



Commission Meeting of July 19, 2017 Riverhead Town Hall

Ms. Carrie Meek Gallagher (State of New York),
Mr. Dorian Dale (Suffolk County), Mr. Edward P. Romaine (Brookhaven),
Mr. Daniel McCormick (Riverhead), Mr. Jay H. Schneiderman (Southampton)

Adopted Resolution Independent Group Home Living Program, Inc. SCTM # 200-410-2-1.1 Core Preservation Area Hardship Waiver Manorville, Town of Brookhaven

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

I. The Application

Whereas, Independent Group Home Living Program, Inc. (the “Applicant”), by its representative, Egan and Golden Attorneys, submitted a Core Preservation Area Hardship Waiver Application on April 7, 2017 to develop a structure and associated amenities to serve intellectually disabled adults in the hamlet of Manorville, in the Core Preservation Area of the Central Pine Barrens, in the Town of Brookhaven (the “Application”).

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

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

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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, pursuant to ECL §57-0121(3)(c), the CLUP with respect to the Core Preservation Area shall be designed to protect and preserve the ecologic and hydrologic functions of the Pine Barrens by prohibiting or redirecting new construction, and

Whereas, pursuant to §5.2 of the CLUP, new development shall be prohibited in or redirected from the Core Preservation Area absent a Commission granted Hardship Exemption which may be granted by the Commission upon a showing of Extraordinary Hardship or Compelling Public Need as defined in the Act, and

III. The Project Site, the Project and the Application

Whereas, the Project Site contains 4.12 acres of area and is located at the southwest corner of North Street and Ryerson Avenue, is split between two zoning districts, the J Business 2 and A Residence 5 Zoning Districts and contains both an area containing a fallow agricultural field in the northwest corner of the Project Site and a wooded area, and

Whereas, the Applicant, in February 2017, purchased the Project Site for \$170,000, and

Whereas, prior to February 2017, the Project Site contained a 1,200 square foot, one and a half story residence constructed in 1803 known as the Morgan House, as per the listing by the New York State Historic Trust. After the Applicant purchased the Project Site, it caused the Morgan House to be demolished prior to submitting the Application, and

Whereas, the Applicant proposes to construct a 4,295 square foot residence including a basement and porches; 9,166 square feet of driveway area including approximately 2,852 square foot parking lot; 2,346 square feet of sidewalks and patio area, and 10,818 square feet of landscaping, as per the Site Plan prepared by Jerry Rumplick, AIA, last dated January 30, 2017 (the “Site Plan”), in the fallow agricultural field and does not propose to disturb the wooded areas of the Project Site (all of the improvements are collectively referred to as the “Project”), and

Whereas, the Applicant, during a Commission held public hearing, stated that it was proposing the Project in order to provide a new community residential facility for several residents of a large group home facility in Melville, in the Town of Huntington, and that if the Application is approved, the Applicant will relocate the residents of the facility in Huntington to the Project Site, and

Whereas, the Application consisted of a letter addressing the Hardship Exemption criteria contained in the Act; an owner's affidavit; a January 2017 Town of Brookhaven Demolition Permit; a Full Environmental Assessment Form Part I; Google Earth street views of the Project Site; the Site Plan; and exhibits containing Commission decisions including approvals and denials of other Core Hardship Applications.

IV. Public Process

Whereas, on May 17, 2017, the Commission held a public hearing on the Project. During the hearing, the Commission introduced a Staff Report and Exhibits A through I 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

Whereas, on May 31, 2017, the Applicant submitted supplemental information on the Application in response to the Staff Report distributed at the public hearing.

