



**Commission Meeting of May 18, 2016
Wertheim National Wildlife Refuge, Shirley, New York**

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

**Adopted Resolution
East End Christian Academy
Core Preservation Area Compelling Public Need Hardship Waiver
Manorville, Town of Brookhaven, SCTM #: 200-461-3-40**

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

I. The Project

Whereas, the East End Christian Academy, a 501c3 organization (the “Applicant”), proposes to develop a Kindergarten through 12th grade school for 200 students in a 15,000 square foot steel structure (the “Project”) on the 2.68 acre Project Site identified as Suffolk County Tax Map Number 200-461-3-40 located at 505 Eastport Manor 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 presently contains the Manorville Community Church, built in 1913, a trailer in which Sunday School is conducted, a parking lot, and a playground; and

Whereas, approximately 1.5 acres of the site is wooded with natural pine barrens vegetation; and

Whereas, the Suffolk County Pine Trail Nature Preserve is shown to have frontage on the Project Site, as per the Suffolk County Tax Map; 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”), Environmental Conservation Law (ECL) Article 57, which was signed into law on July 13, 1993. The Act, among other things, created the Central Pine Barrens Joint Planning and Policy

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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 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.

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

III. The Current Project and Materials Submitted to the Commission

Whereas, on November 16, 2015, the Applicant, by its representative, Catherine Meade, submitted a Core Preservation Area Compelling Public Need Hardship Waiver application to the Commission to authorize the Project; and

Whereas, the Project layout was hand-sketched on a Survey prepared by Robert B. Holtzman dated July 6, 1996 in which three options are depicted with Option 1 illustrating the proposed school building in the rear of the existing church; Option 2 depicting the proposed school building on the east side of the existing church; and Option 3 depicting the proposed school building on the west side of the existing church; and

Whereas, the Applicant has not prepared and submitted a professionally-prepared Site Plan for the Project that would indicate the extent of installation or expansion of infrastructure and development on the Project Site including, but not limited to, clearing limits, disturbance of vegetation and excavation, installation or expansion of individual on-site sanitary wastewater structures, parking lots and/or bus lane accommodations, and other facilities to support the Project; and the application does not contain a rendering of

the Project that would indicate the design, color, and materials for the proposed building and other improvements; therefore, the Application information is limited and does not contain, describe, or identify information on the precise design, appearance, and extent of development on the Project Site; and

Whereas, the Applicant has submitted requests for extensions of the Commission decision deadline up to the date of April 20, 2016.

IV. The Project Site's Cultural and Natural Resources

Whereas, the Manorville Community Church, built in 1913, is listed in an inventory by the New York State Historic Trust Office of Parks and Recreation under the building name S.S. Peter & Paul Roman Catholic Church dated June 22, 1978. The New York State Cultural Resource Information System (CRIS) database lists the building as “eligible” for historic status; and

Whereas, the project site is within an area identified as archaeologically sensitive according to the New York State CRIS; and

Whereas, on December 16, 2016, the Commission received a response from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) which stated that “...*the Manorville Community Church appears to be eligible for listing in the State and National Registers of Historic Places,*” and “*proposed “Option 1” building location appears to be the most appropriate. We further note that orienting the narrower façade of the proposed building towards the Manorville Community Church and street would lessen its visual impact on the building and site.*” The OPRHP requested that the Applicant submit “*a description or drawing indicating the materials proposed for the facades of the new building;*” and

Whereas, on December 21, 2015, 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. The NHP provided a report entitled “*Report on Rare Animals, Rare Plants, and Significant Natural Communities*” with respect to the Project. The NHP report identified a number of State-listed Threatened and Endangered and rare animal and plant species that “have been documented in the vicinity of the Project Site” and that “potential onsite and offsite impacts from the Project may need to be addressed.” The NHP also identified an Upland/Terrestrial Community Pitch Pine-Oak Forest as a “significant natural community considered significant from a statewide perspective by the NHP.” The report

states, “By meeting specific, documented criteria, the NHP considers these community occurrences to have high ecological and conservation value.”

