



ZONING Board of APPEALS
 166 Boulder Drive
 Fitchburg, MA 01420

MEETING MINUTES – March 12, 2019
SENIOR CENTER, 14 WALLACE AVE

- | | | | |
|-------------------|----|----------------------|---------------------|
| 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-2017-15	Andrew Mercurio	38 OMENA PL	7:00PM
<i>Review of a Special Permit Conditions under §181.3561 reinstating an abandoned/vacant building as a 2-family structure located in the Residential C District at 10/107/0</i>			

Presentation given by Andrew Mercurio stating that project almost coming to the end and we are looking on April 1st for a possible to be ready for rent, got all the permitting sign off on, ready to get the final walk through from the building department. At this time, we are doing some final touch up, the whole place has been painted. It's been a long process than doesn't feels is real. We have put a new roof, new chimney and from the inside kitchens, bathrooms had been updated, installed new appliance to each unit.

LM – How about the trash that got dump around the property? AM – Lately we haven't get anything big, only small stuff no big items. LM – Oh, that's good

Those seeking Information: None Those in Support: None Those in Opposition: None

MM – Those boarded-up windows on the basement are they going be change or stay the way they are? AM – They are going to remain the way they are just for security purpose, there is not ventilation issue down there so is for security - MM – Would you able to frame them or block them so they would look nicer and doesn't make the property look like is abandoned? AM – Yeah, he could try to work on something, like scraping and pointing and some screen paint on the whole foundation too, but its has been too cold, so in the future when he do the basement he could also take care to those windows block them or do something else - MM – Another thing that he is concern about is that the house is right at the sidewalk, you step out of the property onto sidewalk, and the sidewalk is deplorable. This is a safety issue, what is the plan on that? AM – He been talking to DPW about that, but it's been too cold to do anything, not that he wanted to complaint about, but since is part of city property he wanted to know what it can be done. However, they put him on the plan agenda for spring, but we were talking about either fixing and putting 3point concrete or doing asphalt – MM – So, are they giving you indication of that they are going to take care of it? AM – Well, it's kind of open on the air, they kind of getting around with it, but either them or he would have to fix it. But is something that he wants to do, because after it will be just to maintaining.

LM – Well, the Board can try to send a note to Leny Lasko and let him know that petitioner has done a lot of work of the property and it will be nice if they can take care off.

JM – Any natural light in the basement? - AM – No, really and is not necessary since that tenant won't have access to that area – JM - Anything that its storage down there? AM – Nope, anything beside the 1st floor furnish, the water and the landlord brake panel other than that nothing else, it's strictly just for him going in there.

JS – On her opinion if he can find something more attractive for those boarded out windows to look better will be neat – AM – Maybe some kind of basement up style windows

MM – At this meeting the petitioner was supposed to bring a copy of the recorded deed in regards of the auxiliary lot that is not going to be use for anything other than parking – AM – Sorry, completely forgot to bring that

LM – But do you have that? It was recorded? AM – He believe is recorded, it was a process that you recorded and them is a waiting period – LM – No, once you recorded its happens instantaneously – AM – Oh, when he first when there they told me that it will be couple days to get a hard copy – LM – Oh, that's could be a possibility if you do it with an attorney – LM – So,

what we would recommend is to put you on the agenda for a 3 months review, but at the mean time if you could bring that document to the Building Department and can take you from the schedule. How it's that sounds? AM – Okay, sounds fair
MM – We just want to show-up if for any reason you can't obtained, but if you bring it to the zoning secretary you will be all-set
– AM – Okay, he doesn't see why not

MM – Motion on ZBA-2017-15 under §181.3561 to Approve the Review with the following conditions:

- 1. Review in 3 months – June 11, 2019**
- 2. Basement windows are to be sterically please and keeping with the property**
- 3. At that time petitioner to submit a copy of recorded deed for the auxiliary lot not to be used other than as per plan submitted (This to be Recorded)**

