



ZONING Board of APPEALS
166 Boulder Drive
Fitchburg, MA 01420

NOTE: THIS WILL BE A VIRTUAL MEETING. MEMBERS OF THE PUBLIC THAT WISH TO OBSERVE THE MEETING CAN GO TO:
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EMAIL mmata@fitchburgma.gov

MEETING MINUTES – TUESDAY JUNE 23, 2020
MEETING TIME: 7:00PM

- 1. **Call to Order** LM **PLEDGE OF ALLEGIANCE** ALL
- 2. **Communications** LM **ATTENDANCE:** Lauren McNamara, Michael McLaughlin, Anthony Zarrella, Joseph Byrne, Brian Gallagher, Jeanne Survell & Greg Babineau
- 3. **Hearings**
- 4. **Also, in attendance:** Mark Barbadoro (Building Commissioner)

CASE No.	APPLICANT	PROPERTY	TIME
ZBA-2020-01 Continuance:	Gapco, LLC Paul Tocci	54 LUNENBURG ST	7:00PM

Special Permit under §181.355 to reinstate a vacant/abandoned building as a two-family dwelling located in the Residential C District Map 45 Block 50 Lot 0

LM - 7:12 Petitioner hasn't connected join the virtual meeting. We should take this out of order this petition, so petitioner who is having issues login maybe could connect later on.

AZ – Motion to hold this case to the end of the evening

JB – Motion Seconded

The vote to hold the petition to the end of the evening was unanimously approved.

A virtual presentation was given by Brent Heinzer on behalf of the petitioner. The property owner would like to reinstate the property and change the use on this vacant building to a 2-family dwelling. The building was previously occupied as an apartment and a car radio shop on the first floor, and there was a variance granted for said use.

We plan to remove the overhead doors, remove the majority of pavement and install a lawn to look more like a residential yard and add one entrance in the front of the building that would serve the two stack apartments one on the 1st, one on the 2nd-floor garden style. An exterior deck and stairs will serve both units as the second egress.

We plan to re-side the existing building to a more appropriated residential look, with a clapboard vinyl siding or cedar impression shake all vinyl on the upper level. We plan to modify the structure in a way that will enhance the residential appearance. According to the zoning code the building is located in a residential area so we are allowed to have a two-family, but we have some issues with the vacancies and the nonconforming nature of the lot. So, that's why we are asking the Board for special permit relief to allow this to happen.

LM – is there another drawing that goes along with the submitted plan?

BH -This is the only drawing that we were asked to provide. Before we go further and submit construction drawings we would like to be sure that we are approved by the Board. We have to change the use of the 1st floor into an apartment. The 2nd floor is already an apartment, but its access is from the backside. So, we would have to get construction drawings that will allow us to two access from the front of the building and those plans will go to the Building Department.

BH – This proposed parking has 4 spaces and a turnout that meets the zoning requirements for a two-residential unit.

LM – Is this new pavement?

BH – The parking plan has a turnout, that’s a backup area. We don’t want to force anybody to back-out on Lunenburg Street, they need to be able to pull forward

LM – Does anyone wish to speak in favor of this special permit? No one spoke. Is anyone seeking information about this special permit? No one spoke. Does anyone wish to speak in opposition to this special permit? No one spoke.

MM – What is the siding on the first-floor?

BH – That’s vinyl clapboard siding, and vinyl on the second floor.

MM – Are there going to be windows on the left and right side so it doesn’t look like a commercial building?

BH – I can’t guarantee that right at this moment, because we would have to ensure that the window locations are appropriated for the layout.

AZ – I just wanted to confirm that those are dimensionally compliant parking spaces. Are they?

BH – Yes.

AZ – Excellent, we are very pleased that you are creating that turnout. It may sound like a small thing, but your attention to detail makes it easier to trust that would put similar attention to detail on the rest of the project. I also agreed with Michael that we would like to see some form of siding all the way of the back to the rear side where it is visible to the public and doesn’t look the facade of an industrial building.

GB – It is clearly a huge improvement to the building.

LM – How much natural lighting will you currently have on the other side of the building for windows?

BH – we will leave the existing windows on the left-hand side of the building, but we will add windows on the second floor for bedroom egress.

MM – Is there a time frame on the project? It’s going to be complete by the petitioner or it’s going to be sold?

BH – The timeline hasn’t been defined. I can’t answer for the owner of the property, but I don’t believe he has any intention to sell it. He owns multiple other properties in the city, specifically right across the street too.

LM – Could you give some kind of time frame? We like to have this on our decision.

BH – I think if a special permit granted there is a time frame up to a year to act and if not acted upon then we would have to revisit it and then you make another determination.

MM – Well, you have to substantially start within 24 months or it will lapse.

MM – so the parking will all be repaved?

BH – Yes

MM – Nice presentation and thanks for staying up to 11:00 PM at night, I am in favor of the project.

JB – I’m in favor, but I think that it should be reviewed in 9 months or a year.

JS – I’m in favor of the project.

BG – I think this is a great improvement.

GB – It’s a huge improvement to the building. I defer to the majority of the Board on the review issue.

LM – I’m in favor of the project, adding strapping on the masonry for more siding on the concrete side and windows as necessary, according to Building Commissioner.

