



## TOWN OF ROCKLAND ZONING BOARD OF APPEALS

Town Hall - 242 Union Street, Rockland, Massachusetts 02370  
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### **FINDINGS AND DECISION OF THE ZONING BOARD OF APPEALS**

ZBA Case No.: 2024-05

Date: June 4, 2024

Decision: Special Permit and Section 6 Finding

Applicant: 246 E. Water St. Realty LLC; Kanhaiyo Corporation

Property Address: 246 East Water Street, Unit 3, Rockland, Massachusetts

The Rockland Zoning Board of Appeals has considered the application submitted by 246 E. Water St. Realty LLC; Kanhaiyo Corporation, 246 E. Water Street, Rockland, MA c/o William R. Edes, Esquire, Drohan, Tocchio & Morgan, P.C., 175 Derby Street, Hingham, MA, for a Section 6 Finding pursuant to MGL Chapter 40A, Section 6, and Special Permit pursuant to Zoning Bylaws Section 89, to allow applicant to (i) continue the existing convenience store use, including the sale of beer and wine, under new ownership pursuant to an Asset Purchase Agreement and (ii) expand the existing convenience store use into the space currently used for a vehicle service/repair use and eliminate said vehicle service/repair use. Applicant, Kanhaiyo Corporation d/b/a Quick Stop Gas & Convenience, Bhaveshkumar Patel, Manager, is also seeking approval to apply for a Retail Package Goods Store License to Expose, Keep for Sale, and to Sell Wine and Malt Beverages Not to be Consumed on the Premises License from the Board of Selectmen, currently held by Tonia's Deli & Quick Mart at this location. The property is located in the R-3 Residence Zoning District, Section 415-10 of the Bylaw, and is further identified as Lot 4, Map 60, on the Rockland Assessor's Maps. The owner of the property is Steven S. Minasidis Realty Trust, 246 E. Water Street, Rockland, MA 02370.

The Board certifies that it has complied with all statutory requirements relative to notice to abutters and new publication of notice of the public hearing and has filed copies of this decision and all plans referred to herein with the Town Clerk, Planning Board, and the Building Department pursuant to Mass. Gen. L. c. 40A, Section 11.

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Address: 246 E. Water Street, Rockland, Massachusetts

Advertised: March 19, 2024, and March 26, 2024, in the Patriot Ledger.

The Board lastly has taken into consideration testimony of the applicant, the public, the application materials, plans and revised plans, and communications from various Town boards, abutters, and with interested parties.

A virtual remote Public Hearing was held via Zoom at 7:30 P.M. on April 2, 2024. A continuance Public Hearing was held via Zoom at 7:30 P.M. on May 7, 2024.

**ATTENDANCE:**

Board Members: Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr. and Stephen Galley.

Also present: Building Commissioner/Zoning Enforcement Officer Thomas Ruble

MEMBERS VOTING: Chair Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr., and Stephen Galley.

**DISCUSSION on April 2, 2024:**

The Chair of the Zoning Board introduced the members of the Board advising the public that the hearing is being recorded and explained the rules of the hearing.

The Chair asked the members of the ZBA for a roll call vote to open the public hearing. The ZBA members then took a roll call vote:

Robert C. Rosa, III – Yes, Gregory Tansey – Yes, Robert Baker, Sr. – Yes; Stephen Galley – Yes, Robert Baker, Jr. – Yes. The vote was unanimous and the public hearing was opened.

The Chair read the advertised notice in the Patriot Ledger with a Public Hearing Date of April 2, 2024.

Attorney William R. Edes of Drohan Tocchio & Morgan, P.C., 175 Derby Street, Hingham, Massachusetts, and his clients Ravi Patel and Bhaveshkumar Patel came before the Board to make their presentation. Attorney Edes testified that his client is purchasing Tonia's Deli and Quick Mart so there will be a change of ownership and is seeking to transfer the Retail Package Goods Store License to Expose, Keep for Sale and to Sell Wine and Malt Beverages under a prior Section 6 Finding allowing that use on the site with various conditions, which are recited in the previous findings, and they will comply with the previous conditions with changing the appropriate names and seeking a slight expansion of hours. He explained that in addition to the transfer of ownership, the applicant intends to eliminate the existing service station and use that was allowed by the prior Section 6 Finding and expand the convenient store use into that space resulting in a total of approximately 1,400 square feet

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roughly doubling the size. He stated that the change of use would be no more detrimental to the neighborhood than the existing service station use, it should have a minimal change of traffic on the site and should have more pass by usage than the existing use. He further stated that there would be 2 employees on site and a parking plan was provided showing that there is sufficient parking under the bylaw.

The Chair then opened the meeting to the Board for questions.

Mr. Tansey requested a review of the ADA provisions on the parking plan, which was then reviewed. He then asked if the aisle was 8 feet and was van accessible. The aisle was not 8 feet as there was a back deck not shown on the design plan. Kanayo Lala, the applicant's engineer, stated the rear elevation has a rear door with steps which is why they cannot shift the parking spaces to the left but they have provided a 5 foot wide handicap space where ADA requires only a 4 foot wide space. Mr. Tansey stated the ADA code in Massachusetts requires a parking lot with this many stalls to have 1 van accessible space with an 8 foot wide access alley. Two way traffic on the site was discussed. Attorney Edes stated that there is more than sufficient parking to meet the bylaw so they could eliminate a space to make extra room as long as the access to the door still works and other parking options were discussed.

Mr. Baker, Sr. wanted to know where the handicap accessibility to get into the building was. Mr. Lala explained by Space #2 that area is the walkway and at the end of the L shape walkway there is a door to the store for a slope wheelchair and is only a 5% flat slope walk. Mr. Baker then asked inside the building how a wheelchair would get in as this was not shown on the site plan. Mr. Lala stated they could mark it up. Mr. Baker then asked why Bay 3 does not show how people get up to the retail area and asked about the different level to the garage area. Mr. Lala stated there were stairs and a door would be provided. Mr. Baker wanted to know how someone in a wheelchair would get to that level. Mr. Lala stated someone would get their items for them. Plan A2 was then reviewed. Mr. Rosa commented that this should have been on the site plan. Mr. Baker stated that a handicapped person could not get from one level to the other as there were 5 stairs but no ramp.

Mr. Ruble, the Building Commissioner, stated that the Architectural Access Board ("AAB"), not the ADA, stated that in order for them to do what they want to do they would need to get a variance from the state as this does not meet AAB standards. He also stated that Mr. Tansey was correct about the 8 foot access. Mr. Ruble stated that he enforces ADA and if they want to do what they want to do they need to get the variance. Attorney Edes states that these items would be revisited and revised.

Mr. Baker, Sr. asked if the deli would remain and the applicant stated yes.

Mr. Galley had questions about the Deputy Fire Chief's comments and thought that the gas station was already self-serve. Attorney Edes stated the applicants were not going to make any changes to the pumps or canopy and no changes would be made to that area. Mr. Rosa stated they would need clarification from the Deputy Chief.

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Mr. Rosa asked if the 10 foot buffer for parking spaces 4 through 9 was there. Mr. Lala stated there was a 6 foot buffer. Mr. Rosa stated a 10 foot vegetated buffer was required. He also stated that the dumpster area was not fenced in; there was a waste oil container shown which must be removed; the plan was missing a deck, entrances on the building, planting baskets from a previous decision were missing. Buffer areas were discussed. Mr. Rosa stated there were a number of deficiencies on the plan. He then asked about the easement or right of way and what that was for. Attorney Edes stated he would get the language for that. Mr. Rosa also stated that the parking was crowding the easement. Shifting parking spaces was discussed. Creating the 10 foot buffer was discussed. Mr. Rosa asked if the parking lot would be striped.

Mr. Tansey stated that the existing parking lot did not have a 10 foot buffer but the previous applicant's 21E site and had to be paved to the limits of the property line. Mr. Ruble agreed and stated that the owner had spent a lot of money to comply. Mr. Tansey stated that the DEP would not want them to reduce the paving that is there now and is a common requirement so that storm water cannot infiltrate into the ground.

