



ZONING Board of APPEALS
 166 Boulder Drive
 Fitchburg, MA 01420

MEETING MINUTES – February 19, 2019
SENIOR CENTER, 14 WALLACE AVE

- | | | | |
|--------------------|----|-----------------------|---------------------|
| 1. Call to Order: | LM | PLEDGE OF ALLEGIANCE: | ALL |
| 2. Communications: | LM | ATTENDANCE: | LM, MM, AZ, JB & JM |
| 3. Hearings | | | |

CASE No.	APPLICANT	PROPERTY	TIME
ZBA-2016-31	Active Life Health Care Management/Valdimir Giterman	783 WATER ST	7:00PM
<i>Review of Conditions placed upon a Special Permit under §181.313B5 to conduct an Adult Day Care Center located in the Industrial District at 122/23/0</i>			

Presentation given by Valdimir Giterman stating that everything is going well with the Day Care Center, and after all been settle, we now are on the process to do some planting. Right by the sign pole is we would like to install a wood box container (see exhibit “B”) on both sides and planting some flowers to make it looks neat. Now that there are other business next to us, we had talked to the business owners and we all are agree to install more wood box containers on both side of the building (see exhibit “C”) to plant some kind of palm tree inside to make the place look nice and happier.

LM – So, you open for business already? VG – Yes, we are – LM – Parking lights had been replacing and updated – VG – Yes, they had – LM – Hours of operation are from 7:00AM to 4:00PM – VG – Yes – LM – Are those Monday to Friday? – VG – Now we also open Saturdays from 7:00AM to 2:30PM – LM – Okay, 7:00AM to 2:30PM? – VG – Yeah, and if we want to open Sundays, we would have to let you know? LM – Yeah – VG – Okay

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

MM- Likes the concept of those planting, even that he was looking for some more permanency landscape at the front, but he likes the petitioner idea. – VG – That’s something that the Board will have to talk to the property owner.
 JB – Visited the property today and everything is looks great, property is clean and very well maintain.
 JS – Is there any land to plant, she doesn’t believe it is, but would have to ask? VG – No, there is any really
 JM – He think those are nice they will look great on the property
 MM – Would like to see the landlord to come on the next review with the petitioner, just to know what he thinks

MM – Motion on ZBA-2016-31 under §181.313B5 to Approved the Review with the following conditions:

1. Plan for garden and vegetation submitted on February 19, 2019 has been accepted
2. Per plan submitted previously
3. Not to be operated as nuisance
4. Hours of Operation: 7:00AM to 4:00PM Monday to Friday 7:00AM to 2:30PM Saturday
5. Review June 11, 2019
6. Sunset Clause – Special Permit will expire/terminate upon the sale/transfer of lease or in the event that such as lease is unable to be negotiated with Active Life Health Care Management.

JB- Motion Seconded
 Vote 5-0 to Approved the Review

ZBA-2018-11 **Brothers Parking Lots and Roads** **126 JACKSON AV** **7:10PM**
Review of a Special Permit under §181.313D5 for a Construction Yard located in the Industrial District at 5/9/19

The petitioner had informed to the Board Members by writing that he was unable to attend to this evening hearing and had requested to continue the review to May 2019

Those Seeking Information: None Those In Support: None Those Opposition: None

MM – Motion on ZBA-2018-11 under §181.313D5 to **Grant** the **Continuance** to **May 14, 2019**

JB – Motion Seconded

Vote: 5-0 to **Grant** the **Continuance** to **May 14, 2019**

ZBA-2019-01 **Kenneth Godfrey** **220-222 ALBEE ST** **7:30PM**
Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling with stacked parking spaces located in the Residential A-2 District at 12/11/18

Presentation given by Kenneth Godfrey stating that this is a great property with a very nice neighborhood, but the problem is the eye sore in a nice single-family neighborhood this is 3-family dwelling. His plan is to go in revised and change what it needs to be change, like windows there are about 17 windows which we will replace them. He thinks that the neighborhood deserved to have a nice property not an eye sore sitting there. As the apartments go, they are on very good shape, all they need is some cosmetic work, paint, carpet, and the roof is in very good condition. We are going to be replacing both chimney from the roof up, again roof is in good condition. Other than that, we are going to check plumbing, electrical, but they are livable as they are now, which this is another reason why he got a crash with this property; where you can find a 3-family in Fitchburg with an acre of land. That it makes this property very attractive, we are going to re-sell this property possibly to a home owner occupied, so owner can leave on the 1st floor and to own that piece of land its very attractive for a family that own it and leave in it at the same time.

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

JB – Parking? KG – Yes, the engineer has spoken to the city planner and this parking plan is based on the City regulations, both Planning and the engineer had expressed that 24 foot from the driveway comfort to the lot, it's too much, and they asked me to request it from you to reduce it to 18 feet. From the back of the cars run to a line of bushes that we can save and not to tear those bushes down. They are strongly felted that the 18 feet will be enough rare than 24 feet.

