

**Zoning Board of Appeals
City of Danbury
Minutes
April 24, 2008
Common Council Chambers 7 pm**

Members Present: Richard S. Jowdy, Chairman, Herbert Krate, Michael E. Sibbitt, Joseph Hanna, Alt. Rodney Moore, Gary Dufel

Members Absent: Alt. Richard Roos, Alt. Jack Alt. Villodas

Staff Present: Sean P. Hearty, Zoning Enforcement Officer, Patricia Lee, Secretary

The meeting was called to order at 7:02 pm by Chairman Jowdy. Jowdy read the Legal Notice. Krate made a motion to hear tonight's agenda. Sibbitt seconded the motion and it carried unanimously. Jowdy explained the Public Hearing procedure to the audience and applicants.

#08-09 – WITHDRAWN: Richard Rizzo (Agent for Colonial Ford), 126 Federal Road (L08024), Sec.8.E.3.a.(3)., to vary requirement allowing only 1 free-standing sign for each 300 ft. of street frontage for proposed second sign (CG-20 Zone). Jowdy stated that this has been withdrawn.

CONTINUATION OF PUBLIC HEARINGS:

#08-13 – CONTINUED from 3/27/08: Jorge Galhardo, 85 Beaver Brook Road (K11146); Sec.6.A.3., to reduce min. south side yard setback from 30 ft. to 19 ft.; to reduce minimum north side yard setback from 30 ft. to 24 feet; Sec.8.C.3.b.(1), to vary requirement for landscaped islands at end of most of the parking rows (IG-80 Zone). Mark Kornhaas, PE, took the mic and signed in on behalf of the owner. We were here at the last meeting, he said, and he went over what was discussed at the last meeting. A 3000 sq. ft. building is proposed, and they will remove some of the existing buildings. The hardship is that the lot is grossly undersized, narrow in shape, and the utility easements for the City preclude our planting some islands, which Kornhaas explained. Dufel asked if this plan is different from the last time. Krate asked are all these trailers going away, and Kornhaas said yes. Jowdy discussed the number of spaces with Kornhaas. Any future business coming into that building, it's going to go with the land. Jowdy asked are there any other questions? Is there anyone who wishes to speak for or in opposition to this proposal? There were none at 8:10 pm. Krate made a motion to **approve 08-13** to reduce the north and south side yard setbacks, and to vary the requirement for landscaped islands. The hardships are the City easements on the property, which preclude planting as required; the size and shape of the lot. This variance shall carry **with this use only**. Any change of use shall require a new application to comply with current zoning regulations, Krate added. The use is storage of contractors' equipment. Krate said this is per plan submitted. Joe Hanna seconded the motion. The motion carried unanimously at 8:11 pm.

NEW BUSINESS:

#08-19 – Pavilion Holdings, LLC, 41 East Pembroke Road (H09134), Sec.4.A.4.a.(4).(a)., to reduce front yard setback from 50 feet to 20 feet; Sec.4.A.4.a.(4).(b), to reduce **W** side yard setback from 50 feet to 35.9 feet; to reduce **E** side yard setback from 50 feet to 36.9 feet for church (RA-40 Zone). Jowdy introduced this item at 7:08 pm, and the applicant

came forward and signed in. Russ Posthauer, PE, with CCA, LLC, identified himself as the engineer. It's an existing building that the property owner would like to use as a church. We are not varying the use, just the setbacks. Jowdy asked about the wetlands in the area. If you going to get this variance, your parking area is pretty small. Posthauer said the church area will be a small area in the front of the building. The area is dry to the fence and we believe we can get the parking in there. Dufel asked is that that purple building? Posthauer said the building is in rough shape. It's not suitable for residential use of any kind. Moore asked about the seating area? Posthauer replied 15 to 30; a small church. Krate said we generally ask for a parking layout, and you're without that. Posthauer said it was a day care center. I was strictly going for the setbacks. Jowdy interjected it's a very busy, hazardous corner. We're going to have to get an opinion from Traffic. That's my opinion, and we've got to have the parking, Jowdy said. Krate said we need to see the parking area and the traffic area, so we can understand, and if there are wetlands here, you should show them. Posthauer said the wetlands are not creating the need for a variance. It was used for a daycare, and that probably generated a lot of traffic previously. Jowdy reiterated you've got to address the traffic in changing the use to a church. The City engineer can look at it. Sean asked for the sight lines. Krate said show us parking spaces, traffic flow; you're changing a use to a bigger generator than it was. Posthauer said and an interior layout so it coincides with the required parking. The capacity also, Krate asked. Posthauer said we agree. Jowdy said you can bring it back in. Posthauer said we'll get this to Sean early next week. Dufel asked could you explain the relationship between the survey "Youth Association" versus a church use? Posthauer replied one can prepare a survey for anyone.

