

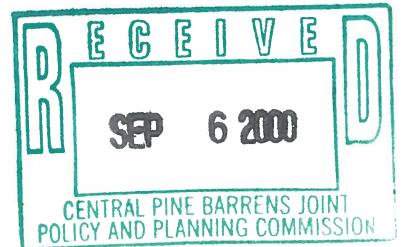
CENTRAL PINE BARRENS

JOINT PLANNING AND POLICY COMMISSION

In the Matter of the Application of

ANDREW AND CAROLYN MALEND

For construction of single-family house :  
on a 2.7 acre lot in an A-2 Residential :  
Zoning District. :



HEARING in the above-captioned matter, held  
on the 23rd day of August, 2000 at 4:00 P.M., at the  
Brookhaven Town Offices, Building 4, 3233 Route 112,  
Medford, New York, pursuant to Notice of Hearing, and  
before Sheila Pariser, R.P.R., a Notary Public of the  
State of New York.

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261 WOODBURY ROAD, HUNTINGTON, N. Y. 11743

## 1 A P P E A R A N C E S:

2 ROBERT J. GAFFNEY, Chairman  
3 Suffolk County Executive  
4 BY: GEORGE PROIOS, Acting Chairman5 FELIX J. GRUCCI, JR., Vice Chairman  
6 Supervisor, Town of Brookhaven  
7 BY: JOHN GIRANDOLA8 VINCENT CANNUSCIO, Member  
9 Supervisor, Town of Southampton  
10 BY: MARTY SHEA11 ROBERT KOZAKIEWICZ, Member  
12 Supervisor, Town of Riverhead  
13 BY: JOEY MAC LELLAN14 RAY E. COWEN, P.E., Member  
15 DEC Regional Director  
16 Representing George Pataki, Governor

17 JUDY JAKOBSEN, Staff to Commission

18 ANDREW MALENDY, Applicant

19  
20  
21  
22  
23  
24  
25 000

1 [THE HEARING WAS CALLED TO ORDER BY THE  
2 ACTING CHAIRMAN, GEORGE PROIOS, AT 4:00  
3 P.M.]

4

5 MR. PROIOS: I would like to call this public  
6 hearing to order. My name is George  
7 Proios. I am Acting Chairman of the  
8 Commission, acting on behalf of Robert J.  
9 Gaffney, who is the Commission Chairman,  
10 and I will let the other members of the  
11 Commission introduce themselves.

12 MR. SHEA: Marty Shea, representing Vincent  
13 Cannuscio of the Town of Southampton.

14 MR. GIRANDOLA: John Girandola, representing  
15 Felix Grucci.

16 MR. MAC LELLAN: Joey MacLellan, representing  
17 Robert Kozakiewicz, Supervisor of  
18 Riverhead.

19 MR. COWEN: Ray Cowen, representing Governor  
20 Pataki.

21 MR. PROIOS: Let me read the Notice for the  
22 record.

23 "Pursuant to the Environmental  
24 Conservation Law, Article 57-0121(10),  
25 notice is hereby given that a public

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1 hearing will be held by the Central Pine  
2 Barrens Joint Planning and Policy  
3 Commission on August 23, 2000 in the matter  
4 of the following application for a Core  
5 Preservation Area Hardship Exemption.

6 "The subject of the hearing is:

7 "Applicant: Andrew and Carolyn  
8 Malenda.

9 "Project Description:

10 Construction of a single-family house on a  
11 2.7 acre lot, in an A-2 Residential Zoning  
12 District.

13 "Project Location: West side of  
14 Halsey Manor Road, north of County Road  
15 111, Manorville, Town of Brookhaven.

16 "Suffolk County Tax Map Number  
17 200-462-4-11."

18 Would a staff member of the  
19 Commission care to make a presentation and  
20 introduce any facts into evidence before we  
21 begin?

22 MS. JAKOBSEN: I have a number of exhibits that  
23 I would like to admit. The first exhibit  
24 will include the list of all the exhibits I  
25 am submitting. That will be the first

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421-2282 502-7282

1 exhibit.

2 The second exhibit will be the  
3 staff report prepared by me with the issue  
4 date of August 23, 2000.

5 The third exhibit is the site  
6 plan provided by the applicant that was  
7 dated February 18, 2000, prepared by  
8 Anthony Lewandowski that states on it:

9 "Survey for Andrew J. Malenda.  
10 Location: Manorville, Town of Brookhaven,  
11 New York."

