



ZONING Board of APPEALS
718 Main Street
Fitchburg, MA 01420

MEETING DATE: Tuesday, January 11, 2022
MEETING TIME: 6:00 AM PM
MEETING PLACE: 718 Main Street 3rd floor
Room number (if applicable) North Fitchburg Meeting Room #300
Address: 718 Main Street, Fitchburg, MA 01420

NOTE: Mask is required to participate in person meeting!

MEETING MINUTES

- 1. **Call to Order** Michael McLaughlin **PLEDGE OF ALLEGIANCE ALL**
- 2. **Communications** Michael McLaughlin **ATTENDANCE:** Michael McLaughlin
(Vice-Chair), Joseph Byrne (Clerk), Christine Tree, Greg Babineau & Gary Kirschke
- 3. **REMOTE ATTENDANCE:** Lauren McNamara (Chair) & Brian Gallagher
- 4. **Hearings**

CASE No.	APPLICANT	PROPERTY	TIME
ZBA-2019-13	Ruth Jeanete Guzman	324 LUNENBURG ST	6:00PM
<i>Review of Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling located in a Central Business District at 36/15/0</i>			

The virtual presentation was given by Manuel Matias (General Contractor), stating:

I'm the general contractor on site, I met with you all live in person last time in September 2021. I'm here representing Ruth Guzman, the owner of the property. Since we last met we've been able to make a lot of progress, the sprinkler system is already installed, a lot of the things that were pointed out at our last meeting, such the deck, siding, and landscaping were remedied immediately. Upon notification, we are making progress. We're working towards the rough plumbing and electrical. Unfortunately, we do not have a finished product. We faced obstacles with COVID and with weather, and therefore we do not have a finished project. But we are much further than we were last time I met the Board, I know this is taking a lot longer than anybody would want. There's has been so many changes to this project, which make it hard to finalize it. The sprinkler system caused additional issues within the property, obviously the property wasn't completely gutted so trying to install a sprinkler system to walls that are already sealed made it harder. We had to break more walls, we had to patch more walls. So, one thing led to another, so it's taking us longer but I am here to assure you that progress is being made.

- MM – Is anyone in the audience or virtual seeking information in this petition? None
- MM – Is anyone in the audience or virtual in favor on this petition? None
- MM – Is anyone in the audience or virtual on opposition? None

MM – Do you have an anticipated completion date? Keeping in mind you're probably going to have some future obstacles, right

Mr. Matias - I'd like to give you a hard date, but the reality is that because of COVID we're facing supply issues. Our cabinet order is back ordered for two months right now, and that's not even talking about the appliances that we're going need to get occupancy permits. So, like I said last time I myself and the owner we are at the mercy of the zoning board, but the reality is I can't give you a hard date when it comes to completion. Because the supply change and have presented a problem for us

MM - We get it, I'm sure you'd probably like to be done two weeks ago

GK - Probably it depends on the right the cabinets, lower the price usually the quicker the turnaround, but depends on the circumstances nothing is now surprising

JB - It's been so long, it's not all about the outside anymore because it's all covered over with snow. I hope that that was cleaned up before the snow came, so you're going be finished or do you have any idea. Would you be finished in June?

Mr. Matias - I think we would have a finished product in June, yes

JB - Do you think that we should call you back in June that with a completion date? Right?

Mr. Matias - Once again I'm at the mercy of whatever the Board dictate, but I am trying to finish this as fast as possible. I came into a situation where multiple issues were needed to be rectified, if it was up to me we wouldn't be having this conversation because it would be a done deal. I can assure you that the owners are continuing to spend money in this project because obviously they want to see this done, if June is when it needs to be completed by. Then I'll take what I can get

JB - Which general contractor are you? Are you the 2nd, 3rd or 4th?

Mr. Matias - Honestly speaking I think I'm the 4th or 5th, my understanding is that they've had some unfortunate luck with the personnel they've hired previous to me. I'm just trying to help them out finish this as fast as possible

MM - You're a licensed contractor, I assume

Mr. Matias – Yes, I am. I am registered contractor with the city right now to rectify this this issue

CT - I want to make sure that you answer the question that was asked very clearly. Do you have a general contractor license that you are proceeding under or are you working under somebody else's number?

Mr. Matias – No, I am a licensed general contractor operating under my own license

CT - You were last here in September, and I think that you were newly onto the project at that point in time. It was the first time that I had seen, and at that point in time you said that the sprinkler system, electrical and the plumbing were ready for the rough inspection. So, has that progressed or still that where it was in September?

Mr. Matias – So, in September the owner had hired a plumber which assured her that it was ready for rough inspection. Upon inspection it was not the case, they've then brought on a different plumber who has progressed the project. Now the project is ready for rough inspection, in regards to the sprinkler system. The sprinkler system also was started in when I came on board on September, as I mentioned there were a lot of modifications that had to be made in order to accommodate the sprinkler system. Which was unforeseen, but now the sprinkler system is installed and ready for rough inspection. The electrical aspect of the property, the back portion has already passed rough inspection. We are trying to get the meters installed, so that way we

can get some heat in the property so that we can continue to work and that's posed some issues. But I had spoken with the electrician and he's assured me that these things would be remedied immediately

CT - At the September meeting, one of the items we talked about being a priority was the front porch. You stated that it would prioritize getting that finished, that you hadn't yet ordered the materials. But you would do so, and think of that as a priority. That front porch still remains with rough columns not finished. The base of that porch is unfinished, the steps have not been modified it still all is skewed. Did you have a challenge that prevented you from doing that or did you just move to other priorities?

Mr. Matias – No, So what we were able to do was complete the siding, the back deck, the middle deck of the property. We reinforced the front deck that you're specifically speaking of, so that what it was definitely undersized before. But we've taken action in reinforced it to meet today's code, there's certain things that the owner has budgeted. So, as things come up they're trying to do as best as they can, with the money they have for this project. But I can assure you that that front deck has been reinforced

CT – Okay, because it still looks as poor as it did before, and one of the issues is clean up of the exterior, which is what is presented to the rest of the city on that gateway street. So, I'm very glad that structurally there's been an improvement, but the visual on that really needs improvement. Are you able to do that in the current weather or do you need some spring weather in order to do that?

Mr. Matias – Unfortunately, we won't be able to paint or make the deck look better, than what it is with the weather situation, but in the spring time that's something that's can be remedied relatively

CT –So, what I would say to the rest of the board, and to you Sir is: I would think that should be done as soon as weather permits and I would expect that weather permitting by the end of April.

GB – So, to recap, this project is before us July 14th, 2020, this could be your six month progress review. On your prior appearance before the board, to Christine's point, on the porch not being done. I understand that there are delays in supplies, chance of weather things like that, but I don't see why they would have been a delay in what we had asked for, which case you might have a cash flow problem and that's up to you, that's your business. I did go by the unit before the snow, I thought the exterior was definitely cleaned up, there was work done out there and it looked very good with a few exceptions. I have a question for you, how many units in this property?

Mr. Matias - My understanding is this was originally a four unit property that was granted a variance to become a three unit dwelling. So, as it stands today 3-units, but I want assure you that we did remedy these structural issues of the deck. I understand that it doesn't look as nice as it should, but we did remedy the structural aspect of the deck and with weather permitting we could spruce it up so it looks better.

BG - You mentioned heat in the building, do all three units have separate heat?

Mr. Matias – Yes, so all three units were separated, each unit has its individual boiler.

BG - Has the heating been inspected and signed off on?

Mr. Matias - The heating has been inspected, the plumbing inspector required additional items to be done. Which the plumber is aware of and working to finalize.

BG - I assume those repairs will be made before the heat goes on in the building, correct?

Mr. Matias – Yes, fortunately the plumbing inspector will not sign off on the rough until these requirements are met.

BG – Okay, well on a positive note the property looks much better than it has, the porches and stairway looks great and I appreciate that. A couple of things I want to call to your attention, it looks like there's a satellite dish on the ground adjacent to the building with the metal brackets sticking up. That could be a safety issue for someone cutting through the property, it's pretty close to the property line. Hopefully you can get that picked up, and the dumpster looks like it's filled to capacity with mattresses and stuff like that. So, hopefully you can address the owner to have that empty. I'm sympathetic to your situation with supplies and all that, hopefully you'll have good luck in the future.

