MEETING MINUTES – JANUARY 8, 2019

SENIOR CENTER, 14 WALLACE AV

1. Call to Order
   LM

PLEDGE OF ALLEGIANCE
   ALL

2. Communications
   LM

ATTENDANCE:
   LM, AZ, JB & JS

3. Hearings

CASE No.  APPLICANT       PROPERTY       TIME
ZBA-2018-15    Francis Dower  783 WATER ST  7:00PM

Review of a Special Permit under §181.313C22 for a Retail Shop located in the Light Industrial District at 122/23/0

Presentation was given by Francis Dower and Ethan Dower stating that the lease from previous location expired on December 31st, 2018 and everything was moved over to the Water St. location, but not open for business yet. They were hoping to be open on November, but it wasn’t possible, right now they probably are 2 or 3 weeks away to open it up. They only need to finish few more things such as flooring on bathrooms and the cafeteria. They also run into a little issue with another tenant wall that separate both businesses, and right now they are on the process of taking care that matter. Landlord allowed them to install a very nice long glass window at front and opened couple more light windows for the business.

LM – When do you think the project will be full completed? FD – We are hoping to be open on January 26, 2019 for Martin Luther King weekend.

LM – Did the property owner take care the Sprinkler System and electrical issues and had been resolve? FD – Yes, he believes that yesterday the Fire Department were on site and not sure if they signed off on it, but Lt. Jordan visited the site with the Alarm System Company and we make sure that whatever the City wanted the City got it. So, for the best of our knowledge that was taken care off to all the entire complex

LM – So, just a review of the conditions that were putting on before: Not to be operated as a nuisance, no materials to be store outside – FD – Right, we have a small storage area out back, but we don’t think that you wouldn’t be able to see it and it’s lock out – LM – No plastic or vinyl banners, just professional signage only – FD – Right, that is coming soon. The sign is up right now is going to come down and a new permanent sign coming soon they are on the process of designing it – LM – Sunset Clause which you understand – FD – Right – LM – So, we have the 6 months review here tonight. Do you think that one more review with us so you can be up and running – FD – If you would like too – LM – Because we haven’t discuss about hours of operation – FD – So, we did have to go through the License Commission and obtain our entertainment permit license about 2 weeks ago, they okayed the license and it’s a pretty wide open that allow us to operate like from 10:00AM to Midnight. But we are not planning to be open that late – LM – Okay – FD – We did have to apply for a week days license which is Monday – Saturday and another for Sundays and The License Commission approved both of those – LM – What do you think are those operational hours are going to be? FD – We are thinking to open at 10:00AM to 8:00PM from Monday to Saturday at least if someone wants a private patty lets said from 7 – 10 them it will be a private patty, but we don’t think that we are going to be open later – LM – Do you mean like a private patty within the building? FD – Yes, you would have the option of buying the building out, saying if someone wants to have 100 kids and they wanted to have a whisper, so they can do that, they would buy the place out and if they wanted go from 7 – 10 they will do that – LM – Oh, by special circumstances -FD – Yes, exactly and that’s it, but just general speaking it will be at 8:00PM – LM – Okay, and Sundays? ED – Just wanted to mention that summer is when we are more open Monday through Sunday, but winter we probably won open every day – LM – Okay, but we just want to have it on file – FD – Right, and Sundays we are tent to open from 10:00AM to 8:00PM – LM – So, you pretty much will be open 10:00AM to 8:00PM 7 days a week? FD – Right – LM – Lighting outside is good? FD – Yes, lighting outside is very good – LM – So, we would like you to come back for one more review after you are opening, and everything is up and running, so that will give you the opportunity if you want to change anything on the Special Permit. So, when do you think? FD – We think that will be good on April, this way we will have February and March to figure it out what we have and what will need to correct – LM – Okay
Those in Support: Harold Mateo who owns couple Water St. properties and he is on favor of this petition
Those in Support: None
Those seeking information: None
Those Opposed: None

Closed

Boar Deliberation:

