

Nov 07 2023 8:53 am



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

MEETING MINUTES – TUESDAY SEPTEMBER 12, 2023
Legislative Building at 700 Main Street

Note: This was a Hybrid meeting, broadcasting and recording by FATV!

1. **Call to Order** Christine Tree **PLEDGE OF ALLEGIANCE** ALL
2. **Communications** Christine Tree
3. **MEMBERS ATTENDANCE:** Christine Tree (Chair), Michael McLaughlin (Vice-Chair), Joseph Byrne (Clerk), Brian Gallagher, Eric Chartrand & James Reynolds
4. **Hearings** Started at 6:03PM

| CASE No. | APPLICANT | PROPERTY | TIME |
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| ZBA-23-20 | Abel Gonzalez | 151 SOUTH ST | 6:00PM |
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Continue – Application for Use of Variance under §181.932 of the Fitchburg Zoning Ordinance to operate a Lodging or Boarding House pursuant to §181.313A5 located in the Neighborhood Business District Map 81 Block 6 Lot 0

CT – On this particular petition, I have a conflict of interest and I will need to recuse myself.

MM – Petitioner was not present in the meeting area, but there has been some communication and an email was sent to the Building Department on August 30, 2023 requesting to leave to withdraw the petition. There are about four persons present and no person waiting to be heard online.

MM – To refresh everybody from the last meeting, we had pretty much heard all the information. We gave the applicant the opportunity for us to have one additional board member, read the minutes and to vote, but as mentioned I wasn't going to open it back up for any questioning. Now, there is one thing I did talk to Attorney Tree, as where we have gone through the whole case. We've heard everything where we were ready to close and ready to deliberate, So, my question to her was, once we reach a certain point during a case are we allowed to move ahead and vote on the case anyways. So, my question to the board is: Do you want to give leave to withdraw move, or do you want to move ahead with the vote on how it was presented?

EC, BG, & JB - We should vote.

MM – So, we're going to move forward with a vote at this point, since we've heard everything from the applicant.

MM - This does not disallow any future applicant from coming before the board for a different application on this particular property, providing that it is definitely amended from what was presented before.

JB – Motion in the affirmative on ZBA-23-20 under §181.932 & §181.313A5 to **Grant the Use Variance** as requested

EC – Motion Seconded

Vote 0 – 4 to **Grant the Use Variance** as requested. Therefore, the **Use Variance** is unanimously **DENIED**.

Review of the Special Permit under §181.94 of the City of Fitchburg Code to keep chickens on the property pursuant to §181.313 located in the Residential B District Map 269 Block 9 Lot 0

CT – The Petitioner isn't here to speak on this matter, and we have received a communication from the permit holder that she was unable to attend tonight's meeting and requested a continuance to October 10th 2023, due to work inconvenience. We have a member of the public who wishes to speak.

Jacquelyn Wehtje Fitchburg resident, - speaking in support the right of the petitioner and everyone else to raise chickens regardless of where they live. Fitchburg is a right to farm community, but unfortunately, that has been interpreted to only apply to elites who own five acres or more of land. Not only in this case but when discussing revisions to the board of appeals rules and regulations. You should recognize the fundamental human right of people to grow and raise food particularly in a poor community such as Fitchburg, and at a time of high food inflation, you would be helping people feed themselves. Many people like to be self-reliant and do not want to depend on government programs or charity as they struggle with high food prices. You should remove the barriers that are currently in place. While roosters can crow early in the morning there should be no issue with chickens. The various problems we have in Fitchburg come from human beings, not chickens. In 2021 Massachusetts passed a law mandating all chickens live cage free, so you don't have to worry about animal cruelty. In the past I understand some in Fitchburg were concerned chickens would not be kept in a proper manner, but with the passage of this law, that is no longer a concern. Pigs are also now the law, but let's start with chickens.

CT - This was a review of an allowed special permit to keep chickens, and I believe that also included ducks. However, before we consider the continuance, I did make inquiry to the city to see if there had been any complaints regarding the keeping of the animals, and there had been no complaint made. Does any board member want to offer a comment?

JB - Made a special trip to the property, and saw the places that it is as was going to be. Therefore, I recommended that it should be approved, since that; it hasn't been any complaints from anybody in the neighborhood. I don't see any reason to bring the permit holder back in October.

CT - I've gone by this property and I was very happy to see that there was no complaints from the neighbors. Neighbors had been very supportive of this lady when the petition was first brought forward, and she keeps the chickens all fenced in the rear. I do see that there is a different concept with her house; she managed to keep this in a fashion that still maintains attractiveness as a cottage style front garden while bringing in that productive food element is great to see. I agree with Mr. Byrne that I don't see a need for further review, but this does expire with the expiration of those particular animals.

MM – Would like to ask if the board agree to have a sunset clause, so we have no more than five and three; eight poultry in all.

CT – Usually we would have a five year term on this type of permit, and we could add a five year sunset clause where the applicant would need to renew

MM – Yes, to make sure that down the road as property changes hands, there's something visible that stays connected to this particular owner.

JB - Motion in the affirmative on ZBA-2022-26 under §181.94 & §181.313 to Approve the Review with conditions and amend condition #4 as follow

1. **Applicant to have no more than 5 chickens and 3 mallards – 8 poultry in all**
2. **Not to constitute a public nuisance**
3. **No roosters**
4. **Sunset Clause – Special Permit shall expired/terminate within 5 years or upon the change of property ownership from Michelle Ouahdani, whichever occurs first.**

BG – Motion Seconded

Voted 5 – 0 to **Approve the Review** with conditions

ZBA-2022-21 **Tara Pena** **447 WATER ST** **6:30PM**
Review of a Special Permit under §181.94 of the Fitchburg Zoning Ordinance to continue the business operation of an Auto Dealership and Repair pursuant to §181.313D11&12 located in the Neighborhood Business District Map 95 Block 59 Lot 0

Present were Amauri Pena (Business Owner), Alexandra Rodriguez (Business Manager and interpreter) on behalf of Tara Pena (Applicant). Also, present was Harold Mateo (Property Owner)

CT - Last time, it seems like you are doing a lot of business there. Which is wonderful, but there's more cars than are supposed to be there. We asked that you think about how to resolve that problem, because we would like to resolve it in a way that doesn't hamper your business. - Alexandra Rodriguez of 264 highland St, in Worcester and office manager at the Pena Auto Sale (AR) - He's trying to fix the issue.

CT - We did get an e-mail from Mrs. Pena as well, please see exhibit “A”

CT - Mr. Matteo gave me a copy of the notice to quit delivered by constable on August 29th, terminating the tenancy as of October 1. So, the owner and Mr. Pena as the tenant, the resolution of a landlord-tenant dispute or eviction is not what we do here. I'm going to guess October the first you are able to start the eviction action proceeding, if you decide to do that.

Mr. Harold Matteo of 1118 water St. in Fitchburg, I am the owner of 447 Water St. through Clearwater Real Estate Investment Group. First, this is the first time that I heard about this post issue, I had heard about the fence and contributed monetarily to get it done. The issue I'm having here is outside the ZBA concerns, it is a tenant landlord matter. I'm trying to figure out a resolution with them, as they are constantly late paying rent and taxes, so I have given about 7-notices to them in the last six months to cure what's asked for in the lease. I'm doing what I have to, as the owner of the property, what I'm able to do legally without interfering in their day-to-day business.

AR – Mr. Pena’s been struggling in the past few months, but he's been trying. He hasn't seen the earnings of the business.

I understand the clientele here in Fitchburg it's a little different, and we had to adjust. We offer different types of financing, but we haven't seen any income, it's not making money and he is trying to figure out how we can continue to do business.

Mr. Chartrand and Mr. Gallagher had no comments

MM - Noticed to quit as of October 1st; is there any way for these people to rectify that or will it take place on October 31st, are you not going to take any money from them?

HM - There is a mechanic there who does extremely well, and while the car business may not be doing, well the mechanic’s side is doing well. He gets enough on a weekly basis, where he could

pay the rent. However, regarding the lease, upon the 30-day notice expiring I'll be able to proceed with the Fitchburg District Court.

CT - Special Permit expires when the ownership of the business changes. – HM – Correct, I will be reapplying for my special permit.

CT - We should continue this maybe on six months review, due to what's going on. I would not expect a resolution if court intervention is required before December the first.

MM – We granted the permit with conditions, to the applicant so as far as the board is concerned our expectation is that the applicant takes care of the conditions as discussed. A couple of things, number one is no outside storage of automotive parts or junk. Another is the plan you submitted it was to have five cars for sale, two cars for customer parking and two cars for employees. There were like 9 to 10 cars that were unregistered, and I know that's been a question about keeping the number where it's supposed to be. Another conditions we agreed upon was, not going to have any plastic signs or flags. If the car's up for sale, put for sale signs on them so people know that you're selling them.

AR - To the sign that says we finance that has to come off – MM - The conditions were that we wanted a professional sign on the building, and no plastic vinyl banners or banana flags.

CT - It's my general sense that there are issues here that we cannot resolve, and I'm thinking a motion to continue until December 2023.

EC - Motion in the affirmative on ZBA-2022-21 under §181.94 & §181.313D11&12 to **Grant a Continuance** of the review hearing until **December 12, 2023** with remaining conditions:

- 1. To operated according to the submitted plan dated June 9th, 2018**
- 2. No plastic or vinyl banners, professional signage only.**
- 3. No exterior storage of junk and no inoperable or dismantled vehicles outside of the property.**
- 4. No parking on the sidewalk or street**
- 5. Hours of operation are Monday through Friday at 8:30 to 7:30 and Saturday 9- 3 and Sunday closed.**
- 6. Sunset Clause – Special Permit shall terminate/expire upon the sale/transfer of the business from Pena Motors LLC.**
- 7. Not to operate as a public nuisance**
- 8. Property owner to remove and replace chain link fence on top of the wall rear side of the property with vinyl fencing or superior product with 60-days of the date Special Permit is issued. – COMPLETED**
- 9. Property owner to remove signposts, concrete and wires within 60-days from the issue of the Special Permit.**
- 10. Original decisions to be recorded with the Registry of Deeds and recorded copy to submitted to the Building Department within 45-days of the Special Permit would be expired.**
- 11. Review – December 12, 2023**

JB – Motion Seconded

Vote 5 – 0 to **Grant a Continuance of the Review to December 12, 2023** with conditions.

