

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

3 *****
4 SCARINGE OPEN DEVELOPMENT AREA
5 17A UPPER LOUDON ROAD
6 OPEN DEVELOPMENT AREA RECOMMENDATIONS
7 *****

8 THE STENOGRAPHIC MINUTES of the above entitled
9 proceeding BY NANCY STRANG-VANDEBOGART,
10 a Shorthand Reporter, commencing on
11 February 28, 2012 at 7:04 p.m. at the Public
12 Operations Center 347 Old Niskayuna Road,
13 Latham, New York 12110

14 BOARD MEMBERS:

- 15 TIM LANE, ACTING CHAIRMAN
- 16 MICHAEL SULLIVAN
- 17 LOUIS MION
- 18 BRIAN AUSTIN
- 19 BRIAN HAAK
- 20 ELENA VAIDA, Esq., Counsel to the Planning Board

21 Also present:

- 22 Joseph LaCivita, Director, Planning and Economic
23 Development
- 24 Andrew Brick, Esq.,
- 25 Rudi Charles Romania
- Mike Augstell
- Suzanne Perry

1 ACTING CHAIRMAN LANE: Our Chairman, Pete
2 Stuto, is going to be a little late this
3 evening so I'm the temporary acting Chair.

4 Our first agenda item is the Scaringe
5 Open Development Area, 17A Upper Loudon Road,
6 to be known as 15. This is an open development
7 area recommendation to the Town Board.

8 O.J. Meyers Surveyors is present with us.

9 MR. BRICK: Good evening Chairman Lane.
10 I'm Andrew Brick, B-R-I-C-K. I'm with the law
11 firm of Donald Zee, PC, 1 Winners Circle,
12 Suite 140, Albany, New York, 12205.

13 Good evening Mr. Temporary Chair and
14 Board Members. We represent Jerry Scaringe who
15 is with me here this evening. This is a
16 request for your advice pursuant to statute to
17 the Town Board on the merits of declaring the
18 one particular parcel as an open development
19 area.

20 I want to start off by pointing out that
21 when Mr. Scaringe was going around the
22 neighborhood handing out the notices there
23 were a number of questions and concerns from
24 the area residents that this request involved
25 the entire large cultivated parcels that exist

1 in this area that are surrounded by Upper
2 Loudon, and then south and then Maple. If
3 anybody is here with that concern this
4 evening, that is absolutely not the case.
5 Mr. Scaringe owns 125 foot by 125 foot parcel
6 to the northeast of those larger cultivated
7 areas. We are not here tonight on behalf of
8 those large open space areas. We are here on
9 behalf of this parcel, which as I said is 125
10 feet by 125 feet. It is located to the
11 southeast of the corner of South Lane and
12 Upper Loudon and it is the fenced in area to
13 the immediate south of 17 Upper Loudon. It was
14 known as 17A Upper Loudon, but through the
15 course of this review process, the Town is now
16 recommending that it be reclassified as
17 15 Upper Loudon as a 911 address. We refer to
18 it as 17A.

19 I hope you all have copies of the survey.
20 I'd like to go through that with you briefly.
21 The property, which as far as we can tell from
22 title searching has been an individual lot
23 since at least 1970. It is an individual
24 building lot. It appears as an individual lot
25 on all of the official Town maps as well as

1 all county records since at least 1970.

2 Mr. Scaringe acquired the property in
3 2006 from the neighboring property at 17 Upper
4 Loudon and along with the parcel that he
5 acquired, he acquired an easement across the
6 southwest corner of 17 Upper Loudon. That
7 easement is 18 and one-half feet wide at the
8 street line, and it's about 25 feet wide at
9 his property line. So, it's somewhat
10 irregular, but it's 18 and a half at the
11 street line and opens up to 25 at his. Again,
12 it's on the southwest portion of the parcel at
13 17 Upper Loudon. That easement was conveyed to
14 Jerry along with this property from the
15 property owner at 17 Loudon. It has ingress
16 and egress.

17 Do you have copies of that particular
18 easement? Do you have the language? I can
19 provide a copy to the Town, if they would
20 like.

21 Included within the deed -

22 ACTING CHAIRMAN LANE: Are you talking
23 about this from the County Clerk's office?

24 MR. BRICK: Yes. I did want to make sure
25 that the record of proceeding has a copy of

1 the deed that the easement does exist, the
2 dimensions of it.

