



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING BOARD OF APPEALS
(203) 797-4525
(203) 797-4586 (FAX)

MINUTES
June 12, 2008
COMMON COUNCIL CHAMBERS
7:00 PM

ROLL CALL: Chairman Richard S. Jowdy called the meeting to order at 7:02 pm. Present were Jowdy, Herbert Krate, Michael Sibbitt, Joseph Hanna, Alt. Jack Villodas, Gary Dufel. Krate made a motion to hear tonight's agenda, except #08-25. Sibbitt seconded the motion. The motion carried unanimously. Chairman Jowdy opened the meeting by explaining the procedure for Public Hearing, those in favor, those in opposition; all speakers sign in and identify themselves.

Absent were Alt. Rodney Moore, Alt. Rick Roos.

Staff present were Sean P. Hearty, Zoning Enforcement Officer, Secretary Patricia Lee, Corporation Council Robin Edwards.

CONTINUATION OF PUBLIC HEARINGS:

#08-20 – CONTINUED: His Vineyard, Inc., 22 Shelter Rock Lane (L15006), **USE** Variance, Sec.6.A.2.a., & Sec. 11.B.2.d., to permit a church use in the IL-40 Zone. Corporation Council comments received 5/14/08. Planning & Planning Commissions both issued negative recommendations. Chairman Jowdy introduced this petition at 7:03 pm. Jowdy said we have two negative recommendations, one from Planning, one from Zoning and Jowdy stated their reasons. Peter Scalzo, attorney at law, from 2 Stony Hill Road, Bethel, came forward and identified self, saying that he is joined by pastors, Kerri and Gary Baldelli, and our engineer Benjamin V. Doto, III, PE, and our parishioners in favor. Gary and Keri are Danbury born and bred and are looking to purchase this parcel. I have documented and submitted their five-year search for a church location, Scalzo said. What is significant in this is that their industrial neighbors are in favor, shown in letters which I submitted at the last meeting. The church use will be primarily on Wednesday evenings and Sundays. I know how important industrial zones are to the City, Scalzo said, and we don't take that lightly. We talked about The Religious Land Use and Institutionalized Persons Act of 2000, and there were two burdens raised in my letter to Chairman Jowdy and the Zoning Board of Appeals dated 3/13/08. Robin Edwards has written a response letter to my letter; but we had cited the Cottonwood Christian Center case in California. That township could not limit their religious worship (in a commercial zone). Scalzo discussed the equal terms test and those issues before the Planning and Zoning Commissioners. We are arguing in the IL-40 zones, they do permit hotels, assemblage uses, and under The Religious Land Use and Institutionalized Persons Act, then you have to treat churches on equal terms. We are focusing on that act. In Corporation Counsel's letter on page two, she points out that nowhere in the IL-40 regulations is it articulated why churches are not allowed but secular places of assembly (in hotels) are permitted. "This leaves no justification (at least from the language of the Regulations) for treating churches on less than equal terms than the secular assemblies in hotels". Scalzo continued, "ZBA also may reasonably conclude that application of the regulation to the proposed church use creates a hardship beyond the

applicant's control, justifying the approval of its variance application. Should the ZBA decide to grant the variance, it may wish to impose such other conditions as it deems reasonable". Scalzo further discussed the hardship. The neighbors are in favor, and we have the equal terms test. Scalzo asked the Commissioners are there any questions? I know Corporation Council is here tonight, if you have any questions for Robin. Pastor Gary came forward in his wheelchair and identified himself. Baldelli thanked the Commission for their time. We have been in the area for 20 years, and we have been leasing our current location for 11 years, Baldelli said. Finding a spot that would suit our needs; our vision and our mission goes deep, and our heart is in Danbury. We both have large families in Danbury. That's a big part of our heart. The Zoning Board; it's just been difficult. We believe we have found what we need. Thank you, Gary Baldelli concluded.

