

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

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39 SANDCREEK ROAD
SPECIAL USE PERMIT
APPLICATION TO CHANGE FROM SINGLE FAMILY USE
TO A TWO FAMILY USE

THE STENOGRAPHIC MINUTES of the above entitled
public hearing BY NANCY STRANG-VANDEBOGART, a
Shorthand Reporter, commencing on
October 11, 2011 at 7:02 p.m. at the Public
Operations Center 347 Old Niskayuna Road,
Latham, New York 12110

BOARD MEMBERS:

- PETER STUTO, Chairman
- MICHAEL SULLIVAN
- LOUIS MION
- KATHLEEN DALTON
- TIM LANE
- PAUL ROSANO
- ELENA VAIDA, Esq., Attorney for the Planning Board

Also present:

- Joseph LaCivita, Director, Planning and Economic Development
- Victor Caponera, Esq.
- Michael Tengeler, Planning and Economic Development
- Joe Grasso, Clough Harbour and Associates
- Frank Baldwin, Property Owner

1 CHAIRMAN STUTO: I'll just note for the
2 Board Members. This is something that Joe
3 Grasso mentioned. We're having Planning Board
4 training as soon as the official matters are
5 over.

6 Can you tell us what we're going to talk
7 about, Joe; just to whet their appetite?

8 MR. GRASSO: Techniques on stormwater and
9 LEDD design and accreditation.

10 CHAIRMAN STUTO: What does LEDD stand
11 for?

12 MR. GRASSO: Leadership and energy in
13 departmental design.

14 CHAIRMAN STUTO: Joe suggested that we
15 think about other topics that we would want to
16 be educated on that would be the most useful
17 here. We'll get back to that at 7:40, or when
18 that commences.

19 Our first meeting on the agenda is a
20 public hearing for a special sue permit,
21 398 Sand Creek Road, application to change
22 from single family use to a two family use.

23 I'm going to ask Michael Tengeler to do
24 an introduction. Then, I'll ask Elena - if he
25 misses anything - to tell us about special use

1 permits. We haven't had a special use permit
2 application in awhile.

3 MR. TENGELER: Good evening. The first
4 piece of business that you have before you
5 tonight is in regards to a special use permit
6 being proposed for 39 Sand Creek Road.

7 In 1995 the owner of the property was
8 granted a variance to construct a single
9 family dwelling on the lot of 39 Sand Creek
10 with the condition that certain setbacks and
11 dimensions would not be exceeded. At that
12 time, a two family dwelling was not allowed in
13 an undeveloped zoning district.

14 On January 4, 2007 the Town of Colonie
15 rezoned the property from undeveloped to
16 neighborhood commercial office residential.
17 The NCOR zoning district allows for a two
18 family residence with the granting of a
19 special use permit by the Planning Board.

20 Victor Caponera is here tonight on behalf
21 of the applicant to further discuss the
22 proposal for the Planning Board to grant a
23 special use permit in order to allow the
24 conversation of this single family dwelling as
25 a use into a two family dwelling.

1 CHAIRMAN STUTO: Elena, would you like to
2 add anything to that, or what is the standard
3 of review for us as we consider a special use
4 permit?

5 I'll just say that a particular zone will
6 allow X, Y and Z as a permitted use and then
7 upon application for a special use permit,
8 there are additional uses that they meet the
9 criteria.

10 Has anybody here been here for a special
11 use permit application before?

12 MR. LACIVITA: We did St. Francis DeSales
13 over on Exchange Street. I think that Victor,
14 you even brought that one.

15 CHAIRMAN STUTO: That was a two family
16 type situation?

17 MR. LACIVITA: That was a change in use
18 type of special use.

19 MR. CAPONERA: The rectory - that was a
20 bifurcate property to -- we had to get a
21 special use permit and we had to go through
22 the procedure that I'll go through tonight in
23 front of the Board.

24 CHAIRMAN STUTO: Elena, do you have
25 anything you want to add?

1 MS. VAIDA: Basically, the PEDD's summary
2 where is says:

3 "Before granting special use permit the
4 Planning Board shall determine.."

