

Furia Core Hardship Application Decision (First)
200-463-1-12.3

2/23/94 - Commission denied application.

3/9/94 - Commission adopted a written decision and findings of fact.

Excerpts from minutes of these two meetings, plus the written decision, follow.

Central Pine Barrens
Joint Planning and Policy Commission

Robert J. Gaffney, *Chairman*
John LaMura, *Vice Chairman*
Ulric S. Haynes, *Member*
Joseph F. Janoski, *Member*
Fred W. Thiele, Jr., *Member*

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Summary of February 23, 1994 Commission Meeting
Riverhead Town Hall

Present: Commissioner Gaffney, Commissioner LaMura, Commissioner Thiele, Mr. Gatta, Mr. Proios, Mr. Cowen, Ms. Filmanski (alternates), Mr. Corwin (director), Mr. Rigano (counsel).

2. Core Area Hardship Application Decision / Whisper Hill

Summary: *The results of the 2/17/94 hearing were discussed, focusing upon the issues raised therein. Ms. Filmanski stated the Town of Riverhead's position on the application. Issues regarding SEQRA determination were briefly discussed by Mr. Rigano. Mr. Gatta motioned to disapprove the application, and Mr. Cowen seconded it. The motion to disapprove the application was passed unanimously.*

Summary of March 9, 1994 Commission Meeting
Riverhead County Center

Present: Commissioner Gaffney, Commissioner Haynes, Commissioner Thiele, Ms. Filmanski (alternate for Commissioner Janoski), Jessie Garcia (alternate for Commissioner LaMura), Mr. Corwin (director), Mr. Rigano (general counsel), Ms. Roth (general counsel).

Furia Findings: *Ms. Roth presented to the Commission members copies of the Furia Findings Statement and Decision of Findings of Fact, prepared by general counsel, that deny this application. Ms. Roth summarized the findings statement that was signed by Commissioner Gaffney as chairman of the Commission. A motion was made by Commissioner Thiele to adopt by resolution the findings statement that was seconded by Commissioner Haynes. The motion was unanimously carried. A motion was made by Commissioner Thiele to adopt by resolution the Decision of Findings of Fact that was seconded by Mr. Garcia. The motion was unanimously carried.*

**DECISION AND FINDINGS OF FACT
CORE PRESERVATION AREA HARDSHIP EXEMPTION PERMIT**

Applicant: Russel E. Furia: Whisper Hill Subdivision

Property Location: Approximately 68.8 acres on the north side of Hot Water Street, approximately 752 feet east of County Road 111, south of the Long Island Expressway and West of Toppings Path in Manorville, Town of Brookhaven, County of Suffolk.

Description of Proposed Development:

The applicant wishes to create a 12 lot grid-type residential subdivision on property zoned A-5 Residence (5 acre). The proposed development requires a significant amount of land clearing and includes the paving of approximately 2000 linear feet of roadway which is presently dirt.

**Decision of Central Pine Barrens
Joint Policy and Planning Commission:**

By resolution dated February 23, 1994, the Central Pine Barrens Commission voted to deny the application based upon the findings of fact set forth herein.

Date of Public Hearing: February 17, 1994

Findings of Fact:

The subject property is located in the Core Preservation Area of the Central Pine Barrens as such term is defined in Article 57 of the Environmental Conservation Law ("Article 57").

Pursuant to §57-0121(8) of Article 57, no development is permitted in the Central Pine Barrens prior to the approval and implementation of a comprehensive land use plan. Prior to the adoption of this land use plan, an application for a hardship permit exempting a Core Preservation Area property owner from the development prohibition in § 57-0121(8) may be submitted to the Central Pine Barrens Commission pursuant to §57-0121(10).

Section 57-0212(10) sets forth specific standards which must be met in order for the Commission to grant a hardship permit exemption in the Core Preservation Area. The applicant must satisfy one of two prongs by establishing either: (a) an extraordinary hardship as distinguished from mere inconvenience if he is precluded from developing the property or (b) a compelling public need for the proposed development.

In order to establish an extraordinary hardship, the applicant must demonstrate that the subject property has no beneficial use if used for its present use or if used as permitted as of right under Article 57. The lack of beneficial use, furthermore, must be due to the unique circumstances of the subject property which: (a) do not apply to or affect other property in the immediate vicinity; (b) relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; or (c) are not the result of any action or inaction by the applicant.

Based upon the statements contained in the applicant's written application, dated November 30, 1993, and upon the statements made during the public hearing held in this matter, the Central Pine Barrens Commission finds that extraordinary hardship has not been established under the criteria set forth in § 57-0121(10). The subject parcel is similar to other vacant property in the Core Preservation Area and it is not unique. Any lack of beneficial use is not due to unique circumstances of the subject property. The extent of disturbance existing on the site from various illegal activities is small in comparison with the proposed clearing and development of a residential subdivision.

Alternatively, in order to establish a compelling public need for the proposed development, the applicant must demonstrate: (a) that the development will serve an essential health or safety need of the municipality; (b) that the public benefits override the importance of protecting the core preservation area; (c) that the development is required to serve existing needs of the community; and (d) no feasible alternatives exist outside the core preservation area within the county to meet this need. In the alternative under the compelling public need prong, the applicant must establish that the development is an adaptive reuse of an historic resource designated by the Commission which is the minimum necessary to ensure the integrity and protection of the resource. The applicant proposes to construct 12 single family homes, each on a 5 acre lot. The targeted market will be upper middle income buyers, with the approximate selling price of \$500,000 per home. The Central Pine Barrens Commission finds that there is no evidence in the record to support a compelling public need for the type of housing proposed.

In addition to the criteria set forth above, in order to grant an exemption permit based either upon extraordinary hardship or compelling public need, the

applicant must meet three additional standards under §57-0121(10)(c), which includes the following: "[t]he waiver will not be inconsistent with the purposes, objectives, or the general spirit and intent of this article." The Commission finds that the material amount of land clearing required under this application is not consistent with the intent of Article 57 to protect the ecologic integrity of the Central Pine Barrens.

Based upon the evidence in the record as analyzed in light of the goals and purposes of Article 57, the Central Pine Barrens Commission finds that the proposed development will be detrimental to other property in the area by virtue of the impact on the ecology of both the site and adjacent property, will substantially impair the resources of the Core Preservation Area and will be inconsistent with the purposes, objectives and general intent of Article 57.

The application is denied.