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ZONING BOARD OF APPEALS
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DRAFT MINUTES
JUNE 12, 2014
City Council Chambers

7:00 pm

ROLL CALL: Chairman Richard S. Jowdy called the meeting to order at 7:19 pm. Present were Jowdy, Michael Sibbitt, Herb Krate, Joe Hanna, Rodney S. Moore. Krate arrived late at 7:19 pm. Absent were Alt. Rick Roos, Alt. Anthony Rebeiro. Staff present were Sean P. Hearty, Zoning Enforcement Officer, Secretary Patricia Lee. Jowdy introduced the meeting agenda with the four applications. Rod Moore motioned to hear the four agenda items. Hanna seconded the motion. Motion carried unanimously.

CONTINUATION OF PUBLIC HEARING: NA

NEW BUSINESS:

#14-21 – J & J Concrete Foundations, Inc., % Rui Ribeiro, 41 Balmforth Avenue (113145), Sec. 4.B.3.a., reduce minimum lot area from 4,000 sq.ft. per dwelling unit to 3,878 sq.ft. per dwelling unit; minimum lot width from 100 ft. to 65.8 ft.; Sec. 8.B.1.b.(4)., reduce driveway width for two-way travel from 24 ft. to 11.7 ft. for three-family dwelling (RMF-4 Zone). Chairman Jowdy introduced this petition at 7:20 pm. Michael Mazzucco, PE, came forward, identified himself and put the plan on the easel, saying he represents J & J Concrete. Mr. Ribeiro is here with me, the applicant. Mazzucco gave the vicinity description, saying in February of 2012 there was a fire here; then it sat for 2 ± years. The owner I think ended up losing it. A demolition permit was issued in November, 2013, and they demolished it, and my client purchased the property then, Mazzucco continued. Using the map on the easel, Mazzucco said it was a 3-family and there was an illegal fourth unit in the basement, per the fire personnel. Secretary Lee asked Mazzucco to use the microphone. About 1990 or thereafter there was an addition, Mazzucco said, and they probably added a unit. Around 2000 they changed some zones, and it became RMF-4, and Mazzucco described the zoning requirements. Two years ago they changed the regulations regarding driveway width, so with the existing driveway it just would not work. This is the new building; lot area-wise we need a variance for the three-family. There is an existing garage, and we would use it for the parking. Mazzucco showed the architectural layout; what it would look like; this is Balmforth Avenue here, Mazzucco said. Mazzucco continued I have the field cards: there is a two-family to the south, and a three-family to the north. Jowdy asked about ingress and egress to the other properties. Essentially it is the existing driveway, Mazzucco said; we plan to just use that. Krate asked Hearty about grandfathering anything. Sean Hearty thought he remembered that it just died on the vine. As long as there is no intent to abandon, Hearty said that is, you change the use; because a fire hit it, that would be a change. Herb Krate said I am not comfortable granting this; a 75

foot front yard setback would be for a two family. Mazzucco and Krate spoke about what could be granted. A lot of things have changed over the 3 years that this has been vacant, Krate observed; when it flips in to a bank, and the bank resells it, I would be inclined to approve it as a two family. Sean Hearty told Mazzucco he might want to continue this. Hearty said I can't recall how far back our research went. Our policy in the City is if it burns down, you can rebuild it for the same use, Hearty said. Krate said when the person bought this, there was no house on it. I'm not sure that does not wipe the slate clean. The bank may have sold the parcel as a lot, Krate continued. That's all it was when it was bought by this contractor; there was nothing on the lot. Sean discussed the nonconformity; he clarified what he said to the commissioners, and said it is up to the commission. You have three things all in play for a three-family, Herb Krate said. Krate and Mazzucco discussed the driveway and the impact of a two-family as opposed to a three-family. Mazzucco and Krate discussed continuing this after getting an opinion from Corporation Counsel. Krate reiterated the bank resold a lot to a contractor; that wipes that slate clean, and he must start over. Jowdy said the dimensions do not give you a three-family. Krate said I may be inclined to deny it even on that basis, given what they are trying to accomplish in the City of Danbury. Krate said forget about the RM-12 Zone. Hanna asked what was it legally before the fire. Hanna and Krate discussed the issue that once the bank took it, he bought a lot. Moore and Mazzucco and Jowdy agreed to table this to July. Motion to close this public hearing by Moore. Second by Hanna. Motion carried unanimously at 7:37 pm. Later in the voting session, Jowdy said this is **continued**.

#14-22 – Shakir Qureshi, 3 Clapboard Ridge Road (H12012), Sec. 5.D.2.a., USE VARIANCE to allow an ice cream/frozen yogurt store in the CL-10 Zone. Chairman Jowdy introduced this petition at 7:37 pm, and Peter Scalzo, Attorney, identified himself and his Bethel address at 2 Stony Hill Road. Scalzo said I am here tonight for a USE variance for an ice cream, frozen yogurt store, and he described the vicinity on Clapboard Ridge Road, and listed the previous uses there. It was built in 1920's. It was previously RA-20 and 8 use variances were granted, Scalzo continued; it is a row that has an RA-20 Zone on it and the character of that structure has changed. In April of this year, Mr. Ventura applied for and was granted a zone change from RA-20 to CL-10. Jowdy and Scalzo discussed that parcel, just that piece, and the zone change. They have always used this commercially, Scalzo said. The light commercial zone was the zone chosen. Jowdy mentioned some allowed uses; a whole gamut, in the CL-10. The use was created in many other commercial zones, but not in the CL-10 zone. It's not a restaurant use; it is carved out as an ice cream parlor. Scalzo said the applicant went around to all the neighbors. Herb Krate announced I have 18 letters from neighbors in favor; that's a lot of yogurt. We just want to do this once, in this structure, Scalzo said. Jowdy read the letter from the Planning Commission: "...on June 4, 2014, the Planning Commission voted to give a negative recommendation ... based on the following reasoning: The proper mechanism for this request is to attempt to amend the Zoning Regulations by adding this use to the CL-10 Zone. This property was just created by virtue of a free split and rezoned to CL-10. Allowing a Use Variance now just undermines all the work done to avoid issuing such variances." Scalzo said I don't particularly like what the Planning Commission said. Krate said I'm not surprised. We're saying an ice cream parlor / yogurt is a good fit here, Scalzo said. Jowdy said if you did not get the CL-10, to Scalzo. Scalzo asked if board had any questions. Herb Krate said I see you have a lot of parking spaces; there's a hair dresser and dog groomer there. Krate said this use will bring a fairly high car count, and it may in fact be dangerous going to the left, with respect to the welfare, health and safety of the neighborhood; a high traffic generator. Scalzo said I don't have any traffic data for you for an ice cream store. I suggest it would work well with the other existing uses there, Scalzo said. Krate said that location has no traffic control;

you are blind in at least one direction, and you're bringing in a high traffic generator. Krate compared the proposed use to a dog groomer and a hair salon; that's my feeling on it. I don't have a traffic study here, but personally when I view this area, it would be a good fit, Scalzo said. It's not a bad location; it's a dangerous use for that traffic spot, Krate replied. It takes 5 minutes minimum to go in and buy an ice cream cone and go home; I anticipate a lot of traffic, Krate said. Moore discussed the permitted uses in this zone. Scalzo said your point is well made, and he listed some of the permitted uses per the current zoning regulations. Jowdy, Scalzo and Krate agreed those uses don't need a use variance. Krate reiterated that he has a problem with that site as a heavy traffic generator. Scalzo said it does except fast food. Krate said if you think that a fast food use in this parcel is going to fly, you are on another planet. Chairman Jowdy said I have no more questions; the facts are the facts. Anyone else in favor or opposition, Jowdy asked. Valentine Ventura signed in at 7:53 pm. There has never been an accident in front of our place, just to answer your concern, Ventura said. Herb Krate restated his concerns; distractions; pulling out on Clapboard Ridge; no clear sight. Ventura said going back to Mr. Jowdy's questions, we were not allowed to come in for a use variance in the RA zone. It has restricted our use drastically, Ventura said. A traffic study was done 14 years ago, when the driving school applied for a variance, and it was granted, Ventura added to Jowdy. We can't put a restaurant there; we think an ice cream shop is a good fit. Ventura discussed sitting there enjoying an ice cream; no drive-up window; not a Dunkin Donuts. I spoke to every neighbor and they were all in favor. Krate said my concern is strictly on the basis of safety and welfare, and I know the location well; personally I am uncomfortable with this quick turn business. Ventura replied I appreciate your concern, but I think you're wrong. Ventura said in over 50 years there's never been an accident on or near that property. Shakir Qureshi next took the microphone at 7:58 pm. When you look at this map here, I am not bringing in any new highway. It's just the left side, you can't make a left turn; making a left, yes, it's hard. We are not bringing new traffic. We have been struggling for this for a year and a half, Qureshi said. Krate and Qureshi discussed new traffic versus the same traffic. Qureshi said I am not creating new traffic. Krate said I remember when we granted the driving school; 6 trips a day; I think I'm correct on that one. I'm done; I get it, Herb Krate said. Jowdy asked about right turn only signage. Qureshi said we could do that. Scalzo came back to the mic, and said this is a new tenant, but there are still a lot processes we have to go through. Herb Krate and Sean Hearty spoke quietly. Herb Krate said I don't think it is in our purview to request a traffic review. Jowdy asked is there anything else? Qureshi asked are there any questions? Is there anyone who wishes to speak for or in opposition to this proposal, Chairman Jowdy asked. Thank you. Motion to close this public hearing by Krate. Hanna seconded the motion. Motion carried unanimously at 8:02 pm. In the voting session later, Moore said what's allowed there and what variances have been granted in the past, an ice cream parlor is certainly reasonable. Motion to approve the request for a use variance to allow an ice cream/frozen yogurt store in the CL-10 Zone Rod Moore. Hanna seconded the motion. Jowdy said I will try your mind. Moore added per plan submitted; the parcel was recently re-zoned to CL-10 and he stated the previous uses. Moore said the City has actually has the CN zone where it lists this as a permitted use; I think this use should be permitted in this zone. It's particularly appropriate for ice cream. Krate and Moore discussed the request for a zone change by the applicant (Ventura). Then the same applicant asks for a USE variance. Moore and Krate discussed the location. Herb Krate said I am making the case for **denial** because of the traffic. The vote was two ayes, and two nays (Krate and Sibbitt in opposition). Jowdy said you will have to take another route. Krate and Hearty said they should amend the regulations.

#14-23 – Mark Edwards, 28-30 Candlewood Dr. (106097, 106233), Sec. 4.A.3., reduce front setback from 30 ft. to 14 ft. for single-family residence (RA-20 Zone). Chairman Jowdy introduced this petition and Ralph J. Gallagher, Jr., introduced himself, his address, and put his plan on the easel. We are here to request a variance on Candlewood Drive. It is less than a quarter of an acre, listed as two lots which Mr. Edwards put together; both nonconforming lots. We designed the septic with Mr. Dunn (City Sanitarian), the modest size dwelling, so we need a front yard variance to 14 feet. Gallagher discussed the driveway entry; the property actually owns in to the driveway. The owner said he would grant an easement. Jowdy and Krate said you have two fronts (yards), and Gallagher agreed; we don't have a side. (Tape 1 flipped from side A to side B.) Gallagher discussed what he came up with when he explored the neighborhood for other front yard setbacks, which he listed. Krate asked is that the entire neighborhood for Candlewood Drive. That's the area I chose; we are not inconsistent with the neighborhood, Gallagher replied. We propose a two-story dwelling in answer to Herb Krate, Gallagher said. Gallagher continued the drainage will not affect any other property owners. We meet all the other codes except the frontage. Chairman Jowdy asked about the coverage. Gallagher and Krate did the math and said 9820 square feet. Hearty stated the allowed building coverage in the RA-20 Zone. Gallagher said there are some smaller and some larger houses. Krate and Chairman Jowdy and Gallagher discussed the hardships, the corner, the easement, the lot configuration. Chairman Jowdy asked is there anyone who wishes to speak for or in opposition to this variance request? Judy Lynch from 12 Overlook Drive, signed in at 8:10 pm, saying I live a few houses down. I see on the map that it is a corner lot, so I see that there are a bunch of inequities, and she discussed that the applicant should be asking for a rear yard. Krate and Hearty discussed corner lots that have no rear yards. Lynch said I stand corrected. Lynch next talked about coverage. These were four lots, then two lots; I don't see a transaction that makes the lots compliant. Krate remarked he's making it less noncompliant, not more noncompliant. Lynch discussed what is required for this district. I did not see where it says in the regulations that a corner lot has no rear yard. It is not clear what he is seeking. Krate responded it's clear what he is seeking. Krate said he only has to come for the one; the difference has nothing to do with it; from 30 feet to 14 feet; that is what he is asking. Lynch pointed out another inconsistency, inequities; does he have to go to Planning and Zoning for a site plan review? Hearty clarified what commissions he would have to go to. Next Lynch brought up the drainage; bringing fill in, changing the grades. Krate said this is what we deal with: strictly the zoning regulations; not fill, not grade. Hearty said there is a code that addresses discharge; a wetland review, zoning review, a staff review, a grading bond, highway bond. Lynch said I am still very concerned about the runoff and the people that live below that. Krate replied this is not our first rodeo, and there is always a lightning bolt that goes through a neighborhood when someone wants to put something on a previously empty lot. We are only the first step in the process. You must address those concerns with those commissions that control those concerns, Krate said. Lynch said but I think it should also be noted; then I would suggest that you bring this to Common Council. We can resolve it here, Lynch said; why to go to that extreme. Hearty said you have a nonconforming lot; the person bought a nonconforming lot. Krate and Lynch discussed not being attorneys. Jowdy, Hanna, and Judy Lynch discussed what they can go through. He has the right to do that, Hanna said. Krate said, with all due respect, you can appeal whatever we decide here tonight, for myself and all the other people here tonight. Chairman Jowdy added whatever we say, you can appeal this. Thank you, Lynch said at 8:25 pm. Next Albert and Susan Mion, from 4 Brighton Street, came forward, owners of the adjoining properties, and they stated the addresses they own. Krate noted you own all the adjoining properties. I have prepared a slide show, Susan Mion said; about 10 slides total. This is Candlewood Vista and I have resided there every summer, Mion continued. We bought a house in 1983. There are about

65 families; a dead end community on Candlewood Drive, with some private roads off of that. Some of houses that Mr. Gallagher mentioned were summer bungalows from the 1940's. Our concerns revolve around density; she discussed the treed lots, the shallow well; the water bubbling out of the ground; the current state of erosion. She said you saw the sand bags down by Candlewood Lake; one of the maps shows the basin has been abandoned. She discussed the water course, problems on our septic; the paving past the culvert on the southwest side; however, there was an underground pipe. Susan Mion said no such pipe exists. She discussed that the storm drain is of great concern for us. The area where driveway is proposed will act as a funnel. Mion described the red fox, the deer, the line of sight; the kids that walk to the school bus, the steep grade; the very steep slope. In 1980 a City sander truck tipped over at that spot, Susan Mion said, and there are other problems which would degrade our property, since technology now allows one to put a septic where it could not be done before. I implore you to please go out and walk the property, Mion said, instead of a two dimensional piece of paper. There is a common sense aspect here; an impact on 60-something families. Krate said one question I would ask: would you like to do something on one of your parcels. Susan replied absolutely **not**, and she described the texture of the neighborhood for 70 years; my little piece of green in Danbury. Albert Mion said we both work for the City. It would change the nature of our neighborhood, he said. Krate said we don't consider these things lightly. I know exactly what you are saying, Albert Mion said. Hanna said we cannot deny them the right to use their property; you cannot control that for the future; this is a buildable lot. Krate said it is not because of technology that's changed; they can have reasonable use of their property. Susan Mion said why squeeze in a large building on a small lot. Thank you, she said at 8:36 pm. Herb Krate asked Gallagher about the side of the lot with the septic; can you move the house over at all? Gallagher replied no, and described the distances. Chairman Jowdy said 26 ft. by 48 ft. is not a big house. Lynch said, from the audience, it's bigger than any other house. Jowdy and Gallagher continued their discussion about the lot; the two stories will blend into the hill. Gallagher said it's not possible to switch the septic, in answer to Krate. Gallagher showed where the well is. Chairman Jowdy asked is there anyone else? Dorothy Durgin from 17 Candlewood Drive came forward at 8:40 pm and signed in. I live down the hill. Someone should come out and see the steep hill before granting the variance. It's an unbelievably steep hill. The roads are all flat, Durgin continued. This piece of property comes down; the road is tiny; it was a lane that they paved. Come out and look at it before you give the variance. I don't think a house should go there; it's a real neighborhood; kids come down; it's all a blind curve, Durgin said. Herb Krate asked is this a private community? Mion said Brighton and Candlewood Drive are City streets, with about 65 families. Krate said I want to give you a little history: Lake Waubeeka is 960 feet up from sea level in less than a fifth of a mile. I know what goes on because everything there is pre-existing nonconforming. I don't understand if you have a homeowners association, Krate said, why this parcel was not taken off the market. Mion said the individual three owners ago was an unusual gentleman, and my dad wanted to buy the lot. Because of our last name, which he presumed was Jewish, he was anti-Semitic, and he would not sell to us. He made very disparaging remarks, and he would not sell it to us. It's a fact; the man was mistaken, Mion said. Herb Krate said I understand that because Candlewood Lake Club was also restricted. Mion said I am just trying to answer your question, to Herb Krate. Durgin again described the steep slope. Ralph Gallagher, in rebuttal, said I want to appease some of the neighbors' concerns: we will take any runoff water and not let it affect anybody below us. There will be a clear sight line or we would not be able to build this. The house works in with the hill, Gallagher continued; it's not a lot of construction; not a lot of concern. Krate said to Gallagher I would ask you to go back to Mr. Edwards and see if this can be modified, and give us a chance to do an on-site visit, not as a group. If you agree, we can continue, Krate said. Gallagher

said we agree to continue and come back with a slightly changed proposal. Herb Krate said we are looking at July for the next meeting. If it's less of a variance, we do not have to re-advertise. Krate made a motion to **continue**. Moore seconded the motion. Motion carried unanimously at 8:53 pm.

#14-24 – ASI, New England as Agent for Danbury Hospital, 24 Hospital Avenue (#I12001) Secs. 8.E.2.e. & g., allow two wall signs to exceed permitted 32 sq.ft. in sign face area to 98.75 sq.ft. for one sign and to 118 sq.ft. for the second sign; and to allow the 118 sq.ft. sign to be internally illuminated. (RH-3 Zone) Chairman Jowdy introduced this application as Morris Gross and Sarah Myers came forward and signed in and identified themselves. Gross described the "Pavilion", two major donors, what facilities exist the vicinity, what you see if you face the property. Gross described the two signs; what was the main entrance before, we chopped down that hill; used to be physician parking lot and that proposed sign, and where it sits back from the road. Herb Krate: that's the lit sign. Are there any private homes, Herb Krate asked. Morris Gross said you have to remember when you look at the hospital, especially at night, it's so well lit, that it's hard to see any signs; the distance; 500 plus windows that are all lit at night, plus the "heli-landing"; the exterior lighting. Sarah Myers showed the translucent face letter signs. Sarah set up the two lighted letters. The bottom is the one that will be used. Hearty looked at the "S" bottom sign. Myers said it's just beautiful. Gross said I've been here 40 years. That hospital has come a long way and you should be very proud of it. Gross said the new contemporary operating rooms, the proposed cat scans and X-rays above you, imaging, radiology, with our high ceilings. Krate said I want royalties. The Mayo Clinic can watch us do surgeries, for example, Gross said. We've created labor and delivery rooms for training, operating rooms for training, with mannequins that can do almost anything, to provide training for our people; a simulation training lab. And a research lab off premise. I am very proud of it, Gross continued. To get the best people in, the best doctors, this is the facility we must have. Are there any questions, Morris Gross asked. Jowdy complemented Mr. Gross. Gross complemented the City and Sean P. Hearty. Motion to close this public hearing by Rod Moore. Second by Hanna. Motion carried unanimously. Motion to close the public hearing session by Krate. Rod Moore seconded the motion. Motion carried unanimously.

Jowdy, in the voting session, said this is open for discussion and / or a motion. Hanna motioned to **approve** to allow two wall signs to exceed the permitted 32 sq.ft. in sign face area to 98.75 sq.ft. for one sign and to 118 sq.ft. for the second sign; and to allow the 118 sq.ft. sign to be internally illuminated in the RH-3 Zone, per plan submitted. Hanna said it will be internally illuminated; it is a reasonable request, and they will not be too intense. Krate seconded the motion. Motion carried unanimously

ACCEPTANCE OF MINUTES: May 8, 2014. Motion to accept these meeting minutes as presented by Krate. Second by Hanna. Motion carried unanimously

ADJOURNMENT:

Motion to adjourn by Herb Krate. Second by Sibbitt and Hanna. Motion carried unanimously at 9:17 pm.

NOTE: The next regular meeting of the Zoning Board of Appeals is scheduled for July 24th, 2014.