



City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1491-2022

Date: June 6, 2022

Location: 1 D'Angelo Dr. – Ken's Foods

Granting of a Variance

To: Ken's Foods – (c/o Atty. William Pezzoni, Day Pitney LLP)


Address: One Federal St. - 29th Floor

City: Boston, MA 02110

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

1 D'Angelo Dr. (Map 116 Parcel 8) Zoning District Industrial

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision and of all plans referred to in the decision, have been filed with the City Clerk.


Ralph Loftin – Chairman
Zoning Board of Appeals


Susan Brown - secretary

Submitted to the City Clerks' office on June 6, 2021.



City of Marlborough Zoning Board of Appeals

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Record and Decision Variance Request

Zoning Board of Appeals Case # 1491-2022

Applicant: Ken's Foods

Date of Appeal: April 14, 2022

Location of Subject Property: 1 D'Angelo Dr. (Map 116 Parcel 8)

Petition: Variance Request: The applicant proposes improvements to the property including additional impervious surface and addition to the existing structures. The property is located in Zoning District Industrial (I). Maximum Lot Coverage in Chapter 650, Article 41 is 60%. The plans show existing lot coverage of 60.1%, which would be essentially in compliance. The proposed 62.6% coverage, and not considered legal pre-existing non-conforming, requires a variance for the proposed deviation of 2.5%.

Meeting date: May 10, 2022

Board members present: Ralph Loftin-Chairman, Robert Levine, Thomas Golden and Paul Giunta.

Absent: Thomas Pope. Also present were:

- Susan Brown- Secretary
- Tin Htway – Building Commissioner
- William Paynton – Building Inspector
- Applicant's Representative: William Pezzoni, Attorney – Day Pitney LLP One Federal Street, 29th Floor, Boston, MA 02110 RE: 1 D'Angelo Drive, Parcel ID #116-8 proposed addition and renovation.
- Elizabeth Mainini – of Guerriere & Halnon, Inc.
- Shaye Mark – Ken's Foods facility manager

Documents in Board's file:

- ZBA applicant form with filing fee of \$ 500.00
- Denial letter from building department dated April 13, 2022
- Plans: Variance Request Ken's Foods Site Plan Modification 1 D'Angelo Dr. Marlborough, MA Sheet 1 of 2, Proposed Layout Sheet 2 of 2 dated April 12, 2022, Proposed Layout Sheets 1 thru 3 dated April 12, 2022
- Two letters of support by Mayor Vigeant dated May 4, 2022 and Michael Ossing, President of the City Council dated May 2, 2022.

It was noted to the audience that the Board is hearing a variance request. The audience was made aware that the public meeting was being recorded.

Public Hearing:

1. Ken's Foods, applicant was represented by Atty. Pezzoni and Elizabeth Mainini of Guerriere & Halnon, Inc.
2. The Applicant has undertaken an expansion and modification of its internal operations, which includes expansion of the existing building, and external site modifications to comply with vehicle circulation, parking and loading regulations of the City of Marlborough.
3. This facility houses Ken's 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.
4. During the design for the planned expansion, it was determined by the Building Commissioner that the proposal does not comply with Chapter 650, Article 41 "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, for the Industrial Zoning District, is 60%. 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. This increase is driven by the renovations necessary for product and health standards within the current facility, as well as complying with required City of Marlborough parking and vehicle circulation regulations.
5. The **hardships** as stated by applicant:
 - The lot configuration, including wetlands and riverfront area imposes a number of constraints.
 - Ken's spent more than a year analyzing the Marlborough facility and identified the changes needed to bring the facility into current regulatory and inter-company health compliance related to public health and food safety. This analysis also looked at how to better accommodate material flow and worker safety within the facility as noted below:
 - A larger ingredient cooler, as more and more of the raw ingredients used in production must be stored at 40 degrees or lower.
 - Maintaining public health and food safety protocols required reworking internal operations, but, due to existing space constraints and equipment needs, a section of the building and loading docks must be expanded, as shown on the site plans on the west side of the building.
 - These changes in turn necessitated reconfiguring the Parking and Loading Dock in order to maintain adequate truck parking and circulation 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 the uniqueness of this property and not other properties within the Industrial Zoning District.
- 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.
- Affecting such land or structures but not generally the zoning district in which they are located: The lot in question is located in Zoning District Industrial. The minor deviation in lot coverage will not be noticeable to abutters.
- Extent of the wetlands and river front resource areas, existing infrastructure and adjacent rail lines are specific to this Site and not generally the zoning district.
- Literal enforcement of this chapter would involve substantial hardship to the appellant or petitioner: The Petitioner has already made a considerable investment in the Site and to accommodate ever changing public health and food safety protocols, the intended modifications and the present proposal is the most effective and financially prudent option. Otherwise, without this relief, Ken's would have to limit its operation at the Site and plan future growth in other communities.
- 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 be affected by the expanded coverage, and the wetlands and riverfront area on this Site will be protected.

6. Speaking in favor: Two letters of support by Mayor Vigeant and Michael Ossing-President of the City Council who was present at the meeting. (Letters in Board's file)

7. No one spoke in opposition to the petition.

8. A motion was made by Robert Levine, seconded by Paul Giunta to close the public portion of the hearing. By a vote of 4-0 the public portion of the hearing was closed.

9. The Board discussed the proposal and the nature of the hardships imposed by the site configuration. There was general agreement among the Board members that the requirements for a variance had been met. A motion was made by Robert Levine seconded by Thomas Golden to approve the application for a lot coverage variance of 2.5%. By a vote of 4-0, the application was approved.

10. A motion was made by Thomas Golden, seconded by Robert Levine to close the public hearing. By a vote of 4-0 the public hearing was closed.

11. A motion was made by Robert Levine, seconded by Paul Giunta to adjourn. By a vote of 4-0 the meeting was adjourned.

Findings of Fact:

1. Ken's Foods has been located at 1 D'Angelo Dr. since 1984.

2. 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 are specific to this Site and not generally the zoning district,
3. The proposed facility modifications and resulting lot coverage increase are required to accommodate public health and food safety protocols.
4. The present proposal is the most effective and financially prudent option to meet public health and food safety protocols.
5. Without this relief, Kens would have to limit its operation at the Site and plan future growth in other communities.
6. The public is not affected by the expanded coverage, and the wetlands, the riverfront area and adjacent rail lines on this Site will be protected.

Decision

A lot coverage variance of 2.5% is granted, bringing the lot coverage from the existing 60.1% to the proposed 62.6%.

Conditions:

1. Approved plans: Variance Request Ken's Foods Site Plan Modification, 1 D'Angelo Dr. Marlborough, MA Proposed Layout, Page 1 of 3 dated April 12, 2022, Page 2 of 3 dated March 5, 2022 and Page 3 of 3 dated April 12, 2022.
2. Prior to construction, the applicant will receive the proper reviews and permits thru the city.
3. No Building Permits can be issued until such time as the applicant presents to the Building Inspector evidence that said variance with its restrictions has been filed with the Registry of Deeds or Land Court as applicable.

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, applicant 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)

Respectfully submitted,


Ralph Loftin – Chairman
Zoning Board of Appeals

Submitted to City Clerk's office on June 6, 2022.



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Applicant: Ken's Foods

VOTE OF THE BOARD WITHDRAW WITHOUT PREJUDICE Signature Sheet

IN FAVOR

Paul Giunta

Paul Giunta

Ralph Loftin

Ralph Loftin

Thomas Golden

Thomas Golden

Thomas Pope

Robert Levine

Robert Levine

IN OPPOSITION

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine
