



Central Pine Barrens Commission

Meeting of November 15, 2023

Adopted Resolution

Taco Bell Mangogna

Core Preservation Area Hardship Waiver

451 County Road 111, Manorville, Town of Brookhaven

SCTM # 200-462-2-12.002

Present:

Mr. Calarco, for the New York State Governor

Mr. Dale, for the Suffolk County Executive

Ms. DiBrita, for Brookhaven Town Supervisor

Ms. Hurley, for Riverhead Town Supervisor

Mr. Shea, for Southampton Town Supervisor

Robert Calarco
Chairman

Yvette Aguiar
Member

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

I. The Project

Joanne Mangogna owns property located at 451 County Road in Manorville, in the Town of Brookhaven. Up until 2019, there was a restaurant operating on the property. The restaurant has ceased operations and Mangogna has been trying to sell the property. Taco Bell Manorville LLC (Taco) has signed a contract to buy the property. Taco's obligation to buy the property is conditioned on getting the Commission's approval of Taco's proposal to demolish the existing restaurant on the property and build a Taco Bell restaurant with a drive through. Taco was represented by its attorney J. Lee Snead in its application before the Commission. Taco requires the Commission's approval because the property is in the Core Preservation Area as defined in Article 57 of the Environmental Conservation Law and the project constitutes development.

The property contains 1.6 acres. The defunct restaurant had a 7,200 square foot building with a 70 space parking lot. Approximately 0.64 acres of the property is covered with natural area. The proposed Taco Bell will include a 2,624 square foot restaurant and parking lot with 25 parking spaces for vehicles. In addition to the 0.64 acres of natural area, Taco proposes to revegetate 0.59 acres of area that is currently devoid of natural vegetation. The proposed Taco Bell will have a drive through provided it receives the necessary change of zone to allow this use from the Town of Brookhaven.

II. The Act and the Commission

The New York State Legislature passed the Long Island Pine Barrens Protection Act (Act) and codified in Article 57 of the Environmental Conservation Law (ECL), which was signed into law on July 13, 1993. The Act, among other things, created the Central Pine Barrens Joint Planning and Policy Commission (Commission), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area.

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In furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens Comprehensive Land Use Plan (the “Plan”), which was adopted on June 28, 1995.

ECL §57-0107 defines development to be the “performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the following uses shall be taken for the purposes of this article to involve development . . . (a) a change in type of use of a structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated.” ECL §57-0123 provides that “no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions” of the Plan and Environmental Conservation Law Section. The Project constitutes development as defined in the Act.

III. The Project Site and Materials Submitted to the Commission

Taco provided to the Commission an owner’s affidavit from Mangogna, a Full Environmental Assessment Form Part I, analyzing the environmental impacts of its proposal, and an aerial with a site plan overlay prepared by H2M dated February 24, 2023.

On October 5, 2023, Taco provided supplemental material to the Commission. The items included an affidavit addressing the hardship criteria and an October 3 letter from Island Associates Real Estate Inc., discussing the lack of interest in a large capacity restaurant for catering, particularly due to the COVID pandemic, marketing efforts to lease or sell the property, and the lack of economic viability of the present use.

IV. Public Process

On July 19, 2023, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing and heard testimony and received exhibits from the Applicant. Subsequently, a transcript of the hearing was distributed to the Commission. The hearing was adjourned until October 18. The decision deadline was extended to November 15, 2023. During the hearing, Taco agreed to consider placing a covenant on the property preventing developing a second structure on the site.

V. The Study Area and State Historic Resources Determination

The Staff Report defined a Study Area which analyzed, in general, the land use and ownership of property within a one-half mile radius of the property. The Study Area is bisected by County Road 111, which is also the boundary of the Compatible Growth Area and Core Preservation Area. The Core is located on the north and east of County Road 111 and the Compatible Growth Area is on the south and west of the road. The Long Island Expressway cuts through the Study Area from east to west. Adjacent to the restaurant, to the north, is a residential structure and other structures in commercial use including a Starbucks drive through coffee shop. Directly across the street, in the CGA, is a 7-Eleven convenience store with a gas station and north of this gas station are commercial uses that include a shopping center and fast food restaurants including McDonald’s

and Wendy's. A second gas station is present in the Study Area at the southwest corner of the LIE and CR 111.

The analysis revealed that the dominant land uses in the Study Area along County Road 111 are commercial uses including restaurant and retail uses. A significant amount of natural public open space is present along the north and east side of County Road 111. Residential uses are present in the CGA south of the Project Site. The properties in the Core that are west of the site are in the A Residence 2 zoning category.

The Commission requested information from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) on whether the project would impact State listed historic or pre-historic resources. OPRHP replied by letter dated June 27, 2023 that, “[i]t is the opinion of OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.” Thus, the Project will not impact such resources.

VI. Other Required Approvals

The Project is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA). Pursuant to Chapter 4 of the Plan, the Commission commenced the SEQRA review of the project and sought to serve as the lead agent coordinating the review with Brookhaven Town, Suffolk County Department of Public Works, Suffolk County Planning Commission and Suffolk County Department of Health Services.

Brookhaven Town, by letter dated June 28, 2023, deferred Lead Agency to the Commission with no comments on the Project. Suffolk County Department of Public Works, by letter dated July 12, 2023, offered comments on referral including that an impact fee may be required and other requirements showing the removal of two existing aprons and ADA compliant sidewalks, driveways and ramps. The Suffolk County Planning Commission, by letter dated June 29, 2023, deferred lead agency to the Commission. The letter contained a statement, “Please note that pursuant to New York State General Municipal Law section 239 and Article XIV of the Suffolk County Administrative Code, prior to final approval, this action should be referred to the Suffolk County Planning Commission for review.”

The Suffolk County Department of Health Services, by letter dated July 10, 2023, deferred lead agency to the Commission. Its letter stated, “The SCDHS maintains jurisdiction over the final lot area, density and use. The Project will generate sanitary wastewater within the allowable limits for the Project Site in Groundwater Management Zone III and will utilize an alternative innovative treatment system. Suffolk County Health Department approval of the IA system will be required.”

The Project requires permits and/or approvals from other involved agencies including but not limited to the Town of Brookhaven for a change of zone, site plan, stormwater and building permits. The Suffolk County Department of Public Works indicated that the project requires detailed plans for curb cub modifications to County Road 111.

VII. History of the Project Site and Prior Commission Decisions

The restaurant on the property was developed prior to the Act, and in June 1998, a core hardship waiver request was proposed for two additions to the restaurant building and additional parking. An enforcement action occurred in August 1998 for commencing development without a hardship and the incident was settled with a fine and stipulation dated September 24, 1998. The stipulation required revegetation of the northern, rear portion of the property.

In 2002, a second waiver request was proposed for another expansion of the restaurant. The Commission stated in the March 2003 meeting minutes that the applicant had already been granted minimum relief and therefore the hardship was self-created and denied.

A review of prior Commission decision indicates that it has granted extraordinary hardship waivers to other projects in the Study Area. This includes its November 8, 1995 approval of the application of Clancy Street Food Corp. Clancy proposed a construction of 5,915 square foot restaurant. As with the Taco application, Clancy property had frontage and direct access to County Road 111. Clancy is located 1,400 feet from the Taco property.

On June 21, 2017, the Commission granted to Starbucks Manorville to convert a bank to a drive through coffee shop, Starbucks, which is located 1,280 feet from the Taco property. The change of zone for a drive through restaurant was similar to the Project.

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

In reviewing a Core Preservation Area Extraordinary Hardship Waiver application, the Commission is required to consider the criteria set forth in ECL §57-0121(10)(a), (c)(i), (ii), and (iii) to determine whether an applicant has established the existence of extraordinary hardship as distinguished from a mere inconvenience, whether the requested relief is consistent with the purposes, provisions of the Act, and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area. An applicant demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this article, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property under certain conditions.

The Commission has considered the application, the Staff Report and Exhibits, transcripts of the hearings, and its prior decisions and finds that Taco has demonstrated that an extraordinary hardship exists.

The property and project are unique because it is developed with a defunct restaurant in an area that does not have a market for the type and size of the existing restaurant and proposed a smaller restaurant for which demand exists. A singular feature of the proposal is the building on the property will be reduced in size by 65%. Taco's real estate expert has opined that this portion of Manorville does not support a formal sit-down restaurant use. The area is not a food destination center and does not have a hamlet center. The subject property characteristics include being developed with a use that predates the Act and for which there is not a demand. This characteristic was not created by Taco but rather by the development of the area as a high traffic corridor. Taco

has not taken or failed to take an action with respect to the property. The land use patterns have changed in the area since the original restaurant on the property was developed. Other unique facets of the application include Taco's ability to demolish the existing building and construct the new building without disturbing or removing any existing natural vegetation on the property.

Taco has provided documentation that the current restaurant has been vacant and marketed for sale for four years. This demonstrates according to Taco, that there is not significant demand for a formal sit-down restaurant on the property. Taco also notes that no matter to whom the parcel was sold, the "building would probably have to come down." The lack of interest in an entity acquiring the parcel and re-establishing its uses as a formal restaurant is attributed to, in part the COVID pandemic, changing trends, presence in a pass-through area with no hamlet or destination center. According to Taco the existing restaurant is now "moribund." No potential buyers or lessees are interested in the site's present use. The Applicant is willing to purchase the site only if a waiver and change of zone are obtained for fast food drive through use.

Taco also asserts that current market and location does not support an economic use consistent with the property's J Business 2 zoning does not support a 200 seat sit down restaurant in this location.

The Project maintains the site's essential character and will not result in an increase in development in the Central Pine Barrens.

In considering the application, the Commission finds that the Waiver will not be materially detrimental to other properties due to the unique nature of the Project which involves removing a defunct use and constructing a smaller use and increasing the amount of natural vegetation on the property. Applicant has demonstrated the property is currently unused and no economic use is supported on the parcel. As a pass through travel corridor rather than destination hamlet, retail and food establishments including drive through national chain restaurants are present and appear viable. A Taco Bell fast food restaurant will not increase danger of fire or endanger public safety when compared the risks posed by a 200 seat restaurant. Taco's willingness to consider restricting additional development of the property is consistent with its recognition that its proposal is unique because it represents a 65% reduction in the size of the structure on the property.

The Waiver is not inconsistent with the purposes, objectives or the general spirit and intent of the Act because it permits the continuation of the use of a developed parcel while reducing the footprint of the use and reintroducing native vegetation to the parcel. The Project reuses a developed parcel and be doing so avoids new clearing in the Central Pine Barrens. By replacing an antiquate septic system with a modern system, groundwater impacts from the use on the property are anticipated to improve as compared to the use of the property's existing system.

IX. Commission Determinations

The Waiver is granted only for this specific project, a 2,624 square foot take out, drive through restaurant as per the site plan prepared by H2M dated February 24, 2023. No other uses or development of the site in the J5 or J6 zoning categories is permitted.

This Waiver does not allow development or redevelopment for uses in the same zoning category such as gas stations, hotels and laundromat facilities or any other permitted uses in the zoning categories of the new zoning if Brookhaven Town approves the proposed change of zone sought by the applicant.

A condition of approval requires the owner of the property to place a covenant and restriction on the property barring the construction of any other structure on the property. This Waiver expires if the Project is not built in five (5) years and a new application will be required even for the same project and site plan.

The Commission finds that Taco Bell Manorville LLC has demonstrated that the property and its proposal is unique for the reasons set forth above. It has further demonstrated that it suffers an extraordinary hardship due to conditions unique to the property and current conditions. The Commission grants a Waiver to Taco Bell authorizing the development a fast food restaurant on the Project Site with conditions.

