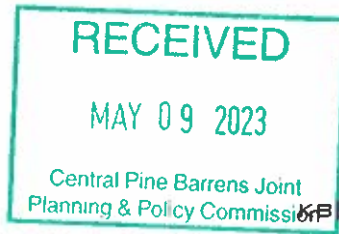




BROWN
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May 8, 2023

VIA FEDERAL EXPRESS

Robert Calarco, Chairman
Central Pine Barrens Commission
624 Old Riverhead Road
Westhampton Beach, NY 11978

Re: Central Pine Barrens Commission (“Commission”) review of the Brookhaven Town Board application for a Change of Zone, Special Use Permits and Waivers of Special Permit Criteria (the “Application”) by 7-Eleven, Inc. to develop a gasoline fueling station and convenience store at the property located at 1481 William Floyd Parkway, Shirley, New York; SCTM No.: Dist. 0200, Sec. 642.00, Bk. 03.00, Lots 41.3, 41.4 and 41.5 (the “Property”)
Our File: 100-552-002
Town Log No.: 2021-018

Dear Chairman Calarco and Hon. Commission Members:

In connection with the Application regarding the Property, the Applicant respectfully submits this request to be placed on the May 17, 2023 meeting agenda to have the Commission reconsider a February 15, 2023 review letter issued by the Central Pine Barrens Commission office. As further provided in the Applicant’s April 7, 2023 submission to the Central Pine Barrens Commission office, the Application is not a development of regional significant as defined by § 4.5.5.1.4 of the Central Pine Barrens Comprehensive Land Use Plan.

Enclosed herewith are the following documents for your consideration:

1. A copy of the February 15, 2023 Central Pine Barrens Commission office review letter;
2. Six (6) copies of an April 7, 2023 letter prepared by Brown Altman & DiLeo, LLP, as attorneys for the Applicant; and
3. Six (6) copies of a Traffic Memorandum, dated March 17, 2023, prepared by Stonefield Engineering.

We note that the enclosed April 7, 2023 letter from Brown Altman & DiLeo, LLP and the March 17, 2023 Traffic Memorandum were previously submitted with the Central Pine Barrens Commission office on April 7, 2023.



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ALTMAN &
DILEO, LLP

If you have any questions concerning the enclosed submission documents, please do not hesitate to our office.

Very truly yours,

BROWN ALTMAN & DILEO, LLP

By:



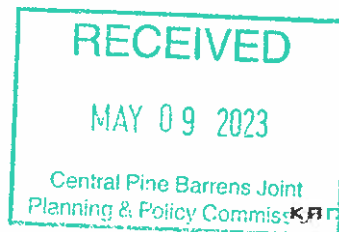
Keith P. Brown, Esq

Encl.

cc: Central Pine Barrens Commission (attn.: Julie Hargrave)
Stonefield Engineering (attn.: Amanda LaRosa)



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April 7, 2023

VIA FEDERAL EXPRESS

Karen Sullivan, Sr. Office Assistant
Office of the Town Clerk
Brookhaven Town Hall
1 Independence Hill
Farmingville, NY 11738

VIA E-MAIL

Julie Hargrave, Policy and Planning Mgr.
Long Island Central Pine Barrens Commission
624 Old Riverhead Road

Re: Town of Brookhaven (the "Town") Town Board Application for a Change of Zone, Special Use Permits and Waivers of the Special Permit Criteria (the "Application") by 7-Eleven, Inc. to develop a gasoline fueling station and convenience store at the property located at 1481 William Floyd Parkway, Shirley, New York; SCTM No.: Dist. 0200, Sec. 642.00, Bk. 03.00, Lots 41.3, 41.4 and 41.5 (the "Property")
Our File: 100-552-002
Town Log No.: 2021-018

Dear Karen:

In connection with the Application regarding the Property, enclosed are the following documents in response to the February 15, 2023 Central Pine Barrens Commission's ("CPBC") letter deeming this project a Development of Regional Significance ("DRS"):

1. A copy of the February 15, 2023 Central Pine Barrens Commission Letter (CPBC Letter); and
2. Ten (10) copies of a Traffic Memorandum, dated March 17, 2023, prepared by Stonefield Engineering, in response to the CPBC Letter ("Stonefield Memorandum").