12 The fourth exhibit is a 1999  
13 aerial photo courtesy of the Suffolk County  
14 Planning Department is where we got the  
15 photo from, with an image thereof created  
16 by David Blackburn, Town of Brookhaven  
17 Planning Division. This was submitted by  
18 the applicant, and the subject parcel is  
19 indicated in light yellow. That will be  
20 the green area, the greener area.

21 The fifth exhibit is the 1999  
22 aerial photo that was produced in a  
23 Geographic Information System Program  
24 entitled "Arc View 3.1." Aerial obtained  
25 by a consortium of agencies, such as

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1 Suffolk County Police, Suffolk County Water  
2 Authority and other government agencies  
3 that were also part of the E-911 project.  
4 The subject parcel is indicated in red.  
5 The boundary lines of the parcel are  
6 approximate.

7 Mr. Malenda is here today.

8 MR. PROIOS: Mr. Malenda, would you like to  
9 make a presentation before the Commission?

10 MR. MALENDRA: Yes. Good afternoon.

11 | MR. PROIOS: Hi.

12 MR. MALENDAS: Would you like me to read the  
13 letter I submitted and put it into the  
14 record?

15 MR. PROIOS: Yes, sir.

16 MR. MALENDAS: "Central Pine Barrens, Joint  
17 Planning & Policy Commission, P.O. Box 587,  
18 3525 Sunrise Highway, 2nd Floor, Great  
19 River, New York, 11739-0587.

20 "Subject: Suffolk County Tax Map  
21 #200-462-4-11.

22 "Dear Gentlemen:

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1 allow me to build a single-family home for  
2 me and my wife in Manorville. As I have  
3 lived in Brookhaven Township all of my  
4 life, we look forward to building this home  
5 and retiring in Manorville.

6 "We purchased this land for  
7 eighty-five thousand dollars in October of  
8 1999. The property is 2.70 acres of land  
9 which has been held in single and separate  
10 ownership since the 1960's. As shown on  
11 the survey, we will only clear a maximum  
12 area of thirty percent of the acreage.  
13 There will not be any subdividing of any  
14 said land. There are homes immediately  
15 adjacent to the land on the north and south  
16 of the property. Also, there are homes  
17 continuing both north and south along the  
18 easterly side of Halsey Manor Road.

19 "As you go north of the parcel  
20 about seven hundred feet on the east side  
21 of Halsey Manor Road homes begin and run  
22 all the way north to the Long Island  
23 Expressway. North of the Long Island  
24 Expressway there is a sixteen home  
25 subdivision on the east side of Halsey

1                   Manor Road. Proceeding south of the  
2                   property there is Donnelly Court with a new  
3                   home at the westerly end of the street, and  
4                   an excavated parcel that appears to be the  
5                   beginning of a new home.

6                   "Just south of Donnelly Court  
7                   there are four new homes, three of which  
8                   have been built within the last eighteen  
9                   months.

10                  "I have received Suffolk County  
11                  Health Department approval and will be able  
12                  to receive Brookhaven Town Planning  
13                  approval after receiving your approval.

14                  "No variances are needed for  
15                  final Building Department approval.

16                  "I have also entered into a  
17                  contract of sale on my existing home in  
18                  Centereach.

19                  "I understand that land to the  
20                  east and west have been acquired by the  
21                  County of Suffolk for the Pine Barrens  
22                  Preservation. I have also been told there  
23                  is pending legislation in Albany to make  
24                  certain parcels on roads such as Halsey  
25                  Manor Road to be exempt from having to come

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421-3225

403-7225

1 before the Pine Barrens Commission.

2 "We truly feel we will not be a  
3 detriment to the Pine Barrens environment.

4 The existing land, if left in its present  
5 state, will not enhance the Core  
6 Preservation area, as there are already  
7 thousands of acres that have been and are  
8 presently being acquired. I truly feel  
9 that the building of our home here will not  
10 adversely affect surrounding homes and  
11 surrounding land.

12 "We will not place a strain on  
13 the local Fire District or School District  
14 as we are grandparents and do not expect to  
15 increase the school population. We will  
16 only increase the tax base for this  
17 District, which is in need of additional  
18 revenue.

19 "We truly feel the waiver will  
20 not be inconsistent with the purposes,  
21 objectives or the general spirit and intent  
22 of this article.

23 "The waiver is the minimum relief  
24 necessary to relieve this extraordinary  
25 hardship.

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421-2225

400-7225

16 I made application to the  
17 Planning Department. If the parcel wasn't  
18 two acres or more, this would have been  
19 approved. It came up under the tree  
20 clearing permit process. No one ever said  
21 that I was not allowed to build here.

22 Since I sold my home, I don't  
23 know where to turn.

24 MR. PROIOS: You bought it in 1999?

25 MR. MALENDAS: That's correct.

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1 MR. PROIOS: At that time, the word "Pine  
2 Barrens" never came up in discussion?

3 MR. MALENDRA: Pine Barrens came up, but no one  
4 ever said it was in an area where you  
5 couldn't build. I made application to the  
6 Health Department, got approvals  
7 immediately. Went to the Building  
8 Department of Brookhaven Town. They said  
9 as long as the property is in single and  
10 separate ownership, they said, "Yes, we can  
11 grant a building permit."

12 I made application to the  
13 Planning Department here, Building  
14 Department here. They came back and said I  
15 need a tree clearing permit now. The  
16 inspection and everything went forth, and  
17 they said it was okay. They said there is  
18 nothing in the area that is harmful  
19 vegetationwise, animals, anything. They  
20 signed off.

21 I was waiting for an approval,  
22 and then I got a letter from Mr. Dolan  
23 saying it was in a nongrowth area.

24 MR. PROIOS: Did you own the property when you  
25 made the application to the Health

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1 Brookhaven. It came to my desk as being in  
2 the Core, and that's where it stops, but he  
3 went through basically -- and that's what's  
4 scary -- he went through the Town, and even  
5 the Town and we didn't address that issue;  
6 and if it wasn't for the tree clearing  
7 permit, he would have had the permit for  
8 it.

9 MR. MALENDAL: If the parcel was two acres or  
10 less, I would have the permit for it.

11 MS. PLUNKETT: Is this part of the individual  
12 parcel, or is this a part of the previously  
13 approved?

14 MR. GIRANDOLA: It is described.

15 MR. MALENDAL: It was never part of the  
16 subdivision. When I did the chain of title  
17 on it, it was only back to the 1950's.

18 MR. GIRANDOLA: On the map to the south, Donnelly  
19 Court, that predates the pine barrens.  
20 That's been there forever.

21 MR. SHEA: Is this parcel proposed for  
22 improvement in the road construction?

23 MR. GIRANDOLA: Yes. I had stated before and I  
24 will tell you again for the record, upon my  
25 letter to him, he came in and spoke with me

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1 and I, basically, told him he has to go to  
2 the Commission, and I did make it known  
3 that he is on the proposed road frontage  
4 exemption.

5 MR. SHEA: He is on the east on the road,  
6 and it is on the road frontage exemption  
7 list because it is in the existing Core  
8 development area?

9 MR. GIRANDOLA: Area of development.

10 MR. COWEN: It is not on the current list.  
11 It is on the proposed list.

12 MR. SHEA: Right.

13 MR. MALENDRA: My house is in contract. The  
14 people are moving here from Chicago, and it  
15 is really a bind. I could be sued for  
16 specific performance on my deal. There was  
17 no notification from anyone until I got to  
18 Mr. Girandola.

19 MR. PROIOS: Did you also have a title search  
20 done on the property?

21 MR. MALENDRA: Absolutely. Everything was done.  
22 Nothing showed up. In the meantime, where  
23 do I live? It's not that I am here --  
24 listen, I was born and raised in this Town.  
25 I do business in the Town.

1 I am not looking to inhibit his  
2 area and destroy it in any way, but there  
3 is no formal way of being notified.

4 MR. PROIOS: Well, we notified all of the  
5 property owners. Now, the problem is that  
6 property owner who knew about it did not  
7 divulge it to you when he sold it. At that  
8 point, you should have had protection by  
9 either having an attorney who was  
10 knowledgeable and having a title company.

11 MR. MALENDRA: The title company didn't say  
12 anything about Central Core Preservation  
13 Area.

14 MR. PROIOS: We have had presentations before  
15 title company people themselves that we  
16 have held out in Riverhead and invited them  
17 all to come and explain to them the law.  
18 Every so often, though, something slips  
19 through the cracks.

20 MR. GIRANDOLA: Continuing on what's an issue as  
21 far as a conservation easement area, would  
22 you covenant clearing restrictions on this  
23 property?

24 MR. MALENDAS: Absolutely. Absolutely.

25 MR. GIRANDOLA: You said thirty percent.

1 MR. MALENDAS: That's what's required. Fine. I  
2 showed it on the survey.

3 MR. MAC LELLAN: What makes it a proposed list and  
4 an adopted list?

5 MR. COWEN: We are waiting for an act of the  
6 State Legislature.

7 MR. MAC LELLAN: That's all we are waiting for?

8 MR. GIRANDOLA: My list has been floundering here  
9 for quite a while. We are waiting to get  
10 it up to the Legislature. Everybody has  
11 been sitting here.

12 MR. PROIOS: All two other Towns. That list  
13 will be going up again one way or the  
14 other, but that doesn't help us right now.

15 MR. MAC LELLAN: Maybe if they go into session in  
16 November or something, maybe we can do that  
17 then.

18 MR. GIRANDOLA: Do we anticipate that list will  
19 be adopted by the Legislature?

20 MR. PROIOS: Yes.

21 MR. COWEN: Yes. Unfortunately, in the  
22 meantime, there is a tenet of this law that  
23 says a hardship cannot be self-created, and  
24 by purchasing the property after the date  
25 of the act, you have self-created your

7 MR. MALENDAS: I didn't self-create this. There  
8 was no notification through anybody. Do  
9 you want to walk through where I went and  
10 see if you can find a notification?

11 MR. COWEN: That's your opinion. You could  
12 start with the attorney who should have  
13 advised you of the restrictions on this  
14 lot.

15 MR. MALEND A: How is he supposed to know that?

16 MR. COWEN: You have to live in a cave in  
17 Suffolk County to not know about this Act,  
18 but that doesn't matter. It is irrelevant.

19 MR. MALENDAS: When you walk into municipalities  
20 and you are going for applications to build  
21 something or to do something, there is  
22 nothing saying where is this, where it  
23 delineates and where it doesn't. How are  
24 people supposed to know this?

25 MR. COWEN: I don't know what happened. I

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1                   don't know what happened. I don't know how  
2                   many people dropped the ball or why they  
3                   dropped the ball. I can't help that, but  
4                   the fact is you purchased the property  
5                   after the Act was enacted and signed. That  
6                   makes it self-created. We are restrained  
7                   from approving the hardship, quite frankly.

8 MR. MALENDAS: Are you telling me it is not  
9 going to be approved and now I have all  
10 these other situations?

11 Who do I turn around and look to,  
12 to damages?

13 MR. COWEN: We will probably take a vote in a  
14 few minutes.

15 MR. MALENDAS: I am not here to argue, but my  
16 back is against the wall here. I am  
17 looking for help, not that I wanted to  
18 create the problem.

19 MR. GIRANDOLA: If you remember at the last  
20 meeting, this issue came up again and I  
21 asked at that time, once and for all I  
22 wanted a legal interpretation, and he is  
23 not here. I don't think the vote should go  
24 at this time, that is my opinion, until we  
25 get a strict interpretation.

1 MR. SHEA: I agree with that. I think we  
2 need a legal interpretation.

3 MR. COWEN: It doesn't matter to me. We have  
4 been down this road before. It is not as  
5 if we don't know what it has to be.

6 MR. GIRANDOLA: I questioned this before, and I  
7 really want a strict legal interpretation  
8 of whatever it is read into the record, and  
9 if need be, we may contest it. Maybe the  
10 Towns don't have the same opinion.

11 MR. COWEN: Well, John, the point is the  
12 gentleman is in a hard situation right now,  
13 and I don't know that delaying this answer  
14 for three weeks is going to be to his  
15 benefit because, quite frankly, I know what  
16 Jim does. He doesn't have any other way to  
17 advise you but that the property has gone  
18 as high as the Supreme Court.