Board Members did not have any questions

AZ – Motion on ZBA-2018-15 under §181.313C22 to Approved the Review with the following conditions:
1. Not to be operated as a nuisance
2. No materials to be stored outside
3. Professional signage only
4. Sunset Clause - Special Permit shall terminate/expire upon the sale/transfer of the business from Francis Dower
5. Review in 3 months – April 9, 2019

JB – Motion Seconded
VOTE: 4-0 to Approve the Review with Conditions

ZBA-2018-19 RSC Global Holdings/Rayco Motors 447 WATER ST 7:10PM
Review of a Special Permit under §181.313C12 for an Auto Repair Garage located in the Central Business District at 95/59/0

Presentation was given by Harold Mateo stating that there is a leak on a water meter and would have to hire someone to do an excavation to change the water pipe that’s goes from the water main to his property. He been hardly struggling trying to find someone to do that because there is not many around Fitchburg who could do that job.

LM – What are your intentions with the building? HM – Same as the beginning, planning to keep it.
JB – Would you straight those yellow poles up? HM – Yes, will change those in the future

Those in Support: None
Those seeking information: None
Those Opposed: None

AZ – Do you have any plan on how to prevent that area for piling up trash and leaf on your property? HM – Oh yeah, on the Spring time planning to put up a fence and hopefully that will stop and prevent for that to happen
JB – Not a wall just going to be a fence? HM – It’s going to be a fence, not a wall. We had cleaned a little it wasn’t completed cleaned, but we are planning open very soon and we will clean all that up before we open
LM – Just going over of the condition:
Hours of operations Monday to Friday 8:30AM to 7:30PM – HM – Yeah, but if we could make those hours up to 8:00PM it will be better – LM – So, you want adjusted? HM – Yes – LM – Saturday 9:00AM to 3:00PM – HM – 9:00AM to 6:00PM – LM – Sunday Close – HM – Yeah we don’t work Sunday – LM – Sunset Clause and we will like to have you up and running and come back – HM – That will be lovely, so you can see the progress – LM – So, when do you think it will be that? HM – To know how we are doing operational lets said for the Fall, September or October will be good time

AZ – Motion on ZBA-2018-19 under §181.313C12 to Approved the Review with alteration striking word “Modification” on condition #1, strike condition #7 replace with Review on September 10, 2019 and modifying hours of Operations
1. As per plan submitted
2. No plastic or vinyl banners, professional signage only
3. No exterior storage of junk and no-inoperable/dismantled vehicles outside the property
4. No parking on the sidewalk or street
5. Hours of Operations: Monday – Friday 8:30AM to 8:00PM Saturday 9:00AM to 6:00PM Sunday - Closed
6. Sunset Clause - Special Permit shall terminate/expire upon the sale/transfer of the business from RSC Global Holdings/Rayco Motors/ Harold Mateo
7. Review – September 10, 2019

JB – Motion Seconded
VOTE: 4-0 to Approve the Review with Conditions
Presentation was given by Ainiwaer Mireguli stating that at the last time she was at front of Board she was asked to have the Building Permit sign off. However, the building inspector was at the location today, but he didn’t sign.

LM – So, could you please tell us what the status is on your property? AM – Yeah, all work is done right now and the electric, gas, plumbing and bathroom are done. Also, today the inspector came over and find a problem and we have to fix it, there are kind of dots poking out, so we are going put plastic to cover it to make it look neat.

JB – The Building Inspector is here toning and we would like to know what is the petitioner talking about? EC – So, the plumbing inspector and he went there earlier today and there is some work that it wasn’t done by a license plumber and for that reason he couldn’t sign off. We also would want to verify wiring, because what the building department has for electrical permit it’s the test, on today’s inspection we noticed some new circuits, but again that will be determinate by the Wire Inspector. So, at this point they would have to hire a license plumber and electrician to sore that out to make sure its all-set.

