



**CITY OF DANBURY**  
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ZONING BOARD OF APPEALS  
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MINUTES – REGULAR MEETING  
**May 24, 2007**  
COMMON COUNCIL CHAMBERS  
7:00 PM

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The meeting was called to order by Chairman Richard S. Jowdy at 7:03 pm.

Present were Richard S. Jowdy, Herbert Krate, Michael Sibbitt, Joseph Hanna, Alt. Jack Villodas.

Absent were Gary Dufel, Alt. Richard Roos, Alt. Rodney Moore

Krate motioned to hear tonight's agenda. Sibbitt seconded the motion. The motion carried unanimously. Chairman Jowdy explained the procedure for Public Hearing, for opposition and rebuttal presentations.

**#07-34** – Jose M. Agra, 73 Franklin Street (H13009), Sec.4.C.3., to reduce required min. lot width from 100 ft. to 86.81 feet to allow conversion from a two to a three family dwelling (R-3 Zone). Jowdy introduced this item at 7:04 pm. Peter Scalzo, Attorney, from 2 Stony Hill Road, Bethel, took the microphone representing Joe Agra. The lot is .4 acre, Scalzo said, and currently houses a two-family structure. Agra is currently a resident of New Fairfield. He lived here for years, Scalzo continued, and he desires to return to this house and live there; a two bedroom addition is proposed. The lot predates current zoning for lot width. As stated, we have 86.81 feet, so we need the balance. It's consistent with the comprehensive plan and with the neighborhood. It's a very beautiful lot, and very flat, with lots of room. Scalzo passed out black and white photos. Also have a plan from CCA that shows the abutting uses, which are 3 and 4 family, currently on much smaller lots. Krate said I have a problem with this photo. Scalzo asked am I in it? Sorry. Krate said we have it already. Scalzo said the house currently has a full attic space that could be converted, but he'd rather add on to the rear, two bedrooms. There's plenty of room for it. I did speak about this twice with Sean Hearty, and he did not communicate any issue with it to me. Krate asked what is the hardship? He has reasonable use of his property. Scalzo agreed he has, he has; the R-3 does allow a two family in that zone. Jowdy said what we are trying to relate to you is that they changed the zone to knock down density. The biggest thing in the City now is the traffic and the crowding, especially on Franklin Street, as you are probably aware yourself. Scalzo said what we are saying here is that this is a very moderate addition and it's to the rear. Krate replied the City has emphasized that they want to get away from this. You have no hardship, basically. Scalzo said it's a three family zone. And I think the history from my client is that he came in during the moratorium, so he shelved this. Sean and I discussed this. The issue was the fact that he has a large lot with plenty of room on it, Scalzo continued. And but for the minimum lot width, he'd be fine. Jowdy gave the history of a previous petition for a residence that was the only one family house on the street, and the Board had to go with the regulations as they now exist. Krate reiterated you do have reasonable use of the land. Hanna said the zone changed for a reason. Krate said the zone change did not put an undue burden on the parcel. Jowdy asked if there were any questions, or any one who wished to

speak for or against this application. During the voting session, Chairman Jowdy said we obviously told the applicant how we stand in cases like this. Krate said I see this gentleman as having reasonable use of his property. Krate made a motion to **deny** the request to reduce the required minimum lot width. The applicant has reasonable use of his property, is my reason for denial. The applicant fails to show a hardship. Hanna seconded the motion to deny, and the motion carried unanimously.

**#07-39** – Timothy O’Hanlon, 2 Settlers Hill Road (A08008), Sec.4.A.3., to reduce rear yard setback from 30 ft. to 5 ft.; Sec.3.G.3., to increase maximum building height from 15 ft. to 18 ft. for detached accessory use / garage (RA-80 Zone). Jowdy introduced this application at 7:12 pm. We have a few letters from the neighbors. Jowdy said we have two letters from neighbors. Timothy O’Hanlon signed in and stated his name. Krate read the letter from lady neighbor, Rosamond Berg Bassett of 96 Turner Hill Road, into the record, dated 5/18/07, requesting postponement of this hearing. They own behind Timothy O’Hanlon; we would like time to explore access from the New York side. Timothy O’Hanlon said she wanted me to give her 100 feet of her road frontage. Krate explained they want us to postpone to June or July since they are away in Europe. It’s really a matter that doesn’t affect us; it has little to do with what we are doing here tonight, Krate added. Jowdy read the narrative from O’Hanlon stating his intent to build a garage. There is a “no objection” letter from Mr. MaCreedy. O’Hanlon said, and I have another letter in favor from the Greens on the other side. Jowdy said tell us what you’re going to do. O’Hanlon said we have no attic or basement space in my house. So I will add to my house. I do have photos, and my lot is surrounded by ledge. I’d like to build it right where this shed is. My whole property is basically ledge. My neighbor built the same garage, and that’s what I propose to build. Krate said but that would not preclude your neighbor’s access issue to their landlocked property. O’Hanlon replied no. I only have 50 feet offset from the house now. Hanna asked you’re making an addition to the main house, right? O’Hanlon explained the map to Commissioner Hanna. Sibbitt and Krate discussed the proposal. Krate asked for a ruler from Secretary Lee. Jowdy, O’Hanlon and Krate discussed the plan. Krate said you may have another problem: you’re cutting it awful close to your well. You need a full 25 feet. O’Hanlon replied I did measure that, and it’s approximately 25 feet. Krate said OK. Sibbitt asked why does it have to be so big? O’Hanlon said it’s just a two-car garage with storage above. Sibbitt said I saw the pictures. O’Hanlon explained it would not look right; it would look too close to the house. There’s a two car garage there right now; I believe my house is 2100 square feet. Hanna discussed how many garages are allowed based on the size of the house. I will convert this to living space, O’Hanlon said. Villodas had a question on the conversion. Jowdy asked are there any other questions. Jowdy asked are there any members of the audience who wish to speak for or in opposition to this request at 7:22 pm. Jowdy re-introduced this later in the voting session, stating he is surrounded by ledge. Krate said I make a motion, if there’s no discussion, to **approve** the petition per plan submitted. The hardship is the topography, and there are to be no facilities, kitchen or bath in the garage. Hanna seconded the motion, and it carried unanimously.

