



CITY OF DANBURY
 155 DEER HILL AVENUE
 DANBURY, CONNECTICUT 06810

ZONING BOARD OF APPEALS
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MINUTES – REGULAR MEETING
January 23, 2014
 City Council Chambers
 7:00 pm

RECEIVED FOR RECORD
 DANBURY TOWN CLERK

2014 MAR -4 P 1:22

BY:

Present were Chairman Richard S. Jowdy, Herb Krate, Michael Sibbitt, Rodney Moore, Joseph Hanna, Alt. Rick Roos.

Absent was Anthony Rebeiro.

Staff present were Timothy Rosati, Assistant Zoning Enforcement Officer, Secretary Patricia Lee.

Jowdy called the meeting to order at 7:01 pm. Motion to reopen # **13-45** and to hear the six items under New Business by Krate. Second by Moore. Motion carried unanimously.

CONTINUATION OF PUBLIC HEARINGS:

13-45 – CONTINUE to 1/23/14: Dr. Andrew C. & Diane Koenigsberg, 89 Old Boston Post Rd. (H22068), Sec.4.A.3., reduce front yard setback from 30 ft. to 12.5 ft.; reduce rear yard setback from 35 ft. to 9.5 ft. for new single-family dwelling – AMENDED application (RA-20 Zone). Extension letter received 1/6/14. Jowdy introduced this item at 7:19 pm (third), an amended application. Peter Olson, Attorney, came forward and identified himself and his firm and his Bethel address, here on behalf of Diane and Andrew Koenigsberg. The site is .214 acres. Olson said to refresh you from the meeting on 12/12/13, the site is nonconforming, and he gave the footage of the setbacks. We ask you to allow us to rebuild the home, widened front to back, and narrowed left to right. We had asked you, Olson said, to continue that December public hearing to address the concern about the proximity of the lake. The first thing I will submit is a memorandum from the wetland scientist, Jim McManus (JMM Wetland Consulting Services, LLC), which Olson distributed (two pages to the memo) to the commissioners. Using the easel, Olson said if you drew lines of the setbacks we would have a very small area in which to build a home. McManus talked to New England Land Surveying; they did a field survey in 2009. Jim set his wetland flags on the new plan, Olson said, numbered one through seven; all are located outside of the lake. There is a small space, a fringe to the lake, because the lake rises and falls. No portion ever goes past from where he flagged the wetlands, Olson continued. Dealing with spaces this small and scales this large, McManus addressed this in his memorandum, wetland flag #5 and #6 are the worst cases. Next, we took a 10-foot line; the dashed line, parallel to those wetland lines; we wanted to observe that buffer. The rear deck will be 9½ feet from the property line; even further from the boundary of the lake; a three foot shift. Olson described what he is now asking the board. This was discussed at the Lake Waubeeka Association 12/22/13 meeting, and that letter should be in your file. The

commissioners could not find that letter in the file. Olson said the Association said they do not object to that variance. Secretary Lee asked for a copy of that letter. Krate said that letter was tied to a map, I presume. Olson said tied to the amended map that I submitted. Krate asked would you accept a condition to the variance. Olson said yes; again, this is a conceptual design. We still need to go to Health for septic and to the Environment Impact Commission for the wetlands. Olson again described the size of the lots. The second hardship is the topography. Dainius Virbickas is working on the septic system design, Olson said. That is a good thing for the lake. But we have to shift the house. Virbickas' letter demonstrates using that land for the septic system. For those 3 reasons, we have a hardship, and we've addressed the concerns of the Lake Waubeeka Association. Jowdy asked is there anyone who wishes to speak for or in opposition to this variance request. Gail Adams, LLS, came forward at 7:31 pm, stating I live at 45 Alan Road at Lake Waubeeka. We thought the trade off was well worth it, as well as other restrictions from the Lake Waubeeka Association; we approve, Adams said. I'm on the board of directors, Gail Adams said. Motion to close the public hearing by Krate. Second by Hanna. Motion carried unanimously 7:31 pm. Jowdy later opened up the discussion / voting session. Krate made a motion to **approve # 13-45**, Dr. and Mrs. Koenigsberg, to reduce front yard setback from 30 ft. to 12.5 ft.; reduce rear yard setback from 35 ft. to 9.5 ft. for new single-family dwelling – AMENDED application, in the RA-20 Zone. This is an amended map, and it's per plan submitted; there will be no negative impact to health, safety and welfare of the neighborhood. Jowdy added the board of directors of the Lake Waubeeka Association approved it. Hanna seconded the motion. Motion carried unanimously 8:31 pm.

