



Commission Meeting of September 21, 2016 Southampton Town Hall

Present:

Ms. Sarah Lansdale (Suffolk County), Mr. Edward P. Romaine (Brookhaven),
Mr. Sean M. Walter (Riverhead), Mr. Martin E. Shea (Southampton)

Adopted Resolution Trocchio Core Preservation Area Hardship Waiver Manorville, Town of Brookhaven, SCTM #s 200-460-1-19 and 20

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

I. The Project

Whereas, Antro Realty Corp.¹ (the “Applicant”) proposes to develop a single-family residence on two parcels and to develop and improve approximately 11,000 square feet of an unopened road (220 feet long x 50 feet wide) known as Third Street to provide access to the proposed residence (the “Project”). The Project is proposed for two parcels of land containing, in total, 26,000 square feet of area (0.60 acre) and that are identified on the Suffolk County Tax Map as Number 200-460-1-19 and 20 and are located on the east 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

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Whereas, in 1993, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “Act”) which was codified in Article 57 of the Environmental Conservation Law (ECL). The Act, among other things, created the Central Pine Barrens Joint Planning and Policy

¹ Antro Realty Corp. owns the property, Joseph Trocchio is President of Antro Realty Corp. Trocchio submitted the application. In this resolution Antro refers to both Antro Realty and Joseph Trocchio. The application was submitted by Richard Scheyer, Esq.

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, ECL Section §57-0123 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

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

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

Whereas, on April 25, 2016, Scheyer, on behalf of the Applicant, submitted materials for the Project to the Commission including a letter, a survey prepared by John Gallacher dated April 18, 2016, and a partially completed Part I of the New York State Environmental Assessment Form. Scheyer’s letter stated the Applicant is “requesting permission to build on this 26,000 square foot single and separate lot which I believe is buildable as a matter of right but would have to be advertised by the Commission as is appropriate under their rules” (the “Application”); and

Whereas, the Applicant acquired the two parcels constituting the Project Site by two Quitclaim Deeds each dated July 23, 1985 and each from the County of Suffolk to Antro Realty Corp., both of which were filed 28 years later on June 10, 2013 in the Office of the Suffolk County Clerk; and

Whereas, on May 5, 2016, the Commission sent a letter to Scheyer concerning the Application. Included with the Commission’s letter was the Commission’s “Core Preservation Area Hardship Application Checklist.” The letter requested Scheyer

identify all of the parcels in the Application and submit all of the materials required in the Checklist including how the Project satisfies the requirements of the Act since such a narrative was not included in the Application; and

Whereas, notwithstanding the Commission's request, neither the Applicant nor Scheyer provided to the Commission a description of how the Application met the criteria of the Act.

IV. Public Process

Whereas, on June 15, 2016, the Commission scheduled a public hearing on the Application; and

Whereas, on July 20, 2016, the Commission held a public hearing on the Project. During the Hearing the Commission introduced a Staff Report and eight Exhibits into the record. Scheyer on behalf of the Applicant introduced 11 Exhibits into the record and provided testimony in support of the Application. Scheyer alleged the Project Site is within 300 feet of the boundary of the Compatible Growth Area (CGA) and that ECL §57-0109 allows an affected property owner to petition the Commission for an adjustment of the boundary as it applies to the affected property; and

Whereas, the Applicant's 11 Exhibits included prior decisions for Core Preservation Area and CGA hardship waiver applications including Screven (July 18, 2001), Czarnecki (September 26, 2001), Passanante (December 6, 1995), Baiata (May 21, 2003), Morgan (June 4, 1997), Marshall (October 2, 2002), Pawson (December 9, 1998), Goldstein (September 17, 1997), Kristiansen (March 20, 1996), and Madelung (June 16, 1995). The parcel, SCTM # 600-137-4-11.5, was identified on the 1995 residential roadfront exemption list; and

Whereas, notwithstanding the statement in the Scheyer letter regarding single and separate status, in a discussion of ownership of the Project Site, Scheyer conceded that the lots were merged; and

Whereas, the Commission heard testimony from the public, and at the end of the hearing, the Applicant requested time to respond to the Staff Report and submit additional information. The Commission and the Applicant agreed that the Applicant would submit materials by August 5, 2016. The Commission held the hearing open; and

Whereas, on August 17, 2016, the Commission continued the public hearing; and

Whereas, the Commission addressed Mr. Scheyer's request under ECL §57-0109 by presenting as an Exhibit a map of the Project Site in relation to the general boundary of the Central Pine Barrens including the boundaries of the Core Preservation Area and Compatible Growth Area. The Exhibit disproved Mr. Scheyer's contention that the Project Site is within 300 feet of the boundary of the CGA and that the Commission could apply ECL §57-0109 to move the Project Site boundary to place the Site in the CGA. The Project Site is in the Core Preservation Area and is 3,530 feet from the boundary of the CGA; and

Whereas, Scheyer submitted three additional Exhibits containing 55 prior Commission hardship exemption decisions as precedent in support of the Application. Exhibit 12 contained 18 additional cases including Westhampton Mini Storage (October 8, 1997), Theodore Martz (June 4, 1997), Hampton Hills Golf & Country Club (August 6, 1997), Dolores Blake (July 16, 1997), Seth Morgan (June 4, 1997), George Mathys (October 2, 1996), Exact Technology (September 11, 1996), John J. Feore (September 11, 1996), Regina and Stanley Seltzer (April 3, 1996), Rita Kristiansen (March 20, 1996), Baiata/Miller/ Beneficial Design Corp. (May 21, 2003), John Trocchio (July 24, 2002), Harold Marshall (October 2, 2002), George Cachimpanis (May 21, 2003), John DeGregorio (October 17, 2001); Alexander Czarnecki (September 26, 2001), Swan Lake Golf Course (October 17, 2001), and Evan Goldstein (September 17, 1997). Exhibit 13 contained 27 cases including all 12 cases in Exhibit 12 and 15 additional cases including Lakeside Manorville Hotel (Day Care) (August 8, 2001), Timothy Pawson (December 9, 1998), Gina DeMarco on behalf of Felicia Matusevich (February 24, 1999), Pauline M. Salmon (May 19, 1999), Hampton Hills Golf & Country Club (June 9, 1999), Joseph Gazza (June 27, 2001), Katherine Foster Screven (July 18, 2001), Joseph Gazza (January 28, 1998), and ProCorm (November 19, 1997). Exhibit 14 contained 12 additional cases including Roberta Sterk (May 29, 1996), Frank Turrigiano (January 24, 1996), Clancy Street Food Court (November 8, 1995), Eagle's Nest Homes (October 25, 1995), Joseph Gazza (September 20, 1995), Judith Massa (June 23, 1995), Theresa A. Cox (May 24, 1995), Manor Pines (January 13, 1995), Janet DeMauro (December 12, 1994), American Physical Society (December 12, 1994), Edwin Tuccio (August 10, 1994), and Diocese of Rockville Center Saints Peter and Paul Church (November 21, 1994); and

Whereas, the Commission closed the public hearing on August 17, 2016.

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, the Study Area includes an estimated 69 parcels containing 600 acres; and

Whereas, approximately 80% or 460 acres of the Study Area contains protected, unfragmented natural open space owned by public agencies including Suffolk County and New York State. The Peconic River watershed and headwaters are 400 feet north of the Project Site. Conservation Easements granted to the Commission in connection with the Pine Barrens Credit Program are recorded on 12 parcels in the Study Area. Developed land uses on 20 parcels containing approximately 85 acres include low density single-family residential development, agricultural uses, and a church. At least six privately owned parcels in the Study Area are undeveloped; 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 July 19, 2016. The NHP correspondence included two reports: "Report on State-Listed Animals" and "Report on Rare Animals, Rare Plants, and Significant Natural Communities." Commission Staff provided the two reports to the Commission during the July hearing; and

Whereas, the Applicant has not submitted site specific natural resources surveys on the Project Site notwithstanding the potential existence of threatened or endangered animal and plant species on the Project Site as documented by NHP in its Reports.

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 since it is within the 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 including natural resources and surface and groundwater resources and is inconsistent with the Central Pine Barrens Comprehensive Land Use Plan (CLUP) and the goals and objectives of the Act to ensure compact efficient, and orderly development; and

Whereas, the Project is situated on an unopened road, surrounded by undeveloped land, in an area of extensive unfragmented public open space. The Project would result in piecemeal and scattered development in the Study Area. . The corridor of Schultz Road is identified as a Scenic Resource in Volume 2, Chapter 8, of the Central Pine Barrens Comprehensive Land Use Plan. The description of its attributes state, “Some light residential development occurs within the large county and federal holdings which dominate the land uses here.” Potential adverse impacts on the quality of resources of the Core Preservation Area would occur as a result of physical changes on undeveloped land on the Project Site and in the Study Area including fragmentation of habitat and development that may diminish the scenic value and rural landscape that defines the Scenic Resource in the Central Pine Barrens; and

Whereas, no evidence was provided that the Project will not result in adverse impacts to State-listed rare, threatened, and endangered species and significant habitat(s), which may exist on the Project Site; and

Whereas, the Project requires installation of an individual on site sanitary system on 0.60 acre in Groundwater Management Zone III, a deep recharge zone in which the Suffolk County Department of Health Services, absent an exception, requires a minimum lot area of 40,000 square feet for a single-family residence. Therefore, the quality of groundwater resources may be impacted.

