

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

3 *****
4 JONES SPECIAL USE PERMIT
5 621 BOGHT ROAD
6 REVIEW AND ACTION ON PROPOSED SPECIAL USE PERMIT
7 *****

8 THE STENOGRAPHIC MINUTES of the above entitled
9 proceeding BY NANCY STRANG-VANDEBOGART,
10 a Shorthand Reporter, commencing on
11 June 19, 2012 at 8:01 p.m. at the Public Operations
12 Center 347 Old Niskayuna Road,
13 Latham, New York 12110

14 BOARD MEMBERS:

- 15 PETER STUTO, CHAIRMAN
- 16 LOUIS MION
- 17 BRIAN AUSTIN
- 18 KAREN GOMEZ
- 19 TIM LANE
- 20 ELENA VAIDA, Esq., Attorney for the Planning Board

21 Also present:

- 22 Michael Tengeler, Planning and Economic Development
- 23 Sang Kim, SY Kim Land Surveyor, PC
- 24 Victor Caponera, Esq.
- 25 Phil Jones

1 CHAIRMAN STUTO: Next on the agenda is
2 Jones Special Use Permit, 621 Boght Road,
3 review and action on a proposed special use
4 permit regarding two proposed two-family
5 dwellings on a newly subdivided lot presented
6 by Sang Kim and it looks like Mr. Caponera.

7 MR. CAPONERA: Thank you, Mr. Chairman.
8 I'm Victor Caponera representing Mr. Jones,
9 the property owner, who is with me tonight as
10 is his wife, his daughters and his son. We
11 really have a family affair.

12 I'd like to bring everybody up to speed.
13 We know that this is a special use permit and
14 I want to just give the Board a little bit of
15 history on this property.

16 This property for about 100 years was
17 owned by the Vischer family. It's a very
18 significant piece of land. If you look at your
19 site plan it's about 80 acres.

20 As I was saying, the property that we're
21 looking at right here, which is an odd shaped
22 piece - was in the Vischer family for
23 approximately 100 years and Mr. Jones and his
24 wife live on this piece right here
25 (Indicating).

1 When the last of the Vischers passed
2 away, the property was basically conveyed to
3 him and he's owned this property for the past
4 few years.

5 Another point of great importance is that
6 to the rear - and it's not shown on here
7 fully - there is another 17 acres of land that
8 is zoned single family residential. It abuts
9 up to Bergin Woods, which is a single family
10 residential development that was done by
11 Mr. Marini.

12 Anyway, the property before
13 January 1, 2007 was all zoned business E. And
14 we know that business E was strictly business
15 use.

16 In January 1, 2007, when the Town enacted
17 its Land Use Law, they rezoned this to NCOR,
18 neighborhood commercial office residential.

19 CHAIRMAN STUTO: What was it before?

20 MR. CAPONERA: Business E and it went
21 back into this area (Indicating) and then it
22 was single family residential. They rezoned it
23 to NCOR, neighborhood commercial office
24 residential. I say that for a very important
25 reason, Members of the Board. Because when you

1 look at the standards under our NCOR Zone, it
2 speaks very specifically about what is allowed
3 in an NCOR zone. Obviously, we allow
4 commercial and residential and it speaks very
5 definitively about multifamily uses and two-
6 family uses being allowed in the zone, so long
7 as a special permit is issued by the
8 enlightened Board, which is this Board. This
9 is what we are here to ask this Board to give
10 favorable consideration to tonight.

11 Before we came here, many months ago, we
12 had to go in front of the Zoning Board and the
13 Zoning Board passed on this and gave us
14 approval to construct these two lots that you
15 see right here and to construct a two-family
16 on each.

17 CHAIRMAN STUTO: What was the nature of
18 their approval?

19 MR. CAPONERA: In an NCOR zone there is
20 some interesting planning which says that you
21 can't subdivide a property more than twice
22 without a variance. So, we got a variance for
23 that. So, that's why we were there.

24 If you look at the site plan, Mr.
25 Chairman and Members of the Board, you'll

1 notice that there is a proposed future
2 roadway. The only way to get to the back 17
3 acres is potentially to use this roadway. The
4 property is landlocked. There is no other way
5 in - practical way in, I should say. So, when
6 Mr. Jones and I sat down with Mr. Kim many
7 months ago, we discussed the best way to
8 practically design this property for the use
9 of what we are proposing now, including the
10 use of the back. Guess who the back piece of
11 property is owned by? The young ladies that
12 happen to be Mr. Jones' daughters, who are
13 with us tonight, obviously.

14 So, we presented to you a unique
15 presentation and we feel that it is a
16 presentation that you should consider
17 favorably when we go through this.

18 I've discussed this at length with
19 Michael over and over again. He has given a
20 recommendation from the Planning Department
21 that this Board should give favorable
22 consideration.

23 I have a copy of the NCOR preliminary
24 draft and it talks about multifamily
25 residential element design as a favorable use

1 in an NCOR zone.

