

1	<p>In the Matter Of: CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION</p> <hr/> <p>TOWN OF RIVERHEAD PUBLIC HEARING January 15, 2020</p>	<p>3</p> <p>RECEIVED</p> <p>JAN 30 2020</p> <p>Central Pine Barrens Joint Planning & Policy Commission</p>
2	<p>1 2 CARRIE MEEK GALLAGHER, Chairwoman 3 DANIEL P. MCCORMICK, Member 4 EDWARD P. ROMAINE, Member 5 JAY H. SCHNEIDERMAN, Member 6 DORIAN DALE, Member 7 ANDREW P. FRELENG, Member 8 JOHN W. PAVACIC, Member 9 DORIAN DALIA, Member 10 JUDY JAKOBSEN, Member 11 JOHN MILAZZO, ESQ., Legal Counsel</p> <p>12</p> <p>13 A L S O P R E S E N T:</p> <p>14</p> <p>15 JULIE HARGRAVE, Principal Environmental Planner</p> <p>16 CHARLES VOORHIS, ESQ., Nelson, Pope and Voorhis</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>4</p> <p>1 2 (Whereupon, this portion of the 3 proceedings began at 3:00 p.m., after 4 which the following transpired.)</p> <p>5 CHAIRWOMAN GALLAGHER: Notice of 6 public hearing, pursuant to New York 7 State Environmental Conservation Law 8 Article 57 and the Central Pine 9 Barrens Comprehensive Land Use Plan. 10 Notice is hereby given that the 11 Central Pine Barrens Joint Planning 12 and Policy Commission will hold a 13 public hearing on Wednesday, January 14 15th, 2020, on the matter of a Core 15 Preservation Area Extraordinary 16 Hardship Waiver. 17 The name of the project is 18 7-Eleven Core Preservation Area 19 Hardship Waiver Application. 20 The Applicant is the Colgate 21 Design Corp. and Franklin Johnson, 22 Inc. 23 Chick Voorhis is here as the 24 applicant's agent. 25 The project site location is</p>

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>But essentially the amount of clearing on the Core Parcel appears to be the same. It's about 7600 square feet. And, again, that's to build some additional parking and create a second access driveway for the site. And, again, this is an unlisted action and there was a coordinated review with the State Department of Transportation and the State Historic Preservation Office, and DEC; and the DEC and the DOT is the preferred lead agency, of course.</p> <p>Again, this is mostly a wooded parcel -- the Core part -- and the CGA part appears to be for the most part clear, there may be some vegetation in the rear of the property, some trees, but I say that because there was an application on this for a very similar project. Essentially, the same type of project to have a parking lot on a Core piece for the use of the 7-Eleven. This was back in 2011, and</p>	<p>9</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>MR. MILAZZO: 2020.</p> <p>(WHEREUPON, the above-referred to document, Aerial Map, was marked as Exhibit M for identification, as of today's date.)</p> <p>MS. HARGRAVE: Thank you.</p> <p>So again, this is on the commercial corridor. The Core Parcel was placed in the Core when the Act was passed because it was not developed at that time. The boundary line wrapped around the existing 7-Eleven and included that in the CGA because it was developed at that time. And so there's a little bit of a jagged boundary in this area to wrap around parcels that were not developed at the time of the Act.</p> <p>MR. MILAZZO: (Interjecting) So with that -- Julie described it perfectly -- the way the Core boundary reads in the vicinity of the property runs along the south side of Route 25A including in the Core, any property</p>
<p>10</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>that application was denied, and that's one of the exhibits.</p> <p>So there is a little bit different data for the this application than that one, but we will clear up those discrepancies.</p> <p>And just to go through some of the land views, if you look at the map that we provided and --</p> <p>MR. MILAZZO: (Interjecting) I'm sorry, Julie, just to interrupt you for just a second.</p> <p>The map Julie is referring to is the map that's entitled 7-eleven Ridge Core Area Hardship Application Public Hearing, January 15, 2000[sic]. It shows one map, aerial in purple with a circle indicating a one mile radius study area.</p> <p>I'm just going to have this marked as Exhibit M.</p> <p>MR. MCCORMICK: (Interjecting) I'm sorry, just for clarification. I believe you said 2000.</p>	<p>12</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>not developed as of 1993. So that's why this property was undeveloped in '93 is in the Core, the adjacent piece to the east which had the 7-Eleven at the time is in the CGA. So that's the way the law was written, it encompassed all the undeveloped property along 25 as of 1993.</p> <p>MS. HARGRAVE: Thank you.</p> <p>Okay. So you can see the commercial corridor and if you start in the -- to the east, there's a state -- large area -- a state public land on the north side of 25 and the Core sort of wraps around that piece as well, and then eastward is the Compatible Growth Area.</p> <p>Into the south side of 25, is a residential area that is in the Core. A lot of those parcels -- some of those parcels are protected, some are developed, some are protected with conservation easements through the credit program. And then the line</p>

<p>1 2 splits again, and to the west is 3 Compatible Growth Area that's largely 4 developed with single family 5 residential uses and that's again, on 6 the south side of 25. 7 8 And then north of 25 to the west 9 is also Compatible Growth Area and 10 it's a residentially developed area, 11 and there is -- and this is all north 12 of 25 -- there is a town public land 13 that surrounds this condominium 14 development in the Compatible Growth 15 Area. 16 17 So just to go through the -- so 18 a few of the questions again, we will 19 ask the applicant if they can just 20 explain, again, the ownership of the 21 parcels and any lease agreements that 22 exist, and we will have to review the 23 recently revised data for the CGA 24 Parcel and the Core Parcel and how 25 much clearing is occurring on both of them and how much is going to remain natural, and then we will receive all</p>	<p>13 1 2 William Floyd Parkway and other uses 3 in the area. 4 5 And C is a copy of the survey 6 that we received from the 2011 7 application showing the site and it's 8 condition with the existing building 9 and parking lot; and this is where 10 there is also a minor discrepancy in 11 the area of the building. This said 12 it was 2,625 square feet. I believe 13 the application says the building 14 is 2800 square feet, so that can be cleared up. 15 16 So Exhibit D is the -- are 17 pictures of the existing site and 18 undeveloped Core area -- Core Parcel. 19 20 And E is a copy of the 21 applicant's data on the amount of 22 paved area and building and wooded 23 area on the Core CGA Parcels. 24 25 And F is the site plan -- proposed site plan, the parking lot, again, and the driveway onto the adjoining Red Maple Road.</p>
<p>14 1 2 the responses from involved and 3 interested agencies. And I think the 4 deadline for this application is next 5 month. 6 7 So -- I'm sorry, it's in March. 8 The March clearing date is the 15th. 9 Oh, then we have until March. We will 10 receive this stenographic transcript 11 after this meeting, and there will be 12 time for you if you discuss this at the next meeting. 13 14 So just going through the 15 exhibits, Exhibit A contains the 1992 16 tax map and the 2018 tax map which 17 shows the same configuration of the 18 parcels that has existed since the 19 time of the Act. And again, this Core 20 Parcel wraps around the CGA, the smaller CGA Parcel. 21 22 Exhibit B is an aerial photograph of the site, highlighting 23 the two parcels as well. And that 24 also contains a larger wider view to show how close it's relation is to</p>	<p>14 1 2 And G is a copy of the 3 applicant's map that shows the Core 4 site conditions, and the natural area 5 that exists in the proposed clearing 6 on the Core Parcel. 7 8 H is the Compatible Growth Area site conditions. 9 10 I is the restoration plan. The 11 applicant proposes to do some 12 restoration in the rear of the existing building, and then also, on 13 the Core Parcel there are native 14 non-native plants on that parcel and 15 they are proposing to do some 16 restoration on that piece and there's 17 more details on the restoration plan. 18 19 And J is the 2011 disapproval of the former application, which was also 20 to build additional parking. There 21 was a little more clearing -- a few 22 thousand square feet more clearing 23 because there was a truck loading dock proposed at that time, that's not 24 proposed now. You can see that in the</p>

<p>1 2 site plan on the last page of that 3 Exhibit. 4 Then K is a response from the 5 New York State DOT and with some 6 comments. 7 And L is the applicant's 8 petition addressing hardship criteria. 9 MR. MILAZZO: And as you 10 mentioned, M is the study area map. 11 So one of the things the staff 12 has been working on is making sure we 13 are consistent in each of our 14 applications, we -- they are 15 consistent with their applications. 16 So the last couple of years 17 you've seen study area maps and 18 descriptions of the property within 19 the vicinity. So that's just what 20 Exhibit A is -- excuse me, Exhibit M, 21 and that's supplemented by Julie's 22 description of the area in the 23 vicinity of the property, so that's 24 common practice. 25 I just want to clarify -- Chick,</p>	<p>1 2 There are a number of things 3 that we are planning to go through. I 4 did things -- some old fashioned 5 boards, but they should be visible, 6 and certainly the overhead that was up 7 before would be helpful. 8 For the record, my name is 9 Charles Voorhis, known as Chick, at 10 Nelson, Pope and Voorhis. We are an 11 environmental and planning consulting 12 firm in Melville. 13 And just for the record, I have 14 40 years of experience as an 15 environmental planner on Long Island 16 with certifications as a planner and 17 an environment professional. 18 Obviously, I'm here on behalf of 19 the applicant, which I will describe. 20 I am very familiar with the site and 21 the area, having been involved with a 22 number of things in the Town Of 23 Brookhaven going back to the 1980s. 24 I've also reviewed the prior 25 record that Julie mentioned -- I'll</p>
<p>18</p> <p>1 2 maybe you can help me or someone can 3 help me -- the date of the next 4 meeting is March 18th. 5 MS. HARGRAVE: Oh, then -- that 6 is why I was thinking it was before. 7 MR. MILAZZO: So -- yeah, so the 8 deadline is before then, so maybe, 9 Chick, on behalf of your client, if 10 you can give us an extension or -- so 11 we can make a decision at the next 12 meeting, when -- just so we don't have 13 any confusion on that. 14 MS. HARGRAVE: Thank you. 15 MR. MILAZZO: Can we just swear 16 him in? 17 C H A R L E S V O O R H I S, 18 on behalf of the Applicant herein, 19 having first been duly sworn by the 20 Notary Public, testified as follows: 21 MR. VOORHIS: Good afternoon. 22 BOARD: Good afternoon. 23 MR. VOORHIS: And thank you, 24 Julie, for a great introduction of the 25 application.</p>	<p>20</p> <p>1 2 have a couple remarks on that -- and I 3 was directed to prepare this 4 application to come before you today 5 for the Core Hardship. 6 So our application was submitted 7 in November, and it was updated in 8 January, as Julie said it was last 9 Friday. 10 What happened was -- if you go 11 to the Suffolk County GIS viewer -- 12 you'll note that the Core Preservation 13 Area boundary in the this area and 14 perhaps on other areas is offset. And 15 staff who was not quite as versed in 16 some of these boundaries -- and I 17 didn't pick it up, I'm sorry to say -- 18 didn't notice that. And it does show 19 that this parcel was split, and part 20 of it was in the Core and part of it 21 was not, so Julie brought that to my 22 attention. We had a conversation last 23 week and we were very quickly able to 24 revise the application and that is 25 what was referenced as the January</p>

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	25 for Colgate Design Corporation is John M. Amato, he's the treasurer of that corporation, he is also the contact and Treasurer for Franklin Johnson, Inc., so he essentially controls both parcels. MR. MILAZZO: Okay. MR. VOORHIS: They are in different corporations, but commonly owned. And if we need to get any other consent, as I said, it is the same party. MR. MILAZZO: And that's been that way for a long time? MR. VOORHIS: It has. MR. MILAZZO: For more than 20 years? MR. VOORHIS: These gentlemen are quite elderly, I can tell you that, 46 years. MR. MILAZZO: 46 years, okay. MR. VOORHIS: So the parcel is here. When Brookhaven has been looking at zoning, they've been	26	27
	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>The Core Preservation Parcel is outlined in red, it shows it being vacant. What I think is -- what's really important is that it has two frontages, the north side of this parcel is on New York State Route 25 and the west side is Red Maple Road. And therefore, it experiences all of the impacts that are associated with those roadways; the State Highway, noise, lights, activity, dust and so forth. And so that's the north and the west sides of the property.</p> <p>East of the property is the existing 7-Eleven. Similarly there's a parking area that goes right to the property line. It's an active building, it's a busy 7-Eleven and that dominates the east side of the site. And as I indicated, east of that is a store in the J6 zone.</p> <p>South of the site is an existing residence -- and it's actually several residences down Red Maple Road -- and</p>		28

<p>1</p> <p>2 In addition to that, this parcel</p> <p>3 -- and I know staff went out and saw</p> <p>4 the photographs -- but we are all</p> <p>5 sensitive to invasive vegetation.</p> <p>6 What's happening on this parcel is</p> <p>7 you've got a limited amount of native</p> <p>8 vegetation, you have an extensive</p> <p>9 amount of vines and invasive shrubs,</p> <p>10 as well as trees that are impacting</p> <p>11 the native character of the site. You</p> <p>12 have Wisteria and Bittersweet --</p> <p>13 Asiatic Bittersweet, which we all know</p> <p>14 are the primary culprits in destroying</p> <p>15 forests.</p> <p>16 And we do have photography --</p> <p>17 this is just a key map of the</p> <p>18 photographs, and this is all in the</p> <p>19 file -- but you have Black Locusts,</p> <p>20 you have Bittersweet, you have vines</p> <p>21 creeping up trees, you have ground</p> <p>22 cover, you have braided vines that are</p> <p>23 impacting trees, and it's my</p> <p>24 expectation -- and really any</p> <p>25 ecologist would confirm that over time</p>	<p>29</p> <p>1</p> <p>2 correct files and boundaries; and,</p> <p>3 again, it just shows that you got two</p> <p>4 roads adjacent development, it's an</p> <p>5 island because these residences -- and</p> <p>6 those residences are actually in the</p> <p>7 Core preservation area.</p> <p>8 So we feel that we can make this</p> <p>9 a better situation, we feel a Hardship</p> <p>10 is warranted on site due to the unique</p> <p>11 history and surrounding development</p> <p>12 and the existing site conditions and</p> <p>13 we've included the basis for</p> <p>14 conformance with Article 57, and the</p> <p>15 land view plan in support of what I</p> <p>16 hope will be a favorable decision.</p> <p>17 Just in terms of the project</p> <p>18 itself, you can refer to the overhead,</p> <p>19 a limited area of Tax Lot 6.1 is</p> <p>20 proposed to be used within the</p> <p>21 Core Preservation Area. The minor</p> <p>22 changes within Tax Lot 20, the</p> <p>23 existing 7-Eleven, do not involve any</p> <p>24 relief for clearing of natural</p> <p>25 vegetation in the CGA and would not</p>