MM - I think that everybody knows that you were dealt these cards, you just try to help the situation. So, we appreciate it, I think the board maybe could pass on to the owner. I think is kind of reaching its limit with the timelines, we know Covid it's been an issue, but this case was originally before us in 2019. Again, no fault of yours, you've stepped in to try to remedy it. If you could just do us a favor as things progress, just trying to keep the dumpster empty and the place exterior looking presentable because it sounds like it's going to be a few more months.

Mr. Matias – Yes, definitely at my end I'll definitely have the satellite issue remedied, unfortunately we empty out the dumpster and it seems like people think it's a community dumpster for everybody decides to throw their stuff in there, but we'll definitely do a better job at keeping an eye out. To avoid these things from happening.

MM - Back to the board - what do we want do for timeline on a review, any suggestions?

JB - He said it was going to be done by Jun.e

MM – So, do you want to do the meeting in July?

CT – That's a recommendation can be review in July, that does work for me. But I do want condition to fix the porch by the end of April.

MM – Okay, could you give me some language please?

CT – Repairs and repainting of the front porch and walkway servicing it on Lunenburg Street should be finished by April 30th, 2022.

MM – Mr. Matias, if you could just pass onto Mrs. Guzman that we want to close this up, by the end of June. So, that everybody needs to work collectively towards that goal.

Mr. Matias – Definitely, I couldn't agree with you more.

CT – Motion on ZBA-2019-13 under §181.3561 to **Grant a Continuance on the Review to July 12, 2022** with an additional condition as follow:

1. **Repair and paint all decking.**
2. **Upgrade exterior with uniform gutters, facial boards, vinyl siding.**
3. **Full rehabilitation of kitchen and bathroom, front first floor.**
4. **Paint kitchen and bathroom from the second floor with a granite kitchen counter and new vanity in the 3 bedroom-unit.**
5. **Alter paving and landscaping as per plan submitted to the Zoning Board (Dated 5/14/2019).**
6. **Repair slate roof or re-shingle with good quality asphalt shingles.**
7. **All items outlined in exhibit D, "Scope of work," to be completed.**
8. **The special permit shall terminate/expire if the property is sold or transferred prior to all conditions from Zoning Board have been met.**

9. **Property is not to be Occupied or put into use before Zoning Board findings that all conditions have been met.**
10. **Further Review on July 12, 2022, at which time it is expected that all exterior work will be completed.**
11. **Property to be kept free from outside storage or debris, and to be maintained at all times throughout the completion of the project.**
12. **Yard to be maintained in acceptable condition throughout the completion of the project**
13. **The property will be cleaned in short order and kept clean until the project's completion.**
14. **The front porch and front walkway to be repaired including paint by April 30th 2022.**

JB – Motion Seconded

Vote (1-roll call vote)

5 – 0

to **Grant a Continuance to July 12, 2022**

ZBA-2021-32

Jose Martinez

147 DANIELS ST

6:15PM

Continuance:

Special Permit under §181.336 of the Fitchburg Zoning Code to reinstate a vacant/abandoned building as a four-family dwelling less than required of 2,500 SF per unit pursuant to §181.743 located in the Neighborhood Business District Map 64 Block 14 Lot 0

MM - I've been told that they've asked for an extension until next month, that's correct, Mercedes?

Zoning Secretary – Yes, it's correct. At this point petitioner still is in the process of obtaining parking plan approval from the City Planning Board, and they are scheduled to meet on January 25, 2022.

MM – So, this Board might want to see the parking plan, even though it is planning. If you could note that when it does come, you could get a copy of that, and obviously, we'll get a decision from the Planning Board.

GK - I'm not sure of the 2500 number, but exterior space or each unit has to have 2500 square feet outside.

Commissioner Barbadoro - I believe it's 2500 square foot minimum lot size.

GK - Could they meet this?

Commissioner Barbadoro – Well, what they're doing is they have a lot besides. Whenever you have a multifamily dwelling, you need to have a lot that includes everything for trash, snow removal, green space, parking, and that entire thing takes 2500SQF per dwelling. So, if you have six dwelling units, multiply 2500 by six.

MM – So, before we move on, do we have an extension that works for us?

Zoning Secretary – We do have one date as of February 8, 2022

CT – Reads a comment from Planning Board, stating: This applicant is currently before the Planning Board for a Special Permit & Site Plan Review for a 4-family. The site plan needs to be revised to show proposed finish grades, % slope of the driveway, stormwater management details, etc. Hearing continued to January 25 Planning Board meeting. NOTE: Whitman & Bingham site plan differs from the one submitted with the ZBA application

only because, I'm worried about the risk of another boarding house situation. That was our thought process and so I suggested that maybe they should try and do that given the issue.

MM – So, just for clarification is boarding houses are allowed in that area?

Commissioner Barbadoro – No, but it's they are really hard to stop even in court, it's something that I sometimes don't want to row against the tide

MM - Before I kick off for the record, the assessor's card shows is being a single-family with four bedrooms. Which only makes me believe that over time something was put in illegally.

GB - You said they were 8-bedroom in the property right now?

NT – Eight

GB - How many parking spaces do you have in this property?

NT – It shows in my engineer plan that you already have.

GB - You have parking for four automobiles on the property

NT - Right now?

GB – What will you have?

NT – Six parking spaces

LM - It looks as though this property was listed in December of 2020, these folks probably purchased it. At the time when it was being marketed, it has three kitchens, five potential bedrooms and four full bathrooms. That's what the listing says, in total rooms 5-bedrooms not eight bedrooms as the petitioner says. Four electric meters in the basement, one of which was taken out. So, it looks like that would have indicated that it was maybe being used as a two family, but in the public record show 3350 square feet, with no garage. It looks like there is a good amount of parking, and it was transferred as a single family dwelling. Records showing it is a single family home with 3350 square feet, and parking indicates that it's three parking spaces. I think that he had six parking spots and of that I am not positive.

JB – If he has the proper amount of parking and they are big enough to handle it as a two family, it feels that it would be better as a two-family than a huge single-family. I don't see any reason to hold back on it, as long as while he is converting into a two family and we have enough inspections done on it to make sure that it's done properly.

MM - How many rooms is in the house?

LM - There was a total number of eight

BG - I'm familiar with the property, I knew the family who lived in it and used it as a one family home since the early 1950s. So, it had been used for quite some time as a single family, I have a question to the petitioner about the four parking spots that are on the side of the driveway. There's the very steep grade, it's almost like a wall. With the proposed parking area that tears down quite a bit, there would be some grade issues and I'm wondering what the plan is to improve the grade to allow for those four additional parking spaces

NT - Well for that we have to build a new retaining wall

BG – I don't honestly see how that can be done with raising the level considering this building on the other side of that lot

MM - A question to the Commissioner from the Board, the new zoning requires how many feet of set-back for driveways parking from the property line, is it three feet now?

Commissioner Barbadoro - I believe it's three feet, on single or two families.

MM - I believe it's three feet, but the plan doesn't show that. What concerns me is the ability to turn around and be able to maneuver out of the property instead of backing out, it looks like this has been a single family for many years, and it looks like he purchased it as a single family with the intent that it's a single family. Over the years kitchens get put in illegally, for somebody who is living in the house. This is 3300 square feet it's a good sized house, but it's not a mansion. And you are telling us there's eight bedrooms, so maybe that's if you chop everything up and make it all smaller. Looking at the assessor's card that when you buy a property, you do your due diligence. I assume you knew that when you bought this home it was a single family home, right?

NT - Yes

MM - I'm kind of struggling with, if you want a multi-family home you buy a multifamily home. If you want a single-family home you buy a single-family. I look at the fact that it's caused problems for the city after all these years, is that homes just continually get chopped up and more units get put in. It has an impact on the city, on the school systems, on the infrastructure on the parking, on the congestion and on the neighborhood. And there's a lot of nice single-family homes in this neighborhood, so I'm kind of looking at it staying why we want to add to the congestion

MM - I'm reading 181.7611, it says that a no driveway shall be located within three feet of any property line. Building or sidewalk except by special issue by the Planning Board, and there's some discrepancies on this parking plan being designed

CT - Are you dividing any of the interior spaces in order to make the bedrooms?

NT - No

CT - Any plan to have separate entrances for the two units

NT - We have one hallway

CT - Are you going to have one entrance there or two entrances on that side?

