



**CITY OF DANBURY**  
155 DEER HILL AVENUE  
DANBURY, CONNECTICUT 06810

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

MINUTES  
**August 14, 2008**  
COMMON COUNCIL CHAMBERS  
7:00 PM

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Chairman Richard Jowdy called the meeting to order at 7:05 pm. Present were Jowdy, Herbert Krate, Michael Sibbitt, Joseph Hanna, Gary Dufel. Absent were Alt. Rick Roos, Alt. Rodney Moore, Alt. Jack Villodas. Jowdy said good evening and said we'll start off; one more gentleman is on his way up. Krate motioned to here tonight's agenda. Sibbitt seconded the motion. The motion carried unanimously. Jowdy explained the procedure for public hearing, those in favor and those in opposition, and the right to rebuttal. If we have a four-man board, one negative vote turns the application down, so we'll wait for our five-man board. Mr. Hanna is here, Jowdy said.

NEW BUSINESS:

**#08-37** – Jose Yock & Nydia Yock, 31 Oakland Avenue (I11043), Sec.4.B.3., to reduce minimum req'd. lot area from 8000 sq.feet to 7421 sq.feet; to reduce front yard setback from 20 feet to 15 feet; to reduce rear yard setback from 25 feet to 16 feet to legalize 2-family residence (RMF-4 Zone). Jowdy introduced this at 7:06 pm, and read the request. When you come up, please sign your name. Gregg Brauneisen, Attorney at Law, from 148 Deer Hill Avenue, introduced himself and described the variance requested and gave the history from 1997. The zone change was discussed, and the Planning approved the zone change at my client's sole expense, Brauneisen explained. There was a fire on the premises and the contractor absconded with the funds to rebuild. My client was then told that a variance was required to complete the construction as a two-family home. The hardship is that the lot is undersized, and my client is not allowed a use that the surrounding neighbors have. Brauneisen read the letter dated today from Joseph J. Romanello, Jr., at 21 Walnut Street, a neighbor in favor of the application. Krate asked for clarification about the fire and the rebuild as a one-family versus a two-family dwelling. Krate asked he built it as a one family? Brauneisen replied that I don't know. Dufel asked is the fact that there was a fire change anything here? Other than delaying things, did it change any of the arguments? This looks like an old drawing, Dufel said. Krate explained the same footprint rebuild rule. Krate said my concern is did they build a one-family home. Sean P. Hearty said now it's a one-family home in a multi-family zone. Brauneisen said he's being denied a similar use as his neighbors. Krate said it's irrelevant to me that he paid to have the zone changed. Brauneisen said he has neighbors with two-family homes on even smaller lots. Dufel said you're saying that the new zone change created a whole lot of nonconforming uses? Brauneisen replied no; this is pre-existing. Dufel said okay; that was not clear to me. Brauneisen said that was the question back in 1997, and they were told to change the zone; don't seek these variances. Brauneisen and Dufel discussed the one versus two-family use, and the fact that it's always been a one-family, triggering your being here tonight. Hearty clarified about the 1997 history, the fire, the contractor taking off with the funds; the regulations have now changed; the setbacks have changed. I cannot definitively say yes or

no. Jowdy asked about the lot size compared to neighboring lots. Brauneisen explained it's a larger lot than most of the lots. Hanna asked about the parking. Brauneisen answered there's plenty of parking. Dufel asked (there is snow on the ground in the photos) these were taken last week? Jowdy asked if the Commissioners have any more question. Jowdy asked was there anyone who wishes to speak for or in opposition to this proposal at 7:16 pm.

During the voting session at 8:24 pm, Jowdy said we are open for discussion for #08-37, and Jowdy reviewed the request. Their attorney made the presentation. They want to make it into a two-family; he's the one that had the zone changed. Dufel said that is something that puzzles me: they are asking to legalize a two-family residence. I don't think the attorney was ready to make his case, Dufel said. I'd rather have them come back. Dufel made a motion to **deny without prejudice** so we can find out. Krate seconded the motion. The motion carried unanimously.

