



Central Pine Barrens Commission
Meeting of January 17, 2024
Adopted Resolution

Gosselin Property – Clarification to Condition #4

Core Preservation Area Hardship Waiver

49 Old Westhampton Road, Wildwood Lake, Riverside, Town of Southampton
SCTM # 900-164-4-11 and 12

Present:

Ms. Lansdale, Suffolk County Executive
Ms. DiBrita, Brookhaven Town Supervisor
Mr. Hubbard, Riverhead Town Supervisor
Ms. Moore, Southampton Town Supervisor

Robert T. Calarco
Chairman

Timothy C. Hubbard
Member

Maria Z. Moore
Member

Daniel J. Panico
Member

Edward P. Romaine
Member

I. The Project

Jason and Nancy Gosselin (collectively the Applicant) own property located at 49 Old Westhampton Road in Riverside, in the Town of Southampton. The Gosselin family's maternal in-laws have owned the property since the 1930s. The property fronts Wildwood Lake, and contains 1.73 acres of area. It is developed with eight cottages that total 6,500 square feet in area. The total area of existing disturbance on the property covers 0.88 acres and natural area covers approximately 0.85 acres.

The Gosselin's seek to demolish all of the existing structures on the property except for one cottage that will remain and be used for storage use. Gosselin seeks to construct a new single-family two-story residence seven bedroom house containing 3,600 square feet of area (the Project). Their project will not require clearing and if authorized will leave approximately 0.98 acres of natural area on the property including freshwater wetland habitat and revegetated area where structures will be removed.

Gosselin requires the Commission's approval for this project because the property is in the Core Preservation Area as defined in Article 57 of the Environmental Conservation Law and the project constitutes development. Details and specifications concerning the Gosselin's proposal are depicted on the Building Permit Survey prepared by Young Associates last dated October 25, 2023. The Gosselins are represented before the Commission by their attorneys Wayne D. Bruyn and Robert E. Marcincuk of O'Shea, Marcincuk and Bruyn, LLP.

II. The Act and the Commission

The New York State Legislature passed the Long Island Pine Barrens Protection Act (Act) and codified it in Article 57 of the Environmental Conservation Law (ECL), which was signed into law on July 13, 1993. The Act, among other things, created the Central Pine Barrens Joint Planning and Policy Commission (Commission), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area. In furtherance of its mission and in compliance with the directives set

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forth in the Act, the Commission drafted the Central Pine Barrens Comprehensive Land Use Plan (the Plan), which was adopted on June 28, 1995.

ECL §57-0107 defines development to be the “performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the following uses shall be taken for the purposes of this article to involve development . . . (a) a change in type of use of a structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated.” ECL §57-0123 provides that “no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions” of the Plan and Environmental Conservation Law Section. The Project constitutes development as defined in the Act.

III. The Project Site and Materials Submitted to the Commission

On October 12, 2023, the Applicant submitted a core hardship waiver application prepared by Nelson and Pope, dated October 6, 2023, with an Environmental Assessment Form Part I, a Building Permit survey of the property prepared by Young Associates dated September 26, 2023 and an interpretation request dated October 5, 2023 prepared by Wayne D. Bruyn, O’Shea Marcincuk and Bruyn.

On November 14, 2023, the Applicant submitted an updated Building Permit Survey prepared by Young Associates last dated October 25, 2023.

IV. Public Process

On November 15, 2023, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing and heard testimony from the Applicant. A presentation was made and submitted by Nelson and Pope and Robert Marcincuk. The hearing was closed and a two week written comment period held open. A transcript of the hearing was received and distributed to the Commission and posted on the Commission website.

V. The Study Area and State Historic Resources Determination

The Staff Report defined a Study Area which analyzed, in general, the land use and ownership of property within a one-half mile radius of the property. The Study Area contains the communities on the waterfront of Wildwood Lake, surrounded by a significant amount of natural public open space owned by Suffolk County, New York State and Southampton Town.

The Commission requested information from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) on whether the project would impact State listed historic or pre-historic resources. OPRHP replied by letter dated July 18, 2023 that, “[i]t is the opinion of OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.” Thus, the Project will not impact such resources.

VI. Other Required Approvals

The Project is a Type II Action pursuant to the State Environmental Quality Review Act (SEQRA).

The Applicant proposes an Innovative Alternative (IA) On Site Wastewater Treatment System for wastewater treatment on the Project Site. Suffolk County Health Department approval of the IA system will be required.

The Project requires permits and/or approvals from other involved agencies including, but not limited to the Town of Southampton Conservation Board for wetland habitat protection and building permits.

VII. History of the Project Site and Prior Commission Decisions

The property was acquired by the owner's relatives in the 1930s and developed with multiple seasonal cottages for use by family and friends. Recently, upon the death of the maternal grandmother, the property was transferred to the Applicant.

The Applicant asserts that the proposal is consistent with past Commission decisions to allow the replacement of a dwelling as non-development activity pursuant to the definitions in ECL §57-0107(iii). Despite this assertion, the Applicant also submitted a core hardship waiver application.

In their application, Applicant cited prior Commission decisions including, 71 Lakeview Drive (2016) and Starbucks Manorville (2017). In reviewing the materials, the Commission finds that its decisions cited by the Applicant as precedential have been distinguished. The matter of 71 Lakeview developed a naturally vegetated site, unlike the subject Project, and it was similar to the Project by being surrounded by a developed residential community. The nonresidential project, Starbucks, reused a developed site, which is similar to the Project, but it was a commercial land use rather than residential.

The matter of David Bruhns, Ridge, was raised as a precedent matter by the Applicant. It was a core hardship application that was ultimately determined by the Commission in 2006 to constitute "non-development." It allowed the replacement of a dwelling where a dilapidated one previously existed. Notwithstanding Bruhn's, the Commission subsequently has not followed this holding.

The Commission has in the recent past required core hardships for the complete demolition and removal and development of new structures such as in the 2023 decision Taco Bell Mangogna. In cases where demolition did not occur, such as in the non-residential property of Starbucks Manorville and JCJC, core hardships were required for development and changes in use.

Other matters requiring core hardships that were approved and denied involved the development of structures on naturally vegetated properties where no prior development or disturbance existed. Estate of Constance DiPeri (2010), and similarly 71 Lakeview, was also situated in a developed residential community of at least 40 other developed lots surrounding it. And the subject matter is unlike disapprovals of Gustave, Manorville (2016), Trocchio, Manorville (2016) and Dittmer,

Yaphank (2018) that were undeveloped lots, naturally wooded and in more sparsely developed communities.

VIII. Commission Review of the Act's Extraordinary Hardship Waiver Criteria and Applicant's Materials

In reviewing a Core Preservation Area Extraordinary Hardship Waiver application, the Commission is required to consider the criteria set forth in ECL §57-0121(10)(a), (c)(i), (ii), and (iii) to determine whether an applicant has established the existence of extraordinary hardship as distinguished from a mere inconvenience, whether the requested relief is consistent with the purposes, provisions of the Act, and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area. An applicant demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this article, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property under certain conditions.

The Commission has considered the application, the Staff Report and Exhibits, transcripts of the hearings, and its prior decisions and finds that Gosselin has demonstrated that an extraordinary hardship exists.

The property and project are unique because it is developed with eight dwellings that will be replaced with one and commensurate outdated cesspools that will be removed and updated with an innovative alternative sanitary treatment system. A larger area of the site will be protected including wetland buffers than currently exists. The upgrading of the septic system is expected to protect surface and groundwater water resources including Wildwood Lake and adjacent freshwater wetland habitat and the pine barrens ecosystem.