JS – Motion Seconded

Vote 4 – 0 to **Approved the Review**

ZBA-2018-37 **Craig Twohey** **70-72 FALULAH ST** **7:10PM**
Review of a Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling located in the Residential C District at 141/28/0

Presentation given by Craig Twohey and Kenneth Godfrey stating that project is coming great, every single day we have 3 – 7 people working in there, so we really are on schedule. Progress is going forward we been working on plumber, electrician and carpenters, so we are thinking that it will be complete by the end of April. But some of the conditions that were putting on we can't complete them till the weather permitted, such landscaping, parking, side walk and decks. In addition, the basement was a little roff, partial of the basement didn't have floor, we clean it looks neat and now it can be installing a washer and dryer for the tenants. We want to address it a little be more to be a useable space

Those seeking Information: None Those in Support: None Those in Opposition: None

LM – Well, its sounds like you may would need some more time to come back them – KG – We could come back next month, he thinks that they are going to be ready -LM – Do you think next month? – KG – We been working for about three weeks and once the weather gets better thinking on bring some more workers to speed the process – LM – Okay – CT – Well, he doesn't think that the parking will be ready complete – LM – So, we could put you on the May agenda them – KG – Okay.

MM – You are going to list the property right – KG – The property is under an agreement, already has a buyer, so we don't think is going into the market

LM – At this point we all are agreeing to have you come back on May 14, 2019 – KG – May 14 it is – LM – It's that okay – KG – Yeah, and if we have complete finish before May 14 and have all permit sign off, so what happened them? LM – Them you just go the Building Department – KG - Okay

MM – Motion on ZBA-2018-37 under §181.3561 to Approved the Review with the following conditions:

- 1. All exterior deck, porches and stairs to be stained and painted**
- 2. Front concrete stairs and walkway and on the right side to be replaced**
- 3. Garage side and overhead doors to be replaced**
- 4. Certified parking plan to be submitted at March review**
- 5. Property not to be occupied, sold, or transferred prior to all conditions being met**
- 6. Review to May 14, 2019**

JS – Motion Seconded

Vote 4 – 0 to **Approved the Review**

ZBA-2019-01 **Kenneth Godfrey** **220-222 ALBEE ST** **7:20PM**
Continuance:
Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling with stacked parking spaces located in the Residential A-2 District at 121/11/0

Presentation given by Kenneth Godfrey stating that couple Board Members came to the property and did a walk through that was great. His engineer had designed two different plan options for parking, they both liable and they both are doable. We would like to work with the Board to have one of these approve. His preference is plan "A" which is the pull in parking, rather than plan "B" where the cars going to the sides and maybe disturbing some of the neighbors. And to be honest with you all plan "A" will be the most economic plan, so he would like to hear the Board opinion

LM – We are only 4 members tonight and you would need to have an unanimous vote would you like to move forward? KG – Yes

JM – So, how about the pool? KG – The pool is going –JM – Okay

LM – Is the carport going to be useable? KG - Yes, carport planning to be useable.

Those seeking Information: None

Those in Support: None

Those in Opposition: None

JS – So, that is a very busy road and drivers go very fast speed on this area, if you are going to create the pulling in parking makes the whole frontage apartments fall. After visiting the location she dislike the whole parking thing, so she is not agree on either one of those parking plans and on addition to that the zone is very tight. She doesn't have a solution, she doesn't like the very tight frontage either – KG – He understand your concern, but we have to do something and every single property on that street are that way - JS - Well, but they are single family dwelling – KG – He understand, but he doesn't have a lot of options either– JS –Well, this is the only 3-family in the single homes neighborhood and reinstate it as a 3-family she thinks is too much for the neighborhood – KG – So, do you will be more on favor with parking plan “B” will work better? JS – Yeah, I get that and it may work better – KG – He is willing to do whatever the Board wants, all he seeking is to get this project done – JS – This is only her opinion and she also would like to see what the other members opinion are, but she thinks that would be too tight thinking of 6 cars and possible 12 people leaving at there between all single family houses its seeing too much

JM – He wasn't there at the time the other members went there – KG – Yeah, he understands and either plan works so he will do whichever

MM – On his opinion it's pretty apparent that this was a single family at some point. What's concern him is the minimum of investment that is going to be putting on. In the by-laws if you have met the parking and if in a Residential neighborhood and is a 3-family, you may rehabilitate a multifamily as of matters of right, if you do a 50% of renovation. After visiting and listening he doesn't get the impression of that is what he is planning to do - KG – He doesn't think that the property needs a 50% renovation – MM – That's okay. But the whole place it seeing a mess to him, and that's his personal view point. However as a Board Member he has to look what's work better and benefit for the neighborhood and the City safer. He didn't have the opportunity and he didn't know if the petitioner had the opportunity see if this after overtime it was converted from a single family to a 3-family dwelling – KG – Well, in town records is showing as 3-family – MM – Okay, but are you looking the taxes, the accessor sheet of are you looking where the permits were pull – KG – Accessor card, not sure about those building records, but this it could be 100 years ago – MM – It could be 100 or it could be 20 he doesn't know – KG – He knows that the Building Department had been there, had inspected the property and the Deed it says is a three family – MM – He won't discount that, but this is a really though one property and he doesn't really knows how to get there. However he would like to see that renovation done correctly – KG – And you right its was a single family and it got converted into a different apartments, but we are invested 70k into renovations is not that we are not doing much – MM –Again we are looking the renovation what should be done and what is going to benefit to the City and too the neighborhood, and honestly these abandonments are an opportunities for the City to cut it right from a wrong it was done on the back of time, and we understand that is was use as a 3-family at one point, but that doesn't meant that's is the best for the City at this point of time – KG – He thinks that after a new siding and new windows put on, it will be a significant improvement, it's going to look good

LM – She thinks that it will be significant improvement to the property, however she is listening to them because they are the ones who had the opportunity to go in the building

JS – Well units are too small, and the backing-up parking isn't a great benefit to the tenants, so a combination of these she would like to see this as a two-family – KG – Turn it into a two-family?

JM – Yeah, that will be more sensible – KG - That's significantly will devalue the property enormously probably by 100k

LM – We don't know about that – KG – Well, that's dropping about \$1300.00 of monthly income – LM – That's the business part of it

JS – How is it that they will pay for rent? -KG - \$1,300.00 to \$1,400.00 a month

LM – It could be converted into 2-family easily? KG – Well you would have a monster apartment, combine two of two units it will be a 6-7 bedrooms apartment

MM – Or maybe have the 1st and 2nd floor apartment and convert the 3rd floor into an attic as it was. He is not looking favorable as a 3-family – KG – How or what can he do to retain it as a 3-family? give us some options and ideas

LM – Does the Board thinks is because of the 3-family or its because of the parking?

LM – Well, he thinks is a combination of both the units and parking, and this is base on his visit to the property

JS – At that neighborhood all are single-family and this is the only one 3-family its does fit there on her own opinion. She feels it should be a single family, but she is willing to be on favor for a two-family – KG – That's a waste of space converting the third unit as attic when it can be a useable space

LM – Well it use to be like that at some point – KG – Well, but it is an apartment right now, its all set-up with bathroom and kitchen, smoke detectors