NT - It show on the plan

CT - So, that's going to be used by the first floor, but you can take the stairway to the second floor, and then that's the second entrance for the second floor.

NT - Right

CT - I am looking at the front of the house, what do you plan to do to the exterior?

NT - New siding

CT - I am calling it the front porch, but it's the porch on the side. It has a lot of elaborate detail on it

NT - Well, I will be redone

CT - What I'm going say is, this came to us on a special permit, and I was curious about it because you are allowed by right to have a two family. And it's just my question was why? It's because this is a non-conforming structure, and I gather that the nonconformity is the fact that you don't have enough front yard to meet the setback dimension in the district. And I think you

need 25 feet and you don't have a 25 feet in front yard. So, that when comes before us, the special permit is to change that use. It's really to me this is a non-conforming structure but a conforming use

Commissioner Barbadoro - it's a conforming use, it said non-conforming structure and so you're increasing the density of use on something that is substandard, so that's was the reason why they are here

CT – And for the record the special permit is really necessary because of the modifications, not because of the detected modification

Commissioner Barbadoro – Yes

CT - Are you going to change the footprint of the building at all?

NT - No

CT – Are you going to add that stairway onto the back?

NT – Yes

CT – Do have enough setback on that stairway

NT - Yes

CT – The minimum is 30feet

NT – They been there already

CT – So, that was existing

NT – Yes

CT - I would agree with the statement of the Building Commissioner, but I would rather see another two-family than have an eight bedrooms single-family home. There is a property across from you that I think that at least at one time it was a single family and is now a group home. I would rather not see that happen.

MM – It is an eight rooms, not an eight bedrooms

CT - I think that of what are you proposing a 4-bedrooms per unit, I would not be in favor of that. I think it's a permitted use in the district and I would be on favor of a two-bedroom per unit, as long as there's adequate parking.

LM – What's the project cost is going to be in total? And what kind of renovation are complete going to be included? Do you have a budget for this?

NT – Yes, we have a budget

LM – What is that?

NT – 150 Thousand

MM – What's the time line?

NT – Eighteen months

MM – Do you have a licensed contractor?

NT - Yes

LM - We got into several other cases which can't complete the project, and my concern is. I would like to see if he's got project costs from a contractor that's planning to do this. Has he already had bid made, did he have several bids, did he pick a contractor. We're taking a risk increasing the density from a single-family to a two-family. We've gone through this before where oftentimes we're taking a risk on someone that we don't know or know their abilities. I say this politely because for everybody that comes to the city, I want make sure that they do the project right. And not just a throw together, and we're sitting here with a two-family home now, with three and four-bedrooms. We're footing the bill for several students to go through the school system, and we've got a building that will not be completely up to code or was as promised. I'm eager to see if we can get with you theoretically, however I'd like to see the project cost, and like to see a little more. I appreciate the fact that they put together this parking plan, and I think we need to have some more information here, but I'm not quite sure I'm ready to take the plunge from a single-family to a two-family. It's not like it's this is a huge 5000 square foot home, so that's my feeling on it.

NT - I honestly I didn't know that all this was going to be done, they didn't really inform me, but with all the concerns and things you have, and all things that you're looking for in terms of turning it into a three-bedroom per side. As well as her talking about numbers, and making sure that we have all these things. Now that I know I can definitely get you all out information and you are being diligent in terms of what we need to do to make sure that we meet the qualifications for the board here of what we asking for, because I feel that most of the things that are very important for you

GB - Well this one's a quandary because we typically attempt to reduce the number of multi-units, and I am agreed with Lauren on the standpoint that a property follow not really marketable to the single-family, how is right now? In principle convert it to a two-family. So, two things here, one is the parking. And then the other one is, making sure that's done properly so that we don't get stuck with, sitting here waiting for completion

CT - So, on the change of use criteria, it states, to have enough parking. I also agree with Lauren, I do think absolutely a good quality of work, the ability to finish the work, and completion of the contract. So, I would like to see more detail and if we can get to allowing it, how that is going to happen? Including the contractors used and the resources to do that, I would also say as a comment there, as I said it's very nice architectural detail on the back porch. And would be very nice to see it preserved as that particular neighborhood contains a lot of historically built homes, and as they get renovated I would appreciate any attempt to preserve that detail.

JB - I initially said I was 100% behind this idea of building, this into the two-family. However, Lauren brought up excellent points about knowing the scope of the works and having a contractor that would be willing to stand by his work, so we don't involve ourselves with a mess. Once we give them a permit to go ahead, and they get bogged down in the middle, we're in between a rock and a hard place if we already gave them a permit to go ahead, they get stuck and we really have no recourse if that happens. I would like to have a continuance, so that we can have an opportunity for the applicant to get the work that we need.

MM - There's a lot of things to look at this: Number one, I look at the intent it was purchased as a single-family home, right. 3300 square foot is not an excessive size dwelling, there are a lot of homes that are that size that are single-family homes. It's not uncommon anyway, it's an eight room building, right. It's been listed at the city's assessor as a single-family for many years, what was done illegally we all can't be responsible for. What I'm fearful of is, this is a very historic part of the city. And we're going to convert this into a two-family, we're going have a big

pressure treated deck facing somebody's property. With the abutters in the back, it's a very small lot. It's right on a corner, and the setback on both sides is minimal. We typically see that multifamily homes actually bring a lower tax base and a lower value, and I'm afraid that is this going have an impact on its predominantly single family neighborhood. People move into single family neighborhoods because that's what they want to live in it. Also, I look at some of the criteria for a special permit, neighborhood character, and I think that converting this, although there are other single-families in that general area, you can look at them and say that was a single-family converted to two. The City doesn't have a shortage of multi-family homes or affordable housing, there's a lot of communities contrary to that. So, I would be more looking at what already exists in the neighborhood, and trying to preserve that instead of blowing our standards in the neighborhood. I'm sure you're going do a great job, what is concerning for me is, I visited the property and for weeks on end, and for months it was debris all over the property. To the point where I brought it to the attention of the building Commissioner, but this is what the neighbors looked at for months. There was no dumpster it was all over the ground, everywhere? You gutted the building and you threw everything out on the property, and that's not fair to have people, abutters have to look at that for months. So, it says to me, well going forward what's it going to be. We've already had some situations where we've allowed people some extension of the building, and two and a half years later we're still dealing with it.

BG - I personally see the property as a gracious single-family home, and a neighborhood where there are several others like that 3300SF. It's not the biggest house in the neighborhood, but that's how I see it. I also know that it's on a Form B Massachusetts register as a historic property, as well my concern is with the demolition of the decks. The current decks and porches there's a lot of elaborate detail that really needs to be preserved on that property, there's a tremendous view from the porch of that property. I'm inclined that it stay as a single-family, unless the applicant can convince me otherwise. And I need more information to consider it as a two-family and to make a better decision

MM - What information would you like to see?

BG - I'd like to see the total cost of the project, I look at the building and I say that it needs a lot of work to bring it up.

GK - My experienced as building houses, I had to fully do the construction costs, for the bank that you had to give then the built of each aspect of the property or what you're going to do. A very detailed drawing

MM - Some members would want to see more information, to get a general consensus. I'm not in favor of this particular petition, but afterward want some more information then let's get what you would like to see. And put it on for the next month hearing or March

LM - We're looking for a parking plan, and we are also looking for the scope of the work. He said he had one, so he must have provided it. He said he has \$150,000 set aside, so can he give us the scope so that we can have a better sense of whether or not this is going to be fulfilled. We ask him for proof of funds, there's nothing we can do after we give the Special Permit. I looking favorably on this, it doesn't mean what he provides me it's a definite yes. I know there's going be time-consuming things, but there some things that I would assume are at his fingertips, because project is a large project. And he knows that he's going have scope of his plans, so the only tricky part I think is the parking plan. I don't know if some person that drafted this actually saw the site, so if he wants to take it step by step, and come back with a scope of work and the parking plan and then he has to spend money on a parking plan and he wants to come back and in another

MM – We appreciate you coming back. We've been looking for you for a while regarding the case at 1151 Main Street.

MB - I'm not sure what happened, I know at the August meeting review we had a continuance, but I never received a notice of the next date. So I checked the agenda a few times in the following months, and I didn't see us listed on. But we apologize for missing that review last month.

MM – Well, we apologize too. But, unfortunately, after we have months of no communication, the board just kind of scratches their head and gets a little concerned about where we're at. I know our Zoning Secretary had tried to reach out to you multiple times, so we apologize, but we did make a very strong conscious effort to get you back in here so we can talk.

DB - So, we have professional signage. I think that was one of the issues that we had last time. Right now, we have a temporary final sign that just kind of lets the public know that we're open; it must definitely be of a temporary nature will come down very shortly, but we did get the professional signage up. And I believe we met all the other conditions as well that the board asked for.

MM - Anyone in the audience or virtual that would like to speak in favor, against, or seek any information in this case?

Commissioner Barbadoro - There are problems with unregistered and broken down cars in the back of that property. I'm hoping that aren't any there now, and if there are, you're going to remove and clean it entirely at your earliest convenience

DB – Yes, that place is going to be clean. We're going to put a gate on the back there when we start working on the three units. It's going to be a private gate and a private road that nobody's going to be able to park in there unless the person lives in the building.

MM - I'm just going to ask some basic questions, and then I'll turn it over to the board. What do you want for hours of operation?

DB – Our hours of operation are from 8:00 a.m. to 6:00 p.m.

MM - What days?

DB - Monday through Saturday

MM - A comment I have, the one thing that stuck out in my mind, was that the board did not want to see any vinyl banners. We wanted permanent professional signage not the vinyl banner; it's been up for a long time.

DB - We have a professional sign already, and the banner is only to let people know that we are open for business

MM - We're trying to improve the quality of the signage in the city because these vinyl banners end up staying up way past their life cycle. And we get asked Mark several times to remove it, and I believe he agreed to, and somehow it was stuck to the wall and wouldn't come off. So, do you think that it can be removed very quickly?

DB - It can be removed tonight, as we speak

MM – Well, we want to be reasonable, and we'll give you till tomorrow

DB - I will do that tomorrow, yes

LM – Reads the Planning and Community Development correspondence: Stated that they plan to convert the 2nd floor of this building into three two-bedroom units.

LM - I didn't hear this case entirely before, but as far as the auto detailing. Are there proper floor drains there, so the water doesn't go to the street? Will they be closing things down or just wondering about that? What will happen in the actual auto detailing?

DB – Yes, that was already inspected by the department of engineering of the city. It was done a long time ago, and everything goes separate.

GK – Did not have questions

JB – Did not have questions

CT – I wasn't here for the original allowance, and I want to understand how the operations will work, briefly. Because we're in the downtown business district, and there's no space or place for cars to park. It looks like you have the one bay where the car goes in, the door closes, and it's very nicely completely screened from the street or anybody seeing anything as to what's going on in there. I don't see where the entrance door is. There is no indication for it, so I am curious about the procedure for a customer to come there into the car wash and then leave. What would you do with more than one person at a time?

MB – Currently, it's on an appointment basis, so they will call, make an appointment and have their car detailed. We are currently one employee, so we won't be able to handle more than three right now, but if they call, make an appointment, and they can leave the car there and come back to pick it up later. Or sometimes the guy goes to bring it back to the customer, so there's no need for a lot of parking. We also own the other lot next to the Spanish market, which is right in the middle, and there are a lot of parking spots right there available as well. So if there was any situation or someone walked in and saw what's going on, or see if they could make an appointment to get the car washed, there is plenty of parking, someone should do something like that.

MM – Do you have any plans to have a proper entrance and exit to the business?

MB - There is a door on the front of the building that allows employees to walk in and walk out without having to go through the garage

MM – So, is that the entrance, and do you have a bathroom?

MB – Correct

MM - The use of the building in between the designated area in the lobby or bathroom seems to be a large area.

MB – Yes, that's an office space area, so that's for administrative bookings, to keep receipts; bookkeeping's an office space there.

MM - On the ground floor?

MB - On the ground floor, correct.

CT – Did you receive approval from the planning board for three two-bedroom units in this building.

DB - Yes

MM - Where is the parking for those apartments?

DB – At the end of the top portion of the building, on the back of the building that we own. We're going to have plenty of parking in there; we already have drawings from an architect. Brought these plans for the planning board.

CT - I have gone by the property, I'm glad to see a permanent sign up. Also, I'm very glad the vinyl sign is going down (you've been about to open for a very long time). This doesn't seem to work as a model unless you have somebody coming by appointment only. Because I don't know how somebody would pick you up in the car wash and then enter the doors. I would like to see, if that is a customer entrance from outside, I'd like to see it marked as such, instead of just having a blank white door, so that it indicates that there is an open, ongoing business at this location.

MM – So, a defined entrance with signage

CT – Yes

JB - I have no questions

BG - Over the course of time, since we've been reviewing this, it seems the applicant has done a lot of work to freshen the place up, and it certainly looks much better. I appreciate that it looks a little bit better every time I go back to the property. One request I have is that there is an abundance of old carpeting that's all rolled up in the back parking lot, if you could clean that up.

DB – We will do

GB - My notes on this case are multiple motions meetings, and I know that you said that you didn't see it on the agenda. I have all the agendas and you clearly were marked. I know the Zoning Secretary is putting these agendas together and in the paperwork you submitted just recently for this one, you stated that you were out of state, but did you not know about these meetings before leaving the state if you were responsible? I move to point out that it's a disservice to the board, on no shows. You did not show up for multiple meetings, and we have to continue using further meeting after meeting, which adds to the caseload, which keeps other applicants waiting. And it's not right.

LM - I wanted to understand where the parking would be clearly?

MM – Petitioner answer stated that parking is on the back.

LM - The units are up back

MM - The units are above, and the parking is to the left of the designated business parking up the hill and around to the back.

LM - That's for the units, right?

MM - That's correct

LM - Then, where would the parking be for the actual auto detailing?

MM – In our last decision, we put a max of three vehicles, and having been in the building, I know three vehicles will fit in the building. So if the Board wants to go over something else, let's do it before I close.

MM – Are you going to pave it?

DB –Yes, we're going pave. All that the planning board has approved

Commissioner Barbadoro - I also have two other quick comments to make. One is, will you please come down to the building department as soon as you're back in town so that we can go

over what where you are with your building permits for the auto detailing portion of the business. Because I think there is work that still needs to be done with the building permit. My second comment is, I remember when DPW did a test to make sure that your sewer was draining correctly, your floor drain I believe you still need to put in a trap in there to meet the plumbing quote. So, I want to discuss that with you.

DB - I will stop by, and we will have a talk.

LM – So, we should list in our conditions no abandoned vehicles, no outside storage.

MM - Sunset clause and the permit will be issued once all work is completed.

MM – So, we are leaving everything from the prior decision because this board is the one that decided those.

LM – So, you're going to leave in the 12 items?

MM – I am going to read off what I have listed: No auto repair - Maximum of three vehicles - Hours of operation Monday through Saturday, originally we had nine to six the applicant is requesting 8 to 6 - No vinyl banners or temporary signage - Defined customer entrance with signage - Six-month review which would be July 12 - Permit will be issued once all work is completed per building commissioner - Sunset clause – All debris to be removed from the exterior building – And no exterior storage – No unregistered vehicles - Detailing to be executed in the designated area.

LM - Do you have a dumpster, or is there trash pickup, or is there a dumpster right now?

DB - Right now, we are taking the garbage and bringing it to the dumpster in Winchendon, where I live, but we don't have that many businesses going in right now. So, in the future, when we start getting busy, we're going to get a dumpster.

LM – No outside storage and six months review

CT - My question is, when we have a sunset clause, what entity is this going to be? It's the entity that's operating the business, and it's a company listed there. Is somebody named?

MM - I would say, if we're going to issue the permit to the applicant, then the applicant should be in the Sunset Clause, right?

CT - Yes

CT – Mr. Bradley, are you operating this business under the entity or your name?

DB - The business name is "King's Auto Detail" it's under my name.

CT - It's a corporation?

DB – Is not a corporation at this point.

CT - Attorney Bradley, can you confirm that your father is saying he has a DBA?

MB – Yes, it's a sole proprietor (DBA)

MM - What's the DBA?

MB – King's auto detailing

MM – The Board has no further questions.

