



Commission Meeting of July 15, 2009

Location: Quogue Wildlife Refuge, Quogue, New York

Present: Peter Scully (New York State), Thomas Isles (Suffolk County),
Brenda Prusinowski (Brookhaven), John Turner (Brookhaven),
Marty Shea (Southampton)

Adopted Resolution to Issue a Notice of Violation to Hugh McCarrick

Whereas, the 18,200 sq. ft. (0.42 acre) project site is located at #5 (Lot 26) and #7 (Lot 25) Sunset Drive, south of Lake Panamoka, in the hamlet of Ridge, in the Compatible Growth Area of the Central Pine Barrens, in the A-1 Residence Zoning District, Town of Brookhaven, SCTM No. 200-217-1-25 and 26; and

Peter A. Scully
Chair

Phillip J. Cardinale
Member

Linda A. Kabot
Member

Mark Lesko
Member

Steve A. Levy
Member

Whereas, on April 14, 2009, a Compatible Growth Area Extraordinary Hardship Waiver application was submitted to the Commission by Hugh McCarrick, as a contract vendee, and Donald and Rita Buckingham, the owners, for a two lot subdivision of two undersized parcels merged due to common ownership since 1973 and relief of the Vegetation Clearance Limit Standard from 53% to 70% on Lot 25; and

Whereas, the Town Building Division determined that the lots were not single and separate, and thus, when an application to build on Lot 25 was submitted, the applicants were directed to the ZBA to file for a subdivision of the property to “unmerge” the lots; and

Whereas, the two-lot non-conforming subdivision was classified as “development” pursuant to NYS ECL Article 57-0107(13), which requires it to comply with the CLUP as implemented by the Town Code and since it did not, a CGA Hardship application was required to be submitted to the Commission for its review and approval; and

Whereas, when the Town ZBA received the subdivision application, the project site contained one single-family dwelling on Lot 26, which was 63.5% cleared, and the remainder of the site was vacant and 100% vegetated; and

Whereas, on September 13, 2006, the ZBA granted the two-lot subdivision, which created two non-conforming lots (8,437.5 sq. ft. (Lot 25) and 9,763.3 sq. ft. lot (Lot 26)), moved the dividing line 25 feet north to make Lot 25 larger, and issued 10 variances for dimensional relief; and

Whereas, on September 15, 2006, the ZBA adopted a SEQRA Negative Declaration with one of eight “Reasons Supporting the Determination” listed as “Applicant to apply to the Pine Barrens Commission for hardship waiver, re: clearing limits;” and

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Whereas, in April 2007, Hugh McCarrick purchased Lot 25;

Whereas, on January 25, 2008, the Commission received a letter from Hugh McCarrick with a brief history of the project and asking for “help with his property;” and

Whereas, on February 5, 2008, Commission Staff met with the applicant in the Commission Office to discuss the project and requirements and provided a copy of the CGA Hardship application; Staff responded to the applicant in writing by letter dated February 8, 2008; and

Whereas, on March 25, 2008, the Commission received a letter from the Brookhaven Town PELM requesting comments on a proposed revegetation plan, and in a response dated April 2, 2008, Commission Staff stated that the information provided lacked the necessary data to determine compliance with the CLUP; and

Whereas, on May 21, 2008, the ZBA amended their September 13, 2006 decision with a condition that stated, “Include stipulation that applicant must apply to Pine Barrens Commission for hardship waiver re: clearing limits;” and

Whereas, on August 20, 2008, the ZBA granted Hugh McCarrick an increase in the allowable clearing limit to 70% on Lot 25; and

Whereas, on November 10, 2008, the Town of Brookhaven Building Division issued a Building Permit #VNA08B52965 to Hugh McCarrick, which stated, “Prior to issuance of a Certificate of Occupancy, the applicant must demonstrate compliance with ZBA grant dated May 23, 2008 requirement that applicant must apply to the Pine Barrens Commission for a hardship waiver re: 53% clearing limit. Clearing not to exceed 53%;” and

Whereas, on December 18, 2008, Hugh McCarrick commenced construction of a single-family dwelling on the project site; and

Whereas, on April 14, 2009, Hugh McCarrick submitted a complete CGA Hardship application to the Commission; and

Whereas, Hugh McCarrick’s survey prepared by Wallace T. Bryan dated March 10, 2009 indicates the overall site’s existing amount of natural vegetation (prior to construction) was 12,001 sq. ft. (66%), and the total existing amount cleared was 6,200 sq. ft. (34%); the area to remain natural is listed as 33.9%, and conversely 66.1% would be cleared, which exceeds the 53% clearing standard; Lot 26 is listed as 63.5% cleared; and

Whereas, on May 20, 2009 the Commission held a public hearing on the CGA Hardship application at Brookhaven Town Hall, and a copy of the transcript was made available to the Commission; and

Whereas, testimony and receipt of additional information at the hearing, including a survey prepared by Wallace T. Bryan last dated September 17, 2008, revealed that Hugh McCarrick cleared 70% of Lot 25; and

Whereas, Hugh McCarrick's actions violated the Pine Barrens Protection Act; and

Whereas, because the project site is now the subject of a clearing violation, the Commission cannot act on the Hardship application, thus, an application cannot be processed until the violation is resolved; and

Whereas, the Commission has considered all materials submitted in connection with the application.

Now therefore be it

Resolved, Hugh McCarrick's actions violated NYS ECL Article 57 because he commenced development that did not conform to the provisions of the CLUP. Be it further

Resolved, the Commission terminates its review of the Hugh McCarrick CGA Extraordinary Hardship application due to the pending violation. And be it further

Resolved, the Commission shall determine the penalty to resolve said violation.

Record of Motion

Motion By: J. Turner
Seconded by: T. Isles

Record of Vote
Yea: 5
Nay: 0