

LM- That was part of the conditions to not keep unregistered vehicles on the property – Mr. Alonso - They are not junk vehicles we are repairing them so they work.

MM- The property needs some landscaping, plants and/or some trees, something that makes your business look great. Mr. Alonso – Okay

AZ- Motion to Approve the Review with the amended condition #2 changing the date of the review:
Conditions to read:

- 1- No unregistered or inoperable vehicles on property
- 2- Review in one-year **July, 2019**

MM- Motion Seconded

VOTE: 5-0 APPROVE the Review

ZBA-2016-31 Active Life Health Care Management/Valdimir Giterman 783 WATER ST 6:10PM
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

Presentation given by Valdimir Giterman stating that opened their doors for business after 4-5 months of waiting for the required licenses. The curb has been repaired and parking lot lights have been replaced and are still doing some painting. They have not done any trees as of yet, parking lot will be paved. They have clients and their door are open to everyone even though most of them under their care do not pay. They are waiting for business to catch up with demand, and so far, the people love it..

LM- So, what else needs to be completed? Mr. Giterman - I think we have done pretty much everything, except the lease modification with the landlord.

LM- So, do you think you need a little more time, maybe till spring? Mr. Giterman - Yes, it makes sense because what is left now is renewing the lease and making modifications to same.

Those in Support: None Those Seeking Information: None Those Opposed: None

MM- Motion to **Approve** the Review of a Special Permit under §181.313B5 with the following amended conditions:

1. Per Plan submitted previously.
2. Not to be operated as a nuisance
3. Hours of Operation: 7:00AM-4:00PM
4. Review February 2019
5. Sunset Clause - Special Permit will expire/terminate upon the sale/transfer of the lease or in the event that such a lease is unable to be negotiated with Active Life Health Care Management,.

AZ – Motion Seconded

VOTE: 5-0 **Approve** the Review with amended conditions

ZBA-2018-12 210 Upham Street Realty Trust 210 UPHAM ST 6:15PM
Philip J Albert, Trustee

Appeal to Overrule the Building Commissioner’s Decision for the need of a Special Permit under §181.313D5 for a Construction Yard located in the Industrial District at 58/44/C

JM- Recused himself for the hearing

Presentation given by Jeffrey Aveni and Philip Albert stating that this an appeal of the Building Commissioner’s determination, of this lot as a construction yard. There are two primary issues with this determination: 1. The Building Commissioner completely ignored the fact that in an Industrial Zone a business which is defined by law, is allowed and if part of that business has open storage it is also allowed. Our contention is and has been that the property is used as an excavation and paving business. Right! Which is allowed to have an open-air storage. Both of these are defined by the law. 2. In looking at the By- law, a

construction yard is on the table of uses, it's not defined. Contractor's yard is defined, but is not on the table of uses. The business been established at this location for a very long time.

LM- How long is the business been in the existing said location? JV- This is a whole separate piece owned by Mr. Albert since 2012.

Those Seeking Information: None

Those in opposition: Lena Reyes, I live at 51 Kelley St., and this is regarding a parcel of land across from me owned by Mr. Albert where they store and dump materials and on the parcel of land they have not used prior to 2 years ago. I have lived here since 2005. They cleared that parcel of land including and cutting all trees and demolished the house. Then they dump tons of material into Upham St. the primary place of the business throughout the day and night causing a lot of noise, vibration and disturbances. There are trucks coming through Jackson Ave into Kelly Ave all day long to dump material. All this has changed our quality of life enormously from peaceful and happy into miserable. Our health is being affected negatively, because we can't sleep through the night. As soon they started doing this I tried several times to contact the owner via phone, I sent emails through the web site, and left multiple messages, but he never responded once.

Joanne Tulonen, also in opposition of 113 Summit St. agrees with Lena because our quality life is gone, we live under a massive disturbance and vibration, early 2000 she witnessed dumped materials which she hadn't seen before. Back then she wasn't concerned that it would affect her health, and/or what this business was doing to the neighborhood because, all that area was trees, but now is nothing besides sand, concrete etc. She now thinks that everybody deserves to have a better quality of life. She tried to communicate with the business owner, however she received no response, no one cared, and no one listened to us.

Comments from Attorney Christine Tree-Assistant City Solicitor – Primary use applies to a particular lot owned by the petitioner, but this should apply to all lands owned by the petitioner. P.J. Albert claims that “business or professional office, including medical,” would include any business office, for any business purpose. The ordinance defines business or professional tautologically while also including a reference to medical offices or laboratories. P.J. Albert may argue that the “or” in between the word “business” and the word “Professional” allows for an interpretation of the ordinance to mean a business office and further separates it from the qualification “including medical.” It appears that is a strained reading and would be contrary to the purpose and intent of the Zoning Ordinance. According to this interpretation, any business that has an office would be permitted to operate it as the principal use in the zoning district. There is no evidence to support this interpretation.

The terms Construction yard and Contactor's Yard are used in the Zoning Ordinance. Construction yard is in the Table of Uses and Contactor's Yard is a defined term. It appears that there was an error in transcribing the term used in the Table of Uses as defined or vice versa. No inferential leap is required to come to this conclusion. The court has determined that “words undefined by the zoning laws and ordinances are to be construed with their common understanding and uses. The definition of Contactor's Yard states “a facility or area for storage, open or closed, for construction equipment or materials and commercial materials associated therewith.”

The Zoning Ordinance provides that 181.312 Applicability; “When an activity might be classified under more than one of the following uses the more specific classification shall govern; if equally specific, the more restrictive shall govern. “ Under this provision, P.J. Albert's use would be classified under Construction Yard, even if it could also be classified under business office, theory suggests that the business owed by P.J. Albert, this provision would require the handling of the use pursuant to the use of Construction Yard.

Those in Support: David Detlor

Attorney Jeffrey Aveni - The primary use of this business is paving and Excavation with open storage included with the business.

AZ- Regarding the C16 Definition, this comes down to a contest! Giving the definition in the ordinance is very clear that business and professional office, is not a business with a professional office. It's a business office or professional office, if you look at the list it said business or professional office, medical office are indoor businesses where people do business over the counter or with a professional.

Regarding a construction vs. contractor yard definition, which is not on the table because the idea from the Counsel when this ordinance was drafted decided, when you put as undefined term of the table and then you put a definition where they are very similar terms, it can be used to define a business doing the same thing. It

seems logical, furthermore, I know that the ordinance does state the use which is not found in the table of definitions is **prohibited** in all districts.

So, I think in this case we would be looking for a use that requires a Special Permit. Before getting any further, we want to ask you if you would like to amend your petition as suggested? Attorney Jeffrey Aveni - No, at this time.

MM- Storage of equipment? Attorney Jeffrey Aveni - Yes – Upham was bought on 2012, MM -There was a house on it? Attorney Aveni - No, it's a warehouse and it still there. MM – Any abutters next to it? Phillip Albert - No – MM - Any kind of fence or screening? Attorney Aveni – Yes, it is.

LM – How long have you owned the business? Philip Albert - Since 1981

AZ- How often do you bring material there and at what times? Philip Albert- Any time, day or night can't be determined.

MM- So, you considered this as open storage? Attorney Aveni - Correct

JS- What Street do you use to bring materials into the property? Philip Albert- Trucks come through Jackson or Kelley Ave. JS- Is there any other way in or out? Philip Albert- No

JS- Abutters bought their house in an Industrial zone, but all that needs to be corrected to make everybody happy are the issues previously mentioned.

Attorney Jeffrey Aveni asked to have a continuance to the next meeting and agreed to amend the petition requesting a Special Permit.

LM- Motion to **Accept** the amendment

JS- Motion Seconded

VOTE: 4-0 to **Accept** the Amendment

Mutual Agreement for Extension of Time was signed.

AZ- Motion to **Grant** the continuance to **September 2018**

JS- Motion Seconded

VOTE: 4-0 to **Grant** a Continuance to **September 11, 2018**

ZBA-2018-04 Alan & Anastasia Wernick 65 LAUREL ST 6:30PM

Use Variance under §181.313A4 for multi-dwelling units and under §181.313C10 for retail sales and services located in the Industrial District at 55/41/0

LM- 1st Call

Petitioner were not present

LM- 2ND Call

Those in Support: None Those Seeking Information: None Those Opposed: None

LM- Third Call

Petitioners were not present

Board deliberated – Based on the fact that they were unable to attend for June 12, 2018 the past meeting and neither the current one for July 10, 2018 the Board may grant them Leave to Withdraw.