JS – Who was the plumber did you use to do the work? AM – Electrician the far she knows he has license

Those On Favor: None Those Seeking Information: None Those Opposed: None

LM – So, you will have to come back again – AM – Okay, will do
AZ – March will be okay, that way they don’t have to rush getting done what they need to get fix – AM – Yeah, that sounds okay
LM – So, you will be coming back on March 12, 2019 – AM – Okay March 12

AZ– Motion on ZBA-2017-42 under §181.3561 to Approve the Continuance of the Review to March 12, 2019 with conditions discussed:
1. Property to remain a single-family dwelling only
2. Review in two months – March 12, 2019
JB – Motion Seconded
VOTE: 4-0 to Approve the Continuance of the Review to: March 12, 2019

This petition was move to the next month agenda (February 12, 2019) because there was an error on the newspaper published according with the By-Laws. So, the Board of Appeals couldn’t hear this case on January 8, 2019

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Chair Person made 3 calls, but No one is in attendance in the audience for this hearing

Those Seeking Information: None Those In Support: None Those Opposed: None
Hearing Closed:

LM – Board Members were agreed that, since this is the 1st time that petitioner missed a hearing. They would like given the petitioner an opportunity to come back on February 12, 2019

AZ – Motion on ZBA-2018-30 under §181.3433 to **Grant the Continuance to February 12, 2019**

JB – Motion Seconded

**VOTE:** 4-0 to **Grant the Continuance to February 12, 2019**

**ZBA-2018-35 Solar Wolf Energy/Craig Caron 165 KING ST 8:10PM**

**Continuance:**

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

LM – First she wanted to them know there were only 4 members this evening, so you can’t have a negative vote. So, if you would like to reschedule and come back, or would like to move forward? NH – Let’s move forward

Presentation was given by Craig Caron, Ted Strzelecki and Norman Hill (Engineer/Surveyor) stating that the first thing that we have for you toning is to show a certified Plot Plan which shows the precisely location of the property line in red, the house in brown and the ground mount system in yellow. This shows exactly how close this is to the front yard and the side yard, you noticed that from the property along on King St. is about 18′ feet and from the property line atfares away from King St. is 17 1/2 feet as you all can see. Over the left side of the plot plan you have the zoning requires, zoning requires front yard setback 25′feet, side yard 15′feets and a rear set back 30′feet. Now studying this case noticed that this is a corner lot, corner lot at King St. and King Pl. and there is a section on the by-law that says “if you have a corner lot you have not a rear yard” you only have 2 sides yard; 2 front and 2 sides. This is important because it changes that’s requires setbacks from that line instead of be 30′feets require setback is only 15′feet require for side setback, which is means because you have 17 1/2′feets from the line and this meet what City ordinance requires. So, we would like to ament our petition for the request of Variance on the rear yard setback, because there is no rear yard.

AZ – He looked on the section that describe sore that you are talking about and it does say you have two front yards, could you just tell me the part? Because I just don’t see that section where indicates that there is only two front and two sides. On his personal interpretation it has always been up to this point that is two fronts and two views, dual frontage. He could be wrong on that, but he doesn’t seem it – TS – He also contacted a Solar System Panel member from the Building Commissioner of Massachusetts, and he confirm that as well that a corner lot has no rear.

LM – Well, the employee building inspector Eric Chartrand is here to help us on this – EC – No, we don’t seem that way, it will be two fronts and whatever the other side definition – LM – Okay – EC – And they still are encroaching the front yard which still need the Variance – LM – Right

AZ – Yeah, the ways it reads its define a side yard as a central yard between the front yard and the rear yard, so it seems impossible to have a lot without a rear yard because otherwise here it won be a definition of a side yard – NH- He read that section today and he couldn’t find it at the meeting – AZ – When is a specific definition, we supposed to go by the closes common sense definition that it come too and by a common sense. If there is actual language that you can find that is says otherwise.

NH – So, is the Building Inspector here? Because he will know – EC – Yeah, and when you have a situation like this case you have two fronts but having two fronts on this situation doesn’t help you because on how the arrays are situated – NH – Alright so we still are requesting the Variance them. So, the first thing we would like to talk about is the hardship, in this case the hardship is because of the size of the lot. This lot confronted from King St. to the other side something about 58′feets, so if you subtract the required 30′feet back plus 25′feets you will be subtracting 55′feets that will be just inches on the middle of the lot to which to build this ground mount solar. This must be a grandfather lot just by looking the shape of the lot is so small. Now the lot zone is a residential and this is a residential system build for a house for a residential use. So, we are consistent with the intent the zoning and we don’t believe that is going to be detrimental to the neighbors, we don’t believe that it going to reduce the property value and we think is consistent with intent to zoning all overage residential for a residential system.

**Those Seeking Information:** None **Those In Support:** None **Those Opposed:** None

JB – You pull a building permit, is that correct? TS- Well, the office did – JB – The building permit was sign off by Fitchburg Building Department? TS – Correct – JB – But yet we are here for a Variance how come? EC – So, the original
plot plan is a lot different than what the actual is, and he doesn’t know why it is but it’s how was submitted – JB – So what was submitted and sign off for a building permit is not what is has been build – EC – Right, the original plot plan was received it shows much large and that was permitted base on. How did we get here is a good question because he is wondered how did they determinate it – TS – So, we used the Eagle Eye software and use it as guideline to measure it to determine the property line EC – So, we approve the permit base on what we received, which it was wrong. We been back a forth with the Solar Company Manager Mary and it was part of the stipulation that they would have to obtain a certified as-built at the end but before final inspection
LM – So they took their chances – EC – Basically – TS – And that’s what typically require most towns to submit an as-built later which we do, so you basically must put it and do as-built once is in
AZ – So, first of all he gets it of having an as-built done after is done its standard, but the point of that is that you can use something less than a fully survey plot plan at you own risk and then you have to proof then actual needs require after word. So, fairer more by looking up the initial plan he understand the explanation, but it’s hard to believe that the measure setback on that plan are exactly what is require by the City Ordinance, that’s strike me incredibly unfavorable – TS – Which is why we move forward with it – AZ – We have seeing plenty of plot plans where the setbacks requirements is 25 – 30 and where the measurement is 26 .30 or 26. 29 for it to work out that the measures aren’t exactly for what is require that is the kind of thing that’s a good fit for a Variance, but on this case there is no way that these measurements could have possible been accrued. Usually we see plans like this which we do see them where people took their time to get the measurement even if not fully certified plot plan, but at least a ground measurement where someone took a tape measure and check how much space they have. The hardship that you are lining make sense he see that there is hardship and its due to the land, but also has to be not general affecting the district and you basically saying the hardship is the lot that doesn’t meet the Ordinance and if that’s requires for variance we will have to give variance for every single house in the Residential B who wants to put a non-conforming structure -NH – It could be possible to move the angle? TS – So, the company that does our ground are approves engineer systems in order for us to do that we have to have a worse case than this, because we have to make two separate array we have to cut this in a half and put another one in front of the other in order for the owner achieve the energy uses that we have to meet with the amount of panels that it has to go in to meet that demand for the room, basically we will put two arrays and that will look more like a commercial application NH – But it will less than 12’ feet wide? TS – It’s something it can be done but will have to look it more detailed
LM – She is not on favor of the petition because on her opinion its look deplorable in the neighborhood -NH – He thinks they look great – TS – So, you saying that you are not on favor because of the way that they look? LM – It’s not on the economic good for the neighborhood and it’s a lot of reason and we can go back of Variance if you want to read the variances requirements – TS – Nope, it’s okay he hears what he wants to hear, and this is a public record right? – LM – Of course it is, but you said that it’s for the economic good of the neighbor – NH- We said it a good for the property value – LM- okay, but she is not completely agreeing with that, that’s one issue. Not on favor of the petition at less there is something significantly can be done to screen those panels – NH – We can put a stack fence up – LM – She doesn’t think that it looks good for the neighborhood, she rather like to see them on the roof, and she knows that there been circumstances on this case. It’s always frustrating for the Board to be in a situation to trying make something work because someone has already purchased something or they had done something and she feels for the petitioner, but that is not the Board issue, so its owner issue.
AZ- Speaking on going on records, this was a situation where the permit wasn’t pull by the home owner the permit was pull by the contractor and we seems quite few situations on the years been on the Board and clearly can see that his was a due diligent its strikes him that is the home owner is out of money when it’s the contractor who should be on the hook for that we are not the bad guys because the permit wasn’t pull properly, the City is not the bad guy because they approved the permit that it had un-accrued dimension on it. We can only work with on the dimensions that were given and taken as is given that they are accrued, the fact that the permit was granting for a project that was conforming doesn’t mean that we should be abounded to approve a project that it’s very clear to be not conforming. When it could take 10 – 15 minutes to do spot check from you guys part and go out to the site toes a line across the site and said we don’t have room for this – TS – How? Again, at less we hire engineer first we wouldn’t know where the property line is? JB – That’s shouldn’t be the home owner problem or the Board problem – TS – Either if myself or anyone of his people has going out and pull a tape measure, who’s to said that we will come out with the exact measure when we don’t know where the property line is. We are not engineers – AZ – That’s why he said spot check he is not talking about exact measure distant obviously you can’t get that without a survey. He is saying “if you say what we think the property line about here it goes to about here” you are going to come about 5’ or 6’feets short minimum no matter how you measure it, and them is when you come to the Board to ask for the Variance before you put anything into the ground. That’s the level of diligent that we seem from just about every other contractor that we approved permits and variances for, it’s just a basic thing.
NH – If the Board is so kind, we would like to request a continuance, so we can come back with something different – LM – Sure, still with a Variance? – NH – We don’t want to withdrawal the Variance application just yet, just give us the continuance for Variance – LM – Okay, and then you can twit ked if you need it too – NH- Yeah – LM – Yeah that’s fine
AZ – Would like to suggest that on the findings that this should not be hook-up and/or turn on – TS – It’s not activated. The Wire Inspector has not sign-off on this, which mean the meter has not been swap and on Solar System if the meter has not swap there is not benefitting to turn it on
LM – Just wanted to add that when you cut me off when you want me to say or is that’s your opinion? Is not what she wanted to say? She does not see that this is a public good, this is detrimental to the neighborhood because the way it stands right now. Come back and we are totally open to see another plan and seem that are going to work something, you heard what every Board Member had to said and we willing to listen next time, but where you want to be with this you have to make some substantial investment to screen this and make it work because right now isn’t a good interest on the neighborhood. So, when would want to come back? NH – March it’s good

