



ZONING Board of APPEALS
14 Wallace Ave.
Fitchburg, MA 01420

MINUTES OF THE MEETING
January 10, 2017

1. **Call to Order:** LM
2. **Communications:** LM
3. **HEARINGS**

PLEDGE OF ALLEGIANCE: All
ATTENDANCE: LM, MM, JB, NS, AP & AZ

6:00 PM
ZBA-2016-23
Marcus Moran / JMAC Distribution LLC
135 Crawford St.

Petitioner indicates all going well with the new location, no change in operations. Decided to close off one of two entrances for safety and convenience reasons – this is working well.

[Seeking Information: None, In Favor: None, Opposed: None]

MM: What's the plan for dealing with privacy issues along the fence?

Moran: The landlord had some green slats that were put in. They don't seem to be as effective as the tarp that would sit on the inside. So we do plan to put that up, but it's to do it, and moving incurred expenses. If you need that accelerated, I'd be happy to do that.

MM: I just want to be conscious of the aesthetics on a gateway road into the city – looking at the screening issue more than anything.

Moran: The tarp worked fine across the street – kept things private over there. When you're coming from the airport side, the elevation's a little higher, so when you come around, you look down and you can see all the cars in there, so... a tarp isn't really going to hide that. Tarps will be up in the spring.

MM: Is there any other type of solid fencing material that could be used? You said the slats aren't good?

Moran: The slats are in now. But they're not as effective – somewhat transparent.

AP: Are you talking about the slats *in* the fencing?

Moran: Yes – we're going to keep those in and put the tarp behind them.

AP: I drive by there almost every day, and I think the slats look good.

MM: Is the fence the property boundary?

Moran: No.

MM: Is there any room down the road to put in some shrubbery along the front of it?

Moran: The problem with that is that the plows come through and throw all that snow over it. I'd love to, but any investment would be wasted.

LM: Maybe just some gravel or something like that.

Moran: We put bark mulch in, but weeds come through it quickly. We do the best we can, and keep it clear of trash.

Moran: We're planning to put a sign up eventually and make it look nice.

LM: You would need to go back to the Building Department, just so you know.

Moran: No problem.

LM: I think we've got a good petitioner here, who's shown he knows how to keep his property in order. If we say, "Not to be operated as a nuisance," I don't think he needs to come back.

AZ: I'd concur.

JB: If he operates as a nuisance, we can deal with it then.

Hearing Closed:

Deliberations:

[No substantive deliberation – all members indicate favorable to the petition.]

MM – Motion to approve the review with conditions as previous.

LM – But we're striking the review, right?

MM – Yes.

AZ – Seconded.

VOTE: 5-0 (LM, MM, JB, AZ, AP)

Approve the Review

6:15 PM

ZBA-2017-01

Carewell Urgent Care

432-504 John Fitch Hwy.

Jason Carullo representing Back Bay Sign on behalf of petitioner Carewell. David Lowe also present from Carewell. Seeking a variance for an electronic reader-board sign. New sign will be mounted to existing freestanding sign mount. Planned usage of the sign will be consistent with other Carewell locations: monochrome, no animation, no scrolling, no flashing. Display will advertise Carewell services and hours, as well as standard time and temp display.

[Seeking Information: None, In Favor: None, Opposed: None]

MM: Concerned about color, animation, etc. based on problems with previously-granted sign variances.

Carullo: Reiterated no animation, no scrolling, no flashing, long-delay message rotation, colors can be whatever the Board would prefer to see.

LM: What would the hours of operation be?

Lowe: We're open 8-8, and typically run the sign 24/7 to indicate our hours after we're closed.

LM: So the sign would be static after 8:00 PM?

Lowe: We can do that.

LM: Do we have restrictions on the other signs we granted on John Fitch? I know we do elsewhere.

JB: Those other locations all have the scrolling and animation concerns.

NS: What did we do for the car wash? Because this is almost exactly the same location as the car wash.

Lowe: I think the car wash sign runs 24 hours.

AZ: I think for the car wash, we imposed restrictions saying no animations after dark to avoid distracting drivers at night, but since this one isn't going to animate at all, that seems like a non-issue.

LM: Do we want to do this as a Special Permit? I know we'd been hoping to be able to do that going forward.

AZ: I think we still lack authority to do that as of now.

MM: I'd prefer to see it as a Permit.

AZ: I agree – we just need the City Council to act on that first and give us the authority to do that.

MM: If we can add a sunset clause to the Variance, I'm OK with that.

AZ: Sure, we can do that.

MM: Do you agree, Anna?

