

**BEFORE THE BOARD OF ADJUSTMENT FOR THE
CITY OF KENAI, ALASKA**

210 Fidalgo Avenue
Kenai, Alaska 99611

**IN THE MATTER OF THE APPEAL
OF PAULA CARLYLE: APPEAL OF
PLANNING AND ZONING
COMMISSION ACTION GRANTING A
CONDITIONAL USE PERMIT FOR
PROFESSIONAL OFFICES AT
1311 KIANA LANE**

Case No. BA-24-01

DECISION ON APPEAL

I. INTRODUCTION

Paula Carlyle appealed the DECISION of the City of Kenai Planning and Zoning Commission (“Commission”) approving a Conditional Use Permit to operate Professional Offices, located at 1311 Kiana Lane, Kenai, Alaska. For the reasons set forth below, the Board of Adjustment UPHOLDS and MODIFIES the DECISION of the Planning and Zoning Commission approving the Conditional Use Permit and imposes ADDITIONAL CONDITIONS.

II. PROCEDURAL HISTORY

On May 23, 2024, the City of Kenai (City) received an application from Salamatof Native Association, Inc., requesting a Conditional Use Permit to operate professional offices¹ at 1311 Kiana Lane. [R.41-42] The site is located in an area zoned Suburban Residential. [R.35] Pursuant to KMC 14.22- Land Use Table, professional offices require a conditional use permit in the Suburban Residential Zone. There is an existing structure and parking lot on the property that has previously been used as church, school, yoga studio and martial arts studio. [R.36, 61] The application and testimony indicate the building would be utilized by the Salamatof Tribe as offices

¹ The application refers to an “administrative building” which most closely aligns with “professional offices” in the City’s Land Use Table.

for its staff for five to seven employees operating Monday through Friday from 8 am to 5 pm. [R.41, R.61]

On June 26, 2024, the Commission held a public hearing on Resolution No. PZ2024-16, a resolution granting the Conditional Use Permit for “Administrative Offices”. [R 31- 34] At the public hearing, the Planning Director recommended approval of the conditional use permit for professional offices with certain recommended conditions, noting that the property had previously been used for nonresidential purposes and the proposed use met the required conditions of a conditional use permit. [R.61] Chris Mumfor, President and CEO of the Salmatof Native Association explained that the Corporation intended to purchase the building for the Tribe’s administrative offices. [R.61] Eric Morrison, Director of the Tribe, commented that the proposed use fit within the Institutional Land Use designation for the property and would provide social and cultural service to the community. [R.61] Brad Brown, a resident expressed opposition to the proposed use because it could generate heavy traffic, posed a danger to neighborhood children, could exacerbate on street parking problems and violated the character of the suburban residential neighborhood. [R.61] Raymond Hanson expressed similar concerns, including concerns about the Tribe’s use of the property expanding to other uses and uncertainty as to what future plans were for the property. [R.61] Tim Davenport testified to similar worries, and that the proposed use would decrease his families’ quality of life and property values. [R.62] Danette Howland, the current occupant of the building, supported the conditional use permit, noting that the prior use housed a successful martial arts and yoga studio attracting up to 30 people at a time. She stated that issues with kids using the street for four wheelers and motorcycles was a separate enforcement issue. [R.62] Kathy McMurray opposed the proposed use due to traffic and safety issues. [R.62]

The Planning and Zoning Commission approved Resolution No. PZ2024-16, with three yes votes and one no vote.

On July 9, 2024, Paula Carlyle submitted an Appeal of the Decision by the Planning and Zoning Commission to the Board of Adjustment. [R.4-6] The Board of Adjustment held an adjudicatory hearing on August 21, 2024, where both the Appellants and Appellee appeared and presented evidence and argument.