MM – We are here to make decision based on the by-law and rules and regulations, and best interest to the City. We are not trying to be hard, but we are here sitting saying what is best for the City – KG – He understand all what you are saying, but there still is going be a 6-7 bedroom apartment – MM - If he going to look on favor for 2-family is not going to be just because of all these rooms, are going to be bedrooms. It’s above of just stuffing bunch of people at a house, it’s about what’s doing right for the neighborhood and for the property. So, if he will approve a two-family the third floor is going to be the attic, is going to be storage like every other house – KG – He really would like to keep it as a 3-family apartment building even if he has to move the parking to the back a little bit, but taking that third unit away from me, it’s just too much. The house it will come back to the market – CT – What’s there were permits pull and it was legally converted, would he have the keep it as a three by right? – MM – Under the guidelines for abandoned property, he believes you would have the right if it a conforming use in that district, and you would have to meet all criteria. You would have to meet parking and it must be conforming to that zoning district, and you would have to do a 50% renovation, he believes that they can do it as the matter of right – KG – Now do we know if a 3-family is allowed on that district? – MM – Probably it is, that is a conversation you can have with the Building Commissioner. We are just looking on the options were presented to us

LM – Sorry, you had heard what’s happened here and we are only 4 members board – KG – Well, he probably doesn’t want to go through it tonight, he probably would want to do some more due diligent with the Building Department – LM – So, you are asking for a continuance? – KG – Yes

MM – And if you want to come up with alternative parking plan – KG – We already did

LM – On her opinion if the pool and the deck got remove, maybe they can create some parking spots by that area – CT – How about if we are able to improve those bathrooms, and make more spaces

MM- Everything helps, but we can’t make a guarantee

MM – Motion on ZBA-2019-01 under §181.3561 to Approved the Continuance to April 9, 2019

JS – Motion Seconded

Vote 4 – 0 to **Approved the Continuance**

ZBA-2017-42 Aniwaer Mireguli 24 VICTOR ST 7:30PM
Review of a Special Permit under §181.3561 to reinstate a vacant/abandoned building as a single-family dwelling located in the Residential B District at 3/50/0

At this time Petitioner had requested and sign an extension of time agreement to April 9, 2019. So she can have some additional time to complete the plumbing matters and obtain the Building Permit sign off.

Those seeking Information: None Those in Support: None Those in Opposition: None

Hearing Closed: Deliberations:

LM – Board Members were agreed that, since that this is the first time that the petitioner has requested an extension they would like to give the petitioner an opportunity to come back on April 9, 2019

MM – Motion on ZBA-2017-42 under §181.3561 to Grant the continuance to April 9, 2019

JS – Motion Seconded

Vote 4 – 0 to **Grant the Continuance**

ZBA-2019-04 Eric Lahti/Ryan Franczek & Eric Bilton 787, 829&837 NEW WEST TOWNSEND RD 7:40PM
Variance under §181.96 for the use of a common driveway to access 3 houses located in the Rural Residential District at S31/15/0,S31/15/2&S31/15/3

Presentation given by Eric Lahti, Melanie Lahti and Eric Bilton stating that these are all family building they own single family dwelling. And they want to build the third house on the same piece of property which is 27 acres total, and they want be on the back. So, they went to see the City Conservation Commissioner talk to him and they want us to use the existing road that we currently have, they want us to curb the wetlands. There is no impact to wetland at that point. So, there’s a permit to cross and use the existing road improve it and just to use one road so we don’t have to cross the wetland on three places. Planning Board had already approved it, but because of the extension to access the third house also needs Zoning Board approvals. This will

improve the existing Road and wont impact the neighborhood. We also had installed dry hydrant for Fire Prevention; Conservation Board approves that near the pond.

LM – So, moving ahead this evening we are only four members Board which means that you are going to need unanimous vote. Would you like to move forward? EL - Yes

Those seeking Information: None

Those in Support: None

Those in Opposition: None

MM – So, you got approval from conservation commissioner? – EL – Yes – MMA – And from planning board for what? – EL – For subdivision – MM – Them you only here for us, because planning approves 2 houses services, but because of the third house it come to come to us? EL – Correct – MM – Okay

JS – What are you going to made of – EL – We are going to gravel it and eventually pave it – JS – She just wondered if conservation would allow them to pave it – EL – No, conservation had said that he could pave it, and it’s on one of the conditions -JS – Oh, okay

