

**MINUTES OF PUBLIC HEARING
HELD BY THE ZONING BOARD OF APPEALS
LINCOLN CENTER HEARING ROOM
NOVEMBER 28, 2012**

MEMBERS PRESENT: James Stevenson, Chair
Albert Gionet, Vice Chair
Robert Haley, Secretary
Edward Slegeski

ALTERNATES PRESENT: Armando Darna (sitting)
Sandra Stough

ALSO PRESENT: James Davis, Zoning Enforcement Officer
Renata Bertotti, Senior Planner
Ginger MacHattie, Recording Secretary

The Chair opened the Public Hearing at 7:00 p.m. The Secretary read the legal notice for the application when the call was made.

ROBIN DELLASELVA – application #2012-107, 108 – appeal the ZEO’s order that the home conducted operation is not permitted under the following article and sections: Art. II Section 1.03.01(r) (1) that the occupation shall be confined to the inside of the house and shall not be carried on in any attached garage, unattached garage or on the grounds of the premises; (3) the occupation shall not be visible from the street by display of products or equipment; (7) the occupation shall not tend to excessively draw people and vehicles to the premises; (8) the occupation shall be conducted and operated only by the resident or family members; (10) no classes shall be held for purposes of giving lessons or instruction for more than two students or pupils at a time; and request a variance to Art. II Sec. 1.03.01(r) (1), (3), (7), (8) & (10) to permit a personal fitness training home conducted occupation with limited outdoor activity at 86 Ash Street, Residence AA zone.

Attorney Dori Famiglietti spoke on behalf of the applicant to appeal an order of the Zoning Enforcement Officer and in the alternative to request a variance. This stems from the applicant’s home conducted business at 86 Ash Street. Robin Dellaselva is a certified personal trainer that trains her clients at her home and sometimes in her yard. Most of her sessions are one on one. More recently, she has added boot camps which take place outdoors. She said those take place about two times per week, weather permitting. There are usually five or six clients at the boot camp sessions. Some of those clients are friends and do carpool so there are between three and five cars for a boot camp session.

Attorney Famiglietti reviewed that Mr. Davis issued a Notice of Violation on September 27, 2012. She said there are a couple of issues cited that are a problem and that is why there is a variance application. Regarding item 8, the occupation shall be conducted and operated only by the resident or family members, the applicant does not have any employees and is the only one conducting the business. Regarding item 7, the occupations shall not tend to excessively draw people and vehicles to the premises; excessive is a very open ended term subject to different

interpretations. She hopes that with the information given to the ZBA, it can determine there are not excessive people or traffic going to the property. Attorney Famiglietti referred to a letter dated September 19, 2012, submitted by Robin Dellaselva, as well as a letter from the attorney dated November 15, 2012, both of which address some questions raised by the Traffic Engineer. On an average day there are four to five clients going to the house for training and on the two days in which boot camp sessions are held, there are five or six clients in attendance. She understands that a letter from Mr. Jolly claims there is non-stop traffic from 7:00 a.m. to 8:00 p.m. and that is just not the case. The numbers given were just for clients which do not account for friends and family that may come and go from the property.

Attorney Famiglietti read the letter she referred to earlier dated November 15, 2012 into the record as Board members did not have it in their packets. She referred to three letters in support. In the letter, she explained that Ms. Dellaselva typically has training sessions with four or five clients per day and they are usually one on one. Twice per week she offers a boot camp. Ms. Dellaselva has a large driveway that can accommodate all client parking on her property. Using standard parking stall dimensions, the upper portion of her driveway can accommodate nine cars.

Attorney Famiglietti, referred to item number 3, the occupation shall not be visible from the street by display of products or equipment. She distributed a packet to Board members and explained that it appears Ash Street is not a Town road. One of the items in the packets notes that Ash Street has not been accepted as a Town road. In addition, she included a copy of a subdivision plan for an adjacent parcel. It notes that Ash Street Extension is not a Town road. She also included two deeds; one for the present owner and an older deed. The property description was included. This indicates that the property owner needs access to the property because there is not a public highway at this location. Ash Street appears to be a private right of way. It is more akin to a driveway serving a limited number of houses. Village Street is the closest Town street. She said there is no way that people will know anything about the occupation going on at the subject property from Village Street.

