



**CITY OF DANBURY**  
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ZONING BOARD OF APPEALS  
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DRAFT MINUTES  
**June 13, 2013**  
COMMON COUNCIL CHAMBERS  
**7:00 PM**

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ROLL CALL: Chairman Richard S. Jowdy called the meeting to order at 7:01 pm, and explained the executive session procedure to the audience for a possible modification for #**12-41**. Present were Jowdy, Rodney S. Moore, Joseph Hanna, Alt. Vincent DiGilio, Alt. Anthony Rebeiro. Absent were Herb Krate, Michael Sibbitt, Alt. Rick Roos. Staff present were Attorney Robin Edwards, Corporation Counsel, Sean P. Hearty, Zoning Enforcement Officer, Secretary Patricia Lee.

OLD BUSINESS:

EXECUTIVE SESSION & POSSIBLE ACTION REGARDING SETTLEMENT of SEVEN SPRINGS REALTY v. ZONING BOARD OF APPEALS of the City of Danbury and Colonial Subaru, Inc., Docket # DBD-CV13-6011435-S, Variance Application # **12-41**: Motion to go into Executive Session by Moore. Second by Hanna. Motion carried unanimously at 7:02 pm. (Tape turned off.) Commissioners left the Chambers and entered Room 3C for Executive Session. Commissioners returned to their seats in the City Council Chambers at 7:14 pm. Jowdy said the session lasted approximately 15 minutes. We were briefed by our Attorney Robin Edwards and Sean Hearty. Jowdy read what was originally approved, and said Robin Edwards of Corporation Counsel will address the modifications. Subsequent to the approval, Jowdy said, they worked out an agreement between themselves. Edwards took the mic and identified herself and the matter before them tonight, and the two parties involved. This arose from an appeal of an adjacent abutter to a variance application which was granted at 89 Newtown Road. The details of that proposed document are in a stipulated judgment. There are copies available should anyone want to read the stipulation. Edwards explained the two changes to the variances in the stipulation. See underlined sections. It is also filed in the record which will be available in the planning office. It is basically making the variance more strict. Attorney Edwards sat down at 7:20 pm. Anyone here wishing to speak in favor or in opposition to this proposal, Jowdy asked. Joe Hanna read the motion to modify the side yard setback and the grading edge issues, dated 3/20/13:

- 1.) To vary Section 5.A.3. of the Zoning Regulations to allow a side yard setback of 13 ft. for the building overhang, and 14 ft. from the face of the building, and
- 2.) To vary Section 8.A.2.c.(4) of the Zoning Regulations to allow grading within 5 feet of the southerly property line which will be limited to the blending shown on the map, "Grading & Utility Plan", sheet CO2, Colonial Subaru, 89 Newtown Road, Danbury, Connecticut, dated 3/20/13, prepared by Benjamin V. Doto III, PE.

Attorney Edwards suggested to Chairman Jowdy that you also move to proceed with this settlement; make that part of your motion as well. Hanna added the language to proceed with settlement of the matter of Seven Springs Realty, LLC v. Zoning Board of Appeals of

the City of Danbury and Colonial Subaru, Inc., by adopting the provisions as set forth in the document presented entitled, "Stipulation for Judgment", noting specifically that the terms of the variance granted by the Zoning Board of Appeals on December 13, 2012, Number 12-41 will be modified as follows, and Mr. Hanna restated the two requests 1.) and 2.) listed above. The modifications were prepared by Benjamin Doto, III, PE. Hanna made the motion. Moore seconded the motion. Motion carried unanimously. Jowdy explained to the audience that this was a lawsuit and he thanked Robin Edwards.

Jowdy asked for motion to hear items #**13-18** through #**13-24**. Hanna seconded the motion. Motion carried unanimously. Hearty said there is no need to close the previous old business.

