



City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1478-2021
Location: 175 Lakeside Ave.

Date: June 7, 2021

(General Laws Chapter 40A, Section 16)

To: Applicant: St. Mary Thomas LLC, 8 Wixtead Ct. Douglas, MA 01516
c/o Mina Makarious of Anderson & Kreiger LLC

Address: 50 Milk St.

City: Boston, MA 02109

affecting the rights of the owner with respect to land or buildings at:

175 Lakeside Ave. Map 80 Parcel 8

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision and of all plans referred to in the decision, have been filed with the City Clerk.


Ralph Loftin – Chairman
Zoning Board of Appeals


Susan Brown - secretary

Submitted to the City Clerks' office on June 7, 2021.



**City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
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**Record of Proceeding and Decision
Held Virtually thru Microsoft Teams and was recorded**

Location: 175 Lakeside Ave, Map 80 Parcel 8, Zoning District Business
Zoning Board Case # 1478-2021

Applicant: St. Mary Thomas LLC, 8 Wixtead Ct., Douglas, MA 01516

Representative: Mina Makarious of Anderson & Kreiger, LLC

Date of Appeal: April 2, 2021

Meeting Date: May 18, 2021

Zoning relief requested: To reverse the decision of the Building Commissioner denying a commercial building permit to rebuild a gas station which was destroyed by fire at 175 Lakeside Ave based on his determination that the lawful nonconforming use had been abandoned or not-used for over two years. M.G.L. c. 40A, § 15, and Marlborough City Ordinances Chapter 650-12(B)(1), Chapter 650-24(E)(2)(d)

Roll call of members present in Memorial Hall: Ralph Loftin-Chairman, Paul Giunta, Robert Levine, Thomas Pope and Thomas Golden. Also present was Susan Brown-secretary.

Appearing virtually: Jason Piques - Assistant City Solicitor, Patrick Dahlgren - Assistant Building Commissioner, and Priscilla Ryder – Conservation Officer

Applicant's representative appearing virtually was their representative: Mina Makarious of Anderson & Kreiger LLC, 50 Milk St. 21st Floor, Boston, MA 02109

Notice of the hearing was given by Certified Mail to all persons to be affected, as shown on the most recent tax list and by publication in the Marlborough Enterprise Weekly, a newspaper of general circulation in Marlborough, MA,

Documents Submitted by applicant in this Appeal:

- Application with filing fee, narrative and plans
- Denial letter dated March 3, 2021 RE: Construction Permit Application, 175 Lakeside Ave. Marlborough, MA BP-2021-000234

Public hearing:

1. The property in question is located at 175 Lakeside Avenue (the "Property"), Map 80, Parcel 8. The property is located in the Business Zoning District. On the site is a commercial motor vehicle station and automotive repair garage which has suffered some damage by fire.
 2. The property is located within the Business zoning district. The property is also located within the Zone A of the City's Water Supply Protection District, being within 400 feet of Lake Williams.
 3. The property abuts a Dunkin Donuts to the West and a business to the East of the property. Towards the rear the property abuts residential homes located in Zoning District A-3.
 4. St. Mary Thomas, LLC (the applicant) is appealing the denial of a commercial building permit to rebuild the property. Their representative is Mina Makarious of Anderson & Kreiger, LLC.
 5. Between 1969 and 2019, the property has been used as a gas station.
 6. In 1996 the City amended its zoning ordinance making motor vehicle service stations and automotive repair garages a prohibited use within Zone A.
 7. The applicant has owned the property since 2015.
 8. The property was partially destroyed by fire on January 24, 2019.
 9. The Building Department issued a decision denying a commercial building permit to rebuild a gas station on March 3, 2021, stating in part: "The business has not been opened to serve any fuel or make any automotive repairs in the 2 years since that [the date of the fire] and there has been no attempt to legally make any improvements to restore the site."
- A plot plan was provided with their packet entitled: Plot Plan located at 175 Lakeside Ave., dated 6/5/2017 Prepared by: Alpha Omega Engineering, Inc. The applicant also provided plans to show the exterior and main level of the property.
10. According to Mina Makarious narrative dated April 2, 2021:
 - a. The applicant began working on rebuilding the site 2 days after the fire.

- b. The applicant has been working diligently to reconstruct the gas station and thus to begin using the property. Due to Covid 19 it was difficult to find contractors to do the work. There were also delays in obtaining permits due to backlogs within the Building Department during the pandemic.
 - c. The most recent request from the applicant was for a Building Permit, exactly 2 weeks past the two-year anniversary of the fire.
 - d. The Building Department denied the application for a building permit citing Chapter 650-12(B)(1) that the property had been abandoned and not used for over two years since the fire.
 - e. Abandonment of use requires both an intent to abandon and voluntary conduct to carry the implication of abandonment.
 - f. Since the fire on Jan. 24, 2019, the applicant has been continuing efforts to rebuild and there is no intention to abandon. The effort to complete the reconstruction was largely out of the applicant's control, due to difficulties in securing contractors.
 - g. The use is still lawfully non-conforming because although it is located within the city's Water Supply Protection District, it has not been abandoned or not used for two years, and therefore had not lost its protected status.
 - h. The two-year deadline to restore or rebuild the nonconforming use without City Council approval under Chapter 650-12(B)(3)(b) had been tolled. At the outset of the pandemic, the Legislature tolled any "permit in effect or existence as of March 10, 2020 ... during the state of emergency."
 - i. To have the site remain as a gas station will not cause any harm to the public good.
 - j. This is a small family business; it would be a financial burden if they cannot re-open as a gas station.
 - k. The applicant made attempts to rebuild, not directly with the building department, but through their contractors to obtain the proper permits.
11. Board Members, Paul Giunta and Thomas Golden asked about the condition of the underground tanks, whether the tanks are up to code and if the property is contaminated in any way. Answer: Applicant's attorney stated he was not aware of any issues with the tanks. Board member, Ralph Loftin stated that the issue before the Board this evening is to vote whether to uphold or overturn the Building Commissioner's denial letter.
12. Board Member, Paul Giunta, stated that until an investigation of the tanks and the site is done, he would have to vote to uphold the Building Commissioner's denial letter.

13. There was an e-mail dated May 17, 2021 from Whitney Shaw, 169 Lakeside Ave regarding not wanting a 24-hr. business in this location, requesting a survey of the property, and fencing. (this was read into the file)
14. There was no one speaking in favor of or in opposition to the petition.
15. Patrick Dahlgren, Assistant Building Commissioner, stated the following:
 - a. In accordance with his denial letter dated March 3, 2021, after the fire on Jan. 24, 2019 the property has not been used since that time. The business has not been opened to serve any fuel or make any automotive repairs in the last 2 years since that time and there has been no attempt to legally make any improvements to restore the site.
 - b. Citing Chapter 650-24E(2)(d): Motor vehicle service station; automotive repair garages are prohibited in Zone A of the Water Supply Protection District.
 - c. Citing Chapter 650-12(B)(1): Any nonconforming use or structure which has been abandoned or not used for a period of two years or more shall lose its protected status and be subject to this chapter.
 - d. The Code Enforcement Officer issued the applicant a letter dated Jan. 30, 2019 stating that the Building Dept. will need to receive a monthly report on the progress of property following the fire. To date, the Building Dept. has not received any correspondence in the form of a monthly report. According to Chapter 485-17 Reporting Obligations – stating in part: “after a fire, a monthly report has to be submitted to the Building Dept. with an update on the progress of the site.” No such report was given to the Building Dept. during the last 2 years.
 - e. There were several code enforcement violations with fines for blight and working without a building permit
16. A motion was may by Paul Giunta and seconded by Robert Levine to close the public hearing. A roll call vote of 5-0 with all yeas, to close the public hearing.
17. Board Member, Robert Levine, stated that from the testimony of their attorney there appears to be all kinds of activity on the site since the fire. It appears an electrical permit was pulled back in June 17, 2020. He also stated there are difficulties in hiring contractor's even for a single-family home.
18. Board Member, Ralph Loftin, also felt that activity on the site has been on-going.
19. Jason Piques, Assistant City Solicitor, appeared virtually. He stated that he is aware the public hearing is closed. The issue before the Board this evening is to

uphold or reverse the Building Commissioner's decision to deny the application for a building permit. The Board is not being asked to address other issues concerning the gas station at this meeting.

20. Board Member, Paul Giunta, agreed that his statements this evening about the condition of the tanks and soil do not relate to the issue before the Board this evening. Maybe at another time, the site may come back before the Board, then the Board will be able to add conditions.
21. Board Member, Paul Giunta made a motion to uphold the Building Commissioner's denial letter date March 3, 2021. No second was made; the motion did not carry.
22. A motion was made by Robert Levine, seconded by Thomas Golden, to reverse the Building Commissioner's decision to deny the application for a building permit dated March 3, 2021. A roll call vote was taken with Robert Levine, Thomas Pope, Thomas Golden and Ralph Loftin voting to overturn the Building Commissioner's denial letter; Paul Giunta voting not to overturn the Building Commissioner's letter. Vote was 4-1 to overturn the Building Commissioner's denial letter dated March 3, 2021.

Findings

The Board makes the following findings:

1. The Board credits testimony that the Applicant made some efforts to hire a company to remediate the site 2 days after the fire.
2. The Board credits testimony that the Applicant, through its roofing contractor, applied for a building permit to reconstruct the roof of the service station on June 22, 2020 and completed work in January 2021.
3. The Board credits testimony that the Applicant, through an electrician applied for an electrical permit on June 17, 2020.
4. The Board did not find sufficient evidence indicating the applicant intended to abandon its nonconforming use at the site.
5. The Board did not find sufficient evidence that the property had been "not used" for a period of two years.

6. The Board makes no finding regarding any required approval by the City Council to restore or rebuilt a non-conforming use under Marlborough Zoning Ordinance 650-12(B)(3)(b). This matter was not a basis for denial by the building commissioner and is not within the purview of the Board.

Decision

By a roll call vote with all yeas were Robert Levine, Thomas Golden, Thomas Pope and Ralph Loftin voting to reverse the Building Commissioner's decision to deny the application for a building permit dated March 3, 2021; Paul Giunta voting not to reverse.

Vote is 4-1 to reverse the Building Commissioner's decision to deny the application for a building permit dated March 3, 2021.

Any person aggrieved by a decision of the Board of Appeals or any special permit granting authority or by the failure of the Board of Appeals to take final action concerning any appeal, application or petition within the required time, whether or not previously a party to the proceeding, or any municipal officer or board, may appeal to the land court department, or the superior court department in which the land concerned is situated by bringing an action within twenty (20) days after the decision has been filed in the Office of the City Clerk. See M.G.L. c. 40 § 17.

Respectfully submitted,


Ralph Loftin – Chairman
Zoning Board of Appeals

Submitted to City Clerk's office on June 7, 2021.



City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1478-2021

Applicant: Paul Cadd, Mr. Handyman, 205 Church St. Marlborough, MA 01752

Representative: Mina Makarious, Anderson & Kreiger LLP

Owner: Kamal Armanious, Resident Agent, St. Mary Thomas LLC

Location: 175 Lakeside Ave.

VOTE OF THE BOARD Signature Sheet

IN FAVOR *To overturn
The Building Dept.'s
Denial Letter*

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine

IN OPPOSITION

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine
