



ZONING Board of APPEALS
 718 Main Street – Suite 201B
 Fitchburg, MA 01420

MEETING MINUTES – January 10, 2023
 Legislative Building, 700 Main Street

Note: This meeting was with remote option!

1. **Call to Order** Christine Tree **PLEDGE OF ALLEGIANCE** ALL
2. **Communications** Christine Tree
3. **MEMBERS ATTENDANCE:** Christine Tree (Chair), Michael McLaughlin (Vice-Chair), Joseph Byrne (Clerk), Eric Chartrand
4. **MEMBERS ATTENDANCE REMOTELY:** Brian Gallagher
5. **ALSO IN ATTENDANCE:** Mark Barbadoro (Building Commissioner)
6. **Hearings**

CASE No.	APPLICANT	PROPERTY	TIME
ZBA-2022-01	Nghia Tran	47 SCHOOL ST	6:00PM
<i>Review of the Special Permit under §181.335 of the Fitchburg Zoning Code to convert a large single-family into a two-family dwelling located in the Residential B District Map 18 Block 30 Lot 0</i>			

The presentation was given by Nghia Tran (applicant), stating that the plumber and electrician are trying to wrap it up in a couple more weeks. Outside, the hand railing for the deck is my only concern about the ballot. I e-mail a picture to know whether or not it's acceptable. See exhibit "A."

BG – So, there was a particular balustrade or railings, and you were pointed to an example across the street or something similar. These are the exterior ones around the front porch, right? NT - Yes

BG - This balustrade is actually 100% different than what was there originally; the house across the street is nearly identical. So I don't feel as in keeping with the style of the house, certainly not historically.

EC – This probably it's something that you picked up off the shelf from a regular hardware store - NT – Yes, nobody made it today

MM – I visited the property a couple of days ago, and the important part of the board's decision to allow it to go from a single-family to a two-family was that we wanted to preserve the house's architecture and the balustrades. Also, the roof's eaves on the house appear to have some material that was put over on the entire roof, which was painted. We would like that to be adequately repaired with the proper trim that matches the building on both corners sides. – NT – Yes, I will change it because somebody robbed them, so I had to get some ground molding repaired with proper trim that matches

CT - I'll read the stated conditions, one by one, and have you let me know how it's going; see Exhibit "B." – NT – Okay

CT – On conditions # 5, 6 & 7, I appreciate the time, effort, and money into the construction of that wall. The result on the property looks great. Very impressive
 #8 construction to be completed within 12 months; you still have some time. Do you think that you will need an extension? – NT – No

#10 Dumpster to be emptied regularly; how many dumpsters did you need? – NT - I got my dump trailer. I don't need a dumpster in there

CT - I want to have a review before it's completed, but you're not going to be complete until April because of the gas company. – NT - Correct

CT – So, do you want to have a review in April or May? – NT – I think May

CT – For the records, nobody was present in person or virtually to speak, favorably or against this case.

MM – Motion on ZBA-2022-01 under §181.335 to **Grant a Continuance on the Review to May 9, 2023**

JB – Motion Seconded

Vote 5 – 0 to **Grant a Continuance on the Review to May 9, 2023**

(By roll call BG)

ZBA-2019-13 Ruth Jeanette Guzman 324 LUNENBURG ST 6:15PM
CONTINUANCE of a Special Permit under §181.356 of the Fitchburg Zoning Ordinance to reinstate a vacant/abandoned building as a 3-family dwelling located in a Central Business District at Map 36 Block 15 Lot 0

No one is in attendance this evening. It was noticed at the last hearing on October 11, 2022, to be reviewed in the meeting held in January. Petitioner was notified of this hearing, and no communication was received from the petitioner.

MM - The application was made and heard back in 2019; it's been a long case. There have been many no-shows, it's frustrating the applicant's inability to close the project, and three years is a long time.

CT - Comments from the building department, September 30, 2022, was the last inspection; nothing since then. A few issues need correction. Please see exhibit "A."

CT - I don't like pulling permits mid-project, especially because I think this project is close to completion. However, we have gone to at least two meetings without communication; at the last meeting, we had somebody show up, but in the prior July was, nobody. So, I want to be specific about the violations by reviewing the conditions, and if any board member believes the condition is not being met, please let me know. Please see Exhibit "B."

MM – Condition #1 some of the decking has been replaced, but it hasn't been painted yet; incomplete #2 uniform gutters; there are downspouts and are sitting in rocks holding them up. Incomplete #10, which is all exterior work to be completed by September 13, 2022; which definitely has not been met #14 Front porch and front walkway to be repaired, including paint, by April 30, 2022; has not been met

JB – Question, if we revoke the Special Permit tonight, which is a halfway completed project? What would the applicant have to do to get it completed? – CT – Will have to submit a new application.

Commissioner Barbadoro - If the applicant has their special permit revoked, they must come back and get a new special permit, or they can proceed by right as an exempted structure.

MM - Motion in the affirmative on ZBA-2019-13 under §181.3561 to **Approve the Review** as all **Conditions** have been met

JB – Motion Seconded

Vote 0 – 5 to **Approve the Review**
and therefore the Motion failed.

A second motion was made to Revoke the Special Permit.

MM - Motion in the affirmative on ZBA-2019-13 under §181.3561 to **Revoke the Special Permit** issued to the property owner Ruth Guzman and any other affiliates for violation of conditions.

JB – Motion Seconded

Vote 5 – 0 to **Revoke the Special Permit** for violation of conditions
(By roll call BG)

ZBA-2022-31 Yael Dario Recio 56 CULLEY ST 6:30PM

Continuance:

Special Permit under §181.313D12 and §181.94 of the Fitchburg Zoning Ordinance to open a motor vehicle body and paint shop located in the Neighborhood Business District at Map 33 Block 58 Lot A

The Petitioner and Ariel Araujo spoke on the petition.

CT – From the December 13 meeting, we had asked for one condition: the parking plan. – AA – Yes

CT – According to this plan, you could not put any parking spaces in front of the building. – AA – Right, because the sidewalks

CT – So, this leaves you with five. – AA – Yes, and because we leave the front empty where the dumpster is, to get better access for the truck and wouldn't stop the traffic.

CT - Do you know the total square footage of the building? – AA - 60 by 40

CT – And this is a Body Shop, not sales. – AA - Body Shop, not sales

CT – So, a parking requirement is two spaces per service Bay or, as otherwise determined by this board, how many service bays? - Two

CT - How many employees? AA - Only one

CT - Is there any person in the audience or virtual who wishes to speak on this application? – Seeing none

MM - Please give me the rough dimension for the five parking spaces. - AA - 18 by 9

CT - What are your intentions regarding the chain link fence? – AA - We are thinking of putting a fence door that slides.

CT - It would improve the neighborhood if it was not a chain link, at least at the front. Or if it was a chain link, it was faced with another material privacy slat, black or green.

MM - Motion on ZBA-2022-31 under §181.313D12 and §181.94 to **Approve the Special Permit** at 56 Culley Street for Yael Dario Recio with the following conditions:

1. **Property is to be used for motor vehicle body repair and painting only with two bays, including on the spray booth; no non-body auto repairs, sales, or other service.**
2. **Professional signage only - no temporary vinyl banners.**
3. **Not to be operated as a public or private nuisance.**
4. **No offensive fumes or odors, and no outside storage of vehicle parts.**
5. **The dumpster is to be located within the fenced area.**
6. **Any unregistered cars to remain on property no longer than two months.**
7. **Parking according to plan dated January 10, 2022, and submitted with this application.**
8. **Hours of operation 8:00 AM to 6:00 PM Monday through Friday and Saturday 8:00 AM to 4:00 PM.**

9. **Inspections from the building and fire department to be completed for the spray booth prior to Certificate of Occupancy.**
10. **The building's exterior is to be painted in a good and workmanlike fashion by May 31, 2023.**
11. **The existing fence is to be replaced with a chain link painted black with privacy slats that match by May 31, 2023.**
12. **Petitioner shall pave the parking area with asphalt within one year, by January 10, 2024**
13. **Sunset clause – Special Permit to expire/terminate upon the change or transfer of ownership of the business from Yael Dario Recio.**
14. **Review – June 13, 2023.**

JB – Motion Seconded

Vote 5 – 0 to Approve the Special Permit with conditions

(By roll call BG)

ZBA-2023-01

Tammy Prentiss

0 Minneapolis Ave

6:45PM

Appeal to Overrule the Building Commissioner's decision under §181.92 of the Fitchburg Zoning Ordinance to deny a permit to construct a single-family house on a 6,000 SF lot less than the minimum required pursuant to §181.416, located in the Residential A District at Map 202 Block 47 Lot 0

