

THE STATE OF NEW YORK

NYS CENTRAL PINE BARRENS COMMISSION

In the Matter of

Colgate Design Corp./Franklin Johnson, Inc.

200-351-2-6.1 and 200-351-2-20

Suffolk County Water Authority
2045 Route 112
Coram, New York 11727

Wednesday, October 19, 2011
3:00 p.m.

1

2 A P P E A R A N C E S :

3

4 CENTRAL PINE BARRENS JOINT PLANNING AND POLICY

5 COMMISSION

6 PETER SCULLY, CHAIRMAN

7 JEFF MURPHREE, Town of Southampton

8 MARK LESKO, Town of Brookhaven

9 SARAH LANSDALE, Suffolk County

10 DAN MCCORMICK, on behalf of Sean Walter, Town of

11 Riverhead

12

13

14 ALSO PRESENT:

15

16 JOHN MILAZZO, Pine Barren Commission Attorney

17 JOHN PAVACIC, CPBC Director

18 JULIE HARGRAVE, Staff

19 CAROL OSTROWSKI, CLERK

20

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2 I N D E X
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P R O C E E D I N G S

2

CHAIRMAN SCULLY: Thank you for your
patience. We'll call the hearing to order. I'll read
from the notice the hearing and the reporter can
incorporate it.

6

Notice is hereby given that the Central
Pine Barrens Joint Planning and Policy Commission will
hold a public hearing on October 19, 2011 on the matter
of the application for the Core Preservation Area
Hardship Waiver pursuant to New York State Environmental
Conservation Law Article 57-0121(10) and a Compatible
Growth Area Hardship Waiver application pursuant to ECL
Article 57-0121(9).

14

The project name is Colgate Design
Corp./Franklin Johnson Inc. The applicant/owner is Frank
J. D'Anna, President of Colgate Design Corp. The
applicant's agent is Leigh Rate c/o Certilman Balin
Adler & Hyman, LLP.

19

The project site Suffolk County Tax Map
numbers are 200-351-2-6.1 (Core Preservation Area) and
200-351-2-20 (compatible Growth Area).

22

The project site is located on the southeast
corner of NYS Route 25 and Red Maple Road in the hamlet
of Ridge, Town of Brookhaven, Suffolk County, New York.

25

The applicant proposes to clear existing



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1 natural vegetation to expand the parking lot to allow
2 improved truck access for an existing 7-Eleven
3 convenience store. The project site is situated in the J
4 2 Business Zoning District. A previous application made
5 by the tenant was denied relief by the Commission on
6 January 19, 2011.

7 I ask the Commissioners put their names on
8 the record.

9 MR. LESKO: Mark Lesko, Town of Brookhaven.

10 MR. MURPHEE: Jeff Murphee from the Town of
11 Southampton.

12 MS. LANSDALE: Sarah Lansdale, Suffolk
13 County.

14 MR. MCCORMICK: Dan McCormick, on behalf of
15 Sean Walter for the Town of Riverhead.

16 CHAIRMAN SCULLY: Peter Scully, representing
17 the Governor of the State of New York.

18 We'll hear first from staff. Miss Hargrave.

19 (Staff Exhibits A-I were so marked for
20 identification.)

21 MS. HARGRAVE: Thank you, good afternoon.
22 Before you you have a staff report and exhibits. I'll
23 just list the exhibits into the record. The draft staff
24 report that contains all existing conditions and
25 descriptions of the project, that is Exhibit A. B is the



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1 aerial of the project site showing the core and the CGA
2 parcels that make up the project site.

3 The site plan prepared by Catapano
4 Engineering PC dated June 20, 2011 is Exhibit C.

5 The two certificates of occupancy for the
6 existing convenience store dated February 11, 1974 and
7 September 29, 1975 is Exhibit D.

8 Exhibit E is the past Commission hardship
9 waiver resolution to deny 7 Eleven Inc., dated January
10 19, 2011. The site plan that accompanied that
11 application is dated 10, 28, 2010 and that is Exhibit F.

12 Exhibit G is photographs of the project
13 site. They show the existing convenience store on the
14 CGA parcel and existing wooded site which is the core
15 parcel that is adjoining the CGA parcel and they both
16 make up the project site.

17 Exhibit H is the applicant hardship
18 petition. Exhibit I is the clearing calculations on the
19 former and current projects, the project before the
20 Commission in 2010 and the current project.

21 So, the proposal is to expand the parking
22 lot for the existing 7 Eleven convenience store from 18
23 to 25 parking spaces. The majority of that expansion
24 will occur on the core parcel and involves clearing on
25 the core parcel and on the CGA parcel to establish a new



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1 truck loading area and refuse enclosure and a driveway
2 onto the adjacent road Red Maple Road and that's a new
3 driveway. That's the majority of the project.

4 Again, the project would involve clearing
5 on the core and CGA parcels and on the CGA portion the
6 applicant proposes to clear an additional 3.8 percent or
7 735.8 square feet. On the core parcel the proposed
8 clearing is 26.6 percent or 9,398.8 square feet. The
9 project development and the parcel, the CGA parcel is
10 already over cleared and the applicant proposes to clear
11 more that warrants a hardship, requires a hardship. The
12 clearing on the core parcel is new development and that
13 requires a hardship to move forward.

14 The applicant needs Town of Brookhaven site
15 plan and building permit and a permit from the
16 Department of Transportation. They are redesigning their
17 entrance and the exit onto the new driveway, onto the
18 adjacent road.

19 The property owner has owned the project
20 site, both parcels since the 1970's. The core parcel is
21 in the core because it was not developed when the act
22 was passed in 1993 so that placed it in the core
23 preservation area.

24 Both parcels are zoned commercial for
25 commercial development. The core parcel is not eligible



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1 for the road front exemption because it is not
2 residentially zoned. But as far as whether the applicant
3 could have obtained a Pine Barrens credit that may be
4 possible but the applicant has never applied to the
5 Commission or the clearing house for a Pine Barrens
6 credit. They may qualify for a full credit but, again,
7 the applicant has not applied for that; so that analysis
8 has not been done.

9 Other things, again, the hardship petition
10 is in here. The differences I wanted to show you, the
11 two site plans from the former application and the
12 current application, this is current one, the former one
13 has these additional five parking spaces and this truck
14 loading area. The current one eliminates those spaces
15 so there is less clearing than what the Commission
16 denied earlier this year. But there is additional
17 clearing on the core parcel but there is less clearing
18 here. The truck loading area is over here. So -- do you
19 have any questions?

20 CHAIRMAN SCULLY: The truck loading area is
21 not, in the new plan has them lining up perpendicular to
22 the --

23 MS. HARGRAVE: In the new plan it is more
24 like a parallel parking instead of this.

25 CHAIRMAN SCULLY: Parallel to the dock but



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1 perpendicular to the building?

2 MS. HARGRAVE: Yes. I looked up the Town
3 parking requirements to see how they compared, the
4 applicant was requesting more parking. For a convenience
5 store you need one space per 100 square feet; the 2,600
6 square feet the convenience store has, they need 26
7 spaces; they currently have 18, I believe.

8 CHAIRMAN SCULLY: So the existing does not
9 comply with the Town code requirement, it is short of
10 parking?

11 MS. HARGRAVE: Right. I am sorry they have
12 23 spaces right now. Maybe the applicant -- I am sorry,
13 excuse me. I think I have it in the staff report. They
14 will be expanding from 18 to 25. They need, if they met
15 the Town code, they would need 26. They were proposing
16 to have 23. So they are not exceeding what is required
17 in the code. They are not even going to meet what is
18 required in the code. The previous application
19 originally it exceeded what was required in the code but
20 then they reduced it. They have reduced the number of
21 spaces from what they previously asked the Commission
22 for. The five spaces are now gone, but again they do
23 propose to build out these parking spaces in the core on
24 the north side of the core parcel.

25 MR. MCCORMICK: What is the total square



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1 footage as proposed now as to previously what was
2 proposed and denied?

3 MS. HARGRAVE: The building?

4 MR. MCCORMICK: The clearing in the subject
5 property.

6 MS. HARGRAVE: Okay.

7 CHAIRMAN SCULLY: Exhibit I has a chart.

8 MS. HARGRAVE: So does the last Exhibit. The
9 2010 application proposed to exceed the standard by
10 14 percent. It was an additional 2777 square feet. The
11 new project is 11.3 percent over the standard. That's
12 2177 square feet; but that is on the CGA portion, there
13 are clearing standards. The core parcel has no
14 standards, so -- and there is clearing there, so, any
15 clearing on that parcel is in addition to the amount
16 that is going to be exceeded to the CGA portion.

17 MR. MCCORMICK: Julie, Exhibit B is an
18 aerial photo. Have we confirmed the accuracy of that
19 photo, is that core property, in fact, surrounded by
20 developed properties?

21 MS. HARGRAVE: It has a road -- it is
22 surrounded by two roads, the existing store and
23 development in the rear of the property. What isn't
24 accurate in this aerial, though, is this line, that
25 shows this red line, ignore that red line. The parcel on



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1 the left which is shown as the core is correct and what
2 is shown as the CGA is correct.

3 MR. MCCORMICK: There is development to the
4 east and west and well as the south, correct?

5 MS. HARGRAVE: Yes.

6 CHAIRMAN SCULLY: Which line is it you
7 suggest we disregard?

8 MS. HARGRAVE: This red line the; core
9 boundary line. These need to be fixed in our data base.
10 The core parcel is like an L shape, so --

11 CHAIRMAN SCULLY: So the core parcel
12 extends behind the existing store.

13 MS. HARGRAVE: Exactly.

14 CHAIRMAN SCULLY: For that purpose there
15 are two purple lines there, actually those are the core
16 boundary; is that correct?

17 MS. HARGRAVE: Yes; the purple line behind
18 the store that is the boundary line for the core parcel.
19 The one that is splitting this, creating this third
20 parcel there is not correct. The L shape is the whole
21 core parcel. The 7 Eleven is on the little rectangle.

22 CHAIRMAN SCULLY: Anything else? Questions
23 for Julie?

24 MS. HARGRAVE: The applicant is here.

25 CHAIRMAN SCULLY: Ms. Rate?



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1 MS. RATE: Certilman Balin, 100 Motor
2 Parkway in Hauppauge. Lot 20, going over, lot 20 is this
3 lot that is located in CGA. It was developed in 1974
4 with a 7 Eleven.

5 The applicant as landlord at 7 Eleven and
6 the tenant entered into a lease agreement 37 years ago
7 for the 7 Eleven property. It is renewed every 15 years
8 for the past 37 years. Lot 6.1 which is in the core, is
9 an L shaped lot, vacant obviously. 7 Eleven and the
10 landlord and owner of the property, the applicant have
11 entered into a lease for this property expansion as
12 described.

13 Currently trucks coming in enter off of
14 Middle Country Road because the property line is like
15 this, this the entire property line so they idle on
16 Middle Country Road. This would allow them to come in
17 exit out and come back onto Middle Country through Red
18 Maple Road. That is the intention of the new site plan.

19 March 2010 when 7 Eleven made application
20 it was denied by this Board by the Commission and they
21 resubmitted, the owner resubmitted this application with
22 reduced parking, reduced loading space. There is some
23 re-vegetation in this area behind the existing 7 Eleven
24 where they can remove a few trees.

25 Regarding the property limit CGA the



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1 applicant is now proposing only 3.8 release. It was
2 develop in 1974 and already beyond the lease limits and
3 its only increase of 3.8 percent compare to the prior
4 plan, increased by 3.1 percent overall clearing
5 decreased by 2.7 percent, decreased it fertilizing and
6 vegetation 2.6 percent adding some of that vegetation in
7 the back.

8 The parcel in the core, the proposed
9 clearing is 26.6 percent, clearing for that site
10 compared with the prior application, a decrease of 1.8
11 percent. Vegetation to remain is increased to 5.2 (ph)
12 percent, fertilizing and vegetation decreased by
13 2.6 percent. For both sites the overall clearing is
14 44.2 percent taking into consideration both lots.

15 The Commission previously approved about
16 300 feet down a day care center that was proposed to add
17 -- a few years ago that clearing limit was approved at
18 62.5 percent. That was to construct an entirely new
19 building, parking lot, playgrounds, all facilities for
20 the day care center.

21 Really we're proposing minimal
22 improvements. There will be some increase in clearing in
23 this area to access additional parking. We have parking
24 along the front of the lot. The loading station, having
25 a loading space here would have a space in this area



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1 that does comply with town code requirements. So all of
2 this to here will remain as natural vegetation.

3 Addressing the use variance criteria the
4 applicant cannot realize a reasonable rate of return
5 because the lot was rendered un-buildable because in the
6 core area. They acquired the property over 30 years ago.
7 They acquired the property and it's been designated core
8 because vacant in 1993. The hardship is unique and it is
9 not contiguous to any core parcels. There is only one
10 other core parcel in the area that is possibly about
11 300 feet down to the west on Middle Country Road which
12 received relief from the Commission.

13 Also there are two lots across the street
14 on Middle Country Road that remain vacant. They are
15 not in the core because the line actually runs along the
16 south of Middle Country Road not the north of Middle
17 Country Road. The lots across the street that are vacant
18 are not core parcels that would require that type of
19 release.

20 The proposed use would not alter the
21 essential character of the area. It is already
22 commercially developed. Developed on all sides. This
23 parking lot expansion will not alter the essential
24 character of the area. The hardship is not self created
25 because they owned the property 37 years and it is only



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1 become subject to this in 1993.

2 Also merging of these two lots brings it in
3 compliance with the Brookhaven Town code. They are
4 proposing 27 parking spaces. That also brings them into
5 lot area compliance, compliance with lot area
6 requirements. Any questions?

7 CHAIRMAN SCULLY: Questions for the
8 applicant? Does Staff or Counsel have questions for the
9 applicant? Okay. So, you were not implying then, I was
10 reviewing your letter of July 14th, you are not implying
11 because there are two vacant lots across Middle Country
12 Road that are in the core that the applicant's property
13 is treated differently; its just that it's on the south
14 side of Middle Country Road.

