



CITY OF DANBURY
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ZONING BOARD OF APPEALS
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MINUTES – REGULAR MEETING
October 11, 2007
COMMON COUNCIL CHAMBERS
7:00 PM

The meeting was called to order at 7:01 pm by Chairman Richard S. Jowdy. Present were Jowdy, Michael Sibbitt, Joseph Hanna, Gary Dufel, and Alt. Jack Villodas. Absent were Herbert Krate, Alt. Rick Roos, and Alt. Rod Moore. We now have our five members, Jowdy said, as he opened the meeting. Sibbitt motioned to hear tonight's petitions. Dufel seconded the motion, and the motion carried unanimously. Jowdy explained the procedure for Public Hearing to the audience. Staff present were Sean P. Hearty, Zoning Enforcement Officer, and Patricia Lee, Secretary.

NEW BUSINESS:

#07-66 – Miguel D. Fernandez, 12 Well Avenue (G15102), Sec.4.A.3., to reduce required minimum rear yard setback from 35 ft. to 22.5 feet for attached 2-car garage (RA-8 Zone). Chairman Jowdy introduced this petition at 7:03 pm. Jonathan Encarnacion, designer, identified himself at the mic. I brought with me letters from the neighbors saying they are okay with the addition, which he handed to the Commissioners. I also brought some pictures showing the existing detached garage that is there now that is not fit to be used. That's going to be demolished, Encarnacion said. Jowdy clarified the setback request and the square footage, and that it will remain a single-family house. Dufel asked about the existing garage, and its use. Encarnacion said it's not safe. It's going to be a two car attached garage, and he placed the rendering on the easel. Villodas asked about living quarters upstairs. Sibbitt added you don't need a window for extra storage; it makes a difference if no one is going to be living there. Jowdy clarified that the upper area will not be living space. We may not permit the window. Villodas asked what about the two skylights up there. Jowdy asked if there were any members of the audience who wish to speak for or in opposition to this request at 7:09 pm.

In the voting session at 8:20 pm, Jowdy reviewed the garage request. It's more conforming than it was before. Hanna made a motion to **approve** Miguel Fernandez, 12 Well Avenue for a rear yard setback reduction for an attached two car garage. The applicant said they'd remove existing unsafe garage, Hanna said, and there's no harm to the welfare, health and safety of the community, per plan submitted. Jowdy asked is there was a question on the window? Sean P. Hearty, Zoning Enforcement Officer, said I don't want a breezeway; I want a habitable space. Hanna added the STIPULATION that the connector between the house and garage must be finished for habitation. Sibbitt seconded the motion, and the motion carried unanimously at 8:22 pm.

#07-67 – Antonio & Helen Fernandes, 28 Staples Street (G14059), Sec.4.C.3., to reduce required lot size from 7500 sq.ft. to 6465 sq.ft.; to reduce required lot width from 75 ft. to 62.5 feet; to reduce side yards setbacks from 15 feet to 12.5 feet (N) and to 12.9 feet (S); to reduce rear yard setback from 25 feet to 14 feet to legalize two-family residence (R-3

