



CITY OF DANBURY
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ZONING BOARD OF APPEALS
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DRAFT MINUTES
December 13, 2012
CITY COUNCIL CHAMBERS
7:00 PM

Chairman Richard S. Jowdy called the ZBA meeting to order at 7:20 pm. Present were Jowdy, Joseph Hanna, Michael Sibbitt, Rodney S. Moore. Absent were Herb Krate, Alt. Rick Roos.

Staffs present were Sean P. Hearty, Zoning Enforcement Officer, Patricia Lee, Secretary. Jowdy read the legal notice. Moore made a motion to hear the new business as listed below. Hanna seconded the motion. Motion carried unanimously. Jowdy explained the process for public hearing to the audience, for presentation and rebuttal. Again, we are a four-man board. Kindly sign in and say your name, and you are on the radio and television, Jowdy said.

NEW BUSINESS:

12-40 – Richard & Karyn Palanzo, 27 Middle River Road (E12045), Sec.3.G.3.a., to allow detached accessory use to be located in required minimum front yard (RA-40 Zone). Chairman Jowdy introduced this new business at 7:23 pm. Rick Palanzo came forward and introduced himself and his address and signed in. I'm before you this evening, Palanzo said, because my house and garage were built long before the zoning regulations took effect. We'd like to locate a garden shed; this will permit us to stay back from the stream and the septic system. Jowdy said the shed is set back further than the house. We will actually be away from the front yard more than the garage is, Palanzo said. Jowdy asked is there anyone who wishes to speak for or in opposition to this variance request. Moore said I did have a question. This is a hand sketch, so if we were to approve this per plan submitted, how would we designate that? Hearty said the code prohibits putting it in the front yard. Sibbitt made a motion to close the public hearing. Hanna seconded the motion. Motion carried unanimously. At 8:30 pm in the voting session, Jowdy summarized the request to allow a detached accessory use to be located in the required minimum front yard. Hanna made a motion to **approve** #12-40 variance. Second by Moore. Hanna said this is per plan submitted, and it will not affect the welfare, health and safety of the community. The motion carried unanimously.

12-41 – Colonial Subaru, Inc., 89 Newtown Road (M11014), Sec.5.A.3., to reduce side yard setback from 20 ft. to 11 feet for building; Sec.5.H.1.b., to eliminate 20 ft. continuous planting strip for Newtown Road, reduce planting strip from 20 ft. to 5 ft. for Old Sherman Turnpike, and allow driveway/travel lanes in front yard setbacks for Newtown Road and Old Sherman Turnpike; Sec.5.H.2., to permit parking, storage, and display of vehicles in a front yard setback for Newtown Road and Old Sherman Turnpike; Sec.8.A.2.C.(4), to permit edge of excavation or fill within 5 ft. of property

line; Sec.8.C.1.c., to permit parking in front yard setback for Newtown Road and Old Sherman Turnpike; Sec.8.C.3.b., to eliminate 1 street tree per 40 ft. frontage requirements for Newtown Road; Sec.8.E.5.a., to reduce front yard sign setback requirement from 10 ft. to one foot for Newtown Road (CG-20 Zone). Ben Doto, III, PE, came forward and set up the plan on the easel. Jowdy read the requests before the commissioners. Doto handed out the aerial photos and identified himself. Thank you for hearing us the evening. The proposal is for the site here at 89 Newtown Road, the former Robert Buick site. Mr. Beylouni said with me as is Robert Benn from 87 Newtown Road. There is one building on the site, Doto clarified for Jowdy. Most of the requests are we are trying to modify existing conditions. There are three existing buildings on the site and Doto described them and the two frontage streets. It's basically a parking lot with three nonconforming buildings. We're proposing to take those down completely. Five curb cuts total. We will close two of these curb cuts, and Doto described the modifications to control flow better. We looked at fitting a traditional car dealership here, and it was almost impossible to fit a traditional car dealership on here. We met with planning staff to make sure that we have a viable site plan, ingress, egress. Planning was insistent on a few things; landscape islands, Doto continued. We are not asking for a coverage or height variance. We ask to allow continued use of the front yard setback; there is some encroachment beyond the property line. We are going to pull that back. The proposal with the one building itself; it will have a glass front; the main entrance will be here, the service will be in the back, and he described the variance needed for the overhang. This building is currently in the side yard setback. This building is coming down; that building is coming down; both violate the side yard setback. As I said, they are all existing conditions. The shop needs to be totally redone, Doto said. We are a shallow lot with a bowtie shape. Planning wanted us to maintain the front yard setback. We have an excess of frontage on the two streets. There is a 42-inch diameter storm drain, and Doto described its location and the rights to drain there, and said we propose to leave it there. We will connect to that in the future. We've also tried to put some of the nicest features of the site facing Newtown Road. Doto said we are also proposing some street trees along Old Sherman Turnpike. There's a sidewalk that continues to the west. We are proposing sidewalks to close the existing gaps. Doto described the edge of excavation and wanting to fill up to the property line. We have some areas of pavement that we are going to cut up and remove. We are closing these two driveways since there is a light right here on Newtown Road; we are drastically improving the traffic patterns here. It was agreed that this was the most viable thing to do. There's very little traffic on Old Sherman Turnpike. Doto described the last driveway as an enter-only driveway. We are trying to improve the site for traffic, aesthetics, we're using a second floor; we're economizing the site. We're asking for a sign variance to put the sign between these two parking spaces, and Doto discussed the sign requirements and visibility. We feel that's appropriate. The old Robert Buick sign was 47 feet high; it's gone; the owner must have taken it down. It's still 60 plus feet to the edge of the pavement. If you look at the aerial photo, a lot of signs on Newtown Road are closer to the road than we will be. This will be a state of the art dealership; top ten in the United States, 7 million dollars, and will bring 20 to 30 new jobs. This is a 2½ acre site, and it was acceptable to Colonial Subaru, Inc. and Subaru of America, Doto said. We are not asking for height or coverage variances. I'll be happy to answer any questions. Jowdy asked about the green belt: it will not be used for any parking. Planning is very difficult, very concerned about what Robert Buick used to do. One big concern that Planning has is the trucks; plus the delivery trucks can off-load on the site, not on the road. Jowdy said that was a good presentation. Hanna asked about the square footage of the building versus the existing square footage. No upper floors

