RIVERTON BOROUGH ZONING BOARD
MINUTES
December 15, 2004

Pursuant to the Sunshine Laws and other statutes of the State of New Jersey, the regular meeting of the Riverton Zoning Board of Adjustment was called to order at 7:40 PM by Chairman Kerry Brandt.

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

1. Posting notice of a schedule of all meetings on the official bulletin board in the Borough Office and publication of the schedule in the Burlington County Times on January 26, 2004.
2. Posting notice and publication in the Burlington County Times of this meeting by the applicants.

PRESENT: Kerry Brandt, Edward Smyth, John Trotman, Richard Mood, Ken Mills, Fritz Moorhouse, Alfred DeVece, and Alan Adams.

ABSENT: Bill Brown.

OFFICIALS: Board Solicitor Janet Zoltanski Smith, Councilwoman Muriel Alls-Moffat, Code Enforcement Officer Tony Dydek, Secretary Ken Palmer, Board Engineer Richard Arango, and Board Planner Tamara Lee were present.

MISCELLANEOUS: The chair announced that there were two applications before the board. The continued Cedar Lane Mews application would be heard first. The Shover application would be heard second.

MINUTES: A motion was made by Fred DeVece, seconded by Rick Mood, and unanimously approved to accept the minutes of November 17, 2004 as distributed.

PUBLIC HEARINGS:

APPLICATION BY CEDAR LANE MANOR t/a CEDAR LANE MEWS FOR DEVELOPMENT, SITE PLAN APPROVAL, USE, AND BULK VARIANCES TO CONSTRUCT TOWNHOUSES AT 811-817 CEDAR STREET, BLOCK 1700, LOT 2:

The chair asked the board if personal or business conflicts prevented any member from hearing the application. There were none. The chair and board solicitor asked if there were any additional people that would be testifying for the applicant and needed to be sworn in. There were none and the Janet Smith reminded the applicant and his representatives that they were still under oath. The chair stated that he would like to have a review of application.

Summary and Testimony – Louis A Colaguori, the applicant's attorney reviewed the location of the property, presented a brief overview of the plans and the variances being requested. The use variance(s) would be decided first, followed by the bulk variances and finally the site plan review. At the prior session, the following professionals had been sworn in and provided testimony:

- Dominic Flamini the applicant
- Thomas Scangarello the applicant's planner
- Robert Stout the applicant's engineer
- Walter Croft the applicant's architect
- Alexander Litwornia the applicant's traffic engineer.

Referring to the conceptual plan, Mr. Colaguori reviewed that the applicant plans to construct 16 age restricted, high-end town homes in three units on the property behind the existing apartment complex which is four units with 36 apartments. Access to the town homes would be from both Eighth and Ninth Streets. Density issues have been raised which require a use variance. Parking issues were raised and it was noted that as of 7:00 PM tonight there were 21 vehicles on the site. The applicant maintains that there are more than sufficient spaces for the use. The

property comprises approximately 8.6 acres. Drainage calculations have been done and presented. Testimony was provided to the positive and negative criteria of the application. Federal Law provides for and permits the restrictions surrounding age restricted housing for seniors. Issues regarding the Master Plan raised by the board's planner were addressed and he feels the plan meets the intent and spirit of the plan. He feels the concern over multifamily housing was aimed at the conversion of the existing housing stock to multifamily use. The plan before the board is for new single family attached dwellings. The site supports the construction of the homes. The wetland impact has been reviewed and the plan will meet the current 50 foot setback requirement and there will be no invasion of the wetlands area. If the use is granted, approvals will be obtained for all state requirements.