Zone). Jowdy introduced this item as Fernandes signed in at 7:10 pm. I am Mr. Antonio Fernandes; I own the home. Chairman Jowdy said I have one question: it says to legalize a two family residence. Okay, just to clarify that, you only are asking to legalize what's there. Fernandes agreed and said I have some pictures to show you. Back in the 80's I came in and spoke with Mr. Art Bohan, Fernandes said, and I interpreted that discussion to mean everything was okay as a two-family. It met all the zoning requirements prior to the zone change two years ago. Fernandes continued, now Sean told me the only way to make it legal is to come in for a variance, and Fernandes described the parking. Jowdy said it's been there all these years. Are there any questions for Mr. Fernandes, Jowdy asked. He's legalizing it. There are two electrical meters and adequate parking. To Dufel Jowdy said, ask your question now. Dufel said this is obviously a very small lot, and Dufel asked Hearty to help him understand how it's been used as a two family for 20 years. And what happens if they deny it? Sean explained the history: Mr. Skelly had an issue with having the apartment in the house. If you do deny it, it would revert back to a one family home. The two family now is illegal, Hearty said. Jowdy questioned the legality of the two-family house; he's not coming in with a legal two-family house then? There are no permits or documents to verify that, Hearty answered. What's before the Board now is to vary the current regulations. Right now in my mind's eye, it's single-family, Hearty said. Fernandes said that he did not know that Mr. Bohan had passed away when he came in this time. This was just recently, when I asked to speak to Mr. Bohan. That's when I spoke to Sean and he explained that I'd have to come to this committee to make it legal, Fernandes said. Hearty explained the Assessor cards were changed by an over-zealous employee. You can tell me you have a hotel, but that does not make it legal, Hearty said. It's taxed on what the Assessor sees when he goes out there. Dufel discussed what is the hardship; that he cannot build a two family house on this lot? He has not shown a hardship. It's a small house. It's a small lot. I don't see that as a hardship. This lot is far too small, Dufel concluded. Joe Hanna said if he came in three years ago it would have been okay. Dufel added he just wants to do something with it that zoning does not permit. Jowdy discussed had that been a two family house, even though what you said is correct. I'm not disagreeing with you, Jowdy said. Dufel reiterated I don't consider that a hardship. Jowdy and Dufel discussed this. Jowdy said you heard the input from the Board. Fernandes said my whole thing is that it's been a two family for all these years; it's got two meters. Sibbitt clarified with Mr. Hearty the front yard parking and the setback there. There was a denial on this by the ZBA for a shed a while back, and we denied it in 1991, Jowdy said; an insufficient hardship was shown to place a shed there. That was denied. Also, you know that you were asked is this is a single family house in 1991, and Mr. Fernandes, you said it is. Jowdy read from the old ZBA 1991 minutes. So you came in and said on those minutes that are recorded that it is a single-family house, and that was in 1991, Jowdy said. Fernandes said but it was being used as a two-family at that time. Jowdy asked are there any other questions? Is there anyone who wishes to speak for or against this application, Jowdy asked.

Mary Slater from 26 Staples Street came forward and signed in at 7:17 pm. I was here in '91, Slater said, regarding the shed right in front of the house on the line. I want to start off by saying that I've lived there almost 28 years. He is right (Dufel). They are small homes; a small area, 30 feet from house to house. He remodeled the downstairs. He lived upstairs. He eventually moved downstairs, and rented upstairs, Slater continued. There has to be some respect here for those who have lived here for years. She discussed the driveway. There were no problems in '79. Mary Slater said the trouble started when it was rented out. She discussed the issues with the renters, the parking, the car that did not run; they would park the car there, and we could not get out. We could not get into the common driveway. Another family later moved in when they moved out. She gave a history of all kinds of problems. My husband could not get in the driveway every day when he came home for

lunch, which he did everyday. It wasn't just the tenants; also the people visiting the tenants. I had to call the police, Slater said. We continued to have problems. Fernandes did not respond to the first letter from Jowdy and Jowdy, which Slater held up. The next family was probably the worse that the one that was there: drugs; a woman knocked on our door asking for big momma; the older boy sat in the car and smoked cocaine. When we told the police department, they said there are a lot of houses out there like this; we'll put it on the list. Jowdy clarified that the issue is really with the common driveway. Slater continued discussing the drug activity, and one day the FBI pulled up with guns drawn. She described the children living there, and what the FBI did. Slater said that Fernandes said he was not aware of this event. The ones in there now are just as much trouble, Slater continued. They threw a football at our house, and we had to call the police that night. They rented to immigrants, which is alright, but urinating on the neighboring property is not alright. We had our problems. Slater discussed the other people on Hakim Street not really being affected. We have had the most trouble. Mr. Kovacs put up a fence, which was a help, but the family has wrecked the fence. It's just that before this was rented, Slater said, there was no problem, and she used an example of a furniture delivery. They have 15 people there. The police were there two nights ago. Mr. Fernandes ran an ad in the paper that was totally not true (regarding the parking). If I could not get into my own house, then there is not sufficient parking, Slater said. Jowdy said what you're saying is very well taken. Slater added some one could buy that house and be no better than what's there now. This car sat there for a year, and the boy would go out and sit in it and listen to the radio. You've got to have some kind of permit to build an apartment; Fernandes said they lost the papers. It's just been a nightmare. One tenant told my husband I'm blocking you for half a day. Villodas asked her did your attorney get a response to this letter? Jowdy said the evidence is that the gentlemen is trying to legalize something that is not legal, and explained the ZBA possible vote, and her options to shut it down if it is not legal. You'll know it after tonight, Jowdy said. Slater continued explaining events, and said she understands that there is a buyer ready to buy it as a two-family. Well, we were stressed here for 15 years; it's been one family all these years. In the beginning we were very nice, but that's the type of people that were renting this home, Slater said. Jowdy said the applicant can come up and rebut. Fernandes came forward again saying, obviously, Mary has had a lot of problems. I do talk to the tenants. I feel for her. She's right: they are Section 8, and I cannot throw them out. Chairman Jowdy said we've got the input, and we appreciate it.