ZBA-2022-05

AG Dream Flip LLC

83-85 MARSHALL ST

6:45PM

Review of the Special Permit under §181.3366 of the City of Fitchburg Code to reinstate a vacant/Abandoned building as a 3-family dwelling located in the Residential C District Map 10 Block 64 Lot 0

Permit holder was not present, and no one else was present or virtual to speak for, or against the petition.

CT - We did receive a communication from him, dated today and looking for a continuance to November the 14th, 2023. See exhibit "A"

CT - I did notice this is the same permit holder for 348 Elm St., where we were looking for an unsafe building that had partially collapsed to be demolished. It is in the process of being demolished right now. The applicant sent the plans, I don't see that they've been modified as the last modification date was October 25th, 2022. He wants us to know that he's been working on plan. We had been looking at the review because there was a gigantic hole dug next to the stairway and retaining wall, and we wanted to be sure that it was safe. As I recall the Building Department did go out and look at it, and said at the time that it was safe.

BG - I had an opportunity to visit the site, I disagree with the findings in terms of the hole, that is still as it was, and it is a couple of feet from the landing of the stairway. If anyone were to misstep, they're going down about 30 feet, extremely dangerous.

EC - The applicant is taking on a lot of projects, and it's slowing them all down, so he really needs to prioritize them better.

JB and JR – No comments

MM – A little concerned about the fact that this project seems to have gone nowhere, I don't believe there's any occupants in it right now. However, the retaining wall is wide open and continues to deteriorate, which I believe we've captured in the comments.

CT - I am also concerned about the continuing deterioration of the wall and the hole in the stairway. I noticed that the neighboring property had installed a very nice retaining wall with three steps providing an excellent example for what the applicant can do with that wall. Mr. Chartrand could you suggest an action that would be appropriate to prevent any public injury.

EC - Physically blocking the stairs by putting a fence up. Beside that, some kind of containment for your construction would be appropriate and the hole itself, cover it or fill it in. I hope that he will be ready to work really soon, because winter's coming. It's progressing very slowly, but the safety stuff definitely needs to get taken care of. An additional condition is said hole to be filled in, construction fencing to be placed in front of the hole and stairwell and a 30 day timeline is more than enough

MM - Motion in the affirmative on ZBA-2022-05 under §181.3366 to Grant a Continuance to December 12, 2023 adding new conditions and amending the review date condition:

- 1. Retaining wall on the house facing side of the street to be face blocked.**
- 2. Parking spots to be paved with asphalt and striped.**
- 3. Snow removal area to be paved with porous material.**
- 4. Guard rail and dumpster screening to be constructed of solid vinyl fencing and not chain link material.**
- 5. Granite steps to be maintained and repaired with a metal handrail added.**

5. **Sunset Clause – Special Permit shall terminated/expire upon the sale/transfer of the business from Families Together, LLC**
6. **Property Owner shall repair the entranceway pavement**
7. **Further, review – March 12, 2024**

BG – Motion Seconded

Vote

5 – 0

to **Grant the Continuance on the Review**

ZBA-2022-33

Christopher Cordio

109 OAK HILL RD

7:15PM

Review of a Special Permit to operate a restaurant under §181.313 of the Fitchburg Zoning Ordinance located in the Residential C District at Map 63 Block 32 Lot 0

Present was Christopher Cordio of 35 Jeanette St., owner and petitioner of 109 Oak Hill Rd., stating: After my approval, I had to make some changes through Mr. Lorigan. Due to the Building Department stated that it's a nightclub because of the live music, so they had me change double doors to the side of the building to have access to the second floor. All this had to be done before my permit was issued.

Also, there was a miscommunication about the site plan review, and Mr. Barbadoro agreed that this is an existing non-conforming building, and therefore it doesn't require site plan approval. Since that point, we put the addition on the left hand side, but dig safe came out and the gas line runs straight there. So, I got a hold and I have to pay a bill for \$2500, to come and move the gas line to the backside of the building. We had the sprinkler company which because on the second floor and the two different layers, we'd have to put a dry and a wet system. However, if we take out the ceiling and do an open truss look, which spray foam on the ceiling then only one wet system would require. I haven't done the roof yet, but the inside is all taken apart.

CT – So, the parking and the structure could be constructed according to plan submitted data December 12th, but you're going to need to amend the plan that was submitted – CC – Yes, I will get that updated over to you

CT – At this point of time no conditions have been met yet – CC – That's right

CT - Now August 31st 2023 was the completion date – CC – Yes

CT - You're clearly seeking an amendment – CC - Please

CT - What is a realistic date for you – CC - August of next year

CT – Is anyone present or virtual to speak on, for or against the petition? None

MM - There's an addition at the front of the building to the left, is that's getting removed and rebuilt properly – CC - Correct

MM - I know that there isn't a need or requirement for a site plan, and not trying to add in any additional costs. But, as we review this plan I might want to give some consideration, and maybe a site visit by some of the Board members to try to look at some green space on the front. Secondly, the surface of the parking lot is completely eroding, is that going to be removed and repaved – CC - It's going to be completely removed and repaved

CT - When do you think you would be preparing to do that exterior paving and landscaping – CC - Probably the next April when the paving mills reopen

CT - Then the other issue is whether or not the extension is within the setbacks CC – Yes, they approved my building permit with the setbacks

CT - I'm going to remind you that we did not grant any relief from setbacks – CC - That's why we did 17 on the side, so we get the extra two feet

Renovations of the building it's all facade and interior, with the exception of 1-proposed addition. As you can see the little addition connecting buildings 87 and 89, which conforms to the side yard and front yard setback. So, new construction won't increase the nonconformity, and as a part of the project there will be improvements to the site parking landscaping storm water and sewer improvements. We're going through those review processes with all City department, DPW, Fire; expect to be in October on our first meeting with the planning board.