**#07-40** – William J. & Mary K. Trotta, 20 Woodbury Drive (K08005), Sec.4.A.3., to reduce side yard setback from 25 ft. to 19 ft. for residential addition (RA-40 Zone). Chairman Jowdy introduced this item. Mary and William Trotta introduced themselves to the panel, saying this is our 1<sup>st</sup> time doing this too. When we moved in 9 years ago we only had two children; now we have three. Two are sharing a bedroom currently. Our home is 15.4 feet from the property line so that is not an option. Jowdy asked you intend to add another bedroom? That’s what you’re doing? Trotta explained the children’s ages and the number of bedrooms. We have sewers now. Krate said I have no questions. Jowdy said the hardship is basically the small lot, and Krate added the location of the current house on the lot.

Jowdy asked if there was anyone who wished to speak for or against this application. During the later voting session, Krate motioned to **approve** the Trotts' petition to reduce the side yard setback for the addition at 8 pm; the hardship is the house is existing and in order to put the addition on where they can; it is modest, and it's per plan submitted. Sibbitt seconded the motion, and the motion carried unanimously.

**#07-41** – Greenwood CT, LLC, 29 East Pembroke Road (109045), Sec.9.C.2.a., Sec.9.C.2.b., to allow expansion of non-conforming restaurant use including outdoor patio (RA-20 Zone). Jowdy introduced this at 7:25 pm. Ted Backer, Attorney, of 83 Wooster Heights Road, signed in, saying that was the Mexican restaurant. Backer said thank you, Mr. Chairman. Essentially we are asking for an expansion of a nonconformity in two places. Poets Landing is over here. This is the side. There's a rooming house over on the left side, Backer said. We want to put a bathroom and storage here, to square off this corner, 220 square feet. Also we propose to build an outdoor flat dining patio, and I have a bunch of pictures I'd like to show you. There is plenty of parking: there's a total of 77 spaces here. Our plan is to have 7 tables here; under the code, it would be 7 additional spaces, and we have 20 or so additional spaces. One the neighbors is the house behind it. One is in Poets Landing. The 3<sup>rd</sup> neighbor is in the condominium., Mr. Poon spoke up from the audience. Ted Backer passed out photos to the Commissioners. The gas company is going to extend the line, but they have not done it yet. This is where the patio would go. This gives you a little different perspective over there. This just gives you a sense of; there are not trees completely around it; most of this structure was built in 1845. Jack Villodas questioned where the patio is going to be. Backer discussed the previous variances. Krate said I have one question, and I don't want to get caught in a Catch 22: is your client inclined to give up the right to enclose this if this variance is granted? Ted said Mr. Poon is the successful owner of 5 restaurants. Krate and Jowdy questioned Poon: would you give up the right to enclose this at a future time and extend out the building. Poon agreed. Krate asked where are his other restaurants. Poon said Ridgefield and Wilton. Hanna had a question on which door is which on the photograph. Krate had a question on the dining area and kitchen area, and the entrances. Krate asked Poon you're not going to obstruct any egress by doing this? Poon replied no. Backer showed the interior seating and table chart. Poon, Backer, Krate, and Jowdy discussed the plan. Jowdy said it is very nice. Backer said thank you. Jowdy explained when we say enclose, you will not be able to screen it or put a roof over it. Jowdy asked is there any members of the audience who wish to speak for or in opposition to this request at 7:35 pm.

Pat Gross came to the mic, stating I live at 35 East Pembroke Road, and I have no problem with storage and bathrooms. I have a problem with the patio because of noise, Gross said. I've lived across the street since 1979, and I want some peace and quiet now. They have done a very nice job with the building. We will hear the noise in our living room all summer long. My son's bedroom is right in the front of the house. I'm worried about maybe piping music out. I just don't want any more noise, Gross concluded. Jowdy said thank you for input; we will take it under consideration.

