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PUBLIC HEARING NOTICE

CENTRAL PINE BARRENS
JOINT PLANNING & POLICY COMMISSION

EASTERN SUFFOLK DEVELOPMENT CORPORATION
-----X

Brookhaven Town Hall
One Independence Hill
Farmingville, New York

August 10, 2005
3:00 o'clock P.M.

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

PETER SCULLY - Chairman
BRENDA PRUSINOWSKI - Town of Brookhaven
JOHN TURNER
MARTIN SHEA
JOHN PAVACIC
RAY CORWIN
CHRISTOPHER KENT
MICHAEL DEERING
JUDY JAKOBSEN

JOHN C. MILAZZO, ESQ.
Attorney for Central Pine Barrens
Joint Planning and Policy Commission
P. O. Box 587
3525 Sunrise Highway - 2nd Floor
Great River, New York 11739



1
2 CHAIRMAN SCULLY: I'd like
3 to call this hearing to order and
4 ask the members of the Commission
5 to put their appearances on the
6 record.

7 MICHAEL DEERING, repre-
8 senting Suffolk County Executive
9 Steve Levy.

10 CHRISTOPHER KENT, repre-
11 senting the Town of Riverhead
12 Supervisor Phil Cardinale.

13 MARTIN SHEA, representing
14 Southampton Town Supervisor Patrick
15 Heaney.

16 BRENDA PRUSINOWSKI, repre-
17 senting Brookhaven Town Supervisor
18 John J. LaValle.

19 JOHN TURNER, representing
20 the Town of Brookhaven.

21 PETER SCULLY, representing
22 Governor George Pataki.

23
24 CHAIRMAN SCULLY: I'll
25 read from the notice of public

1 hearing. This is an application
2 for a Compatible Growth Area hard-
3 ship. The subject of the hearing
4 is Eastern Suffolk Development
5 Corporation requesting a hardship
6 permit to construct a proposed
7 shopping center/office center con-
8 sisting of three separate buildings
9 totaling 17,731 square feet, an
10 onsite septic system on a 2.3 acre
11 site zoned RB80. The prior zoning
12 was Business CR. The applicant is
13 seeking relief from the clearing
14 standard.
15

16 The application location
17 is on the northwest corner of Kay
18 Road and New York State Route 25
19 in Wading River in the Town of
20 Riverhead and I will ask Mrs.
21 Jakobsen to make a presentation.

22 (At this time, cover
23 sheet was marked Staff Exhibit 1.

24 Digital photographs taken
25 at the site on 8-8-05 by Commission

August 10, 2005

4

1 staff using an Olympus model 2020
2 digital camera. The photos were
3 processed using Olympus Camedia
4 Master Version 1.2 software was
5 marked Staff Exhibit 2.
6

7 Staff report prepared
8 8-8-05 was marked Staff Exhibit 3.

9 Site plan - proposed shop-
10 ping center East Suffolk Shoppes,
11 Route 25 and Kay Road, Sheet S-1.1,
12 Wading River, New York, sheet pre-
13 pared by Searles, Stromski, Associ-
14 ates, dated 10-4-04, revise date
15 10-8-04. **Does not conform to**
16 **clearing standard**, was marked Staff
17 Exhibit 4.

18 Site plan - proposed
19 shopping center East Suffolk
20 Shoppes, Route 25 and Kay Road,
21 Sheet S-1.2, Wading River, New
22 York. Sheet prepared by Searles,
23 Stromski, Associates, dated 10-4-04,
24 revise date 10-8-04. **Does not**
25 **conform to clearing standard**, was

August 10, 2005

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marked Staff Exhibit number 5.

Site plan - proposed shopping center East Suffolk Shoppes, Route 25 and Kay Road, Sheet S-1.3, Wading River, New York. Sheet prepared by Searles, Stromski, Associates dated 10-4-04, revise date 10-8-04. **This site plan conforms with the clearing limit,** was marked Staff Exhibit 6.