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 dominant land use in the Study Area is low density residential development, public open space, and agriculture. Conservation easements on parcels protected under the Pine Barrens Credit Program, a transferable rights program established by the Commission, are recorded on 40 parcels in the Study Area, 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 May 16, 2017 which stated, "The oldest house in the Manorville Historic District, sometimes referred to as the Morgan House, was demolished at the site prior to the submission of the

Consultation Project for review. The loss of this building has resulted in a limited ability for us to fully carry out our role under the New York State Historic Preservation Act,” and

Whereas, the New York Natural Heritage Program (NHP) by letter dated June 5, 2017 provided a report of rare or state-listed animals and plants and significant natural communities that their database indicates occur in the vicinity of the Project Site. The report listed the State-listed threatened upland sandpiper; the State-listed endangered tiger salamander; the State-listed threatened banded sunfish; the State-listed threatened northern long-eared bat; and five State-listed threatened plant species including persimmon, narrow-leaved bush clover, trinerved white boneset, stargrass, and tooth-cup, and

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

VI. Other Required Approvals

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

Whereas, the Project will require a permit for the approval of plans and construction of an individual sanitary wastewater system although the volume of allowable sanitary flow generated by the Project will not exceed the amount that may be treated in an onsite septic system, and

Whereas, the Project Site is within a NYSDEC-designated Scenic corridor of the Peconic River and is subject to regulation under Article 15, Title 27 of Environmental Conservation Law regarding Wild, Scenic and Recreational Rivers, and

Whereas, the Project will require a building permit from the Town of Brookhaven.

VII. Potential Adverse Impacts

Whereas, the Project has the potential to cause adverse impacts on the resources of the Core Preservation Area, including natural resources, and is not consistent with the CLUP's provision to redirect new construction or development from the Core Preservation Area, and

Whereas, the Project Site is situated on a road corridor identified as a Scenic Resource in Chapter 8 of Volume 2 of the CLUP. The development, on a scenic road, of a new, 4,295 square foot structure that is more than three times the size of the previous residence on the Project Site results in potential adverse environmental impacts on the scenic resources of the Core. The previously-existing Morgan House was set back from the road in the wooded area and was not directly visible from North Street, and

Whereas, the Project requires the conversion of approximately 26,161 square feet of the Project Site from fallow agricultural area to developed area which may cause a potential adverse visual impact, and

Whereas, the Applicant did not provide any materials to address whether the Project would cause adverse impacts to the State-listed rare, threatened, and endangered species and significant habitat identified by the NHP, and

VIII. Commission Review of the Act's Extraordinary Hardship Criteria, Compelling Public Need Criteria and the Application

Whereas, the Applicant applied to the Commission for either an Extraordinary Hardship Exemption or a Compelling Public Need Exemption for the Project, and

Whereas, to demonstrate the existence of an Extraordinary Hardship the Applicant alleged that the Project Site has unique circumstances that are not applicable to the other parcels in the immediate vicinity, has no current beneficial use and that granting the Extraordinary Hardship Exemption would create a beneficial use for the Project Site, that the unique circumstance of the Project Site do not apply to other parcels in the area and that the grant of an Extraordinary Hardship Exemption would not create an unfavorable precedent in the neighborhood because the Project Site is the last privately-owned undeveloped parcel in the area; and

Whereas, to demonstrate the existence of a Compelling Public Need the Applicant alleged that the Project will serve an essential public health and safety need, and

Whereas, the Commission has considered the Application, Record, and its prior decisions and determines the hardship, to the extent it exists, relates to and arise out of the personal situation of the Applicant and is the result of the Applicant's action; therefore, the Applicant has not demonstrated that an extraordinary hardship has been established and was not self-created, and

Whereas, the Commission finds the Applicant has not met the Extraordinary Hardship Exemption criteria because the Project Site had a beneficial use, specifically the pre-existing building known as the Morgan House, and the Applicant's demolition of the Morgan House created a self-created hardship which relates to and arises out of the Applicant's personal situation and is the result of the Applicant's action, and

Whereas, the Commission finds the Applicant has not established that a Compelling Public Need exists for the Project because the Applicant failed to provide any evidence to demonstrate that no feasible alternatives to the Project Site exist on which to develop the Project or that no better alternatives exist within the County, and without such evidence has not demonstrated a Compelling Public Need exists for the Project on the Project Site or that the Project is needed to serve the municipalities within the Central Pine Barrens as the potential residents of the facility currently reside in the Town of Huntington, and

Whereas, the Applicant has not demonstrated that the Project Site has no beneficial use as it may be entitled to an allocation of Pine Barrens Credits, as 40 other parcels in the Study Area have been.

