



Commission Meeting of August 16, 2017 Brookhaven Town Hall

Present: Mr. Freleng (Suffolk County), Mr. Romaine (Brookhaven),
Mr. Walter (Riverhead), Mr. Shea (Southampton)

Adopted Resolution

Compatible Growth Area Hardship Waiver Application of
R.N. Middle Island LLC (7-Eleven Middle Island)

910 Middle Country Road, Middle Island, Town of Brookhaven
Suffolk County Tax Map Numbers 200-378-2-37.2; 200-403-1-2.1 and 2.3

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

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I. The Project

Whereas, R.N. Middle Island LLC (the “Applicant”) by its consultant Nelson Pope & Voorhis LLC, submitted a Compatible Growth Area Hardship Waiver Application on May 3, 2017 to develop a gas station and convenience store in the hamlet of Middle Island, in the Compatible Growth Area (CGA) of the Central Pine Barrens, in the Town of Brookhaven (the “Application”), and

II. The Act and the Commission

Whereas, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “Act”) and it is codified in Article 57 of the Environmental Conservation Law (ECL). The Act, created the Central Pine Barrens Joint Planning and Policy Commission (the “Commission”), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area, and

Whereas, 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 “CLUP”), which was officially adopted on June 28, 1995, and

Whereas, Section §57-0107 of the ECL 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 . . . (b) a material increase in the intensity of use of land or

environmental impacts as a result thereof; . . .(c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;” and

III. The Project Site, The Project and The Application

Whereas, the Project Site contains 1.54 acres of area and is located at the northeast corner of New York State Route 25 and Rocky Point Road, is split between two zoning districts, J Business 2 Zoning District and the J Business 5 Zoning District, and contains both existing developed area and natural area, and

Whereas, the Applicant proposes to clear 100% of the site to develop a gas station with eight (8) pumps and a 2,995 square foot convenience store. Two, 20,000 gallon underground storage tanks are proposed. A parking lot for 30 vehicles is proposed, and

Whereas, the Application consisted of a letter addressing the CGA Hardship Exemption criteria contained in the Act, an owner’s affidavit, an Environmental Assessment Form Part I; a Site Plan, and Revegetation Plan, and

Whereas, the Project will remove existing structures as per the Site Plan prepared by High Point Engineering dated November 23, 2016, and

Whereas, the Project does not conform to the Central Pine Barrens Comprehensive Land Use Plan (the “CLUP”) Standard 5.3.3.6.1 Vegetation Clearance Limits, and

Whereas, the Project Site contains an existing cleared area of approximately 53% or 0.82 acres. The remaining 47% or 0.72 acres is presently vegetated, and

Whereas, pursuant to the CLUP Standard and the Site’s Zoning District, 65% or 1.0 acres of the Project Site may be cleared to conform to the Standard, and

Whereas, the Applicant proposes to disturb 100% of the Site in the Project, and

Whereas, the Applicant proposes to revegetate 35% of the Project Site, and

IV. Public Process

Whereas, on June 2, 2017, the Commission received a letter in support of the Project from the Middle Island Civic Association, and

Whereas, on June 21, 2017, the Commission held a public hearing on the Project. During the hearing, the Commission introduced a Staff Report and Exhibits A through H and developed a record consisting of the hearing transcript, the Application and the materials marked as Exhibits by the Commission and the Applicant (the Record), and

Whereas, at the public hearing, the Applicant distributed a report titled “Site Vegetation Investigation Supplemental report on the Application of R.N. Middle Island Site,” and

V. The Study Area

Whereas, the Staff Report defined a Study Area consisting of all of the property within a one-half mile radius of the Project Site, and

Whereas, the dominant land uses in the Study Area are Middle Country Road, a State Highway, and commercial land uses, a sand mine, and multi-family residential uses, and

Whereas, the Project Site is within an area identified as archaeologically sensitive according to the New York State Cultural Resource Information System (CRIS) database, and

Whereas, notwithstanding the Project Site’s location in an archaeologically sensitive area, the Commission received a response from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) by letter dated May 19, 2017 stating the Project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places, and

Whereas, the New York Natural Heritage Program by letter dated June 22, 2017 stated the Project Site is 60 yards from the breeding habitat of a New York State listed endangered species, the eastern tiger salamander, and

VI. Other Required Approvals

Whereas, the Project is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA), and

Whereas, the Commission performed an uncoordinated review of the Project, and

Whereas, the Project requires additional permits and/or approvals from other involved agencies including Suffolk County Department of Health Services, the Town of Brookhaven, and the New York State Department of Environmental Conservation (NYSDEC), and

Whereas, the Project requires Suffolk County Department of Health Services compliance with Article 6 of the Sanitary Code, Article 7 to permit storage tanks, and Article 12 for registration of above and underground storage of hazardous material, and

VII. Potential Adverse Environmental Impacts

Whereas, the Commission did not identify significant adverse environmental impacts as a result of the Project, and

Whereas, no significant adverse impacts on groundwater or surface waters were identified. The Project will generate a nitrogen in recharge concentration of 1.68 ppm, and no regulated freshwater wetlands are on or adjacent to the Project Site, and

Whereas, on June 22, 2017, the Natural Heritage Program reported eastern tiger salamander habitat, a New York State listed endangered species, within 60 yards of the Project Site and the Project Site is therefore within the 1,000-foot jurisdictional boundary of this endangered species, as defined by the NYSDEC. On August 9, 2017, the Applicant provided to the Commission a letter from NYSDEC, dated August 4, 2017, titled “Letter of Non-Jurisdiction for Freshwater Wetlands Act and No Endangered Species Incident Take Permit Required,” that concluded no Incidental Take Permit is required, and

Whereas, no significant adverse impacts to endangered or threatened species of animals and plants are anticipated, and

Whereas, on May 19, 2017, the New York State Historic Preservation Office stated the Project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places, and

Whereas, the Project Site was previously developed as a gas station and commercial building, and no significant adverse impacts on traffic are proposed nor will the Project significantly alter the present pattern of movement of people or goods, and

Whereas, the Project utilizes subsurface leaching pools in the drainage systems design. A Stormwater Pollution Prevention Plan will be prepared for the Project to

control stormwater and avoid related adverse impacts on groundwater, ecological resources, and adjoining properties, and

Whereas, no significant adverse impacts to open space will occur because the Project Site is not adjacent to preserved or protected lands.

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

Whereas, pursuant to the Act, to determine whether an applicant has demonstrated the existence of a hardship, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b and determine whether the Project is consistent with the purposes and provisions of the Act and whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area and consider the criteria in ECL §57-0123(3)(b), and.

Whereas, the Applicant alleges that it cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. The Applicant has owned the Project Site since 1986. The Applicant alleges the Project Site has remained vacant for 11 years, and

Whereas, the Applicant alleges the site is substantially cleared and contains existing commercial uses that were developed and established before the Act. The site contains a dilapidated gas station and commercial building, and the existing factors are unique and do not apply to a substantial number of parcels in the vicinity, and

Whereas, the Applicant alleges that the Project is not expected to detrimentally alter the essential character, and on the contrary is expected to improve the character of the site within the neighborhood, and

Whereas, the Applicant owned the site prior to the Act and alleges the structures are obsolete, have been unable to sustain occupied and viable commercial uses over a period of time, and redevelopment of the Project Site in order to re-establish a long-term, viable commercial use is problematic when the standards of the CLUP are applied. The Applicant alleges a hardship waiver will allow the applicant to realize a reasonable return while facilitating a project in keeping with the character of the area and surrounding land uses, and.

Whereas, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing, and

Whereas, the Commission finds Project Site has been vacant for 11 years and was therefore unable to provide a significant financial return during that time while the redevelopment will provide a substantive financial return for the Applicant that has not been realized over the prior time period, and

Whereas, the Commission finds the Applicant has established the existence of a hardship because the Project Site is unique as it was developed with a gas station and commercial building structures and facilities prior to the Act, and the Project redevelops the Site resulting in improved character and upgrading commercial land uses and facilities on the Project Site on a State highway corridor in the CGA, and

Whereas, the Commission finds the characteristics of the Project Site do not apply to a substantial portion of the district or neighborhood because of its past use, size, and scale. The waiver will not alter the essential character of the neighborhood because of the Project Site's existing condition and commercial land uses, extent of development, and quality of existing ecological habitat that remains, and

Whereas, the Commission finds the Applicant will reuse a site containing two non-residential land uses - gas station and office/retail building - in its existing location rather than constructing a new development on an undeveloped, naturally wooded and vegetated site and,

Whereas, the Commission finds the Project Site is adjacent to the center of a major, visible, and heavily traveled intersection in the CGA, which is surrounded by development and not in a remote location where the dominant land use contains extensive public land and the Project results in compact, efficient, and orderly development in the CGA, and

Whereas, the Commission finds the Applicant has established the existence of a hardship and that the Project is designed to be compact, efficient and orderly development in the CGA, consistent with the purposes and provisions of the Act, and

Whereas, the Applicant will obtain any and all applicable permits to conform to other Standards of the CLUP, and

IX. Mitigation

Whereas, the Applicant proposes to replant 35% of the Project Site, and retain the replanted area as natural in the future.

X. Commission Determinations

Resolved, that the above recitals are incorporated herein and made a part hereof, and be it further

Resolved, the Commission finds the grant of a waiver will not have a significant adverse environmental impact and hereby authorizes the issuance of a Negative Declaration pursuant to SEQRA, and be it further

Resolved, the Commission hereby determines that the Applicant has demonstrated it meets and satisfies the criteria for a CGA Hardship pursuant to the Act because the Project is unique and is designed in a compact, efficient, and orderly pattern on a Project Site that was previously disturbed and developed with commercial land uses. The Project will not alter the essential character of the neighborhood and does not apply to a substantial portion of the neighborhood, and be it further

Resolved, that the Application is approved in accordance with the Site Plan prepared by High Point Engineering dated November 23, 2016, subject to the following specific conditions:

1. The Applicant shall obtain additional permits and approvals, as required by other agencies.
2. The Applicant shall be allowed to clear 100% of the existing vegetation on the Project Site, as per the Site Plan prepared by High Point Engineering dated November 23, 2016, and shall subsequently revegetate no less than 35% of the Project Site with native plant species, as per the Revegetation Plan prepared by Nelson, Pope & Voorhis last dated June 11, 2017.
3. The Applicant shall install a split rail fence along the outer boundary of the natural area to protect the area from future disturbance and encroachment. The Applicant should prepare submit for review to the Commission office for recording a draft Declaration of Covenants and Restrictions to protect the natural area, along with any other required C&Rs as a result of the site plan review process.
4. The Applicant shall notify the Commission office of the completion of the revegetation and fence installation within two weeks of the date of their completion upon which the Commission office shall schedule and conduct an inspection to ensure conformance with the approved Site Plan and Revegetation Plan.
5. Proposed signage should be in keeping with the character of the Compatible Growth Area including the materials, colors, size, and lighting. Provide a copy of the details of the sign for review prior to construction.
6. If any element of the Project is proposed to be significantly modified, the Applicant must seek the review and obtain the approval of the Commission, prior to undertaking the modification.

Resolved, this approval shall expire five (5) years from the date of adoption by the Commission.

R.N. Middle Island LLC (7-Eleven Middle Island)
Compatible Growth Area Hardship Waiver
Middle Island, Town of Brookhaven, SCTM #s 200-378-2-37.2; 200-403-1-2.1 and 2.3

Record of Motion:

Motion by: Mr. Romaine

Seconded by: Mr. Shea

In Favor: 3

Opposed: 0

Abstain: 1, Mr. Walter