#### NEW BUSINESS:

# **13-18** – Brian Reeves (FastSigns), 80 Mill Plain Road (D14003), Sec.8.E.3.a.(3), to permit two free-standing signs on existing lot width 251 ft. of frontage, and to reduce required separation of two signs on one lot from 300 ft. to 52 ft.; Sec.8.E.5.a., to permit new free-standing sign in required side yard; Sec. 8.E.6.b., to permit prohibited signs for off-premises advertising for property located at 82 Mill Plain Road on property located at 80 Mill Plain Road (CA-80 Zone). Jowdy read the petition and Brian Reeves introduced himself and signed in. Commissioners viewed the plans at 7:26 pm. Jowdy asked Reeves to begin. Reeves described the area, behind 80 Mill Plain Road, that has no identification, no signage for the four businesses located there. This will be a two-sided sign. There is an actual sign for the marble business. I don't know if that sign has been approved, a 4 ft. by 5 ft. maybe, Reeves said. Jowdy asked Reeves otherwise there is no sign back there? Jowdy described the hardship: there's no identification there now. Moore asked about the 5 ft. by 5 ft. sign for the marble place. I don't know if there was a permit for that or not, Reeves replied. Mr. Friedland owns the back property. Mr. Salame owns the adjacent property. Moore and Reeves discussed the existing signage; and where is the sign that would be 52 feet from it, just to be clear. Mr. Albert Salame came forward and signed in at 7:31 pm. Hearty said I think that is the existing Dandy Distributors sign, down the road. That's where the new sign will go. The old sign will come out, Salame said; that yellow and black sign. I'm giving him permission to take that sign out. Jowdy asked is there anyone who wishes to speak in favor or in opposition to this application. Moore made a motion to close # **13-18**. Hanna seconded the motion. Motion carried unanimously. In voting session at 8:05 pm, Jowdy reviewed the sign requests. Moore made a motion to **approve** Brian Reeves' item, # **13-18**, Sec.8.E.3.a.(3), to permit two free-standing signs on existing lot width 251 ft. of frontage, and to reduce required separation of two signs on one lot from 300 ft. to 52 ft.; Sec.8.E.5.a., to permit new free-standing sign in required side yard; Sec. 8.E.6.b., to permit prohibited signs for off-premises advertising for property located at 82 Mill Plain Road on property located at 80 Mill Plain Road. The neighbor was in favor of this, Moore continued; per plan submitted, and stipulate that the old sign be removed. Hanna seconded the motion. Motion carried unanimously.

# **13-19** – Tomas & Luzia Guardado, 11 Bennett Place (H15099), Sec.4.C.3., to reduce front yard setback from 20 ft. to 9.2 ft. for residential addition (R-3 Zone). Jowdy introduced this item and Tomas Guardado identified himself and signed in at 7:34 pm. Guardado said I am trying to put an addition on the left side of my house. He clarified where the addition is going, which Jowdy and Guardado discussed. Jowdy said you are not going any further to the road frontage than any other house; they discussed the setback. Hanna asked about single versus multi-family. I took some pictures, Guardado said. Jowdy

said I used to deliver newspapers there. Guardado distributed his photos: my living room, my kitchen; as you can see it's pretty tight. I have two boys. My wife is ironing in the dining room, Guardado said. Rebeiro reiterated it's a single family. Jowdy and Guardado and Hanna discussed the distances, the topography. Any questions, Jowdy asked? Jowdy asked is there anyone in favor or in opposition to this petition. Motion to close the public hearing # **13-19** by Hanna. Second by Moore. Motion carried unanimously. Motion to **approve** this petition by DiGilio, per plan submitted, to reduce front yard setback from 20 ft. to 9.2 ft. for residential addition. Rebeiro seconded the motion. Motion carried unanimously at 8:07 pm.

# **13-20** – Steven M. Olivo, Trustee, 7 Hospital Avenue (I12155), Sec.4.D.3.a., to reduce minimum required lot width from 125 ft. to 60.50 ft.; to reduce minimum lot area from 11,500 sq.ft. to 11,117 sq.ft. for construction of 4 dwelling units (RH-3 Zone). Jowdy introduced this and Paul Jaber, Attorney at Law, came forward and signed in on behalf of Joe DaSilva at 7:40 pm. Jaber identified himself. This variance is for property located at 7 Hospital Avenue; I brought a map here, and Jaber pointed out the vicinity, the first building on the left hand side. He owns all the property, yes, in response to Jowdy's question. Jaber stated the two variances are to allow four dwelling units. DaSilva is the contract purchaser of the property, which is in a blighted and deteriorating condition. DaSilva also owns these houses, 63, 63½ and 5 Hospital. Jaber gave the background of the negotiations on 4.G.7. of the Zoning Regulations between the City and DaSilva. He read the housing redevelopment purpose; the obvious intent to encourage owners of blight housing to tear them down and put new housing in their place. He obtained site plan approval for 17 units. But when he was doing that, Jaber continued, 7 Hospital Avenue became available for sale. So he incorporated the four lots into one combined lot. Jaber showed the architect's rendering proposed drawing. Jaber explained what will happen if you grant the variance: we will combine all the lots and the lot width issue goes away. Jaber discussed the incentive in the regulations, as many units as you previously had, per Section 4.G.7. He read the option into the record regarding demolished and replaced units regardless of the current zoning density limitations. In 1960, it was owned by Mr. DaSilva's father. The planning staff and Mr. DaSilva reached a compromise, Jaber continued. There has to be some cost incentive to do this, Jaber said. The hardship being the lot width really goes away, so that meets the regulations. And the density issue: we are now only asking for four units. He could build two buildings and comply; he could get the same number of units, but it would not be feasible financially for him to build two buildings, Jaber said. One building would be much more of an advantage, and Jaber and Jowdy discussed the wording. In further support, we would have no objection to your conditioning the variance that it is void unless the lots are combined. Hanna and Jaber discussed why a variance is needed. I agree with you, Jaber said; the Planning Department said the variance was needed. Jowdy asked three stories? An elevator? Yes. Jowdy asked is there anyone here in favor or in opposition to this application at 7:56 pm. Moore made a motion to close the public hearing. Hanna seconded the motion. Motion carried unanimously. Jowdy said in the voting session said it's going to make that area presentable. That's a good looking building to replace all the junk that's there. Rebeiro made a motion to **approve** to reduce minimum required lot width from 125 ft. to 60.50 ft.; to reduce minimum lot area from 11,500 sq.ft. to 11,117 sq.ft. for construction of 4 dwelling units, per plan submitted. Moore said add the **stipulation** that the variance is null and void if the lots are not combined. Moore seconded the motion. Motion carried unanimously at 8:10 pm.

# **13-21** – Manuel R. & Gloria A. Salazar, 9 Mannions Lane (K16122), Sec.4.B.3., to reduce minimum side yard setback from 15 ft. to 1.7 ft.; to reduce minimum rear yard setback from 25 ft. to 12.1 ft. for residential conversion from one to 3-family dwelling (RMF-4

Zone). Jowdy introduced this application at 7:50 pm, and Winston McKenzie and Michael Zarba signed in. Zarba said there are existing conditions on the site; we propose increasing from a one to a three-family home. There are violations on the building now. The garage seems to be 2 feet off the sideline, Jowdy said; the dwelling that is here right now is in violation. What has been there is legally non-conforming, Zarba agreed with Jowdy. We are not worsening the condition at all, Zarba said. Hanna asked about this being before the ZBA previously, and Zarba explained the history of the previous application (ZBA 13-05). Jowdy discussed the proposed addition, with Hanna, the dimensions; it looks like a larger extension. Hanna, Hearty, and Jowdy discussed the size. Jowdy said it's not a large area. Hanna asked do you have a finished area over the garage now? No, Winston McKenzie said. Moore said this is a variance for an existing structure. Hanna said last time there were too many complaints from the neighbors about the parking. Winston mentioned the parking in the garage, and Jowdy explained what the ZEO will do if they do not comply. Hanna said you are still violating; if you are going to approve that or not. Winston explained that the pool was taken out. Hearty said they are in compliance now as a single-family. DiGilio clarified the previous violations being cleaned up on a fully compliant single-family residence. DiGilio asked who owns that fence? Someone in the audience said the condominiums. Jowdy said we'll call you up. Thank you very much. Jowdy asked is there anyone who wishes to speak for this variance request? There were none. Jowdy then asked anyone in opposition? My name is Frances Kane and I live next door, the next speaker said. The fence was constructed; the neighbors were involved, that fence was put up and is maintained by myself and my neighbors. Jowdy and Kane discussed the small addition that is not on the garage side. Mannion Lane does not allow for two cars at the same time. Is the septic involved here? Jowdy said that is not an issue. Pat Torre, the next speaker, said my question is I don't understand which side it is going on. Moore provided her the survey and Hearty explained to her where the addition is going. There are car issues already as a one-family house. How are they going to park cars for a three-family? Jowdy said it's up to the City to enforce this; if they are parking in the street, call the police, Jowdy said. Hearty said it's hard to enforce. Jowdy said that is zoned for a three-family. If they don't comply, they are in violation. Hearty explained the "family" definition to Torre. Jowdy asked does the petitioner want to come up and rebut. No, Zarba said. Hanna made a motion to close this public hearing. Moore seconded the motion. Motion carried unanimously at 8:10 pm. Jowdy reviewed this in the voting session; he showed he has the parking. Moore said I'd like to see Sean Hearty go by there once a week. DiGilio questioned the two to a three versus a one to a three. Sean Hearty explained the history of the process including removing one unit and the pool to the commissioners. DiGilio said the hardship is not to make more money. Hanna made a motion to **approve** the variance, Sec.4.B.3., to reduce the minimum side yard setback from 15 ft. to 1.7 ft.; to reduce the minimum rear yard setback from 25 ft. to 12.1 ft. for residential conversion from a one to a 3-family dwelling, per plan submitted. DiGilio seconded the motion. Motion carried unanimously at 8:12 pm.

# **13-22** – John & Leslie Shain, 4 Pocono Point Road (K02011), Sec.4.A.3., to reduce minimum side yard setback from 15 ft. to 5 ft. for a residential deck (RA-20 Zone). (see also EIC **952**) Jowdy introduced this petition at 8:11 pm, and John Shain came forward and identified himself and described the small cabin on Candlewood Lake saying it needed a lot of TLC. You can see the property is nonconforming; we want to expand the deck on the lake side, and that would require the variance. Jowdy said it will not project anymore than the house is projecting now, and Shain agreed. Hanna asked why are you not shifting the house? Shain said I have talked to the neighboring property owners and they are fine with that. Sean Hearty and Shain suggested we move the deck within the same footprint of the house. Rebeiro said it looks like it would encroach more. This plan was done by a landscape architect. Secretary Lee said but it's not a survey. Moore said the actual footprint was done

by the landscape architect. The two maps contradict each other, Hanna said. The commissioners discussed the proposal confusion with Hearty and Shain. Hearty suggested that there was a miscommunication. I want the survey to reflect the deck. The landscape architect's rendering is not a survey. The survey must be updated, Shain and Hearty agreed. DiGilio made a motion to continue this to the next meeting. Secretary Lee said the next meeting is July. Hanna seconded the motion. Motion carried unanimously to **continue**.

**# 13-23** – Wayne Firmender, 63 Ta'Agan Point Road (I06019), Sec.4.A.3., to reduce minimum west side yard setback from 15 ft. to 0.4 ft.; to reduce minimum east side yard setback from 15 ft. to 11.2 ft.; to increase max. building coverage from 20% to 28.1% for residential additions & reconstruction; Sec.8.A.2.c.(4)., to reduce bottom edge of excavation from 5 ft. to 0.0 ft. to property line (RA-20 Zone). Ralph Gallagher, Jr., PE, came forward with Mr. Firmender as Jowdy introduced the application at 8:21 pm. The house is about 7800 sq. ft., built in 1953, 1.3 foot from the line. The hardship is the house and foundation is in disrepair. We propose to tear the house down, rebuild on the same footprint, with a couple of small changes, and he described the color coding, the jogs, and the connection proposed between the existing garage and the house on the second story. Jowdy said you are rebuilding what is currently in violation. The third variance is the coverage, to get from the garage to the house. The fourth variance is the construction within five feet of the property line, and Hanna questioned the less than half a foot, 0.0 ft. Gallagher said we are right on the edge. He is going to be standing on the neighbor's property when he builds. You need a skinnier guy, Hanna said. Gallagher said it's a nice piece of property. We abandoned the well and septic, which were old and nonconforming; making them all new and conforming to Health and Building. Hanna asked why so close? Rebeiro said it's existing that close. Gallagher said we cannot save the foundation. Firmender said we are staying in the original foundation footprint. Hanna and Jowdy discussed the distances. Gallagher said the chimney is close. Jowdy said the hardship is that it could not be serviced by the fire department. Secretary Lee said do you have letters? Firmender said we have two letters from the neighbors and he distributed them. Firmender said their homes have been redone, so they are encouraging this, if you will. I am looking to bring it up to the aesthetics of the neighborhood. DiGilio discussed the proposed roof overhang; from the end of the gutter versus from the wall. Firmender said the architect and Syd Rapp worked together. DiGilio said the dwelling itself will be back. Firmender said we worked hard to stay within the footprint. Jowdy asked is there anyone in favor or in opposition to this at 8:32 pm. Motion to close the public hearing by Rebeiro. Second by Moore. Motion carried unanimously. Rebeiro said I drove by there and it's not pretty, in the voting session. Moore made a motion to **approve** the request to reduce minimum west side yard setback from 15 ft. to 0.4 ft.; to reduce minimum east side yard setback from 15 ft. to 11.2 ft.; to increase max. building coverage from 20% to 28.1% for residential additions and reconstruction; Sec.8.A.2.c.(4)., to reduce bottom edge of excavation from 5 ft. to 0.0 ft. to property line. The hardship is the topography, and the existing foundation is too far gone, per plan submitted. Hanna and Rebeiro seconded the motion. Motion carried unanimously at 8:15 pm.