**#08-38** – Ronald Utsogn, 9 Mountainville Road (J1702), Sec.3.G.3.c., to increase maximum permitted floor area of detached accessory structure from 50% (451 sq.feet) of the total ground floor area all of principal buildings on lot to 69% (624 sq.feet) for detached accessory use (garage), (RA-20 Zone). Jowdy introduced this petition as Ronald Utsogn came forward and signed in. The increase is approximately 75 sq.feet? Utsogn said yes. I have some pictures also to help reference, which he distributed. Jowdy asked is this the garage that's on there now? Utsogn said yes, and gave its size. Jowdy had a question on the existing conditions, and Utsogn explained how the garage blocks are pulling apart and making the structure unsafe. I'm looking to remove that garage and build a two- car garage with some light storage on top. I've got a dirt basement in the house. It's an 1880 Victorian with only two closets in the whole house, both on one room, so we definitely have storage problems. So we are hoping to solve two problems: the need for a good solid foundation, plus get some light storage on top of it. Jowdy questioned the size of the expansion of the garage proposal. Krate said he is going from a one-car to a two-car. Obviously it is similar to the neighbor's garage. It's in keeping with the neighborhood, Utsogn said, and the same style; and I will keep the Victorian style so it matches with the surrounding area as well. Jowdy explained the hardships. Utsogn described the narrow and steep lot; the mountain, the ice in winter; it's easier to clear a driveway when you move the cars off it. Dufel asked about the size of the garage. You can have a 451 sq.feet What do you consider the size for a two- family garage? Dufel said so I can buy the width of it; but why do you need such depth? Utsogn said even with the width, I would still need the variance. Krate explained justification for the size. Hanna added, for the lawn mower. Utsogn said I could not open the car doors. I have a riding mower and ladders and other garden supplies. I got to park it somewhere; if I can, park it inside. Dufel explained we're required to give the minimum variance necessary. I would like to see this thing come closer, Dufel said. Krate reiterated the standard garage size for two cars. Dufel said you are not giving us the smallest you can survive. Dufel said if he just built bigger house, asking Hearty, could he build a bigger garage? Jowdy asked if there were any further question. Jowdy asked is there anyone else who wishes to speak for or against this application. Thank you, Jowdy said. The Board will inform you of their decision. In the voting session later, Jowdy reviewed the request for the two car garage; the existing one is falling apart, and he opened it for discussion. Krate made a motion to **approve # 08-38** for the increase in the maximum floor area of a detached accessory structure from 50% (451 sq.feet) of the total ground floor area all of principal buildings on lot to 69% (624 sq.feet) for a garage. The hardship is that it is an old Victorian with a rather small footprint, and in order to put in a two-car garage, must go above what the regulations allow. Hanna seconded the motion. The motion carried by four (Jowdy, Sibbitt, Hanna, Krate) with Dufel in opposition.