19 MR. GIRANDOLA: I'm sorry, I want an  
20 interpretation based upon this legislation,  
21 not some other legislation that was  
22 forwarded up to the Supreme Court.

23 MR. COWEN: I am trying to help this guy out  
24 by giving him an answer as soon as  
25 possible. I don't think it is to his

1 advantage to put this off for another three  
2 weeks.

3 MR. GIRANDOLA: You are saying even if Jim came  
4 back with a different interpretation, you  
5 will vote the same way?

6 MR. COWEN: He can't come back with a  
7 different interpretation.

8 MR. GIRANDOLA: You are saying that.

9 MR. PROIOS: I would like to know if any  
10 members of the Commission would like to  
11 address the Commission on this issue.

12 MR. OLSON: You all know me. My name is  
13 Walter Olson, Civic Property Rights  
14 Association.

15 I sympathize and totally  
16 understand Mr. Cowen's position on this,  
17 and he has been very clear about this  
18 position for many years. I know this, and  
19 you all know this because we have all been  
20 in this room.

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1                   What you are saying is very true. In most  
2                   cases, people will create their own  
3                   hardship if they buy property after the Act  
4                   was in place and they didn't find out ahead  
5                   of time that there were these constraints  
6                   on it; but in this particular case, the  
7                   parcel is already on a list that everyone  
8                   in this room realizes is going to be  
9                   approved, and I see no benefit whatsoever  
10                   to the cause, the environmental cause or  
11                   any other cause to put this gentleman  
12                   through the type of hardship that you will  
13                   put him through by making him wait the  
14                   length of time, to wait until the time when  
15                   that list is going to be approved, when we  
16                   all know it is going to be approved.

17                   How many people are you going to  
18                   have come before you in this situation with  
19                   the parcel they have already bought? I  
20                   would venture to say it will never happen  
21                   again. I don't think you have to worry,  
22                   therefore, about setting a precedent.

23                   I also thoroughly understand what  
24                   the gentleman is saying about this lack of  
25                   notification, and it is true. You

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1 suggested his attorney should have advised  
2 him of this, and I would concur with that.  
3 I find it a little amazing that any good  
4 attorney wouldn't be aware and wouldn't see  
5 if this parcel was in the Core before he  
6 went ahead with the closing, but obviously  
7 this attorney did. It wasn't this  
8 gentleman's fault, therefore, but he is  
9 being caught between a rock and a hard  
10 place, and you are his only solution, and I  
11 don't see what you gain by putting him  
12 through any further hardship. I really  
13 don't.

14 I understand your point, that you  
15 don't want these people to come to you and  
16 deliberately buy a piece and then claim  
17 ignorance and say "I didn't know it was in  
18 the Core." I can understand your position  
19 in that matter. I don't think that is the  
20 position here.

21 I don't think being hard-nosed  
22 about anything buys you anything. I  
23 strongly urge you to take a vote today and  
24 let the man go ahead. You know he is going  
25 to go ahead six months from now. What do

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1 you have to lose?

2 That's all I have to say.

3 MR. MALENDAL: Thank you. Can I make a comment  
4 about the attorney?

5 MR. PROIOS: Yes.

6 MR. MALENDAL: The attorney is a personal friend  
7 of mine. We went through high school  
8 together. He practiced law upstate New  
9 York. He just moved back to Long Island  
10 last August. He represented me on this  
11 piece of property. His name is Charles  
12 White. He is from Port Jefferson. Maybe  
13 he was not aware of the situation. He  
14 practiced in the Binghamton area.

15 MR. PROIOS: Any other members of the public  
16 wish to address the Commission? [NO  
17 RESPONSE]

18 If not, I will bring the hearing  
19 to a close.

20 [WHEREUPON THIS HEARING WAS CONCLUDED AT  
21 4:20 P.M.]

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## CERTIFICATION

9 I, SHEILA PARISER, R.P.R., a Notary Public in  
10 and for the State of New York, do hereby certify:

12 THAT this is a true and accurate record of  
13 the Hearing held before the Central Pine Barrens  
14 Joint Planning and Policy Commission, in the matter  
15 of ANDREW & CAROLYN MALENDRA, held on August 23, 2000,  
16 as reported by me and transcribed under my direction.

18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand this 30th day of August, 2000.

Sheila Pariser  
SHEILA PARISER, R.P.R.