AP: Yes.

LM: OK, let's do it that way then, until we can get it cleared up with the Council.

Hearing Closed:

Deliberations:

[All members indicate favorable to the petition.]

AZ: I'd like to address the mandatory findings.

MM: I'd like to note for the record that the Variance and the sunset clause both apply to Carewell, not to Back Bay Sign. [All agree.]

AZ: I believe we should find that due to the character of the surrounding region of John Fitch, as distinct from the Central Business District as a whole, the impact of one additional lit sign on a wholly commercial strip filled with other such signs would be uniquely low. I believe this meets the mandatory criteria under 181.9614.

MM: Motion to approve the Variance with conditions as stated and including ZBA standard sign conditions.

AZ: Seconded.

VOTE: 5-0 (LM, MM, JB, AZ, AP)

Approve the Variance

6:30 PM
ZBA-2017-02
Viorel Duca
101 Marshall St.

Petitioner seeks a Special Permit to reinstate a vacant/abandoned single-family house as a nonconforming structure. Specifically, side setback is 1.3 ft. less than required, and front setback is 6.2 ft. less than required.

[Seeking Information: None, In Favor: None, Opposed: None]

MM: What's your plan for parking?

Duca: I had been hoping to be able to come in from Nutting [the street running behind the property] and put in a carport on the back side of the property, but it's all on slate, so that would require blasting. So, I'll plan to park on the street. I understand from the neighbors that parking on Marshall is not allowed in the snow, but that there is a lot down the hill at a community center or church that everyone parks in and walks, so I'll do that.

MM: I noticed that the concrete and railings on the walkway are in disrepair. What's the plan for that?

Duca: I plan to remove the deteriorated concrete, make a flat walkway, and reconstruct the railing as well as the retaining wall on which it sits.

AZ: No questions. I'm a bit concerned that it might actually be easier to process this as a new Variance grant than as a Reinstatement, because the latter has an "architectural features" requirement, while the conditions for the former are easily met in this case.

MM: I think we can get there [i.e., Reinstatement] on this, but I'll wait and we can discuss it after everyone weighs in.

AP: I agree that the setback relief is minimal, it's a very common nonconformity in that neighborhood, and it will have no detrimental impact on the neighborhood.

JB: You mentioned that you tried to get the power turned on and were told you needed a Reinstatement. Did they ever turn it on yet?

Duca: No.

JB: I thought the meter was lit up when we [i.e., JB and MM] went there earlier tonight.

Duca: Yes, I saw it lit up as well, but the power isn't on in the house.

JB: Did you know the back window is wide open?

MM: No, only the storm was open.

Duca: I was there earlier to check up on the property, and everything is shut.

JB: Is the water on?

Duca: No, nothing is turned on right now.

JB: Is there a basement?

Duca: There is no basement, but there is a crawlspace.

LM: What are your intentions for the house? You're going to live there by yourself?

Duca: Actually, I have two dogs, two boxers. I'm thinking of just fixing the place up a bit. It's a solid house, but I was thinking of refinishing the hardwood floors and replacing the windows with double-pane. The roof also may need repair. I may also take some trees down, just to be sure nothing will fall on the house in a storm.

LM: How quickly are you planning to move in?

Duca: The sooner, the better, but realistically many of the repairs won't be able to be done until late winter or early spring.

MM: Is your intent to do a full restoration?

Duca: No, just the repairs I mentioned. The house is in good condition overall, otherwise. Maybe also some repainting.

LM: Any further input before we close?

Duca: I'd just like to point out that of the two setback nonconformities, the one to the side abuts only a wooded lot – there is no neighbor.

AZ: Yes, I'd like to also note for the record that the side setback is less than a foot and a half out of compliance.

Hearing Closed:

Deliberations:

[NS indicates in favor]

MM – I am in favor, and I think we can reach the “architectural features” requirement by virtue of the fact that it's a small, single-family home in an over-concentrated neighborhood. It will have at most two occupants, and one in the near-term, and the petitioner has indicated that there will be no problem with parking, so I think it would be positive for the city and the neighborhood.

AZ: I agree. Mike's sold me on the Special Permit Reinstatement route. I agree that a small, single-family, appropriate for single occupancy, in what is, generally, an over-concentrated neighborhood, is in itself an “architectural feature deemed appropriate for rehabilitation” that we should be encouraging for the sake of the neighborhood and the city.

LM: Any conditions?

AZ: Maybe no more than one car parked out front.

LM: That's difficult – it would mean no company allowed.

AZ: That's a good point – I withdraw the proposal.

