

Zoning Board of Appeals
Minutes
September 8, 2015

Members present: Paul Giunta – Chairman, Theodore Scott, Thomas Golden, Mitchell Gorka and Ralph Loftin. Mr. Loftin signed an affidavit stating he had read the minutes from the August 18, 2015 meeting.

Location: 50 Brigham St. (Safety-Kleen – the applicant) – Clean Harbor owns Safety-Kleen.
(Continuation from August 18, 2015)

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. Lot is located in an Industrial Zone.

Representatives: Kendra Kinscherf, Esq. (Attorney) of Davis Malm & D’Agostine P.C. Attorneys at Law (arrived late due to traffic) and David D. Paquette, Director Branch Engineering|Safety-Kleen.

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.

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)

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.

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.

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?

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

As requested from the August 18th 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.

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

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

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.

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.

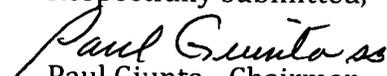
Board Member, Ralph Loftin had similar concerns as stated above.

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.

With no other motions on the table, the Board **voted 3-2 not to grant a variance.**
The meeting was adjourned.

Respectfully submitted,


Paul Giunta - Chairman