



City of Marlborough
Zoning Board of Appeals

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768 Facsimile (508) 460-3747

ZBA Case #1466-2020

Date: August 13, 2020

Applicant: Theodore Evangelous

Location: 75 Lincoln St.

Date of Application: May 15, 2020

Date of meeting: July 28, 2020

Zoning Board of Appeals
Notice of Decision
Uphold the Building Commissioner's Decision

Zoning relief requested: This is an administrative appeal of a zoning denial letter from the Marlborough Building Commissioner dated April 15, 2020 denying the applicant, Theodore Evangelous' proposed roofing company contractor yard use at 75 Lincoln St. Marlborough, for failure to comply with Chapter 650-16B, 650-17 of the City Code as the use is not an allowed use. Applicant's appeal seeks to overturn the denial of its request for verification that a proposed Roofing Company use is a pre-existing nonconforming use. The property is in Residence B Zoning District.

Vote: The Appeal is denied. The determination of the Building Commissioner in the denial letter dated April 15, 2020 is upheld.

Based on the findings and testimonies presented by the applicant and their attorney, Christopher Flood of the Law Offices of Flood & Favata, P.C. and abutters, the Board voted 3-2 to uphold the Building Commissioner's denial letter dated April 15, 2020 which was reviewed by the Board on July 28, 2020. A roll call vote was taken: Paul Giunta-yes to uphold, Robert Levine-yes to uphold, Ralph Loftin-yes to uphold, Thomas Golden-Not to uphold, Thomas Pope-Not to uphold. A vote of 3-2 to uphold the Building Commissioner's letter dated April 15, 2020.


The Board finds the following in denying the appeal:

1. A roofing contractor yard is not an allowed use in the "Table of Uses" Section 650-16B. (in part) – all uses not noted in Section 650-17 entitled: Table of Uses shall be deemed prohibited.
2. The proposed change of use is prohibited as it is a new non-conforming "use". An upholstery business use to a proposed roofing business "use" requires compliance with current zoning.
3. The right to continue a non-conforming "use" does not allow the owner to change to a fundamentally different "use" without compliance with current zoning. The change in "use" from an upholstery business to a roofing company constitutes as a change of materials and in the nature of the use to be conducted.

4. The character of the proposed business, "roofing" is not within the same category of the current upholstery "use", thus the proposed "use" is not allowed to commence or be conducted indefinitely.

End

Respectfully submitted,


Paul Giunta - Chairman
Zoning Board of Appeals
Date: August 13, 2020

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 to the filing of this Decision with the City Clerk.

Clerk to the ZBA: A copy of this decision was filed with the City Clerk on August 13, 2020.


Susan Brown, Clerk – Zoning Board of Appeals

Submitted to the City Clerks office on August 13, 2020.



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Record of Proceeding and Decision

Location: 75 Lincoln St.

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Date of Appeal: May 15, 2020

Zoning relief requested: Zoning relief requested: This is an administrative appeal of a zoning denial letter from the Marlborough Building Commissioner dated April 15, 2020 denying the applicant, Theodore Evangelous' proposed roofing company contractor yard use at 75 Lincoln St. Marlborough, for failure to comply with Chapter 650-16B, 650-17 of the City Code as the use is not an allowed use. Applicant's appeal seeks to overturn the denial of its request for verification that a proposed Roofing Company use is a pre-existing nonconforming use. The property is in Residence B Zoning District.

Meeting Date: July 28, 2020

Members present: Meeting in city hall, 3rd floor-Memorial Hall was Board Members: Paul Giunta-Chairman, Thomas Golden and Robert Levine and Secretary-Susan Brown. Also, Jeffrey Cooke, Building Commissioner.

Meeting remotely were: Ralph Loftin and Thomas Pope.

Also, meeting remotely were Theodore Evangelous-applicant and Jonathan Chase owner of 75 Lincoln St. Representing Mr. Evangelous was Atty. Christopher Flood.