Henry Antonio, of 21 Wood Street in Danbury, next identified himself saying I represent Mrs. Rose Guarino, who just had heart surgery. They were previously granted that parking lot, with the stipulation of that the back stockade fence. A section or two of the fence fell; I don't know if it was hit by a truck or what. Mr. Skelly came out. Now the fence is all over, Mr. Antonio said, just leaning up. Krate said, in fact, it is on record, a variance on 5/24/79, granted with STIPULATION to expand the nonconforming use with a stockade fence to adequately screen the neighbors in the rear. Krate explained, no matter what happens tonight, this has to be conformed to. Mrs. Guarino just wanted that fence fixed. It's on the map. She's number 16. Ted Backer came back to the mic saying, just so everyone knows, we bought property in December. We will absolutely fix the fence. It's got to go back,

Krate said. Backer said Mr. Poon will fix it in a week. Poon said, this morning the lady come to me wanting to put music on the patio and I said no. We create a different atmosphere, Poon said. Krate said my difficulty with this is this: you are basically encroaching in a residential zone with a commercial operation. When you are doing something like that, we listen very carefully to reasonable exceptions to this use. You in fact are encroaching on them, even though it's been there forever. So we're very sensitive to people bringing up kids, Krate said, wanting to go to sleep; he should be able to go to sleep. You can't stop people from talking loud when they are outside. Backer said, if I can address two points, I am in no way making light of her concern. We'd agree not to have music out there at all. That "creating a ruckus" at Tortilla Flats Restaurant, we all know. Backer discussed the tables out there. Jowdy asked how large is the side to the patio; how about a sound barrier? Engineer an acoustic fence. As long as you're agreeable to that, we'll see how that goes. If you lived across the street from the restaurant, you would want the same consideration if you came before a board. Backer said let's sit down.

Pat Gross came back to the podium stating we opposed that lounge when it was proposed. They begged us from Tortilla Flats Restaurant. Well, as soon as they got their variance, they put in plants which were knocked down. Krate said an acoustic fence: I will stipulate it. We take each exception on its own merit. Gross said I am not against him. He seems to be a very nice gentleman. They've done wonders with the building. Jowdy said it's a different type of restaurant. Gross asked how late would this patio be open? Krate replied we cannot control that. That's up to the City of Danbury. We don't control the hours of operation; that would fall under a different venue. I've never seen an Asian restaurant stay open till 2 pm in morning. Jowdy said I don't think you're going to have the same atmosphere. Gross said I'm just concerned now with excess noise. Will that fence really work, or will it be an eyesore? Jowdy said there are restaurants all around the Lake with patios. (Tape A flipped to side B). Gross, Krate and Jowdy discussed the expectations involved with this new restaurant. It's not geared to that. You're not going to even get that much family there. Gross added, as long as they are not motorcycles. Henry Antonio asked does that fence stipulation still stand? Backer agreed, you can assure Mrs. Guarino. Jowdy said, introducing this petition during voting session, it's been here as long as I've been here. Additions seem to be very reasonable if we protect the patio. 90% of the restaurants around the Lake have patios. Krate made a motion to **approve**, per plan submitted, to allow expansion, with the **STIPULATION** that in the granting of this, the applicant will install an acoustical barrier on west side of this patio area, so that noise will not leak onto Pembroke Road and the houses across the street. Failure to maintain this barrier shall constitute the revocation of this variance, Krate added. Sibbitt seconded the motion, and the motion carried unanimously at 8:02 pm

**#07-42** – Louis & Dawne Nalbatian, 251 Middle River Road (B07038), Sec.4.A.3., to reduce minimum required side yard setback from 40 ft. to 16.2 ft. for residential addition (RA-80 Zone). Gregg Brauneisen, Attorney, signed in stating he is here regarding Louis and Dawne Nalbatian, who propose a modest addition to their 1600 sq.ft house. It will be in keeping with the neighborhood. Brauneisen said I have letters in the file supporting this application. The hardship is the triangular shape of the lot. The lot was previously upzoned from RA-40 to RA-80. Location of the septic precludes putting it in the back. They have twin boys now, and they are expecting twins again. Jowdy said I'm familiar with Middle River Road. Krate said I don't see a well, unless he's praying for rain everyday. Quit! I mean after this. You don't know how to do it one at a time, Krate joked. Jowdy asked is there any members of the audience who wish to speak for or in opposition to this request at 7:55 pm. Krate said I'll do it. Krate made a motion to **approve** the request to reduce the required side yard setback, per plan submitted; the situation here is it's a very long narrow lot, and a modest

addition. The lot is only 90 feet wide approximately, and the house is pre-existing on the lot. Sibbitt and Villodas seconded the motion. The motion carried unanimously.

ACCEPTANCE OF MINUTES:

Motion to accept the minutes for May 10, 2007, as presented by Herb Krate.  
Second by Joe Hanna. The motion carried unanimously.

ADJOURNMENT:

Motion to adjourn by Krate. Second by Mike Sibbitt. The motion carried unanimously at 8:05 pm.

THE NEXT REGULAR MEETING IS SCHEDULED FOR June 14, 2007, at 7 pm, in **Room 3C**.