15 MS. RATE: There are other vacant lots but
16 not designated in the core area.

17 CHAIRMAN SCULLY: Thanks. Any member of the
18 public have any questions?

19 MR. AMPER: Richard Amper.

20 Whereupon,

21 RICHARD AMPER,
22 after having been first duly sworn, and testified as
23 follows:

24 MR. AMPER: This doesn't seem very
25 different from the last application so I would assume



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1 that the recent court decision on the American Physical
2 Society (ph) which seems to suggest that the Commission
3 must be consistent with its approval process would work
4 the other way here unless there was something
5 significantly different about how the core preservation
6 area is being treated because we heard about combined
7 percentages and percentage in the CGA but the percentage
8 in the core is not germane to either of those because
9 that's right, it was put in the core 1993, no one has
10 taken -- people have taken exemptions but the courts
11 have made it clear that was entirely permissible.

12 I don't think there is anything in the
13 statute or the land use plan which would indicate that a
14 waiver is justified on the basis of the fact that
15 someone can't meet the parking lot requirements of the
16 municipality. Whether or not the parking places are
17 parallel or not they're still in the core.

18 We made the suggestion at the time, I
19 cannot remember the member of the Commission that
20 objected to that, but that in order to get around this
21 problem, the solution is to reduce the number of parking
22 spaces required to make sure that that development
23 occurs in the CGA. This particular application probably
24 reduces the percentage of cleared land by 3.5 percent
25 but I just can't find that in the hardship criteria,



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1 that if you have a little less, so, they can go back and
2 say how about if we make it 4.5, or maybe come back and
3 say how about if we get it down to two point whatever,
4 it doesn't change the basis which you made the decision
5 and the standards that should apply to hardship waiver.
6 So it doesn't work. I think it creates a very bad
7 precedent and I think you are duty bound now to maintain
8 the same standards of review with your current decision
9 as you apply to the preceding one and should not permit
10 this hardship.

11 CHAIRMAN SCULLY: Thank you, Mr. Amper.

12 Anyone else have anything else to add?

13 MS. RATE: If the Commission were following
14 prior precedents they should have approved it in the
15 first place because 300 feet down the road they approved
16 with 62.5 percent clearing for a large structure, a new
17 parking lot with a day care center and they didn't seem
18 to have issue with that.

19 We're asking for less than 15 parking
20 spaces in the core area on a lot they have owned for
21 37 years which was not the type of factual situation we
22 had on that prior approval for the day care center.

23 Again, if we're talking about following
24 precedent, then this type of relief at 26.6 percent
25 should certainly not be as much an issue as 62.5 percent



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1 approved just a few years ago. If we're talking about
2 precedent this will not set a precedent approval at
3 26.6 percent considering, again, how long the property
4 owners have owned the property.

5 CHAIRMAN SCULLY: Just to clarify, if I
6 recall correctly last time you were before us you
7 indicated that the applicant had not yet sought approval
8 from the Town but will do that after hearing what the
9 Commission had to say?

10 MS. RATE: We have met with the Town. They
11 are aware of our proposal. They had suggested to put
12 vegetation; they like the fact we are coming into
13 compliance with the code as far as parking lot area;
14 but we won't move forward with the site plan unless
15 approval from the Commission.

16 CHAIRMAN SCULLY: Thanks. Any questions
17 from the applicant or staff?

18 MR. AMPER: One additional observation. The
19 precedence operative here pertains to this applicant and
20 this site. That would be the dominant precedent.

21 CHAIRMAN SCULLY: Any comments or questions?
22 I guess we'll close the hearing for further
23 consideration by the Board. Thank you very much.

24 I see that we come to the end of our
25 agenda. Any other matters that we need to come before



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1 the Commission?

2 MR. LESKO: If I could ask the record
3 reflect had I voted on the Meadows of Yaphank I would
4 have voted yes. It was late for me to vote on that
5 project; if the record could reflect I would have voted
6 yes.

7 CHAIRMAN SCULLY: So noted. If there is
8 nothing further can I have a motion to adjourn?

9 MR. MURPHEE: Motion.

10 MR. LESKO: Seconded.

11 CHAIRMAN SCULLY: Anyone opposed,
12 abstaining. Motion carries unanimously, we stand
13 adjourned.

14 (Time Noted: 3:22 p.m.)

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2 C E R T I F I C A T I O N

3

4 I, Marie DiMarco, a Shorthand Reporter and
5 notary public, within and for the State of New York, do
6 hereby certify:

7

8 That said transcript is a true record of

the proceedings set forth herein.

9

10 I further certify that I am not related to
11 any of the parties to this action by blood or marriage,
12 and that I am in no way interested in the outcome of
this matter.

13

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand this _____ day of _____, 2011.

16

17

18 _____
19 Marie DiMarco
20
21
22
23
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