III. STANDARD OF REVIEW

Kenai Municipal Code provides that “...the Board of Adjustment may reverse, remand or affirm, wholly or partly, or may modify the order, requirement, decision or determination, as ought to be made, and to that end shall have all the powers of the body from whom the appeal is taken.”² The Board reviews the appeal *de novo*.³ Therefore, no deference is given to the decision by the Commission. While public testimony does hold evidentiary weight, the Board cannot base its decision solely on support or opposition by the public.⁴

The function of the Board is to determine whether the requirements for a conditional use permit have been met and grant or deny the conditional use permit on the conditions supported by the substantial evidence before it.⁵ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁶ The Board must make specific findings supporting its conclusions.⁷

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kenai Municipal Code 14.20.150(a) states in relevant part that: “[t]he conditional use permit procedure is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property and the application of controls and safeguards to assure that the proposed use will be compatible with the surroundings.” The applicant for a conditional use permit has the burden of establishing that the conditional use meets the following six criteria:

- (1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;
- (2) The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired;
- (3) The proposed use is in harmony with the Comprehensive Plan;
- (4) Public services and facilities are adequate to serve the proposed use;
- (5) The proposed use will not be harmful to the public safety, health or welfare; and
- (6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions should be met by the applicant. These may include,

² KMC 14.20.290(f)(2).

³ *Id.*

⁴ *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 172 n.11(Alaska 1993)

⁵ *Id.* At 931-932.

⁶ *Id.* Citing *Kiener v. City of Anchorage*, 378 P.2d 406, 411(Alaska 1963).

⁷ *Fields*, at 932. And KMC 14.20.180(c).

but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.⁸

The evidence indicates that the subject property is adjacent to a city maintained 21-foot-wide paved road in a neighborhood of primarily mixed single family and multi-family residential improvements. Testimony indicates that existing traffic issues are present due to on-street parking that at least seasonally is a violation of City code as well as use of the street by youth on all-terrain vehicles. Two accidents were described to the Board, one involving a pet, and another a child on a bicycle.

Testimony indicates that the building located on the property of the proposed conditional use, was first built as a church and welcomed into the neighborhood as the surrounding property was mostly owned by parishioners. The property is designated in the City's land use plan as an institutional use. Currently the property is owned by Danette Howland and her family that occupy the structure as a residence, even though a building permit was never issued by the City approving a change in use from an institutional use to a residential use. The Howland's bought the property to open a yoga and martial arts studio, obtained a CUP from the City and operated the property as such with up to 30 clients at a time until approximately 5 years ago. The Howland's now wish to move and testified that they cannot afford to maintain the large structure. They testified that while they operated the martial arts and yoga studio no neighbors complained to them about increased vehicular traffic even when they had bigger programs such as partnerships with the Boys and Girls Club.

Residents and property owners in the neighborhood testified that the neighborhood was a close community where neighbors looked after each other. However, there was also discussion of one problematic house that created neighborhood issues. There was mixed testimony about noise from current traffic, but generally the residents and property owners testified that they were worried about the residential nature of the neighborhood changing. There was concern about safety from increased traffic and strangers in the area going to and from the proposed offices. Testimony also expressed concerns about negative impacts on quality of life and property values. Concern was expressed regarding the ability for emergency vehicles to respond because of the

⁸ KMC 14.20.150(d)(1-6).

width of the road and on-street parking. Generally, the residents and Appellant testified that they did not want a non-residential use in their residential neighborhood.

The Appellee provided that the Salamatof Tribe desired to use the building as an office space for 5 to 7 of its employees in furtherance of its mission to provide community and cultural services. Mr. Morrison, who represented the Tribe, stated that there would be some non-employees coming to the building for purposes such as tribal enrollment, but that they would not be feeding or housing people at the property. He stated that he understood that this application was just for professional offices and that other non-residential uses not permitted by the zoning code would require additional conditional use permits.

A. The Applicant Met Its Burden to Show that the Use of the Property as a Professional Office is Consistent with the Purpose of the Zoning Code and Purposes and Intent of the Zoning District.

The Zoning Code through the conditional use process is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property. The purpose and intent of the Suburban Residential Zone is:

(a) *Intent.* The RS Zone is intended to provide for medium density residential development in areas which will be provided with common utility systems. The specific intent in establishing this zone is:

- (1) To separate residential structures to an extent which will allow for adequate light, air and privacy;
- (2) To prohibit uses which would:
 - (A) Violate the residential character of the environment;
 - (B) Generate heavy traffic in predominantly residential areas.⁹

In this case, the substantial evidence shows that the use of the existing structure as professional office space with the limits imposed below would not violate the purpose and intent of the RS Zone. The record and testimony indicate that the residential medium density character of the neighborhood would be maintained. The use would be primarily limited to the property with some increased traffic on the public road. The Board also finds that the imposition of a limitation

⁹ KMC 14.20.090

on the number of employees using the facility will reduce the risk of heavy traffic. Compared to other allowable permitted uses in the RS Zone, such as up to six-unit multifamily housing, a small professional office should not generate unanticipated or unreasonable traffic numbers in the Zone. The current owner of the property provided that neighbors did not complain when they operated a business in the location with up to 30 people attending certain events. The prior use was as a church which would have generated much larger numbers of visitors, though possibly less frequently. The use would not modify the existing structure in a way that jeopardizes the light, air and privacy of the residences, as the use will not expand the existing structure. The record indicates that the proposed use meets minimum development requirements such as lot sizes, building setbacks and lot coverage.

B. The Applicant Met Its Burden to Show that the Economic and Noneconomic Value of Adjoining Property or Neighborhood Would Not Be Significantly Impaired.

The requirements for granting a conditional use permit require the applicant to show the economic and noneconomic value of adjoining property and the neighborhood would not be significantly impaired by the use. There is already a structure on the property that has been used previously as a church, school, auditorium, yoga and martial arts studio. The use as a professional office space would not change the appearance of the structure in a way that would have a negative impact on neighboring properties. The use approved by this conditional use permit would not expand the impact of the non-residential structure in the residential neighborhood. The Applicant stated that the Tribe did not have plans to expand the structure in the immediate future and such expansion is not allowed by approval of this conditional use permit. The current occupants testified that they are unable to keep up with maintenance of the property. New occupants with the ability to maintain the property would reasonably improve its appearance and impact on neighboring properties over a deteriorated or even unoccupied structure. Even if this use was not permitted, the building and its impact, if any, on the neighborhood would remain.

Imposing conditions on the number of employees and hours of operation will further alleviate any potential impairment of value to the neighborhood and its residents consistent with those conditions imposed by the Planning and Zoning Commission including buffers, setbacks and screening requirements. The evidence, including testimony from the current property owner, indicates that prior institutional uses of the building have had minimal impact. The Board

understands that when the church structure was first built, many of the surrounding properties were owned by those of the same faith served by the church, however this changed over time. While it is important to understand how the building came to be, it does not change the fact that today the old institutional building remains on the property. No evidence was presented that the prior institutional and studio uses generated a disturbance to the neighbors.

While residents have made conclusory statements that the use would have a negative impact on their property values and quality of life, no evidence was presented that supports that the use of the existing building for office space would have a negative impact. The proposed use, as limited by this decision and the decision of the Planning and Zoning Commission, should not have impacts beyond that of other uses permitted in the RS Zone with regard to traffic and safety, the primary issues raised by those opposed to the use. It also appears to the Board, that many of the residents that testified were concerned about future expanded uses of the structure such as to feed or house members of the community or homeless populations, which this conditional use permit considered by the board does not allow.

C. The Applicant showed that the Proposed Use is in Harmony with the Comprehensive Plan.

The Land Use Plan from the 2016 Comprehensive Plan identifies the subject property as an institutional use. An Institutional use is intended to provide an area in which government and tax exempt institutions can offer social and cultural amenities to the citizens of the community. The primary Institutional use is public non-profit, and quasi-public uses including government offices and facilities, schools, churches and other community service-oriented facilities. The use of this property for professional offices to provide community and social services fits well with the designated land use as institutional.

Other Goals included in the Comprehensive Plan include revitalizing existing structures and enhance properties for community use, promote quality of life, and to develop land use strategies to implement a forward looking approach to community growth and development.

