



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING BOARD OF APPEALS
(203) 797-4525
(203) 797-4586 (FAX)
MINUTES – REGULAR MEETING
December 18, 2007
COMMON COUNCIL CHAMBERS
7:00 PM

Chairman Jowdy called the meeting to order at 7:02 pm.

Members Present: Chairman Richard S. Jowdy, Joseph Hanna, Alt. Jack Villodas, Gary Dufel, Alt. Rick Roos

Members Absent: Herbert Krate, Alt. Rodney Moore, Michael Sibbitt

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

Jowdy read the legal notice header as an introduction, and Roos read the new business before the Commission. The Commission voted and unanimously approved tonight's agenda. Jowdy explained to the audience the procedure for Public Hearing.

NEW BUSINESS:

#07-71 – Crystal Bay Association, Inc., 10 Hayestown Road (I09066), Sec. 3.G.3.a., to allow detached accessory building in front yard; Sec.4.E.3., to reduce front yard setback from 40 ft. to 8.2 ft.; to reduce side yard setback from 15 ft. to 10.8 ft.; Sec.8.C.4.f.(4)., to reduce the number of required parking spaces from 94 to 90 for two detached garages (Roos-10 Zone). Chairman Jowdy introduced this petition at 7:03 pm. Attorney Paul Jaber signed in at the mic, identified himself, saying he represents the homeowners association for Crystal Bay Association. And this variance affects the common area and the community. Jaber read the specifics of the petition. Steve Sullivan, PE, is also here with me tonight to go over the changes to the plan. The applicant wishes to construct 2 garages. Due to the very unusual configuration of this parcel, therefore this line here on the south would be the frontage, Jaber explained, resulting in the need for variances for the front and side yards. A similar application was before you July 2007 and it was denied. We reviewed that in great detail, and we made a couple of changes as best we can, but I believe we did a great deal to help you go along with this. Also, there were a couple of issues that were not addressed the last time which affect the hardship. We reduced the depth of the garage to 20 feet. Also, we made compact spaces on the other side, so we were able to pull this garage forward, and pull this garage a few more feet. So when these are constructed there will be an overall loss of four spaces. Roos asked where are those 4 spaces currently located? Jaber and Roos discussed the lost spaces to pick up 20 spots. Jaber reviewed the requirements of the CT General Statutes regarding hardships, and this publication that I just got in the mail. He read from this literature: the comprehensive plan, with the consent of

neighbors; how it conforms to the comprehensive development plan; owing to conditions affecting that parcel, enforcing it would result in exceptional difficulty or hardship. There is technical frontage but no real frontage, Jaber explained; a similar design to Poets Landing. The hardship must be unique to and affect only the applicant's property and not other property in the neighborhood. It cannot be financial in nature, and obviously this is not. And the hardship cannot be self created, Jaber continued, and must result if the regulation is literally enforced. I believe that is true, as we have to call this side yard a front yard. I indicated something in the regulations that I wanted to bring to your attention: Sec. 3.G., a little known Section, and I talked to the planner about this. It was not considered when this was designed. Garages are accessory buildings. Jaber read from Section 3.G., at 7:11 pm. The regulations say you could build back to back garages with the agreement of the property owners. Crystal Beach signed an agreement with Crystal Bay indicating that they have no objection. The property is unique: 4 acres surrounded by water; 40 units total, 26 fulltime residents and 14 part time residents. What is interesting is a survey was done by the president of the Homeowners' Association over 7 full months, during which time the maximum number of cars was 56 cars. Jaber said this demonstrates that losing the 4 parking spaces is of no effect to the residents that live there. These are part summer communities; part time residents. The intent of this whole application is to provide 20 residents with covered parking. Many residents are elderly; therefore it's a motivating factor. Now Steve Sullivan will come up, Jaber said. Oh, here's the agreement between Crystal Beach and Crystal Bay.

Dufel said could you just quote that section again; I've got my book with me. Jaber repeated Section 3.G.3.c., the second sentence. Sean Hearty said it's on page 3-13. Roos explained the proposal with Villodas at the panel. Dufel read from the Section that Jaber had cited. How do you reconcile these limitations of height and area? That implies two buildings being put together, Dufel said.

Jaber explained I'm using this for a couple of purposes. These will be built similar to the Poets Landing plan. Dufel said fair enough.

Jowdy asked are there any questions?

Steve Sullivan, P.E., identified himself at 7:16 pm, saying I have just a couple of things. Sullivan compared the previous variance requests to this application, the changes in footage; the south side or front yard area. We reduced in both scenarios the depth of the garages. That reduction in depth reduced our variance request, which he explained. The original plan for this had a front yard parking variance approved in '94. Finally, our distance to Candlewood Lake remained the same. That's all, Sullivan said.

Chairman Jowdy asked are there any questions or comments?

Dufel said I have a few questions. I realize that the parcel does not really have frontages, but with any property, lot lines and development are set not to have it too close to lot lines. You have 4 acres. When we dealt with this in July; this was recently developed by most terms. You would have rearranged things to fit in, Dufel said. You've spent now five months moving things five feet. We're in the middle of snow storms, when the plows are coming through, and I'm not convinced anyone deserves a garage as a hardship. Secondly, 40 living units, a lot of which are part time (16); why can't you live with less? Or more importantly, why can't you move them nearer the condo units? You want a variance. Yet you are making people walk.

Roos interjected I see this as no relief to senior citizens; they are walking farther from their units.

Dufel said I have one more sentence to make. You stated there are never more than 56. I would frankly feel better about putting the garages closer with less spaces. You convinced me you don't need 90 spaces.

Jaber asked so you would consider us redesigning the whole lot?

Dufel said I treat putting things close to the property lines; you're putting them there forever.

Jaber said but the two complexes are similar, Poets Landing and Crystal Bay.

Dufel said I don't see anything across the street.

Jowdy said where the garages are is appropriate with the ones across the street. Jowdy commented on the winter weather, saying I'm familiar with the complex. I went up there quite a bit for a relative who lived there; I'm just answering the question, Jowdy said. It's a good layout from my perspective for the health, welfare and safety of the public. They are going to be retired and elderly people, Jowdy added.

Steve Sullivan said, just to let the Commission know, the existing utilities here on site are all through this area, and that was one of the factors in our layout of the site.

Dufel discussed rearranging the parking spaces, throwing away the need for a variance.

Steve Sullivan reiterated, as I just mentioned, the utilities are here.

Jaber said let me make a suggestion: can we **continue** this and see if we can redesign this?

Roos said just a comment: we already granted you a variance for reasonable use of that property for the way it is used right now. I still need to see why this should be granted.

Jaber concluded thank you, and I think it's a good dialogue.

Jowdy said okay; we'll table that.

#07-77 – Antonio A. Ramos & Antonio C. Narciso, 2 Broad Street (K12270), Sec.6.A.3.a., to reduce rear yard setback from 30 ft. to 3 ft., to reduce side yard setback from 20 ft. to 3 feet, to reduce front yard setback from 30 ft. to 27.7 feet; Sec.8.C.1.c., to allow continued parking in front yard, for ironworks operation (IL-40 Zone). Jowdy introduced this at 7:30 pm. Gregg Brauneisen, Attorney, signed in and identified himself, from 148 Deer Hill Avenue here in Danbury. My clients operate A and A Ironworks, and they've operated their business here for many years. Roos turned off his cell phone. Gregg Brauneisen stated the purpose of the proposal, and the need for the variances. The lot is only 12,000 square feet, so the size of the lot is the hardship, and it's in compliance with the Comprehensive Zoning Plan.

Jowdy had a question on the proportion of the building: this is a tremendously large building for the lot.

Brauneisen replied we don't need a variance for that, the building coverage, so I don't know where that is coming from.

Jowdy expressed how many variances are needed.

Brauneisen said we are not trying to over burden the property. But that's a good point.

Jowdy discussed that this is an industrial building, and the maintenance part of that. I am not saying you cannot get a ladder on the side. But a big building is one thing, and maintaining it, Jowdy said.

Brauneisen said you have got to get the parking in there as well, on the lot, Mr. Chairman.

Dufel said from what I see, here you have five parking spaces and a loading dock. Describe the vehicles coming in here.

Brauneisen said there will be mostly small vehicles coming in here.

Dufel, Hanna and Brauneisen discussed the deliveries of steel, the size of the trucks, how they pull up to the loading space, and do they back in?

Mr. Antonio Ramos took the mic, and described how the trucks back in to the side, and we unload them with a fork lift. We're trying to get a bigger building so we could work mainly on the inside, and have storage, Ramos said.

