



**CITY OF DANBURY**  
155 DEER HILL AVENUE  
DANBURY, CONNECTICUT 06810

ZONING BOARD OF APPEALS  
(203) 797-4525  
(203) 797-4586 (FAX)

**MINUTES**  
**July 26, 2007**

The ZBA meeting was called to order by Chairman Richard S. Jowdy at 7:06 PM.

Present: Richard S. Jowdy, Herbert Krate, Michael Sibbitt, Joseph Hanna, Gary Dufel and Alt. Jack Villodas. Also present were Zoning Enforcement Officer Sean P. Hearty and Secretary Patricia Lee.

Absent: Alt. Richard Roos, Alt. Rodney Moore

Mr. Krate made a motion to hear tonight's agenda as presented. Mr. Sibbitt seconded the motion, and it carried unanimously. Jowdy explained the procedure for Public Hearing to the audience: the presentation, the opportunity for opposition and applicant rebuttal, and he asked all to please sign in. and identify themselves at the mic.

NEW BUSINESS:

**#07-51** - Seven Springs Realty, LLC, 85 Newtown Road (M11004), to appeal for correction of an alleged error in a decision of the Zoning Enforcement Officer who on 5/4/07 did grant a permit requested by Squeaky's Car Wash (CG-20 Zone). Chairman Jowdy introduced this application at 7:07 pm. Attorney Tom Beecher identified himself, representing Vanguard Products and Seven Springs Realty. Before I go any further, Beecher said I have some materials to hand out, and a copy of the pertinent parking regulation, and a survey showing the proximity of my client to the car wash. Beecher set up the easel. The commissioners reviewed the hand-outs. As you can see from the copy of the site plan that is in the application, my client is only 37 feet from the boundary line. First, Beecher said, why am I here? First, no board has ever reviewed this site plan. It was approved administratively. Perhaps something was missed, Beecher proposed. Second, the permit allowed the applicant to convert the building into a convenience store plus a car wash. They did extensive blasting and excavating in the rear to squeeze everything in. There's a retaining wall to be built to stabilize the slope, which is now a cliff. The retaining wall goes all along the boundary. I was informed today that a stop-work order has been issued by the City. Chairman Jowdy noted that these are two separate issues, the wall and the permit. Beecher continued, Mr. Hearty and Mr. Null have been very helpful throughout this whole process. A zoning permit is required before a building permit can be issued. Beecher cited the zoning regulations: "complying with the zoning regulations..." ; Beecher noted the parking regulations section, which I've given you. For an automobile washing establishment, Beecher stated the number of required spaces and waiting spaces in the driveway. He defined the waiting spaces. There's no rational way to describe it otherwise. If you look at the site plan, it clearly shows that traffic goes in over here off Industrial Plaza Road. Then the cars come out and they drive out where the arrow says, Beecher explained. There are

only 5 spaces waiting. Krate said I disagree with your interpretation of number of parking spaces. Krate read the regulations regarding the existing spaces. Beecher said I disagree to Commissioner Krate. No one is waiting for anything when they are leaving. Krate said you're waiting for the drying. Where does it say that? Beecher read the regulations, per fixed stall, washing stall. Krate explained his interpretation of the space count and a fixed stall, where one can dry; you are choosing to interpret this regulation the way you want, not the way that it is written. Krate and Beecher discussed the car wash facilities' spaces on Main Street. Krate said the front spaces there are for the building next door. The family also owns that accessory building next to it. Krate said I guess we interpret it differently. Beecher explained that what this Board is saying if they uphold the zoning permit, is that all new car wash applications will be interpreted this way. Beecher discussed what complies with the regulations. Krate said, predicated on what you're saying, he could probably get 8 to 9 cars in the entrance area. Beecher said all we are here to appeal is the plan that was approved, and the plan that was approved says five. That is the gist of our appeal, but it's waiting for the car wash service, or it's waiting for nothing. Jowdy asked if your client was aware of this and that there was no Public Hearing. Beecher said it was published, but I was not reading the paper. It was approved by Ms. Emminger and we didn't see it. Jowdy discussed that once a plan is approved, the Zoning Enforcement Officer (ZEO) goes in and stamps it. Beecher said I'm not here to carve up Mr. Hearty at all. The Planning Commission gave him the plan to approve, so he approved it, Jowdy said. Beecher corrected that: it was an Administrative Approval. No full board has seen this until now, this ZBA Commission. Nevertheless, the regulations say the zoning permit should be issued only to a project that complies with all the zoning regulations. Jowdy said he does not look at all the plans when they come down from Planning. Beecher said this project does not comply with the regulations; I'm not saying he did not do his job right. Herb Krate said there's no blame here. It comes down to how you interpret the regulations, and I'll read it again, which Krate did; washing and then a separate stall for drying. So it clearly says it could be cars waiting to be washed or waiting to be dried. Beecher said I think I can make them mutually exclusive. Beecher began to re-read the regulations. It's not equipped to dry in the main stall. Krate said how do you know? Have you looked in there? Dufel said may I interrupt for a clarification. There's the number of parking spaces, or are we arguing the count of fixed stalls. Beecher said if the drying occurs in that fixed stall, then there are 10 cars waiting, so these five cars here are waiting for nothing. Krate said you don't know that. Dufel said so you're asking us tonight to judge if the ten spots are legal. I can do my job on that, Dufel said. Beecher explained that what it boils down to is you are making a precedent for all future car washes in Danbury. Krate discussed the hypothetical car waiting at the car wash. You just made an assumption that the waiting cars are not waiting to be dried. Dufel said to Krate, you've gone a little too far. Jowdy said the interpretation of the regulations has been up to the ZEO; now you can challenge his interpretation, but he makes his determination. Beecher said, well, I have. Krate said let me clarify something that Dick said: it's this Board's job to look at and decide the correct interpretation. You're not challenging Sean, and I don't want that to be misunderstood, Krate said. Jowdy said okay, I think we got it. Dufel asked now this is the only challenge you are making to this project? Now this drawing handed out was the applicant's drawing? Attorney Beecher said it's my understanding that this is the site plan, which Jennifer Emminger approved, and it then came across Hearty's desk. The parties chuckled over who is more intelligent, Dufel or Beecher. Beecher responded to Dufel's question, I don't have that off the top of my head. Krate said I don't think it exists. Dufel questioned the way the regulations talk about parking. Can anybody tell me where that's located in the regulations? Krate replied but that's generally for fixed parking generally. Jowdy said you could put at least 3 more cars there, just eyeballing this; why there can't be another 3 or 4 cars there? Beecher clarified that this Board does not have the right to redesign this project. You have to make a determination. Dufel argued I don't think we are redefining the project. If I clarify that that