CT - I usually take some time to read and review of this plan, so the side yard setback is 25 and all the way down it's marked as 24 on the right hand side. – AC – Correct, so we do have that setback that's not met as well

CT - That's not a side yard setback, and then the 23 in the rear – AC - We had that discussion with the building commissioner front yard, side yard and rear yard, is based upon the dimensions of the lot and so. This is a corner lot, has frontage on two streets and so, and the way the ordinance reads and the way we interpret it and in coordination with the building department. They interpreted it, as front yard setback would be Nokege St., narrowest dimension, so your rear yard setback would be on your plan on the easterly property line. Therefore, the rear yard setback would be the ones that are 24-feet away in the rear yard setback, because required to be 20 so we conform to that. The left setback is you're frontage on Nokege Street looking at the end of the building, which is why we don't meet that of 25-feet we only have 23.

CT - You're aware of the plan on record from 1958 that created the subdivision of the big parcel, that was owned by Iver Johnson and there is a right of way shared in common by all of the lots that's marked on that. – AC - There are two right of ways, one that comes of Nokege St., 20-foot wide and then terminates a couple 100 feet into building 87, and also of that, there's another 20-foot wide that runs along the northerly side corner of the Kelly wood products building.

CT – Also, another right of way on the right hand side of your plan on the easterly side – AC - That somewhat runs on the center of the property line between our property and the property owners of Boardman properties, and so as part of the project we're maintaining all of those ways and improve them with all new pavements. Also, there are various shared utilities, and this was all 11-big property sharing water, sewer and so. As part of the project all new infrastructure is being put in main water, sewer lines and all those existing buildings connect we're going to reconnect them at that same location, so it'll at least a partial upgraded connection for all buildings substantially.

CT - It also mentions that there's a railroad on the right hand side of the right of way, all lots have the right to use and access the railroad – AC - Still exists, but doesn't go anywhere

CT - Is there any plan to seek to extinguish that easement with the neighboring properties – AC – No, we weren't getting into abolishing any easements at this point, what we were asking is cooperation with the Kelly Wood Products abutting property for some storm water improvements to go through their property to access the north national river. We've had conversations with them and they were supportive

CT - What that building addition is basically – AC - A lobby area that will be your front entrance coming in of the parking area, walk in and have a mail room, storage, bike storage. So, that's the entry area and then you can get into those other two buildings from there, but nothing underneath

CT - Application wasn't specific on how many units you're looking to build. – AC - We're proposing 50 one-bedroom and 15 two-bedroom units. Total of 65 units

CT - The parking that you've depicted on this plan is compliant with the parking regulation – AC - Correct

CT - Both in number and in dimension, as well as the access driveways –AC- Correct

CT - Reading the second page of the plan it looks like you have two way traffic movement, all the way around almost everywhere – AC - Is two way in and out both ways

CT - Is the width of the right of way on the right hand side on Nokege St., is sufficient for a conforming 2 way access. – AC - We're providing a 24-foot wide access, the existing is 20 so we're making the new paved access a little wider. 20-feet would be absolute minimum code for two way traffic, and for emergency vehicles.

CT - You're projecting to have market rate rentals, you're not going to be selling these as condominiums – AC - Correct

CT - Would it be market rate housing, right now it's almost unaffordable for many people of normal income, I would love to see some reasonable rental rates so that people could afford to stay in town. What's your timeline on construction once permitting is accomplished – AC - With funding in place looking to start some of the building work maybe into the next year, and then site work wouldn't be probably till later on in the construction season, spring 2025, from the beginning to the end 15 to 18 months.

John Kelly I'm a resident of Gardner MA and a part owner of Kelly Wood Products, it appears to us that the proposal is a very good one.

James Boardman from Ashby, and owner of Boardman properties, the two properties that abut this project. When I came to the Board back in 2006, you didn't demand but you asked don't back trailers off River Street. I used the right of way, and I need to know if we need to have tools in place. I'm in favor of all this proposal, but I can't stop my business as a wholesale auto parts dealer. They've never reached out to me, so when they talked to Mr. Kelly they don't talk to me at all. I have some concerns, one is I have four or five trailers a day that deliver and use this right of way, so is it going to be okay, it's safe for pedestrians, if it's going to be a residential area. I also have a mailbox that's common for the whole unit on my property; I'd like to know what we're going to do with because I get letters all the time. I'm responsible to keep it clear for the snow, but nobody can answer me who holds the liability if someone falls and hurts. Another question I have, if they are going to take care the utilities we share, I've had to do 24 hour fire watch a few times through the years and they've never maintained. Road is so much traffic here, and the road doesn't get maintained and you can barely pass through. I want to understand if anybody needs to back out onto the right of way, or River Street. I have four vans, and they get loaded on the side, in the morning and they're gone for the day. The tractor trailers come in, they go around the back of the building and then they back into a loading dock to make their delivery and then they're gone; they pull out on River Street right or left for now.

