



City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768

Minutes

May 2, 2023

Two hearings were held: ZBA 1496-23 for 13-15 Mechanic St. and ZBA 1497-23 for 785-795 Boston Post Rd.

Zoning Board Of Appeals Case # ZBA-1496-23

Applicant: Rick Marino – Represented by Atty. David Click

Date of Appeal: March 27, 2023

Location of Subject Property – 13-15 Mechanic Street

Petition: To appeal the zoning denial of the Building Commissioner including his misclassification of the previous use as Consumer Services Establishment where such use is not clearly defined, and further appealing Building Commissioner's determination that the "new improvement project use" is "in a manner substantially different from the previous use or to a substantially greater extent." City Code section 650-5 Definitions: word usage and 650-12B, Nonconforming Uses.

Meeting Date & Time: May 2, 2023, 7:00PM

Members Present: On a roll call vote present were: Ralph Loftin-Chairman, Thomas Golden, Thomas Pope, Robert Levine.

Also Present Were:

- Priscilla Ryder, Acting ZBA Secretary
- Atty David Click, Applicants attorney
- Rick Marino, owner
- Tin Htway, Building Commissioner
- Dennis Demers, resident
- Atty, Jason Grossfield, City Solicitor

Board Chairman Ralph Loftin disclosed that he is a customer of Rick's establishment and has been for many years, although he has not discussed this case in any way.

Atty. David Click Presented as follows.

- He stated that the February 9, 2023, Zoning Denial Letter includes misclassification of historic use of 13-15 Mechanic Street. The property has a long-standing use already as auto repair. Therefore, he is not in agreement that this proposed use is substantially different from previous use.
- He provided a summary of the property and explained that the proposed plan is for 2 overhead doors, replace front garage door and modify façade. The western side entrance

door would also be moved closer to new garage door and a restroom would be installed. None of these changes would alter the structural footprint of the building.

- He provided a supplemental packet which showed what had been filed in March 1990 as a sign application. The sign would state auto-commercial-residential. Also, the City property cards were provided from 1987-2023. The use code, building year and descriptions for all is listed on these cards. The property description was auto repair/service shop. The descriptions changed over the years. In 2009-2011, service garage class s; 2013, commercial land building; 2014, commercial movement building; 2016, building use: auto repair. He read the definition of auto repair according to 650-5; "The business of maintaining, servicing, repairing, or painting the vehicles. Excluding the sale of dispensing fuels, including sale of installing lubricants, tires, batteries." Therefore, the property should be categorized as auto repair and falls within category 650-18 (25) since the 1980's.
- He noted that the zoning denial letter identifies glass works as minor glass repair falling under consumer service establishment, which has no definition. 650-17- auto repair not allowed in MV district. Consumer service is wrong definition.
- He noted the proposal would fall within the 4 corners of the current structure. Modifications to building would fall under 650-12, Nonconforming use, which they don't believe this is. He asked the ZBA to please overturn decision and determine that the proposed use is not more detrimental.

Rick Marino Presented as follows.

- Minor repair is a chip in glass repaired with epoxy. Smashed windshield is major repair. He expressed his opinion that the definition of glass repair is incorrect.
- The former owner, Alan Glass, did major windshield repair as well as installing sunroofs in cars which did not originally have sunroofs, which is major body work.
- The determination made by the Building Commissioner was incorrect, needs to be in auto repair zone even for auto glass.
- Every mechanic works differently. Property has been taxed and recognized as auto repair; building built to be used for auto repair. Just because it has lifts does not mean it is substantially different
- Intended use is to service vehicles as a full-service facility. At minimum, the tier 2 auto repair which is listed in the city regulations. It is taxed as auto repair use, so he felt comfortable buying the property.
- The denial document is written in a way in which no auto repair is allowed.

Tin Htway Presented as follows.

- New non-conformity or expanding explained that Allan did not only do auto work but other services. Auto glass, windows, storm doors, shower doors etc. Only 2 items related to auto repair.
- Mr. Marino wants to expand greater than what was already there. Therefore, a section 6 finding is needed from the City Council to determine if this is okay in this neighborhood.

- Therefore, his determination was correct, Alan Glass has not done much auto repair work and it was not an exclusive use.

Bob Levine noted

- If most of work was glasswork, the 3 proposed auto lifts not used for glasswork thus in his opinion this is a substantial difference and doesn't meet "Powers test." He asked if the intended use is still auto glass or if any other use would be included. He is unsure if glass replacement can be reconciled as auto repair.

