

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

3

4 *****

5 JONES SPECIAL USE PERMIT
6 621 BOGHT ROAD
7 REVIEW AND ACTION ON PROPOSED SPECIAL USE PERMIT OF
8 TWO PROPOSED TWO-FAMILY DWELLING ON NEWLY
9 SUBDIVIDED LOTS

10 *****

11 THE STENOGRAPHIC MINUTES of the above entitled
12 matter BY NANCY STRANG-VANDEBOGART, a Shorthand
13 Reporter, commencing on
14 August 7, 2012 at 10:03 p.m. at the Public
15 Operations Center 347 Old Niskayuna Road,
16 Latham, New York 12110

17 BOARD MEMBERS:

- 18 PETER STUTO, CHAIRMAN
- 19 MICHAEL SULLIVAN
- 20 BRIAN AUSTIN
- 21 KATHY DALTON
- 22 LOU MION
- 23 KAREN GOMEZ
- 24 ELENA VAIDA, Esq., Attorney for the Planning Board

25 Also present:

26 Joe LaCivita, Director, Planning and Economic
27 Development

28 Victor Caponera, Esq.

29 Sang Kim, PE, SY Kim Land Surveyors

30 Phil Jones, Landowner

31

32

33

1 CHAIRMAN STUTO: Okay, next on the agenda
2 is Jones Special User Permit, 621 Boght Road.

3 Do you want to give an introduction
4 before we turn it over?

5 MR. TENGELER: Sure. This is the Jones
6 special use permit. They last appeared before
7 the Bard on June 19th where the consensus was
8 that although the criteria of a special use
9 was met, the Board wanted to see a more
10 comprehensive plan that took into account
11 plans for the surrounding acreage, also owned
12 by the Jones'. Victor Caponera is back to
13 present tonight.

14 CHAIRMAN STUTO: Thank you.

15 Mr. Caponera?

16 MR. CAPONERA: Mr. Chairman, Members of
17 the Board, members of the audience, I'm Victor
18 Caponera as the attorney for the owners,
19 Mr. and Mrs. Jones who are with us tonight. I
20 promise you that I am not going to ask the
21 Board's deep consideration on this because I
22 know that you've worked hard.

23 Anyway, as Michael very appropriately
24 indicated we were here a couple of months ago
25 in June. Mr. Chairman, you had some concerns

1 about basically the concept and thought it was
2 a little piecemeal. So, what we did is through
3 the efforts of Mr. Kim who is also here, and
4 my client and also members of your planning
5 commission - we redesigned the size and the
6 makeup of the lots to show larger lots. The
7 original lots that were proposed were just
8 18,000. Both of these are over 21,000 square
9 feet. We also added greenspace, specifically
10 arborvitaes, on the side where the proposed
11 road might go as well as larger deciduous
12 trees in the back - maple trees. And we slid
13 the whole project over to the west so that it
14 abuts up closer to the buildings that are
15 currently there. So, this basically in our
16 view and our opinion matches up with what the
17 Board wanted us to reconsider. We took this
18 back and made some changes.

19 In addition, the other site plan that we
20 show shows the overall possible use of not
21 only this property that's owned by the Jones',
22 but the 17 acre parcel that's owned by the
23 children of the Jones'. If you look at that,
24 it actually goes through the back of that
25 parcel with a possible future development for

1 residential use. You can see how that is drawn
2 in there.

3 Of course, as I mentioned before, the
4 property in the back - the 17 acres is single
5 family, SFR. The property in the front is not.
6 It's in the NCOR zone and you can see that
7 demarcation line that's in the rear. So, what
8 I believe that we did was accomplish what the
9 Board asked us to do and that is go back and
10 retool and rethink and put this back in a
11 better perspective so that you can look at the
12 whole property in terms of what the future
13 might be. So, we made a revision. Mike
14 Tengeler worked as we did with Joe and we're
15 asking the Board's consideration favorably on
16 giving us the approval for this special use
17 permit.

18 As the Board knows too, almost a year ago
19 I went before the Zoning Board and got the
20 variance for this and got an approved zoning
21 verification subject to the Planning Board
22 approving this.

23 Mr. Chairman and the Board: That is my
24 presentation.

25 CHAIRMAN STUTO: I just want to

1 understand what I'm looking at. I have three
2 maps. One is the comprehensive one. That's not
3 the one that I have a question on. Then, I
4 have two other maps and I just want to make
5 sure that I'm looking at the right ones.

6 One is dated July 6, 2011 and the other
7 one is May 1, 2012.

8 MR. CAPONERA: This is May 1, 2012.

9 MR. KIM: The difference is we put the
10 lot line like that (Indicating). We gave a 21
11 foot setback from the future right of way.
12 It's the same as this one (Indicating).

13 MR. CAPONERA: That was a concern that
14 you had.

15 CHAIRMAN STUTO: So, July 6, 2011 was the
16 one that we saw last time?

17 MR. KIM: That was the Board meeting.

18 CHAIRMAN STUTO: But it was almost a year
19 old. I just want to make sure. That's the old
20 map.

21 MR. CAPONERA: You changed this.

22 MR. KIM: There is a revision.

23 MR. CAPONERA: Mr. Chairman there is a
24 revision. It says 6/29.

25 CHAIRMAN STUTO: That's 6/29/12.

1 MR. CAPONERA: So, this is a revision
2 that occurred after our meeting on June 19th.

3 MR. KIM: Now we are proposing 40 feet
4 from this building to the proposed right of
5 way. This lot is 19 feet wide and consequently
6 the building can sit that distance from the
7 future right of way. There will also be
8 proposed arborvitae trees on the outside of
9 the driveway to screen our future building.

10 CHAIRMAN STUTO: Give us a second to
11 absorb that.

12 So, the new lots are bigger, wider -

13 MR. CAPONERA: They're wider and bigger.
14 the buildings have been moved back from the
15 proposed future road from 21 feet from the
16 right of way to 40 feet. So, it's been doubled
17 and just as I said, the right of way is 60
18 feet. The Town Code now only requires a paving
19 to 32 feet. So, effectively speaking, the
20 building would be at least 55 feet from the
21 paving of the new road.

22 CHAIRMAN STUTO: On the right lot, the
23 area of the lot got smaller. I just want to
24 make sure that I'm understanding this
25 correctly. On the older map, it was 21,464.

1 MR. CAPONERA: That's incorrect. The old
2 one was 18,000.

3 CHAIRMAN STUTO: The one that was revised
4 6/29/12 that you told me to look at says
5 17,016.

6 MR. KIM: Right and now it's up to 21,000
7 square feet.

8 CHAIRMAN STUTO: Which is the current one
9 that you want us to consider?

10 MR. CAPONERA: The one that we're looking
11 at right now which shows the lot at 21,464
12 feet.

13 CHAIRMAN STUTO: When is that dated?
14 July 6, 2011?

15 MR. CAPONERA: That's 6/29/12.

16 CHAIRMAN STUTO: Are you sure about that?

17 MR. CAPONERA: Maybe you should go up and
18 see what he's looking at. There may be a
19 misprint on that.

20 CHAIRMAN STUTO: This is the larger
21 lot - the 21, 464. The last revision is 6/29.

22 MR. KIM: This is the same map.

23 CHAIRMAN STUTO: So, these are both the
24 same map.

25 MR. KIM: Yes.

1 CHAIRMAN STUTO: So we don't have the old
2 map here.

3 MR. CAPONERA: Does it show 21,000 on the
4 new ones?

5 MR. TENGELER: Yes.

6 MR. CAPONERA: Does it make sense now?

7 CHAIRMAN STUTO: Yes. So, the right of
8 way is still 50 feet?

9 MR. KIM: That's what the Town requires.

10 CHAIRMAN STUTO: You thought that they
11 widened it?

12 MR. CAPONERA: No. I wasn't sure if it
13 was 50 or 60. The required is three rods.
14 Three rods is 49.5 feet, so it has to be a
15 minimum of 49.5 feet. That's a state law.

16 CHAIRMAN STUTO: If you don't mind, can
17 you go over how you changed it with respect to
18 sliding lots around, the distance of the house
19 to the street and also the greenspace?

20 MR. KIM: This was the old lot line
21 (Indicating). It was only 100 feet wide. At
22 the time, the setback was from this driveway.
23 It proposed only a 21 foot setback. We
24 increased this 19 feet more to create a
25 building setback to 40 feet. That's the Town

1 requirement. We created the 40 foot setback
2 from this building for the future right of
3 way.

4 MR. CAPONERA: And you added the
5 arborvitae which is the greenspace buffer
6 between the building and the proposed future
7 road, and the mature maple trees in the rear
8 of the building. I'm not sure if it was you,
9 Mr. Chairman or other members of the Board
10 were concerned about this. Basically, the idea
11 was to slide this all closer to Mr. Jones'
12 current building and property on the west
13 side, make the lots larger, increase the
14 distance between the proposed building and the
15 future road, add greenspace so the buildings
16 were moved, the lots were made bigger and the
17 setback is doubled from the proposed future
18 road. The Board also wanted to see what the
19 future would hold, which is why we came up
20 with the design to the back of the property
21 which is owned by Mr. Jones' two daughters.
22 So, that is this future 17 acre parcel back
23 there (Indicating). It is zoned 100 percent
24 single family residential. It is land locked.
25 There is no other way in and no other way out,

1 which is why this road is proposed. That was
2 another question that the Board had - why is
3 the road there?

4 MS. VAIDA: Victor, how is this not going
5 to be a problem in segmentation under SEQRA?

6 MR. CAPONERA: What do you mean?

7 MS. VAIDA: You're showing the proposed
8 use of that and you're asking us to approve,
9 in a sense, part of a development.

10 MR. CAPONERA: It's a separate parcel.
11 It's owned by separate people. There is not a
12 segmentation issue here; I assure you. They're
13 separate pieces of land. They're owned by
14 separate people. The Board wanted a
15 consideration of what the future is going to
16 be. That's specifically why the road was
17 proposed to be here. We're showing it to them.

18 MS. VAIDA: What if, by looking at the
19 development in the back it turns out that the
20 engineers or whatever decide that the access
21 to that should be some place other than where
22 you're proposing it? You're sort of limiting
23 the choices by putting those two houses there.
24 In order to develop back there, that's going
25 to have to be the access.

1 MR. KIM: The concept subdivision was in
2 2008. It is a dead-end street - a temporary
3 cul-de-sac from Bergin Woods. Mr. Jones
4 approached this family to see if they could
5 give us some kind of access or a conditional
6 easement. It was denied. They were not
7 interested.

8 MS. VAIDA: So, that was filed as a
9 concept application?

10 MR. KIM: We haven't filed it. We brought
11 the concept plan to the neighbor and that was
12 denied. Because of that reason, I have this
13 kind of roadway here (Indicating). I didn't
14 have any access. Because it was denied, the
15 only access that this property can have is
16 from Boght. That's why I reserved this 50 foot
17 strip of land right in between. That could be
18 developed in the future. They could have
19 access from this way.

20 MR. CAPONERA: The reason that he chose
21 this area, just for your edification, is
22 you've spent 25 minutes talking about sight
23 distance. That's why this professional put
24 this proposal there for sight distance. This
25 isn't just some whimsical thought to throw up

1 a curb cut here. This is where he, in his
2 professional opinion, believes that it should
3 be. This is why we humbly ask this Board to
4 favorably consider this.

5 MS. VAIDA: The only thing that troubles
6 me is whether or not if this development is
7 important to your client -

8 MR. CAPONERA: Which development?

9 MS. VAIDA: The big one in the back.
10 Perhaps this should all be considered as one.

11 MR. CAPONERA: They don't own that
12 property.

13 MS. VAIDA: But his daughters do.

14 MR. CAPONERA: I promise you that this is
15 not segmentation.

16 MS. VAIDA: Why was the other access
17 point denied?

18 MR. KIM: There are a few people there
19 that totally denied the access.

20 MR. JONES: I bought that property off of
21 Mr. Wilson in the back because he knew that I
22 had access off of Boght Road. He didn't want
23 to divide up any more of his property. So, my
24 intentions were eventually in the future to
25 come off of Boght Road, that we had proposed.

1 He didn't want to sell me any more of the
2 land. He sold me that piece because he knew
3 that I had access to it.

4 MR. KIM: That's the reason that we kept
5 a 50-foot strip in the middle.

6 CHAIRMAN STUTO: Kathy, would you mind
7 starting? Do you have questions or comments?

8 MS. DALTON: I don't have any questions.
9 I missed the first meeting that you were at. I
10 wasn't privy to all that conversation and I
11 have to admit that I didn't read the
12 transcript from it. This looks like a
13 reasonable plan to me and a reasonable way to
14 ensure that you don't have that landlocked
15 parcel. We run into it all the time. People
16 don't think for the future.

