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TOWN OF NORTHBOROUGH Zoning Board of Appeals
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DECISION

ZBA CASE NO. 23-18

PROPERTY LOCATION: 339-345 West Main Street

PETITIONER: Tradebe Treatment and Recycling of Northborough, LLC

PROPERTY OWNER: Tradebe Treatment and Recycling of Northborough, LLC

DEED RECORDED WITH THE WORCESTER DISTRICT REGISTRY OF DEEDS: Book 12687, Page 129

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the Administrative Appeal Petition of Tradebe Treatment and Recycling of Northborough, LLC, appealing the determination of the Northborough Inspector of Buildings/Zoning Enforcement Officer regarding the use of the property located at 339-345 West Main Street, Map 81, Parcels 16 & 17, in the Business West Zoning District and Groundwater Protection Overlay District Area 3.

APPLICATION

1. On November 21, 2023, the Applicant filed with the Town Clerk an application for a Hearing before the Zoning Board of Appeals appealing the determination of the Northborough Inspector of Buildings/Zoning Enforcement Officer regarding the use of the property located at 339-345 West Main Street, Map 81, Parcels 16 & 17, in the Business West Zoning District and Groundwater Protection Overlay District Area 3, as a contractors' yard.
2. Notice of the public hearing was filed with the Town Clerk on December 26, 2023, duly published in "THE COMMUNITY ADVOCATE" on January 5, 2024 and January 12, 2024, and was mailed to abutters and other parties of interest on December 29, 2023.

EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1. Application for Hearing before the Zoning Board of Appeals, including:
 - a. A deed for 339-345 West Main Street, Northborough, Worcester County, Massachusetts, recorded at the Worcester District Registry of Deeds on March 12, 2020, Bk: 12687, Pg: 129;
 - b. A GIS map of the property located at 339-345 West Main Street, dated November 15, 2023;
 - c. A certified abutters list for parcels 300 feet from 339-345 West Main Street, Map 81, Parcels 16 & 17, in the Business West Zoning District and Groundwater Protection Overlay District Area 3.
 - d. A letter from Mark Donahue, Fletcher Tilton PC, to Robert Frederico, Building Inspector/Zoning Enforcement Officer, RE: 339-345 West Main Street, Northborough, Massachusetts, dated September 12, 2023;
 - e. A copy of a document entitled: "Articles of Charter Surrender Upon Conversion to a Foreign Other Entity" dated December 16, 2012;
 - f. Email exchange between Robert Frederico, Building Inspector/Zoning Enforcement Officer, and Mark Donahue, Fletcher Tilton PC, RE: 339-345 West Main, dated October 25, 2023;

- g. A letter from Matt Eckel, Fletcher Tilton PC, to the Town of Northborough Zoning Board of Appeals, RE: 339-345 West Main Street, Northborough, Massachusetts, Zoning Board of Appeals – Appeal, dated November 21, 2023;
- h. A letter from Mark Donahue, Fletcher Tilton PC, to Mr. Paul Tagliaferri, Chair of the Zoning Board of Appeals, RE: 339-345 West Main Street, Northborough, Massachusetts, Zoning Board of Appeals – Appeal, dated February 16, 2024;
- i. An Affidavit of Applicant in Support of Appeal by Steven D. Rodrigues, RE: 339-345 West Main Street, Westborough, Massachusetts, Owner/Applicant: Tradebe Treatment and Recycling of Northborough, dated February 16, 2023;
- j. Packet of invoices from Dennis K. Burke Inc. dated June 2, 2020, January 25, 2022, April 21, 2022, August 4, 2022, November 3, 2022; Fastenal invoices dated February 28, 2019, September 16, 2019, April 16, 2020, May 1, 2020, February 22, 2021, August 16, 2021, June 23, 2022, August 31, 2022, January 31, 2023, February 24, 2023; and Miller Fence Co invoices dated February 19, 2021, November 25, 2021, January 25, 2022, and March 10, 2022;
- k. Email from Robert Frederico, Building Inspector/Zoning Enforcement Officer, to Laurie Connors, Planning Director, RE: 339-345 West Main Street – Additional Appeal Materials, dated February 20, 2024;
- l. Email from Robert Frederico, Building Inspector/Zoning Enforcement Officer, to Laurie Connors, Planning Director, RE: 339-345 West Main Street – Additional Appeal Materials, dated February 26, 2024.

