

JOINT PLANNING AND POLICY COMMISSION
NEW YORK STATE PINE BARRENS COMMISSION

December 17, 2014
1-4

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<p>1</p> <p>2</p> <p>3</p> <p>4 CENTRAL PINE BARRENS</p> <p>5 JOINT PLANNING AND POLICY COMMISSION</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Brookhaven Town Hall</p> <p>10 One Independence Hill</p> <p>11 Farmingville, New York, 11738</p> <p>12 December 17, 2014</p> <p>13 3:00 p.m.</p> <p>14 Public Hearing:</p> <p>15</p> <p>16 Before: PETER SCULLY, Chair</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CHAIRMAN SCULLY: I would like to call</p> <p>2 this meeting to order. I will read from the public</p> <p>3 notice, which you can incorporate into the record.</p> <p>4 Pursuant to New York State Environmental</p> <p>5 Conservation Law, Article 57-0121(9), notice is</p> <p>6 hereby given that the Central Pine Barrens Joint</p> <p>7 Planning and Policy Commission will hold a public</p> <p>8 hearing on December 17, 2014 on the matter of an</p> <p>9 application for a Compatible Growth Area Hardship</p> <p>10 Exemption.</p> <p>11 The name of the project is the Riverhead</p> <p>12 Central School District Compatible Growth Area</p> <p>13 Hardship Waiver Application. The Applicant owner</p> <p>14 is Riverhead Central School District, c/o Partridge</p> <p>15 LLC.</p> <p>16 The Applicant's representative is David</p> <p>17 Wortman of VHB. The project site location is 337</p> <p>18 Edwards Avenue, Calverton, New York 11933.</p> <p>19 The Project Site Tax Map Number is</p> <p>20 600-117-1-8.3.</p> <p>21 The Project Description is as follows:</p> <p>22 The applicant requests a CGA Hardship</p> <p>23 Waiver for relief of the Comprehensive Land Use</p> <p>24 Plan, Vegetation Clearance Limit Standard</p> <p>25 (5.3.3.6.1). The clearing limit is 65 percent</p>
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<p>1 A P P E A R A N C E S :</p> <p>2</p> <p>3 JOHN W. PAVACIC, Executive Director</p> <p>4 Central Pine Barrens</p> <p>5 DAN McCORMICK, ESQ.</p> <p>6 Attorney, Town of Riverhead</p> <p>7</p> <p>8 JOHN MILAZZO, ESQ.</p> <p>9 Attorney, Town of Riverhead</p> <p>10 MARTY SHEA,</p> <p>11 Town of South Hampton</p> <p>12</p> <p>13 JULIE HARGRAVE,</p> <p>14 Senior Environmental Planner</p> <p>15 Central Pine Barrens</p> <p>16</p> <p>17 BRENDA PRUSINOWSKI,</p> <p>18 Representing Brookhaven Town Supervisor Edward</p> <p>19 Romaine</p> <p>20</p> <p>21 SARAH LANDSDALE, Representing Suffolk County</p> <p>22 Executive for Supervisor Steven Bellone</p> <p>23 ANDREW FRELENG, Chief Planner</p> <p>24 KYLE COLLINS, Member</p> <p>25 ED ROMAINE, Member</p> <p>JOHN PAVACIC, Member</p>	<p>1 based on the site's Industrial C Zoning. The</p> <p>2 proposed clearing limit is 84 percent.</p> <p>3 Approximately 56 percent of the 6.79 acre project</p> <p>4 site is developed with a trucking facility,</p> <p>5 including a 7,200 square foot building and parking;</p> <p>6 the remaining 44 percent of the site contains</p> <p>7 natural vegetation. The proposal includes</p> <p>8 construction of a 2,600 square foot addition to the</p> <p>9 existing building for a bus maintenance garage; 254</p> <p>10 parking spaces for employee vehicles, vans and</p> <p>11 buses; and a 14,000 gallon capacity bus fueling</p> <p>12 area for diesel, gasoline, and liquid propane gas</p> <p>13 storage.</p> <p>14 The hearing will be held at 3:00 p.m.,</p> <p>15 December 17, 2014, at Brookhaven Town Hall, One</p> <p>16 Independence Hill, Farmingville, New York 11838. A</p> <p>17 copy of the application is available for</p> <p>18 examination during regular business hours between</p> <p>19 8:30 a.m. and 5:00 p.m. at the Commission's office</p> <p>20 at: 624 Old Riverhead Road, Westhampton Beach, New</p> <p>21 York 11978.</p> <p>22 I would like to ask the Commission</p> <p>23 members and representatives to identify themselves</p> <p>24 for the record.</p> <p>25 Mr. McCormick?</p>

<p style="text-align: right;">Page 5</p> <p>1 MR. McCORMICK: Dan McCormick, designee 2 on behalf of Supervisor Sean Walter, Town of 3 Riverhead. 4 MR. ROMAINE: Ed Romaine, Supervisor, 5 Town of Brookhaven. 6 MS. PRUSINOWSKI: Brenda Prusinowski, 7 Supervisor Romaine's alternate representative. 8 MR. SHEA: Marty Shea, Supervisor Anna 9 Throne-Holst's alternate designee. 10 MR. COLLINS: Kyle Collins, Supervisor, 11 Anna Throne-Holst's alternate. 12 MR. FRELENG: County Planning, Andrew 13 Freleng, alternate. 14 MS. LANDSDALE: Sarah Landsdale, Suffolk 15 County Planning, Steve Bellone's representative. 16 CHAIRMAN SCULLY: Peter Scully, 17 representing the Governor of the State of New York. 18 We will turn first to staff, Julie? 19 MS. HARGRAVE: Thank you. 20 I will just go through the exhibits and 21 what has been presented to you. 22 This is the Central School District 23 Compatible Growth Area Hardship Waiver Application. 24 The staff exhibits, including the staff 25 reports are:</p>	<p style="text-align: right;">Page 7</p> <p>1 of Riverhead. 2 The project is to reuse an existing 3 trucking facility that is developed. The site is 4 6.79 acres and is developed with the 7,200 square 5 foot building and parking for a truck and parking 6 lot for vehicles, and the site is currently cleared 7 to a limit of 56 percent. 8 The proposal includes a 2,600 square 9 foot addition to the existing 7,200 square foot 10 building and storage of 14,000 gallons of fuel, 11 parking for 72 buses, 39 vans and 143 employee 12 vehicles for the school district. 13 The applicant proposes a total clearing 14 limit of 84 percent and the standard in the Central 15 Pine Barrens Conference on Land Use Plan is 65 16 percent. 17 The school district declares the agency, 18 pursuant to the State Environmental Quality Review 19 Act and adopted a negative declaration on December 20 9th. The project will need Health Department 21 approval for waste water, Article 6B12 for storage 22 of fuel on the site, as well as a DEC storm water 23 plan. 24 The site, again, is currently developed 25 with a trucking facility and the proposal includes</p>
<p style="text-align: right;">Page 6</p> <p>1 Exhibit A, 2014 tax map and 2013 aerial 2 of the site. 3 B is a site plan prepared by BBS 4 Architects, dated December 13, 2013. 5 C is a photograph of the project site. 6 D is the applicant's Hardship Waiver 7 Petition. 8 E is the Certificate of Occupancy, 9 number 13651, dated July 25, 1997, to the owner 10 Frank Beaulieu for park and ride facilities. 11 And F is a Certificate of Compliance, 12 number 168, dated April 21, 1998, to Frank Beaulieu 13 and asks for a 41,000 gallon underground propane 14 tank. 15 I will go through the staff report to 16 give you the background information and the 17 information that has been submitted: 18 Again, the site is on the west side of 19 Edwards Avenue, at 337 Edwards Avenue in Calverton, 20 in the Town of Riverhead. It's bordered on two 21 sides, the north and the east, by the actual 22 boundary of the Central Pine Barrens, which is at 23 the north, on one of the northeastern most points 24 of the Central Pine Barrens, in the compatible 25 growth area. It's zoned Industrial C, in the Town</p>	<p style="text-align: right;">Page 8</p> <p>1 an expansion of the building and the parking lot on 2 that project site. 3 The occupant submitted a review of the 4 project's conformance with standards of the Land 5 Use Plan and also, in their review, the applicant 6 said that the proposal would improve approximately 7 7.3 percent and 13.9 percent would be landscaped 8 and 15.9 percent would remain in its current 9 condition. So that is the only standard that the 10 applicant needs a waiver from you. 11 The petition, again, is included in the 12 application -- in the exhibits. Some of the 13 discussion items, again, the project will need 14 approval from the Health Department, so those 15 approvals will occur during the application 16 process, and we would expect to receive notice of 17 conformance with those standards. 18 Other items: The project could install 19 a split-rail fence to delineate the clearing 20 boundaries from the 15 percent that is going to 21 remain natural on the site. They did propose to 22 install trees to buffer the site, so that is also 23 included. 24 MR. ROMAINE: Do you know what type of 25 trees? Is it specific, in terms of vegetation?</p>