**# 13-24** – Thomas J. Mascola, 15 Deepwood Drive (M09067), Sec.4.A.3., to reduce side yard setback from 15 ft. to 14 ft.; to reduce front yard setback from 30 ft. to 27 ft. for deck (RA-20 Zone). Jowdy introduced this item at 8:33 pm. Mascola identified himself and signed in. The commissioners viewed the maps. Mascola said I have some handouts that might make things a little clearer, which he distributed. I've been in the house about 10 years; the deck was probably built somewhere in the 70's. The deck is beyond repair. It was kind of small. Mascola said I like shade more than sun; rebuilding it half and half with a

roof on it. Because of the configuration of my property I had to keep the deck fairly narrow, but it would not look very good if it was too narrow. It would look more like an outhouse than a deck. Hanna said so your deck is on the Danbury side. Jowdy and Tom Mascola discussed the size of the deck; not a big deck. Hanna said I think you like to look at Danbury all the time. Moore asked how much of a hardship would it be if you extended that deck three feet less? Tom Mascola replied I needed that space for the steps going down from the deck; approximately 2 to 3 steps, Tom Mascola said. Hearty said is there going to be a roof on this thing? Half will have a roof and half will not, Tom Mascola said. Hearty and Tom Mascola discussed the free-standing roof, an asphalt roof with shingles; it's almost a detached accessory structure, Hearty said. Tom Mascola explained to Hearty that the roof part will not be attached to the house. Hanna mentioned shoveling snow on the steps in the winter. Tom Mascola said some will be open to the sun, and also for grilling. Moore and Hanna looked at the sketch from the side. Moore said we're not art critics, to Hanna. I plan to put a small roof over the doorway, Tom Mascola said. Hearty said the covered sunroom is not part of the application; it's considered a three-season room. A covered deck to me is a sunroom, Hearty said. Hearty asked does the board understand what he wants to build? DiGilio said your roof line is going to be in front of the existing roof. It looks like it's pretty high. Coming up and down those stairs, are you going to hit your head, DiGilio asked? Tom Mascola said it is a ranch. Toward the back the ground level goes down, and I have a bunch of pictures here that may show that portion better. DiGilio said it becomes a safety issue. Tom Mascola showed the photo. (Tape flipped to B.) DiGilio asked about exit and entrance to the deck. Hanna said I have one more question. DiGilio said, Joe, take a look at that picture; it's blown up better. Tom Mascola said the actual clearance will be something like 18 inches. It will extend a little more out front than it does on the back. DiGilio said you will have a lot of water channeling on your deck. Moore said the big question is what is this hybrid? Hearty said we never had this before; it's a gazebo on top of a deck; I've just never seen it before; he's thought it out. Hanna said I'd like to see the roof carried over; you look like you have two buildings on one lot. Tom Mascola said I think it will look like an "L" of the house. DiGilio said it's going to be higher than the roof. Mascola said no, it isn't. Hearty said I would ask the building inspector to look at his drawings; I've never seen anything like this. Hanna commented how is he going to maintain it? Mascola said there will be room to get in there. Hearty discussed what people usually add to a deck. Moore and DiGilio said that it is the roof. Rebeiro clarified. DiGilio said you could run into problems with the building department. The plan states a covered deck; the legal notice does not mention the roof, Hanna said. Some of that is almost the existing deck, Moore said. Tom Mascola said the existing deck I think is about 16 feet long. Hanna discussed the 15.4 ft. distance, but you are saying 14 feet on the application. Tom Mascola explained arriving at the 30 ft. overall length. The survey shows the existing deck, Moore said, since we say "as per plan submitted". There still may be a zoning issue about covering the deck, Moore said. Hearty said I'd like to have more clarification; see the covered deck on the survey; is it a deck, or an addition? Rebeiro said they can hatch it on the plan. Hanna said we have to see the roof on the plan. Hearty said we have already one continuation. I can get clarification from Counsel what to call this; this is to be mounted to the top of the deck; the gentleman has a wonderful design in his head. I recommend a continuance and maybe a modification to the variance request. Tom Mascola said I have one question and that is the overhang. Hearty said it's got to be shown. Tom Mascola said I am not in the construction line. Hearty said even a gutter cannot project into the setback. Moore asked Mascola a question about the detail of the variance request. DiGilio said we do not get involved in the rail height, for example; we do not know how to classify this; we need clarification. Continue it and find out what the result will be, Hearty said; unless Bethel wants this. Moore made a motion to **continue**. Hanna seconded the motion. Motion

carried unanimously at 8:05 pm. Hearty said we'll talk about that Monday as the issue is closed.

ACCEPTANCE OF MINUTES: April 25, 2013, meeting minutes. Motion to approve as presented by Moore. Second by Hanna. Motion carried unanimously. There were no meetings in May.

ADJOURNMENT:  
Motion to adjourn by Moore. Second by DiGilio. Motion carried unanimously at 8:16 pm.

NOTE: The next regular ZBA meeting is scheduled for **July 11, 2013**.

Richard S. Jowdy, Chairman