

**AUGUST 4, 2010 MINUTES**

A regular meeting of Planning Board of the Township of Roxbury was held on August 4, 2010, at 7:30 p.m. in the Municipal Building at 1715 Rt. 46, Ledgewood, N.J. After a Salute to the Flag the Chairman read the Open Public Meetings Act.

**BOARD MEMBERS PRESENT:** Larry Sweeney, James Rilee, Linda Lutz, Michael Shadiack, Tom Carey, Charles Bautz and Chairman Scott Meyer

ABSENT: Joseph Schwab, Richard Zoschak

LATE: Bob DeFillippo and Andre Verge

PROFESSIONAL STAFF PRESENT: Tom Germinario, Esq., Russell Stern, P.P., Paul Ferriero, P.E.

Also present Eugenia Wiss, Planning Board Secretary

**MINUTES:**

A motion to approve the minutes of July 7, 2010 was made by Mr. Sweeney, seconded by Mr. Bautz

ROLL CALL: Mr. Rilee, yes; Mr. Carey, yes; Mr. Shadiack, yes; Mr. Bautz, yes; Mr. Sweeney, yes

**RESOLUTIONS:**

**PBA-10-006 JCBJ REALTY, LLC Block 4101, Lots 9.01 and 9.02 288 and 290**

**Emmans Road**

**Minor Amendment of Conditions to Approved Subdivision**

**ROXBURY TOWNSHIP PLANNING BOARD  
RESOLUTION**

**Decided: July 7, 2010**

**Memorialized: August 4, 2010**

**IN THE MATTER OF JCBJ REALTY LLC  
AMENDED MINOR SUBDIVISION APPROVAL  
BLOCK 4101, LOT 6  
APPLICATION NO. PBA-10-006**

**WHEREAS**, JCBJ Realty LLC (hereinafter the "Applicant") applied to the Roxbury Township Planning Board (hereinafter the "Board") for amended minor subdivision approval on 6/24/10; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 7/7/10; and

**WHEREAS**, it has been determined that the Applicant has complied with all procedural requirements, rules and regulations of the Board, and that all required provisions of procedural compliance have been filed with the Board; and

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**WHEREAS**, the Board makes the following findings and conclusions based upon the documents, testimony and other evidence comprising the hearing record:

1. The property which is the subject of the application consists of 316,661 square feet (7.2695 acres) located in the OS Open Space District. By Resolution dated 5/3/06, the Applicant was granted a minor subdivision approval to create two flag lots from the existing parcel for the development of each with a single family dwelling. Both lots (9.01 and 9.02) contain 157,480 sq. ft. (3.6152 ac.). Both lots are accessed by a 14'-wide common driveway, which the Resolution required to be paved for the first 20' from the road and thereafter be crushed stone. Condition #3 of the Resolution provides:

3. The recorded deeds to both lots refer to this Resolution and shall contain a restriction prohibiting the paving of the common driveway beyond the first 20 feet from Emmans Road. The deed restriction shall be reviewed and approved by the Board Attorney prior to filing.

2. Applicant now seeks to amend the minor subdivision approval to allow porous paving of the entire driveway.

3. The proposed development of the subject property to which the Board's decision herein pertains is depicted and described in the following drawings and/or plans:

(1) Minor Subdivision Application, prepared by John Caponegro.

(2) Minor Subdivision Plans, consisting of four sheets revised through May 10, 2010, prepared by R. Henry Huelsebusch, PE.

(3) Stormwater Management Report, dated May 2010, prepared by R. Henry Huelsebusch, PE

4. The Board's planning and engineering professionals and/or consultants submitted the following reports concerning their respective reviews of the application, which are part of the hearing record:

(1) Paul Ferriero, PE, dated 6/30/10

5. The original approval for the minor subdivision required a condition that the main portion of the driveway not be paved. The requirement was based on the fact that the project needed to be below the threshold of a "major development" as defined by the NJDEP stormwater rules. If the project exceeded this threshold, the 300 foot riparian buffer from the C-1 stream would have made the development impossible.

6. A "major development" is defined as one in which the *increase* in impervious surface is greater than ¼ acre, or 10,890 square feet. Under the DEP rules, impervious cover that pre-existed the proposed development and is removed or redeveloped does not count as new impervious surface.

