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C E N T R A L P I N E B A R R E N S
C O M M I S S I O N M E E T I N G

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CLANCY STREET FOOD COURT

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April 17, 2024
3:00 p.m.

116 Hampton Road
Southampton, New York

TRANSCRIPT OF PROCEEDINGS

April 17, 2024

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

ROBERT T. CALARCO, Governor's Representative

SARAH LANSDALE, Suffolk County Representative

TIMOTHY C. HUBBARD, Riverhead Supervisor

MICHELLE DI BRITA, Brookhaven Representative

JANICE SCHERER, Southampton Representative

MATTHEW CHARTERS, Riverhead Representative

MARIA Z. MOORE, Southampton Town Supervisor

JUDITH E. JAKOBSEN, Executive Director

JULIE HARGRAVE, Joint Planning and Policy Manager

JOHN C. MILAZZO, Commission Counsel

ANGELA BROWN-WALTON, Administrative Assistant

ALSO PRESENT:

David J. Kepner

Charles J. Voorhis

PUBLIC SPEAKERS:

Nina Leonhardt

1
2 MR. CALARCO: This is the Clancy
3 Street Food Court Core Preservation Area
4 Hardship Waiver Application. Please note the
5 public hearing notice has been posted and
6 provided to the stenographer.

7 Ms. Hargrave.

8 MS. HARGRAVE: Thank you. It's a
9 smaller site, a little less involved.

10 This is a Clancy Street Food Court
11 Core Hardship Waiver Application. Everyone
12 should have a staff report. It was posted on
13 the website, the applicant has it as well.
14 "Chick" Voorhis represents the applicant.
15 The owner is David Kepner, and he has owned
16 site for a long time. I think I'll explain
17 more later.

18 The project site is located on the
19 southeast corner of County Road 111 in
20 Manorville and the LIE eastbound ramp in
21 Brookhaven Town, Core Preservation Area. The
22 site is 1.167 acres in the J Business 2
23 Zoning District. It's undeveloped and
24 naturally vegetated. The proposal is the
25 development of 3,293 square foot restaurant

with 54 indoor seats and 32 outdoor seats. Other development is parking for 29 vehicles, two curb cuts, landscaping and construction of an on site innovative sanitary system.

There is some history with the site and the Commission. The project site was the subject of a core hardship waiver with the same name in 1995 to develop a 5,915 square foot restaurant. That decision is still valid. The project was never built and the site remains undeveloped today. Ownership is the same as it was in 1995.

The study area contains open space to the north and commercial uses to the east. Opposite the site on County Road 111 is the compatible growth area. There are large retail shopping complexes on that side of County Road 111, the grocery store, a medical office and drive-thru restaurants. There's a farm present a little further south on Chapman Boulevard and County Road 111, and residential development to the west of that area, the farm and commercial development on the west side of County Road 111.

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2 The SEQRA classification is Type II
3 Action. The project will require other
4 permits, including state DOT for the cut on
5 the LIE access road, County DPW for the curb
6 cut on 111, and the health department as
7 well.

8 The project will generate more
9 sanitary flow than is allowed on the project
10 site. The proposal mentions a redemption of
11 Pine Barrens Credits. This site, since it's
12 in the core, is not a site where Pine Barrens
13 Credits can be redeemed. The core is a
14 sending area fore credits, not a receiving
15 area. So, the applicant would need to work
16 with the Health Department to find an
17 alternative to conform to Article 6, and that
18 might include purchasing land in the same
19 watershed area. That has been done before
20 when a project is in the core.

21 There's questions at the end of the
22 staff report. Again, they include the issue
23 of excess flow that is an increase of the
24 intensity of use in the core and not to use
25 Pine Barrens Credits.

1
2 Obtaining other approvals,
3 coordinating with the DEC and make sure they
4 do not clear during any endangered species
5 habitat and species windows to protect
6 certain list of species. If this is
7 developed, to protect the large trees and
8 other natural vegetation on the site, and to
9 minimize signage to be compatible with the
10 Pine Barrens landscape and minimize signage
11 and, obviously, dark sky lighting requirement
12 anyway.

13 It's a difficult site to get in and
14 out of; it would be turning south. Turning
15 south would probably be prohibited, since
16 it's a four lane highway essentially. So,
17 there could be some difficulty there with the
18 access, but that's not really something we're
19 discussing today.