Jowdy asked is anything you want to add? Ben Doto, PE, took the mic, identified himself, and said I just want to summarize that the site can easily accommodate this proposal. One limitation is the site does not have access to City sewer, so a church would be a good use for this site therefore, the septic system would limit the industrial use at this site; there would be restrictions from the Health Department. But a church has very low water usage. The other limitation for an industrial use are the wetlands on the site. The Wetlands Commission in my experience would have some concerns with an industrial use on this site. Krate interjected to Doto, what you are saying is interesting, but that it can't be used for another use is not our concern. Jowdy asked Doto about the façade of the proposed site. We have those photos you submitted before. Jowdy asked is there anyone who wishes to speak in favor. Everyone in the audience for this petition are in favor. Jowdy added there was quite an extensive letter by Robin Edwards; Sean and we have a copy. Krate said we all have it. I concur with Ms. Edwards, Jowdy said, and this is one of the situations where the interpretation of this code would cause the hardship. Our job is to decide if we are allowed to make the decision. Is there anyone in opposition who would like to come up and speak in opposition? Krate said I'd like to make a motion to suspend the rules so that we can vote on this now. Krate said I make that a motion. Sibbitt seconded the motion, and the motion carried unanimously. Robin Edwards stood up and recommended they close the Public Hearing first. Krate said, yes, we're suspending the rules. Krate said I make a motion to close the Public Hearing. Hanna seconded that motion and it carried unanimously. Jowdy then had Herb Krate read the last two paragraphs of the letter dated 5/14/08 from Corporation Council Edwards into the record. Jowdy then said, thank you. If we take that one step further, there could be a hotel on that site. That is one of the factors that I believe the applicants are basing their case on. We don't allow churches per say in the residential zones unless there are three acres or more. So those are comments that I have, Jowdy concluded.

Krate addressed Robin Edwards: we have two denials from Planning and Zoning. I'd like to get your gut feeling on this, so that we don't open a Pandora's Box for future applications. Edwards, Corporation Counsel, identified herself at the mic, and said I think you must take each case on its own facts. She gave the history of the religious land use act (RLUPA) and basically what it says: each case on a case by case basis. There are a flood of these cases across the country. If this is okay today, it does not mean that it is okay tomorrow, Edwards said. Krate discussed setting a precedent; I wanted to hear it from a legal standpoint. One commissioner suggested this would be opening a Pandora's Box. Each case must stand on its own merits, Edwards replied. Jowdy reiterated about setting a precedent; the next church that comes in would have to stand on its own merits. These are local people. If they were out of state, we might look at them differently. Krate said you cannot look at them differently; everything must be on an equal footing. If it is the identical criteria, under the Federal statute, and I try to read that thing, and it is confusing; you can't pick and choose who you want and who you don't want. Jowdy responded, yes, you're exactly right. I agree with you 100%. Any other input? Gary Dufel said I've given this one some extra

thought and I've jotted down some notes. My thoughts are this: the industrial zone purpose is for the economic vitality of Danbury; limited space in extent and availability, jobs and economic improvement; this is not in the best interest of the community. Danbury provides a lot of areas where churches are allowed, just not industrial zones. I do not agree with the hotel analogy. Dufel said. A church is a destination place that does not complement an industrial zone. So I think our regulations support a denial for this use in an industrial zone. Krate said Jack Villodas is the alternate. Krate made a motion to approve His Vineyard, ZBA 08-20, and he cited the reasons for his motion. Corporation Council comments were received on this, and Planning and Zoning reports were also received on this. The hardship is that the zoning regulations do not clearly state why churches should be held to a different criteria than a hotel place of meeting; and for those reasons, I believe that the hardship is caused by the zoning regulations, and Krate expanded on this. It would be treating a church on a different level. It would, in my opinion, create an undue hardship for the religious association. Krate asked are there any limitations to the use from any Commissioners? We would not permit a day care or school use on the premises, Krate said. Hanna seconded the motion. Gary Dufel cited Roberts Rules of Order; I just want the rules followed. Jowdy said there is no discussion from my left; vote please. Dufel voted nay. Sibbitt voted nay. Jowdy, Krate and Hanna voted yes. Chairman Jowdy said to the applicant, unfortunately, your application is **denied**. There must be four votes in favor. Thank you for coming, Jowdy concluded.

