

JANUARY 21, 2009, MINUTES

A regular meeting of Planning Board of the Township of Roxbury was held on January 21, 2009, at 7:30 p.m. in the Municipal Building at 1715 Rt. 46, Ledgewood, N.J. with Vice Chairman Larry Sweeney presiding. After a Salute to the Flag the Vice Chairman read the "Open Public Meetings Act".

BOARD MEMBERS PRESENT: Michael Shadiack, Larry Sweeney, Charles Bautz, Linda Lutz, Andre Verge, Richard Zoschak, James Rilee, Joseph Schwab and Robert DeFillippo

ABSENT: Chairman Scott Meyer and Steven Alford

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

Also present, Eugenia Wiss, Board Secretary.

MINUTES: A motion to approve the minutes January 7, 2009, with some clarifications was made by Mr. Rilee, seconded by Mr. Zoschak.

Roll Call: Michael Shadiack, yes; Larry Sweeney, yes; Charles Bautz, yes; Linda Lutz, yes; Andre Verge, yes; Richard Zoschak, yes; James Rilee, yes; Joseph Schwab, abs. and Robert DeFillippo, yes

RESOLUTIONS:

PBA-09-001 Roxbury Commons, LLC. Block 12201, Lot 1.0103 180 Howard Boulevard Amendment to Preliminary Approval for a change in signage

ROXBURY TOWNSHIP PLANNING BOARD

RESOLUTION OF MEMORIALIZATION

Decided: January 7, 2009
Memorialized: January 21, 2009

**IN THE MATTER OF ATKINS MANAGEMENT/ROXBURY COMMONS
AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL
BLOCK 12201, LOT 1.0103
APPLICATION NO. PBA-09-001**

WHEREAS, Atkins Management/Roxbury Commons (hereinafter the "Applicant") applied to the Roxbury Township Planning Board (hereinafter the "Board") for amended preliminary and final site plan approval on 12/11/08; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 1/7/09; 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

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

1. The subject property, known as Roxbury Commons, encompasses 10.86 acres located in the OB Office Building district. The site is developed with a 9,529± square feet Cracker Barrel restaurant, a 23,200± square feet retail building and a 43,824± square feet 3-story 76-room hotel. Signage for the site was incorporated within a clock tower. The tract received preliminary site plan approval in 1999 and final site plan approval in 2005.

2. The Applicant now seeks amended preliminary site plan approval to increase the existing clock tower sign box by 11 square feet. The existing sign area is 127 square feet and proposed area will be 138 square feet. The only proposed modification is to the sign box. No changes will be made to the clock tower structure, but for the lettering of “Roxbury Commons” mounted to the sides of the clock.

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:

Prepared by Omland Engineering Associates, Inc.

- Sheet 1 of 1, Condominium Plan, dated 11/1/99

Prepared by Jarmel Kizel Architects

- Sheet A-1, Plans, Section, Elevation of Clock tower, revised 11/8/00

Prepared by Sign Art Graphics

- Summary of Work
- Existing and Proposed Color Sign Graphics

4. In support of the application, the Applicant submitted the following documents, which are part of the hearing record:

Letter of John P. Wyciskala, Esq., dated 11/25/08

5. 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:

Russell Stern, PP, AICP, CLA, dated 12/22/08

6. In the course of the public hearings, the following exhibits were marked and are part of the hearing record:

- A-1 Photos of Existing and Proposed Freestanding Sign

7. In the course of the public hearings, the Applicant was represented by John Wyciskala, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

Michael Castoro, Sign Contractor

8. The development of the subject property as proposed by the Applicant requires relief from Section 13-8.916F, as a 120 sq. ft. sign is permitted, while Applicant proposes a 138 sq. ft. sign. The sign also requires relief with respect to the addition of the words "Roxbury Commons" to the sign in individual lettering.

9. Based on the hearing record, the Board finds that the variance from Section 13-8.916F is justified for safety reasons as it will promote visibility and identification of tenants by passing motorists. The increases sign area will be utilized by the retail tenants and provide them with a larger sign to promote visibility and exposure of their services. Visibility to the individual tenant façade signs from Howard Boulevard is limited due to the layout of the retail building perpendicular to the road and site landscaping. The additional lettering "Roxbury Commons" on the sign will also serve the safety purpose of enabling passing motorists to more readily identify the complex. The relief with respect to "Roxbury Commons" lettering is granted for complex identity only, and such lettering may not in the future be replaced with lettering identifying a specific business within the complex.

The Board further finds that this relief can be granted without substantial detriment to the public good and that the granting of this relief will not substantially impair the intent and purpose of the zone plan and/or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the amended preliminary and final site plan approval as depicted and described in the drawings and/or plans referenced hereinabove. In connection with this approval, the Board grants relief from land use provisions of the Township ordinances in accordance with Section 9 above.

This approval is subject to the following conditions which shall, unless otherwise stated, be satisfied prior to modification of the sign.

1. Verify proposed sign box dimensions as the Sign Art summary dimension varies from their graphic dimension.

2. Dimension distances to the top, bottom and sides, between the sign box and outer edge of EIFS. A five inch (5") dimension is preferred.

3. Dimension sign box on Jarmel Kizel drawing and specify sign area.

4. Dimension "Roxbury Commons" lettering.

5. Update the revision date on the Jarmel Kizel drawing.

6. The clock shall be properly functioning.

7. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.

8. This approval is subject to the payment in full by the Applicant of all taxes, fees, escrows, assessments and other amounts due and owing to the Township and/or any agency thereof.

9. If the Soil Conservation District, Morris County Planning Board, or any other governmental body from which approval is necessary causes, through their examination of the plans as recited in this resolution, any revisions to said plans then, in that event, same shall be submitted to the Planning Board Engineer. If the Planning Board Engineer deems said revisions to be significant, the Applicant shall return to the Planning Board for further review and approval.

10. Revised plans shall be submitted within 60 days and must be deemed complete to the satisfaction of the Board Engineer within 6 months of the date of memorialization. Failure on the part of

the Applicant to satisfy this or any other condition of this resolution will result in referral of this matter back to the Planning Board for purposes of deeming the approval null and void.

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 January 7, 2009.

A motion to approve the Resolution was made by Mr. Rilee, seconded by Mr. Shadiack.

Roll Call: Michael Shadiack, yes; Larry Sweeney, yes; Charles Bautz, abs. Linda Lutz, yes, Andre Verge, yes; Richard Zoschak, James Rilee, yes; Joseph Schwab, abs. and Robert DeFillippo, yes

COMPLETENESS:

PBA-08-019 Prudent Publishing Co. Block 9501, Lot 2, 400 Frontage Rd.
Final Site Plan Approval.

A motion to deem this application complete was made by Mr. Rilee, seconded by Mr. Zoschak.

Roll Call: Michael Shadiack, yes, Larry Sweeney, yes; Charles Bautz, abs., Linda Lutz, yes; Andre Verge, yes; Richard Zoschak, yes; James Rilee, yes; Joseph Schwab, yes and Robert DeFillippo, yes.

PBA-08-00022 WDIFTK Corp. Block 5203, Lot 46 North Hillside Avenue (across from Meeker St.)
Major Subdivision for four lots

A motion to deem this application complete was made by Mr. Rilee, seconded by Mr. Bautz.

Roll Call: Michael Shadiack, yes; Larry Sweeney, yes; Charles Bautz, yes; Linda Lutz, abs.; Andre Verge, yes; Richard Zoschak, yes; James Rilee, yes; Joseph Schwab, yes and Robert DeFillippo, yes.

APPLICATIONS:

PBA-08-019 Prudent Publishing Co. Block 9501, Lot 2, 400 Frontage Rd.
Final Site Plan Approval. Carleton R. Kempf, Esq. represented the applicant. Engineer Joaquin Fernandes of Hatch Mott MacDonald was sworn in and qualified by the Board. He addressed the January 16, 2009 report from Mr. Stern. The handicapped parking was not constructed as per preliminary approval because only Phase I has been constructed and the spaces were needed for future office space in the later phases. Mr. Bernard D'Avella, President of Prudent Publishing, was sworn in and said they will take care of the parking striping. The striping in the rear of the building has been done. The 6' sidewalk in front of existing building is not necessary until the later phases are done. This and the handicapped spaces will be flagged as the additions move forward.

The ruts in the embankment had been repaired once by the contractor but had a problem again and they will be repaired when weather permits. The architect advised them that the bricks that match the building weren't going to be made anymore so they bought enough to do the entire project and are storing them on site. They could build an aesthetic fence around them if necessary, the cement is being disposed off and the bricks will be made orderly when the weather permits. Mr. Stern said the bricks are almost on the side property line and they could find an alternate site to store them on. They will be there until Phase II or III is done, approximately three years. Mr. Stern thought a board-on-board type fence would be acceptable, solid like the dumpster, but was concerned about the length of time they would be stored and thought they should be put behind the new building addition. They wouldn't be seen behind the addition between the corner of the building and the first bay and they could put up a chain link fence for security. The area of bricks is approximately 15' x 20', two pallets. This location won't impede circulation or parking. They have complied with the other conditions of his report and will provide verification.

Regarding the engineering memo dated January 17, 2009, from Mr. Ferriero all items have been covered. They provided six as-built Site Plans signed by a licensed surveyor to the Board tonight. The striping and relocation of the bricks will be done by April. The Traffic Safety Bureau wants an additional stop sign and they agreed to that. They agreed to keep the emergency driveway clear per the Fire Official's recommendation.

The embankment will be repaired and re-vegetated possibly with geo-fabric. Outstanding Items 5,6,9 could be bonded to April 15th, however, Mr. Ferriero felt a bond is cumbersome and it is a small amount. A Temporary C.O. could be issued until the work is done. Attorney Germinario agreed.

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

A Motion to move PBA-08-019 with the caveat that a Temporary Certificate of Occupancy be issued until April 15th when all items will be completed was made by Mr. Rilee, seconded by Mr. Zoschak.

Roll Call: Michael Shadiack, yes; Larry Sweeney, yes; Charles Bautz, abs. Linda Lutz, yes, Andre Verge, yes; Richard Zoschak, yes; James Rilee, yes; Joseph Schwab, yes and Robert DeFillippo, yes

PBA-08-016 – Baiano Holdings, LLC – Block 6901, Lot 4, 64 North Dell Ave.

Preliminary Major Site Plan on Dell Avenue in the I-3 zone

This matter was continued from the December 3, 2008 meeting. Robert Gaccione, Esq. represented the applicant. They are seeking site plan approval for the permitted use of a landscaping and a roll-off container business. The proposed use will be for outdoor vehicle and equipment storage and they have bulk variances and waiver requests. Mr. Montella a member of Baiano Holdings, LLC previously testified about the operation of

the business. Mr. Careaga had previously testified and had been qualified and sworn in and had reviewed the recent reports. Regarding Mr. Ferriero's Dec 11, 2008 report the monument sign was reduced to 45 sf. Mr. Ferriero felt this was not the kind of business that needs a sign to attract customers. Mr. Stern agreed the size needs to be decreased and more detail needed. They agreed to 32 sf with the design approved by the Township Planner. They can't change the orientation of the sign because of the septic but will work with Mr. Stern. They can comply with the other items in Mr. Ferriero's letter.

With regard to Mr. Stern's letter of December 15, 2008: There will be a maximum of 30 dumpsters on site although they own 50 and they have decreased the storage area. They do have turning radiuses that are adequate for their trucks. Weekend hours are not usual, 6:00 a.m to 6:00 p.m. are the typical hours of operation during the week. This site abuts a residential area in the south. Mr. Montella was still under oath and their vehicles travel from the site in both directions. They don't work at the site all the time; they just leave in morning and come back in the evening. They have another site in Andover. They do landscaping in the summer but only 5 days a week. The layout of dumpster storage is on the western side of the site, the angled parking can store 25 long dumpsters but some are shorter. They now have a 15' buffer, the primary storage is on the western side along with trucks and equipment behind the building. They will be parked in the gravel driveway. The turnaround area and entrance from Dell Avenue to the fence will be paved. With regard to water impact on Corwin Lake they are reducing the coverage and adding landscaping to this site. The storm water runoff will not be changed. They have submitted an abbreviated environmental impact statement. Mr. Rilee and the Environmental Commission representative, Mrs. Lutz, were concerned about runoff into the lake from dumpsters returned to the site. There is 100' of vegetation between the lake and dumpsters. They haul bulk waste only, no garbage or hazardous material. If there is a spill they will have an environmental kit near the garage and near the trucks. They don't carry oil or toxic materials, they might have a problem with a truck but their trucks are fairly new and they take care of them. Mr. Ferriero felt gravel would be better to keep runoff from going offsite than pavement. Also pavement can be damaged by the equipment. Construction containers that go to a facility can't take paint, pool chemicals, asbestos, etc. and they make their customers sign that nothing is hazardous in the containers. The transfer stations check contents of containers carefully.

With regard to the variance for outdoor storage in the setback area there is no envelope because of the size of the property according to Mr. Careaga and the 25' buffer areas are a similar issue because the site is too narrow. Mr. Stern noted that they pushed outside storage away from Dell Avenue. He recommended that the fence be pushed back 30-40 feet. They moved the gate 100' feet back and there was a grassed area inside the fence. The fence would be typically closed. If they add landscaping to the grassed area inside the fence it would prevent it from being used for storage. Mr. Stern felt moving the fence back would better prevent this area from being used for storage.

The impervious area is currently 83.3% and they now propose 57.14%. 55% is allowed by ordinance. The previous owners had graveled over without permission. They agreed to increase the height of evergreens for screening to 6-7' and replace fencing slats where

necessary. They agreed to the additional landscaping. They request a design waiver for widening the road because it won't match up with the properties on either side. The plans will be revised to show that detail. Items 1.15, 1.16 and 1.18: the sidewalk and curbing are existing and they will show that detail. There are 12 employee parking spaces in a gravel area and they agree to install wheel stops. They have 12 employees maximum, some are laborers not drivers. Item 1.19, the island issue, requires a waiver because it would leave inadequate room to turn around. They will plant shade trees there and Mr. Ferriero didn't recommend curbing. They want to illuminate the outside storage area with 6 lights on poles for minimum illumination. The lights are higher to protect them from truck damage. Item 1.29 and Item 1.30 will be a condition of approval. The sign will be changed from 20" to 18". They can also comply with the landscaping and the rest of the items on Mr. Stern's list.

They verified that the sign will be reduced to 32 sf and be 18" wide. They will shift the fence back to protect the grass area from future storage use and the Board supported that. They will come to an agreement of shifting the fence 10-12 feet and will discuss this with Mr. Stern.

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

A motion to move PBA-08-016 with the caveats agreed to tonight was made by Mr. Zoschak, seconded by Mr. Bautz.

Roll Call: Michael Shadiack, yes; Larry Sweeney, yes; Charles Bautz, yes; Linda Lutz, yes; Andre Verge, abs.; Richard Zoschak, yes; James Rilee, yes; Joseph Schwab, yes and Robert DeFillippo, yes

PBA-08-012-STS/Pond View At Roxbury, Block 2701, Lot 2 & Block 2702, Lots 13, 19, 20, 21, 22 & 23, 19 Halsey Street Major Subdivision for six lots located on Halsey Street, in the R-3 zone

George Johnson, Esq. represented the applicant and Mr. Silcox, Principal of STS, was present. The application was commencing anew because of notice issues. Mr. Steven Smith from Jaman Associates was sworn in and qualified. The applicant is proposing taking seven existing lots and Halsey Street and reconfiguring them into six lots. Mr. Smith referred to the plans last revised on October 27, 2008. Halsey Street, a paper street, and a right-of-way, will be vacated and they will rededicate Halsey Street. This application includes a new roadway, 28' wide with curb on both sides, drainage, sewers and no sidewalks. The plans had been revised with an infiltration system with no outfall. They seek a waiver for not installing curbing and variances for reconfiguring Lot 13 to increase the lot size. The variances are for a preexisting non-conforming front and rear yard setbacks that are going to be improved but still not in compliance.

Attorney Germinario and Attorney Johnson had worked out the notice issue for this application. The first report from Mr. Stern dated 1/15/09 regarding tree removal and

landscaping; they will comply with all of Mr. Stern's recommendations and they will meet with him to make sure they comply exactly. To address outstanding items in Mr. Stern's other report updated 1/15/09: They will update the notification list on the cover of plan. They have no specific building elevations at this time but note the number of bedrooms and parking for each dwelling. They been in contact with the DEP about the letter of interpretation, they are satisfied and are waiting for a new "LOI" and understand any Board action would be subject to new "LOI" and DEP approval. The revisions to the Environmental Impact Statement will be done. They are not proposing to put anything on the water to prevent access. The residents would have just a visual use and they don't want to put up a fence to obscure the view. Mr. Stern said they have no rights to access the lake so this is an item for the Board. Attorney Johnson said they could put a deed restriction regarding no access to the Lake and Attorney Germinario agreed. The ownership and maintenance of the infiltration basin would be the responsibility of the homeowners; it should be in the deed or with a homeowners association. Attorney Johnson had a concern with a homeowners association because it is a small subdivision; the basin has no outlet and is on two lots but he agreed to have a homeowners' association handle this. The concrete monuments for the Conservation Easement were discussed; they did not want them at ground level and recommended a post. Mr. Ferriero suggested the detention basin should be fenced like a pool fence, 48" to code. They don't want to fence the detention basin. Mr. Gribbon felt water will be in basin for hours. The distance from one house to detention basin is 25'. It would be difficult to police people putting up sheds, etc. in this area. Mr. Ferriero suggested a fence corner, post and rail and he will work with Mr. Smith on the detail. The lot line to Lake Silver Spring is difficult to locate because of water height fluctuations. They are not proposing trailers for offices or storage. The conservation easement land must be left natural with no structures and the wording of the easement will be specific. With regard to item 2.3, they only want to show items that affect Halsey Street and Mr. Stern wanted lots 3 & 18 shown on plans but they don't want to go on the property to do survey. They agreed to show the information for lot 3 & 18. With regard to item 2.8 they don't want to construct sidewalks. All rest of the items and any other items not elaborated on they have no issue with. With regard to payment in lieu of sidewalks, the Township would like to put sidewalks in the immediate neighborhood and this is a matter they will leave open.

To address Mr. Ferriero's report dated January 14, 2009, they agreed to items in Section I with Mr. Gribbon providing further testimony on stormwater. Section II, they can address or have no issue except the utilities will have control of locations in D-3. D-4-10 and no issue through Item K. Item L, regarding the street light, Mr. Ferriero said this is no longer an issue. The meeting was open to public before Mr. Gribbon addressed the stormwater.

Mr. Herb Mittelstadt, owner of Lake Silver Springs, gave a copy of his questions at the last meeting. His concern was the water, the lake has been rising but that has to be addressed after the storm water testimony. The backyards of the proposed lots face lake and children are going to go into the lake and it drops 22 feet. There is no way for emergency vehicle to get in there. This is their liability. The Lake was 4' higher last fall. They want a fence put up and he felt the detention basin will usually be full of water. Mr.

Smith said their lake table elevations don't agree; the most difference in the elevation is ½ foot and they took elevations 4 to 5 times over a 4 to 5 year period. Mrs. Mittelstadt said there is no outlet in the lake and the level has gone up every year. Because of the discrepancy in the height of the water, Mr. Ferriero needs the photographs. Photos were submitted that were taken by the Mittelstadt's and marked O-1 through O-38. A photo indicates pipe to measure the water height. Attorney Johnson said the Mittelstadt are liable if someone falls into the lake and they can put a fence in themselves. They are concerned if they build in the future on nearby lots they own. Mr. Smith said the road will help remove one variance, constructing on unimproved road. They can shift the trees on the plans if necessary with the Town's approval. Mr. Smith explained why the term NJDEP term for State Open Waters was put on the plan.

In the conservation area, numerous DEP restrictions will apply, they can't do much, the area won't be disturbed. The infiltration basin was 2 1/2 ' feet higher than the water elevation but Mr. Mittelstadt was concerned as to when the Lake elevation was taken. They need to take elevations or note the dates that elevations have been taken and could use the photo, Exhibit O-35 to the pipe as a reference. Mr. Mittelstadt said the Lake can rise 6" in a big storm but the Lake was a sand quarry once but has a clay base. The Mittelstadts will show Mr. Smith where the pipe is.

Kathy Wizner, 23 Railroad Ave. said Lot 18 doesn't exist anymore, it was combined and is Lot 17.01. She would like to be able to access Halsey Street. They agreed to do a curb cut but wouldn't do any of the grading. She had questions on the trees on the plan and had a tree fall recently and whose property it was on.

No one else from the public commented. The meeting was closed to the public.

This matter will be carried to the February 18, 2009 meeting with an extension granted. Mr. Gribbon will not be available until 8:30 p.m. on February 18th.

OLD BUSINESS:

NEW BUSINESS:

The meeting was adjourned by motion at 10:25 p.m.

Eugenia Wiss, Board Secretary