Attorney Famiglietti explained that the personal training equipment is not solely dedicated for business purposes and her clients. They are all items she uses while training for an event. The items are not specific to a business use and will continue to remain in her yard for her own personal training purposes. The property is somewhat unique and remote. It is almost 2.5 acres and larger than the surrounding properties. It is tucked away at the end of the narrow right of way and surrounded by extensive trees or vacant land. In the areas that it does abut a property with a dwelling, there is a significant tree buffer in between. She said it is not visible to any of the neighbors.

Attorney Famiglietti said that the applicant is seeking a variance if the Board chooses not to overrule the Notice of Violation. The applicant does not dispute items one and ten and seeks a variance for those two items. Attorney Famiglietti submitted a copy of a letter from the owner of the property consenting to this application. This is a rental property for the applicant but she has lived there for some time. Additionally, there is one letter in opposition from Mr. Jolly. There are two additional letters in support of this application and Attorney Famiglietti read them into the record.

The first letter was from Kim Kobalski, a former client, who related an incident with Mr. Jolly when she was on her way to Ms. Dellaselva's house. The second letter, from Han Ha, is in

support of the application as well. She related an incident she had with Mr. Jolly on her way to Ms. Dellaselva's house. Attorney Famligiotti explained that she is trying to put this all in context. Clearly there is a neighbor that is somewhat disgruntled and unsatisfied about something and is trying to make his feelings known.

Attorney Famligiotti said in order for the Board to grant a variance, the applicant must demonstrate a hardship. The regulations themselves, as applied to this specific and unique property, are the hardship. The regulation does not seem to fit the specifics of this situation. This is a fairly large property for the neighborhood, situated at the end of a narrow right of way, surrounded largely by trees, and no neighbors to speak of. The use is not all that different from private recreational uses that people generally have in their back yards, such as a jungle gym. If the variance is not granted, Ms. Dellaselva will continue to use the equipment for her personal use. Teammates will still continue to train with her in preparation for events so that equipment will remain in place.

Attorney Famligiotti said this is not a use that will have an adverse impact on the neighborhood. The nature of the use is very similar to private recreation use on the property. There is no excessive traffic or noise. This property is ideally situated for this type of use.

In response to a series of questions from Mr. Haley, Robin Dellaselva, 86 Ash Street Extension, confirmed that the business started in-house with one or two clients. She did not apply for an in home business. The Town does plow her street but she does not have city water and has a septic system.

In response to a question from Mr. Stevenson, Ms. Dellaselva said the Town does collect trash on her street. Mr. Stevenson said it is a Town street; the Town will not collect trash on private property.

In response to several questions from Mr. Stevenson, Ms. Dellaselva said her schedule is fairly flexible. She sees clients at 7:00 a.m. and has afternoons off. Then she has a couple of clients in the evening, maybe 4:30 p.m. to 7:30 p.m. She does not train people all day long. She trains five days a week and does not usually work on weekends. Ms. Dellaselva said she has five to seven people in the boot camp classes, but some of them carpool. She said she has done boot camps inside during bad weather.

Ms. Dellaselva explained that she has the boot camps outside because she started training for races and she built the obstacles in her backyard. When outside, they are training for the obstacles they do. Some are paid clients and some are friends.

In response to several questions from Mr. Haley, Ms. Dellaselva said she has two friends that also work out in the yard a couple times per week. She explained that this occurs from spring to early fall. This time of years she is serving four to five clients per day and one or two at a time.

In response to several questions from Mr. Stevenson, Ms. Dellaselva confirmed the outdoor activities are seasonal and occur April through October. From November through March training is strictly indoors and also at Case Mountain. She explained that she has not thought about leasing because her area is perfect. There is so much space and land and she can be home with her kids.

In response to a question from Mr. Gionet, Ms. Dellaselva said the electrical spools are about 6' tall. They are attached to something in the ground.

