

**RIVERTON BOROUGH ZONING BOARD
MINUTES
July 21, 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 7:30 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, Alan Adams and Bill Brown.

ABSENT: None.

OFFICIALS: Board Solicitor Janet Zoltanski Smith, Councilwoman Muriel Alls-Moffat, Board Engineer Richard Arango, and Board Planner Tamara Lee were present. Secretary Ken Palmer was not present.

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 reviewed a written request from the applicant's attorney requesting a continuance agreed to by the applicant until the August meeting. The chair explained the process to the members and to the public. Fred DeVece made a motion seconded by Fritz Moorhouse 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, use, and bulk variances to construct townhouses at 811-817 Cedar Street, Block 1700, Lot 2 is continued, applicant having requested an extension of time for consideration of the matter until the next regular meeting of the Board on August 18, 2004.

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

HOUSEKEEPING: The chair established a time limit of 10:45PM for the meeting. The hearings would conclude at 10:30PM in order for the board to conduct other required business before the deadline. The Brandenburger application will be first and then the Blanch application. During public comment, comments will be limited to five minutes.

MINUTES: A motion was made by Fritz Moorhouse, seconded by Rick Mood, and unanimously approved to accept the minutes of June 16, 2004 as distributed.

PUBLIC HEARINGS:

APPLICATION FOR SITE PLAN AND SUBDIVISION APPROVAL WITH USE AND OTHER VARIANCES BY BRANDENBURGER/SHERIDAN, INC., FOR THE "SITZLER" PROPERTY MAIN AND CINNAMINSON STREETS, BLOCK 904, LOTS 2&3; BLOCK 905, LOT 6; BLOCK 906, LOT 1

(CONTINUED):

The chair asked the board if personal or business conflicts prevented any member from hearing the application. Due to a business relation with the applicant, John Trotman and Ken Mills recused themselves. Fred DeVece recused himself since he is a notified adjoining property owner. The board's solicitor stated it would be best if the recused members sit in the audience during this portion of the meeting. The chair reviewed that all jurisdictional requirements have been met and the application could be heard.

David Oberlander, attorney for the applicant, noted that there were only six members present to hear the application and raised the concern that additional members should be brought in. The chair stated that following legal review, additional members from the planning board cannot be brought in unless there is a lack of a quorum within the zoning board to conduct the hearing.

The chair briefly 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. In order to maintain continuity, the board desires to hear the entire presentation to know how the site works then separately decide on the various issues. The chair also reviewed the state Municipal Land Use law governing the hearing as well as the role of the Borough's Master Plan and codes. The board cannot make the law but can consider exceptions or variances. He referred to the review provided by the board's planner, Tamara Lee and what needs to be shown in order to grant a use variance. The board cannot consider a current lack of permitted use as a basis for granting a use variance. The members are obligated to vote on whether the applicant has met the burden of proof to justify a change of use for a site. Use variances require five votes rather than a simple majority to approve. The process of hearing testimony, board questions, public comment, deliberation and voting on the topic will be followed during each phase of the hearing. James Brandenburger the applicant, Andrew Ott the applicant's engineer, and Marc Shuster the applicant's planner were sworn in.

Summary and Testimony – The applicant's attorney summarized the application to develop a mixed use project on the plot along Main Street, the rail line and Cinnaminson Street. The commercial development will be along the Main Street and be part of the existing business district. Residential development will be in the Cinnaminson Street residential area. The site had previously been approved for 17 town houses, but never developed. The attorney summarized the uses they feel are being sought.

The applicant presented a short introduction. He reviewed that the original plan for the property did not work and that the plan proposed provides commercial use in the business district along Main Street and retains the residential character along Cinnaminson Street. A full lot in the site has been reserved to address storm water concerns. The plan was developed with input from both professionals and residents of the Borough. He discussed some preliminary revisions which are not presented tonight including providing pedestrian access in place of closing the current through pedestrian access on the site. He presented a picture marked as exhibit A1 of the proposed design for twin homes. The applicants are willing to closely follow recommendations from the ARC as to the final design of the structures. Designs for the commercial buildings are still conceptual and will be heavily based on input from the ARC. It is proposed to construct the commercial space to accommodate up to four commercial units of approximately 1000 square feet each. This could be less if a client needed a larger space. There are plans for four two bedroom apartments over the commercial space of approximately 1,000 square feet each. The applicant proposes to own and lease out the commercial space. The chair reviewed that the intent of allowing apartments over businesses is ancillary to the commercial use and is intended to meet the objectives of fostering small businesses typical of a small town center. The applicant has no problem in limiting the maximum size of the commercial sites to preserve the character of the businesses that might wish to occupy the site.

Mr. Shuster stated his credentials and work in the area. He reviewed the three things he needed to demonstrate. He will demonstrate why the proposed use is a better fit than other uses. Granting the variance will not result in a substantial detriment to the public good with emphasis on the word substantial. The change in use will not result in a substantial impairment to the zone plan in the zoning ordinance, again with emphasis on the word substantial. The site is located in a mixed use area that already contains businesses and residential in close proximity to each other. The commercial development along Main Street will reflect the types of uses currently present while the

residential development on Cinnaminson Street will go along with the residential character of the street. Mr. Shuster feels the proposed uses fit well within the confines of the existing land uses in the area. The proposed detention basin will be located in an area that already serves this purpose and will be enhanced by the proposed development. It is the intent of the applicant to assume responsibility for the maintenance of the catch basin. The apartments are a variance on a conditional use and the proposed development provides no external impact and acts in the manner intended in the code. The design and appearance of the final plan will ensure compatibility with the area. Mr. Shuster gave examples from other developments to support his contentions. The chair asked him to address the impact of high traffic versus low traffic uses. Mr. Shuster submitted that the proposed eight dwelling units would have a minimal impact on traffic compared to a 5,000 square foot commercial development that could be built there and provided details to back up the statement. Thus he feels the residential area meets the goal of lessening traffic impact. He continued to testify why the proposed development will enhance and blend in with the existing uses in the area. He provided testimony as how the plan will not negatively impact the neighborhood. The plan prevents commercial uses impacting the residential area of the site and enhancing the commercial character of the area along Main Street and the detention basin enhances the entire area for everyone. Thus he feels there is no substantial detriment caused by the proposed plan. He testified that the plan does not impair the zone plan. He feels the light rail line has presented a major change in the land use characteristics envisioned in the Master Plan. The chair stated and the board's planner reinforced that the Master Plan rather than ignoring or failing to take into effect changes like the light rail instead encourages changes where they do not substantially effect or change the character except to improve things such as lessening the impact of vehicular traffic. Mr. Shuster maintains that the light rail presents a major change in the character of the area and the Master Plan does not preclude the Borough subsequently considering land use changes in the allowed uses in the area as a result of the change in character. He feels he has met the enhanced burden of proof as to why the current Master Plan did not take into consideration the proposed use of the property. Asked if he would still consider the use appropriate without the presence of the light rail, Mr. Shuster stated he didn't know since he only considered the use with the presence of the light rail system. Asked if he thought the light rail station made the proposed twin homes more appropriate, Mr. Shuster replied "indirectly." He stated there were other reasons why the townhouses are more appropriate for the area. The river line goes to the enhanced burden issue. He maintains the community did not consider the impact of the River Line on land use. Ed Smyth wanted to know if the contention being made was that the light rail has improved conditions or increased the value of property in proximity to the line since he feels the noise near the line and traffic congestion on Main Street from the light rail has done anything but improve conditions. Further discussion resulted in the statement that this is not the primary point of the testimony but only presented to support the proof required. The applicant and his professionals feel the plan meets the goals of the Master Plan by enhancing while preserving the commercial and residential characteristics of the site. Also, the plan meets the goals by fostering economic vitality, providing for adaptive reuse of under utilized properties in the town, and encouraging compatible infill on vacant parcels in the area. Janet Smith stated she felt the board is looking for an explanation as to why the proposed twin homes are more appropriate than single family structures which are permitted in the zone. The chair added that the bulk variances being requested add an additional concern to why the applicant feels twins are needed and that the board cannot consider nor the applicant claim economic hardship as a reason. Mr. Shuster replied that economic suitability is an issue. In the plan rather than the existing homes absorbing the impact of the commercial area, the new homes will bear that impact and that lowers the residential desirability and marketability of the site and thus the type and style of residential construction should reflect the diminished economic conditions present on the lots. Asked about proof, Mr. Shuster offered that in thirty years of experience it has always been a given that residential property adjacent to commercial property is less desirable than residential property adjacent to other residential property. Mr. Shuster believes that contention is self evident.

The chair feels that proof has not been presented that it is not possible to put single family detached residences on the proposed site. A use variance should never be approved because there is a fear that something worse will be proposed. The chair offered that the board needs proof that the site is not suited for the currently permitted use and that if numerous bulk variances are needed for the proposed use, perhaps that proves that the site is not suited for the proposed use. There has been no testimony that detached residences cannot be erected on the parcel proposed as residential construction. The applicant asked for a five minute recess after which Mr. Brandenburger offered that he feels the planner did a good job presenting the applicants case. It was not Mr. Shuster's intention to state that the light rail is integral to the development but rather could be one of many reasons to consider it a viable project and maybe a valid reason for the Borough to consider revisiting the Master Plan concerning properties in the

vicinity of the line. Jim feels that twin homes best fit the both the market potential of the site as well as compliment twin homes that already exist in the vicinity as well as detached homes that are on very narrow lots. To erect detached homes would probably involve bulk variances to match the existing character of lots and homes in the immediate vicinity of the site. The applicant feels if single homes are the only possibility, he cannot develop the site as a split use as proposed. It is not his intention to threaten the community to place an allowed but perhaps undesirable use on the site. He does not want to construct a large single use unit on the sight. He feels the proposed plan does not put an undue burden on the community. He wishes to see the plan done correctly. As such he is requesting a two-month continuance until September to come back and address the board's concerns. He will request the engineer to revise the plans to show the revised proposed location of the commercial structure. Ed Smyth was concerned if the applicant was planning on acquiring additional properties for the development. The answer is no, he plans to purchase the entire "Sitzler" site and proposes to split the uses between commercial and residential use. The chair stated that the board would be happy to act on the request for a continuance but perhaps the applicant would like or be well served to walk away with input from the board and its professionals.

Issues – The board and professionals offered the following:

- Tamara Lee, board planner, offered that previous approvals or plans for the site should not be relied upon since the Master Plan was completely rewritten and the town rezoned subsequent to previous approvals. The Master Plan did consider the possible impact of the light rail and mass transit and to reflect the wide division of opinions on the subject. The orientation of the proposed commercial structure should mirror the existing structures in the area. It is recommended the applicant be familiar with the large streetscape plan proposed for the area. The streetscape along Broad Street and the impact of the catch basin should be addressed. The argument for twin homes as a needed buffer between existing homes is not supported given the current location of the neighborhood business zone and the mix of residences and businesses already present. In small towns the provision of a gradient from residential to business is not always possible and the use of buffers is more suitable. The Master Plan addresses the current stock of multifamily construction and while part of the character of the town it also addresses the impact on traffic and congestion and the desire to lessen that impact with future development/redevelopment. The applicant asked if Tamara feels there should be no residential development and it should be all commercial. Tamara feels commercial uses can be put there and are well suited if broken up into smaller units with adequate provision for and encouragement of pedestrian traffic. The smaller scale of such a plan would be oriented to pedestrians. While appearance is important, the uses are important and smaller establishments are much more suited to the Master Plan's goal of encouraging pedestrian oriented businesses rather than businesses that generate or are dependent on vehicular traffic. The applicant commented that retail is difficult to market currently and the residential portion would help carry the site. If the site is going to rely heavily on vehicular traffic, perhaps a traffic engineer should be prepared to offer testimony given the conditions that currently exist at the location on Main Street.
- Rick Arango, board engineer, referred to his report of July 13, and highlighted the following specific concerns referenced by page and item number:
 - page 4, item 11
 - page 4, item 12
 - page 5, item 9
 - page 7, item 4
 - page 7&8, item 6 (various)
 - page 8, item 7 (access)
 - page 11, item M.1
- Kerry Brandt, has a problem with the twins and is not sure other than economics, which cannot be a consideration, how they can be justified. He is also concerned about the impact of the twins on density, sewerage, schools and traffic. He feels, if town homes are allowed, it will establish a precedent for other properties in the area and impact the intent of the zoning. He is concerned about the maintenance of the detention area and what is to prevent it being sold off for other use and the stormwater control being lost. While traffic is not an issue for the use variance it is an issue for the site plan review and therefore needs to be kept in mind. While the Master Plan encourages use/re-use of underdeveloped property, a use variance cannot be granted just to fill up a property. The board cannot create zoning laws or rezone just to fill up a vacant space. There must be proof that the site can never be used as provided for under the current use plans.

Continuance – The applicant wishes to continue the hearing to the September meeting. Because a change of date is being considered and the change is not yet confirmed, the applicant agreed to a continuance until the August 18th meeting and then the applicant or his representative will then seek a further continuance until the established September meeting date. It was moved, seconded and unanimously approved and resolved 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 of Brandenburger/Sheridan, Inc. for a site plan and subdivision approval with use and bulk variances to develop the above named property in the Neighborhood Business and R4 Districts is continued, applicants having requested an extension of time for consideration of the matter until the next regular meeting of the Board on August 18, 2004.

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

Following a short recess the meeting was reconvened at 9:50PM.

APPLICATION FOR SIDE YARD SETBACK RELIEF FOR CONSTRUCTION OF AN ADDITION ON THE REAR OF THE HOME, BY JOSEPH E. BLANCH, 629 LINDEN AVENUE, BLOCK 1003, LOT 18:

Summary – The applicant desires to construct an addition on the rear of the existing home that will align with the lines of the existing structure. The side yard setback of the existing building is closer than the 10 feet required by the code and the applicant is seeking a bulk variance to allow the new construction to follow the lines of the existing structure. The property is in the R4 district. The chair reviewed that all jurisdictional requirements have been met and the application could be heard. Mr. Joseph E. Blanch IV, the owner, was sworn in.

Testimony and Board Questions – The applicant reviewed that he wishes to remove an existing small shed addition and concrete porch. The shed addition contains a mudroom and powder room. The existing kitchen is too small for the family. The new approximately 18 by 11, one-story addition will contain an expanded kitchen and a new mudroom and powder room. The addition will extend along the existing building line and not extend further into the setback area. While not finalized, the applicant plans that any roof overhangs and gutters will not extend beyond the roof lines of the existing building. When asked if he would assure and agree that no part of the new structure would extend further than the existing house, the applicant agreed to this condition. There were concerns by the board that the addition may exceed the impervious lot coverage requirement. The applicant testified that reusing existing coverage area as well as removing any concrete that is no longer needed at the rear of the addition should bring the total impervious lot coverage under 40 % and within code. The applicant stated that new addition needs to be constructed as planned because of the location of the existing kitchen. He does not feel it will detract from the neighborhood because it is designed to appear to be part of the current structure and not look like an addition. There were no further comments or questions from the board.

Public Comment – The hearing was opened to public comment.

A member of the public not identified on the tape questioned the applicant as to what he was doing to maintain the existing character and appearance of the house in the new addition. The applicant explained his plans.

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

Deliberation and Decision – There were no further questions by the board. Fritz Moorhouse moved the board approve the bulk variance to extend the building along the existing setback line of approximately 6.93' from the property line, that any roof overhangs or gutters extend no further than the existing roof line and that portions of sidewalk be removed to assure the impervious lot coverage does not exceed the 40% maximum in the code. The motion was seconded by Alan Adams and a poll vote of the members approved the application by a vote of 7 to 0 as follows:

Mr. Brandt – aye 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 – The following resolutions were read, reviewed, considered and adopted by the Board:

Resolution 2004-02, Cindi Vee, 204 Broad Street, Block 800, Lot 31 – A motion was made by Fritz Moorhouse and seconded by Rick Mood to adopt and memorialize the resolution as read at the meeting. The resolution was unanimously approved by a poll vote of the members eligible to vote as follows: Mr. Brandt, aye; Mr. Smyth, aye; Mr. Trotman, aye; Mr. Moorhouse, aye; Mr. DeVece, aye; Mr. Adams, aye.

