



**Commission Meeting of November 15, 2017  
Brookhaven Town Hall**

Present: Ms. Carrie Meek Gallagher (State of New York),  
Mr. Dorian Dale (Suffolk County), Mr. Edward P. Romaine (Brookhaven),  
Mr. Daniel McCormick (Riverhead), Mr. Kyle P. Collins (Southampton)

**Adopted Resolution**

Compatible Growth Area Hardship Waiver Application of  
Bluewater Development  
313 Edwards Avenue, Calverton, Town of Riverhead  
Suffolk County Tax Map Number 600-117-1-8.2

Carrie Meek Gallagher  
*Chairwoman*

Steven Bellone  
*Member*

Edward P. Romaine  
*Member*

Jay H. Schneiderman  
*Member*

Sean M. Walter  
*Member*

**I. The Project**

**Whereas**, on September 11, 2017, Michael Owen of Bluewater Development, LLC (the “Applicant”) by his consultant Charles M. Thomas, RA, PLLC, submitted a Compatible Growth Area (“CGA”) Hardship Waiver Application to the Central Pine Barrens Commission (the “Commission”) to develop a 7,500 square foot building for use as warehouse and office on a 40,001 square foot (0.9183 acre) Project Site, in the hamlet of Calverton, in the Compatible Growth Area of the Central Pine Barrens, in the Town of Riverhead (the “Application”), and

**II. The Act and the Commission**

**Whereas**, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “Act”) and it is codified in Article 57 of the Environmental Conservation Law (ECL). The Act, created the Central Pine Barrens Joint Planning and Policy Commission (the “Commission”), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area, and

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**Whereas**, in furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens Comprehensive Land Use Plan (the “CLUP”), which was officially adopted on June 28, 1995, and

**Whereas**, Section §57-0107 of the ECL defines development to be the “performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the

following uses shall be taken for the purposes of this article to involve development . . .  
(b) a material increase in the intensity of use of land or environmental impacts as a result thereof; . . .(c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities,” and

### **III. The Project Site, The Project and The Application**

**Whereas**, the Project Site is located at 313 Edwards Avenue, in the Industrial C Zoning District, in Calverton, in the Town of Riverhead, and on the eastern boundary of the Central Pine Barrens region, and

**Whereas**, the Project Site, in Groundwater Management Zone III, is subject to a wastewater flow rate of 300 gallons per day, and

**Whereas**, the Project Site contains an 896 square foot, single-family residence, originally constructed in 1942, a driveway, and landscaped features. The Project Site presently contains a mowed lawn, hedgerow, and landscaped area, and a natural area characterized as a successional old field ecological community that has not been mowed in at least two years. The site was cultivated in 1992, and

**Whereas**, the Project Site is characterized as an infill lot due to its existing developed condition and placement in an area surrounded by development. The Project Site was part of a minor subdivision in 1986, and

**Whereas**, the Project removes existing structures and disturbs 100% of the Site, with the exception of at least two existing trees that will remain, and

**Whereas**, the Project includes construction of a 7,500 square foot, one-story building for office and warehouse use, a parking lot for 10 vehicles, and associated infrastructure including driveways, sanitary wastewater structures such as leaching pools, and other site development including landscaping and lighting, and

**Whereas**, the Application consisted of a letter addressing the CGA Hardship Exemption criteria contained in the Act, an owner’s affidavit, an Environmental Assessment Form; and a Site Plan prepared by Charles M. Thomas, R.A., PLLC, last revised June 10, 2016, and

**Whereas**, the Project does not conform to the Central Pine Barrens Comprehensive Land Use Plan (the “CLUP”) Standard 5.3.3.6.1 Vegetation Clearance Limits, which permits clearing 0.6 acres or 65% on the Project Site and

**Whereas**, the Applicant proposes to landscape 35% of the Project Site as a natural buffer to the surrounding development, and

#### **IV. Public Process**

**Whereas**, on October 18, 2017, the Commission held a public hearing on the Project. During the hearing, the Commission introduced a Staff Report and Exhibits A through G and developed a record consisting of the hearing transcript, the Application and the materials marked as Exhibits by the Commission and the Applicant (the Record), and

#### **V. The Study Area**

**Whereas**, the Staff Report defined a Study Area consisting of all of the property within a one-half mile radius of the Project Site, and

**Whereas**, the dominant land uses in the Study Area include sites developed with commercial businesses, industrial energy facilities, and agricultural operations, and

**Whereas**, the Project Site is within an area identified as archaeologically sensitive according to the New York State Cultural Resource Information System (CRIS) database, and

**Whereas**, notwithstanding the Project Site's location in an archaeologically sensitive area, the Commission received a referral response from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) by letter dated October 4, 2017 stating the Project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places, and

**Whereas**, the Commission received a referral response from the New York Natural Heritage Program by letter dated September 27, 2017 indicating no listed species were documented on the Project Site, and

#### **VI. Other Required Approvals**

**Whereas**, the Project is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA), and

**Whereas**, the Commission performed an uncoordinated review of the Project, and

**Whereas**, the Project requires additional permits and/or approvals from other involved agencies including, but not limited to, Suffolk County Department of Health Services and the Town of Riverhead, and

## **VII. Potential Adverse Environmental Impacts**

**Whereas**, the Commission did not identify significant adverse environmental impacts as a result of the Project, and

**Whereas**, no significant adverse impacts on groundwater or surface waters were identified, and

**Whereas**, no significant adverse impacts to endangered or threatened species of animals and plants are anticipated, and

**Whereas**, no significant adverse impacts to open space will occur because the Project Site is not adjacent to preserved or protected lands, and no freshwater wetland habitat is on or within the Project Site nor is the Project Site within a regulated jurisdictional boundary for wetlands or other natural resources, and

**Whereas**, on October 4, 2017, the New York State Historic Preservation Office stated the Project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places, and

**Whereas**, the Project Site was previously developed with a residence, and due to the limited size of the Project Site and the scale of the Project, no significant adverse impacts on traffic are proposed nor will the Project significantly alter the present pattern of movement of people or goods, and

**Whereas**, the Project utilizes an individual septic tank for sanitary wastewater and subsurface leaching pools in the drainage system design. The Project will employ stormwater control measures to avoid adverse impacts on groundwater resources and adjoining properties, and

## **VIII. Commission Review of the Act's Extraordinary Hardship Criteria and Applicant's Materials**

**Whereas**, pursuant to the Act, to determine whether an applicant has demonstrated the existence of a hardship, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b and determine whether the Project is consistent with the purposes and provisions of the Act and whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area and consider the criteria in ECL §57-0123(3)(b), and

**Whereas**, the Applicant alleges that it cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. The Applicant purchased the Project Site in 2005 for \$365,000. The Applicant attests they cannot realize a reasonable return on the property since it did not sell three years ago when it was placed on the real estate market. The dwelling is presently vacant, and

**Whereas**, in considering the criteria set forth in Town Law §267-b2(b)(2), the Commission finds that the hardship, as it relates to the Project Site, is unique due to existing developed condition, and

**Whereas**, in considering the second waiver criteria, the Commission finds that the hardship, as it relates to the Project Site, is unique because the Project Site has been developed with a farmhouse residence since 1942 and was cleared for agricultural use. The property was mowed regularly until approximately two years ago. The Project is not a circumstance that applies to a substantial portion of the neighborhood surrounding the Project Site, and

**Whereas**, in considering the criteria set forth in Town Law §267-b2(b)(3), the Project Site is adjacent to and in an area characterized by developed uses including commercial land uses such as two bus terminals, a golf course, industrial solar facilities, and agricultural operations, and

**Whereas**, in considering the third waiver criteria, the Project does not propose a land use that is inconsistent with the existing neighborhood and community character; the Project is a similar type of land use consistent with the immediately surrounding land uses, and the proposed site modifications are consistent with the pattern of development surrounding the Project Site; therefore, the Commission finds that the Project will not alter the essential character of the neighborhood, and

**Whereas**, pursuant to Town Law §267-b2(b)(4), the Commission finds that the hardship is not self-created since the Project Site is a developed infill lot proposed for redevelopment where the lot property was previously under active cultivation and left unmaintained and managed for two years allowing natural succession to occur, and

**Resolved**, the Commission hereby determines that the Application meets and satisfies the criteria for a CGA Hardship pursuant to the Act, that the alleged hardship has not been self-created since the Project Site is a developed infill lot

**Whereas**, the Commission finds that the Project will landscape 35% of the Project Site as a natural buffer to adjacent properties and will adjoin the natural area on the existing Riverhead Bus Facility property to the north and west. No public lands adjoin the Project Site so there will not be a need to establish open space connections; and no rare, threatened, or endangered species were documented on the Project Site, and

**Whereas**, the Commission finds the Applicant will retain existing healthy trees on the Project Site and incorporate them where feasible into the Site Plan, and

**Whereas**, the Applicant will obtain any and all applicable permits to conform to other Standards of the CLUP including Article 6 of the Suffolk County Sanitary Code for wastewater generated on site and other applicable regulations such as Articles 7 and 12 of the Sanitary Code for the protection of groundwater resources, and

