



Central Pine Barrens Joint Planning and Policy Commission  
September 21, 2022

Adopted Decision to Deny  
Tommasino Compatible Growth Area Hardship Waiver Application  
88 Woodland Avenue, Manorville  
Town of Brookhaven, SCTM # 200-558-2-23.3

Present: Ms. Aguiar (Riverhead Town Supervisor)  
Mr. Freleng (for the Suffolk County Executive)  
Mr. Romaine (Brookhaven Town Supervisor)  
Mr. Schneiderman (Southampton Town Supervisor)

**I. The Project and the Project Site**

Yvette Aguiar  
*Member*

Steven Bellone  
*Member*

Edward P. Romaine  
*Member*

Jay H. Schneiderman  
*Member*

Desiree Tommasino, the Applicant, owns a 2.3 acre property in the Compatible Growth Area of the Central Pine Barrens. The property is located on the west side of Woodland Avenue in Manorville in the Town of Brookhaven. A two-story residence and a 1,300 square foot barn are developed on the property. The property is presently cleared of natural vegetation to a limit of 35%. The Applicant acquired the property in 2021.

On April 5, 2022, Tommasino applied to the Central Pine Barrens Joint Planning and Policy Commission for a Compatible Growth Extraordinary Hardship Exemption. Additional material was submitted on April 12 and June 14. Collectively these materials constitute the Application. The Application is a request to clear an additional 10% (0.24 acre) of the Compatible Growth Area to develop the cleared area with a 120 foot by 80 foot (9,600 square foot) horse arena (the Project).

In 2016, the Brookhaven Town Zoning Board of Appeals approved the Woodland Avenue Land Division. The Project is shown in a hand drawn survey of the site prepared by Kenneth H. Beckman L.S. dated May 5, 2021. The survey refers to natural buffers in the rear yard and a Declaration of Covenants and Restrictions (C&Rs) recorded on the property to limit clearing to a maximum of 35% of the site. After the Project, 45% of the site would be cleared and 55% would remain natural.

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**II. The Long Island Pine Barrens Protection Act of 1993, the Commission, Development and the Central Pine Barrens Comprehensive Land Use Plan**

The Commission was created by the Long Island Pine Barrens Protection Act (the “Act”) adopted in 1993 and codified in Article 57 of the Environmental Conservation Law (ECL). The Act empowered the Commission to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area. The Act defines development to be the

“performance of any building activity, . . . , the making of any material change in the use or intensity of use of any . . . land and the creation . . . of rights of access.”

The Act further provides that, “[s]ubsequent to the adoption of the land use plan, the provisions of any other law, ordinance, rule or regulation to the contrary notwithstanding, no application for development within the Central Pine Barrens area shall be approved by . . . the [C]ommission . . . unless such approval or grant conforms to the provisions of such land use plan; provided, however, that the [C]ommission by majority vote is hereby authorized to waive strict compliance with such plan or with any element or standard contained therein.”

The Project constitutes development including the increase the intensity of use of land and involves the material alteration of grade or vegetation on a parcel of land, as defined by the Act. The Application requires a demonstration of hardship as defined in the Act.

### **III. The Application, the Staff Report, the Public Process, Applicant’s Testimony and the Supplemental Materials**

The Applicant submitted a State Environmental Quality Review Act (SEQRA) Short Environmental Assessment Form, a survey dated May 5, 2021 prepared by Kenneth H. Beckman, L.S. and narrative for a hardship exemption pursuant to the Act. The Applicant’s April 12 submission included a review of the hardship criteria.

The Applicant’s email of June 14 confirmed that the site is presently cleared to the maximum limit of 35% and that the survey was not up to date with the current clearing limit and the existing barn on the property. The Applicant was waiting to have the survey updated.

A public hearing on the Application was held on July 20, 2022. At the hearing a Commission Staff Report was introduced into the record. The Commission received sworn testimony from Mr. and Mrs. Tommasino. The Applicant submitted a hand marked up survey prepared by Kenneth H. Beckman L.S last dated May 18, 2016 showing the location of an existing barn, 36 foot by 36 foot (1,296 square feet), that was recently constructed on the property. The Applicant stated a final official survey will be submitted soon after the hearing.

One comment was made from the public that raised concerns of past precedent for horse arenas in the Central Pine Barrens. A stenographic transcript was made of the hearing and provided to the Commission members.

During the Hearing, the Applicant confirmed their awareness of the C&Rs when they purchased the property.

The Applicant desires to clear “a little more” than the C&Rs allow although they understand the purpose and need for the covenants, as stated in response to the Commission’s question to that effect. Applicant explained their line of work which is professional equine therapy and received certification in April 2022 in Equine Assisted Growth and Learning Association (EAGALA). The Applicant desires to practice

EAGALA utilizing the arena with her horses and a partner, an independent contractor, who is an equine therapist. The arena would be used in lieu of working in a third party barn and instead of incurring the financial cost to rent and use an offsite facility. The Applicant plans to create her own business.

The Applicant and a therapist would utilize the facility to practice their skills with a horse(s). The Applicant would not receive direct payment or a fee from the therapist but as a team the Applicant and therapist, an independent contractor, would trailer horse(s) from the project site to an offsite facility for the business of providing equine therapy services to clients.

On August 3, the Applicant supplemental materials were received from the Applicant including a letter and survey last revised July 14, 2022. The letter reiterates the Applicant's request including clearing 10% of the property, utilizing the property as a residence and for continuing education with the "horse's skills to better serve the community." The letter explains the horses were rescued from kill pens. The Applicant plans to trailer horses out of the existing barn on the property, which is depicted in the July 14 survey.

#### **IV. The Parcel and its Immediate Vicinity, the Study Area**

To determine the characteristics in the immediate vicinity of the Applicant's property, the Commission defined a Study Area, which is an area that extends one half mile from the parcel. The Study Area is entirely in the Compatible Growth Area.

The immediate vicinity is characterized by low density developed residential uses in the neighborhood, undeveloped residentially zoned properties, agricultural uses and Sparrow Sand Mine to the east. Woodland Avenue is undeveloped approximately 300 feet south of the project site.

The Project Site has been the subject of subdivisions or land divisions that have resulted in its reconfiguration and the modification, on paper, of lots in the immediate vicinity. The Property, in its current configuration, has been assigned a new tax map number and does not appear in the 1993 tax map or the 2019 tax map.

#### **V. State Environmental Quality Review Act and Other Agency Jurisdictions**

The Project is an Unlisted Action pursuant to the SEQRA regulations. The Commission performed a coordinated review of the project as Lead Agency with the other involved agencies including the Town of Brookhaven.

The Town of Brookhaven, in its response dated May 10, 2022, stated no objection to the Commission acting as Lead Agency.

The New York State Office of Parks Recreation and Historic Preservation, by letter dated June 14, stated:

“Based upon this review, it is the opinion of OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.”

The New York State Department of Environmental Protection (NYSDEC) Division of Fish and Wildlife, New York Natural Heritage Program, by letter dated June 14, stated:

“Within 1.5 miles of the project site is a documented non-winter location of Northern long-eared bat (*Myotis septentrionalis*, state and federally listed as Threatened). Additional locations are within 5 miles. The bats may travel five miles or more from documented locations. The main impact of concern for bats is the removal of potential roost trees. A seasonal tree cutting window might be required for such activities at this location as to not result in the “take” of these endangered/threatened species or their habitat within the meaning of Environmental Conservation Law (ECL) §11-535.”

On July 19, the NYSDEC responded to the SEQRA Lead Agency coordination and repeated information concerning the occurrence of the Northern Long Eared Bat (NLEB) (*Myotis septentrionalis*), within 1.5 miles of the project location and that Tiger Salamanders (*Ambystoma maculatum*), a species listed as “endangered” by New York State have also been documented in this project’s vicinity.

## **VI. Commission Review of the Application and Findings**

Pursuant to the Act, to determine whether an applicant has demonstrated the existence of a hardship, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b and determine whether the Project is consistent with the purposes and provisions of the Act, whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area and consider the criteria in ECL §57-0123(3)(b).

The Applicant did not demonstrate hardship in the application by addressing the hardship criteria including financial evidence, uniqueness and character and self-created hardship. The Applicant spoke directly to seeking to clear 10% of the property to accommodate a horse arena to practice EAGALA after achieving certification in April 2022, after acquiring the property.

The Applicant did not provide the demonstration related to the hardship request that for each and every permitted use under the zoning regulations for the particular district where the property is located that hardship exists.

The Applicant did not provide financial information related to the hardship request as specified under Town Law §267-b2(b)(1) to demonstrate financial losses or gains from the Project. No financial information related to the proposal including the cost to use an offsite facility use or the financial loss if the project is not approved or other financial data related to the Applicant’s profession as it relates to the property and project.

The private residential use and zoning of the property does not permit it to be used commercially. For instance, utilizing the property to host paying clients or using the property to train people who are not residents of the property would constitute business transactions and commercial uses of the Property. The Project is designed to establish a facility for the Applicant to practice their profession. The Applicant has explained that a therapist partner would be present when practice occurs.

The Commission asked the Applicant if the application was disapproved would third party equine services be utilized to achieve the same goal if other arenas in the Town or in the County are available. In her testimony, the Applicant stated presently she works under another facility and after this project is done she would create her own business. She said it “would be a better fit to be able to practice at my house, rather than have to go somewhere else.”

In considering the criteria set forth in Town Law §267-b2(b)(2), the Commission finds the applicant has not provided information that the hardship, as it relates to the Project Site, is unique. The Application lacks the required review of other permitted uses and identifying where a hardship exists. Therefore, the Application does not inform the Commission to identify hardship in this matter.

