

Town Of Chester Zoning Board of Appeals
1786 Kings Highway, Chester, New York 10918
Phone: (845) 469-7000, ext. 308 Fax: (845) 469-9242

APPLICATION TO THE ZONING BOARD OF APPEALS

PART I: OWNER INFORMATION-Please type or print below

DATE: 10/05/2017

Property Location: 1046 Lakes Road, Monroe, NY 10950

Owner(s) of Record: Full name(s) Darin Hecht

Home Phone#: (845) 782 - 2955 Work #: () - Cell #: (914) 450 - 6774

Email address: dhecht@khindustrialsales.com

Mailing Address of Owner(s): 1046 Lakes Road

City, State, Zip Code: Monroe, NY, 10950

PART II: AGENT INFORMATION- If applicable (Please attach Owner Authorization letter)

Agent Name: _____

Work #: () - Cell #: () -

Email Address: _____

Mailing Address of Agent: _____

City, State, Zip Code: _____

PART III: ATTORNEY INFORMATION

Attorney for Applicant: Burke, Miele, Golden & Naughton, LLP

Mailing Address of Attorney: P.O. Box 216, 40 Matthews St., Suite 209

City, State, Zip Code: Goshen, NY, 10924 Phone # (845) 294 - 4080

PART IV: APPLICATION DETAILS

Note: If this application is being made by someone other than the owner, the owner must sign the owner's authorization attached to this document.

Orange County Tax Map Number: 18-1-52 Section/Block/Lot 18 / 1 / 52

Zoning District: SR-2

Lot Size: .95 acres

Type of Variance Sought: (check one or more)

☒ Area Variance

☐ Use Variance

☒ Interpretation

Referred by:

☐ Planning Board

☒ Code Enforcement Officer

State in factual terms the exact manner in which applicant seeks from the Zoning Board of Appeals:

Applicant respectfully seeks an interpretation that his limited business use of his property for many years is a home occupation as defined under the Code and is thus permitted within the SR-2 District. Ancillary to that interpretation is the applicant's request for two area variances. One for the maximum number of nonresident employees allowed, and the other for the maximum ground floor area that may be dedicated to the home occupation under the definition.

A summary statement of the practical difficulty because of the existing zoning regulations for the subject premises as follows:

When Town Law § 267 was revised in 1992 the "practical difficulties" test for area variances was abrogated, in favor of the present statutory balancing test for area variances, weighing the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community. See *Sasso v. Osgood*, 86 N.Y.2d 374 (1995). The five factors for each requested variance are discussed below.

Describe any circumstances supporting this application:

Applicant has been operating his home business without incident since April 2006 and the complaint to the Code Enforcement Officer which lead to the Cease and Desist, and Orders to Remedy, are the result of a personal dispute between the applicant and a neighbor. The requested interpretation of a home occupation will allow the present long-standing limited business use of the property to continue.

Has a variance or special exception use ever been applied for on this property?

☐ Yes ☒ No

If yes, indicate the Zoning Board of Appeals date of decision: _____

Is the subject property located within 500 feet of any of the following?

☐ Town or Village boundary line (if yes, indicate which Town or Village: _____)

☐ State road, park, or other recreational facility

☒ County Road or right of way

☐ Federal owned property

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OWNER AUTHORIZATION

STATE OF NEW YORK

COUNTY OF ORANGE

I, _____

residing at _____

being the owner of premises _____

also known as Orange County Tax Map #: _____

hereby authorize _____

whose mailing address is _____

to appear on my behalf before the _____

of the Town of Chester, and to file any documents required with reference to my

application for _____

I hereby agree to allow my agent, whose name appears above, to act on my behalf and I further agree to abide by any requirements imposed by this Board as a condition of their approval.

OWNER SIGNATURE

Sworn to before me this _____

Day of _____, 20____

Notary Public

ZONING BOARD OF APPEALS

OWNERS AUTHORIZATION FOR A SITE VISIT

I (Please print) _____

grant permission for members of the Zoning Board of Appeals and/or representatives of same Board to make a site visit on my property should they deem it necessary to review my application. The property location is:

Signed,

Date:

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Interpretation Only

A request for an interpretation is made for the following reason:

Applicant operates a beauty supply home business and the applicant's property is located in the SR-2 District which allows customary home occupations as an accessory use. Home occupation is defined under the Town of Chester Code as "[a]ny gainful occupation customarily conducted within a dwelling by the residents thereof" The definition also provides examples of what permissible home occupations may be, and what it shall not be construed to include. Applicant has been operating his home business and using his barn for storage without incident for the past eleven years. The property is not used as a retail store, nor is it open to the public. Applicant's use of his property is the antithesis of the uses the definition provides as being impermissible. Applicant's business is unlike a restaurant, clinic or hospital, animal hospital, dog kennel, barbershop, beauty parlor or antique shop because, as mentioned above, it is not a retail store nor is it open to the public, it is a basic beauty supply business with boxes being picked up and dropped off by UPS. Therefore, and in light of the home businesses non-intrusive nature, applicant requests an interpretation that his long-standing home business is a permissible home occupation in the SR-2 District.

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Area Variance Only: Ground Floor Area

Please answer the following:

Will there be an undesirable change in the character of the neighborhood, or a detriment to nearby properties if this variance is granted?

No. Applicant has been operating the home business for the past 11 years without any objection or complaints, until the complaint of a neighbor which was not based on the incompatibility of the home business in the neighborhood, but based upon an unrelated personal grievance. In any event, other than a proposed breezeway, there will be no physical modifications to the property so as to affect the character of the neighborhood.

Can you achieve your goals via a reasonable alternative which does not involve the necessity of an area variance?

No. As noted, applicant has been operating his business in this manner for the past 11 years, and the alternative to the variance would require a significant downsizing of his business, which includes secondary impacts such as having to fire employees of the business who are employed on a full-time basis.

Is the variance substantial?

The totality of the circumstances must be evaluated in determining whether a variance is substantial. In this instance, the barn in question has existed since 1760, with an addition in 1865, and it will continue to exist regardless of whether this application is granted. The applicant has merely repurposed its use, and as noted above, such use has not changed the character of the neighborhood, nor has it been a detriment to nearby properties. Thus, the variance is not substantial in this context. Dimensionally, the substantiality of the variance is small to moderate. Dimensions: 1760 barn – 30'x40' (1,200 sq. ft.); 1865 addition – 25'x30' (750 sq. ft.); residence first story area – 1,278 sq. ft.

Will the variance have an adverse impact on physical or environmental conditions in the neighborhood or district?

No. There is no change to the physical or environmental conditions in the neighborhood or district.

Is this a self-created difficulty?

Yes, "[a]lthough one of the factors to be considered is whether the difficulty is self-created, this factor is not determinative." *Lessings, Inc. v. Scheyer*, 16 A.D.3d 418, 419 (2d Dept. 2005).

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Area Variance Only: Nonresident Employees

Please answer the following:

Will there be an undesirable change in the character of the neighborhood, or a detriment to nearby properties if this variance is granted?

No. Applicant has been operating the home business for the past 11 years without any objection or complaints, until the complaint of a neighbor which was not based on the incompatibility of the business in the neighborhood, but based upon an unrelated personal grievance.

Can you achieve your goals via a reasonable alternative which does not involve the necessity of an area variance?

No. Applicant employs 2 nonresident employees, 1 more than is allowed under the definition and the only alternative to the variance would be to fire an employee who is employed by the applicant on a full-time basis.

Is the variance substantial?

As noted above, the totality of the circumstances must be evaluated in determining whether a variance is substantial. Applicant employs an office worker and a shipping clerk, neither of whom can be said to change the character of the neighborhood or are a detriment to nearby properties. Also, the variance is only for one additional nonresident employee. Thus, the variance is not substantial.

Will the variance have an adverse impact on physical or environmental conditions in the neighborhood or district?

No. There is no change to the physical or environmental conditions in the neighborhood or district.

Is this a self-created difficulty?

Yes "[a]lthough one of the factors to be considered is whether the difficulty is self-created, this factor is not determinative." *Lessings, Inc. v. Scheyer*, 16 A.D.3d 418, 419 (2d Dept. 2005).