CT - I understand this to be only an appeal, not a request for a variance or special permit. – Atty. Kiritsy - That's correct

CT - In the proposal, you've submitted a survey plot plan that has a proposed building on it. You intend to meet all existing setbacks. – Atty. Kiritsy – Correct

The presentation was given by George Kiritsy (attorney) and Tammy Prentiss (property owner); the matter under appeal is whether this is a grandfathered property under chapter 40A, section 6. This is what I like to call a five and five property, where a lot existing prior to the enactment of zoning, which contains at least 50 feet in frontage and 5,000 square feet in area and is held in separate ownership from the abutting lots, is grandfathered as a buildable lot. At issue here is whether or not this property was held in common ownership, and a somewhat unique issue was during what happens during tax title because this area had a series of tax titles over the decades. As I explained in the narrative submitted with my application the lot should be grandfathered, see application exhibits for further review

The building commissioner denied the application in October, and we believe this parcel is privileged under the grandfathering language of Chapter 40A, §6. With my application, we submitted a lengthy narrative explaining our position. See application exhibits for further review.

To summarize, that Chapter 40a, §6, has a series of freezing provisions and a series of grandfathering provisions, particularly relying on provisions relative to pre-existing lots - as suggested as five and five lots - of vacant land which predate zoning, which are not held in common ownership, to be used for one or two family residential purposes, are exempt from changes or increases in the zoning relative to dimensional provisions if the lot has at least 5,000 square feet of area and 50 feet of frontage, to keep it as a buildable lot. The issues that have to be presented to claim your grandfathering protections are:

#1 Whether you are you applying for residential purposes, and Miss Prentiss is applying for the construction of a single-family home.

#2 Whether the lot has at least 5000 square feet of the area. This lot contains over 8,000 square feet, so we meet said criteria.

#3 Whether the lot has at least 50 feet of frontage, and this lot has a little over 53 feet of frontage.

The last criteria that needs to be met is no common ownership, which requires significant research to determine whether or not this property was owned or held in common ownership.

Miss Prentiss's property dates to the 1920s. However, this lot was created in the 1890s; it was conveyed out of common ownership in the early 1920s. And all these exhibits were submitted within the application for review and verification.

In 1985 the city took the property from Herman Leger as the identified owner; it was taxed dating all the way back to the 1950s. So, this property was a delinquent parcel for decades; in 1996, it was conveyed to Tammy's father, Mr. Savoy.

CT - Was there a recording of the delinquency? – Atty. Kiritsy - No

CT – So, the fact that there were unpaid taxes, I have no reason to doubt the city's taking in 85, but the city never acted on it prior? – Atty. Kiritsy - The city didn't act until 1985, so I suspect that the tax taking from 1955 might have been delinquent to 1925, but they just said from 1955 forward. There is a case from the Land Court, Gaudette v Burditt, and the Land Court said that two parcels held in tax title would not constitute a merger; that's what the law is, according to the Land Court judge.

80 Minneapolis's title goes through a series of private owners all the way up to the current owner in 2021; that whole chain of title is a completely unique chain for that property. It was conveyed in 1959 to Martino Jacobs and then Benjamin Builders.

The property that abuts the rear is on Columbia; that property also, at one point, ended into tax title and was probably the first lot in the 1890s subdivision. It comes from the commonly derived Charles Callahan owner that came out in 1900 prior to either of these other two lots on Minneapolis, so there's a collective deed Alice Wolsoncroft took the title in 1900. A collector's deed from 1934 goes to the land of low value with an affidavit that gets recorded. A collector's deed from 1950 from the City of Fitchburg to a Haskins who sold it in 1970. Stays in private ownership independent of 0 Minneapolis, the subject property.

CT - Is there any member of the public, present or virtual, who would like to comment on this petition - None

MM - I did visit the parcel, and there are two stakes in the ground. What do those represent? – Atty. Kiritsy - They had it surveyed

MM – So, I did some fuzzy math while I was there, it says 53 feet, but it appears to be between stakes about 37 feet; is there something I'm missing? – Atty. Kiritsy - I can't tell you what the stakes were, but I can tell you that this lot has frontage on a plan of 53 feet

MM - When they did the survey, did they mark out the border? – TP - We had it surveyed six months ago

MM - Can the surveyor come out and make it a little bit clearer? – TP - We haven't walked it; we hired the survey company to come and make sure

MM - Did they actually come out to view the property in person? - TP – Yes

CT – The survey plan does not indicate that the surveyor located all of the corner boundary pins. Are you willing to have boundary pins set? - TP - They were set, but not sure what happened with the one that is missing. We are willing to have them set again.

