

**MINUTES**  
**April 12, 2007**  
**Zoning Board of Appeals**

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR **5/10/07**.

The meeting was called to order at 7:09 pm by Chairman Richard S. Jowdy. A motion was made to hear tonight's agenda by Herb Krate. Second by Joe Hanna, and the motion carried unanimously. Jowdy explained the procedure for a Public Hearing to the audience, those who wished to speak in favor or opposition, rebuttal, and then the Commissioners take everything into consideration. Please sign your name when you come up, Jowdy reminded the audience.

Members Present: Chairman Richard S. Jowdy, Herbert Krate, Joseph Hanna, Michael Sibbitt, Alt. Jack Villodas

Members Absent: Gary Dufel, Alt. Rodney Moore, Alt. Rick Roos

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

**NEW BUSINESS:**

**#07-25** – City of Danbury Public Works Dept., 53 Newtown Road (L12014), Sec.6.B.3.a., to increase maximum building height from 35 ft. to 85 ft. for new salt/sand storage Building A (IG-80 Zone). Jowdy introduced this proposal for the structure in the IG-80 Zone. Antonio Iadarola, Public Works Director and licensed engineer, introduced himself stating I'm going to be brief. Iadarola said the State issued the City a consent order, and he read the sections, which state that the sand and salt storage facility must have a roof structure. In 2005 we didn't have the money. Now the application in front of you is for a dome; it is engineer evaluated and recommended, and it will allow us to store salt and sand and also load our trucks. And it comes under that DEP section that I just described, Iadarola said. It's efficient, not only for salt and sand. We are also looking at magic salt. We will be able to store both those products and still maintain our operation. It tops out at about 85 feet. You approved a silo for nearby Tilcon for about 80 feet previously. The City engineer is here tonight. Iadarola asked are there any questions. Jowdy said the building itself is set off the back, with little visibility. Iadarola said correct, it's the far building. Krate said it's an order from the State. Jowdy asked is there anyone who wishes to speak for or against this application. During the voting session, Krate made motion to **approve # 07-25** to increase maximum building height to 85 feet. This is mandated by the State and the City is required under DEP regulations to cover it and prevent seepage. Sibbitt seconded the motion, and it carried unanimously.

**#07-26** – Jason Celestino, 16 Brushy Hill Road (I17026), Sec.4.A.3., to reduce minimum front yard setback from 30 ft. to 21 ft. for residential addition (RA-20 Zone). Chairman Jowdy introduced this item. Ward Mazzucco, Attorney, signed in and identified himself and his address, stating he is here on behalf of the applicant. The property in question is a historic home built in 1893, at the north end of Brushy Hill Road. The property is in an RA-20 Zone, although I know the tax assessor lists it as RA-80, Mazzucco said. It's just over a half acre. The card indicates that the house

is about 1100 sq. ft., so it's a very compact dwelling, and Mr. Celestino would like to expand it. It has 7-foot ceilings, typical of homes at that time. The house as it is has sat 22.4 ft. from the road, and the proposal is an addition to the side, which is also proposed to be 22.4' from the road, no closer than the existing dwelling, Mazzucco said. I have some photos that I think would help that. Krate said, first, you're asking for less than you applied for. Which is right? Mazzucco replied 22.5 feet. Mazzucco handed out and described each photo, #1, #2, the sharp rise in property, the existing driveway, the water and sewer lines, and beyond the driveway is a rather steep slope. He cannot expand the house in that direction, Mazzucco said. So in light of the constraints to the right and left side, it forces the addition to be put in the front. There's an antique barn in the rear. The proposal is for an addition as close to the house as the current house is. Also, photo #4 shows the façade which is largely obscured by the existing topography, so it would be no more imposing to the traveling public. The two immediate neighbors, Grohlich and Scott, have signed letters in support of the application, and on the other side there's a row of evergreen trees which pretty well blocks the view anyway, Mazzucco said. That's the external factors. There's also internal architecture to be considered, Mazzucco said. Jonathan Kost, architect, identified himself at the mic, saying I have some architectural plans, five copies, which he handed out. There is a couple of points regarding the architecture of the house I want to make. Being a small antique house, Mr. Celestino always thought he'd renovate it as an antique. The east side has already been restored to the original, Kost said. What we propose to do is to add an addition about the same size as existing house, with seven feet plus or minus ceilings. We know we could not go towards the driveway due to the grade. We looked at going to the rear, but found out that it was too close to the garage to encompass all of the rooms. The driveway has horrible sight lines on the road, Kost continued. If the addition came off of there, one would have to back out of that driveway. So we pulled the addition off to the west; Ward calls it the south, as minimally as we can, a 16' bump out. Kost described the grade and the required cut. In maintaining character of the house, want to follow the same roof lines and get access into that space, which Kost explained. That gave us our front elevation, minus our little covered porch here. That piece was added to create a hierarchy of the architecture, a formal entrance to present the front door. Kost described the covered porch, the ridges, the side entrance; everyone who passes the house sees where the front door is. I'm not sure if I have any other points to make. The front door is focus of the formal entrance, Kost concluded. Mazzucco said that concludes our presentation. Jowdy raised a question on where the City owns from the traveled portion of the road. Krate said I remember the house; you can hardly see the house. Mazzucco thanked the Commissioners. At 7:26 pm, Jowdy asked is there anyone who wished to speak for or against this application. During the voting session, Chairman Jowdy reviewed the request, saying the setbacks are deceiving on that road. Is there any discussion, Jowdy asked. Krate made a motion to **approve** per plan submitted; the hardship being is the existing location of the dwelling on the lot. It will not affect the welfare, health and safety of the neighborhood, and it's in keeping with the area. Hanna seconded the motion and it carried unanimously.

**#07-27** – John DeGross, 55 Holley Street Ext. (J12084), Sec.4.A.3., to reduce south side yard setback from 15 ft. to 5.4 ft.; to reduce north side yard setback from 15 ft. to 7 ft. for new single-family residence (RA-20). Jowdy read this request into the record. John DeGross signed in and identified himself, a resident at 19 Hamilton Drive, Danbury, CT. We are proposing to get a variance on the side lines. This was a pre-existing lot and it was changed to a half acre zone, DeGross said. It's very

consistent with all the houses in the neighborhood. We're asking this so we can build an affordable home there, DeGross said. Jowdy had a question on the size of neighboring homes. DeGross said if I purchase the property, I'm going to give them that little piece there. DeGross & Jowdy discussed the residence design. Hanna asked is there an existing house there now? DeGross replied no. Some have no setbacks; some are even smaller, DeGross said. Krate said it's always nice to see a neighborhood that predates me. Jowdy added this is something reasonable. Jowdy asked are there any members of the audience who wish to speak for or in opposition to this request. During the voting session, Jowdy reviewed the request at 8:29 pm. The lot was upgraded by zoning, and it conforms with the area. Krate made a motion to **approve** the requests to reduce the side yards setbacks; the hardship is that this is a pre-existing, nonconforming lot, it's in keeping with neighborhood, and per plan submitted. Sibbitt seconded the motion. The motion carried unanimously at 8:30 pm.

**#07-28** – William Lavelle, 17 Stevens Street (H14268), Sec.4.D.3., to reduce min. lot width for 2-family dwelling from 75 ft. to 45.90 ft.; to reduce min. side yards for 2-family dwelling from 15 ft. to 9 ft. (NE side) & from 15 ft. to 12.9 ft. (SW side); Sec.3.H.3.a., to reduce minimum lot frontage for 2-family dwelling from 50 ft. to 43 ft.; Sec.3.H.3.b., to reduce minimum lot width for 2-family dwelling from 75 ft. to 45.90 feet; & to reduce minimum width of lot for front portion of lot from 50 ft. to 43 ft. at front street lot line, widening to 50 ft. at 48.30 ft. back from front street lot line (RH-3 Zone). Chairman Jowdy introduced this item at 7:30 pm. William Lavelle signed in as Jowdy read the requests. My name is Bill Lavelle and he gave his address at Terre Haute Road in Danbury. My mother and I had gotten a variance on this two years ago (ZBA # **04-35**). Since then the setbacks rules have changed, so we are therefore asking for a variance on the sections that didn't require variances before the moratorium. Nothing has changed on the plans, Lavelle said. It's in conformity with all the other lots on the street. It's not changing anything. Jowdy said the only thing that's changed is the zoning code. We have had many, many guys come in for similar situations, Jowdy explained. Krate asked why wouldn't you have reasonable use of the property with a one-family home? Lavelle said that would not be in conformity with rest of the area. Krate said we are here to grant reasonable relief, but the State statutes say we must allow you reasonable use of the property. And the setbacks don't bother me so much as the lot area, Krate continued. Lavelle said I fully understand that. Krate said you're not being denied use of the property. Lavelle countered I'm denied because it doesn't fit. These are all the nonconforming lots on the street right now, Lavelle said. Dom Chieffalo went down to the head of Planning & Zoning, and he looked at it, and he would not allow us to do it. What the board is saying is that we have a mandate now based on the new law. There's a couple of other guys that came in, and we could do nothing, Jowdy said. We're trying to knock down the density. Lavelle said we did not have a problem when we submitted this downstairs, since we got a variance on the property before. You got a variance on the lot area, Krate said. They are trying to limit the density of the area. Lavelle said I can understand what happened on Virginia Avenue over there. Lavelle said it does not change the neighborhood. It does not change anyone's appraisal on their houses. The town attorney or whoever does not want to grant any more of these variances, Lavelle said. I don't see that this is fair. My mother and I have been paying taxes on this for years, Lavelle said. Krate said the neighbors on both sides are single-family. Lavelle said this is a four-family. This is a two-family, pointing to the printout. This is the only lot left on the street, Lavelle said. Krate said everything here is multiple family. Hanna said the City

changed the regulation. Lavelle said I was given the impression downstairs that this would not be a problem in a two and three-family zone. I think that's one of the things, nonconformity, even though the regulation has now changed; even though attorneys have decided now to change the rules. It doesn't affect anyone else's value on the street, Lavelle said. With your mercy, please take that into consideration. Jowdy asked if there was any members of the audience who wish to speak for or in opposition to this request. Jowdy, during the discussion session, said this had this approved for coverage previously. The only thing different is that the hardship presented is that this is the only single-family house on the street. Jowdy said we've got to take that into consideration. Krate said this is the only one of these that I'm really torn on; this is different than any other one that's come before us. It's the only lot left in the middle of all multi-family houses, Jowdy said. Hanna, Jowdy, Krate, Villodas and Hearty all discussed the regulations, the others we've seen, the mixed use neighborhood, the two to three-family dwellings. Hanna said we've got to judge each application on its own merits, and to decide where we stand with this. Krate and Jowdy discussed it further, and Hanna said, "What do we do the next time?"; base each one on its own merit, reasonable use of one's property, the entire neighborhood here. You can vote any way you want, Krate said. Each case has individual characteristics about it, Krate said. He discussed previous applications before the ZBA. What's reasonable use? What's inconformity? Krate made a motion to approve all of the requests of this variance. Krate continued this particular variance stands out in my mind because it totally conforms with the neighborhood. The hardship is that it's a pre-existing, nonconforming subdivision; it's in keeping with the neighborhood, and it's not a danger to the welfare, health and safety of the area. Krate said it's per plan submitted, Villodas seconded the motion. Sibbitt and Hanna voted nay. Chairman Jowdy said it's **defeated**.

**#07-29** – Michael & Diane Steinerd, 41 Harwood Drive (F20031), Sec.4.A.3., to reduce rear yard setback from 35 ft. to 28 ft. for residential addition (RA-40 Zone). Chairman Jowdy introduced this application. Allen Raiano, of Hawleyville, CT, identified himself and signed in, he said on behalf of the Steinerd's. Raiano said we're here for a setback reduction from 35 feet to 28 feet for a proposed addition for the side of their home. I have photos here of the site, and photos of other homes in the area. Two of the four are imposing on the sideline, in answer to Mr. Jowdy's question, Raiano said. They already had a variance granted back in 1998; they tried to legalize an addition. It was in disrepair, so they changed their plan when I got involved, to use it for a den for their kids. It's very odd-shaped lot, Raiano said. I also have letters here from all the neighbors with no objection. I also have a rendition. All but one neighbor has approved this, Krate said. Jowdy said about all the houses up there are about the same. Hanna had a question on the open deck. Raiano said we will try to get that variance (ZBA **#98-26**) taken off the record if we can. Jowdy asked are there any other questions? I know the area; I sold it, Jowdy said. Jowdy asked if there are any members of the audience who wish to speak for or in opposition to this request. Mr. Steinerd from the audience said I'm in favor. Jowdy re-introduced this in the voting session at 8:39 pm. Krate made a motion to **approve** the request to reduce the rear yard setback, per plans submitted. It will be in keeping with the neighborhood, and will not pose a detriment to the welfare, health and safety of the area, Krate said. Sibbitt seconded the motion, and the motion carried unanimously.

**#07-30** – Joao M. & Annabella E. DaCruz, 15 Deerfield Avenue (K11053), Sec.6.A.3.a., to reduce side yard setback from 20 ft. to 6 ft.; to reduce rear yard setback from 30 ft. to 6 feet for mud room and 2-car garage addition (IL-40 Zone). Chairman introduced this application at 7:45 pm. Neil Marcus, Attorney at Law, signed in on behalf of the applicant and identified himself and his law firm. The property consists of a single-family house on a nonconforming lot, Marcus began. The garage that we'd like to build cannot be done under the existing regulations. We will take down an existing shed. The real positive thing is, if a variance is given, the property becomes less nonconforming on the north side. So we pick up a foot, Marcus said. On the east side of the property where we require a variance, we just have very little room since the lot is so narrow. We would do the construction inside the existing fence, Marcus said. The neighbor to the east will be less impacted if we keep the garage as far back on the lot as possible. Marcus discussed alternatives, but the preference for the benefit of the neighbor, is to keep it as far away from the residence as possible. We can do that because to the north is basically commercial property; part of Fairfield Processing, not a residential use behind us. That's the proposal. For the garage itself, I have elevations here, Marcus said. Krate asked why is the garage so large? Marcus replied my client would like to put his trucks inside. Krate asked is this a residential area? Marcus said it's a big garage for big trucks. Krate said we don't want to have him run his business in a residential area. Krate reiterated he's basically setting up a business with trucks in residential area. Marcus said there's no question. Krate said given the fact that this is in a residential neighborhood, why doesn't he build his garage in a commercial area like other businesses do? Marcus said this seems to make sense. Krate said it's contrary to the zoning regulations. Sean P. Hearty, Zoning Enforcement Officer, said you're right; you cannot run that truck out of that house for a business. You can store a truck. Jowdy had a question on the garage that's attached to the house, in addition to the proposed garage. That piece right there, Jowdy said; it's a breezeway. Hanna asked why do they need a breezeway if it's so close to the property line? Can you still do a breezeway between a garage and a house? Hanna continued what size garage doors are going in here? The applicant responded from the audience: pick ups, no dump trucks. Marcus discussed the size of the trucks. Krate asked why is the garage so large? It seems that if we're going to build it, Marcus said. Hanna again questioned the breezeway. Marcus said it's a hallway; it's 9 feet across. That's not a hallway, said Jowdy. The Board may be a little naïve, but we've got to make sure that this is not a commercial use. It looks like it's a commercial use. Krate said the garage dwarfs the house (Tape #1 flipped to side B). All discussed the windows, size of the hallway; there's no dimension on here, 9 ft. by about 15 ft. Hanna asked why does he has to be so close to property line? Marcus said let me ask you a question. The variance that we're looking for; you must realize this is in an IL-40 zone. Jowdy discussed how it would look when you drive down the street, saying this is a two and three- family zone. Marcus said the zone was changed after the house was built. Krate said our concern is the trucks in the zone, and the size of the trucks in the zone. Krate said I thought it was a residential zone. Chairman Jowdy said the Board apologizes: we thought it was a residential zone, but it's IL-40. Marcus resumed describing what he's asking for. Jowdy said if he's adding a business to a residence, you know that as well as I do, you cannot have a mixed use. Marcus suggested you could condition this so that he does not use the house as a residence. Marcus added, the other thing is to keep this as a residence. Jowdy said, "Neil, don't be ridiculous". Krate and Sibbitt talked, and Sibbitt said, you have a proposed two-car garage in a size that can fit four vehicles. Marcus said why don't we **continue** this till the May meeting. Hearty said I ask you to **note** that I did not

review this application. This is an expansion of a nonconforming use, and I won't allow this.

**#07-22** – Elmer Palma, 22-24 Padanaram Road, Elmer's Diner, (H10124, H10125), Sec.8.E.5.a., to reduce required setback from front property line from 10 ft. to 1.5 ft. for free-standing sign (CN-20 Zone). Attorney Neil Marcus identified himself again. This is a very straight forward application, Marcus began. The reason that we have a hardship is because of the sign regulations. The plan shows that on Route 37, you can see the existing guardrail of the existing highway. Marcus then described what is shown on the plan, and a "shoulder that is extraordinarily wide". It's less than 10 feet from the property line, Marcus said. It creates two problems: first to identify the entrance to driveway, and secondly to interfere with the free movement of traffic. This is an odd shaped narrow piece, this is one hardship, Marcus continued. But also we have a hardship because we have a huge shoulder. Marcus discussed where the property line should be, where's the entrance to the diner; you'd drive by the diner before you found the entrance. Size wise the sign is within your regulations, Marcus said. It's about 10 ft. x 6 ft.; 6 ft. x 12 ft. conforms. It's hard to see at 10 feet back from the road. It defeats the purpose of putting a sign on the restaurant. Other than that the proposal conforms to the other regulations. Chairman Jowdy said I want to take this liberty to set record straight. I'm going to quote you out of the minutes of 10/14/99: this piece of property was approved. Jowdy said the architect spoke in favor; Bob Cooper, the Director of I Can, the agency, Ann's Place. This location as it stands, Ann's place, had outgrown it's space. This was given to them by the City. It would have had 250 to 270 people per month in and out of there. Somewhere along the line, the diner came in to that space, Jowdy continued. It was never approved for a diner. The variance obviously went with the applicant, Ann's Place, not the land. There was a house there. They wanted to add an addition to the house, and we allowed it at that time, Jowdy said. You coming in for a variance is not valid to my mind. We've been taking flack on this thing. Now you are claiming a hardship. First of all, all Mr. Elmer needs is a sign that says "I'm open" or "I'm closed"; it's the most visible property in the City of Danbury. I want to put that into the record, Chairman Jowdy said. Marcus said you know that I had no involvement in the Ann's Place application. I came in after Elmer had purchased the property. It was before the Danbury agencies, Marcus said. Krate said we're going to look into, if Ann's Place sold this property, because that road stinks already: the added traffic; it was not envisioned by this Board or any board in the City. Marcus said I understand your feelings for the history of this City. Jowdy said we are not debating the quality of Mr. Elmer's operation. Let's stick to the variance. Marcus resumed discussing the proposed hardship, finding the entrance; punishing Elmer for the history of this, I don't think it's fair. It's a lot easier to find it, Marcus said. Krate said that road will be widened at some time. The State will be forced to widen that road, and I personally will not be inclined to give a zero setback variance to anyone. Marcus brought up the location of the Marcus Dairy sign; I don't think it's a safety problem at all, Marcus said. Sibbitt and Krate spoke at once. Krate said I don't think it's even close to compare Sugar Hollow Road traffic with Padanaram Road traffic volume. Marcus added the State has given us a curb cut; you can condition this that it must be signed off by the State. Jowdy asked is the setback to the pylon? Marcus answered the setback is to the edge of the sign. Jowdy and Marcus discussed the sign design, with Hearty; maybe move it to this side over here. Elmer Palma said we have no room there. Marcus said we'd have to redesign the parking. All discussed the existing signage, each awning size, awning sign size, the whole thing counts as a sign. Six signs, so you're not over on your

allowed signage now, Krate said. Elmer Palma took the mic and said I believe it is one of my dreams to become part of the community, what I do for the community. I was forced to cut one foot on one side; it was already made; we have no room to put anyplace else; we can never put the sign there; dangerous, this is only place where the sign can go. Palma discussed his happy Ridgefield diner customers, and "the way I build this building". Jowdy said I have no argument with that. The entrance to that driveway should have some marker to show where entrance is. We're just trying to do the best thing, Jowdy concluded. Hanna discussed the size of the sign; a plastic banner is still considered a sign. Krate said he has enough footage. Hearty interjected that banners are prohibited. Palmer, Marcus, Krate and Jowdy discussed a temporary sign, a banner, permanent signs; taking some time for people to know it's open 24 hours, probably 6 months to a year. Krate said he can't put a banner up, Joe; it's illegal. Jowdy said know there can be no banner sign. Villodas asked where is this in relation to North Street Shopping Center. Secretary Lee had a question on specifying "per plan submitted". Marcus said people are worried about sufficient parking; we'd like to keep the sign out of the parking area. Krate said if it came before us to be a diner, we never would never have allowed this. Krate said to Palma you did nothing wrong. All you did was point out a soft spot in the law, Krate said. Palmer said I just ask for help; I worked in restaurant business 19 years. Attorney Marcus tried to compare his experience as a cook to that of Mr. Palmer. Jowdy asked are there any members of the audience who wish to speak for or in opposition to this request. Lynn Waller came forward at 8:25 pm, identified herself and her address. Waller said I'm not really in opposition, but I'm concerned for people coming out of the diner. There's no building that is more visible in City, Waller said, but pulling out on Padanaram Road is scary. Jowdy said you have got to slow down to see the entrance. Waller asked please don't impinge on any handicapped spots; we need them all. One foot worried me in bad weather, in the snow, Waller concluded, and she thanked the Commissioners. Marcus said I have nothing to add at this point. Later in the voting session, Jowdy discussed his experience passing by this property. Krate said I don't think this sign will change the damage that's been done there. Krate made a motion to **approve** the request to reduce the required setback from the front property line, per plan submitted. The applicant has been made aware that no banners are permitted at any time, and make this a provisional variance indicating that at no time can a changing letter electronic sign be put up on that sign post, similar to Stew Leonard's. It shouldn't be because of possible danger, Krate said. The hardship is the nonconforming lot. Jowdy said to Sean Hearty, I think we should allow an "Open" sign. Hearty replied for one weekend only for the grand opening, the same as everybody else. Hearty added only a time and temperature changing letter sign is permitted. Sibbitt and Hanna both seconded the motion. The motion carried unanimously.

ACCEPTANCE OF MINUTES: March 22, 2007 Meeting. Motion to accept minutes as presented by Herb Krate. Second by Michael Sibbitt. Motion carried unanimously.

ADJOURNMENT:

Motion to adjourn by Krate. Second by Hanna. The motion carried unanimously at 8:45 pm.

Respectfully submitted,

Patricia M. Lee, Secretary