AZ – Motion on ZBA-2018-35 under §181.414 to Grant the Continuance to March 12, 2019
JB – Motion Seconded
VOTE: 5-0 to Grant the Continuance to March 12, 2019

ZBA-2018-21  FBC19-62, LLC  126 PACIFIC ST/183 CEDAR ST/191 CEDAR ST  8:20PM
Continuance of a Reconsideration:

Appeal to Overrule the Building Commissioner’s Decision for the need of a Special Permit from The Planning Board under§181.752 in a Residential B District at 13/51/0, 13/50/0 & 13/48/0

Presentation was given by Atty. Mark Bodanza, Carl Bletzer and City Solicitor Atty. Pusateri stating that they have a pending case because this gentleman has claim that there is a constructor grant and we have postponed that. Also, there is another case that’s pending with Worcester Superior Court which is going to determinate the number of occupants for each building and a couple of additional obligations.

LM – Before that we get to far would like to let you know that we are only 4 members board this evening and you will required to have an anonymous vote or would like to continue? MB – We would like to move forward and give to the Board an update on where are and present our ideas to solve this problem
MB – We had a meeting with Atty. Pusateri and the principal of the corporation to discuss some ideas on trying to solve this practically. There are 3 pieces of litigations pending in relationship to this case. So, at this time what is before is the issues with the common drive on 126 Pacific St and 191 Cedar St. and as you know those properties are connected each other on the rear yards. The issued developed was when Mr. Bletzer open these properties up, he created parking area for 126 Pacific on the rear yard and access that from Cedar St., but after a deeply review he doesn’t think that there is a need of the common driveway and we are perfectly willing to fence off the back of 126 Pacific St. and not use the rear yard of 126 Pacific for parking. However this doesn’t prohibit Mr. Bletzer for using his property to allow people to live in 126 Pacific, the park on Cedar St. property has only pedestrian access to 126 Pacific on where is not vehicles on 126 Pacific. 126 Pacific has no parking as you probably well aware this area has no parking, he doesn’t needed those 3 parking spots were crated and if he simple fence that off then there will not be issues with the common driveway. However talking to Atty. Pusateri who’s been very cooperative and good to deal with, and we finally put our heads together and try prove this so, that we will be presenting something that is more pleasant for both to the abutters as well to the City in general. So, we came out with a sketch plan where you can see that there is going be a buffer around the entire property so the abutters will have some protection, there was a concern about draining and there is going to 3 feet’s of infiltration trench on the back of washed stone fabric landscape plantings. We are going maintain gravel with the extra parking spots which is also part of the water infiltration, but the extra drive itself will be pave.
LM – it is the parking just for those houses? And not just random people? MB – No, not at all – LM – Has it been in the past? CB – No, never
