

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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GAFFER COURT MIXED-USE

GAFFERS COURT

WAIVER REQUEST

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6 THE STENOGRAPHIC MINUTES of the above entitled  
7 matter by NANCY STRANG-VANDEBOGART, a Shorthand  
8 Reporter, commencing on November 17, 2015 at 8:50  
p.m. at The Public Operations Center, 347 Old  
Niskayuna Road, Latham, New York

9

10 BOARD MEMBERS:  
11 PETER STUTO, CHAIRMAN  
12 LOU MION  
13 SUSAN MILSTEIN  
14 CRAIG SHAMLIAN

13

14 ALSO PRESENT:

15 Kathleen Marinelli, Esq, Counsel to the Planning Board  
16 Joseph LaCivita, Director, Planning and Economic  
Development  
17 Michael Tengeler, Planning and Economic Development  
18 Frank Fazio, PE  
Victor Caponera, Esq.  
19 John Avakian  
20 Robert Ensign

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1           CHAIRMAN STUTO: Next and final project is Gaffers  
2 Court Mixed-Use, Gaffers Court, Waiver request. This is  
3 a mixed-use consisting of 2,160 square foot commercial  
4 first floor with two apartment units on the second  
5 floor.

6           Joe, do you have any introductory remarks on  
7 this?

8           MR. LACIVITA: No, this is s Michael's.

9           MR. TENGELER: The Planning Board last saw this I  
10 believe about a month ago for a sketch plan review where  
11 Frank Fazio is presenting tonight. This is for a  
12 mixed-used facility on Gaffer's Court. It's exclusively  
13 in a HCOR zoning district which allows for a mixed-use.  
14 The density that they are looking for are two units on  
15 top which is in conformance with the density  
16 calculations with this specific use and size.

17           There were a couple of comments that the Board  
18 had last time. We went over them with Frank and I  
19 think that everything has been addressed on the site  
20 plan that was asked for before. Frank will make a  
21 brief presentation to familiarize everyone with  
22 everything and we'll get back into the additional  
23 amenities and so forth.

24           MR. FAZIO: Just to refresh your memories this  
25 building is 4,320 square foot building with 2,160 square

1 foot on each floor. The bottom floor will contain lease  
2 space for business only and Mr. Farracane is going to  
3 locate his business on there also.

4 The upstairs will have two apartment units, as  
5 Mike said, which is in accordance with the use and  
6 this is an allowed use in this corridor here. We  
7 have all the requirements for the zoning on this.

8 We did have to get a couple of variances from  
9 the Zoning Board. One being that this lot was  
10 undersized. It was an existing condition so they  
11 got a variance for that.

12 Also, a variance for a five yard setback on  
13 this side of the parcel which is next to a  
14 residential unit over here (Indicating). During  
15 that Zoning Board, to refresh your memories, the  
16 neighbor wanted the building set back a little bit  
17 further. He has a business and wants a visual sight  
18 distance up to there so we accommodated that by  
19 moving the building back. We're supposed to be a 20  
20 foot setback.

21 By moving the building back it would have two  
22 parking spaces outside in the front of the building,  
23 which you're not allowed to have. One space is an  
24 access aisle because we can't make that a parking  
25 space. There are two spots in green here and the

1 front one should never be occupied so there won't be  
2 a vehicle there. Basically, there will only be one  
3 vehicle in front of that setback.

4 The other waiver that we're asking for is 10  
5 feet setback from pavement to the adjoining  
6 properties. We have 8.82, so we just need a minor  
7 waiver on that.

8 The other one was the orientation of the  
9 building and what we did do is we put a front door  
10 in here so that it has an appearance of a front  
11 elevation that does face the road. Again, the  
12 parking lot is on the side of the building so that's  
13 the entrance to the building.

14 Again, there lot is so narrow, but the building  
15 facade is in the front as if the entrance was there  
16 so that kind of necessitated that the building was  
17 oriented -- I'll say at a 90 degree turn and it's  
18 not directly facing it, but we did put a front door  
19 in there so that it looks like it has a front  
20 feature.

21 Again, we went over the use of the building and  
22 being in conformance with the zoning on it. There  
23 are the residential units within the vicinity of  
24 this area and it's mostly stopping and the bus line  
25 and things of that nature. The common practice now

1           that you will see residence units above a business  
2           now in a lot of locations. You see them all over  
3           different cities and in the area.

4           The Board did make some comments regarding the  
5           looks of the building. We went back to the drawing  
6           board and what I have here is what this used to look  
7           like with some increased enhancements to this  
8           building.

9           There was some discussion about balconies on  
10          the building and we have incorporated balconies.  
11          There would be 10 foot by six foot balconies on each  
12          apartment unit on here. We have enhanced the front  
13          with some stone features with almost a little tower  
14          look to it. The other one is kind of plain looking  
15          so we enhanced that front so that it has that  
16          residential look to it. The peak roofs face the  
17          parking lot. The main entrance to the building is  
18          in the middle and there are spaces on each side as  
19          you walk in the back.

20          We have increased the hardy board, cement board  
21          on the front and the side. There are railings for  
22          all the balcony areas and the trim around the  
23          building. There won't be any worry about painting  
24          or chipping or anything like that. It's basically  
25          almost a maintenance free building on the exterior.

1 I think that we've put some nice amenities on it. I  
2 think that it's a nicer looking product. I think  
3 that we have a good product here.

4 Anyone have any questions?

5 MR. SHAMLIAN: I do. That elevation looks great.  
6 I'm not so sure about the elevation facing the street.

7 MR. FAZIO: There will be a front walkway there  
8 that will be landscaped. In the front of the property  
9 we'll be putting in a railing and fence along the  
10 property in there.

11 MR. TENGELER: Craig, one thing that Frank hasn't  
12 talked about is the kind of stone bottom. The problem  
13 with that was that we had discussed that and they're  
14 doing the frontage fence in the front with some  
15 landscaping. We thought that it would be missed because  
16 it would be covered by the frontage that they are  
17 proposing out there - the decorative fence. If that is  
18 something that the Board is passionate about, maybe they  
19 can look at that.

20 MR. SHAMLIAN: I'm not trying to design it. I'm  
21 just looking at what's in the plans as the front  
22 elevations. What you have facing the street is rather  
23 unattractive in my mind. Something is  
24 disproportionately not right about where the windows  
25 are. I'm not trying to design it. That's one of the

1 questions that I had. The other is: What are you doing  
2 for landscaping on the residential side?

3 MR. FAZIO: I think that we showed some trees in  
4 there along the property line. You can't put too much  
5 back there because we only have five feet from the  
6 building.

7 MR. SHAMLIAN: I'm not seeing the landscaping.

8 MR. TENGELER: I see some vehicles on the other  
9 side, but I'm not seeing landscaping.

10 MR. FAZIO: Again, we only have five feet there.

11 MR. LACIVITA: What is the question there? Is it  
12 to protect the residential or are you looking on the  
13 frontages of the elevation?

14 MR. SHAMLIAN: As you look at that plan on the left  
15 hand side, it's five foot -- the Zoning Board may have  
16 approved that, but I'm not sure that it's right. It's  
17 pretty close to a residential property. I see no  
18 plantings along that line.

19 MR. FAZIO: The problem with that is that you can't  
20 put trees in there and to put landscaping in there would  
21 be hard to maintain because you only have a five foot  
22 space in there.

23 MR. SHAMLIAN: Move the building five feet away.

24 MR. CAPONERA: I did the variance, so that's why  
25 I'm sticking around. The reason that it had to be this

1 way was because of the parking. If you didn't do that,  
2 then you couldn't put the parking there. It wouldn't  
3 fit. So, that's why the building had to be located that  
4 way and that's why the Zoning Board, after I explained  
5 it to them, unanimously approved it.

6 MR. SHAMLIAN: They don't need to have to have that  
7 square footage.

8 MR. CAPONERA: I do believe and I don't have the  
9 file with me. I'm just sitting here. I'm not sure, but  
10 I think that the building got smaller. I'm not 100%  
11 sure.

12 MR. LACIVITA: I'd be more inclined not to put  
13 landscaping on that side or shrubbery because you're  
14 going to create the mildew factor and it's going to  
15 start to -- evergreens, if you put them there, they're  
16 going to become wet and you're going to see mildew on  
17 the building. I would not want to see landscaping  
18 there, nor would I want a fence as Michael was  
19 suggesting because again you're creating a shading  
20 mildew and everything else behind it. It's almost a  
21 gangway.

22 MR. CAPONERA: It's 51% greenspace, too. I think  
23 that the reason more was -

24 MR. SHAMLIAN: The greenspace was not the issue.

25 MR. CAPONERA: I understand.

1           MR. SHAMLIAN: It's that you're right up against a  
2 property.

3           MR. CAPONERA: Sure, I understand, but you also  
4 have to deal with the property too. It's a narrow piece  
5 and 51% is a pretty substantial amount of greenspace.  
6 It's a challenging piece when I worked on it when I was  
7 before the Zoning Board. The project has changed,  
8 obviously.

9           MS. MILSTEIN: How close is the residence to the --  
10 there is a house over there.

11          MR. AVAKIAN: I'm the owner of 55 Gaffers and I  
12 think that we're about 15 feet from them.

13          CHAIRMAN STUTO: Do you want to speak on the  
14 project?

15          MR. AVAKIAN: I would love to. Can you talk to  
16 them about the fence?

17          CHAIRMAN STUTO: We'll give you a chance. You live  
18 in the brick house next door?

19          MR. AVAKIAN: Yes.

20          CHAIRMAN STUTO: Okay, I think that we'll let the  
21 neighbor speak. Will you go to the microphone and say  
22 your name for the record?

23                 Have you seen the plans?

24          MR. AVAKIAN: I haven't seen the updated plan. I  
25 saw the initial plan.

1 I'm John Avakian and I also own Maggie's across  
2 the street.

3 CHAIRMAN STUTO: The gift shop?

4 MR. AVAKIAN: Yes, and that's why I bought that  
5 house as well for extra parking and also office space  
6 and extra storage.

7 CHAIRMAN STUTO: Do you live there?

8 MR. AVAKIAN: I do live there, currently. I had to  
9 rent out my other house. We made a lot of changes real  
10 quick.

11 Pat, I like you and we've had many  
12 conversations, but this being so close to my  
13 property line, I don't know why they told me that  
14 they are allowed to do that. At night they are  
15 talking about illuminating the fence because of the  
16 mold or whatever you said. It would give me no  
17 privacy and also on top of that this building is not  
18 something that I want to live in forever. It's  
19 something that's going to be torn down and  
20 redeveloped at a later time. Being that's so close  
21 to my property as well, it limits me to what I can  
22 even do because I won't have any leeway space. So,  
23 if I went back to back to him with five feet and did  
24 the same thing -- you talk about greenspace, I won't  
25 have any greenspace. I won't have anything. The

1           only way that I can put a building on my property --  
2           his is too small and mine is even smaller. So, I  
3           would have to go lengthways - east and west just  
4           like his building would have to go. We have no room  
5           at all, unless he swaps his property from this side  
6           to this side and putting it here and I build  
7           something along that fence line. By having him be  
8           so close to mine, what am I going to do?

9           CHAIRMAN STUTO: Is the side setback a waiver that  
10          they are asking for?

11          MR. LACIVITA: No, that's a variance.

12          CHAIRMAN STUTO: They received a variance.

13          MR. AVAKIAN: I know, but now you're talking that  
14          you can't put no greenspace in there.

15          MR. LACIVITA: I didn't say that you can't. I just  
16          said that I would recommend against it because if you  
17          start putting shrubbery there, you're going to have a  
18          mold factor on the buildings.

19          MR. AVAKIAN: I'm going to have a mold factor on my  
20          building because I'm not going to have any sun hitting  
21          it. This building is going to be higher than even my  
22          building and when the sun comes, it's going to block my  
23          entire house.

24          MR. CAPONERA: Did you say that you were going to  
25          build something there?

1 MR. AVAKIAN: Eventually. Not right now.

2 MR. CAPONERA: What were you thinking about,  
3 commercial?

4 MR. AVAKIAN: Well, it is commercial property. I  
5 bought it for two reasons.

6 CHAIRMAN STUTO: I'm going to say something and I  
7 don't know if this helps or not. It's late and I  
8 appreciate the applicant coming in here and what they  
9 are trying to do. It's a relatively small project, but  
10 I have problems. As I said on the record before with  
11 the residential on the top, I don't think that it's  
12 appropriate. I drove by it a couple of different times.  
13 You're there now, but yours is what I would call a  
14 pre-existing non-conforming use. In other words, it's a  
15 layover from the prior time. That area is commercial. I  
16 don't think that isolate residential fits on the top.

17 I'm not inclined to vote for the waivers with  
18 the residential on the top. The applicant  
19 representative said that it's done in other places  
20 and it's whatever. I'm not buying it.

21 MR. TENGELER: I just want to quote a section of  
22 the Comprehensive Plan -

23 CHAIRMAN STUTO: When I'm done, that will be fine.

24 There is only four people here tonight, so I'm  
25 not voting for it and it's a hard vote for me. It's

1 a smaller business guy and I understand that. The  
2 other members may not agree with me. If you want to  
3 table it and come back when there is a full Board, I  
4 have no objection to that. I'm only one vote, but  
5 that's where I'm heading.

6 Go ahead, Mike.

7 MR. TENGELER: In the Comprehensive Plan in section  
8 3.4.12 it talks about mixed-use along Route 9 between  
9 Maxwell Road and Latham Circle, essentially taking it  
10 from Maxwell Road to Latham Circle where this  
11 neighborhood -

12 CHAIRMAN STUTO: That plan can say anything that it  
13 wants for that wide area. All you have to do is go over  
14 there. The residential doesn't fit there, in my  
15 opinion. It's going to be hard for me to change my  
16 mind.

17 MR. CAPONERA: But it's zoned that way. That's the  
18 thing.

19 CHAIRMAN STUTO: Correct, well there are waivers  
20 here too.

21 MR. CAPONERA: I'm just saying that the zoning  
22 allows it and encourages it under our Master Plan and  
23 I'm just saying -- I understand what you're saying.  
24 You're saying that you don't feel that it fits in the  
25 spot, but that's what the Master Plan calls for. That's

1           what the zoning calls for. I didn't have to get a  
2           variance for that. I only had to get a variance for the  
3           side yard.

4           CHAIRMAN STUTO: You're asking for four waivers and  
5           I don't think that you meet the standards for the  
6           waivers, if you really want to talk about it.

7           MR. ENSIGN: My name is Robert Ensign. I own the  
8           property within 35 feet. I'm at a 14 foot lower  
9           elevation -- over 35 feet. I'm not against the project.  
10          Development is more than welcome. I am concerned about  
11          the runoff.

12          On your present plans you have draining with a  
13          retention pond in back. As it grades down -- I'm 35  
14          feet away and I'm 14 feet in elevation lower. Just  
15          like the TDE said on Pollock Road, the drainage for  
16          an outlet of the drainage is going into an area  
17          of -- it doesn't have any place to go. The  
18          elevation is going down a few feet from the front to  
19          the back. Right now it's all dirt and trees and it  
20          absorbs all the water. There is no run off coming  
21          down from the Circle West Plaza. On the back side  
22          of their parking there is no water running down this  
23          way, but if you followed the elevation of the  
24          ground, there is a drainage swell. The water is  
25          going to go off the back. Were having more and more

1 rain. I've seen torrential waterfalls come from the  
2 Circle West Plaza because their drainage is plugged.  
3 It's already knocked down my retaining wall. I've  
4 sent two letter to the Town of Circle West without  
5 having any response at all. We brought this up at  
6 the Zoning Board and they said that they'd look into  
7 it. My retaining wall is getting ruined more and  
8 more. I've had water come off of the hill like a  
9 waterfall and go in my building which is no good.  
10 It's the old McCabe's building. We're 824 Loudon  
11 Road.

12 CHAIRMAN STUTO: I'm going to ask staff if they  
13 know anything about that.

14 MR. ENSIGN: But where they have this -- out the  
15 back it's going -- there is only one place it can go.  
16 It can go to me and cause more damage to my property.  
17 Again, I'm not opposed to this, but we have to get this  
18 water to go towards Gaffers Court so that it goes into  
19 that drainage and we're only talking a few feet in  
20 elevation over 100 feet. There is enough that fell on  
21 the property right now and I had asked zoning about  
22 putting in an earthen berm so that could not happen to  
23 me. Right now I have tens of thousands of dollars --

24 CHAIRMAN STUTO: Does the department have anything  
25 to respond to that?

1           MR. TENGELER: We have sent the projects to the  
2           appropriate departments. I know that our Stormwater  
3           Management commented on October 21, 2015. There were  
4           three comments; provide emergency overflow in pond area,  
5           a stormwater maintenance agreement will be acquired and  
6           in order to issue a certificate of occupancy an  
7           inspection will be required by the Stormwater Management  
8           Office before construction is to start. I have to think  
9           that -- and Frank can speak to this too -- he does the  
10          stormwater management at SUNY Albany -- providing  
11          emergency overflow in the pond area I would think  
12          similarly addresses some of Bob's.

