



# City of Marlborough Zoning Board of Appeals

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

**ZBA Case**      **#1437-2015**  
**Location:**    **50 Brigham St.**

**Date: September 21, 2015**

## **DENIAL of Variance or Special Permit or Extension Permit (General Laws Chapter 40A, Section 11)**

The Board of Appeals of the City of Marlborough, MA hereby certifies that a Variance or Special Permit or Extension Permit has been DENIED:

To:                Safety-Kleen Systems, Inc.  
                      c/o Kendra Kinscherf, Esq. Davis, Malm & D'Agostine, P.C.

Address:        One Boston Place


City:             Boston, MA 02108

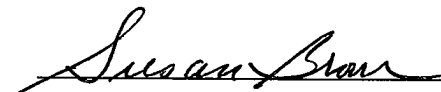
affecting the rights of the owner with respect to land or buildings at:

**50 Brigham St. (Safety-Kleen Systems, Inc.)**

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision has been filed with the City Clerk.

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 or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to 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 or Town Clerk. (Reference: Mass General Law Chapter 40A, Section 17)

  
Paul Giunta - Chairman

  
Susan Brown - Secretary

Submitted to the City Clerks' Office on **September 21, 2015.**



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Name: Safety-Kleen Systems, Inc.  
Location: 50 Brigham Street

Date: September 21, 2015

## Zoning Board of Appeals Notice of Decision **DENIAL**

The Zoning Board of Appeals, acting under the Zoning Ordinance of the City of Marlborough and the Zoning Enabling Act of the Commonwealth of Massachusetts, after public hearings held at the Marlborough City Hall, 140 Main St. Memorial Hall, 3<sup>rd</sup> Floor, on August 18, 2015 with a continuation meeting on September 8, 2015 **DENIES** the request of Safety-Kleen, Systems, Inc.

**Petition:** Safety-Kleen Systems, Inc. proposes to expand their pavement at 50 Brigham St. (Map 104, Parcels 26 & 26A of the Assessor's Maps) The existing "lot coverage" already exceeds the limits under the City of Marlborough's current regulations-Article VII-Dimensional, Landscaping and Parking Regulations-Table of Lot Area, Yards and Height of Structures. Parcel is located in an Industrial Zone.

Therefore, the Board voted with Paul Giunta-chairman, Theodore Scott and Thomas Golden voting in the affirmative and Mitchell Gorka and Ralph Loftin voting in the negative. The Board voted 3-2 **NOT** to grant a variance (4 affirmative votes are required for passage) based on the following:

1. It was unclear that the petitioner (Safety-Kleen) has explored other options to utilize space on the property and on the adjacent property (a contiguous parcel); space that is already paved.
2. Although the petition cites a "financial" hardship, fundamentally the company seeks a variance in order to move Clean Harbors' operation from Southborough to Marlborough, thus improving operational efficiency. Even though the additional lot coverage sought is minimal, adding to a non-conformity in order to improve business efficiency is not a legitimate reason to grant a variance.

3. The Board does not want to set precedence in issuing a variance because, two businesses merged and now they need more paved area to accommodate their equipment and staff.
4. A variance increases the existing non-conformity.
5. Although Safety-Kleen and Clean Harbors' operations are compatible, their operations aren't very dependent on each other, so the petition isn't a "hardship". Both operations could continue together or as they are operating now.
6. Further, there is still some possibility of leasing additional space for Clean Harbors on the Safety-Kleen parcel. The contiguous abutting lot or another site without further increasing Lot Coverage

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Respectfully submitted,

  
Paul Giunta  
Chairman

Submitted to the City Clerk's office on September 21, 2015.



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## Zoning Board of Appeals Record

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on August 18, 2015 with a continuation meeting on September 8, 2015.