<p style="text-align: right;">Page 9</p> <p>1 MS. HARGRAVE: Well, the standard 2 required is native plants. 3 MR. ROMAINE: Such as? 4 MS. HARGRAVE: They could be cedar or 5 pitch pine; something that was -- evergreen maybe 6 to screen the site year round. The Commission may 7 have ideas on that. There is a variety in the plan 8 and also the towns have longer lists of plants. 9 So I think that's it, unless you have 10 any questions for me, and the applicant is here. 11 CHAIRMAN SCULLY: Questions for Julie? 12 Mr. Freleng? 13 MR. FRELENG: Julie, are there existing 14 trees in the road, the frontage, now? 15 MS. HARGRAVE: There are trees, if you 16 go to Exhibit C. So there are trees, street trees 17 on Edwards Avenue, that line Edwards Avenue. There 18 are several large trees. They don't really screen 19 the parking lot. They are very mature, tall trees, 20 but there are trees along Edwards Avenue and there 21 are trees also on the border of the site, on the 22 southeast corner, but the majority of the site is 23 field and I believe they are going to retain the 24 trees that exist on the site. So, again, they are 25 on the border of the property and, also, on the</p>	<p style="text-align: right;">Page 11</p> <p>1 MS. HARGRAVE: That site was under 2 construction at this time, so... 3 CHAIRMAN SCULLY: Other questions for 4 staff? 5 MR. COLLINS: Yes. 6 As a reference, in your report about the 7 site history, it talks about a November 21, 1994 8 application that came before the Commission and the 9 Commission concluded, utilizing the goals and 10 standards, that it is consistent. The application 11 that was submitted on that site plan, what did it 12 reference for the subject area, as it related to 13 that review determination? 14 MS. HARGRAVE: As far as the condition 15 of the area? 16 MR. COLLINS: Well, there was an 17 approval, so, I mean, it had to state what they 18 were doing with that area, I would assume. I was 19 wondering what did the Commission look like to make 20 a finding, as it related to the prior site? 21 MS. HARGRAVE: I can pull that. I have 22 it, but that project that was approved or 23 determined to be consistent with the goals at that 24 time, it wasn't close to hitting the standards. So 25 it was in conformance really.</p>
<p style="text-align: right;">Page 10</p> <p>1 south side. As you can see, there is on page 1 of 2 Exhibit C, there are large white pines that line 3 the south side of the property. 4 MR. FRELENG: So when you say "trees," 5 you are using trees loosely; you are really talking 6 about a visual screening of the parking lot, not 7 necessarily mature trees, but some sort of 8 screening of the parking lot. 9 MS. HARGRAVE: Yes. I mean, it will 10 take time for them to fill in. Some type of 11 screening, it could be large shrubs. 12 MR. FRELENG: Can I just point out to 13 the Commission that the aerial that we have is from 14 2013. It really does not represent the state and 15 the date. If you go out into the field and if you 16 look at Google, you can see the facility to the 17 south is much more developed than is showing in the 18 aerials. 19 CHAIRMAN SCULLY: The facility to the 20 south is -- 21 MR. FRELENG: The Hampton Jitney. 22 CHAIRMAN SCULLY: Oh, there is an 23 adjacent site that is fully developed. Got it. 24 MR. FRELENG: It's darn close. So the 25 aerial is not up to date.</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. COLLINS: I think it's important 2 that we include what the description was on that 3 site plan when it was approved, because if it says, 4 if it was mowed lawn area, that would make a 5 distinction as it relates to what the Planning 6 Commission considered at the time of that approval. 7 I think that should be clearly referenced in the 8 report, what the Commission report stated in that 9 '94 approval about what was the condition of the 10 site and what was shown on the approved site plan. 11 MS. HARGRAVE: Most likely it was a 12 farm. 13 MR. COLLINS: You don't have to pull it 14 out now, but I think it needs to be included in the 15 report. 16 MS. HARGRAVE: Okay. 17 MR. COLLINS: Also, you have a reference 18 in here, on page 2, a reference to site 19 description. Under "Vegetation," you make a 20 reference to Ettinger et al, a 2004 document, you 21 are referencing that? 22 MS. HARGRAVE: 2014, it says -- 23 MR. COLLINS: Whatever that is, it 24 should be clearly referenced too, what that is. Do 25 we know what that reference is to?</p>

