



**City of Marlborough
Zoning Board of Appeals**

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768

Notice of Decision: Administrative Appeal

ZBA File No. 1458-2019

Notice is hereby given that a Zoning Board of Appeals Administrative Appeal has been DENIED.

Appellant: Gina A. DiMatteo

For: Administrative Appeal to Overturn Building Inspector's determination.

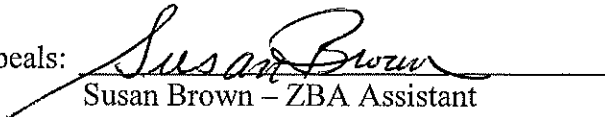
Property Located at: 721 & 729 Farm Rd. as shown on Assessor's Map 73, Parcels 49 & 50.

Owned by: Gina A. DiMatteo

This decision of the Zoning Board of Appeals is on file in the office of the City Clerk.

Certified this the 1st day of October 2019.

Zoning Board of Appeals:


Susan Brown – ZBA Assistant

RIGHT TO APPEAL:

Appeals to this Decision are to the Court pursuant to the M.G.L, Chapter 40A, Section 17, and must be taken within twenty (20) days of the filing of this Decision with the City Clerk.

CITY CLERK CERTIFICATIONS:

I certify no appeal has been received within twenty (20) days of the filing of this notice in my office, or that if an appeal has been filed it has been dismissed or denied.

Steven W. Kerrigan – City Clerk



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Record of Proceeding and Decision

Zoning Board Case #: 1458-2019

Applicant/Appellant: Gina A. DiMatteo 721 & 729 Farm Rd. Marlborough, MA 01752

Date of Appeal: August 7, 2019.

Location of Subject Property: 721 & 729 Farm Rd. Shown on Assessor's Map 73, Parcel 49, 50.

Relief Requested: Pursuant to G.L. c 40A, §8 and §15 appealing the zoning violation letter dated July 8, 2019 issued by Ethan Lippitt-Code Enforcement Officer for violations under for violations under (1) Section 650-17 Table of Use, Contractor Yard is not permitted, (2) Section 650-48D(1) - Vehicles are parked on pervious surfaces and (3) Section 270-19 - Fence installed without a permit; and Fence Code §270-31 Maintenance of fence. The Appellant contends that the use is an existing non-conforming protected use. Subject property is located in Zoning District Limited Industrial.

Public Hearing: The Zoning Board of Appeals held a public hearing on the above-entitled proceeding on September 17, 2019 at 7:00 PM at Marlborough City Hall, 3rd Floor-Memorial Hall.

Decision: Denied.

Date of Decision: September 17, 2019

Members Present at Public Hearing: Paul Giunta-Chairman, Ralph Loftin, Thomas Pope, and Robert Levine. Members Absent: Thomas Golden (recused).

Also, present: Jeffrey Cooke, Building Commissioner, Ethan Lippitt, Code Enforcement Officer, Mayor Arthur G. Vigeant, Jason Grossfield, City Solicitor, Jay Piques, Assistant City Solicitor, Councilor Delano and Councilor Ossing.

Notice of the hearing was given by Certificate of Mailing to all persons to be affected, as shown on the most recent tax list and by publication in the Marlborough Weekly Enterprise, a newspaper of general circulation in Marlborough, MA, on August 29, 2019 and Sept. 5, 2019.

Documents Submitted in this Appeal:

1. Packet submitted by Appellant's attorney containing the Zoning Board of Appeals Application, filing fee, enforcement letter dated July 8, 2019 from the City's Code Enforcement Officer, Certificate of mailing list and a plan entitled Existing Conditions Plan of 721 & 729 Farm Rd. dated August 5, 2019 Sheet 1 of 1.
2. Submitted by the Building Commissioner - Aerial GIS photos of the property in question. Aerial GIS photos with dates from 1960 thru 2017.

Public Hearing

- Atty. Donald J. O'Neil, Councilor at Law, 688 Pleasant St. Worcester, MA 01602 represented the Appellant. He stated that his client withdraws the appeal on the fence issue, and that the parking surface violation issue has been resolved.
- Atty. O'Neil gave a brief history of the lots in question as follows:
 - 1956 Zoning Ordinance came into effect in the city.
 - 1964 The appellant's father purchased the land to operate a greenhouse. Lots were zoned Industrial
 - 1969 The lots were re-zoned Limited Industrial

Uses currently on the lots: The sale of vehicles is conducted on the lot – the building dept. seems to have no issues with this type of use, so it must be grandfathered. Tenants are conducting a light manufacturing business on the premises. Tenants are conducting a HVAC operation. Building spaces are used by tenants with equipment on the properties. Atty. O'Neil states that these uses are permitted because they are pre-existing con-conforming.

Atty. O'Neil further stated that the rear of the two properties are used as outdoor storage. His client has a partial list of approximately 55 tenants dated back since 1976. Currently they have 18 tenants located on the lots. Copies of leases are available. Atty. O'Neil agrees that overtime, there are more vehicles on the properties. His clients have operated their business for over 40 yrs.

There have been no objections over time from the City's Building Department. These are "grandfathered uses" which the city has allowed for 40 plus years and this should serve as evidence as being "grandfathered".

