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**CITY OF DANBURY**  
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ZONING BOARD OF APPEALS  
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**DRAFT MINUTES**

**April 14, 2011**

CAUCUS ROOM and COMMON COUNCIL CHAMBERS  
7:00 PM

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Chairman Richard S. Jowdy called the meeting to order at 7:07 pm in the Caucus Room. Present were Jowdy, Michael Sibbitt, Herb Krate, Joseph Hanna, Gary Dufel. Absent were Alternates Rick Roos, Rodney Moore. Staff present were Sean P. Hearty, Zoning Enforcement Officer, Timothy Rosati, Assistant Zoning Enforcement Officer, Patricia Lee, Secretary. Jowdy explained to the audience the procedure for Public Hearing. Herb Krate read the list of tonight's applications to be heard.

**# 11-04** – CONTINUED from 2/10/11: Kelly Boa, 18 Boulder Ridge Rd. (I05101), Sec.8.B.1.b.(3)., to increase max. allowed driveway grade from 12% to 17.9% for portion of driveway (RA-20 Zone). In the Caucus Room, Joseph Boa stood stating he is speaking for his niece Kelly Boa who is away on business. Niece Kelly bought the existing home and did some remodeling. The house is too close to the road. The variance request is for a small portion of the driveway to exceed a 12% grade. Visibility is not an issue; this is the last house on the road. Safety is not an issue, Boa said. This is the only way the driveway could be done. Krate said there's a For Sale sign on it; is it a spec house? Boa said they've been unable to sell it, so she decided to rent it. Dufel said when I was out there it was an ice rink, and I came away frightened. You're a builder, Dufel said. Boa said he was not a builder. Dufel said the property owner owns both properties out there. The second house is the same distance. You could have put the garage elsewhere. Dufel continued, this really concerned me. You could have done something. Boa replied I was honestly not aware. Dufel said it's unsafe. Dufel said there's a reason for the City of Danbury 12% grade rule. I've never seen a request for this elevation, Dufel said. Krate asked did the board go out and look at it? (3 did an on-site visit). Krate said this is a troubling situation. What if there are renters in there who are unaware, exposing the City of Danbury to problems, as it's right on the road. It hits the road at a 17% grade. Krate explained to Boa what the board usually asks for with a steep grade. Jowdy suggested an easement using the property next door. Boa repeated we were not aware of it. Dufel said this is not a business we can be in. Boa said the Fire Marshal has no problem with it. Krate said they would not have to drive a truck up there (if there were a fire). In subfreezing weather, it's problematic, Krate said. That's why I asked for the on-site at the last meeting. Dufel, Jowdy, Krate and Boa discussed other possibilities. Boa said I don't see how. Dufel said maybe you've got to get an engineer out there. Boa said I asked forgiveness because we were not aware of the problem. Jowdy said get an engineer's opinion. Krate said we will have to vote on it tonight, deny it without prejudice. Boa explained why Michael Mazzucco recommended the plan as he did. Later, during the voting session in Common Council Chambers, Krate made a motion to **deny without prejudice**; Krate said to get engineers to look at it and come back. Sibbitt seconded the motion and it carried unanimously.

**# 11-06** - Neil R. Marcus, Esq. / White Street Duchess, 276-280 White St. (K13031), request for approval of location for sale of gasoline, C.G.S. Sec. 14-321 - 14-324 as revised and amended through 2010. (CG-20 Zone). Attorney Marcus took the microphone at 7:33 pm, after the computer rebooted in the Common Council Chambers, and he discussed the rising price of gas per gallon. The reason this is back on your agenda, is due to an oversight at the meeting on November 18, 2010, and he read the original wording of the request. At the 11/18/10 ZBA meeting, the gas station location approval was not on the agenda, due to a rare clerical error, Marcus said. He described the history of the application, and apologized for any inconvenience. We'd like to start the project and we need this for the bank. Planning and Zoning have approved it; Planning on March 1, 2011. We're here really on a technicality. Pat already sent out the letter. I'd like you to act tonight to approve the location approval for the sale of gasoline. Dufel said I was not at that meeting. It will still be a Duchess? A convenience store and a gas station, Marcus replied. Dufel said I read the minutes; a lot of minutes. Jowdy said the board will let you know of our decision. In the voting session, Krate made a motion to **approve** 11-06, a request for approval of location for the sale of gasoline, C.G.S. Sec. 14-321 - 14-324 as revised and amended through 2010. The only thing that was not done because a piece of paper was missing. This is just a formality, Marcus concluded. Hanna seconded the motion. The motion carried unanimously.

**# 11-07** - Elite Rentals, LLC, 9 Williams St. (I15086), to appeal for the correction of an alleged error in a decision of the Zoning Enforcement Officer who on 2/9/11 issued a Cease and Desist Order (RMF-4 Zone). Chairman Jowdy introduced this item at 7:38 pm. Neil Marcus, Attorney, identified himself again for the record. Marcus said I ask that you pass this over until the next meeting. Elite Rentals was not notified. I can't blame Pat for this one. We've agreed. Sean will meet with me. Hearty said the current structure is vacant due to a fire. As a side note, the Cease and Desist order was given. Chairman Jowdy asked is there anyone here in favor or in opposition to this issue at 7:39 pm. Krate said it's not on the floor; we should hold all testimony. Billy Hogan signed in at the podium and then left the room. **Continued** to May 12, 2011.

**# 11-08** - Thomas W. Van Lenten/ Newbury Renaissance, LLC, 23 Scuppo Rd. (F14068), Sec.4.B.3., as amended by prior variance, on Building 5, to reduce side yard setback from 15 ft. to 13 ft.; to reduce front yard setback from 16 ft. to 14 ft. for roof overhang (RMF-4 Zone). Chairman Jowdy introduced this application and read the dimensions in question. Nicholas J. Gazetos, Executive Vice President, Chief Lending Officer, Savings Bank of Danbury, came forward, identified himself, and said Tom (Van Lenten) is not here. This is the old High Ridge property that was gutted. The banks have built out the property, but during construction we found out that GRC had not made a correct calculation, on building 5. The project is pretty much built out at this point. Krate said so you are the lucky owner. Dufel asked can Sean (Hearty) verify that they built the building according to regulations that were in play? Hearty said this was obviously missed; it is only two feet. Dufel said nobody noticed this ripple. Chairman Jowdy asked is there anyone who wishes to speak for or in opposition to this variance request at 7:43 pm. Later, Jowdy reintroduced this in the voting session at 8:03 pm. Krate said let's just clarify: the overhead came into discussion because of the Fire Department, who put them in noncompliance. Krate made a motion to **approve** on Building 5, to reduce side yard setback from 15 ft. to 13 ft.; to reduce front yard setback from 16 ft. to 14 ft. for roof overhang, per plan submitted. It's in keeping with the area, and is not a detriment to the welfare, health and safety of the neighborhood. Hanna seconded the motion. The motion carried unanimously.

**# 11-09** – Jose M. Albuquerque, 36 Sheridan St. (J14154), Sec.8.A.2.c.(4), to reduce minimum for bottom edge of excavation or fill from 5 ft. to 0.0 ft. for driveway (R-3 Zone). Mr. Luis said he is speaking for Mr. Albuquerque. The reason they want to open it up a little bit, because it's too tight, especially in the winter. They hit the side of the house and the wall. It's hard to back out; it would be better. Chairman Jowdy said you are widening the driveway. You need a retaining wall. Luis replied about 3 feet; not big. Krate, Dufel, Chairman Jowdy, and Luis talked about the existing building and driveway. Dufel asked the house is there now? Luis said yes. Are you doing anything to the building, or just the driveway? Dufel said I am always interested in the way the land moves. Dufel asked about the placement of the house. Luis said I brought some pictures. Oh, good, great, said Dufel. Hold on here. The property next to it is higher, Dufel said. Okay. Luis said yes and explained to Dufel. That's what I wanted to understand, Dufel said. Jowdy said thank you very much. Jowdy asked is there anyone here who wishes to speak for or in opposition to this application? Jowdy said the board will let you know its decision. Luis said thank you. Jowdy then introduced the next application, ZBA # **11-10**, The Holiday Inn. (See ZBA # **11-09** discussion below). I'm sorry, I was late, an unidentified audience member in the first row said. (This speaker was Raymond C. Lubus, Attorney at Law.) I represent the abutting neighbor. Krate said to him we cannot take in discussion now. Each variance is opened and closed; so we can't now take anyone on. Jowdy said we have not closed the Public Hearing until the end of the meeting. I don't know the legality of someone coming in late. The speaker said until the Public Hearing is closed I believe it is still open. Hearty, Lubus, and Krate discussed his right to comment on any issue that is on the agenda. Krate said I don't want to set a precedent. We should consult Corporation Counsel. He's the attorney for the opposition, Hearty said. Jowdy said that ends all the applications for this evening. Attorney Lubus said, Chairman, I'm sorry I arrived late. I was on the one just prior to this, on Albuquerque. Lubus said I'm in opposition. Hearty said, Chairman, the one you already moved through. Hearty, said, oh, okay. Lubus said I represent the abutting neighbor. I just have some pictures I want to submit that show just how close. Krate said we cannot take in evidence now, we can't accept it. I'm sorry. Each variance is opened and closed and we move on to the next one, Krate said, and we can't now take anything on. Lubus argued that he could submit evidence. Jowdy explained the testimony procedure. Lubus said I'm a lawyer. Until the Public Hearing is officially closed, it's still on the agenda. You have the right to close the Public Hearing on each one, after you entertain a vote. If you have not done so, this still is a Public Hearing. Hearty said I think also that, Mr. Chairman, that when you actually say is there anybody in favor or anybody in opposition, and you close and you move on to the next case, I think there is also an argument there, that that variance has been held and closed. I'm not too sure; I don't know, Hearty said. Krate asked Lubus you are an attorney? You were hired? Lubus said I can't be in two places at once. Krate said that's not my problem. Lubus said but it is a Public Hearing that wasn't officially closed and everything that's on the agenda. Krate said no, we really can't and I'll tell you why. If a petitioner comes in, does a petition and leaves, now we've set a precedent where people come forth against it without the petitioner having the opportunity to rebut that. Lubus said and out of fairness, I would ask that you continue that portion of the Public Hearing of that meeting so that he could be notified so it could be determined. That's an appeal to the Superior Court, Lubus said. Lubus, Krate and Jowdy discussed the issue speaking simultaneously. Krate said we don't want to set a precedent like that. Chairman Jowdy said I think we should get an opinion from Corporation Counsel. I don't know the answer, Jowdy said. Hearty said I agree, he's got; he's the attorney for the opposition, but I don't know. Dufel I don't feel responsible for the attorney who is -- ineligible --. Lubus said, out of fairness to the petitioner, I would request; we would come back so that we can address the concern. And there would be notice. Hearty said I'd like to get an opinion from Counsel on this, gentlemen. Jowdy said yes, I agree. Dufel and Jowdy discussed what the question is. Hearty said that would be my question to the Counsel, the Corporation Counsel. That's

another legal question too: if we go ahead with continuing it, do we have to reopen it technically to hear new information. It's just a quagmire we're getting into here, Hearty said, so. Jowdy and Hearty agreed that Hearty should contact Corporation Counsel. Jowdy and Dufel spoke simultaneously. If Corporation Counsel, Krate said, finds that we should not take information after a particular petition has been, in effect, closed, when we ask is there anyone for or anyone opposed, then we will probably take a straw vote at that time. Hearty said I think we understand the commissioners' mind and we'll talk to Counsel. I recognize, Lubus said, that I need to -ineligible - however, if the Public Hearing isn't officially closed, it is still open and we can continue it. I recognize that the petitioner is not here and, out of fairness, it would not be fair to make comments without the petitioner here, since they have left. However, it is still open and can be continued to the next meeting with the petitioner here, and I can make some comments on behalf of the neighbor. Jowdy discussed what happens when I ask if there is anyone in opposition, and no one appears, unless I officially say this hearing is closed, is it technically - ineligible- session, vote; we have to find out. Hearty said I will pose that question exactly. (Several commissioner speaking simultaneously.) We'll table it, Jowdy said. Lubus said thank you. Okay, so, Jowdy said, we'll take all that into consideration. Hearty said we have the Holiday Inn. We will just **table** it until we get the opinion. The voting session began later at 8 pm. Dufel recommended that we hold our vote. Krate said we are holding our vote. Krate made a motion to table. Jowdy moved the discussion to # **11-04**, Kelly Boa, for that vote.

# **11-10** - DXNCT - Holiday Inn, Lance Herman, Agent, 80 Newtown Rd. (L11029), Sec.8.E.3.a.(1).(b)., to increase allowed height for wall sign from 30 ft. to 59 ft. (CG-20 Zone). Chairman Jowdy introduced this application. Lance Herman signed in at 7:46 pm, saying I'm signing in. Good evening. We did not enjoy being on the cover of the paper. Krate said this is facing which street. This is facing Eagle Road, Herman said. Lance Herman introduced himself. The Holiday Inn brand is going through logo and signage changes, as well as other improvements in the hotel. New bed, sheets, pillows just went in this week. We are changing our pylon sign. We are going to be taking down the large building sign, and we want to put up a new sign on the Eagle Road face of the building. There is actually a fifth floor, one room, and the sign will be smaller in size, more contemporary, and more in keeping with the new logo. I think it went up in 1983. Krate joked about Howard Johnson's. The new pylon sign has a smaller in size, more contemporary, and is five feet lower than the current sign, Herman said. The letter block, that's coming down. Dufel asked does that meet all the City codes now? There is a variance from many years ago, Herman said, from the early '80's. Dufel said so you are not requesting a variance you never had before. You are trying to do some upgrading. Lance Herman replied I guess you could phrase it that way. Krate said we will ask for the old sign to come down, as long as you have no problem with us making that a condition. Herman said no, in fact it is scheduled to come down the weekend of the 25<sup>th</sup>. Krate said that's fine. Jowdy asked does anyone have any questions. Dufel said I want to ask Sean a question: in general, the City of Danbury creates these rules that the signs must be according to these laws, and they must have done it for a reason. Business reasons are not really a hardship. Why do we have the rules? Krate said I can answer that. Chairman Jowdy said I can answer for you. Krate said when they did the new sign regulations, they did not anticipate signs on buildings; they were based on free-standing signs. It's Danbury Hospital; it's everybody. We asked them to change it three years ago, Krate said. Jowdy explained the fire at Feinson's Men Shop and the sign on the roof preventing the water getting to the fire, and Jowdy explained. That's when they changed it. Hearty said I would not dare to question the commissioners' knowledge. How does this request for a variance differ from

the Police Station, Dufel asked. Well, that's a police station, Hearty replied; Gary is busting the ZEO's stones, for the record. Thank you, Gary. Jowdy asked are there any other questions? Chairman Jowdy asked is there anyone who wishes to speak for or in opposition to this proposal? Herman said I'm in favor. Thank you very much, Jowdy said; the board will inform you of its decision. Herman said thank you very much, gentlemen. Jowdy said that ends all the applications for this evening. Attorney Lubus said, Chairman, I'm sorry I arrived late. I was on the one just prior to this, on Albuquerque. Lubus said I'm in opposition. Hearty said, Chairman, the one you already moved through. Hearty, said, oh, okay. Lubus said I represent the abutting neighbor. I just have some pictures I want to submit that show just how close. Krate said we cannot take in evidence now, we can't accept it. I'm sorry. Each variance is opened and closed and we move on to the next one, Krate said, and we can't now take anything on. Lubus argued that he could submit evidence. Jowdy explained the testimony procedure. Lubus said I'm a lawyer. Until the Public Hearing is officially closed, it's still on the agenda. You have the right to close the Public Hearing on each one, after you entertain a vote. If you have not done so, this still is a Public Hearing. Hearty said I think also that, Mr. Chairman, that when you actually say is there anybody in favor or anybody in opposition, and you close and you move on to the next case, I think there is also an argument there, that that variance has been held and closed. I'm not too sure; I don't know, Hearty said. Krate asked Lubus you are an attorney. You were hired? Lubus said I can't be in two places at once. Krate said that's not my problem. Lubus said but it is a Public Hearing that wasn't officially closed and everything that's on the agenda. Krate said no, we really can't and I'll tell you why. If a petitioner comes in, does a petition and leaves, now we've set a precedent where people come forth against it without the petitioner having the opportunity to rebut that. Lubus said and out of fairness, I would ask that you continue that portion of the Public Hearing of that meeting so that he could be notified so it could be determined. That's an appeal to the Superior Court, Lubus said. Lubus, Krate and Jowdy discussed the issue speaking simultaneously. Krate said we don't want to set a precedent like that. Chairman Jowdy said I think we should get an opinion from Corporation Counsel. I don't know the answer, Jowdy said. Hearty said I agree, he's got, he's the attorney for the opposition, but I don't know. Dufel I don't feel responsible for the attorney who is - -ineligible - -. Lubus said, out of fairness to the petitioner, I would request; we would come back so that we can address the concern. And there would be notice. Hearty said I'd like to get an opinion from Counsel on this, gentlemen. Jowdy said yes, I agree. Dufel and Jowdy discussed what the question is. Hearty said that would be my question to the Counsel, the Corporation Counsel. That's another legal question too: if we go ahead with continuing it, do we have to reopen it technically to hear new information. It's just a quagmire we're getting into here, Hearty said, so. Jowdy and Hearty agreed that Hearty should contact Corporation Counsel. Jowdy and Dufel spoke simultaneously. If Corporation Counsel, Krate said, finds that we should not take information after a particular petition has been, in effect, closed, when we ask is there anyone for or anyone opposed, then we will probably take a straw vote at that time. Hearty said I think we understand the commissioners' mind and we'll talk to Counsel. I recognize, Lubus said, that I need to -ineligible - however, if the Public Hearing isn't officially closed, it is still open and we can continue it. I recognize that the petitioner is not here and, out of fairness, it would not be fair to make comments without the petitioner here, since they have left. However, it is still open and can be continued to the next meeting with the petitioner here, and I can make some comments on behalf of the neighbor. Jowdy discussed what happens when I ask if there is anyone in opposition, and no one appears, unless I officially say this hearing is closed, is it technically - ineligible- session, vote; we have to find out. Hearty said I will pose that question exactly. (Several commissioner speaking simultaneously.) We'll table it, Jowdy said. Lubus said thank you. Okay, so, Jowdy said, we'll take all that into consideration. Hearty said we have the Holiday Inn. We will just

**table** it until we get the opinion. The voting session began later at 8 pm. Dufel recommended that we hold our vote. Krate said we are holding our vote. Krate made a motion to table. Jowdy moved the discussion to # **11-04**, Kelly Boa, for that vote.

Jowdy reintroduced this item (#**11-10**, Holiday Inn) at 8:05 pm, saying it's an eyesore sign that's been up there for years. Krate made a motion to **approve** the request to increase the allowed height for wall sign from 30 ft. to 59 ft. The petitioner has agreed to remove the old sign that currently has a variance on it, as a condition, Krate said. Dufel said per plan submitted. Krate said per plan submitted. Sibbitt seconded the motion. Motion carried unanimously 8:07 pm.

**ACCEPTANCE OF MINUTES:** February 10, 2011 (There were no March 2011 meetings.) For the minutes of February 10th, 2011, there are only three of us here. Dufel asked I was not here? Okay. The minutes of December 9, 2010; we have four people, Jowdy said. Krate made a motion to approve the December 9, 2010, minutes as submitted. Hanna seconded the motion. Motion carried unanimously.

**ADJOURNMENT:** Motion to adjourn by Jowdy. Second by Hanna. Motion carried unanimously at 8:08 pm.

**NOTE:** THE NEXT REGULAR MEETING IS SCHEDULED FOR MAY 12, 2011.