

May 22, 2007

Lisa P. Jackson, Commissioner  
New Jersey Department of Environmental Protection  
401 East State Street  
P.O. Box 402  
Trenton, New Jersey 08625-0402

**RE: Belmar Seaport Village Redevelopment**

Dear Commissioner Jackson:

I am writing regarding an issue that has arisen as a result of conditions contained in a recent CAFRA permit, which could have a significant impact on the Borough of Belmar's Seaport Village Redevelopment. The conditions raise a concern that the Department may be interpreting a provision of the CAFRA parking regulations in a way that would effectively preclude Belmar from relying upon a "shared parking" strategy and limit the Borough's ability to use public financing to ensure an ample supply of parking.

I would appreciate the opportunity to meet with you to discuss this issue. In an effort to facilitate our meeting, I am providing a lengthy statement of the issue to help you get up to speed. I apologize in advance for the length of this letter.

The CAFRA provision at issue is N.J.A.C. 7:7E-8.14(e), which provides the following:

- (e) Coastal development located in municipalities which border the Atlantic Ocean . . . shall provide sufficient on-site and/or off-site parking for its own use at a ratio of two spaces per residential unit. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable

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walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with [N.J.A.C. 7:7E-7.5\(d\)](#);807;807, the parking facility rule, where applicable.

The Borough has no issue with the parking requirement as written. The Borough also supports the underlying purpose of the rule, which is to promote ample parking for visitors to the coastal zone.<sup>1</sup> Our concern is that DEP may be interpreting this provision to require that all such “on-site and/or off-site parking” spaces be reserved for the exclusive use of the residents of the redevelopment.

*DEP’s Apparent Strict Interpretation of N.J.A.C. 7:7E-8.14(e)*

The concern regarding DEP’s interpretation of N.J.A.C. 7:7E-8.14(e) arises from two conditions contained in CAFRA permit No. 1306-06-0003.1 (CAF 060001) issued in connection with the proposed 800 Main Street Project. At the time of the application, the redeveloper proposed 38 residential units, 9,000 square feet of retail space and 69 off-street parking spaces to be provided on the site. Because the project proposed 69 spaces on site, the redeveloper was obligated by N.J.A.C. 7:7E-8.14(e) to provide either an additional 7 parking spaces within a “reasonable walking distance” of the project, or reduce the number of proposed residential units.

With the prior approval of the Mayor & Council, the redeveloper proposed to satisfy the requirement to provide the additional 7 off-site spaces by paying into the Borough’s Parking Utility Fund the sum of \$140,000.00 (\$20,000 per parking space not provided on site), which the Borough would have used to fund the construction of 7 parking spaces in a public parking facility planned nearby. Because the Borough cannot afford to build the parking structure until additional projects are approved and the rateables are constructed, the Borough and developer proposed that the DEP give credit for 7 new on-street parking spaces to be created as a result of the project<sup>2</sup> on an

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<sup>1</sup> Notwithstanding this purpose, CAFRA’s parking rule does not apply throughout the coastal zone. For reasons that are not explained in the regulations, N.J.A.C. 7:7E-8.14(e)<sup>1</sup> carves broad exemptions of certain geographic areas, including closest to Belmar, the entirety of Neptune Township west of State Highway 71. The exempted area lies just west of the Ocean Grove section of Neptune, and equates to Main Street in Belmar.

<sup>2</sup> The 800 Main Street project will actually create 9 net new on-street parking spaces as a result of the replacement of the depressed curb that ringed much of the perimeter of the existing site, which had been a car dealership.

interim basis until such time as permanent off-site spaces are built by the Borough nearby.<sup>3</sup> These new on-street spaces would address any actual increase in parking demand resulting from the project, while the developer's payment of \$140,000 into escrow would secure the developer's obligation to provide permanent off-street spaces in the future.

The CAFRA permit issued by DEP did in fact enable the developer to rely upon the newly created on-street spaces pending the creation of permanent off-street spaces. In doing so, however, the permit imposed conditions requiring that the off-site spaces be dedicated for the exclusive use of residents of 800 Main Street. These conditions raise an issue as to whether DEP interprets N.J.A.C. 7:7E-8.14(e) in a way that could preclude the Borough from utilizing a shared parking strategy in its redevelopment plan.

The relevant conditions of the 800 Main Street CAFRA Permit are as follows:

1. PRIOR TO OCCUPANCY, the applicant must demonstrate to the Divisions that either all of the required 76 residential parking spaces are provided on-site, or that 69 residential parking spaces are required for on-site, with the creation of 7 new spaces located immediately adjacent to the property on Eighth and/or Ninth Avenues. It should be noted that the on-street parking spaces must be permanently dedicated to residential usage, and must be signed for 24 hour access by the residents for in perpetuity. [Emphasis added.]
2. If new off-site parking is proposed and accepted by the Division, PRIOR TO OCCUPANCY, the permittee shall submit to the Division, for review and approval, a draft conservation restriction governing the restriction, for in perpetuity, of the off-site parking spaces for the exclusive use by the residents of 800 Main Street. [Emphasis added.]

PRIOR TO OCCUPANCY, the applicant shall file the deed restriction with the County Clerk's Office and provide the Division with verification of filing within 60 days of approval by the Division, and prior to site preparations. Said restriction shall run with the land and be binding upon all successive owners.

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<sup>3</sup> Although N.J.A.C. 7:7E-8.14(e) provides that on-street parking spaces should not be counted in meeting the 2-space per residential unit requirement of the rule, the language is phrased in such a way as to provide the DEP with flexibility in its application: "In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project." [Emphasis added.]

Because the Mayor & Council were unwilling to set aside and sign 7 on-street parking spaces for the exclusive use of the residents of 800 Main Street, the developer was forced to modify its plans in order to meet the two-space per residential unit requirement on-site.<sup>4</sup> This avoided the need to appeal from the “exclusive use” conditions in the Permit. The broader issue regarding DEP’s interpretation of N.J.A.C. 7:7E-8.14(e) remains.

The CAFRA permit does not impose an express requirement that the on-site spaces be reserved for the exclusive use of the residents of 800 Main Street. Our concern, however, is that the above-quoted conditions in the permit nevertheless accurately reflect DEP’s interpretation of N.J.A.C. 7:7E-8.14(e), and that a similar condition restricting the use of on-site spaces were to be included in some future CAFRA permit.

Neither the plain language nor purpose of N.J.A.C. 7:7E-8.14(e) requires that off-site parking spaces be reserved for the exclusive use of residents of the buildings. Moreover, such an interpretation would be inconsistent with 4 of the 8 basic coastal policies underlying CAFRA, as follows:

- I. Protect and enhance the coastal ecosystem;
- ii. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities.
- iv. Protect the health, safety and welfare of people who reside, work and visit the coastal zone; and

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<sup>4</sup> I explained to Mr. Mauriello and his staff in a meeting prior to the issuance of this permit that the Borough could not agree to a condition requiring that the new on-street parking spaces be set aside for the exclusive use of the residents of the 800 Main Street project. The effect of such a condition would be to reduce the amount of available parking by reserving on-street spaces for only a small group of residents, whose need for parking would be satisfied most of the time by the 69 spaces provided on-site. Indeed, the practical effect of this restriction would be that the spaces would be empty, and two of the groups N.J.A.C. 7:7E-8.14(e) was designed to ensure would have access to our community, namely employees and visitors to the community, see N.J.A.C. 7:7E-1.5(a)1(iv), would have to drive past those spots looking for places to park. I also explained that the Mayor & Council periodically denies requests by residents to create resident-only parking areas near the beachfront, a pro-public access position that would be much more difficult to sustain if we began to create resident-only parking areas in the redeveloped downtown.

- viii. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

Such a strict interpretation would also be inconsistent with Smart Growth principles, and in particular shared parking strategies that are designed to make the most efficient use of land.

*Belmar's Approach to Smart Growth, Sustainable Design and Shared Parking*

Belmar has adopted a highly sustainable approach to its redevelopment, relying upon model Smart Growth and sustainable design principles, including criteria promulgated by the U.S. Green Building Council Leadership in Energy and Environmental Design ("LEED") program. Belmar has enhanced the proposed LEED criteria for Neighborhood Development ("LEED-ND") with a series of prerequisite standards that set high storm water management, treatment and recharge standards. Belmar's redevelopment approach, which is receiving a 2007 Smart Growth Planning Award from New Jersey Future next month, also uses a mix of carrots and sticks to encourage developers to provide parking on-site, to "wrap" it with retail uses and townhouses and to enclose it from above. Developers are encouraged to design the enclosures over the parking areas as courtyards and "amenity decks" for the upper-story residential units that surround it. These decks will incorporate green-roof landscaping elements that capture and channel the storm water runoff to underground water detention and recharge systems, all but eliminating automobile-related runoff and non-point source pollution that is typical of traditional outdoor parking lots. In fact, when construction is completed at 800 Main Street, this site will be transformed from an automobile dealership and surface parking lot with 100% impervious surface to a site that will have no parking lot runoff and will retain 100% of its stormwater on-site. Equally important, by eliminating the traditional asphalt parking lots that currently line our downtown, we will be improving the aesthetic quality of our commercial district and providing a more livable and pedestrian-friendly environment for our residents and visitors.

In part because of the higher construction costs associated with building structured and covered parking, and out of a desire to make the most efficient use of precious coastal land, the Borough is encouraging "shared parking," a Smart Growth concept that is gaining currency nationally. See, e.g., Shared Parking, Urban Land Institute (2<sup>nd</sup> Ed., 2005). At bottom, the goal of a shared parking plan is to minimize the total number of parking spaces needed by clustering uses with off-setting peak parking demands. At the same time, the approach seeks to minimize periods when a substantial number of parking spaces sit idle, a condition that is common in traditional single-use developments. Although the CAFRA regulations pre-date Smart Growth,

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economizing on the land area devoted to parking is an express purpose of the CAFRA regulations. See N.J.A.C. 7:7E-7.5(d)3 (Parking lots and garages are “conditionally acceptable, provided. . .[inter alia] the extent of paved surfaces is minimized”).

The shared parking element of Belmar’s redevelopment plan requires that every Belmar project – not just projects that are required to meet CAFRA approval – provide the number of parking spaces as determined under the Borough’s shared-parking formula, but in no case less than two spaces per residential unit. Belmar’s shared parking formula is based upon likely percentage of peak demand per use as calculated during different times of the date and week. While CAFRA imposes no obligation to provide off-street parking for non-residential uses, Belmar’s shared parking formula takes non-residential parking demands into account.

To ensure the marketability of the residential units, the Borough allows the redevelopers to reserve with signage only one parking space on-site for each residential unit. All other spaces must be available on a first-come, first-served basis for use by non-residents (e.g. retail and office employees and customers), subject to such parking duration and similar rules as the Borough may impose to encourage maximum use during the varying peak use periods. The flexibility to control the uses of the spaces, and to require the inclusion of such intelligent information systems as dynamic signage that alerts passing motorists when empty parking spaces are available in a building, will all be elements of Belmar’s plan to ensure optimal use of all available parking for our redevelopment and to minimize traffic attributable to motorists who searching for an available space. By optimizing the likelihood that every off-street parking space is used efficiently, we hope to maximize the availability of on-street parking spaces for shoppers in our downtown and visitors to our community. We believe these goals are entirely consistent with the policy considerations that underlie N.J.A.C. 7:7E-8.14 and N.J.A.C. 7:7E-7.5(d)3.

*The Borough’s Financial Model Requires that*

*DEP Clarify Its Interpretation of N.J.A.C. 7:7E-8.14*

The Borough’s plan to fund an adequate supply of parking relies upon the use of the Redevelopment Area Bond Law to provide public financing to construct spaces in excess of CAFRA requirements in strategically located parking structures. We also plan to use public financing to acquire from developers rights to control the use of all CAFRA-required residential parking spaces in excess of the one-space per residential unit number developers will be permitted to reserve for their residents. If the CAFRA parking requirement is construed to require that all on-site required by CAFRA must be

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for the exclusive use of the residents of each project, then the Borough will likely not be able to use public funds to acquire rights in any of these spaces, or to control their use in a way that will ensure the success of the Borough's shared parking plan. Due to the high cost of providing structured parking, the redevelopment will not be able to proceed without public financing. For that reason, we need the DEP to confirm that N.J.A.C. 7:7E-8.14(e) is not inconsistent with the Borough's shared parking approach.

I am also requesting that the DEP reconsider its position that when off-site parking spaces are used – whether interim new on-street spaces or permanent off-site and off-street spaces – they must be reserved for the exclusive use of residents of the project. This will ensure these new spaces are available for use by the maximum number of people, regardless of whether they are residents of a nearby project, shoppers in the downtown or tourists visiting our community.

The Borough is amenable to whatever record-keeping requirements NDJEP may require to account for the number of parking spaces required by N.J.A.C. 7:7E-8.14 over the course of multiple CAFRA permits during the course of the redevelopment project. These records should ensure (a) that only newly created on-street spaces are relied upon on an interim basis in meeting CAFRA parking requirements; (b) that funds for permanent off-site spaces are paid into the Borough's Parking Utility Fund to secure their ultimate construction; (c) that interim spaces are replaced with permanent off-site spaces when the permanent off-site spaces are constructed; and (d) that off-site spaces are not double-counted when developers calculate their compliance with the requirements of N.J.A.C. 7:7E-8.14(e).

Finally, and no less importantly, I suggest that DEP revisit the requirements of N.J.A.C. 7:7E-8.14(e) and the objectives of CAFRA generally and consider new rule-making in light of Governor Corzine's commitment to provide affordable housing and to promote Transit Villages and encourage the use of mass transit. While N.J.A.C. 7:7E-8.14 currently exempts nursing homes and assisted living facilities, and provides a mechanism for reducing the two-space per residential unit parking requirement for senior citizen housing, it does not contain a similar provision for affordable housing units, or provide any opportunity to reduce parking demand based either on a municipality's status as a Transit Village or the proximity of a development to a train station. At an actual construction cost of more than \$22,500 per structured parking space, including either a total or partial exemptions for such circumstances would likely serve as a significant incentive to coastal zone developers to include affordable housing units in their redevelopment projects and to site their projects near train stations.

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I would be pleased to meet with you or your staff at your convenience to discuss these issues in greater detail. In the meantime, I appreciate your taking the time look into this issue and consider my concerns.

Very truly yours,

Kenneth E. Pringle  
Mayor of Belmar