**#08-39** – William Heese, 40 Paul Street (H21053), Sec.4.A.3., to reduce minimum side yard setback from 15 feet to 7 feet for 3-season room addition (RA-20 Zone). William Heese signed in and said thank you for hearing my petition tonight. The house is currently outside of the setback, and to keep it architecturally compliant, Heese said, I just want to extend out the back of the house with a 14 foot by 14 foot room. Krate said this is up in my country. Jowdy said your addition is along the same line as what you have now. You have a seven-foot sideline now; it's already nonconforming. Krate said everything up there is nonconforming. Dufel said I have a question. Krate said the septic is in the back. Dufel said give me an explanation of why you can't put it right in the center. Heese explained why it could not be placed any other way, and related he had a problem with a contractor. Dufel said that's not pertinent. Why did you put it where you are putting it? Dufel asked is there a bathroom in the way? Heese replied there is no bathroom, but architecturally speaking I'd rather do it on the back of the house. Dufel asked is that a shady area? Heese said the whole back yard is kind of open. I'd have to change the roof. Hanna asked Heese where is your septic system? Heese explained at the podium, and Hanna said it would then interfere with your septic. Dufel said that's what I was looking for: your septic. Jowdy asked if the Commissioners had any other questions. Jowdy asked is there anyone who wishes to speak for or against this application at 7:30 pm. Jowdy reviewed the application in the voting session at 8:28 pm. Dufel said I cannot forget that he said he had an option. Krate said yes; he needs a variance for anything. Due to the septic location, Hanna said, he still needs a variance. Krate made a motion to **approve # 08-39** at Lake Waubeeka, to reduce the minimum side yard setback for a three-season room addition. The hardship is the narrowness of the lot and the location of the septic system. Sibbitt seconded the motion. The motion carried by four (Jowdy, Sibbitt, Hanna, Krate) with Dufel in opposition.

**#08-40** – Joan Murphy, 39 Harbor Ridge Road (I05126), Sec.4.A.3., to reduce minimum rear yard setback from 35 feet to 28 feet for proposed single-family residence with attached garage (RA-20 Zone). I am Patrick Murphy, Joan Murphy's son, the speaker said as he signed in. Ladies and Gentlemen, what we would like to do is remove an existing, nonconforming residence, and build a conforming home, with two bedrooms and 2½ baths. The area where the house is calls for half-acre lots; our lot is ¼ acre. Dufel asked haven't we seen this before? Murphy explained that the old plan (see ZBA **#08-22**) was interfering with the septic design. A two- bedroom is proposed, Murphy said to Dufel; a little tiny cottage. Hanna asked about the reduction to 28 feet. Jowdy said so this will be less nonconforming. Krate said I have no questions. Jowdy asked if the Commissioners had any other questions. Is there anyone who wishes to speak for or in opposition to this proposal, Jowdy asked. Jowdy reviewed **#08-40** in the voting session. Krate said that was where they were rebuilding, centering the new house on the lot. Krate made a motion to **approve # 08-40**. It is certainly bringing the entire lot into more conformity; it is a pre-existing nonconforming area, per plan submitted on these, if I forget, Krate said. Hanna seconded the motion. The motion carried unanimously.

**#08-42** – Samuel P. Showah, LLC, and Lula Holding, LLC, 107-109 Triangle Street (J14270), Sec.6.A.3., to reduce the required lot area by 384 sq.feet for road widening (IL-40 Zone). Jowdy introduced this at 7:33 pm. Attorney Christopher Donohue signed in and identified himself, on behalf of the applicant and Mannkind Corporation. Mannkind has been asked by the City to increase the turning radius at the corner and to widen it. Mr. Showah has been kind enough right from the beginning to cooperate. Mr. Jaber discovered the error at the time of signing. Krate said the hardship is that the City requires it. And it does not benefit

Mannkind. Dufel had a question on the numbers: it's significantly nonconforming now. Krate asked do we have to re-advertize? The application is correct. Donohue said we ask that you do not re-advertise. Hearty said there is a time concern here. Krate said I suggest if there is no opposition, we go ahead with this tonight. Jowdy asked is there any opposition? The Board will inform you of their decision. Jowdy, in the voting session, said that it was advertised wrong. It is pretty cut and dry; our error, not the applicant's, Krate said, and with that, he made a motion to **approve** the reduction of the required lot area by 384 sq. feet to allow for the realignment of the road necessary under City regulations. The owner of the property has agreed to this, making it a little more nonconforming, Krate said. Sibbitt seconded the motion, and the motion carried unanimously.