LM – Well they need the back-up and turn around – KG – Right, and they think that 18 feet will do it.

JM – How about the shed on the back? KG – The shed on the back is in good condition is just the roof needs to be replaced – JM – How about the pool? – KG – He thought to take it down, but he would like to leave the option to the new owner if they want to keep it – JM – What is the condition? KG – Fair condition – JM – How about the deck? KG – Not quite sure yet, but if it needs to be replaced, we will do it

MM – Interesting property, but back on the days it was a single-family home – KG – He thinks it was – MM – It has this funky addition on the left into the rear and the neighborhood are very nice, so how can we make this to looks better and we are very open for thoughts. What about the carport? KG – That's structure connected to the house and if we take that off will mess the structure of the little addition – MM – How that addition is that related to? -KG – We think is connected to the house too – MM - What is in there? KG – A living space and also has its own emergency egress MM – He just struggling on this he knows is great property the main house is great and it's hard to think on how can we make this better for the neighborhood – KG - He think when we clean it up and after we put the new siding the entire property will be an amazing improved – MM – The parking spot by the next door neighbor, is there a way we can do a revise parking to give them some privacy? KG – This parking plan was made by an engineer and he did this base on the best land topography, we probably could put up a fence – MM - The one car at the front that is on its own, its seeing sticking out to the street – KG – No, they can pull all the way into the carport – MM – So, are you saying that is under the carport? – KG - No, but it can be pull forward and be under the carport if they want too

LM – Where is the building entrance located? KG – At the building middle section – LM – Any entrance on the back? –KG- Yes, the fire scape or 2nd egress, but the main entrance is on the front door

JS – But there is an apartment on the back – KG – Yes, there is a slide door for the 1st floor unit
LM – So, technically the 1st floor unit could park on the back and they can use the back door entrance – KG – Yes, it could be possible – LM – And then the other 4 spots for the two and three units could use the front door entrance? – KG – Yes, it can be possible - LM – Well as you can hear most everyone is saying that they are not agree with the parking plan, first of all you are encroaching to close to the road – KG – This is a conforming parking according to the City Regulations

MM – If this got reinstate as a three-family the pool would have to get down – KG – No problem – MM – The board will need to see a better parking plan.

JS – So, the 3rd unit on the third floor is on the attic? – KG – No, there is not attic

LM – So, are there 1st, 2nd, and 3rd floor? KG – That’s correct

LM – Reads responses from Board of Health and a violation from the previous owner (Exhibit “A” & “B”) - KG – He wasn’t aware of it but will take care of it. He won’t re-sell the property if not in good shape.

MM – Suggested to the Board to have a site visit – KG – That will be great

LM – Okay, so we have to do a continuance for the next month meeting – KG – That’s okay, he has another property that’s has a review on the next month meeting anyway

MM – Motion on ZBA-2019-01 to **Grant** the **Continuance** to **March 12, 2019** under §181.3561

JB – Motion Seconded

Vote: 5-0 to **Grant** the **Continuance** to **March 12, 2019**

ZBA-2019-02 **Santiago Fernandez** **84 PRATT ST** **7:45PM**

Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling located in the Residential C District at 77/68/0

Presentation was given by Santiago Fernandez stating that he bought the property approximately a year ago, it was already a 3-family dwelling conforming, but it was abandoned supposedly for more than one year which it made it non-conforming he thinks. His plants now are that he has 3 children who are old, and they are working with him on this project. He is a Fitchburg residence since 1998, and he is trying to put his 3 grown-up children on their own place. He has already changed the heating system to a force air system heating and air conditioning, and by trying to do things right and legal for his family as well to the City; that’s the reason that he is here tonight. He had changed all the heating system, but the Building Department allowed him to finish the job. He could rent the unit as they are, but unfortunately, he can’t.

Those Seeking Information: None

Those In Support: None

Those Opposed: None

LM- Was the property vacant a year before you bought it, or after you bought it? – SF – It was abandoned a year, then he bought it, and he has owned for another year – LM – So, how were you able to do some of the work already, if you did not were suppose too? – SF – Because they told me after that we requested for the permission, and for the plumbing permit and they granted it. So, after they came and asked what we were doing this is un-conforming. At least they allowed us to finish the work – LM – And what is the house condition? – SF – It is on good condition

JM – Parking on the back – SF - Yes

LM – Do you have anything to add – SF – No, that’s all

JB – No questions property has enough parking on the back and plenty space for snow storage, is good to go

MM – Is the driveway and the parking area pave? SF – Yes, it is pave, but is not on good shape, so it can be re-pave –

