

MAY 5, 2010 MINUTES

A regular meeting of Planning Board of the Township of Roxbury was held on May 5, 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: Linda Lutz, Tom Carey, Robert DeFillippo, Charles Bautz, Richard Zoschak, Michael Shadiack and Scott Meyer

ABSENT: Larry Sweeney, Joseph Schwab, James Rilee, 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 March 17, 2010 was made by Mr. Zoschak, seconded by Mr. Bautz

ROLL CALL: Mr. Shadiack, yes; Mr. Zoschak, yes; Mr. Bautz, yes; Mr. DeFillippo, yes; Ms. Lutz, yes; Mr. Carey, yes; Mr. Meyer, yes

RESOLUTIONS:

PBA-08-00011 KBC PROPERTIES, LLC (Kuiken Brothers Lumber) Block 1905, Lots 11 & 13

**ROXBURY TOWNSHIP PLANNING BOARD
MAJOR SOIL REMOVAL/RELOCATION
PERMIT EXTENSION**

Pursuant to Chapter XVII of the General Ordinances of the Township of Roxbury, Article 17-1 *et seq.* (the "Ordinance"), the Roxbury Township Planning Board (the "Board"), having conducted a public hearing pursuant to the Ordinance, does hereby grant to the Applicant identified herein an extension of its Major Soil Permit, subject to the terms and conditions enumerated herein below.

1. Applicant/Permittee: KBC Properties, LLC
2. Application Number: PB-08—0011
3. Property Identification: Block 1905, Lots 11 and 13
4. Subdivision/Site Plan Approval Date(s): Preliminary Major Site Plan 7/11/07
5. Major Soil Permit Approval Date: 6/4/08 (extended 6/17/09 to 6/4/10)
6. Extension Approval Date: 5/5/10
7. Extension Expiration Date: 6/4/11

8. This permit extension is subject to all terms and conditions of the original permit except as follows:

N/A

The undersigned does hereby certify that the foregoing is an accurate recitation of the action taken by the Planning Board on the approval date designated hereinabove.

PBA-07-0031 VIVIAN LIST Block 2604, Lot 1 31 Ferro Monte Avenue

**ROXBURY TOWNSHIP PLANNING BOARD
RESOLUTION OF MEMORIALIZATION**

**Approved: May 5, 2010
Memorialized: May 5, 2010**

**IN THE MATTER OF VIVIAN LIST
EXTENSION OF TIME FOR FILING MINOR-SUBDIVISION DEEDS OR PLAT
BLOCK 2604, LOT 1
APPLICATION NO. PBA-07-0031**

WHEREAS, Vivian List (hereinafter known as the Applicant) obtained minor subdivision approval from the Roxbury Township Planning Board (hereinafter known as the “Planning Board”) on 12/5/07; and

WHEREAS, pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-47d, a minor subdivision approval expires 190 days from the date of memorialization, if a deed or plat has not been filed within that timeframe; and

WHEREAS, pursuant to the MLUL, N.J.S.A. 40:55D-47f, the Board may extend the 190-day period if the Applicant was prevented from filing because of delays in obtaining legally required approvals, despite having diligently pursued such approvals; and

WHEREAS, the Board has determined that the Applicant was prevented from filing because of delays in obtaining legally required approvals, despite having diligently pursued such approvals.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board does hereby grant the requested extension of time for filing of the Applicant’s minor subdivision deeds for an additional period of 2 years pursuant to N.J.S.A. 40:55D-47f, provided that the Applicant shall comply with the Mandatory Mt. Laurel Development fee in effect at the time of issuance of a building permit, pursuant to Ordinance §13-7.829 or any successor provision thereto.

The undersigned does hereby certify that the foregoing is a true copy of the action taken by the Planning Board at its regular meeting of May 5, 2010

APPLICATIONS:

**PBA-08-00011 KBC PROPERTIES, LLC (Kuiken Brothers Lumber) Block 1905,
Lots 11 & 13**
Extension of Major Soil Removal/Relocation Permit

Mr. Germinario said this was a routine extension and was the second extension for approval granted on June 4, 2008. On June 17, 2009, it was extended for one year and the current extension would take them to June 4, 2011.

A motion to approve the Extension and Resolution was made by Mr. Zoschak, seconded by Mr. Bautz.

ROLL CALL: Mr. Shadiack, yes; Mr. Zoschak, yes; Mr. Bautz, yes; Mr. DeFillippo, yes; Ms. Lutz, yes; Mr. Carey, yes; Mr. Meyer, yes

PBA-07-0031 VIVIAN LIST Block 2604, Lot 1 31 Ferro Monte Avenue
Extension of Minor Subdivision Approval granted November 7, 2007

Mr. Germinario said the approval would have expired 190 days after approval or in June of 2008. Lawrence Fox, Esq. on behalf of the applicant explained that there were a number of conditions of approval that needed to be satisfied. Garages had to be removed, one portable shed will be removed any day, plan revisions were required and they were submitted at this meeting. The deeds had been submitted for approval. Also, because of the economy, Ms. List would have to pay more taxes for two lots and she just recently had a buyer for the lot although it had been on the market. The Zoning hasn't changed. The conditions have all been satisfied and they will record the deeds after the extension is granted. The Board approved an extension to June 15, 2010 and Mr. Fox felt this was enough time to perfect the subdivision.

A motion to extend the approval and to adopt the Resolution for the Extension was made by Mr. Bautz, seconded by Mr. DeFillippo.

ROLL CALL: Mr. Shadiack, yes; Mr. Zoschak, yes; Mr. Bautz, yes; Mr. DeFillippo, yes; Ms. Lutz, yes; Mr. Carey, yes; Mr. Meyer, yes

PBA-09-021 CARTON ENTERPRISES/ BARREIRO, ANTHONY (Landing
Market) Block 11301, Lot 16 190 Mount Arlington Boulevard
Minor Site Plan Application,

Attorney Dunn represented the applicant. This application was for a change of use that the Zoning Officer felt was a Site Plan Application. This is a two-unit building with a dance studio that was approved in 2007 and a deli/convenience store. He wants a change of use for the installation of a stove and walk-in box. Mr. Barreiro was sworn in. He is the tenant and owner of the business. Krishna Kupra is the owner of the property. Mr. Barriero acquired the lease on July 22, 2009. He sells produce, groceries and deli sandwiches and they want the stove for Taylor ham and eggs in the morning. He has no cooking facilities now except a microwave. They are open from 6 a.m. to 8 p.m. daily and on Sundays, 7 a.m. to 7 p.m. They share the property with a dance studio. Architect Bengis' map dated December 23, 2009 showed the site and attached were the interior plans with the changes depicted. They want to add a six-burner stove with a hood in an empty space and no structural changes are proposed. The hood will take care of odors. They will be cooking in the morning for a short time. The specifications of the hood

were read. The C-shaped hood was designed to capture and contain cooking vapors. He intends to install the stove and has already purchased it. Regarding his parking, the maximum parking he requires is 9 spaces. Customers stay for five minutes. He didn't feel the stove would change this requirement. There is no seating area and they would buy the food and eat it on the run. Some people walk to the store. He doesn't think the stove will intensify the number of people who come to the store; it will just give his customers more range of product to choose from. He has no conflict with the dance studio; they police it and work together. The dance studio doesn't have parties, the parents know they need to drop off and pick up. They are pleased with the arrangement.

Mr. Dunn showed the aerial photo of the site that showed the neighboring open park, lake and homes. They have no complaints from the neighbors.

To address the comments in Mr. Stern's report, the maximum number of employees is three at one time and some don't drive. He doesn't want to be limited in the time he uses the stove because he wants to make his own roast beef, turkey, potato and macaroni salads to offer a better product. He agrees to comply with the fire code regarding the stove installation. There will be no onsite dining and food consumption. The vent is in the hood, it will be professionally installed. There will be no baking; they get baked goods from vendors. They might extend their hours to 9 p.m. in the summer. The dance studio is closed in the summer. They will cook as ordered; the food will not be pre-made. They won't sell burgers because they don't want fryers. The approval from 2007 was for 21 parking spaces originally but the parking dropped down to 19 spaces because that is what fit. The corner of the lot should be striped for "no parking" because of safety and they agreed. The stacked parking by the dumpster was for employees or family of the business owners and they move when necessary.

They are familiar with the Dance Studio Resolution but have no conflict with their operation. Any non-conformance to the Resolution is a Township enforcement issue. They will install the correct lights along the street. They will take care of that and will do the striping. They verified the owner's signature on the application. The exhaust will go through the roof and won't be visible and the hood has the filters to filter smell. He starts opening procedures at 5 a.m. but plans on cooking the bacon, etc. the day before.

He has a three-compartment sink already and sanitation system. The parking time maximum for the Dance Studio is for eight minute parking now. Eight minute parking for the deli would be difficult to enforce as well as controlling eating in the parking lot.

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

The refrigeration unit in the back room is for cooler space and they can't put it in the store because refrigeration makes the store too hot. The stove will be operated off and on all day and they don't want to restrict the hours. The grilling will be done in the morning and they will precook the day before around 10:00 a.m.

Mr. Zoschak noted there is a bad parking situation there, it's dangerous for kids. Mr. Meyer didn't feel it would intensify with the grill. Mrs. Lutz said it is a permitted use and there is an enforcement issue with the dance studio but this is not the applicant's issue.

A motion to approve the application with agreement with Mr. Stern's report, with the specified stove hood, subject to the fire code compliance was made by Mr. Bautz, seconded by Mr. DeFillippo

ROLL CALL: Mr. Shadiack, yes; Mr. Zoschak, yes; Mr. Bautz, yes; Mr. DeFillippo, yes; Ms. Lutz, yes; Mr. Carey, 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

Mr. Steven Tombalakian, Esq. represented the applicant. This application was deemed complete on March 3, 2010. They have been working on comments received from the professionals and this will be ongoing. They have one witness, their Site Engineer Bill Paige. There are some legal issues that are still unresolved and Mr. Germinario suggested that the respective counsels for the applicant and the objector present their arguments to him in the form of a written letter so he can review the status between now and the next hearing and advise the Board. This was acceptable to Mr. Tombalakian and the objector, Ms. Madden, was in the audience.

Mr. Tombalakian gave the Board an overview of the situation. There is a property with a pink house that separates the Burger King from Boston Market. In 2005 Burger King applied to replace the existing Burger King but now they have an option to purchase the property with the pink house on it which will enable them to reconfigure the site. The Burger King and pink house will be demolished and a new Burger King and separate retail building will be constructed on the lot. The legal issue involves their ability to use a future easement in the back of the Boston Market property to provide access from the Roxbury Mall to Burger King. Boston Market has access to the mall from their site plan approval in 1993. They feel this access would make this a better site but there are issues with this. Boston Market is adjacent to the Roxbury Mall and has a driveway to the mall and they would like to tie their parking lot to that driveway. Boston Market is a subtenant, the owners are the Maskellos (who own the pink house lot) and were here tonight. The Maskellos have leased the property to Ms. Madden who subleased the property to Boston Market.

With or without the access they would like to proceed, however, access is a critical component. With regard to the cross access, traffic impact and circulation within the site, Mr. Stern recommended that the Board retain the services of Harold Maltz, Traffic Consultant. Mr. Tombalakian agreed to this. The County had also recommended a traffic consultant. Mr. Germinario will do a Resolution to appoint Mr. Maltz. Mall users

cut through there and that will be looked at but the driveway is already there.

Mr. Bill Paige was sworn in and qualified. He might be qualified as a traffic engineer in the future. Exhibit A-1, C.1.1 is a Site Plan that shows the surrounding features of the property. It shows the existing Burger King, the pink house, Boston Market, Route 10 Eastbound, the residential area to the southeast and backside of the site, the Roxbury Mall and wetlands. They have approval from the DEP to fill in the wetlands on the pink house property. The wetlands behind the existing Burger King will remain along with the buffer. The next Exhibit A-2, is drawing C 3.0 and is a color version of the proposed site. That shows the proposed Burger King and reflects the recommendations of the professionals. The new retail building will be 6,330 sf. and the new prototype, modern Burger King will be 2,891 sf and constructed where the pink house is. There is one access off Route 10 that circulates through the site and exits onto Route 10; it is the same as the present Burger King. The access they propose is in the southwest corner of the site that would connect to the shopping center through Boston Market. The new drive-through will be 140' longer than what is there present. The total parking for both properties is 80, 86 spaces are required so they will need a variance. There will be more trucks traffic there when they set up but Burger King can control their delivery times not to impact their customers. Separate dumpsters are provided for both buildings. They will provide more of a green strip in the back by removing some asphalt. They are providing more of the amenities for pedestrian activities, sidewalks and walkways. Retail stores would be in the location of the present Burger King and they propose five tenants based on the square footage of building but there might be less. The pink house has its own access but that will be eliminated. That property will be re-graded to eliminate the pooling. Exhibit A-3, C 4.0, the grading plan illustrates the proposed underground detention system. The plan has been submitted to DEP and Board Engineer.