<p>30</p> <p>1</p> <p>2 this property will become all</p> <p>3 invasive, trees will be destroyed.</p> <p>4 There is Red Maple on the property,</p> <p>5 which is an Allelopathic Species,</p> <p>6 which means it changes the soil</p> <p>7 character around it; and if something</p> <p>8 isn't done, essentially, not only this</p> <p>9 is an island, but it will become a</p> <p>10 wasteland and we've all seen it when</p> <p>11 you have disturbed pieces of property</p> <p>12 invaded with vines, they get</p> <p>13 destroyed.</p> <p>14 So based on all of this, the</p> <p>15 parcel has none of the qualities that</p> <p>16 are typically used when considering</p> <p>17 full preservation of land. It's not</p> <p>18 compatible growth, we're not looking</p> <p>19 to change the boundary, but if it were</p> <p>20 compatible growth, you can clear</p> <p>21 65 percent of the property.</p> <p>22 This is a little bit bigger</p> <p>23 version of the Core Preservation Area</p> <p>24 and the Compatible Growth Area that</p> <p>25 now is consistently mapped with your</p>	<p>32</p> <p>1</p> <p>2 require any hardship approval. As a</p> <p>3 result, the application is strictly</p> <p>4 for the use of that shaded area within</p> <p>5 this particular property.</p> <p>6 As referenced before, on</p> <p>7 September 20th, 2010, an application</p> <p>8 was submitted for a CPA Hardship</p> <p>9 Waiver and also a CGA Hardship Waiver</p> <p>10 at that time, which as Julie said we</p> <p>11 removed one of the loading areas that</p> <p>12 would have required relief in the CGA,</p> <p>13 so that's a very substantial change.</p> <p>14 In the results for proposal to</p> <p>15 clear 35 percent of Tax Lot Number 1;</p> <p>16 add 14 parking spaces, a new driveway,</p> <p>17 clear 977 square feet on Tax Parcel</p> <p>18 20 -- which is the 7-Eleven -- modify</p> <p>19 access and add the truck loading zone.</p> <p>20 This was a different</p> <p>21 application, it was much more</p> <p>22 aggressive. I did review the file and</p> <p>23 I spoke to the attorney that presented</p> <p>24 that case, and I felt that an adequate</p> <p>25 case was not made and the decision was</p>

<p>1 proper based on the record that was 2 submitted at that time. So that was 3 denied on January -- in January 2011, 4 and we're here with a smaller project, 5 with additional supporting information 6 and are obviously seeking a different 7 outcome.</p> <p>9 There are minor changes on the 10 7-Eleven site. We are using some 11 areas immediately around the building, 12 we're also creating some restoration 13 on that particular piece of property, 14 but all the improvements are within 15 existing disturbed areas.</p> <p>16 Also the changes on the CPA 17 parcel are there, the detail in terms 18 of square footage. I believe that 19 we've addressed one of the staff 20 comments in the resubmission. I don't 21 know if this was able to be updated 22 when that submission was made Friday 23 for the reasons that I've indicated 24 before with the mapping discrepancy.</p> <p>25 In addition to improving store</p>	<p>33</p> <p>1 plan, which we have proposed, would be 2 needed to maintain and to restore that 3 area.</p> <p>5 Plantings will replace the 6 invasive understory with native 7 shrubs, perennials and ferns, a 8 15 foot vegetation setback is provided 9 along the existing structure, the 10 remaining area between the setback and 11 the restoration area is the subject to 12 soil modification to a depth of 24 13 inches to reduce the compacted soils 14 and manage invasives. The edges of 15 the parking area will be created, low 16 mow non-fertilizer dependent ground 17 cover vegetation is proposed and that 18 can be mowed just periodically. We 19 are also flexible to other screening 20 methods and other vegetation based on 21 staff input.</p> <p>22 The plan as we proposed would 23 facilitate the operation of the 24 existing uses, will provide additional 25 access point -- which is very</p>	<p>35</p>
<p>1 operations, this parking and access in 2 deliveries at this busy 7-Eleven 3 store -- that's operated on the site 4 for 46 years -- will be improved, and 5 we also included the Native 6 Restoration Plan.</p> <p>8 So I indicated that the property 9 is dominated by invasives and will 10 change in terms of character if 11 uncontrolled. Our proposal before you 12 has a detailed inventory of existing 13 species on the property and a proposal 14 to ecologically restore the property 15 so that forest does not come down over 16 time as it would if nothing occurred.</p> <p>17 The project requests the 18 Hardship to clear 26.5 percent of the 19 property or 7602 square feet for that 20 new parking area, which is limited to 21 nine stalls and allows access out of 22 the existing side street.