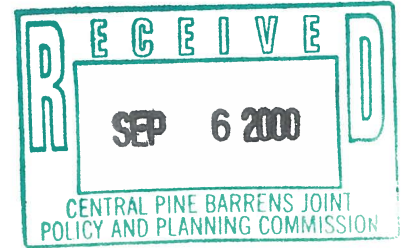


JOINT PLANNING AND POLICY COMMISSION

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



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

ROBERT J. GAFFNEY, Chairman
Suffolk County Executive
BY: GEORGE PROIOS, Acting Chairman

FELIX J. GRUCCI, JR., Vice Chairman
Supervisor, Town of Brookhaven
BY: JOHN GIRANDOLA

VINCENT CANNUSCIO, Member
Supervisor, Town of Southampton
BY: MARTY SHEA

ROBERT KOZAKIEWICZ, Member
Supervisor, Town of Riverhead
BY: JOEY MAC LELLAN

RAY E. COWEN, P.E., Member
DEC Regional Director
Representing George Pataki, Governor

JUDY JAKOBSEN, Staff to Commission

ANDREW MALENDIA, Applicant

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421 2255

502 7383

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:

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

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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. MALEND: Yes. Good afternoon.

11 MR. PROIOS: Hi.

12 MR. MALEND: 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. MALEND: "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:

23 "As per the direction of Ms. Judy
24 Jakobsen, I am hereby applying for a Core
25 area hardship permit. This permit will

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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

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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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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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1 "We would deeply appreciate being
2 placed on the calendar for a hearing as
3 soon as possible because as stated above,
4 our home is in contract.

5 "We thank you for this
6 opportunity to come before you and kindly
7 ask for you approval to build our
8 retirement home.

9 "Thank you, Andrew and Carolyn
10 Malenda."

11 In going for a permit, we went to
12 the Health Department and it was granted.
13 We went to the Town Building Department.
14 They said as long as it is in single and
15 separate, it would be fine.

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. MALEND: 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. MALEND: 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 Department?

2 MR. MALEND: Yes, I bought the property.

3 MR. PROIOS: Was it contingent upon having
4 approvals?

5 MR. MALEND: No, because of the information I
6 had obtained.

7 MR. PROIOS: Any questions?

8 MR. COWEN: Were you represented by an
9 attorney at the closing when you purchased
10 this property?

11 MR. MALEND: Yes, sir.

12 MR. SHEA: Are you proposing to put any
13 portion of the property in a conservation
14 easement?

15 You say the property is affected
16 by tree cutting limitations.

17 MR. MALEND: Right, it is. Only thirty
18 percent would be cleared is what I have
19 here. I also stipulated after, when the
20 Planning Board looked at it, that I would
21 leave trees along the front of the road,
22 also, if need be.

23 MR. PROIOS: Anyone else?

24 MR. GIRANDOLA: This goes for the entire project
25 as far as Suffolk County, even the Town of

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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. MALEND: 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. MALEND: 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. MALENDIA: 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. MALENDIA: 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.

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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. MALEND: 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. MALEND: Absolutely. Absolutely.

25 MR. GIRANDOLA: You said thirty percent.

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1 MR. MALEND: 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

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1 hardship and, as a matter of fact, we have
2 ruled -- I don't know how many so far --
3 but quite a few applications in the same
4 circumstance, and we had denied the
5 hardship, quite frankly, because it was
6 self-created.

7 MR. MALEND: I didn't self-create this. There
8 was no notification through anybody. Do
9 you want to walk through were 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: 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. MALEND: 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. MALENDIA: 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. MALENDIA: 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.

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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

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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.

21 Unfortunately, this gentleman
22 didn't know this, and I don't think it will
23 hurt your case one bit by making an
24 exception in this particular case, on this
25 particular issue, because it is unique.

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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. MALENDIA: Thank you. Can I make a comment
4 about the attorney?

5 MR. PROIOS: Yes.

6 MR. MALENDIA: 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.]

22 o0o

23

24

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CERTIFICATION

STATE OF NEW YORK)
)
COUNTY OF SUFFOLK)

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

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

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



SHEILA PARISER, R.P.R.

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