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ZONING BOARD OF APPEALS
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DRAFT MINUTES – REGULAR MEETING
February 10, 2011
COMMON COUNCIL CHAMBERS
7:00 PM

Present were Alt. Rodney Moore, Michael Sibbitt, Alt. Rick Roos, Joseph Hanna, and Acting Chairman Herb Krate. Absent were Chairman Richard S. Jowdy, Gary Dufel. Staff present were Sean P. Hearty, Zoning Enforcement Officer, Patricia Lee, Secretary. Acting Chairman Herb Krate announced the meeting commencement. Roos made a motion to hear tonight's agenda. Hanna seconded the motion and it carried unanimously. Krate described to the public the procedure for the public hearings and voting session.

CONTINUATION OF PUBLIC HEARINGS: N.A.

NEW BUSINESS:

11-01 – Johanna P. Hartlief-Spelman, 8 Durham Rd.(H04093), Sec.3.G.3.a., to allow a detached accessory building to be located in front yard setback (RA-80 Zone). Acting Chairman Herb Krate introduced this petition at 7:22 pm, Doug Spelman and Johanna Hartlief-Spelman signed in and they introduced themselves. We are requesting an easement. It is a very unusual lot; you would not be able to do it today, we don't think, Spelman said. He described the severe slope and distributed photographs. There's really no place to put a 96 sq.ft. shed for storage of things that we cannot safely keep in the garage. It's a good looking little shed. Krate asked is there anyone who wishes to speak for or against this proposal. Doug Spelman described the paper road. It's a road that will probably never be continued. Krate reintroduced this again in voting session later. Roos made a motion to **approve** allowing a detached accessory building to be located in a front yard setback. The hardship in this case is the topography; it's the only place they can put a shed; it is per plan submitted; and it would be limited to an 8-foot by 12-foot structure. Sibbitt seconded the motion. The motion carried unanimously.

11-02 – Michael P. Hatcher, 21 Cedar Dr.(K04145), Sec.4.A.3., to reduce north side yard setback from 15 ft. to 3.2 ft.; to reduce south side yard setback from 15 ft. to 11.5 feet; to increase lot coverage from 20% to 22.6% for residential rebuild with garage (RA-20 Zone). Krate introduced this at 7:25 pm. Michael Mazzucco, PE, came forward and signed in. Michael Hatcher, the applicant, signed in. Mazzucco introduced himself and Mike Hatcher, of 21 Cedar Drive. The parcel is 0.16 acres with an existing dwelling. We propose to remove the existing dwelling and construct a new one in the same general location. We are therefore requesting variances (as above) for the setbacks and the lot coverage. Krate asked what is the current coverage of the existing house. Hatcher described the overhang. Mazzucco described the narrowness of the parcel; it doesn't give you too, too much. This is a copy of the neighborhood showing the neighboring houses. This has not gone to Candlewood Lake Authority yet, and it will still have to be reviewed by the Environmental Impact Commission.