20 Obviously, the hardship criteria --
21 I'm sorry to go back -- I briefly mentioned
22 that the applicant indicated in their
23 application the site was historically
24 developed with a residence in the 1960's.
25 The residence no longer exists, and the site

1
2 has continuously been owned by the current
3 owner since 1980. Obviously, they're been
4 paying taxes but they never built the project
5 that was the subject of the waiver in 1995.

6 The site is impacted visually.
7 Specifically, the applicant has set their
8 application from a major highway and the
9 prior disturbance and, obviously, they have
10 explained that basic work. The Commission
11 supports renewing the hardship based on minor
12 changes in the project.

13 Again, this is a new project. The
14 site is undeveloped. The waiver is still
15 valid, but they are not pursuing that
16 project, they have changed the project. It
17 is, essentially, a vacant, undeveloped site
18 today. There is some information in the
19 staff report for precedent on site that had
20 prior development such an animal shelter, the
21 Mangogna restaurant that is nearby -- near
22 the site, which was last year proposed to be
23 potentially a Taco Bell restaurant, and also
24 Starbucks that is next door to site. When
25 they needed a change of zone, that site was

1
2 also developed. So, a lot of sites -- some
3 sites have received hardships in the past,
4 but there was development there on some of
5 those project sites.

6 That's all I have for now. If you
7 have any questions.

8 MR. CALARCO: Any questions for
9 Ms. Hargrave?

10 Seeing none.

11 MR. VOORHIS: Mr. Kepner is here. He
12 is going to start.

13 MR. CALARCO: Just state your name
14 for the record.

15 MR. KEPNER: My name is David Kepner.
16 I'm the owner of the property. I think Julie
17 said just about all you need to know. What's
18 important to me is she mentioned the wavier
19 granted in 1995 is still valid. I think it's
20 worthy to point out that what I am seeking to
21 do now is way less intrusive than what was --
22 the project for which I got a waiver in 1995.
23 The building footprint is 3,900 square feet
24 that I'm looking for. The one that received
25 a wavier was 5,900 square feet. There's less

1
2 parking. We're improving the sanitary system
3 to the current AI. Natural vegetation will
4 be the same with no irrigation, no
5 fertilization.

6 So, I'm hoping you will give me
7 permission to go ahead with the project.
8 That's it.

9 MR. CALARCO: Thank you, sir.

10 MR. VOORHIS: Thank you, David. For
11 the record, "Chick" Voorhis with Nelson Pope
12 Voorhis for the applicant.

13 David and I processed this
14 application before this body in 1995. So,
15 we're very familiar with the history. It was
16 not able to be built at that time, based on
17 market conditions. Mr. Kepner has identified
18 a market that this can serve at this time.
19 It was a little difficult to explain why we
20 did have to come before the Comission, based
21 on the prior approval, but this Commission
22 does have a precedent and track record for
23 looking at minor changes to site plans and
24 updating approvals where appropriate. I
25 think Julie covered that in the staff report.

1
2 So, I'll go through a couple of the
3 facts, supplement what Mr. Kepner has
4 indicated, and basically summarize some of
5 the points from our application. I will also
6 mention that Tim Shea from Certilman Balin,
7 and Yuliya Viola, are the attorneys on the
8 project that are assisting with processing in
9 the town and review of the application
10 materials that we submitted. And Chris
11 Labate of Lab Crew is the engineer. They are
12 not here today, I don't expect we'll need
13 their presence, but if there are follow up
14 items, we can certainly address that. I will
15 be addressing the staff comments that I
16 received midday yesterday, because I think we
17 can really make a lot of progress today on
18 this application by clarifying some of these
19 items.

20 So, today is the hearing. Our
21 application was submitted February 9th. 1.17
22 acre site. It is completely within the Core
23 Preservation area. These are the boundaries.
24 It's basically CGA south of the Expressway
25 and southwest of CR 111, Core Preservation

Area CPA to the north. The site is and has been zone J2 Business, which as you know is a general business category in the Town of Brookhaven.

The site was historically developed. I'll go through a couple of items that show that graphically. Mr. Kepner indicated he has owned the site since 1984, ten years prior to the Comprehensive Land Use Plan, nine years prior to the Act. It remains undeveloped, but it was developed from about 1961 to at least 1994 with a single family residence. It shows the alteration on the site based on that previous domestic use.

