

**WETHERSFIELD PLANNING AND ZONING COMMISSION
PUBLIC HEARING AND MEETING**

August 20, 2013

The Wethersfield Planning and Zoning Commission held a public hearing and meeting on Tuesday, August 20, 2013 at 7:00 p.m. in the Wethersfield Town Council Chambers located at Town Hall, 505 Silas Deane Highway, Wethersfield, Connecticut 06109.

1. CALL TO ORDER:

Chairman Roberts called the meeting to order at 7:05 p.m.

1.1 ROLL CALL & SEATING OF ALTERNATES (5 members required for a quorum):

Commissioner Hammer called the roll as follows:

Member Name	Present	Absent	Excused
Richard Roberts, Chairman	✓		
Thomas Harley, Vice Chairman	✓		
Antonio Margiotta, Clerk			✓
James Hughes			✓
George Oickle	✓		
Joseph Hammer	✓		
Anthony Homicki			✓
Dave Edwards			✓
Angelo Robert Fazzina	✓		
Thomas Dean (alternate)	✓		
Alex Vasel (alternate)			✓
Leigh Standish (alternate)	✓		

Also present: Peter Gillespie, Town Planner/Economic Development Manager;
Denise Bradley, Assistant Planner

Chairman Roberts noted at the time of roll call there were five (5) full members and two (2) alternate members in attendance. All members present to participate.

Members of the Public were present.

2. OLD BUSINESS:

There was no Old Business discussed at this meeting.

3. NEW BUSINESS:

3.1 PUBLIC HEARING APPLICATION NO. 1798-13-Z: Gary Catania Seeking a Special Permit in accordance with Section 3.5.2 of the Wethersfield Zoning Regulations for the continued use of a home occupation at 44 Victory Lane. (Renewal and modifications to conditions)

Stephen T. Penny, of Penny, Botticello & O'Brien, P.C., 202 West Center Street, Manchester, Counsel for the Applicant appeared before the Commission. Proof of the written notice regarding this Application which was provided to property owners within three hundred (300') feet of the site was provided to the Planning Office of the Commission pursuant to Regulations. The lot at the site is

approximately 16,651 square feet (.39 acres) and a copy of the lot was provided to the Commission. The site is bounded by five (5) other single-family residence lots, three (3) of which are on the cul-de-sac on Victory Lane and the other two (2) of which are located on Monticello Drive.

Counsel provided the Commission with a copy of an aerial view photo of the cul-de-sac in relation to the location of the site and a copy of a photo of the driveway at the site. Counsel indicated that the separate entrance to the basement from a door accessible at the rear of the garage exists without entering the main part of the home and that a staircase leads from the garage into the basement. He noted a ten (10') foot evergreen hedge that provides screening from the side garage entrance described above (see copy of photo provided to the Commission). A copy of the floor plan of the first floor of the residence was also provided to the Commission. Counsel also provided an aerial view of the site and depicted the natural grove of evergreen trees that exist at the rear portion of the site and which borders neighbors to the north on Monticello Drive. Counsel provided an additional copy of a photo depicting the twenty (20') foot sanitary easement and the fifteen (15') foot side yard setbacks relative to the neighboring property of 38 Victory Lane. Counsel noted that the pedestrian entrance and the main entrance to the garage at the site are both located on the opposite side of said neighboring property. Parking for four (4) vehicles can be accommodated in addition to the parking of two (2) vehicles in the garage.

Applicant, Gary Catania, appeared before the Commission and described his Application. He is certified by the American College of Sports Medicine as a Health Fitness Specialist which allows him to provide personal training only. The business proposed is a personal training facility that would serve one (1) client per session and the number of sessions would not exceed twelve (12) sessions per week. Personal training would occur at the proposed site and would involve utilizing fitness equipment located at the site. The Applicant would refer clients to various gyms, massage therapists, group trainers/facilities, etc. and would not perform or have the above-mentioned services performed at the site proposed in this Application.

Chairman Roberts noted various items of correspondence, both in support and not in support of this Application, to be included as part of the record.

