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DRAFT MINUTES – REGULAR MEETING
July 22, 2010
COMMON COUNCIL CHAMBERS
7:00 PM

ROLL CALL: Chairman Jowdy called the meeting to order at 7:00 pm. Present were Chairman Richard S. Jowdy, Herbert Krate, Joseph Hanna, Gary Dufel, Alt. Richard Roos. Absent were Michael Sibbitt, Alt. Rod Moore. Staff present were Sean P. Hearty, Zoning Enforcement Officer, Patricia Lee, Secretary. Chairman Jowdy and Herb Krate introduced tonight's agenda. Krate made a motion to hear tonight's listed applications. Hanna seconded the motion. The motion carried unanimously. Jowdy explained the procedure for Public Hearing to the audience.

CONTINUATION OF PUBLIC HEARINGS:

#10-15 – CONTINUED: 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). Chairman Richard Jowdy introduced this continuance at 7:01 pm and read the requests. Attorney Michael Kaufman introduced himself. Paul Fagan and Mr. Douglas Mann are present, Kaufman said. I will hand out some revised surveys showing the easement as requested. Krate asked Kaufman to submit the revised map and the commissioners reviewed it. Kaufman said it has not been filed yet, until we see the outcome of the variance. We intend to file it if the variance is granted. Krate said certainly. Dufel and Krate discussed what the document states. Jowdy asked is there anyone who wishes to speak for or in opposition to this application. During the voting session, Jowdy reviewed the shown easement. Herb Krate made a motion to **approve** 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, per plan submitted. We asked the applicant to come back. He did so, and he brought new plans, Krate continued. This variance would require that the easement be reviewed by Corporation Counsel. Hanna seconded the motion, and it carried unanimously at 8:35 pm.

#10-25 – CONTINUED: Roberto F. Marquez, 9 Stevens Street (H14265), Sec.4.D.3., to reduce minimum front yard setback from 20 ft. to 7 ft. for proposed porch roof overhang (RH-3 Zone). Jowdy introduced this at 7:05 pm. Allen Raiano signed in and identified himself saying Mr. Marquez is here with me tonight. You guys wanted to get out and take a look at the property. Raiano distributed his photographs, same as he handed out at the last meeting photos. Raiano said he'd like to replace the awning that he cannot operate with a roof overhang, a couple footings, a couple posts. His hardship is the house is so close to the

street. Probably 55% of the homes are too close to the street, Raiano said. Krate mentioned the clutter there. Raiano said Marquez may take down the existing cover, if the commissioners order it. Dufel said there is a porch. Raiano said all he's looking for is an overhang. Jowdy said he could get an electric awning. Hearty said an awning is considered part of the structure. Dufel noted the house is for sale. I have trouble granting a variance for a house that is for sale. Raiano replied it might not sell for two years. Krate said I don't see a real hardship. We're here to grant hardship. There's no reason for it, and right now it's a mess. And I tend to think it won't get any better with a roof, Krate added. Jowdy and Raiano discussed the clutter in the front, and the board stipulating that he clean up the cluttered mess. Jowdy and Raiano discussed this saying if you mimic the porch next door; the fence and all the other junk around it. Krate said to Raiano look at this. Your pictures tell the whole story. Raiano said I agree with you, and pointed out another house even closer to the street. Raiano said both of his neighbors gave letters in favor of his building this overhang. Roos said it sounds like this is turning into a shed. Raiano said it's for him to get from his door to his driveway without getting wet. Roos said my concern is the clutter stays there even if the overhang is granted. Hanna asked why are you going 8 feet out? That's what the customer requested; the size of a piece of plywood, Raiano said. Hanna said you are supposed to go out the other way. Roos and Raiano discussed the size. Roos and Hanna looked at a photo. Jowdy asked is there anyone who wishes to speak for or in opposition to this variance request. Raiano submitted the neighbors' letters. For the record, the neighbors are in favor, Jowdy said. Thank you, Jowdy said. Jowdy said the other houses are different. Jowdy listed all the options the commissioners have with this. Dufel pointed out he already has a porch, and he's asking for a significant setback. Krate added and we'd have to ask Sean Hearty to go out there. Hearty said I don't know how you'd address the clutter. Krate made a motion to **deny without prejudice** the request to reduce minimum front yard setback from 20 ft. to 7 ft. for a proposed porch roof overhang. I cannot come up with a hardship here, and I'm not sure given the track record of this house, Krate said. Hanna seconded the motion, and the motion carried unanimously.

NEW BUSINESS:

#10-31 – Emile G. Buzaid, Jr., 2 Petersons Lane (B08058), Sec.8.A.2.c.(4)., to reduce bottom edge of excavation or fill from 5 ft. from property line to 0 ft. from property line for construction of stone wall fence & driveway (RA-80 Zone). Chairman Jowdy introduced this new business at 7:14 pm. Attorney Emile Buzaid (son) III took the microphone and said he is representing my parents. We hope to seek relief from a rule to allow us to install a 12-inch footing for a stone wall. It is not a retaining wall. We are not going to change any grades. This is just digging a trench in the ground so the wall will have a solid foundation. Dufel asked are you digging just on your property? Is there a house on lot 8? That house is further to the southwest, Buzaid said. Dufel asked the age of the house. The answer was four years. Jowdy asked about the access way and who's that for. Buzaid said that's for the neighbor. Krate said and you're only going down a foot and a half. Roos said you're extending the driveway to the pool house. It's been approved. We have not done it yet. Jowdy asked about the vicinity of the access way and what it serves. The access way will access the house and the garage, Buzaid said. Krate said, "Relax" to Buzaid. Dufel said I do have another question: is that access way being used today. Yes, it's goes to the neighbor's driveway. Dufel and Buzaid discussed snow plowing. Dufel said I've seen where walls on property lines and the plows come along. Buzaid said that's another reason why we need the excavation. It's a decorative piece. Jowdy and Krate and Buzaid discussed the only reason they have to come to us: just for permission to do the foundation for the wall. Any other questions, Chairman Jowdy asked. Chairman Jowdy asked then if there was anyone in favor or in opposition to this application at 7:21 pm. Neighbor Dean Lewis came

forward and said I am one of the neighbors. Right; that's my driveway. I have pictures I'd like to submit to give you a better idea of this. It's actually lot 7. Lewis pointed to where his house is on lot 7. It's built? Buzaid said it's just a pile of rocks. Dufel said to Lewis and Buzaid you can debate outside. Lewis stated his objections: that stone wall is in my driveway. The commissioners and Lewis discussed the pile of stones, and your driveway encroaches on his property. The stone wall that crosses the property; the back yard is just a pile of stones. Krate said to Lewis we need to know what your objection is. Lewis read the hardships stated, and responded to two issues. Krate said he's permitted to put a wall on the property line. He can put an 8-foot fence on the property line. I'm just addressing what I don't think is his hardship, Lewis said: maintenance, I don't see that this is an issue. On picture 1, he's already put up pillars on the line. Krate said if he dug a footing, that's what he needs a variance for. Would you be happier with a 2-foot wall, or an 8-foot fence? Hanna concurred with Krate. Lewis said I would be just as happy if he put a pile of stones along his driveway. Chairman Jowdy asked what hardship is created for you if he puts in a footing? Lewis said he has to prove his hardship; he's creating this hardship himself. Jowdy said it could fall on the other property. Hanna, Dufel, Chairman Jowdy, and Lewis discussed wall options; how it looks, the change to runoff. Krate said to Lewis your drainage argument falls through. I'm going to call it what it is: you're probably pissed off that they made you move your driveway. The commissioners voiced their views on this among themselves. Lewis discussed the minimum variance he needs to have reasonable use. Krate: he does not have to be five foot off the property. There was excavation done, which is why there is a Cease & Desist Order on the property. And he created the hardship. Chairman Jowdy said he's allowed to come back up to make his rebuttal. OK, anyone who wishes to speak for or against this application? Dufel said I have one or two questions to ask the applicant. Buzaid came back to the mic. Buzaid said I probably stay there one to two nights a week, in response to Dufel. I don't know what your background is, Dufel said, but I find it detestable that we are put in the middle of two neighbors who don't get along at all; am I reading it wrong? Buzaid said let me take a step back. We want to make this the best it can be. Dufel and Buzaid argued. This is not about zoning; this is about property lines. You started building something here; that was wrong. My parents were told they did not need a permit, Buzaid said. Dufel said I'm calm. Krate asked Hearty does it require a building permit to build a 2-foot wall. Hearty explained why the original regulations were put in there; it has to go in front of the ZBA because of excavation within five feet of a property line. Buzaid said I agree. We don't have to show a hardship to put it right there. This is for the benefit of everyone; this is landscaping, and I am a lawyer, Buzaid said. Dufel asked are you practicing law tonight before this commission? Buzaid replied yes. Lewis has every right to voice his objections tonight, Krate said. Rick Roos concurred that safety issues are very important to this board. There's obviously a dispute here. Buzaid said there is absolutely no dispute. Krate said I guarantee you, if you came over here (on the plan), you would not be here tonight. Buzaid said my dad would like to speak, please. Emile, Sr. came forward and signed in, identifying himself as the older Buzaid. There was one before me. I appreciate that this is volunteer board the elder Buzaid said. This is a landscape, a small project. This is not motivated by any borderline issues. Let me give you a little history about why we are here tonight. Tim Rosati came up and said stop. We said absolutely we will stop, and Rosati left. A half hour later our phone rang, and Sean Hearty said the spirit of this regulation is for something totally different. What you're doing is not within the spirit of this regulation. Please, apply for a variance. It was highly recommended that we go through this process, pay the fees, file all the paperwork, and we are here tonight to please the City, Buzaid said. I personally didn't want to come. I can put it in without a footing. We should like to do things as nicely as possible, for the enhancement of everyone. Jowdy asked a question of Hearty about walls being dug; a solid barrier, the frost, the footing, is that considered excavation? Sean Hearty replied yes. The

only thing we wave is a fence. If you are removing soil, that's what this regulation is about, Hearty said. Dufel said I can't see any danger coming out of this. Hearty explained I asked the Buzaid's to come in front of the board and ask for a variance. Mr. Lewis came back to the mic and said I have an additional photo I'd like to submit. You can see that there's a clear slope. By putting in this wall, it does indeed change the grade of that property. Dufel and Krate discussed the grade. Krate said if the title company is relocating your driveway, what is your concern? Lewis replied by having my friend's car towed. It is a blatant violation of the zoning regulations. I abide by them, Lewis said. It affects the safety: if he piles it on the driveway, loosely, without the excavation, for the peril of my property. Krate said he can make it with concrete without the ditch. You have recourse there. He's not changing grade. He's putting up a wall. If that happens to channel water onto your property, you have recourse in the courts, Krate said. All we are dealing with is the ditch. Lewis said I haven't heard a hardship. Krate said it was not the intent of the regulation, so in effect the regulation caused the hardship. His father did in fact give us the hardship when he was talking to Sean. Krate discussed the intent of the regulation; this is not a retaining wall. All they are asking is to put in a shallow footing, to put the wall on a firm footing. His hardship is that this regulation was not designed for a wall built on grade. I'm answering as best as I can. I'm sorry you guys are head to head on this. Jowdy said we have been given a hardship: the literal interpretation of the law can create the hardship. Jowdy explained that is the hardship in itself. Krate discussed why the rule was added, for excavation that is too onerous. Lewis asked what's the hardship if it is only decorative? I'm just asking a question. He can do this wall with or without this trench. Come hell or high water, he's not moving that five feet, Krate said. You're here for the wrong reasons then, Krate said to Lewis. Hanna asked Lewis is this your house? This is your garage? Where does your driveway drain? Lewis answered from right to left. Hanna said your driveway drains on his property. How can you complain that the drainage affects you? Lewis explained the grass, the slope from the street to my house; a significant grade down. Hanna said that can improve the drainage for you and for him. The wall will have crushed stone on the bottom to drain, Hanna said. Lewis said I don't know if it was done in that way. I can't comment on that. Lewis said I have no more questions. Is there anyone else in opposition, Jowdy asked. We'll take everything into consideration. Later in the voting session, Jowdy said the code does cause the hardship at 8:38 pm. Krate clarified the intent of the regulation. Dufel said I don't want a drainage problem created. Is there a way we can phrase this? There is a point discharge rule in the code, Sean Hearty said to Dufel. Reiterate that in the motion, Dufel asked. Krate made a motion to **approve** the request to reduce the bottom edge of excavation or fill from 5 feet from property line to 0 feet from the property line for the construction of stone wall fence along the driveway; the excavation will be no more than 12" deep to support a stone wall. It is and should be a part of this variance that the applicant realizes that he cannot change the runoff characteristics. Hanna seconded the motion. The motion carried unanimously.

#10-32 – Anthony & Vivian Chiappinelli, 22 Shore Road (K02112), Sec.8.B.1.b.(3)., to increase portion of driveway grade from 12% to 19% (RA-20 Zone). Jowdy introduced this application. Anthony Chiappinelli introduced himself and signed in at the microphone. Good evening, Chiappinelli said. I appeared before the board in 2008 to get relief from a side yard setback and a grade variance, and he explained the easement that he had granted to the City, for the improvements on Shore Road. He gave the history of the drainage, the pipe he installed at his own expense, and the easement given at no cost to the City. The City engineer, after my first appearance, was not happy with a five-foot encroachment for the garage, so Sean Hearty and the engineer and I met, and we went back and forth with the City, revisions, for several months. The culmination was the engineering department denied it. We withdrew our application at that time without prejudice. The driveway now becomes

necessarily shorter, so the slope becomes much steeper than we had originally planned, Chiappinelli said. Dufel asked about the previous proposed garage location, and Chiappinelli explained why it's changed. It's a function of distance over elevation. I'd like to submit, as I continue, some photos of some neighboring properties. Krate said this is "driveway day". Dufel said it's hard to get an appreciation of a slope from pictures. Chiappinelli said they suggested and we complied with a driveway permit. Now we park up on the road; on our property but off the road. The house was completed in 1950. We bought the home about 9-1/2 years ago, and we were getting flooded out in heavy rains. He described the City pipe replacement. The grade at the road level is at elevation 470. At the base of the driveway it would be around 458. The street level would be 470. The house is down off the street by 15 feet. Krate said would you be willing to put up a retaining barrier, so that no cars could keep going. Yes, Sir. I'm talking about a timber or metal stop; 8 x 8 timber. It's got to be strong enough to stop a vehicle, Krate said. I might be able to get it down to 18%, but we want to maintain a good site distance as you enter Shore Road. We want to do the same thing at the base of the driveway, in that turnaround area. Krate said what I would be looking for would be something that would run like this, if we were to make that a provision. Chiappinelli said I do live there four seasons. Dufel asked Hearty can you shed any light on their negotiations that fell through? Hearty said they don't like trees or anything in the right of way. Dufel discussed City liability by forcing a 19% slope. What's worse: an encroachment or a grade? One has to grant some relief if the City has put this to him. Dufel said I have no further questions. Chiappinelli said I listed several properties where the board had granted grades, and I appreciate the board's efforts. Jowdy asked is there anyone who wishes to speak for or opposition to this application at 8:09 pm. Jowdy reviewed what the applicant is looking for in the voting session. I know the road very well, as we all do. Krate made a motion to **approve** the variance to increase a portion of driveway grade from 12% to 19% with the **stipulation** of a guard rail. I marked off an area on one of the plans; a rail sufficient to stop an automobile, per plan submitted. Hanna seconded the motion. The motion carried unanimously. Sean, how am I going to test if a rail is sufficient to stop an automobile? Dufel said build it with complete auto safety in mind. Sean joked we have crash test dummies downstairs. Dufel said I have grave reservations.

#10-33 – Guy & Karen Clements, 234 Middle River Road (C07011), Sec.4.A.3., to reduce min. side yard setback from 40 ft. to 18.5 ft. for residential addition (RA-80 Zone). Jowdy introduced this item as the Clements' signed in. Chairman Jowdy said we have a letter from 236 Middle River Road, Elyse L. O'Donnell at 236 Middle River Road. Jowdy read the neighbor's letter into the record, which detailed the previous history in 1987; the letter is in opposition to this variance, and the age and medical state of the writer. Karen Clements said the building that she is referring to, she approved when my parents put those plans through; the two car garage that is existing now. Dufel asked what's your variance request? Jowdy said she's relating to something that is not before us tonight. Karen Clements said my parents would like to build a utility room and a dining room. There's no deck. They will be putting a deck there. Krate noted that a portion of the existing deck will be removed. Karen Clements and Krate agreed. Dufel asked what are you putting in? Oh, a room. Karen Clements said now that we are all on the same page. Dufel said so the house is going where the deck was. Dufel discussed the height, the foundation, and following the existing floor plan. Krate said I thought you were brother and sister. Dufel asked what is your hardship. My Mom has no dining room to entertain for the holidays. Krate said this is a grandfather in training. Karen said there's no basement, so storage is really lacking. Dufel and Karen discussed when it was built, prior to zoning regulations. Rick Roos asked you will be using the existing footprint? Mr. Clements described the lines that the proposal will create, and all convened at the panel to review and discuss the addition. The framed

building and the shed will stay, Hanna confirmed. They discussed the property line, and what the neighbors won't see. It's a 28 ft. by 14 ft. addition. Chairman Jowdy asked are there any other questions? Is there anyone who wishes to speak for or against this application? Thank you. Jowdy reviewed the request, parallel with the house, in the voting session. Krate made a motion to **approve** the request to reduce min. side yard setback from 40 ft. to 18.5 ft. for residential addition. It's a pre-existing nonconforming house; it's replacing an existing deck that was there previously; per plan submitted. Hanna seconded the motion. The motion carried unanimously.

#10-34 – Segun Adebambo, 2 Seeley St. (I16196), Sec.4.A.3., to reduce min. side yard setback from 8 ft. to 1.5 ft.; Sec.8.A.2.c.(4), to reduce from min. 5 ft. to 0.0 ft. from bottom edge of excavation or fill to property line for residential addition (RA-8 Zone). Krate asked how do you pronounce your name. Paul Stock and Segun Adebambo came forward. The commissioners reviewed the plans. Krate said I don't get this. You're showing one foot on the plan. We have to have plans that agree; we have to have this plan agree with what we advertise. Or you have to get us new plans, re-advertise or continue this showing 1 and a half feet. Dufel asked do we want to listen to get a feel for it? Krate explained the two variances that he has to come in for, as we found out tonight. Paul Stock said I don't want to argue with anybody. We can continue this, and you have to come in with the proper plans, Krate said. We'll continue this to the 26th of August. There's not enough business for an 8/12 meeting. The last three meetings you did not have as there was not enough business. Unfortunately, we can't do anything. Sean Hearty and the commissioners and the applicant discussed "per plan submitted". Krate said we're increasing it, not reducing it. Dufel said just not per plan submitted. The commissioners all discussed this at 8:29 pm. Let's hear it, Krate said. There's a family of five living in a two bedroom home, Stock said. They have grown out of the house. It's a small two bedroom. It was built in 1800. Krate said to the applicant talk to me about the excavation as I now found out; 43 inches down for a footing. No retaining wall; it's a flat lot. Stock described the neighborhood, the narrow lots, the letters submitted (3) in agreement from the abutting homeowners, Caruso, Ridgeway, and Tartaglia. So there's a wooden fence. We'll put it back up as soon as we're done. Dufel and Stock reviewed what exists. And you can't move it over at all, Dufel asked. It's just not going to line up, so he can't move them over any further. Give me five minutes; I'll come up with another question, Dufel said. Is there anyone who wishes to speak for or against this application, Chairman Jowdy asked. Thank you very much. Jowdy read the requests in voting session later on. Krate made a motion to **approve** 2 Seeley Street to reduce the min. side yard setback from 8 ft. to 1.5 ft.; Sec.8.A.2.c.(4), to reduce from a min. of 5 ft. to 0.0 ft. from the bottom edge of excavation or fill to the property line for a residential addition, to zero for a footing only. This plan is subject to a new correct plan being submitted, and effective upon submission of that plan, Krate added. Hanna seconded the motion, and it carried unanimously. (New plan submitted 7/23/10).

ADJOURNMENT: Motion to adjourn by Krate. Second by Hanna. The motion carried unanimously at 8:47 pm.

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR **August 12th or 26th, 2010**, at 7 pm.