There is an increase in density. While the Borough's code does not provide a number of units per acre figure, the property is in the R8 zone which requires a minimum lot size of 8,000 square feet for a permitted single family detached home. The board's planner had provided a theoretical calculation that this equaled roughly 5.4 homes per acre. Using that calculation and based on the acreage of the site, it is calculated that constructing the 16 additional homes would result in a density of approximately 6 units per acre or approximately 10% over the calculated figure. Testimony was given that the figure used for the size of the property is the total acreage of the site and not the net developable acreage. It is recognized that due to wetland considerations, some of the site cannot be developed; however, it is felt that calculation based on total acreage is proper and permitted. Mr. Colaguori stated that density limits are to limit the number of people and he went on to provide various ways that density can be calculated. He stated that he feels the proposed new homes plus the number of existing housing units would still result in a density figure that is less than the town as a whole. Board Planner Tamara Lee reminded the board that if new testimony is to be given concerning census data and population density calculations, she feels the board should and she would prefer that the board hear this type of expert planning testimony from the applicant's planner. The chair stated that while the theoretical calculations were an interesting statistic, they are not part of the code. Testimony should stick to the Master Plan. The board cannot rezone and he doesn't feel the board can consider other statistics but must base its decisions on what is provided for in the current code. The chair feels the current code is specific to the type of dwelling permitted and the minimum size of the building lot. The chair feels the application is to develop undeveloped land and that the code requires the land be developable since it states that there will be a minimum lot size for each home. Further he feels the proposed plan far exceeds the density permitted on the undeveloped land. Mr. Colaguori stated that while there may be room to agree to disagree, he feels the Master Plan uses census data to support its goals and therefore census data is permitted to support the application. The figures developed in the Master Plan support the proposed use. State law allows use variances if the use is not permitted and also where density is exceeded. He feels a prima facie case has been presented, that it is a viable project, the project meets a need for age restricted senior housing that is not addressed in the current plan, and that the site is adaptable for the proposed use. The chair asked that perhaps the applicant can better summarize just how the positive and negative criteria have been addressed. Tamara stated that testimony at the last meeting began to address density and that she feels more numbers are still needed. The board is considering two basic variances. Tamara feels that proofs for the possible need for town homes may have been presented; but, that the density issue has still not been addressed. Ed Smyth feels that the existing apartments already create a density issue. Tamara stated that density is not just people. The Master Plan considered more than just people when addressing density. It also included the impact of traffic and the character of the town – whether it should be a dense urban town or quaint little town. The chair feels that since wetlands are not developable, they should not be considered in any density discussion. Tamara stated the ordinance is silent on that issue. It does not base density on net area which excludes land which is not developable. Nor does the ordinance stipulate a "buy right" provision which bases the number of lots on the number that can be built without variances. If a "buy right" calculation was done on the site, many of the existing apartments would not be permitted. The chair asked how then does the board calculate bulk density? Tamara stated that was why she developed her calculation of 5.4 homes per acre based on the R8 district requirement of 8,000 square foot per lot. Theoretically, if a developer came in with a proposal to develop a site, and the application was for single family use, they might base their proposal on such a density calculation. The fact that a fair percentage of the site may not be developable would present a case for bulk variance relief justified on the hardship that the site meets the code requirements except that part of the property is not buildable. Tamara conceives that such a theoretical claim could be substantiated based on the current ordinance. Tamara stated that an applicant has no absolute right to a variance for density but may request it; and she wanted to know how many units they would need to delete from the plan to bring the density more in line with the code's theoretical requirement. While the current code may not require that an applicant bring the density calculation to or below what is allowed; the Master Plan does address the look and

feel of the Borough. If the perceived look and feel of the proposed plan does not meet the goals of the Master Plan, then perhaps the board does have a means to require proof that a variance should be granted. The chair again stated that he feels the board is required to base its decisions based on the codes and Master Plan currently in effect. Tamara concurred that only the planning board has jurisdiction over the Master Plan. Tamara feels the board should consider both variances together. Ken Mills asked again what exactly are the two variances being considered. Tamara stated there are two – the ability to build a type of home other than the permitted single family detached home; and the issue of density. The chair asked if density is based on the code's R8 definition of one home per 8,000 square feet and Tamara stated that is correct; but, that if a use other than single family detached is to be granted, then the density requirement might better be based on the theoretical 5.4 units per acre figure that roughly equates with the R8 requirement.