Jowdy discussed this application in voting session, saying obviously the gentleman does not have a legal two family house. It would be detrimental to everyone in the area. Michael Sibbitt made a motion to **deny** the #07-67 petitions for lot size, lot width and setback reductions; the applicant has reasonable use of the home as a one family house. In 1991 he said it was a one family house, and having two tenants there is detrimental to the common driveway. He has reasonable use as it is, and plus current lot width regulations have changed, Sibbitt concluded. Dufel seconded the motion. The motion carried unanimously at 8:25 pm. Chairman Jowdy added we could encourage ZEO to see that this is on his list.

#07-68 – CPCI, LLC, 27-29 and 31 Tamarack Road (aka, Avenue), (I10042, I10043), Sec.5.A.3., to reduce minimum required side yard setback from 20 feet to 12 feet for expansion of auto service station & convenience store (CG-20 Zone). Jowdy introduced this item at 7:36 pm for the expansion. Attorney at Law Paul N. Jaber signed in and identified himself and his firm, stating he is representing the applicant, CPCI. Also with me, Jaber said, are Mark Smith and Bill Higgins who is with Consumer Control. Jaber discussed the vicinity, adjoining the old motor vehicle building, across the street from Hayestown School. Currently a CITGO station is there; these same people that are looking to expand here. It was previously approved for a medical office. They would like to expand the station and the convenience store, and greater control the traffic. Dufel said I'm having difficulty finding

the paperwork describing the hardship, Schedule A. He located the attachment. Jowdy clarified the egress and ingress proposed. Jaber said the design is required by the City. Mr. Smith, a civil engineer, a few months ago began working with the City traffic engineer, and to expand it we needed to get approval to begin. He also met with Jennifer L. Emminger, Associate Planner, and had many meetings, and what evolved is this plan that will widen this road, and also install these large islands here. There are 45 feet from the property line and even greater distance to the road. Also, he wanted us to install an extra large driveway here for tankers and traffic. All this pushed the site back, Jaber said, in order to comply with the wishes of the City traffic engineer. There are two front yards and two side yards. So on about July 5th or 6th, we filed the application with the Planning Department, which was reviewed for about two months by Jennifer; she picked it up, then in June there were some changes to the commercial regulations. This was all designed around that, and we were caught in the middle, so to speak, Jaber explained. We feel this design meets the requirements for the welfare, health and safety of the neighborhood. In addition, it's important to point out what effect this variance will have on the property to the rear. I have some aerial photos. Jaber continued, if you go up Glen Hill Road, at about a 13% grade, Glen Hill convalescent Home is in the rear there. You can see a very severe slope which we don't think anything can be built upon. There are no retaining walls necessary; we are grading it, Jaber said. It would be very improbable that anything would be built there due to the great slope. So we don't think this will have any effect on the neighbor to the east. The hardship was the change to the regulations, Jaber said. We are complying with the extensive landscaped area and the traffic flow design; the distance from the adjoining owner should not have an effect, and we'd be creating a better situation, Jaber said. Now this would have to go to the Planning Commission, obviously, if you approve it, Jaber concluded.