2 What do we have here? Just down the road
3 a few hundred feet is Route 9. We all know
4 What's on Route 9 in this general vicinity? We
5 have Guptil's. We have a gas station. We have
6 a Freihofers establishment that's right here
7 (Indicating). We have other business uses. I
8 represented the folks across the street and
9 have gotten them variances on some of their
10 commercial uses. So, it's a mixed-use area.
11 Guess why the Town zoned this NCOR? For that
12 very reason; as a transitional zone to go from
13 commercial, to mixed-use, to residential. And
14 the 17 acres that's owned by my client's
15 daughters is all single family residential.

16 CHAIRMAN STUTO: Okay, that's behind
17 this?

18 MR. CAPONERA: Correct.

19 CHAIRMAN STUTO: This lot is about eight
20 acres?

21 MR. CAPONERA: Correct.

22 CHAIRMAN STUTO: And there is 15 or so
23 behind it.

24 MR. CAPONERA: There are 17 acres. It's
25 absolutely magnificent. I've been back there.

1 It's very majestic.

2 CHAIRMAN STUTO: It's currently
3 landlocked?

4 MR. CAPONERA: Correct. And so, when Mr.
5 Kim and I looked at this along with Mr. Jones,
6 we felt that this was the most appropriate way
7 to develop his property.

8 I'm sure that everyone has driven by this
9 property and you've noticed the beautiful
10 rolling hill or flatland. He spends thousands
11 of dollars a year just on gasoline to mow this
12 lawn.

13 Am I correct in that?

14 MR. JONE: Yes.

15 MR. CAPONERA: Maybe it's more now. It's
16 a beautiful parcel.

17 Has everyone driven by this piece? Some
18 are shaking their heads, so I don't need to
19 show you the photos them.

20 Ms. Vaida, have you been by it?

21 MS. VAIDA: I refuse to answer that
22 question.

23 MR. CAPONERA: Thank you.

24 I'll hand the photos up.

25 So, when the Board considers what the

1 allowable uses are in an NCOR zone -- and I
2 have that Local Law right here. Some areas are
3 a very heavy commercial use; a vehicle service
4 station, a movie theater, municipal uses,
5 nursing home, and it goes on and on and on.
6 Also, it allows for the use of what we are
7 proposing.

8 So, under the Code of our Land Use Law,
9 this Board is required to make findings. The
10 findings are that the use conforms with the
11 specific special use permit standards found in
12 the use regulations in this article, in this
13 chapter. It's consistent with the use
14 regulations and it's consistent with the
15 Town's Planning Department's documents. We
16 already have that from the Town Planning
17 Department. Mr. Tengeler prepared a beautiful
18 letter where he articulates in detail how this
19 proposal fits in the categories that the Board
20 has considered.

21 It is my humble opinion that based upon
22 the history of the property, the fact that
23 it's currently in the condition that it's in,
24 and with the idea of future proposed roadway
25 to the rear and service that landlocked piece

1 that's back there, it's for a potential use
2 for residential purposes only. We feel that we
3 meet the criteria and would be happy to go
4 through this in greater detail with the Board,
5 if the Board wishes.

6 MS. VAIDA: The area that you want to
7 rezone -

8 MR. CAPONERA: I'm not rezoning anything.

9 MS. VAIDA: Okay, the area that you want
10 the special use permit for to do the
11 duplexes - that's not landlocked?

12 MR. CAPONERA: No, it is not. I'm talking
13 about the property that's back here
14 (Indicating). This is not landlocked. This is
15 zoned NCOR. NCOR zone allows multifamily
16 residents.

17 MS. VAIDA: With a special use permit.

18 MR. CAPONERA: Correct; as long as it's
19 compatible with the surrounding areas, which
20 we believe that it is. That's why I spoke to
21 you about -- if you just walk down the street
22 a few feet, you're going to see -

23 MS. VAIDA: How does the landlocked part
24 relevant to this?

25 MR. CAPONERA: It's relevant because the

1 property is zoned either by Mr. Jones - this
2 seven or eight acre piece, or his daughters in
3 the back.

4 I think that Mr. Jones, you owned it and
5 of course being the dutiful father that you
6 were, you conveyed it to your daughters,
7 correct?

8 MR. JONES: Correct.

9 MR. CAPONERA: So, the idea, Ms. Vaida,
10 is that there has got to be some practical way
11 to get back there. This is our practical
12 solution. That was after consultation with SY
13 Kim.

14 CHAIRMAN STUTO: Can you describe to me
15 what the houses are going to look like? Are
16 they going to be two stories?

17 MR. KIM: Thank you. This is the two lot
18 site plan for the duplex houses. Each is for
19 two units. Each unit consists of two stories
20 with a one-car garage on each side.

21 CHAIRMAN STUTO: The garage is the GFF?

22 MR. KIM: Yes.

23 CHAIRMAN STUTO: The road is going to go
24 between there someday, right?

25 MR. KIM: Yes.

1 CHAIRMAN STUTO: What's the standard
2 width of a Town road?

3 MR. KIM: It's 50 feet. That's what this
4 map indicated. Also, there is a sewer line
5 that exists. There is also a waterline.

6 CHAIRMAN STUTO: I want to ask you a
7 couple of questions about the road. What is
8 the standard width of a road? The pavement is
9 going to go right to the lot line?

10 MR. KIM: The road is about 16 feet wide.

11 CHAIRMAN STUTO: The envisioned road;
12 that's what I'm asking you about.

13 MR. KIM: That's 50 feet.

14 CHAIRMAN STUTO: How wide is the pavement
15 going to be?

16 MR. KIM: The pavement will be 28 feet
17 wide.

18 CHAIRMAN STUTO: How wide of an area is
19 usually dedicated to the town?

20 MR. KIM: That's 50 feet, overall -

21 CHAIRMAN STUTO: So, that whole thing
22 will be dedicated to the Town?

23 MR. CAPONERA: There is county
24 legislation - a county law that requires every
25 road to be three lots or 49.5 feet. So,

1 therefore, the Town, when they dedicate roads,
2 they have to be 50 feet wide.

3 MR. KIM: That's correct. The legislature
4 indicates that any public road should be three
5 lots, which is 49.5. The Town of Colonie has
6 50 feet instead of 49.5.

7 CHAIRMAN STUTO: When does the owner
8 intend to build the houses, do you know?

9 MR. KIM: As soon as this Board approves
10 it.

11 CHAIRMAN STUTO: What are the plans for
12 the houses? Are they going to be occupied by
13 family, sold, rented?

14 MR. KIM: Either sold or rented. Either
15 way, he hasn't decided which way he will go
16 yet.

17 CHAIRMAN STUTO: What I'm trying to
18 envision is the impact. Now, it's a nice
19 grassy area in between. Once you put a road in
20 there, I'm trying to envision the impact on
21 the two adjacent residents who live on the
22 inside parts of those duplexes. I guess that
23 is somewhat a question in my mind.

24 MR. KIM: Mr. Jones is securing this area
25 for the future of the road extension.

1 CHAIRMAN STUTO: I understand that.

2 MR. LANE: But the eventual owners are
3 going to have to be very aware that there is a
4 very good possibility that there will be a
5 road coming next to their house someday.

6 MR. KIM: That's correct.

7 MR. AUSTIN: Why can't two lots be pushed
8 together and that road be put on the left
9 side?

10 MR. KIM: When you look at this drawing,
11 here it is right here (Indicating). If I
12 pushed it that way, that road would be twisted
13 around to avoid this house. That's why we put
14 it this way.

15 CHAIRMAN STUTO: We weren't given that
16 map, which would have been helpful, as well.

17 MR. KIM: It's a small strip of land.
18 When you look at this map, that portion of the
19 house -- there is a sewer line coming in on
20 the side to serve this house. It encroaches on
21 this side (Indicating). So when you look at
22 this map right here, there is a strip of land
23 that will be combined into that into one
24 parcel. That's what we propose.

25 MR. CAPONERA: That's owned by Mr. Jones

1 also. He owns both parcels. He is here, he
2 owns this and his daughters own the back
3 piece. He owns all the surrounding property.

4 The property owner across the street is
5 here tonight too.

6 The reason that this was planned this way
7 was to obviously make this compatible with the
8 surrounding neighborhood. This wasn't done
9 with the intension of making some -- not a
10 good design. The theory was to design it so
11 that you had a road that goes back and it has
12 some integrity to it with potential
13 future -- who knows? It could be a future
14 development with homes facing the road as you
15 go in. That's the whole thought process behind
16 this.

17 CHAIRMAN STUTO: I think that we
18 understand that. We're thinking about the
19 potential impact on that residential house.

20 MR. CAPONERA: This map really tells the
21 tale. You can see the homes located where they
22 are.

23 CHAIRMAN STUTO: How far is the pavement
24 going to be from the resident's driveways? Can
25 you approximate that?

1 MR. KIM: Right at the driveway -

2 CHAIRMAN STUTO: The other driveway
3 that's going to be next to the road. What I'm
4 saying is that they're going to have a new
5 road in front of their house which is already
6 there. Then, they're going to have a road on
7 the side of their house. I want to get that on
8 the record so that the Board all thinks about
9 how close that new road going to be to that
10 new driveway.

11 MR. KIM: We proposed 21 feet. This zone
12 requires a 20 foot setback. So, we put 21 feet
13 on each side.

14 CHAIRMAN STUTO: From the pavement.

15 MR. KIM: The future pavement?

16 CHAIRMAN STUTO: Yes.

17 MR. KIM: That future pavement is 22
18 feet.

19 CHAIRMAN STUTO: So, 11 from the road to
20 the end of the Town right of way.

21 MR. KIM: Right.

22 CHAIRMAN STUTO: Can how many more feet
23 to the driveway?

24 MR. KIM: Twenty-one feet.

25 CHAIRMAN STUTO: So, it's about 32 feet.

1 Do we know if there will be greenspace
2 there or not? You're going to have a driveway
3 and you're going to be pretty darned close to
4 the road. I don't know. It's hard to envision.

5 MR. KIM: The DPW required it regardless
6 of what the turnaround section was.

7 CHAIRMAN STUTO: Then it's going to be a
8 thoroughfare.

9 MR. KIM: Just in case in the future, if
10 we develop the roadway, this unit can access
11 in through here so I proposed this driveway
12 here to come into Boght Road. DPW said no, we
13 cannot do that.

14 MR. MION: It seems like from a safety
15 point of view, it would be better to do it
16 your way than what DPW said.

17 MR. KIM: DPW said no, so I revised the
18 whole thing.

19 MR. AUSTIN: I'm just trying to think in
20 the future, too. In the future, the daughters
21 decide to develop land into single family
22 residential homes - into a development of some
23 sort. I would assume that those homes would
24 be -- I don't want to use the word assume, but
25 what style are they looking at? Are they

1 looking to mimic the Marini homes in Bergin
2 Woods that back up to them?

3 MR. KIM: I would assume so. The Marini
4 homes in the back there are houses that they
5 would match up with similar kind of houses.

6 MR. AUSTIN: My thought then would be
7 pulling into a neighborhood with half-million
8 dollar homes and having two duplexes sitting
9 on either side of my entryway. I'm just
10 thinking out of the box a little bit here. I'm
11 thinking about the future.

12 CHAIRMAN STUTO: You're trying to
13 envision that.

14 MR. AUSTIN: Yes, I'm trying to envision
15 that but driving into a big development like
16 that with -

17 MR. KIM: I understand your point of
18 view.

19 MR. CAPONERA: Mr. Jones would like to
20 make a comment, too.

21 MR. JONES: My name is Phil Jones and I
22 own the property that we're trying to get this
23 project through. The duplexes that we're
24 trying to build are just a little bit of a set
25 off of what I want to continue to do for the

1 future of my daughters. The duplexes have no
2 impact as far as on the part of the property
3 compared to the rear. You're talking almost
4 one-eighth to a quarter of a mile distance to
5 the rear of the property. The houses that they
6 will be building will be compatible to a
7 Marini House. It will be a large scale type
8 with a larger lot. Then, what we are going to
9 do is whatever is left of the property to
10 offset the cost of the houses, we will do
11 another subdivision.

12 CHAIRMAN STUTO: I'm not sure that I
13 understood the last part, to be honest with
14 you.

15 Let me just be out in the open about it.
16 Part of my initial issue seeing this -- my
17 personal opinion is that it's kind of piece
18 meal. I like to see a comprehensive thing;
19 something that fits together would be the
20 ideal. I'm not saying that you're proposing
21 something that you're not entitled to propose.
22 I'm just saying that in an ideal situation,
23 that's what I would like.

24 Now, you're talking about doing something
25 in two different stages, I think. That's why

1 I'm asking you the question. I'm not sure that
2 I understood your map.

3 MR. JONES: As part of the piece meal, I
4 don't have a million dollars to keep
5 continuing on. By selling the two lots in the
6 front, it will help us get a little start.

7 CHAIRMAN STUTO: So, you're probably
8 going to sell the lots; is that what you're
9 saying?

10 MR. JONES: We're going to put the
11 duplexes up there, but yes. I'm going to have
12 a contractor, yes. Eventually, we're going to
13 build a house for my two daughters.

14 CHAIRMAN STUTO: On which property?

15 MR. JONES: IN the rear of 645 Boght Road
16 which is the rear - the 17 acres of land.

17 CHAIRMAN STUTO: That's your next step?

18 MR. JONES: That's correct. This might
19 not happen today or tomorrow. It might not
20 happen for years from now.

21 CHAIRMAN STUTO: But that doesn't have
22 frontage, so you either have to build a road
23 or you have to get an open development area
24 permission to do that. That is something that
25 we have struggled with, as a Board. That's my

1 perspective of it. I'm just telling you what's
2 troubling me, personally about it and what's
3 not ideal about this situation. I'm not saying
4 that you're not entitled to do this. We're
5 definitely going to consider it.

6 MR. JONES: What we are proposing tonight
7 for the duplexes up front and as we go on,
8 we'll continue on. There is plenty of property
9 there. It's for my children. I'm not out there
10 trying to make a million dollars.

11 MR. AUSTIN: Just another out of the box
12 thing. I know that it's NCOR zoned in the
13 front, correct?

14 MR. CAPONERA: Yes.

15 MR. AUSTIN: Why not rezone it to single
16 family residential, because that side of Boght
17 Road going down the hill has a number of
18 single family residential homes and there are
19 some very nice homes as well leading into
20 Bergin Woods and Dutch Meadows. Then, put two
21 half million dollar, whatever, homes on those
22 lots instead? That could be the transition
23 into the big development. You see where I'm
24 coming with that one?

25 MR. CAPONERA: I do, but I have to be

1 honest with you.

2 MR. AUSTIN: Is it the monetary thing?

3 MR. CAPONERA: No. I just don't think
4 that the rezoning would be appropriate in this
5 particular spot. I think that it could be
6 definitely questioned as spot zoning, which is
7 not legal in the State of New York. Second of
8 all, we can only deal with the zoning that's
9 given to us here, which is NCOR, which says
10 that it is a mixture of commercial and
11 residential to blend your way into the full
12 residential area. This is why we're proposing
13 what we are proposing. You have to understand,
14 in my personal opinion, putting two homes of
15 the statute that you just suggested in this
16 area - it would never work because the homes
17 that are in that area are not of that stature.
18 They're back in Bergin Woods. You're talking
19 about \$600,000 or \$700,000 or \$800,000 homes.
20 In my opinion, that's not going to work right
21 here.

22 CHAIRMAN STUTO: It's too close to the
23 corner.

24 MR. CAPONERA: Absolutely. You have a
25 Freihofer's and Guptill's, a pizzeria and a

1 gas station. I'm humbly saying to you that
2 this is a transitional area that we're looking
3 at. Our code says multifamilies are allowable
4 in this zone, so long as they're compatible,
5 that's all we're suggesting. When Mr. Kim and
6 I sat down many months ago, we thought about
7 this and we drew it up and in fact, you didn't
8 even need lots this big in an NCOR zone. You
9 don't need a lot this big in an NCOR zone. So,
10 we presented a lot substantially smaller than
11 this. I said no, make one at least the minimum
12 size requirement in a single family
13 residential zone which is 18,000. So, now what
14 are the sizes of the lots? They're 18,000 and
15 18,000 plus. So, with all due respect -- and I
16 think that the questions that you're asking
17 are great. This isn't like we just sat down
18 and plopped these on here. This went through a
19 considerable amount of cogitation between Mr.
20 Kim and I, and Mr. Jones. We thought about it.
21 We looked at the zone and we looked at what
22 NCOR allowed. We knew that it was a
23 transitional zone that allowed residential and
24 commercial and we felt that this was the best
25 scenario. Believe me, I understand what you're

Legal Transcription

1 saying. I humbly think that it would be a
2 monumental flop, in this area. It wouldn't be
3 back here (Indicating) because it would abut
4 right up to the Bergin Woods properties, which
5 is where Marini built.

6 MR. AUSTIN: With all due respect, as
7 well, to your comments, this is the first time
8 that we've seen this. So, it's our task as a
9 Planning Board to try to think out of the box,
10 as well.

11 MR. CAPONERA: Which is why I called you
12 the enlightened Board.

13 CHAIRMAN STUTO: Some of the things that
14 you said strike me as a little bit
15 inconsistent. You left the 50 foot gap so you
16 could put a Town standard road in, and the
17 funds are at a shortage or there isn't an
18 excess amount of money to develop the whole
19 property. The next step will be to build on
20 the 15 acre site. If you're going to do that,
21 you're not going to put a Town standard road
22 back to those houses.

23 MR. CAPONERA: I suspect that Mr. Jones,
24 when faced with the cost of building a Town
25 standard road several hundred feet

1 back -- you're absolutely correct. I just
2 don't see that happening.

3 I'm hoping that the legislature will get
4 their wits about them and amend Section 280a
5 of the Town Law that allows keyhole lots. The
6 open development, in my opinion, was a major
7 league mistake. I think that until the
8 legislature changes it -

9 CHAIRMAN STUTO: What change would you
10 want them to make?

11 MR. CAPONERA: Prior to a very famous
12 case that came out -- I can't think of it off
13 the top of my head. It was about six years
14 ago. Prior to that, I regularly came in to not
15 only the Zoning Boards and got a variance for
16 frontage. That statute says that you have to
17 have a minimum of 15 foot frontage on a public
18 highway or street in order to be able to be
19 considered a lot. Then along comes this
20 decision that was decided by I think the
21 Appellate Division, Third Department. Anyway,
22 that decision said that no, the Zoning Boards
23 have no more authority to do this. You have to
24 do an open development district. I heard what
25 you said a few minutes ago. You are absolutely

1 correct. I can get silly and I think that it's
2 unfounded. You, as well as the Town Board has
3 got to act on an open development for a
4 situation like this. To me, it's ridiculous.
5 But, there is no guarantee. Your point is well
6 taken. I'm hoping that the Legislature will
7 amend that though.

8 CHAIRMAN STUTO: I haven't heard that
9 they are.

10 MR. CAPONERA: I haven't, but I know that
11 I've talked with other people who share my
12 passion for this and they're trying to lobby
13 the Legislature to do this. Is it going to
14 happen? Who knows?

15 CHAIRMAN STUTO: Any other questions at
16 this point?

17 I think that case begins with an "I".

18 MR. CAPONERA: I can't remember, but you
19 and I are on the same page.

20 CHAIRMAN STUTO: Can either Elena or Mike
21 go over the criteria for a special use permit?
22 We had one or two a long time ago. We voted no
23 on at least one that I remember.

24 MR. CAPONERA: The last one that I did
25 with you folks was on Sand Creek Road. It was

1 a two-family.

2 MS. VAIDA: What actually might be a
3 better way is to have Victor read the
4 findings. I'm not sure, but I think that they
5 have to be in writing; but I'm not sure. Maybe
6 they could just be read into the record. But
7 if you went over the criteria -

8 MR. CAPONERA: I'd be happy to.

9 MS. VAIDA: And then as you read each
10 one, explain how you comply with it. That
11 would probably make this go a lot quicker and
12 more smoothly.

13 MR. CAPONERA: "In granting or denying a
14 special use permit, the Planning Board shall
15 take into consideration scale of the proposed
16 project and the possible impact of the project
17 on neighboring properties. Before granting the
18 special use permit, the Planning Board shall
19 determine that the use conforms to the special
20 use permit standards set forth in the use
21 regulations provisions of the Land Use Law."

22 I submit that the uses allowable in this
23 zone allow two-family residences. So, I submit
24 to you that we meet that criteria.

25 "That the use is consistent with the

1 Town's current planning documents including
2 the Comprehensive Plan."

3 I defer to the Honorable Mr. Tengeler who
4 has written a proposal to this Board
5 indicating that this proposal does comply.