The chair asked if Tamara might review what the board is allowed to consider and what it is not permitted to consider. The decision should not be based on the number of school aged children or on economic issues. Referencing her 7/14/04 report, Tamara stated that Section 2.2 tried to lay out how the board could review the plan. In that section, points a, b, c, and d represent positive criteria. The application needs to support the purposes of the Municipal Land Use Law. It should advance the local master plan. The site should be well suited to the use. Denial of the use variance will create a substantial hardship. The more of these latter proofs provided, the stronger the case for granting a variance. Against the positive criteria are the negative criteria. Is there any substantial impairment to the master plan or zoning code? Is there a substantial detriment to the public good? Environmental impact can be considered as a public good issue. Tamara feels that there is no public detriment in the classical sense such as odors or hazardous conditions. However, if the board feels that a case for negative impact on the environment can be presented, then that impact can be considered a detriment to the public good. Under enhanced proof, the applicant must provide good reason why the use(s) are not in the ordinance and should be. For the positive criteria, as many proofs as possible should be met. For the negative criteria, all proofs must be met. The chair reviewed that he understands that, for each variance requested, the applicant must satisfy at least one of the positive criteria and must satisfy all the negative criteria. He would like to see if they meet the above requirements for each variance and let the Environmental Commission speak to the environmental impact. Tamara agreed that was a suitable way to address the issues. The chair asked the applicant to proceed along the lines discussed and to try and be as concise as possible. Mr. Colaguori feels the two issues are intertwined and that latitude is needed. Mr. Scangarello stated he wasn't sure he could provide what the board is requesting. He does not feel the board can consider two use variances and needs to know jurisdictionally where they stand. He feels that if the density issue has been met, then the only variance is over the type of dwelling. The chair asked what Janet thought and she said that she would defer to Tamara's opinion that two basic issues of type of home and density exist and that they overlap. She thinks the board should proceed as stated. The chair reviewed that he feels under sections 128.18 (type of dwelling) and 128.20 (bulk lot size) that two separate variances are being requested. Mr. Scangarello feels it is a complicated issue especially if a decision is appealed and he needs a legal opinion on how to proceed. Tamara suggested that the board could hear and decide on the type of use while not making a commitment to the number of units. Granting a use for a type of unit does not guarantee a specific number of units. The chair stated that the minimum lot size code is 8,000 square feet. Tamara replied the board can decide on the use variance and that the decision has absolutely no bearing on whether the plan will work or the number of units will work. The chair stated that he was still confused over the issue since while the code defines lot size, the application is not providing for building lots but for condominiums or town homes on a jointly owned land. Mr. Colaguori reviewed that condominium law states that different standards cannot be set for condominiums and that if a plan meets the density requirements, the law provides for common ownership. The chair asked that if a single lot is being considered, what the impact of the existing apartments is. Testimony was given that perhaps providing the conceptual site plan may be clouding the issue. What is being proposed is to construct an additional 16 units of some form of attached housing on a site where attached housing units already exist. The use variance does not address the specific form of housing or the actual number of units but rather the variance to construct a form of housing not currently permitted under the Borough's code. The proposed plan is what the applicant feels is the best way to proceed but what they hope to come away with is the approval to construct additional attached housing not to exceed 16 units on the site. They are prepared to demonstrate that the proposed site plan is the best way to meet their need providing they are provided the use variance. They understand that the use variance is not an approval of the site plan but provides the ability to proceed with the site plan. Janet asked if the information was going to be provided and that the board could proceed. Tamara reviewed that the applicant had come before the board

requesting a use variance and preliminary and final site plan approval. Most such applications are bifurcated and the use variance is considered separately from the site plan. The board has sort of back tracked and is now considering the use variance without deleting the site plan testimony. To resolve the use issue, Tamara suggests the board move forward and considers the use variance which is to allow the construction of additional attached housing on a site where apartments already exist. The type and number of such units does not have to be part of the variance and can be reserved to being considered during the site plan portion of the application. There was discussion that the application had been presented in the form and manner that the board and planner requested. The chair stated that the efforts of the applicant are not wasted since the board feels it needs to have a good sense of what is planned for the site to properly determine that granting a use variance is warranted. What he wishes now is for testimony to sum up concisely how the necessary proofs have been met. Mr. Scangarello replied that previously and again tonight they feel they have spoken to the positive and negative aspects of the plan which includes:

- the need for age restricted housing in the town
- the issue of environmental sensitivity
- the benefits of providing new housing in the Borough
- the use will meet or enhance the goals and objectives of the Master Plan
- the proposed plan will enhance the neighborhood
- it will decrease the volume of traffic versus other permitted uses
- it encourages walking over vehicle use
- it supports the State Plan.
- there is no substantial impact to traffic and the environment
- the plan maximizes light, air, and open space
- they have met the enhanced quality of proof
- the plan preserves value
- the plan provides for a need not provided for under the current Master Plan or codes of the Borough.