IX. The Mental Hygiene Law, the Application and the Act

Whereas, the Applicant provided information concerning Mental Hygiene Law Section 41.3, "Site selection of community residential facilities," which govern the review by a municipality, defined to be village, town or city, of a community residential facility; and further provides that facilities such as proposed by the Applicant shall be deemed a "family unit, for purposes of "local laws and ordinances," and

Whereas, the Commission is not a municipality as defined by the Mental Hygiene Law and the Act is not a local law or ordinance, and

Whereas, the Commission reviewed the Application to determine whether the Applicant established an Extraordinary Hardship or a Compelling Public Need for the Project and, for the reasons set forth above, determined that the Applicant failed to

establish the existence of either condition for which the Commission could grant relief and that such determination is not related to the Project's use or its status under the Mental Hygiene Law, and

X. Prior Commission Decisions

Whereas, the Commission has previously determined, in the applications of JCJC Holding Corp. and Westhampton Property Associates, that mere acquisition of a Core Preservation Area property does not create a self-created hardship precluding the grant of a hardship waiver, but unlike those prior determinations, IGHL did create a self-created hardship that precludes the grant of a waiver, and

Whereas, the underlying facts in the JCJC Holding Co. matter differ from those in the instant application. In JCJC, the applicant, JCJC, purchased an existing building located in the Core Preservation Area and requested Commission approval to change the use of the structure. No material changes were made to the structure, rather just the use within it. The Commission approved the application, finding in part the mere acquisition of the JCJC property after the Act's adoption did not create a self-created hardship that precluded the grant of the hardship waiver. In contrast, IGHL, the Applicant, created the hardship by acquiring a property and its structure, with a beneficial use and the ability to be used for the non-development uses permitted in the Act, including redevelopment, reconstruction, or improvement, and then demolished the structure after the Act's passage. This action made the self-created hardship and removed a beneficial use of the Project Site thereby producing a self-created hardship where one did not previously exist, and

Whereas, the approval of Westhampton Property Associates (WPA), where the project site was purchased after the Act, is unlike the Project since WPA sought to continue a pre-existing use of a property. In WPA, WPA purchased an active sand mine after the passage of the Act and applied to the Commission for approval to deepen the mine. WPA did not create a self-created hardship by discontinuing the use of the mine and then applying to the Commission for permission to deepen the mine. In the case of the application by IGHL, the Applicant demolished the beneficial use on the Project Site resulting in a self-created hardship in regard to the Applicant's intent to develop a new use and structure on the Project Site, and

Whereas, prior Commission decisions on hardship waivers for development in the Core Preservation Area are unlike the Project. Although other applicants also purchased sites after the Act, as in the case of the Applicant IGHL, they did not proceed

to first demolish structures or abandon beneficial uses and then subsequently seek hardship waivers to produce self-created hardships.

XI. Commission Determinations

Resolved, the foregoing recitals are incorporated herein and made a part hereof; 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, that the Commission finds the Applicant has not established a Compelling Public Need requiring the grant of the Hardship Exemption exists, and be it further

Resolved, the Commission finds the denial of the 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 IGHL Core Preservation Area Extraordinary Hardship Waiver exemption is denied.

Independent Group Home Living Core Preservation Area Hardship Waiver Manorville, Town of Brookhaven; SCTM # 200-410-2-1.1

Record of Motion

Decision to Deny

Motion by: Mr. Romaine

Seconded by: Mr. Schneiderman

In Favor: 5

Opposed: 0

Abstention: 0