

Supervisor Lesko and Councilwoman Bonner Announce NYS Supreme Court Decision to Deny Rocky Point Drive-In Property Owner's Motion to Appeal in Up-Zoning Case

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Decision stops any big box store development at blighted site on Route 25A

Farmingville, NY - Supervisor Mark Lesko and Councilwoman Jane Bonner have announced that the New York State Supreme Court Appellate Division has denied the Rocky Point Drive-In developer's motion to appeal the March 2012 decision which overruled the Suffolk Supreme Court's green light for "big box" retail development at the site. The property owner had previously challenged the Town's up-zoning of the 18-acre property from retail to recreational, which does not allow big-box stores. The community has fought a big-box store at this location for years and this decision puts an end to the chance that one would come to the Rocky Point Drive-In site. Once the Appellate Division ruled against a "big box" store, the developer sought permission to appeal that rejection. The recent ruling denied such permission.

Councilwoman Jane Bonner said, "The Rocky Point Drive-In has remained blighted for too many years and now it's time for the property owner to work with the Town on a plan to develop it into a commercial recreational use to meet the needs of the residents of District 2 and the entire North Shore community." She continued, "The Route 25A corridor is primarily made up of mom and pop stores that would be negatively impacted by a big box store and many local jobs would be lost. Some may argue that it would create jobs, but in reality, they are low paying jobs that could not support a family during these tough economic times."

Supervisor Lesko said, "It has taken over 10 years to get to this point and now the residents of Rocky Point can look forward to replacing a long-blighted property with an appropriate commercial recreational use. I look forward to working with Councilwoman Bonner and the residents to ensure that any redevelopment of this property is consistent with what is in the best interest of the community."

In 2000, the Town of Brookhaven commenced the process to up-zone the property from Retail (J-2) to Commercial/Recreational consistent with the Town's Comprehensive Plan. Upon learning of the Town's proposal, the property owner of the Rocky Point Drive-In brought an application before the Town to construct a Lowe's, which he claimed was a permitted use under the original zoning. The owner brought several lawsuits against the Town, challenging the up-zoning and also claiming that the Town intentionally and maliciously delayed hearing the Lowe's application until after the up-zoning was approved by the Town Board. Despite the fact that a commercial center was not a permitted use under J-2, the Suffolk Supreme Court ruled in favor of the plaintiff that a Lowe's could go forward without variances. The Town subsequently appealed and, in the meantime, Lowe's withdrew from the project. In 2008, Councilwoman Jane Bonner reached an agreement with Walmart not to build at the site and last fall, the owner indicated that it now planned to construct a Target store on the site.

On March 7, 2012, the New York State Supreme Court Appellate Division completely reversed the Suffolk County Supreme Court's original decision, stating that there was no intentional delay or malice on the part of the Town and that the Commercial/Recreational zoning was to remain in place.

"The record does not support the [Suffolk Supreme Court's] determinations of undue delay and bad faith... or that the [Town] selectively enforced the prohibition against commercial centers in J-2 zoning districts," the court wrote in its decision. The court additionally dismissed the plaintiff's cross-appeal and awarded a bill of defense costs to the Town.

The Rocky Point Drive-In was opened in the early 1960's and closed in the late 1980's, and was subsequently opened as a golf driving range, which has also been closed for years.

According to attorneys for the Town, the developer has one last opportunity: it can ask the NYS Court of Appeals to hear its appeal. That motion would need to be made in approximately 30 days. The Court of Appeals rarely grants such motions.

A link to the decision is below:

<http://www.courtalert.com/AD2PDF/M138425.pdf>

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