MM- Motion to Grant Leave to Withdraw Without Prejudice

JS- Motion Seconded

VOTE: 5-0 to **Grant** Leave to Withdraw Without Prejudice

ZBA-2018-14 Michael Lamkin 110-112 ASHBURNHAM ST 6:45PM

Continuance:

Special Permit under §181.3561 to reinstate a vacant/abandoned building and a Special Permit under §181.3555 to extend the nonconformity from 2-units to a 4-unit structure located in the Residential B District at 174/27/0

Presentation given by Michael Lamkin and Deb Lafleur stating that this is a great project and would like to convert a two-family dwelling into a Four One-bedroom apartments unit, the Planning Board has already approved this project and he is just waiting for the Zoning Board's decision. We would like to rent these

MM- Motion to Grant the Special Permit under §181.313C22 for a Retail Shop located in the Light Industrial District with the following conditions:

1. Not to be operated as a nuisance
2. No materials to be stored outside
3. Professional signage only
4. Sprinkler and electrical issues to be addressed prior to occupancy
5. Review in 6 months - January 2019 - with hours of operations to be determined at that time
6. Sunset Clause - Special Permit shall terminate/expire upon the sale/transfer of the business from Francis Dower

VOTE: 5-0 to **Grant** the Special Permit with Conditions

ZBA-2018-16 Nassif Hayek 0 KIMBALL ST 7:15PM
Use Variance under §181.313C11 for an Automotive Dealership located in the Industrial District at 41/17/5,6,7&8

Presentation given by Nassif & Morgana Hayek and Kalid Qasim stating that a dealership in this Industrial zone will fit great because is located next to a gas station, which is very convenient. Currently these are empty lots and they would be bringing these to life having 100 cars for sale. Frontage is over 100', on the side will be customer parking and a very small office.

Those in Support: Pavlo Amanatidis Those Seeking Information: None Those Opposed: None

MM- How many cars are you planning to keep for sale at this location? Nassif Hayek - About 100 cars – MM are you planning to build a house? Nassif Hayek - No, just a looking for a building that is 10'x10', no bathroom, we will be using the gas station facility or a mobile home, but no construction. – MM- Well, we will need to see some plans.

LM- Agree we cannot approve something that we cannot visualize

AZ- We also will need to see at least customer parking to be paved

LM- Would you like a continuance, so you can present some plans and hours of operations? Nassif Hayek- Yes

AZ- Motion to Approve a Continuance of the hearing to September 11, 2018 at which time the petitioners will present the following:

1. Certified plot plan to be presented showing parking and paved area for customers
2. Scheduled Hours of Operation presented

VOTE: 5-0 to Grant a Continuance to **September 11, 2018**

ZBA-2018-17 Bienvenido Vicioso 18-20 BEEKMAN ST 7:30PM
Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling located in the Residential B District at 95/19/0

Presentation given by Bienvenido and Victor Vicioso with Yulitza Vicioso as interpreter stating that they bought this home few months ago, Unit one and two had services and just the 3rd unit was out of utilities. So, he thought the vacant/abandoned building only applied to the 3rd unit.

LM- In the listing when you bought the property, was any language stating that you needed to contact the City Building Department? Victor Vicioso - No, we are first time homebuyers and we were confused and/or didn't understand this process.

Those in Support: Harold Mateo, he thinks this is a great property to be reinstated.

Those Seeking Information: Steve Descoteaux, of 76 Birch St. HE has an issue with the noise, speakers come out with a high volume and last for hours late at night. We have a City Ordinance for noise and they been stipulated for a reason.

Those Opposed: None

MM- Did you put the pool in? Victor Vicioso - Yes

LM- With a permit? Victor Vicioso - No, I didn't know we needed permit for a pool. – LM- Whenever you have a question that you are not sure about, just go to the City to the Building Department and ask.

AZ- Chickens? Vincent Vicioso - We weren't aware that we couldn't have them.

MM- Do you still have chickens? Victor Vicioso - No, we ate them – Steve Descoteaux - they still have chickens on the property, I saw them today just before coming here. MM- We need the truth here please, be honest! Victor Vicioso- There were 6 chickens and we ate 4, so there are 2 left that we are planning to eat.

AZ- What is the plan for the property? Victor Vicioso - To live on the 1st floor, his sister on the 2nd floor and his cousin in the 3rd unit.

AZ- We don't have a certified plot plan, we only have a sketch tonight. We really want to see an engineered certified plan with full measurements of the parking to be conforming spaces.

LM- Do you understand that you need a certified plot plan? Victor Vicioso - Yes

LM- Do you want an continuance to come back with the plan and in the meantime, be sensitive to the neighbors keeping the music down, no chickens and get a permit for the pool.