6 "That the use is consistent with the
7 purpose of the land use district in which it
8 is located and with the applicable provisions
9 of the Land Use Law including the other detail
10 special use permit criteria."

11 Again, I refer back to what the criteria
12 set forth in an NCOR zone is where they talk
13 about two-family and multifamily as well as
14 the allowable uses in an NCOR zone which
15 allows these uses.

16 "That the use will be suitable for the
17 property on which it is proposed, considering
18 the property size, the location, the
19 topography, the vegetation, soils, natural
20 habitat and hydrology and if appropriate, its
21 ability, if desirable to be buffered or
22 screened from neighboring properties and
23 public roads."

24 If you've been there, it's pretty flat.
25 As you go into the back toward the back 17

1 acres, it kind of goes down about 15 or 20
2 feet. It's wide open. There are no trees. It's
3 pretty open in this area. So, the screening I
4 think is out of the question. I think that
5 it's suitable based upon what I said a few
6 minutes ago.

7 "That the uses will be compatible with
8 adjoining properties and with natural and man
9 made environment."

10 Based on what I've said before of where
11 this is and its close proximity to Route 9 and
12 the commercial uses that are in that area and
13 directly across the street, the Freihofer's,
14 the Guptil's which has a two-family residence
15 on it - that it is compatible.

16 "That the use will not adversely effect
17 surrounding land uses by creating excessive
18 noise, dust, odors, or pollution as well as
19 any other nuisances."

20 I submit that a two-family is not going
21 to create noise, dust, odors or any excessive
22 nuisance.

23 "And that the use will not cause undue
24 traffic congestion, unduly impair pedestrian
25 safety or overload existing roads, considering

1 their current width, surface and condition.”

2 Again, I submit that this proposal will
3 have none of that and the Planning Department
4 has concurred with that.

5 “That the use will have appropriate
6 parking and be accessible to fire, police and
7 other emergency vehicles.”

8 Clearly, the proposal is to face these on
9 Boght Road. So, there is water and sewer and
10 hydrants. So, it meets that criteria.

11 “That the use will not overload public
12 water, drainage, sewer system or any other
13 municipal facility or services including
14 schools.”

15 Clearly the diminimous request that we
16 are making is small. Mr. Kim has set that
17 forth in his documentation that he submitted
18 to the Planning Departments.

19 “That the use will not degrade any
20 natural resource, eco system or historic
21 resource.”

22 To the best of our research, there is no
23 natural resource, eco system or historic
24 resource on this property.

25 “That the relevent site plan criteria can

1 be satisfied and the site plan approval can be
2 granted under the Land Use Law.”

3 That’s basically the criteria.

4 CHAIRMAN STUTO: The typical residential
5 frontage is, I think, 80 feet. Can you explain
6 to me why these lots are 75 feet?

7 MR. CAPONERA: I believe that it’s 75.

8 MS. VAIDA: It’s 60. We just looked that
9 up.

10 CHAIRMAN STUTO: Can somebody say that
11 articulately for the record?

12 MR. KIM: It’s 60 feet.

13 MS. VAIDA: We looked it up before.

14 MR. CAPONERA: In an NCOR zone you have
15 to have 60 feet of frontage.

16 MR. KIM: And 6,000 square feet of lot.

17 MR. CAPONERA: We have 75 feet and 18,000
18 square feet.

19 CHAIRMAN STUTO: What are they
20 envisioning when they’re talking about 6,000
21 square foot lots?

22 MR. CAPONERA: Buildings on small lots
23 that are literally built right next to one
24 another.

25 CHAIRMAN STUTO: Town houses or something

1 like that?

2 MR. TENGELER: It's the neighborhood
3 commercial office residential, so it's a
4 neighborhood type setting.

5 MR. CAPONERA: I felt and Mr. Kim
6 concurred that when we looked at this and he
7 had these small lots there. I said, it's just
8 not compatible with what the neighborhood is.
9 That's why we suggested a larger lot and wider
10 lot, and a lot that meets the single family
11 residential criteria which exceeds the 60-foot
12 minimum frontage and 6,000 square foot size.
13 This is 18,000. That's three times the size.

14 Reading from some of the comments that
15 Mr. Tengeler has given to this Board:

16 "The site is located in an NCOR zoning
17 district, which allows a two-family residence,
18 provided a special use permit can be granted.
19 Zoning verification approval was issued by the
20 Town of Colonie Building Department for the
21 two-family uses on April 3, 2012 with the
22 understanding that a special use permit
23 application would have to come before the Town
24 Planning Board. All recommendations as
25 outlined in the findings in fact have been

1 satisfied and the Board can make the required
2 determinations A through K above. The proposed
3 project does conform to the special use permit
4 standards as well as the conditions set forth
5 in the approved Zoning Board decision. The
6 proposed use is suitable for the property in
7 which it is proposed and that it would allow
8 for subtle transition from NCOR to single
9 family residential in that the duplexes are
10 more residential looking than that of a
11 commercial building or a multiunit complex.
12 The fact that it is a duplex rather than a
13 multiunit complex makes it blend in with NCOR
14 border as well as a SFR border that are both
15 in close proximity to the site.