The site is situated where there is an existing traffic light at the intersection of CR 111 and Chapman Boulevard. The Project is expected to generate more frequent visits overall as a drive through restaurant than a non-drive through and the presence of a traffic signal is expected to mitigate the potential increase in traffic as a result of the Project. Queueing lanes and curb cut modifications and designs are expected to accommodate traffic in a safe pattern in the Study Area.

The Commission finds the Project will not result in substantial impairment to the resources of the Core Preservation Area. An alternative innovative treatment system will be installed in the Project, replacing an outdated septic system, for wastewater treatment and expected reduced nitrogen concentration discharge to groundwater.

The present use is abandoned. The Applicant has attempted to attract a tenant with no success. The market for a restaurant use in this location is driven toward convenience such as a drive through rather than a traditional sit down restaurant. Lack of a town, hamlet setting or destination area, the Project is more compatible with the site in this pass through location.

The Commission finds that the Project is not inconsistent with the purposes and provisions of the Act, including but not limited to, the goals and objectives to “[p]reserve the functional integrity of the Pine Barrens ecosystem, protect the quality of surface water and groundwater, discourage piecemeal and scattered development, [to] accommodate development in a manner consistent with the long-term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient, and orderly.”

The Commission hereby determines the Hardship Waiver application, as submitted, satisfies the criteria for a Core Preservation Area Extraordinary Hardship Waiver pursuant to New York State ECL Article 57 §57-0121(10) for the reasons set forth in this resolution.

The Taco Bell Mangogna Core Preservation Area Extraordinary Hardship Waiver is approved, as per the Site Plan dated February 24, 2023 prepared by H2M, subject to conditions including:

1. The Waiver shall be valid for a period of five years from the date of approval.

2. The Applicant must obtain additional permits and approvals, as required by law, prior to commencement of activity related to the Project including Town of Brookhaven zone change, site plan, stormwater and building permits; Suffolk County Planning Commission review and approval; Suffolk County Department of Health Services review and approval; Suffolk County Department of Public Works permits and approvals, and any other approvals that apply to the Project.
3. Submit items to the Commission office, subject to review and approval, including:
 - a. Landscaping Plan with native plants, area, species, quantity of plantings and other relevant information. Protect existing trees in the rear of the property.
 - b. Protect the rear natural area during construction with snow fencing and remove when construction is complete. No structures may be placed in the natural (landscaped) area except for moveable picnic tables in a grass area(s).
 - c. Sign plan(s) with minimal lighting and signage that is minimal and in keeping with the character of the Central Pine Barrens in its design, height, color(s) and material.
 - d. Lighting plan with dark skies fixtures, compliant with dark skies regulations.
 - e. Declaration of Covenants and Restrictions barring additional development on the Project Site. Include this decision as an exhibit. Once approved, record in the Office of the Suffolk County Clerk
4. Within six months of completion of the Project and issuance of a Certificate of Occupancy, the Applicant shall submit an As-Built Survey for the Commission's file record.
5. The Waiver is granted only for this specific project, a 2,624 square foot take out, drive through restaurant as per the site plan dated February 24, 2023 prepared by H2M. No other uses or development or buildings on the site in the J5 or J6 categories are permitted without review and approval by the Commission.
6. If any changes occur in the Project the Applicant must notify the Commission and submit an amended application, subject to review and approval.

Taco Bell Mangogna Manorville Core Preservation Area Hardship

Town of Brookhaven; SCTM # 200-462-2-12.2

Decision to Approve Record of Motion:

Motion by: Ms. DiBrita

Seconded by: Mr. Dale

In Favor: 5

Opposed: 0

Abstention: 0

cc: Town of Brookhaven Planning and Environmental Department
Suffolk County Department of Health Services
Suffolk County Department of Public Works
Suffolk County Planning Commission

