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2
3 CENTRAL PINE BARRENS
4 JOINT PLANNING and POLICY COMMISSION

5 In the Matter of the
6 Public Hearing on the
7 COMPATIBLE GROWTH AREA APPLICATIONS
8 of
9 Theresa A. Cox
10 and
11 Bagatelle Nursery

12
13
14
15 200 Howell Avenue
16 Riverhead, New York 11901

17
18 April 26, 1995
19 5:40 p.m.
20 -

21 PUBLIC HEARING
22
23
24
25

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

GEORGE PROIOS

Chairman

County of Suffolk

RAY COWEN

State of New York

Representing the Governor's Office

BARBARA WIPLUSH

Town of Brooklyn

BRENDA FILMANSKI

Town of Riverhead

Alternate for Deputy Town Supervisor

DORIS ROTH

General Counsel for the Commission

MARTIN SHEY

Town of Southampton

Alternate for Active Deputy Supervisor

JOHN GIRANDOLA

Town of Brookhaven

Planning Division

A L S O P R E S E N T:

ROY DRAGOTTA

Bureau Chief-Municipal Law Bureau

BILL SPITZ

DEC

DONNA PLUNKETT

Staff to Commission

* * * *

1
2 MR. PROIOS: I'd like to call
3 the meeting of the Central Pine Barrens
4 Joint Planning and Policy Commission to
5 order. We have two items on the agenda.
6 I will take them one at a time.

7 The first one is a holdover from
8 our April 19th hearing and I am going to
9 reopen the hearing on the matter at that
10 time which was before us which was
11 Theresa A. Cox.

12 I'm sorry, I should introduce
13 myself, as well. I am George Proios,
14 acting Chairman representing the County
15 Executive, Robert Gaffney, who is the
16 Chairman of the Commission.

17 I will let the members from my
18 right introduce themselves.

19 MR. DRAGOTTA: I am Roy
20 Dragotta, Suffolk County Attorney's
21 office.

22 MS. WIPLUSH: I am Barbara
23 Wiplush, Assistant Town Attorney, Town
24 of Brookhaven.

25 MR. GIRANDOLA: John Girandola,

Planning Division, Town of Brookhaven.

MR. PROIOS: To my left.

MR. COWEN: Ray Cowen,
representing Governor Pataki.

MS. FILMANSKI: I am Brenda
Filmanski, representing Deputy Riverhead
Town Supervisor James R. Stark.

MS. ROTH: I am Doris Roth of
McMillan, Rather, Bennett & Rigano,
General Counsel to the Commission.

MR. SHEY: I am Marty Shey,
representing Deputy Supervisor Richard
Lowes, Town of Southampton.

MR. PROIOS: And we have the
applicant.

MR. SANDERMAN: Philip H.
Sanderman for the application, Charles
Green. My address 1770 Motor Parkway,
Hauppauge, New York 11788.

Sitting next to me is Sal
Malguanera, who is our appraiser, who
will also testify during the hearing.

I will try to keep this brief in
view of this anticlimactic of what

1
2 occurred this afternoon. Just by way of
3 background, my client's daughter and
4 son-in-law, that is the Coxes, purchased
5 this property some time around 1986. It
6 is two lots and it was one acre zoned at
7 the time. Their intent was to build a
8 house on one and then the parents would,
9 ultimately, build a house on the other
10 lot.

11 The Town upzoned it while they
12 were doing their engineering and going
13 through their permits to two acre. And,
14 actually, before it even applied it went
15 up to two acre. So, they applied to the
16 Board of Appeals as a two lot split. In
17 1990 it was approved.

18 It is the two lots, there were
19 separate tax map numbers and separate
20 deeds. At that time they applied to
21 Citibank or Citicorp for a mortgage and
22 their parents gave a second mortgage so
23 that they can begin construction.

24 They started constructing a house
25 which was framed out and almost

1
2 complete. I don't know to the extent.
3 Mr. Malguanera can testify to that.

4 Unfortunately, the daughter and
5 son-in-law became involved in a
6 matrimonial and subsequently divorced.
7 And in order to save the property from
8 foreclosure, Citicorp was foreclosing,
9 the parents had to buy out the Citicorp
10 mortgage and then take the property
11 back.

12 All-in-all, they lost their three
13 year approval from the Board of Appeals.
14 It expired and they were stuck with the
15 two lots with a seventy or eighty
16 percent complete house on one lot and no
17 improvements on the other.