16 Therefore, a conversion to a two-family
17 use would be compatible with the surrounding
18 neighborhood and would not diminish the
19 quality of life, services, or safety to that
20 area. There is no indication that the proposed
21 use will adversely affect the surrounding land
22 uses by creating excessive noise, dust, odor,
23 traffic pollution or any other nuisances. The
24 site plan indicates acceptable parking
25 standards, meeting the criteria for the Town

Legal Transcription

1 of Colonie Land Use Law and the driveways have
2 been designed with the distance and to allow
3 for safe vehicles to access the properties.”

4 CHAIRMAN STUTO: Anybody on the Board
5 want to express any feelings or thoughts or
6 ask questions?

7 MS. VAIDA: I have another procedural
8 question.

9 Is this also being considered as a site
10 plan application?

11 MR. CAPONERA: Actually, there are two
12 matters before the Board. One is the
13 subdivision as well as the special use permit.

14 MS. VAIDA: So, this is a subdivision
15 application?

16 MR. CAPONERA: Subdivision.

17 MR. TENGELER: It's administrative
18 through our office.

19 MR. LANE: So, we're not voting on the
20 subdivision?

21 MR. TENGELER: No. It's solely for the
22 special use.

23 CHAIRMAN STUTO: Are there any members of
24 the public that would like to be heard on
25 this? If you do, just wave your hand.

1 I'm somewhat troubled and I'll try to
2 articulate how I feel about it. You meet a lot
3 of the criteria, in my opinion, for the
4 special use permit. We talked about smaller
5 sized lots and you're talking about transition
6 from commercial on Route 9 and so forth, into
7 something else. It seems a little bit hodge
8 podgy, pardon the expression, or not a
9 comprehensive look at this entire property.
10 You're going from Freihofer's to farm type
11 buildings and this is a farm type lot - to two
12 duplexes with a swap of land between them
13 contemplating something behind them. The
14 special use permit talks about screening.
15 These are going to be right out there. As I
16 said before, I have a little hard time
17 envisioning it. There is no screening. They're
18 going to be right up against the proposed that
19 may or may not be put in, or you might be
20 coming back in looking for a driveway for an
21 open development area. I don't think that it's
22 the ideal way to deal with this property on a
23 comprehensive basis. I'm not sure where I come
24 out on it, but I think that there is enough in
25 the record and in my opinion that the Board

Legal Transcription

1 could go either way on this in terms of
2 granting a use permit.

3 MS. VAIDA: The other problem that I do
4 have with this is when I read further in this
5 section of law, it talks about the decision
6 and it says:

7 "After the conclusion of a public hearing
8 for a special use permit, including site plan
9 approval, the Planning Board shall grant, deny
10 or grant subject to conditions the special use
11 permit."

12 Then it talks about the decision
13 containing written findings, explaining the
14 rationale and that the special use permit
15 shall be conditional upon the approval of the
16 site plan pursuant to this chapter.

17 It appears to me as though this should be
18 done simultaneously before the Board -

19 CHAIRMAN STUTO: With site plan approval.

20 MS. VAIDA: Right.

21 MR. CAPONERA: Mr. Chairman, would it
22 make any difference if elevations were
23 produced?

24 CHAIRMAN STUTO: Probably.

25 MR. CAPONERA: I'm just thinking about

1 that. I completely understand your thoughts on
2 this.

3 MR. TENGELER: I passed down similar
4 elevations that were in our file.

5 MR. CAPONERA: I don't have them. I'm
6 just wondering if that would give you
7 assistance to the Board.

8 The smaller lots, in a townhouse
9 scenario, I would envision it being in some
10 kind of comprehensive multiunit thing where it
11 tells a story. Just to plop these in the
12 middle of a farm field with something else
13 that might happen in the future, is not ideal.
14 I'm having trouble envisioning it.

15 MR. CAPONERA: I understand.

16 MR. KIM: This is the front view and also
17 there is a porch coming out. This entry is a
18 garage.

19 CHAIRMAN STUTO: But they're in the back,
20 right?

21 MR. KIM: Yes. Each unit is a regular
22 house size.

23 CHAIRMAN STUTO: What are the dimensions
24 on those bedrooms?

25 MR. KIM: They're approximately 11 by 11.

1 CHAIRMAN STUTO: It's not a bad looking
2 unit. If it was in a subdivision that had
3 screening and greenspace and so on -- but to
4 plop two of them -- with no greenspace on the
5 side and no screening, you have no control
6 over what's going to happen here or here or
7 here (Indicating). They are just potentially
8 stark buildings without any type of green
9 type.

10 MR. KIM: That would be here
11 (Indicating).

12 CHAIRMAN STUTO: But that's in the back.

13 MR. MION: I kind of feel the same way.
14 You have this road here and if you decide to
15 just put the family back here, we still need a
16 road back there (Indicating). Based on
17 previous things that have come before this
18 Board, we end up with a driveway that has to
19 be built to a road structure. In one
20 particular case it was \$60,000. That's a lot
21 of money to put back there. It might be longer
22 than that. I guess where I'm coming from is we
23 need to see a picture. Are you going to put
24 more houses back there besides the girls? If
25 that's the plan -- if I heard correctly,

1 you're going to put the girls' houses back
2 there first. So, what are we going to have to
3 do? We're going to have to go before the Board
4 for an open development, or are we going to
5 actually put a road back there so that we can
6 do the subdivision and also build their
7 houses?