The chair feels it is hard for him to make a decision based on the review provided. He sees two good points: it provides for a form of housing not currently allowed which he feels is needed, and while perhaps not properly considerable as a primary issue, it does provide increased ratables. However, the chair does not feel the issues of environmental impact and density have been addressed. Mr. Scangarello stated that if the board wants him to repeat in detail the prior testimony, he is willing to do so. However, if the density issue continues to be a sticking point he is not willing to proceed without a legal opinion on how it impacts the use issue. Tamara replied that if you are requesting approval for 16 units then the board can properly consider density. If however you are requesting approval of a type of housing then density is not a real issue at this time. Mr. Scangarello replied that they are seeking a use variance for a type of housing and that conceptually they feel they can fit 16 units of same on the site. Tamara stated that while planning boards have the ability to consider conceptual or sketch plans, zoning boards do not have that ability. The chair stated that he just wants it made clear that if the applicant does not wish the board to consider density at this time, then the applicant needs to understand that granting approval for the use has no bearing at all on the determination of how many units will be approved. The site plan review will determine that issue. If the applicant's plans are predicated solely on the approval to construct 16 units, then he runs the risk that may not occur even though a use variance has been granted. Tamara concurred that if the board is not allowed to consider density, a variance is being requested for a type of housing that does not now exist in the ordinance. The board cannot consider bulk issues for a type housing that does not exist without considering density issues. Janet stated that if the applicant is not willing to address density issues at this point then perhaps the board should just move ahead and address whether or not to grant the use variance for the type of housing with numbers to be considered at a later time when the site plan is addressed.

Tamara stated she would guide the board. If the request supports the Municipal Land Use Law, a variance can be considered. If it promotes the goals and objectives of the master Plan that is a plus. The application speaks to the site providing a variety of housing for all age groups and preserving the views and character of the Borough. Tamara feels that the carriage house claim may be stretched given the mass of the proposed units. If the board feels the application not only supports but enhances the Master Plan, then this can be considered a special reason for approving the use.

Ed Smyth stated the Borough is surrounded by town houses. While we may be in an era of housing change and that

change may be needed, he can't conceive of where the proposed units will go. While he feels the prior presentation was good, he feels the proposed construction may not be feasible given the dense growth behind the existing buildings as well as the drop off to the creek. He also feels the proposal does not address the issue of reducing the existing density of the Borough. Tamara commented that the Master Plan is very concerned about traffic and the proposal makes a positive point that age restricted housing would provide less traffic and a different time impact than other forms of housing. As to whether the site is particularly well suited to the proposed use, the board should consider whether the site is isolated and perhaps the use conceived isn't better suited closer to the downtown area. Tamara feels this is a relative issue. If the board feels proximity to the town center is relevant, then this location may be better than say near the golf course or if there are issues that make this site better suited than say right on Broad and Main Streets or behind the NuWay. Mr. Scangarello stated he feels the site is well suited for the planned use and preserves the view. Tamara stated that a helpful example might be locating a cell tower on the highest point of a town. While the location may represent the site being particularly well suited for the planned use, the negative criteria when considered may outweigh the best use criteria. Tamara discussed that the Master Plan and resulting code could have zoned for the apartments and multifamily uses, but did not. Why, because the goal is to decrease density. The Master Plan envisions future development in the Borough as lessening density in all ways and thus a code which encourages apartments and other forms of multifamily use is counter to that goal. That does not preclude however finding that such a use might possibly represent the best suitable use for a particular site given all considerations. If the board can conceive that a use does not substantially impair the plan then it may approve the use. The chair asked about considering developable versus un-developable. Tamara stated that since the code is moot on the subject, it can't consider gross versus net issues when deciding on use. Mr. Scangarello stated that the proposed use is a good thing for the town because it goes to reducing the overall density of the town compared to other uses. The chair stated that permitting only detached single family housing is because it is the least dense use. Tamara restated that density is only one tool that is used to gauge the intensity of a use. Issues such as age restricted use also address that issue and the board can properly consider that a mitigating factor when gauging the impact of allowing a requested use. It was again commented that what is being discussed is whether the requested use is valid. Density is an issue better left to the site plan consideration. Ed Smyth asked Tamara if it would make a difference to her if the applicant came back with a plan for a lower number of units. She replied yes that theoretically since it provided a less dense use than anticipated, it would make a difference to her. Asked by Mr. Scangarello if she feels area covered or number of people is more important, Tamara stated, that personally she prefers a clustered concept which preserves as much usable open space as possible. However, she went on to state that this was only a personal opinion and is not a recommendation to the board in this matter. The chair commented that to him everything is relevant; the environment, people, roads, drainage, etc. and needs to be considered. Personally he feels the type of housing is positive for other reasons already presented; however as it relates to density he has concerns. Mr. Scangarello stated density is only related to units per acre not people. Further if the decision, whatever it may be, is appealed, that distinction would be critical. The chair reiterated that his goal was that if an approval was to be granted, he wishes the applicant to go away with a clear understanding of what may be doable. Mr. Scangarello stated that feels they have demonstrated there is not a substantial detriment based on Tamara's provided calculation of 5.4 units per acre and that there is no distinction between developable and un-developable land. The chair stated that we need to move on. Rick Arango, the board's engineer stated that he feels many of the issues brought up tonight are site plan related issues and are essentially moot if the use variance is not granted. Fritz Moorhouse asked if the applicant was flexible in the number of units. Mr. Scangarello replied he was certain the number was flexible but if the board is basing its decision on density, then he feels the applicant needs a clear understanding of what the board considers density.

