



Commission Meeting of June 21, 2017 Riverhead Town Hall

Present: Ms. Carrie Meek Gallagher (State of New York),
Mr. Andrew Freleng (Suffolk County),

Mr. Edward P. Romaine (Brookhaven), Mr. Sean Walter (Riverhead),
Mr. Jay H. Schneiderman (Southampton)

Approved Resolution

Starbucks of Manorville (CA 485 County Road LLC), SSTM # 200-462-2-6 Core Preservation Area Hardship Waiver Manorville, Town of Brookhaven

I. The Project

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

Whereas, CA 485 County Road LLC (aka Starbucks of Manorville) (the “Applicant”), by its representative, Farrell Fritz Attorneys, P.C., submitted on March 28, 2017 a Core Preservation Area Hardship Waiver Application for a change of zone from J Business 2 to J Business 5 on a 1.25 acre parcel identified as Suffolk County Tax Map Number 200-462-2-6 (the “Project”), located at 485 County Route 111, an existing improved, paved road, in the hamlet of Manorville, in the Core Preservation Area of the Central Pine Barrens, in the Town of Brookhaven (the “Project Site”); and

Whereas, the Project Site is developed with a 2,000 square foot building, occupied by a drive through bank and a Starbucks coffee shop, and a parking lot with 62 spaces; and

Whereas, the Project requests to utilize the existing drive through window presently used by the bank operation. When Starbucks expands into the bank space and utilizes the drive through, it triggers a change of zone and classifies the Starbucks as a major restaurant pursuant to the Town of Brookhaven Zoning Code. The Project will utilize the existing development and reduce parking on site from 62 spaces to 55 spaces; and

Whereas, the Project Site contains no existing natural pine barrens vegetation and no freshwater wetlands.

II. The Act and the Commission

Whereas, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “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 (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 . . . (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;” and

Whereas, Section §57-0123 of the ECL 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 CLUP and Environmental Conservation Law Section; and

Whereas, the Project constitutes development as defined in the Act.

III. The Project Site and Materials Submitted to the Commission

Whereas, the Applicant submitted a letter addressing the hardship criteria; an owner’s affidavit; a Full Environmental Assessment Form Part I; a Survey prepared by Michael K. Wicks stamp received March 28, 2017; and a Site Plan prepared by Civil Insites (date illegible); and

Whereas, the Project Site holds a Certificate of Occupancy dated September 17, 1986 for a “fast service restaurant” and a Certificate of Compliance dated July 31, 1987; and

Whereas, the existing developed condition of the Project Site remains the same as it was prior to the Act; and

Whereas, the Applicant purchased the Project Site in 2016 for \$1,550,000.

IV. Public Process

Whereas, on May 17, 2017, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing; heard testimony and received exhibits from the Applicant and heard testimony from the public; subsequently, a transcript of the hearing was distributed to the Commission.

V. The Study Area

Whereas, the Staff Report defined a Study Area which consisted 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 commercial, residential and public open space. Conservation easements are recorded on 60 parcels in the Study Area; 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 9, 2017 which 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, although the site contains no existing natural pine barrens vegetation, a request for information was submitted to the New York Natural Heritage Program (NHP) responded to the Commission's request for information on rare, threatened or endangered animal and plant species on the Project Site. The NHP letter dated June 12, 2017 stated, "Given the current developed condition of the project site, and that the proposed project does not involve any new construction, ground disturbance, or clearing, we do not expect any impacts to any rare or listed animals or plants in the vicinity of the project, or to the adjacent pitch pine-oak forest"; and

Whereas, the Applicant has not submitted site-specific natural resources surveys on the Project Site.

VI. Other Required Approvals

Whereas, the Project is a Type II Action pursuant to the State Environmental Quality Review Act (SEQRA); and

Whereas, the Project requires permits and/or approvals from other involved agencies including but not limited to the Town of Brookhaven; and

Whereas, the Applicant asserts that Project will generate sanitary wastewater within the allowable limits for the Project Site in Groundwater Management Zone III, and will utilize the existing sanitary system designed for a restaurant use; and

Whereas, the Project will require a change of zone and building permit(s) from the Town of Brookhaven.

VII. Prior Commission Decisions

Whereas, other development projects in the Core Preservation Area in the Study Area that were approved and identified as being similar in nature to the Project and, like the Project Site, fronting on and possessing direct access to an existing improved, paved road, include, but are not limited to, Clancy Street Food Corp and David Kepner, SCTM # 200-462-2-5.1, approved on November 8, 1995, proposed development of a commercial establishment for the retail sale of food on 1.17 acres in the J Business 2 Zoning District, with frontage on and direct access to CR 111 in Manorville; and Michaelangelo's Restaurant, SCTM # 200-462-2-12.2, approved on

August 5, 1998, proposed development including expansion of a restaurant on 1.7 acres in the J Business 2 Zoning District, with frontage on and direct access to CR 111 in Manorville; and

Whereas, the Commission granted Core Hardship Waivers to JCJC Holding Company, SCTM # 9000-204-1-8, on June 15, 2011 and to Westhampton Property Associates, SCTM # 900-276-3-1, on October 17, 2012, two entities, which like the Applicant, purchased their respective properties after the passage of the Pine Barrens Protection Act in 1993.

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

Whereas, pursuant to the Act, in reviewing a Core Preservation Area extraordinary hardship exemption application, the Commission shall consider the criteria set forth in ECL §57-0121(10)(a) and Sections 57-0121(10)(c)(i), (ii), and (iii) to determine whether the Applicant has established the existence of extraordinary hardship as distinguished from a mere inconvenience and whether the requested relief is consistent with the purposes and provisions of the Act and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area; and

Whereas, the Commission has considered the application, the Staff Report and Exhibits, transcripts of the hearing, and its prior decisions; and

Whereas, to address the criteria in ECL §57-0121(10)(a), the Applicant alleges, "The proposed action is merely a continuation of an existing use"; and

Whereas, to address the criteria in ECL §57-0121(10)(a)(i), the Applicant alleges, "There is no other property in the Core with the same or even similar circumstances. Likewise, no properties in the immediate vicinity are impacted or affected by these circumstances"; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(a) because the characteristics of the subject property are unique. The property was developed with a restaurant use prior to the Act. The Project will not increase the number of uses or different types of uses than those that already exist nor expand the existing building beyond its current footprint or gross floor area. The Applicant is currently one of two tenants that occupy the existing building on the Project Site. The Project will utilize existing space presently occupied by another commercial business. The result is no net increase in the number of uses will occur, no net increase in gross floor area, footprint or lot coverage will occur, and the site will continue to be used by the Applicant, absent the bank, and in accordance with its present land use with no disturbance to or removal of the ecological resources of the Core Preservation Area; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(a)(i), because the Applicant is a commercial land use that currently operates in the existing building on the Project Site, and the Project continues the existing use, utilizes the developed property and the facilities in the existing building including the drive through window; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(a)(ii), because the Project Site is currently developed, no net increase in development is proposed; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(a)(iii), because the inability to have a beneficial use results from unique circumstances peculiar to the Project Site which are not the result of action or inaction by the Applicant since the restaurant use presently, legally exists on the Project Site and the drive-through window exists and will be utilized by the restaurant resulting in a reuse of an existing use and operation and achieving compact, efficient, and orderly development in the Central Pine Barrens; and

Whereas, the Commission granted Core Hardship Waivers to JCJC Holding Company, SCTM # 900-204-1-8, on June 15, 2011 and to Westhampton Property Associates, SCTM # 900-276-3-1, on October 17, 2012, two entities, which like the Applicant, purchased their respective properties after the passage of the Pine Barrens Protection Act in 1993.

IX. Commission's Review of ECL §57-0121(c) Additional Standards

Whereas, an Applicant for a Core Preservation Area Hardship Waiver must also establish it has met the criteria in ECL §57-0121(10)(c) which states as follows: “An application for a permit in the core preservation area shall be approved only if it is determined that the following additional standards also are met: (i) The granting of the permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the core preservation area; (ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this article; or (iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need;” and

Whereas, to address the criteria in ECL §57-0121(10)(c)(i), the Applicant alleges, “The granting of a hardship permit will not be materially detrimental or injurious to other properties or improvements in the area in which the subject property is located. Other parcels in the area are developed or protected and do not have the same circumstances as the Project. The parcel is in a developed community and there will be no increase to the danger of fire, will not endanger public safety or result in substantial impairment of the resources of the Core Preservation Area;” and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(c)(i), because the Project will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire and endanger public safety or result in substantial impairment of the resources of the Core Preservation Area due to the development and use of the lot history, developed with a commercial structure and occupied by commercial uses including a restaurant use, and will not diminish or remove existing natural or vegetated lands in the Core Preservation Area; and

Whereas, the Commission finds the Applicant has met the criteria in ECL §57-0121(10)(c)(ii), and granting of the waiver would not be inconsistent with the purposes, objectives or general spirit and intent of the Act because it accommodates development in a manner consistent with the long term integrity of the Pine Barrens ecosystem and ensures the pattern of development is compact, efficient and orderly; and

Whereas, the Commission finds that due to the Project Site's past development history and current proposal, no net increase in the amount of development in the Core Preservation Area will occur as a result of the Project. The Project reuses a developed site currently occupied by the Applicant and reduces the number of businesses on the Project Site from two to one, conforms to Article 6 of the Sanitary Code for wastewater use on the Project Site due to the use of the site as a restaurant prior to the Act, and results in no clearing or disturbance to ecological resources of the Core Preservation Area. By avoiding the purchase and development of a vacant, natural, privately owned site in the Core, the Project avoids adverse impacts to the groundwater and ecological resources of the Core Preservation Area.

X. Commission Determinations

Resolved, the foregoing recitals are incorporated herein and made a part hereof; and be it further

Resolved, the Commission finds that the Project constitutes development as defined by the Act; and be it further

Resolved, the Commission finds the Applicant has demonstrated an extraordinary hardship for the reasons set forth above; and be it further

Resolved, the Commission finds that the requested waiver will not result in adverse growth inducing impacts in the Study Area and in other similar hamlets in the Core Preservation Area because the Project Site is presently developed and currently partially occupied by the Applicant. The Project Site contains two commercial land uses including the Starbucks and a bank with a drive through window. The Starbucks expansion into the bank space and use of the drive through window results in the decrease in tenants from two to one in the existing building, resulting in no net increase in development, and if approved would not be inconsistent with ECL Article 57, in particular ECL §57-0121(10)(c), and accommodates development that is compact, efficient, and orderly; and be it further

Resolved, the Commission finds the Project will not result in substantial impairment of the resources of the Core Preservation Area since no impacts to groundwater will occur, no disturbance or removal of existing natural vegetation will occur, and the Project maintains the essential character of the region and will not result in an increase in development in the Central Pine Barrens; and be it further

Resolved, 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;” and be it further

Resolved, that 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; and be it further

Resolved, that the Starbucks of Manorville Core Preservation Area Extraordinary Hardship Waiver exemption is approved; and be it further

Resolved, the Hardship Waiver shall be valid for a period of five years from the date of approval; and be it further

Resolved, the Applicant must obtain additional permits and approvals, as required by law, prior to commencement of activity related to the Project; and be it further

Resolved, 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; and be it further

Resolved, pursuant to ECL §57-0121(10)(c), “Any waiver or exemption granted under the provisions of this part shall only be considered an exemption or waiver of the particular standard of this title which the commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any local, county or state law or ordinance;” and be it further

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

**Starbucks of Manorville (CA 485 County Road LLC) Core Preservation Area Hardship
Manorville, Town of Brookhaven; SSTM # 200-462-2-6**

Record of Motion:

Decision to Approve

Motion by: Mr. Romaine

Seconded by: Mr. Walter

In Favor: 5

Opposed: 0

Abstention: 0