The Applicant vehemently objects to the classification of this project as a DRS on, among other things, the following grounds:

1. The Application *does not satisfy the definition of § 4.5.5.1.4* of the Central Pine Barrens Comprehensive Land Use Plan ("CLUP") and cannot be classified as a DRS;
2. The Application *does not cause* the Level of Service ("LOS") at the William Floyd Parkway and Moriches Middle Island Road intersection (the "Intersection") to increase from a LOS C to D; and



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3. The CLUP *does not authorize* the CPBC to conduct further traffic review.

The Application does not meet the CLUP's definition of a DRS.

A DRS is defined to include a “development project *resulting* in a traffic impact which would reduce service by two (2) levels of service below existing conditions or to a level of service of D or below.” CLUP § 4.5.5.1.4 (emphasis added). The CLUP does not define the term “result,” and, in such case, New York law requires that undefined terms be given their ordinary commonly understood meaning. NY Stat § 234. Further, any ambiguities in the term “result” must be resolved in the applicant’s favor. *See BBJ Associates LLC v. Zoning Bd. of Appeals of Town of Kent*, 65 A.D.3d 154, 159 (2nd Dept. 2009). We note that the term “result” is defined to mean “to occur or exist as a consequence of a particular cause.” *See The American Heritage Dictionary* (2d Edition).

Section 4.5.5.1.4 of the CLUP clearly requires that a LOS D occur or exist as a consequence of the development. A project, therefore, cannot be deemed a DRS under CLUP § 4.5.5.1.4 unless the traffic impact results in a LOS D as a consequence of that particular project. The submitted material from Stonefield Engineering clearly demonstrates that the Intersection will operate at a LOS D in the 2023 No-Build Condition. Accordingly, this Application does not result in the Intersection having a LOS D and cannot be deemed a DRS.

As further provided in the enclosed Stonefield Memorandum and the previously submitted September 28, 2022 Stonefield Traffic Impact Study, this Application does not cause the Intersection to degrade from a LOS C to D. In fact, the 2023 No-Build Conditions clearly show that the Intersection will operate at a LOS D even if this project is not developed. Stonefield concludes that the “degradation [of the Intersection] is a *direct result* of the conservative 1.5% annual growth rate that was applied to account for a planned development project and forecasted traffic volume growth within the study area, whereas the additional traffic volumes associated with the [instant Application] only result in a marginal increase to the calculated Level of Service at the study intersection from the 2023 No-Build to the 2023 Build conditions.” *See Stonefield Memorandum*, pg. 1 (emphasis added).

However, the CPBC Letter ignores Stonefield’s traffic data, the definition of § 4.5.5.1.4 of the CLUP and the common understanding of “result” by wrongfully deeming this Application a DRS. Section 4.5.5.1.4 of CLUP requires a project to cause the level of service to degrade to a D in order to deem it a DRS. As provided by Stonefield Engineering, the Intersection is projected to operate a LOS D in the 2023 No-Build Conditions regardless of whether this project is developed. As such, the 7-Eleven Application clearly does not satisfy the requirements of CLUP § 4.5.5.1.4 as it does not result or cause the LOS at the subject Intersection to reduce to a D.



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Further, when the Project is developed, the 2023 Build Conditions anticipates only a "marginal increase to the calculated Level of Service". The Intersection will operate at a LOS D in the Build and No-Build Conditions. This Application simply does not result in any further degrading of the LOS at the Intersection. Deciding even a marginal increase from the LOS D in the No-Build Conditions and a LOS D in the Build Conditions as a DRS is unsupported by § 4.5.5.1.4. It is improper for the CPBC Letter to conclude otherwise and such an interpretation against the Applicant is clearly prohibited by New York State law. As such, the CPBC Letter must be revised and all conclusions and interpretations of § 4.5.5.1.4 must be made in accordance with CLUP.

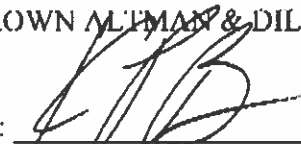
Accordingly, New York law requires that the CPBC issue an amended letter striking all references to a DRS.

If you have any questions concerning the enclosed submission documents, please do not hesitate to our office.

Very truly yours,

BROWN ALTMAN & DILEO, LLP

By:



Keith P. Brown, Esq

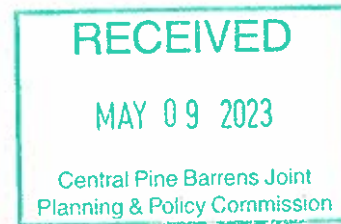
Encl.

cc: Central Pine Barrrens Commission (attn.: Julie Hargrave)
Stonefield Engineering (attn.: Amanda LaRosa)

STONEFIELD

March 17, 2023

Town of Brookhaven
Department of Planning, Environment, and Engineering
One Independence Hill Road
Farmingville, NY 11738
Attn: Amy Moody



**RE: 7-Eleven Convenience Store with Fuel Sales
1481 William Floyd Parkway
SCTM No. 200-642-3-41.3, 41.4, & 41.5
Hamlet of Shirley, Town of Brookhaven, Suffolk County, New York
SE&D Job No. K-18112**

Dear Ms. Moody:

Stonefield Engineering and Design, LLC ("Stonefield") has prepared this memorandum in response to the review letter prepared by the Central Pine Barrens Joint Planning and Policy Commission, dated February 15, 2023, in connection with the proposed 7-Eleven development located at 1481 William Floyd Parkway in the Hamlet of Shirley, Town of Brookhaven, Suffolk County, New York. This memorandum was prepared to address the comment contained within the "Development of Regional Significance" subsection outlined on page 2 of the aforementioned review letter, which reads as follows:

"Table 7 in the project traffic study dated September 2021 identifies that the project achieves a threshold definition of a Development of Regional Significance (DRS). The impact of a level of service C to D is reached at the William Floyd Parkway and Moriches Middle Island Road intersection in the weekday evening peak hour from the existing condition to the Build condition. As a DRS, an application must be submitted directly to the Commission for its review and decision. A DRS project must conform with the Standards and Guidelines of the Comprehensive Land Use Plan. Please direct the applicant to either revise the application to avoid a DRS or submit the application as required for review."

The above comment indicates that the Level of Service of the study intersection of William Floyd Parkway and Moriches-Middle Island Road exceeds the Level of Service C-D threshold from the 2021 Existing condition to the 2023 Build condition during the weekday evening peak hour; however, it is important to note that the findings of the Traffic Impact Study prepared for the proposed development indicate that the Level of Service C-D degradation occurs from the 2021 Existing to the 2023 No-Build conditions. The degradation is a direct result of the conservative 1.5% annual growth rate that was applied to account for a planned development project and forecasted traffic volume growth within the study area, whereas the additional traffic volumes associated with the proposed development only result in a marginal increase to the calculated Level of Service at the study intersection from the 2023 No-Build to the 2023 Build conditions.

Based on a review of the Central Pine Barrens Comprehensive Land Use Plan, a "Development of Regional Significance" (DRS) is defined within Section 4.5.5.1 as "a development project resulting in a traffic impact which would reduce service by two (2) levels below existing conditions or to a level of Service D or below." The calculated Level of Service C-D degradation is associated with the forecasted traffic volume growth for the study area rather than the projected impacts of the proposed development. Therefore, the subject application does not qualify as a DRS as the Level of Service C-D threshold would be exceeded in the future without the presence of the proposed development, or any development otherwise, at the study location. Hence, a separate application for review by the Central Pine Barrens Joint Planning and Policy Commission is not warranted.