The amount of building area will be reduced by approximately half, from 6,500 to 3,600 square feet and the footprint of the structures on the property will be reduced from 6,200 to 1,800 square foot footprint. Additionally, 0.98 acre (42,689 square feet) of natural open space will be protected in covenants with non-disturbance, non-fertilization buffer requirements by the Southampton Town Conservation Board. As a result, the Project provides more area of the site in its natural condition and permanently protected than the amount of area developed, 0.98 acre and 0.75 acre, respectively.

The Applicant asserts that the seasonal nature of cottages, except for two winterized structures, do not suit their needs. The Applicant seeks modern features and energy and water efficiency in lieu of the existing separate, small and outdated structures that presently occupy the property. The cottages, according to the Applicant, do not meet the needs of modern families including lack of insulation, inefficient heating in winter, insufficient cooling in summer, lack of laundry facilities, small kitchens and bathrooms. According to the Applicant, the cottages require significant and costly maintenance and have exceeded their life span.

The characteristics of the site were created by Applicant's ancestors and predate the Act. The Applicant has not taken or failed to take an action with respect to the property. The needs of "modern families" as the testimony suggests have changed since the property was developed. The property will be rebuilt without disturbance or removal of trees or other natural vegetation.

Additionally, the Applicant will restore areas that are left cleared when structures are demolished and removed.

The Applicant is not currently present year round on the property to utilize the cottages either by their own use or for lease. The cottages require maintenance and improvements that the Applicant is not willing to undertake.

The change in use of the property will be reduced from the number of individuals and substantial use down to one family. {Is this the number of people that can use it because of all of the cottages} The Applicant may have sought to lease all the cottages causing substantial material use of the property and instead has chosen to reduce the intensity of use and use the property for one single family. This use is consistent with the single-family residential community that surrounds the property.

The Project maintains the site's essential character and will not result in an increase in development in the Central Pine Barrens.

In considering the application, the Commission finds that granting the waiver will not be materially detrimental to other properties due to the unique nature of the Project which involves removing a pre-existing non-conforming use, multiple dwellings on one residential property, and increasing the amount of natural vegetation onsite through the revegetation of cleared areas on the property. The property is unique because it benefits from development prior to the Act. The Applicant reuses a developed property in the Core, in a different manner and with a different structure than the present condition, rather than clearing an undeveloped naturally vegetated property.

The Applicant has demonstrated the property is currently not beneficial for their use. The Applicant seeks to retire in the coming years and eventually relocate full time to reside on the property. Having a dwelling that meets the needs of the family is the purpose of this application. The Applicant has committed to no clearing of trees or other disturbance to natural vegetation in the Project.

The Project will not increase danger of fire or endanger public safety when compared the risks posed by the present use. The Applicant's willingness to protect 0.98 acre of the property is reduces the potential significant use that may presently occur and also potentially could occur if each existing cottage were updated, expanded, winterized and used year-round.

The Waiver is not inconsistent with the purposes, objectives or the general spirit and intent of the Act because it permits the continuation of the residential use of a developed property while reducing the footprint and total square footage of structures and protects natural vegetation and revegetates cleared areas on the property.

The Project reuses a developed site and by doing so avoids new clearing in the Central Pine Barrens. By replacing an antiquate septage system with a modern system, groundwater impacts from the use on the property are anticipated to improve as compared to the use of the property's existing system. This benefits the quality of groundwater and surface water resources including Wildwood Lake.

IX. Commission Determinations

Based on the foregoing and upon review of the application, the Commission hereby grants the waiver requested by Gosselin. The Waiver is granted only for this specific project, a 3,600 square foot dwelling as per the survey prepared by Young Associates dated October 25, 2023. No other uses or development of the site in the R15 zoning category is permitted.

This Waiver does not allow development or redevelopment for another use or project.

The Commission finds that Gosselin has demonstrated that the property and its proposal is unique for the reasons set forth above. It has further demonstrated that it suffers an extraordinary hardship due to conditions unique to the property. The Commission grants a Waiver to Gosselin authorizing the development a 3,600 square foot dwelling on the Project Site with conditions.