Gary Dufel motioned to open the Public Hearing for the next application. Sibbitt seconded the motion. The motion carried unanimously.

#08-25 – CONTINUE to **7/10/08**: Anthony J. & Vivian Chiappinelli, 22 Shore Road (K02112), Sec.4.A.3., to reduce min. req'd. side yard setback from 15 ft.; Sec.8.B.1.(3)., to allow 15% driveway grade for portion of driveway (RA-20 Zone). This will be continued at the next ZBA meeting as the applicant's request.

#08-28 – CONTINUED: Carol Nicklaus, 35 Alan Road (H22021), Sec. 3.G.3.d., to allow a detached accessory use between the dwelling and the front lot line; Sec.4.A.3., to reduce minimum side yard setback from 6 feet to 3 feet for a detached accessory (greenhouse) use (RA-20 Zone). Jowdy introduced this item at 7:36 pm. Carol Nicklaus came to the mic and signed in. Dufel expressed a question on which of the Commissioners present could vote on **#08-28**. Villodas was not here for the last meeting. Jowdy said you had me all confused. Dufel said I have read the record (minutes) and am ready to sit in on this Nicklaus application. Nicklaus identified herself again. If I understand correctly, the continuation was because of a change in your regulations; it has been republished and I am here to put a greenhouse on my lot, and I would be happy to go over any concerns again. Krate asked your hardship is the movement of the sun? Nicklaus said it's also because the back yard is taken up by the septic system; it is the only place that it could function as a greenhouse. Dufel asked, if the septic system was not in the back yard, could you put it in the back yard? Nicklaus said if I put it in the back yard, besides the septic system, I would have to take down a lot of my neighbors' trees, which I don't want to do. Krate said I'll vouch for that; there's no sun in the back yard. Dufel said to Nicklaus but you took a picture when the sun was shining back there. Nicklaus replied I'm not a clever applicant, what can I say? This one is pretty shady. Dufel and Nicklaus looked at her photographs, and discussed the lot line, the number of variances granted in the area. Dufel said I got my questions answered. Villodas asked to see her photos. Nicklaus asked do you have a copy of the survey there? Chairman Jowdy said, thank you. During the voting session at 8:08 pm, Chairman Jowdy reviewed her request, the septic, the trees; the only feasible place. Krate said so it's a celestial problem. Dufel said just

because she was a lovely lady and very friendly does not sway me. This is one to me that zoning is in place to stop. But you look at the picture: I consider this a very ugly structure in the front yard, and I don't want to do this to the neighbors. If this was just a shed, she could put it in the back yard. What about this makes us think that this is a necessary amenity to a home, Dufel asked. You shouldn't buy something like this if you don't have a spot for it. Chairman Jowdy said I can just say this is the only place to put a house for flowers, and he opened it for a vote. Krate made a motion to **approve #08-28** for a detached accessory use for a greenhouse only, per plan submitted. Joe Hanna seconded the motion. Dufel voted nay, and the other Commissioners voted aye (Krate, Jowdy, Sibbitt, Hanna, Villodas). The motion passes, Jowdy concluded.

NEW BUSINESS:

#08-30 – Casali Construction, LLC, Beech Trail (H04027), Sec.4.A.3., to reduce rear yard setback from 35 ft. to 6 ft.; Sec.8.A.2.c., to allow grading of site preparatory to construction (RA-20 Zone). Jowdy introduced this item at 7:45 pm, and Pat O'Rourke came forward. Sean said, a quick point: the Board is going to be addressing a new slope/grading/excavating, upgraded regulation. At Krate's request, Sean Hearty read the new regulation into the record. Krate said could we get these before our meeting? Anything that does not have an approved site plan or subdivision approval showing the infrastructure, you will be hearing. Sean continued you will be hearing lake lots a lot. Dufel asked Sean to clarify the new regulation. Hanna said what about a fence? Hearty gave some examples of when a variance would be needed, a retaining wall. O'Rourke said I am here because of this new zoning law. Our neighbors have all agreed to give us grading rights. It would all be reseeded. We also need to reduce the rear yard to 6 feet, which O'Rourke pointed out on his plans at the dais. Dufel had a question on the amount of filling, which O'Rourke addressed. Dufel asked is this the only location? O'Rourke said this lot is preexisting nonconforming, and answered Dufel's questions. I understand, thank you, Dufel said. Krate said I have no questions. Jowdy said that's all for now, and asked is there anyone who wishes to speak for or in opposition to this proposal? At 8:12 pm Chairman Jowdy summarized the request in the voting session. Joe Hanna said they got a permit from the neighbors. Krate made a motion to approve Casali's request to reduce rear yard setback and to allow grading. The Hardship is the topography and the pre-existing, nonconforming lot. Sibbitt seconded the motion and the motion carried unanimously.

#08-31 – John C. Lewis, 91 Boulevard Drive (D16009), Sec.4.G.1., to allow parking in a front yard; Sec.8.C.1.c., to legalize 3 parking spaces in a front yard (RA-40 Zone). Revised plan received 6/11/08. John Lewis signed in as Jowdy introduced this item. Lewis identified himself to the Commission. Okay, go ahead, John, Chairman Jowdy said. What we want to do is legalize these parking areas. The way I've laid it out there. Krate asked and your hardship is? Lewis replied obviously, not parking on the street. Krate asked is parking not permitted on Boulevard Drive? Lewis explained that, no, it's just in the winter. I've put a lot of money into these dwellings and I've gotten a lot of complements. Joe Hanna asked you have three houses? Three different lots? Lewis responded just one property with three houses. Dufel asked how long has it existed? Lewis said I don't know; I bought these only last year. I couldn't know. There's grass growing, sure. If you looked at it, probably the property sat for awhile. They came from the city. It's Lake Kenosia. Dufel said you stated you have no knowledge of the former parking habits. Do you know of cars being towed? Lewis replied yes. It's makes it more convenient for the people living there. Dufel said to Lewis tell me about the topography since you don't show it on the plan, Lewis described the rear and sides yards topography. He came to the dais to show Dufel. Joe Hanna asked

Hearty are they legal structures? Hearty said yes. Dufel asked somebody educate me where Boulevard Drive is? The commissioners responded where. Dufel said your map says existing gravel parking area, but you are proposing this; so you've put in the gravel drives. Lewis said, with the winters, you don't know what's coming. Chairman Jowdy discussed maneuvering around cars parked on two sides of the road. It's a hazard to anyone else coming and going, Chairman Jowdy said. Krate asked how high off the ground does it wind up? Lewis said it's perfectly level. I have a contractor lined up to do it. I had Syd Rapp out there to do it right. Hearty said the driveways were installed without permits. And the operation has since ceased. Lewis said it's not our intent to make them three separate lots. Dufel mentioned the two previous denials. Chairman Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal? Chairman Jowdy reviewed the petition at 8:13 pm in the voting session; the hardship claimed is to get cars off the road. In my opinion, it would be a benefit to that neighborhood. Krate said this whole thing is ridiculous; three dwellings on one lot, but we're stuck with it. Upon Krate's request, Hearty said we don't allow parking in the front yard. Farther back is better, which is a more dangerous situation; parallel or vertical, the front yard setback is quite severe for an old lot like that. Krate asked is there any better solution that you see? Chairman Jowdy described the grades in that neighborhood. Hearty said the lot is mainly flat. Dufel asked is it possible to defer a vote on this? Krate said our Chairman made a statement that I trust, but I'd like to see it. Krate made a motion to continue this application. Sibbitt seconded it, and the motion carried unanimously; table this till we go on site. So approved, Jowdy concluded.

#08-32 – Steve Filippakos, aka PSN Associates, LLC / Transcon Associates, Ltd., 24 Rowan Street Extension (I11035), Sec.5.H.1.b., to reduce continuous perimeter planting strip required depth from 20 feet to 2 feet to allow installation of seasonal dining patio (CG-20 Zone). Jowdy introduced this issue at 8 pm, and Mark Kornhaas, PE, from Artel Engineering Group, LLC, came forward with the easel. Kornhaas identified himself and his address. This property, Kornhaas said, is located at 24 Rowan Street Extension, and he described the zone and vicinity. The building size is about 24,000 sq.ft. It was renovated in 2006; now Mykonos Restaurant. Our application is for a 20 foot by 35 foot dining patio on the west side of the building. Dunkin Donuts is directly across the street. Kornhaas described the variances needed; the planting strip location is just in this area. Krate asked Kornhaas what type of protection will be put along the street? Kornhaas replied an aluminum wrought-iron type fence, maybe a hedge, or planters. Krate said we may stipulate something more substantial to deflect an automobile. One mistake there, pulling out, would put them on that patio. Dufel asked is this a flat patio, and will it have an awning or cover? Kornhaas said it will be a fair weather eating place, late spring to early fall; empty half the year. Kornhaas agreed with Krate. Kornhaas said they are open for lunch, but their business is mainly dinner time. Kornhaas said we've noticed that a patio is to a restaurant, what a canopy is to a gas station. Chairman Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal? Chairman Jowdy in the voting session reviewed this at 8:17 pm: a seasonal dining patio, and it's what they are doing today. Krate said I want to see a barrier in keeping with the prevention of an automobile being able to pass onto that patio, with that Dunkin Donuts across the street; there needs to be adequate protection, to protect the public safety. We can stipulate that. I would prefer stipulating that, in answer to Dufel's suggestion of referring it to Planning and Zoning. Krate made a motion to **approve** this, with the **stipulation** that they must put an adequate traffic barrier, as per the opinion of the traffic engineer, which would stop any vehicle that might turn onto that patio, so as to protect the public. Joe Hanna seconded the motion, and it carried unanimously.

#08-33 – Paul Slinsky, 18 Albert Road (H09146), Sec.4.A.3., to reduce minimum side yard from 25 ft. to 17.1 ft.; to reduce minimum front yard from 40 ft. to 38.2 ft.; to reduce rear yard from 35 ft. to 11.8 ft.; to increase maximum building coverage from 15% to 16% for residential addition (RA-40 Zone). Chairman Jowdy introduced this variance at 8:05 pm, and Kevin Slinsky signed in. Tell us why you need all of these, Jowdy said. Slinsky said it's a small lot with a tiny house, and I realized this (ZBA **07-79**) would cost me too much money; the foundation, beams, contractors. Chairman Jowdy said this is for your own use, a very small, small house. Your explanation is well taken. You are actually reducing this; now no second floor. Hearty said this is a brand new variance. Dufel asked when it is done, how many bedrooms will there be? Slinsky replied two. Chairman Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal? During the voting session at 8:20 pm, Chairman Jowdy opened this up for a vote. Dufel made a motion to **approve 08-33** requests for a variance for a residential addition, per plan submitted. You don't know how hard it is for me to make a motion for four variances, Dufel said. The hardship is the pre-existing, nonconforming lot. Joe Hanna seconded the motion, and the motion carried unanimously at 8:21 pm.

Approval of Minutes from the 6/12/08 meeting was tabled till the next meeting when four commissioners who were present at that meeting can vote on it.

ADJOURNMENT: Motion to adjourn by Krate. Second by Sibbitt. The motion carried unanimously at 8:24 pm.

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR JULY 10, 2008, at 7 pm.

Richard S. Jowdy, Chairman