18 They are located on Star
19 Boulevard in Calverton, which I will
20 have testimony on to the extent of the
21 development. I think most of you are
22 probably familiar with it. It is an
23 improved road, essentially, developed in
24 one acre lots similar to size and shape
25 of these lots.

1
2 We did go in in '94, January of
3 '94. The Board of Appeals reviewed the
4 variance and, again, adopted a negative
5 declaration on renewal and that
6 precipitated our coming before you
7 today.

8 The lots are each 43,560 square
9 feet, containing approximately 111 feet
10 of frontage by 392 feet in depth.

11 At this point there is no purpose
12 in any continuing other than this
13 description, but Mr. Malguanera handled
14 the original Board of Appeals
15 application, testified as to economic
16 hardship and practical difficulty and
17 handled the renewal in January '94. He
18 is a qualified real estate appraiser.

19 MS. FILMANSKI: When did the
20 three year split expire?

21 MR. SANDERMAN: Under the
22 Brookhaven Town Code the Board of
23 Appeals split is good for three years.

24 I can give you an exact date and
25 a copy of the original approval. I

1
2 think this may be it. August 1, 1990.
3 So, it would have run out August 1, 1993
4 and that is an extra copy of the
5 original approval.

6 But, it was a rather unique
7 situation involving the matrimonial and
8 we are stuck now with this one house on
9 two lots.

10 Mr. Malguanera is a licensed real
11 estate broker and a real estate
12 appraiser and has many years experience
13 testifying before the Board of Appeals
14 and with your permission, I would like
15 him to testify very briefly as to the
16 cost of property and economic hardship.

17 MR. MALGUANERA: The property I
18 originally handled the variance in 1990
19 and I handled it again November 17,
20 1993; cases 21 and 22. It was subse-
21 quently reapproved by the Zoning Board.

22 The area, the character of the
23 area, there is approximately eighty-
24 seven percent conformity. These are two
25 parts of a tax map that I'd like to hand

1
2 in to someone here (Handing), showing
3 the development of lots.

4 Most of them developed into one
5 acre lots. The Greens, who is the Cox'
6 father, had to repurchase the property
7 at foreclosure sale, legal fees, have
8 approximately 125,000 into the property.

9 I've taken some pictures tonight
10 to submit to the Board. This is a
11 picture of the existing dwelling which
12 is not finished on the interior. It is
13 basically in a shell form. This is a
14 picture of the lot adjoining the
15 property. The house as it sits right
16 now.

17 The total cost into this property
18 they have 125,000. Based on the current
19 market conditions it would be hard
20 pressed to even get his money back on
21 this property.

22 The house in the condition that
23 it's at right now would have a market
24 value of approximately 60,000 in the
25 unfinished stated because it is

1
2 basically in an unfinished form. The
3 lot would have a market value of 45,000
4 bringing a total value of the property
5 to 105,000 should the variance be
6 granted. If the variance is not
7 granted, the lot in question, the house,
8 would only have a market value of
9 approximately 70,000. Taking the 70,000
10 away from the 125,00 that they have
11 expended into the property, they would
12 have a severe economic hardship of
13 55,000.

14 We feel that granting the
15 variance would not affect any of the
16 surrounding properties or impair any of
17 their values.

18 If the Board has any further
19 questions that I have stated, I will try
20 to answer them for you.

21 MR. PROIOS: Any questions?

22 MR. SANDERMAN: If there are no
23 questions, Chuck Voorhes is here to
24 testify as far as the --

25 MS. WIPLUSH: This is on an

1
2 existing road; isn't it?

3 MR. SANDERMAN: Yes, this is an
4 existing road.

5 MS. PLUNKETT: I would like to
6 remind the Commission that this parcel
7 is present on the list in the plan for a
8 core hardship exemption.

9 MS. FILMANSKI: As one parcel?

10 MS. PLUNKETT: No. We
11 recognized when we were doing an
12 analysis that the one parcel was already
13 developed and we read that this one acre
14 parcel was still vacant.

15 On the tax maps it shows up as a
16 separate parcel so we never knew it was
17 annexed to the other parcel. So, it
18 would be exempt under our proposed plan.

19 Just so the Commission under-
20 stands that.

21 MS. FILMANSKI: They merged as a
22 result of law?

23 MS. PLUNKETT: Well, because of
24 the ZBA expiration. So, I guess, the
25 question is whether single and separate

1
2 is relevant here or whether the
3 Commission wants to just recognize this
4 as a separate lot already.

5 I mean, it shows up as a separate
6 tax map lot on all the maps that we
7 have. So, we would have never known
8 from our analysis, as you well know, we
9 did not do that analysis for all
10 parcels.

11 MR. COWEN: But in the plan,
12 Donna, it does show up as a separate
13 lot.

14 MS. PLUNKETT: Yes, it has its
15 own tax map number.

16 MR. COWEN: So, there are two
17 lots there, basically.

18 MS. PLUNKETT: There is two
19 numbers, yes.

20 MS. WIPLUSH: So, it is listed
21 for an exemption.

22 MS. PLUNKETT: Yes, I told the
23 applicants if they wanted to proceed
24 with their application and testify
25 anyway in the event that the plan, you

1
2 know, something happens and that doesn't
3 go through so they chose to take this
4 option.

5 MR. COWEN: Let me ask Mr.
6 Sanderman a question. What is it
7 exactly you are applying for at this
8 point?

9 MR. SANDERMAN: Well, we reviewed
10 the variance which was to build on the
11 two parcels and that is what we are
12 trying to do.

13 We are asking for a hardship. We
14 are not entitled to any exemptions under
15 the act. If we take the position that
16 the lots are single and separate from
17 the Pine Barrens Acts standpoint, we
18 don't conform to the lot area. And in
19 the core area single and separate lots,
20 I believe, are not exempt unless they
21 conform to lot area.

22 We don't conform under the
23 exception for prior approvals because,
24 again, it does not conform to lot area.
25 So, we are here now for a hardship

1
2 variance.

3 MS. FILMANSKI: Would you be
4 building on the vacant parcels?

5 MR. SANDERMAN: Yes, we would be
6 completing the house which, I believe,
7 the parents intend to occupy on the main
8 parcel. And then, I believe, their
9 intent is to hold the other parcel for
10 the daughter in case she ever remarries.

11 MS. FILMANSKI: So, there is no
12 immediate plan to build on that parcel.

13 MR. SANDERMAN: Well, they could.
14 I mean, I can't commit myself to that.
15 They might sell it off or something.

16 We do have the approval --

17 MS. FILMANSKI: So, you want to
18 exempt parcel number two --

19 MR. COWEN: Well, this is what I
20 am getting at. We had this circumstance
21 come before the Commission before.
22 Technically, there cannot be an appli-
23 cation per se unless there is an actual
24 building proposed for that lot. That is
25 what I am trying to say.

1
2 You don't come to the Commission
3 to ask to subdivide the property. That
4 is not a project, per se.

5 MR. SANDERMAN: That was our
6 application that we have an approval
7 with the Town for a Board of Appeals
8 land division for a proposed dwelling on
9 parcel two and for an existing partially
10 completed dwelling on parcel one.

11 MR. COWEN: Right.

12 MR. SANDERMAN: That is what we
13 are coming to you for.

14 MR. COWEN: Okay. But, we don't
15 define that as development I don't
16 believe.

17 MS. ROTH: Land division is
18 not --

19 MR. PROIOS: How about a ZBA
20 variance.

21 MR. SANDERMAN: We cannot
22 process a building permit until the ZBA
23 variance becomes final. There is a
24 Board of Appeals lot area variance.

25 MR. COWEN: So you can get that.

1
2 Is there any reason you cannot get that
3 before you come to the Commission?

4 MS. PLUNKETT: No, he has the
5 land division approval.

6 MR. SANDERMAN: Right.

7 MS. PLUNKETT: He needs to
8 proceed in order to get the building
9 permit.

10 MR. SANDERMAN: I think we have
11 a semantics problem.

12 When we go before the Board of
13 Appeals in Brookhaven for a split
14 involving lot area, we call it a Board
15 of Appeals land division. But, it is
16 really lot area variances and that was
17 to construct a single family house.

18 MR. MALGUANERA: Also, the Board
19 of Appeals decision did mention New York
20 State Central Pine Barren Joint Policy
21 and Planning Commission made the
22 approval subject to, so, there is some
23 determination that came from this Board.

24 MR. COWEN: We are not communi-
25 cating here.

1
2 What I am trying to tell you is
3 that you don't have a project that is
4 called a development pursuant to the
5 State statute until you proceed to build
6 a building on that property.

7 MR. SANDERMAN: That is what we
8 are proposing and that is what the Board
9 of Appeals variance was for.

10 MS. PLUNKETT: It does show a
11 proposed house on the vacant lot. This
12 lot is the lot that has the existing
13 property and this is the proposed
14 (Indicating).

15 That is different than what the
16 other applications were.

17 MR. SANDERMAN: If I may read
18 from the applications to the Board of
19 Appeals and from the grant was for an
20 existing one family dwelling with roof
21 over porch on plot one and proposed
22 family dwelling on plot two requiring
23 lot area variance. Front yard set back
24 variance and side yard variances for
25 both lots.

1
2 So, it is a proposed structure.

3 MR. COWEN: The difference
4 between being proposed and being here
5 with an application for a building, you
6 don't have an application for a
7 building.

8 MR. PROIOS: Are you saying,
9 Ray, that he would only apply here when
10 he goes for his building permit on the
11 lot?

12 MR. COWEN: He can get this
13 building permit.

14 MR. MALGUANERA: No, we can't.

15 MR. COWEN: Why not?

16 MR. MALGUANERA: It is part of
17 the ZBA grant that we must come before
18 the Board and that is why we are here
19 tonight. -

20 MR. COWEN: The ZBA stepped
21 beyond their authority. I can tell you
22 that much because it is not a
23 requirement of the statute to do that.
24 It is not.

25 MS. PLUNKETT: Well, actually,

1
2 right, in looking at the statute again
3 the fact that the land division is the
4 change in the intensity, it is
5 considered development.

6 If you recall the manual and the
7 other property, those were single lots.
8 They were not land divisions. And, if
9 you look at the statute in terms of the
10 intensity of the use, the land division
11 is in and of itself creating the greater
12 intensity in the land use.

13 The other lots, like the Lucas,
14 was like single lots. He didn't -- it
15 was a single lot owner who may be in
16 some time in the future want to build a
17 house.

18 MR. COWEN: Off the record,
19 please.

20 (Whereupon, a discussion was held
21 off the record.)

22 MS. FILMANSKI: Is there a valid
23 building permit on the shell, the
24 building that is a shell?

25 MR. MALGUANERA: Yes, it is.

1
2 MR. SANDERMAN: It is expired;
3 right?

4 MR. MALGUANERA: Yes, I think
5 they are in the process of renewing it.
6 They cannot renew it because it was
7 attached to the grant that we must come
8 before the Pine Barrens Commission.

9 MR. SANDERMAN: It was issued
10 when the house was originally built. It
11 was built with a valid permit.

12 MR. MALGUANERA: We have
13 everything in place.

14 MS. FILMANSKI: On one or two
15 lots?

16 MR. SANDERMAN: The permit only
17 covers lot one for the house because the
18 permit was issued subsequent to the
19 first grant in 1990. -

20 MR. SHEY: At this point in time
21 is there a consent value plan showing
22 the amount of clearing proposed in
23 relation to the construction on the
24 second house, related to the completion
25 of the first house, as well?

1
2 MR. SANDERMAN: I believe that
3 was covered in the approval in the
4 negative debt.

5 MR. VOORHES: There is a
6 limitation of thirty-five percent
7 clearing.

8 MR. SANDERMAN: Which is a
9 condition of the approval.

10 MS. ROTH: Do you have a survey
11 that shows the blueprints for the
12 proposed dwelling?

13 MR. SANDERMAN: We have an
14 individual survey. At this point it
15 doesn't show extensive clearing but it
16 was a condition of the approval.

17 I don't know if you agree with
18 me.

19 MR. COWEN: I will stand-
20 corrected. As a matter of fact, when
21 you do subdivide land or even divide
22 land, it is in the intensity of the use
23 and that is subject to the approval by
24 this Commission. I stand corrected on
25 that point. However, it appears from

1
2 what you are submitting to us that the
3 action in front of us is simply that
4 division of land and the action of the
5 house application is not before the
6 Commission because you don't have enough
7 detail on that up to this point.

8 MR. SANDERMAN: It is for a
9 proposed house. We can't process the
10 application until we have the Board of
11 Appeals becomes final. The Building
12 Department won't take it. I don't know
13 if Planning will take an individual lot
14 survey.

15 MR. VOORHES: At this point we
16 are before you because of the appli-
17 cation of land and the fact that it
18 doesn't conform with the existing Town
19 zoning. -

20 MR. COWEN: Right. You may have
21 to come back with another application
22 when it comes time to actually put a
23 house there.

24 MR. VOORHES: If the law says we
25 have to, if it is not subject to the

thirteen exemptions, we will be back.

MR. COWEN: Unless we get to June 30th and we have a plan and that lot is exempt essentially from the statute, then you don't have to come back.

So, okay, we are clear now.

You are here for a land division. All right.

MR. SANDERMAN: I don't know. I could argue with you over that and say that yes, this is a proposed location and show a proposed footprint. The house would certainly be located in the footprint.

And, that an approval can certainly cover any conceivable house that we are going to build on the site and can put limits and expense on clearing without building plotted on a plan.

MR. GIRANDOLA: They are already there as far as the conditions because I know environmental tax law in addition

1
2 to my comments and if the approval
3 refers back to environmental, there are
4 conditions.

5 MS. PLUNKETT: It is thirty-five
6 clearing and they are supposed to submit
7 a grading plan at the time of appli-
8 cation for the building permit.

9 MR. GIRANDOLA: Right.

10 MS. PLUNKETT: The Commission
11 may want to see this actually plotted on
12 a survey if it is going to be part of
13 the Commission approval.

14 MR. SANDERMAN: We can plot it
15 very easily and get it back to you.
16 Limits of clearing and type of education
17 that is there, but at this point, I'd
18 have to make a separate application.
19 This is a home owner, it is not a
20 builder. He is not speculator.

21 MS. FILMANSKI: But, you don't
22 plan on building in the very near
23 future; is that right?

24 MR. SANDERMAN: I don't think
25 immediately. We do plan on finishing

1
2 this house and we have to renew the
3 building permit on that immediately.

4 MR. MALGUANERA: The intent here
5 is that he has someone looking at the
6 lot. He is trying to recoup some of his
7 money back as I stated to you earlier.
8 He has a potential buyer for the
9 property but we are at a standstill at
10 this point until the Board makes a
11 decision on it.

12 We have everything else in place,
13 Health Department, we have been through
14 the Town of Brookhaven Planning Board,
15 but our hands are handcuffed at this
16 point.

17 We cannot get a building permit
18 issued until something comes out of this
19 Board. -

20 MR. COWEN: Donna, let me ask
21 you a question. Forget about this house
22 that is already on the one lot. If we
23 were here tonight entertaining an
24 application for a house on this lot,
25 would this application be complete at

1
2 this point in time.

3 MS. PLUNKETT: In the core area
4 there are no -- we have --

5 MR. COWEN: We have a check
6 list.

7 MS. PLUNKETT: Right. In terms
8 of the check list that you had approved,
9 basically, yes. Everything that they
10 have submitted for any previous
11 approvals, they have submitted to us.
12 There are no specifics with regard to
13 building plans or anything of that
14 nature.

15 Again, this statute is very
16 unclear with the level of completeness
17 and we basically have to schedule the
18 hearing immediately. That is why we are
19 here.

20 Now, if we need more information
21 prior to making decision I think it is
22 within our power to do that.

23 I mean, we had to schedule a
24 hearing so until this really came up --
25 I would say yes, that it meets

1
2 everything that we have on the check
3 list. I mean, we don't ask for anything
4 very specific.

5 MR. GIRANDOLA: Can I make the
6 Commission aware of something. If you
7 ask for something now as far as meeting
8 clearing or whatever, if you look at the
9 survey, you really just have a block
10 diagram depicting the house. That is
11 why we tie everything into the time of
12 building application is that we really
13 get to see the true picture that there
14 is a house, there is lines. He does the
15 clearing limits on the plan. He also
16 adds amenities such as swimming pools
17 and everything like that, this way we
18 can address the clearing at that point
19 in time. -

20 So, to ask for it at this point
21 in the ZBA, I think you will be fooling
22 yourselves in a way. As long as the
23 conditions are there, the thirty-five
24 percent and whatever --

25 MR. COWEN: You are making my

1
2 point for me, John.

3 MR. SANDERMAN: If you want to
4 look at it again from the building
5 permit, sure.

6 MR. COWEN: All I am trying to
7 get from staff is whether or not this
8 application is adequate to review
9 tonight or to hear testimony on tonight
10 for both activities that are going to
11 take place here. One being the land
12 division, I guess we have enough
13 information for that, certainly. The
14 second being the application is seeking,
15 apparently, approval for a single family
16 residence on that lot.

17 Now, do we have enough in this
18 application for that purpose?

19 MS. PLUNKETT: Well, the point
20 is also that depending on what you would
21 want to analyze because, again, we
22 haven't applied standards in the core
23 area. There are no standards for a
24 core, you know, once you grant a
25 hardship, it doesn't say you have to --

1
2 I might want to see some steep
3 slopes, I might want to see how it was
4 graded or something to make sure that
5 the building of the house is not going
6 to --

7 MR. PROIOS: We only have really
8 two issues. The amount of vegetation to
9 be cleared and the nitrates. You said
10 there is 43,000 square feet. So, we
11 don't have an issue with the septic
12 systems and if we put a restriction that
13 limits the amount of clearing on the
14 property, basically, there is no other
15 issue we can deal with.

16 MR. SANDERMAN: Which is already
17 there from the Board of Appeals.

18 MR. VOORHES: I have the Town
19 requirements. There are six items.

20 One, of maximum lot clearance
21 limits of thirty-five percent for lots
22 one and two, that is both lots.

23 Maximum fertilizer dependents
24 fifteen percent limitations.

25 Grading plan will be submitted at

1
2 time of building permit.

3 A hundred foot buffer along the
4 east side of lots one and two.

5 All disturbed ground surfaces
6 should be seeded and mulched within two
7 weeks of final grading.

8 And items above should be shown
9 on surveys at time of application for
10 building permit.

11 So, before they can build all of
12 these all ready conditioned and approval
13 to take place.

14 MR. COWEN: I am just trying to
15 create a clear record here so we know
16 what it is you're in front of us for.
17 So state it again once for the record
18 why you are here.

19 MR. SANDERMAN: We are here for
20 approval, one, to split the property
21 into two lots, one acre each. Two, we
22 knew the building permits with the
23 residence that is existing so that we
24 may complete that on lot one. And,
25 three, for proposed dwelling on lot two

1
2 and, in both cases, we would be in full
3 conformity with the conditions imposed
4 by the Board of Appeals in their grant
5 which is part of the record. It has
6 been submitted in writing.

7 MR. COWEN: Let me ask Counsel a
8 question. I don't think we have any
9 involvement with the continuation of
10 construction in that existing building,
11 do we?

12 MS. ROTH: I don't think so. I
13 think that is already done.

14 MR. COWEN: That is all interior
15 at this point. I don't think that the
16 Commission has any jurisdiction.

17 MR. SANDERMAN: Except that the
18 Town won't renew the building permit
19 without the Commission's approval on the
20 split. Because, the building --

21 MR. COWEN: The split is
22 different from going in there with a
23 hammer and finishing that house.

24 I mean, we don't have any
25 jurisdiction over that as far as I know.

1
2 MR. SANDERMAN: Right.

3 MS. ROTH: We still have the
4 core criteria.

5 MR. COWEN: Right, but they can
6 finish that house without coming to the
7 Commission.

8 MS. ROTH: The one that they
9 started, yes.

10 MR. COWEN: Right, the existing
11 one.

12 MR. PROIOS: Any questions?

13 MR. SHEY: What is the character
14 of the surrounding property?

15 MR. MALGUANERA: Star Boulevard
16 is an existing route that is developed
17 at this time.

18 MR. VOORHES: There are many tax
19 parcels that are conformed in size to
20 this or smaller.

21 Maybe, if I could just go back,
22 we had submitted a letter report dated
23 March 15 demonstrating a hardship on
24 this application. And, that doesn't
25 include the proof of hardship CI, table

1
2 one, an inventory of lots a thousand
3 feet of parcel and there were eighty-
4 seven percent of the lots within a
5 thousand feet were one acre or less.
6 There is existing development in the
7 area. The majority of lots are
8 established of one acre lots or less.

9 MR. SHEY: Those are developed
10 one acre lots?

11 MR. VOORHES: Yes. And in the
12 March 15 letter report we did go through
13 each hardship area talking about the
14 prior approvals, the depth of the review
15 of the environmental provision limits at
16 time of approvals, the configuration of
17 the lots and how lot nine, tax map lot
18 nine, is vacant. And, on one side of
19 the property configuration is such that
20 logically it can be utilized for a
21 single family dwelling.

22 We presented the inventory of
23 lots within a thousand feet. And, we
24 did an analysis, even though this is not
25 subject to the ZBA standards, just to

1
2 show the spirit and intent in conformity
3 with Article 57, we did apply those
4 standards and found that it was
5 consistent.

6 One area that would involve
7 discussion was taken up with the Town
8 analysis. The slopes are such that
9 there is a small area in excess of
10 fifteen percent. We proposed to show a
11 building undeveloped that would avoid
12 that area (Indicating). That lot would
13 be built without disturbing lots next to
14 it for fifteen percent.

15 MR. COWEN: But, that is not, in
16 fact, what is reflected on the plan.

17 MR. VOORHES: That is correct.
18 It is not reflected on here either.

19 MR. COWEN: So, presumably, the
20 Town would --

21 MR. VOORHES: That would be
22 taken up at the time the building permit
23 applications as part of the ZBA
24 approval.

25 MR. SANDERMAN: That started

1
2 when we submitted the grading plan which
3 was a condition of the approval, that
4 the grades had to be approved by the
5 Town.

6 MS. ROTH: The location of the
7 proposed house will be moved from what
8 is shown on that survey?

9 MR. SANDERMAN: It may be moved.

10 MR. VOORHES: Probably depending
11 on the configuration of the house, how
12 it would be utilized on the lot.

13 MR. SANDERMAN: But, all of that
14 must be done in conjunction with the lot
15 clearance standards and the hundred foot
16 natural buffer required along the rear
17 of the lot.

18 MR. PROIOS: I have no
19 questions. Anything else? -

20 Should we hold the hearing open?

21 MS. PLUNKETT: I would just like
22 to ask the Commission if you feel that
23 the hardship revisions as are necessary
24 in the core area have been met, I think
25 that they are addressing various issues

1
2 here. But, I think we have to be
3 reminded that this is the core area
4 hardship and are those conditions being
5 met accordingly?

6 Maybe you want to address those
7 specific possibilities that are relative
8 in Section 10A, 1, 2 and 3. I mean,
9 that would be my only question.

10 I think we are talking about this
11 property more as it was a compatible
12 growth area application and the core
13 area hardship provisions speak to
14 particular peculiar physical conditions
15 of a property. And, I think, that the
16 condition of the existing property
17 itself, it's not really clear from the
18 survey if part of it is cleared already
19 or is part of it wooded. -

20 Chuck, can you address that?

21 MR. VOORHES: Yes, lot eight is
22 presently occupied by a single family
23 dwelling and we will go back to this map
24 showing it the same way. This is the
25 existing single family dwelling

1
2 (Indicating). It's established in
3 landscaped vegetation. Approximately
4 thirty-five percent of that lot is
5 currently landscaped in Pine Oak Forest
6 vegetation on the balance of this lot.

7 So, the back is wooded. This
8 area is landscaped to those percentages,
9 clearing on lot nine will be limited to
10 sixty-five percent.

11 MS. PLUNKETT: What is there now
12 though? It is more relevant as to what
13 is there now.

14 MR. VOORHES: There was a
15 picture available, also.

16 MR. MALGUANERA: There is a
17 picture floating around.

18 This is the existing dwelling and
19 this is a picture of the -- this is the
20 lot (Indicating). Next to the dwelling,
21 the house is over here.

22 MR. COWEN: Mr. Sanderman, you
23 have the statute in front of you. So,
24 why don't you address those hardship
25 core issues at this time.

1
2 MR. SANDERMAN: The act talks
3 about the subject property does not --
4 that we must show that the subject
5 parcel does not have any beneficial use.
6 That this is used for its present use
7 and then it lists three categories that
8 must be addressed.

9 The purpose of my having Mr.
10 Malguanera testify was to establish the
11 economic part of beneficial use. I
12 don't think we could distinguish,
13 unfortunately, beneficial use is not
14 precisely defined in the act. So, we
15 did show that if the hardship is not
16 granted, there will be an economic loss.
17 There is no question on that.

18 Then we must also show that the
19 inability to have a beneficial use
20 results from the unique circumstances
21 peculiar to the subject property which,
22 one, do not apply to or affect other
23 property in the immediate vicinity.

24 We have had testimony today that
25 this is really unique with these

1
2 parcels; the history of zoning on it,
3 the variances, the prior approvals. It
4 is just not around, the surrounding area
5 has already been predominantly
6 developed. So, this is a very unique
7 situation.

8 Two, relate to or arise out of
9 characteristics of the septic property
10 rather than this personal situation of
11 the applicant. And, again, the
12 characteristics of the parcel are that
13 it is double the size of the surrounding
14 eighty-seven percent of the surrounding
15 parcels and physical characteristics
16 that it is.

17 They are separate tax map numbers
18 and they had been reacquired through a
19 foreclosure proceeding through a
20 distress proceeding.

21 The third criteria is that the
22 circumstances are not the result of any
23 action or inaction by the applicant, or
24 the owner, or his predecessors in title
25 including any transfer of contiguous

1
2 lands which were in common ownership on
3 or after June 1 of 1993.

4 Now, this has been single and
5 separate ownership since prior of June
6 1, 1993. So, the second part does not
7 apply.

8 I don't know what the first part
9 means that they are not the result of
10 any action or inaction by the applicant,
11 owner or predecessors entitled. We
12 certainly tried to build this so the
13 hardship that is resulting is not the
14 result. I mean, the hardship that has
15 resulted was just a gratuitous or
16 ingratuitous set of circumstances. That
17 is really all I could say on that. We
18 put the history on the record.

