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ZONING BOARD OF APPEALS
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ZONING BOARD OF APPEALS
MINUTES

City Council Chambers

August 11, 2022

7:00 p.m.

ROLL CALL:

Chairman Joseph Hanna called the meeting to order at 7:00 p.m. Present by roll call were: Juan Rivas, Rick Roos, Michael Sibbitt, and Rodney Moore. Mr. Hanna seated Alternate Rick Roos in place of regular member Anthony Rebeiro. Staff present were Zoning Enforcement Officer Sean Hearty and Secretary Mary S. Larkin. Absent were: Anthony Rebeiro and Peter DeLucia.

ACCEPTANCE OF MINUTES: June 9, 2022 & July 28, 2022

The Minutes from June 9, 2022 could not be accepted at this meeting.

Motion to accept the Minutes of July 28, 2022 was made by Rod Moore; seconded by Juan Rivas. All in favor by those eligible to vote with AYES from Commissioners Hanna, Moore, and Rivas.

The next regular meeting is scheduled for **August 25, 2022**

Motion to change the order of the agenda to hear Application No. 22-18 Musnug Road & Lakeview Drive first was made by Rick Roos; seconded by (inaudible). All in favor with Ayes from Juan Rivas, Rick Roos, Michael Sibbitt, Rodney Moore, and Joseph Hanna.

PUBLIC HEARINGS:

Motion to open the Public Hearings for Applications Nos. 22-14, 22-15, 22-16, and 22-18 was made by Rick Roos; seconded by Michael Sibbitt. All in favor with Ayes from Rodney Moore, Juan Rivas, Rick Roos, Michael Sibbitt, and Joseph Hanna.

Mr. Hanna announced that Application 22-16 (Ives Street) was continued to August 25, 2022.

Motion to open Application No. 22-18 was made by Juan Rivas, second by Rick Roos. All in favor with Ayes from Rodney Moore, Juan Rivas, Rick Roos, Michael Sibbitt, and Joseph Hanna.

#22-18: Musnug Rd. & Lakeview Dr., Vogel, Michael & Merri, (I05157), RA-20 Zone. Sec. 4.A.3. Reduce rear yard setback from 35' to 10'; reduce side yard setback from 15' to 6'.

Stacey Keaney, Keaney & Co. LLC, presented the application. Ms. Keaney explained the rendering she displayed on the screen showing the front of the building. Dealing with a 50-degree slope which has proven challenging - excavation was problematic because topography of existing property was very steep. Owners originally had two cabins on the same property. Cabins were very close to the side setback at 5.5 and 6' away from the property line in the front, which they are replacing with new home on the site. Initially they asked for a 20' variance because it is very difficult to have this go up the hill any more than shown, and it was granted. After excavation they learned and observed the rock outcropping, the builder could not manage the siting because most of the construction in the basement would be eliminated as it would have to cantilevered out or on piers. Water which could cause problems if there was a foundation built there, possibly causing hydrostatic pressure, so they asked the Zoning Enforcement Officer if they could move the house. The Zoning Enforcement Officer recommended they obtain the assistance of a Geo-Technical Engineer to help them manage the location. *NOTE: Audio was briefly lost.*

Owner, Michael Vogel, said they hired GeoDesign based in Middlebury, CT. Professional Geologist, Paul Woodell, came to the site and met with the owner and builder. They reviewed the materials, and his recommendation, based on his findings was the best solution for construction of the site, was to reduce setback lines as requested (in the variance application). Mr. Hanna asked about the hardship. Per Ms. Keaney the hardship is they have to avoid the rock outcropping. They have to pull the house forward; therefore, they are asking for a variance 6' from side and 10' from rear. The existing cottage is 5.5' from side and 10' from the rear. The new construction will be 6' from side property line to the edge of the overhangs, and it will not be any closer than the original cabin that was demolished.

Rick Roos asked if septic will be relocated? Ms. Keaney replied that it will be relocated. The septic will be above, between the two lots. Pump system will be below and then pumped up. Juan Rivas said he read under the Geotechnical Limitations Review it states, "the conclusions and recommendations contained in this report shall not be considered valid unless the changes are reviewed and conclusions of this report modified or verified in writing." Mr. Rivas asked if they have they confirmed with the company that this location is satisfactory for the construction of the house without problems. Ms. Keaney stated the builder, Wood Works Construction, has been pinning it in the field, and he is confident this location will give way to the proper construction. They might have to give up some basement area, and if necessary, that is what they will choose do. Mr. Rivas asked if there is anything in writing to prove that this can be done? Ms. Keaney said they would do some other form of construction under it, if limited by the footings and footing drains, they will do a cantilever on piers so they will not have a problem with water. Ms. Keaney indicated the builder is experienced in this "Connecticut challenge" and thinks they will not have to come back to the ZBA. Mr. Moore commented that 6' & 10' will have

to do it, and it sounds like they have a strong confidence and potential ways of dealing with that, and it seems every other option has been explored to remove it (the rock). Ms. Keaney stated the blaster was reluctant to use blasting as it might compromise the rock. They spent a whole week pounding it before choosing an alternative. No one in support no one in opposition.

Motion to close Application 22-18, Musnug Road & Lakeview Drive was made by Rod Moore; seconded by Juan Rivas. All in favor with Ayes from Rodney Moore, Juan Rivas, Rick Roos, Michael Sibbitt, and Joseph Hanna.

Motion to open the voting session was made by Juan Rivas, seconded by Rod Moore. All in favor with Ayes from Rodney Moore, Juan Rivas, Rick Roos, Michael Sibbitt, and Joseph Hanna.

Rodney Moore indicated that after seeing the issues at hand and that options were explored, this project is certainly in character with the neighborhood, and there are no health and safety issues. Motion to approve Application No. 22-18: Musnug Rd. & Lakeview Dr., Mr. and Mrs. Vogel, reduce rear yard setback from 35' to 10'; reduce side yard setback from 15' to 6' was made by Rodney Moore; seconded by Juan Rivas. All in favor with Ayes from Rodney Moore, Juan Rivas, Rick Roos, Michael Sibbitt, and Joseph Hanna.

#22-14: 23-27 Rose St., 25 Rose Street, LLC, (H13272), C-CBD Zone. USE VARIANCE, Sec. 3.C.1. & 5.F.2.a. to allow automobile dealership & repair service in the C-CBD Zone, Sec. 7.A.5.c.(3) to vary requirement that all principal & fire exits shall have access to ground or structure leading to ground having continuous elevation above the 100-year flood flow level; and Sec. 9.C.1.a. to change from one non-conforming use to another non-conforming use.

Motion to open Application No. 22-14, 23-27 Rose Street, was made by Juan Rivas; seconded by Michael Sibbitt. All in favor with Ayes from Rodney Moore, Juan Rivas, Rick Roos, Michael Sibbitt, and Joseph Hanna.

Neil Marcus, Esq., Cohen & Wolf, 158 Deer Hill on behalf of Danbury Auto Group Inc., 23-27 Rose Street. Mr. Marcus began his presentation with the statement of hardship – see planning staff report made to the Planning Commission and Zoning Commission the first page and a half gives somewhat the same zoning history of non-conforming uses. Most recently it was a lumber yard. His clients bought it at a bad time. City hall was pretty much closed down for Covid, and they relied on the Tax Assessor's field cards. Mr. Marcus explained the data on the field cards, which includes the appraised value and the assessed value. The field cards showed the property to be in CG-20 zone, and they purchased the property with the intention of using it for automotive use. They began their project, and he said the City personnel they were dealing with thought it was in the CG-20 zone; however, the property is in the CBD Zone. Automotive would no longer be allowed. Historic use, per staff report, had been for automotive sales, at one time it was a car dealership. Prior owners had come before ZBA to use for automotive. Regulations changed and the old uses would now be non-conforming uses. New non-conforming use was the lumber yard up until his clients purchased the property. Mr. Marcus showed photos are the current buildings existing on the site. First two pictures are pictures

inside the larger structure on the site – a parking facility with is allowed on the site. However, the cars will ultimately be sold.

Top left photo is a former gas station operated for many years with auto repairs which will continue. Use of that property encompasses everything his client hopes to expand next door. General pictures of parking area/old lumber yard, third is a continuation of the existing building and yard. Fourth page shows the old gas station, which will continue to operate as automotive repair and sales shop. Last page is close up of work that has commenced on the building. Structural reconnaissance to determine what type of material (sentence not completed) on the building and that's where the project started.

Attorney Marcus passed out another packet of material. Cover letter from neighbor in support was passed out, with more to come separately according to Mr. Marcus. Correspondence has to do with zoning history that his clients uncovered. Top letter is between the Architect Engineer and the City of Danbury shows from beginning the property was being worked on as if it were in the CG-20 zone. Then correspondence between Sean Hearty and Ray Martin. (See highlighted section of handout.) Nos. 23-25, 27 Rose Street was believed by Ray Martin to be in CG-20 Zone. Ray Martin asked if automotive was a change in use. The answer was "No," current use will also be for retail sales allowed for under CG-20. They thought everyone believed it was CG-20. Subsequent correspondence is between the architect and Planning Department and Page 4 between JoAnne Read, Planning Assistant, and Ray Martin. Much of staff working remotely. July 2020 was really the height of Covid lockdowns. Sometime in July 2020 it was discovered that the property card should have indicated CBD, in fact, there was a question if it was CL-CBD, which is an old zone that no longer exists. But as you can see, the architect was trying to figure out why he was pursuing a plan that was designed under CG-20 if the property is a different zone. Going forward you will see another email from Ray Martin to Brian Geary (a principle applicant) and it shows Laura Marchi, Building Department Secretary, telling Mr. Martin that City Hall was closed to the public and staff was working from home, which further indicates access is limited. In their case the applicants made a good faith effort to establish the zone only to discover the tax cards are in error.

Per Attorney Marcus, they are here tonight to ask for a variance, and the hardship is the error of the Tax Assessor. According to Page 2 of Sharon Calitro, AICP, Planning Director's report, the prior owner was issued a letter in 2019 and was told by letter that it was in the CBD Zone and then the subsequent communication with Ray Martin indicated it was in the CG-20 zone. Does letter to seller exist? Seller had No obligation to disclose that. Seller did not know what the intention of the buyer was. The question ultimately is what's going to happen to the property in its current state?

One variance is to the flood plain requirement. Property is almost completely below the 100-year flood zone. Thirteen other properties in that area are all in the 100-year flood zone. As long as they don't change any of the building exits – they can withdraw the flood plain zoning variance based on Sharon Calitro's staff report. They (the applicants) still want to restore the historic automotive use of the property. Looking at the photos, it is currently an automotive place, but they want to improve the property. Right now, the parking lot is allowed in the CBD zone; storage of cars is allowed in the

CBD zone, but they would like to make it a showroom. Right now, cars are on a rack right now in a warehouse, and they would like to upgrade the space to make it a showroom, and to do that they need a variance. They would like to expand to the rear of the building where they will have a prep shop. Offices are allowed in the CBD zone, and they want to have business offices. They don't want to become Tesla where you have to go elsewhere to buy a car. Mr. Marcus said they can always go back to lumber yard, but they don't want to do that. They think a lumber yard, although allowed, is more non-conforming than what they are currently posing. Mr. Marcus mentioned there is always a tractor trailer delivering to the lumber yard. They can avoid that with this use. Zoning particulars as to whether or not the applicant should have known that the prior owner knew there was a mistake on the Tax Assessor cards is irrelevant. Attorney Marcus is asking the Board to use discretion and judgment to determine that the property can be renovated to sell pre-owned cars. It is not likely to be used for retail clothing sales or restaurants. These won't work on this site. Backed up by Still River channel and concrete walls. Adjacent down the road are industrial uses such as Fairfield Processing. He is asking to consider this opportunity to upgrade the property as an improvement to Rose Street. They will be more efficient in their use to sell high-end, previously-owned automobiles. Parking cannot be changed, storage building will still store cars, and the old gas station will still be a repair shop where you can buy cars.

Attorney Marcus asked the Board to figure out the best use of the property. Conclusion on staff report is that this will allow more intensive, non-conforming uses. You (the Board) can condition the use of the property.

Mr. Marcus continued stating regarding potential flooding – the Still River channel was in response to 1950s flood. Idea of selling cars rather than building supplies is going to have potential impacts or that the Cars will be impacted vs building supplies is a disingenuous argument. Take the use that will exist in a disjointed manner and allow them to do a high-end rehab of this property. His clients are willing to spend a lot of money in Danbury to make this facility improvement. What harm will come if these uses are approved? Mr. Marcus handed out two more letters of support, which he received late. They have been operating since purchasing the property, and they have no reported incidents – no police calls, no nuisance complaints. Mr. Marcus said there will be no negative impact, and urged the Commissioners to inspect the property with access.

Mr. Hanna asked Attorney Marcus if the buyer had an attorney when they bought the building? Mr. Marcus said he thought they had an attorney. Mr. Hanna asked, "Why didn't the attorney do the research?" Mr. Hanna said, "We cannot go against the City when they change the zone." Mr. Marcus said the purpose of the Zoning Board of Appeals is to vary the regulation, if there is a result of unusual hardship or a difficulty to use the property. Mr. Hanna said he can use the property. Mr. Marcus said, "the real question is why did the Tax Assessor use the wrong information?" Mr. Marcus asked why the City said it is CG-20? Commissioner Moore said that what Attorney Marcus left out in his timeline is a letter from Sean Hearty, dated 5/17/19, and the property was purchased about a month later, so there was foreknowledge. Mr. Marcus said Mr. Hearty can probably explain. Neil Marcus doesn't understand the email to Ray Martin after that stating the current use will also be for retail sales as allowed under CG-20.

Mr. Hanna said, “The City changed the zone and that should be respected.” Attorney Marcus suggested they should just look at the site. Mr. Hanna reiterated the ZBA cannot go against the City.

Danbury Auto Group owner Trevor Distefano, 33 Rose Street, approached the Board and indicated that when he purchased the building he was not looking to open a car dealership, but he was still leasing it to them. Mr. Distefano said he needed the parking and explained that someone else owned 10’ over the fence and he purchased the property. Mr. Distefano said he didn’t care about the zone of the property. He decided he needed more room, he was told to do a survey, etc. He went through the process of adding another room at which time the architect said it was a CG-20 Zone. Now he’s \$250,000 in with lost rent and all the things they had him do and still nothing. He doesn’t know if it’s the gentlemen, Buck, wanted to buy his property, but he can’t sell the property now because he doesn’t have the property for his business now. Mr. Distefano said the hardship is the danger of the building supply business with trucks backing in almost hitting his cars and almost hitting people as well. The hardship is the danger to the community. Mr. Hanna said, “All the trucks come early to beat the traffic; it is not a hardship.” Mr. Distefano said there will not be any additional cars, they are currently working out of a container.

Mr. Hanna read the recommendation from the Zoning Commission into the record.

Mr. Moore suggested he summarize the application: The applicant has taken the 100-year flood plain off the application. Who should have known what and when is not so crucial as a hardship. Later on an error was discovered, which should not be on the hardship list. What has happened since then? Is it an improvement to the City? Is it not? He would like to proceed on the basis of what is allowed in that zone. Attorney Marcus offered that the CBD Zone allows 43 uses as of right. Parking uses and parking facilities—Mr. Marcus then read from the list of what uses are allowed. You can sell all types of retail items. Not all are considered high-end retail. A special permit could be had for a bus station, taxi and limousine services. It is so broad per Mr. Marcus, if you look at site you can ask if this proposal out of line. He suggested they look at site and the surrounding neighborhood. He said there is no excuse for the error by the assessor and no excuse for reasonable access to City Hall. These were unfortunate circumstances what they would like to do is come out with a better use of the property. Mr. Moore said that it could be argued both ways. One is there are plenty of uses available not restricting reasonable use of the property and as you (Attorney Marcus) are arguing it is not any more severe.

Mr. Roos asked Sean Hearty if Vision is a third-party vendor that stores information that people can access? Sean Hearty, Zoning Enforcement Officer, said Vision is a third party, and the information in Vision came directly from the Assessor. Mr. Hearty said JoAnne Read was correct when she questioned the CG-20 designation of the adjacent property in her email. Mr. Hearty stated that Planning & Zoning Department is the authority and they said “No”. Mr. Hearty further said that the field cards are not always accurate. A survey map was incorrect. Mr. Roos asked, if after JoAnne Read’s email, was there still some ambiguity? Mr. Hearty replied, “no” and further stated JoAnne Read is a pro, who is constantly doing reviews. Mr. Hearty further stated, “There was a comedy of errors but not any that could fall squarely on the City.” Mr. Roos thinks not enough due diligence was given. Mr. Marcus there is no allegation that the City tried to mislead his clients at all.

Brian Geary, on behalf of the applicant, spoke and said an A-2 survey from New England Land Surveying came back designating the CG-20 and said that five emails asking for the zone were not answered. Ray Martin reiterated the survey and CG-20 comments. Mr. Geary said there was never any clarity.

Ray Martin, Architect, spoke and said that he has worked with New England Land Surveying and has never had a problem, so when the survey came back indicating CG-20, he had no reason to question that.

Commissioner Michael Sibbitt asked Attorney Marcus about the flood plain requirements as he is concerned Danbury could be next on the list for a flood. Mr. Marcus said all of these buildings were built before the floodplain regulations and used frequent flooding of Federal Road as an example. Mr. Marcus said the cars are stored above the flood plain.

Mr. Rivas is concerned that it has been referred to the Planning Commission and the Zoning Commission, and he thinks it should have ended with the Zoning Commission. The Zoning Board of Appeals has authority to grant some relief or variances and feels, due to certain circumstances, like they are being put in a spot for spot variances, and becoming a de facto Zoning Commission within ourselves, and he feels if we allow something like this, it will be a slippery slope for many more things to come. If we do allow something like this, then a business in another zone comes before the board and wants a different business in that zone. Per Attorney Marcus, the ZBA has a very difficult job and has absolute discretion. Your job is to look at the circumstances and determine what is a fair and just result. Extraordinary difficulties of this application are the unusual hardship. Mr. Marcus stated the Zoning Commission and Planning Commission do not hear from the applicants; it is judged from second-hand reports. They do not ask questions of the applicant. The ZBA is able to grant relief when circumstances apply. ZBA is not bound by the Zoning Commission. This will be an upgrade to the building. Brian Geary said they have hundreds of customers in Kennedy Flats. Mr. Rivas understands what they want to do, but if they want to keep it as a parking lot, that's okay. Mr. Rivas still has questions and he agrees with Chairman Joseph Hanna that the attorney should have done their due diligence in reviewing and made sure there were no discrepancies. Mr. Marcus said if a mistake had not been made, it would still be a lumber yard. They are substituting one non-conforming use with another non-conforming use but more conforming to retail sales. They are not spot zoning. Mr. Trevor Distefano said he didn't care when he bought the place as he was not looking to do a dealership, he can just put the lumber yard back. Applicant said when he bought the property, he thought it was in a CG-20 Zone. When he saw how invasive the tractor trailers were, he decided he wanted to put in a little shop to match his shop. He wants something that looks beautiful that he can be proud of the place. Mr. Rivas asked if he wants it to be a dealership, and Mr. Marcus said he has a dealership next door, and he wants to expand it. On compatibility, Attorney Marcus referred to the high-end auto sales facility on New Street.

No further questions; no additional support or opposition.

Motion to close Application No. 22-14 was made by Rick Roos; seconded by Michael Sibbitt. All in favor with Ayes from Juan Rivas, Rick Roos, Michael Sibbitt, Rod Moore, and Joseph Hanna.

Motion to go to the voting session was made by Rod Moore, seconded by Rick Roos. All in favor with Ayes from Juan Rivas, Rick Roos, Michael Sibbitt, Rod Moore, and Joseph Hanna.

*Request for variance to Sec. 7.A.5.c.(3) to vary requirement that all principal & fire exits shall have access to ground or structure leading to ground having continuous elevation above the 100-year flood flow level was **withdrawn by the applicant.***

Motion to approve Application No. 22-14, 23-27 Rose St., 25 Rose Street, LLC, (H13272), C-CBD Zone. USE VARIANCE, per plan submitted Sec. 3.C.1. & 5.F.2.a. to allow automobile dealership & repair service in the C-CBD Zone and Sec. 9.C.1.a. to change from one non-conforming use to another non-conforming use was made by Rod Moore. Mr. Moore said that he does not find knowledge or lack of it as the hardship in this case, but both the Planning Commission and Zoning Commission have not included in this use what was a pre-existing use similar to many of the uses that are allowed but not allowing a car dealership. We have as one of those, some good and some bad. The good is it can become, in an expanded sense, a car dealership with improvements that should help the neighborhood. This would be in character with the neighborhood with no adverse effects on health and safety.

Motion was made to approve and the **motion was denied.** Votes by roll call were as follows: Ayes from Rod Moore, Michael Sibbitt, and Rick Roos. Nays from Juan Rivas and Joseph Hanna. (Application denied because four Ayes are required to grant a variance.)

#22-15: 18 Carol St., Neil Marcus Esq., (H23043), RA-20 Zone. Sec. 4.A.3. Reduce rear yard setback from 35' to 16'; reduce front yard setback from 30' to 6.1'; increase max. building coverage from 20% to 28.2%.

Motion to open Application No. 22-15, 18 Carol Street, was made by Rick Roos, seconded by Rod Moore. All in favor with Ayes from Juan Rivas, Rick Roos, Michael Sibbitt, Rod Moore, and Joseph Hanna.

Neil Marcus, Esq., Cohen & Wolf, 158 Deer Hill Avenue, Danbury, representing the applicants, Gail & Jason Reiser. The property is located at 18 Carol Street and is a Lake Waubeeka property. Mr. Marcus explained that the Lake Waubeeka lots were divided before it was designated as an RA-20 Zone, and most of the lots are undersized. Mr. Marcus distributed photographs of this house constructed in 1952. The existing house has been condemned and the hope is to reconstruct a year-round residence. A previous variance allowed front and side yard setbacks to be reduced. Mr. Marcus described the variance requests and indicated it will be average size for the type of houses being built in Danbury today. Building coverage goes up quickly on a small lot. Hardship: It was up-zoned when it was put into RA-20 and is irregular in shape. They are asking for minimal variances per Mr. Marcus to allow a reasonable construction.

Mr. Marcus offered his research at Lake Waubeeka and other sections of Danbury and other summer communities in Danbury to see how the ZBA has treated this and found in a number of cases such as: Shady Knolls a variance for coverage was granted for a .2-acre lot at 32%, Powell Street, .2-acre lot at 34%, and the Northwest Passage, a .2-acre lot at 29%.

Mr. Marcus said his client has researched and wants to seek a variance for what is allowed for other communities like Lake Waubeeka. A map with letters of support were submitted in advance. Mr. Marcus indicated this plan is clearly an upgrade for the property. The site plan shows they have a lot of frontage on the road, however, the variance is because the property line is a far distance from the actual roadway. There is a buffer of the street itself. In the back there is a corner of the house that gets to a 5.1' setback from the neighboring property. The lot is not squared off and the 5.1 variance is due to angle of the side yard. The property has two direct neighbors who support the application and then the property of LWA in the rear, and it is basically open space area. The design of the house is contemporary-farm house and shows a two-car garage underneath. Architectural layouts have been included.

Chairman Joseph Hanna asked the location of the garage entrance and the septic. Commissioner Juan Rivas asked the square footage of the home. Attorney Marcus said it is 3,200 sq. ft. of living area, and the footprint is 1,600 sq. ft. Discussion continued about the building height calculation. They referred to Page 6 of 10 of the building plans. Mr. Marcus said it is 34'.

Mr. Hanna quoted the opposition statement letter as to the square footage. He asked if the living area will exceed the 3200 sq. ft. as stated in the opposition letter? Mr. Moore also asked the footprint calculation. Adding on the decks and porches gets you to the 29% coverage. Mr. Marcus referred to the Zoning Location Survey. Floor plan is drawn to scale by the architect per Neil Marcus.

