

**RIVERTON BOROUGH PLANNING BOARD
MINUTES
November 9, 2004**

The Public Session of the Planning Board was called to order at 7:05 PM. by Chairman Frank Siefert.

Public Notice of this meeting pursuant to the Open Public Meetings Act has been given in the following manner:

1. Posting notice on the official bulletin board in the Borough Office on October 22, 2004.
2. Required Service of notice and publication in the Burlington County Times on October 29, 2004.

PRESENT: Frank Siefert, Birnie O'Reilly, Donna Tyson, Christopher Halt, Mayor Martin, Councilwoman Alls-Moffat, Anthony Dydek, and Robert Smyth.

Also Present: Solicitor Tom Coleman and Secretary Ken Palmer

ABSENT: Jose Talavera.

REORGANIZATION:

The chair announced that Christopher Halt had been appointed by the mayor to replace Christian Hochenberger and to also serve as the board's representative on the Environmental Commission. Christopher was sworn in as a member prior to the meeting by board solicitor Tom Coleman. The position of a vice chair was not discussed.

MINUTES:

A motion was made by the mayor and seconded by Councilwoman Alls-Moffat to approve the minutes of October 19, 2004, as distributed. The vote was unanimous.

CORRESPONDENCE/ANNOUNCEMENTS

1. **10/21/04, copies of letter to mayor and Council from the Environmental Commission urging action on a Stream Corridor Protection Ordinance – copies distributed to non-Council/government members.**
2. **10/21/04, letter to the chair, with copy to zoning board from the Environmental Commission requesting that the requirement that the boards make available informational copies of development applications be observed in the future – copies given to the board.**
3. **Copies of a brochure on Open Space and Resource Planning Services from the DVRPC.**
4. **Revised Site Plan submissions from Ott Engineering for the Moccia Application – copies distributed to the board.**
5. **Review letter from board engineer concerning the Moccia Application – copies distributed to the board.**

PUBLIC HEARINGS:

APPLICATION FOR SITE PLAN APPROVAL OF A PARKING AREA PAVED AND EXPANDED AT 300 BROAD STREET, BLOCK 801, LOT 13, BY MOCCIA PROPERTIES, LLC, 530 MAIN STREET, RIVERTON, NJ:

Continuance – The chair and secretary reviewed a letter from the applicant's attorney requesting a continuance so they could properly review and address as needed the site review submitted by the board's engineer. Councilwoman Alls-Moffat made a motion seconded by the mayor that, at the request of the applicant, the hearing be continued. There being no further discussion, the question was called and the motion passed unanimously by voice vote to the effect that:

Be it resolved by the Planning Board of the Borough of Riverton, County of Burlington, and State of New Jersey that consideration on the application of Moccia Properties, LLC for site plan approval is continued, applicant having requested an extension of time for consideration of the matter until the next regular meeting of the Board on December 21, 2004 at 7:30PM.

This notice will be posted on the bulletin board and is the only official notice required of the continuation.

APPLICATION FOR SITE PLAN APPROVAL WITH RELIEF FROM OFF STREET PARKING REQUIREMENTS AND ANY OTHER VARIANCES NEEDED TO OPEN AN ICE CREAM PARLOR AT 529 MAIN STREET, BLOCK 903, LOT 26, BY THE FOUR MMMM'S, L.L.C., 608 THOMAS AVENUE, RIVERTON NJ: (CONTINUED)

Introductions and Housekeeping – The mayor recused himself from the matter and stepped down until the conclusion of the hearing. Joe Threston, attorney for the applicants was introduced. Board solicitor Tom Coleman reviewed that with the re-publishing of the notice all jurisdictional requirements have been met and the matter could be heard. The applicants were sworn in.

Testimony and Board Questions – The applicants testified under questioning from their attorney and reviewed the plans to operate an ice cream parlor at 530 Main Street under the name of Four MMMM's, LLC. The business will have 24 seats. There is no off-street parking available at the site and they are seeking a variance from the eight off-street parking spaces required for their type of establishment. They feel that there is sufficient on-street parking as well as space in the nearby municipal lot. While classed as a restaurant, the applicants plan to serve only ice cream related items and will operate as an ice cream parlor type of business. There will be no outside seating. The shop will initially operate on a seasonal basis from March through October. Tentative hours are: Monday – closed; Tuesday-Thursday – 2-10:00 PM; Friday – 2-11:00 PM; Saturday – 12-11:00 PM, and Sunday – 12-10:00 PM. No exterior renovations or alterations are planned except perhaps an approved sign and hopefully an awning that will not interfere with the public right of way. Donna Tyson noted the sensitivity over noise and parking issues related to Tony's Seafood restaurant and feels the board should be aware of that and consider it in their decisions. Mr. Coleman asked if the applicants or their attorney knew how many spaces were in the municipal lot. They were not sure but thought it was greater than 10 and less than 20 and feel more than enough spaces exist. Donna Tyson stated she feels the lot should be used for down town businesses and that use by residents of nearby apartments discouraged except in evenings. Councilwoman Alls-Moffat stated she thought there were two handicapped spaces and 16 or 18 regular spaces in the lot. Tom Coleman stated that there appeared to be more than enough spaces in the lot to meet the requirements of the applicants and the board could consider this if it so wished. Donna wanted to know if parking was permitted in the small lot in front of the hair salon across the street. It was stated that the lot is private and supposedly reserved for the patrons of the salon and the residents of the upstairs apartment. It appears that the lot is used by others, even if it is posted otherwise. It was asked if the lot by the Borough Hall and Fire House could be used. It was stated that this lot is also posted and is supposed to be for fire or Borough business only. It is supposed to be kept clear other wise to allow for emergency response personnel to have a place to park when necessary. The board asked if there was any concerted effort by the businesses in the area to coordinate their hours. It was not known but is most likely case by case and depends on the type of business. Mr. Coleman stated that as he recalled, the hours at Tony's may have been set as part of the approving resolution. It was asked if the applicants felt a fair amount of business would be walk up and the answer was yes. Trash would be stored in the rear until placed at the curb on normal collection days. The amount of trash is not contemplated to exceed the normal amount permitted for regular collection. Donna feels that any businesses in the area need to be sensitive to the residents in the area and that deliveries, noise and other related items need to be considered. Tom Coleman stated that delivery hours and location can be considered in any approvals. Birnie O'Reilly stated that any lighting should be downcast only and she hopes that all design considerations for the entire building be coordinated and unified. As to the location of any awning, it was stated that plans would only have it extend over the planters and not the sidewalk. Most likely it will be a small fixed type.

Public Comment – The hearing was opened to public comment:

- Lauren Lewonski, 515 Howard Street, has parking concerns. She feels that any new businesses that don't have parking should only be allowed if she and other residents have dedicated parking. She has issues concerning hours of operation, noise, kids, etc., and feels that Borough officials are not responsive. She stated she is tired of acting as a de facto code enforcer since nothing appears to be done by the appointed officials. She doesn't want to be forced to take things further. The chair and Tom responded that problems or enforcement of the hours of operation or designation of parking spaces are not board issues. The board can set the hours but not enforce them. It is Council's responsibility to deal with parking issues. Code Officer Tony Dydek responded that he has dealt with any issues concerning Tony's that have been referred to him and is not aware of any outstanding items. Birnie stated that the owner of Tony's and the owner of the property

should come before the board to petition for a change of hours if needed. Muriel wanted to know if Tony's Seafood was relevant to this hearing since it is not the same business. Tom Coleman stated it was relevant if the same people appear to be effected; but that this application should stand on its own merits and not be tied to the operation of another business. Donna stated that it appears specific parking needs are addressed in other towns and she does not have a problem with that. Donna feels the Borough needs to address the issue. Everyone needs to work together. Limits are okay as long as they work for all concerned. Bob Smyth asked Tom if the board can stipulate hours and parking. Tom replied the board can suggest hours if they are not submitted and can certainly work with applicants if it feels hours of operation present a significant factor in considering the application. The board cannot grant designated parking as part of its approval; that is a Council/town matter to be addressed. The board is charged with crafting a resolution that is coexistent with the applicant's desires and the resident's concerns. Birnie feels that the board could make a pledge to the people experiencing problems and who have been made promises that it would champion or support their cause if they take it to Council. It was mentioned that hours of operation are an enforcement issue and have been presented to Council. The chair stated that the board needs to stick to the issue at hand; the application. Birnie stated she feels the issue warrants further discussion among the board.

- Michael Heine, 206 Carriage House Lane, applauds initiatives to create new businesses in town especially where such businesses are permitted and serve to promote the goals of the master plan. The proposed business is not the issue, parking is the issue. It is not realistic to keep counting the same parking spaces. A survey is needed to establish use of parking. The board does not connect with the Council. There appears to be no enforcement of complaints. Tony Dydek stated he was not aware of any complaints that had not been addressed. Mr. Heine, referring to "Cox" stated the application violates case law in that variances of the type being requested must be grounded in conditions peculiar to the site and if the problem is generic to all properties, the remedy is a revision of the ordinances. Mr. Heine stated that the parking problem is not peculiar or limited to the case before the board but to all the shops in the area. Nothing should be done on this application unless the board has the exact approval granted to the owners of the property occupied by Tony's Seafood. Parking and business issues should be separated. He went on to discuss how he feels the board should address the issue and how to pursue the matter further with Council. Muriel asked Michael how he would solve the parking problem since Council has tried to solve the problem for three years. She went on to state that land is not available to provide for more municipal parking; this is a perfect type of business for the town; the police department has stated that localized dedicated parking is not feasible; she applauds Michael's thoughts regarding parking, but she does not see a solution at hand. The chair asked that the public be heard and discussion be held until the public was done.
 - William H. Harris, 502 Cinnaminson Street, recalled a previous similar type of business and is concerned with the generation and removal of trash. The applicant stated that much of the material is recyclable and/or reusable. Mr. Harris feels the awning is a nice idea.
 - Ms. Lewonski, feels there is no acceptable response to the monitoring issue. She was informed that it had been stated that monitoring and enforcement are not board issues. Tony Dydek stated that such issues were his in his capacity as Code Enforcement Officer and were addressed when he was notified of them.
 - Mr. Heine, replied to Muriel that the board does not solve the parking problems of the town so he would not answer her at this meeting. He stated he has serious disagreement with her facts, her judgment, her prognosis and her planning capabilities. The chair stated that comments should be restricted to the application and personal remarks had no place. Mr. Heine stated the only issue before the board tonight is whether to allow seating. There is a recognized relationship between seating and parking. He urges the board allow the use but limit seating. The chair responded that comments must be kept to the subject and to please refrain from comments of a personal nature which are inappropriate.
 - Frank Cioci, 408 Lippincott Avenue, asked if the board planned on voting on the matter tonight. The answer was yes.
 - Ms. Lewonski, stated there are noise ordinances in the town and wants the issue considered.
- There was no further comment and the hearing was closed to public comment.

Deliberation and Vote – The board deliberated on the matter. Donna asked if the hours for Tony's Seafood were only to 9:00 PM. Tony Dydek responded that was true; however, from an enforcement point of view, he does not feel he can enforce that a business be closed as of a stated time as long as the business takes steps, i.e., last serving, etc. that attempts to have the business able to close at its stated time. He stated you can't enforce that