JM – What is the distance? – EL- From the road is about 1,600 long

AZ – Just going through the other conditions for common drive and trying to verify if it meets all of them, and it is seeing that this petition does. The intersection with the road is much more than requires, minimum width of 12FT and it said it’s going to have 25 feet wide. Is the whole way being 25 all the way to the third house connection? -EL – Yes, the whole is 25 to where the driveway break-up and them we will move 12 feet – AZ – Okay – EL – Conservation wants us to move 12 feet ahead -AZ – Yeah, that’s required and it’s going to be circuits with a minimum of 4 inches of gravel – EL – Yes – AZ – Good sounds like it met what’s required from the City Ordinance

MM – On his opinion the Board should add as a condition that conditions for Planning must be met

AZ – Good, to him it’s seeing that the petition met all specific criteria for the Variance, and doesn’t general affect the District

Motion on ZBA-2019-04 under §181.96 to Grant the Variance with the following conditions:

1. **To permit access three house rather than two**
2. **All conditions of the Conservation Commission adopted as conditions like wise of the Zoning Board**

JS – Motion Seconded

Vote 5 – 0 to **Grant the Variance**

ZBA-2019-05 **Via Y Rada Investments, LLC** **180 RIVER ST** **8:00PM**
Special Permit under §181.3561 to reinstate a vacant/abandoned building as a single-family dwelling located in the Commercial & Automotive District at 27/17/0

Presentation given by John Barrett, Romulo Viayrada and Rick Healey stating that they have two request for the Board tonight. The application was an appeal the Building Commissioner’s decision relative to abandonment. This is the primary issue he would like to address tonight, but our position it is that the application is for a special permit. His client purchase the property this pass January 2019, he obtained as a single family home that he was going to renovate. He file a Form of Intent and everything seeing was going okay, but at some point the Building Inspector Chartrand felt that this property abandon. It is seeing that he based his determination on the fact that the Bank had foreclosure the property back on July 2018. The property had been living till July 2018, and the electricity had been maintained. So, petitioner was stress because his project now had to wait. He sends a letter to the Commissioner asking to reconsider his letter interpretation, but he didn’t have enough time for to fully evaluate it before we must file the appeal. He respectively will submit that foreclosure by a bank it doesn’t constitute abandonment of a use. If that was the case you would have banks that they don’t want to lend money to anyone who has a property it has a preexisting nature, because if for example has foreclosure on to collect their money that will end-up abandonment the use. And that’s the reason they lend the money for, so, this it will create a problem. At one point of time the use of term abandonment and abandonment has it a term of the law and it required the intent of the owner or the occupant to abandon the use, and the intent it has demonstrates by a general objective thing that they do. One clear example will be: if you have this property and a person converted into an office and them the person said no, we want to bring it back into a single family. That will constitute the momentary instant where it has been abandoned because the intent is there. On that basic he would ask to the Board to overrule the Building Commissioner decision that this property was abandoned, and he thinks that is something the Board surely has the ability and right to do. We also have a letter from a neighbor of 178 River Street stating the people that were living at 180 River Street until July 2018 and the property always was on good shape clean and always was on good taken care off. Moving into our secondary issue we think that this property is livable as per special permit there is adequate parking. When his client purchased the property, he had the mortgage plot plant and that it was submitted with the application.

He decides to get a surveyor certified and that indicates that in fact the railroad property cut through his house, So, he spoke with the lawyer who represented his client at that time it was purchase and he has been in contact with the railroad representative. So, this is not part of an old of rail siding, in fact if you look the plan closely you can see that the railroad already sold part of it back on 1996 to Wayne Roy Corporation. So, that's the line of the siding, so currently there is a piece of land on the back that is basically vacant. The lawyer is on the process on making an offer unfortunately we really didn't have time to procure at this point. This it will restore the original area and will add about 40 feet to the back of the lot. However even without that piece of land still have adequate parking for a single family and it conform accordingly with the by-law. There is any negative impact to the neighborhood, so it will a great improvement for the neighborhood and benefit to the City. Also, there is another possibility that there is another piece of land own by City and it maybe available under the side yard property program that it will allow possibly if he can acquired it to give him more room for his property for some green space and to making it more conforming.

LM – So, you said you purchased the property on January of this year, when was on the market? – RH – it was on the market as of August 21, 2018

Those seeking Information: None

Those in Support: None

Those in Opposition: None

Mary Jo Bohart from Community Development and just some information about the parcel next door which she believes is 190 River and it was advertise about a week ago under the City yard B, and because of the Commercial & Automotive zone there maybe few patties maybe interested – LM – Who they may see on that piece of land? Mary Jo- the information is on the website and she believes that there are few more weeks if they are interested.

MM – Okay we have 2 things going on and we will have to vote to overrule the Commissioner decision which he is not here toning, and secondary the special permit on the 3566 – JB – Right – So, couple questions, is there a easement on this piece of property that allow those people next door at 178 River to pass by – JB – No, there is not – MM – So, what's going happens after the sale? – RV – He spoke with those people and they are allowed to pass by at the other side, so whoever is going to buy it he addresses that with the new owner – MM – So, you are going flip it? – RV – Yeah – MM – So, he has a concert about that, his preference will be to not have an easement on that property and he will like to have a fence put up. He visited the property and he think it will have a negative impact on a buyer, so before that happens let's do it right – RV – Yes, he will do it right – MM – There is not right to pass – RH – There is nothing on the deed to indicates such a thing

AZ – His question for Atty. Barrett on the abandonment issue what rule on the abandonment essentially you are asking us to overrule, he interpreted this on two different ways. One been that as long as the bank has a mortgage on it and is secure after foreclosure it not will be abandoned. The other one he interpreted as that it will not be abandoned because of the owner took care of it up to the time of foreclosure – Atty. Barrett – Many things on law are very complicated, but he suggest that the fact that a bank foreclosure a property is not a case of the abandon, because all it is to intent to collect their money that they lend and that now that person is not paying. And he thinks if you did that as intent of abandon it can really has some serious consequences for the lenders – AZ – So, you think that the intent of the bank that should control, not the intent of the property owner – Atty. Barrett - Lets said property owner takes off and abandon it, he is abandoned it, but he is not abandoned the use. Again, this is a real problem if a person who is under water and walk away from it, maybe if the bank doesn't do anything, as we have seeing many cases where the bank doesn't do anything for years. So that will be and indication that the bank had also abandoned, but if the pursuer closure right as soon they foreclose, they pursuer right after that to mark the property to sell it – AZ – So, if we overrule the Building Commissioner then we weren't granting any permit or anything so we couldn't put conditions on it, so just to confirm you and your client understand that if we were to rule the Commissioner abandonment you will have one single family by right. You still on the situation where you have to either purchase or torn it down the stuff is on there – Atty. Barrett – Right, that doesn't change – AZ – His last question is that you mention that even if you couldn't get the railroad land on the back of the building you still have two conforming parking spots, where will be those plan? – RV – On the back is about 7 feet addition which is coming down, and there will open some space for a tended parking – AZ – Okay, he is good

LM – Her only concert is that they been doing and practicing the same rule from the last year and a half, that at the minute a property is foreclosure on is considered abandoned. So, she feels that because that's what they been practicing and what we been told that we should be doing, she doesn't know anything other than that. So, she thinks that deeming an abandon is not a problem because we all can get to same point anyway – Atty. Barrett – Well he will urge for you to reconsidered that – LM – Okay, help me get there them – Atty. Barrett – Well it maybe a practice that has been implement by the Building Commissioner under the reading, because he provided a copy to his client and he thinks that he is reading that incorrectly. At this point whichever way we get there it doesn't matter to his client if the Board overrule the Commissioner or the Special Permit – LM – She thinks that there is a lot of people out there that will be asking for some kind of relief – Atty. Barrett – That's why he is thinking because you must get a lot request of relief every time a bank foreclose – LM – She is going to be seeking some more detail information from the City Solicitor about this, she thinks that Atty. Barrett made a great case for that