Counsel indicated that this Application complies with what is considered a major home occupation that meets special permit requirements and those permit requirements found in Article 8 of the regulations. Counsel stated that notification to all property owners within three hundred (300') feet, and the proof of the mailing of notifications has been provided for the Town's file. Counsel mentioned it has been indicated and established at this hearing (with photos) that four (4) spaces are available in the driveway, in addition to the two (2) spaces in the garage, at the site. Counsel stated that access to the basement is from stairs in the garage, and floor plans were submitted at this hearing and with the Application depicting the arrangement. Counsel mentioned there are no employees, that there is no signage, and that there are no departures from original conditions. He also mentioned there are no reports of incidents involving special permit violations. He submitted for the record and described ten (10) exhibits.

PUBLIC COMMENTS IN FAVOR OF THE APPLICATION:

Gene Mueller, Simsbury, CT, appeared before the Commission in support of the Application. He has trained with Gary for approximately fourteen (14) years. He spoke positively of the neighbor's character and questioned the scrutiny of client and visitor parking at the site and on the public street.

Ron Catania, 64 Shea Circle, Rocky Hill, spoke in favor of the Application (and submitted a written statement for the record during this meeting). He noted he does park in the driveway when he visits the Applicant (his brother) at the site despite his awareness of the subject street being a public road (thus parking permitted). He questions why there is neighbor discord regarding this matter, as he mentioned he resides on a cul-de-sac in Rocky Hill where he described neighbors fend/watch out for each other. [Chairman Roberts noted Mr. Catania's correspondence was received, but there was no address on it. Mr. Catania indicated said correspondence was an e-mail attachment with his address not place in the letter document.].

Anuj Mather, 18 Cobblestone Court, Newington, CT, spoke in favor of the Application. He noted there have been no issues or concerns which pertain to his parking in the Applicant's driveway when he has

attended sessions at the site.

Andrew Stearn, 57 Oliver Way, Bloomfield, CT, spoke in favor of the Application. He noted he has trained with the Applicant for over fifteen (15) years and that there have been no issues with adhering to the parking terms. He also noted the Applicant always waits for him on arrival and escorts him from the subject site upon conclusion of a training session.

Mark Catania, 99 Pond Side Drive, appeared before the Commission and spoke in support of the Application. He discussed traffic volume relative to home-based businesses. He indicated there are over eight (80) home-based Child Daycare centers in the Town of Wethersfield. He noted that traffic on the streets of those operations increases at peak hours and is at least triple the amount of traffic generated verses traffic generated from the Applicant's proposed business of working with two (2) clients per day. He asked the Commission not to over-analyze traffic impact at the site.

Irma Mass, 38 Nathaniel Drive, appeared before the Commission and spoke in support of the Application. She noted the Applicant was clear about the home occupation permit conditions imposed for the site had resulted in the Applicant's inability to accept new clients at the site. As such, the training sessions were conducted at her residence for over three (3) months. She noted that since one (1) of his clients recently moved away, the Applicant was able to offer the site to her for training. She also noted that the Applicant had her abide by the special permit terms and that she did so. She thanked the Town for allowing the Applicant the ability to offer personal training at the site.

Sharon Carducci, Realtor @ Raevis, 361 Two Rod Highway, spoke in support of the Application, as well as a property on Victory Lane currently on the market that is rumored to have a decrease in value due to the Applicant's business (and therefore, they are forced to sell). She noted that property was purchased in 1998 for Two Hundred, Twenty-Nine Thousand, Six Hundred Fifty (\$229,650) dollars and that the asking price in 2013 is Four Hundred Nineteen Thousand, Nine Hundred (\$419,900) dollars. She also noted Zillow data shows a 1.7% increase, and Trulia has a 1.3% increase in Wethersfield property values for 2013. She mentioned that May to July of 2013, housing values have increased 12.3%. She indicated that after spending a day at funeral services, she is saddened by the wasting of time with this Application's proceedings.

