



CITY OF DANBURY
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ZONING BOARD OF APPEALS
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MINUTES
August 23, 2007

COMMON COUNCIL CHAMBERS
7:00 PM

ROLL CALL: The meeting was called to order by Chairman Richard S. Jowdy at 7:04 pm. Present were Chairman Jowdy, Herbert Krate, Joseph Hanna, Gary Dufel, and Alt. Rodney Moore.

Absent were Michael Sibbitt, Alt. Rick Roos, and Alt. Jack Villodas.

Staff present were Sean P. Hearty, Zoning Enforcement Officer, and Secretary Patricia Lee.

Krate made a motion to hear all of the items on tonight's agenda. Hanna seconded the motion and it carried unanimously. Chairman Jowdy explained the procedure for Public Hearing to the audience: the petition, the rebuttal process, and the voting session.

NEW BUSINESS:

#07-54 – Ricardo Jarrin, 20 Olive Street (K12032), Sec.4.A.3., to reduce required minimum side yard setback from 15 feet to 12.5 feet for residential entrance overhang (RA-20 Zone). Jowdy introduced this item as Jarrin signed in at 8:06 pm, and Jarrin identified himself with his right hand raised. Chairman Jowdy said to Jarrin we're not judges. Jowdy said I notice this garage comes out very far. Why do you need a two-foot overhang? Krate said there's something wrong with the map; where's the entrance? Hanna said this one, right? The applicant and Sean Hearty looked at maps at the panel. Dufel tried to clarify what's already existing here, which he discussed with Hearty. Krate said it's the only measurement not on the plan. Jarrin said the house was built in approximately 1929. Krate added it's really less of an infraction of what was there. Jowdy said to Jarrin we understand what you're saying. Jarrin presented his photos and said it is also okay with the neighbors. He showed his photos to the Commissioners. Jowdy said thank you for your presentation. Jowdy asked is there any members of the audience who wish to speak for or in opposition to this request. Jarrin asked do you need the other pictures too?
Later in the voting session at 8:28 pm, Jowdy opened the petition for discussion. Rod Moore motioned to **approve** the petition for the overhang, per plan submitted; the existing portion of the house is actually much closer. Herb Krate seconded the motion, and it carried unanimously.

#07-55 – Robert Hafkemeyer, 22 Hawthorne Cove Road (K02121), Sec.4.A.3., to reduce minimum required north side yard setback from 40 feet to 21.1 feet; to reduce minimum south side yard setback from 40 feet to 18 feet; to reduce minimum rear yard setback from 40 feet to 38.1 feet for residential additions (RA-80 Zone). Jowdy introduced this item at

7:10 pm. Mr. Ryan came forward and signed in: Good evening. Dave Ryan, LLS, said, I'm the surveyor. I prepared the plot plan for them, Rob and Amy Hafkemeyer. And they now want to remodel the house. They are going to have a baby. Everything they have to do has to be on the side as they have a whole new septic system. Ryan discussed the side and rear measurements. Rob and Amy are here if you have any questions, Ryan said. Jowdy clarified some measurements: what is the dining room? Ryan said 12' x 14'. Dufel asked have the people to the north offered any negative or positive input? Ryan said I'm a neighbor too. Dufel asked is this a conflict of interest? Jowdy and Ryan clarified the distances, and Dufel said, and you certified the map? Jowdy asked is there anyone who wishes to speak for or against this application? During the voting session, Jowdy reviewed the small addition saying he showed us it's the only place to put it. Krate said it's actually two additions. Moore added, one to the rear, and one to the side. Krate made a motion to **approve** the residential additions. The hardship is there's no place else to put the additions, with the location of their septic. This will not affect the welfare, health and safety of the community, and it is per plan submitted. Hanna seconded the motion, and it carried unanimously.