<p style="text-align: right;">Page 13</p> <p>1 MS. HARGRAVE: Yes. That's the new, 2 very current version of the ecological communities 3 in New York State, it's the 2014 version. 4 MR. COLLINS: Then you reference, and I 5 think everybody agreed, that's why we are here 6 today, that the activity does consist of 7 development. However, there were some questions 8 that have been raised at previous hearings or at 9 previous meetings of how this complies with the 10 definition under "Clearing." 11 I think given that you stated the 12 definition of what development is, we should also 13 be discussing how this complies with the definition 14 under "Clearing," because Clearing clearly talks 15 about agricultural, horticultural and turf areas to 16 be exempt from that. So I think we need to make 17 sure that when we make reference to what the 18 activity is on site, that it does not -- if in fact 19 you can make that finding, how is it consistent or 20 not consistent with that definition? Because I 21 think when you take a look at the reference and the 22 definition of what you put in here, I think this 23 would lead you to believe that it would be exempt 24 from the definition. 25 MR. PAVACIC: The standard refers,</p>	<p style="text-align: right;">Page 15</p> <p>1 mowed, and that is by the Applicant's own admission 2 in the submission, it is a native turf grass. 3 That's not, for purposes of this application, not a 4 formalized landscaped area. It's not an 5 agricultural use. You can see it's no longer used 6 for agriculture. 7 MR. COLLINS: My question is as it 8 relates to the turf area. 9 MR. MILAZZO: I think the turf would -- 10 the Commission has used the word "turf" either to 11 mean a grass -- a turf area would be more of a 12 lawn- type thing. 13 MR. COLLINS: Here comes the question: 14 Because somebody did not mow their grass for a 15 season, we are now going to say that it is now 16 subject to the clearing restrictions. I don't 17 think that's the intent of what this talks about. 18 MR. MILAZZO: Those are all very good 19 questions. So we have an application where they 20 are saying this is native habitat; we are asking to 21 clear native habitat. So the issue is -- 22 MR. COLLINS: Well, you know, whether 23 the applicant -- my concern is, we are under a 24 hardship provision here. The law requires us to 25 make a finding that is consistent with the</p>
<p style="text-align: right;">Page 14</p> <p>1 first of all, to natural presentation, not clearing 2 of native, so natural, non-native. 3 MR. COLLINS: We can read it into the 4 record. It says, once defined -- this is under 5 533.6 -- which is "Clearing" is defined for the 6 purposes of the standard to remove any portion of 7 the natural vegetation found on the site, exclusive 8 of any vegetation associated with active 9 agriculture, horticultural activity, formalized 10 landscape and turf areas." 11 CHAIRMAN SCULLY: It's not a threshold 12 issue with regard to the pending application. 13 MR. COLLINS: So the question we need to 14 answer here: Does it fall with any of those 15 categories, what is the definition of "turf area, 16 formalized landscaping," as it relates to this 17 application? 18 Clearly, from the aerial photographs, we 19 can see this area has been mowed. You can see that 20 it goes back and forth on the aerial photograph. 21 So what is the definition of a turf area as it 22 relates to the clearing definition? 23 MR. MILAZZO: I think the reference to -- 24 the 2014 reference is a type of a special room. So 25 it's a mowed grass line, which is periodically</p>	<p style="text-align: right;">Page 16</p> <p>1 standards for a use variance. The use variance is 2 a very difficult standard to meet. So I am 3 concerned that we are going to go down the road, 4 that we are going to try to pigeonhole this into a 5 use standard where I don't see that what they have 6 submitted meets the conditions of that, nor do I 7 even think -- and it's questionable whether they 8 need to go through that if this is not defined as 9 "Clearing," because it could have implications on 10 future applications, whether this is defined as 11 vegetation or natural vegetation and now, the next 12 time we go into this scenario and it's pristine in 13 the middle woodlands, and we have made a 14 determination, I think this could have a very 15 severe effect on future precedent-setting 16 applications before the board. That is my concern. 17 MR. MILAZZO: My advice would be to let 18 the Applicant make his case. 19 CHAIRMAN SCULLY: Mr. Freleng? 20 MR. FRELENG: Question to Julie: Is 21 there an existing fuel storage on the truck 22 facility now? 23 MS. HARGRAVE: There is a -- the CC is 24 for -- there is fuel storage, from what I 25 understand, yes.</p>

<p style="text-align: right;">Page 17</p> <p>1 MR. FRELENG: But we don't know how 2 much? 3 MS. HARGRAVE: How much? 4 MR. MILAZZO: We have a certificate of 5 compliance for an underground propane tank. 6 MS. HARGRAVE: For a thousand gallons. 7 MR. MILAZZO: They have a propane tank. 8 The applicant can probably speak to whether there's 9 -- it looks like there was also a gas facility on 10 there because there is CC and there are 11 applications that's out of our red tape. It will 12 be located near the existing pumps. 13 MR. FRELENG: The truck facility is in 14 operation now? 15 MS. HARGRAVE: Yes. 16 MR. FRELENG: Is there anything in the 17 application materials with regard to the fate of 18 the existing maintenance facility other than the 19 fact that they are going to move it from point A 20 to the subject property? You said they are moving 21 it and they are going to eliminate that use, 22 geologic zone 3, whatever it is, the covenant 23 restricting the fact that they are going to 24 prohibit any future use of that facility for bus 25 maintenance, bus storage, truck facility, anything</p>	<p style="text-align: right;">Page 19</p> <p>1 MS. HARGRAVE: The President of the 2 School Board. 3 CHAIRMAN SCULLY: The President of the 4 School Board. 5 You are going to have to identify 6 yourself for the Reporter and be sworn. 7 MR. WORTMAN: Commissioners, My name is 8 David Wortman, W O R T M A N, with the firm of VHB 9 Engineering, with offices in Hauppauge. 10 Whereupon, 11 DAVID WORTMAN, 12 after having been first duly sworn, was examined 13 and testified as follows: 14 MR. WORTMAN: Good afternoon, 15 Commissioners. We are here after having submitted 16 some applications for hardship. We have 17 demonstrated within that application, we believe, 18 that we are consistent with all of the criteria -- 19 rather, excuse me, the standards for development in 20 the compatible growth area. 21 There is a question as to whether we 22 meet the standards for the clearance of natural 23 vegetation. As we detail within our submission, it 24 is our perspective that the site has been entirely 25 cleared of natural vegetation as far back as our</p>
<p style="text-align: right;">Page 18</p> <p>1 like that in the referral materials? 2 MR. MILAZZO: I think they're expanding 3 the existing building. 4 CHAIRMAN SCULLY: No, he is talking 5 about the remote site currently in use. 6 MS. HARGRAVE: It's outside of the pine 7 barrens. 8 CHAIRMAN SCULLY: These are good 9 questions for the applicant. 10 MR. MILAZZO: They didn't indicate the 11 fate of their non-Pine Barrens use. 12 MR. ROMAINE: We could put in the 13 resolution that we are have having a discussion. 14 We could vote on a resolution on this. 15 CHAIRMAN SCULLY: No, not yet. We need 16 to hear from the applicant. 17 Anything else for the staff before we 18 hear from the applicant? 19 MR. FRELENG: No. 20 CHAIRMAN SCULLY: So I see the 21 Superintendent of Schools, Nancy Carney is here, 22 and the Assistant Superintendant, Sam Schneider. 23 Also, Mr. Wortman is here from VHB and Mr. Smith, I 24 believe, from BBS. 25 Who is going to represent the district?</p>	<p style="text-align: right;">Page 20</p> <p>1 areal photography will let us look, since 1938. 2 There are some minimal areas on the site that 3 contain natural vegetation, or what might be called 4 that. These are areas where trees and shrubs and 5 the like have been planted; all of these areas will 6 be unaffected by the improvements. 7 There is an area that in our 8 understanding has been maintained as turf area, 9 roughly three acres of the site exists in that 10 condition today. We intend to expand the parking 11 areas within a portion of that. The site 12 percentages expressed by Ms. Hargrave match those 13 described on the site plan included with the 14 hardship application as the future condition of the 15 property. 16 It is our understanding that because the 17 Commission requested a hardship application, that 18 in some form or another our application was 19 understood to represent the removal of existing 20 vegetation or that otherwise, because the site was 21 cleared beyond 65 percent, it does not meet the 22 standards in its current form, therefore, the 23 hardship was required. 24 In addition to discussing our compliance 25 with each of the standards, we also set forth an</p>

<p style="text-align: right;">Page 21</p> <p>1 analysis of our compliance with each of the 2 criteria for the granting of the hardship. Also, 3 as Mr. Collins pointed out, the criteria for a 4 granting of a use variance in accordance with state 5 and town law. 6 With that being said, you noted the 7 presence of the District Superintendent of Schools, 8 Nancy Carney; the Assistant Superintendent, Dan 9 Schneider; the President of the Board of Education 10 and the District architect, Roger Smith. We are 11 all present to answer any questions that you may 12 have for them. Of course, I can answer some but 13 there are a few items that I would like to just 14 touch upon briefly, if could. 15 The ecological community's question: It 16 was suggested that we had -- the applicant rather, 17 in its submissions, had described that area as 18 native habitat. I don't think that is exactly how 19 it is described in our submission. I think we did 20 represent these areas containing a number of 21 species, but most consistently these are considered 22 turf grasses, and they are maintained by regular 23 mowing of the lawn, et cetera. 24 As far as the question of fuel storage 25 on the site, I think that is correctly answered.</p>	<p style="text-align: right;">Page 23</p> <p>1 a truck facility. 2 MR. WORTMAN: That's a fair question. 3 At this time the district is welcome to offer any 4 further information as to its plans or lack thereof 5 for that piece of property. We did not propose to 6 put any restrictions on land in connection with 7 this application, land that's outside the Pine 8 Barrens especially, but from a practical 9 standpoint, the answer is the proposed facility is 10 expected to accommodate the district's 11 transportation fueling needs, as well as all those 12 for its training and operations -- they intend to 13 close that facility and as such it would longer be 14 operational, nor would they have the need for 15 storing fuel on the site. 16 MR. FRELENG: I understand the district 17 is not the owner of the property, is that correct? 18 MR. WORTMAN: Currently the district is 19 not the owner of the subject property, that is 20 correct. 21 MR. FRELENG: When you came to the point 22 where you were going, it exceeds the clearing 23 standard, did you look at other parking 24 arrangements or anything that might have lessened 25 the request?</p>
<p style="text-align: right;">Page 22</p> <p>1 There is a CO for propane storage of the site. 2 There is also known to be the storage of large 3 quantities of diesel fuel used for the fueling of 4 trucks, et cetera, under existing conditions. 5 These are not listed as a permanent tank, but 6 within a fuel storage vehicle within that. 7 If you have any other questions, I will 8 be happy to answer those. 9 CHAIRMAN SCULLY: Questions for Mr. 10 Wortman or the school district. 11 Mr. Freleng? 12 MR. FRELENG: Thank you for answering 13 that question on the fuel storage; the trucking 14 facility is in operation today and I thank you for 15 answering that question. 16 One of the questions I do have: In the 17 application materials it was implied that there is 18 a net improvement to hydrogeologized zone 3 because 19 the existing facility would be removed from where 20 it is to the subject property. That implies that 21 that facility then will not have a future truck or 22 a bussing facility on it. How do we know that? 23 Are you proposing some sort of restriction on that 24 property or are you just assuming that it won't be 25 developed under the existing zoninh of that site as</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. WORTMAN: I would invite Mr. Smith 2 to be best able to answer that. 3 THE COURT REPORTER: State your name, 4 please. 5 MR. SMITH: Roger Smith. 6 Whereupon, 7 ROGER SMITH, 8 after having been first duly sworn, was examined 9 and testified as follows: 10 MR. SMITH: My name is Roger Smith. I 11 am the principal architect of BBS Architects, 12 landscape architects and engineers in Patchogue. 13 Just as a couple of points of 14 information that I think should be on the table: 15 The property was designed and built as a bus garage 16 originally; so it has been used as a trucking 17 facility but it was originally designed and built 18 as a bus garage, which is the intention of the 19 district, to use it as a bus garage. 20 We would obviously comply with any of 21 the regulations of the subject Health Department 22 for storage of any materials on the site. The 23 existing facility, this is the bus garage facility 24 moving from the Riverhead School District to this 25 particular piece of property.</p>