In considering the second waiver criteria, the Commission finds that the hardship is not unique. Clearing restrictions apply to other properties in the immediate vicinity and in other development projects in the CGA. The development of a subdivision was accommodated in the CGA, clustered and compactly designed to protect the resources of the CGA, as per the Act. Covenants to limit clearing and protect areas that remain are applied to development projects in the CGA to achieve the goals of the Act and to conform with the Comprehensive Land Use Plan. Permitting clearing of natural vegetation in an area that was required to remain natural, as per the covenant, contravenes the goals and objectives of the Act and the Plan and sets a precedent for other similar types of applications where an individual property owner proposes to exceed their clearing allowance. Additionally, the Applicant purchased the property knowing a covenant was recorded that restricted clearing on the property. The Applicant proceeded at risk to purchase the property, advance their certification with a business plan and proceeded to request to clear in excess of the covenant’s limitations.

In considering the criteria set forth in Town Law §267-b2(b)(3), that the requested use variance, if granted, will not alter the essential character of the neighborhood, the Project Site is in a recent subdivision that was subject to a recorded covenant requiring 65% of the property to remain natural. Development that occurs on privately owned undeveloped land in the Study Area must conform with the Comprehensive Land Use Plan, which accommodates development in a compact, efficient and orderly pattern while protecting the pine barrens resources including water and ecology.

The Commission asked the Applicant in the Hearing if there is any assurance that could be submitted that clients will not be serviced in the arena on the project site. The Applicant, in their testimony, stated she is “pretty respectful of my neighbors. I know everyone that lives over there. I know the neighbor next to me, I went to high school with, and the neighbor next to us is a retired plumber and he’ll tell you we get along, we never have any

issues. So we wouldn't really be looking to bring in clients and wreck their territory or deal with any of the animals that we have in the back, like deer or we don't want to disturb any of that."

The Commission finds that no assurances were provided by the Applicant to avoid disturbance to neighboring properties. The Applicant indicated that she presently practices with a therapist at a third party barn and that their current neighbors are not opposed to the Applicant's work. The Applicant's plan to have her own business in the future and not utilize expensive third party facilities, as she expressed in her testimony, may be contradicted by the purpose of the proposed arena on the property. However, the Applicant explained if the project is approved that practice would occur with a non-paid therapist on the property and services will be performed offsite. When asked about paying the independent contractor, the Applicant stated she does not pay her to practice. On the Commission's question of issuing the independent contractor a 1099 for her service, the Applicant stated she would look into it.

The Applicant contends that training will occur with an independent contractor in the arena, and they will take their services offsite. Exceeding covenant's clearing restrictions to protect vegetation and habitat on the property for a business related use is not in keeping with the land use Plan goals in the Compatible Growth Area, as per Section 57-0121 of the Act, which include to "preserve and maintain the essential character of the existing Pine Barrens."

Pursuant to Town Law §267-b2(b)(4), the Commission finds that the hardship is self-created. The Applicant, as per their testimony, purchased the property in 2021 and closed in May 2022, and in the hearing testimony the applicant stated they were aware of the restrictive clearing covenant. The Applicant's EAGALA certification was completed in April 2022, after purchasing the property. The Applicant responded to the Commission's question on uniqueness of the property that there is nothing unique and regarding clearing, the Applicant seeks "a small percentage more."

The Commission hereby determines that the Application does not meet the criteria to satisfy the requirements for a CGA Hardship pursuant to the Act. The alleged hardship is self-created because the applicant stated on the record during the public hearing that they were aware of the presence of the C&Rs when the property was acquired. The property has the use of a residence and a barn . No unique quality, features or circumstances were demonstrated by the Applicant to support the Project.

The Project contravenes the goals and objectives of the Act and the Plan that establishes the clearing limit threshold in the CGA for the purpose of maintaining the character of the compatible growth area. Granting a waiver would be contrary to the Act and the Plan and would be precedent setting in nature since other property owners in the vicinity, constrained by similar or the same C&Rs limiting clearing of natural vegetation, may seek hardships for their individual benefit.

This activity would cause permanent adverse impacts on the resources of the CGA in terms of achieving the goals and objectives of the CGA, as stated in the Act, to protect the pine barrens environment, quality of surface and groundwaters and discourage piecemeal and

scattered development...while protecting the pine barrens environment from the individual and cumulative impacts of development. The Applicant benefits from the subdivision in the CGA that was accommodated to support compact, efficient and orderly development.

The Project conflicts with the purpose of protecting natural vegetation cover to protect ecological and water resources in the Central Pine Barrens.

## **VII. Conclusion**

The Commission finds that the Applicant has failed to establish a hardship exists under the Act's criteria and therefore denies the requested hardship exemption.

The Commission finds the denial of the hardship waiver application will not have a significant adverse environmental impact and hereby authorizes the issuance of a Negative Declaration pursuant to the SEQRA regulations.

Motion by: Mr. Romaine

Second by: Ms. Aguiar

Ayes: 4

Nays: 0

Abstentions: 0