setback line meant nothing regarding the queuing, this is not a redesign. Where are the regulations that state we can only count things within that dashed line? Beecher asked then why didn't they put that in there. Krate and Beecher discussed the parking within setbacks. Krate said this is fluid parking, driving in and out of driveways. Hanna and Jowdy discussed the plan. Krate discussed the process of a car wash. I thought you attorneys had so much money you got your cars washed all the time. Beecher laughed, that's the second error tonight.

Sean P. Hearty, Zoning Enforcement Officer, took the mic at 7:35 pm. Hearty clarified the front yard setback where parking is not permitted. This lot has two front yards. It really has no rear yard. This is a tough lot. Hearty said we don't want the lines to go out into traffic and disrupt the highway. Sean noted how multiple departments kick in on the review with the Planner, and the process leading to the staff doing a report. In this case it did not trip the need to go to the Commission. Hearty said, the application was submitted 12/22/05. It was approved and permits were issued. I respect Attorney Beecher, and it has nothing to do with me. I'm going to go into this again, Hearty said. I get a listing of what needs to be done by me, and I do a review before I approve the plans. The question here is one of queuing. Again, we are going to beat this dog to death; waiting for what in a car wash operation; a little retail area, then coming out drying, and someone jumps inside and wipes the inside. A car wash is a special operation, and Hearty gave examples. These items are discussed during plan review. The planner and the developer will talk. This site meets our requirements for layout and queuing and the flow of traffic. Once again, the two front yards make this site hard to develop. In my interpretation to the code, Hearty said, I concur with the planner in issuing it, and ask you to uphold the permit. Atty. Robin Kahn next signed in and identified herself, representing the permit holder. She pointed out three parking spaces on the easel. I agree with Sean in the interpretation, Kahn said. I also take issue with the appeal, in that this was approved in '06. It was published and no appeal was taken. The site plan complies with zoning. This is really a second bite when we are way down the line here, Kahn said. Now a year later there's an issue raised. Krate said (smiling) so you're saying he's trying to get his cake and eat it too? Secretary Lee said a direct hit to Beecher. Chairman Jowdy said thank you.

Jowdy opened voting session at 8:04 pm and reviewed the appeal and the interpretation of the parking spaces. It's open for more discussion. It looks like they could be accommodated on the property. And this was not appealed till right now, obviously. Hearty said, as a point of order, this was administratively approved; it did not go before any Commissions. Krate said my comment is this is one fixed stall; it's a single line of washing. I don't know any car wash where they don't dry your car coming out of the car wash; so it's simply semantics. Based the way this is written, Krate said, the ZEO was correct in his decision. Sibbitt said never saw a car wash with two lines going into the facility. Krate said there are two on Main Street. Dufel said I don't like two issues here, but those are not before this Board. I think it's a lousy use of the property, Dufel said, but we are not voting on that; I agree with the ZEO. Hanna and Villodas offered their comments. Krate made a motion to deny the appeal; the permit was issued in compliance with our zoning regulations. He did in fact issue it in compliance, and there was ample time for the applicant to appeal the granting of the site plan, which they did not. Michael Sibbitt seconded the motion. The motion to **deny the appeal** was carried unanimously.

