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PLANNING BOARD COUNTY OF ALBANY
TOWN OF COLONIE

JONES SPECIAL USE PERMIT
621 BOGHT ROAD
REVIEW AND ACTION ON PROPOSED
SPECIAL USE PERMIT

THE STENOGRAPHIC MINUTES of the above entitled
matter BY NANCY STRANG VANDEBOGART, a Shorthand
Reporter, commencing on November 27, 2012 at 7:22
p.m. at the Public Operations Center, 347 Old
Niskayuna Road, Latham, New York 12110.

BOARD MEMBERS:

PETER STUTO, CHAIRMAN
LOU MION
KAREN GOMEZ
KATHY DALTON
MICHAEL SULLIVAN

Also present:
Elena Vaida, Esq., Counsel to the Planning Board
Michael Tengeler, Planning and Economic Development
Joe LaCivita, Director, Planning and Economic
Development
Joe Grasso, Clough Harbour and Associates
Victor Caponera, Esq.
Sang Kim, SY Kim Surveyors

1 CHAIRMAN STUTO: We have one announcement.

2 MR. SULLIVAN: We have a student here tonight.
3 His name is Tim Blanchard. He's part of the Grace
4 Fellowship. Welcome.

5 CHAIRMAN STUTO: If you have any questions,
6 please speak up. We'd be glad to answer them.

7 Next on the agenda is the Jones Special use permit,
8 621 Boght Road. This is the review and action on a
9 proposed special use permit regarding two proposed
10 two-family dwellings on newly subdivided lots
11 presented by Victor Caponera and Sang Kim.

12 Mike, do you want to give us an introduction on
13 that?

14 MR. TENGELER: Yes, this is their third
15 appearance here. At the last meeting which was
16 approximately three months ago, there was some
17 miscommunication between Sang Kim and the Board as
18 to a specific recommendation that was made in
19 regards to the middle roadway. They since have come
20 back and kind of tweaked the design a little bit to
21 more of our liking and what we were looking for.
22 Specifically, they've reduced a curb cut. Each
23 parcel previously had two curb cuts a piece onto
24 Boght Road. There is currently one curb cut a
25 piece. They're back before us for an amendment to

1 their site plan review portion of the special use
2 permit and the Planning Board is here to tweak and
3 suggest and possibly improve this design.

4 CHAIRMAN STUTO: My recollection -- this is for
5 the benefit of the rest of the other Board Members
6 as well.

7 Does everybody remember this project?

8 There are two two-family houses in the right of way
9 for future development for the property. We had
10 asked, from my recollection, whether they could face
11 the properties or the middle right of way, and my
12 recollection was that we were told that was the
13 Building Department.

14 Joe?

15 MR. TENGELER: It was the DPW Department.

16 CHAIRMAN STUTO: That the DPW Department said
17 no. Now, that was early on in the application or at
18 least the presentation process, and that steered the
19 project in a whole different direction which was to
20 face the ingress and egress onto Boght Road and also
21 to face the buildings that way.

22 I have discussed this with staff. My personal
23 opinion was that is not the ideal way to go. If
24 that piece of misinformation had not been in front
25 of us, the project may have turned out completely

1 differently.

2 Does everybody understand that point?

3 With that in mind, you can make your presentation,
4 however you choose to do so.

5 MR. CAPONERA: I'd like Mr. Kim to speak to
6 your understanding and what happened. I think that
7 it's important that he speak on this.

8 MR. KIM: Mr. Chairman, Board Members and
9 Planners, since I last spoke - I think that it was
10 June 19th when we made a presentation. At the time
11 we had the minor subdivision approval. Not the
12 final approval, but the concept approval had been
13 granted from the planner. He suggested to me to
14 come to the Planning Board for site plan approval,
15 simultaneously. So, at the time, I brought up the
16 plan and also I met with the Town's Senior Planner.

17 CHAIRMAN STUTO: Is that somebody in this room
18 right now?

19 MR. TENGELER: That's Mike Lyons, our Senior
20 Planner.

21 MR. KIM: At the time, the garage proposed was
22 on the outside of each unit. That's why we put the
23 driveway outside both parcels. He suggested to me
24 to put a common driveway coming out into this strip
25 of land (Indicating) which would help in future

1 access for a single family home or a multiple home
2 or a public highway; either way. The reason that I
3 designed this was just in case the property owner
4 proposed a future highway. This is perfect way to
5 meet the highway requirement; there are 50 feet
6 rights of way, a 25 feet radius from the
7 intersection, and so on. He suggested that we bring
8 out the common driveway.

9 So, I went to the Building Department. Any
10 approval process will require the zoning
11 verification. So, I drew up the map with the three
12 prints and the Zoning verification form. I went up
13 to the Town's building and zoning department. A
14 Zoning Officer told me that he could not approve the
15 zoning verification. The main reason was that each
16 unit must have a current access to the developed
17 Town highway. So, he suggested to me to draw up a
18 separate access to the road. So, I quickly revised
19 the map. I brought it to the zoning office. I had
20 an approved zoning verification. Unfortunately, at
21 the June 19th presentation I had misspoken. I'm not
22 sure why I said DPW. That was clearly the Building
23 Department.

24 CHAIRMAN STUTO: So, you're saying that the
25 only thing that you misspoke about was which

1 department it was; is that what you're saying?

2 MR. KIM: Yes, the Building Department and not
3 the DPW.

4 CHAIRMAN STUTO: Do you have any reaction to
5 that, Mike?

6 MR. TENGELER: Essentially, yes. That changes
7 things and if a recommendation came from our DPW
8 Department than that would have come from our
9 Highway Department specifically relating to this
10 highway. What it was related to was actually the
11 zoning verification process and that they couldn't
12 receive an approved zoning verification with the
13 curb cuts and what was originally designed with that
14 middle piece.

15 CHAIRMAN STUTO: Did you verify that?

16 MR. TENGELER: Yes, I spoke to Mike Lyons, our
17 Senior Planner and Ted DeLucia of the Building
18 Department.

19 MR. KIM: I thought that I said the Building
20 Department, but the minutes clearly indicate that I
21 said DPW.

22 CHAIRMAN STUTO: I still don't understand why
23 it couldn't have been faced the other way. You
24 still have frontage on the Town road and you had a
25 common owner that conveyed this property.

1 MR. CAPONERA: You're absolutely correct. In
2 fact, I questioned that today and had a long
3 discussion with Ted DeLucia this afternoon from the
4 Building Department. I went over Section 280A of
5 the Town Law that we discussed the last time that we
6 were here on August 7th. I said, Ted, technically
7 it does have frontage on Boght Road and we reviewed
8 it and he said, I understand what you're saying but
9 we cannot and will not approve a zoning verification
10 if you have the access coming onto this private
11 area. He said, they have to come out onto Boght
12 Road.

13 MR. LACIVITA: Absent an open development, if
14 they decided to go that route.

15 MR. CAPONERA: That's where I was going next.
16 We talked about the [SIC] Endelicado case back in
17 August. The [SIC] Endelicato case came out in the
18 last 10 years. It used to be that I would come in
19 front of the Zoning Board and get what's called a
20 280A variance to allow access onto a private road
21 and not on a public road. That case came out and
22 said, that a Zoning Board has no authority to do
23 that. You have to go to the Town Board to get
24 what's called an open development area. So, the
25 Town Board could grant an open development area to

1 access onto this prior road.

2 CHAIRMAN STUTO: Right, and that goes through
3 us and we've done that many times. We even have an
4 application on tonight for that same process.

5 MR. CAPONERA: That's why the application that
6 we came for before that was approved by the Board on
7 August 7th and showed the access onto Boght. Since
8 that time, Mr. Kim has met with various departments
9 including the Highway Department. I think that you
10 said it was Mr. Neeley. If you recall, there were
11 two access points and that has been revised. Now
12 there is one access point for both parcels.

13 CHAIRMAN STUTO: Is that from our prior
14 approval until then? That's a change?

15 MR. CAPONERA: That has changed. This is the
16 August 7th plan that was approved. There is a
17 driveway here on Boght Road and there is a driveway
18 here on Boght Road for this one (Indicating);
19 likewise on the piece that's to the east.

20 MR. LACIVITA: The project that was just before
21 us -- I'm a little confused as to the comment that
22 was made that two dwellings couldn't have a single
23 access point to the highway. I think that's just
24 what Mr. Kim just said. That's why Bob Cordell from
25 the Building Department couldn't approve the

1 original zoning verification. That's why he wanted
2 two driveways, which we came to approve at that
3 time. We have an approved verification for the
4 Wideman property on Troy-Schenectady Road with one
5 access point and two dwellings.

6 MR. CAPONERA: I talked to Ted DeLucia today
7 about 3:30 and I told him what we had done, and he
8 indicated that he could approve the zoning
9 verification with one access point.

10 Could you show them how you changed this?

11 So, now the change. If you can look at this
12 application, there is only one access just as Joe
13 was indicating. Now there is one access on this
14 parcel accommodating both the two-family and then
15 likewise on the easterly more parcel. That's why
16 the garages are located the way that they're showing
17 you on this elevation.

18 Has there been any other changes?

19 MR. KIM: One other change is that there was a
20 Stormwater Department comment to indicate that when
21 we put -- previously we put the one rain garden
22 right here because there is enough land left over
23 (Indicating). We proposed one rain garden for each
24 lot. Stormwater and DPW suggested to us to put that
25 rain garden in for each unit separately. So, we had

1 a meeting where Mr. Dzialo and me and my son
2 together discussed it. They loved this idea of the
3 two rain gardens for each lot. Each lot has a
4 separate rain garden. So, if we get the approval
5 tonight, he suggested that we revise the map. We
6 have it revised as you can see already.

7 CHAIRMAN STUTO: The drawing that we have in
8 front of us shows us one rain garden per lot.
9 You're saying that Dzialo suggested two?

10 MR. KIM: Yes.

11 CHAIRMAN STUTO: We don't have an up to date
12 drawing.

13 MR. KIM: We had a meeting with Stormwater
14 yesterday. We didn't have time to submit a revised
15 one.

16 CHAIRMAN STUTO: Aren't they supposed to look
17 at it before we get it on the agenda here?

18 MR. TENGELER: They did review this plan
19 previously. This is an amendment in that the
20 driveway was changing. Some pieces are still
21 falling into place.

22 CHAIRMAN STUTO: Is there any way that you can
23 give us what is currently approved and let us pass
24 it down to our Board?

25 MR. KIM: I brought the one plan.

1 CHAIRMAN STUTO: Can you unclip it and let us
2 see it?

3 MR. KIM: Yes.

4 Mr. Chairman, another item that I had discussed
5 with Mr. Neeley at the time of the meeting - we
6 addressed whether this would be a public highway or
7 a private driveway in the future. We pushed this
8 driveway so that there was a driveway and then the
9 roadway and then this driveway (Indicating). He
10 said that was safe enough for each to access.

11 MR. LACIVITA: Did we get that recommendation
12 from Bill about pushing the driveways back? It
13 doesn't look like we have anything from the Highway
14 Department.

15 CHAIRMAN STUTO: I'm looking for the drawing
16 that we voted on last time.

17 Is there anyone from the public that would like to
18 be heard on this project?

19 (There was no response.)

20 CHAIRMAN STUTO: OKay, I'll give my concerns
21 first. I don't know if they are reflected in the
22 Board Members or not.

23 There has been miscommunications from the inception
24 of this and I'm just saying that there has been bad
25 information for whatever reason. Now, we don't have

1 what is a final drawing and you're saying that there
2 has to be a stormwater change. I would have liked
3 to see both drawings next to each other.

4 The Jones' own this parcel in the application.
5 I've heard from staff that you bought the parcels
6 from them; is that correct?

7 MR. KIM: Yes. I wanted this to be part of my
8 retirement plan. I'm in my 70s, so I'm not going to
9 be doing too much. I'm going to retire soon.

10 CHAIRMAN STUTO: You never told us that during
11 the application.

12 MR. KIM: He tried to sell the property, but he
13 couldn't sell it. Finally I said, I can take over,
14 if you ou want.

15 CHAIRMAN STUTO: So, the closing had occurred;
16 is that correct?

17 MR. KIM: Not yet.

18 MS. DALTON: All of our applications are in
19 somebody's else's name.

20 MR. CAPONERA: Who is the applications name in?

21 MS. DALTON: It's William Jones.

22 MR. CAPONERA: He is the one that owns the
23 property. There has been no closing.

24 CHAIRMAN STUTO: You have a contract to buy it?

25 MR. KIM: Yes.

1 CHAIRMAN STUTO: My personal opinion is that I
2 would rather see the buildings face the other way.
3 I think it would be a nice entrance. First of all
4 you have two curb cuts on Boght Road. It would be a
5 nicer entrance to whatever development happens
6 behind here (Indicating). That's my vision of it.
7 Next, we can go through the ODA process - the 281 or
8 Town Law 281 on that.

9 Second, I'd like to see final drawings. That's my
10 feeling.

11 MR. CAPONERA: I was thinking that you were
12 going to talk about this tonight. I had this
13 further discussion with Ted at the Building
14 Department. I said, what if the Planning Board
15 feels that the building should face this other road,
16 which may or may not become a public street? He
17 indicated if the Board required that and further
18 required an easements -- because essentially that's
19 what would be needed here. You need an easement
20 because the 50 feet would still be in Mr. Jones'
21 name, and provide an easement to get in and out
22 until such time as the road becomes a public
23 highway. Typically when I do subdivisions, one of
24 the things that you put in the deed is that you have
25 an easement to get in and out of the property to a

1 public highway until such time as the road becomes
2 dedicated.

3 CHAIRMAN STUTO: Then you have the access as a
4 member of the general public.

5 MR. CAPONERA: That's exactly right. So,
6 that's doable and we kind of went through that. I
7 said, if that happens, will there be a need to go
8 and get an open development? He didn't think so.
9 He said that if the Board determines that, this is
10 the way and they make their decision based upon
11 that.

12 CHAIRMAN STUTO: It's my own personal opinion
13 that I would like to have it happen that way.
14 Procedurally, I'm not sure whether we need the open
15 development area or not.

16 MR. MION: I'd like to see finished drawings.

17 MS. DALTON: We don't have all of the up to
18 date plans. Apparently Stormwater hasn't reviewed
19 everything. There are questions about if we had the
20 building the other way whether or not you do or do
21 not need an open development. So, my suggestion is
22 that we table this until we get answers to the
23 questions, Stormwater Management gets a chance to
24 look at it and whatever your final design is --

25 MR. CAPONERA: And provide something in

1 writing.

2 MS. DALTON: I would also say that I would feel
3 a lot more comfortable if there is a sale pending
4 and have an actual application from the actual
5 owner. I don't know if that matters.

6 MR. CAPONERA: Let me make something perfectly
7 clear. When I got involved with this, and as I
8 stand here tonight, Mr. Jones owned the property.
9 He still owns the property. I was not aware until a
10 few weeks ago that Mr. Kim had decided that he was
11 going to enter into a contract to buy the property.
12 So, the application is absolutely on the mark. It's
13 owned by and continues to be owned by Mr. Jones, who
14 is with us tonight. There is nothing wrong with the
15 application. It's absolutely in order.

16 MS. DALTON: I'm not suggesting that there is
17 something wrong tonight. I'm just saying that if we
18 were to table it so that it's not impeded tonight,
19 I'm not sure when and if the sale is going through.

20 MR. CAPONERA: If it goes through then you just
21 amend the application to the correct owner.

22 MS. DALTON: All I'm suggesting is that when we
23 get the paperwork, the paperwork would be in sync
24 with whoever owns it.

25 MR. CAPONERA: You'd needn't worry about that.

1 I will take care of it.

2 CHAIRMAN STUTO: I'm definitive. I'd like to
3 see it facing the right of way.

4 MR. CAPONERA: And obviously you want written
5 confirmation from Highway, Sewer, DPW and everyone?

6 CHAIRMAN STUTO: Correct, and if we need to do
7 an open development area --

8 MR. CAPONERA: And I can double check that,
9 too.

10 CHAIRMAN STUTO: Motion to table?

11 MS. DALTON: I make a motion to table.

12 MR. MION: Second.

13 CHAIRMAN STUTO: Any discussion on that?

14 (There was no response.)

15 CHAIRMAN STUTO: All those in favor?

16 (Ayes were recited.)

17 CHAIRMAN STUTO: All those opposed?

18 (There were none opposed.)

19 CHAIRMAN STUTO: The ayes have it.

20 Thank you.

21 MR. CAPONERA: Thank you, very much for your
22 time.

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24 (Whereas the above proceedings were concluded

25 at 7:44 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 December 10, 2012