MM – Great presentation you brought up some valid point and we look every case individually base on the information and is very complex. He is a simple person and look it up and say if the building is destroy and nobody apparently been in it for several years whether the bank had intentions or not they didn't take care of it. So, he thinks that they would have to look these case by case, he think what they need to do is to make those banks more reliable to take care the properties for when they are vacant or empty, because they are getting destroy

LM – Reads a respond from Board of Health and a violation to the prior ownership back on May for a poor maintenance on property

Hearing Closed:

Deliberations:

AZ- So, he had a question for the other members: He didn't have the opportunity to visit the property and maybe some of you did, but for what he remember there were some broken windows. Are those still broken? –LM – Let's assume that they are, he is renovating the whole entire building – AZ – Where he's struggling on, based on Attn. Barrett argument that we should be reconsidering the definition of abandonment in pieces in general. In this case it's seeing that those violations existing just few months prior of the foreclosure and the bank never fix them, that's drives him as of a form of abandonment of use at least whether if they were marketing it or not. Is not really the point, if they were keep it habitable then they were not abandoned the use of the habitation. As to this particular scenario he thinks there is clear evidence of intent to abandon essentially from the owners, to abandon the use again, not to be abandoned the structure obviously they still intent to own it, and then to sell it; but the use obviously they didn't want to keep it up to at least the standards requirement. In his opinion.

MM – He been watching the property for a quite a long time and the inside is pretty destroy it's appear that no body had been living there for a very long time, he could be wrong. The people next door had taken up the right of passing and use it as their driveway, the bank hasn't done anything to prevent that. We look this case on individual basics, he feels that this property has been sitting there and no one has putting any attention, it very obvious that this property was like "let go"

JM – They didn't leave this property that to be habitable right away, it needs a lot of work

AZ – Just something to add on is that you made a good point about banks, as entities without individual mental states, perhaps not being capable of having "intent to abandon", but if that was the case it would lack the intent to continue—and "lack of intent to continue" is in my mind interchangeable with "intent to abandon." But either way if the bank is not keeping the eye on the property and doing nothing to secure it and or keep it up, that is abandoned.

JS – Do they do that? – AZ – Maybe, some do some don't, but they should. But he thinks that's message that we send if we say no foreclosure is not abandonment, but lack of maintenance after foreclosure and failure to leave the property at least in a minimum condition to inhabit is abandonment.

AZ- Motion to Overrule the Building Commissioner decision on the grounds objectively for abandonment interpretation

MM – Motion Seconded

Vote 4 – 1 to Upheld the Building Commissioner decision

AZ – He thinks that the petition meets the Special Permit criteria

LM – Are we going to talk about parking – AZ – It sounds like that they have driveway and a tend parking for a single family is not problem

MM – On the mortgage plan was provide he draw a sketch showing parking at the right side of the driveway and also it shows the fence that was discuss

AZ – Motion on ZBA-2019-05 under §181.3561 Approve the Special Permit with the following conditions:

1. **Property to reinstate as a single-family dwelling with tandem parking permitted**
2. **Access to adjoining lot to the Northeast to be blocked off by quality, visually appealing fence or barrier**

JM – Motion Seconded

Vote 4 – 1 to Approved the Special Permit

ZBA-2018-35 Solar Wolf Energy/Craig Caron 165 KING ST 8:15PM

Continuance:

Variance under §181.414 for the construction of a Solar Ground Mount leaving 18'.2 from the front property line and 17.3' from the rear property line located in the Residential B District at 77/89/0

LM – We have a note here from the petitioner stating that the continuance for PV Solar project at 165 King Street that Solar Wolf will not be able to attend. The scope of this project has change and a continuance is no longer needed. Her understanding is

Those in Opposition: Sheila and Tyrone Tines of 24 Clyde Street stating that their property is right by the easement and she is under oxygen 24/7 which make her very smell sensitive. Having this kind of business technically next to her property it will risk her life and she can't risk that, everyone needs breath to live. She hears that they mention the gym, and yes they can hear noises coming from there, but they don't produce diesel or gasoline smell. Another thing is that they don't live on the neighborhood, we do. And even when he said that all his trucks are clean air certified, but how about those do deliveries for his business, he won be able to control them and they probably coming throughout the day where she may have windows open and the smell will cause her a breath attack. During winter window are closed, but summer the window are wide open.