MM – Motioned on ZBA-2020-01 under §181.355 to **Approve** the **Special Permit** AZ Motioned Second. The Roll Call Vote was unanimous to **approve** the **special permit** with the following conditions:

1. **First-floor exterior finish will be finish clapboard over the concrete second-floor exterior finish to be cedar shingle style**
2. **Add windows on the side as recommended**
3. **Re-pavement with black top as shown**
4. **Nine months Review**
5. **Plans as submitting**

ZBA-2020-03 Kathleen Walsh 41 ATLANTIC AVE 7:20 PM

A variance under §181.414 for the construction of a single-family dwelling on a newly subdivided lot, lot 2 and a petition to overrule the building commissioner’s determination under §181.425 that Lot 2 is not an Infill Lot in the Residential B District Map 70 Block 22 Lot 0

Lauren McNamara – Recused herself for the petition

MM – Just for the record the Board has received a copy of: Zoning Hearing – Kathleen Walsh ABA-2020-03 please see exhibit “A”

A virtual presentation was given by Atty. Jeffrey Aveni. He stated that he can summarize his written presentation and answer any questions the Board has. He said “what is important for the Board to realize is that there is a difference between what the by-law allows for in the special permit requirements of the “Infill Lot”, section 181.425, and what the Planning Board considers to be a policy and procedure in their rules and regulations. As stated in 181.425 of the by-law, an infill lot is allowed in the Residential B zoning district by a special permit from the Planning Board. This lot is excess of 5,000 square feet which satisfies the area requirement. The Planning Board has imposed their own rules and regulations; specifically, section 4 of their procedure or policy which states: A lot cannot further be subdivided from an existing house lot. The issue is the planning regulations are not the zoning by-law, and under the zoning by-law, as far as our opinion is concerned, it is clearly allowed by special permit from the Planning Board and they cannot impose additional requirements that would supplant what the zoning code allows for.

MM – Just for clarification you have two requests in your petition. One for a variance to construct a single-family in a newly subdivided parcel. The second is to appeal to overrule determination, correct?

JF – I think that the Board should consider the appeal to overturn the Building Commissioner’s determination before the request of variance is addressed.

MM – Read all correspondence emails from abutters and concerned citizens in regarding the particular case See exhibit “B”

MM – Does anyone wish to speak in favor of this special permit? No one spoke. Is anyone seeking information about this special permit? No one spoke. Does anyone wish to speak in opposition to this special permit? Fay Grier of 41 Atlantic Ave., She sent her statement letter and it was noted on the list of other abutter’s correspondences and she didn’t have anything new to say

GB – I went by the property. I assume that other surrounded properties are grandfathered. Based on what is in front of us this evening I don’t have any questions

GS – Could you please give me a brief definition of what an infill lot is?

JA – Would the Board allow him to read what’s on the by-law?

JS – Yes

JA – Section 181.425 for undersized infill lot for the Fitchburg Zoning Ordinance (Hereinafter “the Ordinance”) states: In the RB, RC, and College Districts, by special permit from the Planning Board, a lot with at least 5,000 square feet may serve as the location for a single-family dwelling. Any of the dimensional requirements of this Ordinance, such as lot frontage, width, building setbacks, etc. may also be reduced or eliminated by this Special Permit, provided that the Planning Board makes a determination that the proposed dwellings are consistent in scale and setbacks with abutting structures, and those in the immediate neighborhood. The Planning Board may impose conditions for the use of such infill lots, including, but not limited to, landscaping, and maximum lot coverage.

JB – One question, but to the Building Commissioner: Does an infill lot have to be a vacant lot or can it have a structure on it?

MB – We just heard the black and white reading of the by-law. It doesn’t say whether a structure it can be on an infill lot or not.

BG – Just for clarification, is the applicant applying for a Variance or Special Permit?

JA – The first thing the applicant wishes is to appeal the negative determination of the Build Inspector. For some reason the by-law is silent, it doesn’t talk about the function of the lot. The Planning Board’s rules and regulations are not a Zoning by-law. Nothing in the by-law prohibited in infill lot to be created by dividing a lot that’s has a structure on it

MM – Your office submitted a portion of the Planning Board Rules and Regulations, could you talk a little about that?

JA – Those are the Rules and Regulations, those were not voted by your City Council and did not follow the procedures outlined in M.G.L. c. 40A s. 5, so those rules do not become an ordinance in the City of Fitchburg those are their internal rules and regulations. A planning board can vote to approve or deny a specific application submitted or say they want a certain document with the application, or they want it in a certain format. But they can’t change the special permit criteria in the Zoning by-law and that’s what their rules and regulations are trying to do.

MM – I looked at the statement and as I read it, they are not trying to change the basic zoning by-law. They seem to be sub statements with regards to the general purpose of the infill lot provision is. It reads “To facilitate the reuse of vacant, condemned, or substandard property within existing urban or blighted areas as single-family

dwelling units. To reduce vagrancy, litter, abandoned, or substandard structures. To lessen density and promote single-family owner-occupied homeownership in urban areas, and. To improve the neighborhood character.” I have taken classes regarding the infill lot zoning, and the intent of an infill lot provision, and its similar to what I just read about, that is to repurpose old lots that were once used but have been abandoned.

AZ – I think that our Vice-Chair is entirely correct regarding the intended purpose of the Ordinance. Frankly, it was a mistake of the drafters not include those purposes as substantive requirements in the Ordinance. So, as the Ordinance currently stands, we have no justification to impose those requirements because they are not in the text of the zoning ordinance.

MM – The Board will have to make two votes. The first vote is going to be the request to overrule the building commissioner determination.

JS –I agree with Building Commissioner’s determination as is stated on his letter of January 2nd

GB – I also, support the Building Commissioner

JB – When Vice-chair read the statement it said vacant land, right?

MM – Yes

JB – This isn’t a vacant land, it has a garage, so it can’t be infill lot. So, he also agreed with Commissioner

BG – Yes, in favor of Building Commissioner

AZ – I looked into this closely, and I think this is application is pretty much beyond the context, this wasn’t an intended use of the infill lot provision. We have language from the Planning Board, we have the customary uses across of the state. This was not how this was intended to be used. That being had said, we are only here as a board to enforce the Ordinance as it was written and not to reform the Ordinance to better purposes and the ordinance was quoted by Atty. Aveni correctly.

The requirement that the lot be vacant, or the lot pre-existing and not subdivided, or any other additional criteria are not stated in the code. I believe that the petitioner is also correct that the Planning Board’s authority to issue regulations pertains only to its procedure to things like what paper do you have to bring with you, or what the fee for application is going to be or so forth.

However, there doesn’t appear to be any actual adverse decision, from which the Board can render an appeal. The Building Commissioner didn’t deny any Permit or permission, but simply indicated that the proposed project will either require Special Permit from the Planning Board under 184.425, or a Variance from the Zoning Board and that’s correct. And the Planning Board appears to not have denied any permit either but instead granted the petitioner’s request to withdraw. So, my take on this is that we can’t grant an Appeal because there is nothing to Appeal, but we should issue a determination that the Planning Board does have the authority to issue a Special Permit and therefore the obligation of disposing such Special Permit request in accordance with the Ordinance.