HEARING

The public hearing was opened at a duly noticed public hearing of the Board on January 23, 2024. At the Applicant's request, the public hearing was continued to February 26, 2024 without hearing any testimony. Attorney Mark Donahue presented the application on February 26, 2024 at which opportunity was given to all interested to be heard in favor of or opposition to the application. The public hearing was broadcast on Northborough Public Access Television and live streamed via ZOOM video and audio conferencing, allowing members of the public to participate in the hearing through real-time active participation, in accordance with Governor Baker's Executive Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, S20, dated March 12, 2020, Chapter 20 of the Acts of 2021, Chapter 22 of the Acts of 2022, Pursuant to Chapter 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency, signed into law on March 29, 2023. Participating Board members were Chair Paul Tagliaferri, Brad Blanchette, Mark Rutan, Suzanne Cieslica, and Alternate Jeff Gribouski. After listening to the testimony and reviewing all exhibits, the Board closed the public hearing.

FINDINGS OF FACT

1. The subject property at 339-345 West Main Street is in the Business West Zoning District and Groundwater Protection Overlay District Area 3.
2. The Applicant is appealing the determination of the Northborough Inspector of Buildings/Zoning Enforcement Officer regarding the alleged use of the property located at 339-345 West Main Street, Map 81, Parcels 16 & 17, in the Business West Zoning District and Groundwater Protection Overlay District Area 3, as a contractors' yard.
3. On September 13, 1989, the Zoning Board of Appeals issued a Groundwater Protection Overlay Special Permit and a Special Permit with Site Plan Review to Zecco Inc. for construction of an

- unloading pad and canopy for the existing waste oil, waste gasoline and water storage facility at 345 West Main Street (Case No. 89-19);
4. Per Zoning Bylaw 7-05-030, Table of Uses, Part B. Commercial and Industrial Districts, Hazardous waste facility is not an allowed use in the Business West District. The use of the property as a Hazardous waste facility was a lawfully existing nonconforming use.
 5. Per Zoning Bylaw Section 7-08-010A., lawfully existing nonconforming uses and structures may continue to the same extent and for the same purpose; provided, that no modification, extension or alteration of the use or structure is accomplished except as authorized hereunder.
 6. In a letter to Robert Frederico, dated September 12, 2023, Attorney Mark Donahue stated that Tradebe made the corporate decision to cease using the Property as a facility to receive, contain and transport hazardous waste and materials, and on September 27, 2021, Mass DEP determined that Tradebe had met the applicable closure requirements specified in the Closure Plan.
 7. Per Zoning Bylaw 7-05-030, Table of Uses, Part B. Commercial and Industrial Districts, Contractors' yard is not an allowed use in the Business West District. As of this date, the Applicant has not submitted an application to the Zoning Board of Appeals for a use variance to allow a Contractors' yard nor provided sufficient evidence that the property was used as a Contractors' yard within the last two years.
 8. Per Zoning Bylaw Section 7-08-050, A nonconforming use or structure that has not been used for a period of two (2) or more years shall lose its protected status and be subject to all of the provisions of this bylaw.


DECISION

On February 27, 2024, after due consideration of the Application, the Board voted two in favor, three opposed to approve the Applicants' appeal. With fewer than four members voting to overrule the decision of the Building Inspector/Zoning Enforcement Officer, the Appeal was denied and the Building Inspector's determination that a contractors' yard is not an allowed use at 339-345 West Main Street remains in effect.

Roll Call vote was taken by members and was as follows:

Mr. Rutan	"yea"
Mr. Blanchette	"nay"
Ms. Cieslica	"nay"
Mr. Gribouski	"yea"
Chair Tagliaferri	"nay"

**TOWN OF NORTHBOROUGH, MASSACHUSETTS
ZONING BOARD OF APPEALS**



Paul Tagliaferri, Chairman