MM – Commissioner with a grandfathered law, what are the setback requirements? – Commissioner Barbadoro - The way I read 40A section 6 is that the setbacks in effect when the lot was last held in common ownership are applicable, so if the last time this lot was held in common ownership predated the Zoning Ordinance in its entirety, then there are no setbacks; all that is applicable the law requiring 5,000 square feet of area and 50 feet of frontage.

Commissioner Barbadoro – Where Monitor Street was created as a paper street at one point, and I believe it is now owned by the Prentisses? Is that going to be included in this lot area? – Atty Kiritsy - It is not

included in this lot area; it is not allowed under case law to combine the private way with your lot in order to claim sufficient area.

MM - I want to ensure that it is 50 feet of frontage, and the prior survey did not mark any bounds that could be located on it. The current one does mark that, except for the first one in the front left corner. So, I'd like to see that marked and have the opportunity to review that on a personal site visit before we move forward on a decision.

CT – I want to note and have you confirm you're not relying on the extra back portion of the property for meeting the lot area requirements. – Atty. Kiritsy - That's correct

CT – I would like to set a continuance date, to have your surveyor set the pin on that front left corner very explicitly and notify the building department when that is done so that the Board members may view the pin and frontage at their convenience. – Atty. Kiritsy – We can have that done and agree to continue to February 14th.

MM - Motion on ZBA-2023-01 under §181.92 to **Grant a Continuance to February 14th, 2023**

JB – Motion Seconded

Vote 5 – 0 to **Grant a Continuance to February 14th, 2023**

(By roll call BG)

ZBA-2023-02 Maitland Ishmael 479 WATER ST 7:00PM

Special Permit under §181.3332 and §181.3366 of the City of Fitchburg Code to reinstate a vacant/abandoned building and convert from one nonconforming use to another less detrimental nonconforming use as a duplex unit pursuant to §181.313, located in the Neighborhood Business District at Map 96 Block 5 Lot 0

The presentation was given by Maitland Ishmael (Owner), stating that: he is looking to make it a duplex 3-bedroom with 2-bathrooms on each side. Upgrade house to standard and put it back on the market. The property has parking spots in the front yard because the neighbors have a three-family and also park in the front. The distance between the building to the main road is a little bit farther. Originally, it had three parking spots at the front; I was recommended to give one more at the back. If I have four parking spaces, that will grant me the permit to make this a duplex.

CT – Are you aware that this was before the board and was denied in 2019? – MI - No

CT - Last time, somebody was looking to reinstate the four-family onto a three-family. Please see Exhibit "A."

CT - Did you buy the property recently? – MI – Yes, I did in November, and it was being sold as a four family

CT - Do you have a shared driveway with the next-door property? - Yes

CT – So, there's a 10-foot shared common right of way between you and the next property. – MI - Correct

CT - What kind of work do you think has to be done on the building? – MI - Everything needs to be done; the interior needs to be upgraded, including kitchens, bedrooms, electric, plumbing system, and fire alarm settings.

CT - Are there any structural issues with the property? - No

CT - Foundation needed to be reinforced, any of the beams need to be reinforced? – MI – No

CT - Is the roof in good condition? - Yes

CT - Windows – MI - Windows for sure; since it's been abandoned, some windows need to be replaced, and the doors all need to be replaced and reinforced

CT - What's the source of your funding for this project? - My lender

CT - To do the whole project? – MI - Yes, everything has been put on hold; waiting to get this approval and to be ready to start the job ASAP

CT - Have they reviewed and approved the scope of work that you're going to do and the budget for it? – MI – Yes, our budget is around 200,000 for the whole job

MM - Is that renovation cost or purchase and renovation? – MI – Project cost, our vision is around 285k. I added 15,000 more for everything.

CT - What is your plan if the board denies the permit? – MI – Will ruin my business plan as a business investment because I got so much money to put into the project

CT - Have you done any other renovation projects in the area? – MI - Not in Fitchburg, but in Lowell and Rhode Island

CT - Can you give us the two addresses? – MI - 93 Temple St., Lowell, 307 Pawtucket Blvd., Providence, 270 Killingly St., Providence.