CT - So, if this board is looking some screening between the residential and industrial use, that would interfere with the loading up of your vans. – JB - Correct

This is a good thing for the community; we just need the tools to make sure these people are safe, if there's a major traffic flow. Do we need signage crosswalks?

CT - This has to go through a couple of different boards to get permission, us, Conservation and the Planning Board. We all have handled different aspects of it; I certainly want to make sure all of the businesses continue to operate. The fine detail on this will be before the Planning Board,

and I highly encourage you to attend the Planning Board meetings, so you can make these comments known to them as well.

Greg Moran I'm retired now, from a Realty Company. I'm 100% behind Mr. Boardman, because I understand retailing and I understand his operational needs. The 20-foot wide right of way is going to be improved upon it, to make sure that we address any and all of those concerns, whether it's a mailbox or any attempt of operators to encroach on that 20-foot right away.

CT - On my part I will need until the next meeting to digest and make sure I have looked fully at all the plans and thought about my questions

MM - I'd like to do a viewing of some of the buildings with the applicant, before the next meeting
– AC – We are happy to have a site viewing at the board's convenience

CT - I would be looking to have to continue the hearing until November and scheduling the site visit in between then now. If we get some more detailed plans prior – AC - I've been happy to forward the full set of construction details, locations of water mains and all of that I just didn't want to overwhelm me with a lot of information that didn't seem pertinent to the expansion of a non-conforming building.

CT - These buildings are so close to the road, and to the other industrial uses. I would be interested in knowing what will be changed They are historic, and what aspects are being preserved and that's something that can be the topic of discussion at the next meeting. AC - We're going for historic tax credits, so they have a lot of control over what we can and can't do; so we really need to maintain the historic character and restore it back to that historic look.

CT - These buildings are in the flood zone, does the level of the floor have to be raised because the buildings are adjacent to it; or because it's a historic building there's an exemption in the in the building code for that. – AC - We've had that discussion and process through the Historic Commission

MM - Motion in the affirmative on ZBA-23-22 under §181.333, §181.336, §181.74 & §181.94 to **Grant a Continuance to November 14, 2023**

JB – Motion Seconded

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

ZBA-23-23 David Bilotta 0 GALE ST 7:50PM
Variance under §181.93 of the Fitchburg Zoning Ordinance seeking a relief for a dimensional frontage requirement to erect a two-family dwelling pursuant to §181.416 located in the Residential B District Map 110 Map 3 Lot 0

Present were David Bilotta (Petitioner and property owner) and Ian Brennan of Westford (Potential Buyer)

Right now, we have no street frontage. We have Clyde St. comes around, Milton St., Gale Street is a private way paper street, and Hancock and Smith Street. Ian has purchased two properties from myself and built 2-duplexes facing Smith St. However, I have this last lot #3, that I wanted to develop. So, my thought process was to continue the road from where ends, and continue to the driveway to the duplex,

CT – So, it would have frontage on Gale Street, which is a path in the woods. – DB - Yes

CT - There is a gravel passage that's built all the way – DB - The whole area's gravel, but ESC is putting in. Unutil has an easement for me to pass and trespass in order to maintain their cables, that has been done properly

CT – So, they have the right to install cables, and support wires. – DB - They have the cable et cetera applying to me, purchasing from them, and there is a 24 wide easement from them that was done back in 2018.

CT - How much space is remaining if we exclude the area over which they have the easement? – DB - A total of 58-feet, and 20' is the easement for use, so there's 38 feet left

CT - Is there any plan to actually improve that Gale St. – DB - No

CT - The other two houses were constructed according to a 2005 special permit. – DB 2008

CT - Was that an ANR plan – DB – Yes

CT - Did you designate that as a non-buildable lot – DB – It said parcel

CT - Your plan is to build a duplex, to own or rent it out – IB – Rent it out

CT - I appreciate the narrative in response to the questions on the petition. However, with a variance of any kind the question is whether there is a hardship created by the soil, the shape of the lot, the topography, or an existing structure. We have to find there's a hardship created by one of those four reasons, or we can't consider the granting of the variance. I didn't see the response to that in your narrative so could you tell how there's a hardship? – DB – It should be the shape and because of the way the shape it is, doesn't allow me to be able to build because the way is set up

CT - You said it is twice the required area for to build – DB – Almost three, its required 10,000 and this 28,000 square feet, with a 124-foot deep, but because of the shape, we're limited in what we can do

CT – Is there any member of the public who is here or virtual to speak on this petition? None

Mr. Reynolds, Mr. Byrne, Mr. Chartrand and Mr. Gallagher had no comments

CT - I'd like to get an indication from the Board, if would like to vote on this tonight or whether you'd like to move it for further consideration.

MM - You purchased it all as one large parcel – DB - In 2005, and then in 2006, the City approved the plan for six-units. Time went by, changed my mind. Went back in 2008, and that's when we divided by the three lots.

MM – So, at that time you created two buildable lots, and one non-buildable lot – DB - Correct

CT - I looked at the deed and there's a long note attached which is unusual, this deed is one of the very few that I've seen where it specifically says otherwise that you don't necessarily have the right to use the way. I think it was because Unutil wanted to keep control over that portion of the property, have you clarified that if you would have the right to build that driveway where you want. – DB - That's all part of the deal that we had with Unutil, within the easement that's all been recorded

CT - I had seen the 2005 special permit recorded, but not the 2008 decision. I would like to see the decision from 2008 before we vote to make a decision on it, so can you make sure to submit that special permit decision from 2008. I would like to continue the hearing to October 10, 2023

MM – Motion in the affirmative on the ZBA-2023-23 under §181.93 & §181.416 to **Grant a Continuance until October 10th, 2023**

JB – Motion Seconded

Vote 5 -0 to **Grant a Continuance to October 10, 2023**

ZBA-23-24 Rafael Borges 100 CLARENDON ST 8:05PM

Dimensional Variance under §181.93 of the Fitchburg Zoning Ordinance to reduce the Lot area in frontage/front, side and rear yard setback on a 6,300 SF lot with less than the minimum requirements to erect a three-family dwelling pursuant to §181.416 located in the Residential C District Map 63 Block 97 Lot 0

Present were Greg Roy from Dillis & Roy (Civil Engineer) representing the applicant this evening. The size of the property is 6,300-square feet; it has 90-feet of frontage. Single family dwellings are allowed on lots of greater than 5000-square feet, so there is the adequate area for a single family residence. The applicant is proposing to construct a three-family residence on the property, and in your ordinance requires 7500-square feet. Therefore, we are looking for a dimensional variance relief from your ordinance. The property historically was used as a multi-family prior to a fire years ago, and there is no evidence to support it, and to be forthright, it has happened outside of the two year window, to be able to reinstate that non-conforming use. We're not asking for the creation of a new lot, a new three-family, or a new non-conforming that hasn't already existed in the past. I'd like to amend my narrative submitted with the application, and in addition under the lot shape argument for hardship; particularly given the fact that this lot has had a historical multifamily dwelling on it. So, we're asking to approve something that actually has existed in the past. We submitted detailed architectural plans, they feel is aesthetically pleasing and will provide value to the neighborhood. We would have to go to planning board, but we understand the variance was the first stop.

CT - Does anyone present or virtual who wish to make a comment on, for or against this petition?
None

BG - What is the lot currently being used for? GR - It's a paved lot, fenced I think it's used for parking.

MM – Does the owner owns any abutting properties – GR – No, to my knowledge he doesn't appear to own any common lot line

CT - My main question to you, is what is the hardship that is created by the shape – GR - We're have a situation where we have a conforming lot for a single-family, knowing there could be built as of right. So, our appeal is a hardship based on lot shape given that we are 1200-square feet short with the testimony and the fact that there has been in this case a lot that's existed for a long time that has had a previously erected multifamily structure on it.

MM - Motion to close the public hearing

EC – Motion Seconded

Vote 5 – 0 to close the public hearing

CT - In this case we are bound, not even by ordinance but by state statute to conform to the variance criteria, which require that there be a hardship related to the soil, shape, topography or structure. Where it is possible to build a single family home by right on this lot, even if there is an issue related to the lot I do not understand what the hardship would be. Even if setback relief is needed

to construct the single-family dwelling, we have the infill lot provisions available. Which I looked to see if maybe that could provide an avenue of relief to construct a multifamily, but it does not; it is for single family only. I don't see the hardship criteria has been met, and I as one board member would not be in favor of granting the variance.

JB – I echo your statements.

Mr. Chartrand, Mr. Reynolds and Mr. Gallagher – No additional comments

MM – In regards to area, it doesn't even meet the area for a two family never mind the three, it doesn't meet the criteria and there's no substantial financial hardship. I wouldn't be in favor of this.

MM - Motion in the affirmative on ZBA-23-24 under §181.93 & §181.416 to **Grant the Dimensional Variance** as requested

JB – Motion Seconded

Vote 0 – 5 to **Grant the Dimensional Variance** as requested, and therefore, **Dimensional Variance** requested is **DENIED**

ZBA-2022-17 **Jeffrey Summers** **69 HIGH ST** **8:20PM**
Continue - Review of the Special Permit under §181.94 & §181.77 of the Fitchburg Zoning Code to operate a sober house pursuant to §181.313A5 within a reasonable accommodation in accordance under the Fair Housing Act 42 U.S.C. 3602 located in the Residential C District Map 19 Block 22 Lot 0

Present was Jeffrey summers (Owner and Petitioner),

CT - Mr. Summers, I want to be sure because at the last meeting you were not present, had you received a copy of the minutes. I want you to have knowledge of what went on at the last meeting, where you were scheduled for 6:00PM – JS - I was the only one scheduled

CT - We also had an executive session on another matter, and you came 45-minutes late. So, the hearing was held and the review was continued, and none of the conditions were changed except the review date. However, we have testimony from the City Solicitor, Building Commissioner and Attorney Pollack on an update as to the various things that have been going on. Currently, you have appealed this decision, and one of the questions that was asked of the Law Department was whether there was a stay in place on the appeal; and the answer was that there was not. To understand the current status, I did go and look at the Court docket online, and I saw that after the meeting, you had made a motion to the Superior Court asking to prevent any inspections from the City; and the court had denied that – JS - I know that there is a October third the court date

CT - The general gist of the statement from the City Solicitor was that there was a motion to dismiss the appeal. It had been submitted, but had not yet been heard. I believe that's the October hearing, so the appeal is still pending. The testimony from Attorney Pollack was reviewing the actions that had taken place in the Housing Court, and that was prior to this decision issuing on a contempt order; which I think remains outstanding. I did look at that docket, and I saw that you had filed a notice of appeal in that case as well. Is the appeal proceeding in that case – JS - Yes

CT - Attorney Pollack stated that the fine in that case was \$11,650, it was in attorney's fees under that order of \$7,125; and there was a continuing fine of \$50 a day. Then there was an order for reduction of occupants, and she had reported that had not been complied with. Would you agree with those statements – JS - I would not.

