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CITY OF DANBURY
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ZONING BOARD OF APPEALS
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ZBA DRAFT MINUTES
June 10, 2010
COMMON COUNCIL CHAMBERS
7:00 PM

ROLL CALL: Chairman Jowdy called the meeting to order at 7:04 pm, and Jowdy read the legal notice into the record. Herb Krate made a motion to continue #**10-22** and to hear the New Business as numbered. Sibbitt seconded the motion. The motion carried unanimously. Jowdy explained the procedure for the Public Hearing to the audience.

CONTINUATION OF PUBLIC HEARINGS:

#10-22 – Fernando A. & Luisa B. DeSousa, 14 Wildman St. (J13027), Sec.6.A.2., Sec.11.B.2.c., USE Variance, to allow package store in the IL-40 Zone, currently being used as grocery store (IL-40 Zone). Negative recommendations received from Planning Commission and from Zoning Commission. Jowdy opened up this petition. We have two letters from the Zoning Commission and Planning Commission, both given negative recommendations to the variance, which Jowdy read into the record, stating the motions and reasons, both letters saying there is no hardship shown (see letters dated 5/25/10 from the Planning Commission and the Zoning Commission). With that we will call up the applicant, Jowdy said. Gregg Brauneisen, Attorney at Law, signed in and identified himself at the podium, giving his address as 148 Deer Hill Avenue here in Danbury. Mr. DeSousa is here tonight with his son-in-law. The variance is for locating a package store on their Wildman Street property. I did meet with the Zoning Enforcement Officer out there, Brauneisen said. Sean Hearty said we went to the site last Thursday, and he listed all the uses on the site including two residential units. There is sufficient parking for both uses out there. The site is neat, Hearty said. With some modification and tweaking, there is sufficient parking. Brauneisen said it is a large parcel compared to the other parcels on the street. Whenever there's a use variance Planning and Zoning usually give it negative recommendations. Brauneisen quoted Dennis Elpern as saying he would never agree to any use variance. All these properties are not suited for the uses. Elpern was on the record saying they really need a zone change. The real hardship is that these lots are not of a size for the industrial uses. They could not support and industrial use, which they are zoned for, Brauneisen continued; allowing the uses that the City would like there. There have historically been package stores there before. Krate interjected that fact does not mean that one would be let back in again. Dufel said I have a question for Sean Hearty. When the Zoning Commission and the Planning Commission do a recommendation like this, are they working with a hardship as the ZBA views a hardship? Sean P. Hearty explained the power that the ZBA has. They can use certain language, but they can't change the regulations to remediate that regulation. Dufel asked does it truly about the CN-5 Zone? Gregg Brauneisen replied yes; I showed you that. The line goes right down the middle of Wildman Street. The current use of the property is a nonconforming use. So all we're asking is a slight expansion of a nonconforming use under Sec.11. Krate said my question is more as to why and how is the applicant being challenged at this point with not having reasonable

use of his property. It's a use hardship. So what I'm looking for is a hardship that falls in line with what we are mandated to act on. And Krate elaborated. Why isn't there reasonable use with the grocery store in there, other than financial? Gregg Brauneisen explained to Krate. Krate said but he has the use today, as long as he does not shut it down and try to reopen it. What hardship can you put on the table that shows us he does not now have reasonable use of the property? Krate continued, if you were only asking for a hardware store, it's almost like apples and oranges. It's been profitable enough to stay in business as a grocery store. Where does the hardship come in, other than economic? That's not the issue here tonight. Gregg Brauneisen discussed what he is allowed to do on his property, on this parcel. Krate said we're talking about a piece of it now; the same owner owns the whole parcel. Krate discussed what the owner might be able to do with the property in an industrial use. Show me where he does not have reasonable use of the property, and Krate discussed the power of the Zoning Board of Appeals. I'm not thrown away by the Planning and Zoning recommendations. If he closes all those business, he could put an industrial use there. That's something he must make a choice about. Tell me why his use is not a reasonable use of the property. I don't care that it is a nonconforming use. He could run that for 100 years the way it is. Krate again asked why does he not have reasonable use? He wants to take one business, and he wants to put another business in, and that's not showing me why he does not have reasonable use, other than a financial hardship. Want is wonderful thing, Krate said. Brauneisen tried to explain the hardship, but Krate said I have no other questions. Jowdy asked is there anyone in favor or in opposition to this request. In the voting session, Jowdy summarized the request. This is open for discussion. Krate reiterated his problem with this: there is reasonable use of the property at the current time. Moore said the use is still limited to a certain extent, if the grocery store ceases to exist; a hardship is an "if". Moore and Krate discussed what's a real hardship. Krate said today it does not represent a real hardship, in my mind. Dufel said when I came here, looking at the neighborhood, I thought the placement of the liquor store was a reasonable placement. But your argument, Herb, is what swayed me. It does not leave us a lot of choices. Jowdy described the area, saying I agree with you and with Herb (Krate). Dufel said when the grocery store shuts down. Gregg Brauneisen, Attorney, stood up and said the grocery store is not operating. Dufel said he (Brauneisen) is out of order. Hearty said the use would have to be abandoned. Dufel said we will have you leave the room. As an attorney, it's very rude, Dufel said to Brauneisen. Krate made a motion to **deny this without prejudice**. I don't see a valid hardship. It is being used currently as a grocery store: your words. It is without prejudice, Krate added. Sibbitt seconded the motion, and the motion carried unanimously.

NEW BUSINESS:

#10-15 – Douglas S. & Eileen Mann, 67 Deer Hill Avenue (I16148) and 69 Deer Hill Avenue (I16147), Sec.4.A.3., Sec.4.A.7.d., to reduce minimum 6 ft. side yard setback from legally non-conforming 5.2 ft. to 1.0 ft. for existing garage roof overhang; Sec.4.A.7.d., to reduce minimum 100 ft. lot width from legally non-conforming 66.1 ft. to 63.1 ft., for proposed change of property line (RA-8 Zone). Jowdy introduced this one at 7:22 pm and read the petition. Michael Kaufman signed in and identified himself, an attorney with Jones, Damia, Kaufman, Borofsky & DePaul, LLC, on behalf of the applicant Douglas Mann. Also here is Paul Fagan, Land Surveyor. Essentially what we are seeking is pretty straight forward. There is currently a shared driveway. Kaufman said these were built in approximately 1888 and 1862, well before zoning regulations came into effect. We are asking for a small relocation of the lot line to allow for separate access to the rear of 69 Deer Hill Avenue. Kaufman explained each of the variances requested: side yard setback, minimum lot width, and the Deer Hill Avenue overlay. Krate said so in effect you're straightening the line. Kaufman replied, no, we are making a jog in the line. Oh, THIS is the existing line, Krate said. The hardship is that as a result of zoning, there's no independent access to the rear of 69 deer Hill Avenue, and our client would like to have independent access. This is consistent with the areas on Deer Hill; most of the Deer Hill Avenue properties have independent

access. Dufel said I drove by and saw a For Sale sign there. How long have these two lots been in common ownership? Kaufman explained the ownership, for about 25 or 26 years. Dufel said tell me why today it is a hardship. What is triggering this application? Kaufman replied there is an interest in selling at least one of the properties, and explained the informal agreement. Dufel asked Kaufman you're an attorney? Dufel said there's a parking easement on 67. What's that all about? Kaufman replied there's an approved office use on 69, so that ensures that there is adequate parking for the office use. Dufel said my main concern is that you cannot maintain the side of the garage with a 1 foot separation distance. It's impossible. It seems this is a one-way project. You can't maintain the garage. Kaufman said the intent is not to do harm to any one. Dufel said I can't vote for this; this is very one sided. Jowdy said it seems like a very simple request to allow the owner to paint or fix the roof. Kaufman consulted with his client and Paul Fagan in the audience at 7:30 pm. Kaufman thanked the commissioners. Mr. Fagan pointed out that there is a little extra room. Dufel replied there's not any room; please don't insult me. The last question, Dufel said: if this has existed over 100 years, why can't you make an agreement instead of changing the property line? Kaufman answered as a result of zoning there is no independent access. If it's an issue to allow for maintenance on that side; Krate said so we could stipulate that. Kaufman said I have some pictures showing....Dufel said they do have independent access. We are trying to separate them, Kaufman continued. Problems arise with easements, Kaufman said; we would ask that you vote in favor of the application at 7:34 pm. In the voting session, Jowdy summarized the requests at 8:29 pm, stating open for discussion. Krate said I would motion in the affirmative here, with the provision that access must be granted. Dufel and Krate discussed an easement versus a stipulation. Hanna said it's got to be an easement. Krate made a motion to **continue** this application with the Zoning Enforcement Officer, to be reflected on a revised map. Jowdy said it's continued.

#10-23 – Andrew & Patricia A. Green, 20 Dartmouth La. (H18015), Sec.4.A.3., to reduce the front yard setback from 20 ft. to 13.5 ft. for a second story residential addition / covered porch (RA-20 Zone). Andrew Green took the mic and introduced himself. We own the property at 20 Dartmouth; we have a strange pentagon-shaped property. The previous owners acquired it, and Green explained how the lot got its funny shape. It was part of the development in the fifties. I have a steep drop off in the back of my house. What we are doing is proposing a second story addition, and I have pictures. In the front there is an overhang where the porch would be going, and there is a 3-foot portion of the second floor that would be sticking out. Where we meet the setback line is where the porch is. A previous variance was noted by Dufel (ZBA 98-29). You said you have pictures? Is the house to the north very close? Green and Dufel discussed the vicinity, and a fairly modest house. So you're going up with a full second story? Dufel defined the changes Green is looking to do. So it's a roof with some sort of columns, a deck, not concrete. Jowdy asked are there any questions. Jowdy asked is there anyone here who wishes to speak for or in opposition to this request. Dufel asked Sean Hearty, as a point of information, is there something in place that prevents someone from putting a structure right on the property line? Jowdy reviewed the item in the voting session at 8:31 pm. Krate made a motion to **approve** reducing the front yard setback from 20 ft. to 13.5 ft. for a second story residential addition / covered porch. The hardship is the pre-existing nonconforming location of the house. It is in keeping with the neighborhood. This is per plan submitted. Hanna seconded the motion. The motion carried unanimously.

#10-24 - Gary & Sharon Stone, 6 Pocono Point Rd. (K02009), Sec.4.A.3., to allow detached accessory use in a front yard for a garage (RA-20 Zone). Jowdy introduced this petition at 7:41 pm. We would like to put up a detached garage, Gary Stone said. We would like to stay within the setbacks, but this is a lake lot. Krate said there are other houses here that have garages in front yards. 38 total; 24 with garages in the front yard facing the road, Stone added. I have that printout if you want to keep it. Jowdy said that's really the only place on the property where one could put a garage. Krate said you can't put it in the Lake. Dufel said I'd get to review it then anyway. Stone continued discussing the vicinity.

Krate said I know the area. Sharon Stone said my husband's family were early settlers of the City of Danbury. Gary Stone discussed some of their hobbies: gardening, woodworking. The house is teeny tiny, Sharon Stone said. Dufel had a question. Stone we have done a lot of fixing up. This is basically what it would look like. Dufel asked are you in a homeowners' association? Sharon Stone said we bought the house in '03, and we finally sold the house in Suffern, NY. Jowdy asked is there anyone who wishes to speak for or against this application at 7:46 pm. In the voting session, Krate made a motion to **approve** allowing a detached accessory use in a front yard for a garage, per plan submitted. It is definitely in keeping with the neighborhood, and will not be a detriment to the health, welfare and safety of the community, Krate said. Hanna seconded the motion, and it carried unanimously.

#10-25 - Roberto F. Marquez, 9 Stevens Street (H14265), Sec.4.D.3., to reduce the minimum front yard setback from 20 ft. to 7 ft. for a proposed porch roof overhang (RH-3 Zone). Chairman Jowdy introduced this item, and Allen Riano of Absolute Development Company came to the mic. Mr. Marquez would like to take down an existing awning, and put up an 8 ft. x 16 ft. overhang. He is 83 years old, and he has a hard time rolling it up and down. Hanna asked the size. Dufel said I've seen the house. I'd like to address one thing to the Commission. Dufel said I urge this one to be delayed so everyone can see this. People should see this to make their decision. Nearby houses do not have front porches. It's really just two blocks over, Dufel said. There are 39 houses on Stevens Street, Riano said, he noted how many of those have front porches. Dufel said there's nothing to sit in the front for. There is a façade that's been put up. People need to see it to make their own judgment, Dufel repeated. This house is totally different than every one in the neighborhood. There is already a big porch; now you are asking for another porch. All 31 porches are within the setback; 8 are within 5 feet. Jowdy said, in order to do an on-site, we will **continue** this for an on-site to the next meeting.

#10-26 - Mitchel Seidman & Gala Seidman, 3 Driftway Rd. (E15006), Sec.4.A.3., to reduce minimum front yard setback from 40 ft. to 28 ft.; to reduce minimum rear yard setback from 35 ft. to 28 ft. for a replacement residence (RA-40 Zone). Jowdy introduced this petition at 7:51 pm. Paul Jaber, Attorney at Law, identified himself saying he is representing the applicants who are the contract purchasers of the Driftway Road residence in Danbury. They intend to build their own home, and I'd like to go over the neighborhood, Jaber said. Behind Patriot Square Condominiums, with Molly Darcy's Restaurant & Bar, there are office condos, a single-family home, and adjoining that is Driftway Hills, a residential condominium development, with a driveway that leads to about 4 houses. The parcel is one-half acre; a legal, pre-existing nonconforming lot. Jaber explained that the dwelling that is on the lot now encroaches onto Driftway Road. Heavy shrubbery and hedges also encroach onto Driftway Road. What exists now is a safety problem created by the current location of the house and the steep hill. Jaber said the person that owned the house is deceased. You can't finance a house that encroaches into the street. They both work in Patriot Square Condominiums, and that's one on the primary reasons they want to live here. They went to a great deal of effort to locate this house there. The builder asked that I ask for a couple more feet. The lot really has two problems: it's 77 feet deep on the north side and 107 feet on the south side in depth, but it angles into a small area. With the RA-40 setbacks, it would be a very narrow house. The second issue is the brook that's located behind this lot. They have to go to the Environmental Impact Commission. Jaber explained why they designed the house the way they did. The lot sizes in the neighborhood, as discussed with pre-applications meetings here, and Jaber explained what exists in the neighboring lots. On Elmbrook Drive, the lot sizes are all smaller than this house. I drove down Elmbrook Drive near the Goodyear Tire Shop. I'm sure it's a private road, Elmbrook. It ends before the brook. Those houses are all less than the size of this lot. North of this property is more than an acre. Jaber discussed the lot sizes in the area. This lot is larger than most. Their home will be beneficial to the neighborhood. If there are any questions, I'd be happy to answer them. Dufel asked about the woodshed in back. Dufel said exploring things: they way you situated it, you need two variances. Jaber replied that's why we hired

the engineer. Jaber discussed the driveway location and safety. The City may choose to clean it up. Jowdy discussed the shrubbery and enlarging the road. Jaber said I'm guessing the City is going to cut all that down. Jowdy asked are there any questions. Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal at 8:03 pm. Krate, in the voting session, said I make a motion to **approve** 10-26, to reduce the minimum front yard setback from 40 ft. to 28 ft.; to reduce minimum rear yard setback from 35 ft. to 28 ft. for a replacement residence. It will actually be an improvement to the neighborhood. This is per plan submitted with the amendment of 28 ft., not 30 ft. Hanna seconded the motion, and it carried unanimously.

#10-27 - Marlo Development Co., LLC, 9 Lois St. (H11162, H11163, H11164), Sec.4.A.3., to reduce minimum front yard setback from 30 ft. to 20 ft.; to reduce min. rear yard setback from 35 ft. to 28 ft.; to increase max. building coverage from 20% to 23%; Sec.3.I.1.b., to reduce rear open deck setback from 25 ft. to 17.5 ft. for new single-family residence (RA-20 Zone). Jowdy disqualified himself from 10-27, 10-28, 10-29, and left the dais. Acting Chairman Herb Krate introduced this petition as Mike Mazzucco signed in and Joe Putnam set up the plans on the easel. The next three are identical, although we have to act on each one separately, Krate said. Dufel asked the applicant to give us an overview. I've driven through there, and I presume that that's where these are going, and I'm concerned that these will be in keeping with the neighborhood. Mazzucco identified himself. With us tonight is Joe Putnam and Syd Rapp. The lowest parcel has a variance request for coverage. Referring to the map on the easel, Mazzucco described the three lots. We are combining three lots. Krate said so you are taking that; show me the three lots that we are looking at. Mazzucco complied. Dufel asked where is the stream? Mazzucco said after combining the lots, the lot on Lois Street is the smaller one. You can't reasonably construct a house at that depth. Syd did a great job in keeping in harmony with the rest of the lots, Mazzucco said. All of the lots are 80 feet. They are modest raised ranches. They are four-bedroom with a garage under. Dufel said the basement is at grade or partly into the grade. Mazzucco said that's correct; we tried to work with the grades. Dufel said each one gets a deck in the back. I would hate to think that in a while these will come back asking for front porches, Dufel added. Mazzucco explained the front entry ways for the houses. Dufel said so we don't need any strange turnarounds. Dufel summarized the number of variances being asked. Krate noted that the only size variance is on 10-27. Krate and Dufel discussed the number of variances. Dufel said you've asked for 12. You only need 10. Putnam discussed the square footage of the homes. Rod Moore asked about affordable housing. Dufel asked how many permits will you have to ask for, and Mazzucco enumerated the permits that will be required, including the water line, road opening, City water and sewer; this is not a subdivision. Dufel said then there will be one empty lot on Margerie Street. Mazzucco replied correct. Moore asked can you give me a ballpark (figure) on what these might sell for? Putnam replied in the high \$300,000 range. Mazzucco said on Syd's map he just shows the houses laterally, just to give it a little more space, especially on 6 Margerie, which Mazzucco explained, making kind of a buffer between the homes. Dufel said the question I have on some of the variances is that we must consider the minimum variance necessary. Why are these not three-bedroom? Putnam replied the fourth bedroom is for market value, to accommodate families. Mazzucco said he feels this is more in tune with the neighborhood. Dufel said I would accept that. The fourth bedroom will be on the upper level, Putnam said. Krate asked is there anyone who wishes to speak for or against this application. A man in the audience spoke up saying I'm not opposed. And the Commissioners told him you have come up. My name is Sidney Almeida; I just have a concern that I'd like to address: traffic. Lots of people use those roads as cut-throughs, high speed, Almeida said. Is there anything that can be done to slow traffic down? Krate replied that really does not come before us; not what we are dealing with here tonight. We have no control over that. Sean Hearty said I can refer him to the proper people to discuss speed bumps. Sean said remind me Monday, Pat Lee. It would be beneficial to the applicant too, Sidney Almeida said. I would also like to add, another house on Margerie was also built with variances. Mazzucco gave out additional plans. Krate asked is there anyone

who wishes to speak for or against this application. Mr. Jowdy came back up to the dais. Chairman Jowdy announced we are going into the voting session at 8:23 pm. Krate read the **10-27** request, and made a motion to **approve** it per plan submitted. I have one question. Dufel said the overall plan was shifted. Hanna seconded the motion, along with Rod Moore. The motion carried unanimously.

#10-28 - Marlo Development Co., LLC, 6 Margerie St. (H11175, H11174, H11173, portion H11172), Sec. 4.A.3., to reduce minimum front yard setback from 30 ft. to 20 ft.; to reduce min. rear yard setback from 35 ft. to 28 ft.; to reduce rear open deck setback from 25 ft. to 17.5 ft. for new single-family residence; Sec.3.I.1.b., to reduce rear open deck setback from 25 ft. to 17.5 ft. for new single-family residence (RA-20 Zone). Moore made a motion to **approve** per plan submitted to reduce the minimum front yard setback from 30 ft. to 20 ft., and to reduce min. rear yard setback from 35 ft. to 28 ft.; to reduce rear open deck setback from 25 ft. to 17.5 ft. for new single-family residence. Hanna and Sibbitt seconded the motion. The motion carried unanimously.

#10-29 - Marlo Development Co., LLC, 8 Margerie St. (H11170, H11171, portion H11172), Sec. 4.A.3., to reduce minimum front yard setback from 30 ft. to 20 ft.; to reduce min. rear yard setback from 35 ft. to 28 ft.; to reduce rear open deck setback from 25 ft. to 17.5 ft. for new single-family residence; Sec.3.I.1.b., to reduce rear open deck setback from 25 ft. to 17.5 ft. for new single-family residence (RA-20 Zone). Joe Hanna motioned to approve the request to reduce minimum front yard setback from 30 ft. to 20 ft.; to reduce min. rear yard setback from 35 ft. to 28 ft.; to reduce rear open deck setback from 25 ft. to 17.5 ft. for new single-family residence; and to reduce rear open deck setback from 25 ft. to 17.5 ft. for new single-family residence. Sibbitt seconded the motion. The motion carried unanimously at 8:39 pm.

ACCEPTANCE OF MINUTES: April 8, 2010: Motion to accept the 4/8/10 minutes as presented by Krate. Second by Sibbitt. The motion carried unanimously at 8 pm. April 22, 2010: Motion to accept the minutes as presented by Hanna. Second by Sibbitt. The motion carried unanimously. May 13, 2010: Motion to accept the minutes as presented by Krate. Second by Sibbitt. The motion carried unanimously. May 27, 2010: Motion to accept the minutes as presented by Krate. Second by Sibbitt. The motion carried unanimously.

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR JULY 22, 2010, at 7 pm.

ADJOURNMENT: Motion to adjourn by Joe Hanna. Second by Michael Sibbitt. The motion carried unanimously at 8:44 pm

Richard S. Jowdy, Chairman