



**City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768**

**Minutes
May 10, 2022**

**Variance Request
Zoning Board of Appeals Case # 1490-2022**

Applicant: Robert Gauthier

Date of Appeal: March 16, 2022

Location of Subject Property: 65 Oakcrest Ave. (Map 44 Parcel 51A)

Petition: To construct a new 5 ft. x 7 ft. front portico at 65 Oakcrest Ave. Map 44 Parcel 51A, Zoning District A-2. The property is a lawful pre-existing non-conforming lot. The minimum required front yard setback is 30 ft. Existing front yard setback is 30.1 ft. vs. the proposed 25.4 ft., a 4.6 ft. deviation.

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
- Applicants: Robert and Aura Gauthier

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.

Robert and Aura Gauthier, the applicants, represented themselves.

The Board Chair informed the applicants that only four Board members were present this evening. To receive a favorable decision, the vote would have to be 4-0. Also, the Chair informed the applicants that at any time during the Board's discussion of the case, the applicants can ask to "withdraw without prejudice".

Hardships as stated by the applicants:

- To add protection for themselves from the weather.
- The north facing front entrance endures weather conditions that result in wood rot to the front doorway. The portico will provide protection to the entrance way from rain and snow conditions.
- As stated by the applicant: "As we are getting older, it would be nice to have this added protection and with wider steps and landing, it will be an easier wheelchair accessibility."

Questions from the audience – none.

Speaking in **favor** of the petition:

- Michael Ossing – 43 Varley Rd. Marlborough, MA – Stated the petition would not be a detriment of the public good and that he was in favor of the petition.
- Kathleen Lachapelle – 73 Oakcrest St. Marlborough, MA – was present and submitted a letter of support to the petition.

Speaking in opposition – none.

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

Discussion – The Chairman explained to the applicant that there are 3 factors the Board must consider before a variance can be granted. First, the property must be unique from others in the area in terms of shape, topography, or soil conditions; second, the hardship experienced by the applicant must arise from these unique features of the property; third, whether the variance can be granted without detriment to the public good. The Board must view the hardship as interfering with or preventing the use of the property as zoned if not relieved by the requested variance.

The Board felt the lot in question is not unique to the neighborhood in that there are several others in the area with similar shape and size.

The Board felt the applicants' stated hardships did not arise from the features of the property, thus did not meet the Hardship requirements according to Mass General Law Chapter 40A §10.

The Chairman did reiterate that the Board can proceed with a vote, or the applicants can ask to "withdraw without prejudice." After further discussion the applicants decided to withdraw their application.

On a motion by Paul Giunta and seconded by Robert Levine to grant the applicant's request to "withdraw without prejudice" by a vote of 4-0 the request was granted.

On a motion by Robert Levine and seconded by Thomas Golden to close the public hearing, by a vote of 4-0, the public hearing was closed.

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 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

Ken's Foods, applicant was represented by Atty. Pezzoni and Elizabeth Mainini of Guerriere & Halnon, Inc.

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. 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.

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.

The **hardships** as stated by applicant:

- The lot configuration, including wetlands and riverfront area imposes a number of constraints.
- Kens 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 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 and affects the uniqueness of this property and no 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, Kens 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.

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

No one spoke in opposition to the petition.

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.

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 variance was approved.

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.

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

Decision:


The present proposal is the most effective and financially prudent option to meet public health and food safety protocols. Without this relief, Kens would have to limit its operation at the Site and plan future growth in other communities. Chapter 40A Section 10: 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 is a minimal increase in impervious coverage, 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. Thus, a variance is granted as follows, the existing Lot coverage is 60.1% and the proposed Lot coverage is 62.6% a deviation of 2.5%.

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.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "Susan Brown", is written over the printed name.

Susan Brown
Secretary – Zoning Board of Appeals