



**MINUTES OF A PUBLIC HEARING OF THE ZONING BOARD OF APPEALS (Unapproved)
OF THE TOWN OF NEW LEBANON HELD ON MARCH 6, 2018
ON A REQUEST MADE BY MICHAEL DARCY (TM #19.2-1-85)
FOR AN INTERPRETATION REGARDING HOME OCCUPATIONS**

Present: Anthony Murad, Chairman
Ted Salem, Member
Phyllis Stoller, Member
Jeannine Tonetti, Member
Chuck Gerald, Member

Absent: None

Others Present: Cissy Hernandez, CEO; Jeff Hattat, Deputy CEO; Daniel J. Tuczinski, Esq., Town Attorney; Jesse Newton; Cynthia Creech; Tegan Joy Cook; Michael Darcy; Tammie Darcy, Ryan Darcy, Blayne Darcy; Patricia Farnam; Kevin Smith

Case No.: ZBA-2018-001 – Michael Darcy – (19.2-1-85)

The applicant is appealing a Notice of Violation and is seeking an interpretation by the ZBA as to whether the type of activity he is conducting at his residence meets the definition of a home occupation.

Chairman Murad noted that three letters offering public comment had been submitted. One abutter indicated that they had no issue with the project; One was opposed to approving this project and one from the CAC pertaining to the existing DEC violation.

Mr. Darcy said he is confused as to exactly what the Board is seeking. He presented a map containing the layout of the property which he then reviewed with the Board. Mr. Darcy stated a neighbor had become upset about the driveway and notified the Town that he was running a business out of his residence; however, Mr. Darcy believes he is not running the business there, he is just parking three large commercial vehicles that he uses for his business on his property.

Chairman Murad explained that home occupancy requires the business be run out of the home. He asked how active the vehicles were and if they were operated on the property all day. Mr. Darcy said the vehicles leave the property in the morning, are on projects in Massachusetts and New York all day, and return to the property at the end of the day to be parked in the front yard. Mr. Darcy's original intent was not for the vehicles to be parked in the front yard. He has additional property alongside his tree line where he intended to park the vehicles. However, Officer Cox from the DEC stopped Mr. Darcy from parking in that area since it is located near a wetland. Officer Cox noted that silt had built up in the area, and there was debris there. The

Biologist, Theresa Swenson, apparently wrote up what Mr. Darcy needed to do to correct the situation, but Mr. Darcy never received any documentation from her.

CEO Hernandez said she requested a copy of the DEC Biologist's site visit report. Mr. Darcy needs to restore the property to its original condition and move the vehicles further away from the wetland area, which he says he can do. That would get everything back off the road behind the garage and tree line. There will be three large trucks parked there.

Mrs. Padrick, an abutter, said she is concerned she would have to look at trucks in the front yard.

Chairman Murad said the ZBA can make no decision for the DEC. The ZBA is faced with determining whether Mr. Darcy's proposal adheres to the Home Occupation Law. Mr. Darcy doesn't believe this is a home occupation since the vehicles are just parked in his yard. He asked for the definition of "home occupation", and Chairman Murad read the definition aloud. There are three degrees of home occupation, being H01 (no impact is made on the neighborhood, no signs are posted, there is no increase in traffic, and no special vehicles are parked on the property); H02 (the Code does not limit the number, size or type of vehicles which can be parked on the property); and H03.

Mr. Darcy does not intend to operate these vehicles on his property during the day and won't be performing repairs or maintenance to his vehicles while on the property.

ZBA Member Ted Salem said it's the ZBA's job to determine if this is an H03 at all.

Mr. Darcy said he is aware of fifteen other sites in town where tractor trailers are parked on residential property.

ZBA Member Jeannine Tonetti asked Mr. Darcy to refrain from using disrespectful terms like "tattletale" when talking about his neighbors. She stated the public has a right to offer their comments without being called names and harassed.

ZBA Member Phyllis Stoller said Mr. Darcy should fix the corner and asked if the best scenario would be for him to move the vehicles behind the house. Mr. Darcy said that is his backyard, so he doesn't want to park vehicles there, but he would move them to the tree line area that borders his property. He wouldn't park near the wetland. The DEC is to advise before March 15th.

Member Ted Salem asked, in terms of the business, what does Mr. Darcy do all day, to which Mr. Darcy said he's either in one of the trucks or on a job site. No one is in his house taking phone calls (no landline) because they all use cellphones.

At this point, Chairman Murad asked for public comments.

Mr. Darcy's son Ryan Darcy spoke. He is usually the driver of one of the vehicles and leaves the earliest. He is considerate with how he starts the truck, doesn't let it run all day, keeps it silent and tries to be considerate. They are trying to get this business started and hope to expand eventually, but for the present time, they are set up at the residence. They don't bring material to the property and do not meet customers there.

Chairman Murad said if the HO3 goes to the Planning Board, then all issues would be discussed and restricted with conditions on use.

Cynthia Creech, an abutter, said she admires that Mr. Darcy is starting a business, but this is not the right location for that particular business. This is not an HO3, office work is not the primary function. The statute says HO3 use means business is carried on within the dwelling unit. Mr. Darcy is out on jobs all day. These are large commercial use vehicles, and she objects because they don't fit on Lovers Lane which is a residential area with small houses. HO3 – intrusion to present character of neighborhood. These trucks are intrusive. His use would not increase neighborhood traffic, parking, there are no customers onsite. In reference to a landscaping business, there are large commercial activities. Ms. Creech doesn't think this qualifies as an HO3.

Member Chuck Gerardi asked how this use is different from that of an electrician, plumber, etc.? (which are included as samples of occupations included in the Home Occupation definition) They don't do their business at home either.

Ms. Creech said those tradesmen use smaller gas-powered vehicles. The electrical contractor typically drives a pick-up with a toolbox in the back. This use is very different than that. Typically, residential neighborhoods don't have logging trucks parked in the yards. None of this is addressed in the zoning code.

Member Chuck Gerardi said gas versus diesel-run vehicles is not addressed in the code.

Member Jeannine Tonetti said the issue is scale.

CEO Hernandez asked if this is an HO or HO3 discussion. Chairperson Murad said it's both. The size and character of the vehicles is the issue. The Planning Board should determine if this is an HO3.

Brynn Padrick, an abutter, said the trucks run 40 minutes in the morning. She's trying to live there with her 92-year old mother, not be a tattletale neighbor. Mrs.

Patrick spoke to the DEC too, and they already knew about the issue. The trucks are not gone all day and they run for 40 minutes in the morning warming up. She feels vilified.

Blaine Darcy said this is not the first time Mrs. Patrick has hassled her family.

Chairperson Murad said this can't be the issue before the Board. The Board will merely determine whether this is a home occupation or an HO3 and refer the matter to the Planning Board.

Abutter Donald Padrick said there are diesel trucks parked by the road. He lives across the street and fumes come to their home. Size does matter. Lovers Lane is not the best maintained road, and these trucks don't help the condition of the road. They will be maintaining vehicles at the property.

Chairperson Murad instructed all present to direct comments to the Board, not each other.

The PB can request certain conditions be imposed. Are vehicles just being parked there or is it an HO or HO3?

Chairman Murad moved to close the Public Hearing at 8:10 p.m. and Member Jeannine Tonetti seconded. The motion carried with the following vote:

Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chuck Gerald	Aye
Ted Salem	Aye
Chairman Murad	Aye

Respectfully submitted,

Donna M. Gedeon

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Planning/Zoning Clerk