### Proceedings:

1. **Date of Appeal:** June 25, 2015
2. **Name and Address of Applicant:** Safety-Kleen Systems, Inc. 50 Brigham St. Marlborough, MA 01752 (represented by Kendra Kinscherf, Esq., Davis, Malm & D'Agostine, P.C., One Boston Place, Boston, MA 02108.
3. Administrative body from whose decision or order of appeal was taken: Building Dept.
4. Appeal filed with: Zoning Board of Appeals and City Clerks' Office
5. **Nature & Basis of Appeal:** Safety-Kleen Systems, Inc. proposes to expand their pavement at 50 Brigham St. (Map 104, Parcels 26 & 26A of the Assessor's Maps) The existing "lot coverage" already exceeds the limits under the City of Marlborough's current regulations-Article VII-Dimensional, Landscaping and Parking Regulations-Table of Lot Area, Yards and Height of Structures. Lot is located in an Industrial Zone.
6. Section of the Zoning Ordinance involved: **See #5 above.**
7. Notice was sent by Certificate of Mailing to parties in interest, including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property lines, including owners of land in another municipality, all as they appear on the most recent applicable tax lists.
8. Original documents are on file with the Board of Appeals and the City Clerks' Office.

9. **Findings:**

1F. **August 18, 2015** – Members present: Paul Giunta-Chairman, Theodore Scott, Thomas Golden and Mitchell Gorka.

Also present were Kendra Kincherf Esq. of Davis Malm & D'Agostine P.C. and David D. Paquette, Director Branch Engineering-Safety-Kleen.

2F. This 2.55 acre lot is fairly flat with a 177 ft. driveway entrance off of Brigham St. A trapezoid shaped lot in the back (almost entirely occupied by two clusters of buildings and a rail line) At the rear of the lot is a rail road line. Existing Lot Coverage is 70.59% vs. the required maximum Lot Coverage of 60% for Zoning District Industrial.

3F. Safety-Kleen has occupied this site since 1980. The property has not met the 60% maximum Lot Coverage on this 2.55 acre site since at least 1993 when the city approvals were obtained for an expansion project that resulted in 70.59% of Lot Coverage.

4F. There is an existing city easement between Buildings A & B and Buildings C & D. Nothing permanent can be constructed over this easement.

5F. The abutting lots are of business use and residential use.

6F. Currently there is 1.80 acres of impervious surface (out of 2.55 acres) = 70.59% of Lot Coverage (exceeds the required maximum 60% Lot Coverage) – Their narrative states the property was previously “grandfathered”.

7F. According to the plans presented Safety-Kleen occupies Buildings A, B, C, D, E, F, G and H. The 1 story at the entrance of 50 Brigham St. is not utilized by Safety-Kleen

8F. Safety-Kleen leases only a portion of the entire parcel.

9F. Safety-Kleen is designated as #50A – 50H Brigham St. of which has separate occupants and businesses (8 tenants).

**Proposal**

10F. Safety-Kleen's proposal is to expand the pavement by 4,722 sq. ft. (**4.31%**) adjacent to Building A) to house some extra trucks and equipment.

11F. Atty. Kinscherf stated they have merged with Clean Harbors in Southborough, MA which is the reason for the additional pavement. Clean Harbors will maintain its location in Southborough.

12F. The proposal is also to add 18 Mint Julep along the new pavement area near Building A in order to provide additional landscaping along the exclusive parking area on the northern property line in order to come into compliance with the Ordinance's 5 ft. setback requirement, and add 24 Gold Mound Spirea and 4 silver maple trees along the front lot line.

13F. In **Opposition** - E-mail from **Ms. Ippolito** dated August 18, 2015 of 168 Mill St. Reasons for opposition: Toxic fumes from the site, trucks going up and down Mill St. carrying these types of hazardous material (in Board's file)

14F. There was no one in the audience to speak in favor or in opposition to the petition.

15F. Atty. Kinscherf stated:

- After the project is completed there will be 1.91 acres of impervious surface = 74.90% of Lot Coverage (exceeds the required maximum 60% Lot Coverage)
- Nothing is stored underground.
- Trucks empty hazardous material into storage drums before they are parked on the lot. Drums are normally stored for a week – 10 days.
- There is enough parking for their existing 11 employees and 6 additional employees by utilizing exclusive use parking and shared parking on the lot.

16F. A Board member asked the applicant if there were any other options to create more space on the property vs. adding additional pavement. **Answer:** Atty. Kinscherf stated this proposal is the most feasible and safest for this lot.

17F. There was some questions about expanding the fenced area, thus creating more space within the fenced in area. **Answer** – Atty. Kinscherf stated that will not work, due to the existing traffic flow within the property and the lack of movement area.

18F. **Hardship** as stated by Atty. Kinscherf:

1. Difficult to meet all the zoning requirements with so many existing business and buildings.

2. The property has not met the 60% maximum lot coverage on this 2.55 acre site since at least 1993 when the city approvals were obtained for an expansion project that resulted in 70.59% of lot coverage.
3. Without the addition of 4.31% of pavement, it will be difficult if not impossible for Safety-Kleen will not be able to merge with Clean Harbor of its facilities and increase its operations at the property and could not adequately serve an ever-increasing demand for handling Regulated Recyclable Materials.
4. As a result of the peculiar circumstances noted, complying with the maximum lot requirements of the Ordinance would be insufficient for the existing businesses on the property, and would prove to be a substantial hardship to Safety-Kleen.
5. Parking and storage are limited due to the following:
  - o Uniquely shaped buildings with 8 separate areas for different occupants which occupy nearly one-quarter of the property.
  - o Shape of lot is unique – a narrow rectangle in the front (approximately half of this is occupied by one of the buildings)
  - o A trapezoid in the back (almost entirely occupied by two clusters of buildings and a rail line.

**September 8, 2015 - Continuation meeting**

19F. Members present: Paul Giunta-Chairman, Theodore Scott, Thomas Golden, Mitchell Gorka and Ralph Loftin. (Ralph Loftin signed an affidavit stating he has read the minutes from the August 18, 2015 meeting.)

Also present were Kendra Kincherf Esq. of Davis Malm & D'Agostine P.C. (**arrived late**), because of traffic and David D. Paquette, Director Branch Engineering-Safety-Kleen.

20F. According to their narrative, Safety-Kleen accepts both hazardous and non-hazardous materials, which are then handled and sent off-site for recycling. They do not permanently store any hazardous waste at the Marlborough facility.

21F. The Chairman read into the file an e-mail from the Deputy Fire Chief, Frederick Flynn, in response to the Board's inquiry if Safety-Kleen had any past or present violations on the site. **Answer:** Safety-Kleen has no underground storage tanks, permits are current, and no violations. (e-mail is in Board's file)

22F. David Paquette stated the following:

- Clean Harbors, in Southborough, MA acquired Safety-Kleen. The increase in pavement will be for the additional trucks and equipment from Clean Harbors.
- Safety-Kleen is permitted through the Mass Dept. of Environmental Protection (DEP) Because of this permit, the trucks on site has to be secured within a fenced in area.
- Will remove existing paving (a very small section) and add pervious landscaping along the exclusive parking area on the northern property line in order to come into compliance with the Ordinance's 5 ft. setback.
- The facility is inspected by the city's fire dept. once or twice a year.
- Safety-Kleen has offered to purchase the property, but the land owner refused.

23F. Board Members Mitchell Gorka and Ralph Loftin felt the applicant has not explored other options vs. getting a variance. Mr. Gorka felt there are unused areas within the lot they can utilize. Mr. Loftin suggested the applicant ask the land owner if the "**Rail Siding Lease Area**" could be used as additional space. David Paquette stated that may not be a good idea, because there are no catch basins in that area.