They are, however fully able to consider the special permit the criteria in 181.425 in addition to the criteria in 181.932 not instead of. So, the Planning Board should take this up. They are still free to consider conditions such as, whether the benefit to the City and the neighborhood outweigh the detriments of the proposed use. We are just making a determination, this is not a final adverse action to appeal from, but instead, it was a Planning Board informal determination that they don’t have the authority to issue this permit because it was in contradiction of their own regulations. This was not in fact in accordance with our Zoning Ordinance. Therefore, they should take this up again and review it under the proper standard.

MM – Yes, good point, we have been asked to overrule the Building Commissioner decision, and the Building Commissioner didn’t really make a decision, all he made it was a recommendation. So, the request is to overrule

his decision, he is not on favor overruling the fact that he said and stated to the applicant on the letter what the procedure is, and the action they need to take. In regards to the Board making a finding a decision or recommendation as to what a different board should be doing, I'm not sure that's the path that we should vote on

AZ – Normally as a matter of practice I don't think that different boards should be telling each other what to do. However, we are the interpretive authority over the zoning ordinance, that's part of our charge is to interpret what the ordinance actually means. In this case, if the Board wants to proceed with the course that I recommended, I wouldn't consider it as telling the planning board what to do, but simply as us filling our roles of guidance in interpreting the Ordinance and giving them our advice and opinion on what the case before them will be.

AZ – Motion on ZBA-2020-03 under §181.425 to **UPHOLD** the Building Commissioner determination

JB – Motion Seconded

The roll call vote was approved unanimously to **UPHOLD** the Building Commissioner determination

MM – On the second part of the request for Variance under 181.414 for the subdividing lot at 41 Atlantic Ave?

AZ – On this, I would like to request that we first enquire to the applicant whether they would like to proceed with the request for the variance or go back to the planning board for a special permit. As it was indicated to us by the applicant's attorney the variance was needed if we rejected the appeal.

JA – At this point, I would like it to go back to the Planning Board.

MM – Atty. Aveni would you like a continuance?

JA – Sure.

AZ – Motion on ZBA-2020-03 under §181.414 to **Continue** to **July 14, 2020**

JS – Motion Seconded

The Roll Call Vote was unanimously approved to **Continue** to **July 14, 2020**

ZBA-2020-09 Sarah Hudson 853 FRANKLIN RD 7:40 PM

Special Permit under §181.341 to convert part of a single-family dwelling basement and garage into an in-law apartment less than 800SF located in the Rural Residential District Map 111R Block 3 Lot B

A virtual presentation was given by Sarah Hudson stating that she bought this property the previous year and her intention is to install an apartment for her parents. Currently, the basement is partially finished. She is going to install the bathroom, put a kitchen in, and change half of the garage into a bedroom for them. So, they can be half-year up with her and another half of the year down in North Caroline with her brother

LM – Any plan on how this is going to be turned back into a single-family home at the end of the need?

SH – Yes, my plan is to turn the space into a studio when we are done with it.

Does anyone wish to speak in favor of this special permit? No one spoke. Is anyone seeking information about this special permit? No one spoke. Does anyone wish to speak in opposition to this special permit? No one spoke.

MM – I had the opportunity to view the property and the applicant was very kind and show him the area where the unit will be developed. So, I'm is good.

AZ – I also visited the property and it's so far back off the road that you can't really tell that it's there, and it looks like it's an appropriate spot to put an in-law apartment. So, no concerns from me.

JB – No questions.

BG – I visited the property and is a great property with a lot of parking and it's a good situation.

JS – No questions, if everybody else is good I'm good too.

GB – I went by as well and has no questions.

LM – I also drove by and it looks like it could be a perfect set-up. Will there be any changes to the exterior at all?

SH – One of the garage bays will be removed and an exterior door and a window will be put in its place

LM – The rest of the facade will be the same as the rest exterior?

SH – I actually have a lot of extra vinyl siding so I don't need to worry about matching it.

LM – Just so you know that this is renewed every 5years, so you would have to visit us again

SH – Yes. I have one additional question? Eventually, I won't need it anymore. When that happens and I want to switch to be just an accessory apartment, can I keep the sink and the kitchen cabinets and removed the stove and the fridge? What do I need to do to make it no longer an apartment officially?

LM – So, the intention is to bring it back as a single-family setting. Is the future studio will be utilized for you and not for a business?

SH – Yes, it will be just for her own hobbies

LM – At that point, you could talk to the Building Commissioner to ensure what you do is right

MM – This is one is a meeting of the intent of 181.34 the area utilized is under the maximum allowed is exactly what is the by-law was intended for. I also like the idea that in the future to decommission the kitchen and keep the sink for hobbies.

AZ – I don't have any issues with the petitions at all.

JB – No problems it's an absolutely perfect place for it.

BG – Yes, I think it is a good situation and as long we put the needed conditions, I'm in favor of it.

JS – I think it's fabulous that the petitioner is willing to share parents with her brother.

AZ – Motion on ZBA-2020-09 under §181.341 to **Approved** the **Special Permit** with the standard conditions:

1. **Property not to be sold or conveyed as a two-family dwelling**
2. **Special Permit expires in five years and must be renewed prior to the expiration**
3. **Accessory apartment to be occupied by a relative of the owner of the property**
4. **Dwelling is to be owner-occupied**
5. **The addition will have matching façade to the original property**
6. **Accessory Apartment will not have separate utilities but will be part of the single-family dwelling**

7. **Sunset Clause – Special will terminate/expire upon the sale/transfer of the property from Sarah Hudson**

The roll call vote passed unanimously to **approve** the **special permit** with conditions.

ZBA-2020-10 Joseph Smeraldi 18 CHESTNUT ST 8:00 PM

Appeal to Overrule the Building Inspector’s Determination on a Zoning Violation under §181.325 and §181.313B7 for nonexempt agriculture use on a single-family dwelling located in the Residential B Zoning District Map 18 Block 113 Lot 0

A virtual presentation was given by Joseph Smeraldi stating that he was cited for violating Zoning Ordinance 181.313 B sub section #7. Which states the use of the land as the primary purpose of Agriculture on a parcel of more than 5 acres in area. He stated that he is not using his land for the primary purpose of agriculture, and therefore that zoning Ordinance doesn’t apply to him, He cannot be in violation of that subsection because he not using his land for the primary purpose of agriculture. Furthermore, the Zoning Ordinance defines agriculture and he doesn’t meet the definition of agriculture. There is a reference that was cited to remove farm animals it states on another City Ordinance 84.1-6, the pets he has do not meet the definition under farm animals per Chapter 84, and that’s his appeal as well. He had four chickens, but someone walked by his land and threw another chicken over his property fence, so now there are five.

LM – Read multiple emails received from abutters please see exhibit “A”

LM – Does anyone wish to speak in favor of this special permit? (Yes Mercedes can you add them please?)No one spoke. Is anyone seeking information about this special permit? No one spoke. Does anyone wish to speak in opposition to this special permit? No one spoke.

GB – Mr. Smeraldi could you define the difference between a pet chicken and agriculture chicken?

JS – the ordinance defines a farm animal as “a domesticated animal intentionally kept, maintained and/or reared in an agricultural setting” and my yard isn’t an agricultural setting. It also further defines pets as “any dog, cat, bird or other domesticated animal kept and maintained in or near the household of the owner or keeper for companionship and/or enjoyment of the owner.” So, as I explained in this appeal, I don’t use his land as an agriculture setting and my chickens don’t meet the definition of the farm animals, but they do meet the definition of pets. The history of my chickens is very particular because two of them came from a farm where she has trouble eating, she can eat like mulch, but if he through some corn on the ground the other chickens eat all of them, she may get one or two. She can’t get a worm on her own, he has to pick her up and feed her. He knows that she won’t survive on a farm. Polly, she was given to him because the farm was going to kill her as a young chick, because she was bullied, and she has a limp. I spent months keeping her inside and talking to a vet about how to care for her, after six months of caring for she is now healthy now though she doesn’t produce as much as a normal chicken would. The other two were given to him by a neighbor after they saw they saw he had the one chicken; he didn’t ask for any of these chickens. I don’t obtain them to produce eggs, they were just animals to care for and I decided to take care of them. I didn’t ask for them they were given to me by my neighbors.

MM – At the time that you were sending the letter with regards to the chickens, how many did you had?

JS – Four

LM – Any of them produce some eggs?

JS – Yes

LM – How many eggs and what do you with them?

JS – An average about 3 and I eat them, I used to eat about between 2 – 4 a day, that’s my primary protein since I don’t eat meat and now, I eat whatever they produce.

LM – You said that you didn’t ask for any of these chickens and now you have five, so if anyone drops chickens in your yard and then you have several chickens. What are you looking for? If they keep dropped in your yard and you just would keep taking them and you would have several chickens

JS – No, I would have a limit. I don’t want to have dozens of chickens in my yard. This chicken was dropped off... it was running around Main Street. She thought it was mine. I don’t plan on getting more and I really don’t want another chicken.

AZ – How often and how do you keep your area sanitary to prevent the kind of build-up of all the crud that people complain about with chicken coops?

JS – I don’t cut the grass. I maintain a natural landscape. There is a stream and a waterfall and a small pond to keep a more natural landscape. The chickens range all day, even on a rainy day they are out in the yard. So, they do their business in the yard, I have food out in a couple of different spots and I move them around. They go to the bathroom in the coop overnight. I have a sensitive sense of smell and it doesn’t smell outside, and indoor I clean those spots every day.

LM – Mr. Commissioner Do you know if the Board of Health oversees any of this?

MB – I’m not familiar with the Board of Health regulations, but I imagine they have some farming licenses or permits. However, I’m not familiar enough to speak about it.

AZ – On that subject, we could include the nuisance language, as just as we often do, that the Board decision doesn’t relieve any obligation under any code that the Board is not charged with enforcing

MB – I want the Board to understand that the Building Department has been enforcing the agriculture ordinance on people who own chickens because it is the neighbors who complain. If it’s determined that people can utilize their livestock as pets and eat their products, I don’t think that anyone in the City with livestock will call their livestock pets, and that would be kind of hard to distinguish between the two. That would make the ordinance unenforceable. So, I’m concerned for the people who have been calling and looking for some relief. Also, with respect to the comment on the principal use, we were referring to the table of the principal uses. There is another ordinance about accessory uses, non-residential accessory uses, and the by-law says. “Except otherwise set for the herein, any use permitted as a principal use is also permitted as an accessory use. Provided such use is customarily incidental to the main or principal building or use of the land; any use authorized as a principal use by special permit may also be authorized as an accessory use by special permit” etc. So, my point here is that if we can cite the principal use table for accessory uses if non-residential one. We can expect that if the table of use requires Special Permit as a principal use, then it would also require one as an accessory use.

JS – Based on what the Commissioner said I understand that principal and accessory use, there is an error I made in his petition, but if the Board looks into sub section #7 it says right in the use that is the use of the land for the primary purpose of agriculture. And it is clear that I don’t use my land for a primary purpose of agriculture

MM – The primary use of agriculture under five acres just simply is not allowed. You have requested the Board to Overturned the Building Commissioner decision, correct?

JE – Yes, based on the fact that he is not using my land as primary for agriculture.

MM – Okay, in one of his letters to you, he recommended that you should apply for a Special Permit. Have you thought about that?

JS – I believe that was part of this appeal, as a secondary.

MM – But is not

JS – I emailed to Commissioner to that effect, but I don't believe I need a Special Permit, and that the Board is authorized to do it because I am not violating that subsection.