</p> <p>23 Invasives are often difficult to 24 eradicate, and based on the species 25 that we've indicated an aggressive</p>	<p>34</p> <p>1 important to this use -- will allow 2 for deliveries that does not impact 3 Route 25. There are safety aspects to 4 this -- again, 1974 when this was 5 built it was a different environment 6 -- and obviously 7-Elevens have become 7 very popular -- on deliveries are a 8 logistical challenge, and this would 9 help alleviate that.</p> <p>11 We feel the design limits the 12 use of the CPA property to the maximum 13 extent while allowing for these 14 limited improvements. I've done a lot 15 of Compatible Growth Hardships, and as 16 I said some in terms of 17 Core Preservation Area Hardships, the 18 requirements are very different. And 19 under ECL, Article 57-0121(10) (a), it 20 spells out the criteria that are used 21 for this type of determination. The 22 first one has to do with the subject 23 property does not have any beneficial 24 use, if used for its present use or 25 developed is authorized by the</p>	<p>36</p>

<p>1 2 provisions of this Article. 3 4 I think you get the sense that 5 it's zoned J2, has been since before 6 the Act, has been vacant, but it's an 7 island and is heavily impacted. And 8 that -- because it's zoned J2, it 9 can't be used for anything else in the 10 Town of Brookhaven other than general business. 11 12 And certainly, you know, there 13 is a credit program for this type of 14 thing, but as I've indicated at least 15 based on characteristics of 16 proprieties that I've analyzed over 17 many decades, it doesn't really 18 possess the characteristics that we 19 would look for total preservation, and 20 it would yield about .8 credits, which 21 is a very limited value to the owners 22 of this property, who are seeking the 23 limited use of the property and the restoration of the vegetation. 24 25 And there is additional information on page 2-1 --</p>	<p>37</p> <p>1 2 the immediate vicinity. I think 3 throughout our application materials, 4 the information that Julie put 5 together in Exhibit's B, I think it 6 was, and C in the staff report, it 7 really shows the character of this 8 area in addition to the testimony that 9 I provided today, and that is that the 10 property is unique. It's four sides, 11 developed not contiguous to any 12 natural vegetation -- I don't want to 13 repeat too much -- but dominated by 14 invasives along roads and domestic 15 impacts from residential. It is truly 16 unique in that respect. That it does 17 not relate to or arise out of the 18 characteristics of the subject 19 property rather than the personal 20 situation of the applicant. 21 22 These gentleman have owned this 23 since 20 years prior to the Act. 24 Nothing has changed for them except 25 the Act came to be, and they have a 7-Eleven that had become somewhat</p>	<p>39</p>
<p>38</p> <p>1 2 3 MR. MILAZZO: (Interjecting) I'm going to -- for the record. 4 5 That parcel would likely get one 6 full credit because it benefits from 7 road frontage, it's greater than 4,000 8 square feet -- I'm sorry, that's for 9 residential property. You can do an 10 appeal. Right now it would get .8 11 credits based on the zoning and 12 acreage, but it could come in for an 13 appeal. 14 15 MR. VOORHIS: Yes -- 16 17 MR. MILAZZO: There is 18 residential allegation minimum of one 19 credit for existing room for 20 improvement. 21 22 MR. VOORHIS: I don't think the 23 additional .15 credit is going to 24 really make it that much easier for my 25 client to bear that. 26 27 You go down through, and there 28 are a couple of sub-criteria, one does 29 not apply -- this petition does not 30 apply to or affect other property in</p>	<p>40</p> <p>1 2 3 antiquated. It does not have the 4 required parking under Town Code that, 5 and this would allow it to meet the 6 current parking requirements of Town 7 Code, which is actually a very 8 important point. 9 10 So in my opinion, we certainly 11 meet that criteria; and there is, 12 again, text and verbiage in the 13 documentation. And that this is not 14 the result any action or inaction by 15 the applicant owner or predecessors 16 entitling and including any transfer 17 of contiguous lands which would come 18 in ownership after June 1st, 1993. I 19 can get the full record of ownership, 20 but, again, he's an elderly gentleman, 21 had owned this for many years and 22 really that's covered under the 23 previous one. 24 25 There are other similar provisions that must be met under Article 57-0121(10) (c), we go through that, I think it would be a little bit</p>	

<p>1 redundant to go through it because 2 many of the things are consistent with 3 what I've indicated already, but we do 4 have extensive backup for each of 5 those items.</p> <p>6 So we believe that we've 7 demonstrated an extraordinary 8 Hardship. I certainly appreciate the 9 staff documentation today and the 10 discretion items were that the 2010/11 11 application for a similar proposal 12 stated that the Core Parcel was 13 recently leased by the applicant.</p> <p>14 To my knowledge, it is owned by 15 the groups that I've indicated before. 16 I will certainly look to verify that 17 and get any further information that 18 you or the staff may feel that is 19 needed, clarify the project data and 20 resubmit with correct data. I believe 21 that was done on Friday, based on the 22 mapping discrepancies that I 23 indicated, received responses involved 24 by interested agencies.