Mr. Rosa stated he felt there were deficiencies on the proposed plan.

Mr. Ruble stated that there is no window shown to the left of the front staircase going down to the cellar that must be added to the plan. Attorney Edes said it would be added to the plan.

There are also several issues with the existing conditions plan.

The Chair then opened the meeting up to members of the public, asking if any of the attendees would like to speak either in favor or opposed to this applicant.

No one spoke in favor.

Mr. Martin asked about signage on the building with the updated hours would there be any conditions about LED lighting, etc. Mr. Rosa explained that any new signage would need a permit from the Building Department and would need to comply with the bylaws but that was a separate permitting process.

Laura Rafferty questioned when the fuel would be delivered around 11:00 P.M. and it was noisy and wanted to know if it could be reduced. Stevem Minasidis stated most deliveries were before 11:00 P.M. and maybe as early as 6:00 A.M. She then asked if 11:00 P.M. was a little late for a liquor store to be open in a residential area. Mr. Minasidis stated they were open until 11:00 P.M. originally. Mr. Rosa stated this could be a further asset to the town and Ms. Rafferty agreed.

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Mr. Rosa then stated that he wants to see the plans updated to show everything that the Board is looking for.

Mr. Rosa then asked Mr. Ruble if he was going to send them for site plan approval and Mr. Ruble answered that if they were going to do any improvements to the outside of the building he would. Mr. Ruble stated he would need to look at the revised plans.

Mr. Rosa stated that the existing condition plan should be updated to show the true existing conditions. The design plan needs to be updated with what needs to be done. He stated that the hearing should be continued until the revised plans are submitted and reviewed.

Mr. Tansey agreed.

Mr. Ruble strongly suggests counsel review the 2002 conditions.

Mr. Galley asked about the rear buffer and whether the DEP order should be documented. Mr. Rosa stated that that should also be documented on the plan.

Mr. Baker, Sr. asked about the planted area on the Liberty Street side which is now asphalt, should be shown on a landscape plan to include the barrels.

Mr. Rosa stated that he would like to see the hearing continued.

Robert Baker, Sr. makes a motion to continue the public hearing for 246 East Water Street to give petitioner time to revise the plans to May 7, 2024, at 7:30 p.m. with documents submitted 1 week prior to the hearing.

Seconded by Stephen Galley.

The ZBA members then took a vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes.

The vote is unanimous, and the public hearing has been continued.

Mr. Baker, Sr. and Mr. Rosa asked the applicant to reach out to the Deputy Fire Chief for clarification.

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**DISCUSSION on May 7, 2024:**

**ATTENDANCE:**

Board Members: Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr. and Stephen Galley.

MEMBERS VOTING: Chair Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr., and Stephen Galley.

The Chair of the Zoning Board introduced the members of the Board advising the public that the hearing is being recorded and explained the rules of the hearing.

The Chair asked the members of the ZBA for a roll call vote to open the continuance public hearing. The ZBA members then took a roll call vote:

Robert C. Rosa, III – Yes, Gregory Tansey – Yes, Robert Baker, Sr. – Yes; Stephen Galley – Yes, Robert Baker, Jr. – Yes. The vote was unanimous and the continuance public hearing was opened.

The Chair read the advertised notice in the Patriot Ledger with a Public Hearing Date of April 2, 2024.

Attorney Edes discussed the material changes to the updated plans: (A2) inside floor of former service bay was brought up to the convenience store level eliminating stairs. Former entrance at front of building is being eliminated. Wine barrel planters were installed and additional ones would be added at rear. Waste oil container was removed. Dumpster fenced in. The access easement was explained. He confirmed that the Deputy Fire Chief comments were not applicable as there would still be self-serve gas.

Mr. Rosa stated that the easement was for the benefit of Mrs. Klotz, the next door neighbor to the east and was not extinguished.

Mr. Galley had no questions.

Mr. Baker, Sr. asked about the elevated floor and the handicap access by ramp (Eastern elevation). He asked if the pumps would stay self-serve. Applicant answered yes. He mentioned gas customers walking around to back to pay and walking across the traffic path. Attorney Edes said the door was moved 30 feet to the East.

Mr. Galley had no questions.

Mr. Baker, Jr. had no questions.

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Mr. Rosa asked if any changes could be made to the stairway so as not to impede traffic off East Water Street. Mr. Lala answered with the slope and dimensions of the ramp and Attorney Edes stated that if changes were made it would impact the handicap spaces. Mr. Lala did state that he would see if they could push it back by 1 step. Mr. Rosa stated that the Building Commissioner may require a Variance upon review of the plans.

As Mr. Ruble was not present, Mr. Rosa stated the Building Commissioner would have to make a determination as to whether or not a Variance was required and would also have to review the architectural interior height of the former garage bay with the new flooring height.

Mr. Rosa said the issue before the Board was a Section 6 Finding/Special Permit for the transfer of the Retail Package Goods Store License to Expose, Keep for Sale and to Sell Wine and Malt Beverages.

Mr. Baker, Sr. asked about Condition #11 of the Decision filed December 31, 2002, and discussion ensued.

The Chair then opened the meeting up to members of the public, asking if any of the attendees would like to speak either in favor or opposed to this applicant.

No one spoke in favor.

No one spoke in opposition.

The Chair read to the applicant the appeal process and stated a decision will be made later the same night after the public portion of the hearing, and that the applicant was welcome to be present during deliberations and informed them of their obligations to request a certificate of no appeal. The Chair also stated that if the relief was granted, one of the conditions would be to show the Building Commissioner proof of recording of the decision.

Mr. Tansey makes a Motion to close the public portion of the hearing.

Mr. Baker, Jr. seconds the Motion.

The ZBA members then took a vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes.

The vote is unanimous, and the public hearing has been closed.

**DELIBERATION:**

Mr. Rosa stated they are increasing a non-conforming use by taking over the second half of the building which was already a non-conforming use. The Board had no

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issues with this. The Section 6 Finding is not much more non-conforming, and they are taking away the front entrance for cars driving in and out while cars are getting gas.

### **FINDINGS:**

The Board decided to grant the Section 6 Finding for the expansion of the non-conforming use which will not make the use of the property more detrimental to the neighborhood and a Special Permit to allow the sale of beer and wine with the following conditions:

### **CONDITIONS:**

1. There shall not be any open containers or bottles of beer or wine served on the premises at any time.
2. There shall not be the sale of single cans/bottles of beer or glasses of wine to customers.
3. Bhaveshkmar Patel will be the Manager of the Retail Package Goods Store License to Expose, Keep for Sale and to Sell Wine and Malt Beverages.
4. Hours of operation will be Monday – Saturday: 5:00 a.m. to 11:00 p.m. and Sunday: 6:00 a.m. to 10:00 p.m. Alcohol sales: Monday – Saturday: 8:00 a.m. to 11:00 p.m. and Sunday: 10:00 a.m. to 10:00 p.m. consistent with liquor license rules in Massachusetts. The Select Board, who are the licensing authority for the alcohol license, will designate the liquor license hours.
5. Delivery of goods shall be prohibited from 9:00 p.m. to 7:00 a.m. seven (7) days per week.
6. **Locks are to be installed on coolers/lockers where the beer and wine are stored.**
7. **Coolers/lockers are to be locked when beer and wine are not being sold in accordance to the license issued by the Rockland Select Board.**
8. All employees, including the Manager, must be TIPS certified.
9. The name of the business for the Retail Package Goods Store License to Expose, Keep for Sale and to Sell Wine and Malt Beverages will be Quick Stop Gas & Convenience.
10. The Dumpster area will be fenced in and trash pick-up times shall be pursuant to Board of Health regulations.
11. No banners are to be on the property.
12. Lighting will be directed away from the neighbor's dwellings.
13. There will be no additional signs on the property.
14. There will be no parking on the Liberty Street side of the building. Wooden wine-type half barrels shall be placed within the 10 foot buffer zone and the 10' buffer along the liberty street sideline should be crosshatched striped as no parking.

