



Commission Meeting of July 20, 2016 Riverhead Town Hall

Present: Ms. Carrie Meek Gallagher (State of New York),
Ms. Sarah Lansdale (Suffolk County), Mr. Edward P. Romaine (Brookhaven),
Mr. Daniel McCormick (Riverhead), Mr. Jay H. Schneiderman (Southampton)

Adopted Resolution 71 Lakeview Drive, SCTM #: 900-163-2-27 Core Preservation Area Hardship Waiver Northampton, Town of Southampton

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

I. The Project

Whereas, Ralph Vail (the “Applicant”), by his representative, Thomas Cramer, submitted on February 24, 2016 a Core Preservation Area Hardship Waiver Application to develop a single-family residence on a 10,000 square foot parcel identified as Suffolk County Tax Map Number 900-163-2-27 (the “Project”), located at 71 Lakeview Drive, an existing improved, paved road, in the hamlet of Northampton, in the Core Preservation Area of the Central Pine Barrens, in the Town of Southampton (the “Project Site”); and

Whereas, the Project Site is presently wooded with natural pine barrens vegetation and contains no freshwater wetlands; and the Project Site is in the Residence 15 (R-15) Zoning District (in which a minimum lot area of 15,000 square feet is required).

II. The Act and the Commission

Whereas, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “Act”) and codified 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 (the “Commission”), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area; and

Whereas, 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 “CLUP”), which was officially adopted on June 28, 1995; and

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Whereas, Section §57-0107 of the ECL 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 . . . (b) a material increase in the intensity of use of land or environmental impacts as a result thereof; . . . (c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;” and

Whereas, Section §57-0123 of the ECL 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 CLUP and Environmental Conservation Law Section; and

Whereas, the Project constitutes development as defined in the Act.

III. The Project Site and Materials Submitted to the Commission

Whereas, the Applicant submitted a letter addressing the hardship criteria; a title report; an owner’s affidavit; a Town of Southampton Letter of Non-Jurisdiction Pursuant to Chapter 325 (Wetlands); A Full Environmental Assessment Form Part I; a Survey prepared by Cramer Consulting Group dated February 3, 2016; and an aerial map of the Project Site in relation to the developed community in which it is situated on the north of Wildwood Lake and seven parcels identified in the vicinity of the Project Site that are listed in the Core Preservation Area residential frontend exemption list; and

Whereas, the Applicant alleges that the Project Site has been held in single and separate ownership since 1955; and

Whereas, the Applicant purchased the Project Site in 1970 and has owned it continuously since then; and

Whereas, the Applicant has extended the Commission’s hardship application decision deadline to July 20, 2016; and

IV. Public Process

Whereas, on March 16, 2016, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing; heard testimony and received exhibits from the Applicant and heard testimony

from the public; subsequently, a transcript of the hearing was distributed to the Commission.

V. The Study Area

Whereas, the Staff Report defined a Study Area which consisted of all of the property within a one-half mile radius of the Project Site; and

Whereas, within the Study Area are approximately 118 parcels comprising approximately 121 acres; and

Whereas, the dominant land use in the Study Area is residential; on the Project Site's west side is a developed road, Lakeview Drive, and the Project Site is surrounded on all three sides – north, east, and south – by existing residential development; approximately 72 parcels are developed with single-family dwellings in the residential community on the north side of Wildwood Lake in the Study Area; open space is the second most dominant land use in the Study Area including large tracts owned by Suffolk County, New York State, and the Town of Southampton; conservation easements are recorded on at least 14 parcels in the Study Area; and

Whereas, the Project Site is within an area identified as archaeologically sensitive according to the New York State Cultural Resource Information System (CRIS) database; and

Whereas, notwithstanding the Project Site's location in an archaeologically sensitive area, the Commission received a response from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) by letter dated April 13, 2016 which stated the project will have no impact on cultural resources in or eligible for inclusion in the State and National Register of Historic Places; and

Whereas, the New York Natural Heritage Program (NHP) responded to the Commission's request for information on rare, threatened or endangered animal and plant species on the Project Site by letter dated April 29, 2016. The NHP provided a report entitled "Report on State-Listed Animals" and listed Tiger Salamander (*Ambystoma tigrinum*), a State-listed Endangered amphibian, Banded Sunfish (*Enneacanthus obesus*), a State-listed Threatened species, and Little Blue (*Enallagma minusculum*), a State-listed Threatened species. The species are noted as documented near the Project Site, within 0.5 mile. The report states potential onsite and offsite impacts from the project may need to be addressed. The NHP response contained a report entitled, "Report on Rare Animals, Rare Plants and Significant Natural Communities" that listed one species of moth, the coastal barrens buckmoth, a State-listed Special Concern, and four animal species of dragonflies and damselflies with a State listing of "Unlisted;" the report listed significant natural communities including a wetland/aquatic community, specifically a coastal plain poor fen identified as a cranberry bog, and two upland/terrestrial communities identified as pitch pine oak forest and pitch pine oak heath woodland. The report listed four species of vascular plants including two State-listed Endangered species and two State-listed

Threatened species and identified Wildwood Lake and Cranberry Bog as habitats for these species, and such wetland habitats are not present on the Project Site. The NHP provided a separate report entitled “Report on Historical Records of Rare Animals, Rare Plants, and Natural Communities,” and listed one historical record of a species of moth noted as “Unlisted” and 17 State-listed Endangered or Threatened species of vascular plants with 1952 listed as the most recent record of observation of this set of historical species; and

Whereas, the dragonflies and damselflies are noted by NHP as observed in Sweezy Pond, Wildwood Lake, and Cranberry Bog; the Project Site is neither situated in the regulated boundary of pond, lake or bog habitats nor does it contain habitat suitable for the species of moths and dragonflies listed by NHP; and

Whereas, a Letter of Non-Jurisdiction, dated October 7, 2009, was sent by the Town of Southampton to the Applicant and the letter indicated there are no regulated freshwater wetland habitats present on the Project Site; and

Whereas, the Project Site does not contain a cranberry bog or wetland habitat dependent species identified by the NHP; and

Whereas, the Applicant has not submitted site-specific natural resources surveys on the Project Site.

VI. Other Required Approvals

Whereas, the Project is a Type II Action pursuant to the State Environmental Quality Review Act (SEQRA); and

Whereas, the Project requires additional permits and/or approvals from other involved agencies including Suffolk County Department of Health Services, the Town of Southampton, and the New York State Department of Environmental Conservation; and

Whereas, the Project will generate 300 gallons of sewage per day according to the provisions of the Suffolk County Sanitary Code; and the Project will require a permit for the approval of plans and construction for a sewage disposal system for a single-family residence; and

Whereas, the Project Site is within a Recreational River Corridor of the Peconic River as designated by New York and is subject to regulation under Article 15, Title 27 of Environmental Conservation Law regarding Wild, Scenic & Recreational Rivers; and

Whereas, development of the Project Site will require a building permit from the Town of Southampton.

VIII. Prior Commission Decisions

Whereas, other development projects in the Core Preservation Area that were approved and identified as being similar in nature to the Project and, like the Project Site, fronting on and possessing direct access to an existing improved, paved road, and being adjacent to existing development either on two or three sides include, but are not limited to, Roberta Sterk, SCTM #: 200-355-3-16, approved on May 29, 1996, proposed development of a single-family residence on 1 acre in the A5 Residence Zoning District, with frontage on and direct access to Primrose Path in Calverton, owned since 1963; Harold Marshall, SCTM #: 200-481-1-5, approved on October 2, 2002, proposed development of a single-family residence on 3.99 acres in the A5 Zoning District, with frontage on and direct access to East Bartlett Road in Middle Island, owned since 1966; and George Cachimpanis, SCTM #: 200-300-3-28 and 29, approved on May 21, 2003, proposed development of a single-family residence on 0.44 acre in the A5 Residence Zoning District, with frontage on and direct access to Parkway Drive in Calverton, owned since 1965.

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

Whereas, pursuant to the Act, in reviewing a Core Preservation Area extraordinary hardship exemption application, the Commission shall consider the criteria set forth in ECL §57-0121(10)(a) and Sections 57-0121(10)(c)(i), (ii), and (iii) to determine whether the Applicant has established the existence of extraordinary hardship as distinguished from a mere inconvenience and whether the requested relief is consistent with the purposes and provisions of the Act and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area; and

Whereas, the Commission has considered the application, the Staff Report and Exhibits, and the transcripts of the hearings and its prior decisions; and

Whereas, to address the criteria in ECL §57-0121(10)(a), the Applicant alleges, “The granting of the hardship would be unique to this parcel. There are no other vacant parcels in this developed community that could seek similar relief; all other parcels have been developed”; and

Whereas, to address the criteria in ECL §57-0121(10)(a)(i), the Applicant alleges, “The benefit sought by this parcel does not apply to or affect other property in the immediate vicinity;” and

Whereas, to address the criteria in ECL §57-0121(10)(a)(iii), the Applicant alleges, “The need for the hardship is not the result of actions or inactions by the applicant/owner;” and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(a) because the characteristics of the subject property are unique; the property is situated in a developed residential community and is the only remaining undeveloped, unprotected parcel with development on all sides; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(a)(i), because the Project Site is the only undeveloped property on a road surrounded on three sides by existing residential development and in a developed residential community with 72 dwellings and no other undeveloped, unprotected parcels; and the development of the Project Site would not result in adverse environmental impacts on the resources of the Central Pine Barrens such as fragmentation of the existing habitat and establishment of an adverse precedent in that it may help to 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 Preservation Area in developed residential communities not contiguous to open space or other undeveloped land; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(a)(ii), because the characteristics of the Project Site categorize it as an infill lot, which was discussed in the public hearing on the Project; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(a)(iii), because the inability to have a beneficial use results from unique circumstances peculiar to the Project Site which are not the result of action or inaction by the Applicant since the privately owned parcels in the immediate vicinity in the Study Area make up a developed residential community, leaving the Project Site the only undeveloped privately owned parcel and it has been owned by the present owner since 1970 and held in single and separate ownership since 1955.

IX. Commission’s Review of ECL §57-0121(c) Additional Standards

Whereas, an Applicant for a Core Preservation Area Hardship Waiver must also establish it has met the criteria in ECL §57-0121(10)(c) which states as follows: “An application for a permit in the core preservation area shall be approved only if it is determined that the following additional standards also are met: (i) The granting of the permit 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 core preservation area; (ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this article; or (iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need;” and

Whereas, to address the criteria in ECL §57-0121(10)(c)(i), the Applicant alleges, “The granting of a hardship permit will not be materially detrimental or injurious to other properties or improvements in the area in which the subject property is located. Similar parcels were included on the Non-Development List and were developed with no impact to the surrounding land. The parcels is in a developed community and there will be no increase to the danger of fire, will not endangered public safety or result in substantial impairment of the resources of the Core Preservation area;” and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(c)(i), because the Project 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 and endanger public safety or result in substantial impairment of the resources of the Core Preservation Area due to the infill nature of the lot in a developed residential community, and it is not contiguous to other undeveloped, unprotected or protected and vegetated lands; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(c)(ii), and granting of the waiver would not be inconsistent with the purposes, objectives or general spirit and intent of the Act because it accommodates development in a manner consistent with the long term integrity of the Pine Barrens ecosystem and ensures the pattern of development is compact, efficient and orderly; and

Whereas, the Project layout illustrated on a Survey prepared by Cramer Consulting Group dated February 3, 2016 indicates a maximum clearing limit of 70% on the Project Site; and the Commission finds that due to the Project Site’s proximity to Wildwood Lake, to minimize stormwater runoff, allow natural recharge to continue to occur, and to protect a portion of the existing natural vegetation on the Project Site, the Applicant shall be subject to clearing limits on the Project Site in accordance with the clearance standards listed in Figure 5-1 of the Central Pine Barrens Comprehensive Land Use Plan; a Project Site in the R-15 Zoning District is subject to a maximum clearing limit of 70%; therefore, 30% of the Project Site shall remain in its existing natural state.

X. Commission Determinations

Resolved, the foregoing recitals are incorporated herein and made a part hereof; and be it further

Resolved, the Commission finds that the Project constitutes development as defined by the Act; and be it further

Resolved, the Commission finds the Applicant has demonstrated an extraordinary hardship for the reasons set forth above; and be it further

Resolved, the Commission finds that the requested waiver will not result in adverse growth inducing impacts in the Study Area and in other similar hamlets in the Core Preservation Area because the Project Site is the only undeveloped, unprotected lot in the developed residential community on the north side of Wildwood Lake and it is surrounded on all sides by development, and if approved would not be inconsistent with ECL Article 57, in particular ECL §57-0121(10)(c) and accommodates development that is compact, efficient, and orderly; and be it further

Resolved, 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 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;” and be it further

Resolved, that 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; and be it further

Resolved, that the 71 Lakeview Drive Core Preservation Area Extraordinary Hardship Waiver exemption is approved; and be it further

Resolved, that the Project shall be subject to a maximum clearing limit of 70% or 7,000 square feet, and 30% or 3,000 square feet of the Project Site shall remain in its existing natural state in accordance with the Project layout illustrated on a Survey prepared by Cramer Consulting Group dated February 3, 2016; and be it further

Resolved, prior to the commencement of construction activities on the project site, limits of clearing shall be delineated with stakes to ensure retention of 30 percent of the Project Site in existing natural vegetation; and

Resolved, install a split rail fence along the boundary of the clearing limit to protect the 30% area of the Project Site to remain natural; and be it further

Resolved, the Applicant shall contact the Commission office to inspect the clearing line once staked and at least one week prior to commencement of construction activities, and contact the Commission office to re-inspect the clearing line after the issuance of a Certificate of Occupancy; and be it further

Resolved, the instant conditionally approved Hardship Waiver shall be valid for a period of five years from the date of approval. All work or action required in the conditions, where applicable, shall be completed within three years from the date of approval unless a longer period was approved or the Applicant obtains an extension from the Commission; and be it further

Resolved, pursuant to ECL §57-0121(10)(c), “Any waiver or exemption granted under the provisions of this part shall only be considered an exemption or waiver of the particular standard of this title which the commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any local, county or state law or ordinance;” and be it further

Resolved, a copy of this resolution shall be filed with the Suffolk County Clerk within one year of the date of approval and indexed against the property.

**71 Lakeview Drive Core Preservation Area Hardship
Northampton, Town of Southampton; SCTM #: 900-163-2-27**

Record of Motion:

Decision to Approve

Motion by: Mr. Romaine

Seconded by: Mr. Schneiderman

In Favor: 5

Opposed: 0

Abstention: 0