MM – Okay, and that's is a perfect comment, and that's is your own determination base on what you read through the case law

MM – I am trying to look at this and say that we have a request to overturn the Building Commissioner decision and that's what we are going vote on. At least if you ask otherwise. So, the question here is along with your request would you like to either ament your request for Special Permit

MB – I had emailed Mr. Smeraldi and recommended that he apply for Special Permit, and my recollection is that he has emailed me requesting to amend the application to an Appeal of the Building Official decision to add a Special Permit

JS – I thought that there were two issues, one, to overturn the decision of the Building Commission and the alternative to granting a special permit.

LM – The Application is it is checked off only states to overrule the decision the Building Commissioner

JS – Yes, after I submitted the application, I emailed the Commissioner to please accept the email and edit the Special Permit request on the application.

LM – So, that's what you would like, to amend your petition this evening?

JS – I would like both, I would like a determination on the Building Commissioner decision, it's one issue. Because I would like to appeal separately, if you uphold his decision on that, then you can make a second motion to them considered to grant a special permit. I don't think is necessary, but that's what been advised to do, and I would take that as a secondary option. So, yes

AZ – Motion to amend the petition to add the alternative of a request of Special Permit, with the understanding that the communication affirming this between Mr. Smeraldi and Commissioner Barbadoro will forward to place on the record

MM – Motion Seconded

The Roll Call Vote was unanimously approved to amend the petition to add the special permit request.

Deliberation:

AZ- I have gone through the Zoning Ordinance and the City Code carefully and I think that Mr. Smeraldi is correct in his assessment. As far as the accessory use issue normally goes, that's exactly how we would do it as Commissioner Barbadoro outlined. But where we actually have a line that defines the use as "primary" that would override the usual presumption that it could be a secondary or accessory use. If we end up going to the table of uses for this that would be "C, 1" (Nonexempt Agriculture use). Which would be by Special Permit that would be denied the appeal. I think the Board should approve the appeal because the Zoning Ordinance defines agriculture as: "cultivating and harvesting general crops including the storage of necessary farm equipment on parcels of less than five acres and raising of livestock if on parcels of more than five acres, but not including animal feedlots". The thing is that the term "livestock" is not defined under the Zoning Ordinance, the nearest thing we can get is if we go to the rest of the city code. We have section 92-2 which defines agriculture as the keeping and raising poultry etc. and other domestic animals for food and other agriculture purposes. So, under that definition, it isn't agriculture, because I think we established sufficient facts that the purpose of, his keeping of the chickens is not for food or agricultural purposes. We also have section 84-1 which defines farm animals as "A domesticated animals intentionally kept, maintained and/or a reared in an agricultural setting for produce,

or for its labor. Including poultry, raised for commercial or subsistence purposes”. Again, not an agricultural setting, not raised for produce or labor and not for commercial or subsistence purposes. I think that the petitioner is correct because it does meet the definition of a pet, a dog, cat, bird, and these are birds. Kept and maintained in or near the household of the owner for companionship and/or enjoyment of the owner and shall not include a farm animal, but we just determined it’s not a farm animal even though it is an animal that is usually found in a farm. Because if we have an undefined term completely, that is, we have no definitions, we just go by common definitions, but here we have a definition of a farm animal and it doesn’t fit. So, if we have a use that’s not on the table, but we treat it as a use. We would need to count the keeping chickens for non-agriculture purposes as a pet, as a distinct use over the property. we will have to start counting the keeping of cats and dogs in a non-commercial non-kennel setting, also as a distinct use of the property, And then we would be in trouble because anyone who has a dog and doesn’t have a variance for it will be in a zoning violation. I don’t see any justification for not allowing this, in the other cases the chickens causing problems for the neighbors or causing sanitary issues and I think the key is in the details. The first is making it very clear in our records that this is not for food purposes. A lot of other petitioners have come in front of the Board before, I believe that they were keeping chickens for food purposes, and they also created nuisance conditions with neighbors. I think that in this particular petition and in this very narrow case in front of the Board tonight, those factors don’t apply. Also, from what we all heard there was only one neighbor who has concerns, but the other neighbors think that the Board should grant the appeal and said that this is not an agricultural use and doesn’t require a Special Permit

MM – I’m most certainly in favor upholding the Building Commissioner decision, it is very straight forward. Agricultural use is not allowed period, on five-acre lots, there is a route for the applicant to be able to request relief and that is through Special Permit. I don’t believe that chickens are being used for his pet, and based on many cases that been before the Board and the by-law, you have to look at what is the intent of the by-law. I raise that over and over again we can always dissect any language and come up with different conclusions, based on how the language was written, but what’s the intent? And the intent is pretty clear that anything under five acres is not allowed. However, there is a mechanism and that is through the special permit process

JB – There is no place for chickens in the City.

BG – As an observation I made, I viewed this property from the sidewalk, the yard is very clean, and no one would tell him that he is irresponsible with the animals. This is a rescue situation and people give them to him.

JS – I feel like the Board should act according to the City’s Ordinances as we have in the past, I don’t think this is different, even though he has the neighbors support. I am not opposed to the idea to give him a Special Permit with a definitive time frame, So, I would uphold the Commissioner’s decision and think we probably should give a short-term Special permit

GB – I agree with Michael

LM – I have two sons and their neighbors have chickens, one of them has them in cages and there is a lot of smell and noises and am concerned about that. The other son lives next to someone who also has chickens, but you wouldn’t know if the chickens are there, they don’t smell. I think that the Board should state on the agriculture as Michael presented and give the petitioner some trial mechanism, but I also uphold the Building Commissioner decision.

AZ – I just want to raise two points to the Board. One is simply that when we are acting on appeal, we are not exercising a discretionary function, and I heard a lot of discretionary language from the Board members in terms of what we can guess or what we think is a good idea. And very valid concerns, in a case that the Board is exercising a discretionary permit granted function, but in the case of an appeal, the Board is to solely interpret the law. So, my second point and a question I put to the Board: How does this use meet the definition of an agriculture use? Because we can’t say this is agriculture just because it feels like agriculture to the Board, we need it to fit within the definition in the law.

JS – He is eating the produce of the animals that makes it livestock.

AZ – But it said the purpose is the produce. It doesn't say "incidental" benefit is the produce. At least I think that is what he is saying, and if he is not keeping the chickens for eggs, then he doesn't meet that criterion.

MM – We are voting base on our interpretation of what we read.

BG – It seems more like a rescue situation to me than anything else, and that is how I'm interpreting it.

AZ – Motion on ZBA-2020-10 under §181.325 and §181.313B7 to **UPHOLD** the Building Commissioner's determination

MM – Motion Seconded

The Roll Call Vote was 4 yes – 1 no to **UPHOLD** the Building Commissioner's determination.

MM – Clearly the applicant has shown what the intent is with the chickens, he has an extremely unique piece of property. I used to call a piece of heaven in a dense neighborhood, it's like being in the middle of an oasis and I most surely will be in favor of base on the facts for the Special Permit for the number of chickens that he currently has, with a one year review. That will allow him to enjoy them and for us to see how the process goes without increasing the numbers. Also, the Special Permit be for these specific animals and as the count change, they shouldn't be replaced.

LM – Also, not be a nuisance for the neighbors.

BG – I think Michael covered it.

GB – No sale or gifting eggs, and maybe Board of Health inspection as required.

JS – Yes, I agree with Michael I think it should be 6 months or a year review.

AZ – I think this is the next best thing, I would be fine with almost all of the conditions that have been mentioned. Except, if he demonstrates to the Board that he is a responsible chicken keeper, and for some reason, he loses one the chickens and he wants to replace it. I am fine with five, we have no reason to cut those numbers, and five chickens sounds reasonable.

LM – how do we feel about another department's overview?

AZ – Without doing some research I don't know if the Board can order him to have Board of Health inspection because that would require something from the Board of Health. So, I suggest having as condition said to (Compliance with or with the Board of Health regulation or inspection.

AZ – Motion on ZBA-2020-10 under §181.325 and §181.313B7 to Approve the Special Permit with the following conditions:

1. **Six months and a One-year review**
2. **No more than five chickens**
3. **Not to be operated as a nuisance**
4. **Compliance with all Board of Health Regulations**
5. **Property to be homeowner occupied while the chickens are kept there.**
6. **Sunset Clause – Special permit will terminate/expire upon the sale/transfer of the property from Joseph Smeraldi**

The Roll Call Vote was 4 – 1 to Approved the Special Permit with the following conditions.

ZBA-2020-11 Sonya Thomas 21 LIRYC LN

8:20 PM

Renew of a Special Permit under §181.341 to continue the use of an existing in-law apartment located in the Rural Residential Zoning District Map 171 Block 18 Lot 0

LM – Recused herself as she has done in the past since she is one of the petitioner's abutters.

GB – Recused himself as he is an abutter of the petitioner

A virtual presentation was given by Sonya Thomas stating that everything is going well. She had applied five years ago when they move into the property, her parents live in the accessory apartment. The neighbors like them and everything is going well, so they just reapply to renew after five years.

LM – Does anyone wish to speak in favor of this special permit? No one spoke. Is anyone seeking information about this special permit? No one spoke. Does anyone wish to speak in opposition to this special permit? No one spoke.

BG – Went by and view the property and looks good

JS – You said that your parents still reside in the accessory unit, correct? – ST – Correct

JS – Looks good

AZ – He has no concerns on this matter

JB – No concerns

MM – Looks that we have a complete affidavit

JS – Motion on ZBA-2020-11 under §181.34 to **Approve** the **Renew** of the **Special Permit** with the following conditions:

1. **The property shall not be sold as a two-family dwelling**
2. **Special Permit will terminate upon the sale, conveyance or transfer of the property**
3. **Special Permit will terminate in five years from the date of issue unless reapplied for before the expiration date**
4. **Accessory Apartment will be occupied by a relative of the owner of the property**
5. **Accessory Apartment use will comply with §181.34**
6. **Accessory Apartment is limited to the second-floor space above the garage addition**
7. **Accessory Apartment will not have separate utilities, but will be part of the single-family dwelling**

AZ – Motion Seconded

The Roll Call Vote was 5 – 0 to **Approve** the **Renew** of the **Special Permit** with conditions

ZBA-2020-12 Brian & Amy Green 157 WALTON ST 8:40 PM

Special Permit under §181.354 to erect a garage on an existing non-conforming single-family dwelling encroaching side and rear setbacks located in the Residential A-2 Zoning District Map 92 Block 71 Lot 0

AZ – Recuse himself as he sits on the City Council with Amy Green

MM – I have a question for clarification before we begin, is this for a Variance or Special Permit? – LM – Special Permit?

MM – Also, I don't see a denial letter

LM – I don't see a letter either, perhaps we can refer to the Commissioner Barbadoro

Commissioner – the section is 181.354 which is the Variance section, he knows the description said Special Permit

LM – We may have to redo this case.

LM – Well how did the notice go out?

Secretary – It went out as Special Permit.

LM – Do you have a letter for this petition? – Secretary – No, there wasn't a letter provided.

LM – I think that we do need to re-notice this case and ask the Commissioner to write a letter.

LM – I saw the plans and went by the property.

A Virtual presentation was given by Amy Green stating that her understanding it was that they need a Variance, because on the non-confirming lot they own, with the existing plan to erect the garage that is before you; they don't meet the minimum setback for the 15 feet for the side or 35 feet for the rear. Therefore, they were advised to go for a variance.

LM – Does anyone wish to speak in favor of this special permit? No one spoke. Is anyone seeking information about this special permit? No one spoke. Does anyone wish to speak in opposition to this special permit? No one spoke.

Commissioner – this appears to require a Variance and we have noticed this inappropriately, really sorry.

LM – Why could they get a special permit, if it was attached?

Commissioner – Because as stated in section 181.355 alteration to a nonconforming structure will not increase the footprint of the existing structure provided that existing height restrictions shall not be exceeded. In the event that the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by Special Permit, to allow it. So, there is Special Permit allowance for increasing the nonconforming nature, we have a unique Ordinance here that other towns that will be a Variance, this take into account that this small nature of some of the lots that the City has, with houses already on them, but when you started adding a new structure the new nonconformity it's requires a Variance.

LM – Unfortunately, for the setbacks, they will need a Variance, so we will have to re-notice this.

JS – I agree with Chairperson, it will have to re-notice unfortunately.

MM – The application it checked off for a Variance, the agenda said Special Permit, which we know is incorrect. However, under 181.354 it's the correct section for a Variance, and that was sent out as a notice. Are those two words that don't make typical enough that we can hear as a Variance because the section was correct even though the description was not?

JS – I believe that because the abutters weren't properly notified and that is the issue, and maybe the abutters didn't show up to this hearing because they thought it was a Special Permit and Variance is more weightiness. So, administratively, procedurally it needs to re-notice. As her personal opinion.

JB – I don't want the Board to be considered being partial to or in favor of someone because they are a counselor, so we should be re-notice this petition.

LM – I don't want anyone to think that we did it as a favor.

MM – because this happens before in the past don't know when or how long ago, but he knows is was related to not having a denied letter from the Commissioner and that's kind spells things out for everybody.

LM – Right, another procedure that wasn't done either.

MM – It just tells everybody the course of action it needs to be taken specifically and also what relief is required.

BG – I think that the abutters deserve to be notified exactly what's it

AG – Procedurally, I want this to be done by the book with all the I's dotted and tees crossed, so it doesn't ever come back on any of the Board or the Board Member I want to avoid that at all cost. I Am okay with re-doing the language if it has to be done that way. I don't know how to go about convincing or letting the neighbors or abutters know that is just due to the language and not about the project, because I believe that some had submitted a letter of support for the proposed garage as it stated in drawings that were submitted. I am good procedurally if we need to give this another month or 45 days before we can come in again.

LM – No, we're still on time to be on July meeting, as long as Commissioner Barbadoro can provide a letter to the Board

AG – I am good with that because I want to do it correctly so that there is no question about anything moving forward.

MM – Motion on ZBA-2020-12 under §181.354 to **Continue** and to **Re-notify** correctly to **July 14, 2020**

JS – Motion Seconded

The Roll Call Vote was 5 – 0 to **Continue** and **Re-notify** correctly to **July 14, 2020**

ZBA-2020-08 Tricia Ducharme 1022 MAIN ST 9:00 PM

Continuance:

An appeal to Overrule the Building Commissioner's Decision for the need of a Special Permit from the Zoning Board of Appeals under §181.3566 located in the Central Business District Map 29 Block 14 Lot 0

The petitioner wasn't present at the virtual meeting this evening. She had emailed to the Zoning Secretary stating that she needs to have a meeting scheduled for an earlier time, please kindly reschedule for an earlier time before 9:00 PM. It is far too late to be scheduled at 9:00 PM. it would not end till after 10:00 PM.

LM – I feel that we should move forward on this case anyway, even though she is not here participating. I got up to speed reading the minutes from the last meeting, so I would like to participate. I don't know everyone else feels, even though the petitioner is not here, but I feel there is nothing that we can do at the last minute like this.

AZ – I agree, I think that "I don't want to be up late" isn't a great reason for skipping a meeting at last minute. We stack here late and at least the petitioner can do is respect that

JS, BG, GB & MM – Also agreed to move forward

LM – Read an email letter was sent from Michael Donnelly stating the 1022 Main Street remains in violation of the Wetlands Protection, please see exhibit "E"

LM – the petitioner needs to go to the conservation commission to address the issues that they have there. They have some outstanding fines it sounds like. So, they technically are not in tax compliance or in compliance with the City. The other thing is that they need to work with Conversation commission to get a determination on where the wetlands are on the property, so they can have a valid parking plan on what they would be doing on the property. And then they would be looking doing a Site Plan Review with the Planning Board, and then they can come back to Zoning Board, and that's doesn't mean that the Board would be looking favorable looking this. They surely know that they don't have a permit and they have cars there for sale. They do what they want, so, the Board need to set them on the direction and they may comeback

LM – Does anyone wish to speak in favor of this special permit? No one spoke. Is anyone seeking information about this special permit? No one spoke. Does anyone wish to speak in opposition to this special permit? Amy green spoke and stated that she is on the public safety committee and that she also chairs the Public Safety Committee and this particular petitioner and/or address does not have a class "2 Dealer License" which is needed to sell cars on the property. There are 5 cars marked with price tags sitting on that lot, which is a

complete violation of the conditions they were given last year when one the original owners came before the City Council and we denied the Class 2 Dealer License; for him the associate or the property.

AG – So, I don't know who the enforcer of that is, but clearly, there is a problem on that property, and she doesn't continue to see running as currently is

LM – Does something come under City Clerk for a cease and desist order, or this all is under Commissioner Barbadoro?

Commissioner Barbadoro – The Traffic Division enforce the Licensing, the Licensing comes from City Council for a dealer license, but there is a use component and the use component is enforcing by the Building Commissioner.

The cons. comm. enforces through the Conservation Commission, so the Building Commissioner and these departments have jurisdiction to overview itself and if it determinate that those out there are there for sale, those vehicles are in violation of our Zoning Code. Because a Special Permit is required and there has been a three-year gap between when someone had both control the lot and also a dealer license. One of the owners of the property owners had a dealer license and he then leased the property to some else. Although, the owner kept the dealer license and it was addressed to that property, but he didn't have possession of the property at that time. That's why no lawful sale took place. When he finally took possession again the City Council had suspended Mr. Cordio's license the week prior. So, the person operating the property did not have a license since April 1, 2017, according to the lease agreement and is exhibit "A" in the court case. Therefore, he believes that the property is abandoned. However, what I typically do with applicants who I think that they are in violation is, if they agreed to apply, I won't enforce until after the Hearing

LM – I think at this point now we should do a "Cease of Desist", and give them a letter from the Commissioner who also represents the Board indicating that should go to the Conservation to address the recommends of the supply and to find out what the regulations of the wetlands and have it documented by them, they should be going to site plan review. So, she doesn't know if the Board wants to continue this for several months, but there needs to be a cease of desist order.