Mr. Davis stated that the applicant is appealing the decision of the Zoning Enforcement Officer's letter of September 27, 2012. The applicant is not disputing Article II Section 1.03.01(r)(1). The next item is Article II Section 1.03.01(r)(3), the occupation shall not be visible from the street. He referred to twelve photos included in Board members' packets taken while standing in the Town's right of way. The application has not stated a legitimate hardship as to why a variance should be granted. The proposed use far exceeds that which is usually found in a residential neighborhood. Recently, personal training facilities have been approved at various locations in the Town, particularly in Industrial zoned buildings. None of these have approved outdoor equipment or activities. Typical items found in most residential neighborhoods might be a playscape, a swing set, and slides. Items 7, occupation shall not draw excessive people and vehicles to the premises. He said the term excessive is not definable when it comes to this. One cannot specifically assign a number. Mr. Davis read the dictionary definition of excessive. There are a number of variables that are considered when determining what uses are permitted as of right, permitted by special exception in particular areas, or on a particular street in a municipality, including street type. Ash Street is a narrow local street with minimum traffic and currently services three residences with the potential for more.

Mr. Davis explained that, as far as the variance is concerned, the term excessive is hard to quantify and particular attention must be given to the specific property, the neighborhood, the anticipated number of people, vehicles, and trips as compared to the usual and acceptable, based on existing conditions. Mr. Davis agrees that the business is being run only by the applicant.

In response to a question from Mr. Haley, Mr. Davis explained that the applicant is a Certified Personal Trainer. There is a Certificate of Zoning Compliance that is requested from all businesses prior to operating a business to avoid these types of situations. In addition, a business should obtain a trade name certificate at the Town Clerk's office. He did not know there was a business at this location until he received a call from Mr. Jolly.

Ms. Bertotti said Town staff has reviewed this application and the Town's Traffic Engineer said the parking on site is adequate for the number of clients expected.

Attorney Famligietti referred to the letters written in response to Mr. Jolly's actions and asked that all letters be put into context when considering this application. The four to five cars is not a lot and is not excessive. The location of the property is secluded and tucked away and the nature of the activity is innocuous.

In response to a question from Mr. Stevenson, Mr. Davis said a permit is not needed for training equipment on a residential parcel for personal use.

Chairman Stevenson asked if any member of the public wished to comment either in favor of or in opposition to this application. No member of the public wished to comment at this time.

Ms. Bertotti said the letters included in the packet were from Laura O'Connor Hanson, 36 Village Street, in support; Peggy Coe, in support; Dori Parla, 31 Village Street, in support, and Robert R. Jolly, 44 Village Street, in opposition.

The public hearing on this application was closed.

JUDY KECHIJIAN – application #2012-110 – request a variance to Art. II Sec. 1.03.05(a) to allow the installation of an 8' high fence (6' permitted) along a 136' long section of the northeastern property line at 64 Shepard Drive, Residence AA zone.

Judy Kechijian, 64 Shepard Drive, said she is requesting a variance for an 8' high fence due to the height difference between her yard and her neighbors, which is about 15' to 18'. The additional 2' will not be noticeable. Shrubs were suggested, but those will take five years to fill in and would not provide immediate privacy. She provided a picture as the example of the style she would like to install.

In response to a series of questions from Mr. Haley, Ms. Kechijian said the lower deck is about 6' high plus the railing and the upper deck is another 3' to 4' higher.

In response to a question from Mr. Gionet, Ms. Kechijian said her neighbor has a colonial style home. The family room is in the back of their house. She noticed that they put sheets up over the family room windows for privacy at one time.

In response to several questions from Mr. Slegeski, Ms Kechijian explained that an 8' fence would provide the privacy she is seeking because her property is on a hill. It would provide more privacy. She explained she has a swimming pool with a deck in the back and it would be nice to know she has privacy. She intends to install a 6' fence on the other side of her yard as well. Ms. Kechijian said she has an amicable relationship with her neighbors and does not think they will have a problem with this fence.

Chairman Stevenson asked if any member of the public wished to speak either in favor of or in opposition to this application. No member of the public wished to speak at this time.

Ms. Bertotti said Town staff has no outstanding comments.

The public hearing portion of the meeting was closed at 7:58 p.m.

I certify these minutes were adopted on the following date:

January 16, 2013
Date

James Stevenson, Chair

NOTICE: A DIGITAL RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.

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