3 If my eyes are pretty good, that is the
4 deed that you're holding.

5 If you read the Schedule A, that is the
6 description of the easement. That
7 includes - and I'm paraphrasing - the right of
8 ingress and egress, pavements and the
9 installation of utilities. All routine
10 services can be derived for ingress and egress
11 to Jerry's parcel at 17A, which is now 15.
12 Again, we have provided the lot that shows at
13 the street line at the right of way line. It's
14 18 and half feet. We would propose that if
15 this open development area be approved, that
16 they pave this driveway to the width of at
17 least 15 feet and would traverse the easement
18 area. The easement travels the property for
19 only about 25 feet in the middle of the
20 easement. So, Jerry's property at one point is
21 only really nine feet from the street right of
22 way; on the farther end, it's about 40 feet.
23 Down the middle it's about 25 feet, which
24 would run across the property at 17.

25 Again, it's a fully valid binding

Legal Transcription

1 easement and Mr. Scaringe has the rights to
2 ingress and egress his property, bringing in
3 utilities pursuant to that easement.

4 I do have, and I suspect that you have
5 them in your file, a number of memos from Town
6 Departments regarding this request for an open
7 development area. We have Pure Waters, the
8 local Fire Department, the Police Department
9 and I believe that you should have something
10 from the Water Department. The survey that I'm
11 actually showing had the Water Department
12 stamp on it and some notations that they
13 included on it.

14 It's my understanding in speaking with
15 Jerry at the Water Department, they wanted to
16 see if this is approved, the hydrant moved
17 closer to the property. The movement of that
18 hydrant would be at the expense of my client,
19 which he is willing to provide for the Water
20 Department, providing the open development
21 area is approved.

22 I'd like to hand these up to the Board,
23 Mr. Chairman. When Jerry went into the
24 neighborhood to give people notice and let
25 them know about this hearing tonight, he also

1 carried with him a petition requesting his
2 neighbors to support him, so I'd like to make
3 this a part of the record.

4 ACTING CHAIRMAN LANE: Do you know what
5 vicinity in relation to the property and how
6 far he went?

7 MR. BRICK: Jerry is here, and he went
8 through the neighborhood and erred on the side
9 of caution regarding what actually constituted
10 200 feet. It's my understanding that everybody
11 who was required to receive notice pursuant to
12 Town Code did receive that notice pursuant to
13 Town Code.

14 ACTING CHAIRMAN LANE: We like to see it
15 go a little further sometimes.

16 MR. BRICK: I told him to do 500 just to
17 be sure. Also, I was out there today at the
18 property. It's properly posted for the notice
19 of the hearing. I did see that there today.
20 With that, I'll hand up these copies for you.

21 I only have one copy of this photograph
22 because they're color. I go through way too
23 much color print in the office, so I tend to
24 minimize how many color prints I do.

25 This is an aerial photograph from your

1 Town GEIS public access system that shows five
2 different properties within the vicinity of
3 Jerry's property where they have no street
4 access. These are landlocked properties and as
5 you can see each and every single one of them
6 has a single family dwelling on it and
7 accesses it through somebody else's parcel.
8 For the record, they consist of 17 Imperial
9 Drive, which is 2,400 feet from the subject
10 property. That is from your GIS system.

11 The property at 398 Loudon Road is 2,960
12 feet from the subject property; 8 Cherry Tree
13 Road is 2,670 feet for the property; 221
14 Menand Road is the furthest one away and
15 that's 3,150 from the property. That's still
16 less than half a mile. The property at 5
17 Chestnut Hill Road is 2,450 feet from the
18 property. I'd like to hand those up as well.

19 The importance of providing those is to
20 show that this is not some crazy idea of open
21 development area. I know that you see them. I
22 don't think that this Board sees the
23 applications for them too often. But clearly
24 within the vicinity of half a mile of the
25 subject property, there are properties that at

1 some point should have gotten an open
2 development declaration because they're
3 accessing their property across the property
4 of another. That may sound landlocked, which
5 is why Section 280A of the Town Law is
6 supposed to address. We believe that we
7 addressed all of the criteria under Section
8 280A of the Town Law.

9 I would point out that under the language
10 of that statute, it specifically says that the
11 intent of the open development area and your
12 review of the recommendation to the Board is
13 to ensure that there is sufficient access for
14 fire, police and EMS type vehicles. That's
15 right in the statute. We have the memos from
16 Emergency Services and the statute also says
17 that 15 feet of street access from an easement
18 is presumptively sufficient access to a
19 landlocked parcel. We have 18 and a half feet
20 at street line. We would meet that presumption
21 as well.

