**MEMBERS PRESENT: ALSO PRESENT:**

Vincent Finizia, Chairman David Gove, Attorney

Walter Popailo Alexa Burchianti, Secretary

Gregg Feigelson

Dan Doellinger

Tom Atkin, Alternate

**ABSENT:** Bob Favara & Julie Bell

The meeting was opened at 7:00 pm by the Acting Chairman Vincent Finizia who led those present in the Pledge of Allegiance.

Motion made to adopt minutes from September 21, 2017.

Motion made by Walter. Second by Tom. Motion carried 4-0

**DARIN HECHT – AREA VARIANCE & INTERPRETATION**

Alec Gladd attorney for Darin Hecht 1046 Lakes Road. They pulled the use Variance application and revised it to 2 area variances and an interpretation that this is a permissible home occupation. Counsel read the brief description of the definition of the term “Home Occupation”. Counsel stated they would put forth that it’s an internet based home business is something that is customarily conducted within the dwelling by the residence thereof.

Mr. Hecht has a wholesale beauty supply business that he runs out of his barn. One of the issues with that is, that it is conducted within the dwelling. What they are adding to this part of the application is connecting the house to the barn with a breezeway so it becomes all one structure so it is therefore being conducted within the dwelling.

Gregg: Are you arguing that the scale of this is customary for a home occupation? Customary is keyword in my mind. Counsel: Yes, the definition also gives what it is to include and what it is not to include. The things for it to not include are businesses that generate a lot of foot traffic. This instance, because he is a wholesale supplier it’s not a retail store front. No one goes to his property. He doesn’t generate any foot traffic so it is in line with some of those other uses that a home occupation could be.

It also has some dimensional requirements, “said activity shall not have more than one non-resident employee” so therefore that’s why they are asking for one of the area variances. Counsel states he has 2 employees. He has an office worker and a shipping clerk. That is 1 above what the definition allows.

Chairman: States that this business has been operating for 11 years with no problems. Just wanted that on the record.

The definition also includes a requirement that it shall not occupy more than ½ of the ground floor are of the dwelling. So they also have to seek an area variance for that requirement as well. Based on the size of barn dedicated to the home occupation use because that is more than ½ of the ground floor area. The total sq. footage of the barns now is 1,950sq ft. the first floor area of his house is 1,278sq. ft. so the difference is 336sq ft. for the additional area variance.

Gregg: So is there an issue the setbacks if the house becomes attached to an accessory building.

Counsel Gladd: To that point with the barn not meeting the setbacks, our position is that it is pre-existing non-conforming structure because of the physical dimensions. And those dimensions are not changing, and not moving it at all. This structure can continue as is because they are not amending it. But if the board looks at it more like an change of intensity of use and you want them to add that variance into the application they would be willing to, but our position is that they don’t think they have to because it is pre-existing non-conforming of the physical dimensions and they are not altering the physical dimensions of the barn itself.

The breezeway would be about 20ft. No permit was filed yet for the breezeway until they get an answer from the Zoning Board.

Gregg: Personal opinion it seems like a very clever approach but seems a little squirrely and I’m concerned in terms of the precedence it sets. Does anyone have any concerns? Or any examples of where there is a warehouse that is bigger than the primary residence? And would this become common?

Walter: Are we setting precedence that anyone that adds a breezeway to a barn could do that?

Chairman: If she gets denied at the building department then this gets squashed completely. The breezeway would be legal I’m sure and would be constructed the way Joe would want it. I don’t know if we would be setting a precedent. Breezeways are breezeways. Gregg: This tactic has used for other things approved by this board but nothing like this. Chairman: Well on another note the Planning Board Chairman has been initiating not through the legal channels, having old barns in Orange County do something more than fall apart. He doesn’t fall in that category because he was taking care of the barn he has a business in it, I’m sure Joe will go in and check for fire safety issues etc. Darin: You mentioned falling apart. It was at one point dilapidated it had a dirt floor. Now it has a concrete floor, we have done things, obviously Joe has to come in that’s fine to make sure it’s safe.

Dan: What cause the switch from the use variance to this application now? Dan stated he likes the other one better. Counsel: When you look at the bulk table there were 16 different uses that you would have to distinguish and for each and every use you would have to show that they couldn’t realize a reasonable rate of return, if they used it for that use. And even if 1 of those uses you could get a reasonable return then they wouldn’t be entitled to the variance.

Walter: So we know that if they attached the breezeway to the barn it becomes part of the dwelling? Is that correct? Alexa: Yes Walter: Once the dwelling comes, if more than half of it is being used for the business then it needs a variance? So the business is allowed there he just has to much space? Alexa: No, the first part of this is an interpretation. The board needs to interpret what a home occupation is and if this business falls into that definition. The second part of this application is the 2 area variances.

Gregg: The code is a little ambiguous because this is more of a “modern” home occupation.

Motion made to set a Public Hearing for November 16, 2017. Motion made by Walter. Second by Tom. Motion carried 5-0.

**SANDRA MARCIANO – AREA VARIANCE**

Daniel Yanosh surveyor for Chaz Byrne and Sandra Marciano. 68 Goosepond Mtn Rd. s/b/l 4-1-11.1 and s/b/l 4-1-11.3 Chaz Byrne is interested in purchasing 1.27 acres of land from Sandra Marciano, whose property is currently 3.10 acres in AR-3 zone which is conforming. Chaz Byrne currently has 1.30 acres which is currently pre-existing non-conforming. It was originally a 3 lot sub-division in 1996 where the zoning was where the lots were 1 acre conforming.

Dan Yanosh states that because the zoning change is why it’s creating a non-conforming lot. Otherwise both lots would still be conforming.

Motion made for Public Hearing for November 16, 2017. Motion made by Dan. Second by Gregg. Motion carried 5-0.

Motion to adjourn meeting. Motion made by Gregg. Second by Walter. Motion carried 5-0.

Respectfully Submitted,

Alexa Burchianti

Zoning Board of Appeals Secretary