V. Public Process

Whereas, on December 16, 2015, 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 from the Applicant and the public; a transcript of the hearing was distributed to the Commission.

VI. Other Required Approvals

Whereas, the Project is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA), a coordinated SEQRA review was conducted in conjunction with other involved agencies including the Suffolk County Department of Health Services, the Town of Brookhaven and New York State Department of Education; and permits and/or approvals are required from involved agencies.

VII. The Commission’s Environmental Review of the Project

Whereas, the Commission, using the materials submitted by the Applicant prepared Part 2 of the Environmental Assessment Form (EAF) and the completed Part 2 determined that the Project will cause or has the potential to cause moderate to large impacts in eight categories of environmental impacts and create 21 environmental impacts and that the Project is inconsistent with local land use plans or zoning regulations; and

Whereas, a review of the Part 2 of the EAF entitled “*Identification of Potential Project Impacts*” reveals potential adverse environmental impacts may occur as a result of the Project. These impacts include *Impact on Land* because of the physical impacts and change on the Project Site from construction, disturbance, and removal of vegetation; *Impact on Groundwater* because of the increase in intensity of land use on the Project Site resulting in an increase in sanitary wastewater flow on the Project Site; *Impact on Plants and Animals* on the Project Site including the loss of individual plants and animals and habitats listed as threatened, endangered, and special concern and impacts on a significant natural community, pitch pine oak forest; *Impact on Aesthetic Resources* because the Project may be visible from publicly accessible vantage points seasonally and year round and in an area proposed as an historic district; *Impact on Historic and Archaeological Resources* because the existing Manorville Community Church is eligible for listing in the State and National Registers of Historic Places; *Impact on*

Transportation because the Project may alter the present pattern of movement of people or goods; *Impact due to lack of Consistency with Community Plans* because the Project “land use components may be different from or in sharp contrast to current surrounding land use patterns;” the Project is inconsistent with County plans or other regional land use plans including the CLUP; *Impact due to lack of Consistency with Community Character* because the Project may replace or eliminate existing facilities, structures, or areas of historic importance to the community, create a demand for additional community services, and is inconsistent with the predominant architectural scale and character and character of the existing natural landscape.

VIII. Commission Prior Compelling Public Need Waiver Exemptions

Whereas, to establish the existence of a compelling public need hardship, an Applicant must establish it has met the criteria in ECL §57-0121(10)(b)(i) which states as follows: “*A person, the state or a public corporation shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, one of the following: (i) The proposed development will serve an essential health or safety need of the municipalities in the Central Pine Barrens such that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that overrides the importance of the protection of the core preservation area as established in this article, that the proposed use is required to serve existing needs of the residents, and that no feasible alternatives exist outside the core preservation area to meet the established public need and that no better alternatives exist within the county;*” and

Whereas, the Commission finds an examination of its record on granting Compelling Public Need Hardships demonstrate that the Waivers primarily involved actions by utility service providers attempting to provide electrical power, a basic public need, to satisfy growing regional demand to consumers of electric utility services; and

Whereas, the Commission on January 26, 2000 granted a Compelling Public Need Hardship Waiver to the Long Island Power Authority (LIPA) to install a 22-mile underground electric transmission line from Riverhead to Southampton to serve a growing customer base for electric services on the East End of Long Island; and

Whereas, other utility related Compelling Public Need Waivers that were granted include KeySpan Energy Delivery Long Island Gas Transmission Main Reinforcement Project Phases IV and V on June 15, 2005; and

Whereas, the Commission on November 19, 2008 granted a Compelling Public Need Hardship Waiver to LIPA on November 19, 2008 to expand an existing electrical substation in Riverhead to support growing regional consumer demand for electric utility services; and

Whereas, the Commission on August 19, 2015 granted a Compelling Public Need Hardship Waiver to Rockwell Collins, the only FCC-authorized provider of the emergency backup communications radio system utilizing High Frequency (HF) radio spectrum to “assure mission-critical connectivity for dispatch and emergency operations, hospitals, first responders, critical infrastructure, and federal, state, and local agencies,” to construct additional infrastructure in an existing developed communications facility to serve an essential health and safety need and communications support in times of disaster or emergency.