<p style="text-align: right;">Page 25</p> <p>1 What was that question? There were four 2 answers for one question. 3 MR. FRELENG: I wanted to know if you 4 had looked at other parking places. 5 MR. SMITH: Yes, I'm sorry. We, as the 6 site plan developers probably drew it at least 7 eight or ten times. This was the minimal, at best, 8 layout that we could get that was the least 9 invasive to the property. 10 MR. FRELENG: That's based on what you 11 have in the site now or does that anticipate 12 growth? 13 MR. SMITH: Do you mean what we would 14 need for our own utilization on the property? 15 MR. FRELENG: Right. Any movement of 16 what you have to the site or are you anticipating 17 some growth? 18 MR. SMITH: We anticipated everything. 19 We anticipated everything moving and recognized 20 that that would be the extent that we would be 21 permitted or the most that we would need to be able 22 to operate. 23 CHAIRMAN SCULLY: Other questions for 24 the applicant? 25 (No response.)</p>	<p style="text-align: right;">Page 27</p> <p>1 subject area? 2 MR. ROMAINE: I think that would be 3 germane if we were dealing with the subject owner, 4 but we are actually dealing with an applicant that 5 is going to develop this property as a bus garage. 6 I mean, how it was used before, if this is 7 approved, what impact does this have? 8 MR. COLLINS: It goes into the question 9 of whether this is turf area or not; whether we 10 even need to look at the issue of if it's cleared 11 or not. 12 MR. ROMAINE: I agree with you on that 13 point; the problem is here we are looking at it. 14 MR. COLLINS: Well, we could make a 15 finding that, yes, they submitted the hardship, 16 they have given that, at least, but it does not 17 meet the definition of "Clearing" and the 18 resolution could say: Therefore, they do not need 19 a waiver from the clearing restrictions. 20 MR. ROMAINE: I could support that. I 21 would be happy to support that. 22 MR. COLLINS: My concern is, I don't 23 have a problem with the application per se, I have 24 a problem with if we are going to grant a hardship 25 based on use variance standards, which I find how</p>
<p style="text-align: right;">Page 26</p> <p>1 Questions for staff? 2 (No response.) 3 If not, any member of the public wish to 4 be heard on the application? 5 CHAIRMAN SCULLY: Any further discussion 6 or questions for staff or questions for the 7 applicant? 8 MR. COLLINS: Actually one question: 9 What has been the maintenance of the subject area? 10 Do you have a time line for how often it has been 11 mowed. 12 MR. WORTMAN: My understanding is based 13 on discussions with the district and some direct 14 contact with the operators of the site. The best 15 way to describe it is that it's periodic, but at 16 least once, if not multiple times per year that 17 property has been the subject of mowing, at the 18 beginning and end of season. The habit has changed 19 slightly, I think, over the course of this 20 application process. They do not intend to hold on 21 to the property much longer. It's in the sales 22 arrangements. 23 MR. COLLINS: Could you get something 24 from the current owner that would be submitted for 25 the record on their maintenance practices of the</p>	<p style="text-align: right;">Page 28</p> <p>1 they are going to meet those standards, what is the 2 financial difficulty, that's the first, number one. 3 I think that the issue here is going to be whether 4 this is clearing or not. That's my concern. 5 MR. FRELENG: Why don't we bring back 6 some on this. 7 MR. MILAZZO: I think the applicant can 8 present his analysis of how it meets the standards. 9 MR. WORTMAN: Sure. 10 With respect to the financial 11 difficulties, as one of the criteria for the 12 granting of the use variance, being that the 13 applicant here is a public school district, it does 14 not necessarily get held to the same criteria as a 15 private land owner might or a private enterprise 16 might, and so with respect to looking for some kind 17 of a lack -- excuse me, for proving that without 18 this hardship there would be a lack of reasonable 19 return, it doesn't exactly apply because this is 20 not a property venture. This is, of course, the 21 result of what the district can express as a very 22 extended process of searching to find an 23 appropriate facility. 24 Here they have got a facility that is 25 sized appropriately, that is in current use, that</p>

