



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING BOARD OF APPEALS
(203) 797-4525
(203) 797-4586 (FAX)

MINUTES – REGULAR MEETING
June 14, 2007
ROOM 3C
7:00 PM

The meeting was called to order by Acting Chairman Herbert Krate at 7:03 pm. Present were Krate, Michael Sibbitt, Joseph C. Hanna, Alt. Richard Roos, Alt. Jack Villodas. Absent were Chairman Richard S. Jowdy, Gary Dufel, and Alt. Rodney Moore. Rick Roos made a motion to hear tonight's agenda. Hanna and Sibbitt seconded the motion, and it carried unanimously. Krate described the procedure for Public Hearing, petition by the applicant and opposition, then rebuttal, then the voting session to follow at the end of the evening. Krate said it takes four positive votes to grant a variance.

CONTINUATION OF PUBLIC HEARINGS:

#07-30 – CONTINUED from 5/10/07: Joao M. & Annabella E. DaCruz, 15 Deerfield Avenue (K11053), Sec.6.A.3.a., to reduce side yard setback from 20 ft. to 12.5 ft.; to reduce rear yard setback from 30 ft. to 10 ft. for mud room & 2-car garage addition (IL-40 Zone). Herb Krate introduced this continuance at 7:05 pm. Attorney Neil Marcus identified himself on behalf of DaCruz. Marcus said this was before you on May 10th. At that time the proposal generated a fair amount of confusion. Which zone was it in? As it turned out, Marcus said, we are in the industrial zone and it is a residence. Marcus discussed the breezeway; we got the sense that the scope of the project was way to big for the site. We've come in with an amended plan, after talking with the Zoning Enforcement Officer; we've shrunk down the breezeway connection, and the key thing is that we have a letter from Sean P. Hearty, and he would want a condition attached, a stipulation that the garage shall not be used for storage of commercial vehicles. Krate said you can't have a dual use in the IL-40 Zone. Marcus replied so long as the garage is attached to the residence, the stipulation stands. The whole project was scaled down. Marcus began saying the hardship, but Krate interrupted asking if there was any members of the audience who wish to speak for or in opposition to this request? The hardship is the pre-existing, nonconforming lot with regard to size, the existence of the residence, and the shape of the lot. During voting session at 8 pm, Krate reviewed the #07-30 requests. Hanna made a motion to **approve** DaCruz, at 15 Deerfield Avenue, per plan submitted, to reduce the side yard setback and to reduce the rear yard setback, with the **condition** that the garage cannot be used for commercial use. Krate clarified this is a residential use in the industrial zone. Roos seconded the motion and the motion carried unanimously.

Krate announced, again, Crystal Bay will not be heard tonight, **#07-43**.

NEW BUSINESS:

#07-38 - Clinton R. Huffaker, 33 Hamilton Drive (H04053), to appeal for correction of an alleged error in a decision of the Zoning Enforcement Officer on April 12, 2007 (RA-20

Zone). Herb Krate introduced at this petition at 7:10 pm. Atty. David Grogins, of Collins, Hannafin, Garamella, Jaber & Tuozzolo, P.C., identified himself and said he is here on behalf of Mr. Huffaker. Grogins said we are appealing an order by the Zoning Enforcement Officer, regarding the keeping of guinea hens on his property off of Hamilton Drive. Mr. Huffaker is allegedly engaged in farming in the keeping of guinea hens. We have had discussions with the Zoning Enforcement Officer, and we do not agree with his interpretation. In this case, if you look at the definitions, that is, the ordinance, the first claimed violation is that Mr. Huffaker is engaged in farming; and in Sec. 4.A.5, and we don't claim that we are in the RA-80 Zone. So we don't believe that we are in that RA-80 zone, and we don't claim that we are farming. Krate said you're in a half acre zone. Grogins read the definitions of farming. He does not engage in forestry. He doesn't raise animals. He has 8 guinea hens which he keeps as pets. The alleged violation, and Grogins cited the section, where the keeping of livestock or poultry except in the zoning district where farming is allowed. There's no definition of what poultry are. I went to Webster's Dictionary, Grogins said, for a definition. He neither keeps these birds for that; he keeps them only as pets. They kill ticks and other insects; he only keeps these birds as pets, Grogins reiterated. The other alleged violation is that the enclosure in which he keeps these is in violation. Mr. Huffaker distributed a "Gardening with Guineas" leaflet. Grogins and Krate discussed the definitions and regulations sections. A structure is defined as "fixed location on the ground", Grogins said. Our argument is there's no precedent. This structure has no foundation, heat, or running water; it's on blocks and it's movable, Grogins said. Krate asked him when is the last time you moved it? So it's been in the same spot since you built it? That's a fixed location, Krate declared. We consider, even a 20 ft. trailer used for storage, that's considered a fixed location shed, and it has to be applied for, or it has to get lost, Krate explained. It's not that it could be moved. It's that it has not been moved. Krate continued garden sheds have to get applications. Joe Hanna asked about the hens. Huffaker answered how he obtained the hens, and some he gave away. Grogins handed out a paper saying this is a petition I'll submit to you signed by all the people in the neighborhood, with no objection on their part. Krate handed the handwritten petition to Secretary Lee. Krate described the regulations, saying if it's not there, it's not allowed. We are always going to err on the side: if it's not there, it's not allowed. Grogins replied if it's not kept for eggs or for meat, it's not poultry. Huffaker described the biological background of the guinea hens, from Africa or Asia usually, and they resemble a game bird. They are raised by hobbyists. Most people have them for the Lyme disease problem. They kill slugs. They kill rodents. I keep them enclosed. Huffaker said they are not allowed to run around the neighborhood. They can come out under supervision, like a teenager. Hanna asked if you let them out, how do you get them back in? Huffaker said they are trained; they sleep in their coop at night. Grogins said it's a pet. It's not commensurate with the facts in this situation since he's not farming. Sean P. Hearty, Zoning Enforcement Officer, came forward at 7:24 pm. We have nothing against Mr. Huffaker liking his pets. I not saying Mr. Huffaker is farming. He's in an RA-20 zone, a residential zone. Turn also to page 4-45, Hearty said: livestock and poultry were added to these regulations, and that deals with chickens, rabbits, any type of domestic animal that I think would be kept on a farm. Sheds have been permitted since 1982. In last 10 years, Hearty described how now sheds require a full C.O. We do this so we can have a say in the location of the shed or coop; anything that has a roof over it is a detached accessory structure. This was referred to me by the UNIT, Richie Antous, and you'll see my correspondence. I now know more about guinea fowl, then I ever wanted to know. There is lots of information on the internet. They are a farm animal. They are a delicacy meat, Hearty continued. They are birds, a farm animal, regardless of personal feelings. They have a loud high screech. In my opinion, they go in the same category as hens and chickens. Hearty discussed that pigs and horses belong on a farm. I may love this thing, but it belongs on a farm, Hearty said. My order was issued with no error and I support it.

Krate asked Attorney Grogins if he cared to rebut. Grogins said I really don't have much more to add. Huffaker said I have something to add about food. I consider a dog a pet, but if I were Chinese I might eat dogs, Huffaker said. If we look at the cultural mores of America, we do not eat guinea hens. In France, they do. I teach French. Last time I looked, I live in the United States. Krate said there's no question that the shed or coop is totally in violation, for setbacks as well as for coming before Zoning; the ZBA approves most detached accessory uses. Hearty added, if they need a variance. At 7:30 pm, Krate said we'll inform you of our decision.

Krate introduced this in the voting session at 8:02 pm. That's the gentleman with the guinea hens and coop or shed. Anyone? Roos said, personally, I think he's in error on both counts. It's semantics in defining the guinea fowl, like a chicken or other bird that should be kept on a farm, Roos said. Krate asked for a motion or discussion. Roos made a motion to deny the appeal of the Zoning Enforcements Officer's decision, in RA-20 Zone; as I just mentioned, guinea hens are birds that need to be kept on a farm, in spite of his contention that they are pets. Roos reiterated this, and in addition I believe his chicken coop violates the shed setbacks. Krate said and no application was ever made for the shed, that detached accessory building. His setbacks are undetermined because there was no structure indicated on his map. Roos and Krate discussed the shed, and that there is no certified map. Krate said it's clearly in violation. Hanna seconded the motion and the motion carried unanimously to **deny** the appeal.

#07-43 – POSTPONED TO 7/12/07: Crystal Bay Association, Inc., Hayestown Road / Poets Landing (I09066), Sec.4.E.3., to reduce min. front yard setback from 40 ft. to 5.7 ft.; to reduce side yard setback from 20 ft. to 5.5 ft.; Sec.8.C.4.f., to reduce required parking spaces from 94 to 90 for 2 detached garages (RR-10 Zone).

#07-44 – Gary Case, 13 First Street (J11333), Sec.8.B.1.b.(3)., to increase max. allowed grade from 12% to 17.6% for portion of driveway (RA-8 Zone). Ross and Krate spoke quietly together, discussing a regulation in the book. The next case would be Gary Case, Herb Krate announced, to increase the allowed driveway grade for a portion of driveway in RA-8 Zone. Mr. Case signed in and identified himself and distributed photographs. I found out just prior to setting up this meeting; I found out I needed still to have a zoning inspection. And that's when I found out that the driveway did not meet the regulations, Case said. Overall, according to Paul Hiro, the driveway does meet the regulation. And it's only on the left side, not on the right side. The asphalter, A. J. Construction, did the asphalt to stay under the corner of the house. I only know my two neighbors on my left and on my right do not object to me obtaining a variance. Krate said note that the resident at 13A First Street and 11 First Street have no objection. Krate and Case discussed that just because A. J. Construction did it, doesn't make it right. And I don't know why you did not bring Paul Hiro in to shoot it, Krate said. Case said I had an A-2 survey done before the driveway was paved. This is a single-family dwelling with an accessory apartment permit, a mother-in-law apartment. Case continued, according to Paul Hiro, the garage is new construction, in answer to Joe Hanna's question. Case said the driveway goes to the garage. Hanna had questions on the driveway and the garage. Gary Case clarified the photo for Herb Krate. I'm in a dilemma: raising my garage would make it unusable. Krate and Case discussed the fall off. Sean Hearty looked at the photograph at Krate's request. You're 13-1/2 percent all the way down; beyond the house is in violation. The entire driveway to the edge of the garage is in violation, 13-1/2 % again, Krate said. Case said this might even show it better. Krate said the issue is beyond just this. This carries on to the edge of your garage. Oh, I see, that's the width. This entire driveway is in violation, not just a piece of it. At the end you're still 13.5 %, Krate said. Okay. Someone obviously dropped the ball. Villodas asked who hired A. J. Construction? FSM Services out of

Brookfield hired A. J. Construction, Case replied. Krate asked at 7:41 pm is there any members of the audience who wish to speak for or in opposition to this request. Later in the voting session, Krate reviewed this request. In reality, folks, this entire driveway is in violation, Krate said. Action, questions, anyone? Mike, you haven't said anything tonight. You're scaring me, Krate said. Hanna said most of the driveway is just a little above the allowed grade. Krate asked should we do this with the provision? Roos said there's a retaining wall. Hanna said we can add that. Krate said there's a curb back there and that's not going to stop a car rolling down. Krate showed plan and photo to Hearty. Hanna and Roos discussed this and Hearty used the scale. You could condition it, Hearty said. Hanna made a motion to **approve** this, per plan submitted, for a portion of the driveway, with the **stipulation** that he erect bollards at the end of the driveway to stop the cars, for safety. The driveway's already in place. Roos seconded the motion, and the motion carried unanimously. Villodas said I didn't hear the motion, so Krate explained it to him. Villodas said I'm in favor.

#07-45 – Elaine J. Wallin, 132 Federal Road (L07043), Sec. 5.A.6.a., to eliminate requirement for 20 foot wide front yard landscaped strip; Sec.8.C.1.c., to allow parking in a front yard (CG-20 Zone, RA-80 Zone). Krate introduced this application at 7:42 pm, as Mike Mazzucco set up his easel, and Attorney Neil Marcus came forward again. Krate said I'm so familiar with it I don't have to look at it. Attorney Marcus said I would commend you if you took the hike up to the top. Marcus identified himself. With me tonight is Michael Mazzucco, PE, who is our civil engineer. At the time, on 5/10/07, Attorney Bob Talarico presented this, and unfortunately the Wallins were unable to attend that night. They are all here tonight. We read the minutes, and listened to the tapes, Marcus said. It appears it was not understood. You know where it is: Wallin Pool, it's been there a long time. Marcus described the taking line, right up here, just a few feet off the corner of the building. This is essentially the right-of-way for Federal Road. The entire site violates our zoning regulations. The State, when they took it, made this site completely nonconforming, and that is one of our hardships. That's where it starts, Marcus said. What we propose to do is to make this property more conforming, if we get this variance. The highway is too close to the building any way you slice it, Marcus added. At the end of the day, we will acquire this property from the State of CT, indicating where with the map on the easel. All of this parking that exists today is incorporated onto our site. Mazzucco added it's under contract. Marcus said, so with the exception of few spaces up here, every space is in the right-of-way. Krate said as is the building. Marcus continued, so if we can renovate the parking lot with the variances we are requesting, we take everything and move it back. Mazzucco showed the Preliminary Site Plan on easel. Marcus described how it would be reconfigured, and at same time we plan to significantly renovate the building. It is not the architectural high point on Federal Road. The Wallins want to have this building fixed up and become more compatible with Federal Road. Krate said the last time I don't think this was presented with the buy back. Marcus said, I tell you, I listened to the tapes, and to tell you the truth, when I first saw the maps, I could not believe that this is the State Highway line. So if the State widened Federal Road, we'd still have our parking lot. Marcus said we don't have our landscaped islands; we don't have them now. Krate and Marcus discussed the sidewalk issue, which is up to the State Highway Department. Mazzucco put a colored plastic sheet over the easel plan to show the increased landscaped area. Hearty said your decision tonight would have to be contingent upon the land deal with the State. Krate, Mazzucco and Marcus discussed the sloped back area, the other "lazy" Marcus brother, the Lazy Boy store down the road. Villodas had a question on the green shaded area and the crushed stone brought in to stabilize the site. Villodas said, when that property is acquired, that green shaded area becomes....Krate interjected the green is State owned, but they have to maintain it. Krate said you're outside the floodplain there. Marcus said, oh, yes. Mazzucco

showed the layout of Federal Road lots and business, and the next sheet with the photographs. Krate said we insisted on a landscaped area at Michael's Jewelers when they put it in. Forget about what's there now; it makes no sense at all. Mazzucco said this is typical of the whole road, including Stew Leonard's. Hanna had a question: how wide is that front area? Marcus said about 20 feet. Mazzucco said we spent a lot of time looking at the layout. Krate asked you have no tenant yet for this project? Marcus replied no; it will probably be offered for lease before it's built. It's a major change for this property. Mazzucco displayed showed the architectural rendering. Mazzucco said there is actually a parking level, not on the roof, but up the grade around the back of the building, so you won't ...Marcus interjected, in theory, this will be retail below and offices up above. Roos questioned the amount of required parking, not for a restaurant or a medical office. Krate said we'll put one of the overlays in the file. I understand it now, at least. Marcus said it was clear when I listened to the tapes, the concepts was not understood. Marcus said we are gaining buffer, clearly. Hanna, Krate, Marcus and Mazzucco discussed the previous presentation and what was not shown or made clear, "according to the story we got the first time." That's why I denied it without prejudice, Krate said. Mazzucco said that's our presentation at 8 pm. Krate asked is there any members of the audience who wish to speak for or in opposition to this request? During the voting session, Krate reviewed the petition. This basically will bring this property into conformity with the rest of Federal Road, and it must be based on the return of the land by the State to the landowner. Hanna made a motion to **approve** the petition, per plan submitted, to eliminate the requirement for the 20-foot wide front yard landscaped strip, and to allow parking in the front yard. They must obtain, purchase the land of the strip owned by the State; that must be transferred, and they will maintain the grass strip. Sibbitt seconded the motion. Hearty said this plan still has to go before site plan approval, and if there are changes to the parking area, you should leave it up to the ZEO if the plan then has to come back before you; if you state per plan submitted, plan dated 4/10/07. Krate said I don't want to grant parking in a front yard in both zones. You know, we got burned with Elmer's Diner, Krate added. Marcus said if you say you're approving per plan submitted, it's only in the CG-20. Krate said Ann's Place got something and then the diner got it. The motion carried unanimously, and Marcus commented that you adopted Sean's comments.

ACCEPTANCE OF MINUTES: May 24, 2007. Krate made a motion to accept the minutes as presented. Hanna seconded the motion and it carried unanimously.

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR **JULY 12**, 2007, at 7 pm.

ADJOURNMENT:

Roos made a motion to adjourn. Krate seconded the motion, and it carried unanimously at 8:18 pm.

Ms. Wallin said thank you for the approval. Marcus said thank you. Krate said don't let it go to your head, Neil.

Respectfully submitted,

Patricia Lee, Secretary