**Whereas**, the Project accommodates development that is compact, efficient, and orderly as it removes a pre-existing non-conforming use and adaptively reuses a previously developed site with a use that is conforming to the zoning district, instead of utilizing an undeveloped site, while providing a compact expansion and land use consistent with the character of the area, and

**Whereas**, the Commission finds the Project is consistent with ECL Article 57 because it has been designed for compact, efficient and orderly development by minimizing clearing, alteration, and disturbance to natural ecological communities and protecting the quality of surface water and groundwater resources, and

**Whereas**, the Applicant will obtain any and all applicable permits to conform to other Standards of the CLUP, and

**Whereas**, the Project will conform to other Standards of the Central Pine Barrens Comprehensive Land Use Plan (CLUP) including, but not limited to, conformance with Article 6 of the Suffolk County Sanitary Code, the site is not within the groundwater contributing area of a public water supply wellfield; the Project avoids impacts to and does not disturb steep slopes; the Site Plan contains with native plant species in landscaping, and the Project conforms to the maximum 15% Fertilizer Dependent Vegetation Limit, and

**Whereas**, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing, now, therefore, be it,

**Resolved**, that the above recitals are incorporated herein and made a part hereof; and be it further

**Resolved**, that the Project is consistent with the goals and objectives of ECL Article 57 to protect groundwater resources and quality, natural ecological communities of the Central Pine Barrens, and accommodate development consistent with the long term integrity of the Pine Barrens ecosystem and to ensure the pattern of development is compact, efficient, and orderly, and be it further

**Resolved**, the granting of this hardship exemption is consistent with the purposes and provisions of ECL Article 57 and will not result in a substantial impairment of the resources of the Central Pine Barrens because the Project will occur on property which

was already previously disturbed, and will be constructed in an efficient pattern consistent with maintenance of the long term integrity of the Central Pine Barrens; and be it further

**Resolved**, that the Commission hereby determines the Project meets and satisfies the criteria for a Compatible Growth Area Hardship Waiver pursuant to the Act; that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; that similar facilities exist in the immediately surrounding area, for the reasons as discussed above; and be it further

**Resolved**, that the Commission hereby determines the Application meets and satisfies the criteria for a Compatible Growth Area Hardship pursuant to the Act; that the requested use variance, if granted, will not alter the essential character of the neighborhood, and is consistent with the community character of immediate area, the hamlet in which the Project Site is located, and does not apply to a substantial portion of the neighborhood, and be it further

**Resolved**, the Commission hereby determines that the Application meets and satisfies the criteria for a CGA Hardship pursuant to the Act, that the alleged hardship has not been self-created since the Project Site is a developed infill lot where redevelopment is proposed in an area that was previously cleared and unmaintained for two years allowing natural ecological succession to occur.

#### **IX. Mitigation**

**Whereas**, the Applicant proposes to replant 35% of the Project Site, and retain the replanted area as natural in the future, and

**Whereas**, the Applicant will record Covenants and Restrictions to protect the planted buffer area, and

#### **X. Commission Determinations**

**Resolved**, that the above recitals are incorporated herein and made a part hereof, and be it further

**Resolved**, the Commission finds the grant of a waiver will not have a significant adverse environmental impact and hereby authorizes the issuance of a Negative Declaration pursuant to SEQRA, and be it further

**Resolved**, that the Application is approved in accordance with the Site Plan prepared by Charles M. Thomas, R.A., PLLC, last revised June 10, 2016, subject to the following specific conditions:

1. The Applicant shall obtain additional permits and approvals, as required by other agencies.
2. The Applicant shall be allowed to clear 100% of the existing vegetation on the Project Site, as per the Charles M. Thomas, R.A., PLLC, last revised June 10, 2016, and shall subsequently landscape no less than 35% of the Project Site with native plant species, as per the referenced Site Plan.
3. The Applicant must prepare and submit for review to the Commission office a draft Declaration of Covenants and Restrictions to protect the naturally revegetated area, along with any other required C&Rs as a result of the Site Plan review process which on approval by the Commission will be recorded in the Suffolk County Clerk's Office.
4. If any element of the Project is proposed to be modified, the Applicant must seek the review and obtain the approval of the Commission, prior to undertaking the modification.

**Resolved,** the Applicant shall have until November 15, 2022 to obtain a Certificate of Occupancy from the Town of Riverhead for the improvements authorized herein. This approval shall expire on November 15, 2022.

Bluewater Development  
Compatible Growth Area Hardship Waiver  
Calverton, Town of Brookhaven, SCTM # 600-117-1-8.2

**Record of Motion:**

Motion by: Mr. Collins

Seconded by: Mr. McCormick

In Favor: 5

Opposed: 0

Abstain: 0