The Project is situated on a site where there is presently development. The Project is expected to generate fewer trips, reduced use and fewer impacts due to the presence of a year round dwelling for one single-family consistent with the Study Area.

The Commission finds the Project will not result in substantial impairment to the resources of the Core Preservation Area. An alternative innovative treatment system will be installed in the Project, replacing an outdated septic system, for wastewater treatment and expected reduced nitrogen concentration discharge to groundwater.

The present use does not suit the needs of the Applicant. The Applicant stated to the Commission that it will not subdivide and lease the cottages through the rental market or on AirBnB or other platforms for vacation use or year round residency. The Applicant seeks to consolidate activities on site and use it for their own single use, significantly reducing the intensity of use of the property and the structural footprint on the property.

The Commission finds that the Project is not inconsistent with the purposes and provisions of the Act, including but not limited to, the goals and objectives to “[p]reserve the functional integrity of the Pine Barrens ecosystem, protect the quality of surface water and groundwater, discourage piecemeal and scattered development, [to] accommodate development in a manner consistent with the long-term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient, and orderly.”

The Commission hereby determines the Hardship Waiver application, as submitted, satisfies the criteria for a Core Preservation Area Extraordinary Hardship Waiver pursuant to New York State ECL Article 57 §57-0121(10) for the reasons set forth in this resolution.

A condition of approval requires the Applicant to record a Declaration of Covenants and Restrictions (C&Rs) on the property to protect 0.98 acre of the property and barring the construction of any other structure(s) and uses on the property. The C&Rs will reflect that the two existing tax lots will be merged and no further subdivision will be allowed.

This Waiver expires if the Project is not built in five (5) years and a new application will be required even for the same project and survey.

The Gosselin Property Core Preservation Area Extraordinary Hardship Waiver is approved, as per the survey prepared by Young Associates, last dated October 25, 2023, subject to conditions including:

1. The Waiver shall be valid for a period of five years from the date of approval.
2. Implement the building plan survey depicted in the plan prepared by Young Associates last dated October 25, 2023. Submit any updates if they occur. No substantial changes may occur without Commission approval.
3. The Applicant must obtain additional permits and approvals, as required by law, prior to commencement of activity related to the Project including Town of Southampton and Suffolk County Department of Health Services review and approval, NYSDEC, and any other approvals and permit requirements that apply to the Project.
4. No clearing or disturbance to trees or other natural vegetation present on the Project Site other than that which is shown in the referenced October 25 plan.
5. Utilize dark skies light fixtures.
6. Install native plants in the revegetation plan.
7. Minimize disturbance to the site and adjacent roadways and community when demolition and removal of existing structures occurs.
8. Install erosion control measures and manage stormwater on the project site.
9. Submit a copy of the Declaration of Covenants and Restrictions granted to the Town including:
 - a. Protect 0.98 acre of natural area of the site. Ensure it includes no disturbance to natural vegetation for the Project and does not permit the construction of any other structures and uses on the property.
 - b. Merge tax lots 11 and 12.
 - c. No future subdivision.
10. Within six months of completion of the Project and issuance of a Certificate of Occupancy, the Applicant shall submit an As-Built Survey for the Commission's file record.
11. The Waiver is granted only for this specific project, a 3,600 square foot dwelling as shown on the Young Associates last dated October 25, 2023.
12. If any changes occur in the Project the Applicant must notify the Commission and submit an amended application, subject to review and approval.

Gosselin Property at Wildwood Lake Core Preservation Area Hardship
Town of Southampton, SCTM # 900-164-4-11 and 12

Decision to Approve

Record of Motion:

Motion by: Ms. Lansdale

Seconded by: Ms. Moore

In Favor: 4

Opposed: 0

Abstention: 0

Absent: 1 (Mr. Calarco)

cc: Town of Southampton Department of Land Management and Building Department
Suffolk County Department of Health Services
New York State Department of Environmental Conservation Region 1