VIII. Prior Commission Decisions

Whereas, other development projects in the Core Preservation Area that were disapproved by the Commission and identified to be precedent setting as they were similarly proposed in areas of low-density development include, but are not limited to, a) Independent Group Home Living (IGHL) on SCTM # 200-460-1-27, within 150 feet of the Project Site, disapproved on September 26, 2001, 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. b) Armand Gustave c/o Peter Barron on SCTM # 200-460-1-10, within 400 feet of the Project Site, disapproved on June 15, 2016, proposed development of a single-family residence on 6,000 square feet and the development of 5,333 square feet of an unopened road in the A5 Residence Zoning District. c) Henry Dittmer in Yaphank on SCTM # 200-529-5-35, disapproved on February 17, 2016, 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, and d) Gazza in Westhampton on SCTM # 900-247-1-4.1, disapproved on July 16, 1997, proposed development of a single-family residence on 6.57 acres in the CR 200 Zoning District.

IX. 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, an Applicant for a Core Preservation Area Hardship Waiver must establish it has met the criteria in ECL §57-0121(10)(a); and

Whereas, the Applicant submitted an Application that is devoid of materials, arguments, and evidence of the existence of extraordinary hardship; and

Whereas, the Commission finds that the prior cases provided by Scheyer to the Commission during the July hearing are factually dissimilar to the Project. Only two cases, Screven and Czarnecki, are located in the Study Area within one half mile of the Project Site; In these matters, the Commission granted hardships for development proposed in the Compatible Growth Area, for development that had previously received Building Permits, for development on sites adjacent to development on one or more sides, for development located in other areas of the Core Preservation Area, for development that consisted of a subdivision, and for development of a parcel that was later added to the Core Preservation Area residential roadfront exemption list. The Commission further notes that the most recent decision noted by the Applicant was in 2003; and

Whereas, in the July public hearing, the Applicant did not address the criteria contained in Article 57 for a hardship; and

Whereas, notwithstanding the grant of an extension for the Applicant to provide additional materials addressing the criteria, the Applicant failed to submit additional materials by the deadline of August 5, 2016; and

Whereas, in the August 17 public hearing, Scheyer on behalf of the Applicant acknowledged he did not provide additional materials by August 5. However, the Applicant submitted an additional three Exhibits at the public hearing on August 17. The Applicant stated their record was complete; and

Whereas, none of the Applicant's materials address the Act's hardship criteria; and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a)(i), because the Applicant did not provide information on this element to demonstrate it met the standard of this article. The Commission further finds the Project is not unique among other private property in the Study Area. And the denial of the Project would be consistent with prior denials of Projects in the Study Area including IGHL and Armand Gustave c/o Peter Barron; and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a)(ii), because the Applicant did not provide information on this element to demonstrate it met the standard of this article; and

Whereas, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(a)(iii), because the Applicant did not provide information on this element to demonstrate it met the standard of this article.

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

Whereas, an Applicant for a Core Preservation Area Hardship Waiver must also establish it has met the criteria for a permit in the Core Preservation Area pursuant to ECL §57-0121(10)(c); and

Whereas, the Applicant did not provide information on this element to demonstrate it met the criteria in ECL §57-0121(10)(c)(i); and

Whereas, the Applicant did not provide information on this element to demonstrate it met the criteria in ECL §57-0121(10)(c)(ii); and

Whereas, the Applicant did not provide information on this element to demonstrate it met the criteria in ECL §57-0121(10)(c)(iii).

XI. 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 that the Applicant has not provided any evidence demonstrating the existence of an extraordinary hardship if the Act's provisions are literally enforced, 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)(i) through (iii) because the Applicant did not provide information on these elements; and be it further

Resolved, the Commission finds the Applicant has not met the criteria in ECL §57-0121(10)(c)(i) through (iii) because the Applicant did not provide information on these elements; 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, that the Application for the Trocchio Core Preservation Area Extraordinary Hardship Waiver exemption is denied.

Trocchio Core Preservation Area Hardship

Manorville, Town of Brookhaven; SCTM #s 200-460-1-19 and 20

Record of Motion:

Decision to Deny

Motion by Mr. Shea

Seconded by: Mr. Romaine

In Favor: 4

Opposed: 0

Abstention: 0