns stated at the prior meeting of noise and vibration was read into the meeting at this time.

Attorney Aveni stated that a fence has been erected 6’ High and 100’ long and showed the Board pictures of the fence blocking the entrance that was being used along the abutter’s property. The entrance and exit for the vehicles used by the business has therefore moved to the far side of the property.

Those in Support: None Those Seeking Information: None Those Opposed: Lena Reyes-Flores – Restated her concerns contained in the letter read and what she spoke on at the prior hearing.

JB – I drove into the property. Is the blacktop on top to fill into the hill: Mr. Albert – We recycle it and make a gravel out of it. JB – Is it environmentally sound? Mr. Albert – Yes, and the Board of Health is aware of what is on the properties. JB – To the abutters I would like to say that your property was created by a Special Permit when it was built. Your home is next to the Industrial District. Even though it was quiet when you purchased your home that does not mean that the businesses in the Industrial District would not be allowed to grow.

MM – It's that old adage, Buyer Beware. This business has been in the City for many years. At the prior meeting you stated that the vegetation had been stripped away with the house that was removed. Would you be willing to put in some vegetation to help block the noise, or continue the fence? Mr. Albert said that the

fence has to be there because of traffic site line and safety, but the vegetation would be possible. The house that was taken down was probably the biggest buffer. MM – We do not want to infringe on your businesses growth or success.

AZ – I would like to see a soft barrier of vegetation, perhaps a hedge would block the noise better. I appreciate that you put up the fence so quickly. Mr. Albert – We can plant greenery behind the fence and along the jersey barrier. I cannot go in front of the fence as it hugs the roadside.

Hearing Closed:

Deliberations:

AZ – There are several points we need to decide upon:

*Which property are we considering at this time? Only 210 Upham St. or 210 Upham St. and its adjoining parcels owned by different entities?

In my opinion that we can find: 210 Upham St. is the parcel on the petition request and is the only lot before us.

AZ – Motion to find petition only deals with 210 Upham St.

MM – Motion Seconded

VOTE: 4-0 Petition deals with 210 Upham St. only

*Is the term "business" in C16 of the *Table of Principal Uses* used as an independent noun, or as one of two adjectives modifying "office"?

It is my opinion that it is an adjective as the contrary conclusion would mean all commercial uses would be allowed without restriction in virtually all non-residential districts. All of Section C and much of Section D would become irrelevant.

MM – The business as a whole is an office with storage of construction equipment and supplies.

AZ – Motion to make a finding that C16 "business or professional office" refers to an "office" which is "business or professional" in nature, not to a "business" or a "professional office" distinctly.

MM – Motion Seconded

VOTE: 4-0 C16 refers only to offices, not to all "businesses" generally

*Definition of a construction yard and contractor's yard.

It is my opinion that it was a scrivener's error. "Construction yard" is referenced throughout the Zoning Ordinance, but does not appear in the Definitions, while "Contractor's yard" appears only in the Definitions but is never used in the ordinance. I believe they are interchangeable. Contractor's yard is defined as: *A facility or area for storage, open or enclosed, for construction equipment or materials and commercial vehicles associated therewith.* This definition should be applied to all instances of the term "construction yard."

AZ – Motion to find that construction yard and contractor's yard is interchangeable

JB – Motion Seconded

VOTE: 4-0 Scrivener's error – terms are interchangeable and "construction yard" is defined per the definition given for "contractor's yard"

AZ – Motion to overrule the decision of the Building Commissioner that "construction yard" is the primary use

JB – Motion Seconded

VOTE: 0-4 Decision upheld--"construction yard" is the primary use

*Was a special permit requested, and if so, do we grant it?

Opinion – The petition was amended at the first hearing to include a special permit request.

Conditions discussed by the Board:

1. Fencing along Kelley Av to be maintained and kept in good condition
2. Vehicles enter and exit on the far side of the property abutting Kelley Av prior entrance to remain closed
3. Vegetation across the open part of the property abutting Kelley Av
4. Sunset Clause – Special Permit will terminate/expire upon the sale/transfer or change of operation from 210 Upham Street Realty Trust/Phillip J Albert, Trs.

MM – The business has been there for years and we cannot put a conditions on for no night hours without negatively impacting his business.

JB - Conditions stated previously should be sufficient.

The Board took into consideration the abutter's concerns.

MM -The abutter's property is next to the Industrial District. Petitioner will be putting up a vegetative screen and that should satisfy some of the noise issue. We cannot insist that the business cannot grow. We want this business to continue to be successful and do not want to negatively impact it. With prior conditions discussed, do not see any need for a further review. I viewed the property and the trucks are lined up like soldiers in a neat row. I believe that the petitioner will take care of the abutter's concerns to the best of his ability short of negatively impacting his business. The application meets the criteria under §181.93.

AZ – In reviewing our mandatory findings:

- A. Petition deals with 210 Upham St. only, as other parcels, though used in common by a single business, are owned under different legal entities and are not listed on the petition.
- B. Discrepancy between the terms "construction yard" in the Table of Uses and elsewhere, versus "contractor's yard" in the list of definitions is mere scrivener's error – "construction yard" and "contractor's yard" are intended as the same term throughout the ordinance.
- C. Business on this site is primarily a construction yard.
- D. This is a longstanding business and the vehicles need to be stored for the business
- E. Traffic flow and safety will remain the same and has been moved to the far end of the property
- F. Utilities and public services will remain the same
- G. The character of the neighborhood is mixed use.
- H. There are no alleged impacts on the natural environment
- I. The request is of no detriment as the business has erected and fence along Kelley Av and will be adding vegetation on the remaining open space behind the barrier

AZ – Motion on ZBA-2018-12 to Overrule the Building Commissioner's Decision for the need of a Special Permit

JB – Motion Seconded

VOTE: 0-4 Motion to Overrule DENIED Commissioner's Decision is **UPHELD**

AZ – Motion on ZBA-2018-12 to Grant the Special Permit with the previously discussed conditions

MM – Motion Seconded

VOTE: 4-0 GRANT the Special Permit with Conditions

ZBA-2018-17

Bienvenido Vicioso

18-20 BEEKMAN ST

9:45PM

Continuance:

Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling

located in the Residential B District at 95/19/0

Presentation given by Bienvenido Vicioso submitted a certified plot plan, but it does not meet the requirements in regard to the parking and was not accepted.

MM - The land surveyor that drew it should have known the requirements and shown compliant parking spaces with proper driveway width. Without the proper dimensions, we would be hard pressed to vote on this.

Mr. Vicioso – We have taken out the pool.

JB – Are there people living there? Mr. Vicioso – Yes, the utilities and water were on before we knew we needed a Special Permit and we had already rented it.

**Mutual Agreement for Extension of Time* was signed

AZ – Motion on ZBA-2018-17 to Continue the hearing to November 13, 2018 to have a revised plot plan showing all the dimensions.

MM – Motion Seconded

VOTE: 5-0 GRANT a Continuance

ZBA-2018-13

Nadel Antonio

20 WALNUT ST

10:00PM

Continuance:

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

Nadel Antonio did bring in floor plans and a parking plan, but the parking plan showed only 2 parking spots on the property. Petitioner submitted an agreement with a neighboring lot to use 2 spaces at 24 Walnut St. (Exhibit C) signed by both parties. He wants to make the property a 2-family dwelling.

MM - The City Council reinstated the property as a single-family home. Board will need a plan of the property you are using for parking showing which spaces are designated for your use. We will also need you to submit the floor plans that you have with you at that time also. MM – How deep are the garage spaces? Mr. Antonio did not know the measurements. MM – I commend you for your efforts, but there are too many unknowns at this time for me to make an affirmative decision.

LM – You have 2 options: 1. You can ask for Leave to Withdraw Without Prejudice until you are able to obtain a permanent solution to the parking or 2. You can request a Continuance for 1-2 months in order to get all the information to the questions we have been asking.

MM – We need a plot plan showing standard non stacked parking designated for your property. I recommend that you try to secure land of your own for parking. Perhaps the neighbor would sell you a piece of his lot.

LM – Explained the restrictions on Accessory Apartments to Mr. Antonio since he is seeking to put his mother in the second unit he wants.

Mr. Antonio requested a continuance for 2 months.

JB – This was reinstated as a single family home, why would we reverse that decision?

AZ – Motion on ZBA-2018-13 to Continue the hearing to November 13, 2018

JB – Motion Seconded

VOTE:

5-0

GRANT Continuance to November 13, 2018

9. MISCELLANEOUS

Board discussed ways in which to try to shorten the length of the hearings. After discussing all options it was decided that:

Meetings will start at 7:00PM, Requesting a spokesperson when there are several abutters that want to comment and asking that if a person speaks, it has to be something different.

10. ADJOURNMENT