

**November 2, 2011 MINUTES**

A regular meeting of the Township of Roxbury Planning Board was held on November 2, 2011, 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.

**ROLL CALL:**

**PRESENT:** Mr. Shadiack, Mr. Bautz, Mrs. Lutz, Councilman Zoschak, Mayor Rilee, Mr. DeFillippo, Mr. Carey and Mr. Meyer.

**ABSENT:** Mr. Verge and Mr. Meyers.

**STAFF:** Mr. Ferriero, Mr. Germinario, Mr. Stern and Mrs. Wiss

**MINUTES:** October 5, 2011

Motioned by Councilman Zoschak and seconded by Mr. Bautz to approve.

Ayes: Mr. Shadiack, Mr. Bautz, Councilman Zoschak, Mr. DeFillippo, Mr. Carey

Abstain: Mrs. Lutz, Mayor Rilee, Mr. Meyer

Noes: None

MOTION APPROVED.

**COMPLETENESS:**

**PBA-11-10 ROXWOOD ASSOCIATES, LLC. Block 9302, Lot 1 and Block 9401, Lots 1, 12 & 13 1550 Route 46** Amended Preliminary Site Plan Application – Sarlo Conversion

Mr. Thomas Carroll had reviewed the most recent completeness reports and requested the application be deemed complete. Whether the Planning Board has jurisdiction on this application will be determined as the first issue of the merits of the application. Mr. Stern and Mr. Ferriero considered the application complete.

Motioned by Mrs. Lutz and seconded by Mr. Bautz to deem complete.

Ayes: Mr. Shadiack, Mr. Bautz, Mrs. Lutz, Councilman Zoschak, Mayor Rilee, Mr. DeFillippo, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

The hearing will be scheduled for Dec. 7, 2011 and the first matter is the Board's jurisdiction.

**PBA-11-15 ROXBURY ENTERPRISES, LLC. Block 5002, Lot 3.2 2 Commerce Boulevard**

Final Site Plan Approval for Bank. The staff recommended that this application be deemed complete and heard tonight.

Motioned by Mayor Rilee and seconded by Mr. Bautz to deem complete.

Ayes: Mr. Shadiack, Mr. Bautz, Mrs. Lutz, Councilman Zoschak, Mayor Rilee, Mr. DeFillippo, Mr. Carey and Mr. Meyer

Noes: None

**RESOLUTIONS:**

**PBA-11-12 SENECA HILLS CORP. Block 1901, Lot 18 17 Eyland Place**

Minor Subdivision, three lots.

**ROXBURY TOWNSHIP PLANNING BOARD  
RESOLUTION OF MEMORIALIZATION**

**Decided: October 5, 2011  
Memorialized: November 2, 2011**

**IN THE MATTER OF SENECA HILLS CORPORATION  
MINOR SUBDIVISION APPROVAL  
BLOCK 1501, LOT 18  
APPLICATION NO. PBA-11-12**

**WHEREAS**, Seneca Hills Corporation (hereinafter the "Applicant") applied to the Roxbury Township Planning Board (hereinafter the "Board") for minor subdivision approval on 9/20/11; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 10/5/11; 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 property which is the subject of the application consists of 23,281.47 square feet located within the R-4 Residence District (7,500 square feet minimum lot size requirement). The parcel is developed with a two-story single-family dwelling built in the 1880's. The home is not designated on the Township's Historic Districts Map but adjoins the Historic District along the rear property line. The dwelling does not have a garage and exhibits a nonconforming front yard setback of approximately 20 feet to the enclosed front porch (30 feet required). The home is served by public sewer and an on-site well located within the dwelling. The property frontage lacks curb, sidewalks and street tree planting.

2. The development of the subject property proposed by the Applicant comprises minor subdivision approval to preserve the existing dwelling on a new parcel and create two new single-family lots from the existing 23,281.47 square foot property. All three lots will require lot area variances after right-of-way dedication. Proposed Lot 18.02 will encompass 7,760.49 square feet (before right-of-way dedication) and contain the existing dwelling. Proposed Lot 18.01 located to the east of the existing home will encompass 7,760.49 square feet (before right-of-way dedication) and accommodate a proposed two-story single family dwelling. Proposed Lot 17.03 located to the west of the existing home will encompass 7,760.49 square feet (before right-of-way dedication) and also accommodate a new home. Both new dwellings will have a 39.2 feet front yard setback (30' required) before right-of-way dedication and will be served by public sewer and water. Before right-of-way dedication, building coverage will be 15.79% on

Lot 18.01 and 14.912% on Lot 18.03 (20% max.). Impervious coverage is 20.717% on Lot 18.01 and 22.736% on Lot 18.02 (35% max.). The existing dwelling will have a lot exhibiting 14.208% building coverage and 24.975% impervious coverage, before right-of-way dedication. At this time, an approximate 1,075.03 square feet area is proposed as a roadway and utility easement across the Eyland Place frontage.

