

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
MARCH 10, 2010**

The regular meeting of the Zoning Board of Appeals of the Village of Goshen was called to order at 7:30 pm on Wednesday, March 10, 2010 in the Village Hall by Chair Wayne Stahlmann.

Present: Lynn Cione
Garfield Clark
Neal Frishberg
Wayne Stahlmann, Chair
John Strobl

Also Present: David Donovan, ZBA Attorney

ZBA Chair Wayne Stahlmann opened the meeting with the Pledge of Allegiance.

Divi Dance Studio, 60 Erie Street, Tax Map Designation: 106-2-16

Relief requested: Area variance allowing a specialty school to be located on a lot that is less than 1 acre; or alternatively, an interpretation that the lot size is a permitted, pre-existing condition.

Present for the applicant: Diane Nikeshin, owner Divi Dance Studio

Ms. Nikeshin said that she is a life-long resident of Goshen and that she and her husband have owned Divi Ballroom Dance Studio for a year. They want to lease part of the fourth floor (1300 sq. ft.) of the building at 60 Erie Street in order to conduct private dance lessons. The ballroom dance lessons will be taught by her husband in the evenings and on one weekend day. Other occupants of the building are attorneys and the office of Bracesetter, she said. The lessons will be private, with no more than six people in a group lesson. Most lessons will be conducted for wedding couples. She expects no more than three to four cars. She said the evening lessons will be by appointment only and will start around 5 p.m. and go until 10 p.m. at the latest. On the weekend, the lessons would be held in the afternoon. Ms. Nikeshin said that they will not be using the outside of the building. Relative to the question of noise, Ms. Nikeshin said they will be playing music to dance the fox trot or the tango to, and that a television could be at the same volume.

Mr. Donovan said he would like to disclose that he lives across the street from the building. He said the building has a unique history, that it was originally St. John's high school, known as Garr Hall. Up until the early 1960s it was a school, and since that time, has been primarily used as office space. Mr. Donovan said that the PB determined that it is a permitted use under the code as a "private specialty school". In the PB's referral, it says that the issue for the ZBA is whether or not it is permitted as a pre-existing condition and if not, then whether to give an area variance because a private specialty school needs a minimum lot size of 5 acres and this lot is less than 1 acre. "It was not referred to us on the use issue, but was referred to us on the 1 acre vs. 5 acre issue," Mr. Donovan said.

Mr. Stahlmann read a letter dated March 10, 2010 from Building Inspector Ted Lewis who said, "In light of the fact that in the past this building has housed numerous and varied tenants, including a beauty salon, a school and presently is occupied by an attorney's office all in the R-1 Zoning District, I respectfully request that you act favorable in this instance."

Mr. Donovan said that according to the zoning map, the lot is in the R-2 zoning district.

Mr. Donovan defined “pre-existing condition” as a condition that was legal when created and established before there was zoning, or the zoning allowed it when it was established, and it can continue so long as the use is not interrupted or expanded. Mr. Donovan said that the use of the building as a school pre-dated the zoning code which went into effect in 1966.

Richard Ayres, who resides at 114 Murray Ave., two houses from the building, said that the law offices presently in the building are used 24 hours a day, 7 days a week. Mr. Ayres said that when the former school was purchased, it was remodeled to what it is today and a variance was obtained for the entire building “for use for professional purposes”. He said he is against having a dance studio “school” in the professional building and asked how it can be considered a “professional business” and whether the floors were built to withstand constant pressure from dancing. He questioned if the walls are soundproof, and if the constant noise and pounding will bother the other tenants. He asked, if the request is granted and the tenant vacates, is the variance cancelled or does it remain in effect so that other tenants can move in and the neighbors will no longer have to be notified. Mr. Ayres said the word “school” raises a red flag for him and asked if the ZBA members have witnessed the parade of school buses that pass by four times a day or the bus parking lot along Murray Ave. from 2:15 to 3:35 p.m. that obscures the stop sign on the north side of Murray Ave. Mr. Ayres asked the ZBA to protect the residential integrity of Murray Ave. He said the area doesn’t need another school or gathering of children. Mr. Ayres said he is against granting the variance.

Ms. Nikeshin said that ballroom dancing is a profession and that it is a “school” because they will be teaching people to ballroom dance. She said that their students will be couples who want to learn how to dance for their weddings. She said she believes the business will only add to Goshen. It is a specialty. She asked who will protect her if the attorney next door is noisy and said she feels she is being discriminated against because it is a “dance” school.

Mr. Donovan said that the PB made the decision that it is a private specialty school and that if the ZBA disagrees with that, it can communicate that to the PB, “but it is not necessary right for our review.” He said the ZBA has been asked to rule on the issue of whether or not it is protected because of its pre-existing status or in the alternative, to issue a variance from that 5 acre requirement to a reduction to 1 acre.”

