

**RIVERTON BOROUGH PLANNING BOARD  
MINUTES  
September 21, 2004**

The Public Session of the Planning Board was called to order at 7:30 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 January 21, 2004.
2. Required Service of notice and publication in the Burlington County Times on January 25, 2004.

**PRESENT:** Frank Siefert, Eric Goldstein, Mayor Martin, Councilwoman Alls-Moffat, Anthony Dydek, Jose Talavera, and Donna Tyson.

**Also Present:** Solicitor Tom Coleman and Secretary Ken Palmer

**ABSENT:** Christian Hochenberger and Birnie O'Reilly.

**MINUTES:**

A motion was made by the mayor and seconded by Councilwoman Alls-Moffat to approve the minutes of August 17, 2004, as distributed. The vote was unanimous.

**CORRESPONDENCE/ANNOUNCEMENTS**

1. Invitation from Burlington County Dept of Economic Development and Planning to the Committee of 50 Annual Dinner Meeting and Golf Outing, 10/7/04
2. Bulletin from ANJEC announcing the 31<sup>st</sup> Annual Environmental Congress, 10/15/04, Mercer County Community College.
3. Announcement from Rutgers University of the Fall 2004 schedule of the Overview of Municipal Land Use Law for Planning and Zoning Board Members course.
4. Announcement from National Business Institute of the schedule of offerings of its Land Use Law Update in New Jersey seminar.
5. Bulletin from Steins & Weinroth, PC regarding Assembly Bills A-3155 (Realty Transfer Fee on purchase of real estate for over \$1,000,000) and A-3128 (payment of estimated income taxes on real estate transactions by non-residents).
6. Copy of Borough ordinance 2004-9 amending Chapter 22 to include the Planning Board Checklist
7. Two copies (Board and E.C.) of cover letter from State DEP, Division of Water Quality regarding a draft of the NJ Discharge Elimination System Stormwater Discharge New Master General Permit for Cat 13 – Mining and Quarrying.
8. Copy of parts of Moorestown ordinance regarding real estate signs.
9. Copy of memo from Tamara Lee to mayor and Council regarding responses to questions related to a meeting held on the cross acceptance process.
10. Copy of letter to mayor and Council regarding final draft of a letter sent to Paul Drake of the Office of Smart Growth by Tamara Lee as requested by the Borough which requests permission to change the scope of work to be performed under the grant to redevelopment related efforts and providing a proposed scope of work to be performed.
11. Announcement from Princeton Hydro, Environmental Consultants, of the opening of their office in South Jersey.
12. Announcement from the Delaware Valley Smart Growth Alliance of the launching of the Delaware Valley Smart Growth Alliance.
13. Received 9/21/04, a 9/11/04 letter from Fred Hardt regarding the destruction of client files older than seven years and requesting that clients make arrangements to retrieve them if they do not want them destroyed.
14. One voucher/invoice as presented under New Business.

## **Minor Site Plan Reviews:**

### **300 Broad Street, Parking Lot Issues and Commercial Use:**

**Parking Lot** – Tony Dydek reported that he had visited the site to measure the parking lot which is approximately 50 feet wide by 100 feet deep. He discussed the letter to Mr. Moccia stating he had to appear before the board regarding enlarging of the parking lot and that Mr. Moccia needed to check with County to see if they had any problems with the work. Mr. Moccia informed him he had sent a letter to the County. The survey included with the submission to the County was from 1981 showing a concrete strip driveway coming off Broad Street. There are varying stories as to when the parking area was created. Since Mr. Moccia is not prepared nor has he submitted a Site Plan application, Tony advised him to appear before the board to discuss what exactly was at issue and what needed to be done regarding formal submissions and reviews. Related to this issue, it appears that the Smyth's may back out of the plan to use the first floor of the building as a shop selling furniture and accessories reclaimed from Mr. Smyth's foreclosure business. The chair stated that he feels these are separate issues since the commercial use involves the Smyth's as potential tenants and the parking lot involves the owner. Tom Coleman stated that the issues are intertwined but should be considered separately. He reviewed that enhancing the parking lot requires a site plan review. Councilwoman Alls-Moffat discussed a letter from the County Engineer regarding the parking lot and his discussions with Mr. Moccia. The mayor stated he feels due to Mr. Moccia's long standing status as a major property owner/taxpayer and resident that a quick and hopefully favorable resolution to the issue should be reached and that he doesn't want Mr. Moccia to be treated unfairly. Eric Goldstein stated that this has no bearing, everyone needs to be treated the same and the rules must be followed by everyone. Councilwoman Alls-Moffat stated that she doesn't recall there ever being a parking lot of the size now existing. She doesn't have a problem with the lot's existence, but rather the fact that proper procedure has not been followed. The County Engineer is expecting details before a decision or opinion can be rendered. While there are latitudes for private property, this is a commercial site and the proper process has not been followed. Donna Tyson commented that public parking is a problem throughout the town; however paved areas concern her and she prefers stone where possible. She also wants to ensure fair treatment of everyone involved. Eric Goldstein stated that there is a relationship between use and form regarding number of spaces, lighting, ADA access issues, etc. and feels it is hard to separate the site use and parking lot issues. Jose Talavera concurred that the issues are closely related. Tom Coleman stated that the issues can be separated. The paving of the lot is one issue. The use of the lot is separate and should be considered as part of the commercial use. Donna asked if Mr. Moccia had made any application(s) to the County. Mr. Moccia stated no since in his mind he has not done anything wrong or that required an application and formal review. The chair asked Tom if this is a minor site plan or regular site plan issue. Tom replied that the issues involved required a formal site plan application and review with required service of notice, publishing, etc. The chair asked Mr. Moccia to discuss his concerns with the board. Tom Coleman advised Mr. Moccia and the board that any discussion at this time is informal and informative only. Until a formal application is made and a hearing conducted, the board cannot render any decision. This was understood by all sides. Mr. Moccia presented his side of the issue. He stated that he has owned the property for 30 years and the area in question has always been used as a parking lot. There is a continuing history of use by trucks and other vehicles for parking in the area. He cited the Borough code Section 126(sic)-65C regarding parking lots and stated it was his opinion he had done nothing more than ensure that the existing parking lot was up to Borough code. He feels that there are many instances of areas being illegally used for parking, that the areas are not to code, and that all he was doing was ensuring his area was to code. It is still used for parking as it has always been. He did not try to "sneak" in a new lot. Councilwoman Alls-Moffat stated she recalls that 30 years ago there was only a driveway shielded by shrubs from the house as well as the highway. There was no garage or parking lot. Mr. Moccia stated that parking has occurred there constantly for the past 10 to 15 years. Muriel stated again she doesn't object to a parking lot in itself. Rather, her concern is there was no application or plans or review concerning ADA or lighting requirements. The lot just appeared where there was never anything of that size before. Mr. Moccia contended that he didn't think he had done anything wrong. He had undertaken to bring an area used as a parking lot up to code standards. The chair stated he hoped to clarify the issue and have everyone leave with a clear understanding of what is needed to rectify the situation. Jose stated that the section of the code involved is 128 not 126. Jose also started to discuss the use of the lot, which Tom Coleman again stated was not open for discussion at his point. The chair asked Tom what is needed. Tom stated that a review and certification by an engineer as to the lot's location, construction, etc. needs to be submitted for site plan review. The chair stated that until the application is submitted and a proper hearing scheduled and held, further discussion should be tabled. Donna Tyson reiterated that she would prefer a "softer" surface such as stone. The chair reviewed discussions in Council regarding issuing of citations and penalties and he commended Tony Dydek and Mr. Moccia with trying to handle things without the need for citations.

**Commercial Use** – Discussion then moved to the application by Glen Smyth to operate a retail store on the first floor of the property. The chair asked the applicant to review the type of business planned. It would sell material obtained through his foreclosure business. The retail use is permitted in the NB zone. Mr. Smyth did not know how much traffic would be generated by the proposed business. He feels a certain

amount will be walk up. The chair asked if the foreclosure business was retail. Mr. Smyth stated that it is not and is operated as a separate entity. The chair asked Tom if the use, parking concerns, and other issues such as handicapped access which are related to the proposed operation require a full site plan review. Tom stated that while a permitted use, a change of use from residential to commercial requires a site plan review. Handicapped access to a commercial operation, handicapped parking, proper lighting of the site and parking are all also issues that properly require a full plan and review. Thus it is outside the realm of a minor site plan application. Mr. Smyth inquired as to why he had not been informed of all this back in July. Tony stated that it was mostly his fault in that he was unaware of the residential use history of the site and then the parking lot issue surfaced, etc. Mayor Martin asked if he was allowed to comment even though he needs to recuse himself from any deliberations. To Coleman stated that in his capacity as a board member, that would be unadvisable. Donna feels that it is unfortunate that things have dragged on; but she recalled that even in July there were concerns that needed to be answered by Mr. Moccia and that he had been asked repeatedly to make himself available. She hopes the issues can be quickly resolved and that the board will do whatever is legally possible to "fast track" the issues. Jose asked if they were not presently operating the business. The answer is no, not since they were informed that they could not. Muriel recapped that two separate site plan applications were to be filed. Jose stated that Mr. Smyth's application needed to address the handicapped parking and lighting issues for the business. The availability of a checklist to help the applicants was discussed and it was stated that the previously adopted checklist is now part of all packages.

**529 Main Street, Ice Cream Parlor** – Maureen and Mark Miller, 608 Thomas Avenue, wish to open an "authentic, Victorian style" ice cream parlor in the commercial structure at the above address. The location is currently vacant. It will feature authentic décor. It will feature inside seating; possibly up to six tables. Business hours would mostly be "after dinner" and other hours traditionally not in conflict with traffic generated by the more traditional business hours. They have a target date of March 2005 to open. Muriel asked if off street parking is a requirement for eating establishments especially those that feature seating. The applicants testified that they hoped that existing curb and the Borough lot parking would suffice the needs. The chair asked what the off street parking requirement was for this type of establishment. It is one parking spot for every three seats. The former use of the store was a consignment shop. Tom Coleman stated that unfortunately the matter could not be considered as a minor site plan unless there is testimony that sufficient off street parking is dedicated to the business' use. Again, the applicants stated they hoped to utilize the Borough lot and or Mr. Moccia's lot at 300 Broad. Tom Coleman related that similar issues arose with the restaurant at 517 Howard. Variances for the parking necessitated a full site plan review. This is even more of an issue here since the site has no off street parking. It was reviewed with the applicants that a plan showing the proposed seating was needed. They also need to be prepared to address trash, hours, lighting, etc. Muriel wanted to know if there was parking behind the building in the area entered off Cinnaminson Street. Yes there is but it is not available to the public; as it is for the residents along Broad Street. Mr. Moccia wanted to know if they can use the lot at 300 Broad Street. Tom stated that type of testimony is among the many things that can be considered at the time of the hearing. The applicants stated they would like a letter outlining what they need to do. It was explained that the checklist with the application should answer their questions. The applicant is concerned that every time they come in they are told something different and they want something in writing addressing their specific needs so they need to now what they have to do before the meeting. The mayor asked who they could talk with to get their answers. Muriel stated that the checklist should answer their questions. In answer to the question of why a minor site plan was submitted in the first place, it was determined that it was an accident and that better familiarity with the site would have helped prevent this kind of unfortunate occurrence. The chair asked who determines what type of application if any is needed. Tom stated it is not the clerk's job; it is the professionals such as Tony and others present on Wednesdays. The mayor feels that the ability of going through a walkthrough would be helpful; or at least some form of verbal review. The chair apologized for any confusion created as everyone learns the process. They will not be penalized for the incorrect submission that was the Borough's error to issue it to begin with. The chair reviewed the difference between a minor and regular site plan application. As to Donna's suggestion that there be cut and dry simple way of determining what is needed, Tom stated there are too many nuances to do that. The mayor stated that during some intervening discussion, he believes the Borough's Code Officer would be willing to go over some things after the meeting. It was stated, and it is mentioned on the checklist, that applicants are encouraged to seek professional assistance/representation when preparing and submitting a site plan or subdivision application.

## **OLD BUSINESS**

**Environmental Commission** – There was no report, Christian Hochenberger was absent.

**Redevelopment** – Councilwoman Alls-Moffat reported that members had attended the Cross Acceptance meeting which went well. Council's engineer was also present. The plan is moving forward with only

minor changes so far. The committee will be attending a County meeting later in the month.

