

TOWN OF AMHERST
Zoning Board of Adjustment

September 17, 2019

APPROVED-AMENDED

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

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

NEW BUSINESS:

1. CASE #: PZ11655-082319 – VARIANCE

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

Jamie Ramsay read the public hearing notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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In response to a question from Charlie Vars, Hank Leonard stated that he will raise the elevation up 6" off the current parking lot, lay a second layer of asphalt, and then set the block on top. In response to a question from Charlie Vars, Bob Murphy addressed the first test by stating that, with his choice in tenant, he is trying to not allow any leaks or damage to the environment. He addressed the second test by explaining that, the spirit of the Ordinance is being kept by totally covering the structure, thus not making it exactly "outdoor storage of salt" but more of an indoor structure. He addressed the third test by explaining that he has had trouble filling his bays and has done his homework on having quality tenants. To address the fourth test, Mr. Murphy stated that the value of the surrounding properties will not be diminished, and he hopes that the upgrades to his facility will increase the values.

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

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

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

2. CASE #: PZ11383-052819 – VARIANCE

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

Jamie Ramsay read the public hearing notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Charlie Vars moved to enter deliberations. Danielle Pray seconded.
All in favor.**

CASE #: PZ11383-052819

**Charlie Vars moved no regional impact on this application. Jamie Ramsay
seconded.
All in favor.**

Discussion:

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

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

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

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

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

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

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

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

- C. Vars – not true, the ordinance was created for the public safety and health. In this case the public is the neighbors and he does not feel convinced this application is within the public interest.
- J. Ramsay – not true, this appears to be a safety concern in the neighborhood.

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

1 True, 4 Not True

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

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

5 Not True

3. Substantial justice is done.

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

5 Not True

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

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

2 True; 3 Not True

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

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

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

5 Not True

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

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

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

Discussion:

Robert Rowe left the meeting.

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

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

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

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

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

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

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

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

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

OTHER BUSINESS:

1. Minutes: August 20, 2019

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

Charlie Vars seconded.

All in favor.

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

All in favor.

Respectfully submitted,
Kristan Patenaude

Minutes approved as amended: October 15, 2019