Mutual Agreement for Extension of Time was signed.

AZ- Motion for a Continuance of the Special Permit under §181.3561 to reinstate a vacant/abandoned building as a 3-family dwelling located in the Residential B District to September 2018

JM- Motion Seconded

VOTE: 5-0 to **Grant** a Continuance to **September 11, 2018**

ZBA-2018-18 Edgewater Construction, Inc. 1096 WESTMINSTER HILL RD 7:45PM

Variance under §181.414D2 to extend the minimum front yard requirement leaving 20.5' to the property line in a Residential A-1 District at 228/10/2

JS – Member recused herself for this hearing

Presentation given by Attorney Brian Tobin and Elijah Ketola stating that the topographic elevation of the lot poses several challenges. The steep increase in elevation means that repositioning the house to comply with the front yard requirements for the St. Jude's side would jeopardize the stability of the soil for the adjacent lot on the Western side of the parcel. It would cause soil to move from the higher elevated adjacent lot onto the side of the house on this lot. It would also undermine the stability of the soil underneath the adjacent lot's pool and patio/deck of the West Side neighbor. And that is why we are here asking for a variance encroaching into the front set back potentially for safety reasons. This location is the best area and most flat on the property.

LM- How did this happen? Brian Tobin - This wasn't done intentionally, as you can see on the topography map the elevation is very challenging.

AZ- How long have you been in this business? Brian Tobin - 15-20 Years

Those Seeking Information: None

Those in Support: Morgan McQueeney of 1096 Westminster Hill Rd - the buyer of this property, and we are here because we need to get this approved otherwise we are losing everything.

Those Opposed: Jeanne Survell from 32 St. Jude Blvd. she can't believe that a company that has been in business for 15-20 years makes this kind of error! Elijah Ketola - Yes, and that's why we are here tonight asking for forgiveness because this is a corner lot and has a second front set back requirement. We discovered this in the closing process with the bank, as soon we found this out we immediately went to the building inspector and he told us to come to you to request a variance.

AZ- Want to know how have you been in business this long and you missed that a house on a corner lot has two front yards. And how something seeming so simple got missed in every level along the way?

MM- Well a simple question here is: had plans been submitted to the building department here? Brian Tobin

- Yes – MM- And it shows the correct setback? EK- NO, this is the right one that was submitted at point –

MM- The corner of St Jude can use some landscaping? What's there is overgrown, and you cannot even see the Stop sign making it kind of unsafe. Also, the yard is all weeds, and finally will you finish the project pave the driveway and take care the landscaping and lawn? EK- Yes, we will take care of the driveway and landscaping and Edgewater Construction would be responsible for the cost.

AZ- Motion to **Grant** the Variance under §181.414D2 to extend the minimum front yard requirement leaving 20.5' to the property line in a Residential A-1 District with the following conditions:

1. Drive way to be installed and paved according to code
2. Property landscaping to be completed, particularly along the St. Jude side of the lot
3. Lawn to be neatly trimmed
4. All conditions to be met prior to transfer of ownership

JM – Motion Seconded

VOTE: 5-0 to Grant the Variance with conditions stated

ZBA-2018-19 RSC Global Holdings/Rayco Motors 447 WATER ST 8:00PM

Special Permit under §181.313C12 for an Auto Repair Garage located in the Central Business District at 95/59/0

Presentation given by Harold Mateo stating that he bought the property not long ago and is doing a lot of cleaning. Looking to use as garage and car dealership.

LM- Use as car dealership? Harold Mateo - Correct – LM- What's the number of vehicles that you want to have there? Harold Mateo - 8, it has been used for many years as car garage, but it has a sunset clause, so we have to come back with the whole process to open again.

Those in Support: Josh Ortiz, at 110 Albee Street. I think it will be nice to have this business here.

Those Seeking Information: None Those Opposed: None

JM- Are you planning to change those outside lights? Harold Mateo - Yes, planning to do it.

LM- What is the issue with the Board of Health? Harold Mateo - Yes, that was from the previous owner and had a court document stating that all has been addressed.

AZ- Are you operating as auto repair as well or just a dealership? Harold Mateo - Auto repair and dealership, but a lot of the repair will be just focusing on his own vehicles not as many externals – AZ- The reason for this question is because I see on the plan you had submitted 8 parking spots for the auto display, 2 employees parking and 2 parking for customers, but it doesn't show any additional parking for repair vehicles? Harold Mateo - I won't be taking more than 2 vehicles at a time – AZ- okay, and will 2 cars fit in the services space? Harold Mateo - Yes, 2 cars fit perfectly in there.

