



Central Pine Barrens Commission

Meeting of June 26, 2024

Adopted Resolution

Clancy Street Food Court

Core Preservation Area Hardship Waiver

County Road 111, Manorville, Town of Brookhaven

SCTM # 200-462-2-5.1

Present:

Mr. Calarco, for the New York State Governor

Ms. Juengst, for the Suffolk County Executive

Mr. Panico, Brookhaven Town Supervisor

Mr. Hubbard, Riverhead Town Supervisor

Ms. Moore, Southampton Town Supervisor

Robert T. Calarco
Chairman

Timothy C. Hubbard
Member

Maria Z. Moore
Member

Daniel J. Panico
Member

Edward P. Romaine
Member

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I. The Project

David Kepner of Clancy Street Corp. owns property located at the intersection of County Road (CR) 111 and the southeast service road of the Long Island Expressway (LIE) at Exit 70 in Manorville, in the Town of Brookhaven. The Central Pine Barrens Commission (the Commission) approved a hardship waiver in 1995 for Clancy Street Food Court for the development of a restaurant that was never constructed. The 1995 waiver is still valid. The property remains undeveloped and is naturally vegetated.

Clancy was represented by its consultant Charles Voorhis, Nelson Pope and Voorhis in its Application (Clancy) before the Commission. Clancy 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 Application and the 1995 waiver share the same name but the site plans reflect different projects.

The property contains 1.167 acres (the Project Site). The 1995 waiver was for the construction of a 5,915 square foot building for the retail sale of food or food services and retail sale of dry goods, with a 33-space parking lot and seven additional spaces for drive-thru stacking.

The Project is development of a 3,293 square foot restaurant with 48 seats including 22 indoor and 26 outdoor seats, and a parking lot with 29 parking spaces for vehicles and one loading stall. A drive through is not in the Project. An area of 0.17 acres will be landscaped with native, non-fertilized, non-irrigated vegetation and 18,221 square feet (0.42 acre) of existing natural vegetation will remain in its present condition. An innovative alternative on site sewage disposal system is proposed for updated and improved wastewater treatment and reduced nitrogen concentration in groundwater discharge.

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.

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 . . . (c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land...” 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

Clancy submitted to the Commission, on February 13, 2024, an Application that included the owner’s affidavit, a Full Environmental Assessment Form Part I with the existing environmental features and proposed conditions, and a Site Plan prepared by Nelson, Pope & Voorhis, LLC dated February 9, 2024.

IV. Public Process

On April 17, 2024, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and seven Exhibits A through G prepared for the hearing. The Applicant submitted testimony and gave a PowerPoint presentation. One member of the public commented with a concern about the proposed sanitary flow and need for Pine Barrens Credits. Subsequently, a transcript of the hearing was distributed to the Commission. The hearing was closed with a 14-day comment period.

On May 1 the Applicant submitted supplemental information following up on questions raised at the public hearing. The Applicant amended the site plan to reduce the number of seats by 44%, from a total of 86 including 54 indoor and 32 outdoor seats, to a total of 48 seats including 22 indoor and 26 outdoor seats. This reduction avoids the Project exceeding the site’s sanitary flow capacity and conforms with the Suffolk County Sanitary Code flow standards.

On May 15, the Commission at the request of the Applicant, extended the decision deadline from June 11 to the regular Commission meeting on June 26.

V. The Study Area and State Historic Resources Determination

The Staff Report defined a Study Area which analyzed, in general, the land uses within a one-half mile radius of the Project Site. The Study Area is bisected by CR 111, which is also the boundary of the Compatible Growth Area to the west and the Core Preservation Area to the east. The LIE cuts through the Study Area from east to west. A commercial building occupied by a drive through Starbucks restaurant is present on the south side of the Project Site. A conservation easement property, granted to the Commission, is immediately adjacent to the east. Natural open space is present to the north, east and south of the Project Site.

North of the LIE in the Study Area, land uses include natural open space, a religious institution and low-density residential development. South of the Project Site to the corner of Chapman Boulevard are residential and commercial land uses in the Core. In the CGA, commercial uses are present including two gas stations, drive through chain restaurants and two shopping plazas with a grocery store and retail businesses. Residential and commercial zoning categories are present in the Study Area.

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 prehistoric resources. OPRHP replied by letter dated February 29, 2024 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 a Type II Action pursuant to 6 NYCRR Part 617.5(c)(9) of the State Environmental Quality Review Act (SEQRA). No further environmental review pursuant to the SEQRA regulations is required. Other agencies with jurisdiction will need to review and issue permits or approvals for the Project to proceed including Brookhaven Town for site plan, stormwater and building permits; Suffolk County Department of Public Works for a curb cut on CR 111; New York State Department of Transportation for a curb cut on the eastbound ramp to the LIE; and Suffolk County Department of Health Services for approval of the sanitary system.

In its June 5, 2024 correspondence, the New York Natural Heritage Program (NHP) provided two reports titled “Report on State listed Animals” and “Report on Rare Animals, Rare Plants and Significant Natural Communities.” The first report listed a State-listed animal, the Tiger Salamander, an Endangered amphibian, that has been documented in the vicinity of the Project Site. The report also listed the Federal or State-listed Endangered mammal, the Northern Long Eared Bat (NLEB), that has been documented within 0.5 mile (nonbreeding) and within 3 miles (maternity colony) of the project site. On the NLEB, it states, “Individual animals may travel 3 miles from documented locations. An impact of concern is the cutting or removal of potential roost trees.” To protect the NLEB habitat, the Applicant will adhere to the NYSDEC restricted tree clearing periods, which in Suffolk County, is within the December 1 to February 28 clearing window.

The second report included Coastal Barrens Buckmoth, a State-listed Species of Special Concern. It states this species was documented in a large area that extends into the project site, and in 1989, the moths were found in a dense tree and scrub oak thicket with scattered pitch pine.

In its May 8, 2024 referral response, the New York State Department of Transportation reported that a case number had been created for this project.

VII. History of the Project Site and Prior Commission Decisions

The 1995 Waiver authorized a 5,915 square foot restaurant on the Project Site. In 2001, a Hess gas station was proposed on the Project Site involving a change of zone, fueling facilities, underground fuel tanks and a convenience store. A positive declaration pursuant to SEQRA was adopted by the Commission in 2002 and subsequently in 2003 the application was withdrawn due to potential significant environmental impacts highlighted in the review.

Prior Commission decisions indicate other Core hardship waivers that were granted to non-residential uses in the Study Area including Lakeside Manorville Hotel daycare (2001), Starbucks drive-through restaurant (2017), and Mangogna drive-through restaurant (2023)

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 and supplemental information, the Staff Report and Exhibits, transcript of the hearing, and its prior decisions and finds that Clancy has demonstrated that an extraordinary hardship exists.

The Project Site and the Project are unique because of the 1995 decision permitting development of a similar use. The 1995 Waiver permitted a larger building in approximately the same location as the Project. A singular feature of the proposal is the building is smaller by 56% or 2,622 square feet. Consistent with the 1995 Waiver, the Project will clear no more than 65% of the Project Site and retain 35% of the existing natural vegetation. The Project Site has no beneficial use for the Applicant in its undeveloped and natural state other than increasing property value. The Applicant relied on the prior valid hardship which had no expiration date and continued to pay taxes without commencing construction.

Presently the owner has secured a potential tenant to develop a restaurant of a size and scale to suit present market needs and demand. The residence that was present on the Project Site in the 1960s

has since been removed. Clancy failed to take action to develop the Project Site in accordance with the 1995 waiver. Since 1995, land use patterns in the Study Area have changed. Construction of the LIE and development of vacant land in the CGA has occurred on CR 111 from the LIE to Chapman Boulevard in the Study Area. CR 111 has become a major thoroughfare for travelers with eastbound destinations.

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 prior development on the Project Site and a prior waiver for a larger building. But for a languishing approval and lapse in construction since 1995, the Applicant could pursue development pursuant to the 1995 waiver.

Consistent with a pass through travel corridor rather than destination or hamlet center, retail and food establishments including drive through national chain restaurants are present in the Study Area. A restaurant will not increase danger of fire or endanger public safety when compared the risks posed by the Project.

Other than the Project, no other development is permitted on the Project Site. If and when the market or ownership changes, no uses of a size or scale larger or an increase in intensity or density is permitted. The purpose of this is to retain the protection of the character and resources of the Core.

The Waiver is not inconsistent with the purposes, objectives or the general spirit and intent of the Act because it permits development of a parcel with a prior valid hardship, where it was contemplated and approved, and reduces the size and scale of the use. Consistent with the 1995 waiver, the Project protects 0.42 acre of the Project Site's existing natural vegetation.

Clancy utilizes a Project Site that was previously developed and has a valid prior approval and by doing so avoids development of a different property without approval to build and requiring natural vegetation in the Core to be cleared in a less developed area of the region. The Project and its location preserves the integrity of the pine barrens to build in a more compact, efficient and orderly pattern. The alternative wastewater treatment system is expected to improve the treatment of sewage generated by the use and protect groundwater resources as compared to the system authorized in 1995.

IX. Commission Determinations

The Waiver is granted only for the Project, a 3,293 square foot restaurant as per the Site Plan prepared by Nelson, Pope & Voorhis, LLC last revised April 18, 2024 and received on May 1. No other uses, zoning or development is permitted.

This Waiver does not allow development or redevelopment for uses in the same zoning category. No change of zone is contemplated, required or authorized. Aside from this Waiver, the Applicant must obtain any and all other permits and approvals from other agencies including Brookhaven Town, SCDPW, SCDHS, NYSDOT and NYSDEC, as applicable.

A Declaration of Covenants and Restrictions (C&Rs) is required barring the construction of any other structure(s) or increases in density or intensity or change of use on the Project Site. This Waiver expires if the Project is not built in five (5) years and a new application will be required for the same or a new project. Attach this Waiver to the C&Rs as an exhibit.

The Commission finds that Clancy has demonstrated that the Project is unique for the reasons set forth above including the Project Site history. Clancy has demonstrated that it suffers an extraordinary hardship due to conditions unique to the property.

The Project Site is situated where there is an existing traffic light at the intersection of CR 111 and the south side of the LIE overpass. A median barrier is present on CR 111 and southbound turns would create an unsafe condition to cross a four lane principle arterial expressway as defined by NYSDOT. No southbound turns should be allowed; only northbound and eastbound turns should occur from the Project Site unless offsite road improvements occur or as authorized by other agencies.

The Commission finds the Project will not result in substantial impairment to the resources of the Core Preservation Area. The innovative alternative on site wastewater treatment system is expected to reduce nitrogen concentration in wastewater discharged to groundwater and to protect groundwater resources in the Core.

Lacking the setting of a downtown hamlet center or destination area, the Project is compatible and compact in a pass through location. The Project Site has road frontage in a busy, heavily traveled commercially developed corridor. Fragmentation into a more rural, natural and less commercially developed setting is avoided by the Project.

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.

It is determined that Clancy is the same use as the 1995 waiver and no greater adverse environmental impacts are proposed through its reduction in size of the restaurant building and seating, no drive through stacking, fewer parking spaces and an updated sanitary system. The building is smaller in size than the 1995 waiver and excess sanitary flow is eliminated by the Applicant's 44% reduction in the number of restaurant seats; it conforms with the sanitary flow for the Project Site; it utilizes an updated alternative wastewater treatment system to protect groundwater resources as compared to the 1995 sanitary system, and it maintains the protection of the pine barrens ecosystem through continued protection of existing natural vegetation and character consistent with the 1995 waiver.

The Commission grants a Core Hardship Waiver authorizing the development of a restaurant on the Project Site with conditions. The Clancy Street Food Court Core Preservation Area Extraordinary Hardship Waiver is approved, as per the Site Plan last revised April 18, 2024 and received on May 1, 2024, prepared by Labcrew Engineering, P.C., subject to conditions including:

1. The Waiver is valid for a period of five (5) years from the date of approval or the regular meeting date of the Commission meeting in June 2029.
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, 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, NYS Department of Transportation, NYSDEC and any other approvals that may apply to the Project.
3. Submit items to the Commission office, subject to review and approval, due to the highly visible location of the Project including:
 - a. Natural area
 - i. Prior to site disturbance for any purpose, stake the limits of clearing to protect 18,221 square feet or 0.42 acre area identified in the Site Plan as "Area to Remain Natural and Undisturbed," which is the existing natural area outside of the clearing envelope for the building and restaurant outdoor areas, parking lot and other infrastructure including utilities.
 - ii. No removal of understory, trees or other vegetation is permitted in the areas identified in the Site Plan as "Area to Remain Natural and Undisturbed."
 - iii. Protect the 0.42 acre natural area during construction with snow fencing and remove temporary fencing when construction is complete. Install split rail fence on the interior edge of the natural area.
 - iv. Protect the existing large pussy willow on the southwest corner of the site near the proposed ingress/egress on CR 111. The Site Plan shows the area where it is present as "Area to Remain Natural and Undisturbed." Therefore, no trimming of this plant is permitted for greater visibility of the use or sign.
 - v. Protect existing trees and other vegetation within the clearing envelope where possible for natural buffers such as on the south fence line and not in the cross access connection.
 - vi. Notify this office at least one week in advance of clearing to perform an inspection prior to disturbance. No clearing outside of clearing limits may occur.
 - vii. Landscaping Plan. The Landscape Plan, LAN-1 last dated April 18, 2024, lists 14 arborvitae to shield areas including the trash dumpster and one (1) red maple tree in a landscaped island at the cross access connection. The Plan Landscaping Chart lists 7,408.7 square feet of native grass area. Consider keeping native trees where possible oaks, pitch pines and other trees to provide habitat, food for wildlife, shade where necessary and natural buffers. Any additional plantings should be native species to support pine

barrens ecology. Consider native inkberry and American Holly as evergreen screening plants where necessary.

viii. No structures may be placed in the landscaped area except for moveable picnic tables in a grass area(s).

4. Obtain a cross access agreement to utilize the proposed cross access with the adjacent developed property presently occupied by Starbucks. Submit a final copy of the cross access agreement to the Commission office. Avoid removal of large trees where possible in this access driveway.
5. Endangered Species Protection. Coordinate with NYSDEC to ensure protection of species listed in the letter dated June 5, 2024 from the Natural Heritage Program as on or near the Project Site. To protect the species and habitat of the Northern Long-eared Bat, a State and Federally Listed Endangered Species, avoid clearing from March to November of any given year. Clearing may only occur from December to February of any given year. Consult with NYSDEC on other species listings to ensure no regulated habitat is present that may alter the site plan as it is presently proposed.
6. Signage. Only one monument sign is proposed and five wall signs are proposed including two on the building and three on the clock tower.
 - a. One monument sign is proposed. It is shown at the CR 111 curb cut. The sign is 32 square feet with dimensions 4'5" tall and 6'8" wide; it is supported by two stone pillars. It has the words "Clancy's Market" with two colors: red letters and a beige background. The proposed sign is not illuminated.
 - b. Different names are shown in the signage in the materials submitted on May 1. The color renderings signage says "Clancy's Market." In the Building Elevations, Sheet A-1 prepared by Design Tech, Kevin J. Kelly and Associates dated April 24, 2024, received May 1, signage says "Clancy Street."
 - i. The color renderings show five signs including two building wall signs and three clock tower signs that say "Clancy's Market."
 - ii. The Building Elevations show clock tower signage that says "Clancy Street."
 - iii. Please reconcile the names and avoid excessive and inconsistent signage on the building and overall on the Project Site
 - c. If lighting is proposed on signage in the future it must be minimal and downward facing, fully shielded lighting.
 - d. If the signage changes in the future, it must be of the same or smaller size and the colors, design and material must be in keeping with the character of the Central Pine Barrens.
 - e. No sign is proposed or shown in the Site Plan on the South Service Road eastbound ingress/egress. Only one additional monument sign is permitted if it is necessary, and it must be of the same size, scale and style as the one shown in the Site Plan. If a sign on the South Service Road curb cut is necessary, it is permitted to be the same or smaller in dimensions, design and material without review by this office.
 - f. No variances are proposed.

- g. No illumination of the clock tower signage is permitted. The clock may have a matte surface with dimly lit interior illumination. This is to protect the adjacent and nearby open space resources for plants and wildlife in the Core and dark skies.
- h. No changes in signage may occur other than expressed in this decision.

7. Lighting Plan. Sheet LIG-1 last dated April 18, 2024 illustrates shielded fixtures to be installed. The Lighting Plan presently has 12 shielded fixtures including 11 wall mounted shielded fixtures at a height of seven feet and one light pole at a height of 18 feet.

- a. Dark skies compliant only fixtures are permitted.
- b. No additional light poles at the entrances or elsewhere on the Project Site are permitted.
- c. No increase in the number of fixtures or greater amount of light emitting from the Project Site is permitted.
- d. No light shall spill off site as per the photometric plan.

8. Revise and resubmit the Building Elevation prepared by Kevin J. Kelly & Associates, Sheet No. A-1, dated April 24, 2024, to reduce the number of seats from 90 seats to 48 seats.

9. Declaration of Covenants and Restrictions (C&Rs). Prepare draft C&Rs for review and approval by this office. The C&Rs will be granted to the Commission. The C&Rs will restrict additional development, changes in use, increases in density or intensity on the Project Site. Once approved, record in the Office of the Suffolk County Clerk.

- a. Protect 0.42 acre of natural area of the site.
- b. No disturbance to existing natural vegetation to remain.
- c. No construction of structures and uses or changes of use on the property other than what is approved in this decision.
- d. Add this resolution as an exhibit.

10. Submit to the Commission office a copy of the As Built Survey within six months of completion of the Project and issuance of a Certificate of Occupancy.

11. The Waiver is granted only for this Project, a 3,293 square foot restaurant as per the site plan last revised April 18, 2024 and received on May 1, 2024, prepared by Nelson, Pope & Voorhis, LLC. No other uses or development or buildings are permitted.

12. If any changes occur in the Project the Applicant must notify the Commission and submit an amended application, subject to review and approval.

Clancy Street Food Court Core Preservation Area Hardship

CR 111, Manorville, Town of Brookhaven; SCTM # 200-462-2-5.1

Decision to Approve

Record of Motion

Motion by: Mr. Panico

Seconded by: Mr. Hubbard

In Favor: 5

Opposed: 0

Abstention: 0

cc: Town of Brookhaven Planning and Environmental Department and Building Department
Suffolk County Department of Health Services
Suffolk County Department of Public Works
Suffolk County Planning Commission
New York State Department of Environmental Conservation Region 1
New York State Department of Transportation Region 10