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. 1459-2019

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

Appellant: Trombetta Family LP

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

Property Located at: 655 Farm Rd. as shown on Assessor's Map as 85 Parcel 12.

Owned by: Trombetta Family LP

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
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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Zoning Board of Appeals
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Record of Proceeding and Decision

Zoning Board Case #: 1459-2019

Applicant/Appellant: Trombetta Family LP of 655 Farm Rd., Marlborough, MA 01752

Date of Appeal: August 7, 2019.

Location of Subject Property: 655 Farm Rd., Marlborough. Shown on Assessor's Map 85, Parcel 12.

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 Section 650-17 Table of Use, Contractor Yard not a permitted use; Section 650-48D & 3 - Vehicles are parked on pervious surfaces; and Section 526-3 - Temporary signs or other obstructions exist over public ways. The Appellant contends that the enforcement letter dated July 8, 2019 was improperly issued. The subject property is located in Zoning District Limited Industrial (the front portion of the lot) and Business (the back portion of the lot).

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, Thomas Golden and Robert Levine.

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 Atty. Mark A. Kablack, applicant's attorney. Dated Aug. 7, 2019
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. Mark A. Kablack , of M.A. Kablack & Associates, 176 East Main St., Suite 3, Westborough, MA 01581– Applicant's attorney. Atty. Kablack made his presentation according to the Addendum to Appeal which is attached to the application filing packet. He felt the enforcement letter, dated July 8, 2019 is deficient and meaningless. He contended the Burden of Proof is upon the Code Enforcement Officer to clearly reference the violations, this was not done.

  The enforcement letter, dated July 8, 2019, is erroneous in that the sign violation is within the city's sign ordinance Chapter 526-3 and under the prevue of the Planning Board, not the Zoning Board of Appeals. Also, the amount of time to appeal an enforcement is 30 days, not 14 days.

  Within the City's General Code, there is no definition for "Contractor Yard". At the time of this appeal, there is still no definition in the City's General Code. Atty. Kablack gave a brief historic presentation of the 655 Farm Rd. from 1918 to the present, according to his Addendum to Appeal. He explained the site is either legal, or may be a pre-existing non-conforming use, which has been in existence since 1918. His client, Mr. Trombetta felt just operating a greenhouse was not profitable, so he expanded his business to selling ice cream and miniature golf in which he received permits from the city. He stated the "use" of the lot is as follows: being zoned Limited Industrial/Business the property is utilized as a commercial green house, with annual uses as stockpiling of soil, pallets, which are the uses that goes back in history, and additional use on the property is renting/leasing space to tenants to store bulk equipment/materials.

  He stated that the history of the lot was: In 1956, the lot was zoned Industrial. In 1969, the lot was zoned Limited Industrial. In 1989, the front portion remained Limited Industrial and the rear portion is zoned Business; Mr. Trombetta desired to construct condo units in the back portion of the lot, but that never happened.

The GIS photos presented by the Building Commissioner show increase of storage trailers, no evidence of illegal use. Atty. Kablack stated he was told that a revised enforcement letter would be forthcoming, but it was never received.

- Mr. Trombetta gave a brief history of his property stating some of the existing buildings have changed in use, i.e. antique shop was a propagation room and potted plants. He grew vegetables that he had shipped out to stores. The green house frame work remains standing and being used. He has a huge area in the back that he uses for tenants to store their bulk items. There are storage containers on his property. Parking is on compacted asphalt, approved by the building department and engineering which is recycled impervious surface.

- Board Member, Ralph Loftin asked if tenants would be permitted to use the property according to the original zoning, or should they be required to observe current zoning requirements. Atty. Kablack pointed out that zoning runs with the land, regardless of ownership, thus tenants would not be required to observe current zoning requirements.

  The Board felt renting/leasing space is not incidental to the primary use of the property which is a green house.

  Board Member, Ralph Loftin thought a list of current renters of space on the property in question would be helpful in deciding by the Board. Board did not request such a list.

  The Board considered a site visit of the property. But after some discussion, they voted against the site visit stating that through the GIS photos from the Building Commissioner and testimony by Mr. Trombetta and his attorney that there was enough information that the property has changed and expanded in use over the years. Nor was evidence presented by the Appellant to show exactly when the use as a contractor's yard began. The Appellant conceded that tenant use of the land is not incidental to his primary business.

- Councilor Delano explained that the city council was willing several times to re-zone the area, and help Mr. Trombetta ease into their expanded use. Mr. Trombetta effectively blocked the City Council's approach to re-zoning.

- Councilor Ossing stated this all could be avoided if people just pull the proper permits.

- A gentleman stated he rented space from Mr. Trombetta in the past. Mr. Trombetta benefitted small businesses by providing space for them to store their equipment, materials and supplies.

- A woman living on Farm Rd. wanted to know the why there is an appeal before the Board and why there is a hearing this evening.

Jeffrey Cooke – Building Commissioner

- 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 show an increase of trailers and equipment.

  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/greenhouse.

City Solicitor, Jason Grossfield stated there is a jurisdictional question as to whether the applicant properly filed its appeal because the applicant did not directly file it with the City Clerk's Office as required by state law He also opened that there is a burden of proof upon the appellant as well to prove its defense to the zoning violation, specifically, where it is alleged the current use is permitted as a legal pre-existing non-conforming use. He stated that the applicant acknowledged during the hearing that the use of the land for storage of equipment, vehicles/trailers by others has grown over time, and even if the applicant could show a legal pre-existing non-conforming use exists, then a special permit is required to expand such a use.

Atty. Kablack stated he felt the Board was not understanding the testimony which was given by himself and his client about the history of the property. He also felt it was not worth continuing the public hearing and doing a site visit. After talking with his client, he requested the Board to close the public hearing and take a vote.

A motion was made by Paul Giunta to close the public hearing. Ralph Lofton seconded the motion. The Board voted 5-0 to close the public hearing.

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 purview of the Zoning Board of Appeals. The violation for temporary signs or other obstructions (Chapter 526-3) is not a zoning ordinance, and therefore an appeal to the ZBA is not proper.

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. Applicant's testimony acknowledged the expansion.

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 was legal or 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 Robert Levine to deny the appeal and affirm the enforcement letter dated July 8, 2019. Ralph Loftin seconded the motion. With a vote of 4-1, Paul Giunta, Ralph Loftin, Thomas Pope, and Robert Levine voting in the affirmative and Thomas Golden voting in opposition.

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

NAYS: Thomas Golden

THE ZONING BOARD OF APPEALS

Signature:

Paul Giunta - Chairman as

By:

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

Oct. 1, **2019.**

Susan Brown

Susan Brown, Clerk to the ZBA

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ZBA Case # 1457-2019 **Applicant: Trombetta Family LP**
Location: 655 Farm Rd.

VOTE OF THE BOARD
Signature Sheet

In Favor of Appeal	**In Opposition** to appeal
Paul Giunta	Paul Giunta
Ralph Loftin	Ralph Loftin
Thomas Golden	Thomas Golden
Thomas Pope	Thomas Pope
Robert Levine	Robert Levine