NEW BUSINESS:

14-01 – Vera Delohery, 79 James St.(K12042), Sec.4.A.3., to reduce side yard setback from 15 ft. to 5.7 ft. to roof for proposed enclosed porch (RA-20 Zone). Jowdy introduced this application, but there is on one here. Jowdy moved this to the end of the agenda. Don Reisert came forward and apologized for being late; he said my daughter had a science fair. Vera wants to close in 13 feet of it to make a fully heated four-season sun porch, Reisert said. It's all existing. She wants to put a grill out there. She was granted a variance about 8 years ago; it's a pretty small house. She was unable to make it tonight. I don't know the house square footage, Reisert continued. Jowdy estimated the size of the house. Jowdy asked are there any questions from the board. Moore said this does not really describe the hardship or any hardship. Reisert said it's a very small house, a very small kitchen; no dining room, just a dining area. Two people live in the house: her and her daughter. I believe it's two bedrooms. Jowdy asked are there any questions. Jowdy asked is there anyone who wishes to speak for or in opposition to this variance request at 8:29 pm. Motion to close this public hearing by Krate. Second by Hanna. Motion carried unanimously. Motion to close the public hearing portion of the meeting by Krate. Second by Hanna. Motion carried unanimously. In the voting session, Jowdy said those are all small houses on James Street. Hanna made a motion to approve the request to reduce side yard setback from 15 ft. to 5.7 ft. to the roof for proposed enclosed porch in the RA-20 Zone. Second by Krate. The house is small, and there is no detriment to the welfare, health and safety of the community, per plan submitted, Krate said. Motion carried unanimously.

14-02 – Augusto DaSilva Enterprises, LLC, 25 Beckerle St.(G10129), Sec.4.A.3., to reduce side yard setback on west side from 15 ft. to 8.0 ft.; to reduce side yard setback on east side from 15 ft. to 11.0 feet for single-family dwelling (RA-20 Zone). Jowdy introduced this item and **# 14-03** at 7:04 pm, and Thomas Beecher, Attorney at Law at Collins Hannafin, PC, in Danbury, identified himself and put the plan on the easel. Beecher signed in stating he is representing Augusto DaSilva for these two

items. (Joseph Hanna is now here, and Alternate Rick Roos left at 7:05 pm.) Beecher continued, with me tonight is Gus DaSilva, who has two vacant lots up in the Ridgewood Terrace subdivision. Jowdy said both of these are different sizes. Beecher said both lots are the same. Krate said we must open and close each item, so please present them separately. Beecher gave the original subdivision map to the commissioners. There's one for everybody, Beecher said. On this map you will see the two applications, lots 42 and 47 which I have highlighted for you. This subdivision was formed and recorded in 1926, so these are legal nonconforming lots, and he stated the size of the lots: ±6250 sq. ft. roughly each in area. Both are constrained by a City drainage easement as seen in your packets. Beecher went to the easel and picked up that mic; 50 feet wide even. We are seeking a modest building envelope consistent with the neighboring lot; not a large footprint. There have been 38 other variances in this subdivision because of these legal nonconforming lots. Beecher discussed the reductions he is requesting. On the plans that were submitted to you, the actual dimensions along the southern boundary do not add up to 50 feet, so I am asking for a change in a good way. He listed the new request. 12 feet on the west; 9 ft. on the east side, not 8 feet. We are looking for a little bit less than we applied for, Beecher said. I'll wait on the Farm St. lot specifics. The hardship for both lots is these are pre-existing, nonconforming lots, and the drainage easements. I got help from JoAnne Read, Beecher said. She's terrific, I must say. By looking at the other variances in the neighborhood, this will not present any problems for the welfare, health and safety of the community, and they are consistent with the neighborhood. I have an aerial photo highlighting the Farm Street lot; the houses are all very similar in here. That's my specifics as to Beckerle, Beecher said. Jowdy asked are there any questions. Is there anyone who wishes to speak for or in opposition to the variance? Motion to close the public hearing by Krate. Second by Sibbitt. Motion carried unanimously. Motion to **approve # 14-02** by Krate, to reduce the side yard setback on the West side from 15 ft. to 9.0 ft.; to reduce the side yard setback on East side from 15 ft. to 12.0 ft. for a single-family dwelling. To 9 feet on the West side, and on East side from 15 to 12 feet, per plan submitted. Those plans have been manually altered to indicate the lesser variance; the revised map, and it will not be a detriment to the welfare, health and safety of the community. Moore seconded the motion. Motion carried unanimously.