IX. Commission Review of the Act’s Compelling Public Need Hardship Criteria and Applicant’s Materials

Whereas, pursuant to the Act, in reviewing a Core Preservation Area Hardship exemption application, the Commission shall consider the compelling public need hardship criteria set forth in ECL §57-0121(10)(b), and Sections 57-0121(10)(c)(i), (ii), and (iii) and determine whether or not 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 hearing transcript; and

Whereas, to establish the existence of a compelling public need hardship, an Applicant must establish it has met the criteria in ECL §57-0121(10)(b)(i) which states as follows: “A person, the state or a public corporation shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, one of the following: (i) The proposed development will serve an essential health or safety need of the municipalities in the Central Pine Barrens such that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that overrides the importance of the protection of the core preservation area as established in this article, that the proposed use is required to serve existing needs of the residents, and that no feasible alternatives exist outside the core preservation area to meet the established public need and that no better alternatives exist within the county; and

Whereas, to address the criteria in ECL §57-0121(10)(b), the Applicant states the “*proposed building plan will truly benefit families of Manorville and the surrounding towns to a degree that is necessary to fulfill the requirement;*” and

Whereas, to address the criteria in ECL §57-0121(10)(b), the Applicant states, “*Manorville Community Church has a Food Pantry registered with Suffolk County that serves needy families throughout the year through weekly evening hours and through holiday meals. Approximately 1,200 people are fed per year through this food pantry. In addition, this Food Pantry is also available to serve the local 55+ community;*” and

Whereas, to address the criteria in ECL §57-0121(10)(b), the Applicant states “the church has a growing youth program for Sunday School throughout the school year and Vacation Bible School for the summer time;” and the Project “would allow the ministries at the existing Church to flourish, to grow in connection to one another and to God, meeting a great need for citizens in the community;” and

Whereas, to address the criteria in ECL §57-0121(10)(b), the Applicant states that “sharing the school on the same land at the Manorville Community Church provides opportunity share costs, plans, and space that will serve the community and co-exist in a way that affords each of the non-profits to succeed financially and give back to those in need;” and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(i) because the Project does not serve an essential health or safety need of the municipalities in the Central Pine Barrens such that the public health and safety require the requested waiver; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(i) because the Applicant has not established that the Project is essential to serve the needs of the residents of the Central Pine Barrens; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(i) because the existing food pantry provided by the church is currently in existence and appears to operate independent of any school and will continue to exist whether or not the Project occurs; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(i) because any public benefits generated by the proposed use, which the Applicant has not adequately demonstrated will occur, do not override the importance of the protection of the Core Preservation Area and its resources, including

the State-listed Threatened and Endangered animal and plant species and a significant ecological community type that have been identified by NHP and which are representative of the significant ecological resources that exist in the Central Pine Barrens; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(i) because the Project will establish an adverse precedent for other land use development projects that are also not required and also do not serve an essential health or safety need of the municipalities of the Central Pine Barrens; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(i) because feasible alternatives exist outside the Core Preservation Area to meet the Applicant's needs including, but not limited to, other property owned by the Applicant known as the Northville Public School Building on Sound Avenue in the Town of Riverhead that was planned for development of a school; and other than verbal statements made by the Applicant that they are exploring other potential sites for development of the Project, the Applicant has not submitted documentation on alternatives for Commission review and consideration; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(i) because the Commission finds the Applicant has not submitted a clear demonstration that no better alternatives exist outside the core preservation area and within the County, as required in the waiver criteria; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(ii) because the Project is not an adaptive reuse of an historic resource but instead will result in the construction of a completely new, modern building with no traditional architectural elements; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(b)(ii) because the Project Site contains a structure eligible for listing in the State and National Registers of Historic Places; and the Project would diminish the integrity and character of the resources on the Project Site and in the Core Preservation Area, and the Project is not consistent with the objectives outlined in ECL §57-0121.

