

Sep 12 2023 11:34 am



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

MEETING MINUTES – THURSDAY JULY 13, 2023
Fitchburg City Hall, 718 Main Street

1. **Call to Order** Christine Tree **PLEDGE OF ALLEGIANCE** ALL
2. **Communications** Christine Tree
3. **MEMBERS ATTENDANCE:** Christine Tree (Chair), Michael McLaughlin (Vice-Chair), Brian Gallagher, Eric Chartrand & James Reynolds
4. **ALSO, IN ATTENDANCE:** Vincent Pusateri II (City Solicitor), Donna Pawlak (Assistant City Solicitor) & Mark Barbadoro (City Building Commissioner)
5. **Hearings:** First case call at 6:05 PM

CASE No.	APPLICANT	PROPERTY	TIME
ZBA-2022-17	Jeffrey Summers	69 HIGH ST	6:00PM
<i>Review of the Special Permit under §181.94 & §181.77 of the Fitchburg Zoning Code to operate a sober house pursuant to §181.313A5 within a reasonable accommodation in accordance under the Fair Housing Act 42 U.S.C. 3602 located in the Residential C District Map 19 Block 22 Lot 0</i>			

Meeting open held until 6:05 PM waiting for Mr. Summers. Building was checked, exterior and interior doors were open, and Legislative Building checked. Mr. Summers was not present for the Review Hearing.

CT - Special Permit was granted on July 12th, 2022, we did have a later filing date of the decisions. The decision allowed the special permit and put in certain provisions or conditions, which had to be met in order to retain the special permit.

The applicant is not here, no other person that I can see that is a member of the public is here. We do have city officials here and of course a full Board.

CT - I will review the conditions, and I would like to take any City Departments input, on whether the conditions have been met. In addition, any Board observations, and taken an action at the end.

First condition, occupancy is limited to 12 persons or one person per bedroom with more to be created, if proper permits are pulled to construct new bedrooms.

The kitchen to be upgraded to commercial standards. Renovation to be completed within 12-months.

Applicant’s outstanding fines to be paid within 12-months

Applicant shall reduce the number of occupants to no more than 12 persons within 12 months, so, some time was allowed.

Review date July 13th, 2023.

Building, Health and Fire inspections to be completed annually, and the sunset clause.

CT - Mr. Commissioner, do you have any input, on whether any of those conditions have been met? – Commissioner Barbadoro - I have no knowledge how it's going inside building, but in connection with the number of people Mr. Summers was supposed to give us notices on the

eviction of the people he was getting removed. He had used an argument in court why he couldn't remove people, and we haven't received any copies and he hasn't applied for a building permit to upgrade the kitchen. He hasn't applied for a building permit to add more bedrooms to the space. He doesn't have a valid Certificate of Inspection, and hasn't re-applied to obtain one. Last time he applied the City didn't issue it, because the exterior stairs are unsafe and he has exceeded the time frame to repair them.

CT – To your knowledge, since the last meeting has he applied for any permits – Commissioner – No, he hasn't.

CT - To your knowledge, has he paid the fines that were instituted by your department – Commissioner – No, he paid \$300.00 at the time he applied for the Special Permit, and no payment has been received after. He created a self-imposed with payments schedule that he didn't follow.

CT - Do you have any specific knowledge of health and fire inspections, or whether those inspections have occurred? – Commissioner – A search shows that the Health Department, indicates that they cannot approve their inspection, until they get a lodging house license, and fix the Building Code deficiencies.

CT – Received a Board of Health comment - Which says, violations of state sanitary code remains.

CT – Atty. Pawlak do you have anything to offer? DP – Yes, the Zoning Board should know that we have a judgment of contempt against Mr. Summers for this property, in which he was ordered to reduce the occupants to 12. As well, what Mark was referring to, in fact that he was supposed to have served all notices to quit, which were to be served on the city within seven days of filing and the docket numbers for any summary process actions were to be provided to the city; they were not. The court order required that the appropriate licenses be obtained and he doesn't have a lodging house license, at this point. He was also ordered to pay \$11,650 in fines to the city, within 10 days of the order and that is also passed. He was ordered to pay \$7,125 in attorney fees to the city, and that has long since passed and we haven't received a payment. He is continuing to be fined by the court, and I would also like to report that anytime we request an inspection, either from the Building Department, or the Board of Health to get in; there it's always an issue. This building should be inspected since the past year, by the building and board of health department. We had a court order to give a 48-hours of notice, but there is always an issue. By the fact, this is a required regular inspection for anybody operating a lodging house, and when we do go there, he doesn't want or allow us to go in certain areas. He doesn't want or allow them talking to anybody.