CT - Commissioner Barbadoro gave statements was that no inspections had occurred, since the ZBA decision that we had issued. In which has a condition for annual inspections, fire and health; and there was an \$8000 fine to the Building Department; which had not been paid. Would you disagree or agree with those statements? – JS - I would disagree

CT - I think that fully apprises you of what had what had happened at the last meeting, but the minutes are available for review.

JS - I brought an appeal to Superior Court, and we'll proceed with the appeal in October, we'll see what happens then. As for of the \$8,000 fine, I'm not familiar with it and I don't agree with that. Everything else I I've complied with, and did whatever you have asked.

CT – We'll go through the special permit conditions, and you're welcome to say you've or haven't complied, or make any other comments. Occupancy shall be limited to 12-persons to create a living environment of one person per bedroom, defined as one room with a closet which is not accessible only through another bedroom. Petitioner may seek to increase the number of persons by modification of the special permit if petitioner creates more bedrooms on the premises with such property modifications to be properly permitted and constructed in accordance with all municipal state and federal law. – JS - That condition was unreasonable and illegal, 69 High Street has been either a group home, convalescent home, or nursing home for more than 65 years. I had documented proof of and handed to this board, it was always double occupancy. So, I find it illegal, discriminatory, and even racist, that's why I have not complied and I think the court would agree with me.

CT - #2 Kitchen to be upgraded to commercial standard, which is generally defined as the installation of kitchen appliances in good working order, which are sufficient in size and number to service the residents on the premises, and of durable quality such as those intended for use in a commercial application. – JS - I have a commercial kitchen, and those were the exact words in the ruling. A commercial kitchen would consist of a three base sink, grease trap, commercial stove, and an ansel system. The fact that you put this condition on, when this place has existed for 65 years in this same condition and it's residential. I found the condition to be unreasonable, illegal and racist.

CT - #3 Renovations to be completed within 12-months from the date of this decision.- JS - I have done some renovations, but the conditions I found to be illegal and racist; I did not complete.

CT - #4 Applicant's outstanding fines are to be paid within 12-months from the date of this decision. – JS - I don't believe that I owe any fines, and any fines that are legal and justified, I will pay immediately.

CT - #5 Applicant shall reduce the number of occupants to no more than 12-persons unless a modification is granted within 12-months from the date of this decision. – JS - You did not have the agreement certified with the city clerk within 90-days, my application for a 22-person occupancy is automatically granted, and that's what the mass general law states.

CT - #6 was the review, so #7 Building, health and fire department inspections shall be completed annually. – JS – Initially, the hearing on July 12th, 2022 and after that two inspections were performed. I had no problem with, but after the court case started, I didn't feel like there was a legitimate reason to have another inspection, so we did not have that inspection.

CT - Which departments were involved in the inspections that occurred? – JS – Fire, Building, Electrical, Plumbing, they came together on two different occasions yes.

CT - Then a sunset clause, I assume that either yourself or the entity is still the owner – JS - Yes

CT - Person wish to speak:

David, I was at the Jeffrey's house out the Garnet Street, and then I moved to the High Street house. I've been in sober houses programs all over the state, and you're holding a higher standard than any other city in Massachusetts holds. At every place I've been, it's always a shared room, and that's how sober houses and programs work. As far as the kitchen, in every other program I've been they don't have a commercial kitchen.

CT – No other person present or online.

Mr. Reynolds, Mr. Chartrand and Mr. Byrne – Had no question to the applicant

JB - Would it be out of line for me to make a motion that we continue this meeting until November, so that we can at least get the reading what the courts have to say and then we can make some decisions. Due to that everything is on air at this point

CT – We can, there are other things that may interfere with whatever decision we make, but there's no court order that prevents us from acting. So, it's a judgment call on continuing until after that hearing.

JB - Motion on ZBA-2022-17 under §181.94 & §181.77 to **Grant a Continuance to November 14th, 2023** conditions to remain and amending condition #6:

BG – Motion Seconded

1. **Occupancy shall be limited to twelve persons, to create a living environment of one person per bedroom, defined as one room with a closet which is not accessible only through another bedroom. Petitioner may seek to increase the number of persons by modification of this Special Permit if Petitioner creates more bedrooms on the premises, with such property modifications to be properly permitted and constructed in accordance with all municipal, state and federal law.**
2. **The kitchen to be upgraded to commercial standards, which is generally defined as the installation of kitchen appliances in good working order which are sufficient in size and number to service the residents on the premises, and of durable quality such as those intended for use in a commercial application.**
3. **Renovations to be completed within twelve months from the date of this decision.**
4. **Applicant's outstanding fines are to be paid within twelve months from the date of this decision.**
5. **Applicant shall reduce the number of occupants to no more than twelve persons, unless a modification is granted, within twelve months from the date of this decision.**
6. **Review – November 14, 2023.**
7. **Building, Health and Fire Department inspections shall be completed annually as a condition of the continuation of this Special Permit.**
8. **Sunset Clause – Special Permit shall Expire/Terminate upon the transfer or sale of the property or the business from Jeffrey Summers/Jeffrey's House, Inc.**

Discussion on the motion:

CT - There's a court hearing that may or may not wipe clear the issue, it does makes sense to wait for since it's scheduled so soon, unless there is any kind of exigent health and safety issue. We haven't had anybody appear to make any statement that there's an exigency; we have ongoing things that have been pending for a long time. Such as the inspections, we also have a city ordinance that allows boards to revoke or suspend permits in the face of unpaid fines, but if we didn't have a motion pending in October the 4th there might be no reason at all for a continuance.