Resolution 2004-03, Kathleen and Barry Grahn, 401 Midway, Block 1300, Lot 10 – A motion was made by John Trotman and seconded by Rick Mood to adopt and memorialize the resolution as read at the meeting. The resolution was unanimously approved by a poll vote of the members eligible to vote as follows: Mr. Smyth, aye; Mr. Trotman, aye; Mr. Moorhouse, aye; Mr. DeVece, aye; Mr. Adams, aye.

Fence Ordinance Review – The chair reported that there had been no new meetings of the committee due to preparing for the site plan applications and business related conflicts. He hopes to resume things as soon as possible, but possibly not until September.

NEW BUSINESS

Vouchers and Invoices:

- Janet Smith, 7/16/04 – invoice for \$1,293.75 for attendance at the June meeting and work on the Vee and Grahn applications. Work on the applications to paid from escrow.
- Janet Smith, 7/16/04 – invoice for \$456.25 for the various professional services for the period 5/6/04 to 7/15/04.

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.

Possible Upcoming Hearings: The chair reviewed the following new applications may be on the agenda for July:

- Cedar Lane Mews – they are scheduled to appear – use variance to erect town homes behind the apartments.
- Omnipoint Communications may request a hearing for a cell tower.

Hearing related issues:

Ed Smyth wanted to know if Council was aware of these major hearings involving use variances and if there should be input from them. Councilwoman Alls-Moffat replied that she reports to Council on the board meetings. Janet Smith stated that when granted use variances can be appealed to Council. The board has to act in a limited legal situation where it considers the application on its merits based on the ordinance. While Council members can attend as members of the public, she is not certain it is advisable for them to comment as Council members since they could be directly involved if the board grants the use variance and it is appealed to Council. Muriel wanted to know if she can take the plans before Council for their review. Janet suggested that Muriel review things with the Borough's solicitor. Janet does not think it is appropriate for the board to seek Council input.

Janet raised the issue of changing the September meeting date since it falls on Rosh Hashanah. Various dates were considered and possibly changing the location. It was decided the date would be moved to the second Tuesday of

September (9/14/2004). Due to September beginning on a Wednesday, this ends up being the day before the normal date for the meeting. This date will be announced to all parties at the August meeting and appropriately noticed as required.

CORRESPONDENCE

The chair reviewed that any correspondence received was related to the applications being/to be considered and should be considered as part of the applicable hearings. Janet stated that correspondence related to the applications should be forwarded to the applicants.

PUBLIC COMMENT ON GENERAL ZONING ISSUES

The meeting was opened to public comment. Comments should be related to general matters and any comments specific to an application need to be reserved until the appropriate time during the hearing and when the applicants are available to hear them.

Bernie O'Reilly, 200 Lippincott Avenue, is concerned the language in the Master Plan is not strong or clear in its intent. She feels it is vague and, absent clear statements, may be an avenue for appeal. She feels the current zoning code is also unclear or does not address the issues at hand. She feels the code and Master Plan are not in agreement. She feels the board needs to communicate these concerns to Council and the concern they are vulnerable to having the Borough's intentions overridden by a developer. She feels they need to be clearly defined. Janet replied that the Master Plan resides within the Planning Board. The chair stated that the board can only follow what exists statutorily and is in the codes of the Borough. Muriel stated she was impressed with the way the zoning board conducts itself and will report the same to Council. The chair feels Birnie's comments are well taken but the board must conduct itself as the existing laws allow. Birnie went on to insist that the way things are now leaves the Borough wide open to challenges. Council has decided not to pursue the grant awarded to rewrite the ordinances. Except for piecemeal efforts, the board's hands are tied. Birnie went on to pursue her argument that things need to change.

Frank Cioci, 408 Lippincott Avenue, wants to know when comment will be allowed on the application. The chair replied that the hearing had not progressed to that point, but it will be allowed and is encouraged when appropriate. Janet Smith added that there is nothing precluding a person directly approaching an applicant and stating their concerns "off the record" and plans to raise them at the hearing and perhaps the applicant would like to be prepared to address them. Frank was concerned the applicant was not hearing the concerns of the board. Janet concluded that the hearing process is not one of trying to ambush the applicant but as the word states a process to present all sides of the issue and come to a legal decision that is welcomed by all sides.

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

Meeting adjourned at 10:45 PM.

Next meeting is on 8/18/2004, 7:30 PM at Borough Hall.

Tape is on file.

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