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STONEFIELD

7-Eleven Convenience Store with Fuel Sales
Shirley, New York
March 17, 2023
Page 2 of 3

Further, should the intersection experience a traffic growth consistent with the conservative 1.5% growth rate, signal timing modifications could be implemented to offset the LOS degradations. To resolve the calculated Level of Service degradations in the 2023 No-Build and Build conditions, Stonefield recommends minor signal timing modifications as a potential mitigation measure. The following modification would mitigate the calculated increase in delay and create more favorable operating conditions in the 2023 Build condition during the weekday evening peak hour:

- ◆ *Reallocation of two (2) seconds of green time from the northbound William Floyd Parkway through phase to the southbound William Floyd Parkway left-turn phase. Cycle length to be maintained.*

Table I provides a comparison of the Level of Service and delay calculated at the intersection of William Floyd Parkway and Moriches-Middle Island Road during the weekday evening peak hour for the 2021 Existing, 2023 No-Build, and 2023 Build conditions as presented within the Traffic Impact Study, as well as the Level of Service and delay calculated for the 2023 Mitigation condition with the applied signal timing modification. Level of Service/Capacity and signal timing analysis sheets associated with the 2023 Mitigation condition analysis are appended to this memorandum.

Comparative Level of Service (Delay) Tables

WILLIAM FLOYD PARKWAY & MORICHES-MIDDLE ISLAND ROAD

EB (Eastbound) and WB (Westbound) approaches are the Moriches-Middle Island Road approaches
NB (Northbound) and SB (Southbound) approaches are the William Floyd Parkway approaches
X (n) = Level of Service (seconds of delay)

TABLE I – WEEKDAY EVENING PEAK HOUR

Lane Group	2021 Existing	2023 No-Build	2023 Build	2023 Mitigation
EB Left	C (31.1)	C (31.5)	C (32.0)	C (33.0)
EB Through/Right	C (29.9)	C (30.3)	C (30.3)	C (31.3)
WB Left	D (37.1)	D (37.8)	D (38.1)	D (39.4)
WB Through	C (27.8)	C (28.0)	C (28.1)	C (29.0)
NB Left	E (56.5)	E (56.4)	E (55.6)	E (56.7)
NB Through	C (29.3)	C (30.2)	C (30.5)	C (33.4)
SB Left	E (63.7)	F (77.9)	F (79.8)	E (55.0)
SB Through	C (21.1)	C (22.1)	C (22.7)	C (22.3)
Intersection	C (33.8)	D (37.2)	D (37.8)	C (33.9)

As shown in **Table I**, the proposed signal timing modification would result in a Level of Service comparable to the Level of Service calculated for the 2021 Existing condition. Therefore, a separate application for review by the Central Pine Barrens Joint Planning and Policy Commission is further unwarranted as the calculated Level of Service C-D degradation which triggered the comments contained in the aforementioned review letter is mitigatable through minor signal timing modifications. Please note that any modifications to the signal operations at the intersection of William Floyd Parkway and Moriches-Middle Island Road would be subject to review and approval by the Suffolk County Department of Public Works (SCDPW). As the proposed signal timing modifications are based on forecasted delays calculated in a model, the SCDPW would not likely apply the mitigation measure proactively; rather, it is anticipated that an assessment of real-time delay conditions would be requested following the construction of the development, and mitigation measures would then be considered on an as-needed basis. It should be noted that the site-generated traffic volumes projected for the proposed development within the Traffic Impact Study are a conservative estimate of the development's future impacts, and therefore the forecasted delays may be greater than the real-time impacts to the intersection upon development.

Based on a review of the Central Pine Barrens Comprehensive Land Use Plan, it is Stonefield's professional opinion that the subject development does not qualify as a DRS on the grounds that the identified Level of Service C-D degradation would be achieved in the future without the presence of the proposed development, or any development otherwise, at the intersection of William Floyd Parkway and Moriches-Middle Island Road. Further, the calculated Level of Service C-D degradation which triggered the comments contained in the aforementioned review letter is mitigatable through the application of minor signal timing modifications. Hence, a separate application for review by the Central Pine Barrens Joint Planning and Policy Commission is not warranted for the proposed development.

Please do not hesitate to contact our office if there are any questions.