Concerning the issue of environmental impact, Tamara said she would defer to the Environmental Commission's report. As to whether the use is inherently beneficial, Mr. Scangarello stated that if compared to the letter of what is normally considered such a distinction, such as a school, hospital, etc., then he was not making such a distinction. However, if only provision for a beneficial type of housing that is not currently provided for is considered then he feels the enhanced proof has been provided. Tamara stated that if a truly inherently beneficial use is being considered, enhanced proof is not required. In this instance however, she feels the enhanced proof is needed. Tamara further stated that if the board believes the Master Plan is truly outdated and there have been substantial changes in the town that warrant the Master Plan being changed, then the board can consider that as a reason for granting a variance. Another example of a valid consideration is where the code does not provide for something because it legally cannot, such as split lot zoning. If a board believes that in a particular instance that split use is

the only truly beneficial use, then it may properly consider a variance in that instance. The chair asked if there had been a substantial change to which Mr. Scangarello replied that it was his professional opinion that the change in the value of the traditional and permitted form of housing in the Borough had outstripped the ability of older citizens to occupy that housing and the change in demographics in the area demonstrated the need for the type of proposed housing which the current code does not provide for. Mr. Scangarello believes they have demonstrated that need.

The chair stated that if the board concurred he wished to allow for further board questions. He then would consider the comments of the Environmental Commission and then hear public comments. The chair stated that given the need to conduct other business including another hearing that he wished to establish a cut off for consideration of the use variance of 10:20 PM if it had not already been concluded. There was no disagreement. There were no further questions from the board and the floor was given to the Environmental Commission. The following commented after being sworn in:

- Michael Robinson, Riverton, NJ, Secretary of the Environmental Commission commented based on three items distributed and entered into evidence as EC #1 – General Remarks, EC #2 – Density and Traffic, and EC#3 – History of Stream Corridor Protection Ordinance Proposal. He also referenced the Commission's booklet on the Pompeston Creek that is available to all. Nothing has addressed the impact of the proposed development on the existing residents of the apartments. Their view and/or access to the creek area will be blocked/restricted. The commission objects to the proposal as imposing too many units which are too high and too close to the creek. The plan will adversely impact the area. The plan will adversely impact four initiatives underway to protect the waterway. Existing laws do not protect the creek and the initiatives under way will provide the protection. Building the units will destroy a natural habitat and restrict access to the area for all citizens. This type of development belongs closer to the center of town. The chair asked speakers to limit their comments to the environmental impact of the plan. Michael feels the issue of density is properly related to the issues. The chair stated that some of those comments are better left to general public comment and asked that speakers for the commission restrict their comments to environmental impact of the proposal. Michael summarized that woods and growth that form a natural barrier to protect the creek will be destroyed. The existing natural view will be destroyed. The board as well as other entities in the Borough is charged with protecting the environment. These are detriments to allowing the plan. Lastly, Michael wanted to know if the board can legally restrict development to age restricted housing. The chair once again asked speakers to adhere to the issue.
- Deborah Grant Lord, President of the Pompeston Creek Watershed Association, spoke to the $250,000grant to develop a Regional Stormwater Management Plan for the creek and that the type of proposed development is the type any such plan will try to discourage. There is already too much impervious coverage in the creek area. There will be undesirable destruction of vegetation that naturally helps protect the creek. The plan does nothing to help preserve the creek or the stream corridor. The creek and corridor are an environmentally sensitive area. The site is specifically unsuited for this development as it applies to the health of the creek. As for possible impact on the general public, the site and the creek sit on the recharge area of the aquifer. Any impact on the quality of the creek can also possibly impact the aquifer and the intake for the water company which is near the mouth of the creek in the Delaware River.
- Barbara Rich, Moorestown, NJ, is a resident of the Pompeston Watershed is concerned about riparian rights. Determining these rights directly impacts on what land is actually owned and can be considered in any calculations. The chair asked the board engineer if this was an issue and he replied that he would research it since it would be a site plan issue. Fred DeVece asked what area the Pompeston Watershed Association oversees. They oversee the four towns that are along the creek.