MM – Could you that? – SF – Yeah, we can do it – MM – He thinks that the only condition that the Board should be about the driveway and parking to be pave with a 6 months review

JM – Just to clean it, but other than that good to go

Motion on ZBA-2019-02 to **Approved** the **Special Permit** under §181.3561 with the following Conditions:

1. Driveway and parking to be re-pave
2. Property to be brought up to code accordingly with the Building Department regulations
3. Review in 6 months **September 10, 2019**

JB – Motion Seconded

Vote: 5-0 to **Approved** the **Special Permit**

Presentation was given by Luis Martinez stating that he is trying to move his business from Leominster to Fitchburg, only the business shop and the storage because the business office is at 142 Clarendon Street in Fitchburg. Basically, what he is trying to establish at Summer Street is the business shop to store the business equipment, materials and tools. Materials are bricks, blocks, and cement, the cement is going to be stored inside the building. Some of the equipment is going to be inside of the building, the only thing going to be outside are the trucks, blocks and the bricks, these come and stay on pallets. There is not going to be piles of gravel or other material around, everything is going to be on pallets. Right now, he is going to be on a lease on a 3,200 SF for his business, but his plan is to purchase the property. He has been on business since 2003 almost 20 years, which was based in Leominster, but unfortunately the building was sold and now he must move out. We have between 15 to 20 employees, and all the business equipment are the later models between 2011 and 2016. This means that the later models are certified that they made less noise. The 99 Restaurant is one of the neighbors, but if there is any concern of the restaurant, there is anything that is going to show or affect this business from where his business is going to be located. From the past 2 years he has been looking in the area of Fitchburg and nothing came up, until he got this opportunity which he thinks is a great location and beneficial for his business. This place was empty for 2 years and he must fix a couple things, but he wants to make sure that when the Building Department comes to inspect it is going to be okay. As of now he has a 5-year lease at Summer Street, with plenty of parking but planning to buy it in a near future within 6 months or a year.

LM – Could you tell us what is going to be outside storage here? – Mr. Martinez – Is going to be brick and blocks on pallets – LM – How many pallets do you think? – Mr. Martinez – Well, when he orders then, he orders a full truck, usually are about 15 pallets of bricks and 10 of blocks – LM – Okay, and then everything else, all other materials will be inside the building? – Mr. Martinez – Other material that we use for that is cement which it comes in bags and that is going to be inside – LM – Any other storage? Mr. Martinez – Well inside is going to be oil, oil filters for when we do services on the trucks, shovels, welders – LM – What are the hours of operation? – Mr. Martinez – Normally we start at 5:30AM start trucks up and running for about 10 to 15 minutes leave the location and return late in the afternoon around 4:00PM or 4:30PM and at that time we load those trucks for the following day to not make a lot of noise early in the morning

Those Seeking Information: Mr. Tyrone Tines of 24 Clyde Street stating that his house driveway is just by this business and his major concern is about these hours of operation and the outside material, any chemical to be stored in there – Mr. Martinez – No, chemical at all besides oil and diesel, but toxic chemicals none of that

LM – When you start those trucks up at 5:30AM how many trucks do you start at the same time? – Mr. Martinez – It depends on how many crews will need to go on the schedule, business starts operating on April, and we start slowly and it gets busy by May. And the business operations end on November, each crew it may be 4 to 6 vehicles – LM – Are they all leave at the same time? – Mr. Martinez – Yes, everybody leaves at the same time – LM – How many vehicles are we talking about? – Mr. Martinez – 14 vehicles, but we don't use them all

Cory Richards of 15 Clyde Street stating that they have 2-year-old twin boys and their bigger concern is about the noise too early in the morning, and hopefully they don't come back that late at night – Mr. Martinez – There is not a heavy noise our trucks are mostly new from 2011 through 2016. We don't come back later than 4:30PM, if there is a double shift we don't come back to the shop at all, we stay in a hotel, because he is very considerate with his neighbors

Robert Heinle of 21 Clyde Street stating that he would like to know if there is any gasoline, diesel storage in the building – Mr. Martinez – Right now there is not, but in the future it will be an above ground diesel tank approved by the Fire Department, it has all require permits from the City of Leominster all are current and up to date and it is hazard insurance. This is a 2,300 gallon tank with a roof, and it has a bathtub which if there is any leak won't disperse around because all will stay in the bathtub – RH – Is the maintenance going to be conducted from outside or inside? – Mr. Martinez – Inside only and he would want to mention that the business doesn't operate during winter time – RH – Would you mind if somebody starts a bunch of trucks at 5:00AM every morning, smell diesel for at least 10 minutes – Mr. Martinez – Trucks are certified clean air trucks, which means that they don't smell – RH – Is every piece of his equipment certified clean air on his business? Mr. Martinez – Again, all our equipment is mostly new, not older than 2011 – RH – Are they going to be storing anything that deteriorates the property, like grass, grassweeds? Mr. Martinez – No, we don't do grass or landscape, but the other thing that we are going to have is baskets of Watergates and brand-new manholes – LM – Okay, we need to know all of that is going to be on the outside storage – Mr. Martinez – Blocks, bricks, Watergates tops and brand-new manholes –