Best regards,



Joshua Herman, PE
Stonefield Engineering and Design, LLC

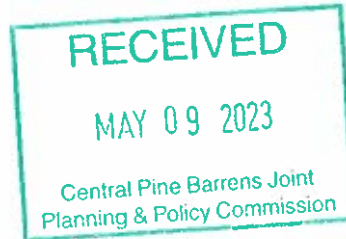


Matthew J. Seckler, PE, PP, PTOE
Stonefield Engineering and Design, LLC



**CENTRAL
PINE
BARRENS**
JOINT
PLANNING
&
POLICY
COMMISSION

February 15, 2023



Amy Moody
Department of Planning, Environment and Engineering
Town of Brookhaven
One Independence Hill
Farmingville, NY 11738

**RE: Referral: 7-Eleven @ Shirley Site Plan and
Change of Zone Log # 2021-018-CZ
1481 William Floyd Parkway, Shirley
SCTM #s 200-642-3-41.3, 41.4 and 41.5
7-Eleven @ Shirley,
Central Pine Barrens Compatible Growth Area**

Dear Ms. Moody:

Robert Calarco
Chairman

Yvette Aguiar
Member

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

On October 14, 2022 and January 26, 2023, the Central Pine Barrens Commission office received a revised referral of the referenced application. The project site is in the Central Pine Barrens Compatible Growth Area. A prior response was sent on January 19, 2022.

Existing Conditions and Project Description

The 1.38 acre site is comprised of three tax parcels. Two lots, 41.4 and 41.5, are presently developed with a 7-Eleven convenience store and parking lot. Lot 41.3 appears to be undeveloped.

Presently, 0.24 acres of the site is in A1 Residence and 1.14 acres is zoned J2 Business. The proposal is a change of zone from J2 Business and A1 Residence to J5 Business. Special permits and waivers are requested.

The project is the redevelopment of a site that has an existing convenience store. It includes the demolition of the existing building and construction of a 2,995 square foot new store, 32 parking spaces, which includes three landbanked parking spaces, and the addition of fueling facilities. The development is depicted in the site plan prepared by Stonefield Engineering and Design last dated September 13, 2022.

Central Pine Barrens Status

The proposal constitutes development activity pursuant to the Long Island Pine Barrens Protection Act. Therefore, the proposal must conform to the standards for land use in Chapter 5 of the Central Pine Barrens Comprehensive Land Use Plan (the Plan). If the project does not conform, the application may be revised to conform or the applicant must apply for a CGA Hardship Waiver from the Commission, subject to review and action.

The project must achieve conformance with the Plan prior to the zone change. A note in the Site plan states, "Proposed Zoning Review has been performed under the assumption the property has been rezoned to the J Business 5 District (J-5)."

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The conformance review identifies site's split zoning areas with a combined clearing limit of 63%. All but 1,000 square feet of natural vegetation on the site is identified as cleared and that will remain natural and undisturbed. This area of natural vegetation should be snow fenced during construction to avoid disturbance and protected after construction of the project. (Standard 5.3.3.6.1)

In the application review, it was noted to consider caution when the redevelopment occurs to avoid disturbance to existing trees on the adjacent property to the south. Although minor tree limbing may be necessary, the applicant should maintain a construction buffer to avoid disturbance to adjacent existing trees and habitat not on the project site.

No fertilizer dependent vegetation is proposed. Therefore, the project conforms with the maximum 15% limit. (Standard 5.3.3.6.3)

In accordance with Standard 5.3.3.6.4, Native Plantings, the landscaping plan should be improved. The proposed vegetation is sparse. Only 7 red maples are proposed in the Planting Schedule. Consider adding more trees including native species and shrubs. Consider street trees to improve the site's appearance including oaks and pitch pines in landscaping and other vegetation to support pine barrens habitat in the areas to remain natural or landscaped.

Development of Regional Significance

Table 7 in the project traffic study dated September 2021 identifies that the project achieves a threshold definition of a Development of Regional Significance (DRS). The impact of a level of service C to D is reached at the William Floyd Parkway and Moriches Middle Island Road intersection in the weekday evening peak hour from the existing condition to the Build condition. As a DRS, an application must be submitted directly to the Commission for its review and decision. A DRS project must conform with the Standards and Guidelines of the Comprehensive Land Use Plan. Please direct the applicant to either revise the application to avoid a DRS or submit the application as required for review.

The proposal must conform to all other involved agency jurisdictions and permit requirements in effect on the project site. Thank you for your attention, and if you have any questions, please do not hesitate to contact me at (631) 218-1192.

Sincerely,



Julie Hargrave
Policy and Planning Manager

cc: Judith Jakobsen, Executive Director
John C. Milazzo, Counsel