Tom Burnham, of 54 Erie Street, stated that he resides next door to the building. He said he has concerns about it being listed as a school and has concerns about the current use of the building and expanding those uses in other ways. Mr. Burnham said that there is an illegal auto repair shop operating out of the building next door that is annexed to the lot, and that there are also dog kennels for pit bulls. He said there are other things going on at the property that are not the intended use and that it needs to be looked at in a more cumulative way. He said he has brought this to the attention of the Village Board.

Ms. Cione pointed out that the applicant should not be held accountable for what Mr. Burnham states is going on at the site.

Mr. Frishberg said he doesn’t want to set precedent “that any sort of dance school can go in there.”

Geoff Chanin said he was present to speak on behalf of some of the tenants in the building. He said it is occupied by four law firms and an orthodontist. He said that a dance studio on the top floor with music vibrating is inconsistent with the current uses made of the building. Mr. Chanin said that while the building may originally have been a place of education, if there was a period of time when that use was interrupted, and if defined as a sufficient length of time that activity did not take place, then this is a new application for a non-conforming use and is not grandfathered in. “I understand there was a significant period of interruption,” he said. Mr. Chanin said that the parking lot is

inadequate now and that to allow this use will exaggerate the problem. He said the attorneys work with clients on weekends and evenings.

Ms. Cione said she believes the relief requested is specific to the lot size. She said she would not want to hold the applicant up for yet another month. She asked if the fourth floor was reinforced and Ms. Nikeshin said she is not sure but that she plans to put in a cushioned wood floor for the dance floor.

Mr. Donovan read Section 13.2.1 of the Code and said he doesn't believe the board has jurisdiction over the interpretation issue, but that it could remand the matter back to the PB or the Building Inspector and ask them to take another look at it.

Mr. Frishberg said that while he does not agree with the interpretation of "specialty school" the limited scope of the inquiry is the benefit to the applicant weighed against the detriment to the health, safety and welfare of the neighborhood or community, by the granting of the variance. He said that in making the determination the Board must consider several factors including whether the noise from the dance studio is going to permeate through the building. He said there will only be approximately six people there and he doesn't think it will. He said he also didn't think that the people across the street are going to hear the music, and suggested that if they do, their remedy is to call for code enforcement, but he said he has a concern about the level of the noise for the people in the building. He asked the applicant if there were other areas in the village where she could rent space. Ms. Nikeshin said she had looked at numerous places and that it was hard to find what she was looking for. Mr. Frishberg said he believes the requested variance is substantial and self-created but that it will not change the character of the neighborhood. "When I weigh the factors, I would like to grant the variance with certain conditions concerning hours of operation, installing a wood floor and keeping the music down so as not to disturb the other tenants or neighbors," he said.

Mr. Donovan told the applicant about the factors that the ZBA must consider when deciding on whether or not to grant a variance; the impact on the neighborhood, the magnitude of the variance, whether or not there is any other way other than a request for the variance to achieve the objective and whether the variance is self-created.

Mr. Chanin said he thinks it will have a significant negative impact on the neighborhood, that it is self-created and that there has been no showing of economic hardship. He suggested that under three of the five criteria, the variance should be denied.

Ms. Nikeshin said she has tried to do the right thing and present her case but now hears people say that a dance school isn't considered a school, that there has to be a desk. She asked why she should be penalized and have to restrict her business to certain hours. She said an attorney can go into his office at 1 a.m. but "I would have to have special guidelines."

Mr. Stahlmann asked the applicant if the Board puts restrictions on the variance, would she still be interested. Ms. Nikeshin said she doesn't think it is fair, that she is paying rent to use the space and "I am going to be respectful to my neighbors because the last thing you want is a neighbor that isn't happy with you."

Ms. Cione said she thinks the public hearing should not be kept open, that the applicant is a business woman who is trying to start a business and needs a decision.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen hereby closes the public hearing on the application of Diva Dance Studio. Passed unanimously.

Mr. Frishberg offered a motion that the Zoning Board of Appeals of the Village of Goshen approve the variance requested with the conditions that the hours of operation are

5 – 9 p.m. weeknights and 12 - 5 p.m. weekends, that the noise will not be bothersome to the people below and that the applicant put in the additional wood floor as stated.

Mr. Frishberg's motion was not seconded. He withdrew the motion.

Mr. Stahlmann said that by putting a condition of hours of operation they are restricting the applicant's ability to use the space she is renting.

Ms. Cione said that since the building was once a school, the floors are likely to be more heavily reinforced. She said the dance studio will be contained within the building and will have less impact on the neighborhood than the existing school on the block.

VOTE BY PROPER MOTION, made by Mr. Strobl, seconded by Ms. Cione, the Zoning Board of Appeals of the Village of Goshen grants the variance, without conditions, as applied for in the application of Diva Dance Studio. The motion was approved with four "ayes" and one opposed (Mr. Frishberg)

ADJOURNMENT – The ZBA adjourned at 9:02 p.m.

Wayne Stahlmann, Chair
Notes prepared by Susan Varden