Public Comment: The hearing was opened to public comment. The chair stated that speakers would be limited to five minutes and that remarks should be restricted to the application and delivered as comments not as establishing a dialog with the applicant or board. Following the public comment the board and applicant would have time to respond. All speakers were sworn in prior to speaking.

- James Aguilar, 1134 Bannard Street, Cinnaminson, NJ, feels the plan will directly affect him the most. He lives near the base of the creek and feels there are new or increased flooding issues. He wants to know if lights, runoff, etc. will impact him.
- Cynthia Pierson, 626 S. Pompess Avenue, Cinnaminson, NJ, feels there has already been an adverse impact on

the creek from runoff connected to the Wall Mart. She hears all the noise from Cinnaminson High School events in their stadium. She feels there is already too much impact and doesn't want any more impact on the wildlife in the creek area.

- Michael Heine, 206 Carriage House Lane, feels the application is simply an application by a developer to make money and all comments otherwise shouldn't detract from that fact. The application must be decided along strict guidelines. He referred to the MUL and proceeded to comment that the land area being developed is not the entire site but is restricted to that area that will be deeded to and under control of any condominium association. He disagrees with Tamara and feels the R8 designation is very clear as to what density is – a single family home on no less than an 8,000 square foot lot. He feels the application is propagating a myth used by developers that age restricted housing will soften the impact on the town, provide tax relief to the property owners in the town, and provide a net increase in ratables. There is ample proof that residential development usually has a net negative impact on the tax burden and the municipal services required to maintain the area exceed the taxes generated. Age restriction is a myth. Older people are having children. This is not the place for this type of development. Define the town's assets and don't give them away.
- Christopher Halt, 400 Linden Avenue and also an Environmental Commission member, commented on the impact of traffic. He referred to the Master Plan's objections to additional multifamily impact as it promotes density. He also referenced the commission's handout exhibit EC#2.
- William Henry Harris, 502 Cinnaminson Street, recalled that the area in question used to be the town dump. Developers on the Palmyra Harbor area had to utilize pilings to form a stable foundation for the homes and feels this site will have similar problems if not properly stabilized. The town already has dwellings that meet the supposed need stated by the applicant and doesn't feel the town needs additional town homes. He doesn't feel the site is viable for the plan. A better location may be along the Delaware, not a small creek.
- Louis Koppenhoefer, 901 Cedar Street, feels the existing apartments have been well maintained and make for good neighbors. Cedar Street is used as a bypass for Main Street and such use has increased with the operation of the light rail line. He only envisions more traffic not less if the development is allowed. He does not see in any way that the use is inherently beneficial. He wonders how a sewer line could be installed along Ninth Street since there is none there now because the land slopes in the wrong direction.
- Bennett Landsman, 909 Cedar Street, commented that he is also a member of the Environmental Commission. He has difficulty imagining how the addition of up to 32 more vehicles will not adversely impact an already deteriorating traffic condition along Cedar Street. People already park on both sides of Cedar Street between 8th and 9th Streets. If any existing slots are removed, that will only worsen the situation. The plan will probably remove an existing path along the creek and he referenced the Master Plan where it encourages the Borough to if necessary acquire land to help preserve open space and public access to it. He is concerned the existing views as well as vegetation and trees will disappear.
- Deborah Lengyel, 400 Linden Street, recalls that the apartments at the location were once envisioned as senior housing. Now children are permitted. If the board approves age restricted housing, what can prevent that from changing? Kerry stated that while occupancy can be restricted, there is no guarantee that the law may not change and outlaw such types of restrictions.
- Ed Gilmore, 103 Main Street, is a councilman and the council representative to the environmental commission. He spoke to the existing flora and fauna along the creek and the impact the plan might have. He stated the owner has presented different ideas before. He feels town homes along 9th Street are not a bad idea; but, feels the plan being presented tries to squeeze too much into the site.

There being no additional comment, the hearing was closed to public comment.

Deliberation and Vote – Janet Smith asked the applicant what they hoped to achieve tonight. Mr. Colaguori replied that they had originally presented a site plan with use and other variances. Upon advice that they should pursue the use variance first they have done so with the intent of obtaining a use variance and to later seek approval of the site plan. The chair inquired as to what they hoped the variance would grant and if they had considered subdivision of the area to be controlled by any association connected with the new homes. Lou replied they had not contemplated subdivision especially as it relates to density issues. Asked what they want, Lou feels they are seeking a use variance for the existing site to construct town homes, or other than single family detached homes, or some form of multifamily structure(s). Granting a use variance allows the pursuit of a site plan approval. The chair asked if the applicant would be comfortable having approval allowing a type of housing but without having any idea as to the number of units that might be allowed. Mr. Scangarello wants to know if approval can be granted

conditioned on satisfaction of environmental concerns and providing that the number of units does not exceed 16. The chair stated he was not comfortable talking numbers until the density issues are resolved. Ken Mills stated he is not comfortable if the type of home is not clear. Lou reiterated that the owner is committed to remaining and maintaining the site; he is committed to the Borough. The chair asked for guidance on what he board needs to consider. The chair doesn't feel that the board can approve multifamily without addressing detriment to the public good and considering density as it includes traffic impact and environmental concerns. Tamara replied that the chair's concerns were one reason she used the theoretical density figure to provide a guideline the board might use to equate the use to the R8 definition. If the board can conceive of a number, whatever it might be, then it might consider granting a variance allowing a number of age restricted homes along with the existing apartments. The chair again stated he wasn't sure considering a number now was good. Mr. Scangarello stated that while the applicant feels 16 is a good number, they aren't sure. They may be prepared to go back and review and possibly have to come back with a lower number. The chair feels there is a danger of insisting that a number be included now since if it as voted down, aside from appealing, the applicant would need to completely re-apply and begin the whole process over. Mr. Colaguori replied that having a use variance without a number implied or granted is okay since that is what the site plan approval process is for. Mr. Flamini stated that he is sensitive to the situation and concerns raised. He is confident the board will make a good decision and he is prepared to live with the chance that any approved site plan may allow a much lower number. He has a big investment in the site and wants to protect it. Ed Smyth wants to move beyond the numbers and asked where the units would go if approved since there is concern with the location currently proposed is not suitable. Ed feels the board needs to know the site will work before a use is granted. Lou replied that the applicant needs to know he has the right to proceed with the planned use before he can finalize the appropriate plans. This follows the accepted process – first obtain the use approval and then develop an approvable site plan. John Trotman inquired that if a use without a number is granted, what determines the number. The chair replied that was part of the site plan review. The chair is concerned if approving for this site is akin to approving it for any site. Tamara stated that the process is always site specific and each must stand on its own merits. John Trotman asked if the number is not stipulated, what the board can do to limit the number later. What grounds are used? Tamara replied that the use doesn't currently exist, therefore everything is a variance. Fritz asked if the use is turned down, they can still come back with another plan. Tamara stated that is correct. The use if granted can also be contingent on approval of a site plan.

The board discussed the proper wording of the motion it wished to consider. Janet stated that based on what she had heard from the members, she thinks the board wishes to consider a:

> "Motion for use variance to permit multifamily, age restricted, side by side condominiums with existing apartments with the number of units to be determined at site plan, contingent to site plan approval."

Fritz Moorhouse motioned that the motion be approved as so stated by the solicitor. Fred DeVece seconded the motion. Mr. Colaguori commented the applicant had no problem with the motion being considered. There being no additional discussion, a poll vote was taken and the motion to grant a use variance was approved by a vote of 5 to 2 as follows:

Mr. Brandt – nay: The applicant has not proved there was no substantial detriment to the public good. He feels there is a substantial impairment of the zone plan.

Mr. Smyth – aye: Understands the chair's objections, but use approval is just words that allow them to proceed with producing an acceptable site plan.

Mr. Trotman – aye: Wishes to commend the applicants, concerned residents, and people concerned with the environment and creek for taking time participate in the process. While sympathizing with the chair's feelings, approval now only permits the applicant to come back with an acceptable site plan that addresses all concerns.

Mr. Mood – aye: This is only the first step which states they may proceed. The specifics will follow in the next steps.

Mr. Mills – nay: The hardships and impacts were not properly addressed. He is concerned if there are safety nets available to stop the project if approved at this stage.

Mr. Moorhouse – aye: Listened to the public and heard their concerns. He too is concerned about the condition of the creek and the impact of development along it. He has listened to the concern over

numbers, but feels there is flexibility in them. Approval allows them to proceed with presentation of a site plan that will justify the final number that is approved. The board retains the final say.

Mr. DeVece – aye: He agrees with Ed, and feels Ed's comments express his feelings on the subject.

Continuance – The chair, board and applicants agreed that it was a good point to break the proceedings and continue them next month. The applicant plans to continue the process and move forward to consider the site plan. Asked if they were wished to seek granting of a continuance or intended to reapply when they were ready to present their site plan, they replied that they wished to continue the current proceedings until next month. They hoped to be ready to proceed at least initially with the site plan. Fritz Moorhouse made a motion seconded by Rick Mood that the hearing be continued at the request of the applicant. There being no further discussion, the question was called and the motion passed unanimously to the effect that:

> Be it resolved by the Zoning Board of Adjustment of the Borough of Riverton, County of Burlington, and State of New Jersey that consideration on the application by Cedar Lane Manor t/a Cedar Lane Mews for development, site plan approval, and all necessary variances to construct townhouses at 811-817 Cedar Street, Block 1700, Lot 2 is continued, applicant having agreed to a continuance for consideration of the matter until the next regular meeting of the Board on January 19, 2005 or thereafter if an additional extension of time is deemed necessary.

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

Following a short recess the board continued with the meeting.

APPLICATION FOR SIDE YARD SETBACK RELIEF FOR CONSTRUCTION OF AN ADDITION ON THE REAR OF THE HOME, BY ANDREW AND KATHLEEN SHOVER, 422 LINDEN AVENUE, BLOCK 701, LOT 12:

Introduction –The chair and solicitor reviewed that all jurisdictional requirements had now been met and the hearing could commence. The applicant Mr. Shover and his architect Walter Croft were sworn in.

Testimony and Board Questions/Comments – The residence is in the R8 district and not within the historic district. There is an existing non conforming side yard set back of approximately five feet and the proposed addition which will follow the lines of the existing structure will not extend any closer to the side yard boundary. It actually will be a little less than the current incursion. The mass and style and lines of the addition will match the existing house except where the lower level is stucco with clapboards above, the addition will be all clapboard. The siding material will be wood not vinyl. An existing one story mudroom will be removed. Asked if they couldn't comply with the setback requirements, it was stated that it will be a hardship and greatly restrict the ability of the addition to meet the needs of the family and match the style and feel of the home if they have to adhere to the required setback. Asked about the proximity of the neighboring home to the side yard line in question, it was stated that there is not impact since the neighbor property is located more than 10 feet away from the common property line. It was also discussed that the home was similar to others in the area and that many had been similarly modified.

Public Comment – The hearing was opened to the public and was closed since there was no comment.

Deliberation and Vote – There was no further deliberation by the board and a motion was made by John Trotman, seconded Rick Mood to grant side yard set back relief on extension of a non conforming building. A poll vote unanimously approved the application by a vote of 7 to 0 as follows:

Mr. Brandt aye: Feels there is no way to adapt the plan to comply with the required setback and there is no detriment to the neighborhood by granting the variance.

Mr. Smyth	aye	Mr. Trotman	aye
Mr. Mood	aye	Mr. Mills	aye
Mr. Moorhouse	aye	Mr. DeVece	aye

OLD BUSINESS
Adoption and Memorialization of Resolutions – There were none.

Fence Committee – The chair reported one meeting had been held and another is scheduled for early January.

Escrow Accounts – The secretary reviewed that he is monitoring the accounts and notifying the applicants when necessary. There are no problems or concerns to report.

CORRESPONDENCE

The secretary and chair reviewed the correspondence.

- 11/24/04, copy of letter from Janet Smith to Lou Colaguori requesting that proposed construction be staked out to allow members to better understand the impact. This was not done. The applicant provided aerial photograph with the new construction overlaid
- 12/3/04, copies of the above mentioned aerial photograph.
- 12/8/04, memo from Treasurer Betty Boyle re; the lack of funds in the current budget for the purchase of books for the board.

NEW BUSINESS

Vouchers and Invoices:

- 12/3/04, Tamara Lee – voucher for $85.00 for work on the Cedar Lane application. Pay from escrow.
- Rick Arango – invoice for $437.60 for work on the Brandenburger application. Pay from escrow.

Fred DeVece moved, Fritz Moorhouse seconded and the vote was unanimous to pay the invoices as presented providing there are sufficient funds in the escrow accounts. The secretary will make sure the invoices are signed and submitted for payment.

Annual Reorganization Meeting in January – It was discussed that the mayor wishes to reappoint existing members if they desired to return. It was stated the board wishes the secretary to return. It was commented that unless business required it, the board professionals did not need to attend.

PUBLIC COMMENT ON GENERAL ZONING ISSUES

The meeting was opened to public comment. There was none and the meeting was closed to public comment.

Meeting adjourned at 11:13 PM.

Next meeting is on 1/19/2005, 7:30 PM at Borough Hall.
Tape is on file.

Kenny C. Palmer, Jr., Secretary
RIVERTON ZONING BOARD