**#08-43** –Valdemar Luis, 58½ Sheridan Street (J14283), Sec.4.C.3., to increase maximum building coverage from 30% to 32%; to reduce minimum side yard setback from 8 feet to 3.2 feet for handicapped-accessible bedroom (R-3 Zone). Jowdy read this request at 7:36 pm. Krate said to the audience, Melvin, hate to wake you up. Melvin Euvén came forward and signed in, saying good evening and identifying himself. I am going to do the design and the permit expediting, if the variance is granted. This is an existing 4-bedroom house with City utilities. But the mother of the owner is handicapped, in a wheelchair, and she has someone with her constantly to take care of her. The house is too small; they want to add a bedroom that is handicapped-friendly. Euvén gave the size of the proposed addition. So any addition, no matter how it's placed, would need a variance due to the nature of the width of the lot. The hardship is the unusual shape of the lot, and it will stay in character with the neighborhood. This is a single family house in a multi-family area. Two and three family homes surround it. Krate asked Euvén is there a reason you would not put it off the center; actually the lot gets wider in the back, once you're past the parking area. Melvin read the lot width in the front and back; they are not parallel lines. Melvin brought the plan to the podium. Melvin Euvén said the topography is one, and the kitchen is here. Basically, Euvén said, the proposal with this footprint, this idea lends the less costly of variances. Krate asked just a bedroom, nothing else? One bedroom will become a dining room, Euvén replied. Dufel said we were just reviewing a project; I don't understand why this bedroom is 660 square feet; that's a big bedroom. Melvin Euvén said the Portuguese feel very strongly about keeping their parents at home, so this will be not just a sleeping area. There will be an easy chair; the width of any passage in the room must be at least three feet wide. Dufel asked about the slopes. Melvin Euvén said you are ending up with a tremendous amount of lot coverage. The applicant owns the two adjacent lots, I see, Dufel said. Melvin Euvén asked can I show you the field card, and he and Dufel discussed the lay of the lot and home. Sibbitt asked Euvén how will you get a handicapped person in the house? You can't go up and down those stairs. Krate said is this a one-story addition. Secretary Lee said she has Alzheimer's. Sibbitt said I don't care what she's got; how will they get her in and out of the house? Jowdy asked are there any other questions? At 7:46 pm, Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal? In the voting session, Jowdy re-read the request. They have a handicapped person, and they need this addition for an oversized bedroom due to the wheelchair. Dufel said I have great empathy for the needs of the handicapped. I'm just trying to balance those things. Krate said what I take into consideration is at some point this may require 24 hour a day care, probably for two, so it's not out of the groundwork. Dufel argued about what it could become in the future. Jowdy said you have to have a shower large enough. Hanna said I make a motion to **approve #08-43** to increase maximum building coverage for handicapped-accessory bedroom. The existing house is in the same setback, and it is not encroaching any more; this is per plan submitted. Herb Krate seconded the motion. The motion carried unanimously.

**#08-44** – Russell Neumann, 26 Waterview Drive (I07016), Sec.4.A.3., to reduce required rear yard setback from 35 feet to 8.2 feet for a proposed detached garage (RA-20 Zone). Jowdy introduced this petition at 7:47 pm. Doug MacMillan, architect, introduced himself and said Mr. Neumann is here with me. Both signed in. Krate asked him why are you asking for a rear yard setback when we are talking about the front yard, referring to the plan. MacMillan explained, and Krate said, oh, I see. MacMillan said it's two-fold and he explained the variance request. Krate asked where's the application? Jowdy and the Commissioners reviewed the plan. Krate remarked this is advertised all wrong. Where is the 440 line? We don't have the 440 line on here. Neumann said it's shown as the rear property line on the site plan. Krate replied, well, it certainly does not say it, and I've yet to see a property line that is the 440 line. Sean Hearty said there should be a note saying it's the 440. There's a couple of problems: it's advertised totally improperly, which he explained. Krate continued, don't you need a separate variance to put the accessory building in the front yard? And the application does not say that. We need an accessory building and you're in the front yard. You need the 440 line also, Krate said. Neumann inquired: you said the application is not wrong; the advertisement was wrong? Just for clarification? Dufel said since you apparently have to come back, do you have an approved septic system? Neumann explained the involved process. Dufel said you are asking me to vote to add septic tanks fifteen feet from the Lake? You may want to bring your septic contractor to the next meeting, Dufel said. Neumann explained Peter Dunn (City Sanitarian) met with me on the site after that design was done, and he is comfortable with that. Dufel asked why to do you need so much septic for just one little room. Krate reiterated what the applicant has to do, including go to the Candlewood Lake Authority. We need it here; their response to it, Krate said. Neumann said I spoke to Pat Lee at the office, and I was under the impression; I spoke to Larry Marsicano (Candlewood Lake Authority). I had conversations with Brian Wood (FirstPower). Hearty said Brian Wood defers usually to the local officials. Krate said Northeast Utilities did not want us to approve any additional land coverage. Hearty said it's changed for about a year now, Herb. They are discussing it on the State level. We'll get a definitive. We'll re-advertise this, Hearty said. The next meeting is September 25<sup>th</sup>, Krate said. **Continued.**