City Solicitor Atty. Pusateri: So, part of the reason that we all are here tonight is for you all to have the opportunity to look where all this going and if is there any concerns that you may have we can talk about tonight. He received from Planning Department and Planning chairperson parking issues and a plan, so he sketched out a possible concept. When we look this from the City prospective we come with the realization that this area of our City was developed prior to the populization of the automobiles and no everybody had a car and now there are 3 cars per family sometimes and parking has always been a problem in this area even since we started changing this house to a single homes to multi-families living arrangements due to the students to the college. The City does have interest in improving parking, and this plan show the numbers of spots that will available and if you have 4 house students in each of those units there will more parking for guesses. If they are successful to get what they are asking for, then you still get additional parking for guesses. This plan shows 21 total spaces for parking, snow storage area, and there will be a separation from the street which it will making easier for people to entering and exiting. So, now is at Board discretion on how many parking spots that you would like to have
LM – Could you just refresh our memory on this, are all these 3 single-families dwelling? Atty. Pusateri – Not 100% sure know, but he believes they all are single-families. Which he believes that they can have 4 unrelated people in each unit.

CB – Yes, they are single-family. 183 and 191 Cedar St., are the largest one so, hopefully we can get approve for 5 occupants on those.

Atty. Pusateri – All the Board has on this case is the parking situation. The drainage issue he believes that the Engineer Department are going to be out. Also, Do you want to create a parking situation where is capable that somebody else may want come in and rent a spot. On his own opinion is “Why Wouldn’t”; so, those are the decision that the Board may need to thinking about

LM – Yes, because on the other hand if you do rent out the spot and that person owns it, you are going to more transit people coming through he knows who is going to be renting the spot too. MB – He is there a lot – CB- he have security cameras on those properties and he can access them through his cell phone all the time 7/24

Atty. Pusateri – He likes the concept of those three foot buffer around the entire property where the petitioner will plant grass or some type of landscape and there is going to be enough area for snow storage.

LM - Atty. Bodanza what is the ultimate number of occupants that you are looking for each dwelling? MB – Five for 183 and 191 Cedar St. and Four for 126 Pacific St. LM – The reason we are asking this information because it will help us to determinate the number of parking that it may require for each unit. However base on what you just told us it will be possible to eliminate parking #18 and make a walkthrough? CB – Yes, we can do that –LM – And #1 to width the exits in case of emergency and a fire truck would have to come in, no curb cut would be required. CB – Absolutely we willing to do that and if we are success and obtain what we are asking, this place will look beautiful

LM – What does Planning Board said on regarding of this project? VP – They are very happy most likely they are on favor of this

Those in Support: None  Those seeking information: None  Those Opposed: None

AZ – Just to mention that we appreciate for you to being here tonight, because this presentation clarify and help us to understand your petition ideas.

AZ – Motion on ZBA-2018-21 under§181.752 to Grant the Continuance to June 11, 2019

JB – Motion Seconded

VOTE: 4-0 to Grant the Continuance to June 11, 2019

4. MISCELLANEOUS

Due to the short staff Members on tonight’s meeting we are going to postposed the Board Members election for this year

AZ - Motion to Postpone Election to February 12, 2019

JB – Motion Seconded

Vote 4-0 to Postpone Election to February 12, 2019

5. ADJOURNMENT