There are 12-month deadlines, which should be taken from the date that the decision was filed with the city clerk's office, and we are not at the 12-month deadline given that basis right now. So, there's still an opportunity for the permit holder to comply, although I acknowledge he has reiterated that the constraints are illegal and I think that can be taken as an intent not to comply.

CT - I'm asking to the Board members does anybody else want to continue.

MM – In favor of continuance

Vote 4 – 1 to **Grant a Continuance to November 14th, 2023**
(MM)

5. MISCELLANEOUS

ZBA-2020-21

Matthew Thibeault

0 PEARL HILL PK

177 ETONIAN PK

Variance under §181.961 for a dimensional frontage require on a new single-family dwelling construction located in the Rural Residential District Map 70R Block 40 Map 1A, Request for a finding on a dimensional variance granted on November 10, 2021 and extended on February 8, 2022 to an expiration date of June 7, 2022, as to whether the granted variance was exercised or equitably tolled prior to lapse of the variance pursuant to M. G. L. C. 40A, Sections 10 and 11, and Section 181.9316 of the Fitchburg Zoning Ordinance.

Permit holder was not present at the hearing; no other person was present to speak on, for or against the petition.

CT - This is an unusual item, we had a variance that was granted on November 10, 2021, for construction of a single family-home. On February 8th, 2022, we granted the six-month extension to June 7, 2022. The permit holder did not apply for a building permit until March of 2023, which was eight months after the expiration date to exercise the variance, or have it lapse.

What is before us is a question of: Whether the Board can make a finding that either the variance has been exercised, or that the applicant has been equitably tolled, which means there has been a very good reason that has made it impossible for them to proceed. The applicant sent a communication asking us to push it back to October, so he can attend in person. There's no deadline before us and nothing to delay us from doing that, but we are now at 11 cases for October. I assume everybody's been on to the property, and there was a well installed, and a well permit was pulled on August 24th, 2022

MM - We're allowed, how many extensions? –CT - The statute is unclear, but it is clear that they must be requested before they expire.

EC - I would venture to say that I don't see the application for a well as exercising that permit, because you could apply for a well for any reason and maybe not for a single family home.

MM - I don't think this is a relief question, I think it's a procedure and time writing question.

CT - It's a fact finding. I would prefer not to make this applicant come back before us, without him, here I can't speak to the timeline. I visited the site and at least as of the present there's been a road cleared, a clearing at the bottom, some steps have been taken. I think the best thing to do is to make a determination to hear directly from the applicant, if doesn't seem it's been exercised, so we might as well move forward. Which would give the applicant the opportunity to apply and make it clear, so let's resolve this by having a motion to continue.

MM – Motion in the affirmative on ZBA-2020-21 under §181.961 & §181.9316 to **Continue to October 10, 2023**

JB – Motion Seconded

Vote 1 – 4 in Favor of a Continuance to October 10, 2023, therefore, motion **FAILED**.

CT - We'll need to make a motion to find that the permit holder has either exercised, or/and to deliberate on approval or disapproval of the proposed finding.

CT – Our ordinance reads: Any rights authorized by a variance which are not exercised within one year from the date of grant of such variance, shall lapse and may be reestablished only after notice and a new hearing pursuant to this section. In other words, a new variance application, except the board in its discretion and upon written application by the grantee of the variance may extend the time for exercise of such rights, for a period not to exceed an additional six-months if the grantee applies for the extension prior to the expiration of the one year.

MM - We allowed to extend for six-months and he didn't exercise it – CT - Correct

MM - That's the finding, he didn't exercise it, he definitely did not pull a building permit within six-months

MM – Motion in the affirmative on ZBA-2020-21 under §181.961 for a finding that the applicant has exercised his rights under the variance prior to expiration

JB – Motion Seconded

Vote 0 – 5 for the findings that applicant has exercised his rights, therefore, vote for the finding is unanimously **DENIED**

● - **DISCUSSION OF REVISIONS TO BOARD OF APPEALS RULES AND REGULATIONS**

CT - We should all take a look at the rules and regs, because they have not been amended in a long time; and see if there's anything we want to improve. Second, there is a specific improvement that I would like to have us consider more substantively at the next meeting, to add a provision which allows the board to request or impose a fee upon an applicant; in order to hire our own independent consultant. We are fully able to do this, as long as that provision is in our regs. So, if we get a complex application before us, we can require an applicant to pay for a consultant; and I did create a new section 6A in our rules and regs.

6. ADJOURNMENT - 10:40 MM- Motion to adjourn and continue discussion Thursday

BG – Motion Seconded

Vote 5 – 0 to Adjourn