**#08-45** – Nadia Vargas, 38 Shelter Rock Road (K15090), Sec.6.A.3., to reduce required side yard setback from 20 feet to 6.9 feet for proposed café patio (IL-40 Zone). William Barrett, Nidia Vargas' husband, identified himself at 7:58 pm at the mic, and signed in. Krate said I have a question right off the bat for you. Yes, I have the right map. The Commissioners reviewed the plans. Krate said we are okay. Krate stated I rode by there and saw a stockade fence with some umbrellas out there. Barrett said no, we set it up just to see what it looks like. We're not using it. Eventually, our goal is to have some tables outside and get a kitchen. Krate said isn't that a school behind you? Jowdy clarified about giving a hardship on a nonconforming use, unless you have a hardship that is different. Barrett asked Jowdy what would be the hardship then? Krate reiterated there's a school right next door to you. To increase it, is not conducive to the regulations. Krate explained to Barrett about making a greater nonconforming use. Barrett said the space is very small and we want to offer more to our clientele. And also, you know, smoking is an issue, so we want to provide a space, Barrett continued. Krate said so you want us to approve a greater nonconforming use so people can smoke next to a school. Barrett said they are closed when we open up at 5 pm. Jowdy explained you're presenting a monetary reason for your hardship; and what we are asking for is a hardship. Nidia Vargas came forward, saying hi; I'm Nidia, and she signed in as Chairman Jowdy explained increasing a nonconforming use. Nidia said my hardship is I invested almost everything I have in this; I am behind on all my bills. So many gentlemen have offered tons of money to me to make this go back as a strip club. I have suffered monetary wise and in other ways, Vargas said. I was offered a lot of money by a lot of men,