While the Appellant argues that the proposed use will have a negative impact on the quality of life in the neighborhood, the Board finds that proposed use, with certain limitations imposed, will not have an adverse effect on the quality of life in the neighborhood, given the limited number

of employees and operating hours, availability of parking spaces on the lot, and that the building already exists and the use will likely prevent the building from falling into disrepair. The Board further finds that approval of this conditional use will further the goal of revitalizing existing structures, enhance the property for community use and is a forward looking approach to community growth and development.

D. Public Services and Facilities are Adequate to Serve the Proposed Use.

The Board finds that public services and facilities are adequate to serve the proposed professional office use. The property is adjacent to a paved road maintained by the City. There is adequate police and fire response available and utilities are available including water, sewer and natural gas. The record indicates that the available onsite, off-street parking greatly exceeds the need, so that no employees or guests of the Tribe would be parking offsite, or on public roads. There was testimony about a recent house fire that was extinguished by the Kenai Fire Department indicating emergency services were able to successfully access the neighborhood. Concern expressed about illegal parking on the road, and City snowplow activities that might narrow the roads travel way should be addressed through separate venues with City Administration.

E. The Proposed Use Will not be Harmful to Public Safety, Health or Welfare.

The Board finds that the proposed use would not be harmful to public health safety or welfare. The Board finds that with a limited number of employees, the proposed use will not generate heavy traffic and the traffic that will be generated is consistent with other permitted uses in the zone, such as a six unit multi family dwelling. Other prior uses of the existing structure have generated more traffic, and the Board does not find any record of adverse impact or complaints from the prior use. While the Appellant and others testified that safety issues exist due to existing traffic on the road and on street parking, these issues will not be significantly impacted by the proposed use, and parking issues and use of the road by four wheelers and motorcycles are issues that should be separately addressed by law enforcement and enforcement of the City's parking restrictions as stated above. Concern was also raised about emergency vehicle access; however, as provided above a house fire was described to the Board with City fire response, and it was not expressed that the fire response was in any way impeded by road safety issues.

The Applicant for the conditional use permit stated the services performed in the professional office space will improve public health, safety and welfare through the social services provided. The Board agrees that the Tribe's services will improve the community through the provision of social services.

F. There are Additional Conditions that can be Imposed on the Conditional Use Permit that Would Allow the Use to Satisfy all of the Requirements for Granting a Conditional Use Permit for Professional Offices.

In Addition to the conditions imposed by the Planning and Zoning Commission on the conditional use permit. The Board finds that the following additional conditions are necessary:

1. No more than eight full time equivalent employees may work at the facility at one time.
2. Hours of operation are limited from 8:00 am to 5:00 pm.

CONCLUSION

After reviewing the evidence and presentation of the parties and testimony during the public hearing, the Board of Adjustment Affirms the Decision of the Planning and Zoning Commission based on the findings and conclusion of law stated above and imposes additional conditions on the approval of the Conditional Use permit as provided in this Decision. The Board desires to make it clear to all involved parties that approval of the conditional use permit is only for professional office space as limited by the conditions in the permit. This approval does not, and is not intended to authorize any other non-permitted uses of the property, or make it in any way easier for any future conditional use permits for other uses on the property to be obtained.

Dated this 5th day of September, 2024

BY: Brian G. Gabriel
Brian G. Gabriel, Board Chair

BY: James Baisden
James Baisden, Board Member

BY: Phil Daniel
Phil Daniel, Board Member

BY: Deborah Sounart
Deborah Sounart, Board Member

BY: Victoria Askin
Victoria Askin, Board Members

BY: Henry Knackstedt
Henry Knackstedt, Board Member

Notice of Right to Appeal

This decision constitutes the final decision of the City of Kenai Board of Adjustment in this matter. An appeal of this decision to the Alaska Superior Court must be filed within thirty (30) days of the date of this decision, in accordance with Kenai Municipal Code Section 14.20.300, Alaska Statute 22.10.020(d), and Alaska Rule of Appellate Procedure 602(a)(2).

CERTIFICATE OF DISTRIBUTION

I certify that on 5th day of September, 2024, a copy of this DECISION ON APPEAL was distributed by Certified and/or First-Class Mail to each of the following:

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