

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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4 BRITISH AMERICAN

5 OPEN DEVELOPMENT AREA RECOMMENDATION

6 29 BRITISH AMERICAN BOULEVARD

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9 THE STENOGRAPHIC MINUTES of the above entitled
10 matter by NANCY STRANG-VANDEBOGART, a Shorthand
11 Reporter, commencing on October 9, 2012 at 8:00 p.m.
12 at The Public Operations Center, 347 Old Niskayuna
13 Road, Latham, New York

12 BOARD MEMBERS:

- 13 PETER STUTO, CHAIRMAN
- 14 TIMOTHY LANE
- 15 LOU MION
- 16 MICHAEL SULLIVAN
- 17 KATHY DALTON
- 18 KAREN GOMEZ
- 19 BRIAN AUSTIN

20 ALSO PRESENT:

- 21 Elena Vaida, Esq., Counsel to the Planning Board
- 22 Gene Sneeringer, Esq.

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1 CHAIRMAN STUTO: The next project is British
2 American, Open Development area recommendation, 29
3 British American Boulevard.

4 We'll have Joe do an introduction.

5 MR. LACIVITA: The applicant before us tonight
6 is British American. They actually made a letter
7 request to develop an open development area of what
8 currently exists as 29 British American Boulevard.
9 They sent that letter to the PEDD and the Town
10 Attorney on February 19, 2011 and a subsequent
11 Resolution was offered by the Town Board and
12 referred to the Planning Board for review and
13 recommendation. That's Resolution 250 of 2011.
14 The interesting thing about this project is that the
15 request is for an open development area. Typically,
16 that open development area, as we all know, gives
17 relief under 280A which is frontage to a dedicated
18 street. This parcel actually has two of three
19 buildings already built on the site and one approval
20 that is currently existing for them to erect a
21 building. That would be identified as 27. The
22 applicant is going to go through and define what
23 they are looking for. That is an open development
24 area for a subdivision process soon to be under the
25 purview of the Planning Department. The application

1 is going to be for a subdivision for title. We
2 have Spencer Jones here, Chris Connors and Gene
3 Sneeringer to go through the process and explain as
4 to why they are asking for relief under 280A of the
5 open development area.

6 CHAIRMAN STUTO: Okay, I recognize Gene
7 Sneeringer.

8 MR. SNEERINGER: For those of you who don't
9 know me, my name is Gene Sneeringer and I'm a real
10 estate attorney here in Albany. I also run a title
11 insurance company and one of my other things is
12 that I'm Chairman of Capital Bank. They're
13 building a freestanding site right now on Route 9.

14 CHAIRMAN STUTO: Are you still on that Board?

15 MR. SNEERINGER: I am still on that Board.

16 CHAIRMAN STUTO: We saw their application.
17 It's a good application.

18 MR. SNEERINGER: Thank you.

19 Joe actually really defined what we are looking to
20 do quite well. We're asking for the Planning Board
21 to recommend to the Town Board the approval for this
22 site to be designated for an open development area.
23 As Joe indicated there are already buildings and
24 there is one site left; number 27 is yet to be built
25 upon.

1 The reason that we are looking for this is to have
2 each site be a separately subdivided parcel. You
3 may ask why do we want to do that. Well, again,
4 based upon my background, in today's world in order
5 to obtain financing, most lenders in today's world
6 are going to be looking for every site to be a
7 subdivided site.

8 We went through, as all of you know, a significant
9 banking crisis five or six years ago. Construction
10 lending is very hard to come by. So, what British
11 American is looking to do at this time is to make
12 sure that each of those three buildings are on
13 separate subdivided sites. While we are not
14 prepared to put a shovel in the ground right now to
15 build on the final site, number 27, we do want to
16 have that ready and able so that when we are
17 prepared to then put a shovel in the ground, we'll
18 be prepared and be able to get not only the building
19 permit, but also get the construction financing that
20 we'll need for that.

21 In order to develop the site that you see -- we
22 already do have all of the easements that you would
23 ordinarily customarily need not only for this to be
24 a subdivided site, but also as it exists now. Those
25 easements are already in place not only for access,

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1 but also for utilities which each of the buildings
2 use separately.

3 I think that our application is a lot less
4 confusing and cumbersome from what we just saw.
5 It's actually pretty defined and simple, as Joe
6 pretty much expressed.

7 I'm glad to take any questions.

8 CHAIRMAN STUTO: How much frontage do you have
9 now?

10 MR. SNEERINGER: I think that it's about 105
11 or 109 feet.

12 CHAIRMAN STUTO: You made some mention of
13 easement, but obviously there is an access section
14 which says existing perpetual access easement for
15 25 --

16 MR. SNEERINGER: There are two things, Peter.
17 When this site was originally developed, the
18 engineers were CT Male, as you can see on here. CT
19 Male actually prepared the requirements for the
20 access route here (Indicating). We also have on
21 top of that a document called a reciprocal easement
22 agreement or a declaration of reciprocal easements.
23 That is a recorded document. That document
24 provides to and for the benefit of each of the
25 separate parcels, the ability to drive over all of

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1 the existing driveways that are on the properties.
2 So, you have a circular path around the buildings
3 not only here, but here so that whether you are
4 going to 29, 27 or 25 under the prerecorded
5 declaration, anybody driving or any pedestrian has
6 the right and ability to go over and across all of
7 the existing driveways.

8 MS. VAIDA: Those lots are currently one lot,
9 right?

10 MR. SNEERINGER: Currently, it's one lot.
11 There are separate legal descriptions for each of
12 the three parcels. Now what we are looking to do
13 is to simply have this property designated for open
14 development so that these legal parcels can be a
15 subdivided parcel.

16 MS. VAIDA: I understand that. So, who signed
17 the reciprocal easements?

18 MR. SNEERINGER: All of this property is owned
19 by an entity called BA Hart Group. So, BA Hart
20 Group as owner of all of these three sites,
21 executed that declaration of reciprocal easement.

22 CHAIRMAN STUTO: In anticipation of this? I
23 guess I would ask why you would give yourself an
24 easement?

25 MR. SNEERINGER: Good question. As you

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1 develop each site, you develop each site
2 separately, you want to make sure that you have
3 these rights. So, I do that routinely.

4 CHAIRMAN STUTO: That's for your lessee?

5 MR. SNEERINGER: It's for your lessee, it's
6 for your lender - it's something that you want to
7 have and you want ot have in place whenever you're
8 developing something that you know is going to have
9 extensions to it. It just provides you with that
10 much more flexibility and you have it in place
11 right from the get go with it.

12 MS. VAIDA: That would run with the land?

13 MR. SNEERINGER: That runs with the land;
14 correct.

15 CHAIRMAN STUTO: What about the engineer
16 specifications of the driveway and what about
17 maintenance and when somebody falls down? Whose
18 responsible?

19 MR. SNEERINGER: With respect to the
20 engineering -- actually all three of these sites
21 have gone through -

22 CHAIRMAN STUTO: No, I'm talking about the
23 access road.

24 MR. SNEERINGER: All these sites have gone
25 through engineering. Those were constructed to

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1 engineering specifications.

2 CHAIRMAN STUTO: I want to ensure that as we
3 recommend this to the Town Board, it's maintained
4 at that standard. That's what I'm leading to. Who
5 is going to be responsible? You're going to have
6 three lot owners back there.

7 MR. SNEERINGER: Good question. Each one of
8 these buildings has the obligation to pay its
9 proportionate share for the maintenance of all of
10 the common facilities. The road is a common
11 facility. It's done based upon the square footage
12 of the buildings.

13 CHAIRMAN STUTO: That's an obligation of the
14 tenant, right?

15 MR. SNEERINGER: It's the obligation of the
16 owner which is then invoiced to the Town.

17 CHAIRMAN STUTO: What document provides that?
18 It seems confusing to me that somebody who owns a
19 single lot would create some kind of document
20 that's recorded that requires him to plow his
21 driveway and maintain his driveway. Is that part
22 of the easement?

23 MR. SNEERINGER: It is part of the easement.
24 Maintenance gets billed back to the tenants. One

25 of the reasons that you do want to have that is for

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1 your lenders. Your lenders are not necessarily the
2 same lender for each of the parcels.

3 CHAIRMAN STUTO: Do you have that document
4 here?

5 MR. SNEERINGER: I don't have that document,
6 but it may have been part of what was submitted and
7 I can certainly provide a copy to you, and the
8 Board and Elena.

9 What we would propose to ultimately provide is that
10 the owner of the largest building, which is
11 indicated as 25, is basically the party that then
12 manages and supervises all of the maintenance and
13 has the responsibility of making sure that it's
14 maintained and then collects from the other owners.

15 CHAIRMAN STUTO: You're proposing that for the
16 future? Is that what you said?

17 MR. SNEERINGER: That's what we would propose
18 in terms of determining which of the three sites
19 then has the overall supervision and
20 responsibility. In this particular case, it's the
21 building furthest back, which has to go through the
22 parcel to get there. It's the gorilla here. You
23 want the gorilla to make sure that the site is
24 maintained.

25 CHAIRMAN STUTO: Any questions? Does everyone

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1 understand what they propose to do?

2 MR. LANE: I'm curious why the open
3 development wouldn't have been put forth earlier
4 when they were developing the first two.

5 MR. SNEERINGER: Open development was not an
6 avenue that many people saw. Also a lot of
7 development is lender driven and how sites
8 ultimately get developed. Ten years ago or eight
9 years ago, money was really free flowing. Today
10 money doesn't flow all that easily. So, a lot of
11 this is really lender driven. What we are trying
12 to do is put this site in a position so that 27 is
13 a separately subdivided parcel and 27 is ready to
14 be built upon when a nice tenant comes along.

15 (There was a brief recess in the proceedings.)

16 CHAIRMAN STUTO: We'll call the meeting back
17 to order.

18 Counsel, I believe, has drafted a Resolution.
19 Elena, do you want to take the lead on guiding us
20 through considering the Resolution?

21 MS. VAIDA: I would actively lean more towards
22 simple. Since 280A requires the Planning Board to
23 make a recommendation to the Town Board by

24 Resolution, I would just - instead of doing the
25 whereas clauses here, just start out with on the

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1 application for the open development designation -

2 MR. LACIVITA: The two whereas I think that
3 you want to keep and that it was referred to us.

4 MS. VAIDA: Yes. So, we'll start out:

5 Whereas the applicant made a request for an open
6 development area to the Town Board, and whereas the
7 Town Board referred this matter to the Planning
8 Board for advise and recommendation, be it Town
9 Board Resolution 250 for 2011.

10 Then the next paragraph should say:

11 Whereas 280A of the Town Law provides that the Town
12 Board may establish an open development area within
13 the Town, wherein permits may be issued for the
14 erection of structures to which access may be by
15 right of way or easement upon such conditions, and
16 subject to such limitations as may be prescribed by
17 a special rule of the Planning Board. Therefore, be
18 it resolved that the Planning Board recommends that
19 the open development area as requested by the
20 applicant be approved in all respects based upon the
21 following findings of fact.

22 CHAIRMAN STUTO: Can we have the words "and
23 conditions"? Not just the findings of fact. We're

24 imposing a condition.

25 MS. VAIDA: And it's just going to be a

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1 paragraph - that the request for the open
2 development area for -- do you want to name all the
3 numbers for the parcels? I'm still struggling
4 through this. This is the language that I have. I
5 need a connector here, so help me. It's to permit
6 the existing structures and the structures to be
7 built upon legally subdivided parcels.

8 CHAIRMAN STUTO: How about three legally
9 subdivided parcels. Does that help?

10 MS. VAIDA: I asked Gene about that.
11 That's fine right?

12 MR. SNEERINGER: That's fine.

13 MS. VAIDA: Upon three legally subdivided
14 parcels, each having access by right of way or
15 easement as delineated on the proposed subdivision
16 map by CT Male filed with the application, upon the
17 condition -

18 That's where I was going to get into your condition
19 that you wanted that said roadways be maintained as
20 set forth in the original site plan approval.

21 CHAIRMAN STUTO: And that all parcel owners be
22 jointly and severally liable for such maintenance.

23 FROM THE FLOOR: Right, that works.

24 MS. VAIDA: I don't know if that's going to
25 make any sense when you read it back. We could

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1 always make those minor adjustments - grammatical
2 adjustments.

3 CHAIRMAN STUTO: I was talking to Tim and
4 Mike. That means that if two of the owners go
5 bankrupt, the third owner would still be
6 responsible for the whole thing. Or if one of the
7 owners doesn't come up with enough money, the other
8 two owners will still be responsible. That's what
9 joint and severally means.

10 MR. LANE: You mean the maintenance of the
11 roadway?

12 CHAIRMAN STUTO: The maintenance of the access
13 road.

14 MS. VAIDA: Any future changes to the
15 recommended open development area including but not
16 limited to addition, demolition, structural or site
17 changes, subdivision and change in use or tenant
18 must apply -- applicable Town of Colonie processes
19 and approvals. This Resolution shall take effect
20 immediately and shall be transmitted to the Town
21 Supervisor and members of the Town Board. That's
22 dated today's date, Peter Stuto, Chairman.

23 CHAIRMAN STUTO: We have a motion before us.
24 MS. DALTON: I'll make the motion.
25 MR. LANE: Second.

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1 CHAIRMAN STUTO: Any discussion?
2 (There was no response.)
3 CHAIRMAN STUTO: All those in favor, say aye.
4 (Ayes were recited.)
5 CHAIRMAN STUTO: All those opposed, nay.
6 (There were none opposed.)
7 CHAIRMAN STUTO: The ayes have it.

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9 (Whereas the above proceedings were concluded at
10 8:40 p.m.)

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CERTIFICATION

I, NANCY STRANG-VANDEBOGART, Shorthand Reporter and
Notary Public in and for the State of New York,
hereby CERTIFY that the record taken 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.

NANCY STRANG-VANDEBOGART

Dated October 15, 2012

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