24F. There was some discussion concerning:

- Tanks size and location of tanks.
- Adequate parking within the site for employees and equipment
- The plans bared a "mechanical" stamp vs. a "civil" stamp; will this type of stamp become a problem?

25F. Atty. Kendra **arrived** and stated:

- The additional **4.31%** of pavement will not be an impact on the property or to the abutters.
- The applicant will improve surface run-off by adding 2 new catch basins and improving 2 existing catch basins.
- In her narrative, she mentioned the following:
  - Recent decisions in granting variances by the Zoning Board of Appeals.
  - **Hardship** – Safety-Kleen cannot provide safe and adequate access and parking, while not having a negative impact to its business, are the types of hardships sufficient for granting a variance.
  - The petition will not negatively impact the property or the surrounding industrial properties and will not



substantially derogate from the intent of the Ordinance.

- The variance will benefit the property and the city by improving the stormwater management system by upgrading the two existing catch basins and adding two new catch basins.
- Safety-Kleen has explored other alternatives; this is the most feasible and safest option.
- Cannot use Clean Harbor's location in Southborough to expand. David stated that the DEP permits are for the site in Marlborough. Clean Harbors has no such permits. To relocate Safety-Kleen will be difficult.

### Submissions

26F. Narrative – Petition of Safety-Kleen Systems, Inc., Impervious Surface Variance, 50 Brigham St.

**August 18, 2015 meeting** - Pavement Improvement Plans for Safety-Kleen, 50 Brigham Street, Marlborough, MA dated March 2015 prepared by N.D. Eryou, PhD, PE :

Sheet T-100.00	Cover sheet – Project Location & Scope of Work
Sheet C-100.00	Existing Conditions Map
Sheet C-110.00	Site Plan, Paving, Grading & Drainage Plan
Sheet C-120.00	Erosion Control Plan & Details
Sheet D-100.00	Drainage Details
Sheet D-200.00	Drainage Details
Site Landscaping Plan – Existing – dated 6/18/1996	
Site Landscaping Plan – Proposed – dated 6/18/1996	

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**Sept. 8, 2015 meeting** - As requested from the August 18<sup>th</sup> meeting, a packet was submitted to the Board with the following information:

- Narrative - Supplemental memorandum for Safety-Kleen Systems, Inc.'s Variance Petition (50 Brigham St.)
- Existing Site Plan, stamped by N.D. Eryou, PhD, P.E. on August 31, 2015
- Proposed Site Plan, stamped by N.D. Eryou, PhD, P.E. on August 31, 2015
- Existing Site Plan (with truck turning patterns), stamped by N.D. Eryou, PhD, P.E. on August 31, 2015.
- Letter from Myrna Sheehan, Trustee, dated August 21, 2015
- A full sized set of the stamped plans.

27F. With no other testimony taken or given, the public hearing was closed.

28F. There was no one present to speak in favor or in opposition of the petition.

29F. Board Member, Theodore Scott was in favor of granting the variance based upon the following findings:

- The applicant responded to the Board's directives conveyed at the initial meeting by providing: A clearer and more simplified plan that specifically defined information pertaining to the variance and a letter from the owner of the property giving consent for the application.
- Circumstances related to the shape of the lot and locations of the structures are: the lot in question is not a standard rectangular shaped lot and there are multiple tenants and buildings on the lot that share a common central located parking lot/driving lane area. In addition, there is a 30' foot wide city of Marlborough drainage easement that runs through the property that limits the area that can be used for storage of equipment. Further, utilizing other existing paved areas on the lot is not feasible, because the new equipment area would have to have a perimeter fence which would impact movement on the site.
- The hardships related to these circumstances are: the applicant will not be able merge with the Southborough Clean Harbors facility to more efficiently and more cost effectively operates unless the minor pavement expansion is possible.
- Thus, a literal enforcement of the ordinance would cause a substantial hardship financial or otherwise owing to circumstances related to the shape of the lot and locations of the structures.
- The current paved area is 70.59% which is already over the zoning ordinance maximum lot coverage requirement of 60% and thus is a pre-existing non-conformance. Increasing the area by 4.31% will not have a negative impact to the city or abutters.
- The applicant will provide new landscaped screening adjacent to the north-east abutter.
- The applicant will provide two new catch basins and replace two existing catch basins with catch basins that are in compliance with the current applicable storm water management regulations. This

will significantly reduce the amount of pollutants that could enter the City's drainage system.

