



Commission Meeting of June 15, 2016 Riverhead Town Hall

Present: Ms. Carrie Meek Gallagher (State of New York),
Mr. Andrew Freleng (Suffolk County), Mr. Edward Romaine (Brookhaven),
Mr. Sean Walter (Riverhead), Mr. Jay Schneiderman (Southampton)

Adopted Resolution

Armand Gustave, LLC c/o Peter Baron Core Preservation Area Hardship Waiver

Manorville, Town of Brookhaven, SCTM #: 200-460-1-10

I. The Project

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

Whereas, Armand Gustave, LLC c/o Peter Baron (the “Applicant”), by its representative, Richard Scheyer, Attorney, proposes to develop a single-family residence on a 6,000 square foot parcel identified as Suffolk County Tax Map Number 200-460-1-10, and to develop 5,333 square feet of an unopened road known as First Street to provide access to the proposed dwelling (the “Project”), located on the west side of Schultz Road, in the hamlet of Manorville, in the Core Preservation Area of the Central Pine Barrens, in the Town of Brookhaven (the “Project Site”); and

Whereas, the Project Site is presently wooded with natural pine barrens vegetation; and

Whereas, the Project Site is in the A Residence 5 Zoning District.

II. The Act and the Commission

Whereas, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “Act”) and codified in Article 57 of the Environmental Conservation Law (ECL), which was signed into law on July 13, 1993. The Act, among other things, 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

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

Whereas, Section §57-0123 of the ECL provides that “no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions” of the CLUP and Environmental Conservation Law Section; and

Whereas, the Project constitutes development as defined in the Act.

III. Prior Proposals for the Project Site, The Current Project and Materials Submitted to the Commission

Whereas, the Applicant has extended the Commission’s hardship application decision deadline to June 15, 2016; and

Whereas, Armand Gustave, LLC purchased the property on Project Site on May 29, 2014; the recited consideration was \$12,000; and

Whereas, the Applicant alleges that the Project Site is held in single and separate ownership as defined by the Town of Brookhaven Code; and

Whereas, on March 11, 2014, Richard Scheyer submitted a Core Preservation Area Hardship Waiver Application titled Trocchio to develop SCTM # 200-460-1-10; the application was withdrawn on May 29, 2014; and

Whereas, on June 5, 2014, Richard Scheyer submitted a Core Preservation Area Hardship Waiver Application titled Armand Gustive c/o Peter Baron to develop SCTM # 200-460-1-10; on September 17, 2014, the Commission voted to deny the application without prejudice (the “June 5, 2014 application”); and

Whereas, on September 9, 2014, Richard Scheyer submitted a deficient development application titled Armand Gustive, LLC and Eagan Environmental

Solutions, LLC to develop a three-lot subdivision on SCTM #s 200-460-1-10 and 11; on January 21, 2015, the Commission voted to deny the application without prejudice; and

Whereas, on September 1, 2015, the Town of Brookhaven Board of Zoning Appeals referred a SEQRA Coordination application titled Eagan Environmental Solutions, LLC to develop a two-lot subdivision on SCTM #s 200-460-1-10 and 11; a response with comments was sent on September 11, 2015; and

Whereas, on October 7, 2015, Richard Scheyer submitted a Request for Determination of Jurisdiction titled Eagan Environmental Solutions, LLC to develop a two-lot subdivision of SCTM #s 200-460-1-10 and 11; on October 21, 2015, the Commission determined the two-lot subdivision constitutes development, and no further materials were submitted by the Applicant; and

Whereas, on November 2, 2015, Richard Scheyer submitted a letter dated October 27, 2015 requesting that the Applicant would like to proceed with the application to develop the Project Site and to use materials submitted in the June 5, 2014 application; and

Whereas, the Project layout was illustrated on a Survey prepared by Kenneth H. Beckman, L.S. dated January 28, 2014 received on June 5, 2014.

IV. Public Process

Whereas, on March 16, 2016, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing; heard testimony and received exhibits from the Applicant and heard testimony from the public; subsequently, a transcript of the hearing was distributed to the Commission; and

Whereas, during the public hearing, the Applicant, by its representative Richard Scheyer, listed other project applications as precedent in support of his application including Marshall, Czarnecki, Screven, Manor Pines, MTK, Baiata, Goldstein, Blake, Kristiansen, Cox, Morgan, and Carvalho; and

Whereas, the Commission finds the applications mentioned by the Applicant are factually dissimilar because they are on the residential roadfront exemption list, the parcels are in the Compatible Growth Area of the Central Pine Barrens rather than the Core Preservation Area, the parcels benefitted from Building Permits, are subdivisions, and/or the parcels are not in the immediate vicinity of the Project Site; and the most recent decision noted by the Applicant was in 2003.

V. The Study Area

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

Whereas, within the Study Area are approximately 69 parcels containing approximately 121 acres; and

Whereas, the dominant land use in the Study Area is natural, public, protected open space primarily owned by Suffolk County and New York State; the Peconic River watershed and headwaters are situated to the north; conservation easements are on at least 12 parcels in the Study Area; other land uses in the Study Area include low density single-family residential development, agricultural uses, and a church; at least six undeveloped privately owned parcels exist in the Study Area as well; and approximately 20 parcels in the Study Area are developed, approximately eight are to the north in the Town of Riverhead; and

Whereas, the Study Area is situated in a hamlet of the Core Preservation Area that was the location of a 2012 wildfire known as the Crescent Bow Wildfire in the Ridge and Manorville hamlets of the Central Pine Barrens; 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 response from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) by letter dated April 24, 2014 which stated the project will have no impact on cultural resources in or eligible for inclusion in the State and National Register of Historic Places;” and

Whereas, the New York Natural Heritage Program (NHP) responded to the Commission's request for information on rare, threatened or endangered animal and plant species on the Project Site by letter dated April 21, 2014. The NHP provided a report entitled “*Report on State-Listed Animals*” and listed the Upland Sandpiper (*Bartramia longicauda*), a State-listed Threatened bird, and Tiger Salamander (*Ambystoma tigrinum*), a State-listed Endangered amphibian. The species are noted as documented at or near the Project Site generally within the Study Area. The report states potential onsite and offsite impacts on such species from the project may need to be addressed. The NHP response also provided a Report on Rare Animals, Rare Plants and Significant Natural Communities. The report lists the Narrow-leaved Bush-clover (*Lespedeza angustifolia*), a State-listed Threatened species which also has a Heritage Conservation Status described as “Imperiled in NYS.” The NHP included a separate report that listed rare plants and rare animals that have historical records at the Project Site or in its vicinity, with a total of 19 State listed vascular plants including one Rare species, eight Threatened species, and 10 Endangered species. The report notes, “This report only includes records from the NY

Natural Heritage databases. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the Project Site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources;” and

Whereas, the Applicant has not submitted site specific natural resources surveys on the Project Site.

VI. Other Required Approvals

Whereas, the Project is a Type II Action pursuant to the State Environmental Quality Review Act (SEQRA); and

Whereas, the Project requires additional permits and/or approvals from other involved agencies including Suffolk County Department of Health Services, the Town of Brookhaven, and the New York State Department of Environmental Conservation.

Whereas, the Project will generate 300 gallons of septicage per day according to the provisions of the Suffolk County Sanitary Code; and the Project will require a permit for the approval of plans and construction for a sewage disposal system for a single-family residence; and

Whereas, the Project Site is within a Scenic River Corridor as designated by New York and is subject to regulation under Article 15, Title 27 of Environmental Conservation Law regarding Wild, Scenic & Recreational Rivers.

VII. Potential Adverse Environmental Impacts

Whereas, the Project has the potential to cause adverse environmental impacts on the resources of the Core Preservation Area and is inconsistent with the Central Pine Barrens Comprehensive Land Use Plan (CLUP); and

Whereas, potential impacts including impacts on land use and change on the Project Site due to removal of existing natural pine barrens vegetation and habitat and grading, construction and disturbance; potential adverse impacts on plants and animals on the Project Site including the loss of individual plants and animals and habitats listed as rare, threatened, and endangered species; impact on quality, character, and aesthetic resources and physical surroundings because the Project will be visible from publicly accessible vantage points seasonally and year round; and impacts due to lack of consistency with the CLUP.

