



**Commission Meeting of October 20, 2010
Town of Brookhaven Town Hall, Farmingville, New York**

Present: Peter Scully (State of New York), Mark Lesko (Town of Brookhaven), Carrie Meek Gallagher (Suffolk County), Sean Walter (Town of Riverhead), Anna Throne-Holst (Town of Southampton)

**Adopted Resolution for Estate of Constance DiPeri
Core Preservation Area Extraordinary Hardship
Ridge, Town of Brookhaven, SCTM No. 200-383-1-22**

Peter A. Scully
Chair

Mark Lesko
Member

Steve A. Levy
Member

Anna E. Throne-Holst
Member

Sean M. Walter
Member

Whereas, the Estate of Constance DiPeri, (the “applicant”), by its consultant, Thomas Cramer, filed an application on August 2, 2010 for a Core Preservation Area Extraordinary Hardship exemption permit for the development of a 34.67 foot by 48.3 foot single-family residential dwelling on a vacant, wooded 21,780 square foot project site identified as SCTM No. 200-383-1-22; and

Whereas, the project site is located on the west side of William Floyd Parkway (County Route 46), east of Sally Lane, in the A-1 Residence Zoning District, in the hamlet of Ridge, in the Core Preservation Area, Town of Brookhaven; and

Whereas, the project site has been under the ownership of Constance DiPeri since 1971; Constance DiPeri’s Estate currently owns the project site since she is deceased; and

Whereas, the project site is bounded on the south, west, and north sides by lots developed with single-family residential dwellings, and the east side of the site fronts on William Floyd Parkway; and

Whereas, the land use in the immediate area contains a single-family residential community; to the south and west is open space under public ownership of Suffolk County and New York State; and

Whereas, by resolution dated May 5, 2010, the Town of Brookhaven Board of Zoning Appeals granted lot area, lot frontage, minimum and total side yard variances for a proposed one family dwelling, subject to a condition to obtain a Pine Barrens Hardship; and

Whereas, the Commission granted Core Hardship Waivers on Core parcels in the immediate vicinity on Sally Lane under the names of Richard Salmon (SCTM No. 200-383-1-9) and William Morgan (SCTM No. 200-383-3-19) dated May 19, 1999 and April 25, 2001, respectively; and

Whereas, the Project is a Type II Action pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act,

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SEQRA); no further environmental review is required; and

Whereas, the applicant submitted information relative to compliance with Standards of the Central Pine Barrens Comprehensive Land Use Plan (CLUP); the Standards do not apply to Core parcels, however, the applicant has voluntarily offered that the project will comply with CLUP Standards including Standard 5.3.3.6.1 Vegetation Clearance Limits for a maximum disturbance limit of 53 percent or 11,543 square feet of clearing and Standard 5.3.3.6.3 Fertilizer-dependent vegetation limit to limit the amount of fertilizer on the project site to a maximum of 15 percent; and

Whereas, the sanitary flow will be treated with a conventional individual septic system and will require Suffolk County Department of Health Services approval; and

Whereas, the applicant's Hardship petition included an analysis of the hardship criteria contained in ECL §57-0121(10) in support of its Waiver application; and

Whereas, the Commission held a public hearing on the Project on September 15, 2010; and

Whereas, the criteria for determining whether an applicant has demonstrated extraordinary hardship are contained in ECL §57-0121(10)(a) (i), (ii), and (iii) and 57-0121(10)(c)(i), (ii), and (iii); and

Whereas, the Commission has considered the application and all related documents submitted by the applicant; and

Whereas, pursuant to ECL §57-0121(10)(i), the applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the project does not apply to or affect other property in the immediate vicinity because 40 surrounding lots are developed with single-family homes; and

Whereas, pursuant to ECL §57-0121(10)(ii), the applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the project does not relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and because it is a vacant lot surrounding by 40 developed lots; and

Whereas, pursuant to ECL §57-0121(10)(iii), the applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the project is not the result of any action or inaction by the applicant or the owner or his or her predecessors in title including any transfer of contiguous lands which were in common ownership on or after June 1, 1993, because the applicant has owned the parcel since 1971; and

Whereas, pursuant to ECL §57-0121(10)(c), the Project will not be materially detrimental or injurious to other property or improvements in the area or result in endangering public safety or substantial impairment of the resources of the Core; the

applicant has met these additional standards for granting a hardship permit in the Core due to the proposed disturbance of 53 percent of the site and retention of 47 percent of the site; and

Whereas, pursuant to ECL §57-0121(10)(c)(ii), the waiver is not inconsistent with the purposes, objectives or general spirit and intent of this title; the waiver is consistent with the purposes, objectives, and general spirit of Article 57 as the plan preserves existing natural vegetation, ecologic, and hydrologic functions of the Pine Barrens through the retention of 47 percent of the existing natural pine barrens habitat on the site as undisturbed area; and

Whereas, pursuant to ECL §57-0121(10)(iii), the waiver is the minimum relief necessary to relieve the extraordinary hardship on behalf of the applicant to meet their needs and minimize adverse impacts on the project site in the Core Preservation Area to the greatest extent practicable; and

Whereas, the Commission has considered all materials submitted in connection with the application, now, therefore, be it,

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

Resolved, that the Commission hereby determines the application, as submitted, meets and satisfies the criteria for a Core Preservation Area Extraordinary Hardship Waiver pursuant to New York State ECL §57-0121(10) for the reasons set forth in this resolution; and be it further

Resolved, that the application for a Core Preservation Area Extraordinary Hardship exemption is approved in accordance with the property survey prepared by Harold F. Tranchon, Jr. P.C. last dated December 28, 2009, subject to the following specific conditions:

1. Prior to the commencement of construction activities on the project site:
 - a. Stake limits of clearing to retain 47 percent or 10,237 square feet on the west side of the site in existing natural vegetation.
 - b. Install snow fencing around the existing large trees that will be retained in the construction envelope.
2. Draft a Declaration of Covenants and Restrictions (C&Rs) to protect the western 47 percent of existing natural vegetation on site and a maximum of 15 percent fertilizer dependent vegetation on the project site. C&Rs shall be reviewed and approved by the Commission prior to recording in the Office of the Suffolk County Clerk. Provide the Commission with proof of recording.

3. Obtain additional permits and approvals, as required by law, prior to commencement of the Project. Forward copies of such approvals including, but not limited to the Suffolk County Department of Health Services, Suffolk County Department of Public Works, Town of Brookhaven Building Permit, New York State Department of Environmental Conservation Wild, Scenic and Recreational Rivers, and any other applicable permits to the Commission Office two weeks prior to commencement of site work.

Resolved, if any changes occur in the elements of the project, the applicant must notify the Commission and submit an amended application, subject to review and approval, prior to implementation; and be it further

Resolved, the Commission finds that the instant Waiver is not inconsistent with the purposes, objectives, or general spirit and intent of the Long Island Pine Barrens Protection Act of 1993; and be it further

Resolved, a copy of this resolution shall be filed with the Suffolk County Clerk indexed against the property and proof of recording provided to the Commission within six (6) months of Commission approval.

Record of Motion:

Motion by: S. Walter

Seconded by: M. Lesko

In Favor: 5

Opposed: 0

Abstention: 0

cc: Town of Brookhaven Planning and Building Divisions
Suffolk County Department of Health Services
New York State Department of Environmental Conservation Region 1
Suffolk County Department of Public Works