

TOWN OF AMHERST
Zoning Board of Adjustment

September 17, 2019

APPROVED-AMENDED

1 In attendance: Doug Kirkwood- Chair, Robert Rowe – Vice Chair, Jamie Ramsay –
2 Secretary/Treasurer, Charlie Vars, Danielle Pray, and Tim Kachmar – Alternate.
3 Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Minute
4 Taker.

5
6 Doug Kirkwood called the meeting to order at 7:03 pm. He explained the ZBA process and
7 introduced the Board members.

8
9 NEW BUSINESS:

10
11 **1. CASE #: PZ11655-082319 – VARIANCE**

12 **Bob Murphy (Owner & Applicant) – 3 Howe Drive Unit 1, PIN#: 002-034-002-001 -**
13 **Request for relief from Article 4.13, Section F, Paragraph 1.C to place a salt bin for**
14 **the storage of untreated rock salt. *Zoned Industrial.***

15
16 Jamie Ramsay read the public hearing notice.

17
18 Bob Murphy introduced himself and his potential tenant, Hank Leonard of Global Industrial
19 Services. Mr. Murphy explained that he bought these buildings 30 years ago and moved his
20 business into bays 4 and 5. He is currently trying to fill the building with long-term, quality
21 tenants. He has made investments in the property for the future recently, such as a new roof,
22 windows, heating/cooling system, etc. He has been in business in Amherst for over 33 years and
23 has no desire to upset his neighbors or do something that will have an adverse effect on the
24 Town's resources.

25
26 Bob Murphy explained that the variance is required due to the safety of the outdoor storage of
27 salt on the property. He believes that the design of this containment unit will assure there will be
28 no contamination. He stated that there is a gas riser in the original picture of the proposed unit,
29 but that is no longer there. This will not come into contact with the proposed salt bin at all.

30
31 Bob Murphy read through Article 4.13, Section F, Paragraph 1.C, which prohibits the placement
32 of an outdoor salt bin, but questioned whether, if the bin is impervious, asphalt-lined, and has a
33 roof, it should be considered indoor or outdoor.

34
35 Hank Leonard stated that he is the regional manager for Global Industrial Services, handling the
36 area from northern Boston to the Canadian border. The company is looking to put a branch office
37 in Amherst and will need to store bulk salt on-site for their winter operations. The salt bin will be
38 constructed on an asphalt base that will be higher than the base parking lot. The bin will hold
39 about 50 tons of material. It will be 18'x18'x18' with a 1.5" asphalt base inside. The inside will
40 taper to create a bowl shape. He explained that the salt inside must stay dry, or it is no good to
41 him. The concrete blocks are 2'x6'x2' and will interlock and stack together. The roof structure
42 will be a hoop house with a tarp covering it. There will be hay bales along the outside walls to
43 catch any runoff. The front will also be covered with a roll-up tarp.

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45 Bob Murphy addressed the issue of hardship by explaining that he has had issues in the past
46 getting quality, long-lasting tenants into his units. He is looking at this as an investment. He
47 explained that he doesn't want Global Industrial Services as a tenant, if their salt bin leaks and
48 causes issue to the Town. He believes there is a test well on the property, put there in the past,
49 which could be used to monitor for salt.

50

51 In response to a question from Doug Kirkwood, Hank Leonard explained that the construction
52 process for the salt bin should ensure no leakage into the surrounding soil. He explained that, if
53 water were to get into the bin it would be captured in the bowl shape. He has never had
54 groundwater contamination from one of these salt bins.

55

56 In response to a question from Tim Kachmar, Hank Leonard stated that each wall of the structure
57 will be totally contained. He also explained that he plans to use all but 5-6 yards of the salt and,
58 thus will not have much sitting around in the summer.

59

60 In response to a question from Jamie Ramsay, Hank Leonard stated that the trucks are loaded full
61 of salt outside of the bay. The trucks are not overfilled, heaped, or filled to the top. If any salt is
62 spilled on the ground outside of the truck, it is immediately cleaned up. The spreader sits inside
63 of the truck and 99% of the salt ends up in the bed and not on the ground. He stated that he runs a
64 tight operation and that any spilled salt would be considered a lost asset and his responsibility.

65

66 In response to a question from Robert Rowe, Bob Murphy stated that no engineering studies
67 have been done on the plan, but that he believes the design would meet and exceed the design
68 recommended by the NH DES.

69

70 In response to a question from Robert Rowe, Bob Murphy stated that he would be willing to put
71 up a bond so that the surrounding properties are protected if there happens to be a leak.

72

73 Robert Rowe stated that, as the property is located in an aquifer zone, he would feel better
74 hearing from an independent expert that understands this type of construction before moving
75 forward.

76

77 In response to a question from Danielle Pray, Hank Leonard stated that the canvas used is an
78 industrial-grade poly-canvas. If it gets a rip in it there is a kit to fix it.

79

80 In response to a question from Danielle Pray, Bob Murphy stated that the salt cannot be stored
81 inside the bay due to a space issue, and the fact that salt would be damaging to the concrete floor.

82

83 In response to a question from Jamie Ramsay, Hank Leonard stated that he does not use grout
84 mortar in his construction, but could. He has also seen it coated with tar before. There should be
85 no migration between the keys, as all of the blocks he's using will be brand new and shouldn't
86 have any perforations.

87

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88 In response to a question from Charlie Vars, Hank Leonard stated that he will raise the elevation
89 up 6” off the current parking lot, lay a second layer of asphalt, and then set the block on top.

90 In response to a question from Charlie Vars, Bob Murphy addressed the first test by stating that,
91 with his choice in tenant, he is trying to not allow any leaks or damage to the environment. He
92 addressed the second test by explaining that, the spirit of the Ordinance is being kept by totally
93 covering the structure, thus not making it exactly “outdoor storage of salt” but more of an indoor
94 structure. He addressed the third test by explaining that he has had trouble filling his bays and
95 has done his homework on having quality tenants. To address the fourth test, Mr. Murphy stated
96 that the value of the surrounding properties will not be diminished, and he hopes that the
97 upgrades to his facility will increase the values.

98

99 In response to a question from Doug Kirkwood, Bob Murphy stated that he received the
100 application paperwork from the Community Development Office, but sought no further help
101 regarding the tests.

102

103 Charlie Vars stated that he has been friends with Bob Murphy for some time, but does not
104 believe that this will cause him any trouble handling the application.

105

106 Robert Rowe stated that he will be recusing himself from this case as he does not feel
107 comfortable voting in the affirmative without some information as to if the construction is
108 environmentally sound, for the benefit of the Town and public. He asked that Tim Kachmar vote
109 in his place.

110

111 **2. CASE #: PZ11383-052819 – VARIANCE**

112

113 **Kerry Farwell (Owner) & Dania Ortiz Trinidad (Applicant) – 9 Warren Way,**
114 **PIN#: 002-146-042 - Request for relief from Article 3, Section 3.15, Paragraph G-3**
115 **to operate a nail salon as a Home Occupation. This hearing is being held due to lack**
116 **of sufficient notice. Zoned Residential/Rural.**

116

117 Jamie Ramsay read the public hearing notice.

118

119 Ramon Vasquez, Dania Ortiz Trinidad’s husband, business partner and translator, stated that the
120 proposal is to run a nail salon out of the home. There will be no negative environmental impact
121 as there are no harsh chemicals proposed to be used in this salon. There may be a little acetone or
122 alcohol, but these will not be exposed to the ground; they will be disposed of properly. There
123 will also be no signage for this business. Ms. Trinidad would like to see one client at a time, and
124 thus there will be no large crowds in the neighborhood. There is the possibility for this business
125 to grow year-after-year, but the appointments will always be controlled. The permission of the
126 property owner has been obtained.

127

128 In response to a question from Danielle Pray, Ramon Vasquez stated that there could be about 10
129 customers per day, based on how the appointments will be controlled.

130

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131 In response to a question from Danielle Pray, Ramon Vasquez stated that there is parking for six
132 cars in the driveway. He and the applicant have two cars, but these can be stored in the garage.
133

134 In response to a question from Danielle Pray, Ramon Vasquez stated that, if approval is received,
135 the business will be inspected to check that all of the necessary items are in good order. Once the
136 business has an approved inspection, it can then be randomly inspected at any time without prior
137 notification.
138

139 In response to a question from Danielle Pray, Ramon Vasquez explained that Dania Ortiz
140 Trinidad has a plan to use sets of tools that are personalized for each customer. The set will be
141 properly disinfected and kept with the individual's name on it for their next appointment.
142

143 In response to a question from Danielle Pray, Ramon Vasquez stated that Dania Ortiz Trinidad
144 was previously working at Anjoli Salon in town. He explained that she has a different vision and
145 would like to run a more personalized, customized business.
146

147 In response to a question from Robert Rowe, Ramon Vasquez stated that the street on which the
148 property is located is a short street with approximately eleven houses on it. He doesn't believe
149 any of the other houses have home occupations.
150

151 Charlie Vars stated that he has no desire to stop an entrepreneur, but the home occupation
152 ordinance specifically prohibits hair and nail salons, and beauty shops. He explained that a past
153 Board decided that those types of businesses should be forbidden in the residential zone, and he
154 believes this should be upheld. He also believes it could be difficult to tell others in the future
155 that they cannot have similar businesses, if this application is approved.
156

157 Tim Kachmar encouraged the applicant to look into working with local landlords who might be
158 willing to help an entrepreneur to start a new business.
159

160 The applicant explained that she will be the only employee at the proposed salon. The business
161 would only take up about 1/3 of the basement area.
162

163 John Avila, 7 Warren Way, questioned who will be making sure that the applicant limit her
164 business to one client at a time. He also questioned if the testimony presented from two abutters
165 at the previous Planning Board meeting regarding this case would be considered tonight. Doug
166 Kirkwood explained that those two abutters' testimonies were not permitted, as the applicant was
167 not at that meeting to respond to their questions, and it was not considered a hearing at that point.
168

169 Dan Mangan, homeowner of 8 Warren Way, stated that any business of this type is out of
170 character for this neighborhood. It is a small, kid-friendly neighborhood that does not lend itself
171 to an additional traffic burden. He stated that 'good fences make good neighbors,' and he views
172 the ordinance to be the 'good fence' in this case. He is concerned for the safety of the
173 neighborhood, as he has two small grandchildren who live there. If a salon client accidentally

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174 approached a neighboring house in the dark it could be inconvenient, upsetting, and possibly
175 dangerous.

176

177 **Charlie Vars moved to enter deliberations. Danielle Pray seconded.**

178 **All in favor.**

179

180 **CASE #: PZ11383-052819**

181 **Charlie Vars moved no regional impact on this application. Jamie Ramsay**

182 **seconded.**

183 **All in favor.**

184

185 **Discussion:**

186 Robert Rowe expressed his frustration that neither applicant appeared to completely understand
187 the law and standards that needed to be laid out in order to move forward.

188

189 Nic Strong, Community Development Director, stated that the 9 Warren Way applicant answered
190 the five tests and is seeking a variance for a use otherwise prohibited in the ordinance. A home
191 occupancy would otherwise be minor enough that a simple form would be filled out and
192 submitted to the Community Development Office.

193

194 Doug Kirkwood stated that a class B occupancy is the only type that makes sense in this case.
195 Class A would require no clients be seen. Class B allows up to 3 clients per day. Class C allows
196 up to 10 per day.

197

198 The Board discussed the layout of the proposed home business in regards to its size. They agreed
199 that the square footage of the area would need to be known first.

200

201 Nic Strong explained that the variance in this case is only needed for the use, as it is otherwise
202 prohibited. If the use was not otherwise prohibited, the applicant could fill out a form, the class
203 could be A, B, or C, and no one else would even be aware. The Board is only looking at the use
204 as it is prohibited and whether it can be permitted.

205

206 Doug Kirkwood stated that it is within the Board's purview to see if the application meets the
207 others parts of the ordinance as well.

208

209 The Board discussed the other types of uses that are permitted in that neighborhood.

210

211 1. The Variance will not be contrary to the public interest.

212 • C. Vars – not true, the ordinance was created for the public safety and health. In this case
213 the public is the neighbors and he does not feel convinced this application is within the
214 public interest.

215 • J. Ramsay – not true, this appears to be a safety concern in the neighborhood.

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- 216 • R. Rowe – not true, the ordinance is meant to provide for home-based businesses while
- 217 protecting the neighbors. While he is all for home occupations, this is a small
- 218 neighborhood that is not designed for additional customers coming in and out.
- 219 • D. Pray – not true, one abutter mentioned children, bikers, and walkers in the
- 220 neighborhood, all of which bring up issues regarding public health, safety and welfare.
- 221 • D. Kirkwood – true, Class B would only allow up to three clients per day, which is not a
- 222 huge load on the neighborhood.

223 **1 True, 4 Not True**

224

225 2. The Variance is consistent with the spirit and the intent of the Ordinance

- 226 • J. Ramsay – not true, this test was not demonstrated clearly by the applicant and he
- 227 doesn't believe this is the correct place for this business.
- 228 • R. Rowe – not true
- 229 • D. Pray – not true, this is a safety and welfare issue, and the ordinance is clear.
- 230 • C. Vars – not true
- 231 • D. Kirkwood – not true

232 **5 Not True**

233

234 3. Substantial justice is done.

- 235 • R. Rowe – not true, the Board needs to balance justice for the applicant with the
- 236 neighborhood concerns. There is substantial benefit to the applicant, but not to the
- 237 neighbors.
- 238 • D. Pray – not true, the applicant's loss in not being granted the variance is outweighed by
- 239 the public concerns.
- 240 • C. Vars – not true
- 241 • J. Ramsay – not true
- 242 • D. Kirkwood – not true

243 **5 Not True**

244

245 4. The values of the surrounding properties will not be diminished.

- 246 • D. Pray – true, there is no evidence that surrounding values will be diminished.
- 247 • C. Vars – not true, there was no testimony showing a diminishment or benefit.
- 248 • J. Ramsay – not true
- 249 • R. Rowe – not true
- 250 • D. Kirkwood – true

251 **2 True; 3 Not True**

252

253 5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary

254 hardship.

- 255 • C. Vars – not true, there was no evidence of hardship shown. This property is no different
- 256 from any other house in the neighborhood and the proposed situation could have an
- 257 adverse impact on the health and safety of the neighborhood.

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- 258 • J. Ramsay – not true, there is nothing precluding a home occupancy here, except for nail
259 salons which are prohibited. This is clear and unambiguous.
260 • R. Rowe – not true, there is nothing unique about this property among the other eleven in
261 the neighborhood that would allow for this specific use.
262 • D. Pray – not true, there was no unnecessary hardship shown to overcome this
263 requirement.
264 • D. Kirkwood – not true
265 **5 Not True**

266
267 **The Chair stated that all the tests have failed and the variance is denied.**

268
269 **CASE #: PZ11655-082319**

270 *Robert Rowe recused himself. Tim Kachmar will be voting in his place.*

271
272 **Charlie Vars moved no regional impact. Tim Kachmar seconded.**
273 **All in favor.**

274
275 **Discussion:**

276 *Robert Rowe left the meeting.*

277
278 The Board discussed the possibility of approving the application with the condition of
279 monitoring the property. The property sits over an important aquifer which spreads from Mont
280 Vernon, to Amherst, to Merrimack, and into Nashua.

281
282 Charlie Vars stated that the structure proposed appears to be as recommended and the additional
283 berm inside will make it better protected than even what the town uses for a salt bin. He also
284 mentioned that NH DOT has recently recommended that a 50/50 mix of salt and sand is
285 ineffective and that only salt should be used in most cases. He stated that the reason the
286 ordinance regarding outdoor salt storage was created was because salt used to be stored in piles
287 on the ground with a tarp on top. This is a gigantic step over that. He is concerned that the five
288 test criteria were not articulated well by the applicant, and would not want that to be the reason
289 that the application is denied. He suggested tabling the application, to allow the applicant and
290 tenant to gather engineering documents, and to know if there is a monitoring well on site.

291
292 **Jamie Ramsay moved to table consideration of this case until the October meeting,**
293 **at which time the information requested will be presented. Danielle Pray seconded.**
294 **All in favor.**

295
296 **Charlie Vars moved to exit deliberations. Jamie Ramsay seconded.**
297 **All in favor.**

298
299 Hank Leonard suggested doing soil testing at this site, because, while a well will detect
300 contaminates at a certain depth, testing of the soil on a monthly basis will detect items much
301 more quickly.

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302 Charlie Vars stated that, at the October meeting, the Board will be revisiting the case and looking
303 for an engineering stamp that the proposed salt bin will perform for its intended purpose, as the
304 industry standard describes. The Board will also be looking for specifications of the size of the
305 containment bin, and that the design meets all engineering standards. They will also be looking
306 for an updated drawing of the proposed bin.

307
308 Doug Kirkwood stated that the engineering evaluation should deal with the proposed use at this
309 site and the impact at the site.

310
311 Charlie Vars also requested seeing the specific location that the proposed bin will be located.

312
313 Doug Kirkwood stated that, once the engineer is selected, the applicant should notify the
314 Community Development Office.

315
316 OTHER BUSINESS:

317 **1. Minutes: August 20, 2019**

318
319 **Danielle Pray moved to approve the minutes of August 20, 2019 as submitted.**

320 **Charlie Vars seconded.**

321 **All in favor.**

322
323 **Tim Kachmar moved to adjourn at 9:42 p.m. Charlie Vars seconded.**

324 **All in favor.**

325
326
327
328

329 Respectfully submitted,
330 Kristan Patenaude

331
332 **Minutes approved as amended: October 15, 2019**

333