Roger Cormier, 15 Liberty Hill, spoke in support of the Application. His wife is a former client of the Applicant who abided by the terms of the special permit as reiterated by the Applicant. He spoke favorably of the fitness studio and unfavorably of neighbor scrutiny concerning the arrivals and departures of not only his wife, but the Applicant's clients, friends, relatives, etc., at the site. He described how non-business, personal visits to the site by he and his wife as friends of the Applicant are also met with the request of the Applicant to not park in the street to accommodate neighbor desires of having no on-street parking. He mentioned that Victory Lane is a public street, and parking is permitted on public streets. He also mentioned this Application has solely positive attributes, as the business is structured and by limited appointment only. He stated that in comparison, home-based daycare businesses (of which many exist in Town), generate much more traffic than the Applicant's business. He also stated his residential street has experienced more traffic as the result of teen drivers visiting neighborhood friends. He suggested that Wethersfield resident input have greater weight in consideration of this matter than input from residents of other towns.

PUBLIC COMMENTS IN OPPOSITION TO THE APPLICATION:

Robert Barrett, 38 Victory Lane, had appeared before the Commission in opposition to the original Application and now appears in opposition to this Application renewal and modifications. He and his wife reside next door to the Applicant. He noted he and his wife are opposed to any major home occupation allowed in a residential area. He stated there are many vacant commercial sites in town that can be used for the Applicant's business and noted he and his wife's concerns of business expansion have come to fruition with the special permit renewal filing. He also noted advertising in *Wethersfield Life*, town circulars, public access television, as well as publishing the business address is changing the character of the neighborhood. He questioned whether there will be a time when this Commission would deem the Applicant's business too big. He noted there have been violations by the Applicant of the original special permit, and Mr. Gillespie, Town Planner, has been notified. He indicated that an extension of permit conditions only opens the door for the Applicant to continue to violate the stipulations without repercussion. He mentioned the Applicant's client (who also identified himself at

the first meeting as an electrician) created a disturbance on the Barrett's front lawn by trespassing onto the property at night, removed property stakes (that were placed next to surveyor pins as a reference point for a landscaper), and drove recklessly up the road. A privacy fence was then installed. He noted the Town has nothing in place to monitor and enforce the stipulations of the special permit. He noted an approval for a home-based business at 5 Victory Lane does not allow for clients at the site. He mentioned he purchase a home on a cul-de-sac for the quiet attributes it brings. He believes the granting of this special permit Application will result in property values being adversely affected, increased unwanted vehicular traffic, and discord of the neighbors. He asked the Commission to consider the impact to the neighbors, as they will have to live with the decision.

Maggie Pace, 26 Victory Lane, appeared before the Commission in opposition to this Application renewal and its modifications and noted she was opposed to the original Application. She noted that an undue burden fell on the neighbors regarding violations to the original permit due to a lack of mechanism in place to respond to the violations. She mentioned neighborhood discord has resulted in a community she values. She noted it is disheartening to allowing members of the public who have no immediate sense of her street to heavily weigh in on this Application. She also noted she is not against the Applicant personally. Rather, she is against home occupation permits allowed on residential streets in Wethersfield.

Paul Pace, 26 Victory Lane, appeared before the Commission in opposition to this Application renewal and its modifications and noted she was opposed to the original Application (and submitted opposition letters regarding this Application from: 1) James Fusco, 2) Rick and Lisa Pullielli, 3) Paul and Janice Pace, 4) Karen E. Reynolds, 5) Jason and Corey Stavack, 6) Joann Bronner, and 7) Lyle and Mary Fulton. He believes a dangerous precedent has been set and asked that it be ended. He noted there are plenty of areas in Town suitable for the Applicant's business. He also noted concerns with traffic on Victory Lane when factoring in the subject business and vehicle traffic it brings from clients and contractors. He indicated character assassinations of Victory Lane neighbors at the original hearing were not appropriate and should not be allowed. (Refer to July 15, 2013 letter from Mr. Pace to Peter Gillespie and Members of the Zoning Board.)

Peter O'Keefe, 7 Clove Hill Street, appeared before the Commission and spoke on behalf of Rosalie Barrett as against this Application. He noted that neighborhood activity is more noticeable to residents if the neighborhood historically has been quiet. He believes the standards referred to in the Wethersfield Zoning Regulations, Article 1, Section 1.2 Purpose have not been met in this Application.