7. The site has currently been developed with two dwellings and the common gravel driveway. The existing development on the two lots has resulted in total increase in impervious area of 10,154 square feet and therefore the subdivision project was not a major development. None of the proposed pavement work is within the 300 foot stream buffer and therefore is not in a regulated area.

8. The current proposal requests a modification of the prior approval to permit the construction of a hard surface, permeable pavement surface to replace the existing stone driveway. The construction detail calls for the removal of the existing compacted stone and the installation of porous subsurface material to provide a conduit to the permeable soil below the surface. There will be three "wicks" where the gravel will extend deeper than the standard section.

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9. The permeable pavement provides an effective water quality treatment for the removal of total suspended solids and is recognized by the NJDEP as providing 80% TSS removal. The gravel bed below the surface will provide sufficient volume for the storage of the increased runoff from the surface material.

10. Permeable pavement can be an effective BMP for stormwater management, however its installation and maintenance must be carefully done.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby approve the amended minor subdivision as depicted and described in the drawings and/or plans referenced hereinabove.

This approval is subject to the following conditions which shall, unless otherwise stated, be satisfied prior to the filing of the minor subdivision deeds:

1. The recorded deeds to both lots shall refer to this Resolution and shall contain a restriction requiring that the paving of the common driveway beyond the first 20 feet from Emmans Road shall be porous paving. The deed restriction shall prohibit the modification or re-surfacing of the driveway without the approval of the Township Engineer. The deed restriction shall also require compliance with the approved maintenance plan that shall be recorded with the deeds. The deed restriction shall be reviewed and approved by the Board Attorney prior to filing.

2. The three “wicks” where the gravel will extend deeper than the standard section shall be located in the field prior to construction.

3. Complete specifications for the final surface material (permeable asphalt or permeable concrete) and its installation shall be provided for review and approval by the Board Engineer.

4. A maintenance plan shall be prepared that is specific to the surfacing material. The plan shall be approved by the Board Engineer.

5. The installation shall be inspected by the Township Engineer or his designee. An inspection escrow deposit shall be established for this purpose.

6. Upon completion of the project, the design engineer shall provide a certification that the work has been done in accordance with the plans and specifications.

7. Except to the extent explicitly modified herein, all other conditions of the Resolution of 5/3/06 shall remain in full force and effect.

The undersigned does hereby certify that the foregoing is a true copy of the Resolution of the Roxbury Township Planning Board memorializing the action taken by the Board at its meeting of July 7, 2010.

A motion to approve the Resolution with the Memorialization date corrected to August 4, 2010 was made by Mr. Rilee, seconded by Mr. Bautz.

ROLL CALL: Larry Sweeney, yes; James Rilee, yes; Michael Shadiack, yes; Tom Carey, yes; Charles Bautz, yes

### **COMPLETENESS:**

**PBA-09-018 THE PLAZA AT ROXBURY (St. Theresa’s R.C. Church) Block 5103, Lot 1 Main Street and Commerce Boulevard**  
**Minor Subdivision and Preliminary Site Plan for Medical Office Building and Bank**

Mr. Stern and the staff recommended deeming the application complete for formal hearing. This matter will be scheduled for the September 15<sup>th</sup> meeting.

A motion to deem the application complete was made by Mr. Bautz, seconded by Mr. Sweeney.

ROLL CALL: Mr. Rilee, yes; Mr. Carey, yes; Mr. Shadiack, yes; Mr. Bautz, yes; Mr. Sweeney, yes; Mrs. Lutz, yes, Mr. Meyer, yes.

**PBA-10-005 TISSOT, DAVID & ALISON Block 2801, Lots 10 & 11 303 Eyland Avenue**

**Minor Subdivision Application**

Mr. Stern and the staff recommended granting the waivers and deeming the application complete.

A motion to deem the application complete was made by Mr. Bautz, seconded by Mrs. Lutz

ROLL CALL: Mr. Rilee, yes; Mr. Carey, yes; Mr. Shadiack, yes; Mr. Bautz, yes; Mr. Sweeney, yes; Mrs. Lutz, yes, Mr. Meyer, yes.

**PBA-10-003 E. J. PETERS CO. Block 9203, Lot 2 96 Route 206.**

**Final Site Plan Application.**

Mr. Stern said some items need to be resolved before the hearing but recommended the application be deemed complete and scheduled for a hearing on September 1, 2010

A motion to deem the application complete was made by Mr. Bautz, seconded by Mrs. Lutz

ROLL CALL: Mr. Rilee, yes; Mr. Carey, yes; Mr. Shadiack, yes; Mr. Bautz, yes; Mr. Sweeney, yes; Mrs. Lutz, yes, Mr. Meyer, yes.

**APPLICATIONS:**

**MORRIS COUNTY RAILROAD RIGHT OF WAY, Berkshire Valley Road Storage Area**

Courtesy Review

Morris County Special Counsel John Napolitano said this project was the Kenvil Team Track Improvements. Also present were Frank Pinto, Morris County Director of Planning and Development, Gerald Rohsler, Director of Morris County Transportation and Erik DeLine, Assistant Planner in the Transportation Department. The County received a grant to make improvements to the Berkshire Valley Storage facility. The improvements include curbing, pavement, planting and shifting of the track to keep the work on one side of Berkshire Valley Road. The County owns the facility and it is operated by the Morristown & Erie Railroad.

Bob DeFillipo arrived at 7:40 p.m.

Erik DeLine explained the project in detail. A middle track will be constructed in the middle of the yard to allow the unloading of center beam lumber cars. This moves the unloading away from Berkshire Valley Road and away from traffic. A Run-around track is to be moved west away from that area also. They will also pave an existing access road that is currently graveled to keep dust down. A chain green slated fence will be replaced with an 8' brown slat fence. Part of the property is being leased and they are not renewing leases as they run out and plan to take the fence out to the property line. They will plant about 5 Norway Spruces on each side by the Berkshire Valley entrance, 200' back to meet the required sight distance setback for the railroad. They will plant approximately 13 October Glory Maples per Mr. Stern's request, more or less with his approval. The yard would function as it does now with trucks making a k-turn and exiting. They will plant some natural vegetation in between the Norway spruce plantings and Berkshire Valley Road. The rail, paving and curbing are completely funded. The County will pay for planting and the fencing. The Council has seen this plan and it will eliminate transloading on the east side of Berkshire Valley Road and the transloading can be done on the west side internally. The County does a balancing act with the required provision of railroad services to municipalities that operate under Federal law agencies.

Andre Verge arrived at 7:47 p.m.

The Morristown and Erie Railroad also has other grants for improvements to the railroad system.

Mr. Ferriero questioned how the impervious coverage related to the stormwater requirement because it is over one-quarter of an acre. They thought the existing gravel was considered impervious but, if it is not, they will look into that. They were thanked for the presentation.

**PBA-10-005 TISSOT, DAVID & ALISON Block 2801, Lots 10 & 11 303 Eyland Avenue**  
**Minor Subdivision Application**

David and Alison Tissot were sworn in. Mr. Tissot said they want to purchase a small piece of land, 40' x 100', from their adjacent neighbor and put an addition on the house that requires variances. They have a 1 ½ story cape house with an attached garage. On site is a shed that will be relocated to the rear yard and be in conformance with setbacks. They want to put a cantilevered full dormer on the rear of the second floor and over the garage and also two small dormers on the front of the house. The total addition will be 600 sf. The design will be consistent with the style of the house. A variance for minimum lot size for both nonconforming lots is required along with a side yard setback and impervious coverage variances.

They maintain this property at the neighbor's request, the neighbor wanted them to buy it and it would make both lots more regularly shaped. The expansion is not detrimental to

the neighborhood or the Township and it will enhance the look and functionality of the property.

Mr. Stern said the applicant addressed all the variances well. One comment from his report dated July 26, 2010 was that the driveway should be set back 5' from the property line. They agreed to remove the non conforming pavement in the middle of the driveway and they will relocate the shed. They have Health Department approval. This addition should not trigger a COAH fee because it is less than 1,000 sf. The Deeds will be submitted to the attorney for approval.

The meeting was open to the public, no one from the public commented. The meeting was closed to the public.

A motion to approve the application was made by Mr. Rilee, seconded by Mr. Bautz. ROLL CALL: Mr. Rilee, yes; Mr. Carey, yes; Mr. Shadiack, yes; Mr. Bautz, yes; Mr. Sweeney, yes; Mrs. Lutz, yes; Mr. Verge, yes; Mr. DeFillippo, yes; Mr. Meyer, yes.