JB: I'm concerned, because a few meetings ago, we had another petitioner [Timothy Kihiko] with inadequate off-street parking, and we imposed all sorts of conditions on him for that.

LM: It's not apples-to-apples.

JB: 181.8761 – Off-street parking and loading. It says there *shall* be off-street parking to meet these *minimum* requirements. I was there earlier, and my car is a little bigger, and it sticks out into the street if you try to park on the street. I lived in that area for a long time, and parking is always an issue, so if we start allowing this with no restrictions, we're always going to have this problem. Are we going to stick to the book, or are we going to wing it every time somebody comes in here?

AZ: I'd say that since this is already a petition for reinstatement of a nonconforming property, we're already presuming nonconformity, so the fact that it doesn't strictly accord with the ordinance is not necessarily a problem. But also, the other one [Kihiko] was a multi-family, non-owner-occupied, so we were concerned about this other guy having a *bunch* of people with no place to park, and those people themselves would have had no control over that since they'd only be tenants. Whereas, here, we have an owner-occupied single-family, so we're talking about one person, who needs to find one parking spot, for his one car, so I'm not too concerned.

LM: And I can appreciate why you [JB] would bring that up, but I think we need to treat each case as an individual case. I don't think that previous decision was precedent-setting.

MM: Motion to grant the Special Permit for Reinstatement with no conditions.

AZ: Seconded.

LM: I think we might want to specify owner-occupied as a condition.

MM: Yes.

AZ: Agreed.

VOTE: 4-1 (LM, MM, AZ, AP in favor – JB *opposed*) Approve the Reinstatement

6:45 PM

ZBA-2016-31

**Active Life Healthcare Management/Vladimir Giterman
783 Water St.**

Petition continued from Dec. 2016 for Special Permit to operate an Adult Daycare. In addition to Vladimir Giterman, Zachary Tesler was in attendance for petitioner, and Jamie Rheault representing Whitman & Bingham Associates having been retained by petitioner to prepare a plot plan. Julie Aronovitz attended to represent the landlord of the property.

Jamie Rheault walked the Board through the plot plan [on file], noting parking utilization and areas left usable for tenants of the other two units in the building.

Aronovitz: As landlords, it's been hard to commit to any improvements of the property because most of the building has been empty so long. This business seems like a great opportunity, both for us and for the community, and we've agreed with them for us to undertake a number of improvements as conditions of their lease. We'll replace or repair the light poles, repair and restripe the pavement, paint and repair the sidewalk and overhang in front of the building...

LM: Can we back up and talk about the pavement – what would be entailed in that? Because that had been a concern of ours.

Aronovitz: It will be repaired and maintained, but not fully resurfaced or regraded.

LM: Will there be a seal-coat?

Aronovitz: I don't have those details within our lease – maybe that's something we'll still be negotiating. But I know it needs to be a serviceable job. We're also going to repair lighting on the building, inspect and repair the roof membrane, repair masonry as needed, and scheduled parking lot clean-up and maintenance on a regular basis. Also, if we get this business in, we'll have more than half the building occupied, which will be very helpful in attracting other tenants – and if we fill the building, we can afford to take better care of it, and really beautify that part of the street.

[Seeking Information: None, In Favor: None, Opposed: None]

MM: Good presentation, and I agree that the building has been a bit of an eyesore in the past and the only way to fix that is to get it up and running again. As I mentioned last time, I like the idea of some plantings. We've got to do something to improve the area between the sidewalk and the building. I know this can't happen all at once, but I'd like to see something, say, in a year.

Aronovitz: May I suggest that maybe that could be a condition for the *next* tenant? Because right now, with only one current tenant and this one coming in, we don't have the resources. We want it to be a great property though. We can't do it if we don't have the tenants.

MM: I agree – we've got to work collectively on it. Jamie, could you review the bus parking?

[Jamie Rheault reviewed the bus/van parking on the plot plan]

MM: And these are your vans?

Giterman: Yes, we own the vans.

AZ: I agree that there's no need to put an express condition for plantings right now. But rather than leaving it to a hypothetical future petition for a hypothetical future tenant, I'd want to see maybe a one-year review specifically to address that issue. That way, there's time to get the revenue flowing from this tenant – but I would like to *eventually* see some greenery become an express condition. I agree, though, that it's infeasible to mandate that right now, when there's no cash flow.

[AP – no questions]

JB: No questions, but I agree with Anthony that we should specifically revisit the issue of plantings at our one-year review.

[NS – no questions]

LM – How long before you'll be running?

Tesler: Assuming all goes well, we'd start work in February, so we'd be operating six months from then.

LM: I'd say, then, a 9-month review, and beautification can be addressed as a condition to be settled down the road.

AZ: Agreed – a 9-month review to see how it's starting off, and then at that review, we could put on a further review for potential additional conditions once cash flow is stable.

[Brief colloquy with petitioners about what a "review" means for them.]

Hearing Closed:

Deliberations:

MM: [Clarifying understanding of business operations discussed at previous meeting]

LM: [Reads in memos from other City departments – on file]

AZ: We should adopt the conditions of the other departments as our own conditions. As regards the required findings for a Special Permit, I think there will be no adverse impact on traffic flow or safety, all utilities are adequate, it seems to fit well with the character of the neighborhood, it will be good fiscally for the city, and it will be of social and economic benefit to the community.

AP: This is a much-needed service, it's a good location for it, and it will be great for the city.

JB: Happy to welcome a new business. These guys are great, and this service needs to be here.

[NS and LM – in favor]

MM: Motion to approve the Special Permit with plan as proposed, conditions of other departments adopted, hours of operation 7:00-3:00, and 9-month review with beautification to be discussed then.

JB: Seconded.

VOTE: 5-0 (LM, MM, AZ, AP, JB) Approve the Special Permit, with conditions

*(No other conditions or recommendations were recorded to become part of the decision for this case)

7:00 PM
ZBA-2016-15
Pavlos Amanatidis
1033 Main St.

LM recused, MM acting as Chair, NS voting as Alternate.

[Seeking Information: None, In Favor: None, Opposed: None]

Petitioner explained that he has only recently commenced operations due to permitting delays with other bodies, and is still not operating at full capacity. Does not intend to do heavy repairs any longer – mostly only tires and lights.

MM: [Review of list of conditions.] Not more than five vehicles for sale.

Amanatidis: Only two right now.

MM: Repairs to be conducted inside the building.

Amanatidis: We haven't even started yet, but yes, it will all be inside.

MM: Not to be operated as a nuisance.

Amanatidis: So far, so good.

MM: No dismantled or damaged vehicles stored on the lot. Yeah, that's been pretty good. Six foot white vinyl fence placed around the dumpster.

Amanatidis: Based on what the safety board told us, we've taken down the whole wooden fence and replaced the whole thing with vinyl. The part around the dumpster isn't done, but it will be tomorrow. There was a problem with one of the tenants next door who didn't want the fence to go up, but it's not his land, it's ours, so we put it up anyway.

MM: No outside storage of auto parts. All set. Professional signage only, no vinyl banners.

Amanatidis: We have no vinyl banners.

MM: Don't you have a bunch of those "banana" banners out front?

Amanatidis: Oh, I didn't know that was what you meant. We'll take them down tomorrow.

MM: Hours of operation [. . .]

Amanatidis: We're not even fully open yet. We've been closing by about 4:00 every day.

NS: I drive past there multiple times a day, and there's always this one locally-known streetwalker out front. What are you doing about that?

Amanatidis: Oh, God, yes – I call the cops all the time, and they don't take care of it, I try to chase her off, but she just goes next door, and the guy over there lets her stay in his lot.

[Extended off-topic colloquy about crime in the city.]

MM: My recommendation would be a one-year review. I'm not a big fan of those banners, but I'd say just keep them off the sidewalk, keep them on your property, and keep them in good shape.

Amanatidis: If you don't like them, we'll take them out.

MM: No, it's OK, you made the investment.

Amanatidis: No, if you don't like them, we'll take them out.

MM: I'm only one board member.

Amanatidis: But you live here [i.e., in the vicinity of his property], and they don't live here, so if you don't like them, we'll take them out.

MM: No, no, you spent a lot of money on them, keep them up.

AP: They're in good condition?

Amanatidis: Yes.

MM: I want to talk about a more pressing issue. I'm just going to respectfully say, you've *got* to do something about the unregistered vehicles.

Amanatidis: I'm renting a place in Lunenburg for those auto repairs, so all those people will be going there with their vehicles.

AZ: If we're going to be OK with the banana signs as long as they're in good repair, then we should amend Condition #8 to expressly state that, since as-currently-stated, it prohibits them.

MM: Let's leave it as-is for now, and we'll review it in a year.

AZ: OK, because as long as they're in good repair, I don't have any objection to them.

AZ: Motion to approve the Review with conditions as-stated, further review in 12 months.

AP: Seconded.

VOTE: 5-0 (MM, AZ, AP, JB, NS) Approve the Review, with conditions

4 MISCELLANEOUS

5 ADJOURNMENT