

CENTRAL PINE BARRENS

JOINT PLANNING AND POLICY COMMISSION

In the Matter of the Application of

HAROLD MARSHALL

requesting a Core Preservation Area hardship permit to construct a single-family home with sanitary system on a four acre site zoned A-5.

10 | Page

ii | Page

12

COPY

1 A P P E A R A N C E S:2 ROBERT J. GAFFNEY, Chairman
3 Suffolk County Executive
4 BY: GEORGE PROIOS, Acting Chairman5 ROBERT KOZAKIEWICZ, Member
6 Supervisor, Town of Riverhead
7 BY: JOEY MAC LELLAN8 RAY CORWIN, Executive Director
9 Pine Barrens Commission10 JOHN J. LA VALLE, Member (Present)
11 Supervisor, Town of Brookhaven
12 BY: BRENDA A. PRUSINOWSKI, AICP and
13 JEAN COMPITELLO14 RAY E. COWEN, P.E.,
15 DEC Regional Director
16 Representing GEORGE PATAKI, Governor
17 BY: WILLIAM H. SPITZ, Chief,
18 Water Supply Office19 MC MILLAN, RATHER, BENNETT & RIGANO, P.C.
20 Attorneys for Commission
21 BY: JAMES P. RIGANO, ESQ.

22 ED RANDOLPH, Environmental Analyst

23 D&I EXPEDITING SERVICES, INC.
24 Representing Applicant
25 BY: DIANE MOJE

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1 [THE HEARING WAS CALLED TO ORDER BY THE
2 ACTING CHAIRMAN, GEORGE PROIOS, AT 2:10
3 P.M.]

4

5 MR. PROIOS: I would like to call this public
6 hearing to order. My name is George
7 Proios, Acting Chairman of the Commission,
8 acting on behalf of Robert J. Gaffney,
9 Chairman, the County Executive.

10 I will ask the members of the
11 Commission to introduce themselves.

12 MR. LA VALLE: John LaValle, Supervisor, Town of
13 Brookhaven.

14 MS. COMPITELLO: Jean Compitello, representing the
15 Supervisor of Brookhaven, John LaValle.

16 MS. PRUSINOWSKI: Brenda Prusinowski, for
17 Supervisor of the Town of Brookhaven, John
18 J. LaValle.

19 MR. MAC LELLAN: Joey MacLellan for Robert
20 Kozakiewicz, Supervisor, Town of Riverhead.

21 MR. CORWIN: Ray Corwin; staff member.

22 MR. SPITZ: Bill Spitz. I represent James E.
23 Cowen, DEC Regional Director.

24 MR. RIGANO: James P. Rigano, counsel to the
25 Commission.

1 MR. PROIOS: The first of three hearings is
2 Harold Marshall. The parcel is located
3 north of East Bartlett Road, south of
4 Schneider Lane in Middle Island, Town of
5 Brookhaven.

6 The project is the applicant is
7 requesting a Core Preservation Area
8 hardship permit to construct a single-
9 family home with sanitary system on a four
10 acre site zoned A-5.

11 The Tax Map Parcel Number is 200-
12 481-1-5.

13 Does staff have a presentation to
14 make?

15 MR. RANDOLPH: Yes. In front of you you will
16 see a site plan as well as an aerial photo
17 of the subject parcel.

18 Recently, we visited the site and
19 noticed it was a vacant wooded lot just
20 east of Cathedral Pines County Park,
21 adjacent to two single-family residences,
22 made up of a mature oak-pitch pine forest,
23 and like George said, they are requesting a
24 Core Preservation Area hardship permit to
25 build a single-family home with a septic

1 system.

2 I believe Diane Moje is
3 representing Mr. and Mrs. Marshall.

4 MR. PROIOS: Identify yourself for the record.

5 MS. MOJE: Diane Moje of D&I Expediting
6 Services, Inc., with offices located on
7 West Avenue in Patchogue.

8 Mr. Chairman, if I may proceed to
9 give you a little information on the
10 application?

11 I am representing Mr. Marshall,
12 who is the owner of the subject premises
13 and has been the owner of the subject
14 premises since approximately 1966, when he
15 and his brother inherited the parcel from
16 their mother.

17 Previous to that the property has
18 been in Mr. Marshall's family since the
19 late 1800's. It was owned originally by
20 his great-grandfather and then passed to
21 his great aunt and left to Mr. Marshall's
22 mother.

23 There were actually two parcels
24 involved, and when it was deeded over to
25 just Mr. Marshall's name, the parcel, as

1 you see on your aerial where there are two
2 homes, was left to Mr. Marshall's brother.