Mark Smith, civil engineer, identified himself at 7:47 pm. (Tape flipped to side B.) Jaber did a very good presentation, Smith said. Using the plan L-1.0 on the easel, Smith described where the station will go on the flat area; things are a lot tighter up here by the building. Things are more open down here by the curb cuts. It's a very busy intersection, and right now the station is very close to the road. People can get clearly off the road before they begin looking for the empty filling station with this plan. Smith described the circulating lanes, having cars stacked up, rather than a funnel effect; the aspect of the filling station being filled up by the tanker trucks. We have several fueling positions, but we've slimmed the site in the east-west direction. There is a grade across this site, and you'd like your fueling customers to be on a fairly flat surface. He described how the design allows for reasonable grades for the station. I feel that we've worked the site pretty well, Smith said, and kept it as narrow as we can. Thank you. Jowdy asked about any future intention to add a car wash there. Smith replied no. Jowdy said we just want to make sure; we are all familiar with the car washes on Main Street and North Street.

Dufel said I just have a couple of questions for the team. As I recall we granted a variance about a year ago for how close it was to the school (see ZBA #06-46). Smith responded, it's a good question, but Smith explained that the underground detention system is here so it could not be reversed. Dufel did not favor the tanks proximity to the school. Could you be challenged, Dufel asked, that the tanks could be moved farther from the school? I'm concerned with safety. Could you be challenged to do a little better job? Smith responded could I find another place for the tanks? Yes, I could. It could always be looked at.

Jowdy had a question on the tank location. Smith responded about where the tanks are right now. Jowdy, Dufel and Smith discussed the current tank location. Dufel had a question on ownership of the slope behind the site, which Jaber answered. Is it going to look a lot like the Mobil station off of exit 8, Dufel asked? Jaber and Smith responded it's similar to that arrangement. Jaber said Exit 8 does not have the islands. Dufel discussed the grass

area. Jaber said it's really to push the whole site back, and it just happened that it was one week after the regulations changed. Dufel said I don't care about that. Jowdy asked are there any questions? Is there anyone who wishes to speak for or against this application? Jowdy said thank you at 7:59 pm. Villodas and Jowdy discussed the tanks' size and detention system.

Jowdy reviewed this in the voting session at 8:26 pm, and the area that we are well aware of; they are setting it back further, and it can't be seen from Glen Hill. Jowdy discussed the proposal having no effect on the back piece of property; and the law has been changed.

Jowdy discussed how the interpretation of the regulation itself can cause a hardship, and this could come under that umbrella. Chairman Jowdy opened this item for discussion.

Dufel made a motion to **approve** this, although I don't agree with your last statement; the request to reduce the minimum side yard setback for expansion of the service station and convenience store, on the basis that various City departments have asked for extensive islands development in the front, and this will have no adverse impact to any abutter.

Sibbitt seconded the motion. The motion carried unanimously. Dufel added I'd like to make a statement as it goes on to the different departments in the City: we'd like to see the tanks moved farther away to the other side; a request for the next level of review.

#07-69 – Jose F. Neves, 1 Horseshoe Drive (H09065), Sec.4.A.3., to reduce front yard setback from 40 feet to 27 feet for residential addition (RA-40 Zone). Jowdy introduced this application at 8 pm. Mr. Neves came forward and signed in, saying good evening. I live at 1 Horseshoe Drive; it's an existing nonconforming lot. I now have about 16 feet on one side and about 32 feet on the other. I want to put an addition there, Neves said, and he described the measurements. As you can see, the way they situated the house, it slopes away from the road, and the topography of the land is such that the house is lower than the road. The septic is in the back. Jowdy clarified that the front yard now is nonconforming. The variance you're asking for is actually 40 feet back. Neves replied no; it's further away from the road. Secretary Lee said show them on the map where the 27 ft. falls. Sean and Dufel and Sibbitt talked. Jowdy remarked the entire house is nonconforming. The area of the request is further back. Dufel said I wonder where Horseshow Drive is. Jowdy asked are there any questions? Jowdy asked is there anyone who wishes to speak for or against this application? Jowdy reviewed Mr. Neves' request in the voting session. We all saw what we are talking about. He is not asking for something that is violating anything, Jowdy said. Hanna made a motion to **approve** this, per plan submitted, to reduce the front yard setback; the house is much closer to the setback line than the new addition is going to be, plus location of septic is a hardship. Sibbitt seconded the motion, and the motion carried unanimously.

#07-70 – Danbury 6 Associates, LLC, 115 Mill Plain Road (C14070), Sec.5.B.3.a., to reduce minimum required lot area from 80,000 sq.ft. to 29,185 square feet; to reduce lot frontage & width from 200 ft. to 192 feet; to reduce rear yard setback from 30 ft. to 25 feet for relocation of gas station / convenience store (CA-80 Zone). There's nobody left out there, Jowdy said. Neil Marcus, Attorney at Law, came forward and identified himself and signed in as Jowdy read the request.

Marcus said, first of all, I want to share with you: I left my office tonight and it's as if I stepped into my shower in my bathroom, that's how hard it's raining. It's brutal out there. But all that personal stuff aside, Marcus said, I want to make sure we are looking at the same map. Yes. Good.

Marcus said this property has a long history; this used to be the Colonial Truck Stop before Trader Joe's and Lillian August was built. An old Exxon station is there, and that whole truck stop was polluted with serious petrochemicals. The gas station is still dirty, and it's never been cleaned up. The owners of the station approached my clients a couple of years

ago, saying we'd like to swap; just flip flop. Marcus described the reasons why the station owners want to do that. It's a very difficult driveway to get in and out. It's an old station, and the site's polluted. The parking area that he'd give up is the farthest, so it made perfect sense, until we saw that it was in the Lake Kenosia watershed. So I worked with Jack Kozuchowski, and we reworked the regulations. So you can move a gas station if it will result in a clean up, and we did that. They will come in, Marcus continued, take out a lot of soil, and put in monitoring wells. They have to take out the station, the pumps, everything out of there. First they have to get a variance to allow the swap; it's an equal property exchange. The second thing we will ask you is to reduce the front yard width from 200 feet to 192 feet. Whatever is there, we are recreating it, the 192 feet. So that's variance number two; the first variance is to reduce the required lot area from 80,000 sq.ft. to 29,185 sq.ft. The third variance is to reduce the rear yard setback, and Marcus explained. The last variance is regarding the canopy and we will eliminate the nonconformity. We're replicating the existing conditions with modern pumps as part of the environmental clean up; it took me two years to rewrite the regulations, but all along Jack Kozuchowski said it makes perfect sense. Next we go to the Danbury Planning Department; this will still be a long haul. I expect it will take another two to three years to accomplish. The entrance will be further away from the intersection. At the end of the day, the application is relatively simple. It will be essentially the same thing; we're just going to improve it. Villodas said it's simple for you. Marcus reiterated everyone that we worked with along the way, Dennis Elpern, Planning Director, Jack Kozuchowski, said it's worth pursuing. Dufel said I just have one question. Marcus said to Dufel that there is no school nearby. Dufel asked why could you not meet the rear yard setback of 30 feet? Marcus replied we can't get our parking spaces, and our handicapped parking, in other words, the design moved everything back; like Mr. Jaber said with Tamarack Road, we have the same issue. We run out of room in the back. It just makes sense. Dufel asked what about losing some of the parking, and pulling the building forward? Marcus said really it's getting the underground storage tanks as far back off the road as you can. That's a matter of getting your tanker trucks in there and off the road. Otherwise you're right. And Marcus described the spot where that would put the tanks, very close to the entrance. Marcus said we thought about all of this. They did as much as they could. Dufel said I presume while this is being worked out, the shopping center will lose a lot of the parking spaces. Marcus said that will require the cooperation of the gentleman sitting to my right here (Sean Hearty). I'm not sure how that's going to work out during the clean up. I've not had that before; a temporary loss of parking. Hearty said it's like a phased construction process. Jowdy asked was there anyone who wished to speak for or against this application. Jowdy reviewed this in the voting session at 8:31 pm. Jowdy said the attorney presented a picture; they are moving the gas station for the welfare, health and safety of the community. They have worked on this for several years; it's polluted. Villodas said I live in that area. Hanna made a motion to approve the variance requests, per plan submitted, for the relocation of the gas station and convenience store. The site will be much safer after the clean up, and the safety of the property will be improved, Hanna said. Sibbitt seconded the motion. The motion carried unanimously.

ACCEPTANCE OF MINUTES: September 27, 2007 Meeting. Hanna made a motion to accept the minutes as presented. Sibbitt seconded the motion, and the motion carried unanimously.

ADJOURNMENT:

Motion to adjourn by Sibbitt. Second by Dufel. The motion carried unanimously at 8:25 pm.

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR **November 8, 2007**.