13          MR. FAZIO: We did go out there and dig some test  
14          pits and we did infiltration tests, submitted all of our  
15          stormwater reports and submitted that to the department  
16          of the Town. They were out there and they witnessed the  
17          infiltration tests. What we have done is creates an  
18          infiltration retention basin with a drywell in it so  
19          that during wintertime it doesn't freeze up and water  
20          will still go into the ground by use of the drywell.  
21          This basin holds the storms and the Town requested us to  
22          put in an emergency overflow, should there be an issue.  
23          Normal typical rainfall, even heavy rainfall -- no water  
24          should -- we're designed for a 20-year storm.

25          MR. LACIVITA: His property will not accept

1 additional waters coming onto it --

2 MR. FAZIO: Correct, and the flow comes from his  
3 site. You can see how we did our grading plan. Some of  
4 the flow goes toward Gaffers, but most of the flow will  
5 go back down into the parking lot and into the space and  
6 remain on-site. That's the way that it's set up. It's  
7 not designed to run off the property.

8 MR. ENSIGN: Right, but there is a provision for  
9 when it does and it will. We've had two storms since  
10 I've been in Latham in five years that produced over six  
11 inches of rain. On Route 9 I've seen geysers coming out  
12 of the stormwater. We're getting more and more of these  
13 storms. So, it will and that's why it's here because we  
14 all know that it will. When it does, it comes right down  
15 on me. I'm just asking for some relief from future  
16 damage to my property. We all know that we're going to  
17 get another six inches of rain and it's not wintertime.  
18 That's the problem, because the ground is frozen. It's  
19 a very slow melt-off. It's in the summer when we get  
20 torrential rains and the three inches last year created  
21 six foot geysers coming out of all the drains going down  
22 the ramp at Latham Circle that flooded in front of Lazy  
23 Boy. We're getting more and more of it and we can't  
24 stop that, but we can take that into consideration.

25 When the state did work on the circle, what

1           they did was the Circle West Plaza had a drainage  
2           impediment that was going onto the work that they  
3           were doing on a ramp, so they put riprap in and if  
4           you drive by you see the riprap.

5                     What Circle West did was went over and  
6           destroyed the curb near the plugged storm drain  
7           which caused all the water to come over to me. I  
8           built up an earthen berm to create a retention calm,  
9           but even on a half an inch of rain, it's coming over  
10          a two foot deep retention pond. We have video --  
11          John has video of an absolute -- like Niagara Falls  
12          in Latham.

13                    MR. LACIVITA: I don't know if we can constrict  
14          that to this project. I think that's a DOT issue. I  
15          think that Mike can talk to John Dzialo and he might be  
16          able to get a little bit more berming there.

17                    MR. ENSIGN: That's Circle West's property. Even  
18          more berming isn't going to do anything.

19                    MR. LACIVITA: That's what I'm saying. I think  
20          that you have to look at the infrastructure that's not  
21          on this project, but I think that it's on the state  
22          system.

23                    MR. ENSIGN: So, this infrastructure here is going  
24          to get a swale that goes 14 feet down onto my property.  
25          So, when this does overflow, and it will overflow, it's

1 going to cause severe damage. That's going to cause me  
2 to, like Mr. Farracane, pay an attorney and see what's  
3 going on. I don't want to get that way.

4 CHAIRMAN STUTO: We get your message and I'm  
5 guessing that we may not take a vote tonight.

6 MR. ENSIGN: I appreciate the opportunity to  
7 express my concern.

8 CHAIRMAN STUTO: And I think that those issues  
9 should be addressed.

10 Does the Board want to table this?

11 MS. MILSTEIN: Yes.

12 MR. SHAMLIAN: And there are some underlying issues  
13 about the project.

14 CHAIRMAN STUTO: So, if there is no objection,  
15 we'll table it.

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18 (Whereas the above referenced proceeding was  
19 concluded at 9:07 p.m.)

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CERTIFICATION

I, NANCY L. STRANG, 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 L. STRANG

Dated \_\_\_\_\_