but I turned it down. We need a kitchen, she said. Jowdy said we are constrained under certain regulations. You went into this by buying that building in the first place. By the law, a monetary hardship is not a ZBA hardship, just so you understand the Board. Nidia Vargas explained selling it as a strip club, or running it as a strip club again, which I don't want to do. Krate and Jowdy explained the considerations the ZBA must consider, one of which is the school next door. Nidia Vargas said we want to clean up the area. The school principal came to our soft opening with his wife and child, in support of us. Nidia continued, this has been an eyesore; prostitution; it was shut down many times; they changed the name. Here we come and we try to do something good for the community. Jowdy said we are glad to have you do that; I am just giving you the overall picture of the Boards responsibility. Krate said we are not permitted to consider the monetary side by State statute. It must be a physical problem particular to the parcel. Barrett asked about the setback in that zone. Hanna said 20 feet. Sean Hearty said they have two fronts and two sides. Jowdy said it's still 20 feet. Krate said you're 14 feet into the setback with your proposal. Secretary Lee said I can't hear you; is that on the record, to Vargas & Barrett. Dufel said I'd like a better explanation of what you're proposing. Barrett explained what the proposed patio would be; no awning, just open, creating a level surface. Vargas said I was proposing and 11 to 2 lunch. Barrett said we intend to come back to you to get a kitchen. Jowdy reiterated you expect to come back to expand again a nonconforming use? Barrett said I understand what you are saying. We must try to get back our investment, to make some money, Barrett said. Vargas said I understand that; but I don't understand why we can't get a little bit of consideration when we are trying to clean up the area; the children that are behind us; the previous drugs and prostitution. Jowdy said you are saying you do not want to run a strip club; why do people want to buy it? Vargas replied to run a strip club. We don't want to do that. This is why I have been fighting for two years, Vargas said. Jowdy and Vargas and Barrett discussed the uses. Vargas said I will give it up; no problem. Jowdy said you're saying you'll give it up. Dufel said I don't have any preconceived notions about the previous history of this. Watch the tape tonight. I have not pre-judged this, sir. I believe you have prejudged this, Dufel said to Jowdy. Now we were talking about hours of operation, and I don't know what happened. Barrett said are now open from 5 pm on. Barrett reiterated wanting a kitchen, shifting the back part of the bar; getting some sandwiches in there. Dufel said to Barrett I don't need to know that. You'd use this from April through October? Barrett said we were thinking of a wooden platform, not concrete. Jowdy asked if there were any further questions. Jowdy asked if there was anyone in the audience who wished to speak for or in opposition to this petition.

Megan Meyer came forward and signed in. She said I own the school next door to the café, Hudson Country Montessori School. I must first say they have done an incredible job with their grounds, and yes we did go to their opening. We have children there all day until 6 pm. Their sign says they are open 11 to 2 pm. We are finding cigarette butts, bottles; a child got cut from a beer bottle. I don't wish them any ill; I want them to thrive. Children are back there. I have a little fear from what was back there before, people drinking out there with nearby children; cussing, smoking.

Barrett asked can we respond to her at 8:19 pm. We have had problems with the next door house; partying, bottles, I put up fencing. We will alleviate all those particular problems; I put a fence up. It's been a local junk yard, like Nidia said; we are fighting a battle. Nidia Vargas confirmed Bill Barrett's explanation of the neighbor's "local dump yard". I'm fighting, I'm taking garbage back and forth, Barrett said. Vargas said if we put up a 6-foot fence it will not happen. Chairman Jowdy said thank you.

Megan Meyer again came to the mic. Okay, I don't know what else to say. I hear what you are saying. But when the bar was closed, we meticulously picked up that whole area. What

I'm saying, when it was closed, there were not beer bottles and cigarette butts. I'm just saying this is what's been going on, since you guys have opened.

Vargas asked why hasn't the school put a higher fence?

Megan Meyer replied we have not needed one.

Barrett said he had nothing to add at 8:23 pm.

In the voting session, Jowdy said I'm sorry my colleague was interrupted. This is open for discussion. Krate said I feel the applicant really failed to show a hardship. That and the fact there is a school next door. I certainly am not going to have that be used as a veiled threat by that, and we really cannot entertain a variance based only on financial basis, Krate concluded.

Dufel said I just wanted to be sure that we were focused on this application, not its history.

Krate made a motion to **deny** ZBA #08-45 for a proposed café patio. It's an increase of a nonconforming use, and the applicant failed to show a reasonable hardship other than a financial hardship. Dufel seconded the motion. The motion carried unanimously at 8:39 pm.

ACCEPTANCE OF MINUTES: 7/10/08 Meeting. Motion to accept the minutes as presented by Krate. Second by Sibbitt. Motion carried unanimously.

ADJOURNMENT:

Motion to adjourn by Krate . Second by Hanna. Motion carried unanimously at 8:40 pm.

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR SEPTEMBER 25, 2008.