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CENTRAL PINE BARRENS

JOINT PLANNING AND POLICY COMMISSION

- - - - - :  
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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. :   
:   
- - - - - :

HEARING in the above-captioned matter, held  
on the 10th day of July, 2002 at 2:00 P.M., at the  
Commission Office, 3525 Sunrise Highway, 2nd Floor,  
Great River, New York, pursuant to Notice of Hearing,  
and before Sheila Pariser, R.P.R., a Notary Public  
of the State of New York.

COPY

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

ROBERT J. GAFFNEY, Chairman  
Suffolk County Executive  
BY: GEORGE PROIOS, Acting Chairman

ROBERT KOZAKIEWICZ, Member  
Supervisor, Town of Riverhead  
BY: JOEY MAC LELLAN

RAY CORWIN, Executive Director  
Pine Barrens Commission

JOHN J. LA VALLE, Member (Present)  
Supervisor, Town of Brookhaven  
BY: BRENDA A. PRUSINOWSKI, AICP and  
JEAN COMPITELLO

RAY E. COWEN, P.E.,  
DEC Regional Director  
Representing GEORGE PATAKI, Governor  
BY: WILLIAM H. SPITZ, Chief,  
Water Supply Office

MC MILLAN, RATHER, BENNETT & RIGANO, P.C.  
Attorneys for Commission  
BY: JAMES P. RIGANO, ESQ.

ED RANDOLPH, Environmental Analyst

D&I EXPEDITING SERVICES, INC.  
Representing Applicant  
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:

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

14 We do have Suffolk County  
15 Department of Health approval, Health  
16 Reference Number RR-201-1972, and I will  
17 also submit a copy of that for your record.  
18 [WHEREUPON APPROVAL WAS MARKED APPLICANT'S  
19 EXHIBIT 2 IN EVIDENCE.]

20 MS. MOJE:

21 Another item of information for  
22 your record, this is an application to the  
23 Town of Brookhaven Planning Department and  
24 Planning Board 53944. That is when the  
25 applicant was made aware that this site was  
in the Core Preservation Area and the Town  
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.

20 Obviously, when he inherited the  
21 parcel, he had no thoughts of it not ever  
22 being able to be developed.

23 If the Board has any questions, I  
24 would be more than happy to try and address  
25 them for you.

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?

12 The property is vacant and

13 wooded, and adjacent to an open space area.

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.

21 What is the maximum amount of

22 clearing that would take place with this

23 development?

24 MS. MOJE: We would adhere to whatever the

25 Planning Department or the Pine Barrens

1 Commission saw fit to, you know, enough  
2 space to clear to build a home, but we  
3 would do a minimum amount of clearing to  
4 accomplish the construction.

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 clearing.

2 MR. PROIOS: Any more questions?

3 MR. RIGANO: Does the access road end at the

4 second house furthest from the road?

5 MS. MOJE: Yes.

6 MR. PROIOS: Yes?

7 MS. MOJE: Although it appears that there is

8 a path that goes further.

9 MR. RIGANO: That's undeveloped, though?

10 MS. MOJE: Yes. The pavement is at the end

11 of the properties here.

12 MR. RIGANO: Do you know who owns the property

13 beyond that?

14 MS. MOJE: I believe -- I know that that is

15 Cathedral Pines. I am not sure if this is

16 part of it as well.

17 I was under the impression that

18 it was.

19 MR. RIGANO: Owned by whom, a governmental

20 body?

21 MS. MOJE: Yes.

22 MR. RANDOLPH: Yes, I think so.

23 MR. PROIOS: Are there any members of the

24 public wishing to address the Commission on

25 this application?

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.

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

8                   Acquisition of as many  
9                   undeveloped parcels as possible in the  
10                  adjacent area would serve to form  
11                  contiguous protected open space, and  
12                  provide protect for resources as well as  
13                  recreation use.

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

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

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

24                                       [WHEREUPON NOTE WAS MARKED OPPOSITION'S  
25                                       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

1 objective of this Commission and the Pine  
2 Barrens Act, the preservation of the Core,  
3 can be achieved.

4 MR. PROIOS: Thank you.

5 Anyone else wish to address the  
6 Commission on this application?

7 If not, I will close the public  
8 portion of the hearing. I will leave the  
9 comment period open --

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

13 Does this piece of property abut  
14 the Cathedral Pines County Park?

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.

1                   The south property line likewise  
2                   seems to abut two developed single-family  
3                   residential lots, and finally, the west  
4                   property lines seem to abut County-owned  
5                   land not connected to the Cathedral Pines  
6                   Park; however, which does not lie within  
7                   the vicinity.

8                   If information to the contrary is  
9                   available, this Commission would like to  
10                  know that; otherwise, that would be our  
11                  interpretation as to how this land is  
12                  situated.

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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11  
12  
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

18  
19 OPPOSITION'S EXHIBITS MARKED IN EVIDENCE

20 Exhibit 5:	Note	Page 16
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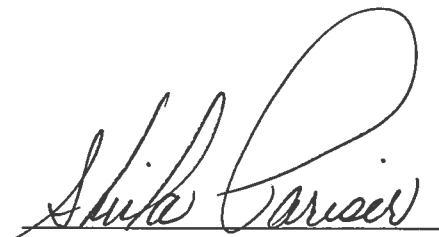
CERTIFICATION

STATE OF NEW YORK)  
 )  
COUNTY OF SUFFOLK)

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

THAT this is a true and accurate record of  
the Hearing held before the Central Pine Barrens  
Joint Planning and Policy Commission, in the matter  
of HAROLD MARSHALL, held on July 10, 2002, as  
reported by me and transcribed under my direction.

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



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:

[illegible]

Signed: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

NOTARY PUBLIC