



**Commission Meeting of January 19, 2011
Town of Brookhaven Town Hall, Farmingville, New York**

Present: P. Scully (State of New York), M. Lesko (Town of Brookhaven),
T. Isles (Suffolk County), S. Walter (Town of Riverhead),
A. Throne-Holst (Town of Southampton)

**Adopted Resolution
7-Eleven Inc., Ridge, Core Preservation Area Extraordinary Hardship
Waiver and Compatible Growth Area Hardship Waiver
Hamlet of Ridge, Town of Brookhaven, SCTM No. 200-351-2-6.1 and 20**

Peter A. Scully
Chair

Mark Lesko
Member

Steve A. Levy
Member

Anna E. Throne-Holst
Member

Sean M. Walter
Member

Whereas, 7-Eleven Inc. (the “Applicant”) leases two parcels of property on the south side of State Route 25 in Ridge, in the Town of Brookhaven in the Central Pine Barrens as defined by the Long Island Pine Barrens Act (the “Act”), and

Whereas, the parcels are owned by Colgate Design Corp. and Franklin Johnson Inc., and

Whereas, the parcel owned by Colgate Design Corp., is in the Core Preservation Area, as defined by the Act, and is identified as Suffolk County Tax Map (SCTM) parcel #200-351-2-6.1 (the “Core Parcel”) and was “recently leased” after the Act’s adoption by the Applicant. The parcel owned by Franklin Johnson Inc. is in the Compatible Growth Area, as defined by the Act, and is identified as SCTM parcel #200-351-2-20 (the “CGA Parcel”). Both parcels are in the J-2 Business Zoning District and contain in total 1.25 acres of area (collectively the “Project Site”), and

Whereas, the Core Parcel is not developed and is entirely vegetated with natural pine barrens vegetation and contains 35,298 square feet (0.81 acres) of area, and

Whereas, the CGA Parcel is developed with a 2,625.60 square foot 7-Eleven convenience store and attendant improvements, including 18 parking spaces. The CGA Parcel contains 19,233 square feet (0.44 acres) of area and has been developed since 1974 with a 7-Eleven convenience store. Seventy-three percent (13,943 square feet) of the parcel is cleared, and

Whereas, the Applicant, by its attorney, Leigh Rate of Certilman Balin, submitted an application dated September 20, 2010 for a Core Preservation Area Extraordinary Hardship Waiver and Compatible Growth Area Hardship Waiver to clear 12,231 square feet (35%) of the Core Parcel to

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add 14 parking spaces and a new driveway and curb cut onto Red Maple Road and to clear 977 square feet of the CGA Parcel in order to modify access to the CGA Parcel from Route 25 and to add a truck loading zone to it (collectively the "Project") both of which constitute development as defined by the Act, and

Whereas, the Project requires other permits and approvals including, but not limited to, Town of Brookhaven Site Plan approval and other Town approvals and a New York State Department of Transportation permit, and

Whereas, the development of the Core Parcel must comply with the criteria contained in ECL§ 57-0121(10) since it is in the Core and development of the CGA Parcel must comply with the Central Pine Barrens Comprehensive Land Use Plan (CLUP) Standards since it is in the CGA, and

Whereas, neither component of the Project complies with their respective Core or CGA criteria and therefore the Applicant requires hardship waivers from the Commission before the Project may proceed, and

Whereas, the Applicant's Core Hardship petition included an analysis of the Core hardship criteria contained in ECL §57-0121(10) in support of its Waiver application, and the Applicant's CGA Hardship petition included an analysis of the CGA Hardship criteria contained in ECL §57-0121(9) in support of its Waiver application, and

Whereas, the Commission held a public hearing on the Project on November 17, 2010; the Commission reviewed the Staff Report and Exhibits prepared for the hearing; the Commission commented on the Project including questioning whether the Applicant could relocate the 7-Eleven to a location outside the Central Pine Barrens and whether the Applicant could modify the Project to require less clearing, and

Whereas, the Applicant submitted additional information on December 9, 2010 including responses to the Staff Report dated September 15, 2010 and two alternative Site Plans prepared by Catapano Engineering dated November 22, 2010 and November 29, 2010, one which reduced the number of parking spaces to meet the Town requirement and the other illustrates development only on the CGA Parcel with the truck loading zone relocated to the east side of the existing building, respectively, and

Whereas, by letter dated December 2, 2010, the Applicant requested an extension of the decision deadline to January 19, 2011 and this request was granted by the Commission at its meeting on December 15, 2010, and

Whereas, pursuant to the Act, in reviewing a Core Hardship exemption application, the Commission shall consider the criteria set forth in the Act at ECL §57-0121(10) and determine whether the requested relief is consistent with the purposes and provisions of the Act and would not result in a substantial impairment of the resources of the Central Pine Barrens area, and

Whereas, pursuant to the Act, in reviewing a CGA Hardship exemption application, the Commission shall consider the criteria set forth in New York State Town Law § 267-b(2) and also determine whether the requested relief 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

Whereas, the Commission has considered all materials submitted in connection with the application, now therefore be it

Resolved, the Commission finds that the Project is not consistent 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 matter 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, the Commission finds that the Applicant has not demonstrated that the Act’s provision causes unnecessary hardship with respect to the CGA Parcel or extraordinary hardship with respect to the Core Parcel, and be it further

Resolved, the Commission finds the Applicant has failed to demonstrate that the Core Parcel does not have any beneficial use if used for its present use or developed as authorized by the Act, and be it further

Resolved, although the Applicant alleges that the Core Parcel does not have a beneficial use, the Commission finds that the Applicant has failed to demonstrate that its alleged inability to have a beneficial use does not result from unique circumstances peculiar to the Core Parcel, is not due to the personal situation of the application and are not the result of action or inaction by the Applicant which are a consequence of the Applicant’s lease of the Core Parcel after the Act’s adoption, and be it further

Resolved, the Commission finds that, the requested waiver exceeds the minimum relief necessary to relieve hardship; the Applicant proposes to develop additional parking on site without evidence of a need through extraordinary hardship to clear in the Core to accommodate additional parking; moreover, the proposed amount of parking exceeds the Town’s parking requirement for the land use and the applicant has not provided sufficient empirical or engineering information to support the number of additional spaces and if approved would be inconsistent with pursuant to ECL § 57-0121(10)(c)(iii), and be it further

Resolved, the Applicant proposes to clear the CGA Parcel in excess of that permitted by CLUP Standard 5.3.3.6.1 (Vegetation Clearance Limit Standard) and thus requires a waiver from strict compliance with the CLUP, and be it further

Resolved, the Commission finds that the Applicant did not submit sufficient competent financial evidence, pursuant to Town Law § 267-b (2), to demonstrate that the

Applicant cannot realize a reasonable rate of return absent the CGA hardship waiver because the Applicant did not provide the Commission with evidence such as the lease or its terms, including the length of the lease, the lease amount or the losses or gains attributable to the current parking configuration or that may occur if the hardship is not granted, and be it further

Resolved, no evidence was submitted to demonstrate that the Applicant explored terminating the lease agreement and relocating to an alternative site(s) that would accommodate the needs of the commercial use, and be it further

Resolved, the Commission finds that the Applicant did not submit sufficient evidence, pursuant to Town Law § 267-b(2), to demonstrate that the hardship is unique to the CGA Parcel but rather the CLUP's provisions apply to all CGA parcels, and be it further

Resolved, that the application is denied, and be it further

Resolved, the Commission finds that the denial of the Project will not have a significant impact on the environment and authorizes the issuance of Negative Declaration for this Decision.

Record of Motion:

Motion by: M. Lesko
Seconded by: A. Throne-Holst
In Favor: 5
Opposed: 0
Abstention: 0