22 With that, we are here to answer any
23 questions the Board or the public may have and
24 address any concerns that anybody may have.

25 ACTING CHAIRMAN LANE: Do we have any

1 residents here to speak on this matter?

2 Please state your name.

3 MR. ROMANIA: Rudi Charles Romania.

4 ACTING CHAIRMAN LANE: Your address?

5 MR. ROMANIA: 14 Maple Lane South.

6 About 10 years ago I met Jerry Scaringe
7 and we sold him a piece of land adjacent to
8 us. He built a beautiful house there. He built
9 it out of love for his mother. He has this big
10 house now and he wants to sell it and get a
11 smaller place. He bought this land in good
12 faith to go ahead and build on it. The Board
13 should really do the right thing and listen to
14 Jerry and allow him to build on this property.
15 There is nothing extreme about it. He doesn't
16 infringe on anybody's property.

17 I've seen the hateful e-mails that have
18 been sent around accusing him of developing
19 the whole field and ripping it off and making
20 a lot of noise doing it. Building a house will
21 probably take him four months from start to
22 finish to get it done. I don't see any
23 impediment or any bother to the neighbors.
24 Jerry is an upstanding citizen and should be
25 allowed to build his house. Thank you.

1 ACTING CHAIRMAN LANE: Thank you.

2 MR. BRICK: I should add that there is
3 intent as mentioned to build his retirement
4 home on this property. The house that he has
5 now is somewhat large and in the same
6 neighborhood. He wants to down-size a little
7 bit. That was the goal all along.

8 ACTING CHAIRMAN LANE: Any other
9 neighbors who are present that wish to speak
10 on this matter?

11 MR. AUGSTELL: My name is Mike Augstell
12 and I lived next to Jerry. I've only lived in
13 the house since a year ago on South Lane. It's
14 on the corner of Maple Lane South and South
15 Lane. I haven't spoken to him that much, but
16 he came around a couple of weeks ago and he
17 discussed wanting to build a house on this
18 property. I think that it's reasonable and you
19 should allow him.

20 ACTING CHAIRMAN LANE: Anyone else?

21 MS. PERRY: Are you going to have the
22 building envelope on this lot?

23 ACTING CHAIRMAN LANE: I'm not sure if I
24 know what you're referring to.

25 MS. PERRY: On any lot there is a portion

1 of land that you are allowed to build. I'm
2 wondering what the setbacks are.

3 ACTING CHAIRMAN LANE: We haven't gotten
4 to that point yet. We're not even near
5 discussing those things yet. This is a
6 recommendation that will go to the Town Board
7 on whether or not we would approve of the open
8 development so that this house could be built.
9 At that point, he could be issued a building
10 permit and he would have to meet all the Town
11 requirements of setbacks and so forth. So,
12 we're not anywhere near that yet.

13 MS. PERRY: It would be helpful to know
14 that.

15 ACTING CHAIRMAN LANE: He hasn't proposed
16 a site plan yet. And those are things that are
17 subject to change, depending on the building
18 plans.

19 MS. PERRY: The Town has the ability,
20 considering it's going to be allowed to be a
21 building lot to modify the setbacks -

22 ACTING CHAIRMAN LANE: What you're
23 talking about would require variances and
24 that's the Zoning Board. That's a whole other
25 matter.

1 Would you like to state your name for the
2 record?

3 MS. PERRY: Suzanne Perry. I live quite
4 close to two of your other lots; 17 Imperial,
5 8 Cherry Tree and 5 Chestnut Hill.

6 ACTING CHAIRMAN LANE: And your address
7 is?

8 MS. PERRY: 4 Chestnut Hill.

9 I'm just inquiring about the size of the
10 house which is proposed, considering the size
11 of the lot.

12 MS. DALTON: I was actually going to ask
13 that question.

14 MR. AUSTIN: That will be pretty much
15 decided by the Zoning Board. When it comes
16 before the Board asking for variances for the
17 setbacks, that brings a house that's
18 inappropriate for the size of that lot and
19 then the Zoning Board will take care of that.

20 MS. PERRY: So, wherever he goes from
21 here, he'll end up at the ZBA.

22 MR. AUSTIN: That will depend on the size
23 of the house that he wants to build. I think
24 that he's looking for the permission to build
25 on that lot.

1 MS. PERRY: I understand that. I'm just
2 well aware that you can build on a tiny lot.
3 You can build a smaller house on a tiny lot.