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 Wunner Engineering Associates

- Sheet 1, Cover Sheet, dated 7/27/11
- Sheet 2, Minor Subdivision Plat & Existing Conditions Survey, dated 7/27/11
- Sheet 3, Lot Grading Plan, dated 7/27/11
- Sheet 4, Soil Erosion & Sediment Control Notes and Details, dated 7/27/11
- Sheet 5, Construction Detail Sheet, dated 7/27/11

Prepared by Robert Murphy Architect

Lot 18.01, Block 1901

- Sheet 1, Notes/Construction Plans, dated 1/21/11
- Sheet 2, Construction Plans, dated 1/4/11
- Sheet 3, Elevations, dated 1/4/11

Lot 18.03, Block 1901

- Sheet 1, Notes/Construction Plans, dated 1/4/11
- Sheet 2, Construction Plans, dated 1/4/11
- Sheet 3, Elevations, dated 1/4/11

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

1. Planning Board Application, dated August 17, 2011 prepared by Anthony Seneca;
2. Checklist, dated August 17, 2011 prepared by Nicholas J Wunner, PE;
3. Addendum to Application;
4. Wetlands verification, dated prepared by Nicolas J. Wunner, PE;
5. Copy of the Deed;
6. Morris County Planning Board Application, dated August 17, 2011 prepared by Nicholas J. Wunner, PE;
7. Morris County Planning Board Exemption, dated August 18, 2011;
8. Morris County Soil Conservation District application for certification, dated August 18, 2011, prepared by David Seneca;
9. Water Company letter, dated June 22, 2011;
10. Assistant Township Engineer's letter, dated June 22, 2011 confirming sewer availability;
11. Memo of Nicholas Wunner, PE, PLS, dated 9/20/11.

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 9/16/11

Paul Ferriero, PE, PP, CME, LEED, dated 9/27/11

6. Township officials and/or agencies submitted the following reports concerning their reviews of the application, which are part of the hearing record:

Michael Kobylarz, PE, PP, CME, Township Engineer, dated 9/26/11

Abigail Montgomery, Sr., REHS, Health Dept., dated 9/29/11

Roxbury Township Historic Advisory Committee, dated 9/29/11

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

- A-1 Colored Rendering of Minor Subdivision Plan Sheet 2
- A-2 Colored Rendering of Lot Grading Plan Sheet 3
- A-3 2 Photos of old and new houses on Lot 17
- A-4 Alternative Driveway Option A
- A-5 Alternative Driveway Option B

8. In the course of the public hearings, the Applicant was represented by Ronald Heymann, and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

Nicholas Wunner, PE, PLS, engineer and planner  
David Seneca, Applicant's owner

9. The development of the subject property as proposed by the Applicant requires relief from the following land use provisions of the Township ordinances:

- As a result of the right-of-way dedication, all three parcels will require lot area variances from Section 13-7.1401D1, and the existing dwelling's nonconforming front yard setback will be diminished, necessitating a variance from Section 13-7.1401D4. After right-of-way dedication Lot 18.01 will encompass 7,366.9 square feet, Lot 18.02 7,402.14 square feet and Lot 18.03 7,437.39 square feet (minimum 7,500 square feet required).
- A variance is necessary from Section 13-7.1401D6, as a minimum side yard setback of 10 feet is required while the left side yard setback for the existing dwelling will be reduced to 6.1 feet.
- All three lots require variances for lot frontage and lot widths under Section 13-7.1401D2 and D3.
- A design waiver is necessary from Section 13-8.612F, as a 5-foot driveway setback is required from a side property line while the existing driveway on Lot 18.02 will be located flush with the proposed Lot 18.01/Lot 18.02 property line.
- A design waiver is necessary from Section 13-8.602A, for insufficient pavement width. A 30-foot width is required while Eyland Place has approximate 25 feet width along the subject property.
- Design waivers are necessary from Sections 13-8.608 and 13-8.610A as curbs and sidewalks, respectively, are not provided. Adjoining Lots 17.01 and 17.02 were granted a waiver of this requirement.
- A design waiver is necessary from Section 13-8.804, as street trees are not provided within the right-of-way and one is located greater than 40 feet on center. The trees will be closely aligned with those on Lot 17.01/17.02 and within the right-of-way once the dedication is made.