MRS. JAKOBSEN: I have already had stamped and marked in six staff exhibits and I basically just want to go over some of the information that I provided in the staff report that contains a number of the exhibits, but also the applicant has submitted three different site plans, Exhibits 4, 5 and 6, and they are known as 1.1, .2 and .3 which are in front of you. Basically I want to mention the sheet S-1.1 site plan, from what I understand, is what the applicant orig-

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2 finally submitted to the Town of
3 Riverhead which, as you can see,
4 the site is pretty much cleared
5 and there is some landscaping and
6 they also submitted, which I have
7 as Exhibit 5, a site plan S1.2 which
8 is the same as the first one, the
9 only difference is instead of land-
10 scaped areas they have it as natural
11 areas.

12 CHAIRMAN SCULLY: Any
13 indication why there is more than
14 one site plan?

15 MRS. JAKOBSEN: Well, it
16 sort of goes to the heart of why
17 they are here and what happened to
18 them in terms of applying through
19 the Town, and so if I can just kind
20 of get through this part, and bear
21 with me, I'm sure the applicant
22 will cover the process.

23 The third site plan is the
24 one where, I should mention the
25 first two site plans do not conform

August 10, 2005

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1 to the clearing standards, the
2 third site plan that was prepared
3 by the applicant varies a little
4 bit in terms of size of building
5 and a little in terms of layout,
6 meets the clearing standards.
7 That's site plan S-1.3.
8

9 CHAIRMAN SCULLY: That
10 wouldn't require a hardship?

11 MRS. JAKOBSEN: This would
12 not require a hardship under normal
13 circumstances. I just wanted to
14 highlight and skip to my staff
15 report basically to go over the
16 current area. You can see by the
17 attached to your staff report,
18 photos of the site and also aerials
19 and the site is currently vacant
20 with some disturbance in the
21 interior and there is residential
22 development to the north and the
23 south. The Grumman facility is to
24 the south of the site and generally
25 there is vacant land to the west

August 10, 2005

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of the site and also east of the
site is Wading River Motel.

The applicant purchased
this site in 2002 and basically this
is an unlisted action for the
Commissioner of SEQRA and we are
performing an uncoordinated review.

On the second page of the
staff report I have provided a
chronology of events based on the
applicant's application that ex-
plains the process of what happens
in terms of the application before
the Town Board. Basically they
started through the Town, got ZBA
approval and ended up at some point
because there was a master plan in
process, they ended up at some point
not being approved by the Town,
which I'm sure the applicant will
go into more detail. Then, because
that master plan would have rezoned
that property to a different zoning
that would not allow the proposed

1 use and the Town turned down this
2 project and then basically an
3 Article 78 proceeding occurred and
4 Justice Oliver made a determination
5 where he annulled the Town Board's
6 determination and substitute appro-
7 val subject to attaining approval
8 from the Pine Barrens Commission
9 and subsequent to that the property
10 was changed from Business CR to
11 RB80 which does not allow the pro-
12 posed commercial use.
13

14 CHAIRMAN SCULLY: Subse-
15 quent to the court's decision?

16 MRS. JAKOBSEN: I'm sure
17 the applicant will explain.

18 MR. KENT: I think it was
19 prior to.

20 MRS. JAKOBSEN: I'm sure
21 the applicant can clarify it.

22 MR. KENT: That's all
23 right.

24 MRS. JAKOBSEN: Basically
25 what happened was they submitted

1 to the Town, according to the
2 applicant's application, they sub-
3 mitted to the Town a site plan that
4 conformed to the standards, the Town
5 would not entertain it because they
6 considered it a new site plan not
7 the one the judge had made, had
8 approved, and therefore the Town
9 said no, that is a new plan and
10 that is not allowed under the cur-
11 rent zoning, you need to go to the
12 Commissioner for a hardship.

13
14 CHAIRMAN SCULLY: Was that
15 by vote or administratively?

16 MRS. JAKOBSEN: I don't
17 know, the applicant can fill that
18 in for you. Then I go on to make
19 a comparison of the site plans.
20 Like I said before, the 1.1 and
21 1.2 do not conform to the clearing
22 limit. Basically we would recom-
23 mend the Commission consider a site
24 plan 1.3 that conforms to standards
25 as the preferred site plan for

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consideration and basically I'm
going to, subsequent to the hearing,
be able to complete the SEQRA pro-
cess so we can't make a decision
today on this.

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Attached to your packet
are two aerials, one that shows the
site up close. You can see some
disturbance in some of the interior,
there is some dumping present. Then
there is another aerial which is
more like a bird's eye view of the
property, and that's all I have.