LM- Is your intention to keep this property for yourself? Harold Mateo- Yes

AZ- What is the square footage of the building itself? Harold Mateo- 10,92 sq. ft.

LM- How many employees are you planning to have? Harold Mateo- Just one and myself.

MM- Any fencing? Harold Mateo - No, previous owner tried it, but it didn't work.

AZ- Motion to Grant the Special Permit under §181.313C12 for an Auto Repair Garage located in the Central Business District with the following conditions:

1. Modification as per plans submitted
2. Professional signage only
3. No exterior storage, junk, inoperable/dismantled vehicles stored outside on the property
4. No parking on the sidewalk/street
5. Hours of operation: Monday – Friday 8:30AM to 7:30PM Saturday 9:00AM to 3:00PM Sunday Closed
6. Review in 6 months - January 8, 2019

7. Special Permit shall terminate/expire upon the sale/transfer of the business from RSC Global Holdings/Rayco Motors Harold Mateo

JM- Motion Seconded

VOTE: 4-1 to **Grand** the Special Permit with a 6 months Review to **January 2019**

ZBA-2018-13

Nadel Antonio

20 WALNUT ST

8:15PM

Continuance:

Special Permit under §181.355 to change from a single-family structure to a two-family and a Variance under §181.414 to add a second means of egress from the second floor leaving approximately 1' to the property line located in the Residential C District at 68/43/0

We have received a letter from petitioner requesting an extension to the next meeting to September 11, 2018. Also, since the last meeting he has been getting information from Treasurer's Department to help him with the process to obtain a lot directly across of street from his+ property. No one has paid the taxes there for over 20 years, so he hopes to be able to purchase the lot as an option. This will be give him 2 additional parking spots that he needs in order to make this house into a 2-family dwelling. It said good night all and thank you for your help and consideration Nadel Antonio.

Those in Support: None Those Seeking Information: None Those Opposed: None

AZ- Motion to continue to September 11, 2018 at the express written request of the petitioner

MM- Motion Seconded

VOTE: 5-0 to **Approve** the Continuance to **September 11, 2018**

4. MISCELLANEOUS:

ZBA-2016-15

Pavlos Amanatidis

1033 MAIN ST

Discuss the Zoning Board Decision from **June 12, 2018**

Pavlos Amanatidis - He missed the last meeting and was informed of the Board's decision to Revoke the Special Permit.

MM- So, this is what we known has been going on. We know you are operating business across the street from where you are. The city has made a tremendous investment on River St., so that whole area will look terrific. Where the Greek Town Market is you have a number of trucks taking up all the parking there, and those vehicles are not supposed to be there. The 18 wheelers have continued to be there, the Building Commissioner and the Building Department have been down to all the properties and talked to you about it and still nothing is getting fixed. I drive by this property every day and a lot of junk vehicles, junk parts are out on the property. It is a disaster and you are there at the property.

Pavlos Amanatidis stated that he is in the process of buying the property that he has been there for a year and half, which he hasn't been able to buy it yet. He met the Building Commissioner and he paid all his fines from the City. The Greek Town Market he doesn't own anymore. He sold it about a year ago. Also, all those cars and trailers have been removed and taken care off.

MM- So, where are they now? Pavlos Amanatidis - Rented a location at the gas station and they have been moved there. MM- Do you have a permit to have them there? Pavlos Amanatidis - Don't know, he asked the owner to rent the parking space and that's it – MM- Well that's the problem. Everything is a mess and it has caused you to lose your Special Permit.

Pavlos Amanatidis - So that's the reason my license is revoked? MM- Yes, we gave you a lot of time to fix the problems, but nothing was fixed and the problems grew worse.

AZ- Been on the Board for 2 years, your case was one of the first I heard. The reason it took a Year and Half to get to this point is because every time you come in front of us, there was something we had

asked for that hadn't been done, or that was something we said that need to be taken care of and it couldn't happen or was supposed to be happening.

There is nothing that we can do about reinstating the Special Permit tonight Mr. Amanatidis. Unfortunately the Revocation has already been done – Pavlos Amanatidis - So, should I apply for it again? AZ- Well, that's is the procedure.

5. ADJOURNMENT