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PLANNING BOARD  
TOWN OF COLONIE

COUNTY OF ALBANY

\*\*\*\*\*  
A HEARING REGARDING THE HODGKINSON RESIDENCE LOCATED AT 1A  
SUNNYSIDE AVENUE. A SINGLE FAMILY DWELLING IN AN NCOR  
DISTRICT REVIEW AND ACTION ON SPECIAL USE PERMIT  
\*\*\*\*\*

THE TAPED AND TRANSCRIBED MINUTES of the above entitled  
proceeding BY NANCY STRANG-VANDEBOGART commencing on  
June 23, 2009 at 7:05 p.m. at the Public Operations Center  
347 Old Niskayuna Road, Latham, New York 12110

BOARD MEMBERS:

JEAN DONOVAN, Chairman  
MICHAEL SULLIVAN  
ELENA VAIDA  
GEORGE B. HOLLAND, JR.  
CHARLES J. O'ROURKE  
TIMOTHY LANE  
PETER STUTO, Jr. Esq., Attorney for the Planning Board

Also present:

Joseph LaCivita, Director, Planning and Economic Development  
Ed Esposito, Esq.  
Mike Lyons, Planning and Economic Development  
Thomas Dellarocco

1                   CHAIRPERSON DONOVAN: We have a public hearing  
2 this evening on the Hodgkinson residence which is a  
3 single family dwelling in an NCOR district and its  
4 review and action on special use permit and final site  
5 plan review.

6                   Joe, is the representative here from there?

7                   Sir, you'll just have to bear with me for a  
8 minute. I got my packet and I thought that there were  
9 materials missing. What I saw on a memo was that this  
10 property was in front of us back in 2007. That must  
11 have been the old Planning Board.

12                   There wasn't a SEQRA adopted at the time because  
13 this is a Type II action which does not require SEQRA.  
14 I wasn't sure because it wasn't in my file.

15                   Secondly, I don't have any minutes in my file  
16 from what happened on that December 7<sup>th</sup> meeting. Is  
17 someone going to let us know? Someone from the Planning  
18 Department, please?

19                   MR. LACIVITA: I didn't see them in this packet.

20                   CHAIRPERSON DONOVAN: Did Kevin prepare this  
21 packet?

22                   MR. LACIVITA: Yes.

23                   CHAIRPERSON DONOVAN: It's lacking, Joe. We have  
24 a special use permit in front of us this evening. There  
25 are certain criteria that the applicant has to meet. I

1 see no comments from the Planning Department about  
2 those special criteria - whether they have been met or  
3 they haven't been met. So, here we are. An applicant is  
4 in front of us and this board is supposed to take  
5 action this evening.

6 Is anybody from the Planning Department ready to  
7 go through the special use permit procedure with us and  
8 what findings are required by this board as we go  
9 forward?

10 No? Okay.

11 Single family home, I believe a special use  
12 permit is needed unless it's an accessory structure in  
13 the NCOR district, is that correct?

14 This is not an accessory structure? This is a  
15 single family structure.

16 The findings that are required in granting or  
17 denying a special use permit - we have to know that the  
18 use is consistent with the town's current planning  
19 documents including the comprehensive plan, that the  
20 use is consistent with the purposes of the land use  
21 district in which it is located, that the use will be  
22 suitable for the property in which it is proposed,  
23 considering the property size, location, topography, if  
24 it is buffered from neighboring properties, that the  
25 use will be compatible with adjoining properties, that

1 the use will not adversely affect surrounding land uses  
2 and will not cause undue traffic congestion, that the  
3 use will have appropriate fronting and accessible to  
4 fire, police and other emergency vehicles and the list  
5 goes on.

6 Is the applicant prepared to address those points  
7 this evening?

8 MR. ESPOSITO: I believe we are. There is no  
9 prior planning actively.

10 My name is Ed Esposito. I'm representing  
11 Mr. Hodgkinson and Thomas Dellarocco that had sold the  
12 land previously. The only action before I even got  
13 involved was December of '07 where there was some Town  
14 Board activity to resolve the issue - it's a dead end  
15 street. The lot was successfully subdivide and prepared  
16 as a .32 acre subdivision.

17 We believe that it is consistent with the  
18 surrounding land use. We have been working diligently  
19 with Kevin and all the department staff to see that we  
20 have the proper utility connections. We were asked to  
21 do a little stormwater investigation and it is a single  
22 family home. It is a modular home. The neighborhood  
23 does have bungalows and ranches. It is very fitting and  
24 it's not out of place or context.

25 I know that John's plight was to deal with the

1 NCOR and I'm sure in that neighborhood it's not the  
2 first home that was looked at. It is a new home and we  
3 have prepared the existing survey right through the  
4 site plan, which hopefully this evening you will take  
5 action on. The owner was looking at procuring a  
6 building permit. We've got the owner here and we're all  
7 here to answer any questions that the board may have  
8 regarding the statistics of the property and the use.

9 I think that the narrative - the one page summary  
10 really gives us access to some of the information and I  
11 believe that mostly all of it. We'd like to discuss the  
12 plan, if we could.

13 MR. LACIVITA: Do you have a tax map or anything  
14 to show the Planning Board how this fits in within the  
15 neighborhood? It does show single families around it.

16 MR. ESPOSITO: I don't know about the package,  
17 per se, but this is the 1929 air survey and we're all  
18 looking at this property right here (Indicating).  
19 That's the tail of the Sunnyside Avenue Extension.  
20 These are the surrounding site photos that were  
21 submitted to show that it is a wooded site. The  
22 pavement is going to be fully restored. Here is where  
23 the hydrant ends here and the stormwater ends and the  
24 sanitary ends (Indicating). I think that we have very  
25 thorough plans to show how we intend to connect. We

1 have met pure waters and so forth. So, these exhibits  
2 are all here and a cover letter was given to Kevin to  
3 pass along.

4 CHAIRPERSON DONOVAN: Okay, well, we do have the  
5 comments from the various departments and I don't know  
6 if you've actually seen these and if those have been  
7 completed. I'm assuming that they have because I have  
8 here May 21, 2009 was a comment from John Frazer and  
9 Daniel Sever who is a water engineer at DPW and that  
10 was on the 21<sup>st</sup>. On the 28<sup>th</sup> it looks like they  
11 signed-off on it.

12 MR. LACIVITA: And additionally with highway as  
13 well. Steve Russell came in here and it was on  
14 May 26, 2009.

15 CHAIRPERSON DONOVAN: The neighborhood is  
16 obviously primarily zoned single family and this is the  
17 situation that we had.

18 I don't know if you knew about St. Francis  
19 de Sales parish that had to come here for a special use  
20 permit to continue to use the parish as a single  
21 residence. This is another issue in our Land Use Law  
22 that probably should be addressed because it's causing  
23 people to have to jump through hoops, probably  
24 unnecessarily.

25 We'll start with Mike. Do you have any questions

1 of the applicant?

2 MR. STEWART: I had a question on the side yard  
3 setbacks. Are they 11 and 25 feet?

4 MR. ESPOSITIO: They are listed under statistics.  
5 Sides are - yes, 11.7 and 25.

6 CHAIRPERSON DONOVAN: What are your front yard  
7 setbacks, sir?

8 MR. ESPOSITIO: The front yard setback is 40.  
9 It's actually a trapezoid site so it is actually more.

10 MR. STEWART: What is the minimum setback for the  
11 side yard? Is it 10 feet or is it 15 feet?

12 CHAIRPERSON DONOVAN: Michael, what is it in the  
13 NCOR zone; isn't a totally of 25?

14 MR. LYONS: It is a minimum of 10 and a total of  
15 25.

16 CHAIRPERSON DONOVAN: So this is actually meeting  
17 the criteria of NCOR, I believe.

18 MR. STEWART: That was my only question.

19 CHAIRPERSON DONOVAN: C.J.?

20 MR. O'ROURKE: I'm all set.

21 CHAIRPERSON DONOVAN: George?

22 MR. HOLLAND: I'm all set.

23 CHAIRPERSON DONOVAN: Elena?

24 MS. VAIDA: I didn't have anything either.

25 MR. LANE: I just had a question, but Joe just

1 cleared it up.

2 CHAIRPERSON DONOVAN: Again, we have requirements  
3 in the Land Use Law that have to be met. The board will  
4 have to draft findings, Joe, in relation to this  
5 project.

6 Mike, tonight, our actions - you say that it's a  
7 Type II SEQRA so therefore, the board doesn't have to  
8 take action on SEQRA, is that correct?

9 MR. LYONS: That's correct.

10 CHAIRPERSON DONOVAN: So what would you this  
11 evening - what would you like us to give the applicant,  
12 with this permit and approval on his site plan? Is that  
13 what you're looking for us to do?

14 MR. LYONS: That's correct. The departments have  
15 signed off and the site plan is satisfactory.

16 CHAIRPERSON DONOVAN: And we'll have to put  
17 together some finding, Michael?

18 MR. LYONS: That's correct.

19 CHAIRPERSON DONOVAN: Any other board members  
20 have any other questions?

21 ***(There was no response.)***

22 CHAIRPERSON DONOVAN: Anybody from the public  
23 have any questions on this?

24 MR. DELLAROCO: I have just one question, if I  
25 may. I own the three point something acres here



1 (Indicating). I know that back a ways when it was zoned  
2 undeveloped they went through this lengthy rezoning  
3 that was supposed to be E3 which was residential in  
4 small commercial. I have no clue when they changed  
5 this. So, now, it means that me, being a property owner  
6 down there who always planned on building his house  
7 down there - which was part of the first time around  
8 when we went through all this. Now, I have to jump  
9 through hoops again to try to put a house on the  
10 property. It's been in my family since God knows when;  
11 maybe the '20's. I don't know who to ask. When was this  
12 changed and why wasn't I, as a property owner, informed  
13 of this?

14 CHAIRPERSON DONOVAN: It was changed in 2007.  
15 There was a new Land Use Law adopted by the town. Now,  
16 it's 2009 and the plan is going into implementation and  
17 we're finding that there are problems. This is one of  
18 the problems that we're finding.

19 MR. DELLAROCCO: I've kept this property  
20 pristine. You can run down and see it. It took me  
21 totally by shock when I sold Johnny this property. I  
22 said, Johnny, you'll have no problem. It's Z3 and you  
23 can put a house on their; multi-single family homes.  
24 You won't have a problem. Poor John has had to spend  
25 his money on this that could have been used better

1           doing something else besides jumping through hoops.  
2           This will be the best looking house on that road. It's  
3           just a shame that we have citizens paying taxes that  
4           have to go through this stuff when it makes no sense  
5           because everything around it is for houses. It's a  
6           perfect use for this land.

7                         CHAIRPERSON DONOVAN: One of the things, as I  
8           said, that we realized that the law is in effect and  
9           that there are problems with it. Some of the problems  
10          were major. We've been addressing them and making  
11          recommendations to the Town Board. The Supervisor has  
12          also requested and is putting together a Land Use  
13          Review Committee and what we'll do is go though the law  
14          and try to analyze it. It's not something that's going  
15          to be done in a week because it's a big document. The  
16          law does have to be addressed. There is no question.

17                        MR. DELLAROCO: Do you see this maybe changing  
18          or giving some leeway here or there or a little slack?

19                        CHAIRPERSON DONOVAN: I hope that issues like  
20          this can be addressed. I can't tell you that this  
21          particular issue will, be but I'm hoping that issues  
22          like this will be addressed.

23                        MR. O'ROURKE: Hopefully common sense will  
24          prevail. Sometimes in government, it doesn't,  
25          unfortunately. This Land Use Law is a prime example of

1 common sense gone awry.

2 CHAIRPERSON DONOVAN: Just like we were saying  
3 before, one of the things that we did - when we did  
4 make changes was we had the zero foot setbacks. This  
5 town was never developed with zero foot setbacks. This  
6 new Land Use Committee hopefully will be able to deal  
7 with this.

8 MR. DELLAROCO: Hopefully when I do build, it  
9 will be a little bit easier.

10 CHAIRPERSON DONOVAN: Anybody else from the  
11 neighborhood or the audience have any questions or  
12 comments?

13 ***(There was no response.)***

14 CHAIRPERSON DONOVAN: Do I have a motion on the  
15 granting of a special use permit for this property?

16 MR. O'ROURKE: I'll make that motion.

17 CHAIRPERSON DONOVAN: Do I have a second?

18 MR. NARDACCI: I'll second.

19 CHAIRPERSON DONOVAN: All those in favor?

20 ***(Ayes were recited.)***

21 CHAIRPERSON DONOVAN: Do I have a motion on the  
22 final site plan approval for this project?

23 MR. O'ROURKE: I'll make that said motion.

24 CHAIRPERSON DONOVAN: Second?

25 MR. HOLLAND: I'll second it.

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CHAIRPERSON DONOVAN: All those in favor?

*(Ayes were recited.)*

MR. O'ROURKE: Good luck.

*(Whereas the proceeding concerning the above entitled  
matter was adjourned at 7:21 p.m.)*

**CERTIFICATION**

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*I, NANCY STRANG-VANDEBOGART, Notary Public in  
and for the State of New York, hereby CERTIFY that the  
record taped and transcribed by me at the time and  
place noted in the heading hereof is a true and  
accurate transcript of same, to the best of my ability  
and belief.*

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**NANCY STRANG-VANDEBOGART**

*Dated July 14, 2009*