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TOWN OF NORTHBOROUGH Zoning Board of Appeals

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**Northborough Zoning Board of Appeals
Zoom Meeting Minutes
February 27, 2024
Approved March 26, 2024**

In accordance with the provisions of MGL Chapter 40A, Section 9, the Northborough Zoning Board of Appeals held a public meeting on Tuesday, January 23, 2024 at 7:00pm. 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, this meeting was conducted via remote participation. No in-person attendance by members of the public was permitted. To participate in the public comment portion of this meeting from a PC, Mac, iPad, iPhone or Android device, attendees were encouraged to join the meeting using the link provided on the agenda.

Members (Remotely): Paul Tagliaferri, Chair; Suzy Cieslica, Mark Rutan, Brad Blanchette; Jeff Gribouski, Alternate.

Members Absent: Fran Bakstran

Staff (Remotely): Laurie Connors, Planning Director; Robert Frederico, Building Inspector and Zoning Enforcement Officer.

Others (Remotely): Mark Donahue, Fletcher and Tilton; Steve Rodriguez, Tradebe; Patty Kress, 60 Old Colonial Road; Erik Hansen, 6 Buckhill Road; Jason Marchese, 19 Buckhill Road; Michael Kramer, 1 Buckhill Road; Paul and Joanne Krause, 10 Buckhill Road.

HEARING

Continuation of the consideration of the petition for an Appeal of the Inspector of Buildings/Zoning Enforcement Officer's determination 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, submitted by Tradebe Treatment and Recycling of Northborough, LLC.

Chair Tagliaferri provided a summary. The Applicant's Counsel sent Mr. Frederico a letter dated September 12, 2023, in which a request was made for a zoning interpretation for the property located at 339-345 West Main Street. In this letter, it was confirmed that the use of the property as a hazardous waste facility was no longer a viable option since the operations of receiving, containing, and transporting hazardous waste and materials had ceased two years ago but that the property has been used for a use that meets the definition of a contractor's yard. In an email dated October 25, 2023, Mr. Frederico said he failed to see sufficient evidence supporting the use of a contractors' yard within the past two years. The Applicant has since filed an Appeal which is now before this Board.

Attorney Donahue said Zecco Inc. had previously used the site for storage of equipment and vehicles and was active in the storage acceptance and transportation of hazardous materials. Tradebe acquired Zecco Inc. and continued to operate the facility in the same manner for an extended period. It was licensed to receive contain and transport hazardous materials as well as serving as a base of operations

for the administrative offices, field staff and business development people. The business that dealt physically with the hazardous materials ceased in 2021, but Tradebe continued to use the site as an administrative center and as site that field personnel would visit to pick up vehicles and equipment to go out to the field and then return to at the end of the day.

Attorney Donahue said an Affidavit was submitted in which Steven Rodriguez stated that the site consistently housed the vehicles of the company which included larger diesels, vacuum trucks, and specialized vehicles; supplies that were utilized in the handling of hazardous waste were stored on the site; and personal protective equipment was delivered and stored at the site until January 2023 when the company consolidated and withdrew operations. Mr. Rodriguez confirmed. Staffing dropped during the epidemic but they continued to maintain a crew and drivers until shutting down operations.

Attorney Donahue said invoices were provided as evidence that supplies were being received at the facility which were consistent with materials used in a contractor's yard. In hindsight, they should have provided more information to Mr. Frederico as part of their initial submittal. Mr. Rodriguez said there wasn't much activity at the site other than the equipment being loading equipment onto the trucks in the morning, leaving, and returning at the end of the day. Anybody driving by wouldn't see anything.

When asked by Chair Tagliaferri when the site began operating as a hazardous waste facility, Attorney Donahue said he didn't have the specific date but that it had to be more than 30 years ago, there was no argument that hazardous waste receipt is seen in Northborough's table of uses as a different use and no argument that use has lapsed and cannot be renewed absent relief from this Board. Tradebe operated that site as a hazardous waste facility starting in 2013, and the license and closure proceedings of the permitting use occurred in 2021. Mr. Rodriguez confirmed.

Ms. Connors noted that she'd found records indicating that the ZBA issued a Groundwater Protection Overlay District Special Permit and Special Permit with Site Plan Review to Zecco, Inc. on September 13, 1989 for construction of an unloading pad and canopy for an existing waste oil, waste gasoline, and water storage facility, which confirms it was in operation in 1989 and most likely before that.

Chair Tagliaferri asked if they were basing their case on the fact that there was an administrative office and structure and a similar business dedicated to the storage of vehicles, equipment, and machinery.

Attorney Donahue said the site continued until 2023 to be used for administrative offices by a contractor involved in the hazardous waste business who also utilized it for the storage of vehicles, equipment, machinery, tools and materials, the equipment component and administrative function ran together.

Mr. Gribouski asked how much of the contractor's yard aspect of the business changed after it stopped receiving hazardous waste and if trucks were stored there after receiving hazardous waste stopped.

Attorney Donahue believed much of the Massachusetts area was serviced from that location with the ability to have a repository for the equipment to do that, when Tradebe was taking materials before the closure plan, there was thought about how to reactivate that because it was a unique use. Mr. Rodriguez said when they were receiving waste, the site wasn't a treatment facility, it was a storage facility, from there it would get trucked to a treatment facility elsewhere until they purchased a facility

with on-site storage and treatment, and it became practical to bring waste to where it was being treated rather than storing it on site.