<p style="text-align: right;">Page 29</p> <p>1 is, in our opinion, effectively fully cleared and 2 has been since long before the enactment of the 3 Pine Barrens Protection Act. We have fuller notes 4 on each of the criteria that speaks to the one in 5 question here. 6 We think that the hardship related to 7 this application is unique, and that it is uniquely 8 situated. This a unique type of use that's a 9 school district's use. It's unique in that it is 10 already developed for the type of use that we are 11 coming in for, and unique in that it's already 12 cleared beyond the standards, among others. 13 Will it alter the essential character of 14 the neighborhood? No, it would not. There are 15 similar uses nearby. Similar use has been 16 established at this site since 1990. 17 As far as the hardship having been so 18 created, again, any application for improvement of 19 this site that reduces that area of the turf now or 20 even if it does not, we would have a hard time 21 proving that it meets the clearing standards. 65 22 percent is better than the existing conditions, the 23 site is largely cleared under existing conditions. 24 I think, with respect to each of the use 25 variance criteria, the criteria for the granting of</p>	<p style="text-align: right;">Page 31</p> <p>1 identified as clearing -- again, the regulations 2 sort of leave us in a bit of a hole here. You 3 cannot clear beyond 65 percent; we are already 4 cleared beyond the 65. 5 CHAIRMAN SCULLY: Keep in mind, the 6 district came and made that argument and was 7 encouraged instead to bring a hardship application, 8 so we can't very well make them change their path. 9 MR. COLLINS: I think the original 10 argument was that it wasn't developed. 11 CHAIRMAN SCULLY: Right. 12 MR. COLLINS: That was when we all 13 agreed that it was developed, so that that's when, 14 I don't know, we talked about that. 15 MR. ROMAINE: Would you want to draft a 16 resolution on this for the Commission, which there 17 is one already drafted to grant them the hardship, 18 and add as a provision to that, notwithstanding the 19 fact that we don't deem this as additional 20 clearing, something of that -- I will leave the 21 language to you because you raised -- 22 CHAIRMAN SCULLY: Is that someone has to 23 add a resolve clause? 24 MR. MILAZZO: At that point, you don't 25 need --</p>
<p style="text-align: right;">Page 30</p> <p>1 the hardship waiver, we did make the appropriate 2 case for each of those criteria. I certainly 3 appreciate the question at hand, is this considered 4 clearing? I think, no matter which way it's viewed 5 at the end of the day, the site does not contain 35 6 percent of natural vegetation. The purpose of the 7 hardship process, I think, is to accommodate some 8 of these areas that can't be well defined and 9 addressed within the standards. That's just sort 10 of what brings them here. 11 So this, here too, this venue, in our 12 opinion, these areas have been cleared and have 13 maintained turf areas, et cetera, and that we do 14 not proposed any new clearing per se. 15 MR. McCORMICK: Of the additionally 16 proposed 1.9 acres of clearance, could you estimate 17 how much of that is represented by the turf area? 18 MR. WORTMAN: How much of 1.9? I think 19 that is the turf area that is encroached upon. 20 MR. McCORMICK: The 1.9? 21 MR. WORTMAN: The 1.9. 22 MR. McCORMICK: So, in effect, if the 23 turf area was deemed turf non-clearance, you would 24 not need to come before us? 25 MR. WORTMAN: If the turf area was not</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. ROMAINE: There is something called 2 belt and suspenders. Why don't we -- I am going to 3 put forward, this is drafted by the Commission and, 4 in essence, what it says is that the project is 5 consistent with the goals and objectives of the 6 Environmental Conservation Law, Article 57. It 7 says that, it determines the project meets and 8 satisfies the compatible growth hardship waiver, 9 and it goes on and on, and in the end resolves also 10 that the Commission determines that the turf area 11 was cleared, had been cleared. 12 MR. MILAZZO: There are issues, it's 13 either approved on a hardship basis or we could 14 look into the question of whether the turf is -- 15 what is the turf? Because Kyle has argued that the 16 turf is not native vegetation, not contemplated by 17 the clearing standards. So that question is an 18 important question and I think the Commission would 19 be better served answering that question. 20 MR. ROMAINE: Separately? 21 MR. MILAZZO: Separately, rather than 22 having a resolution that says: We are approving a 23 hardship, we don't think you need a hardship, so 24 thank you for coming in, which is essentially what 25 that resolution would say. In all due respect, it</p>

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1 would say: "If you need it, you get it; if you
2 don't need it, you are on your way." That may not
3 be the model of clarity that is consistent with
4 prior Commission decisions.

5 CHAIRMAN SCULLY: So --

6 MR. ROMAIN: So why don't we instead
7 adopt this resolution for hardship finding, a
8 hardship waiver, why don't we adopt that and then
9 deal with the turf issue at another date and then
10 clearly define that issue because I think you raise
11 an excellent point there.

12 MR. FRELENG: I don't have a copy of the
13 resolution.

14 CHAIRMAN SCULLY: The public hearing is
15 still open. No member of the public wishes to be
16 heard.

17 Any other questions of the applicant?

18 We will move to close the hearing now
19 for the deliberation of the Commission.

20 (Time Noted: 3:35 p.m.)

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

2 I, MONIQUE CABRERA, a Shorthand Reporter and
3 Notary Public, within and for the State of New
4 York, do hereby certify that I reported the
5 proceedings in the within-entitled matter, on
6 December 17, 2014, at Brookhaven Town Hall, One
7 Independence Hill, Farmingville, New York, and that
8 this is an accurate transcription of these
9 proceedings.

10 IN WITNESS WHEREOF, I have hereunto set my
11 hand this 28th day of December, 2014.

12 *Monique Cabrera*

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14 MONIQUE CABRERA, Reporter

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