14-03 - Augusto DaSilva Enterprises, LLC, 32 Farm St.(H10040), Sec.4.A.3., to reduce side yard setback on east side from 15 ft. to 5.0 ft. for a single-family dwelling (RA-20 Zone). Beecher said at Farm Street, the explanations are all the same. There was a little map issue with Farm Street as well, in answer to Jowdy's comments, Beecher said. Krate said he has not given up the specifics of the request on this. In this particular lot, 5 feet on the east side, zero on the west side, six feet on the east instead of five, Beecher said. So we want six instead of five. The drainage easement is 15 feet wide. We are pushed towards the east side; the house is over on the east side, so not on the doorstep of 34 Farm Street, Beecher clarified, lot 78. Krate said I have no questions. Jowdy asked are there any questions, and is there anyone who wishes to speak for or in opposition to this variance request? Motion carried unanimously. Motion to close the public hearing by Krate. Hanna seconded the motion. Motion carried unanimously at 7:19 pm. Jowdy introduced the second DaSilva variance in the voting session, saying it's the same presentation. Krate made a motion to approve **# 14-03** at 8:34 pm, to reduce side yard setback on east side from 15 ft. to 5.0 ft. for a single-family dwelling in the RA-20 Zone. Plan has also been altered to show less of a variance. It is accepted as a revised map, and will not prove a detriment to the welfare, health and safety of the community. Sibbitt seconded the motion. Motion carried unanimously.

14-04 – Scott Hamilton, 207 Stadley Rough Rd.(J04153), Sec.4.A.3., to reduce min. front yard setback on Stadley Rough from 30 ft. to 5 ft.; Sec.3.G.3.a., to allow detached accessory building in required minimum front yard; Sec.3.G.3.c., to allow detached accessory use to have a ground floor area, when combined with other accessory buildings on the lot, to increase from 50% to 72% for detached garage (RA-20 Zone). Jowdy introduced this item at 7:31 pm and read the petitions. Tammy Zinick came forward. Krate said not only are we late, but we are confused. Zinick signed in and apologized for being late. Zinick said I am the project expediter representing Scott Hamilton. I have to think about saying garage; I say "gararge", Zinick explained. She put the plan on the easel. That does give me more room to dance. The Hamilton's do have a few hardships: two front yards, and two side yards. They have a septic and a well and an existing pool. Even though their plot plan does look quite busy, they do have room for this structure. There really is no other place for this structure. We are asking also for lot coverage, due to fact that this house was constructed prior to 1960 without a basement, only a crawl space. He has tools and two teenagers with lots of toys and things. Has anybody driven by the site to get a visual of it? There are quite a few Mother Nature hardships. Jowdy said the tent does add to your coverage. Zinick said they just want to keep the one tent. Krate asked why is that necessary? It stores his equipment for his employment, the kids' ATVs, two cars, Zinick replied. Jowdy asked a question about just using the garage. Hanna said you can't push the garage closer to the house. Zinick said no, due to the egress windows for the bedrooms. Hanna, Krate, and Zinick discussed which garage. Zinick said no matter where we put that, we will still be looking at that five feet. She showed the access down this paved drive; you've got the septic fields right here. They discussed the required distance for the septic fields. This is the proposed reserve; they have to have a reserve area, Zinick said. Hanna and Zinick discussed the old system location. Krate said I am very uncomfortable giving you this with all that is going on on that lot. Hanna said you've got to put on some dimensions: how far from the house, from the septic. Krate said there is just too much going on; that tent could become a permanent structure. I am not happy with that kind of coverage in a residential area, Krate continued. It's too busy. You can paint it any way you want; it's too busy, Krate reiterated. This is not a business area. Zinick said it's just a pick-up truck. Krate replied I think he would be better served if you came back with a revised plan, keeping in mind that we want to give you the minimum variance necessary. Zinick asked about the proposed location of the garage. I'll have the plan updated. Krate said we're willing to be reasonable, but this is beyond reason. Jowdy pointed out the pool with the deck; I don't think that this is conducive to that lot; come on; on a corner lot going down Stadley Rough Road. Moore said I go by there frequently, and that lot is busy; it adds up to a lot. They want one thing, they are going to have to give up another, Zinick said. Krate said you have reasonable use of the property. Zinick said I have to try for the client. She listed the issues the board wants addressed. Zinick said thank you for your time at 7:46 pm. Motion to **continue** this public hearing by Krate. Seconded the motion. Motion carried unanimously. They are going to bring that back. That lot is covered.

14-06 – Tilcon, Inc., 3-4 Plumtrees Rd.(L12034), Sec.3.J.; Sec.6.B.3., to increase maximum allowed height for storage silo from 35 ft. to 80.0 ft. for third silo (IG-80 Zone). Jowdy introduced this item at 7:47 pm. Krate said they said at the last silo hearing it was the last. (Tape A flipped to side B.) Lee and the commissioners discussed the old files. Jowdy read the minutes from the 2006 application, # **06-53**, into the record, presented by a Mr. Lane. "This silo will be the exact twin of the existing stack". Jowdy summarized the 2006 decision. Dan Kroeber, PE, from Milone & MacBroom, Inc., introduced himself, and said Frank Lane from Tilcon is also here tonight. With aerial photos on the easel, Kroeber described the vicinity, the existing facility, the stacks referred to in the minutes you just read. These are silos, essentially what you described; Kroeber said they will load into a truck. Loading a

truck takes five minutes, and he described what bituminous material is in the silos. The material passes through, and what they are finding out is that traffic tends to back up, so add additional silo is needed to speed up the process. The silos are 80 feet. This will be a third silo next to the existing silo. Kroeber and Krate described the heights. Kroeber discussed the one foot overage on the old variance; we added 2 feet higher in case there was something attached to it. There is no heating; it acts like a thermos, Kroeber said. Tilcon does not want to expand the business, Kroeber said; it is my understanding. Jowdy and Kroeber discussed the filling operation. Frank T. Lane signed in saying I was here for the last three variances. I am the Director of Real Estate for Tilcon Lane said at 7:58 pm. The last time I was here for the silo, the second silo was not put in place. We came back for the second silo. We get tremendous queuing. Frank Lane discussed the procedure of the batch creations, about five minutes to load each truck; there is up to 300 tons in each one of them. Lane discussed the waiting time for the small business truck waiting to be filled up. Krate noted you have a pretty good lock on the market; I don't think you have to advertise. Krate asked is there anticipation to create more trips in and out of Plumtrees? Lane said I don't have a crystal ball, and he discussed the other Tilcon locations. Krate asked about creating more trips, more trucks on Plumtrees Road. Lane described the path from the train to the dump trucks pick up. We are trying to better serve the customer base that we have. Lane and Krate discussed an old injunction; a long story; the D'Addario family. I was interested as to why this was not constructed on that rail spur, Krate said. Jowdy asked if there were any more questions, and if there was anyone who wished to speak for or in opposition to this proposal. Motion to close the public hearing by Moore and Krate. Second by Hanna. Motion carried unanimously at 8:04 pm. In the voting session, Jowdy summarized the presentation referring to the need for another silo. Tim Rosati said they should come in for a site plan or special exception. Krate said I will eat my hat if this does not create more traffic; it's a vehicle generator, and other commissioners should look at this; that's a tough road, and dumping all that onto Newtown Road might create problems. Give the planning and zoning boards a heads up, Krate advised. Jowdy said it is also a concern of the chairman and rest of the board. Krate made a motion to **approve # 14-06** to increase the maximum allowed height for a storage silo from 35 ft. to 80.0 feet for a third silo. The visual impact is minimal; it kind of sits in a hole behind a shopping center; again I have a concern about increasing the traffic, and get a hold of the State. This is per plan submitted, Krate said. Sibbitt seconded the motion. Motion carried unanimously at 8:39 pm.

14-05 – Matt Bartelme, 14 Lakeview Dr.(J05005), APPEAL request for C & D Order from T. Rosati dated 11/14/13, "commercial operation of tree business & storage of equipment" at premises (RA-20 Zone). Jowdy introduced this at 8:04 pm, and Matt Bartelme came forward and signed in. Bartelme identified himself and said I probably have two C & D Orders. Three? I thought only two. We keep a pretty good stock of wood there, Bartelme said. About 14 cord is there and it's not enough for a year. There is nothing commercial going on about it, Bartelme said. I have one neighbor who calls and complains a lot. Bartelme said I heat my house with all wood, and he described what the neighbors use. It is strictly for residential use, Jowdy asked. Bartelme replied residential use only. Jowdy said it's up to you to convince the board and the Zoning Enforcement Officer that it's not for commercial use. Moore asked what equipment is actually stored there. Bartelme listed the equipment. Lake lots are precariously steep. Bartelme discussed his cortisone treatments to his shoulders. I do not charge this lady. She usually does all the splitting all herself, Bartelme said. Secretary Lee said the old Badaracco file is not pertinent to this discussion. Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal at 8:09 pm. Timothy Rosati came forward and signed in and placed his photos on the easel. Rosati passed out materials to each of the commissioners. These are bullet points, Rosati said. Speak into the mic, Krate said.

Rosati discussed the comprehensive history of the property. The dwelling was constructed in 1958, and he discussed the variances, the zoning permits, the oversized garage addition, and he listed the permit numbers. On 10/3/96 this site received zoning compliance. I have a trade name certificate dated 9/21/71 by Matt Bartelme, Bart's Tree Service. No employees, it was for booking and scheduling only. Rosati discussed what he observed on Sept. 19, 2011, which appears to be way beyond the scope of a resident preparing to heat his dwelling. Following a commercial violation documentation on 10/5/11, Mr. Bartelme called me and granted me permission to inspect the site. Rosati described what he next observed in response to complaints: a stacker, lot splitter. I gave him a citation, a warning. New complaints came in the fall of 2011, and Rosati explained what he observed at that time. On 8/30/12, Cease & Desist Orders were issued, stating that all activity must be removed from the vacant lot. Complaints again came in of renewed commercial activity, and on 11/14/13 a Cease & Desist Order was issued for a commercial tree business. In closing, this property is located in a quiet lake community. For more than the past two years, Matt Bartelme has been operating a commercial business in a residential zone. Four C & D Orders have been issued, and he has sought to pacify the neighbors by offering them wood to heat their homes. At the easel, Rosati said I would like to point out, with Google maps, the vicinity, and he brought the map closer to the commissioners. Jowdy said that's a tremendous amount of wood; I don't know what 35 cords looks like. The wood is on pallets already; it does not appear to be a residential activity. And the area referred to, he's on his neighbor's property, Rosati said. Jowdy said to Rosati thank you at 8:19 pm. Jowdy said to Bartelme you can come back up. This seems to have been going on for a very long time. Bartelme at 8:20 pm described the activities that required the equipment on the Lakeview Drive lot. He described the other locations and other equipment he has in the City. He presented a photo showing the logs that resulted from all that storm damage. Then we got the Cease & Desist Order, and I have to go back and split all that wood. Krate said there's no way in hell that you are going to convince me that that is a residential operation. Bartelme said I don't want to use a wheelbarrow; I put it on a pallet and put it in my garage. Krate said to him can I finish? You get cited; you stop for a while; you start up again. Five, six years this has been going on. It's too obvious. I'm amazed that you have not been fined, Krate continued. Bartelme said I am paying thousands and thousands of dollars in taxes. He described the Bethel operation. I was probably guilty in the beginning, Bartelme said. Krate said come on; there is no way that two homes burn that much wood. Jowdy intervened saying the big thing is you've been questioned for years; you have been (issued) violations; so the consensus of the entire board, I don't know. Bartelme said that's probably it at 8:25 pm. Motion to close # **14-05** public hearing by Krate. Second by Hanna. Motion carried unanimously 8:25 pm. Jowdy reintroduced the appeal during the voting session. Herb Krate said that's a nice story about the two homes; I don't buy it. Krate said I want to move to uphold the Cease & Desist Order, and ask Tim (Rosati) to vigorously enforce it, including issuing a daily fine. Jowdy said it's obviously a commercial operation in a residential zone. Krate made a motion to **uphold** the Cease & Desist Order. Sibbitt seconded the motion. Motion carried unanimously at 8:41 pm.

ACCEPTANCE OF MINUTES: Krate made a motion to accept the December 12, 2013, meeting minutes as complete. Moore seconded the motion. Motion carried unanimously.

ADJOURNMENT: Motion to adjourn by Krate. Second by Hanna. Motion carried unanimously at 8:43 pm.

Respectfully submitted,
Patricia Lee, Secretary