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CHAIRMAN SCULLY: Any
questions from the staff? Is there
a representative of the applicant
present?

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STEPHEN R. ANGEL, ESQ.:
Essex and Angel, Riverhead, New
York on behalf of the applicant.

22
23
CHAIRMAN SCULLY: You are
an attorney?

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25
MR. ANGEL: That's correct,
and I have never been here before.

1
2 Should I address you standing or
3 take a seat, which would you prefer?

4 CHAIRMAN SCULLY: Why
5 don't you stand, most people do.

6 MR. ANGEL: Okay. The
7 difficulty is I have bad eyes.
8 This is an unusual hardship appli-
9 cation and we are sort of forced to
10 come before you under circumstances
11 that were briefly alluded to in the
12 staff's report and ultimately
13 culminated in an order by Judge
14 Oliver granting a site plan appro-
15 val on map S1 that you have before
16 you in May of 2004. I know that
17 there were some discussions by the
18 Chairman of whether that decision
19 was before the rezoning and the
20 answer is it was. I believe the
21 first rezoning in Riverhead occurred
22 in June.

23 MR. KENT: There is an
24 attachment to the handout from staff
25 that shows the zone was amended

June 22, 2004.

MR. ANGEL: And it's a
May 20 something or 27 order, but
it's in the packet I submitted.

Of course the lawsuit
was submitted substantially before
that, before the court made its
order, but what we have here -

CHAIRMAN SCULLY: Can I
ask a question, what is the zoning
of the site today?

MR. ANGEL: RB80.

CHAIRMAN COLSON: The zone
doesn't permit this use?

MR. ANGEL: No, it permits
the siting of one house on this lot.

CHAIRMAN SCULLY: Your
application is still viable because?

MR. ANGEL: We take the
position, and I don't believe that
the Town would disagree, that our
application would be viable since
the judge directed approval of that
site plan and we have to satisfy

that condition.

CHAIRMAN SCULLY: You have a preexisting grant for the setbacks from the Zoning Board of Appeals?

MR. ANGEL: Yes.

CHAIRMAN SCULLY: But you don't have a grant for the commercial use.

MR. ANGEL: We have a grant for commercial use on this property when it was commercially zoned as directed by the judge, it's a court order.

CHAIRMAN SCULLY: But prior to rezoning.

MR. ANGEL: Correct.

CHAIRMAN SCULLY: What is the authority for the commercial use on residential property?

MR. ANGEL: Just that it was a direction by the judge that we have an approved site plan subject to the approval of this Commission.

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2 CHAIRMAN SCULLY: Techni-
3 cally you would have a nonconforming
4 use then.

5 MR. ANGEL: Technically we
6 have an order we seek to compel but
7 I'm not sure we need to compel it.

8 CHAIRMAN SCULLY: Sorry to
9 interrupt.

10 MR. ANGEL: I don't believe
11 that - it's part of this digression,
12 there has been no litigation and no
13 firm position with respect to the
14 submission except that the Town
15 Attorney did advise me that the
16 only way that she would entertain
17 the application currently is with
18 your approval because that was a
19 condition expressed by the board, so
20 let me get back to where we were
21 and explain the whole situation.

22 So, the property is
23 located in your Compatible Growth
24 Area, it's on the north side of
25 Route 25 in Calverton. It's, as

August 10, 2005

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1 indicated beforehand, the client
2 bought the property in 2002, I think
3 November of 2002, and at the time
4 the property was zoned Business CR
5 which would permit this small
6 commercial professional development
7 that you see on the plans. The
8 purpose of the purchase and one of
9 the principals of the company,
10 Mr. Kaywood is here, was to create
11 a small commercial professional
12 series of offices and stores for
13 their family, for their extended
14 family, one is an accountant, one
15 wants to open a grocery store, and
16 they went forward with their appli-
17 cation, a fully conforming applica-
18 tion at the time. They were not
19 aware nor were their advisors at the
20 time nor were they advised by the
21 Town of Riverhead that the area
22 that the particular property was in
23 the Compatible Growth Area and so it
24 was processed. It was processed
25

1 through the Zoning Board of Appeals,
2 through the Town of Riverhead
3 Planning staff, through the Town
4 Board on site plan approval, all the
5 way through this relatively long
6 process and the architect who ran
7 it through is here today. It took
8 him many, many months, without any
9 acknowledgment of this particular
10 problem and it went forward and
11 finally was presented while the
12 zoning was still in effect to the
13 Town Board in the form of the S1
14 application, the S1 site plan. I
15 should point out a public hearing
16 was held on the variance, no
17 opposition, no opposition from the
18 Riverhead Town staff, no opposition
19 from the community. One community
20 member spoke in favor of it, some-
21 body from either the Calverton or
22 Wading River civic association, I
23 have to look at the record to tell
24 you which one. The Town Board
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opted to hold an optional public hearing on the site plan application because under the Riverhead code on a conforming application it's not mandated there be a public hearing, but the Riverhead policy in this case when there was a possible proposed master plan change was to hold a public hearing. The public hearing went forward again with no opposition from staff or the public. The resolution approving it was presented to the Town Board and there was one person who wasn't there, one abstention, and it didn't pass 2 to 1 in favor so in effect though it was 2 to 1 it resulted in a denial because of the requirement of an at least three affirmative votes. That's when I got into the picture and it seemed to me like a reasonable Article 78 because it was a conforming application and there was nothing,

1 absolutely nothing in the record
2 that would justify a denial. There
3 wasn't even an attempt by staff to
4 indicate there was some problem
5 with traffic or any other police
6 power concern, so we brought the
7 Article 78 proceeding and Judge
8 Oliver agreed with me, but the Town
9 pointed out, at that point the Town
10 realized an error of its ways and
11 that it was in the Compatible Growth
12 Area.
13

14 CHAIRMAN SCULLY: Only in
15 the context of litigation?

16 MR. ANGEL: Yes, only in
17 the context of litigation. So, what
18 happened was I commenced the action
19 based on the record before us. We
20 had a return, we submitted it. The
21 Town then took the position oh, it's
22 in the Compatible Growth Area, our
23 approval is invalid, so the Town
24 raised that issue for the first
25 time, and it's correct, the Town

1 is correct. Unfortunately, we're
2 suffering for the Town's in effect
3 own mistake. I believe that the
4 statutory provision that created the
5 Pine Barrens do put the obligation
6 on the towns to at least somehow
7 enforce or bring to the public's
8 knowledge through their zoning codes
9 the necessity of complying with
10 Compatible Growth standards, but in
11 this particular situation I don't
12 think it was malicious, it was just
13 that nobody thought about it, they
14 only thought about it in the context
15 of the litigation, so the result of
16 the litigation was Judge Oliver felt
17 there was nothing to stop the denial
18 of the site plan application and
19 granted and order/judgment approving
20 it, not even submitting it back, but
21 making it subject to Pine Barrens
22 approval.
23

24 CHAIRMAN SCULLY: Approving

25 S1.1?

1
2 MR. ANGEL: Yes.

3 CHAIRMAN SCULLY: Speci-
4 fically S1.1?

5 MR. ANGEL: He approved
6 what was submitted and what was
7 submitted was S1.1, correct. So
8 the architect, now, he approved that
9 in May of 2004 and the zoning did
10 change as Mr. Kent indicated on June
11 22nd, and then soon thereafter the
12 architect did prepare a conforming
13 plan and submitted it to the Town
14 for consideration and there was no
15 formal rejection of that plan, the
16 plan is still sitting there, the fee
17 is still sitting there on the second
18 application, but there's been no
19 formal reaction to it other than a
20 conversation I had with the Town
21 Attorney raising the issue that she
22 didn't think that the Town Board
23 would consider a new site plan in
24 conformance with the Code submitted
25 now with a different set of plans

1
2 than was submitted and approved
3 previously. She expressed to me
4 that I should go here and here I am
5 seeking an approval of either S1 or
6 S2 would be our preference obviously
7 or an approval subject to some
8 reasonable conditions so we have an
9 approval of that prior plan so we
10 can go back to the Town of River-
11 head.

12 Now -

13 MRS. PRUSINOWSKI: This
14 staff report says the applicant is
15 seeking relief from the clearing
16 standards, this body is not going
17 to approve a plan.