AZ – I would like to see the Conservation Commission issues remedied of course, but this particular applicant has acting in extremely bad faith. At the end of the last hearing that she was present for it was very clear that we decline to issue any permits as of yet, so she knew that she had no permission to sell cars on the lot. Now, there is a discretionary issue whether we granted a permit at all in the future. Even, if the concrete problems were remedied, I would be disinclined to grant this permit because I feel that the Board can't trust that any conditions, we place on the business will be complied with. So, I am inclined to vote to deny. I have seen enough already and I doubt that in a month down the road I am going to change my mind and be okay and voting for it, even if the other issues are remedied by them. Someone who has violated the law is not someone to trust going forward to comply with the law.

LM – I understand, but I think that people deserve a second chance. At least they are trying to look better and have some plantings and it looks better than it has in five years. So, I don't want to be too hard, I would like to give them an opportunity to follow the rules that we are providing them

JB – I would be okay to continue in about three months and give them an opportunity to see the Conservation Commission and then come back to us. If we tell her before the act to see Conservation Commission to get the land fix, we are not given the petitioner any initiative and opportunity to get that problem to solve

Commissioner Barbadoro – So, I would like to comment, if you decided to grant a continuance that it will be nice to have a statement from the Board that I can add in my letter that would say that they need to apply within 30, or 60 days). I have given her the notice of violation, I have told her that she needs to apply to Conservation Commission, and the city planner Mike O'Hara did the same. He reaches out to her and she is not responding. So, we need to let her know that there is a time limit online.

LM – I agree.

MM – This is an Appeal to Overrule Building Commissioner decision, this property has a long history. This property is now on new ownership, he also visited the site. As we all based on the last meeting there were some comments made visits to the property. As Anthony two comments about that we been watching all along, she doesn't have a license from the State, she does not have a license from the City, she does not have Special Permit, but since she had acquired the property, she has been showing vehicles for sale, the number has increased. She has continued to ignore all our City Official's requests, I am ready to move for a vote. If the applicant wants to apply for a Special Permit down the road, I most surely will entertain a hearing so, but I am ready to take a vote tonight.

AZ – I believe that between the last meeting and this one, she expressed the request to change her request to Special Permit.

MM – Okay, he goes by the agenda, if that's been amended and he is not aware off

MM – Does the secretary has any emails on respect of changing request?

LM – Secretary or Commissioner Barbadoro

Commissioner – Did the notice it went to the abutters did it said anything about Special Permit or not?

Secretary – No, it was noticed for Overrule the Building Commissioner. For the last meeting, she said and according to her opinion “, she does not need a Special Permit because is grandfathered”.

JS – I hear what you said, but I think that she thinks that she is right, and she is not in violation anyhow. She doesn't believe that she should continue as she is, she does have those cars there. She needs to comply with the City and the State and Conservation, so whatever needs to be done in the end, but she thinks in her head that she is not in violation.

MM – at the last meeting I gave the applicant seven opportunities to ament from overruling the Building Commissioner decision for a Special Permit. So, in my opinion, we already wasted a large amount of time, not just the Board's time, but the City's time on trying to deal with this particular property and its clear, based on the information not provided by the applicant and all the information provided by multiple department heads. It is very clear path that we should not be granting an overruled Building Commissioner's decision. However, we still living open the opportunity for the applicant to apply for Special Permit in a future day

Commissioner Barbadoro – I think, that the easiest thing to do here is for him to contact the City Solicitor's office and file a court case. And in the court case, at that time we can do all negotiations that we need to do in terms of all completion of things that it needs to be completed.

LM – However we need to get there she thinks they need to know what the path is, they clearly don't understand, or they don't want to understand. It needs to be clear, so if we go court, we said “we told you what to do, you haven't followed it, and you haven't done what you need to do”. But we don't have any verification that we said that anywhere what they need to do.

Commissioner Barbadoro – I have told her 3 separate times on his letters form of what she needs to do.

LM – Glad to hear that, because she wasn't aware of that.

AZ – I am on board with the Commissioner's plan to use the court, and I think that Michael's right. We don't have a Special Permit in front of us, we have an Appeal to the Zoning Board either the Building Commissioner decision and that is absolutely clear and there is no reason to wait.

LM – Is every Member feel comfortable moving to a Vote? – Yes

AZ – We need to establish the record and facts for this particular case

Commissioner Barbadoro – He could help to establish these records for lack of use over for over two years.

LM – Yes, that will be very helpful

Commissioner Barbadoro – There is a lease agreement between Mr. Amanatidis and Three-Way Trust for 1022 Main St. The term of the agreement began on April 1st, 2017 at that time Mr. Amanatidis took possession of the property. So, the finding and facts are that Mr. Amanatidis had possession as of 1022 Main Street as of April 1st, 2017. There is a denial letter that should have been sent to you all, which is from the City Council stating that on September 6th, 2018 Pavlos Amanatidis Dealer License was denied for 1022 Main Street. There is a letter from John Cordio’s Attorney Three-Way Trust, stating that they evicted Pavlos Amanatidis at 11:30 AM on September 20th, 2018 was evicted. Also, there is a letter from City Council dated September 11, 2018, stating that there was a meeting held on September 6, 2018, where Donald Cordio’s dealer license was suspended at 1022 Main Street. This means his license was suspended on September 6, 2018, five days before he took possession of the property from Mr. Amanatidis on September 11, 2018. By the time he took possession he already had his license suspended, so no one in possession on 1022 Main Street since Mr. Amintidis lease began on April 1st, 2017 to today’s date has had full possession of the property and a dealer’s license from the City Council to sell cars under a class two dealer license. Therefore, the use of selling cars has lapsed for more than three years. Also, there is an order of violation from the Conservation Commission.

AZ – Motion on ZBA-2020-08 under §181.3566 on the Affirmative to Overrule the Building Commissioner’s decision for the need of the Special Permit from the Board of Appeals. On which Building Commissioner was correct to determine that the use of 1022 Main Street as car dealership had been discontinued for more than two or more years, based on all the facts presented.

JB – Motion Second

The Roll Call Vote was 0 - 5 to Overrule the Building Commissioner’s decision. The motion failed.

5. MISCELLANEOUS

6. ADJOURNMENT