Monsoor Hadary came to the microphone. I am one of the investors in the property. We are four. We are from India. We have a small community. I have been living here for 30 years, and once every two or three weeks we would get together like a church, so traffic wise I don't see much of a problem. Including children and everyone, there is maybe 25 or 30 people. Krate we need to have it delineated on the plan. Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal?

In favor, speaker Joher Quaisar came forward. As mentioned before, we are only 25 people in the area. It wasn't going to be a very difficult situation for us to park, and we have met as a group and the parking was substantial. Jowdy said we want to see designated parking spaces. If you decide to double or triple your population, we have to consider it, Jowdy added. Quaisar said I'd assume that the previous approval as a daycare, with maybe 100 kids at a time, as justification that there was no danger.

The next speaker is in opposition: Dana O'Rourke of 64 East Pembroke Road said I would be the driveway on the crazy corner. Today I counted 100 cars in 10 minutes, including 3 buses. I understand it was a daycare, but that was four years ago, O'Rourke said. And there are wetlands back there; a lot of animals going through; it just does not fit in with the area. Moore asked when it was a daycare, did they ever come in for a variance. Dana mentioned the septic. Krate stated that's not our purview. Jowdy asked again is there anyone else who wishes to speak for or in opposition to this proposal?

Speaker in favor: Nahid Quaisar said we are just a very small group, and she described the purpose of the whole center. Jowdy stated it has to be approved for the next generation. If anyone comes in for a church, and the traffic control says it's safe, than it's fine. Nahid Quaisar said I just want to assure Dana that we are just like everyone else; we get together a few times a month, very peaceful. Krate that's not even a question we can take under consideration. Quaisar said it's people driving with kids. Krate said it is the same for all applicants for a church. The quality of the building is not up to us. We have to see a comprehensive plan. The daycare may have predated zoning in the area, I don't know. Jowdy said thank you for your input. This is **continued**. Jowdy explained in the voting session what a problem getting out of that intersection is.

#08-20 – His Vineyard, Inc., 22 Shelter Rock Lane (L15006), **USE** Variance, Sec.6.A.2.a., & Sec. 11.B.2.d., to permit a church use in the IL-40 Zone. Planning and Zoning Commissions have not yet rendered their recommendations on this Use Variance. Jowdy introduced this at 7:25 pm, as Attorney Peter Scalzo came forward, identified himself and his address. Scalzo is joined by Ben Doto, PE, and several members of the church who we will ask to raise their hands in support rather than each coming up to speak, Scalzo said. The pastors, Keri and Gary Baldelli, are here. Currently they meet on the Danbury-Bethel line; they've outgrown there space. They have been there 11 years. They have been on a five-year search for a new building, and we are asking for a use variance in the IL-40 Zone. Doto indicated the site on the easel after introducing himself and signing in. Scalzo said we have letters in support from the five neighbors. Doto described the site at 7:29 pm, and the vicinity. Here's the new signal that was recently installed by the City. Scalzo said I am submitting four letters from the neighbors whose locations Doto pointed out on the plan. Scalzo said I do have photographs tonight. Dufel said, Mr. Chairman, they've submitted a five-page letter that contains a lot of legal jargon that I'd like to read first. Krate and Jowdy explained to Dufel that this has to go to Planning and Zoning too, so we will **continue** this as we wait for their recommendations. Jowdy said that is what we will require before we act on it. Scalzo enumerated who submitted letters in support. Ben Doto held up the photographs. Krate said I just assumed the property ownership. Doto said if I can interrupt here, recently a lot line revision was done: Shelter Rock Business Center. It is the completely undeveloped area as you drive by there. A sidewalk was recently installed. Doto displayed the neighbors' sites photographs and views of the Business Center, the site looking from different views. Hanna said there's some construction there; is that the right property? Hearty clarified the lot line revision. Doto clarified the driveway issue further. You can comply with all those other codes, right, Ben, Sean asked. Obviously we understand we have to go before the EIC, Doto said. Scalzo said I did not know how far the Board wanted to get into the conceptual. We are the contractual buyer, and here's a copy of that letter for the record. We went ahead and had a conceptual drawn up by Ben Doto. Ben is ready to describe that, Scalzo said. We do have to go through the site plan process. Krate said we are not going to vote on this tonight, and I'd prefer to hear their recommendations first. Scalzo discussed the extension to allow the Planning and Zoning Commissions to have time to review and to get their recommendations to you. Jowdy agreed we'd like to get their input. Krate explained the extension legality. Hearty said I do recommend that you get a cursory conceptual overview tonight, a basic conceptual, just so you're on the same page. Dufel asked Hearty if this kind of use variance requires a hardship, and Hearty explained what other bodies must review the petition. Dufel said you have to think about the threat of a future lawsuit, so my advice is to find the hardship. Hearty said I recommend that you get the legal wording of Attorney Scalzo at the next meeting. Scalzo said we are making arguments with the religious land use act, a first amendment protection. Krate said that just protects a church from locating in a certain locale, but not in a certain zone. They can locate in Danbury; they are in Danbury. Scalzo said what we have is a 5-year search; I have a sworn affidavit verifying their 5-year search. Hearty said there will be a thorough review by Corporation Council in answer to Krate's question. A RLUPA case in California was discussed by Scalzo. I will defer to Corporation Council then. Scalzo said okay. We also have floor plans. Hearty said just the basic. Scalzo said this parcel is well suited for the character of the neighborhood; industrial users are not there when the church is in session, Sundays and maybe Wednesday nights. All those in the audience in favor raised their hands. Krate asked for a show of hands of those NOT in favor of it. Dufel asked the number of parking spaces. Dufel and Doto discussed the number of people riding in one car on their way to church. That's per the Zoning Regulations, Krate and Doto said. Scalzo reiterated we will still have to go before the

Planning Commission. Krate asked does this have to go before Traffic? Doto replied if my trip calculations are correct, we don't have to go before Traffic; it's not like the 499 trips of some applicants. Doto described the capability of the building, the number of seats, saying we did plan for that here; the parking spaces are a lot more, based on 565 seats. And you can see we have room for the future in the back. The wetlands are shown in dark green. We will need to cross the wetlands, and we know we have to go before EIC as would any applicant for this parcel. Doto continued discussing the parking spaces, the slopes, the insignificant grades; setbacks are not an issue. The impacts, aside from the wetlands, are the noise, smoke, dust, and traffic in an industrial zone, and this church will have none of those impacts. Church people tend to carpool. Krate asked about a future school. Scalzo replied no school; no daycare. Krate said if anyone in that industrial zone chooses to challenge this, I want to jump through all the legal hoops that we have to, should that become the case. (Tape #1 flipped to side B). Doto next showed a photo indicating the style of the structure proposed, which is, in my opinion, in keeping with the neighborhood. Dufel had questions on the parking spaces, the handicapped spaces. Doto said I'll check that out. Krate said that's a good way to cover yourself. If this is granted, Scalzo said, Ben said I will sit down with my client and find out exactly how many spaces are needed. Krate said if this is approved, it's got to be approved per plan submitted, just so you're clear. Once it's approved it is per this plan, or not per this plan, or you have to come back here, and you don't want to do that. Hearty read the regulations allowing time for the Planning and Zoning Commissions. Jowdy said we'll abide by that. Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal? There were none. Scalzo concluded thank you at 7:56 pm. **Continued.**