4 ACTING CHAIRMAN LANE: He would still
5 need to meet the setback requirements and if
6 he were to propose something that didn't meet
7 those requirements, he'd have to have a good
8 reason to get the variance.

9 MS. PERRY: What is the backyard setback?
10 The front is 50 and the back is 25.

11 ACTING CHAIRMAN LANE: As I said, we're
12 not there yet.

13 MR. AUSTIN: We've been informed that
14 this has gone before the Zoning Board twice;
15 is that correct?

16 MR. BRICK: Yes. Originally, my
17 understanding of it is that Jerry went to the
18 Zoning Board to attempt to get a 15-foot
19 variance for the street frontage necessary.

20 ACTING CHAIRMAN LANE: How long ago was
21 this?

22 MR. BRICK: Last year. It might be two
23 years ago. The Zoning Board had said take a
24 look at Section 280A and take a look at going
25 for an open development area, rather than a

1 variance. They didn't want to give a variance
2 because they obviously - and I wasn't involved
3 at the time, but obviously the ZBA was aware
4 of the 280A Open Development area process.
5 They kind of steered him in that direction.
6 That's when he called us.

7 ACTING CHAIRMAN LANE: So, it was
8 actually the Zoning Board that referred him to
9 seek the open development area which actually
10 has to go to the Town Board first for
11 recommendation.

12 MR. BRICK: What happened was - again,
13 this was before we were involved, but he
14 attempted to get the variance. I don't know if
15 it was the ZBA itself or Town staff that said
16 a 280A is the more appropriate avenue to
17 pursue, possibly. Why don't you look into it?
18 When he did, that's when he came to us. We did
19 the research and said, well, first you have to
20 go to the Town Board. We went to the Town
21 Board and the Town Board passed the
22 resolution, referring it to you for our advice
23 pursuant to the =statute, and that's why we
24 are here this evening.

25 MR. LACIVITA: Just for the record, the

1 original time that this came before the Board
2 it was denied without prejudice. When it came
3 back, Mr. Scaringe actually withdrew his
4 application. I know that we got some
5 information that might have been misleading.

6 Then, the next time he actually came in
7 for a zoning request, it was the Building
8 Department that suggested that they go to the
9 Town Board for an open development. That was
10 done by Mr. Scaringe by Resolution 755. So, he
11 followed all those recommendations by the Town
12 Board.

13 MR. AUSTIN: I'm also seeing that you
14 were before the Zoning Board in 2000. That was
15 because the lot was not big enough -

16 MR. BRICK: Under the Code you have two
17 bulk area restrictions charts. One of them is
18 for lots that preexisted prior to a certain
19 date. I don't know if I brought it with me.
20 Those are the area restrictions and the bulk
21 restrictions that apply. For example, that's
22 the one that allows 15 feet of street
23 frontage. If you're looking at the Zoning
24 Code - and I apologize because I don't think
25 that I brought that with me - that's the chart

1 that you have to follow for this particular
2 property. Again, it's 125 by 125. The property
3 next door, 17, is 125 by 125. It's a good size
4 lot. There is no intent to put a McMansion on
5 it. It's going to be a nice retirement home.
6 He's looking to minimize maintenance and not
7 go bigger.

8 MS. DALTON: So, you would not need any
9 kind of variances. The lot is big enough with
10 the current law to build on it.

11 MR. BRICK: We believe so, sure. We meet
12 the current zoning requirements.

13 Ms. Dalton, you're correct by the way;
14 That is the maximum envelope that is showing
15 on that survey. It's not the proposed one.

16 MR. LACIVITA: I think that what he is
17 shooting for is actually being relieved for
18 what you need to pull a permit. It would have
19 to be on the frontage on a dedicated road and
20 we don't have that here. That's why they're
21 asking for relief of an open development
22 because they are under that 280A.

23 MS. DALTON: I had two questions, but
24 they are not really deciding factors but the
25 first is: Why would you purchase land and go

1 through with the entire purchase before you
2 knew whether or not you could build on it?

3 MR. BRICK: He can show that when he
4 purchased it that he purchased an ingress and
5 egress easement on it as well.

6 MS. DALTON: So, the assumption was that
7 because he had ingress and egress -

8 MR. BRICK: I purposely negotiated to
9 have a driveway across the property so I could
10 get to it. Not everybody knows about zoning
11 and would say, what do you mean I don't have
12 street frontage? That's where we've been ever
13 since.