VIII. Prior Commission Decisions

Whereas, other development projects in the Core Preservation Area that were disapproved and identified to be precedent setting as they were similarly proposed in areas of low density development include, but are not limited to, Henry Dittmer in Yaphank, SCTM #: 200-529-5-35, disapproved on February 17, 2016 the proposed development of a single-family residence on 10,000 square feet and development of 4,290 square feet of an unopened road in the A5 Residence Zoning District; Independent Group Home Living (IGHL) in Manorville, SCTM #: 200-460-1-27, directly across the street from the Project Site, disapproved on September 26, 2001 the proposed development of a 4,500 square foot Individualized Residential Alternative on one acre in the A5 Residence Zoning District with frontage on and access to Schultz Road; Gazza in Westhampton, SCTM #: 900-247-1-4.1, disapproved on July 16, 1997 the proposed development of a single-family residence on 6.57 acres in the CR 200 Zoning District.

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

Whereas, pursuant to the Act, in reviewing a Core Preservation Area extraordinary hardship exemption application, the Commission shall consider the criteria set forth in ECL §57-0121(10)(a) and Sections 57-0121(10)(c)(i), (ii), and (iii) to determine whether the Applicant has established the existence of extraordinary hardship as distinguished from a mere inconvenience and whether the requested relief is consistent with the purposes and provisions of the Act and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area; and

Whereas, the Commission has considered the application, the Staff Report and Exhibits, and the transcripts of the hearings and its prior decisions; and

Whereas, to address the criteria in ECL §57-0121(10)(a), the Applicant alleges, in the June 5, 2014 application, “This is a flat lot with no unique topographical characteristics; the lots exist in close vicinity to other residential lots with homes erected on them”; and

Whereas, to address the criteria in ECL §57-0121(10)(a), the Applicant alleges, in the June 5, 2014 application, “If the Act is strictly enforced there will be no viable use for the subject property, even though it is single and separate;” and

Whereas, to address the criteria in ECL §57-0121(10)(a)(ii), the Applicant alleges, in the June 5, 2014 application, “Neither the owner(s) nor predecessors have taken any action, nor have they failed to act, thereby causing the unique circumstances

detailed herein. They have not transferred any contiguous lands which were in common ownership on or after June 1, 1993;” and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a) because the characteristics of the subject property are not unique; the property contains no unique physical characteristics that distinguish it from other parcels with similar conditions including privately owned, substandard, undeveloped, wooded parcels on unopened roads in the Study Area and in the Core Preservation Area such as the IGHL parcel; and the lack of uniqueness of features applies to and affects other properties in the Core Preservation Area all of which makes evident the lack of hardship, as distinguished from a mere inconvenience; and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a)(i), because the Project applies to other property in the immediate vicinity of the Project Site and in the Core Preservation Area such as the IGHL parcel; and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a)(i), because the subject property is not unique and the provisions of the CLUP apply to and affect other privately-owned and undeveloped properties in the Study Area and in the Core Preservation Area; and the development of the Project Site would result in adverse environmental impacts on the resources of the Central Pine Barrens including adverse impacts on groundwater and ecological resources, fragmentation of the existing habitat, and establishment of an adverse precedent in that it may help to induce and promote similar types of development applications to be submitted in the area of the Project Site and in other hamlets in the Core Preservation Area where low-density development and expansive public land holdings exist; and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a)(ii), because the Applicant’s 2014 purchase of the Project Site for \$12,000, approximately 21 years after the State Legislature’s adoption of the Act in 1993 results in a self created hardship; and Applicant has not provided information concerning interest if any in surrounding lands nor has the Applicant provided a valid single and separate search demonstrating that the parcel is in single and separate ownership; and the Commission finds that even if the Applicant can establish that the Project Site is held in single and separate ownership, such status alone, does not exempt the Project Site from complying with other ordinances implemented for resource protection purposes such as the Act or create special rights under the Act such as entitlement to a hardship waiver exemption if development is proposed for the Project Site; and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a)(iii), because the Project is the result of inaction of the prior owner and the Applicant's action proposing development activity where the provisions of the CLUP state development in the Core Preservation Area shall be prohibited or redirected from the Core Preservation Area, and the Applicant established a self created hardship when acquiring the property in 2014.

IX. Commission's Review of ECL §57-0121(c) Additional Standards

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(c)(i), because the Project will be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire and endanger public safety by increasing development in the Core Preservation Area where a significant amount of natural public open space exists and is situated in proximity to the area the 2012 Crescent Bow wildfire; and

Whereas, an Applicant for a Core Preservation Area Hardship Waiver must also establish it has met the criteria in ECL §57-0121(10)(c) which states as follows: "An application for a permit in the core preservation area shall be approved only if it is determined that the following additional standards also are met: (i) The granting of the permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the core preservation area; (ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this article; or (iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need;" and

Whereas, to address the criteria in ECL §57-0121(10)(c)(i), the Applicant alleges, in the June 5, 2014 application, "The granting of a Hardship Exception Permit will not be detrimental or injurious to other properties or improvements in the area, in which the subject property is located, nor will it increase the danger of fire, nor endanger public safety nor result in impairment of the resources of the core Preservation Area;" and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(c)(i) because the resources of the Project Site and the Core Preservation Area will be impaired and damaged. The potential adverse environmental impacts as a result of the Project include the disturbance and removal of existing natural vegetation

and habitat for the development of the Project Site; potential adverse impacts on groundwater resources due to the construction of an individual on site sanitary system; increase in stormwater runoff on the Project Site and removal of capacity for natural recharge through natural cover on the Project Site; potential adverse impacts on rare, threatened, and endangered species of plants and animals; potential adverse impacts on aesthetic resources and character of the Project Site and Core Preservation Area; impact due to lack of consistency with the CLUP; and increase development in an area of extensive natural public open space that contains fire dependent vegetative cover in an area of a recent wildfire event; and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(c)(ii), and granting of the waiver would not be consistent with the purposes, objectives or general spirit and intent of this title because the Act and the Plan require development to be redirected from the Core Preservation Area and the protection of Core Preservation Area lands for the preservation of existing natural vegetation and the ecologic and hydrologic functions of the Pine Barrens; and the Project would result in the endangerment of public safety or impairment of the resources of the Core Preservation Area since it has growth-inducing impacts and is precedent setting in nature in that it would induce and promote additional development in the Core Preservation Area where limited development density exists and expansive public lands exist and may adversely affect the already preserved public lands.

X. Commission Determinations

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

Resolved, the Commission finds that the Project constitutes development as defined by the Act; and be it further

Resolved, the Commission finds the Applicant has not demonstrated an extraordinary hardship for the reasons set forth above; and be it further

Resolved, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a) because it applies to and affects other property in the immediate vicinity; relates to and arises out of the personal situation of the applicant rather than the characteristics of the subject property, and is the result of the Applicant's action when the property was purchased in 2014; and

Resolved, that Applicant has not established the existence of an extraordinary hardship by alleging the Project Site is held in single and separate ownership; and be it further

Resolved, the Commission finds that the requested waiver exceeds the minimum relief necessary to relieve hardship as the Project is precedent setting, will result in adverse growth inducing impacts in the Study Area and in other hamlets in the Core Preservation Area, and if approved would be inconsistent with ECL Article 57, in particular ECL §57-0121(10)(c); and be it further

Resolved, the Commission finds the denial of the hardship waiver application 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, the Commission finds that the Project is not consistent with the purposes and provisions of the Act, including but not limited to, the goals and objectives to “[p]reserve the functional integrity of the Pine Barrens ecosystem, protect the quality of surface water and groundwater, discourage piecemeal and scattered development, [to] accommodate development in a matter consistent with the long-term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient, and orderly;” and be it further

Resolved, that the Commission hereby determines the hardship waiver application, as submitted, does not meet nor satisfy the criteria for a Core Preservation Area Extraordinary Hardship Waiver pursuant to New York State ECL Article 57 §57-0121(10) for the reasons set forth in this resolution; and be it further

Resolved, that the Armand Gustave, LLC Core Preservation Area Extraordinary Hardship Waiver exemption is denied.

**Armand Gustave, LLC c/o Peter Baron Core Preservation Area Hardship
Manorville, Town of Brookhaven; SCTM #: 200-460-1-10**

Record of Motion:

SEQRA Determination	Decision to Deny
Motion by: Mr. Romaine	Motion by: Mr. Romaine
Seconded by: Mr. Freleng	Seconded by: Mr. Schneiderman
In Favor: 5	In Favor: 4
Opposed: 0	Opposed: 1, Mr. Walter
Abstention: 0	Abstention: 0