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15. A 10 foot vegetated buffer with wooden wine-type half barrels shall be placed to the rear parking area and the 10' buffer should be crosshatched striped as no parking.
16. Two (2) No Parking Signs shall be attached to the building on the northwest and southwest corners of the west side of the building. There will be no parking on the sidewalk. The Petitioner will notify his customers and will enforce this condition.
17. The parking areas will be lined and marked on the plan titled: Parking Plan C1 dated 2/4/2024 prepared by A.S. Elliott Associates, filed with the Rockland Town Clerk on April 3, 2024, and presented to the Board on May 7, 2024.
18. Not later than one year from the date of occupancy of the premises by the petitioner, and each year thereafter, the petitioner shall contact the ZBA in writing to request a review of compliance and complaints.

**VOTES ON DECISION:**

Gregory Tansey makes a motion to grant the Section 6 Finding with the conditions noted above. The Motion is seconded by Robert Baker, Jr.

The Board takes a roll call vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes.  
The vote of the Board was unanimous (5-0) and the Section 6 Finding is granted.

Robert Baker Jr. makes a motion to grant the Special Permit with the conditions noted above. The Motion is seconded by Gregory Tansey.

The Board takes a roll call vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes.  
The vote of the Board was unanimous (5-0) and the Special Permit is granted.

**REASON FOR DECISION:**

The Board found that the Petitioner is seeking to expand the convenience store premises, sell beer and wine from the convenience store and to be considered as a retail package goods store. The Petitioner shall not have any open bottles of wine or beer on the premises at any time. The Board also found that the Petitioner is seeking a Section 6 Finding which is due to the expansion of an existing non-conforming use. The Board found that the expansion of the convenience store and the sale of beer and wine will not bring more traffic to the site, but will serve the customers that already go to the convenience store. The Board found that Mr. Bhaveshkmar Patel will be the Manager of the Retail Package Goods Store License to Expose, Keep for Sale and to Sell Wine and Malt Beverages and that his employees need to be TIPS certified. The Board found that the coolers/lockers would have locks to prevent sale of alcohol before and after allowed hours given by the Select Board for the selling of alcohol. The Board found that the expansion of the non-conforming convenient store/deli would not be more detrimental to the public good or derogate from the intent or purpose of

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the Zoning By-Law and would be in harmony with the surrounding neighborhood. The Board found that the property has plenty of parking in the rear of the building and would not interfere with the neighbors during the hours stated above. The Board found that the Petitioner would not be selling liquor on days not allowed by the ABCC unless authorized by the ABCC or the Select Board. The Board found that by granting this Special Permit, it would not be a derogation to the Zoning By-Law.

THIS DECISION, ALONG WITH THE CERTIFICATION FROM THE TOWN CLERK THAT NO APPEAL HAS BEN FILED, MUST BE RECORDED WITH THE PLYMOUTH COUNTY REGISTRY OF DEEDS AND PROOF OF RECORDING MUST BE FILED WITH THE BUILDING COMMISSIONER PRIOR TO THE COMMENCEMENT OF ANY USE.

**NOTE:**

- ❖ This decision may be appealed to the District Court, Housing Court, Land Court or Superior Court pursuant to Chapter 40A, Section 17. Said appeal must be filed within twenty (20) days after this decision is filed with the Town Clerk.
- ❖ Chapter 40A, Section 11, states that in part, that no variance or Special Permit shall take effect until the Town Clerk certifies that twenty (20) days have elapsed, and no appeal has been filed.
- ❖ This Board certifies that copies of this decision have been filed with the Planning Board as well as with the Town Clerk.

**FOR THE ZONING BOARD OF APPEALS**

By: \_\_\_\_\_

  
**Robert C. Rosa, III, Chair**