- The only abutter concern was regarding what the abutter believed was the existing practice of vehicles containing hazardous waste driving on Mill Street. The applicant agreed that vehicles containing hazardous waste would not drive on Mills Street unless servicing a client on Mill Street.
- The intent of the Zoning Ordinance is to protect the interests of the city and abutters. The minor pavement expansion will not nullify or substantially derogate the intent of the zoning ordinance or diminish the public welfare. The added screening, new catch basins and agreement to limit vehicle traffic on Mill Street are consistent with the intent of the Zoning Ordinance and will improve the public welfare.

30F. Board Member, **Mitchell Gorka** stated the following:

- Safety-Kleen has been a safe, reliable and federally permitted business in Marlborough since 1980.
- Safety-Kleen was acquired by Clean Harbors, which is a reactive hazardous waste cleanup business; compatible with Safety-Kleen's proactive hazardous waste disposal business.
- Clean Harbors has a unit (not state or federally permitted) in Southborough, MA which would like to relocate to the 50 Brigham St. site that Safety-Kleen occupies.
- In order to relocate, Clean Harbors requires additional space for their trucks which is not currently available without increasing the amount of impervious surface.
- The parcel currently exceeds the 60% Lot Coverage limit and the additional proposed space would increase non-compliance further by another 4.31%.
- Safety-Kleen is a tenant at 50 Brigham St. and occupies the majority of the 2.5+ acre parcel there.
- There is also a 1 story building and a circular shaped building which are not occupied by Safety-Kleen.
- The Safety-Kleen's representatives did not know how much of the 1 story building on the parcel was available for lease or how much of the abutting contiguous parcel was available for lease. A very large "for lease" sign sits on the

contiguous property and there appears to be considerable space available.

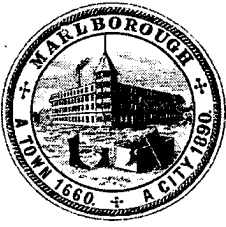
- The petition for the variance to increase the Lot Coverage is proposed on the “hardship” that Safety-Kleen would not be able to accommodate Clean Harbors' trucks and equipment and this impacts the efficiency of their operations.

31F. Board Member, Ralph Loftin had similar concerns as stated above.

32F. **Motion:** A motion was made by Theodore Scott to grant a variance with a condition that the trucks containing hazardous waste existing Safety-Kleen take a right onto Brigham St. and go to the set of lights onto Maple St. This will help address the abutter, Ms. Ippolito's concerns. Motion **seconded** by Thomas Golden. This was opened up for discussion. There was no discussion.

33F. With no other motions on the table, the Board **voted 3-2 not to grant a variance.**

34. The meeting was adjourned.



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Zoning Board of Appeals**

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**ZBA Case # 1437-2015**

**Location: 50 Brigham St.**

**VOTE OF THE BOARD  
Signature Sheet**

**In Favor**

Paul Giunta *Paul W. Giunta*

Theodore Scott *Theodore Scott*

Ralph Loftin \_\_\_\_\_

Thomas Golden *Thomas Golden*

Mitchell Gorka \_\_\_\_\_

Robert Levine \_\_\_\_\_

**In Opposition**

Paul Giunta \_\_\_\_\_

Theodore Scott \_\_\_\_\_

Ralph Loftin *Ralph Loftin*

Thomas Golden \_\_\_\_\_

Mitchell Gorka *Mitchell Gorka*

Robert Levine \_\_\_\_\_