**Fence Ordinance Revision** – Donna Tyson reported that the committee has not met since last reported due to scheduling conflicts. The chair, Kerry Brandt, stated he was going to speak with the zoning board's solicitor regarding what role the ARC can play if they are to be part of the fence review process. Councilwoman Alls-Moffat wanted to know why something as simple as a fence ordinance was taking so long. Perhaps if the committee cannot do it someone else should. Donna stated that work is almost finished and she feels good progress has been made on what is and has never been a simple subject to address in the town. The secretary related that Kerry's schedule has been very full and his job and zoning board position have made tremendous claims on his time. Muriel again stated she thinks the process is dragging on too long. Donna asked if the chair might contact Kerry to relay the sense of urgency developing over the project.

**New Development in Cinnaminson Township** – Donna Tyson reported that Cinnaminson Township has had the project's traffic study reviewed by its professionals. Donna wanted to know if the study included the impact on Riverton's streets especially since the developer directs traffic through Riverton to get to the site. She also wants to know if Riverton has access to the information since it does impact the town. She met with the engineer contracted by Cinnaminson Township to review the study. She also met with their traffic engineer. Main Street and Broad Street were considered in the study. The study is predicting 100 additional cars in the area during peak hours. Donna is not certain but feels this study only pertains to Section 1. The area will be considered a C or D level of service. The report did not state what the area is considered now. The developer is appearing before the Cinnaminson Planning Board on 9/28 to review the traffic study. The engineer who did the review will be there with many questions. Donna feels that Borough officials as well as concerned residents of the Borough should appear and make sure the Borough's interests are properly represented. People interested in any of the submissions and studies can obtain them or review them at the Cinnaminson Township offices. She is particularly concerned on the impact on Cedar Street and the park. Donna also is concerned that the study may pre-date operation of the light rail and thus did not consider its impact on traffic flow. Donna feels it directly impacts the Borough's considerations in the business district as well as the redevelopment area. Donna stated she would contact Council's streets and roads committee chair.

## **NEW BUSINESS**

**Fred Hardt, Old Records** – The chair requested the memo and stated he would contact Mr. Hardt regarding the old records.

### **Vouchers and Invoices:**

1. 9/9/2004, Tom Coleman, \$400.00 for attendance at the August meeting.

A motion was made by Jose Talavera, seconded by the mayor, and unanimously approved to pay the item as presented. The secretary will have it signed and submitted for payment.

## PUBLIC COMMENT

The meeting was opened to public comment.

- Gene Bandine, 522B Main Street, has lived in his apartment since 2001 and lived in the area since 1969. He maintains a parking area has existed in the area discussed at 300 Broad Street. He wants to know who can tell Moccia how many vehicles he is allowed to have parked there. As for run-off, he stated water does not run off the property on to the street or neighboring property. There is plenty of lighting from street lights and now the station lights. Did the dance studio when it was present have to address parking issues? If not why now? Let's not get too up tight with everyone. Jose stated that many requirements are new laws and now must be enforced.
- Charles Caruso, 412 Lippincott Avenue, appreciates the board continually re-accessing itself and learning from its mistakes and thinks it is commendable when a professional stands up in public and says it was my error and will work to make the situation work.
- Frank Cioci, 408 Lippincott Avenue, wanted to know if Mr. Moccia kept the property as strictly residential would there still be the issue of the paved lot. The answer is yes, since impervious paving requires coverage and drainage review. Does this apply everywhere? As far as is known, for impervious paving, yes.
- Michael Heine, 206 Carriage House Lane, supports that applicants should seek professional counsel. While he understands the wish to help the applicant he feels it is unfair to the board and its solicitor to offer assistance since they have an obligation to the Borough and what happens if the advice is misinterpreted. It is healthier for everyone concerned if separate representation/assistance is used. As to the Moccia matter, the ordinances are clear and procedural tracks exist to guide the Borough and its officials. The process must be followed. A property owner is free to do what he wants with his property as long as it is not improper. He should not have to come before a board to determine this. If something improper is done, the zoning officer is obligated to notice the property owner of the violation and summons must be filed. This makes it clear to all concerned exactly what is at issue. When a notice is served it should serve to make sure there is no question on either side as to what is at issue. Once that has occurred, if there is a violation, it is up to the court not the board to decide. The board's solicitor should advise on what the procedural tracks are and the duties of everyone. The rules should be followed. Mr. Heine feels that when personal conflicts arise the board member should remove themselves from the dais until the discussion is over.

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

**Meeting adjourned at 9:22 PM.**

**Next meeting is on 10/19/2004 at 7:30 PM in the Borough Hall**

**Tape is on file.**

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