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 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, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(c), 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; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(c) because the completion of the Part 2 of the EAF indicates the Project will impair and damage the Core Preservation Area. 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 buildings, impervious surfaces, and related infrastructure; potential adverse impacts on rare, endangered, threatened and special concern species of plants and animals; potential adverse impacts on groundwater resources due to increased discharge of wastewater with concomitant increase of contaminants and nutrients, including nitrogen; substantial impairment of the resources of the Core Preservation Area; increase in stormwater runoff on the Project Site and remove capacity for natural recharge through natural cover on the Project Site; potential adverse impacts on aesthetic and scenic resources because the Project may be visible from public roads and publicly accessible vantage points and utilizes architectural elements which are not complementary to the existing historic church; potential adverse impacts on historic and cultural resources because the Project Site contains Manorville Community Church, which is eligible for listing in the State and National Registers of Historic Places, and there are other significant cultural resources nearby; potential adverse impacts on transportation because the Project may alter the present pattern of movement of people or goods; potential adverse impacts due to the Project's lack of consistency with community plans because the Project's land use will be

different from or in sharp contrast to current surrounding land use patterns; is not consistent with County plans or other regional land use plans including the CLUP, and the Project is not consistent with the community character of the surrounding Manorville hamlet area because the Project may replace or eliminate existing facilities, structures, or areas of historic importance to the community, create a demand for additional community services, and is inconsistent with the predominant architectural scale and character and character of the existing natural landscape; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(c), because the development of a 15,000 square foot steel structure in the Core Preservation Area in the hamlet of Manorville, adjacent to the Pine Trail Nature Preserve is not consistent with the character of the hamlet nor the aesthetic, scenic, and natural quality of the immediate area; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(c), because the State Historic Preservation Office review noted that the existing Manorville Community Church is eligible for listing in the State and National Registers of Historic Places and expressed concern for the potential historic designation of the 103 year old church on the Project Site, and the Project impairs the quality of the Project Site as it is inconsistent with the historic-related character of the site and immediate area; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(c), because granting of the waiver would not be consistent with the purposes, objectives or general spirit and intent of this title, as the Project will remove existing natural vegetation and habitat and develop land in the Core Preservation Area with buildings and other structures, increase wastewater flow on the Project Site, and increase the area of impervious surfaces contributing to stormwater runoff; and

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(c), 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

Whereas, the Commission finds the Applicant has not established it has met the criteria in ECL §57-0121(10)(c)(iii), because the Applicant has not demonstrated the waiver is the minimum relief necessary to relieve extraordinary hardship because the Applicant currently utilizes the existing Manorville Community Church and a trailer on the Project Site; and

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 a compelling public need hardship for the reasons set forth above; 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 demonstrated it has met the criteria in ECL §57-0121(10)(b)(i) that no feasible alternatives exist for the Project outside the Core Preservation Area, and the Applicant has not demonstrated that no better alternatives exist for the Project within the County; and be it further

Resolved, that the Applicant has not established the existence of a compelling public need hardship because the Applicant already possesses an existing beneficial use of the Church facility on the Project Site; and be it further

Resolved, the Commission finds that the Applicant has not demonstrated that the Project is required to satisfy a public health and safety need for the reasons set forth above; 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, as it may support other non-required land uses to propose development in the Core Preservation Area that are not essential to public health and safety of the residents of the municipalities in the Central Pine Barrens, and if approved would be inconsistent with ECL Article 57, in particular ECL §57-0121(10)(c)(iii); and be it further

Resolved, the Commission finds the requested waiver will result in substantial impairment of the resources of the Central Pine Barrens area; and be it further

Resolved, that the application for a Core Preservation Area Compelling Public Need Hardship exemption is denied; 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.

**East End Christian Academy Core Preservation Area Hardship
Manorville, Town of Brookhaven
SCTM #: 200-461-3-40**

Record of Motion:

Motion by: Mr. Romaine

Seconded by: Mr. Schneiderman

In Favor: 5

Opposed: 0

Abstention: 0