

**DAY PITNEY LLP**  
**MEMORANDUM**

**FILE COPY**

One Federal Street, 29<sup>th</sup> Floor  
Boston, MA 02110  
T: (617) 345-4777  
F: (617) 206-9339

Boston Connecticut Florida New Jersey New York Providence Washington, DC

**TO:** Zoning Board of Appeals – Marlborough, MA (ZBA)  
**FROM:** William M. Pezzoni  
**DATE:** May 2, 2022  
**RE:** Variance (Impervious Lot Coverage) – Parcel ID# 116-8, 1 D’Angelo Drive,  
Marlborough, MA, Industrial District (“Site”)

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The Applicant has requested a lot coverage variance in the Industrial District at 1 D’Angelo Drive to increase its impervious lot coverage to accommodate the required expansion and modification of its internal operations, which precipitated the need for this minor building expansion and required external site modifications to comply with vehicle circulation, parking and loading regulations of the City of Marlborough. This facility houses Kens Corporate offices and is a key manufacturing facility for the Kens product line and production needs. The facility has been at this location since 1984. Kens is a valued company and asset to the City of Marlborough.

During the design for the planned addition and renovation of a portion of the Kens facility at 1 D’Angelo Drive, Parcel ID# 116-8, it was determined by the Building Inspector that the proposal for this property located within the Industrial Zoning District does not comply with Chapter 650, Article 41, attachment 2, “Table of Lot area, Yards and Height of Structures” of the City Code of Marlborough, specifically as it relates to “maximum allowable lot coverage”, which in the Industrial Zoning District is 60%. Please note that the existing Lot coverage is 60.1% and the proposed Lot coverage is 62.6%. Kens is seeking a variance from the ZBA for this minimal increase in lot coverage. As noted below, this increase is driven by the renovations necessary for product and health standards within the current facility, as well as complying with

required parking and vehicle circulation regulations imposed by the City regulations. The hardship is not self-created but a result of the specific lot configuration, wetlands, riverfront and other Site specific constraints and the health and safety modifications required at the facility.

Kens spent more than a year analyzing their production facility in Marlborough and concluded they needed to do the following in order to bring the facility into current regulatory and inter-company health standards related to public health and food safety. This analysis also looked at how to better accommodate material flow and worker safety within the facility.

1. They need a larger ingredient cooler as more and more of their raw ingredients used in production require them to be stored at 40 degrees. This and the other needs to upgrade public health and food safety protocols noted below resulted in the need to rework internal operations, but, due to existing space constraints and equipment needs, it required that a portion of the building and loading docks be bumped out (expansion), as shown on the site plans on the west side of the building. It should be noted that the current ingredient cooler is not of adequate size to store what is needed for current production needs.
2. They presently produce a wide array of portion control packages (round cups, small 2 oz. pouches of dressings, and flexible bags that vary in size from 10-80 fluid ounces).
  - a. The current location of these machines are scattered throughout the facility and the rooms they are located in are not designed to latest food safety protocols. Under today's standards these packaging lines should be installed in "clean room" type rooms within the plant. These new rooms allow them to produce product in a cleaner and more sanitary environment to meet public health needs and requirements.

- b. The reconfiguration of these internal health and safety protocols necessitated the Parking and Loading Dock Configuration changes, which are required in order to maintain adequate truck circulation, loading dock facilities and employee parking as regulated by zoning.

Because of the location of the property, its infrastructure, landscaping, hardscape and the location of the existing structures thereon, the Site's shape, topography and geological makeup, including the location and constraints of the wetlands, protected resources (riverfront) on a large amount of the Site and the abutting rail lines, the Applicant is requesting this variance in order to preserve its ability to meet its required public health and food safety protocols and maintain its current operation at the Site. The requested relief specifically addresses and affects the uniqueness of this property and not other properties within the Industrial district. Furthermore, a literal enforcement of the bylaw would involve substantial hardships to the owner and the community when the relief requested may be granted without substantial detriment to the public good and without nullifying or derogating the intent of the bylaw.

The criteria required for a variance as stated in the Zoning By-Laws is that the ZBA shall have the power to grant upon appeal or petition, variances from the terms of this chapter, including "use" variances, where the Board finds that:

- (i) *due to circumstances relating to soil conditions, topography or shape of land or structures;* This criteria is met because of the shape of the lot, existing infrastructure on the Site and the restrictive impacts of the associated wetlands and river front resource areas at the Site.
- (ii) *especially affecting such land or structures but not generally the zoning district in which they are located;* The above support this criteria as the

extent of the wetlands and river front resource areas and existing infrastructure and adjacent rail lines are specific to this Site and not generally the zoning district.

- (iii) *literal enforcement of this chapter would involve substantial hardship to the appellant or petitioner, and;* The Petitioner has already made a considerable investment in the Site and in order to accommodate ever changing public health and food safety protocols they need to incorporate the intended modifications and the present proposal is the most effective and financially prudent option. Otherwise, without this relief, Kens would have to limit its operation at the Site and plan future growth in other communities.
- (iv) *that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.* This proposal clearly meets this criteria, as it is a minimal increase in impervious coverage, the public will not notice the expanded coverage and the extent of wetlands and riverfront area on this Site more than accommodates the environmental needs intended to be protected by the bylaw.

The Board of Appeals may also impose conditions, limitations and safeguards not based on the continued ownership by the Applicant, petitioner or an owner. Further, if the rights authorized by the variance are not exercised within one year from the date of grant thereof, they shall lapse and a new petition, notice and hearing will be required for their reestablishment.

The Petitioner and this Site provide a poster child application for meeting all these criteria and not only may it be a hardship or benefit for the landowner but the variance will support community effort to preserve a strong corporate tax base and attract quality and diverse businesses to the Marlborough community.

It is clear that this Site is very unique in its location, its size and the usable area due to soil condition and conservation constraints thereon; it is also a benefit for the community as it will insure that a strong family-owned national company will maintain a presence in Marlborough for decades; a literal enforcement of the By-Law would be a hardship on the Petitioner as well as the community as a whole; and it is clear the desired relief may be granted without substantial detriment to the public good, without nullifying or substantially derogating from the intent and purpose of By-Laws.

If this Board is inclined to grant (and it should) the requested relief, this Board must be clear in any conditions which they may impose upon the Site, however such conditions, limitations and safeguards may not be based on the continued ownership by the Applicant, petitioner or an owner nor can they require or take away underlying private property rights existing under current zoning and they must bear a relation to the nature, character or extent of the variance to be permitted at the Site.

Thank you for your consideration.



*City of Marlborough*  
*Office of the Mayor*

140 Main Street  
Marlborough, Massachusetts 01752  
508.460.3770 Fax 508.460.3698 TDD 508.460.3610  
[www.marlborough-ma.gov](http://www.marlborough-ma.gov)

*Arthur G. Viceant*  
MAYOR

*Patricia M. Bernard*  
EXECUTIVE AIDE

*Ryan P. Egan*  
EXECUTIVE SECRETARY

May 4, 2022

Mr. Ralph Loftin, Chair  
Marlborough Zoning Board of Appeals  
140 Main Street  
Marlborough, MA 01752

**RE: Ken's Foods, 1 D'Angelo Drive**

I would like to express my full support of Ken's Foods and its plans for renovating their manufacturing operations located at 1 D'Angelo Drive.

Their maximum allowable lot coverage within the Industrial Zoning District is 60% and their existing lot coverage is at 60.1%. They are requesting a variance from the Zoning Board of Appeals for a minimum increase in lot coverage that amounts to an additional 2.5%.

Their reasoning for this increase is driven by the renovations necessary for product and health standards within the current facility, as well as complying with required parking and vehicle circulation regulations imposed by the City regulations. These conclusions were drawn after Ken's invested in a year or longer study analyzing their production facility in Marlborough.

These internal health and safety protocols necessitated the parking and lot coverage changes in order to have enough space to bump the building out as required and still have adequate truck circulation and employee parking as regulated by zoning.

They understand that their hardship is not self-created, but a result of the specific lot configuration, wetlands, riverfront, and other site-specific constraints and the health and safety modifications required at the facility.

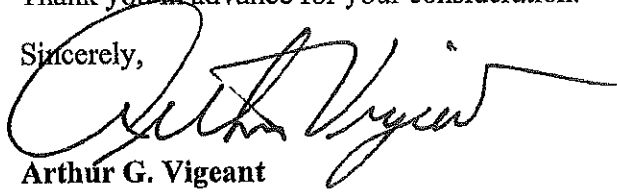
While they're famous for their dressings, they have and continue to support many civic organizations, as well as the Mayor's Charity Fund, our annual Labor Day Parade, our Police and Fire associations, our High School Booster Club, Marlborough Hospital, to name a few.

Ken's Foods is a family-owned business and a leading manufacturer of salad dressings and sauces and employs around 600 at the Marlborough facility which also operates as their

corporate headquarters. Ken's has been in the City since 1985 and has continued to make major investments in this facility.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur G. Vigeant". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**Arthur G. Vigeant**  
**Mayor**



FILE COPY

**Marlborough City Council**  
**Michael H. Ossing**  
**City Councilor-at-Large**  
140 Main Street  
Marlborough, Massachusetts 01752  
(508) 460-3711 TDD (508) 460-3610

May 2, 2022

Chairman and Members  
Zoning Board of Appeals  
City Hall  
Marlborough, MA 01752

Reference: Letter of Support for a Variance at 1A Dangelo Drive – April 13, 2022 Zoning Determination from Building Commissioner Tin Htway re: Ken's Food Expansion

Chairman Loftin and ZBA Members:

I attended the February 8, 2022 and the April 26, 2022 Site Plan Review Committee meetings when the Ken's Food team presented their plans to expand their facility in order to bring the facility into current regulatory and inter-company health standards related to public health food safety. Additionally, I toured the Ken's Food facility on March 3, 2022 with the Mayor to see firsthand some of the constraints that are challenging the operation of the facility to meet today's health standards.

I encourage the ZBA to grant the variance based upon the following:

Existing Building/parcel – The parcel in question requiring a variance (116-8) is a 23.8-acre parcel. The property owner owns the adjacent parcel (115-5) which contains 5.3 acres. Unfortunately, there is a railroad line that separates the two parcels. If the parcels were combined, the variance would not be required.

Substantial Hardship (financial or otherwise) – The facility has an assessed value in excess of \$26 million. Requiring this facility to relocate because of the inability to expand to meet current regulations provides a financial hardship to Kens Food as well as the City of Marlborough due to potential lost tax revenue.

Substantial Relief Without Detriment to Public Good – The property is surrounded by the Metropolitan District Commission (115-10) and Suburban Propane (116-6). Neither of these parcels will be impacted by the grant of the variance. The relief sought by the variance to increase lot coverage from 60.1% to 62.6% is de minimis in nature, will not be a detriment to nearby parcels, or to the public good in general.

5/2/22



Based on the above, I wholeheartedly support the variance to increase lot coverage from 60.1% to 62.6% and urge the members of the ZBA to look upon the application in favorable terms.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael H. Ossing", written over the word "Sincerely,".

Michael H. Ossing  
City Councilor-at-Large  
City Council President