



The Central Pine Barrens Joint Planning and Policy Commission
Meeting of July 16, 2025
Adopted Decision to Deny
V&G Realty Core Preservation Area Hardship Waiver
Gerard Road, Yaphank, Town of Brookhaven
SCTM Numbers 200-781-1-5 and 15

Present:

Ms. Juengst, Suffolk County Executive
Mr. Panico, Brookhaven Town Supervisor
Mr. Hubbard, Riverhead Town Supervisor
Ms. Moore, Southampton Town Supervisor

I. The Project

Timothy C. Hubbard
Member

Maria Z. Moore
Member

Daniel J. Panico
Member

Edward P. Romaine
Member

V&G Realty LLC (the Applicant) owns property located on Gerard Road in Yaphank. The Applicant seeks to construct a two-story residence on a 36,995 square foot project site and develop a portion of Sterling Street for a driveway to the residence. An area of approximately 15,000 square feet will be cleared and the remainder protected as natural open space. An innovative alternative on site wastewater treatment system is proposed (the Project).

In 2016, the Applicant purchased the property, which consists of two contiguous parcels. The parcels are identified as Suffolk County Tax Map Numbers 200-781-1-5 and 15. Lot 5 has 6.22 linear feet of frontage on Gerard Road, an existing public improved road, while Lot 15 has no open improved frontage. The property is undeveloped and contains natural pine barrens vegetation.

The Commission must approve the Applicant's plan because the proposal constitutes development and approval is required for the Project because the property is in the Core Preservation Area as defined in Article 57 of the Environmental Conservation Law, where development is prohibited, and the project constitutes development. Details and specifications concerning the Applicant's proposal are depicted on the Building Permit Survey prepared by O'Connor – Petito, LLC, last revised January 21, 2019. The Applicant is represented by Tracey Schleske of Beach Expediting.

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 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 April 3, 2025, the Applicant submitted a core preservation area hardship waiver application prepared by Tracey Schleske, dated March 27, 2025, with an Environmental Assessment Form Part I and property survey.

During the Hearing Applicant introduced an Exhibit marked as ‘Exhibit I’ which included a Brookhaven Town Zoning Board of Appeals decision dated April 2, 2025 to postpone indefinitely the ZBA’s decision on the application; a map identifies a 500 foot radius map around the project site and states that 21 homes are in a 500 foot radius and 16 lots that are smaller than the project site; and a color markup of the property survey that shows areas to be developed and areas that would remain natural and protected as open space. It is important to note that at least 19 lots, roughly half of the area shown in the radius map are not in the Core. Out of roughly 21 lots that are in the Core, some are public open space owned by Suffolk County, and one lot has applied for a Pine Barrens Credit Certificate to protect the property in a conservation easement.

IV. Public Process

On June 18, 2025, the Commission held a public hearing on the Project. A Staff Report with eight Exhibits was introduced into the Record. The Applicant, by its representative Tracey Schleske, made a presentation on the Application.

The hearing was closed and a seven day written comment period. No comments were received. A transcript of the hearing was received and distributed to the Commission and posted on the Commission website.

V. The Study Area

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 includes a significant amount of natural public open space owned by Suffolk County, most prominently the 1,100 acre parkland known as Southaven County Park which includes an active Trap and Skeet shooting range. The CGA is on the west side of Gerard Road, opposite the Property.

Approximately 80 Properties in the Study Area and unopened roads were placed in the Core Preservation Area in 2014 by an amendment to the Act. In the Study Area this mainly includes undeveloped and natural areas west of Southaven County Park.

The Project Site and area to the north and east are in the old filed Map of Orient Park. The old filed map contains public land owned by Brookhaven Town and Suffolk County and a number of privately owned lots are present in the old filed map. East of the unopened road, Hawthorne Avenue, sits a privately owned, 14 acre lot in the Core that was developed with a residence and accessory structures including barns prior to the Carmans Core expansion.

VI. Other Agency Reviews and Approvals

The Project is a Type II Action pursuant to the State Environmental Quality Review Act (SEQRA) and exempt from further SEQRA review. An Innovative Alternative (IA) On Site Wastewater Treatment System is proposed for wastewater treatment which requires Suffolk County Health Department approval. Other permits and/or approvals are required from the Town of Brookhaven Zoning Board of Appeals and Building Department.

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 May 1, 2025 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.

The Commission requested information from the NYSDEC Natural Heritage Program (NHP) on listed species. In a letter and report dated June 12, 2025, NHP reported, “The following species has been documented within 1.5 miles (nonbreeding) and within 1.75 miles (maternity colony) of the project site: Northern Long-eared Bat. Individual animals may travel 3 miles from documented locations. The main impact of concern is the cutting or removal of potential roost trees.” Northern Long-eared Bat is a Federal and State-listed Endangered species. Tree cutting restrictions are in place to minimize adverse impacts to individuals and populations of this species, which include no cutting of trees during the period of March 1 to November 30 of any given year.

VII. Precedent

The Commission has reviewed similar exemption requests in the past. These matters include both approvals and denials in the Commission decision history.

Out of fifteen denials of core hardships for the development of single-family residences in the Commission’s historical record, applications with similar features as this application include Henry Dittmer Lot 200-529-5-35, Eagan Dittmer, Henry Dittmer Lot 200-326-3-3, Armand Gustave c/o Peter Barron, Armand Gustive Lot 200-460-1-10, Sunderland, Trocchio (Antro Realty) and Gazza Lots 200-355-4-5 and 200-412-3-6.

Lots including Dittmer, Trocchio, Gustave, Gustive and Sunderland were undersized for the zoning district and each had frontage on a developed road that did not comply with zoning

requirements or required a portion of an unopened road that was naturally vegetated and undeveloped to be cleared and developed to establish access. The subject application is similar to the conditions found in similar applications such as Dittmer where an approval of a hardship waiver would result in an adverse precedent that has the potential to result in significant additional development in the Core not only on the Project Site and in the Study Area of the Project Site but in other areas of the Core and thus substantial impairment of the resources in the Core including adverse impacts on groundwater and ecological resources and fragmentation of existing habitat and publicly owned open space and establish an adverse precedent in that it may help induce and promote similar types of development applications to be submitted in the area of the Project Site and in other hamlets in the Core where low-density development and expansive public land holdings exist.

The Commission has granted 24 exemptions authorizing the construction of single-family homes in the Core Preservation Area. The subject property materially differs from these for various reasons, including, but not limited to, the Applicant does not seek to replace a dwelling on the parcel where a dilapidated one existed, does not seek to demolish and redevelop existing structures on the parcel, is not developing a parcel surrounded by existing houses, is not developing a parcel that is listed in the Act's residential roadfront exemption list, is not in a significantly developed area, and is not developing a property for which one or more permits were issued prior to the Act.

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

To establish the existence of an extraordinary hardship, an Applicant must demonstrate the elements set forth in the Act including in ECL §57-0121(10)(a) and (c).

At the public hearing, the Applicant was requested to provide information that was not provided including the property deed and to review the hardship criteria outlined in the Act to demonstrate a hardship pursuant to the requirements in the Act.

To address the first criteria, the Applicant's submission and testimony are deficient and lack evidence of hardship. Pursuant to ECL §57-0121(10)(a)(i), in addressing this element, the application discusses a 14 acre lot with a residence and pool in the core to the east and in the CGA an 11 lot residential subdivision developed after 1993. Development in the CGA is in proximity to the site and outside of the Core and therefore not relevant to demonstrating a core hardship. The 14 acre lot was developed prior to the 2014 Carmans Core expansion.

The Commission finds the Applicant has not satisfied the element in ECL §57-0121(10)(a)(i) on the hardship relating "to or arising out of the characteristics of the subject property rather than the personal situation of the applicant," because the Act prohibition on Development applies to each Core parcel surrounding the Property. The Applicant has failed to provide evidence on how the characteristics of the subject property create unique circumstances and the general prohibition causes a unique hardship to the Applicant. The Applicant did not provide evidence relative to this provision and did not provide proof that the Property has no beneficial use given that the Property is eligible for Pine Barrens Credits. The Applicant did not apply for Letters of Interpretation its parcels which would establish the number of Pine Barrens Credits the parcels would be eligible to receive.

To address the second criteria, the Applicant simply replied in the hearing testimony that the property was purchased and the application stated, “V&G is the fourth owner of the property and purchased it with the intention of constructing a single-family dwelling in 2016.” This statement does not demonstrate that the alleged hardship was not self created. Applicant’s purchase of the Property occurred after it was included in the Core Preservation Area in 2014.

The Commission finds the characteristics of the subject property are not unique for the property in the Core where development is prohibited. The property is similar to other privately owned, substandard and undeveloped parcels on unopened roads in the old filed map in the Study Area and also in other hamlets of the Core Preservation Area where owners of property may apply to develop land in the Core.

The Applicant alleges that the Parcel is held in “single and separate” ownership as defined by the Town of Brookhaven Code. The Commission notes that whatever benefits this provided may have lapsed upon the Applicant’s purchase of the parcels by the same person. Notwithstanding, the Commission has denied other applications for Development requiring a Commission granted exemption based solely on a parcel single and separate status including Dittmer and other denials referenced herein. Single and separate status alone does not exempt the project site from complying with other ordinances implemented for resource protection purposes such as the Act or create special rights under the Act such as entitlement to a hardship waiver exemption if development is proposed on the Project Site.

Pursuant to ECL §57-0121(10)(c)(i), the applicant failed to provide evidence demonstrating that if grant the Hardship exemption will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the preservation area. Absent such a proffer and without this information the Commission is unable to make such a finding.

The Commission finds that, in the absence of evidence to the contrary, the Project could be expected to impair the resources of the Core Preservation Area by setting a precedent to develop privately owned lots in the vicinity and additional disturbance and removal of vegetation to develop unopened roads. Development of the project site may in an area where a significant amount of open space is present in a fire dependent ecosystem may increase the danger of fire by allowing the development of structures within or adjacent to natural open space, expanding area known as the wildland urban interface.

The Project may generate growth-inducing impacts in the Core and is precedent setting in nature in that it would induce and promote additional development in an area where privately owned lots are present in an old filed map and where extensive public open space is also present by developing road on a subdivision map without any roads.

In considering the criteria contained in ECL §57-0121(10)(c)(ii), the Commission finds that granting of the waiver would be inconsistent with the purposes, objectives or general spirit and intent of this title as the Project does not redirect development from the Core Preservation Area or

support the preservation of Core Preservation Area lands, preserve existing natural vegetation, ecologic, and hydrologic functions of the Pine Barrens.

IX. Conclusion

Based on the foregoing, and upon the review of the record developed by the Applicant and the Commission, the Commission finds that the Applicant has not demonstrated extraordinary hardship exists for the reasons set forth above. The Applicant's request lacks a robust record to demonstrate extraordinary hardship, and the Commission has denied similar requests in the past.

The Applicant has not established the existence of an extraordinary hardship or provided any evidence to support the hardship requirements. The Commission finds that the denial of the hardship exemption request is consistent with its prior denials. The Commission further finds that the Applicant has not demonstrated that the Parcel shares the attributes of those parcels for which hardship exemptions were granted.

The Commission finds that the Project is not consistent 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 matter 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 finds that, the requested waiver exceeds the minimum relief necessary to relieve hardship; the development of a vacant, privately owned Project Site on an unopened, undeveloped road is precedent setting and will result in adverse growth inducing impacts in the study area and in other hamlets in the Core Preservation Area, and if approved would be inconsistent with ECL Article 57, in particular ECL §57-0121(10)(c)(iii).

The application for a Core Preservation Area Extraordinary Hardship exemption for V&G Realty is denied.

V&G Realty Core Preservation Area Hardship Disapproval

Town of Brookhaven, SCTM Numbers 200-781-1-5 and 15

Decision to Approve

Record of Motion:

Motion by: Mr. Panico

Seconded by: Ms. Moore

In Favor: 4

Opposed: 0

Abstention: 0

Absent: 0

cc: Town of Brookhaven

Suffolk County Department of Health Services

New York State Department of Environmental Conservation Region 1

NOW OR FORMERLY OF RODDEN ASSET MANAGEMENT TRUST
(VACANT) x 40.9

ANN STREET (NOT OPEN)
(35' WIDE)

MAP OF HORSTEAD DOWNS
FILED 4/5/2004
MAP #11082
C.R. 21-YAPH
TOWN OF BROOKHAVEN
RECHARGE BASIN
XISTING 6' HIGH CHAIN
ND NOW OR FORMERLY
WM OF BROOKHAVEN

(25. WIDE) (NOT OPEN)

RECEIVED

JUN 18 2005

Central Pine Barrens Joint Planning & Policy Commission

ACCIDENTAL = 81.15 WATERS

1ST FLOOR AREA = 1,366 SQ FT
2ND FLOOR AREA = 1,305 SQ FT
GARAGE AREA = 414 SQ FT
PROPOSED DWELLING IS TO CONTAIN 4 BEDROOMS
PROPOSED SANITARY-1250 GAL. SEPTIC TANK WITH A 8' DIA. X 12' DEEP LEACHING POOL
PROPOSED CLEARING 15,000 / 37,992 = 39.4%

TOTAL PARCEL AREA = 37,992 SQ. FT. +/-

MAP OF ORIENT PARK-PLATE N, SECTION 3
FILE MAP No. 49, FILED 3/18/1910

YAPHANK

O'Connor - Petito, L.
Land Surveying
Civil Engineering
27 Forest Ave
Locust Valley
(516) 676-3266

DATE: JAN 12, 2018
REV 12/19/19 WATER SERVICE
REvised:

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REV 12/19/19 WATER SERVICE
REvised: