

SPECIAL USE PERMIT FOR SHOPRITE

Our concerns:

SPACE welcomes the possibility of Shop Rite coming to Stony Point. We, like other residents welcome both the possibility of a good, clean ratable as well as the low prices and wide selection of items that Shop Rite is known for. However, we have some serious concerns about the proposed location, and the impacts on our community it is likely to have. We ask the town to seriously consider our concerns, and make a decision that will be favorable for the town and its residents first, before considering what will be favorable for a developer.

- 1. PROCEDURAL ERRORS.** We believe that the town is proceeding in an illegal manner and we intend to go to the New York State Attorney General with these concerns:
- At the February 23, 2006 Stony Point Planning Board meeting, additional “Special Permit” uses for the Light Industrial zone were reviewed for a recommendation to the Town Board. One of the additional uses was for “Local convenience commercial uses”. Members stated at least twice that this use was not acceptable. Members also mentioned at least seven times that they wanted uses with a minimal traffic impact. Also not recommended were hotels and motels. None of the discussion about the Special Uses were included in the Planning Board minutes for that meeting, although these minutes were presumably reviewed and voted on. The above information is from the tape of the meeting made by the Planning Dep’t secretary, for transcription.
 - On April 11, 2006, subsequent to the letter from the Planning Board dated March 3, 2006, where the Planning Board supplied its recommendation; the Town Board voted to accept **Resolution 06 - 61** “Additional Uses in the LI Zone” which stated
“Now therefore be it resolved, that the proposed local law is identified as paragraphs two (2), three (3), and five (5) of its letter of review dated February 22, 2006 and Be it further resolved that the aforesaid local law is amended to to incorporate the recommendations of the Stony Point Planning Board contained in the paragraph entitled “Other uses which may be suitable” in its letter of review dated February 22, 2006...”.
- Neither “Local convenience commercial uses” or “Hotels and Motels” were included in the above passages, which were voted on and approved unanimously, as was a negative declaration for **SEQRA**. Subsequently,

those minutes were voted on and accepted by the Town Board.

- During the **June 14, 2006** Town Board meeting **Resolution 06 - 128** was offered by Councilman Cole-Hatchard and seconded by Supervisor Marino stating that “**local law 06 - 04**” had not been completed within the time frame required for filing with the Secretary of State, and that the resolution must be “**re-adopted**” by the board. As the only motion specifying the Special Permit uses at the April 11, 2006 meeting, according to the minutes supplied to us under the Freedom of Information Act just mention Resolutions 06 - 60 (the SEQRA neg dec) and 06 - 61 (which describes the additional Special Uses) we must assume that Resolution 06 - 04 and 06 - 61 are the same. However, reviewing the minutes of that meeting obtained under the Freedom of Information Act show that the additional uses for “**Local Convenience Commercial**” and “**Hotels, Motels And Restaurants Accessory To Hotels And Motels.**” were, in fact, *added* to this “*readopted*” resolution. This means that there was **No SEQRA** review held on the two additional uses, which were not part of the original resolution presented at the public hearing and for **SEQRA**, but added afterwards and contrary to the Planning Board recommendations and concealed from public view.

Since there was **No SEQRA** done on the two added uses (*local convenience commercial uses and Hotels and Motels*) nor was there a public hearing as required by New York State law, and therefore, the resolution (06-128) and these additional uses are *in-*

valid. And as it is invalid, this application, which is predicated on it, cannot proceed.

- In fact, the Stony Point Planning Board stated twice during their **February 2006** discussion before their recommendation that there should be no “**local commercial convenience uses**” included in their recommendation, and at least seven times that uses with a minimal traffic increase was a criterion for their recommendation, these points were never conveyed in the Recommendation from the Planning Board which was composed by the town planner’s office and written on his stationery. We question the reason for this serious omission, especially in light of this particular application where traffic volume is a major issue.
- At the **January 24, 2008** Planning Board meeting, a request by the Town Board for a recommendation for the granting of a Special Permit for the construction of a Shop Rite on Kay Fries Drive was considered. The first question asked was under which Special Permit Use was the project to be considered. The Building Inspector answered that it was to be considered under “Local convenience commercial uses”. The Board members questioned what that actually meant. The Building Inspector offered no specific definition, although one does exist under **Town Law (215.5)**. He suggested that it meant a grocery store, and when Board Members, in astonishment, questioned how a shopping center could be considered a “grocery store”, the Building Inspector answered first that it was not a “shopping center”, but a “supermarket”, which he would allow as he is, under New

York State law, the final arbiter of what the zoning laws say. Some members questioned at that point, why *there was no attorney present to clarify these points*. No answer was given by either the Planning Board chairman nor the Building Inspector. We must remember here that the attorney supplied to the Planning Board comes from the office of the town's "Special Counsel" Dennis Lynch, who was for many years, the applicant's attorney. Further discussion on the difference between a "supermarket" and a "shopping center" ensued, with the Building inspector stating that a "shopping center", according to **Town Code (215.5)** would have

"...common amenities provided to patrons apart from the commercial establishments, such as benches, site decoration and landscaping, rest rooms and the like."

He further stated that a "supermarket" (not defined in Town Code) would not have these things. Who, in Stony Point, would not describe the current CVS or the now-closed Stop'N'Shop as "shopping centers" even though those don't have benches? Additionally, *he never read to the Planning Board* what the Town Code definition of "local convenience commercial uses" is:

LOCAL CONVENIENCE COMMERCIAL — *Establishments that deal in the retail sales of convenience goods (food, drugs and sundries) and such personal services as laundry and dry cleaning (pick-up and delivery), hair styling and shoe repair. The maximum permitted aggregate gross floor area on any site shall not exceed 100,000 square feet. The floor*

area of any single store shall not exceed 8,000 square feet, except that food stores or combined sales stores may not exceed 45,000 square feet. Other commercial uses of any kind elsewhere specified in this chapter shall not be deemed "local convenience commercial."

Clearly, this does not come remotely close to describing the proposed project; and despite the Building Inspector's assertion that he is the person who decides what the Zoning code means, he can neither define black as white nor override common sense. The Planning Board was compelled to make their decision on a recommendation at that time, as the Building Inspector explained that under law, there was a time restraint that they must adhere to. Although many serious concerns were raised and not resolved, the Board was compelled to vote on a recommendation, which they did. Subsequently, the town when circulating the proposal to other agencies (county, state) and in its Public Notice in the Rockland County Times, referred to the project as a "shopping center". Treating serious issues as mere paperwork speed bumps is a major reason for the many planning failures in Stony Point. Yet another "time-saving shortcut" that will result in more future problems.

If the town is considering adding "Local commercial convenience uses" to its list of Uses by Special Permit, it will likely be classified as a **Type 1 Action** (see: **617.4 [b] [2]**)

"the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district;"

and thus a **full EIS**.

In summary for this point, we contend that the Planning Board was misled, and there is no legal, or even common-sense basis for granting a Special Use Permit for this project as presented to the Town Board.

2. CHEMICAL HAZARDS As the proposed shopping center is adjacent to an inactive Superfund site (Kay-Fries), the town should ensure adequate testing is done to prove that there is no possibility of contact or contamination during and after construction, paying attention to the likely increase in surface and subsurface groundwater that is likely to be generated by this project. The town must also consider that there will be more requests for a change in use to retail prompting yet more construction in that troubled area.

3. TRAFFIC Currently under construction in the nearby area are two drug stores (CVS, Walgreen's) and a new Provident Bank. Approved but not yet constructed are some 80+ units of senior housing, and although there have been "traffic evaluations" generated for these projects, the town has steadfastly refused to look at the total impact of all this construction on the traffic patterns and flow at the Filor's Lane/Route 9W intersection. The proposed shopping center will have only one entrance/exit from the dead-end Kay-Fries Drive onto Route 9W, less than 100 yards from the Filor's/9W intersection and will likely require a traffic light. The applicant's **SEQRA** Part I states a peak traffic count of 400+ vehicles per hour. The fact that the town has not considered the cumulative effect of construction thus far, let alone this tremendous increase, appears to be a *clear case of segmentation* under **SEQRA**, and a likely violation of the law. Considering the substantial increase in the value of the

land on Kay-Fries Drive as it is being so easily reclassified from Light Industrial to Retail, it is likely that other parcels developed or not, will seek to be reclassified as retail as well, and we may soon be seeing applications for more big-box retailers in that location. This could mean traffic flows far past the 400+ thus far projected. Whether the applicant pays or the town pays for a thorough traffic study and redesign, this must be done. It appears that this is why the "local convenience commercial uses" was added without following **SEQRA**, so the application could move forward without a complete resolution to this potentially huge problem.

- It is noteworthy that a developer can build no more than 14 homes on a dead-end street, but yet can construct a shopping center of some 70,000 square feet, generating hundreds of auto trips per hour on a dead-end street. The safety implications alone should mitigate against this project.

3. PRECEDENT This Special Permit Use can be applied anywhere in the LI Zone, which, in addition to the land on Kay-Fries Drive, also includes the US Gypsum area and the Mirant and Tilcon area. As no one knows what might happen to any of these (US Gypsum could move away tomorrow), what is the impact on the entire town of this action? Are we to see a shopping mall on the Mirant site? A collection of big-box stores (Home Depot, Walmart) down by US Gypsum? Are our town leaders once again bringing us grief to satisfy the financial desires of developers? Whom do they really represent?

- If, as they continually proclaim, they were really interested in gaining good, clean ratables, they would have taken action years ago when the Mirant problem was distant

but clearly visible; they would have sought in a practical manner, the re-use of the remaining Letchworth property, rather than allowing in to lay fallow. They would have worked to make more use of our waterfront district, it too lays forgotten. If they were truly serious, they would have years ago established a real Master Plan Committee, composed according to the state requirement of “...including the public to the greatest extent possible” rather than doing their best to keep the public out of it. A REAL Master Plan would have included research and planning of our business district to make it not only more functional, but more attractive to new business. It could have understood that the Kay-Fries area might function better with its own zone designation, rather than changing all the LI Zone to accommodate one developer’s desire. Instead, they seek to appease powerful local developers by giving them huge increases in their property values while ignoring their responsibilities to the residents of Stony Point.

SPACE Board of Directors
February 13, 2008