#07-56 – Squeaky's Car Wash, LLC, 85 Newtown Road (M11004), Sec.8.E.5.(a), to reduce required minimum front lot line setback for free-standing sign from 10 feet to 2.7 feet on Newtown Road, and to 3.5 ft. on Industrial Plaza Road (CG-20 Zone). Neil Marcus, Attorney at 158 Deer Hillandale signed in, and identified himself and his address, stating he is here on behalf of the applicant. Good evening, Marcus said. The application, as the notice indicates, is really for a minor setback; the site is under construction for a car wash. The proposed sign is in the westerly corner, right at the corner of the two roads, showing the plan, and Marcus gave the distances. The requirement of course is 10 feet, Marcus said. This is not the first time that I've come before you for a sign variance. The hardship is that the road right of way is smaller than the side of the road. So without the variance, Marcus said, it would appear that the sign is way back from the road. Essentially the sign would be in the middle of the parking lot. Marcus continued I came before you with a same situation on Route #37. The sign itself meets the regulations. The total area meets the Danbury Zoning Regulations. Krate asked how high is the sign? The sign is 232 inches; just under 20 feet, Marcus replied; it meets the limit in height. It's a pylon. Keep in mind, Marcus said, in the northwesterly corner is an existing sign, 9 feet by 12 feet, so that sign exceeds what is allowed; it's a pre-existing, nonconforming sign, but it's grandfathered. The intention is to take that down, Marcus said. That sign is located in the same setback as the sign we'll replace it with. Marcus discussed the distances from the neighbor and Industrial Plaza Road. We ask you to condition this that we take down the old nonconforming sign, Marcus said; which is basically something this Commission has always leaned towards. Now I will show you on another map: there was a second sign that was demolished; go to the southerly corner; it was a Shell sign. I don't know exact dimensions, but about 70 sq.ft. And that's gone; we've taken that down. In reality, one of those signs is already gone. We're going to eliminate the nonconforming sign. We feel it's just a better use of the site. It improves the sight lines of the site when leaving the site, Marcus added. You have to get out beyond the existing sign. It is in the sight line. If we move the sign, there will be no sight line issues at all, Marcus said. Krate asked what kind of sign are we looking at? Marcus replied it will be an internally lit box; nothing moving. I can't see why anybody would have any objection to this, but when I sit down, I'm sure I'll find out. Marcus continued discussing taking the non-conformity away, the neighbor; and he'll probably object. It's a sign. The width of the road and the actual property line creates the need for this request. Moore said so the present sign is on two pylons? Marcus answered yes; the other one does not conform. Hanna asked what would be the hardship if it was put where the Shell sign was. Marcus replied it's in the middle of the driveway. Dufel said you might

have misspoke; did you mean the 2.7 feet is from the pylon, or to the edge of the sign? Marcus said it is to the edge of the sign. Dufel said you always come up with a reason for the variance that causes me to think. I don't know if that convinces me. The sign may be the Webster Bank sign; that sign is 10 feet off the right of way, Dufel said. Why can't you put your sign 10 feet off the right of way, at least on Newtown Road? Marcus discussed what Dufel is asking. Dufel continued you have not told us why you can't place the sign within the regulations. Marcus said it would be difficult to see. Marcus added particularly if you are going east on Newtown Road; your eye is not on the sign. Krate, Marcus and Dufel discussed the roadways, the car wash traffic coming out, a traffic light, a stop sign. Marcus said would a stop sign have any effect on the sight lines. Krate said I think there's a light, but it is not lined up with Industrial Plaza Road. Dan Valentine came forward at 7:29 pm and signed in. Marcus restated the question. Valentine said there is an existing building that is there, and if you were to draw a line, roughly 22 or 24 feet, the sign would be in the travel portion of the site. Krate said I don't buy it. Marcus, Valentine and Krate and Dufel looked at the plan at the panel and Valentine continued to explain. Dufel said that seems to be a rare event. Valentine said we still have people that may come out. More discussion followed between Dufel and Valentine, the parking, hindering our parking in that area and the ability to move around. Marcus said the site planner said it functionally works on the site and does not interfere with any sight lines. Krate took measurements on the map with his scale. Krate said I don't know that that represents such a problem. Valentine said what he explained to me is the radius required for a car to get into the spot there. Krate said but this sign is way up. Marcus said but it would be hit by a box truck. Krate stated this is a car wash; you're not washing box trucks. A box truck would probably be making deliveries in this driveway here. Krate added even if it happened, I don't see the problem. Marcus said maybe the engineer was being very conservative. Dufel asked can we split the requests into two votes? Marcus said you have the authority and discretion to do it either way. Marcus added it's not a complicated request. Jowdy inquired you will be eliminated that existing sign even if you don't get the variance? Marcus, Krate and Jowdy discussed conditioning any variance with the removal of the old sign. Krate clarified the sign height, a box truck height; still 30 feet from the sign post; it works. Marcus said again, then we'd go back to McCoy and see if we can do it. Dufel asked this sign is just for the car wash? Marcus said it's divided; it's both. Jowdy clarified the reduced size of the proposed sign. Jowdy asked are there any questions? Jowdy asked are there any members of the audience who wish to speak for or in opposition to this application at 7:36 pm.