Robert Heinle of 21 Clyde Street stating that he lives about 20 feet Northeast from this property and the breeze come from that direction, his point on this is that yes this business it will detrimental to the neighborhood - Atty. Nickels - Mr. Martinez measure from the corner of the building and it came about 115 feet on distance - RH -Another concern that we have is about the diesel tank they mentioned is going to be outside to supply their trucks, what happens if this blow-up? That is going to be devastated for the closed houses next to the business

Pedro Martinez petitioner brother's states that why is everybody is concern about the diesel, what happens with those wood burns that you have at the house because those smell too. He doesn't understand why everything is diesel and diesel when we are saying that those are clean air certified, which it means that he can have the truck running inside and nothing would happens to him - LM - That's a good point

Mary Jo Bohart City Community Development - Mr. Martinez approached her directly about a year ago, he was trying to find a location to stablish his business here in Fitchburg. Unfortunately, he hasn't be able to obtain a property in the Industrial Zone District that they were looking for.

MM - Are you already working those trucks? Mr. Martinez - No 100%, but we had to plow the property - MM - Those trucks on site don't have plow on, right? - Mr. Martinez - No, except his brother truck

AZ - What time approximately did you run trucks? - Mr. Martinez - About 2 weeks ago and around 7:00AM to 7:30AM - AZ - And what time in the morning will your employees start those trucks? Mr. Martinez - Around 5:00AM and will return around 5:00PM to 6:00PM the later, and if we have to do double shift, we don't come back to shop at all - AZ - Do those trucks have back-up alarm? Mr. Martinez - Yes, but we are not backing up - AZ - One abutter of this property has major concerns because this business mostly runs is on summer and the resident has respiratory issues, if you have a wind on the wrong direction it could result serious issues for her - Mr. Martinez - He mostly use are the newest equipment - AZ - Do you have plants to update the oldest one? - Mr. Martinez - Yes, but those oldest models are only for back-up and also the property owner is agreeing for us to use the other side of building for those oldest model - AZ - How often do you use your back-up equipment? - Mr. Martinez - Last year we only needed to use them for about a week AZ - How often would you have business supply delivery? - Twice a month, fuel will be delivery every other week

AZ- Question to the abutter: It would work for you if you got notify before each delivery? - ST - She doesn't know, all she knows is that when she smells something, she can get respiratory attack and she can died from it

JS - This case is very difficult for her because this kind the business is not allow in this district, and there is no a hardship the agreement you have with the landlord it doesn't fit here. Property is megal flat, so topography is not a hardship either. She would love to see his business here in Fitchburg, but these by-law been written for a reason

LM - How many trucks would you storage inside? Mr. Martinez - About 4 - LM - Bricks and blocks would be storage inside or outside? - Mr. Martinez - They will have to remain outside - LM - Hours of operation are going to be 5:00AM to 5:00 or 6:00PM? - Mr. Martinez - That's correct

MM - Variance, he has look-up the central business district, we have some retail, and he doesn't feel that this type of business well fit on this area. One of the Variance criteria is the hardship and there is any.

LM - Agree that this business doesn't fit on this particular area unfortunately

AZ - Motion on ZBA-2019-03 under §181.313D5 to **Grant the Variance**

MM - Motion Seconded

Vote 0 - 5 to Grant the Variance

4. MISCELLANEOUS

5. ADJOURNMENT