He Town regulations are adopted for the purpose of: A. Promoting and protecting the public health, safety, comfort, and general welfare of the community in living and working conditions;

B. Preventing the overcrowding of land and avoiding undue concentration of population;

C. Conserving the value of buildings and encouraging the most appropriate use of land throughout the town;

D. Regulating and restricting the location of trades and industries and the location of buildings designed for specified uses;

E. Regulating and limiting the height, bulk and area of buildings hereafter erected;

F. Regulating and determining the area of yards, courts and other open spaces for buildings hereafter erected;

G. Lessening congestion in the streets;

H. Securing safety from fire, panic, flood, and other dangers;

- I. Providing adequate light and air;
- J. Facilitating adequate provision of transportation, water, gas, electric light and power lines, sewerage, drainage, schools, parks and other public requirements;
- K. Minimizing and, where possible, preventing loss of life, injury and damage to public and private property caused by flooding and attendant hazards; and
- L. Addressing other matters authorized by statute.

and (expectations of cul-de-sac neighborhood living)

Article 3, Section 3.1 Purpose

A. The various residential districts are intended to provide suitable areas for residential development appropriate to the environmental characteristics of the land and the character of the neighborhood. The differentiation among the residential districts is intended to provide for variety in the size and density of residential neighborhoods and a diversity of housing opportunities. The districts are intended to accommodate certain non-residential uses when they are compatible with residential uses and preserve neighborhood character and property values.

Mr. O'Keefe indicated the criteria of 3.5.2 HOME OCCUPATION. Sections B.2. and 3. have not been met, reasoning that the Applicant's business takes up more than twenty five (25%) percent of the square footage of the residence and that clients will be on site.

3.5.2 HOME OCCUPATION. Sections B.2. and B.3.

B. A minor home occupation is permitted when accessory to a residential use of the premises provided that a written request and appropriate plans in accordance with Section 10.2.B are submitted to, and approved by, the Zoning Enforcement Official. The Zoning Enforcement Official may refer any application to the Commission and the Commission reserves the right to review any home occupation for compliance with the following requirements and act upon its findings:

- 2. It shall occupy less than 25% of the gross floor area of the dwelling.
- 3. The home occupation shall not involve customers or clients arriving at the dwelling.

Mr. O'Keefe indicated that if the Commission should renew this Application, he asked that an expansion in the number of visits not be made from ten (10) to twelve (12) and that the special permit duration not be increased from eighteen (18) months to five (5) years. In terms of the stipulations with the current special permit [fifteen (15)], or any additional stipulations, he requested that information be provided on how effective monitoring/enforcement of special permit terms will be addressed.

Mr. O'Keefe read into the record a letter from George Pappas, 21 Victory Lane, that expressed strong opposition to this Application. The letter expresses concerns with Mr. Pappas' wife, assisted by her aide, walking on Victory Lane when considering the impact of traffic and safety issues created by the Applicant's business.

Ron Catania, 64 Shea Circle, Rocky Hill, provided signed and notarized Affidavit indicating information he learned from a phone conversation with a realtor about the reason the other residence on Victory

Lane is for sale. He noted the reason is due to house occupants seeking fifty-five and over (55+) housing.

Paul Pace, 26 Victory Lane, clarified the above residence is for sale due to an occupant having dementia and a desire to live closer their child.

Attorney Penny summarized by stating there have been no violations of the fifteen (15) stipulations made in the original special permit. The zoning enforcement officer did address complaints made at the site, and Attorney Penny indicated complaints would have been received by the Planning Office and/or the Zoning Enforcement Officer. He noted Town Zoning regulations go to great lengths to protect neighborhoods for permits of this kind and that reasonable/rational conditions for the special permit were established. He also indicated. Fitness equipment is normal in residences today. An increase in the number of clients seen in one (1) week is being requested [from ten (10) currently, to twelve (12)], and the permit duration request is for five (5) years instead of eighteen (18) months.

Commissioner Oickle inquired and the Applicant indicated that the increase in permit duration is being sought as to avoid a shorter permit expiration date and control legal expense. The Applicant indicated he'd like to accept two (2) appointments on Wednesdays, as he is now available on Wednesdays to work with clients.

Commissioner Standish inquired and Mr. Gillespie explained the two (2) violations referred to were not violations associated with the stipulations in the original special permit approval. The violations were for excessive noise emanating (above allowed decibels) from the Applicant's generator. The neighbors noted that issue was resolved. Mr. Gillespie also noted it was learned the Applicant was inaccurately quoted in *Wethersfield Life* regarding the number of training sessions offered per week at the site.