they have to ask patrons to leave on the dot of closing time. That's unrealistic. Donna feels that if the hours are different, the two businesses won't be in that much direct competition for the same parking spots. The chair feels Tony's is more a destination type of business while the Miller's business will be more a local related business. Muriel is concerned that if the later hours are granted it will set a precedent for Tony's to plead for later hours. The applicant's attorney Joe Threston summarized that parking is a bigger issue than the application before the board. The law requires a variance for parking and that is why it is being requested. He doesn't see the primary clientele of the shop as the driving type. He envisions a predominantly walk-up clientele. Granting the variance without seating would unnecessarily hamstring the owners. The master plan encourages businesses in the Neighborhood Business zone. The applicants have done the right thing and tried to get the application correct. The applicants cannot resolve the systemic issues of the town. Does the board and the town want to encourage business in the area or not? The request is reasonable. The prior occupant of the site had exactly the same parking requirement as now but it was calculated differently because it was a different type of business. Bob Smyth asked if there was a net increase in the parking requirement and the answer was no. Donna feels resident's parking issues should be addressed. She feels the municipal lot should be used for business related parking and not by the residents of the neighboring apartments. She is not inclined to extend hours when the business is immediately adjacent to a residence, but that is not the case before the board. Birnie has a problem not adhering to the code regarding parking. If Val's was not required to meet the requirement it is an insight to a problem that will only grow if it is not addressed. The chair feels that a lot of good points have been made; but, he would like, if the board is inclined, to entertain a motion regarding the application. Tom Coleman advised the board that if they were inclined to approve the application and based on the facts presented, such a motion would be to grant preliminary and final site plan approval conditioned on: that the business would operate between say March 20th and October 31st at the hours stated by the applicants, that there would be no outside seating, that trash be stored in the rear until placed for collection, that there will be no deliveries before 12:00 PM or after 5:00 PM, that any signage must comply with the Borough ordinance, that the awning not exceed the setback requirement, and that the variance for parking be granted. The chair asked if a motion could be made as so stated by Tom and Tom replied yes and, if approved, he would prepare a confirming resolution. Birnie asked if the board was being asked to consider approval of a motion based on the suggestions made by Tom unless the Board wished to modify them, and Tom replied that was correct and proper and whatever the Board approved would be reflected in the resolution. The chair asked if the Board could make an up or down decision tonight and Tom stated yes if a motion to that effect was made and seconded. The chair stated he would like to entertain a motion. Donna stated she was concerned if the site was to later be changed into a restaurant and wanted to know if the Board could consider this. Tom stated that while the planned use is an ice cream parlor and not a full service restaurant, that distinction cannot be made since eating establishments are a permitted use in the district. The chair again asked if a motion was forthcoming. Tony Dydek motioned that the board approve the application as stipulated by Tom Coleman and Councilwoman Alls-Moffat seconded the motion. After confirming that all members seated could vote, a poll vote of the members was taken and the application was approved by a vote of 6 ayes and 1 nay as follows:

Mr. Siefert – aye	Mrs. O'Reilly – nay
Mrs. Tyson – aye	Mr. Halt – aye
Councilwoman Alls-Moffat – aye	Mr. Dydek – aye
Mr. Smyth - aye	

The mayor resumed his position on the Board.

OLD BUSINESS

Environmental Commission – Christopher Halt reported that Michael Robinson had made a very good presentation to Council on the commission's concerns and proposal for the wetlands encroachment and that the commission hopes Council will take action to approve the request. Copies have been provided to the board.

Redevelopment – The mayor reported that Council planned to discuss the subject at the meeting on December 10th. Information submitted by board planner Tamara Lee regarding possible COAH impact of the plan will also be discussed.

Fence Ordinance Revision – Donna reported that the committee planned to meet on the 22nd or 23rd to work on finalizing the draft. The committee is very close to finishing its work.

New Development in Cinnaminson Township – Donna Tyson reported she had today called and spoken with Cinnaminson’s code officer Mr. Marshall. Their planning board was meeting tonight to codify the resolution approved last month and there would be no public comment. The developer has submitted plans for phases 2 and 3. Since DEP approval has not yet been received, they may withdraw the application until approval is received. Mr. Marshall stated the board is not comfortable hearing the application until DEP approval is granted. Donna asked if Bob Smyth would be willing to help obtain information from Cinnaminson and if she and Bob could work on developing plans to ensure Riverton gains access to all plans so as to continue to monitor impact on the Borough. Bob is interested in helping. Bob feels that due to the size and scope of the development and the potential impact and proximity to the Borough, that the Borough is entitled to meet and discuss concerns with the developer. Donna concluded that repeated attempts to obtain a copy of the traffic study from Rick Arango were still unsuccessful. Even though it is pre-River Line, there may be useful information.

NEW BUSINESS

Vouchers and Invoices:

None presented.

MISCELLANEOUS

Development of 604 Broad Street – Donna stated that she wished to be on record as not supporting the perceived opinion of the board that supports commercial development of the site. She feels the size and location does not really support any type of development.

Parking – Donna is very concerned about the parking problems in the town and wants to see things work for the town. She feels the parking spaces or lack of same created for/by the Light Rail and the impact on the town’s plans for commercial redevelopment needs to be examined. The secretary recalled that during planning of the stations, the Borough had stipulated to NJ Transit that it was not willing to give up any of its property for station parking since parking in the downtown area was already at a premium, and that, as far as he remembered, the spaces created were all within the right of way of the rail line. The proximity of the right of way to the Collins building and subsequent loss of parking next to the building was also discussed. Birnie recalled that during discussions and plans for the Farmer’s Market, the exact location of the right of way boundary seemed to be in question. If rider ship projections made by some organizations come true, there are serious concerns over the impact of parking in the downtown area. The matter needs additional research. Birnie feels that the job of the board is to look ahead and plan for the future. She feels the board needs to gather information and formulate possible solutions to needs created by future development within the town.

Environmental Commission Request for Information on Development Applications – Donna stated she supported the request. The chair asked if she wanted to make a motion on this. The secretary commented that a motion was not needed since it is a requirement that the commission is just requesting be fulfilled. Secretary Ken Palmer stated that while he was not aware of the requirement, he believes that in actuality the development related issues currently before the zoning board are the first development related applications that have been submitted since the commission’s inception. While copies of all applications are available in the Borough office, Ken stated he would make sure that it was known to the boards and their secretaries that the commission is to be included on all development related applications.

PUBLIC COMMENT

The meeting was opened to public comment.

- Michael Heine, 206 Carriage House Lane, commented that everyone who comes before the board should be treated equally. He feels that the application heard before the board tonight is an example of unequal treatment since they have been delayed and made to follow the process while, in his opinion, Mr. Moccia is allowed to treat the process with disdain. It has been five months since the Moccia matter arose and he feels that Mr. Moccia has been allowed to flaunt his perceived preferred status in the town. He reiterated his opinion that Mr. Moccia should be cited on the parking lot at 300 Broad Street and the issue remanded to Municipal Court. He feels this is an example of favoritism on the part of the Borough and the Board and ignores the basic rules of law. It is his opinion that if one person is allowed to skirt the law, all should be afforded the same chance, either that or enforce things to the full extent of the law. Mr. Heine feels that what has occurred is “akin to fixing a parking ticket” for one and not another. It was commented that Mr. Moccia has been served notice and that he has taken steps to rectify the matter by applying for site plan approval. Mr. Heine stated that was insufficient under the law and Mr. Moccia is required to be summoned. Mr. Dydek replied that was not the case and asked if Mr. Heine was accusing him of fixing things. Mr. Heine stated he felt Mr. Dydek was simply not doing his job and would state publicly that in his opinion it is scandalous and he feels that individuals in position of authority have essentially gone on record as feeling that it is okay for persons in the town be afforded preferential treatment based on amount of taxes provided to the town. The chair thanked Mr. Heine for his thoughts and asked if there were further comments related to board matters.

There was no further comment and the meeting was closed to public comment.

Meeting adjourned at 8:52 PM.

Next meeting is on 12/21/2004 at 7:30 PM in the Borough Hall

Tape is on file.

**Kenny C. Palmer, Jr., Secretary
RIVERTON PLANNING BOARD**