CT – Atty. Pusateri, anything that you would like to add? – Atty. Pusateri – Mr. Summers appealed the Board's decision, and your law department dutifully lost track of it. Apparently it went to default by error, and the Court fixed itself as it is not supposed to be defaulting zoning cases. So, what happened was that you folks were receiving notices directly from the court, obviously assuming that we were seeing those too and taking care of it; I apologize for my error on that. We served a Motion to Dismiss on Mr. Summers yesterday. It will get filed in accordance with the rules, in the ordinary course within 10 or 15 days the court will take a look at that. The Motion to Dismiss is clear, he failed to file with the City Clerk's office within 20-days appeal period.

CT – So, a resolution on that Motion within about two months – Atty. Pusateri - I would expect that, so what you would do with your hearing tonight, whether you would hold any decision to see what happens here. Assuming it gets dismissed and the only thing standing is your decision, and then you could revoke or not revoke it.

CT – As one Board member, I think it would be premature to revoke it for missing this meeting. Looking at the equal treatment of other permit holders, we've had people who have missed multiple meetings and has taken us more than one meeting to revoke the permit.

EC - I drove by earlier today and didn't see anything interesting, other than the toilets on the back of the egress.

BG - Same as Mr. Chartrand's observations

MM – Yes, we typically do in some instances with a no show grant a continuance. I look at this case differently, because there's gross negligence, from the statements the Court, Building and the Health department. Risk of life and limb with regards to who's living in the property, who has no understanding of the condition of the property and safety. I am in favor revoking the Special permit, it's a serious situation.

CT - We have a situation where we have a substantial amount of nonpaid funds to the city, both before the special permit occurred with the court proceedings, that \$19,000, plus another \$8,000 in Building Department fines making the total about \$26,000. I share the concern about safety, but I would like to be clear of any concern with the court proceeding before we look at the revocation of the special permit.

MM - Somewhere in the City ordinance states that the Board, City Council, etc. should not be issuing permits, and I don't know if it's outstanding taxes, or outstanding fees. However, this is a little disconcerting hearing compounding issues, that have been prolonged prior to the application and as everybody in this room can visually see, nothing has been done or accomplished. There's not been a good faith effort by the applicant, so we should look to a resolution.

CT - The next meeting to possibly address this would be September 12th, and the court would hopefully be able to rule on the motion to dismiss by that point in time. So, why don't we put this to a vote.

MM - Motion in the affirmative on ZBA-2022-17 to have a further discuss on the Review

JR – Motion Seconded

Vote 3 – 2 to have a further discuss on the Review

A second motion was made for the continuance on the Review to September 12, 2023

EC - Motion in the affirmative ZBA-2022-17 under §181.94 / §181.77 & §181.313A5 to **Grant a Continuance on the Review to September 12, 2023**

BG – Motion Seconded

Vote 4 – 1 to **Grant a Continuance on the Review to September 12, 2023**
(MM)

6. **“EXECUTIVE SESSION:** To consider a Motion to enter Executive Session for the purpose of discussing strategy with respect to the litigation regarding collected pending cases of Magurn v. Fitchburg ZBA, and to have the Chair declare that an open meeting may have a detrimental effect on the litigating position of the Board, and to reconvene in Open Session.”

JR – Motion to enter Executive session for the purpose of discussing the strategy with respect to the litigation regarding collected pending cases and to have the Chair declare that an open meeting may have a detrimental effect on the litigating position of the Board, and to reconvene in Open Session.

MM – Motion Seconded

By Roll Call Vote unanimously voted (Tree, McLaughlin, Gallagher, Chartrand, Reynolds)
5 – 0 to enter into Executive session

CT – So, I do declare as is required that an open meeting might have a detrimental effect, on the litigating position of the board regarding said case. We are now moved into executive session closed to the public. Open session will not resume hereafter except to close the meeting.

Board enters executive session.

Board concludes the executive session and reenters into open session.

7. **ADJOURNMENT**

JR - Motion to adjourn

Vote 5 – 0 to Adjourn.