5 That has all the findings that the
6 Planning Board has to make and they are
7 required written findings.

8 The procedure for the special use permit
9 is that the site plan review is supposed to be
10 done concurrently or prior to the issuance of
11 a special use permit. It's my understanding
12 that everything has been filed for the site
13 plan review and has been reviewed by the
14 department. I'm not sure how much of the
15 documentation is in your package, but I
16 believe that the site plan is in there. Mike
17 can give more information to the Members on
18 that.

19 There is a SEQRA in the package and I
20 haven't reviewed that yet, myself. It's my
21 understanding that it's in there so the Board
22 can take a look at that and if there are any
23 questions, obviously ask questions about the
24 SEQRA. This is in the form of a public
25 hearing, which was properly noticed. That's

1 it. Once the decision is made and we go
2 through the criteria, it has to be in writing
3 and it gets filed with the Town Clerk.

4 CHAIRMAN STUTO: Thank you.

5 Mr. Caponera, would you like to start?

6 MR. CAPONERA: Thank you, Mr. Chairman
7 and Members of the Board.

8 For the record, I'm Victor Caponera and I
9 represent Mr. Baldwin who is with me tonight
10 and is prepared to answer any questions that
11 the Board might have.

12 Just for everyone's knowledge, Frank has
13 owned this property for quite a few years. In
14 fact, about 10 years ago he was trying to fix
15 up the building that was there and
16 unfortunately, that didn't go that well. It
17 seems that what happened is the house kind of
18 started falling over. The building had come
19 down.

20 What I had to do was go in front of the
21 Zoning Board and get a variance to basically
22 reconstruct a new building on the site. That's
23 exactly what Mr. Baldwin did.

24 The building that you see on your site
25 plan that we have prepared shows the dwelling.

1 It was built in exact conformance pursuant to
2 the exact requirements of the Zoning Board
3 decision relative to the setbacks, front,
4 side, etcetera and the size of the building.

5 So, when Frank was doing this back in
6 1994, he asked me - he said, I'd like to put a
7 two-family there and I said, you can't because
8 it isn't zoned for a two family. I said, maybe
9 some day. So, he built it and it's been used
10 all along as a single family residence.
11 However, he was very optimistic that the town,
12 in their infinite wisdom might rezone this
13 property to allow a two-family. When he
14 constructed it, even though it's only been
15 used as a single family, it can very easily be
16 converted upstairs to another apartment,
17 without doing anything to the outside. Lo and
18 behold, the law changed, as Michael just
19 eluded, to allow two-families in this zone.

20 It's also interesting to note that if you
21 look at the site plan, directly next door is a
22 piece of property that is a two-family that's
23 also owned by Mr. Baldwin. That would be 37.
24 Directly next door to that is a three family
25 that's owned by his father, Frank Baldwin, Sr.

Legal Transcription

1 We now come in front of this Board after
2 having gotten the approved zoning verification
3 to convert the existing building at
4 39 Sand Creek Road into a two family with, of
5 course, the Board's consideration of the
6 necessary departments and the special use
7 permit. If you look at the site plan, too,
8 you'll also notice what we did is we showed a
9 circular parking there. So, if we go on to
10 Frank's property next door, you can drive in
11 and drive around and come out so you don't
12 have to back out onto the road. There is also
13 extra parking on both parcels so we can
14 accommodate.

15 As some of the Board Members know, the
16 primary purpose of this special use permit is
17 to review the compatibility of the use of the
18 surrounding properties. My position here and
19 Frank's position is that if you look at the
20 surrounding area, there are many multifamily
21 homes along this area. Of course my office is
22 right around the corner so I look at it almost
23 every day. So, given the fact that there are
24 multifamily uses, two family and three
25 family - the proposed conversion of this

1 building of an existing single family to a two
2 family would, in my opinion, be compatible
3 with this neighborhood. We are not asking or
4 requiring or needing to make any external
5 changes whatsoever. As you see it, it is.
6 Nothing is going to change outside. It's going
7 to remain the same.