**PBA-09-013 A & E VENTURES OF ROXBURY Block 3601, Lot 3 & Block 5004, Lot 10 235-241 Route 10 East**

**Preliminary Site Plan Application for Burger King and Proposed Retail.** This matter was continued from the June 2, 2010 meeting and this was their third appearance before the Board but they were not finishing this evening as there were still issues to work through. They hope to complete the architectural, site engineering and landscape testimony tonight. Since they are still working on a cross access easement agreement with the neighboring long-term lessee, Ms. Madden, Mr. Inglima, her attorney, was assured they will bring witnesses back if they have any questions. Attorney Mike Miceli from Boston Market was also present. Mr. Inglima was optimistic that they would reach an agreement hopefully by the September meeting regarding the access and the Boston Market parking encroachment that will be addressed with easements. The negotiations will result in the loss of parking spaces for Boston Market and will push them into more non conformance and they would be part of this application with an amendment of the Boston Market Site Plan.

They received Mr. Ferriero's report regarding drainage, Mrs. Stern's report, Traffic engineer Harold Maltz's report, the Township Engineer and Traffic Safety Patrolman's reports.

Architect Chuck Dietz had previously been sworn in. To address previous comments, they brought Exhibit A-10, a board with colored elevations of the building. The height of the tower tops is 27' and they were designed to mimic the Burger King towers. There will be a horizontal 2' brick band along the bottoms of the building except for the five doors of the storefront. The rear elevations for the receiving and loading areas and some parking showed additional score lines, masonry piers similar to the front and side and fabric awnings over the exterior doors. The 2' brick band runs around the whole building. The parapets are high enough to screen the rooftop equipment. Wall sconces

run all around the building and Exhibit A-11 was a lighting specification for a security light for the back that will be black since the sconces are mostly decorative.

Mr. Stern thought the rear elevation was upgraded which was important since it faces the R-3 District. They've also now provided a sidewalk on the side of the building. He would like to see the side elevations also. There was a discussion on the signage on the towers but the applicant wanted them all to be equally sized and styled. Mr. Stern would like to see a more substantial cap but they had to mimic the Burger King style. They used stucco instead of block because it doesn't leak and they felt it was an upgrade.

Mr. Deitz didn't prepare the Burger King plans but worked with the architect and could testify. Exhibit A-8 showed colored photos of some of the most recent Burger King styles. They have the brownish brick and stucco with score lines style similar to the retail building. The awnings were also similar. The red cap will not be internally illuminated, just red metal. They have reduced the signage to three 5' diameter logos on each of the three bump-ups and some snap signage has been removed. At the main entrance will be channel letters "Home of the Whopper" and one snap sign to the left "Have It Your Way". This was a reduction in what Burger King Corporate normally has in signage at 5 signs and 14%. There are two additional freestanding signs, the preview and menu board. The parapets will screen the HVAC units on the rooftop. They are also installing a precipitator to minimize invisible smoke and odor and the building is now further away from the residential zone.

A single sheet of revised working architectural plans, Sheet A-3, was marked Exhibit A-12 and Sheet A-4 was marked A-13. Nothing further was required of Mr. Dietz.

Engineer Bill Page reassumed the site plan testimony addressing the submitted plans revised 7/20/10. Primarily they changed circulation plan as well as the drainage.

The site plan referenced, C-3.0, was revised to address comments of the township professionals, Ms. Madden and Mr. Maltz. They had changed an offset intersection to a 4-way intersection that resulted in the loss of four parking spaces. They made the circulation from the access way one way. They moved both buildings 3' closer to Route 10 and they were still conforming. The drive-thru lane was wider conforming to setbacks. They added a sidewalk on south side of the building and have a 15' x 35' loading area (15' x 60' required). The size of the two dumpsters was increased and they provided more detail and showed bollards.

There is a conflict with people pulling out of some parking places with the drive up queue so the employees would park in the these parking spaces. The volume of the speakers for the drive-thru can be adjusted if there are any noise complaints. They have provided a stop line just in from of the dumpsters to address the safety issue. The dumpster doors open to the public driveway so it was recommended that a variance be granted to move the dumpster closer to the adjoining property towards the back of the Clearview Cinema to make it safer. They added some one way signs for traffic circulation. This will be a whole new traffic pattern and there may be a need for some additional re-stripping.

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The next drawing, C-4.0, was the grading and drainage plans. They will accommodate all of Mr. Ferriero's comments and will entertain comments from Boston Market. Because there are a number of issues they will meet with Mr. Ferriero and Al Lapatka, the engineer for Boston Market.

Drawing C-4.1 was the utility plan and they can address Mr. Kobylarz' comments, and the Roxbury Water Company's.

Mr. Maltz's memo of July 28<sup>th</sup> was discussed. With regard to the truck loading area, the size of the truck would be 25-35' after the initial stocking so they felt the loading area was adequate. They have located the pedestrian signs closer to the walkways. They are proposing a hedgerow between the Boston Market and A & E Ventures parking areas. The geometrics to the drive-turn were improved by shifting the building toward Route 10 as shown on the turning template.

Patrolman Pendergast's comments were discussed and they will differ to Mr. Maltz and provide additional stripping also. They agreed with the do not enter signs

Outstanding items in Mr. Stern's letter updated July 28, 2010 were addressed. The planters have been increased to 4'. Mr. Stern asked about the phasing, the house would be demolished first, the grade set and then if there is enough room, they would build the new Burger King, then demolish the old Burger King and put the retail up. They would operate the Burger King while the new one is being constructed. A construction phasing plan is needed. They have removed some of the asphalt in the back but a parking buffer variance is still required. They will be closed at 11:00 p.m. but deliveries will be in violation and Carlos Lugo, BK Area Manager, will testify more on this. Both buildings will be under one management, similar in design and landscaping and commonly managed. They will put a guard rail where the millings are after they are removed. They have met with the DOT and need two things, copies of mailing receipts and the application fee. They have an additional catch basin behind the Boston Market and will satisfy their engineer. They are working out lease agreement for their parking also. Mr. Stern was okay with the hedgerow between the properties. The drive-thru queuing has been addressed with employee parking and they have room for 7-8 from the pick up window. They will reduce the Drive-thru signs to two. They have decorative face block on the dumpster. They will provide more detail on the lighting also. Rooftop mechanics screening need to be shown on the plans and there should be no sound from them. With regard to LEED design – Burger King is still 3 years away so they are not pursuing that with this application. Wall lights details for the Burger King were provided. That concluded the report. Mr. Page will be brought back for cross if need be.

Doug Fullerton, Landscape Architect, was sworn in and qualified. His landscape plan was marked Exhibit A-14. They used berming to mitigate the feel of the shrubs because lawn areas are easier to maintain than shrubs. He would also like to see lawn in areas where people are opening car doors because of trampling. They pretty much agree with Mr. Stern's comments except for one or two of the islands that didn't have trees. They



would like to relocate four shade trees and two ornamental to increase the visibility of the sign. They would maintain the existing evergreens but would prune them. The hedgerow will be a boxwood hedge. If they move the dumpster they will stick with viburnum. In front of the Burger King there will be a planter with irrigation. He wanted some plant substitutions and clarification on the island plantings. Mr. Fullerton and Mr. Stern will come to an agreement on the number of shrubs and the amount of lawn. There will be low perennials in front of the retail area.

The applicant was done with tonight's presentation. The matter was continued until September 1, 2010 with no further notice.

**PBA-09-023 P & D REALTY (MORRIS CANAL PLAZA) Block 6501, Lot 20  
1070 Route 46**

**Preliminary Site Plan Approval.**

This matter was continued to the September 15, 2010 meeting. Mr. Stern said they are looking at a different strategy because of the current market and might abandon the addition and just progress with the façade and site improvement.

**OLD BUSINESS:**

**PBA-08-015 Cooke, Dwight and Phyllis Block 3801, Lot 70 53 Main Street  
Update on Extension of condition of approval.**

Mr. Cooke received approval in January 7, 2009, for a pre-existing, non-conforming residential building in a B-1A Zone that was illegally converted to an office use for an accountant office. They came before the Board to legitimize the use with a Site Plan Application. The two deadlines for complying with the conditions of the Site Plan approval have passed.

They cannot go through with this project (the parking lot, lighting and landscaping improvements) because of the economy. They wanted to withdraw the application but the approval is still valid if they want to sell it. They have agreed to convert it back to a residence by January 1, 2011. The Main Street improvement was not the only issue. The Board could take the position that he abandoned the residential use but will make an exception in this instance. He could pursue the original approval in the future and the Board would decide how he should proceed.

**NEW BUSINESS:**

A Master Plan Reexamination is due in 2011.

The meeting was adjourned by motion at 9:55 p.m.

FOR THE PLANNING BOARD  
TOWNSHIP OF ROXBURY

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Eugenia Wiss, Board Secretary