3 However, Mr. Marshall's brother, acting
4 sooner than Mr. Marshall did, subdivided
5 the property and sold off the property back
6 in the 1980's.

7 I do have some photographs of
8 those homes. The lots are predominantly
9 cleared, and they are similar to the some
10 of the other homes in this area. [HANDING
11 PHOTOGRAPHS]

12 MR. PROIOS: What is the access to those two
13 homes? Is there a paper street?

14 MS. MOJE: There is a deeded right-of-way
15 that has been in existence that is shown on
16 your tax parcel. It is improved by an
17 asphalt driveway that I estimate to be
18 approximately twelve feet in width. That
19 access is to the two homes that are
20 presently existing, having required a Board
21 of Zoning Appeals approval in order to do
22 that under Town Law 280A.

23 The parcel, although zoned A-5
24 Residential, is held in single and
25 separate. If it had not been in the Pine

1 Barrens Core, Mr. Marshall would not have
2 been able to obtain a building permit by
3 just going to the ZBA for a 280A because
4 the parcel is held singly and separately.

5 You do have a Town of Brookhaven
6 building permit that is signed by the Water
7 Department, Kristen Hubbs, as well as a
8 copy of the actual single and separate
9 search that shows that the property has
10 been held in single and separate.

11 Also, just as a side note on the
12 single and separate, the single and
13 separate only stopped back at 1966 when
14 Virginia Marshall, Howard Marshall's
15 mother, had deeded the property to Ashton
16 and Harold Marshall.

17 Also for the record,
18 Mr. Marshall's great-grandfather was James
19 Ashton, and as you know there is an Ashton
20 Road in the area, and I am sure that was
21 named after the family, also.

22 MR. RIGANO: Will you be referring to these?

23 MS. MOJE: Not unless there are questions on
24 them. [REFERRING TO PHOTOGRAPHS]

25 MR. RIGANO: Let's mark these.

1 [WHEREUPON PACKET OF PHOTOGRAPHS WERE
2 MARKED APPLICANT'S EXHIBIT 1 IN EVIDENCE.]

3 MS. MOJE: Further for your record, I have
4 obtained Suffolk County Department of
5 Health approval for the construction of one
6 residence on this property which, by the
7 way, obviously Mr. Marshall was under the
8 assumption that he would be able to get two
9 residences on this property as his brother
10 did, but as he waited, he minimized the
11 chance of that, so the proposal is for one
12 residence on the four acre parcel.

13 We do have Suffolk County
14 Department of Health approval, Health
15 Reference Number RR-201-1972, and I will
16 also submit a copy of that for your record.

17 [WHEREUPON APPROVAL WAS MARKED APPLICANT'S
18 EXHIBIT 2 IN EVIDENCE.]

19 MS. MOJE: Another item of information for
20 your record, this is an application to the
21 Town of Brookhaven Planning Department and
22 Planning Board 53944. That is when the
23 applicant was made aware that this site was
24 in the Core Preservation Area and the Town
25 had indicated that he would need a ruling

1 under 280A, which is something we were
2 aware of.

3 Just another point of reference
4 for the record, that we did make
5 application to the Suffolk County Planning
6 Department as well.

7 [WHEREUPON APPLICATION WAS MARKED
8 APPLICANT'S EXHIBIT 3 IN EVIDENCE.]

9 MR. PROIOS: We will mark the aerial, too.

10 MR. RANDOLPH: Those were already marked as our
11 exhibit.

12 MS. MOJE: Just to further describe the
13 area, I do have some photographs. There
14 are some other homes along Mt. Sinai
15 Avenue, which is the fifty foot right-of-
16 way, also East Bartlett Road, as referenced
17 on the survey.

18 The area is mixed in development.
19 There are, if you look at the tax map
20 immediately surrounding the property, that
21 shows the area depicted much better.

22 There is a residence on the west
23 side of the right-of-way and across the
24 street there are several residences.

25 So, the area is improved and

1 somewhat varied in size and types of homes,
2 and I do have photographs of some of those
3 surrounding homes, and also here is a set
4 of the actual driveway that leads up to the
5 property.

6 So, if you would like to hold
7 onto these for the record, for your use?

8 MR. RANDOLPH: That's okay.

9 MR. RIGANO: If you would like to submit them
10 as exhibits, that's okay.

11 [WHEREUPON TWELVE PHOTOGRAPHS WERE MARKED
12 APPLICANT'S EXHIBIT 4 IN EVIDENCE.]

13 MS. MOJE: If this application were to be
14 denied, Mr. Marshall would sustain a
15 tremendous financial detriment as he has
16 had this parcel in his family for many,
17 many years and had always intended, at some
18 point, either developing it or selling the
19 parcel.

1 MR. PROIOS: Have you read the provisions of
2 the Pine Barrens Law regarding hardship
3 applications?

4 MS. MOJE: I had read them. I was hopeful
5 that Mr. Marshall would be here to assist
6 in some of the details of the history of
7 the property. I was not able to get in
8 touch with him to have him present.

9 Mr. Marshall would stand to lose
10 approximately one hundred thousand dollars
11 that would go to his retirement -- he is an
12 elderly gentleman -- which would be very
13 substantial to him if this application had
14 not been granted.

15 MR. PROIOS: I am in a position of trying to
16 tell applicants the word "hardship" in a
17 normal context is different than what is
18 found in the law. Irrespective of
19 monetary, how long he has owned it, there
20 is specific criteria within this law.

21 Mr. Rigano, would you like to ask
22 a few questions?

23 MR. RIGANO: You mentioned earlier in your
24 presentation about a subdivision approval.
25 Were you referring to the two houses across

1 the driveway?

2 MS. MOJE: Yes.

3 MR. RIGANO: The subject parcel is not part of
4 the subdivision that was given subdivision
5 approval.

6 MS. MOJE: No, it was not part of the
7 subdivision approval.

8 MR. RIGANO: Could you describe whether the
9 property currently has a beneficial use?

10 MS. MOJE: Whether it currently has a
11 beneficial use?

14 To the applicant, he is the owner
15 of the property, it does not serve as any
16 use. It is currently vacant.

17 MR. RIGANO: I have no further questions.

18 MR. PROIOS: Does anyone on the Commission
19 have any questions?

20 MR. RIGANO: I do have one other question.

24 MS. MOJE: We would adhere to whatever the
25 Planning Department or the Pine Barrens

5 MR. MAC LELLAN: When you say build a home, you
6 are talking about the potential of how much
7 space?

8 MS. MOJE: I don't have an actual number on
9 it. If you would just bear with me a
10 second. I meant to do that before I got
11 here.

12 MS. PRUSINOWSKI: Has your client ever obtained
13 credit through the Pine Barrens
14 Clearinghouse?

15 MS. MOJE: No. If I could refer a question
16 to Ms. Prusinowski, what would the
17 clearance be, about thirty percent?

18 MS. PRUSINOWSKI: On a five acre parcel, I believe
19 it would be less than that. I believe it
20 is about twenty percent

21 MS. MOJE: We would be able to stay within
22 the twenty percent clearing if the
23 Commission saw fit to grant this
24 application.

25 MS. PRUSINOWSKI: It would be twenty percent

1 FLOOR: Yes, I would.

2 MR. PROIOS: Please identify yourself.

3 MS. KUHLMANN: My name is Debra Kuhlmann. I
4 live at 79 East Bartlett Road in Middle
5 Island.

6 I live in Middle Island on the
7 north side of East Bartlett Road, Core
8 Preservation Area of significant hydrologic
9 and ecologic importance.

10 The Marshall property on today's
11 agenda is located in the largely
12 undeveloped area between Cathedral Pines
13 County Park and East Bartlett Road. Its
14 western border is adjacent to approximately
15 thirteen acres acquired by Suffolk County,
16 formerly owned by Bartlett Associates.

17 To the northwest, approximately
18 three hundred fifty feet is Suffolk County
19 Water Authority property totaling about
20 forty-five acres.

21 Adjacent to the north is a large
22 privately owned property of approximately
23 ninety acres, the owner of which is
24 considering a contract offer for
25 acquisition by the County.

In recent years, Cathedral Pines Park has improved its facilities with a resulting increase in park usage by hikers, campers, horseback riders and bikers. An extensive mountain bike trail system maintained by CLIMB has enhanced the recreational value of this park.

Acquisition of as many undeveloped parcels as possible in the adjacent area would serve to form contiguous protected open space, and provide protection for resources as well as recreation use.

I encourage the Commission to continue the pursuit of the long-range goal of the Central Pine Barrens Plan to protect the majority of private, undeveloped lands through acquisition.

I commend and thank the property owners who would give due consideration to this option.

22 MR. RIGANO: We should mark this as an
23 exhibit.

[WHEREUPON NOTE WAS MARKED OPPOSITION'S
EXHIBIT 5 IN EVIDENCE.]

1 MR. AMPER: My name is Richard Amper. I am
2 Executive Director of the Long Island Pine
3 Barrens Society.

4 In the interest of full
5 disclosure, I am a friend and neighbor of
6 Ms. Moje, who is representing the
7 applicant, and know Mrs. Kuhlmann, who
8 spoke and testified because of her
9 environment work in the past.