18 MR. ANGEL: No, just the
19 clearing standards, well -

20 CHAIRMAN SCULLY: You are
21 right on point.

22 MR. ANGEL: Well, an
23 approval related to that plan is
24 what we need from this board, some
25 sort of approval related to that

1
2 plan, an approval of the clearing
3 standards would be something we
4 would want actually, that would be
5 satisfactory.

6 CHAIRMAN SCULLY: Relief?

7 MR. ANGEL: Relief.

8 CHAIRMAN SCULLY: You sub-
9 mitted another site plan which
10 staff finds meets the clearing
11 standards.

12 MR. ANGEL: That site plan,
13 can I consult with the architect
14 briefly. I believe that site plan
15 was the one that was submitted,
16 that was submitted to the Town but
17 I think there is another site plan
18 that shows a removal of certain
19 conditions. Yes, we did prepare
20 a fourth site plan that shows
21 compliance with your conditions,
22 but it does not involve a redesign,
23 it involves a removal, eliminating
24 one of the buildings, so if we were
25 to, if you were to consider, if you

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were not considering granting us relief for the clearing restrictions that we sought, we would ask it be relief in conformance with this other site plan where there is no requirement for a full redesign, there is just a reduction of the number of buildings.

MR. KENT: What is the percentage of clearing on that?

MR. ANGEL: I believe it's 65 -

(Discussion off the record.)

(ROBERT STROMSKI, architect, was duly sworn by the stenographer.)

MR. STROMSKI: I am with Searles Stromski Associates and our offices are in Rocky Point.

MR. ANGEL: There was some consideration you may want to consider relief in various alternatives. There are gradations of

1 relief and what I asked Mr. Stromski
2 to prepare at some point was a plan
3 showing the configuration of the
4 project as previously approved with
5 elimination, without redesign in
6 order to meet the Commission's
7 clearing restrictions.
8

9 CHAIRMAN SCULLY: In which
10 case you need no relief from us.

11 MR. ANGEL: Our problem is
12 we need some relief in conformance
13 with the order, we need some
14 determination. The fact no relief
15 is necessary is not the answer.

16 CHAIRMAN SCULLY: Counsel
17 wishes to be heard.

18 MR. MILAZZO: So we have,
19 I think there are four plans on the
20 table today?

21 MR. ANGEL: Correct.

22 MR. MILAZZO: If my under-
23 standing is correct you have one
24 approved by Justice Oliver which
25 didn't conform to the clearing

standards?

MR. ANGEL: Correct.

MR. MILAZZO: You submitted that to the Town and the Town did not accept that pending and they forced you to come to the Commission?

MR. ANGEL: No.

MR. MILAZZO: Let me try again. The Town, you got an order approving it by the judge subject to Commission approval?

MR. ANGEL: Correct.

MR. MILAZZO: You then made a second plan or a third plan that would conform, one doesn't and you said I'd like to submit these to the Town and the Town said we won't accept those because those were not the ones approved by the judge, go to the Commission to get the relief.

MR. ANGEL: Correct.

MR. MILAZZO: Now, for whatever reason you have introduced

1
2 a fourth plan which you believe con-
3 forms to the clearing standards by
4 removing a building. The issue, the
5 issue for the Commission is what
6 plan do you want relief from for
7 and what relief are you seeking. Is
8 it simply an order saying that a
9 determination from the Commission
10 saying this complies with the clear-
11 ing standards and conforms, would
12 that be sufficient for you to go to
13 the Town because in that case you
14 don't need a hardship relief, or is
15 it your intention to give the
16 Commission a plan that needs relief
17 because it doesn't conform to the
18 65% clearing standards, and in that
19 case you need to go through the
20 elements of Town Law 267 and show
21 why the Commission should be in-
22 clined to grant that relief.