Attorney Tom Beecher came forward, identified himself and his firm and signed in. I represent Seven Springs Realty, LLC, and Vanguard Products, and with me tonight is Robert Benn who is a member of the LLC. Beecher distributed his rough rendering of where the proposed sign should go. There is a very real concern for the safety of my client's employees leaving from his property. Beecher discussed the sign elevation and the impact on the sight line. It's my understanding from Mr. Benn that the old sign is further back and is not in the sight line. It doesn't have the impact that we think this will. Beecher discussed why the sign regulations are so written; if you go to Section 8.E.6.c, it specifically prohibits such a sign, located in the corner of the corner lot. Section 3.1.3. creates the linear graphing for that. So if this variance is granted, it would violate the regulations, and it illustrates why this sign should not be granted, Beecher said. The Squeaky's site is a small site. They want to squeeze two uses into that little site. Now they have a self-created hardship. They knew it was a corner lot. They knew it was a small lot. Dufel said to Beecher, if you're concerned with the sight line, I doubt you'd come in here saying they can have no sign; what kind of sign could they then have? Beecher explained I don't see any reasons that they can't put up the sign they want, within the existing regulations. Webster Bank complies. Vanguard Products complies. Beecher continued, they want an economic advantage by having their sign closer to the road. They claim that the right of way is the hardship. What happens

when Route #6 is expanded. (Bob Banacik came to the panel with his scale.) Beecher said it's a self created hardship, not different from any other lot. Beecher cited the Tiefenthaler case. In that case the court agreed with the ZBA: any hardship the owner now has is self-inflicted, and Beecher read the judge's decision. Case law says it must be an exceptional difficulty. Beecher said you haven't heard the applicant say, "This is the only place we can put the sign" on the property. Jowdy interjected, some of the merit is that he's willing to eliminate the old larger sign. Beecher said and I appreciate that. But you should not allow it in the spot he's asking for; and it is not fair to other businesses on Route #6. Dufel questioned Beecher. Jowdy said there's a bank behind that sign, so visibility is going east, not going the other way. Moore had questions about the placement on his map. Jowdy asked are there any more questions for the attorney? Jowdy asked if there was anyone else who wished to speak for or against this application.

Robert Banacik signed in at 7:49 pm saying I own the property currently leased by Webster Bank, and I'm a retail marketing specialist, and I'm very familiar with that site. However, there an existing serious traffic problem exiting. Getting out to make a left turn is almost impossible. Banacik cited the number of cars from 2002. Furthermore, there is an existing illegal sign for a dealer, which is completely illegal and has been there for 12 years, and that exacerbates the sight line problem. I had to jockey parking spaces, but we conformed to the regulations, and quite frankly it's functioning. Banacik said I would not block his sign; it would still tower above my sign. (Tape #1 flipped to side B.) Krate asked Banacik would you talk to your tenant, please? That sign was changing every 30 seconds. When I went by, it was moving. Banacik said your point is taken.

Marcus came back to the microphone and identified himself. When you consider the issue of the hardship, you must also consider the removal of nonconforming structures; clearly the existing sign is even closer to the road, so I would consider that. I would suggest, since the issue has been made, that everybody take a look at this, because quite honestly we will never agree with our next door neighbor. We'll stake the location of the proposed sign. I think that will resolve a great deal of discrepancy, Marcus said. Also, it seems that the second speaker (Banacik) favors sort of a compromise. Now that you've heard this, you've got the map; you might get a different perspective. So we thank you, and we'd be happy if you adjourn this, Marcus concluded. Moore asked how high is the bottom of the sign? Dufel said I've got it: 11' 4" to the bottom of the sign, and his discussed the arithmetic. Jowdy said, for the record, the other sign goes down maybe two feet. Jowdy asked does the opposition want to come up again? Beecher replied, no, we're all set, Mr. Chairman. Jowdy reviewed the petition at 8:30 pm in the voting session, and talked about the sight line and the old larger sign to be eliminated. Krate said if there is no objection, I would like to split this motion: that the front lot requirement setback be denied on Newtown Road. Dufel seconded the motion, and Jowdy asked is there any discussion? Krate said don't think it's prudent on our part to put any signs closer to that road. It's a major thoroughfare, a possible danger in the future, and the State may decide to widen Route #6. Dufel added I did not hear a compelling reason why it could not be placed simply 10 feet back, and still have that other sign removed. I do not think sight lines are the real issue here. Krate said I'm just concerned about that road being widened. The motion carried unanimously to **deny** the first request for Newtown Road. Krate continued, I make a motion to **approve** to reduce the setback on Industrial Plaza Road with the **condition** that the existing sign must be removed, per plan submitted, on that side. Hanna seconded the motion. That motion carried unanimously at 8:35 pm.

#07-57 – William Crain, 83A Boulevard Drive (D16004), Sec.8.B.1.b.(3)., to increase max. allowed driveway grade from 12% to 23% at top, and to 17% thereafter (RA-40 Zone).

Chairman Jowdy introduced this item at 7:56 pm. Mr. William Crain signed in and identified himself. Crain said I guess I'm just here trying to get. Jowdy interjected are you Mr. Crain? Crain replied yes. Secretary Lee said to Crain tell them what you propose to do. The Commissioners unfolded the plans. Crain said, okay, I'm basically here so I can have my driveway. Jowdy said the grade would be way over conforming; 10% is normal, so you're asking for double. Krate said 12% is normal. Jowdy said roughly double; tell us why you want to do this. Crain said, basically, I park on the street now; I walk now. The driveway stops half way down at a fence. Krate said so the worse part of the driveway is already there? Dufel asked so for all these years, anyone who owned 83A had to walk? Crain continued he put up the fence while my house was under foreclosure. He took it upon himself to put up the fence. This already went to court, Crain said. Dufel asked who owns the driveway? Crain replied I guess he does. Krate said wait a second; do you have a copy of the settlement? Sean Hearty, Zoning Enforcement Officer, spoke from the audience saying may I please give you some background, and Hearty explained the changes that he's asking for, and the court stipulated that he get these approvals. Jowdy questioned is this a little bit better? Hearty said that's why he brought it for the Board. Jowdy asked for clarification: is it safer because now you've got the break? It's been there for 40 years; it's been that way. Krate said well we are. Hanna asked Hearty about the parking spaces. Hearty said what's he's doing is bumping over. Krate is that better than it was? Hearty, Hanna, Krate and Dufel discussed the safety and possible liability on the City. Dufel said I have a full understanding. Wait a minute, Krate said; there was a request for the top house, and that variance was denied (ZBA 05-37). Crain said I came to oppose that. Krate said it's the story of my life. Crain said he (Dwayne A. Amicucci) misportrayed his need for the variance. He was trying to legalize an illegal apartment. Krate asked what makes it's less dangerous now? Crain said he was trying to make a parking lot. Dufel read from the ZBA 5/12/05 meeting minutes. Moore asked what was the date on that? Dufel said it seems now there was some legal maneuvering; 23% kind of gives me the shivers. Crain said those houses have been there 70 to 80 years. He does not allow me to go down there. About a month ago, the City put up a sign, no parking on this side of the street. Krate said so we are neutral: we denied it once and we approved it once. Jowdy discussed the history of the site. Krate said I move that we ask this be continued so we can ask Corporation Council's opinion. Crain said I'm just anxious; I just put up the 'For Rent' sign. Krate asked Mr. Crain what if we stipulated \$3 million in insurance. This is an income for you. Crain replied I'd rather wait. Moore said currently the owner at 83 Boulevard Drive does not allow you currently to go down there? Crain said if he gets a lot of money from me, then he must allow it. Jowdy said we're talking about allowing the guy to get to his property. You've got to have an insurance policy. The issue is letting you win that property. Crain said so for 5 years, it's been this way. Crain said, see, this was the deal from the beginning. The deed says right of way; it does not say vehicular. Crain explained what he thinks Amicucci was thinking when he put up the fence. Hearty recommended that this be referred to Corporation Council. Krate said I'd like to continue this to 9/27 so we can get a copy of the stipulations involved. Hearty said and the applicant agrees to that. Jowdy said this is tabled. Krate said this one is continued. Krate asked Sean Hearty would you ask the Fire Marshal to look at this. Krate said it's not land locked. That's not a legal driveway; we denied it. He has the right to walk to it. Dufel said I'm concerned with nobody stopping it versus approving it. Krate said they came in here for the top part of that driveway, and they were denied by us. First of all, this is very convoluted. If my friend here (Dufel) got upset, then you know it's convoluted. I don't care how long it's been there. Let the Fire Department tell us. Firemen die because people like us make decisions, Krate said. Jowdy said we're here to relieve a hardship; we can't just say, ok, you can't get down there. Krate added I'll ask for a significant barrier at the end of that driveway. Jowdy said and it must be gravel. The Commissioners discussed the issue, before moving to the next agenda item.

#07-58 – Todd Holze & Duane Holze, 12 Bates Place (I13276), Sec.4.D.2.a.; Sec.9.C.1.a., to change from one nonconforming use to a different nonconforming use for a publishing shop (RH-3 Zone). Dufel asked for a time out; I need 30 seconds to clear my head after that one. Chairman Jowdy introduced this item at 8:15 pm. Jowdy said it's a well-known place. Todd and Duane Holze signed in. Todd Holze spoke about the history of the Ziegler business. We'll be doing publishing and light assembly, and he described the procedures with the internet and light assembly. Todd Holze said Reliable Excavating is the south neighbor. Krate said I just found out tonight that Reliable plans to build condos there. Dufel said the zone RH -3 is residential. Jowdy added high rise. Krate said since I was a wee child, in other words, before there was dirt, it's been a commercial use. Duane Holze said we have no customers visit. Fedex comes to pick up parcels with a 20' truck. We're the only two employees, and Todd Holze added my wife is a part-time employee. Duane Holze said there's a two car garage, and one can park totally off the street. Krate said there's on-street parking on one side, if I recall. Dufel asked there is no smokestack, no noise? Todd Holze answered we'll be a lot less noisy than a woodworking shop. Krate said the apartment, the kitchenette was supposed to be taken out; you can't sleep upstairs. They were supposed to take the kitchen out. Okay, Jowdy said, are there any questions? Are there any members of the audience who wish to speak for or in opposition to this request? Thank you the Holzes said. In the voting session, Jowdy said this is the print shop, the nonconforming use. (Tape B, side 1 installed.) Hearty said about Lee she fumbled the tape. Krate made a motion to approve the Holze brothers to change one nonconforming use to a different nonconforming use for a print shop. Moore seconded the motion, and it carried unanimously.

#07-59 – Sharon Jiadi, 2 Cornell Road (I09012), Sec.3.G.3.a., Sec.4.A.3., to permit detached accessory use in a front yard; to reduce front yard setback from 40 feet to 15 feet on East Pembroke Road, and to 18 feet on Cornell Road for above-ground pool (RA-40 Zone). Jowdy introduced this petition at 8:22 pm. Sharon Jiadi signed in at the mic, and identified herself. I'm here to try to apply for a variance due to the complexity of my property, and hardship is my property has two front yards. I have this big rock ledge, so it really would not be seen from the road. Dufel asked did we grant a variance for a deck at this property in the last year? Krate asked does your neighbor know he owns part of your deck? The applicant and Jowdy and Krate discussed how to resolve that, even if the property is eventually sold. Right now my whole back yard is fenced, Jiadi said. It's 52" high with an alarm. We would like to put a higher fence; one of those pretty vinyl fences. Dufel said I just want to read what the hardship is. That assumes that everybody deserves a pool. I just want to read the hardship, Dufel reiterated. Jowdy asked is there anyone in favor or in opposition to this application?

Georgette Burns from 10 Hunter Road signed in. I'm Georgette Burns and I live in the Cornell area. Sharon's a great neighbor, and I hope she'll let me use the pool. Cornell is a small, rough neighborhood. In all seriousness, I hope that it gets passed. Her neighbors definitely don't oppose it. Krate said to Burns in other words you're for it. That's it, Jowdy said.

During the voting session Jowdy and Moore joked that they want to table this till December. (Laughter in audience.) Krate made a motion to approve Jiadi's petition for an above-ground pool, per plan submitted. This will not be a detriment to the welfare, health and safety of neighborhood. Dufel asked may we add that the pool filter be a paper filter? Krate replied that's not our purview. Hanna seconded the motion. The motion carried unanimously at 8:40 pm.

ACCEPTANCE OF MINUTES:

Commissioner Krate made a motion to approve the minutes from the July 26, 2007 meeting. Hanna seconded the motion, and it carried unanimously.

ADJOURNMENT:

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

The next regular meeting of the ZBA is scheduled for **September 27, 2007**.

Respectfully submitted,

Patricia Lee, Secretary