These were the conditions of the original hardship exemption. The use was to be limited to retail sale of food and food services and/or sale of retail dry goods. We remain consistent with food service use. Development shall be in accordance with Commission standards for land use set forth in the CLUP. Based on the CGA criteria, we continue to meet that parameter. It's kind of a metric. It's not directly applicable,

1 but it was referenced in the prior decision,
2 even though we're in the Core Preservation
3 Area.
4

5 The height of the ground sign shall
6 not exceed the height of the ground sign
7 found at the gas station across the street.
8 The intent is to comply with each of those
9 conditions within the site.

10 You have the site plan. This is just
11 a quick summary. It is a smaller building,
12 over 2,500 square feet smaller than what was
13 previously approved by the Commission. It
14 has indoor/outdoor seats, it has parking.
15 There is no drive-thru, which had been
16 previously contemplated. There are two
17 driveways, just as there were before; they
18 align with areas that were disturbed on the
19 site based on the prior use. There is a
20 concrete walk along County Road 111.

21 We are proposing an on-site
22 innovative alternative, on-site waste water
23 treatment system. This is interesting,
24 because it came through in Julie's staff
25 report. The Health Department requires us to

1
2 obtain the Pine Barrens Credits. It's
3 actually in the last and most recent notice
4 of incomplete. We need the SEQRA
5 determination from the town for the Health
6 Department and we need credit.

7 So, as David indicated -- actually,
8 as Julie indicated, we will be seeking
9 alternative ways to comply with Article 6 of
10 the sanitary code. I don't have the concrete
11 answer to that today. We believe there are
12 some options, and we will come back with that
13 information, as well as other responses to
14 the staff report. But Suffolk County sits on
15 this Commission. Sarah is representing
16 Suffolk County Executive Ed Romaine. It is
17 basically a requirement of the Health
18 Department. We'll look to get those two
19 things synced up, but I completely understand
20 the concept that it's a sending area, not a
21 receiving area for the purpose of the Pine
22 Barrens Credits. We'll get back to you.

23 There was landscaping proposed
24 previously. We're not proposing any
25 fertilizer dependent vegetation on the

property. That will be compatible with the use going forward: No landscaping. 37 percent of the site will retain the existing natural vegetation; more than would be required in the compatible growth area.

This is the current site plan. I'm going to do a couple of side-by-side with the original site plan. You'll see how consistent they are. You know the site. When we came in, in 1995, I don't think any of you guys were here at the time, but Grace's Hotdogs was next door. It's become the Starbucks.

As we know, there's a large parking lot. There's all kinds of transportation linkages through that parking lot. We're between that site and the South Service Road of the Expressway and County Road 111. So, it's on the very edge of the Core Preservation Area. Even in 1995, I recall vividly we were told not to pursue a Core Preservation Area boundary change, and that we should come in for a Core Preservation Hardship, which we did at that time and

obtained it. But I think you'll understand that the nature of this site is a little bit hard to understand how it is core, other than that it is designated core and that's why we're here.

This is a line drawing of that same site plan. This is the prior approved site plan from 1995. Now, these are line drawings. I don't have full renderings of these. I had to dig back in the file. This may help a little bit. It's a side-by-side comparison.

The one on the left is the currently proposed plan. It shows the configuration of open space in that dark shaded area. Open space across the driveway to the South Service Road and a small area just to the east of the driveway off County Road 111. Very similarly is the 1995 plan where there's a polygon that shows the area of natural open space with, again, two small detached areas of open space north of the Service Road driveway and southeast of the CR 111 driveway.

1
2 I know that the staff report asked if
3 we could move the access point closer to the
4 property lines. Chris Labate of Lab Crew
5 said that was originally proposed and the DOT
6 asked us to move the curb cuts to where they
7 are shown. But this shows the similarity of
8 the two plans side-by-side.

9 So, previously you recognized that we
10 met with the requirements for an
11 extraordinary hardship. I talked about the
12 use to the east, which was Grace's, now it's
13 Starbucks; that has not changed. We're at
14 the fringe of the CPA; that has not changed.
15 The site is at the apex of two major
16 highways; that's the same. The interior of
17 the property is disturbed; perhaps a little
18 less disturbed than it was years ago, but
19 there is remnants and obvious signs of
20 disturbance on the property. The site is the
21 same zoning that it was in 1995. The use is
22 essentially the same, it's a food service
23 use. And the building is placed within the
24 interior of site and the previous cleared
25 areas in the center of the site, and the

1 fringe of the site, the outer continuous open
2 space has remained in very much the same
3 configuration. We don't clear more than 65
4 percent. The building is smaller. We're
5 consistent with the original curb cuts. It's
6 a 44 percent decrease in the size of the
7 building. There are 30 parking stalls.
8 There were 26 previously approved along with
9 stacking for drive-thru. There's no
10 drive-thru with this proposal. It has the
11 added benefit of no fertilizer dependent
12 vegetation or irrigation areas, as well as
13 the added benefit of a IA system.

14
15 So, there's really little or no
16 impact from this project occupying the
17 previously disturbed areas. This is meeting
18 the current stormwater requirements of the
19 Town of Brookhaven. There are no wetlands in
20 the area. Although, I will talk about the
21 recharge basin south of the Expressway, west
22 of the County Road 111 in a moment. There
23 are no steep slopes on the property.

24 So, the site has been continuously
25 owned. The Expressway was installed in the

1970's. I'll show some historic area photographs. The zoning remains the same. The hardship was based on the CPA, which came into affect after Mr. Kepner owned the property. We're looking to update the approval for modified conditions. We conform with town zoning and all of these items that we have covered, just in terms of environmental conditions of the site.

This is the site in 1947. There was a road aligned with County Road 111. This is the site in 1962. There was a residence; so, it constructed prior to that date. The site next door was completely cleared. In 1978 the Expressway and the South Service Road come into view. The site was residential and the site to the east has a residence on it. 1984 very similar conditions. The 2001 aerial shows the house removed but the area of disturbance shown and, of course, the site to the east was completely developed. Then over time it's very similar, just with pioneer vegetation coming in up to this 2023 aerial photograph.

Health Department. As I said, there are just those two items on the last NOI: SEQRA and credit. The DOT, as I said, has reviewed the plans, asked us to modify those plan, and we're working through those approvals, as we are with Suffolk County DPW. Do have consultation from the Natural

1
2 Heritage Program. So, that will come up in
3 this next section and really getting toward
4 the end. We will work with the Health
5 Department to meet the requirements of
6 Article 6 and not use the Pine Barrens
7 Credit. We'll submit and, of course, obtain
8 all of the other required approvals. This
9 tracks the comments in the staff report.

10 We will be seeking a no take, no
11 permit necessary determination from the DEC
12 for northern long-eared bat, which is now an
13 endangered species and is present in the
14 vicinity of the site. So, it's determined by
15 the size of the trees that are being removed
16 and the season when trees are being removed.
17 We'll work through that with DEC. If
18 necessary, or if it's found that a take you
19 would occur, by clearing outside of the
20 December 1st through February 20th window, we
21 agree to only clear within that window, and
22 that would satisfy the DEC requirements under
23 Article 11 of the Environmental Conservation
24 Law.

25 Tiger salamander was interesting,

1 because we located the files from 1995. We
2 did to work in that regard. There is a
3 recharge basin south of the Expressway
4 between the Service Road and the Expressway
5 and west of County Road 111. It is a
6 documented tiger salamander breeding habitat.
7 It goes back to the John Cryan report from
8 1984. The State, under Article 11, looks to
9 protect any habitat where the species was
10 identified previously.
11

12 So, we were able to get a no take
13 determination previously. We're looking to
14 reactivate that, update it, whatever is
15 needed with the DEC. We are within the 1,000
16 foot radius. But with the presence of the
17 two major highways and the disturbance of the
18 site, it's our expectation -- as well as
19 preservation of a large part of the site,
20 it's our expectation that will be approved as
21 a no take determination.

22 We do feel that we're protective of
23 the character of the Core Preservation Area
24 and the Central Pine Barrens. We're
25 protecting the larger trees on the property

1 through the buffer. As you can see, other
2 parts where we're developing were disturbed
3 more recently.
4

5 The signage will be minimal and will
6 be consistent with Pine Barrens landscape.
7 There is a comment regarding sign variance,
8 seeking a sign variance. We will commit to
9 not seeking a sign variance. We'll provide
10 additional information on signage after this
11 meeting, jus to be responsive to the staff
12 report, but we can make that commitment
13 today. We're also completely consistent with
14 the Town of Brookaven Dark Sky compliance
15 requirements, and can demonstrate that
16 through site plan approval, but that would
17 allow us to be consistent with Pine Barrens
18 requirements in that regard. The proposed
19 ingress and egress locations align with the
20 existing access locations with the prior
21 approval.

22 Of course, we'll address any further
23 comments. Thankfully there weren't too many
24 comments on this. I think we can easily
25 clarify them by taking care of the Health

1 Department issue on the credit, and
2 committing to signage variance, and looking
3 to try and move forward with this.
4

5 All of this was covered. It's just a
6 brief summary of the presentation materials
7 that you have in your record and I presented
8 to you today. We will come back with
9 information. We'll submit this presentation
10 for the record, so you have a copy of that as
11 with the prior presentation.

12 I don't know if it's possible, but
13 we'd like to continue to keep the Town
14 apprised of our progress with all the
15 agencies. So, if there is any sense that can
16 be offered or if we wait and come back at the
17 next hearing, we will do so. That concludes
18 our presentation. Thank you very much
19 Mr. Kepner. Let us know if you have any
20 questions.

21 MS. MOORE: Could you repeat what you
22 said about not redeeming the Pine Barrens
23 Credits with the Health Department.

24 MR. VOORHIS: Health Department has
25 required us to obtain a Pine Barrens Credit.

1
2 We reached out to the county reviewer and we
3 shared with them the staff report that we
4 received yesterday, taking issue with that,
5 and we're looking to come up with another
6 means to satisfy Article 6 of the sanitary
7 code.

8 MS. MOORE: "Chick," could you
9 provide us a copy of that letter from the
10 Health Department that requires that?

11 MR. VOORHIS: Yes, I'll be happy to
12 do that.

13 MR. CALARCO: Any other questions?

14 Thank you, "Chick."

15 MR. VOORHIS: Thank you. I
16 appreciate your attention.

17 MR. CALARCO: We have another speaker
18 signed up for this public hearing. Nina
19 Leonhardt.

20 MS. LEONHARDT: Most of these issues
21 have already been addressed for the record.
22 We were concerned about the Pine Barrens
23 Credits, and we were concerned about the
24 sanitary flow. So, those two were main
25 thing.

1
2 And yes, the 30 year old hardship
3 waiver does remain in effect, because that is
4 how the decision came down. The applicant
5 explained something about market forces. But
6 it just makes you wonder. Just a comment.
7 30 years old. It does seem a little strange.
8 That's it. Thank you.

9 MR. CALARCO: Thank you. I
10 appreciate it.

11 Anybody else who would like to
12 address us at this time at this public
13 hearing?

14 Seeing none, counsel is telling me to
15 take a motion to close the public hearing,
16 leaving the record open for two weeks.

17 MR. VOORHIS: We will be submitting
18 some information.

19 MR. CALARCO: We'll leave it the
20 record open for two weeks.

21 MS. DI BRITA: I'll make a motion.

22 MR. HUBBARD: Second.

23 MR. CALARCO: Motion by Ms. DiBrita,
24 second by Mr. Hubbard. All those in favor.

25 (WHEREUPON, there was a unanimous

affirmative vote of the Board.)

MR. CALARCO: Opposed, abstentions.

(No response was heard.)

MR. CALARCO: Before we close out today's meeting, we have one more public comment portion. Is there anybody in the audience that would like to address us at this time?

Seeing none, I'll undertake a motion from Supervisor Moore, second by Supervisor Hubbard to close today's meeting. All in favor.

(WHEREUPON, there was a unanimous affirmative vote of the Board.)

MR. CALARCO: Opposed.

(No response was heard.)

MR. CALARCO: We are recessed.

(Time Ended: 4:37 p.m.)

* * *

April 17, 2024

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C E R T I F I C A T E

I, BETHANNE MENNONNA, a Notary Public
within and for the State of New York do
hereby certify that the foregoing is a true
and accurate transcript of the proceedings,
as taken stenographically by myself to the
best of my ability, at the time and place
aforementioned.

IN WITNESS WHEREOF, I have hereunto
set my hand this 30th day of April, 2024.



BETHANNE MENNONNA