</p>	<p>1 out of respect for the application, at 2 the hearing in November 2010, do you 3 know if there was any reference to the 4 invasive species?</p> <p>5 MR. VOORHIS: I know that there 6 was not. I spoke to the attorney -- I 7 have not checked the entire 8 transcript -- but I asked the attorney 9 and she said that was not considered 10 at the time.</p> <p>11 MR. MCCORMICK: Okay. And is 12 that basically the substance of your 13 argument today in this new application 14 concerning extraordinary hardship?</p> <p>15 MR. VOORHIS: I'd say it's a 16 piece of our argument and in my 17 testimony. I think I've gone into a 18 great detail in terms of the 19 surrounding area and the lack of 20 character for full preservation of 21 this property. I didn't see that in 22 any great detail in the original 23 record, and we've scaled this back 24 dramatically to the absolute minimum</p>
<p>1 2 As I said, no applications are 3 pending, and consider extension of the 4 deadline, which we can certainly talk 5 about. And I expect that I will be 6 able to provide that consent.</p> <p>7 We want to get it right. I hope 8 that the information that I provided 9 is useful. If I can answer any 10 questions, I will be happy to. And I 11 would certainly refer you to our full 12 application package which contains 13 even more information that I can 14 present in a 15 minute or so 15 presentation today.</p> <p>16 So that concludes my remarks. 17 I'm happy to answer any questions.</p> <p>18 CHAIRWOMAN GALLAGHER: Does 19 anyone have any questions at this 20 time?</p> <p>21 MR. MCCORMICK: Chick, Happy New 22 Year, first off.</p> <p>23 MR. VOORHIS: Thank you, Dan, 24 you too.</p> <p>25 MR. MCCORMICK: In reference and</p>	<p>1 2 that we can do to improve the safety 3 and operation of the existing 4 7-Eleven, which isn't going anywhere. 5 And we've removed the Compatible 6 Growth Area Hardship aspect of it.</p> <p>7 So everything is reduced 8 substantially, and I feel and hope 9 that it's better supported.</p> <p>10 MR. MCCORMICK: Okay. And 11 you're saying that Lot 6.1 is owned by 12 at least one of these corporations 13 prior to the enactment of the Act?</p> <p>14 MR. VOORHIS: That's my 15 representation. I will look for 16 further documentation so that your 17 attorney can review that and verify.</p> <p>18 MR. MCCORMICK: Thank you.</p> <p>19 CHAIRWOMAN GALLAGHER: Any other 20 questions.</p> <p>21 MR. FRELENG: I have one for the 22 staff.</p> <p>23 I want to reference to 24 Exhibit E -- I'm sorry, Exhibit B, 25 that's the area.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Julie, can you -- we don't have it -- west of the wooded subject lot, we have Red Maple, and we have a developed site that does not appear to be in the Core, and then we have a site to the west of that that does appear to be in the Core, I think that's a preschool, maybe?</p> <p>MS. HARGRAVE: Yes.</p> <p>MR. FRELENG: Can you explain to me why that developed site isn't in the Core?</p> <p>MS. HARGRAVE: Yes, just so -- the one on the west side, that's a post office and I think that must have been developed before the Act, but I can check that, but yes.</p> <p>MR. FRELENG: The preschool?</p> <p>MS. HARGRAVE: No, adjacent to that to the west, the preschool was developed, it was a decision called MTK -- and I have copy of that decision and it -- and from my understanding it was a bit of a</p>	<p>45</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>think it's '05.</p> <p>So that was for a 7200 square foot building for use of a daycare on 64,000 square feet parcel in the Core and it applied to the Town of Brookhaven for permission to construct a daycare, and received approval from the Zoning Board of Appeals. And after they received approval from the ZBA, the applicant applied to Brookhaven and the staff coordinated the review of the commission. And when the commission received it, they informed the Town that the parcel was in the Core. Then the Town replied back and applied to the commission --</p> <p>MR. ROMAINE: (Interjecting) and the commission was granted the --</p> <p>MS. HARGRAVE: Yeah.</p> <p>MR. FRELENG: Thank you.</p> <p>CHAIRWOMAN GALLAGHER: Anything else at this time.</p> <p>MR. FRELENG: Have you done with that -- I have a question.</p>
<p>46</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>mistake. It got further long in the process of review. It is in the Core, but there was some issue along the way and it was -- it became a Hardship and it was granted.</p> <p>MR. ROMAINE: By the commission?</p> <p>MS. HARGRAVE: The Hardship was granted by the commission.</p> <p>MR. ROMAINE: Do you know approximately when?</p> <p>MS. HARGRAVE: Yes, I have a copy of that. I believe it was in '98, and the applicant for the application before this -- the application in 2011 -- they used that decision as part of their case for trying to get approval for this project.</p> <p>MR. ROMAINE: But it was denied.</p> <p>CHAIRWOMAN GALLAGHER: MTM wasn't denied, but the 7-Eleven was denied.