#08-21 – O Properties, LLC, 9 Padanaram Road (aka, 5A), (H10158), Sec.5.E.3.a., to reduce side yard setback from 10 feet to 7.4 feet for a roof overhang (CN-21 Zone). Jowdy introduced this item at 7:55 pm. Dave Choplinski identified himself and his address, and stated what he's requesting and what are his hardships. I merely erected a covering over the side door, and he gave the dimensions. The second page is the improvements that were made. I only have four copies. Dufel said orient us on this location? Choplinski said the building sits oddly on the lot, and he described the neighboring business, the side door and the back door. Krate said your parking looks like part of that plaza. Choplinski and Dufel discussed the property based on a variance, the right of way, and Almonte's Restaurant, a very nice restaurant, Choplinski said to Krate. I made improvements in the back. Moore asked was the previous tenant Kitchenaid? Hearty and Dufel discussed being land locked, and Hearty clarified it's a front yard. Secretary Lee and Choplinski and Hearty discussed the front yard and the front yard setback; it's not the side. The regulation setback is 20 feet. Hearty and Krate discussed the variance required. Krate said now that I understand it I have no further questions. Choplinski said thank you all. Jowdy clarified which items are continued with Hanna and Hearty and Krate. Jowdy introduced this again in the voting session at 8:13 pm, and he discussed the vicinity and the overhang. Open for discussion. Krate made a motion to **approve 08-21**, to reduce the side yard setback for the roof overhang, per plan submitted, in the CN-20 Zone. Joe Hanna seconded the motion. The motion carried unanimously. Rod Moore said I'm here but I am not voting; I'm just here in case the real Gary Dufel shows up.

#08-22 – Joan Murphy, 39 Harbor Ridge Road (I05126), Sec.4.A.3., to reduce the rear yard setback from 35 feet to 28 feet for new single-family dwelling (RA-20 Zone). Jowdy introduced this item at 8:01 pm. Patrick Murphy, Mrs. Murphy's son, stated we'd like to demolish the existing home; it's a small piece of property for the RA-20 Zone, and the existing home is non-conforming. We would make the new home more conforming except for the rear yard setback. Jowdy paraphrased what they intend to do: upgrade the house

and the neighborhood, and what is the hardship. Mrs. Murphy said it's two bedroom. Dufel said I congratulate you for coming in with something modest. Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal at 8:15 pm. Krate made a motion later in the voting session to **approve** the setback request per plan submitted, for a new single-family home in the RA-20 zone. The hardship is the pre-existing, nonconforming lot. Sibbitt seconded the motion. The motion carried unanimously.

#08-23 – Crystal Bay Association, Inc., 10 Hayestown Road (I09066), Sec.8.C.4.f.(4)., to reduce required number of parking spaces from 90 spaces to 86 spaces (RR-10 Zone). Chairman Jowdy introduced this petition. Suzanne Marnane came forward and stated our attorney is not here; and it was your suggestion that we reduce the spaces, and we did obtain the variance for the garage. But when we did that, Marnane said, it was suggested that we reduce the number of required spaces. Do you recall this? Dufel asked Suzanne will you be paying the attorney even though he did not show up? Suzanne named the firm representing them. Dufel said I have no further questions. Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal? In the voting session, this was opened for a "long discussion" by Krate who pointed out that the wording "feet" should be parking "spaces". Secretary Lee said she caught the mistake before it was published by The News Times. Dufel said I may deny this just because their lawyer is not here. Dufel made a motion to **approve** the petition to reduce the required number of parking spaces, per plan submitted. Sibbitt seconded the motion. The motion carried unanimously.

#08-24 – John Pavlik, 9 Gregory Street (G13023), Sec.4.A.3., to reduce side yard setback from 25 feet to 19 feet for a sunroom addition (RA-40 Zone). Jowdy introduced this petition at 8:06 pm as Mr. Pavlik signed in. John Pavlik identified himself. My petition is basically to add on a sunroom. It's now nonconforming totally, and my hardship is the small size of my house on the first floor. Krate said I have no questions. Dufel said I have no questions. Krate said that's a hat trick. It's less of a violation. Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal. Mike Daniels from 11 Gregory Street came forward and stated I have no opposition; I just moved in. Again Jowdy asked if there was anyone else who wished to speak. In the voting session, Krate made a motion to **approve** the petition; it's a pre-existing nonconforming home and it's further away from the sideline. It does not represent any welfare, health and safety issues for the neighborhood, and it is per plan submitted, Krate said. Joe Hanna seconded the motion. The motion carried unanimously at 8:17 pm.

ACCEPTANCE OF MINUTES: Motion to accept the meeting minutes from March 27, 2008, as presented by Krate. Second by Sibbitt. Motion carried unanimously. There was no ZBA meeting on 4/10/08.

ADJOURNMENT: Motion to adjourn by Krate. Second by Sibbitt. Motion carried unanimously at 8:19 pm.

The next regular ZBA meeting is scheduled for May 8, 2008 at 7 pm.