8 MR. CAPONERA: It's either come in with a
9 subdivision with the proposal to build out
10 this as a public road, or unless the
11 Legislature changes -- I don't expect the
12 Legislature to do that.

13 MR. JONES: Suppose I don't do anything
14 in the future? Suppose I leave it the way that
15 it is?

16 CHAIRMAN STUTO: That's the thing. We
17 don't know. It's your land.

18 MR. JONES: I might not do anything. I
19 might just put these two units and that's it.

20 CHAIRMAN STUTO: We have to assume that
21 nothing would happen, anything would happen or
22 anything could happen. We have to plan
23 accordingly.

24 I would like to see more greenspace. I
25 don't think that duplex lots are made to be

1 built like that unless it's part of a complex
2 or comprehensive thing. If you wanted to put a
3 single family house on a standard lot, maybe
4 because the person that lived there could put
5 whatever greenery that they needed to screen
6 it. I don't know.

7 MR. JONES: I've done a lot to get this
8 far.

9 MR. AUSTIN: What about putting the
10 duplexes the other way, so that they're facing
11 the road?

12 MR. CAPONERA: Would that make a
13 difference?

14 MR. AUSTIN: Then again, you'd be looking
15 at the side of a garage. I know that area
16 well. I drive back and forth to the ball
17 field.

18 MR. JONES: You don't think that a duplex
19 would look nice in that area? It's a very nice
20 area.

21 MR. AUSTIN: It is a nice area, but it's
22 like he said, it's a mixture of housing
23 options. There is the house that burned down
24 and got rebuilt and then you have some other
25 kinds of housing.

1 MR. JONES: That was farmland also.
2 Things have changed and things are going to
3 change.

4 CHAIRMAN STUTO: Okay, in my opinion,
5 you're trying to do too much on too small of a
6 lot without any greenspace accommodation.
7 That's my biggest problem.

8 I didn't get the big map. I don't know if
9 this could be pushed over.

10 MR. CAPONERA: So, you'd like to see
11 larger lots -

12 CHAIRMAN STUTO: So that they work in and
13 of themselves as attractive lots.

14 MR. CAPONERA: I see what you're saying.

15 CHAIRMAN STUTO: I don't know. It's not
16 my job to design it.

17 MS. VAIDA: The Planning Board under the
18 special use permit section - like I was
19 reading to you about the site plan
20 considerations - talks about increasing
21 dimensional or area requirements for requiring
22 permanent set aside of open space land,
23 specifying location character and number of
24 vehicle access points, requiring landscaping,
25 planting and screening, requiring clustering

1 of structures and uses in order to preserve
2 environmental resources and minimize the
3 burden on public service, which isn't an issue
4 for these two houses.

5 Those kinds of things that you're talking
6 about can be considered and made part of the
7 approval. There is a lot of discretion.

8 MR. CAPONERA: It's certainly within the
9 purview of the Planning Board to request this.

10 I understand your concerns, Mr. Chairman.
11 If you're willing, we'd like to pow wow for
12 five minutes and I could ask the Board's
13 consideration in requesting an adjournment. Is
14 that okay?

15 CHAIRMAN STUTO: Okay, we'll take five.

16 ***(There was a brief break in the proceedings.)***

17 MR. CAPONERA: With the Board's
18 consideration, would you consider allowing us
19 a short adjournment to go back and reassess
20 these lots and make them bigger or larger with
21 more greenspace and bring you back a proposal
22 that we think will be more in keeping with
23 your concerns?

24 CHAIRMAN STUTO: I think that we have a
25 consensus that would be fine.

1 MR. CAPONERA: Realistically, when do you
2 think that we could come back?

3 MR. TENGELER: I know that we're booking
4 for July 11th. I believe that is the next date.
5 I can contact you tomorrow and let you know if
6 it's open or not. If not, definitely after
7 that; but I'd like to get you on for the 11th.

8 CHAIRMAN STUTO: And we understand the
9 project a lot better so the preliminary stuff
10 will be over.

11 MR. CAPONERA: The only thing is that I
12 have to talk to Ted DeLucia in the Building
13 Department. I'm wondering if I can go back and
14 get a zoning verification if we change the lot
15 size, and we're going to. We'll talk about
16 that.

17 CHAIRMAN STUTO: We'll help you in any
18 way that we can.

19 MR. CAPONERA: Thank you. So we'll asking
20 for an adjournment to perhaps July 11, if it's
21 doable. If not, the next available Planning
22 Board Meeting.

23 CHAIRMAN STUTO: Without objection from
24 the rest of the Board Members, thank you.

25 We'll continue the hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

*(Whereas the proceeding concerning the above
entitled matter was adjourned at
9:05 p.m.)*

CERTIFICATION

1
2
3
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.*

11
12
13
14 -----
15 **NANCY STRANG-VANDEBOGART**

16
17
18 **Dated July 9, 2012**

19
20
21
22
23
24
25

Legal Transcription

Ph 518-542-7699 Fax 518-831-1710
www.albanylegaltranscription.com