

# Town of Salisbury

## Zoning Board of Adjustment

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### *Zoning Board of Adjustment Meeting Summary April 9, 2013*

Arthur Garvin	Chairperson	Present
Mark Hutchins	ZBA-Vice Chairperson	Absent
Ken Mailloux	ZBA Member	Present
David Merwin	ZBA Member	Present
Rose Fife	ZBA Member	Absent
Ken Ross-Raymond	ZBA-Alternate/Selectman	Present
Gary Clark	ZBA-Alternate	Absent
Vacant	ZBA-Alternate	
Vacant	ZBA-Alternate	
Vacant	ZBA-Alternate	
April Rollins	ZBA - Assistant	Present

**Visitors:** Ally Altman-Dinh, Don Dinh, Ronald Altman, Hannah Howard, Gary Clark, Cindy Romano and Nicolette Gala (abutter).

**Election of Officers** - Mark Hutchins made a **motion** to appoint Arthur Garvin as Chair and Ken Ross-Raymond **seconded** the motion. The **motion passed unanimously**. Ken Ross-Raymond made a **motion** to appoint Mark Hutchins as Vice Chair and David Merwin **seconded** the motion. The **motion passed unanimously**. Ken Mailloux was appointed a member of the ZBA for a term of one year and took the "Oath of Office" prior to the meeting. Gary Clark was appointed an alternate member at the end of the meeting and will be sworn-in at a later date.

Arthur Garvin called the meeting to order at 6:58 p.m. Chair Garvin appointed Ken Ross-Raymond to be voting member.

**Public Hearing – Variance Application / Major Home Occupation for Applicant Ally Altman-Dinh & Don Dinh located at 7 Montgomery Road (Tax Map 248, Lot 25)** – Chair Garvin swore-in Ally Altman-Dinh to provide testimony. Ally Altman-Dinh stated she has made an application to run a small business to teach flying trapeze and Olympic level trampoline, which will be conducted outside because forty feet of clearance is needed for the "rig". Ally Altman-Dinh informed the ZBA that the business would be seasonal and run in the late morning on the weekends (2 classes) & in the evenings during the week days (one class). Ally Altman-Dinh stated this is a new business for her & her husband but they have been doing this for seven years with another company. Ally Altman-Dinh explained that trapeze has been added to the Olympics and interest is growing, so the business will be a teaching facility to take people as far as they want to go. Dave Merwin asked if there was some sort of netting on the ground. Ally Altman-Dinh replied there is netting underneath and an apron on each side/end but students will be on safety lines with staff members and before they are released they are held with a belt harness. Ally Altman-Dinh noted that her husband (Don) is an engineer and reviews their materials for safety, no other company does that, usually it is run by circus people. Ally Altman-Dinh informed the board that they are certified by the United States Gymnastics Association and they

want to make the experience fun & safe for everyone. Vice Chair Hutchins stated this sounds like a serious undertaking and asked about noise. Ally Altman-Dinh replied the equipment does not have mechanical components and will not be like an amusement park but there will be occasional “whoops” of joy, there also is a certain level of quietness needed for the Instructors to communicate with students and each other. Ally Altman-Dinh noted they have worked in a noisy environment before and have adopted a type of sign language and she has some supplemental information if the board would like to review it. Ally Altman-Dinh stated the trapeze can not be spotted from the road, only the house and it does not impact the environment (green business). Ken Mailloux asked what type of access emergency services would have, if something were to happen. Ally Altman-Dinh replied the business has not received approval yet, so she hasn't sought a discussion with the Fire Department but will because she would want them (F.D.) to train with them for a worst case scenario. Ally Altman-Dinh noted they have done this type of training before and the F.D. found it to be very valuable, plus they are AED & CPR certified. The ZBA reviewed an aerial photo of the property from Google Maps. Ally Altman-Dinh noted there is a sixteen foot gate and plenty of room for large vehicles to access the property. Vice Chair Hutchins asked why they filed the Major Home Occupation application. Ally Altman-Dinh replied the business would be outside of the residence and that was the only item which made the business not comply with the minor home occupation. Ally Altman-Dinh noted there would only be three employees and they would all live there. Dave Merwin asked when the business would operate and Ally Altman-Dinh replied from May through October. Dave Merwin asked if there would be an Open House. Ally Altman-Dinh replied yes and they have also spoken with the Salisbury Old Home Day Committee. Ally Altman-Dinh stated they want to be community based and do not want to change the neighborhood but if the business becomes too big, they will move it to where it fits.