EC – This is a difficult property because of its location in the small lot

JB – What is the plan for snow removal? – MI - We can push it back to the road or the side; there's a road at the corner of the land

JB – Isn't going to be enough room.

EC - How long do you think it will take you to do something like that? – MI - Four to five months

EC - Have you put any thought or design into making it a single-family home? - If I make that a single family, I'm going to lose a lot of money.

EC - My only concern is tight parking and putting up a spot in the back. Are you planning on using the right of way to get back? – MI - Want to get a curb cut to go to Burnett

EC - Have you talked to DPW if they'll let you do that? – MI – No

EC - On Burnett is a cliff, and the rear is probably 15 feet; it goes up. I know the DPW does not always do curb cuts, so they might not allow it. So, then you'd be left with three spots for the two units

MM - I'd be willing to offer a continuance to revisit the property and look at the site with regards to parking in the rear; it's a small lot with no green space, a place for snow storage, and the primary reason for zoning is to look at congestion in the streets and provide adequate housing

MI – If this goes back to single-family still going to be the same parking problem, you have to back off. –

CT - I'd disagree with you because you would need two spaces if it was a single-family. Which probably, if you use the common driveway, could be in the back.

CT - Allowing this to proceed may mean you need to put some more time and money into this project. There's no guarantee the board would vote in your favor, so if we investigated this further, you would need the following items at the next meeting:

1. **A plan for snow removal from onsite parking or alternate parking arrangements.**
2. **A scope of work to be performed with an itemized budget addressing each item in the scope of work.**
3. **Proof of funding showing that the applicant can meet that budget.**
4. **A site visit by Board members separately, including entry to the interior, is to be scheduled prior to the next meeting to understand the scope of renovation needs.**
5. **The projected timeline to completion of the project, which right now is four to five months from the beginning of work.**

If you decide to change to a single family, let the building department know what you're going to do. Submitting any updated plan or additional information ahead of time so the board can view it before March 14 would be appreciated.

MM - Motion on ZBA-2023-02 under §181.3332 to **Grant a Continuance** on the petition to **March 14, 2023**, under mutual agreement, dated January 10, 2023.

JB – Motion Seconded

Vote 5 – 0 to **Continue to March 14, 2023**

(By roll call BG)

ZBA-2022-35

JoAnne Hamberg-Magum

1341 RINDGE RD

7:15PM

Continuance:

Appeal to Overrule the Building Commissioner’s Cease and Desist Order under §181.91 regarding the unlawful expansion of a non-conforming mobile home park requiring a special permit under §181.333, located in the Rural Residential District at Map 69R Block 8 Lot 0.

CT – The petitioner has requested a continuance.

MM – Motion on ZBA-2022-35 for JoAnne Hamberg-Magum on 1341 Rindge Rd. to **Continue** the hearing to **February 14, 2023**.

JB – Motion Seconded.

VOTE: 5-0 to **GRANT** a Continuance to **February 14, 2023**

(By rollcall BG)

ZBA-2022-36

JoAnne Hamberg-Magum

1341 RINDGE RD

7:30PM

Continuance:

Appeal to Overrule the Building Commissioner’s Cease and Desist Order under §181.91 relative to Earth Removal use requiring a special permit at the mobile home park located in the Rural Residential District at Map 69R Block 8 Lot 0.

CT – The petitioner has requested a continuance.

MM – Motion on ZBA-2022-36 for JoAnne Hamberg-Magum on 1341 Rindge Rd. to **Continue** the hearing to **February 14, 2023**.

JB – Motion Seconded.

VOTE: 5-0 to **GRANT** a Continuance to **February 14, 2023**

(By rollcall BG)

7. MISCELLANEOUS

● Election of Officers

MM - Nominate Christine Tree to continue as the Chair for another year

JB – Motion Seconded

Vote 4 – 0 to Nominate Christine Tree as a Chair

(By roll call BG)

CT – Nominate Michael McLaughlin as a Vice-Chair

JB – Motion Seconded

Vote 4 – 0 to Nominate Michael McLaughlin as a Vice-Chair

(By roll call BG)

CT - Nominate Mr. Joseph Byrne to serve as our Clerk

MM – Motion Seconded

Vote 4 – 0 to Nominate Joseph Byrne as a Clerk

(By roll call BG)

8. ADJOURNMENT