10 I would bring to the Commission's
11 attention that this is a wooded property
12 that has not been previously disturbed,
13 contiguous to public holdings.

14 That it is in the Core
15 Preservation Area, and all of you are
16 familiar with the standards and guidelines
17 that govern development in the Core
18 Preservation Area.

19 We think that the application
20 does not conform to the provisions of the
21 Pine Barrens Act, but we would like to
22 suggest that it may be useful for the
23 Commission to develop an operating
24 definition of some material that can be
25 provided to the applicant so that they can

1 understand the uncommon definition of
2 hardship as it applies to the Core
3 Preservation Area.

4 None of this means to impose any
5 economic hardship on any property owner in
6 the Core Preservation Area. In fact, I
7 think it would be useful if this
8 information packet also included options so
9 that financial harm did not come to those
10 who own property in the Pine Barrens Core;
11 that is, information concerning the Pine
12 Barrens Credits Clearinghouse, the
13 available Town and County and State
14 programs so that they may be compensated,
15 and perhaps the operative definition and an
16 explanation of the definition of what
17 constitutes an actual hardship, which has
18 more to do with the nature of the land than
19 the economic implications for the
20 landowner.

21 This does not, in our judgment,
22 qualify for a hardship exemption, but we
23 fully support proper and full compensation
24 of the property owner so that he should not
25 be economically injured, and so that the

4 MR. PROIOS: Thank you.

10 MR. SPITZ: [INTERPOSING] I have a couple of
11 questions that have come to light in view
12 of this map.

15 MR. RANDOLPH: I think Suffolk County owns the
16 parcel that abuts this. Cathedral Pines is
17 over here to the east.

18 MR. SPITZ: Barring further investigation of
19 this, the map that I am looking at, it
20 seems to indicate that this property has
21 four property lines, the north, east, south
22 and west property lines. The north
23 property line abuts private undeveloped
24 property. The east property line
25 essentially abuts two residential lots.

13 MS. MOJE: It is the Town, and County and
14 residential property.

15 MR. MAC LELLAN: Is this considered a right-of-
16 way?

17 MR. RANDOLPH: It is a right-of-way, not a road.

18 MS. PRUSINOWSKI: Is this on the single-family
19 exemption list?

20 MR. PROIOS: I think the answer is it is not
21 on the single-family exemption list
22 primarily because it is not improved.

23 FLOOR: Did you say before that the
24 parcel to the north is owned by Suffolk
25 County?

1 MS. MOJE: No, I didn't say that. I thought
2 that the parcel to the north was actually
3 owned by the County.

4 MR. RANDOLPH: No, I was mistaken. It was the
5 parcel to the west.

6 MR. SPITZ: What we did was we just
7 established that the applicant, during her
8 initial remarks, misrepresented that the
9 parcel of property situated to the north of
10 the subject parcel was in County ownership
11 when, in fact, it would seem that it is in
12 private ownership.

13 MS. MOJE: Correct. It was my error.

14 MR. PROIOS: With respect to these two parcels
15 that were developed to the east by his
16 brother, do you know when they were built?

17 MS. MOJE: In the late 1980's. I asked for
18 that information, but I haven't received
19 the information back.

20 MS. KUHLMANN: The five acre zoning went in '89.
21 The application was for the Marshalls to
22 put up three houses, but the Zoning Board
23 reduced that to two, and two homes went up
24 in '89.

25 MR. PROIOS: If there are no other questions,

1 I will leave the comment period open until
2 the next hearing if there is any other
3 information to be received, and the
4 Commission hopefully will have the
5 transcript ready and possibly be able to
6 vote on it at our July 24th meeting.

7 MS. MOJE: Thank you for your time.

8 [WHEREUPON THIS HEARING WAS ADJOURNED AT
9 2:40 P.M.]

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13 APPLICANT'S EXHIBITS MARKED IN EVIDENCE

14 Exhibit 1: Packet of photos Page 8
15 Exhibit 2: Approval Page 8
16 Exhibit 3: Application Page 9
17 Exhibit 4: 12 photos Page 10

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19 OPPOSITION'S EXHIBITS MARKED IN EVIDENCE

20 Exhibit 5: Note Page 16

CERTIFICATION

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

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 17th day of July, 2002.

Sheila Partser
SHEILA PARTSER, R.P.R.

SHEILA PARISER, R.P.R.

CORRECTION SHEET

STATE OF NEW YORK }
COUNTY OF _____ } SS. :

I, _____, being duly sworn, depose and say:
I have read the transcript of my deposition and make the following insertions and/or corrections:

Signed:

Subscribed and sworn to before me
this ____ day of _____, 2001.

NOTARY PUBLIC