19 MR. PROIOS: We seem to be
20 beating a dead horse. We already made
21 the decision that this is going to be
22 approved.

23 Personally, I think a letter from
24 the Commission would suffice to handle
25 all of this at this point.

1
2 I don't know why the ZBA really
3 sent it here. If land division really
4 is, we haven't been viewing in such
5 precise terms. I don't see the point
6 why we want to come back here. Because,
7 we are not going to change. There are
8 two basic issues. You can have a
9 cesspool and wherever it goes is not
10 going to make a difference to nitrate
11 buildings in the area. And, you are
12 going to have a maximum of thirty-five
13 percent clearing.

14 So, the rest of it is -- I don't
15 know what it is.

16 MR. SANDERMAN: I would agree.
17 The only purpose going through this is a
18 technical case in the event that this is
19 not approved. But, we conformed the
20 conditions imposed by the Board of
21 Appeals which must be complied with in
22 order to get the building permit, we
23 have more than satisfied the criteria.

24 MR. PROIOS: I think the ZBA has
25 to go back and realize what needs to be

1
2 actually sent to the Commission. That
3 is something we need to take up with the
4 Town.

5 MS. PLUNKETT: If they send it
6 to us and it is not within the law, we
7 will tell the applicant.

8 MR. PROIOS: The first house,
9 for example, anything once the structure
10 is up, they can do what they want. Even
11 though you may need a building permit,
12 it is not going to come before the
13 Commission. So, that shouldn't have
14 been part of the application.

15 MR. SANDERMAN: May I just point
16 out from a practical standpoint repre-
17 senting builders in general, the very
18 last stage is the physical application
19 for the building permit. To wait until
20 then to go before the Pine Barrens
21 Commission for a hardship really puts
22 builders and lot owners in jeopardy
23 because in order to apply for the
24 building permit, you must have fully
25 engineered architectural plans which

1
2 average costs about \$2,000.00 today. It
3 can run much higher. I personally spent
4 about 7,000 in my house and it wasn't a
5 large house.

6 So, to put somebody in that
7 situation, I would suggest that the
8 rules in the future be drafted so that
9 somebody can come to the Board and
10 receive a conceptual approval once
11 they've obtained their Board of Appeals
12 approval or once they have obtained a
13 plan or whatever their final
14 discretionary approval is. And, this is
15 really the final discretionary approval
16 at the Town that is why they are coming
17 before this Board.

18 MR. PROIOS: Well, hopefully,
19 with the adoption of the plan you will
20 have that because you will know
21 beforehand whether you are in compliance
22 or not in compliance of the plan and
23 then you are only appearing before the
24 Commission if there is going to be a
25 variance to the plan so you know that up

front.

So, we are in the interim phase until June 30th.

MS. ROTH: It is only in the ZBA where they complete this requirement if they see a core.

MR. SANDERMAN: I thought you were saying --

MS. ROTH: He is speaking about another matter.

MR. COWEN: We have a check list that we made up.

MR. MALGUANERA: I think the ZBA is not clear as to what the Board is requiring. Maybe something should be generated out of this book because I think a lot of unnecessary applications may take up this Board's time. -

MS. PLUNKETT: As I said before, if I get paperwork, I just got one the other day and the lots were of zoning and they were less than five or four lots in the compatible growth area. And, I simply called up the owner and

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2 told them they are not subject to law.
3 It behooves the owner to read the
4 statute and to see if they are exempt
5 themselves. And, if they feel like they
6 need something from us, they can come
7 and talk to us.

8 Most of the applications we get,
9 I could say ninety percent are within
10 the jurisdiction. If they are not, we
11 will tell them you're not.

12 MR. MALGUANERA: In this
13 situation you have an existing dwelling
14 and lot and they are tied together.

15 MS. PLUNKETT: That's right.

16 MR. MALGUANERA: There is nothing
17 you can do about it because they are
18 tied together.

19 MR. PROIOS: Are there any other
20 issues people wish to raise in terms of
21 other concerns?

22 MR. VOORHES: I just want to
23 make the March 15th letter part of the
24 record.

25 MS. PLUNKETT: It's fine, it's

complete.

MR. PROIOS: And our decision
will refer to that as part of the
approval.

MR. SANDERMAN: And I thank you
and if there are no other questions, I
think I have over extended my welcome.

MR. COWEN: I'll second that.

MR. PROIOS: I am going to close
the hearing on Theresa A. Cox.

(Time noted: 6:15 p.m.)