CT - Motion on ZBA-2022-02 under §181.94 to **Approve** the **Special Permit** with the following conditions:

1. **Hours of operations from 8:00 a.m. to 6:00 p.m. Monday through Saturday**
2. **No non-detailing auto repairs to be conducted on the Premises**
3. **Detailing to be executed in the designated area on the interior of the building only**
4. **Maximum of three vehicles on site**
5. **Professional signage only - no vinyl banners or temporary signs allowed.**
6. **Defined customer entrance with signage**
7. **All debris to be removed from the exterior**
8. **No exterior storage or unregistered vehicles to be kept on the exterior of the Premises.**
9. **No scrap parts on the exterior**
10. **All premises to be kept in reasonably clean and well-maintained condition**
11. **Permit will be issued once all work is completed per the building commissioner.**
12. **Six month review – July 12, 2022**
13. **Sunset Clause – Special Permit to expire upon the transfer/sale of the property or the business from Dennis Bradley**

Vote (1-roll call vote)
conditions

5 -0 to

Approved the Special Permit with

ZBA-2022-03

Malik Daniel

773-779 MAIN ST

7:10PM

Use Variance under §181.5362 of the Fitchburg Zoning Code to install a 120V duplex receptacle digital wall sign located in the Downtown Business District Map 30 Block 8 Lot 0.

The presentation was given by Malik Daniel, stating:

My brother and I have a business here that I operate, which is "Grizz Gang Forever Studio." We record music for a lot of the local artists; we handle their creative projects as far as their videos and photography, things of that nature. I was working to put up a digital billboard, but you know the process at that point. So, we had to come to this board to get approved, so everything complies with the city and what they want. And that's why I'm here, to explain how we plan this out. We plan to keep exposing a lot of the talent in the city, as far as artist music, artist's paintings, forms of art, and people do videography, photography, modeling, and things of that nature. We wanted to see if we could get this billboard to display the talent of my brother, an artist himself, and some of the artists that come through our studio for networking events. He also had a musical, but kind of concert networking event not too long ago that went well. He wanted to be able to display some of his creativity. I'm not working on that plan for Main Street, a lot of big things coming there, as far as creativity, and I'm more of a businessman. I want more entrepreneurs coming to Fitchburg to keep building more businesses. So I'm here, but as far as this billboard goes this would be our business, and a great addition to our growing platform.

MM – Is anyone in the audience or virtual seeking any questions in this case? None

MM – Is anyone in the audience or virtual in favor of the petition? None

MM – Is anyone in the audience or virtual in opposition? None

BG - If you could explain the nature of the sign to the Board? So we could understand that a little

MD – Yes, I'll be playing music videos for some of the artists that we help them draft using videos, or come up with the project idea for the music videos and photography, or maybe the different things they have been performing. So, nothing too over the top. See, the performing scenes, their videos, maybe cover art of their albums and mixtapes that they're putting out, and stuff that will draw people to businesses. Say, who's that artist? A lot of people are not aware of many artists in the city.

BG - So, will the sign have, like, written notices that you can read while you're steering alongside the road?

MD - I'm not sure of that function. It's more of multimedia videos and photography, photos, and things of that nature. You could probably put a digital flyer on it if we're going to have an event.

BG - The location will not be attached to the window?

MD - It would be on the front of the building, the front window, we are planning. We have our logo, which is on one window. We wanted to put it right next to it. On the adjacent window.

BG - So, would it be in the middle basically, because we're talking three different building numbers. So, will the sign be located in the center of the three addresses that are on the application?

MD - In the center, I think so, it's on the bottom floor, the first floor.

BG - Starts on 773, correct? And then it ends at 779

MD - Yes, so I'm not sure exactly how that structure is, but I know there's a vacant building that has an office space next door. That's 775; we have 773, and I want to say 779 would be the apartment building above or maybe vice versa.

MM - If I look at the building, which is the whole first floor?

MD - No, it's just the right side of the first floor

LM - I'm looking at the drawing that you have in the application, and I see that it's 65 inches which is quite wide and can either be vertical or horizontal.

MD - The digital billboard we have can switch the format of how it displays so that it can be either displayed vertically or horizontally.

MM - Landscape or portrait, right?

MD - Yes, we think vertical would probably look a lot better in the window. It wouldn't be in front of our logo that we have on other windows. So, we want to go vertical; 65, I agree, is big. We were thinking between the 55" and 65", but whatever you guys think is the best idea, we don't mind switching the size of it.

LM - So, I picture the building, and I see the window on the right, a door next to it, and then the left window that's completely blanked out, and then there's another door, and then there's another window. Which window would you plan to put it in? Right now, it's redundant because there are a lot of windows.

MD - So, there's a door that's always close to Central Street, and then there's the big front window. That was a window we plan to put it on, between the middle door. And there's another window to the left. It would be the window closest to the middle door.

LM - There are two doors in the front

MD - The one on the right side has our logo already on; the one on the left side has nothing on. The one by the door close to Central Street had our services displayed.

MM - I think everybody has to get on the same page; how many doors are in the front of the building?

MD - 3 doors, two in the front and one on the side, by the corner

JB - It's behind the street signposts, so that's why it looked a little weird

MD - Right

MM – So, it's the large window between the door on the furthest to the right, and there is another door to the left.

JB - Directly below the two single panel couple of windows

LM – So, it's on the right side, so would it be vertical or horizontal?

MD - Vertical, I would think that's the plan I had in my head when we wanted to put it on this.

MM – Do you own the building?

MD – No

BG - Would the sign be behind the glass or attached to the building on the outside in the window?

MD - On the outside

BG – So, it'll be attached to the outside facade of the building, correct?

MD – Yes, the outside window

BG - I'm not sure I understand how the sign is going to attach to the glass. Is it going to be up on the roofline?

MD -We have an electrician that's going that was working with Mark. I was figuring out how to get this approved first, and then start on as to how to get into fastening and the weather.

MM – So, is it like an electronic digital sign?

MD – Yes

MM - And the size is 65 by what?

MD - 55, and we can go by 65

MM – What's the other dimension?

GB – It looks like 65 diagonal and 58 by 34 for angle

GK - It's definitely a violation on this sign if moving the image, if moving particles and on the longitude size of the electric

JB – It blew my mind when you said it was an outside sign. I had envisioned this particular adventure as a 65-inch television set inside the window. I didn't expect it to be outside the window, so tell me a little bit more about this digital sign. How many specs are on it? When it comes in, usually get a picture or a representation of what it would look like when it's up, in place.

MD – Honestly, it is getting in our head; it looks like a big TV screen.

JB - But outside the window?

MD – Yes, and a lot fitter, so they know that people are placing it outside of their businesses and whatnot. So, it's compatible because it's almost like a Times Square billboard or Tokyo billboard. We put it on the outside and display all different types of advertising. It's on Bluetooth, so we can connect whatever we want to do.

MM - It is basically frameless, and it's a very thin profile.

MD – Yes

MM – It's going summarizing?

MD – Yes

MM - And it's going to be color?

MD - Yes

MM - It's going to have movies, it's going to have movement, video, and audio, and pretty much send anything from a computer to it to make it function.

MD - Yes

CT - So, you are planning on doing audio? Are we going to do anything to direct the sound?

MD - As far as?

CT - There's a big difference between a sign that has audio available to somebody who's standing in front of it, purposely looking at the sign, and audio that is blaring loudly. So that sound will extend to all of the other surroundings.

MD - No, it would be low playing; we don't need to be so loud that they need to be in the car from the street to hear. It would be cool if someone walked by a little bit of audio, but even if audio is not a major thing, it's been more about this playing the artists and their work. As long as people see artists who show their face, their name, they can look up their videos on YouTube. They need to at least do the trick of bringing them on the front of this business on Main Street; that'll earn even more traction.

CT - So is the audio necessary to the display you're trying to do?

MD - It would be a great addition, so I don't want to downplay it, but it all depends on how you guys feel

CT - What are the hours you're planning to operate this?

MD - The sign itself, or do we offer a business?

CT - The hours you plan the sign to be displaying?

MD - We plan to display it during daytime hours, maybe early evening, but not too late. I want to say 12:00 PM to about 8:00 PM, and we shut it off at our computer because we understand that there are also people living in the area. That was the agreement we had when we moved in; we want to work with the people who live here already do the same thing with you guys in the city.

CT - So, is there a recording studio?

MD - That's what the business is

CT - So, you've already undertaken to do business and have soundproofing to be operating?

MD - Yes, that was the first step we had to do

CT - I know you're not the property owner, and I don't know what control you have over the exterior.

MD - I'm not the property owner.

CT - Do you have any control over at least your side of the exterior to be painted?

MD - Yes, I was thinking of painting the whole outside, even the dusty like all that white paint needs to go, it's really old

CT - You're positioning it so that it looks flat out on the street. So, it's not going to be turned towards drivers?

MD - No, it's going to be flat laid against the window; they're driving by, they see it, or someone walking by they see it. I don't want to protrude or anything.

CT - Our ordinance, in general, has conditions on one of these signs, so I think §181.5354. Do you think it'll stick out more than 12 inches from the wall?

MD – No

CT – Also, it says that it shall be no less than 10 feet from the ground. I don't know that it's going to be 10 feet up.

MD – No, it won't. It won't be higher than that.

CT - Obviously, this variance directly violates the zoning ordinance with what you're asking. So, you need to review the criteria for a use variance. It normally requires that there has to be a hardship related to the soil, topography, shape of the lot, or existing structure. Not sure the shape of the lot or the soil; it's not necessarily part of the financial hardship or otherwise, but it has to be related to that. We have to find that your request can be granted without substantial detriment to the public good. Can you talk about any of those requirements?

MD – Yes, as far as it is detrimental to the city, as far as audio levels and no audio at all, or even on what type of things were to be displayed. I'm a family man. I'm a man of the community. I look to continue and love working with the community; I'm a realtor and insurance agent. I do all this because I try to help people; that's what the business is about. We built the family business, looking into this to display talent in the city. That is under-covered, and I didn't notice it before. I believe it's different from what the city is seeing. But I don't think it will hurt at all; I think it will help a lot of people in the long run.

CT - You need to tell me what structure of that building or the lot makes it a hardship. Our ordinance and the state statutes state that there has to be a hardship related to the structure or the lot.

MD - The hardship is that it couldn't bring a lot of advertising revenue business, so possibly take it away if it's not approved. Because we're seeing that displayed on Main Street, and other businesses and other people might want to advertise. That would take income out of the business.

CT – Again, how does this structure, how does the building or the lot create a problem that needs to be resolved? I hate to make up examples but is there inadequate space for advertising, is the building up to the edges of the lot?

MD - There is no space for advertising under the building because of the apartments, and it's a historical building. So, there are only so many things I'm sure you can approve, and that makes it tough. So, this is our only way to advertise on the outside of our business, besides the sign that we have that labor services. That is our hardship.

GB - First of all, I love your business. So, I think the vibrant business you're going to go in there grassroots is good for the city. I want to figure out a way to help you out here, but we've got some hurdles. Do you want to put this on the outside of the building for two reasons: noise, you're asking for trouble? The second thing sounds. Sound bothers me a little bit because it may sound good to you people on Main Street or may not sound good to people on Main Street. But they do support the advertising part. It could be a desire or not.

LM – Agree with everything Greg just said. I wanted to read the comments from the Community Development and Planning Board:

As we work to cultivate the arts and culture in Fitchburg's downtown business district, businesses like Grizz Gang serve as great examples of the type of businesses we would like to support. A digital sign, done properly, could work well within the downtown aesthetic. From the renderings in the sign permit, we would suggest the sign that fits vertically within the windowpane, rather than running horizontally across it. Further, we would also encourage that signage is done in such a way (i.e. sign, brightness, dwell time) to prevent driver distraction or visual clutter.

LM - I'm not hearing everything since I am participating remotely today. So, I don't feel comfortable voting, but when I have read through all the petitions and what I've seen, I think it's a major hurdle for us to get.

Commissioner Barbadoro - It sounded like you're going to be advertising some of the artists that work in the space as well. Maybe some of the arts that are being created in the space, are the images going to have the appearance of movement, like actually moving film or is it going to be still shots.

MD - Mostly still shots. There are artists who have cover art for the music; those do move but nothing major. It's just like short head movement that my glass like a 3-second frame rate or whatnot, so they're swinging their hair swing over and over.

MM – With Special Permits it's easy to get the standard list of criteria. Variance is more difficult, these variances basically, as other comments were made, it's almost like it's not allowed by the city. I love what you do; I've been a musician my whole life. I won't come down, only take it out, late original music in vintage stereo. I could go on and on; I love it. But the city has to come up with a theme for Main Street. We've got these vintage, great historical buildings. This one stands out because of the circular balcony above. But I'm fearful as a board member that we grant one, we just are going get pounded with these. It's a problem, and this Board has brought it up for years that the city has to get its act together regarding a proper design theme for Main Street. We don't have it, and I don't know what we do. Almost every other communities have it. We don't have a theme; we've got beautiful antique architecture, and do we want it to look like Las Vegas, flashing, glitter and signage and all that. So, I'm leaning on the side of caution because the criteria is saying, look, you can't do this except in extremely rare conditions. I don't want this Board to get inundated with calls now for electronic signs without the planning department coming up with a theme for these.

CT – This visual display or located inside of the windows, it's still considered a sign?

Commissioner Barbadoro - Tough to say because you can't put advertising on the inside of your window to a certain display.

JB - And businesses in Industrial Districts shall not require permits, and shall not be completed in calculating the total allowable signage, at the inside

Commissioner Barbadoro – A sign doesn't require a permit, but it is still a sign that it's allowed. And what's the intent

CT – So, if the display were still photos, to the ordinance, it says, flash, rotate, noise, move, or give the illusion of moving, except for time indicators. So, that was a still picture, but no illuminated picture.

Commissioner Barbadoro - Maybe then check the field internal illumination requirement

MM - That is a major issue; the death rate is going through the roof with people driving crazy. Because they're all texting, and when you throw movement in, people were distracted, it's major.

CT - I've seen the options before us, such as asking the applicant whether to look and explore non-moving signs that do not require a variance, and that's something that you would be discussing with the Building Commissioner.

MM - If I take the present proposal, if I stick it in the window right behind the piece of glass. Do you still consider it a sign?

Commissioner Barbadoro - It's probably fine if it's not moving, but I couldn't do a comprehensive review of the bylaw and know about the internal illumination. There's something in there that says

about internally illuminated signs that are prohibited, and it's going to be prohibited anyway without variance if it doesn't say that.

LM – Could we give the petitioner the opportunity to look at other options for himself, other than voting on it this evening? Maybe Mark could look at it. I'd be more in favor of trying something if it were a special permit, but not for something that's a use variance. We could do the toughest thing, and we really can't do it. So, if there's something that we can look at under a special permit, and the petitioner understands that his investment may not work out.

MM - This requires a use variance, so I don't want to go down the path.

LM - I like what he's doing with his business, I'd like to try to figure a way that something could be done, but maybe he could think about other options that would be more artistic. Then this is not Las Vegas, as he says

GB – I feel like I have a nail on the head. I like what you are doing, and I want to help you out. I'm hoping that tonight finally might be the beginning of this request, is for Main Street that it drives some attention at the Community Development Department to do something.

MM - What I want you to understand is that the Board has this option of use variance which is extremely stringent and rare. So we didn't make the rules. We had to follow them.

MB - I think you have to come and have a use case; I have sent it to you to make that decision from the City. Where this isn't unique, it's not going to be something that meets that requirement to find that owing to circumstances relating to the soil conditions, shape or topography of land or structures and especially affecting such land or structures

CT - I want to go through the statute. The statute says that you have to find, due to circumstances relating to the soil conditions, shape or topography of the land or structures and especially affecting such structures, but not affecting everybody else in the district in the same way, that there would be a substantial hardship financially or otherwise. So, you could not show any hardship because I don't think there's anything about the lot or the building that is different from the rest of the neighborhood. The hardship that you have is a need for that very particular type of advertising for your business with artists, which is very much in character with the rest of the neighborhood. The promotion and advertising for this business are in the public eye; frankly, the city is pushing an arts district in the area. It's just that first hurdle you can't overcome.

BG – No further questions

MM – So, doors not closed, there might be other options. We've all been doing this for a long time on the board, I live in Fitchburg, and we have a passion. We want to see Fitchburg get better; we want to see it grow. All of us are into the arts. We definitely welcome you and appreciate your investment,

CT – Motion in the affirmative on ZBA-2022-03 under §181.5362 to **Approve the Use of Variance**, as requested

JB – Motion Seconded

Vote (1-roll call vote) 0 – 5 to **Approve the Use of Variance**

ZBA-2021-35

Todor Ialamov

16 TEMPLE ST

7:30PM

Continuance:

Appeal to Overrule the Building Commissioner's decision that a 4-family dwelling had been abandoned or not used for two years, and had therefore lost its status as preexisting nonconforming use

as a 4-family (Multifamily) dwelling under §181.3361 of the Fitchburg Zoning Code, located in the Residential B District Map 230 Block 20 Lot 0.

The presentation was given by Todor Ialamov, stating:

After December's meeting, I would have to show some communication today. We had purchased this property last year if you check on the deed. I heard somebody mention that's a problem with Temple Street, who I would want to go and take a look at it right now. We have a written agreement with the building adjacent to keep it clean, and it looks nothing like it was before

MM - Which address was that?

TI – 37 Arlington Street

MM - That is it a single-family home?

TI – Yes, single-family home

MM - Do you own the lot in front of it?

TI - We were trying to purchase it from somebody, but we don't own it. We were working to negotiate with them, and hopefully, we can come to an agreement. We know that 88 on Vernon has a lot of problems with the Police Department, all the kind of phone calls they had there, and all kinds of trouble. So, again, we know we have a lot of work, and right now, we would like the Board given a chance to make this building great for the City of Fitchburg.

CT – First, I wanted the Board to look at the summary it was provided via email, and that we're looking at, there are three questions:

Was the use a protected pre-existing nonconforming use? A four-family use was presented to us, which by the building age pre-dates zoning.

Second question: Whether it's not used been used for a period of two or more years?

Third question: Was it abandoned? So on the second question, the statute is very clear when we're looking at the two-year period of time. If it is not being used for at least two years, it becomes unprotected, and that is what I wanted to look at. What does not used mean? There is a case where somebody tried to obtain a building permit by filing an application within a two-year period of time. And that was sufficient to constitute being used. There are other cases on what constitutes being used that are lower level and recent that I don't consider of good quality. These cases try to inject an element of intent back into this very simple question, and there are a couple of cases that talk about whether it was being marketed for sale, or was there any attempt to lease or maintain the property, and if you follow those cases these things should be considered in the question of whether it was still being used for that purpose. I think that those are not in line with simple dictate of the statute on uses.

Abandonment doesn't have to be two years. Abandonment can be instantaneous, but we need to find two things for abandonment.

First, that there was an intent to abandon, and their voluntary conduct carried a location of abandonment. One of the leading cases in this area is a case called Derby Refining, where an oil refining company that stored oil was a nonconforming use. And then it got mothballed, not used. At that point in time, they were looking at the question of abandonment rather than the two years. And the Court said because it was very carefully mothballed and preserved, marketed for sale, that there was no intent to abandon in their findings. Findings of abandonment are always more difficult than a finding of two-year cessation. So, that's what I would have to say generally on the status of the law.

On the facts, I put together a timeline, and this time, I'm going to speak to the Petitioner. When you're looking for this kind of relief from the Board, we should see many more facts than you presented. So, I did some research on this, but I would normally expect that the Petitioner presents to us positive proof his or her case.

So, looking at the timeline, this was in the assessor's card that you gave us with the application. There have been, I think, three foreclosures. Foreclosure alone, without anything else, is not necessarily either abandonment or cessation of use, but it is an obstacle to us. Looking back, when you see those foreclosures there's an implication that after it was foreclosed, it wasn't used. In 2010 it was bought by the prior owner, who owned it until 2017. And there's nothing further in the public record as to when the foreclosure proceedings started. There was a judgment in the land court, allowing the foreclosure under the Soldiers and Sailors Act, in August of 2018. In October of 2018, there was registration as a foreclosing property, and it was specifically listed as foreclosing, not abandoned.

The foreclosure auction took place in June 2018, or the advertising was in June 2018. There was a proceeding for code enforcement in November of 2018 and as a disclosure, I was involved with that on behalf of the City. At that point in time, the property was fully occupied by all four tenants, and that is evident from the filings. On September 5, 2019, an inspection was done and submitted by Michael Maduka, who is a realtor for Quinsigamond Realty. On September 12 through 23rd, 2019, the tenants' agreements that we were shown were signed and according to the statements on those agreements, the vacate date was on September 30 of 2019 for three units, and the last one was October 31. October 3, 2019, the foreclosure date became final. The registration as a foreclosing property was renewed on October 28.

You have stated that the water department says the water was on until November 2019. Property was listed for sale by Quinsigamond Realty MLS #72596447 on November 27, 2019, as a four-unit dwelling. However, the listing included a statement "opportunity to own a property previously used as a 4-unit rental property near Routes 2, 12 and 2A. The City of Fitchburg has deemed it abandoned, and buyers may have to apply to Fitchburg's Zoning Board to determine what use will be permitted." That listing stayed on until June 2020. Then, it was relisted on July 31, 2020, again there's a statement by the realtor "Buyers should discuss usage possibilities with the town building office. Town has stated it will need to be converted to a single-family, or you can apply to convert to duplex (they can turn that down)."

There is a Form of Intent included from the Building Department, asking about the status of the property. There was an inquiry from a potential buyer on September 19, 2020. Another inquired on November 12, 2020. And then we had your inquiry which started on January 28, 2021. In terms of the property, I believe you owned it on March 1, 2021, and you had your January 28, 2021 Form of Intent. From that Form of Intent, I believe that a different form would be required for a building permit. The response from the Building Commissioner stated you needed to seek the Special Permit for reinstatement, by correspondence dated February 26, 2021.

While there was an email between your counselor and the Commissioner on March 25, you next had some communication with Mike O'Hara and the Planning Department on August 20, 2021. You did not submit the application to reinstate the property or appeal the Commissioner's decision until October 22, 2021. This list, I think, was emailed to other members prior to today. Before I speak regarding what I think about this timeline, I would like to hear the opinions of the other members, knowing these requirements.

So, I would say, if we look at the two years question. I think you're over, but you were so close. If the tenants had stayed through October 31 of 2019, or October 23 of 2019, I think we'd made it

within that two years. The paperwork you gave is that three of them vacated by September 30. So, while you had stated that some tenants had stayed a little longer, I don't have anything that shows having those tenants on the property. Not having four tenants in the property, that is what you need for use.

TI – They were evicted, and I believe the Board was okay with the older date of the commissioner's letter.

CT – So, he can consent and say, well, I don't mind if you appeal now, but he can't change the date of last use of the property.

TI – Also, I brought it up to the Commissioner that there's a lot next door, that we could try to get an agreement and turn it into a parking lot.

CT - I looked through and have asked for all of the correspondence. I wanted to make sure that I saw everything, and the thing is that you didn't request a building permit. So, again I think you're not within the two years, but I think it's really close. If we look at the end of this summary, you would add that after foreclosure, the problematic thing is they purposely evicted all the tenants, and then it is in your favor that it's been being listed for sale. As far as maintenance of the property, there it is evidence that you didn't apply to obtain a permit, and you didn't fix anything. So, if I am voting, I would probably vote one way on the issue of instant abandonment, but the petitioner bears the burden of proof, and I would probably vote the other way on the question of two years. I don't think that abandonment is really clear as we have that issue of trying to prove intent. I think that a clear path for the applicant lies under the special permit provisions that we have for resuming the use, especially because there's a provision in there that says that even if you haven't used it for two years or more, you can provide evidence that you made a good faith effort to try to restore the use.

TI - I did my best, and to be honest with you. I am not very familiar with the city or with this part of the business. So, I didn't know much about it, now I started learning about it, and I have been looking a lot more into it. Try to get a counselor, I have called at least in Fitchburg and Leominster area, and I couldn't find anybody that would do that type of work. The only person that I found was ended. We had correspondence with him, but at the end of the day, he was charging me with every single minute, every conversation, and every email. That's much that I think we exhausted \$4000, so I don't know how you said that I needed to do this. I don't know where to look for. I did my best

MM - I've looked through well it was presented, and again the burden of proof is on the applicant. Over time, I've listened to Commissioner Barbadoro regarding abandonment and whether it has a timeline or whether it happens instantaneously. This building, in my opinion, it's been abandoned, you have to do something with it, but that's maybe a different topic. But any four-family that comes in front of the board after abandoning has to build parking. This doesn't have one parking spot.

TI – But, it's not part of consideration on the application?

CT – Right, but Michael is trying to explain it.