23 MR. ANGEL: I understand
24 that and I made a submission in
25 conformance I believe with the 267B

1 standards. Our request is that we
2 obtain relief from the board saying
3 that the original site plan is
4 approved subject to certain con-
5 ditions and the conditions could
6 be, I mean, if I had a hierarchy of
7 desires I would say I would like it
8 approved without conditions. The
9 next step would be I would like it
10 approved or relief granted for the
11 variance or the lack of compliance
12 with clearing restrictions in
13 accordance with the second plan.
14

15 My third position would be
16 this plan that I have submitted as
17 S1.3A which is in compliance with
18 your clearing restrictions and
19 follows the plan of the prior one
20 but has one of the buildings
21 removed. Some sort of relief that
22 the site plan is okay or relief is
23 granted in accordance with the site
24 plan subject to some conditions.
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CHAIRMAN SCULLY: This may

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be a semantic argument because for
the purpose of this discussion if
the Commission made a determination
that the site plan conforms with
the clearing standards is something
we find favorable and made a deter-
mination it required no relief per
se but just determined it was in
compliance with standards that would
probably be okay by you as long as
it's represented in some sort of
written form that might ultimately
find its way before the judge.

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MR. ANGEL: Again, the
semantics that I would like best
is the Commission's stamp of
approval subject to the following
conditions, but yeah, I don't want
to be in a position because of the
unusual trap we fell into unknow-
ingly of having to leave here with
no relief knowing that I could
apply because I can't. I need some
approval related to that order.

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2 CHAIRMAN SCULLY: Under-
3 stood, I think you have done a
4 pretty good job of explaining a
5 very complex situation.

6 MR. MILAZZO: Do you have
7 any correspondence from the Town
8 indicating this should be considered
9 under the zoning that was in effect
10 during the pendency of your lawsuit?

11 MR. ANGEL: I have nothing.

12 MR. MILAZZO: You have a
13 statement from the Town Attorney
14 who said get Commission approval.

15 MR. ANGEL: Yes, but I
16 don't have, I don't have a commit-
17 ment from the Town.

18 MR. MILAZZO: You don't?

19 MR. ANGEL: No, but I am
20 not in a position where I have
21 forced the issue because in my
22 professional judgment it would
23 behoove me to force the issue only
24 after I appeared before this board,
25 Judge Oliver having made it con-

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ditioned upon my seeking relief from
this board.

MR. DEERING: Did you submit a copy of the judge's decision?

MR. MILAZZO: Yes, I have it.

MRS. PRUSINOWSKI: Have you had a chance to review it?

MR. MILAZZO: I've reviewed it.

MRS. PRUSINOWSKI: Is it required we consider the prior zoning because the clearing under the present zone would be limited to 35%.

MR. MILAZZO: That's the issue I see as needing some additional research. The court, when it made its decision, only had the BRC zoning in front of it and the question there was whether the Town followed Town law in denying this and he made a motion to compel them to approve it and they were con-

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sidering a zoning question applica-
tion in light of BRC zoning. Sub-
sequent to the court decision the
zoning has changed and that's the
issue for the Commission that has
not been addressed yet and that's
why I asked if there was a letter
from the Town. Is the zoning BRC
or residential R80 and those stan-
dards would apply, so the question
is what is the relief being granted
from and how do you apply the
Commission's clearing standards to
this application, so you really
have been caught.

MR. ANGEL: There are more
catches here, you have come up with
another catch.

MR. MILAZZO: I'm not
coming up with another catch, I'm
just pointing out what the Commis-
sion's obligation is under the law.
We want to make sure the Commission
understands.

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2 MR. ANGEL: I understand
3 what your concern is. Needless to
4 say, I haven't done research and,
5 secondarily, I'm not so sure we'll
6 find anything clear on it having
7 looked for annotations on the Pine
8 Barrens Act, not on this issue
9 anyway. Needless to say, we can
10 take only one position, I think the
11 65% standard, that would be another
12 way to terminate the project. I
13 should point out something for
14 people who have not seen that. This
15 is an observation I have made as a
16 zoning lawyer who occasionally
17 transcends his bounds and makes
18 statements as if he was a planner
19 or - . I was driving along
20 there on a couple of occasions and
21 I don't know whether it will weigh
22 in your deliberations, but as of
23 right you can put one house on this
24 property and I can envision, it
25 would be very marginal for a house.

1
2 It is in an inappropriate position
3 as far as I'm concerned for a house,
4 it's now and on a road, a 50 mile
5 per hour speed limit and next to
6 marginal, not a very good residen-
7 tial community immediately to the
8 north and what would happen is you
9 probably would build a house that
10 would be rented and within five, six
11 years it would turn into probably
12 an illegal commercial establishment
13 anyway the way much of Long Island
14 has developed over the years. I
15 think this is the appropriate use,
16 I'm stuck in a situation where I
17 have to try to get some relief for
18 the client and I think that's our
19 position.

20 CHAIRMAN SCULLY: Any
21 questions for the applicant?

22 JOHN PAVACIC: New York
23 State DEC. A question as to when
24 was the original commercial zoning
25 put in place on the property?

1
2 MR. KENT: There is an
3 attachment which gives you the
4 date, February 25, 1986. This was
5 given to us by staff, that's the
6 Business CR.

7 MR. ANGEL: It might have
8 been a different type of commercial
9 before the CR.

10 CHAIRMAN SCULLY: Any other
11 questions?

12 MR. ANGEL: I should point
13 out to you and the staff that Mr.
14 Kaywood, one of the principals, is
15 here and if he were to be called he
16 would affirm the statement as far
17 as the dollars. There is a sworn
18 affidavit in your file regarding
19 the hardship application and if you
20 or staff in your deliberations want
21 us to submit anything further or
22 any potential revegetation plans
23 in conformance with this applica-
24 tion, we'd be pleased to do so.

25 CHAIRMAN SCULLY: Thank

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you. Seeing there is nothing further, we will close the hearing.

MR. MILAZZO: Are there any other uses in the RB80 zone?

MR. ANGEL: Yes, there was a horse academy and I addressed that in the affidavit, it's only residential and what I should reflect for the record clearly is that I did mark this one A, I'd like to leave this with you. I should state for the record if any relief is granted and the relief is going to be related to the 65% clearing, 35% natural state, I would request you consider the S1.3A rather than the other plan.

CHAIRMAN SCULLY: I apologize, we became so intrigued with the complexities of the case I neglected to ask if there were any members of the public that wish to comment on the application.

RICHARD AMPER: Let's talk

1 about what's worth considering and
2 what isn't. The fact that the
3 applicant did not know this was in
4 the Pine Barrens is not only not
5 germane from your past experience,
6 it's obviously not germane from the
7 court. The court did not decide
8 that you had no jurisdiction because
9 they didn't know, so that's off the
10 table.
11

12 The second thing the court
13 did decide was that he was allowed
14 to have this despite what the Town
15 had done with respect to project
16 proposal number 1 what was before
17 him was if you can get approval
18 from the Pine Barrens Commission
19 for proposal number 1, then you
20 may have it despite what the Town
21 did. We suggest that you ought not
22 give that variance for project
23 number 1 or proposal number 1
24 because the property was acquired
25 after the Pine Barrens Act and it's

1 a self created hardship, we have
2 been down this road before and you
3 have regularly where the application
4 occurs after the Pine Barrens Act
5 this is a self created hardship so
6 you may not, in our judgment, grant
7 him the hardship and if he did not
8 have a hardship for project number
9 1 so much for what the court
10 ordered. Now we are dealing with
11 a separate piece of zoning and it
12 doesn't conform to the local zoning,
13 so it seems to me even if it con-
14 formed to the standards you would
15 be in no position to take a position
16 other than the position the Town is
17 asking you to do, so with respect
18 to what the court ordered you need
19 not grant the hardship, I propose
20 you cannot grant it because of the
21 date of the acquisition of the
22 property and should not do so and
23 the rest is not germane to the
24 approval of the project because
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it's not the subject of a court order.

CHAIRMAN SCULLY: Thank you.

MRS. PRUSINOWSKI: In regard to the original drawing that presumably is the one under consideration based on this court order, what is the actual clearing limit the applicant is looking for?

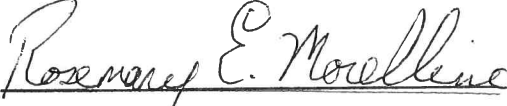
MR. ANGEL: The clearing limit would be the amount of natural, 24%.

MR. STROMSKI: 76 would be the clearing.

CHAIRMAN SCULLY: We will close the hearing for the deliberation of the Committee. Thank you very much.

C E R T I F I C A T I O N

I, ROSEMARY E. MORELLINO, do hereby
certify that the within transcript is a true,
accurate and complete transcript of the
proceedings which took place in the above
matter.


ROSEMARY E. MORELLINO