Motion: Vice Chairman Harley made a motion to close the public hearing of **PUBLIC HEARING APPLICATION NO. 1798-13-Z: Gary Catania** Seeking a Special Permit in accordance with Section 3.5.2 of the Wethersfield Zoning Regulations for the continued use of a home occupation at 44 Victory Lane (Renewal and modifications to conditions).

Second: Commissioner Oickle seconded the motion.

Aye: Roberts, Harley, Oickle, Hammer, Fazzina, Dean, Standish;

Nay: None;

Vote: 7 – 0;

This Public Hearing was Closed.

DISCUSSION:

Commissioner Oickle mentioned there was no convincing evidence submitting regarding the issue of impact on property values in the subject neighborhood in consideration of the existing special permit.

Vice Chairman Harley mentioned the issue of compliance with stipulations and started the discussion of public input with the mechanisms for compliance.

Chairman Roberts indicated there are many mechanisms for ensuring compliance, and Commissioner Standish offered the suggestion of a regular record noting the name of the client, the frequency and the duration of the training session.

Commissioner Standish indicated, and Commissioner Oickle concurred, the special permit approval could be thirty-six (36) months rather than the five (5) year approval being sought and that monitoring data be returned to the Commission for review annually.

Chairman Roberts addressed the request of the Applicant's Counsel (Attorney Penny) to table the decision of this Application, as five (5) full members rather than the nine (9) full members were present at this meeting.

Commissioner Oickle indicated it may prove difficult to get all the same full Commission members together at a particular time.

Chairman Roberts noted this Application would also involve members taking time to digest this matter and suggested that Mr. Gillespie look into or have Staff work on enforcement measures.

Commissioner Hammer noted he shared the concerns expressed Chairman Roberts and Commissioner Oickle regarding full member review (see above). He also noted the group seated this evening could handle the review of this Application.

Vice Chairman Harley mentioned looking at the improvement in control with the enforcement of compliance pertaining to home occupation special permits. He noted there is no hard evidence of special permit violations in this matter and that a special permit duration of less than five (5) years is more appropriate.

Commissioner Standish indicated the neighbors within the three hundred (300') foot radius have a higher stake in this Application.

Commissioner Dean mentioned his thinking is akin to Commissioner Hammer as expressed above and that the issues involved concern whether the number of client visitations should be increased, how enforcement of the stipulations in the special permit will be enforced, and the duration of the special permit (increased/decreased).

Commissioner Oickle indicated he would vote against a permit duration of five (5) years, as a shorter permit duration would be easier to monitor.

Commissioner Standish indicated five (5) years is too long and that there may be a future more immediate need to change regulations.

Commissioner Oickle mentioned that anyone could approach this Commission and request a zone change.

Chairman Roberts noted the special permit would run with the land. He suggested allowing ten (10) visits, a permit duration of no longer than three (3) years, and an annual certificate of compliance submitted by the Applicant. He cautioned having a client log that would have an identification schedule become a public record.

Mr. Gillespie suggested a stipulation provided annually during the first month of each year requiring the Applicant to submit an affidavit annually with a supplemental general log that would attest compliance with the conditions stipulated to. He noted a Show Cause hearing could occur if there are violations to

the stipulations.

Commissioner Hammer concurred with the notion of having the affidavit and supporting documents filed annually (by February 1) for the previous year.

Commissioner Fazzina indicated he was satisfied with leaving the Application terms where they are and adding the affidavit and supporting documents provision to the Stipulations.