The separation between the existing and proposed Burger King and the residential area will be moved more than more than 100'. Modern equipment contains odors within the evaporation system. They originally had a larger retail building designed with a drive-through for a bank-type building but they revised the plans to eliminate the drive-through and also moved the Burger King. They have a 12' road to get to the parking in back of the site. They addressed requirement for emergency vehicle access by widening the through lane and moved the Burger King toward Route 10.

Exhibit A-4, C5.0, the Striping and Parking plan, duplicates the site plan with detail on parking, menu board and speakers, signage, stop bars and stop signs and monument signs. They propose a 20' x 12' high monument sign with decorative brick for three to five tenants that would match the style of the Burger King. The pedestrian circulation was described. The drive through will be blocked with fencing. They are working with the professionals on the lighting. Most of the parking will be in back and the buildings will have back and front access. The drive-through pickup is on the SE corner. For the access from Boston Market, there will be a stop sign. They have contact with the DOT regarding the access permit. They would be generating less traffic with an alternate access and this was more favorable to the DOT.

The loading and unloading, refuse and trash areas were shown. The dumpsters, etc. will be on concrete bases. They will coordinate the collection to not interfere with the customers. The retail building probably would probably have cardboard waste; there will be no food businesses there to compete with Burger King. Tractor trailers could come through the traffic light through Boston Market and continue back onto Rt. 10 when the facilities are not open. They can still accommodate the trucks if this access is unavailable. They will do truck turning templates. They will remove the utility pole and put in underground utilities and there is a sanitary grease track line. The water will be from Route 10. There is an existing sanitary line from Burger King that they will tie into. They will be running a new water and gas line.

Exhibit A-5 was a Tree Removal Plan that shows the existing conditions. No trees will be cut in the back of the site or on the SE side of the property in the buffer to the residential area. They will be removing 14 trees, the largest trees 19-24" (2) and 8 trees in the 6-12" diameter. They need to raise the grades around the peripheral so some large trees need to be removed.

They have received an additional review dated April 30, 2010 from Mr. Stern. They anticipate changes in the application, their architect, landscape architect, professional planner and any other necessary professionals will testify in future meetings. This was the presentation for this evening.

Mr. Ferriero said the half-scaled drawings they handed out were preferable. The Board adamantly agreed. Ms. Lutz questioned why they didn't flip the buildings to better provide for the parking requirements. Burger King wanted the restaurant in this location and it was further away from the residential area. The Planner can comment on the adequacy of the parking for the individual uses. This is an integrated development. Mr. Stern said because of the design waiver for the parking, he asked for parking data and they will address that. The existing Burger King has empty spaces but this layout is different. Mr. Carlos Lugo, Burger King Area Manager, confirmed that deliveries were made overnight; the vendors have keys and deliver and the supplies are put away in the morning. They can't have truck deliveries impeding customers. They close at 11:00 p.m. and deliveries take 20 minutes. A 200' dimensional variance for operation from 11 p.m. to 6 a.m. would be required if they utilized the Route 10 access that was too close to the R-3 zone. They would prefer to use the Boston Market access but would probable leave by the Rt. 10 exit. The Board needs to see the traffic route on the drawings however, this is unenforceable.

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

This matter will be carried until June 2, 2010 with no further notice. The letters from the applicant and the objector will be sent to the attorney for the Board, Mr. Germinario. Ms. Madden said she would contact her attorney, Robert Englimino. The applicant granted an extension to the end of June.

OLD BUSINESS: none
NEW BUSINESS: none

The meeting was adjourned by motion at 9:05 p.m.

FOR THE PLANNING BOARD
TOWNSHIP OF ROXBURY

Eugenia Wiss, Board Secretary