on the existing buildings will be utilized. We are going from 19,000 to 23,000 sq.ft. of coverage. The site currently has no trees; we're putting 20-something trees on it. The zone allows 30% building coverage; we are at about 21%. Moore asked about the sign variance. Doto explained the way the site lays out and why we need to put the sign there. Jowdy asked are there any questions from the board. Is there anyone in favor or in opposition to this petition?

Peter Olson, Attorney, from Bethel, came forward and introduced himself, on behalf of 7 Springs Realty, LLC. I will show you on the map, which he did. I'm also here on behalf of Vanguard Products Corporation, the tenant, in response to Jowdy's question, and they discussed distances. In principal, we do not oppose the new car dealership, but we are compelled to object to the variances. They are reserved for unusual hardships. There is no difference as to how they apply to this property or to any other property in the neighborhood, Olson said. They have reasonable use of the property. Olson described the frontages. Jowdy said a corner lot is a hardship. Olson said in some circumstances it is; we do not think it is in this case. This building will be taller and closer. We think having a building that close will be detrimental to our visitor entrance, Olson said. Jowdy said I'm very familiar with the property. There is no hardship for them to move the building to further encroachment. When the applicant, or predecessor, creates a non-conformity, the law says it should not be expanded. Hanna said we can approve it if we find it will be an improvement to the neighborhood. Olson said there can be a reasonable re-use of that property for a new use; they can make their building smaller. They have not demonstrated that there is something unique about their property. Olson continued discussing that the ZBA cannot stipulate regarding that 5-foot area for excavation and fill. Olson discussed the "Benn Rule" and its history. We don't think there's sufficient protection in that five-foot area. We're concerned about leaving all the development right by the side of the road, which he explained. We have a particular concern about this at our entrance driveway. We think there is no hardship. We ask you to deny this application, Olson concluded.

Ben Doto came back to the mic saying I am not going to repeat the hardships that I have already described. Doto said we can, with this dealership, because of the way it's laid out, have the sales department, an office, the back area; we're going to drop the grade of the service area, an intentional design. It's going to blend. The DOT is planning to do some work on Newtown Road. But we already have three lanes. If they added one or two lanes, it is still possible, especially considering all the other development on that road. I did this on Google Earth, and Doto described the distances. It's not excessive. It's not unreasonable. Doto said I'm sorry to keep going on here. He produced the orange prototypes and showed that they cannot fit on the site. We kept some elements of their prototype, turned it, and we had space right in front of the building. A modern car dealership simply does not fit there. We went through a lot of time and effort to minimize the variances that we need. I think, Doto said, I've answered everything with respect to that. Hanna asked him to again cover the neighbor's line; Mr. Benn's property; the other neighbor's property in the back. Doto said I want to taper my parking lot into the grade; I don't want a hole in the hillside. All the variances are very reasonable here. We are not asking for a use variance. Mr. Benn did get a use variance. Jowdy said sometimes the interpretation of the zoning regulations does cause a hardship. Jowdy asked is there anyone else who wishes to speak for or in opposition to this application. Robert Benn next took the mic and introduced himself to the applicants and the commissioners. Benn described his biggest issue, 11 feet from the property line; you will have to come on our property. Why can't you make the building a little wider? That's my concern. (Tape #1 flipped to side B). Jowdy and Doto discussed a hardship on Mr. Benn, and would a fence prevent that hardship. Benn discussed his

good relationship with Robert Buick. Doto said I'll be very brief. We would have no problem with construction fencing; basically a frost wall. We did have some discussions; a lot of their concerns are not applicable to the ZBA. There are some things we are going to look at, but they are not ZBA issues, Doto said. We worked for a year and a half on this. In response to Moore, we are going to try to keep those elevations as close to how they are now, Doto said. Doto described the building sitting at a high point; that building is coming down. Doto discussed the history of the site, that old pipe, and previous approvals. DOT currently has drainage rights; they don't own the pipe. We really squeezed everything here. Motion to close public hearing by Hanna. Moore seconded the motion. Motion carried unanimously at 8:14 pm. In voting session at 8:30 pm, Jowdy repeated the requests. They sound like quite a few variances, but they were all explained to us. The corner lot and the configuration of the land and the interpretation of the regulations create the hardship. This is, Jowdy continued, open for discussion and or vote. Moore said I'm concerned most with the 14 ft. to 12 ft. because that affects the neighbor the most. Jowdy said you might consider protecting that strip if we choose to approve it. Hanna made a motion to **approve** to reduce side yard setback from 20 ft. to 11 feet for building; to eliminate 20 ft. continuous planting strip for Newtown Road, reduce planting strip from 20 ft. to 5 ft. for Old Sherman Turnpike, and allow driveway/travel lanes in front yard setbacks for Newtown Road and Old Sherman Turnpike; to permit parking, storage, and display of vehicles in a front yard setback for Newtown Road and Old Sherman Turnpike; to permit edge of excavation or fill within 5 ft. of property line; to permit parking in front yard setback for Newtown Road and Old Sherman Turnpike; to eliminate 1 street tree per 40 ft. frontage requirements for Newtown Road; to reduce front yard sign setback requirement from 10 ft. to one foot for Newtown Road, at 8:32 pm. It's in the CG-20 Zone, Hanna said; currently three buildings exist there, and it's much better to have one new building; it would be a major improvement. One **condition** I'd like, a construction fence where the neighbor has concerns. The hardship is currently they don't meet the setback. Sibbitt seconded the motion. Motion carried unanimously..

12-43 – Ten Walnut Street Danbury, LLC, 17 Seeley St. (I16183), Sec.4.A.3., to reduce minimum required rear yard setback from 35 ft. to 31 ft.; to reduce minimum side yard setback from 8 ft. to 3.8 ft. for residential additions (RA-8 Zone). Hearty and Jowdy and Hanna discussed the order on the agenda. Jowdy read these Seeley Street requests and David Duchene signed in, the owner of the property. Duchene discussed the two requests, to fit a staircase in there. The existing staircase is only 30 inches wide and it's a winder. I can square the building and preclude the water coming in the basement. The second variance is for the rear yard, and the existing nonconforming structure; I'd like to make that per the regs. We plan on a second story overhang. Jowdy and Duchene discussed the plan with Hanna; stacking a second story on top; the dotted line across shows the second floor, Duchene said. Hanna and Jowdy reviewed the plan on the dais, as did Moore and Hearty. The existing bilco door will be gone; that allows water into the basement now, Duchene said. Jowdy confirmed his current projection, the staircase; the current footprint; the little sliver. Sibbitt had no questions. Is there anyone in favor or in opposition to this petition? Motion to close this public hearing by Hanna. Second by Moore. Motion carried unanimously. Jowdy reintroduced 17 Seeley Street in the voting session, saying it's open for discussion and/ or vote, and he described what the applicant wants to do. Motion to **approve** by Hanna to reduce the minimum required rear yard setback from 35 feet to 31 feet; to reduce the minimum side yard setback from 8 feet to 3.8 feet for residential additions. It's about 6 inches more

encroachment from the existing house, and the stairway will meet the new code, and it eliminates the basement door to stop the water going down there. It will not affect the welfare, health and safety of the community. Moore seconded the motion. Motion carried unanimously at 8:36 pm.

12-42 – The Danbury Hospital, Hospital Avenue, Locust Avenue, Osborne St. (I12001), Sec.4.D.3.a., to reduce front yard setback on Hospital Avenue from 20 ft. to 18 ft. (RH-3 Zone). Linnea McCaffrey came forward and signed in for Danbury Hospital, stating she is with the law offices of Robinson and Cole, LLP. McCaffrey described the previous variances that came before the ZBA and the changes to Hospital Avenue that the City requested. So this year, we realized, because of the road widening and the City not accepting an easement, we discovered that there is an eighteen and half foot difference. The request is for 18'. McCaffrey referred to the plan, Parcel X that would have to be dedicated to the City because of the new hospital entrance. Chris, an engineer from Tighe & Bond is also with us tonight. The pink area here is going to be an easement for the sidewalk. Jowdy described the hardship, and McCaffrey said it has to do with the City's requests. Is there anyone in favor or in opposition to this petition, Jowdy asked. Sibbitt made a motion to close the public hearing. Second by Hanna and Moore. Motion carried unanimously at 8:28 pm. Jowdy reintroduced this Hospital request in the voting session, needed because of an acquisition by the City of Danbury. Moore made a motion to **approve** to reduce the front yard setback on Hospital Avenue from 20 ft. to 18 ft. The hardship is created by the City; it is well within the bounds of the welfare, health and safety of the community, per plan submitted. Hanna seconded the motion. Motion carried unanimously.

ACCEPTANCE OF MINUTES: **10/11/12** Meeting: Motion to accept these minutes as presented by Hanna. Second by Moore. Motion carried unanimously.

10/25/12 Meeting: Sibbitt said we cannot approve these minutes as I was not present at that meeting.

ADJOURNMENT:

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

Richard S. Jowdy, Chairman