LM – And what are those going to be? – Mr. Martinez – Those come on pallets too, everything is going to be wrap-up and on pallets – RH – Also, he mentions the hours of operation, but how about days. Would the business operate 5, 6 or 7 days a week – Mr. Martinez – 6 Days, Monday through Friday and some occasionally Saturday. If we are very behind of work we will work Saturday, but Saturday we start later than normal – LM – Like 7:00, 8:00? – Mr. Martinez – most likely 6:00 or 7:00. And the reason that we have to leave that early is, because we cover Massachusetts, New Hampshire and Maine. So, for us to be at the job site at 7:00AM we must leave from our shop location early

Those In Support: Pedro Martinez, also business owner brother and work with him, would like to add that sometimes we got highway job or State job. So, for those contracts we would have to work at night, which on those time we will leave the shop sometime around 6:00PM and we will return in the morning the next day around 5:00AM or 6:00AM. Also, when is State job contract the work day vary, because they only work Sunday through Thursday having Friday and Saturday off

Linda Vitone office manager of Martinez Construction for almost 20 years, and she thinks that they are hard workers and she thinks that they deserve this to be granted

Richard Plante of Westminster, MA contractor and had worked with them for a very long time, also, thinks that they deserve to have this Special Permit

Those Opposed: None

JB – He doesn't know what this petition does, because Mr. Martinez is looking for a Variance on a piece of property that he doesn't owns, and he can't do that. So, he is the wrong applicant, he shouldn't be here – Mr. Martinez – Well they told me to come here – JB – Well they are wrong, you are not the owner of the property – Mr. Martinez – As a now no I don't – JB – Well you would to have the property owner to come here

JS – Do you services the trucks there? – Mr. Martinez – Yes, we service our own trucks to a point, but if there something that we cannot resolve them we would bring it a shop

MM – You are asking for a Variance and Variances are very specific on its criteria, and as a Board Member the 1st thing that he looks at is, residential and how are they going to impact. And to be honest with his opinion, he never would want this kind of business abutter on his property. We have some great areas in the City that it has been designated for industrial, construction yard, but this is kind of mix-use area it's retail and there is a lot of mix residential and on his opinion trying to put a construction yard on the middle of all that is not a great long term of fit for the neighborhood. So, once we grant a Variance, we can't take a Variance the away. He always visits the property and listened to the presentation and take in consideration the book and he can't not alter that book, this is our guideline; we must decide base on the criteria for the Variance. And he is having a hard time getting there with this petition - Mr. Martinez – He would like to add something, Vital has about 8 diesel ambulance; so, was there any problem on those?

LM – Let's ask to the audience. Do you have any problem with the noise or smell diesel from Vital ambulances business? -Mr. Heinle – No, they are technically brand new

JB – Visited the property at Whitney Street in Leominster, and he found snow in there and sore of mix-up and he wasn't too pleased with the administration of the yard on how things were, they look trouble you have bricks, broken pallets all over a 55 gallons of oil, not sure if all of that is because you are on the process moving or don't know, but he was very disappointed - Mr. Martinez – Yes, is because we are on the process of relocating our business

MM – On his opinion what the Commissioner sees it, is that everybody has the right to applies technically he can deny them, but we would like to hear the Commissioner opinion. And would like to hear Anthony's opinion

AZ – He can't really give an opinion on this application since that he wasn't present for the whole presentation, but as to the law his reading will be no, because it goes with the land. It's an application that alter the legal status of parcel itself not that is a Special Permit that intent to the occupier, tenant or user. So, that been said he would love to hear from the City Solicitor opinion on this case, because this is going to come again and again and as a Board Member, he would to have a solid opinion. As a now he strongly suggested for a continuance

JM – Maybe if they fence the property, that it may help the abutters with the noise and the smell

LM – Reads the correspondence from the Community Development (See exhibit "C") and a written letter that was given to the Building Commissioner (See exhibit "A") – Mr. Martinez – That letter was because he needed to get a temporary electrical permit

LM – Can you bring the property owner on the next meeting? – Mr. Martinez – Yes, he was trying to be here tonight, but he has other properties in North Caroline, and he had to attend to take a problem at there

AZ – He would like suggested to the Board for a continuance, so we can allow him to contact the owner and also that we can receive an official opinion of the City Solicitor on how we can conduct this, if we have the ability to grant a variance