Chair Garvin referred to ten (10) pages of information that was included for tonight's meeting by ZA Rollins and asked that the information be marked ZBA exhibit #1. Chair Garvin stated there are specific restrictions that were contained in the covenant related to the property. He also noted the applicant(s) are not the owners, to which Ally Altman-Dinh replied correct. Chair Garvin asked if the owners of the property ( Ally Altman-Dinh's parents) have provided any help in regards to the business and Ally Altman-Dinh replied yes, her mother is a promotional designer. Chair Garvin stated amongst the conditions in the deed's covenants & restrictions for Salisbury Farm under Article II, item 2.1, it states; “Each lot shall be used only for single family residential purposes; provided, however, that nothing herein shall be deemed to prohibit (a) home occupations presently permitted thereon as a matter of right in the zoning district in which the property is located by the Zoning Ordinance of the Town of Salisbury or (b) the rental of such lot for such purposes. Chair Garvin asked Mrs. Altman-Dinh if she believed the ZBA has the authority to over ride item 2.1. Chair Garvin then asked if they have consulted a Land Use Attorney regarding the restrictions and could have the opportunity to do so if they wished. Chair Garvin asked if there was a Home Owner's Association in connection with the property and Ronald Altman replied no. Chair Garvin asked if there was any other body and Ronald Altman replied no, there is not a body handling the covenants & restrictions. Chair Garvin read the list of permitted uses in the zoning ordinance and stated none have to do with trapeze.

Chair Garvin opened the Public Hearing at 7:29 p.m. Nicolette Gala asked where the parking area would be located. Ally Altman-Dinh replied the parking would be in the driveway near the house & barn and would not impact the road or the view. Hannah Howard stated there is no association and no one has ever checked to see whether things are happening or not. Ally Altman-Dinh noted she has sent letters to all of the abutters, plus they received the certified legal notices from the ZBA. Ken Ross-Raymond asked if they would be putting up signage and Ally Altman-Dinh replied yes, at the end of the driveway where people would turn in, with another sign on the rig. Ken Mailloux read that only one double sided sign, six square feet in size could be posted according the ordinance.

Ken Mailloux read the Special exceptions for home occupations and noted there are eight things that we are allowing but what power does the board have to make additions. Chair Garvin stated he feels this is a Use Variance and has nothing to do with the residential use of the property and it is clearly the business of the people running the school. Ken Mailloux stated he feels this is a "catch 22" due to the discussion that was held by the PB regarding minor & major home occupations and there needs to be a procedure for this type of issue. Chair Garvin referred to RSA 674:33 and explained that this section of the law was amended by the Legislature; for it requires applicants to prove to us an unnecessary hardship for the granting of the use variance. Chair Garvin read 674:33, ii (B). Ally Altman-Dinh stated if the rig was for personal use then no permit would be needed but because they are offering classes, so a permit is required. Chair Garvin replied the business is under the minor scheme and it doesn't change the dwelling. Selectman Ross-Raymond stated he is unsure if it is a Use Variance because recreational use is allowed in the residential & agricultural zones (page #9).

Chair Garvin swore-in Hannah Howard. Hannah Howard stated this business is no different than someone who provides horse riding lessons from their home.

Vice Chair Hutchins stated he is unsure the board can pass this because there is no hardship and it is not a special exception but it is also not in the board's authority to change the intent of the zoning ordinance. Vice Chair Hutchins noted that Chair Garvin tried to better define home occupations in 2007 and the changes were shut down by the Town's residents. Hannah Howard explained not granting the business would be a financial hardship. Ken Mailloux replied the hardship would be with the land and not the applicant. Ally Altman-Dinh asked who would have the authority to change the Special Exception scheme then and Vice Chair Hutchins replied the Town, at Town Meeting. Vice Chair Hutchins noted the ZBA would have the authority if the proposed use was specifically authorized in the Zoning Regulations.

Selectman Ross-Raymond suggested consulting Town Counsel. Chair Garvin stated the ZBA would need to consult an independent land use Attorney and not the BOS's Attorney. Chair Garvin noted one option for the applicant would be to construct the business and get it going then wait to see if someone does or doesn't complain but then there could be a cease & desist order followed by daily fines. Ally Altman-Dinh asked if that route would cause the two governing bodies to figure out what to do. Chair Garvin replied she would not hear from the ZBA but may hear from the Board of Selectmen. Chair Garvin informed Ally Altman-Dinh they could ask for a decision tonight or consult with a land use attorney & ask for a continuance of the public hearing. Ally Altman-Dinh asked if that meant another 30 days before she could meet with the board and Chair Garvin replied no, they could meet sooner if needed. Ally Altman-Dinh requested a public hearing continuance. The Public Hearing was closed at 8:34 p.m.

**Review and Approval of Draft meeting minutes 12/11/12** – Ken Ross-Raymond made a **motion** to accept the December 11, 2012 draft meeting minutes without changes. David Merwin **seconded** the motion. The **motion passed unanimously**.

### **ADJOURNMENT**

Dave Merwin made a **motion** to adjourn the meeting at 8:41 p.m. Vice Chair Hutchins **seconded** the motion. **Motion passed unanimously**.

Respectfully submitted by,  
April Rollins, Zoning Assistant