

February 16, 2024

VIA HAND DELIVERY AND ELECTRONIC MAIL

Mr. Thomas Schuler, Chair
Zoning Board of Appeals
Town of Stockbridge
50 Main Street
P.O. Box 417
Stockbridge, MA 01262

Re: Berkshire Gas Company – Superior Plus Energy Services, Inc.– 9 Lee Road, Stockbridge, MA 01201

Dear Chair Schuler and Members of the Zoning Board of Appeals:

We write on behalf of Superior Plus Energy Services, Inc. (“Superior”) concerning Superior’s use of the property located at 9 Lee Road, Stockbridge, MA 01201 (the “Property”), which is the subject of an appeal filed by David and Stephanie Adler of 7 Lee Road (the “Adlers”) pursuant to G.L. c. 40A, §8 and Stockbridge Zoning Bylaws Section 7.2.1, in response to an enforcement order issued by Building Commission Kollmer on November 20, 2023. Superior is the tenant under a lease with The Berkshire Gas Company (“Berkshire”), the record title owner of the Property. This matter is scheduled for a Continuation of Public Hearing at the Zoning Board of Appeals’ (the “Board’s”) public meeting on February 20, 2024.

Superior understands that the Adlers have asserted that the current use of the Property is not an allowed use. The Adlers are mistaken. The current use—the storage and distribution of propane gas to residential customers for home heating—has existed for decades and is approved by two special permits issued by the Town of Stockbridge Board of Selectmen (the “Board of Selectmen”) on May 21, 1973 (the “1973 Special Permit”), and June 16, 1981 (the “1981 Special Permit”). Copies of the 1973 and 1981 Special Permits, the application materials submitted in support of those applications, and the Board of Selectmen meeting minutes relating to them accompany this letter.

The 1973 Special Permit allows the installation of one 30,000 Gallon Underground Propane Storage Tank on the Property and contemplates the possibility of installing two more 30,000 Gallon Underground Propane Storage Tanks on the Property. The meeting minutes for the Board of Selectmen’s May 21, 1973, meeting on the application for the 1973 Special Permit reflect that the use for which the special permit was sought was to allow propane gas to be stored on the Property so that it could be introduced into the adjoining natural gas pipeline for delivery

to residential heating customers. As the minutes state, at that time the propane was delivered to the Property by truck (which remains the case today), and it was introduced into a natural gas pipeline that ran over the Property for delivery to residential customers. The minutes also recount the history of the site, which includes the Property being used as a distribution center by the Pittsfield Gas Co. in the 1930s (at which time a storage tank was employed and no gas pipeline existed) and later by the Tennessee Gas Co. to deliver natural gas by pipeline. These records establish that the Property has been used for the storage and delivery of heating fuel to customers in the Stockbridge area for nearly a century, both by pipeline and otherwise.

The 1973 Special Permit does not contain any condition restricting the manner in which propane may be distributed from the Property for home heating use by residential customers. More specifically, the permit does not include any condition or other requirement that the propane must be distributed by pipeline, rather than by truck or other method of delivery. In addition, Berkshire's April 9, 1973, application for the necessary flammable storage license under G.L. c. 148, § 13, which was approved by the Town of Stockbridge's Fire Chief, states that the proposed use was "Gas Processing and Distribution" and the "production of gas and storage of Liquified Petroleum Gases" (of which propane is one). Once again, there was no limiting condition restricting the manner of distribution. Thus, delivery both by pipeline and by truck are allowed by the 1973 Special Permit and Chapter 148 license.

The 1981 Special Permit, in turn, was issued in connection with Section 4.9.7 of the Town of Stockbridge's Zoning Bylaws to allow Berkshire to increase its propane gas storage on the Property by adding the two additional 30,000 Gallon Underground Propane Storage Tanks that had been contemplated in the 1973 application. The 1981 Special Permit describes the then-present use of the Property as "Storage and Production of Supplemental Gas Supply," and the intended use as "Additional storage to increase Supplemental Gas Supply." As with the 1973 Special Permit, the 1981 Special Permit does not contain any condition restricting the specific manner for distribution of the propane. Nothing in the 1981 Special Permit or the records supporting it compels a conclusion that the propane on the Property must be distributed by pipeline, rather than by truck. To the contrary, the meeting minutes of the Board of Selectmen's May 26, 1981, public meeting on the 1981 application recites that trucks were being used (as they were in 1973) to deliver propane to the Property.

Transitioning to today, Superior's current use of the Property is the same as the use that was being made in 1973 and 1981, which use is allowed by the 1973 and 1981 Special Permits. Superior is storing propane gas on the Property for distribution to residential heating customers in Stockbridge and the surrounding area. That use is precisely the use that is allowed by the 1973 and 1981 Special Permits.

The fact that a pipeline was used to deliver heating fuel from the Property for a number of years does not mean that no other delivery method (including the trucks used today) may be used. The record, recited above, establishes that gas was delivered from the site as early as the 1930s—before any pipeline existed on the Property. It also establishes that neither the 1973 nor the 1981 Special Permit contains a condition or other restriction mandating that propane may be delivered to customers only by way of pipeline, and not by truck. To the contrary, as the 1973

and 1981 meeting minutes establish, trucks have been used to deliver propane to the site for decades, and that delivery method was approved as part of the special permits. These facts are fatal to the Adlers' challenge.

Furthermore, it is notable that trucks have been used to deliver propane from the Property to customers for decades—this is not a new phenomenon—and that only about three to six trucks leave the site each day to take propane from the Property to customers. The traffic and other impacts associated with three to six trucks leaving the site to deliver to customers per day are hardly onerous. And those activities have been occurring since before the Adlers purchased their property in the 1990s. It is unreasonable for the Adlers to have bought their property while this proper activity was occurring, to have sat idle without complaint for decades, and only now to assert that an important community business that provides necessary heating fuel to Stockbridge residents should be shuttered.

For these reasons, the Board should reject the Alders' appeal and affirm the Building Commission's correct determination that the current use of the Property is allowed by the 1973 and 1981 Special Permits.

We hope this letter assists the Board in resolving this matter at the continued public hearing on February 20, 2024. Thank you.

Sincerely,



Peter L. Tamm
Attorney for Superior

Enclosures

cc: Matthew Kollmer, Building Commissioner
Terri Iemolini, Town Clerk
William E. Martin, Esq.