Tin Htway explained.

- The Zoning ordinance 650-12 Non-conforming uses was misinterpreted. It is through the Special permit issued by City Council that provides the finding which determines whether the proposed plan is not detrimental to the neighborhood. If this is determined, then the City Council can grant a special permit with conditions that allows you to continue the operation being pre-existing/non-conforming.
- His denial letter written in a way to provide the applicant with the best opportunity to apply for special permit.
- As far as he can tell, for the past 2 years it has been auto glass repair.
- To address the assessors' cards "categorization." He is not sure how assessors define auto repair. However, in this case the Zoning Code definitions are what matters.

Ralph Loftin.

- Asks Atty Grossfield about the application of code.

Atty Jason Grossfield.

- He suggested continuing hearing so the Building Commissioner and applicant can engage in conversation and possibly discuss zoning relief. It is up to the applicant to prove what was on site and when via documentation or testimonial which has not been provided yet.

Ralph Loftin.

- Proposes to continue the meeting to allow parties to get together in order to search for a path forward. But first asked if there were any comments from the public.

Robert Levine

- He read a letter into the record: To the ZBA from David Depietri RE: 13-15 Mechanic Street, Marlborough MA ----dated 4/19/2023.
- The letter explained that Mr. Depietri, has been a manager of 40 Mechanic St. He states that he agrees with building commissioner in which 13-15 Mechanic St cannot operate as an automotive repair business. A lot of money was invested into 40 Mechanic St in the promise that the city was going to re-zone the neighborhood so that auto repair businesses could no longer operate in this area of the city, which they did.

Dennis Demers 49 North Rd Marlborough

- He explained that he was a mechanic in early life, moved on to construction business. Did work at 13-15. Filled in wooden floor with cement for the purpose of working on cars, and put up metal structure as business grew.
- He explains that he has had minor repairs and glass replacement done by Allan in the past and that Allan did more than glass. He also explains that back in the day, a pit and jack stands were used to work on cars. As time has moved on, lifts are now used instead.
- Dennis clarifies that he is speaking in support of the full-service mechanic shop expansion.

Ralph Loftin.

- Asks if any other member of the public would like to speak and there being none, closed that public portion of this meeting.
- The board further discussed what is currently done in the shop and if it includes floor drains. Mr. Marino explained that he does Maintenance, repairs, tires, alignment, diagnostic, oil change, extensive maintenance, and electrical troubleshooting. He has 1900 Clients. He does not have a floor drain.
- The Board members noted that they are still unsure if property has been auto repair or commercial service and would like clarification on that.

Attorney David Click stated that he is requesting a continuance at this time. On a motion by Robert Levine second by Ralph Loftin to continue to May 23, 2023, at 7:00pm. Motion to continue 4-0 approved by roll call vote.

Documents Reviewed:

- Letter to the ZBA from David Depeitri. RE: 13-15 Mechanic Street, Marlborough MA. Dated 4/19/2023

Zoning Board Of Appeals Case # 1497-2023

Applicant: Alice Wright & Jean E. Rabelo. Represented by Attorney Robert Dionisi

Date of Appeal: April 4, 2023

Members Present: Ralph Loftin-Chairman, Thomas Golden, Thomas Pope, Robert Levine.

Also Present Were:

- Priscilla Ryder, acting ZBA Secretary
- Tin Htway, Building Commissioner
- Atty, Jason Grossfield, City Solicitor
- Atty Robert Dionisi, Applicant's Attorney
- Alice Wright, Applicant

Location of Subject Property – 785-795 Boston Post Rd.

Robert Levine read the hearing notice into the record.

Petition: Appeal taken under M.G.L. Ch 40A § 8, 13 and 14 to the Zoning Determination of the City's Building Commissioner dated March 15, 2023, as said determination affects premises at 785 thru 795 Boston Post Road East (Parcel Id # 61-22, #61- 22A, #61-31). The applicants requested an opinion of the Building Commissioner as to whether the premises as constituted is zoned for the sale of used motor vehicles pursuant to a "Class 2 License" as said license is defined in M.G.L. Ch 140 § 58 (c); that is to conduct the purchase and sale of secondhand motor vehicles.

Attorney Dionisi explained:

- In Sept 2022 owner submitted letter to Building Commissioner to determine if property held a valid class 2 license for sales of used motor vehicles. Property currently has a class 3 license. Class 3 is for the sale of junk vehicles with no guarantee. Class 2 is for the sale of used vehicles which include guarantees and involve bonds. Purpose of today's meeting is whether the lot is validly zoned for a class 2 license.
- In _____ he wrote another letter which Mr. Htway responded to and issued a new decision in March 2023 which is the subject of this current appeal.
- This appeal is specifically regarding Ch 40 A – Section 6,7,8-13 and 14, and the statement in Mr. Htway' s letter which states "new use in a manner substantially different from current use."
- He showed photos of crushed cars as well as salvage cars listed for sale in operable and presentable condition (class 3). He presented aerial photo showing site from 7 years ago showing the state and use of the site which has not changed since 1940 and has never been challenged in regard to this use.
- The proposed use is for class 2 sale on ½ of the property. The Zoning determination which was received in March determined that proposed use is substantially different from existing use. Since they are still proposing to sell vehicles, they are unclear why this is different from current use. In fact, he stated that the public benefits by class 2 and this service will clean up the property. An abutter at previous meeting expressed concern regarding crushing in back lot which would be done away with if class 2 was approved.
- He posed two questions, 1) Whether use of property as proposed Class 2 is the same as class 3. 2) Whether there is difference in quality/character or degree of use.
- Existing use is: , Class 3 with 1000 stacked cars, 38 display spaces. They propose to have Class 3 with 400 cars that are junk available on right side of property and Class 2 with 326 used auto cars. He argues that class 2 is not a substantial change and references building code 65-12. Reinforces that he wants the board to find that a change from class 3-2 is not a substantial change in use. The entire 8+ acres was junk vehicles. Owner now proposes to put in parking for a clean and upscale car sales area.

Ralph Loftin.

- Explains that appeals to ZBA validate or invalidate decision. He is unclear of what decision is being appealed.

Attorney Dionisi explained this is an appeal because owner is aggrieved by decision and paragraph 4 of zoning letter. New use substantially different from previous use. Feels as though an attempt to get class 2 license is futile.

Tin Htway provided the following comments

- The Sketch 2 shows a dramatic increase in vehicle sales. Goes from 36 cars to nearly 400 used cars. Therefore, the Intensity increase would require them to see city council for change or expansion of use. They also cannot hold a class 2 & Class 3 license on the same property.
- Explained that more vehicles would be for sale than before, there are concerns regarding fire access/drainage/access. This change of use, therefore, needs to go through a special permit process with City Council. This would be one of the largest used cars lots in the city, from 36 cars to 400 cars.

ZBA members discussed and noted the following:

- Part 1 of powers test is ordinarily and reasonably adaptive to use. Part 2 is quality character or degree differ in character from original use. Part 3 is Impact on neighborhood which is different in severity.
- The site is currently in the Wayside District which is not zoned for class 2 or 3.
- This proposal does dramatically increase the number of “drivable cars” for sale and could have an impact on the neighborhood.

Attorney Dionisi.

- Only asking for whether or not the owner can apply for a class 2 license without being told they are not zoned for it.

Ralph Loftin asks if any member of public would like to speak up in favor or in opposed. There being none, the public portion of the meeting was closed.

The ZBA members noted that the proposed use as presented does constitute a substantial change and therefore were in general agreement with the Building Commissioners decision in his March 2023 letter.

On a motion by Mr. Loftin second by Mr. Levine to uphold the Building Commissioners determination, the roll call vote was 3-1. Thomas Golden **Yes**; Ralph Loftin **Yes**; Robert Levine **Yes**; Thomas Pope **No**

There being no further business on a motion by Mr. Loftin second by Mr. Levine to adjourn, the board voted 4-0 to adjourn.

Documents Reviewed:

- Zoning Board of Appeals Application Form. Submitted 4/4/2023

- Zoning Determination Letter from Tin Htway, Building Commissioner. Dated 3/15/2023
- Exhibit Plan prepared for Post Road Auto Parts including: Existing Capacity Sketch 1, Proposed Capacity Sketch 2, Proposed Approx Layout Sketch 3.
- Photos of junk car yard over the years.

Minutes prepared by:
Alex Grigorov, Secretary
Zoning Board of Appeals

Respectfully submitted,

Ralph Loftin, Chairman,
Zoning Board of Appeals