Mr. Rutan asked if Mr. Frederico did not agree there was activity occurring to January 2023 or did he not agree that it was being operated as a contractor's yard consistent with the operations.

Mr. Frederico said he'd received the request to make the determination regarding the contractor's yard in the fall and received the supplementary information in February when the appeal had been filed. He didn't distrust the Affidavit of Mr. Rodriguez and supposed the invoices could be used as evidence that a contractor's yard was used but that they were outdated. He said he drives by that facility daily and has not noticed activity that has been described as a contractor's yard. He'd researched aerial photos over a few years to see what kind of activity had been going on but hadn't seen any evidence to that. He did not have enough evidence to make a decision either way and deferred to the ZBA.

Chair Tagliaferri's understanding was the principal use of the site is as a hazardous waste facility and that the Applicant is making a case that the contractor's yard is an accessory to the principal use. When operations ceased as a hazardous waste facility and the use of the trucks continued, their accessory use would move to a principal use, therefore an expansion of a pre-existing non-conforming use.

Mr. Frederico said the use of a hazardous waste facility/contractor's yard went together when the hazardous waste operation was in force, but all of that became pre-existing non-conforming. He hasn't seen visual evidence that it has been used as a contractor's yard for the last couple of years.

Chair Tagliaferri took public comment.

Patty Kress, 60 Old Colonial Road, said she frequently witnessed activity at that site several years ago, but not within the last two years. Broken down vehicles on site have not been moved.

Erik Hansen, 6 Buckhill Road, left his property daily at 6:45am and had not witnessed any activity there, other than a pump truck that appeared one day and didn't move for a month. Most of the material in the back has been there for well over two years.

Jason Marchese, 19 Buckhill Road, left daily for work at 5:30am, and had not seen or heard any activity occurring at that site for the last two years. The property is deteriorating, the lawn is never mowed, the fences have fallen; none of that can be blamed on the pandemic, it is not an active site.

Michael Kramer, 1 Buckhill Road, wished to echo the statements made by his neighbors.

Paul and Joanne Krause, 10 Buckhill Road, agreed that there has been no upkeep on that property, it is correct there is no activity there. Ms. Krause appealed to the Board for a denial.

Ms. Cieslica said she drove by that location in the evening and could attest to not seeing any activity.

Attorney Donahue said there was no disagreement that the facility has not been used in the last thirteen months, Mr. Rodriguez's affidavit indicates it was closed in January 2023, but he felt there was some question or difference in memory as to what happened during 2022 or late 2021.

Mr. Rodriguez said once the decision was made to close the permit for the waste receiving side, the tanks were removed and they went through the EPA closure process in 2021, the equipment remained, but the crews were still being dispatched out to bring the waste to other facilities.

Mr. Blanchette made a motion to close the hearing. Mr. Rutan seconded the motion. Roll call vote followed, all were in favor.

DECISION

Chair Tagliaferri said he didn't see enough evidence to overturn Mr. Frederico's decision.

Mr. Blanchette agreed with Mr. Frederico's interpretation.

Mr. Rutan disagreed; the people that worked there said it was used for operations as a contractor's yard, maybe not every day or continuously, but that is not in the definition. Documentation was provided to prove it was used as a contractor's yard, although not in a timely manner. He didn't think that the decision that this was not a contractor's yard would survive appeal to a higher court.

Ms. Cieslica didn't think the detail provided with the invoices was enough, and she was surprised by the amount of public comment made.

Mr. Gribouski felt the Applicants' materials were relatively compelling and until they'd heard public comment, he hadn't had reason to doubt otherwise, however, over time, it was hard to remember what you saw that long ago. He thought it was telling that the Applicant couldn't provide more evidence that the yard has been used as a contractor's yard.

Mr. Rutan made a motion that the Board vote to override the decision of Mr. Frederico on declaring this to be a contractor's yard, voting yes would be to override him and voting not would be to uphold his decision. Mr. Gribouski seconded the motion. Roll call vote was as follows: Mr. Rutan—yes; Mr. Gribouski—yes; Mr. Blanchette—no; Ms. Cieslica—no; Chair Tagliaferri—no. The Applicant's appeal was denied.

Old/New Business

Consideration of Minutes from January 23, 2024—Mr. Blanchette made a motion to approve the minutes as submitted, Mr. Rutan seconded the motion, roll call vote followed, all were in favor.

Next ZBA Meeting Dates: March 26, May 28 (skip April 23, Town Meeting)—Ms. Connors said the Board will be reviewing an application for the Fire Station at the March meeting with a request for variances.

Any other business that may legally come before the Board

- Ms. Connors provided an update relative to the Planning Board's proposed bylaws.
- Ms. Cieslica discussed Kindness Week events and that Community Affairs was finishing up the schedule for the Summer Concert Series.

Mr. Rutan made a motion to close the hearing, Mr. Blanchette seconded the motion, roll call vote followed, all were in favor.

The meeting adjourned at 8:31pm.

February 27, 2024 ZBA Minutes

Respectfully Submitted by
Michelle Cilley, ZBA Board Secretary