</p> <p>MS. HARGRAVE: I'm sorry. It was in April 2005 -- '03 -- but I</p>	<p>48</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>If the applicant can explain, I think in the petition it indicates that the business has changed. The delivery and the customer business has changed over the years. Can you elaborate on that, on how the business has changed over the years, why there might be an additional need for parking?</p> <p>MR. VOORHIS: As I have indicated, 7-Elevens have become extremely popular, and there's more activity, there's more cars on the road, there's more sales through these stores. The site itself, as I said before, when it was constructed in the early '70s, did not conform to the Town required parking, and the parking is for this type of use, one space per 100 square feet and the minimum spaces required would be 27 spaces. At present, there are 18 spaces on the site. And the site in its current condition, requires nine spaces to</p>

<p>1 2 conform to current Town zoning parking 3 requirements. 4 So the proposed number of spaces 5 would satisfy the code, so I think 6 that speaks to the intensity of use of 7 the site, the fact that we know this 8 is overcrowded. If you look at the 9 way it operates, there isn't even a 10 place to backout when you're leaving 11 those parking stalls on the west side 12 as the new site plan would have 13 designed as part of it. And so we are 14 looking to alleviate this situation. 15 Deliveries are difficult, they 16 often will spill out on to 25 with no 17 other alternative, parking is very 18 active and access at the driveway is 19 very active and it doesn't conform to 20 code. 21 So I think the original design 22 may have been adequate in the early 23 '70s, but over time the amount of 24 activity and use, the change in the 25 business model of the 7-Elevens and</p>	<p>49</p> <p>1 2 that's the parcel across the street 3 and immediately to the east and that 4 would be very consistent with what you 5 just indicated. 6 MR. FRELENG: In the staff -- in 7 the original denial it was resolved 8 that it referred to Town Law 9 Section 267B2, I believe that's the 10 use area variance criteria. Did you 11 review those, and can you comment on 12 anymore on those particular reasonable 13 return -- 14 MR. MILAZZO: (Interjecting) Can 15 I interject for a second? 16 So the CGA standard, there's a 17 267 questions. The prior application 18 had a CGA component and a Core 19 component, so they had to go through 20 that demonstration of the CGA 21 reasonable use. They fashioned it so 22 it's only Core, so they have to show 23 there's no beneficial use under the 24 law, they don't concern themselves 25 with the 267.</p>	<p>51</p>
<p>1 2 the types of deliveries, on just the 3 general increase in activity have 4 really caused this site to be 5 functionally challenging and somewhat 6 unsafe. 7 MR. FRELENG: It's my opinion 8 that the applicant might be missing a 9 lost opportunity for revenue because 10 of the congestion on site, people 11 avoiding the site, passing by it 12 rather than going in -- pulling in. 13 I also wanted to just confirm 14 with you that the Core Middle Island 15 Ridge Plan, most recent plan done by 16 the Town and the Town's 2030 plan also 17 identify this area as a Hamlet. A 18 commercial Hamlet, so this property is 19 targeted for Hamlet, it's not likely 20 to change the zoning to residential in 21 the future. I just wanted to point 22 that out. 23 MR. VOORHIS: If I can just add 24 to that, I've indicated the J6 zoning 25 map and the Town's initiatives and</p>	<p>50</p> <p>1 2 MR. FRELENG: And that is not 3 applicable with this application. 4 I have no further questions. 5 Thank you. 6 MR. MILAZZO: I have to 7 demonstrate that there's no reasonable 8 use for the property -- or no 9 beneficial use. 10 MR. VOORHIS: I'll just add that 11 this property as it stands on its own, 12 if it could be used under zoning, it 13 would be a separate store of some 14 sort. I don't think it's the right 15 thing for the property. 16 So by allowing just limited 17 parking, additional access to the side 18 street, on a very busy side, precludes 19 any use of this property. I believe 20 it is precluded as a function of the 21 Core. 22 If you think about it, as its 23 own parcel, Zoned J2, it is owned by a 24 separate corporation and absent the 25 Core, could be developed for its own</p>	<p>52</p>

<p>1 2 use. We are not looking to do that. 3 If you do move forward favorably, 4 we'll be happy to condition any 5 conservation easement on the rear 6 portion of the property, we would be 7 happy to refine or improve the 8 landscape restoration plan, native 9 landscape restoration plan and would 10 be pleased to work with staff to do 11 that.</p> <p>12 CHAIRWOMAN GALLAGHER: Anyone 13 else have questions, comments or 14 thoughts?</p> <p>15 MR. SCHNEIDERMAN: Looking at 16 the earlier denial, there was a 17 resolve clause that found that the 18 applicant hadn't submitted any -- 19 didn't demonstrate that they had 20 explored other sites or relocating to 21 another site, is that something that 22 has been explored?</p> <p>23 MR. VOORHIS: We did. We've 24 included that between pages 3-1 to 25 3-3, and it's really pretty simple.</p>	<p>53</p> <p>1 2 larger image, this is a building 3 that's to the east, and this is in the 4 J6 zone. The edge of the parking ends 5 here, and there's really no 6 opportunity for a cross access 7 agreement -- or easement to the 8 property to the east. It's cut off.</p> <p>9 CHAIRWOMAN GALLAGHER: We're 10 good?</p> <p>11 MR. MCCORMICK: Good.</p> <p>12 MR. MILAZZO: I recommend 13 closing the public hearing. I don't 14 even think we need to keep it open.</p> <p>15 Chick, do you have any 16 supplemental materials you want to 17 submit?</p> <p>18 Or any comments --</p> <p>19 MR. VOORHIS: I was going to 20 say -- to hear from the public.</p> <p>21 I would like the opportunity to 22 make sure that staff is comfortable 23 with all the calculations, and that 24 you have information on the chain of 25 history of ownership of the property.</p>
<p>54</p> <p>1 2 These guys owned this site as we've 3 said, I'll provide the backup for over 4 46 years, and they are not out looking 5 to purchase another site. The 6 7-Eleven exists, there is a revenue 7 stream there and they're happy.</p> <p>8 I think Andy's point is well 9 taken that there is a loss of revenue 10 as the result of the activity that 11 occurs on this site, but they've been 12 able to get by for this period of 13 time, and they're not looking for 14 other sites. 7-Eleven is not looking 15 to relocate, it's been there since 20 16 years before the Act, and again, we 17 have addition verbiage to that effect. 18 That summarizes how we approach that 19 particular criteria.</p> <p>20 MR. SCHNEIDERMAN: Thank you.</p> <p>21 MR. MILAZZO: Did they explore 22 using cross access easement to the 23 east -- of the parcel to the east?</p> <p>24 MR. VOORHIS: They did not, but 25 we can look at that now, and this is a</p>	<p>55</p> <p>1 2 As I said before, we want to get 3 this right, and these gentleman have 4 been very patient over time, both with 5 the previous application and us 6 preparing what we hope is a solid case 7 today. So if we need to extend, we 8 can do that. And I'd like to submit 9 that additional information and of 10 course hear from the public.</p> <p>11 CHAIRWOMAN GALLAGHER: Okay. So 12 close the hearing and keep the record 13 open for additional --</p> <p>14 MR. MILAZZO: (Interjecting) Is 15 there any public comment today?</p> <p>16 (Whereupon, there was no 17 response from the public.)</p> <p>18 MR. ROMAINE: Make a motion to 19 close the public hearing keep the 20 record open for the next ten days --</p> <p>21 CHAIRWOMAN GALLAGHER: 22 (Interjecting) Fifteen days, 30 days.</p> <p>23 MR. MILAZZO: We might as well 24 keep it open until the next meeting.</p> <p>25 MR. ROMAINE: Thirty days then.</p>

	57		59
1		1	
2	CHAIRWOMAN GALLAGHER: Okay.	2	you.
3	MR. MILAZZO: Chick, you'll have	3	(Whereupon, this hearing was
4	to get us an extension.	4	concluded at 3:54 p.m.)
5	MR. VOORHIS: I'll get you a	5	* * * *
6	letter. I'll get you a letter.	6	
7	I really appreciate your	7	
8	attention, thank you.	8	
9	CHAIRWOMAN GALLAGHER: So	9	
10	there's a motion.	10	
11	Is there a second?	11	
12	(Whereupon, there was no	12	
13	response given by the Board.)	13	
14	CHAIRWOMAN GALLAGHER: All in	14	
15	favor?	15	
16	(Whereupon, there was no	16	
17	response given by the Board.)	17	
18	CHAIRWOMAN GALLAGHER: Opposed?	18	
19	(Whereupon, there was no	19	
20	response given by the Board.)	20	
21	CHAIRWOMAN GALLAGHER: Any	21	
22	extensions?	22	
23	(Whereupon, there was no	23	
24	response given by the Board.)	24	
25	CHAIRWOMAN GALLAGHER: Thank	25	
	58		60
1		1	
2	you.	2	E X H I B I T S:
3	Has anything come up? Does	3	
4	anyone else have comments of any kind	4	EXHIBIT DESCRIPTION
5	to make at this time?	5	A Tax maps 1992 - 2019
6	(Whereupon, there was no	6	B 2016 Aerials
7	response given by the Board.)	7	C Survey of Property
8	CHAIRWOMAN GALLAGHER: There is	8	D Photographs of site
9	none.	9	E Project data
10	Is there a motion to adjourn?	10	F Site Plan
11	(Whereupon, there was a	11	G CPA Conditions Plan
12	unanimous, affirmative vote of the	12	H CGA Conditions Plan
13	Board.)	13	I Restoration plans
14	CHAIRWOMAN GALLAGHER: All in	14	J Hardship Waiver
15	favor?	15	K NYS DOT Preliminary
16	(Whereupon, there was no	16	response
17	response given by the Board.)	17	L Applicant's Hardship
18	CHAIRWOMAN GALLAGHER: Opposed?	18	petition
19	(Whereupon, there was no	19	M Aerial Map
20	response given by the Board.)	20	
21	CHAIRWOMAN GALLAGHER: Any	21	
22	extensions?	22	
23	(Whereupon, there was no	23	
24	response given by the Board.)	24	
25	CHAIRWOMAN GALLAGHER: Thank	25	

1
2 C E R T I F I C A T I O N
3 STATE OF NEW YORK
4 Ss:
5 COUNTY OF SUFFOLK
6
7 I, DOMENICA RAYNOR, Court
8 Reporter and Notary Public of the State of
9 New York, do hereby certify:
10 That the within transcript
11 was prepared by me and is a true and
12 accurate record of this hearing to the
13 best of my ability.
14 I further certify that I am
15 not related to any of the parties to this
16 matter by blood or by marriage and that I
17 am in no way interested in the outcome of
18 any of these matters.
19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 15th day of
21 January, 2020.
22
23
24
25

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