**#07-52** – S. Scott & Marsha B. Stetler, 47 King Street (C07040), Sec.4.A.3., to reduce min. front yard setback from 40 ft. to 36 ft.; to reduce min. side yard setback from 25 ft. to 20 ft. for front porch (RA-40 Zone). Chairman Jowdy introduced this application at 7:44 pm, and Architect Christopher S. Moomaw of Ridgefield, CT, came forward and signed in. I practice in Ridgefield. Moomaw said, as part of the package, several surveys were submitted prepared by Paul Hiro. The house was constructed in 1941 and additions were subsequently made to that. It's approximately a half acre site in a one-acre zone. The other

hardship is the location of the house on the lot. I have shaded the setback lines in pink. In dark red, I've shown where they are going over the setback. Krate asked a question on the current setback of the house on the side. After Moomaw explained, Krate said thank you. I understand all of it. Dufel said I have a question on a hardship. If we were to grant every variance on undersized lots; this comes up week after week after week, and everyone is saying my lot is undersized. At some point people have to stop doing so much with it. Herb Krate explained the ZBA exists to grant relief on lots that have been upzoned, changes that take place after the lot is built. Jowdy explained what the applicant is asking: way inside the line; it does not really affect anyone next door. Every variance is different. That's my comment on that, Jowdy said; it's such an insignificant variance. Krate said I would like to say that this Board sits by State order for reasonable relief for use of one's property. Jowdy asked if there were any members of the audience who wish to speak for or in opposition to this request. Thank you. Jowdy reviewed the petition in the voting session at 8:10 pm. There are many similar houses on King Street as they were there a long time before zoning. Krate made a motion to **approve** this request to reduce front and side yard setbacks; it is a pre-existing nonconforming lot, it is minimal relief, and it's per plan submitted. Hanna seconded the motion. The motion carried by five (Krate, Sibbitt, Hanna, Villodas, Jowdy) votes to one (Dufel).

**#07-53** – David Harvey, 298 White Street (K13098), Sec.5.A.3.a., to reduce minimum front yard setback from 25 ft. to 4.5 ft. on Triangle Street; to reduce minimum side yard setback from 10 ft. to 0 ft. for fenced outdoor dog run (CG-20 Zone). Chairman Jowdy introduced this item at 7:50 pm. Mrs. Josephine Harvey introduced herself and her son David Harvey. Do you mind if I come over here and speak to you? I do want to submit letters of no opposition from the neighbors, plus I sent certified letters to those neighbors across the street. We are a State licensed kennel, and we do birds and small animals also. When we started this, there was a pre-existing fence here. So this side fence is pre-existing. Our landlord put this in. Harvey said the City of Danbury said we had to put in a handicapped ramp, and when that was completed it looked really nice. When we were completed with that and the landscaping, David said it's time to get the fence in. I work for HVCEO and with the IRS, so laws are very important to me, Harvey said. Dufel interrupted here to question the fence location and the property line. David Harvey explained where the fence now sits to Commissioner Dufel. Addressi Fencing said we don't need a permit for a fence. Then we called down here, and they said we don't need a permit for the fence. Then, evidently a City official came by and noticed that there was no permit for this. (Tape 1 flipped to side B.) And then we understood there is a difference between a fence and an enclosure usage. Krate said okay, I have a couple of questions. To Sean, where they are putting this run, and does it affect the parking? Krate asked are you legally allowed to have black top under the animals' run? David Harvey said yes, it's actually better for the animals. Mrs. Harvey went on to describe the landscaping and why they put the fence there in the first place. David Harvey said the hardship is that we have two front yards, which he explained. We have no side yards. Our only place to put our State required fence is in our parking lot. Every single electrical wire in that building would have to be relocated if we put the run over here. And it was the most logical place to put it, David Harvey said. CL&P would come and chop my head off, David Harvey said, in answer to Dufel's question. We are taking up four parking spaces. Krate noted that none of the homeowners replied to your letters. There are signed receipts here, and he read their dates. Mrs. Harvey said three of them owned all of the property on the other side. We are here to ask for your help; we did not know what else to do. Dufel asked can I have a rule about enclosures? Hearty said it's an allowed use in the zone; the elevation is really funky there. The fence itself does not bother me; it's the use. Obviously they could not put it in the middle of the parking lot, Hearty said. Hearty and

Dufel discussed the use and the word enclosure. The enclosure dictates the use, Hearty said; it's semantics. Dufel said this to me is the purpose of the Zoning Board of Appeals, when you have a funky site; I'd much rather debate these. The two Harvey's said thank you. Dufel said the dogs don't bark ever, and the applicants joked with the Commissioners. In the voting session, Jowdy reviewed this petition at 8:11 pm. We questioned it quite a bit. Hanna made a motion to **approve** the request. The zone is okay for the business. The business is required to have a dog run, and it is the only place to have it, per plan submitted. Krate seconded the motion. The motion carried unanimously at 8:12 pm.

ACCEPTANCE OF MINUTES: June 14, 2007: Motion to approve these minutes by Krate. Second by Sibbitt. The motion carried unanimously. July 12, 2007: Motion to approve these minutes by Hanna. Second by Sibbitt. This motion also carried unanimously.

ADJOURNMENT:

Motion to adjourn by Krate. Second by Commissioner Sibbitt. The motion carried unanimously 8:15 pm.

The next regular meeting of the ZBA is scheduled for **August 23, 2007**.

Respectfully submitted,

Patricia M. Lee, Secretary