MM – The point is that this is an obsolete building that has been abandoned, so you have to figure out what's next. Based on a couple of pieces of research, there is no definitive answer because there's no affidavit or there's no real concrete paperwork with dates on it that was presented; when the time was.

JB - I heard what Christine said, what you had to say. I don't even think this is a non-starter; you said to the board that you wanted to buy the lot next door. But that fell through, so you have no

place, even tonight you said, yes tomorrow you can build a beautiful new house there. But, unfortunately, I can't let you have it, because there's no parking.

TI - Even though you're talking about abandoning, it's not abandoned.

JB – It doesn't make any difference, still don't have any parking

LM – This application is to overrule the Building Commissioner.

TI – Yes

LM - At this point, if the petitioner would like to come back to us for something else, he's certainly welcome too, but he's going to have to come up with some kind of parking

GK – I don't have any comments.

LM – Christine did a wonderful job, and I would like to compliment her on putting everything simply in order. I reviewed the real estate transactions that are happening and the transactions of agent to agent and I went down a good ten years. I appreciate that, and it's been said well, the burden of proof is basically on petitioners to provide otherwise. We feel bad because we don't want an abandoned building, but it's out of our hands. I will read a comment from the Planning and Community Development regarding this case. And therefore, their comment was, basically, it will need a Site Plan showing parking submitted Planning Board. So, that's a concern for them as well.

BG - My comment that based on the research that Christine is done, I'm certainly not comfortable with overturning the Building Commission's decision on this case

JB – No additional comments

GK – No other comments

CT – No additional comments

MM – One comment, and its easy, again based on what was presented to us and the education provided to look at the criteria program in this particular property.

CT - Motion in the affirmative under §181.922 to Overrule the Building Commissioner's determination as been requested

LM – Motion Seconded

Vote (1-roll call vote) 0 – 5 to **Overrule** the **Building Commissioner's** determination

ZBA-2019-40

Jose Santos

1033 MAIN ST

7:45PM

Review of the Special Permit under §181.313C11 & 12 to occupy the building for Automobile Sales business and Repair services located in the Central Business District at Map 18 Lot 90 Block 0

Lauren McNamara – Recused herself in this hearing.

The Presentation was given by Jose Santos, stating:

I apologize for last time! Unfortunately, I had a family member emergency in Puerto Rico, but I'm here.

MM - I'm going to take you through the criteria so that we can keep this rolling:
Do you have any handmade signs or banners? The banana sign?

JS - It's gone

MM - Any vehicles for sale?

JS – No

MM – Do you have any unregistered vehicles on the property?

JS – No

MM - No storage of vehicles other than the active customer or employee cars.

JS – No

MM - Auto repairs within the building only

JS – Yes

MM - How do you know that if you haven't been around?

JS – I closed for four months.

MM - I can tell you, they've been doing auto repairs off the parking lot

JS – That's the reason I closed down.

MM – You're closing down?

JS - Because they don't follow my rules, but now I came back

MM – So, did I get this right? Are you closing the business?

JS – No, I'm not closing the business. That's the reason that I am coming back again.

MM - No outside storage of vehicle parts?

JS – No

MM - While you were gone, some of that was going on. So, now that you're back take care of that.

JS - Yes

MM – No visible trash to the front of the property

JS – Yeah

MM – You haven't been around, so I guess you can't answer all these questions. Right?

JS – Yes

MM - Dumpster to the right rear

JS – Yes

MM - Hours of operation 9 to 4. In my own opinion, it appears that they've been within those guidelines. There's a sunset clause, which means it's not automatically transferred when you sell or close the business. The next person can't conduct the same business without transfer. No outside storage of auto parts, tires, tire racks, and then we had a one-year review which was September 14, 2021.

MM – Is anyone in the audience or virtual seeking any information in this petition? None

MM – Is anyone in the audience or virtual in favor of this petition? None

MM – Is anyone in the audience or virtual in opposition? None

BG - I would say that now that he's back, he adheres to the conditions set by us. So I'm good with him continuing, I went by the property today, and I did notice it was in good order. There weren't any unregistered vehicles or car parts lying around, and the business looked relatively clean.

JB – No comments

GB – I went by the property and am not seeing any violations.

CT - I don't have any

MM - I don't have any comments. My question to the Board is that we're going to vote to approve or not approve the review and conditions that need to be struck. It needs a new review date for any further review or remove condition #12

JB – I'd like to add on that the tenants he rents too. This special permit is to be revoked if they continue to act the way they did back then. Petitioner's back now, but if he rents out again and the next group of people continues to give us problems, make this place look like a dump, pull the permit.

JS - there'll be no other people. I will be by myself.

MM - Were you renting?

JS - I rent. I am the owner of the business.

MM – Right

JS – I am the only one in charge. If I had to leave, I would close the business.

MM – Okay, they don't run it as you do

JS – No, and I don't want any trouble with you guys. I want to be clear and do the right thing.

MM - We appreciate it. You've been really good about it. So, how does the Board feel with regards to the review? Does it need any further review?

JB – Yes, let's have him back in about eight months

CT – Sounds good

GB – I go along with the Board.

MM – We are going to do one more final kickoff. How about September?

JB – Perfect

CT - Motion on ZBA-2019-40 under §181.313C11 & 12 to **Continue the Review on September 13, 2022** with the following Conditions:

- 1. No handmade signs/banners – Professional signage only**
- 2. No vehicles for sale**
- 3. No unregistered vehicles**
- 4. No storage of vehicles other than active customers and employees**
- 5. Auto repairs within the building only**
- 6. No outside storage of vehicle parts**
- 7. No visible trash to the front of the property**

8. Dumpster to the right rear

9. Hours of Operation Monday through Saturday 9:00 AM to 4:00 PM

10. Sunset Clause – Special Permit will terminate/expire upon the sale/transfer of change of operation from Jose Santos

11. No outside storage of auto parts – tires- tire racks

12. Review – September 13, 2022

JB – Motion Seconded

Vote (1-roll call vote) 5 – 0 to **Continue the Review on September 13, 2022**

ZBA-2021-14

Kenneth Godfrey

220-222 ALBEE ST

8:00PM

Review of the Special Permit under §181.856 to reinstate an abandoned/vacant building as a two-family dwelling located in the residential A District Map 121 Block 11 Lot 0.

MM – Petitioner has communicated with the Zoning Secretary this afternoon, requesting a one-month extension. Due to some health issues.

MM – So, the Board wants to do the next month? Which will be February 8, 2022?

JB – Yes

CT – Motion on ZBA-2021-14 under §181.856 to **Grant a Continuance** on the **Review to February 8, 2022**

JB – Motion Seconded

Vote (1-roll call vote) 5 – 0 to **Grant a Continuance to February 8, 2022**

ZBA-2021-31

Joan Mateo

69 BENSON ST

8:15PM

Continuance:

Special Permit under §181.313D12 of the Fitchburg Zoning Code to stablish a truck maintenance/repair business located in the Industrial District Map 192 Block 9 Lot 3

The Petitioner was not present at the hearing. No person spoke on, for, or against the Petition.

MM - I don't believe that the applicant was here last month, is that correct?

CT – He wasn't here

MM - How would the board like to proceed?

CT - I think it was an application that I was inclined to grant as long as they can show parking.

JB - They've already been their business, or since they haven't even stopped.

CT - I didn't see how it could be granted, saying that parking was adequate without a plan.

JB - Nobody comes here in front of us, and I can't say anything. I would rather turn it down and say no.

GK - Shut the business down

BG - I'm in favor of him having to reapply; this is the second time. We had asked for a parking plan, and he didn't show up the last time, so I think he needs to reapply.

CT - I don't understand why he hasn't appeared. I don't know what his intention is as he isn't communicating.

MM - To the board members, should we grant to leave to withdraw, or do you want to vote it?

JB – Vote it

MM - Because if we voted, then there are the two years, necessarily we're saying we want them to come back or are we saying no comeback.

CT - We're just missing with these things

MM - Right.

CT – Well, I wasn't in opposition

JB - I wasn't opposed to what they were doing, but they don't seem to appreciate what we do here.

CT - Motion on ZBA-2021-31 under §181.313D12 to **Leave** to **Withdraw** without prejudice, due to the Petitioner's failure to appear

JB – Motion Seconded

Vote (2-roll call vote) 5 – 0 to **Leave** to **Withdraw** without prejudice

5. MISCELLANEOUS

6. ADJOURNMENT