Commissioner Michael Sibbitt questioned the hardship. The lot is half of the required minimum lot. They want to build a normal-shaped house on this steep lot. Mr. Sibbitt asked if they could build on existing footprint? Mr. Marcus said it can't be built because it is antiquated and asked Gail Reiser to explain the details of the house plans, which she did. They cannot build on the same footprint due to the ledge. There is ledge and they need to mitigate. – cannot build on same footprint. Mr. Sibbitt asked about the elevator. She has a medical condition that may require an elevator in the future. Mr. Moore said their charge is to grant the most minimal variance and understands what the hardship might be considered to be. He is not sure how much thought has been given to paring this down. These are minimal variances by Neil. No depth to the lot by NM. Architect figured out reasonable size with a proper design that fits on the lot. In terms of analyzing the reasonableness, if the lot were not small and oddly shaped, they would not need a variance. Shape and topography are the hardships. Mr. Sibbitt thinks house is too big. Attorney Marcus thinks it an average size. He's not sure they can come up with a plan that would change the variances significantly. They have mostly letters of support. If you are reducing square footage the house will look different.

Mr. Sibbitt asked for a five-minute recess.

The meeting reconvened at 9:31 p.m.

Discussion continued about the living space. Garage is underneath. Board asked for a revised plan, which applicant will provide. Mr. Hanna asked for clearer drawings. No other questions.

In support of the application, the following people spoke:

Herb Krate of 4 Alan Road supports this application. Mr. Krate is unaware of any house in Waubeeka that does not have a variance. The area was partitioned prior to zoning. Per Mr. Krate: Everything up there is pre-existing, non-conforming for the most part. Septic will not be on the lake and it fits.

Richard Sterzinger of 28 Alan Road supports this application. He said the lot is a weird angle, weird design. No issues with it. Complete support.

Steven Pearlman of 14 Marion Street supports this application. He stood on the lake with his father when there wasn't a house there. When the lots were subdivided, they didn't plan for the future. The lots are too small and we cannot continue to build bungalows if we want the community to survive. Year-round homes are warranted. He was a Licensed Home Inspector for the State of Connecticut. When he inspected that home years ago, he was afraid to go into the basement. The foundation consisted of dirt and stones—no foundation to build on. It was propped up with wood and beams and the hole was dug out by hand. Can't continue the way we're doing; we have to keep up with modern time. Community will go straight downhill if they don't keep up with the times.

In Opposition of this application:

Monnie Newman, Board of Directors, Lake Waubeeka Association. Lake Waubeeka abuts this property in the front and side and they oppose all three variances. The Board unanimously represent 262 houses that exist at Lake Waubeeka. They want to put a stop to the growing size of the houses for the purpose of protecting the lake. Larger homes that are cutting down trees creating impermeable surfaces, driveways, stonewalls, patios is harming Lake Waubeeka. LW has experienced harmful algae blooms that they did not experience frequently before. They live in a watershed and the 78 lakefront homes are the most important to preserving the lake. This is a hazard to the health of the lake and the neighborhood, and they do not want to set a precedent where this happens. There is a vacant lot next to 18 Carol, she is sure they are waiting to see that they got their 3500 sq. ft. house, we can too. Most of the houses in Lake Waubeeka were built at 600 sq. ft. and some are probably about 1,200 sq. ft. Ms. Newman is concerned that the exact length and width of the proposed house. She has questions about the basement too. She showed a photo of the property from the lake to the Board.

Phyllis Ruffer is the incoming Vice President of the Lake Waubeeka Association. She wants to clarify that they are speaking about all three variances. Her information about the size of the house was taken from the tax records. She said the 4,000 sq. ft. number is all the livable space as calculated including basement. Ms. Ruffer thinks this is not an unusual hardship. This property is not equivalent

to other parts of Danbury where variances have been granted. She said that Mr. Marcus failed to state the rear setback in directly on Lake Waubeeka. This reduction in the setback will affect the lake. Disappointment in the use of your property is not a legal hardship sufficient for the granting of a variance. The Reisers bought the property in May of 2021 and completely understood the constraints of the property. Ms. Ruffer said houses at Lake Waubeeka are typically 2,000 sq. ft. They have no argument with the Reisers desire to renovate the house, but their right to build a house and their understanding of their desires must be in conformance with the zoning regulations. Just because they want it is not enough grounds for the variances. They have imposed this hardship upon themselves. The Lake Waubeeka Association is there to protect the lake. She respectfully asks the ZBA to declines the request and decline the variances. They respectfully request the ZBA decline the variance.

Subsequent comments:

Herb Krate, in support again, has lived at Lake Waubeeka for 60 years and part of the problem is self inflicted. The reason is there are too many fish and they took out too many weeds. Algae is a product of that. What is going on in the lake is not irreparable.

Gail Reiser, applicant, wanted to comment on Lake Waubeeka – speaking of ledge – not sure if they can build a basement and they cannot blast because of their proximity to another structure. Will get rid of ledge by hand and Mr. Hanna said you can drill the rock by a hydraulic machine. Very safe but expensive. Ms. Reiser explained they took down trees—95% were dead or dying. EIC approved removal of some trees for construction; however, they will be replanting by a landscaped plan. The health of the lake is the absolute No. 1 priority to them. The variance is not directly in back of the house. The 18’ is to the side, not to back. Mr. Hanna asked if she would consider reducing the size of the house. Ms. Reiser said it depends on the Board.

Neil Marcus: The actual dimensions are on Page 5/10 -- 1,836 sq. f.t foundation. Two bay windows brings foundation will be 2,348 sq. ft. and that is the actual design from the architect. Mr. Hanna asked about full basement. Mr. Marcus said the legal hardship is by Connecticut Statute – unique characteristic of a lot size, shape, and slope, not common to every lot in the area then if there is an unusual hardship or extraordinary difficulty – hardship not determined by the size of the structure. Once you meet coverage and setbacks you can do anything you want. Hardship you have to focus on is the parcel. This is classic hardship. Hardship is when the City of Danbury came along and up-zoned the properties. Hardship is slope, shape, size, and RA-20 Zone. Opposition has misunderstood what the hardship is. Mr. Marcus said there was a mis-statement about this house having a negative impact on the quality of Lake Waubeeka. Mr. Marcus said it will not impact the lake as it will have a 2022 code compliant septic system and they can condition use of pavers instead of paving and no fertilizers. If you need to continue so that the applicant can provide another drawing that shows the basement as unfinished, they will do so.

Phyllis Ruffer, Lake Waubeeka Association incoming vice president said that writing on a plan that a basement will not be lived in doesn't mean the basement won't be lived in. Lot can be used, a house can be built, just not the house the Reisers want. This house followed by another 20 houses will harm the lake.

Mr. Marcus was afforded a chance for a final rebuttal. He invited the those present to his presentation to the New Fairfield, CT.

Discussion: Mr. Rivas would like to continue the application for a more detailed site plan and a revised Page 5 of 10 for clarification. Mr. Moore and Mr. Hanna said they were ready to vote with the stipulation for a revised Page 5/10 of the architectural drawings.

Motion to close Application #22-15 was made by Michael Sibbitt; seconded by Rod Moore. All in favor with Ayes from Rodney Moore, Juan Rivas, Rick Roos, Michael Sibbitt, and Joseph Hanna.

Motion open the voting session was made by Rod Moore; seconded by Michael Sibbitt. All in favor with Ayes from Rodney Moore, Juan Rivas, Rick Roos, Michael Sibbitt, and Joseph Hanna.

Motion to approve, per plan submitted, #22-15, 18 Carol Street, was made by Michael Sibbitt; Rod Moore made a motion to request an amendment to the approval with a stipulation that the applicant submit a revised Page 5/10 of the plans showing the area that will remain unfinished (no living space). Mr. Sibbitt seconded Mr. Moore's motion. All in favor with Ayes. Mr. Moore then seconded Mr. Sibbitt's original motion including the stipulation. Votes: Ayes from Commissioners Moore, Roos, Sibbitt, and Hanna. Nay from Mr. Rivas. Variance approved.

#22-16: 1 Ives St., Greater Danbury Chamber of Commerce Inc., Beecher, Thomas W. Esq., Agent, (I14262), C-CBD Zone. Sec. 8.E.4.a.(7) Increase wall sign height from 20' to 41'.

Applicant previously requested this application be continued to August 25, 2022.

CONTINUED PUBLIC HEARINGS: None

OLD BUSINESS: None

NEW BUSINESS: None

CORRESPONDENCE: None

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OTHER MATTERS: None

ADJOURNMENT:

Motion to adjourn was made by Michael Sibbitt; seconded by Rod Moore. All in favor with AYES from Commissioners Moore, Rivas, Roos, Sibbitt, and Hanna. Meeting adjourned at 10:29 p.m.

Respectfully submitted:

Mary S. Larkin
Recording Secretary