8 We believe that this is in conformance
9 with the specific special use standards and we
10 also believe that the use is consistent with
11 the Comprehensive Plan. It's consistent with
12 the purposes of the land use district in which
13 it is located. Why? Because the land use in
14 which it is located allows for a two family
15 use. It would be suitable for the property on
16 which it was proposed, considering its size,
17 location, topography, vegetation, soils and
18 the use. If you look at these lots along
19 there, they're all about the same. They're
20 narrow and their deep. If you look at the site
21 plan you'll see how deep this lot really is.
22 It goes back quite a ways. So, therefore we
23 feel that it's compatible with the adjoining
24 properties. It is not going to have any
25 adverse effect on the land uses, nor is it

1 going to create any excessive noise, dust,
2 odors, wear, pollution or other nuisances. We
3 also feel that it's not going to have any
4 traffic problems or cause any traffic
5 congestion by virtue of the property's depth.

6 As I just mentioned, it's 250 feet deep.
7 It allows for parking in the rear and will
8 have appropriate accessible parking to the two
9 family. The property is located on Sand Creek
10 Road and of course has direct access to fire,
11 police and other emergency vehicles, which is
12 not that far away on Sand Creek. Given the
13 fact that we currently have a single family
14 residence and we're looking to convert this to
15 a two family, we're certainly not going to
16 overload any public water, drainage or sewer
17 or any other municipal facility. We don't
18 believe that it's going to be degrading any
19 natural resources, ecostream or historic
20 resource.

21 And again, it goes back to what it said
22 when I first started. We're not changing
23 anything on the outside, other than adding a
24 couple of parking spaces to the rear of the
25 property that you can see on the sight line.

1 As I said before, there is not going to
2 be any external modification or alterations.
3 There is little, if any, construction other
4 than a few minor internal modifications.

5 Am I correct in that, Mr. Baldwin?

6 MR. BALDWIN: Yes.

7 MR. CAPONERA: And you're not going to
8 dispose of any chemicals. It's just going to
9 be used for another apartment. We're not going
10 to have any impact on Town communication
11 systems. There are no communication devices
12 that you are proposing to put on, in or over
13 the building?

14 MR. BALDWIN: No.

15 MR. CAPONERA: And certainly no microwave
16 transmitters or any other devices. Therefore,
17 we are not going to have any impact on the
18 Town communication systems. For these reasons,
19 Mr. Chairman and Members of the Board, we feel
20 confident that we will be satisfied with this
21 application and are prepared to answer any
22 questions.

23 CHAIRMAN STUTO: We'll have the Board ask
24 some questions.

25 Paul?

1 MR. ROSANO: I'd like to hear from the
2 public first.

3 CHAIRMAN STUTO: It looks like we have
4 three students from Hudson Valley Community
5 College; Mary Walsh, Ryan George, Michelle
6 Harmann and David Pelcher. Welcome to the
7 Planning Board meeting. If you have any
8 questions during or after, raise your hand and
9 we'll be happy to hear from you.

10 MR. ROSANO: Officially, you can tell
11 your teachers that you were here and it's in
12 the record. You got credit for it.

13 CHAIRMAN STUTO: The transcript will be
14 posted online. We have the stenographer taking
15 the record, so you'll have proof online that
16 you were here as well.

17 Do you have anything, Mike?

18 MR. SULLIVAN: Will it be two 1,000
19 square foot apartments?

20 MR. CAPONERA: Yes.

21 CHAIRMAN STUTO: Up and down?

22 MR. CAPONERA: Correct.

23 CHAIRMAN STUTO: I was going to ask a
24 couple of questions about parking. It looks
25 like you're trying to integrate two lots, at

1 least in terms of circulation. You also own
2 the parcel to the right and your dad owns the
3 other on the other side?

4 MR. BALDWIN: Correct.

5 CHAIRMAN STUTO: I did speak with Mike
6 Tengeler from our staff. He said that
7 technically you're required to have four
8 parking spaces.

9 MR. CAPONERA: Correct.

10 CHAIRMAN STUTO: If this was all one lot,
11 I might be comfortable with what's being
12 proposed, but the fact that they are legally
13 separate -- you can be heard on that, but you
14 might need the four spots.

15 I also wanted to know about pavement.
16 What's the intension for paving in the rear
17 lot? I see the edge of blacktop there. Are you
18 intending to leave it that way?

19 MR. BALDWIN: It's going to run to the
20 far end of the property, right to the end of
21 the garage. It will be crusher run.

22 MR. CAPONERA: I think that the intent is
23 to leave it that way.

24 MR. BALDWIN: For now, yes.

25 CHAIRMAN STUTO: Why didn't you lay out a

1 fourth spot there? There looks like there is
2 room there.

3 MR. CAPONERA: The only reason that we
4 didn't, Mr. Chairman, is the fact that he owns
5 the property next door. I suggested, when I
6 was talking with O.J. Meyers, that they do a
7 circulatory in and out. If you look at the
8 arrows, you can see the pull in to 39 Sand
9 Creek and then you just swing around to
10 37 Sand Creek. You could pull out that way so
11 that there is no backing out onto Sand Creek
12 Road. In so doing, they also added additional
13 parking in the rear of 37 as proposed, so
14 there would be plenty of parking.

15 CHAIRMAN STUTO: I'm going to reserve my
16 opinion on that.

17 MR. LANE: What happens when these
18 properties are passed on?

19 MR. CAPONERA: The same way that you do a
20 cross easement.

21 MR. LANE: And that's simple? What if
22 someone buys one of them and says I don't want
23 someone crossing over?

24 CHAIRMAN STUTO: What if we make a
25 condition of this?

1 MR. CAPONERA: I do that all the time,
2 Tim, and it's recorded in the County Clerk's
3 office. You're buying subject to that
4 condition to that easement.

5 MR. LANE: So, the buyer would have no
6 choice.

7 MR. ROSANO: We did that with the
8 Crisafulli property.

9 MR. CAPONERA: In that case, Crisafulli
10 owned both parcels. As I explained to the
11 Board, it's much easier to do it when the same
12 person owns both parcels.

13 Let's say that I want to buy that two
14 family, you have something on record that
15 you're buying subject to.

16 CHAIRMAN STUTO: I do hear that shared
17 drives always run into trouble.

18 MR. LANE: I live in a neighborhood where
19 there are a couple of them and they're not
20 easy.

21 MR. CAPONERA: They're not good friends?

22 MR. LANE: You have to be, but things
23 come up.

24 MR. CAPONERA: If you feel as a Chairman
25 or the Board that putting additional parking

1 space in the back to make the four and not
2 doing the circular as we proposed is a better
3 proposal, we have no problem with that either.

4 Do you Frank?

5 MR. BALDWIN: No, not at all.

6 CHAIRMAN STUTO: It can still function
7 with the circulation too.

8 MR. CAPONERA: Absolutely.

9 CHAIRMAN STUTO: Okay, let's think about
10 what the best thing to do is.

11 MR. LANE: How are you turning this into
12 a two family without doing any changes?

13 MR. BALDWIN: It was completely designed
14 when it was built for the future to be a two
15 family.

16 MR. LANE: So, where would you add the
17 second family access? On the back?

18 MR. BALDWIN: It has a rear walk-up. It's
19 got the proper access. It's got the front door
20 and the vestibule.

21 MR. LANE: And right now it's not being
22 used as a separate apartment.

23 MR. BALDWIN: Absolutely not. It never
24 has been. I lived there. It was a one-family
25 and we used the upstairs and the downstairs.

1 MR. LANE: And they had their own
2 separate bathrooms, etcetera.

3 MR. BALDWIN: Absolutely.

4 MR. CAPONERA: The Building Department
5 has confirmed all this. I thought that it was
6 quite brave of him to do.

7 MR. BALDWIN: It wasn't my dream home. It
8 was never going to be my dream home. I never
9 intended on living there. I planned on renting
10 it out.

11 MR. LANE: So, at this point, once this
12 has been converted for good -- you're not a
13 resident now, or you don't plan on being one.

14 MR. BALDWIN: I don't think that I will.

15 CHAIRMAN STUTO: Any members of the
16 public?

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

18 CHAIRMAN STUTO: I just don't know what
19 the best solution is on the circulation on the
20 parking. I have no problem with the access to
21 this.

22 MR. CAPONERA: We can certainly add
23 another parking space in the back.

24 CHAIRMAN STUTO: If they were separated,
25 would someone be able to back up?

1 MR. BALDWIN: Yes, absolutely.

2 CHAIRMAN STUTO: You're suggesting an
3 easement plus the four spot? You think that
4 will work?

5 MR. CAPONERA: Sure.

6 CHAIRMAN STUTO: You're going to record
7 that as part of the approval.

8 MR. CAPONERA: I have to, yes.

9 CHAIRMAN STUTO: I'm okay to move
10 forward, if that's the case.

11 Elena, can you help us procedurally as to
12 what we have to do first?

13 MS. VAIDA: Victor, at some point in this
14 process was there a SEQRA determination made?

15 MR. CAPONERA: When I did the zoning
16 case, there was; yes.

17 MS. VAIDA: Is this a Type II?

18 MR. CAPONERA: I think that it would be
19 unlisted. I know that it would be an unlisted.

20 MS. VAIDA: So, the Board is going to
21 have to make a SEQRA determination.

22 MR. CAPONERA: Yes.

23 CHAIRMAN STUTO: You're suggesting that's
24 what we do first?

25 MS. VAIDA: Yes.

1 CHAIRMAN STUTO: I'll give everybody a
2 minute to look over the SEQRA form; Part I
3 project information, short environmental
4 assessment.

5 Elena, do you want to go through some of
6 this for the record to make sure that we've
7 taken a close look?

8 MS. VAIDA: I could. I think that Mike
9 might be in a better position to do that since
10 he's the one that's been going over the site
11 plan review. The application papers and the
12 other documents in front of the Board Members
13 shows the size of the project and basically
14 the way that the project is right now, nothing
15 is being disturbed. There has been no change
16 since they originally brought this. The only
17 thing that is really being changed is the
18 interior of the building.

19 MR. CAPONERA: Correct, and adding some
20 parking spots in the back.

21 CHAIRMAN STUTO: Can we go through that
22 quickly?

23 MR. LACIVITA: I think that one thing
24 that should be in the record, Peter, is that
25 it's not out of characteristic for the

1 neighborhood. There are two families and three
2 families that are bordering this property.
3 It's not out of characteristic of what the
4 neighborhood currently has.

5 CHAIRMAN STUTO: I agree with that.

6 On Part II, does the action exceed any
7 Type I threshold.

8 Mike?

9 MR. TENGELER: No.

10 CHAIRMAN STUTO: No, I don't believe that
11 it does either.

12 Will the action receive coordinated
13 review as provided for unlisted actions?

14 MR. TENGELER: No.

15 CHAIRMAN STUTO: Could the action result
16 in any adverse effect of the following: air
17 quality?

18 MR. TENGELER: No.

19 CHAIRMAN STUTO: Aesthetic, agricultural,
20 archeological, historic or other natural or
21 cultural resources?

22 MR. TENGELER: No.

23 CHAIRMAN STUTO: Vegetation of fawn or
24 shellfish or wild life species, etcetera?

25 MR. TENGELER: No.

1 CHAIRMAN STUTO: Communities existing
2 plan or goals as officially adopted?

3 MR. TENGER: No.

4 CHAIRMAN STUTO: Growth, subsequent
5 development or related activities?

6 MR. TENGELER: No.

7 CHAIRMAN STUTO: Long-term short-term
8 cumulative or other effects?

9 MR. TENGELER: No.

10 CHAIRMAN STUTO: Not identified?

11 MR. TENGELER: No.

12 CHAIRMAN STUTO: Other impacts?

13 MR. TENGELER: None.

14 CHAIRMAN STUTO: Is there likely to be
15 controversy?

16 MR. TENGELER: No

17 CHAIRMAN STUTO: Which would be the
18 appropriate box on the bottom? The second box?
19 We have determined based on the information
20 and analysis above and any supporting
21 documentation that the proposed action will
22 not result in any significant adverse
23 environmental impact.

24 MR. TENGELER: Correct.

25 CHAIRMAN STUTO: Can we have a motion on

1 that?

2 MR. MION: I'll make a motion.

3 MR. ROSANO: I'll second it.

4 CHAIRMAN STUTO: All those in favor?

5 **(Ayes were recited.)**

6 CHAIRMAN STUTO: All those opposed?

7 **(There were none opposed.)**

8 CHAIRMAN STUTO: The ayes have it.

9 What's next? Site plan review or special
10 use permit?

11 MS. VAIDA: I would say site plan. It's
12 really concurrent.

13 CHAIRMAN STUTO: We have a couple of
14 conditions.

15 If I could have a fourth parking spot and
16 have a recorded circulation easement
17 benefiting both adjacent properties; 39 and 37
18 Sand Creek Road, as depicted.

19 Everybody in agreement?

20 **(The Board unanimously agreed.)**

21 CHAIRMAN STUTO: Any other conditions?

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

23 CHAIRMAN STUTO: Do we have a motion on
24 the site plan?

25 MR. LANE: I'll make a motion.

1 CHAIRMAN STUTO: Okay, motion on the site
2 plan approval with the two conditions.

3 MR. MION: Second.

4 CHAIRMAN STUTO: All those in favor?

5 **(Ayes were recited.)**

6 CHAIRMAN STUTO: All those opposed?

7 **(There were none opposed.)**

8 CHAIRMAN STUTO: The ayes have it.

9 On the special use permit, Mike has
10 drafted something in our package.

11 On the PEDD summary recommendation, he's
12 listed the criteria before granting a special
13 use permit. We must determine all of those
14 items; A through K. Then, he's attached a
15 rational to that. Can everybody take a second
16 look at that?

17 MS. VAIDA: This is an NCOR or HCOR?

18 MR. LANE: NCOR.

19 MS. VAIDA: I think that there is a
20 mistake under decision rational to be changed.

21 CHAIRMAN STUTO: The lower one? It should
22 say NCOR?

23 MS. VAIDA: Yes.

24 CHAIRMAN STUTO: Any recommended changes?

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

1 CHAIRMAN STUTO: Would somebody like to
2 make a motion to adopt the decision and
3 rational with that one correction?

4 MR. MION: I'll make a motion.

5 CHAIRMAN STUTO: Second?

6 MS. DALTON: I'll second it.

7 CHAIRMAN STUTO: All those in favor?

8 ***(Ayes were recited.)***

9 CHAIRMAN STUTO: All those opposed?

10 ***(There were none opposed.)***

11 CHAIRMAN STUTO: The ayes have it.

12 MR. CAPONERA: Thank you, very much.

13 CHAIRMAN STUTO: I'll submit this in
14 writing so that you can have it for the
15 record.

16

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19 ***(Whereas the proceeding concerning the***

20 ***above entitled matter was concluded at***

21 ***7:26 p.m.)***

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CERTIFICATION

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4 **I, NANCY STRANG-VANDEBOGART, Shorthand**
5 **Reporter, New York State Approved Transcriber**
6 **and Notary Public in and for the State of New**
7 **York, hereby CERTIFY that the record taken by**
8 **me at the time and place noted in the heading**
9 **hereof is a true and accurate transcript of**
10 **same, to the best of my ability and belief.**
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14 -----
15 **NANCY STRANG-VANDEBOGART**
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18 **Dated October 31, 2011**
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