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 Main Street Journal, a newspaper of general circulation in Marlborough, MA

Documents Submitted in this Appeal:

- A packet submitted to the Board dated May 14, 2020, which contains the Zoning Board of Appeals Application form.
- Memorandum in Support with exhibits
- Zoning Officers letter dated April 15, 2020 with plot plan and floor plan
- Certified list of abutters
- Filing fee of \$375.00

Record proceeding:

1. The property in question is located at 75 Lincoln St. being Map 57, Parcel 249A. Located in Zoning District Residence B.
2. According to Atty. Flood's letter dated May 11, 2020 stating that the applicant submits that the previous uses of the property were pre-existing non-conforming uses and that the applicants proposed use is not more non-conforming than the previous uses and is therefore entitled to continued grandfather status as a pre-existing non-conforming use.
3. Atty. Flood presented a packet dated May 14, 2020 of 75 Lincoln St. (formerly 67 Lincoln St.) (In Board's file) – gave a brief history of the site:
 - 1915-1920-1980 Blacksmith / Yankee fence company
 - 1986 – 2005 Gemini Sign
 - 2005-current Johnathan Chase operated Skin and Bones - custom upholstery and refurbishing business for furniture, motor vehicles, planes and boats.
 - Evidence was provided regarding certain past determinations by the City.
4. Atty. Flood stated the following:
 - a. No changes will be made to the exterior of the building and lot.
 - b. All materials associated with the proposed Roofing Company will be stored inside the existing building.
 - c. The first floor will be used for the Roofing Company.
 - d. The second floor has 2 apartment units which will remain.
 - e. There will be several vehicles involved in the Roofing Company business.
 - f. The proposed use is similar to past "uses" i.e. delivery of materials to the job site, store some materials on site, will provide some employee parking and customer parking. Employees will take the company vehicles home, so there will be no company vehicles parked overnight on the lot.
 - g. We are requesting a continued protection of nonconforming "use" status.
 - h. Proposed use very similar to previous uses.
 - i. The proposed Roofing Company is not any more detrimental to the neighborhood than previous uses.

5. Jeffrey Cooke – Building Commissioner stated the following:
 - a. The applicant was denied on the proposed “use” which is non-conforming to current city code.
 - b. Within the City’s Zoning Ordinance-Chapter 650-17 “Table of Uses” the proposed use requested as a contractor yard is not included in the “Table of Uses” thus is not an allowed “use”.
 - c. Section 650-16B stating in part: All uses not noted in Section 650-17, entitled “Table of Uses” shall be deemed prohibited, except where so deem would interfere with or annul any other City of Marlborough ordinance, rule, regulation or permit.
 - d. The proposed change of use is prohibited as it is an addition of a new non-conforming use.
 - e. The zoning ordinance does not authorize a use variance.
 - f. There is no relief available under Section 650-12B to permit change of the current use to a prohibited use.
 - g. Applicant’s application is for change of “use” to operate a roofing business
 - h. In 2007 the zoning code was revised. If items are not in the Table of Uses, then it is prohibited.
 - i. If there is a break in use for 2 yrs., the protected status for a non-conforming use goes away
 - j. The fence company has been gone for more than 2 yrs.
 - k. The new use must be an allowed use in this district in the Table of Uses.
6. Board member, Robert Levine, quoted the new ordinance Section 650-5 entitled “Definitions, word usage - Contractor’s Yard – Premises used for the storage of equipment and/or materials used for providing contracting services, including but not limited to building construction, heating plumbing, **roofing** and excavation”. Thus, it is evident that “roofing” is considered a contractor’s yard.
7. Within the revised Section 650-17, entitled “Table of Uses” Contractor’s Yard is not permitted within a Residence B zoning district.
8. Jonathan Chase was in the audience remotely. He gave a brief history of the property. He also stated that the lot can hold 20 vehicles. The tenants parking spaces are marked. His business is an upholstery business, Skin and Bones. He owns the building in a family trust.
9. Mr. Evangelous, applicant, stated the following: Joined remotely
 - a. Supplies/equipment associated with the roofing business will be stored inside or delivered to the job site.
 - b. Company vehicles will transport workers and supplies to the customer locations for roof construction.

- c. He has 3 employees and has 3 or 4 company vehicles.
 - d. The paved area outside the structure will be used primarily for employee and company vehicle parking.
 - e. Work will be performed as a daytime operation, outside, at customer locations.
 - f. Not a lot of foot traffic
10. There was no one else to speak in favor of the petition.
11. Speaking in opposition: Joined remotely
Corey and Magaly Cheng – 80 Lincoln St.
San Rojas and Brigida Navarro – 74 Lincoln St.
They presented an e-mail dated July 27, 2020 with exhibits. RE: Neighboring property owners' statement in preparation for ZBA's public hearing at 8 PM on Tuesday 28 July ("change of use" at 75 Lincoln St.) stating in short "We are concerned that a roofing business at 75 Lincoln St. will substantially and negatively impact the neighborhood's safety, and its sight and noise pollution. Also, the new "use" and increase in commercial traffic would be detrimental to the existing neighborhood. A portion of the cover letter was read into the file. In this packet are photos of other job site the applicant has or currently been working on, and the applicant does have a dumpster and other large equipment (In Board's file).
12. Jason Grossfield – City Solicitor – joined remotely
- a. This appeal is limited to the request made in the appeal, which is: to seek a determination that the proposed "use" qualifies as a pre-existing non-conforming use to be continued indefinitely.
 - b. It is the applicant's burden to prove the "use" today is a lawful pre-existing "use"
 - c. Mr. Grossfield quoted a 3-part test for determining whether the proposed change of use of property is protected as a non-conforming use, or would need to now comply with current zoning:
 - i. Does the use reflect the nature and purpose of the use prevailing when the zoning ordinance took effect?
 - ii. Is there a difference in the quality of character as well as the degree of use?
 - iii. Is the current use difference in kind in its effect on the neighborhood?
- An existing use (if its currently protected) will lose the protection afforded a non-conforming use for failure to satisfy even one of the tests and will need to comply with current zoning.
13. The Board finds that the new definition of "Contractor's Yard" which is before them has the following definition: "Premises used for the storage of equipment and/or materials used for providing contracting services, including but not limited to building construction, heating, plumbing, **roofing**, and excavation.

And within the "Table of Uses" Contractor's Yard is not allowed in a Residence B zoning District.

14. A motion was made by Paul Giunta to close the public portion of the hearing. Motion seconded by Mr Levine. A roll call vote was taken: Robert Levine-yea, Thomas Golden-yea, Ralph Loftin-yea, Thomas Pope-yea and Paul Giunta-yea. Vote 5-0 to close the public portion of the meeting.
15. A motion was made by Robert Levine to uphold the building commissioner's denial letter dated April 15, 2020. Ralph Loftin seconded the motion. A roll call vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Golden-no and Thomas Pope-no. Vote 3-2 to uphold the Building Commissioner's letter dated April 15, 2020.
16. A motion was made by Paul Giunta to close the public hearing. Seconded by Thomas Golden. A roll call vote was taken: Paul Giunta-yea, Ralph Lofton-yea, Thomas Golden-yea, Robert Levine-yea and Thomas Pope-yea. Vote of 5-0 to close the public hearing.
17. A motion was made by Thomas Golden, seconded by Robert Levine to adjourn the meeting. A roll call vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Pope-yea and Thomas Golden-yea. Vote 5-0 to adjourn.



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VOTE OF THE BOARD
Signature Sheet

IN FAVOR

**Uphold the Building Commissioner's denial letter
dated April 15, 2020**

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine

IN OPPOSITION

**Not to uphold the Building Commissioner's
denial letter dated April 15, 2020**

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine
