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**BOARD OF APPEALS**

**Hearing # 11-11**

**DECISION ON A PETITION BY RICHARD DOHERTY  
FOR A SPECIAL PERMIT WITH RESPECT TO  
22 ORCHARD DRIVE, MAP D-2/PARCEL 139**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, August 1, 2011 at 7:30 pm in Room 126 on the petition by Richard Doherty for a **SPECIAL PERMIT** under Section 3.8.1.2 of the Zoning bylaw to allow the employment of up to two non-residents to work within the residence as part of a home-based environmental consulting business located at 22 Orchard Drive. Map D-2/Parcel 139.

Present at the hearing were Ken Kozik, Member; Jon Wagner, Member; Marilyn Peterson, Member; Cheryl Frazier, Board of Appeals Secretary; and Scott Mutch Zoning Enforcement Officer. Also present was the petitioner and one abutter.

Ken Kozik opened Hearing #11-11, read the contents of the file and asked the petitioner to begin.

Richard Doherty, an environmental consultant with a home business at 22 Orchard Drive, said that he is required under Section 3.8.1.2 of the Acton Zoning Bylaw to get a Special Permit to allow for up to two non-resident employees to work in his home. He explained that he has three part time employees: one who doesn't come to his home at all; one that comes by once a month to pick things up, which he has been doing for about a year; and one employee that works with him at his home four days a week for 6 hours a day. He further explained that an environmental consultant reviews environmental reports and provides opinions to towns on the severity of environmental matters. He is also a Licensed Site Professional. For example, if someone owns a gas station or some other property where the soil and ground water may have been contaminated by chemicals, he helps them comply with the regulations by assessing the problem, finds out what's in the soil and the ground water and what risk it might pose to people. He takes samples which are stored overnight and picked up by an outside laboratory the following day to be analyzed.

When asked what chemicals he uses in his home business, he replied that he has small quantities of methanol, hydrochloric and nitric acid in 40 ml sample vials. He said that if he were to put all the chemicals together, he would have less than half a liter. The chemicals are used to preserve the site samples before he turns them over to the lab for analysis. The petitioner said he had spoken with the Board of Health who asked about the quantities of the chemicals on site and indicated that they were satisfied with his answers. He has a certificate to operate signed by the Health and Building Departments.

Scott Mutch, Acton ZEO, expressed concern regarding the storage of hazardous chemicals on the site, referring to Section 4.3.3.7 of the Acton Zoning Bylaw – HAZARDOUS MATERIAL OR WASTE, Section 4.3.3.14 – STORAGE OF HAZARDOUS MATERIAL, and to Table 4.3.7.2 – Use Regulations within the Groundwater Protection District. He indicated that the subject property satisfies the definition of the storage of hazardous materials but is located in Zone 4 of the Groundwater Protection District, for which there are no use regulations cited in Table 4.3.7.2. There are use regulations for Zones 1, 2 and 3 in Table 4.3.7.2. He would like time to research if the chemicals stored exceed the allowable threshold as defined in Section 4.3.3.7 – *“Any substance, including petroleum or derivatives thereof, or combination of substances which because of their quantity, concentration, physical, chemical, infectious, flammable, combustible, radioactive, or toxic characteristics, may cause or significantly contribute to a present or potential risk to human health, safety or welfare; to the GROUNDWATER resources; or to the natural environment....”*. Mutch agreed that he would be satisfied if a decision to grant the Special Permit was made, conditioned upon compliance with Acton Zoning bylaws, more particularly those related to the containment of Hazardous waste materials under Section 4.3.3.7, Storage under Section 4.3.3.14, and Use Regulations in Zone 4.

Abutter Ed Ellis of 25 Orchard Drive said he has never been able to tell from the street that a business is being run from the property. There are no signs and very limited activity.

The Board of Appeals, after considering the materials submitted with the Petition, together with information developed at the hearing finds that:

1. The Petitioner seeks a SPECIAL PERMIT under Section 3.8.1.2 of the Zoning bylaw to allow the employment of up to two non-residents to work within the residence as part of a home-based Environmental Consulting business located at 22 Orchard Drive. Map D-2/Parcel 139.
2. The Petitioner has three part time employees: one who never comes on site; one who comes once a month to pick things up; and one who works four days a week for six hours a day.
3. An environmental consultant reviews environmental reports and provides opinions to towns on the severity of environmental matters. As a Licensed Site Professional, the Petitioner also collects samples of soil and groundwater from suspected contaminated sites; brings samples back to his home office where they are preserved prior to being sent to a laboratory for analysis.
4. The Petitioner maintains small quantities of methanol, hydrochloric and nitric acid in 40 ml sample vials on site that are used to preserve samples before they are sent to the

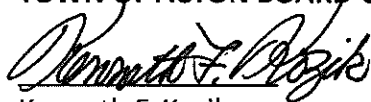
- Zoning Enforcement Officer Scott Mutch has concerns regarding the hazardous material that the Petitioner stores on site and requires more time to research the Petitioner's compliance with Sections 4.3.3.7, Section 4.3.3.14, and Table 4.3.7.2 of the Acton Zoning Bylaw. He would be agreeable to approval of a Special Permit if conditioned upon compliance by the Petitioner on the aforementioned bylaws.

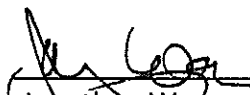
The Board of Appeals, based on the above findings, voted unanimously **3-0 to GRANT a SPECIAL PERMIT** under Section 3.8.1.2 of the Acton Zoning Bylaw to allow the employment of up to two non-residents to work within the residence as part of a home-based environmental consulting business located at 22 Orchard Drive, subject to the following condition:

1. The Petitioner shall comply with all Acton Zoning Bylaws, specifically those related to the containment of Hazardous waste materials under Section 4.3.3.7, Storage under Section 4.3.3.14, and the Regulations in Zone 4.

Any person aggrieved by this decision may appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

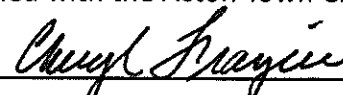
**TOWN OF ACTON BOARD OF APPEALS**

  
Kenneth F. Kozik

  
Jonathan Wagner

  
Marilyn Peterson

certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on Sept 9, 2011.

  
Cheryl Frazier, Administrative Assistant, Board of Appeals

EFFECTIVE DATE OF SPECIAL PERMIT: ~~No~~ permit or modification, extension or renewal thereof, shall take effect until a copy of the decision has been recorded in the Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if such an appeal has been filed, it has been dismissed or denied.

This Special Permit must be exercised within 2 years of its effective date.