Motion: Commissioner Oickle made a motion to approve **PUBLIC HEARING APPLICATION NO. 1798-13-Z: Gary Catania** Seeking a Special Permit in accordance with Section 3.5.2 of the Wethersfield Zoning Regulations for the continued use of a home occupation at 44 Victory Lane (Renewal and modifications to conditions), with the following stipulations:

1. There are no employees associated with the business;
2. Occurrence of training sessions shall not exceed ten (10) training sessions per week;
3. The occurrence of training sessions shall not exceed two (2) sessions per day;
4. The business must be continued to be operated by the residents of the dwelling;
5. The home occupation must be conducted exclusively in the basement of the dwelling;
6. All client parking shall be provided on site in the driveway;
7. No more than one (1) client at a time;
8. Retail sales of fitness equipment are not permitted;
9. Business hours of operation shall be conducted beginning at 7:00 a.m. and ending no later than 8:00 p.m.;
10. Massage or hot tub therapy is not to be conducted as part of the home occupation;
11. Signage is not permitted at the site;
12. This special permit expires February 1, 2017;
13. There is no business operation on Sunday;
14. Conformity to all applicable building and life-safety regulations shall be coordinated with Town Staff;
15. The Applicant shall file an annual permit condition Affidavit no later than February 1 of each calendar year pertaining to said permit activity year. The Affidavit shall be addressed to the Wethersfield Zoning Officer and the Town Planner for purposes of a review and a report to the Commission. The herein-described Affidavit shall be completed annually for the entire duration of this special permit. The Affidavit shall attest to the Applicant's compliance with the conditions to the special permit and shall include supporting documentation, including a client log.

Second: Vice Chairman Harley seconded the motion.

Aye: Roberts, Harley, Oickle, Hammer, Fazzina, Dean, Standish;

Nay: None;

Vote: 7 – 0;

This Application was approved, as stipulated.

4. OTHER BUSINESS:

There were no matters of Other Business discussed during this meeting.

5. MINUTES – July 2, 2013 Planning & Zoning Commission Meeting Minutes and July 16, 2013 Planning & Zoning Commission Meeting Minutes

July 2, 2013 Planning & Zoning Commission Meeting Minutes:

The following corrections were made by Commissioner Oickle to the Minutes from the meeting held on July 2, 2013:

Page 3, 7th Text Line from bottom of page. “mmissioner” is to read “Commissioner”.

Page 5, Paragraph 7, Line 3. The words “to available obtain” are to read “available to obtain”.

Motion: Vice Chairman Harley motioned to approve the minutes, as corrected.

Second: Commissioner Oickle seconded the motion.

Aye: Roberts, Harley, Oickle, Fazzina, Standish;

Nay: None;

Vote: 5 – 0;

Commissioners Hammer and Dean did not participate in the vote, as they were not present for the Planning & Zoning Commission Meeting of July 2, 2013.

July 16, 2013 Planning & Zoning Commission Meeting Minutes:

There were no corrections made to the Minutes from the meeting held on July 16, 2013.

Motion: Commissioner Oickle motioned to approve the minutes, as submitted.

Second: Commissioner Standish seconded the motion.

Aye: Roberts, Oickle, Fazzina, Dean, Standish;

Nay: None;

Vote: 5 – 0;

Vice Chairman Harley and Commissioner Hammer did not participate in the vote, as they were not present for the Planning & Zoning Commission Meeting of July 16, 2013.

6. STAFF REPORTS:

Mr. Gillespie mentioned the subject fence (as stipulated in the June 4, 2013 decision pertaining to **APPLICATION NO. 1636-09-Z: 295 Ridge Road** Request for Site Plan Approval Extension for 291-295 Ridge Road) was installed by August 20, 2013 as directed by the Applicant. However, the plans for the subject site of interested purchaser, *Lifestyles Unlimited, Inc.*, will not be pursued at this time. He also noted a copy of the report he provided to Town Council will be e-mailed to the Commissioners.

7. PUBLIC COMMENTS ON GENERAL MATTERS OF PLANNING AND ZONING.

There were no public comments made at this meeting regarding general matters of planning and zoning.

8. CORRESPONDENCE:

There were no items of correspondence discussed during this meeting.

9. PENDING APPLICATIONS TO BE HEARD AT FUTURE MEETINGS:

There were no pending applications discussed during this meeting.

10. ADJOURNMENT:

Motion: Commissioner Hammer motioned to adjourn the meeting at 9:57 p.m.

Second: Vice Chairman Harley seconded the motion.

Aye: Roberts, Harley, Oickle, Hammer, Fazzina, Dean, Standish;

Nay: None;

Vote: 7 – 0;

Meeting adjourned.

Respectfully submitted,
Ellen Goslicki, Recording Secretary