- Richard DiMatteo, 46 Belleview Ave. Marlborough, MA 01752. He is the brother of Gina DiMatteo. He stated these properties were originally zoned Industrial. His father purchased the properties from Mr. Leonard who ran a greenhouse business. Mr. DiMatteo also stated that on these properties there are trailers for storage, parking other people's trailers on the lots, and many other uses on the lots. Stalls were created on the lots so it would be more organized to rent out spaces. Neighbors have complained about the fence, but that violation has been corrected.

Atty. O'Neil stated he has reviewed the building department's files, showing the conversion of the greenhouses to permanent buildings. His clients did receive permits from the building department. The file also shows complaints from neighbors concerning the mess of the outdoor storage areas at the rear and the fence needing repair. These violations have been corrected. There have been no complaints from the Building Dept. or any attempt to try to shut down their business operation.

Jeffrey Cooke – Building Commissioner

- Mr. Cooke indicated his office did not receive a copy of the appeal filed in this case until Monday. Mr. Cooke explained that vehicle sales are not allowed as a use in Limited Industrial Zone. The City's Licensing Board did grant the sale of 3 vehicles, then 3 vehicles increased to 11 vehicles. Mr. Cooke stated this expanded use from 3-11 needs a Special Permit thru City Council.
- Mr. Cooke gave a presentation and handed out a packet of GIS maps of the property in question randomly dating from 1960 thru 2017. He stated photos show the history of the site showing an increase of trailers and equipment. The photos show little activity in the 1960, and limited activity in the 1990s. He noted lot coverage had grown to almost 90%, and has scaled back slightly in part.

He explained: Under the City's zoning ordinance, all uses not noted in 650-17 entitled "Table of Uses" shall be deemed prohibited, except where to so deem would interfere with or annul any other City of Marlborough ordinance, rule, regulation or permit. The Table of Uses does not authorize use of land for a "Contractor's Yard".

- Accessory Use is defined and regulated in the ordinance. The phrases "Outdoor Storage" and "Open Storage" are defined in the ordinance, but are not listed as uses on the table of uses. Contractor's Yard has no definition in 650-5 and not identified in Table of Uses; Mr. Cooke gave definitions of Contractor Yards from surrounding towns local laws like Milford, Grafton and Ashland. Basic definition is a use by a building contractor or subcontractor for storage of equipment and supplies, materials, and parking of wheeled equipment.

- In the current case, the rental of space to other contractors is not associated with the primary use of the property; not accessory or incidental to the main business
- Gina A. DiMatteo – Appellant, stated there has been a communication problem between her and the City. This problem started with the re-development of the former Marlborough Airport and by her opposing the proposed housing development for the airport site. In a Limited Industrial Zone, you expect to have businesses. The City should support small business

A motion was made by Ralph Loftin, seconded by Robert Levine, to close the public hearing. A vote of 4-0, the public hearing was closed.

Findings and Determination

The Board makes the following findings:

1. In reviewing the enforcement letter, the violations of a contractor yard and vehicles parked on pervious surfaces are under the prevue of the Zoning Board of Appeals. Parties acknowledge the violation on parking surface has been addressed. The appeal of a violation for the fence ordinance was withdrawn.
2. The GIS maps provided by the Building Commissioner show that activity on the property has vastly expanded and changed over the years in relation to the subject area constituting a contractor's yard.
3. The property is being used in part as a "contractor's yard" for renting/leasing space by third-parties (such as tenants) to store their equipment and/materials, and that such use is not incidental or accessory to the core business of the greenhouse operation which is the primary use of the property. This includes the use of pervious parking services on the property. Both aspects violate the Zoning Ordinance.
4. The Applicant failed to establish when the relevant use came into existence, or that said use qualified as a legal pre-existing non-conforming use. Even if the Applicant were able to show a legal pre-existing non-conforming use, the contractor yard use has expanded significantly over the years without the required zoning relief.

On the basis of its findings and conclusions, the Board denies the requested relief. A motion was made by Ralph Loftin to deny the appeal and affirm the enforcement letter dated July 8, 2019. Robert Levine seconded the motion. With a vote of 4-0, Paul Giunta, Ralph Loftin, Thomas Pope, and Robert Levine voting in the affirmative.


AYES: Paul Giunta, Ralph Loftin, Thomas Pope, and Robert Levine

NAYS: None.

(RECUSED: Thomas Golden)

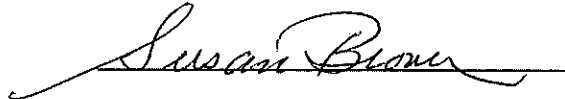
THE ZONING BOARD OF APPEALS

Signature:


By: *Chairman*

Clerk to the ZBA: A copy of this decision was filed with the City Clerk on

Oct. 1, 2019.



Susan Brown, Clerk to the ZBA



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ZBA Case # 1458-2019

Location: 721 & 729 Farm Rd.

Applicant: Gina DiMatteo

**VOTE OF THE BOARD
Signature Sheet**

In Favor

In Opposition *to Appeal*

Paul Giunta

Paul Giunta

Paul Giunta

Ralph Loftin

Ralph Loftin

Ralph Loftin

Thomas Golden

Thomas Golden

Thomas Pope

Thomas Pope

Thomas Pope

Robert Levine

Robert Levine

Robert Levine