Dufel asked you operate this iron works here now? No change in use? You need space in houses? Dufel continued, we have to rule on giving the least amount of variance as necessary. In terms of the neighbors, it's right there.

Brauneisen asked did you visit the site?

Dufel replied I know the area. Can we live with that minimum variance required deal?

What gives you the right to go right up to his nice open space? Is there a way to give a little more room?

Brauneisen said I would say, what's on there now is a Quonset hut, and there really would not be much change as far as you're concerned.

Hanna asked what's the second story to be used for?

Ramos answered storage of ornamental material and a nice office.

Jowdy, Hanna and Ramos discussed the parking spaces, a 7000 sq.ft. building; the lot is so tight; where will you park any of the overflow.

Ramos replied it's three employees now. We love the area. We've been there for 10 years, Dufel said when you sell out and you leave that property, where are future more employees going to go? A 7000 square foot building with only 3 parking spaces!

Brauneisen said wouldn't that have to be addressed when they came in for a change of use?

Hearty and Jowdy discussed a variance versus a use variance; and subsequent use of the property, Hanna asked for the amount of sq. footage with two stories.

Roos, Gallo, Jowdy and Dufel discussed coverage being based on just the footprint.

Jowdy said, again, 7000 sq.ft. building with only 3 employees.

Brauneisen said I understand what you're saying. It's compatible with the zone. You know you can't park on Broad Street.

Jowdy said whoever buys it is going to need more than 3 parking spots, and Chairman Jowdy discussed what could happen if we grant this variance.

Brauneisen said it's a better use than what's there now. This particular house is used for residential; the hardship is clearly the size of the lot.

Jowdy said also, though, the parking cannot be accommodated. It's not cut and dry. Everything you said is factual, and Jowdy discussed the square footage in the houses available now. Those houses are not that big.

Brauneisen said the houses are right on the plan, Mr. Jowdy.

Roos asked is there any additional equipment stored outside right now?

Brauneisen replied absolutely; that's the impetus for this variance.

Ramos discussed 68 feet by 50 feet.

Roos asked, as it is right now, how much more additional space would you require to store the materials that you have right now? Roos asked applicants to envision that, and would that accommodate your needs?

Ramos answered all the small equipment; and we expect to have everything upstairs.

Ramos discussed the interior further with Roos, and his need for room to maneuver, because it would be all open on the inside. Right now we have walls, Ramos said.

Brauneisen reiterated it's going to be more of an open plan.

Roos said going back to my question; pretend there are no walls there. With a second story, would you have enough space to accommodate the materials you have outside?

Ramos replied no; not even close.

Jowdy discussed the square footage in the house now. How big is a Quonset hut? It's much larger than a car garage. (Tape 1 flipped to side B). Jowdy and Brauneisen discussed the square footage further, a Quonset hut, two stories; but it spills out, what's used as the room, it spills out into the front of the Quonset hut.

Brauneisen said I understand completely.

Roos said we need to meet each other half way. I'd like you to see, to go back, and figure out exactly how much space you're going to need; I think we'd be more inclined to be receptive.

Brauneisen said so you want to continue this.

Jowdy said, understand, the variance goes with the property; and Jowdy reiterated his concern about the parking spaces. We've got to take that into consideration. We don't just rubber stamp everything. When we can, we give the variances, and parking is one of the biggest detriments to all the property in the City of Danbury.

Brauneisen said this is a pre-approved lot in an IL-40 Zone. It's not okay for the property owner. We are trying to be reasonable. There are five spaces there, okay?

Dufel said I've gotten confused. Are we going to vote on this?

Brauneisen said we will take into account your suggestions and come back.

Roos said three feet; those are extremely close side yard setbacks, and we've previously requested shrubbery, but there's not even room for that.

Brauneisen said Risdon is a big operation.

Dufel said if you are coming back, in a perfect world, is there any way to obtain more property?

Brauneisen replied I don't think that's in the cards. The river is around there, so it's kind of cut off. So we will **continue** this.

Chairman Jowdy repeated this is continued.

#07-78 – Danbury Rental Real Estate, LLC., 28 Davis Street (G13156), Sec.4.C.3., to reduce minimum lot width requirement from 100 ft. to 69.1 feet for conversion from 2 to 3-family residence (R-3 Zone). Chairman Jowdy introduced this item at 7:55 pm, as Attorney Ward Mazzucco signed in. Ward Mazzucco identified himself, and thanked the Commission for leaving a pen out that I can see. Again, the property is at 28 Davis Street, in an R-3 zone which allows for multi-family homes. I've made a map of the area in green, pink, yellow and blue, indicating the number of families per home. Green is one. Two is in pink. Three in yellow. And four family is the blue one. Some of the three families are on lots even smaller than the subject lot. I'll leave that with you to look at as you wish. Mazzucco continued to discuss the vicinity, Bug Motors, Morris St. School; I'm sure you know the neighborhood. I will pass those around for your information; one of Danbury's solid, stable neighborhoods. My client bought it about five years ago. Mazzucco described the frontage, and the history of the change in regulations. Now this is an existing 2-family house, but it does not have enough frontage to be a three family. Before my client bought the property, he knew that he wanted to develop it as a three-family, and Mazzucco provided proof that they discussed a three-family plan. One requirement was some electrical work, upgrading the services, at a cost of more than \$4000.

Jowdy asked he got permits when this was done?

Mazzucco replied, oh, sure. Another thing was there had to be work done in the basement to put a concrete floor in, some excavation, extra lally columns, and that was done at over \$9000. As a result of that work, the building had and still has the three electrical boxes outside, and the work in the basement is reflected on photo #4, Mazzucco said. That's to provide additional support. There were some other incidental things, safety hand rails, staircase upgrades, and Mazzucco continued handing out photos. You can see it's been well maintained and attractive, one of the nicer and newer looking buildings in the neighborhood. At this point the regulations changed, and it became impossible to have a third family due to the lot width. All other requirements would be met. There's really just a driveway on site now, realistically you could fit maybe three cars. The proposed plan has parking for all three units, in the back, served by a new driveway. All that off site parking would be brought on to the site.

Jowdy asked he got building permits?

Mazzucco said yes, but not a zoning permit. All electrical work and structural work has been done and paid for, with the intent to go to a three-family when the home was upgraded.

Roos stated essentially you put the cart before the horse, didn't you?

John Chrystal, the applicant, spoke from the audience: Gentlemen, forgive me for being a bit dense on this subject. I'm British. John Chrystal explained that he was trying to phase my expenses, and I thought while I'm doing it, I might as well put in three, rather than two.

Mazzucco said with the wisdom of hindsight, he would have gotten all his permits. But he did it in a piece meal way.

Chrystal said I was careless enough to miss the announcement in the press; I'm sorry. Mazzucco said just to go back to where I was, all parking demand will be met in the proposal. The purpose of a lot width requirement would be, I would guess, to keep lot bulk in check. Here adequate access is not a problem, which Mazzucco discussed. If the Board sees fit to grant this variance, when you drive by, you will see no change in the exterior. In terms of satisfying the width requirement, I would respectfully suggest we are actually improving the situation. I would believe, if granted, it would be consistent with the neighborhood, and Mazzucco distributed photos of surrounding parcels.

Roos said I know it well.

Mazzucco described photos 8 through 12 and what the neighborhood looks like, and directly across the street is the four-family. It's very compatible with the neighborhood. The neighbor to the north submitted a letter in support; Moscoso, the neighbor most affected. The second most directly affected neighbor across the street submitted a letter as well (Ataya). Mazzucco gave his conclusion of the presentation, saying I would be glad to answer any questions.

Jowdy had a question about what per cent more coverage.

Mazzucco said it's just a matter of the internal configuration to separate the third unit up there.

Dufel said we've had cases in the past; why don't we need a second exterior egress, a stairway?

Chrystal said I'm told by my engineer that it could lie on top of the existing staircase.

Dufel said secondly, you're showing a retaining wall: how much fill will you need?

Mazzucco replied it's more than 6 inches; it has not been designed yet; certainly it would be done to meet all requirements.

Dufel said lastly, just so I'm clear, we have seen the bills, and we've appreciated the upgrades, but a lot of this would have had to be done anyway.

Mazzucco said yes.

Jowdy asked is there anyone who wished to speak for or against this application.

Lynn Waller came forward at 8:15 pm, from 83 Highland Avenue. I live very close to the site, and I go up and down Davis every day. I am opposed to this, due to the parking. There is a slope. There are so many cars, and they do not move their cars in the winter, so Davis becomes a one lane road, and you can go over there today, after our storms; the road is narrow. It becomes a one lane road. I think it is going to be a nightmare, Waller said. This was a nice old street. You can't force people to park in spaces where they should. They are going to park at the top or where they want. I spend a lot of time on Davis. I'm sorry, I see no hardship. There are just too many people and too many cars on Davis Street, and I hope you do not grant this.

Jowdy had a question for Waller on the parking, the slope and the on-street parking.

Waller replied they are all there. There's a tremendous hill there, and it is easier to park on a flat area than on a slope.

Jowdy asked is there anyone else who wishes to speak for or against this application.

Mazzucco said, to respond quickly to that, there's not enough parking on the site now, and this proposal would provide enough parking for all the people. The need for the fill is to keep the grade such that people would not have to park on a slope.

Roos asked what is the grade. Where is the driveway?

Mazzucco and Roos discussed this on the plan at the panel.

Mazzucco said you can see that it will be roughly at grade for the first third.

Roos asked there would not be any runoff from that area? And these are dwellings back here? So it's not paved or anything? The proposed driveway will not create any additional grade than what exists now? Just wider, Roos asked. Thank you.

Chairman Jowdy said the Board will consider it.

During the voting session, Jowdy discussed the first two applications, and the Commissioners discussed with Sean Hearty opening up something to a future permitted use. Jowdy said he's going to come back, referring to #07-77 for 2 Broad Street.

Jowdy opened up #07-78, 28 Davis Street to discussion.

Dufel said he's got a two family use. He has done a good job upgrading the property. He's got reasonable use as a two family. He's using not knowing the rules as a reason for us to grant a variance to make more money.

Jowdy said, in this particular case, it would be an advantage to get the cars off the street.

Dufel said he could do that with a two family. That does not give us any reason to grant him a variance. There's no exceptional difficulty.

Jack Villodas said I agree.

Jowdy said it's not like it is spot zoning. That's basically my opinion.

Hanna said I think if he's not going for any additions, and I pass by there, and the parking there is very difficult.

Dufel said should we go for a motion?

Roos said the only thing that's changing is the width of the driveway. This is simply converting the attic. You pointed out that he could still do that with a two-family.

Jowdy, Dufel and Hanna discussed that if he doesn't get the variance, he may never do the parking, and Lynn Waller had said they would park on the street anyway.

Rick Roos made a motion to approve #07-78 at 9:29 pm. The hardship I'm submitting is that the zoning law had changed when the original intent of conversion was perceived. It may remove cars off of Davis Street, an extremely busy street, laden with on street parking; per plan submitted.

Hanna seconded the motion.

Villodas and Dufel voted no.

Jowdy, Roos and Hanna voted in favor.

Jowdy announced the motion is **denied**.

#07-79 – Paul Slinsky, 18 Albert Road (H09146), Sec.4.A.3., to reduce minimum required side yard from 25 ft. to 6 ft.; to reduce front yard from 40 feet to 29.6 ft.; to reduce rear yard from 35 ft. to 14.1 feet and to 12.0 feet for two-story residential addition (RA-40 Zone). Chairman Jowdy introduced this petition at 8:21 pm. Kevin Slinsky and Peter Zowalsky identified themselves, and Slinsky said this is my first time here and I'm nervous. He's the carpenter, so he'll explain, referring to Peter.

Peter said he (Kevin Slinsky) is raising a family now, and Jowdy and Peter discussed the size of the existing small house. He is trying to raise a family here, and Peter explained coming out ten feet.

Dufel said if we stay on this Commission long enough, every house on Cornell will be upgraded. This is a tough neighborhood.

Jowdy said 350 square feet is a small house, and applicants agreed, and talked about the two story proposal.

Hanna said the only place you are changing the setback is in the front.

Peter added we are also putting a two foot cantilever on the house.

Dufel asked for photographs, and both applicants talked about the plan. Slinsky said I can't get a bank to give me a mortgage. I'm trying to keep it as small as possible.

Dufel stated you have an old cottage. How long have you owned it?

Slinsky said my dad has owned it for a long time. Also the septic location will interfere.

Dufel said you're the first person that when you stated your hardship, I felt it was true. So thank you.

Jowdy asked are there any more questions? Thank you. Jowdy asked are there any members of the audience who wish to speak for or in opposition to this request?

Dufel explained to the applicants that they can stick around.

During the voting session at 9:30 pm, Chairman Jowdy reviewed the request.

Dufel offered that this person is asking for a reasonable accommodation.

Hanna made a motion to **approve # 07-79** per plan submitted. The house exists. They are going for a second story; only 10 feet for front. The hardship is due to the septic location and the small lot.

Roos seconded the motion.

The motion carried unanimously.

#07-80 – Vespucci Recreational Center, Inc., 10 Christopher Columbus Blvd. (E16001), Sec.6.A.3.a., to reduce minimum required side yard setback from 20 feet to 6 feet for open pavilion (IL-40 Zone). Jowdy introduced this request at 8:27 pm, and asked how did this street get this name?

David L. Ryan, Land Surveyor, signed in, identified himself and described how they are planning to put an open pavilion up. It's in keeping with what they have there, as gentlemen looked at the plans. We are doing it where we are because of Lake Kenosia and it is steep. Presently now there is lawn. The Vespucci Lodge gave the City an easement here for the sewer. Notice where the old septic system was, Ryan said, and we would rather leave that alone. It's been abandoned. We don't want to disturb that area, so we want to expand where we are, where people picnic now anyway. It is an IL-40 Zone all around us too.

Dufel asked where are the steep contours, since you are using them as your hardship?

Ryan explained.

Bruno Tropeano stood up in audience and explained why they need the open pavilion. It would look better; it would be nicer, where the permitted tent goes, and he discussed this with Dufel. Next door is the Asmar's, and their letter came back; it's a rental home there. Jowdy explained the neighbor is a one-family house, and it's going to become commercial, and it will have no detrimental effect on that.

Dufel said a pavilion implies a certain amount of activity, a certain amount of noise.

Tropeano explained the noise is basically when we do the Italian festival.

Hanna asked you only use it a few times a year?

Tropeano explained.

Dufel asked why can't it be on this paved area?

Tropeano explained why: when we have the festival, with a few thousand people, we want to leave the front part open.

Dufel said you've got a big property. You've got space, but you want to be next to the property line.

Tropeano explained why they want to do it here. It's a cemetery. And Dufel continued to question why do you want a variance. We all want something we don't have, Dufel said.

Jowdy said it would not be conducive to the property. I've known the area all my life.

Dufel asked how much before they don't need a variance?

Ryan replied 20 feet. (Tape 2, side A installed).

Dufel said I've got to treat everyone the same here.

Jowdy asked is there anyone who wishes to speak for or against this application? Jowdy added that area is well known by all of Danbury. It does not hurt anyone. It abuts an IL-40 Zone, but the Asmar's want too much money for the property.

Dufel said there is absolutely no reason for them to ask for a variance.

Jowdy explained that they have a detached pavilion.

Dufel said I am sure I am swimming upstream on this one, but in good conscience, they don't need a variance.

Roos made a motion to **approve # 07-80**, per plan submitted, on Christopher Columbus Boulevard. The hardship is the topography as it slopes into Lake Kenosia, plus there were prior septic tanks, which they do not want to dig up. It will have no impact to the welfare, health and safety of the City.

Jowdy said it also abuts the soccer fields.

Villodas seconded the motion.

Motion carried by four (Roos, Jowdy, Villodas, Hanna) to one (Dufel).

#07-81 – Emilio & Pierrette Plante, 4 Griffing Avenue (113220), To appeal for correction of an alleged error in a decision of the Zoning Enforcement Officer who on 10/25/07 issued a Cease & Desist Order for use as a 3-family dwelling (R-3 Zone). Chairman Jowdy introduced this item at 8:36 pm, as Michael Kaufman, Attorney at Law, signed in; and first I'd like to say, last but not least, we are here, and I would like to make a brief introduction, Kaufman said, so you could hear also from Mr. Plante since he has owned the property. He bought it in October of 1975, and it was being used as a three-family at that time. The evidence will show he got a tax bill, and he reported to the assessor that it was a three-family. Kaufman said since he reported the change, it's been noted as a three-family. Also, some 21 years ago, there was a notice from the Health Department that this was legally a two-family, but no action was taken by the Department at that time. It was only in October 2007 that a cease and desist order was issued. Mr. Plante has lived in the community for a little over 45 years; he never sought to use this in a detrimental way, and there is no indication that this was a three-family, not a two-family. This house has been in existence since 1912.

Jowdy had a question on how long before it becomes obsolete.

Kaufman said it was never communicated to him that this was in violation, and now, 21 years after they first looked at it, they say it's a two-family.

Dufel asked for clarification about use of the house as a three-family all these years.

Mr. Plante stood up and signed in.

Dufel said you are treating this almost like in a court of law. There are no lawyers up here.

Kaufman asked Plante if he is retired and when did he buy this property.

Emilio Plante replied in October 1975 he bought the property. Kaufman provided a certified copy of the deed to the Commissioners.

Kaufman asked Plante if he had it surveyed prior to buying the property, and Kaufman provided a certified copy of the survey to Commissioners.

Kaufman said it does not refer to this as a three-family, but it does show a fire escape. Subsequently Mr. Plante built a house on 6 Griffing Avenue.

Plante said I moved the garage.

Kaufman asked Plante to show the fire escape that was there when you purchased the property in 1975, and Kaufman reiterated that Plante believed he was buying a three-family.

Plante, in answer to Kaufman, said I told the assessor's office it was a three-family, probably a year or two after I bought the property.

Dufel said I have a question: why did you believe it was a three family?

Plante replied the big fire escape was there. I was young; three families were living in it.

Kaufman distributed the assessor's card from 1986. Mr. Plante, have you seen this before? And Kaufman prompted him to state it says three-family, erected in 1912.

Dufel said you said there was some inconsistency with these cards. Can you explain that? Kaufman said there was one card that said two-family. I did not bring that one in; the one from the mid seventies.

Dufel asked so why aren't we seeing that one, discussing a history that is perhaps muddled.

Kaufman said since 1986 the town has shown it on the card as a three-family. We are not trying to hide anything.

Dufel reviewed the history of two versus three-family, and this honest guy told the town it was a three-family. Dufel and Kaufman discussed the history, the assessor's cards; the evaluations done then every 10 years.

Plante said I've been paying for a three-family for 32 years.

Roos said, looking on the second page of the card, is one of the families in the basement?

Plante replied no.

Roos said I'm assuming the basement would be concrete. And right next to that it says floors; on the left side of the page. It's checked off full. If there was a basement that did not support any people, I would assume no one would build a concrete floor on the first floor. I don't see anything checked off for the third floor.

Jack Villodas said it says the house has three bathrooms? Each family has a bathroom?

Hanna asked is the attic is finished?

Plante said it has three bathrooms. The attic was finished when I bought it. I put in a window and they inspected it after that. I have 18 parking spaces, which he discussed with Hanna, including the shared parking with the house next door. Hanna and Plante discussed the driveway.

Roos said on second page also, in the center column, this is registered as only a two story house. If the attic was registered, wouldn't it be 2½?

Kaufman and Roos looked at card at the panel.

Roos asked why weren't those mistakes corrected at the same time?

Kaufman said he lived peaceably with this house for 32 years, and the cease and desist came as a surprise to him.

Kaufman asked Plante when you rented the apartment you had it inspected?

Plante answered yes; by the fire marshal, and health and zoning inspections.

Kaufman next distributed the most recent assessor's card; from at least 1986 to present it being shown as a three-family.

Villodas asked where is the third family here?

Plante said it's in the attic. Kaufman prompted Plante about the fire escape being there in 1985.

Kaufman next distributed documents certified by JoAnne Read. The last page in this submission is a document dated 2/26/86, Kaufman said. He asked Mr. Plante have you ever seen this document before?

Plante replied no; I never got anything from the zoning department.

Mr. Plante submitted a permit application for a roofing permit, in which Mr. Plante indicated that this is a lawful three-family. Now after 32 years he's told it is a two-family.

Hanna said a permit application does not legalize a three-family.

Kaufman described the usual burden of proof, but here there is no evidence either way; but at least since 1974, it's been a three-family, and it would be inequitable. With all due respect to Mr. Hearty, I would submit he is not going to have anything in his records prior to 1975 when Mr. Plante bought it; and the interesting thing is that the zoning office investigated this in 1986, but 21 years later it comes to light, Kaufman said. Mr. Plante is following all the rules, and we ask that you grant the unusual request to allow this as a three-family.

Hanna had a question for clarification: the time line, and Hanna read from the assessor's card, "observed use: three apartments".

Kaufman clarified what we are saying. That was never communicated to my client by the zoning office. So Mr. Plante had no knowledge back in 1986 that there was a problem.

Dufel said explain how one could go from that piece of paper to a permit to re-roof. Oh, these two are separate.

Plante said everybody makes mistakes.

Kaufman asked are there any questions?

Jowdy said not just yet. We'd like to hear from zoning.

Sean P. Hearty, Zoning Enforcement Officer (ZEO), identified himself at 9:04 pm and handed out photographs. Does everyone have a copy of the appeal? Once again, we have a discrepancy, so I go on pretty much what is on the record. I rely on the assessor's card to find who was in the building, and what the building was being used for. Hearty explained the history when the conversion was made, 6/8/77. Here's my problem: there's an inspection card in my file from 6/8/77; Ron Clarke, the old assessor, and they saw then a two-family dwelling. So I have a two-year span there, where an inspector saw this as a two-family. The taxes were not changed until 1986. The zoning department has no record of any action from the health department. This is all speculation, Hearty said. In 1987, the card listed the home as a three-family dwelling, and Hearty read from the cards for 1965, 1977, 1986, 1997, and 2007, how house was listed. The cease and desist order should stand. This is not pre-existing, nonconforming. The inspection shows it was a two-family. The zoning officer is designated to aid the health department, and this does not indicate that this is not enforcing regulations. Hearty said you can easily ask for those records, so Mr. Plante could have done that. Maybe the notification did not take place. We can consistently show that it wasn't. There was a conversion done without the proper permits, so Mr. Plante has gained by getting a three-family dwelling out of this. The zoning office regularly received referrals like this from the Health Department; there was no cease and desist sent in 1986.

Dufel said I guess what I'm hearing is the homeowner, when he bought the house it was a three-family and he began paying taxes on it as such. You say that is impossible. Hearty said it is showing you the background, but it's still an illegal conversion. At the same time there were permits pulled for the house next door; he built apartments there. The existence of the fire escape is a mute point. It's not nonconforming; it's still illegal. I don't know what was conveyed to Mr. Plante back then. We have a discrepancy between facts and times and figures.

Kaufman said I spoke this afternoon with JoAnne Read, whom I am sure you know. There were no regulations in existence in 1929. The only regulations according to JoAnne commence in 1963. I would submit the time period you have to look at is from 1963 on. I would submit that Mr. Hearty's records may have had some errors. We don't know the depth of the inspections that were done. There is nothing Mr. Plante has done to indicate that he is lying in any way, and Kaufman referred again to the fire escape that was there when he purchased the property. Next door, he got all the approvals. If there was a problem with this house, he would have addressed it. Kaufman continued discussion at 9:15 pm about the lack of evidence.

Dufel asked you are the only attorney in this group now, right? Mr. Hearty is asking us to judge this based on, "The law states this." What are the options open based on either an approval or a denial?

Kaufman suggested, or we could come in for a variance application and do it that way. We were not able to locate any prior owners. The old records in the fifties and sixties were not the greatest.

Chairman Jowdy referred to what the inspections showed.

Kaufman said what the assessor did on the card at that time, what Mr. Plante has testified; it's your job to judge his credibility,

Roos referred to what the old assessor's determined, and what Mr. Plante is saying today.

Kaufman concluded saying thank you at 9:20 pm.

Jowdy and Villodas discussed what he could do to conform as a three-family.

During the voting session, Jowdy reviewed this appeal at 9:35 pm, and opened it for discussion.

Roos asked have you consulted Corporation Council on this?

Hearty replied no.

Dufel asked did the Zoning Enforcement Officer do his job properly? I think the ZEO did his job very properly, even if this were in a court of law. Three Commissioners agreed (Roos, Villodas, and Jowdy).

Roos made a motion to **uphold the decision of the ZEO**.

Dufel seconded the motion.

The motion carried unanimously.

ACCEPTANCE OF MINUTES: November 8, 2007

Motion to accept the minutes as presented by Roos. Second by Hanna. The motion carried unanimously.

ADJOURNMENT:

Motion to adjourn by Roos. Second by Villodas. The motion carried unanimously at 9:38 pm.

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR JANUARY 10, 2008.

HAPPY HOLIDAYS!!