



**CITY OF DANBURY**  
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ZONING BOARD OF APPEALS  
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MINUTES  
**November 13, 2008**  
COMMON COUNCIL CHAMBERS  
7:00 PM

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The meeting was called to order at 7:03 pm by Chairman Richard S. Jowdy. Present were Jowdy, Herb Krate, Michael Sibbitt, Joseph Hanna, Gary Dufel, and Alt. Rodney Moore. Absent were Alternates Jack Villodas and Rick Roos. Staff present were Sean P. Hearty, Zoning Enforcement Officer, and Secretary Patricia Lee. Herb Krate made a motion to hear tonight's agenda as presented. Sibbitt seconded the motion. The motion carried unanimously. Jowdy asked Corporation Counsel Robin Edwards to come forward after reading the #08-20 petition into the record.

CONTINUATION OF PUBLIC HEARING & POSSIBLE ACTION:

**#08-20** – 22 Shelter Rock La., His Vineyard, Inc. (L15006), USE Variance, Sec.6.A.2.a., & Sec. 11.B.2.d., to consider proposed settlement Stipulation to permit a church use in the IL-40 Zone. Plans and Stipulation were with Planning Dept. 7 days prior to public hearing. Denial by ZBA 6/12/08 appealed 6/25/08. Letter regarding an offer to settle received 8/11/08. Chairman Jowdy introduced this issue, and Attorney Robin Edwards took the mic. She described what the stipulation provides for, and essentially it involves a reduction in the footprint, the addition of a front projection, a drop off loading area, and a pedestrian aisle. The purpose of the hearing tonight is to allow the public to comment on the stipulation; just to comment on the stipulation, Edwards said. Attorney Scalzo is here if there are any questions. I recommend that you entertain a motion to waive the reading of the stipulation. Krate so motioned. Sibbitt seconded the motion and the motion carried unanimously at 7:05 pm. Jowdy asked is there anyone who wishes to speak in favor of the stipulation, a comment on the stipulation, a comment against the stipulation? Due to the complexity of this issue **08-20**, His Vineyard, could we have a motion? Robin Edwards advised Jowdy to first close the Public Hearing. Dufel said I have just one question. Could you just spend a minute discussing the two phases? Ben Doto identified himself. Sure, Doto said: during the initial drawing over the summer, you're correct; we did have a two-phased approach. What we had always shown; we had a revision, about a 10% reduction in footprint. The phasing is going to be interior to the Church only. The ability is to add seats in the event they are needed in the future, Doto explained. Dufel said I understand. Doto explained about the number of seats he is providing; not the footprint; but the parking spaces, and we have the ability to expand the parking on the lawn. Dufel asked does that expansion require a variance? Doto replied no, as far as I know; and he explained why. Dufel and Doto discussed the issue. Doto said I will have Atty. Scalzo answer that. Krate spoke his opinion. Hearty interjected any expansion of the footprint will require a variance. Expanding; for the expansion of the population of the church with no footprint expansion, no variance is required. Robin Edwards said what's before us tonight is really the stipulation. This Commission is really not discussing parking tonight. Krate elaborated on the adequate

parking. Peter Scalzo said I will try to hopefully clarify this. We are here for the granting of a use variance. Obviously, we have to go through the whole process with planning and zoning for this plan. And I think this body needed to know that. So this is the plan that we are taking to zoning. We have an architectural rendering. Robin Edwards added the reason he filed the site plan is so you can see it. Matters that are the purview of other land use bodies will come before them, Edwards said. Krate made a motion to close the Public Hearing. Sibbitt seconded the motion, and the motion carried unanimously. Krate made a motion to **accept the stipulation** as presented. Sibbitt asked any discussion? I want on the record that I am against a church in an industrial area, Sibbitt said, but I will change my vote. Hanna seconded the motion and the motion carried unanimously. Jowdy announced so approved, at 7:15 pm.

**#08-49 – CONTINUED to 12/11/08:** Joaquin Granja, Meadowbrook Rd. (J09004 & J09011), Sec. 4.A.3., reduce min. lot area from 20,000 sq.ft. to 14,331 sq.ft., min. square from 100 ft. to 85 ft., and Sec. 3.H.3., reduce min. lot frontage from 50 ft. to 9 ft. (RA-20 Zone).

#### NEW BUSINESS:

**#08-57 –** Nejame & Sons, 12 Ole Musket La. (F20001), Sec.3.G.3.d., to allow a detached assessor use in a front yard, between a dwelling and a front lot line for pool (RA-40 Zone) Just so everyone is aware how this works, Krate explained for the remaining audience the procedure for Public Hearing, the opportunity to speak and rebut. Chairman Jowdy opened up this discussion at 8:16 pm. Tell us your name, Mr. Nejame. Tom Nejame identified himself saying we have a map showing the location of the proposed pool. The applicant, Gardner Conner, identified himself and signed in. We have technically a front yard, basically because the lot is a corner lot. We looked at other places to put the pool. The septic system is in the rear of the house and the reserve area is there. We tried to get the pool as close to the house as possible. The pool is technically an above-ground pool, but we are going to have to dig into the slope toward Ole Musket Lane. It will require a fence to meet the fence code; obviously a privacy fence. The hardship is that it is the only feasible place to put the pool. Dufel asked about the vicinity of Ole Musket Lane. So this is a 33-foot diameter pool. Nejame explained it is the same as the regulation for an in-ground pool. Dufel noted so you are surrounded by homes; okay. Connor added but with the angle of each house, they would not be able to see the pool; but the Greenfields could see it, but it would not cause any obstruction. Nejame said it's actually going to be below the grade of the road. Jowdy said that's the only place you can put the pool. No questions, Jowdy asked. Jowdy asked is there anyone who wishes to speak for or against this application? In the voting session, Jowdy summarized the request and what the applicant had stated. Open for discussion and/ or vote. Krate made a motion to **approve** a detached assessor use in a front yard, between a dwelling and a front lot line for pool in the RA40. The hardship is it's a corner lot with two front yards, and due to the location of the septic and fields; per plan submitted. This will not adversely affect the welfare, health and safety of the neighborhood. Sibbitt seconded the motion and it carried unanimously.

**#08-58 –** ABC Sign Corp., 47-49 Lake Ave. Ext. (F15002), Sec.8.E.6.c., Sec.8.E.6.d., to allow an electronic message unit sign on a corner lot (CA-80 Zone). Jowdy introduced this item at 7:21 pm, as Larry Bourque identified self and signed in, from ABC Sign Corp. It's a CVS, yes, sir. Krate said it's your court. Bourque began CVS would like you to approve them changing from a manual ground sign. This sign has been in existence for years, and we think an electronic sign that is not be pulsing or flashing is a much easier manner to change the current message board in inclement weather. I think the building has been up long enough to show that there is no safety issue. Krate said that's a heavily traveled road,

plus it's on a corner. Bourque said whether the message is put up electronically versus manually will not create a safety issue. Krate asked how often will they change it? Bourque replied I don't know if I can tell you that. Krate said there could be 30 items on that message board, and then there are the traffic safety concerns, and I am against them. Bourque said some stores stipulate how often they can change the sign message. Jowdy said one changes at 4:30, the next at 5, the next at 5:30, and you have a Las Vegas strip. The Board does not look favorably about changing signs. Bourque asked the Commissioners how do you feel about the WCSU sign. Krate replied we feel that's the State's. Dufel asked Bourque do you own the existing sign? You said changing the sign is hazardous to the employees. Is it a safe sign or not? Bourque replied the managers mentioned to me that some of the employees feel it's unsafe, with the cars coming in and out. Krate said so it's safe enough for shoppers, but not for employees. Dufel asked Bourque do you make signs like this? You make signs that might be unsafe to service? Bourque said I'm relaying to you gentlemen what the employees are complaining about. Dufel said we have to judge on the hardship. Krate said I don't know that there is a hardship. Dufel said he has to run the risk of a vote, or rethink this whole thing. Krate said it's at the whim of the store as to how often this could change. He's (Sean Hearty) got a lot of places to enforce; can you tell me that you can build a sign that limits the change to once an hour? Bourque answered I cannot tell you that. Jowdy asked is there anyone who wishes to speak for or against this application. Thank you very much, Jowdy said. At 8 pm, in voting session, Jowdy said the applicant did not show a hardship, and we've always said in the past, there's no control over the signs. We have different opinions. Open for discussion, Jowdy said. Krate said we should reject this. There is a sign in place now that is adequate. The electronic sign would create a safety issue, and he has no hardship. Krate made a motion to **deny** an electronic message unit sign on a corner lot. There's no real hardship here. He has a sign. A flashing sign, an electronic sign would be hazardous to safety. Sibbitt seconded the motion, and the motion carried unanimously.

**#08-59** – Joan Theriault, 37 Cornell Rd.(H08094), Sec.4.A.3., to reduce side yard setback from 25 ft. to 5.7 ft.; to reduce front yard from 40 ft. to 21 ft. for res. additions (RA-40 Zone). Jowdy introduced this at 7:31 pm. Joan Theriault identified herself, saying I'm a teacher in Danbury. My house sits on a nonconforming lot, as are all the lots on my street. Joan described what she'd like to do: the entrance, car port, mud room. There's not enough room for a garage. Dufel asked her you have room for a boat? Where do you park now? Theriault replied in the driveway. Jowdy and Krate asked questions about the proposed layout. Dufel asked did you consider pushing the car port back on the lot, put it farther back on the lot, so you don't need a front yard variance? Theriault said we do have a shed back there. Dufel said I sometimes ask questions just to get more information, when Krate explained why Theriault wants it where it's proposed. Dufel asked what's the material of the carport? Theriault answered wood with vinyl on it. Three sides will be open. Dufel asked her are you going to come back in a couple years to enclose it? Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal? Sean Hearty said there are utilities going up into Cornell Road, and this will not effect any easements the City needs to secure. Thank you, Jowdy and Theriault said. Jowdy, at 8:03pm in the voting session, reviewed the variance request. Krate made a motion to approve **08-59**, to reduce side yard setback from 25 ft. to 5.7 ft., and to reduce front yard from 40 ft. to 21 ft. for a car port and an entryway. The car port is to be an open car port as a stipulation, per plan submitted. Sibbitt seconded the motion, and the motion carried unanimously.

**#08-60** – New Cingular Wireless PCS, LLC ("A.T.& T."), 115-119 Mill Plain Rd. (C14070), Sec.5.B.3., to reduce rear yard setback from 30 feet to 1 foot for wireless telecommunications equipment shelter relocation (CA-80 Zone). Krate asked a question on the location; a corner? Lucia Chiochio, Attorney at Law, identified herself from Cuddy & Feder, LLP. We

are here to correct an encroachment that was discovered, she said. Their antennas look like a chimney. Krate said that's the Hilton; I remember the variance. Chiocchio explained the equipment shelter, the owners wanting it moved, the tool shed, the dumpster. It was a suggestion by the Planning Commission actually. They installed their facility in 2003. When the property owner had a new survey done in 2006, it was discovered that they encroach onto the railroad property. I called and spoke to Jennifer Emminger and said we can try to move it to try to comply. However, if we did that we would lose the fire lane, Chiocchio explained. The Fire Department had a concern. Krate said I always thought that setbacks on the railroad were zero. Hearty explained the new updated survey: yes, the variance still stands. Krate reiterated I thought there was a zero setback on railroad property. Dufel and Chiocchio discussed not being on the abutting property. Dufel asked how did this happen? You had plenty of room on the drawing. Where did the land go? I've got to ask? Did this engineering firm make the problem? Chiocchio replied I cannot say for sure. Dufel said I'd like to have an answer, as this is new stuff, right? Dufel discussed things predating zoning stuff sometimes; why can't we make it right, something that was built in 2003? We're not supposed to grant a variance for your own mistake, Dufel said. Jowdy explained to Dufel that there is no detrimental effect on surrounding properties. Dufel reiterated why can't an entity with resources spend the money to build it right? The money they spent on this variance could be better spent on doing it right. They should have hired the best people around. She can't even say how this was made. They have liability insurance. You should have gone after them in 2003, Dufel continued. Can you make it right without any variances? Chiocchio explained what they could do, but their concern is the fire lane. Dufel said I don't know if you've tried hard enough. Lucia Chiocchio discussed what could be done at the easel. Dufel said I'd like you to see you come back with some better options. Rod Moore asked for a chronologic clarification of the Hilton being built and the origin. The drawings were not done by Cingular Wireless PCS, LLC. The original survey was done by the property owner, the Hilton. Krate asked do we have the original variance? Secretary Lee provided the 2002 ZBA file, #02-79. Moore, Chiocchio, and Dufel made more comments. The engineer George Pendleton of The Maguire Group in New Britain, CT, said the original property survey was done by Hilton Garden Inn, and he explained the time frames for the surveys done. The mapping is shown on the Maguire Group plans. Pendleton held up the map done by Robert Bergendorff, LS, and talked about the dates. This located the property line. Then through that survey and close-out inspections, at that time, Kenneth Herbert, of Compass Engineering did a new survey to verify to location of the existing structures. Pendleton said we have all these surveys, back through the files, where the property line is shown and has never been in question. When this was constructed in the field Pendleton described what happened with the contractor. Krate asked you mean you actually put up a building without staking it? Pendleton replied I was not there. Dufel said I'm very disturbed with this. Krate asked is there someone here from AT&T? A gentleman from the audience came forward saying I'm Steve Levine; I'm in the real estate department for AT&T. This is the location that the hotel would give us. It had to be relatively close to the building to make that chimney design work; to do it in a stealth fashion. Dufel said I'm adverse to people coming here to solve their mistakes. Are you going to be able to come back with the original five feet approvals, or do you want us to vote tonight? Steve Levine and Attorney Chiocchio discussed the problem quietly, while Jowdy and Dufel talked. Engineers can be very clever people if we let them, Dufel said. Pendleton explained accessing the building from the back side of the building. This is the fire department turning radius. He discussed if we move it this way, or if we move it here. Dufel asked what's wrong with that? You're the phone company. You can put equipment on there to solve your problems, Dufel said. Chiocchio said we did look; it's limited by what's there. I asked Steve has it ever happened on any other of your sites, Chiocchio said. Krate remarked about some guy who built these shacks for you. Chiocchio said it's not a common occurrence, I'm

trying to say. Sibbitt, Krate, Dufel, Hanna, and Alt. Moore discussed the location. Dufel said you're both right.

The Commissioners proposed to the applicants maybe tabling this and coming back. Krate said if your company hired Mr. Herbert to do this survey, someone screwed up and it's on your end that it was screwed up. Pendleton said we've accepted a portion of the liability, and we are all working together. Krate asked how long can you run without losing your signal? Dufel said they are all trying to get away as cheap as they can get, and the Commissioners all commented at once. The application is **continued** to December 11, 2008.

ACCEPTANCE OF MINUTES: October 23, 2008 Meeting: Motion to approve these minutes as presented by Herb Krate. Second by Sibbitt. The motion carried unanimously.

ADJOURNMENT:

Motion to adjourn by Krate. Second by Michael Sibbitt. Motion carried unanimously at 8:04 pm.

The next regular meeting of the ZBA is scheduled for **December 11, 2008**.

Respectfully submitted,

Patricia M. Lee, Secretary