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2
3 CENTRAL PINE BARRENS
4 JOINT PLANNING and POLICY COMMISSION
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6 -----
7 In the Matter of the
8 Public Hearing on the
9 COMPATIBLE GROWTH AREA APPLICATIONS
10 of
11 Theresa A. Cox
12 and
13 Bagatelle Nursery
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

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

3 GEORGE PROIOS
4 Chairman
4 County of Suffolk5 RAY COWEN
6 State of New York
6 Representing the Governor's Office7 BARBARA WIPLUSH
8 Town of Brooklyn9 BRENDA FILMANSKI
9 Town of Riverhead
10 Alternate for Deputy Town Supervisor10 DORIS ROTH
11 General Counsel for the Commission12 MARTIN SHEY
13 Town of Southampton
13 Alternate for Active Deputy Supervisor14 JOHN GIRANDOLA
15 Town of Brookhaven
15 Planning Division

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

17 ROY DRAGOTTA
18 Bureau Chief-Municipal Law Bureau19 BILL SPITZ
19 DEC20 DONNA PLUNKETT
21 Staff to Commission

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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.

2 Planning Division, Town of Brookhaven.

3 MR. PROIOS: To my left.

4 MR. COWEN: Ray Cowen,
5 representing Governor Pataki.

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

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

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

15 MR. PROIOS: And we have the
16 applicant.

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

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

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

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

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.

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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.

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MS. FILMANSKI: When did the

three year split expire?

MR. SANDERMAN: Under the

Brookhaven Town Code the Board of

Appeals split is good for three years.

I can give you an exact date

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

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

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.

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. WIPERLUSH: This is on an

2 existing road; isn't it?

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

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

4
5 MR. COWEN: Let me ask Mr.
6 Sanderman a question. What is it
7 exactly you are applying for at this
8 point?

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

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

24
25 We don't conform under the
exception for prior approvals because,
again, it does not conform to lot area.
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.

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.

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

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

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

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That is different than what the
other applications were.

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

2 So, it is a proposed structure..

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

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

15 MR. COWEN: Why not?

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.

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

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

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

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

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.

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

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

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

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

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

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

We cannot get a building permit issued until something comes out of this 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

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.

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

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

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 time of building permit.
2

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.

MR. SANDERMAN: Right.

MS. ROTH: We still have the
criteria.

MR. COWEN: Right, but they can't get in that house without coming to the session.

MS. ROTH: The one that they
ed, yes.

MR. COWEN: Right, the existing

MR. PROIOS: Any questions?

MR. SHEY: What is the character
e surrounding property?

MR. MALGUANERA: Star Boulevard
an existing route that is developed
this time.

MR. VOORHES: There are many tax
els that are conformed in size to
or smaller.

Maybe, if I could just go back,
had submitted a letter report dated

h 15 demonstrating a hardship on application. And, that doesn't

ude 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

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?

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.

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

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.

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.

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.

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.

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

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

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

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

actually sent to the Commission. That is something we need to take up with the Town.

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

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

1 front.

2
3 So, we are in the interim phase
4 until June 30th.

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

8 MR. SANDERMAN: I thought you
9 were saying --

10 MS. ROTH: He is speaking about
11 another matter.

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

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

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

1 told them they are not subject to law.
2

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

2 complete.

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

9 MR. COWEN: I'll second that.

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

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