10. Based on the hearing record, the Board has made the following findings relative to the variances and/or design waivers sought by the Applicant:

The variances for lot area, lot widths and lot frontages are minimal and involve no discernable detriment. The public benefits associated with the right-of-way dedication outweigh the relatively minor detriments of the setback variances. With appropriate deed restrictions, the design waiver relating to the driveway setback for Lot 18.02 can be accommodated. Design waivers for pavement width, curb/sidewalks and location of street trees are consistent with the existing character of the neighborhood.

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 minor subdivision 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 10 above.

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 Applicant proposes the removal of a portion of the existing driveway and a section of the existing rear porch to eliminate a side yard setback. The elimination of the structures shall occur prior to the filing of deeds.

2. The proposed architectural plans are essentially identical to those approved for the adjoining two lot subdivision. To the extent feasible, the construction of the two homes shall be different from one another and the homes on Lots 17.01 and 17.02.

3. At a minimum, building siding shall be brought down to no less than 3 feet above grade (similar to Lots 17.01 and 17.02).

4. Detailed grading/drainage plans shall be submitted to the Township Engineer for review and approval prior to obtaining building permits (Section 13-8.204C).

5. The new dwellings shall each have a garage.

6. Norway Maple shall be replaced with a more desirable street tree.

7. Minor subdivision deeds and deed descriptions for both lots shall be submitted for review and approval by the Board Engineer and Board Attorney.

8. The Applicant shall receive sewer capacity allocation for both lots from the Governing Body. (Section 13-8.501)

9. The Applicant shall comply with Section 13-2.402A, Lot Line Revision Fee, prior to the filing of minor subdivision deeds.

10. Variances required for lot sizes once the required right of way dedication is made shall be noted on the cover sheet.

11. The required right of way shall be dedicated along the frontage of all three lots.

12. Lot closure calculations and deed descriptions should be provided for review.

13. Individual lot grading plans shall be reviewed and approved by the Township Engineer prior to obtaining building permits.

14. The proposed lot grading plan shows low areas at the rear of both lots with no positive outlet. Soil testing shall be completed prior to the signing of subdivision deeds to confirm surface and subsoil permeability is acceptable to ensure that ponding will not occur. If permeability rates are acceptable the areas shall be restricted from construction traffic to minimize compaction.

15. The lot grading plan shows overhead utility service to the dwelling to remain. The line crosses proposed lot 18.03 and an easement will be required if the service is to remain. The final lot development plans for the new dwellings shall include a note that all utility services are to be underground.

16. The deed for Lot 18.01 shall contain a restriction in favor of Lot 18.02 prohibiting the construction of a fence within five feet of the property line adjacent to the driveway on Lot 18.02 and permitting the stockpiling of snow from that driveway on Lot 18.01.

17. The Construction Detail Sheet notes that the drywells are to be a minimum of 2 feet above the seasonal high water table and that the depth to the seasonal high water table and bedrock. Satisfactory soil logs and permeability tests must be completed prior to the signing of the deeds.

18. Drywell sizing calculations shall be revised to show 3" of runoff across roof area not 2.5 as shown.

19. Utility connection details shall be approved by the Township Engineer.

20. An application for Right-of-Way Excavation Permit shall be required for each lot for the proposed work within the right-of-way of Eyland Place.

21. According to the Township Sewer Utility's records, the existing dwelling at 17 Eyland Place is presently connected to the sanitary sewer system. The Applicant shall obtain a sanitary sewer allocation for the proposed development. Payment of the connection fee will be required in order to secure the sanitary sewer allocation. The current sanitary sewer connection fee rate is \$6,807.00 per equivalent dwelling unit (EDU) or 265 gallons per day, which is due prior to issuance of permits by the Construction Department. However, the connection fee in effect at the time of connection shall apply.

22. This project is within the franchise area of the Roxbury Water Company. The Roxbury Water Company shall be contacted regarding the availability and allocation of water for this project.

23. The point of the well on Lot 18.02 shall be sealed.

24. The following notes shall be placed on Sheet 5 of 5 "Construction Detail Sheet."

Temporary Pavement

The temporary pavements shall consist of 6" of bituminous stabilized base course over 4" dense graded aggregate subbase. The stabilized base course shall be laid to grade.

Permanent Pavement – 6 months after work

The area to be restored shall be milled to a depth of 2" and overlaid with 2" of bituminous concrete surface source. Milling and final pavement shall extend a minimum of 1 foot beyond the original area disturbed as directed by the Township Engineer.

25. Minor subdivision deeds shall include the following recital: "Pursuant to N.J.S.A. 40:55D-47, the minor subdivision referred to in the within Deed was approved by the Roxbury Township Planning Board on [date] and memorialized by Resolution on [date]."

26. Prior to disturbance of the subject property, the Applicant shall comply, to the extent applicable, with the provisions of Ordinance Chapter XVII, "Soil Removal and Soil Relocation."

27. The Applicant shall pay a mandatory development fee in accordance with Ordinance Section 13-7.829, or any applicable successor provision of the Township Ordinance and/or State law in effect at the time a building permit is issued.

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

29. 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.

30. 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.

31. 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 10/5/11.

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Eugenia Wiss, Secretary

Motioned by Mr. Bautz and seconded by Mr. Carey to approve the Resolution.

Ayes: Mr. Shadiack, Mr. Bautz, Councilman Zoschak, Mr. DeFillippo, Mr. Carey

Abstain: Mrs. Lutz, Mayor Rilee, Mr. Meyer

Noes: None

MOTION APPROVED.

#### **APPLICATIONS:**

#### **PBA-11-15 ROXBURY ENTERPRISES, LLC. Block 5002, Lot 3.2 2 Commerce Boulevard Final Site Plan Approval for Bank**

Larry Kron, Esq. represented the applicant. They have agreed with the items noted to be done in the reports of Mr. Stern dated October 28, 2011 and Mr. Ferriero dated October 31, 2011. They intend to complete all outstanding items except for the top course paving which they will bond for. They will stripe the paving now and restripe the final top course by the end of May, 2012. Weather permitting, they will try and complete all the other items in the report. Ninety percent of the landscaping is done and the rest will be done in the spring. The irrigation system has been installed on the site with the exception of the bank area according to the owner. An as built will be provided prior to the Certificate of Occupancy and again after the final paving in the spring. The handicap

accessibility will be addressed. They intend to get the striping on Commerce Boulevard done within the next month. Everything not done by Nov. 30<sup>th</sup> will be bonded and they will work with the professionals to determine bonding requirements. They will comply with any safety items that the professionals determine necessary. Mr. Ferriero went through which items in Mr. Stern's report that could be bonded. Regarding his report the top course paving, striping, the swale along PC Richard's property line and anything incomplete could be bonded. The office trailer needs to be removed from the site after the bank is done.

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

Motioned by Mr. Bautz and seconded by Councilman Zoschak to approve.

Ayes: Mr. Shadiack, Mr. Bautz, Mrs. Lutz, Councilman Zoschak, Mayor Rilee, Mr. DeFillippo, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

**PBA-11-10 ROXWOOD ASSOCIATES, LLC. Block 9302, Lot 1 and Block 9401, Lots 1, 12 & 13**

Extension of Preliminary Site Plan Application

Thomas Carroll, Esq. represented the applicant. They are requesting a one year extension of the preliminary approval that was granted in late 2006 and extended twice with two separate one year Resolutions pursuant to two subsections of the N.J.S.A. 40:55D-49D and 49F.

Under N.J.S.A. 40:55D-49C up to two, one year extensions can be granted. Under N.J.S.A. 40:55D-49F just a one year extension is available if proceeding was prevented by lack of government approvals. N.J.S.A. 40:55D-49D allows for a more expansive vesting period for sites over 50 acres and that provision could apply at the Board's discretion. They are requesting a minimum of a one year extension and would prefer longer.

Mr. Carroll felt they had met the three criteria for N.J.S.A. 40:55D-49D with the number of units, the comprehensiveness of the development and the economic conditions.

Mr. Stephen Santola, General Counsel and Executive Vice President at Woodmont Properties, was sworn in. For clarification the extension is for the plan that was approved. Their Sarlo application that is pending specifically talks to the negative economic conditions particularly attacking the active adult market. The reason this project is vulnerable is because they need to complete a larger building over parking before one unit is sold so there are significant upfront costs. The water needs to be run several miles down Route 46 and there are enormous upfront investments before one closing. It is a comprehensive development. With the parking design and utilities it will



cost \$200-250 per foot to build this project and 2011 sales are significantly below that number. They watch the comps and at this time they are \$150-\$180 per foot. They have tried to preserve the development with extensions and extensive site work. A problem the active adult market has is that with home sale contingencies, buyers need to sell what they have in order to buy in an active adult community and there are financing issues. There is modest interest in family rental units and entry level home buyers. These are trying economic times for the real estate market. This project has 262 units, 52 low and moderate income units. Because they provide COAH credits is an additional reason for an extension.

It was agreed that market conditions work against this project and the Board would favor a one year extension, however, they are not optimistic that things will turn around in one year but it is possible.

They did not move forward in 2006 because after site plan approval, they had other conditions to meet and the housing market started to falter. They don't want to lose what they have put into this project including the professional fees and \$200,000 worth of site work. They hope the economy improves for this type of project. They are hopeful that their Sarlo application is not prejudged. It might be another avenue to make something happen. This application is just for an extension tonight.

A three page report on economic conditions affecting age restricted developments had been presented to the Township Manager back in June. Woodmont had a relatively cooperative relationship with the municipality and Mr. Santola discussed the matter personally with the Manager. Mr. Santola was shown the report. The conclusion of the report was that an insufficient market demand exists presently and in the future for age restricted homes. Under the Sarlo Act for conversion to non age restricted you need a valid preliminary or final approval. Mr. Santola was asked if part of motivation for this extension was for a valid approval required for a Sarlo application. His prime motivation is his \$1,000,000 investment for the litigation, soft costs, architectural drawings and site work.

Mr. Carroll said they would be here even without the Sarlo application. They are two separate issues. This application extends the age restricted component. Since the application is strictly for the purpose for moving ahead with the development as approved and that they would be here tonight regardless of the Sarlo Law, the Board could grant the extension.

Mr. Rilee made a motion for a one year extension based on the testimony of the economic conditions given by Mr. Santola.

Mr. Carroll felt that was an inappropriate proviso that muddies the waters. Does it mean that the approval for the age restricted approval is extended but does it mean a Sarlo application can't be pursued? The Sarlo issue should be separate; there should be no condition or language to sabotage the Sarlo application.

They have met the statutory criteria for the extension and the Board has to weigh the public interest in extending the application as approved as it is part of a Court ordered settlement and involves the Township's affordable housing obligation. On the other side if this approval is a spring board for a Sarlo conversion, this project does not conform to the Township zoning or the settlement the Township reached in litigation with this applicant or their predecessors in title so the Board can apply that condition. The Board is entitled to apply that condition for the public interest and it is not being inserted for the purpose of obstruction.

This extension would apply only to the plan as an age restricted, owner occupied condominium plan as originally approved and not to any potential conversion of that plan pursuant to the Sarlo Law.

If they don't proceed tonight, the applicant has filed a final approval application; however, it was not a complete application at this point. The vesting period deadline to file the final site plan application was November 1<sup>st</sup>. If the extension is granted, they don't need to proceed with the final site plan and they could withdraw the application.

Motioned by Mayor Rilee to extend this application by one year as originally approved in the 2006 plan and based upon the testimony of the economic conditions that was testified to by Mr. Santolo and subject to the provisions of the original approval and seconded by Mr. Bautz

Ayes: Mr. Shadiack, Mr. Bautz, Mrs. Lutz, Councilman Zoschak, Mayor Rilee and Mr. Meyer

Noes: Mr. DeFillippo and Mr. Carey

MOTION PASSED.

After the record was closed and the vote had been taken Mr. Carroll stated that the Extension was also requested pursuant to subsection F, but stated he would not pursue that further. He also wanted to submit exhibits (the two most recent resolutions and the soil moving permit). Mr. Germinario said they didn't need to be submitted since the resolution will refer to them as they are part of the record.

**OLD BUSINESS:**

**NEW BUSINESS:**

A motion to adjourn was made at 8:40 p.m.

FOR THE PLANNING BOARD  
TOWNSHIP OF ROXBURY

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Eugenia Wiss, Board Secretary