14 MS. DALTON: Currently, that was entirely
15 fenced in on all four sides. It looked like it
16 was used for something, but why was it all
17 fenced in?

18 MR. BRICK: I'll let Jerry speak to that.
19 The fence can be removed. Obviously, part of
20 that has to be removed for access. There is no
21 plan in place to keep that there. The large
22 gate is not on the property. That's the
23 adjoining property.

24 MS. DALTON: I'm talking about the fenced
25 between 17 and 17A. So, there are two openings

1 into that area. There is piping and stuff.

2 Mr. Mion and I walked through that whole
3 lot the other day. I was just curious about
4 why it was currently constructed the way that
5 it is. I was wondering if there was another
6 use for it.

7 MR. SCARINGE: One of the owners years
8 ago had a dog and they let the dog in there
9 and also some of the neighbors, I allowed, to
10 make a garden there. The fence is on one side
11 incorrectly placed. The land surveyor
12 discovered that I own more footage on the
13 other side of it. So, if need be, I'll take it
14 down and move it and put it in the right spot.

15 MR. BRICK: That's shown on the northerly
16 portion of the survey. You'll see that the
17 fence is about five to seven feet back from
18 the actual property line. That was one of the
19 good surprises that Mr. Scaringe has had.

20 MS. DALTON: I just want to go on record
21 on why I'm going to be voting the way that I'm
22 going to be voting which is in favor of this.
23 It's because of elements of your presentation
24 that you have made.

25 The first is that you're showing us that

1 it's very consistent with what else is
2 happening in that neighborhood, and so that's
3 valuable to me.

4 Also, I appreciate the petition. I
5 thought that was a nice touch, so that we
6 could see that -- lots of times you only hear
7 people who don't want something to happen. The
8 neighbors are in favor of something, so that
9 was very useful.

10 In looking at the intent of the law, as
11 you described it to us, I also feel very
12 comfortable with that.

13 Thank you for those three portions of the
14 presentation.

15 MR. SCARINGE: I can't take credit for
16 the petition, but thank you.

17 MR. HAAK: I just echo what Kathy said. I
18 think that you said that he plans on having a
19 15-foot wide driveway.

20 MR. BRICK: Yes.

21 MR. HAAK: I think that we've talked
22 about that before in making sure that there is
23 at least 15 feet for the emergency response
24 vehicle, even though it's not as long as some
25 of the other roads.

1 MR. BRICK: Anecdotally, I'm a
2 firefighter in a municipality that has
3 somewhat challenging topography. When I pull
4 up in a driveway and I get off the back of my
5 engine, I don't want to be rolling down a
6 hill. I want to be stepping onto something
7 that's solid.

8 MR. HAAK: It's nice that it's fairly
9 flat as opposed to some others that we have
10 seen.

11 MR. BRICK: It is very flat.

12 ACTING CHAIRMAN LANE: It's something to
13 keep in consideration. You do want to build a
14 property that is safe and accessible and that
15 you can be sure that it's accessible if
16 someone needs to get in there.

17 If it basically is not going to be a Town
18 road, therefore, who will be responsible for
19 plowing, etcetera, and taking care of all of
20 those things?

21 MR. SCARINGE: I have a plow truck.

22 MR. BRICK: The only real municipal
23 impact is moving the hydrant which the cost is
24 going to be borne by Jerry.

25 ACTING CHAIRMAN LANE: Does anybody have

1 any other comments or questions?

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

3 ACTING CHAIRMAN LANE: I'm ready for
4 someone to make a motion.

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

6 MS. DALTON: I'll second it.

7 ACTING CHAIRMAN LANE: Now this is a
8 motion as a recommendation to the Town Board
9 to approve the open development of 17A also to
10 be known as 15 Upper Loudon.

11 All in favor?

12 ***(Ayes were recited.)***

13 MR. BRICK: Thank you.

14

15

16 ***(Whereas the proceeding concerning the above***
17 ***entitled matter was concluded at***

18 ***8:31 p.m.)***

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CERTIFICATION

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4 ***I, NANCY STRANG-VANDEBOGART, Shorthand***
5 ***Reporter, and Notary Public in and for the***
6 ***State of New York, hereby CERTIFY that the***
7 ***record taken by me at the time and place***
8 ***noted in the heading hereof is a true and***
9 ***accurate transcript of same, to the best of***
10 ***my ability and belief.***
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12
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14 -----
15 ***NANCY STRANG-VANDEBOGART***
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18 ***Dated March 20, 2012***
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