17 MR. MION: I think that you've addressed
18 what we asked you to address and it looks
19 good.

20 MR. AUSTIN: It works on the lot. There
21 are no other duplexes on that road, so I'm not
22 sure how they fit.

23 MR. CAPONERA: It's an allowable use.

24 MR. AUSTIN: The only other thing that I
25 could think of is that in the future is

1 driving back into those beautiful homes that
2 were built back there - having my entrance
3 between two duplexes.

4 MR. CAPONERA: As Mr. Tengeler and I have
5 worked with this NCOR and special use permit
6 to go through that - which we did the last
7 time, there is a transition. That's why part
8 of it is NCOR and the other part is SFR. This
9 is what we consider to be - and Mr. Jones
10 considers to be the transitional approach.

11 MR. AUSTIN: Behind the duplexes would be
12 this vacant line?

13 MR. CAPONERA: Yes.

14 MS. DALTON: About how much is there?

15 CHAIRMAN STUTO: Is there 6.5 acres
16 remaining?

17 MR. KIM: Yes, 6.5 acres remaining.

18 CHAIRMAN STUTO: So, you'll be coming
19 back to look for more lots out of that 6.5
20 acres.

21 MR. KIM: It's up to Mr. Jones.

22 CHAIRMAN STUTO: Right, but to say that
23 it's going to be empty property, is not right.

24 MR. JONES: A lot of room for the kids to
25 play.

1 CHAIRMAN STUTO: Thank you for making the
2 improvements. You may not believe this, but I
3 want you to optimize the use of your property.
4 I'm not sure that this does, but it's your
5 property. I think that it would be more cost
6 effective to deal with the whole thing at one
7 time; have a nice entrance. Your NCOR up front
8 here - you have a lot of options and you can
9 do a fair amount of density. That's what it's
10 designed for. You're just off of Route 9 on
11 Boght Road. I'm going to vote in favor of this
12 and I wish you the best of luck. I thought
13 that you could have squeezed something better
14 out for yourself. That's up to you.

15 MR. SULLIVAN: I have no questions.

16 CHAIRMAN STUTO: Karen?

17 MS. GOMEZ: Nothing.

18 MS. VAIDA: Peter, just to make sure that
19 the record is clear, if this gets approved,
20 there is no implicit or passive approval by
21 this Board of that access point - future
22 access point of the development. So, if it
23 turns out that is a problem in the future,
24 it's one that they created.

25 CHAIRMAN STUTO: We're going to get stuck

1 on that one the next time.

2 Thank you for getting that on the record.

3 Do we have a motion to approve this
4 special use permit?

5 MR. TENGELER: Can I make a condition,
6 please, Peter?

7 CHAIRMAN STUTO: Sure.

8 MR. TENGELER: There are still some
9 outstanding Town comments.

10 CHAIRMAN STUTO: Why don't you go through
11 that?

12 MR. TENGELER: There are various Town
13 comments that will need to be addressed
14 through another submission. I believe that
15 there were some remaining stormwater issues.
16 The Town comments should be in everyone's
17 packet. It says Town of Colonie Department of
18 Public Works Bureau of Engineering on top.
19 It's dated June 6, 2012.

20 MR. CAPONERA: I think that you can make
21 it conditional approval, conditioned on
22 meeting the Department comments. It's as
23 simple as that. We are prepared to accept
24 that. We've read all of these and we are in
25 full agreement with them.

1 include this in the record and to agree to the
2 decision rationale to approve the special use
3 permit, contingent upon compliance with all
4 the Department recommendations?

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

6 CHAIRMAN STUTO: Do we have a second?

7 MR. AUSTIN: I'll second.

8 CHAIRMAN STUTO: All those in favor?

9 ***(Ayes were recited.)***

10 CHAIRMAN STUTO: All those opposed?

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

12 CHAIRMAN STUTO: The ayes have it.

13 MR. CAPONERA: Thank you, very much.

14

15

16

17 ***(Whereas the above entitled proceeding***

18 ***was concluded at 10:27 p.m.)***

19

20

21

22

23

24

25

CERTIFICATION

1
2
3
4 *I, NANCY STRANG-VANDEBOGART, Short hand*
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 _____
 NANCY STRANG-VANDEBOGART

15
16
17 ***Dated August 17, 2012***