William McCarthy, a neighbor at 23 Cedar Drive, signed in and said he is not in favor of this proposal. Using his blown up colored map on the easel, McCarthy read his reasons for opposition at the podium. Krate said the height is irrelevant to us; otherwise they would have to come to us for a height variance. McCarthy displayed several blown up photographs. I would lose my beautiful view of Candlewood Lake, which he demonstrated on the easel. This proposal is not in harmony with the neighborhood. My other objection is a proposed retaining wall, so close that I would not be able to put up a ladder to clean my windows. If the retaining wall is right on the property line, Krate explained why they would be 5 feet from the house. The taking of this much area; I don't know about a reserve for a septic. Krate said that will be the concern of the Health Department, the Candlewood Lake Authority, and the Inland Wetlands and Watercourses Commission. These were built in the 1930's. Krate asked is there anyone else here in opposition. Victor George, of 25 Cedar Drive, a property owner who owns two lots away, and lives in Easton, CT, signed in at 7:37 pm. In Easton, I am on the Zoning Board of Appeals; I like to be very accommodating. The first thing I think: what's the hardship, George said. Krate said he stated what his hardship is: the lot is very narrow; that does not mean we are going to approve it. A two-car garage is not unheard of. The coverage issue is a totally different thing; I'm sure there will be questions from us about the coverage. It's a skinny line, Krate continued. Krate said anyone in this area has to come before the ZBA, pretty much. John Sylvester from 19 Cedar Drive, an abutting neighbor, signed in. Back in 1999 when we bought our house at 19 Cedar Drive, we stayed within the house footprint. These are nonconforming lots. Space between the lots is very very small. We do object because we are on the Lake, Sylvester said. If they do raze the house, they should rebuild within the same footprint. Sylvester went to the easel. If we want to sell our house some day, the encroachment could damage the sale of our property. We never changed the footprint of our house; if you issue this variance, it will make that house even closer. On Cedar Drive, there are no more than three garages on the Lake side. I don't mind a building going up there, but not a garage. My last statement is the lot size: I don't think those figures are correct; I would question those figures. Krate replied there are maps here that show the proposal, and I have to assume that the figures on the maps are correct. If it's approved, and I'm not saying it will be; the new proposed footprint; if he goes over that allowable size, he would have to remove anything over the 22.6 % coverage. Michael Mazzucco, PE, came back to the mic at 7:45 pm. The deck is not part of the building; it is not computed in lot coverage, and that may be the reason it may be looked upon as more coverage than we are asking for. Krate asked is there any reason you can't live within the coverage allowed? Sibbitt said what's the hardship? Krate said it can be done, and described the mission of the Zoning Board of Appeals. What size is the garage? Mazzucco replied 22 feet by 22 feet. Hatcher said we reduced it. Hatcher described how the house was originally laid out. The house was actually mis-surveyed originally. The house was pushed down more towards the Lake. I was concerned about the McCarthy's view, believe it or not, and Hatcher described how their revised layout affected the coverage. Roos asked for clarification. Mazzucco said the whole thing is coming down. Roos questioned about the garage, the three feet jut-out. Hatcher said that's a good question. Hatcher described the drop-off; the original plan for the garage; it would look massive from the road, so I pushed the garage down, and Hatcher explained why he had to move the garage over. We looked at the Sylvester's, Hatcher said. Hatcher described the rationale for sliding the garage over. Krate asked what kind of setback would you have then, if you moved the garage to the original plan? Roos said it would be 6.1 feet, I think. Krate said tell me what your hardship is for the coverage issue. Why can't you build this with less square feet? You have reasonable use of your property; what's your hardship? You will also have the same resistance with the Environmental Impact Commission and with Candlewood Lake Authority. Why are you pushing for this 22.6 percent? You have what you have. You have a legitimate hardship for side lot lines;

it's a narrow lot. You could easily shrink that 22.6% down. Roos asked what is the size of your living space now. About 1200 to 1400 sq. ft., Hatcher said. I'd need a calculator; I don't think garage when I say that. Probably about 2000, maybe a little more. Roos said I'd like to ask the opposition people the square footage of their living spaces. McCarthy is about 1400 to 1600 sq.ft.; closer to 1400 sq. ft. I live at 25 Cedar Drive, Anderson said. He gave the living space of the neighbors in opposition. Mazzucco said 19 Cedar Drive back in 1998, ZBA #**98-38**, a variance to increase the building coverage from 20% to 24.5% was granted to (Louise) Sylvester. Mr. Sylvester said that was never built. Mazzucco said but the variance was still granted, and on the land records. Krate said this is not how this is supposed to happen. Sibbitt stated the square footage at 1,562. Krate said the size of the house is not overly large, even with the addition. They showed where they have a hardship on the width of the lot; I'm not sure they've shown a hardship as to the coverage. Krate at 8 pm ended the discussion. In the voting session at 8:00 pm, Krate opened this for discussion. Roos asked can we come back to that one and do the rest, as there will be some discussion. In the voting session later at 8:20 pm, Rick Roos discussed the previous variance that the engineer stated granted building coverage. Whether those variances were acted on or not is irrelevant, Roos said. Based solely on that, just solely because of that, I would be in favor of this. Sibbitt, Krate and Hanna commented, including those variances were not acted on. Sibbitt said, for the coverage, I don't buy it. Krate suggested we could split this out, but that's up to you guys. Roos made a motion to approve the north side setback, side yard setback, and to increase the lot coverage to rebuild. The hardship is unique to this lot. I do hope the applicant takes a serious look at reducing where they can reduce the coverage. Moore and Sibbitt were opposed. There were three commissioners in favor. Variances are denied, Krate said. Moore made a motion to **approve part** of this application, the north side yard, south side yard setback, and **not** to include the coverage variance in this motion, per plan submitted. Krate said he's going to have to come back with a revised plan. Hearty asked do you want him to request to reduce the rear of the house too? The **second part of the variance is in fact denied**. Hanna seconded the motion. This motion carried unanimously. Secretary Lee asked Mazzucco to get me a revised plan.

11-03 – William J. & Judith J. Coffey, 19 Dana Road (F06028); Sec.4.A.3., to reduce front yard setback from 40 ft. to 25.5 ft.; to reduce side yard setback from 25 ft. to 1.0 ft. for garage expansion (RA-40 Zone). Krate introduced this item at 8:01 pm, as William Coffey, Sr. signed in. Coffey introduced himself and said I wish to add a garage to my single-family home. Billy Weidl built it back in the sixties. Krate asked Coffey to speak up. I'm applying now for a two-car garage. I thought I would not need a two-car garage back in 1987 (see ZBA 87-56). I want to be far enough away. Krate asked Coffey did you hire someone good? Coffey replied I happen to know someone who has some excavating equipment. Krate asked is there anyone who wishes to speak for or in opposition to this request. In the voting session, Krate asked are there any questions? Any discussion? The commissioners discussed how he's going to build it. Krate said I've seen him stuff that holds matter in a small area. Do I have a motion and / or questions? Moore said you've got me thinking. Moore said I make a motion to **approve** the request to reduce the front yard setback from 40 ft. to 25.5 ft.; to reduce the side yard setback from 25 ft. to 1.0 ft. for a garage expansion. It is a legal nonconforming use, and will not be a detriment to the welfare, health and safety of the neighborhood, per plan submitted. Sibbitt seconded the motion. Joseph C. Hanna was opposed. The motion passed with four in favor (Roos, Moore, Krate, Sibbitt).

11-04 – Kelly Boa, 18 Boulder Ridge Rd.(I05101), Sec.8.B.1.b.(3)., to increase maximum allowed driveway grade from 12% to 17.9% for portion of driveway (RA-20

Zone). My name is Joe Boa on behalf of my niece, who is working tonight. I have been helping Kelly with the design of this house, and Joe Boa described the variance, a section of approximately 10 feet. The road is further down here. We are about five feet from the road, and it's a dead-end street. Krate said I'd like to look at this one. 17% grade is quite a steep grade. We'd better look at it. I think we should do an on-site for this. 12% is the allowable grade, Moore said. Hearty said so you want to **continue** this. We'll continue this until March 10th. Hanna asked Boa, the house was there already? All we did was put the garage under the house; it's a dead-end road. There's nobody in the house. The garage is there. This was all pre-approved. Krate said what happens if we don't approve this. You'll have a nice two-car playroom. Aren't you in the construction business? (Tape #1 flipped to side B.) We'll look at it, Krate said.

#11-05 – Plumtrees Plaza, LLC, 59 & 63 Newtown Rd.(L12018 & L12021), Sec.5.A.3., Sec.8.A.2.c.(4)., to reduce side yd. setback from 20 ft. to 0 ft.; to reduce bottom edge of excavation or fill from 5 ft. to 0 ft. from property line for grocery store (CG-20 Zone). Herb Krate introduced this application at 8:10 pm, saying to Jaber you're the only suit in the house, and read the request. Paul Jaber, Attorney at Law, introduced himself, saying the principals are the Hawley Family in Danbury. It's in a shopping center with Denny's, Boston Chicken, at the corner of Plumtrees and Newtown Road. You're familiar with the site? Jaber stated the request being made by this variance. This is a corner lot, so it has two front yards, and two side yards. It's a 50,000 square foot shopping center. The vet clinic in the front is not part of the shopping center. A grocery store is proposed, Aldi's; a small store with maybe 90 employees. The tenant requires a loading dock and storage in the back of the building in the rear, Jaber continued. The dock is in the shaded area; the storage is also shaded. You can see where it says 16 feet; they are right on the property line there. The whole addition will be in the side yard setback. The City has already granted an easement last week. We know the difficulty of coming in for a zero lot line variance, Jaber said. The granting of the easement, we paid for it. The purpose of the setbacks (regulations) is so people don't build too close to each other. Jaber said this is unique to this property. The courts have consistently recognized this reasoning as a valid hardship. Jaber continued we're clearly in compliance with the intent of the setback regulations. Jaber submitted a copy of the consent calendar from the Common Council. Krate asked is there anyone who wishes to speak for or in opposition to this proposal? You did a wonderful job, Mr. Jaber. Let's go into the voting session, Krate said at 8:17 pm. Herb Krate in the voting session summarized the request. Moore asked do you know of any other easements such as this, as far as a precedent? Krate said we have done that when people don't have enough parking. It's not unheard of; they do have to come here, because on their property they don't have the room. Roos made a motion to **approve** to reduce side yard setback from 20 feet to 0 feet; to reduce the bottom edge of excavation or fill from 5 ft. to 0 ft. from the property line for a grocery store. This request is unique to this property. However, this is a request for a variance for relief from the easement, Roos said, per plan submitted. Krate added the easement is part of why we have taken this request. Sibbitt seconded the motion. The motion carried unanimously.

ACCEPTANCE OF MINUTES: The minutes from the December 9, 2010, ZBA meeting could not be approved at this meeting.

The January 13 and January 27, 2011, meetings were cancelled.

ADJOURNMENT: Motion to adjourn by Krate. Second by Sibbitt. The motion carried unanimously at 8:33 pm.

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR MARCH 24, 2011.

Herbert Krate, Acting Chairman