

**RIVERTON BOROUGH ZONING BOARD
MINUTES
September 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 7:35 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, Board Engineer Richard Arango, and Board Planner Tamara Lee were present. Code Enforcement Officer Tony Dydek was not present. Secretary Ken Palmer was present.

MISCELLANEOUS: The chair announced that former board member John Perry had passed away. The chair recognized John's long and faithful service as a member of the board.

MINUTES: A motion was made by Fred DeVece, seconded by Rick Mood, and unanimously approved to accept the minutes of August 18, 2004 as distributed.

PUBLIC HEARINGS:

APPLICATION FOR SIDE YARD SETBACK RELIEF FOR CONSTRUCTION OF AN ADDITION ON THE REAR OF THE HOME, BY NANCY J GORMAN, 402 SEVENTH STREET, BLOCK 1102, LOT 19:

Alternate Counsel – Janet Smith announced that she needed to step aside because of a possible conflict of interest. She had requested that Tom Coleman solicitor for the planning board and solicitor to the Borough's redevelopment committee step in to hear this matter. There was no objection by the board and Mr. Coleman took over for Janet to assist the board in this hearing.

Continuance – During review of the jurisdictional requirements it was discovered that the property owners within 200 feet had not been properly notified. The notices were not sent by certified mail as required by statute. The notices were mailed in time. All other jurisdictional requirements were met. Tom Coleman informed the board that if it they were satisfied all other requirements had been met; a continuance was in order so the applicant could re-mail the notices. After review with the applicant that she would have to re-notify the property owners a continuance was requested. Fritz Moorhouse made a motion seconded by Fred DeVece that the hearing be continued at the request of the applicant. There being no further discussion, the question was called and the motion passed by a poll vote of 7 ayes and one abstention 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 of Nancy L. Gorman for side yard set back relief for construction of and addition is continued, applicant having requested an extension of time for consideration of the matter until the next regular meeting of the Board on October 20, 2004.

This notice will be posted on the bulletin board and is the only official notice required of the continuation. Tom Coleman stepped down and Janet Smith resumed her position.

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):

Continuance – The secretary reviewed a written request from the applicant's attorney requesting a continuance agreed to by the applicant until the October meeting. Ed Smyth 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 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 October 20, 2004.

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

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 reviewed that all jurisdictional requirements have been met and the application could be heard. The chair established that the hearing would continue until 10:30 PM with 10:45 PM the very latest. Public comment will be limited to five minutes per person.

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. The following were sworn in:

- 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.

Summary and Testimony – Louis A Colaguori, the applicant's attorney stated that he would like each of the

professionals to provide a summary of the application from their perspective in order to develop the flavor of the application for the board. He further requested that while he didn't expect the proceedings to reach the point of public comment, he requested that one of the neighboring property owners be allowed to comment this evening since he would not be present during future sessions. The chair stated he had no problem with that.

The applicant presented a short introduction. He reviewed his long involvement with the site since 1978, his dedication to maintaining a class site, and he stated that regardless of the outcome of the application he and the partnership intended to remain as owners and no changes to the operation would occur.

Mr. Colaguori reviewed the plan to construct 16 age restricted town homes. He reviewed the qualifications of qualifying and retaining the age restricted status. This will benefit the town by restricting impact on the school. In addition it will provide an option for empty nesters who wish to remain in town, but no longer need a larger home. The homes will be constructed on the current site. The wetland impact has been reviewed and there will be no invasion of the wetlands area. There is no provision in the Borough's codes for town homes. Therefore a use variance is being sought for them. Bulk variances will also be considered since there are none for town homes. He feels the planned units are suitable for the site. Traffic and parking will not have a significant impact on the area. A two-car garage is planned for each unit and a driveway will exist for each unit. There will be some impact on the existing parking lots. Ed Smyth asked questions about the age restriction and it was answered that the Master Deed would contain the restrictions. 80% of the residents would need to be 55+ and a census is required every two years. The units will be sold not rented. There are no plans to change the operations of the apartments. They will remain as rental units.

Mr. Stout, after being qualified, testified as to the existing use of the site and how the new construction would fit in with the existing use of the site. The applicant is seeking new DEP approval certification of the wetlands. The units will be approximately 2,000 square feet and contain two-car garages. The stormwater management plans meet all the new codes. There will be a non-public accessible fire lane.

Mr. Croft, after being qualified, reviewed the design considerations. The homes would have a carriage house feel to the design. He reviewed the design considerations. They will have brick exteriors, period garage doors, period exterior lighting and will fall within the 35 foot height limitation. They will contain elevators. The footprint of each unit is approximately 800 square feet. The front façade will face the creek and the entrance and garages will face the other direction.

Mr. Litwornia, after being qualified, reviewed the traffic study conducted and presented a brief review of the conclusions. Ample parking exists for the existing apartment units. The proposed use as age restricted housing of the new units will have the least impact of any other use. While there will be 16 units, the impact will be the same or probably less than the impact of four single family homes on the same site. Currently, there are many unused parking spots. Even with the loss of some of the existing spots, there will still be more than are currently used. The chair asked how many existing spots would be lost. The answer was six. The current Residential Site Improvement Standards (RSIS) calls for 2.5 spots for a home. Four are planned with two in the garage and two in the drive. Studies show that age restricted housing actually uses less. The chair is concerned about the loss of existing parking for the apartment units. It was stated that the small size of the existing apartments does not lend itself to increased parking needs. Mr. Flamini stated that the proposed parking is the same as it was 19 years ago. Janet Smith voiced concern as to the relevancy of the time period used for the traffic study. Mr. Litwornia replied that the study was done when it was thought the applicant would originally appear.

Mr. Scangarella, after being qualified, provided in depth testimony on the use variance. He stated he needs to show why a use variance is justified and that the good outweighs the bad. He reviewed the Master Plan's goals and objectives. He feels the proposed use is compatible with the Borough's small town character and will enhance the Borough. It will be low impact and environmentally sensitive. He cited the Rutgers Extension Service study on the area including the site. It will improve tax ratables and he cited studies that show a single family home has the worst impact on tax ratables versus services provided while offices are the best. Age restricted housing lessens any impact on the school system. He discussed relativities of the Land Use Law as to granting use variances. He discussed density which, while not specifically defined in the Borough's code, equates between 3 and 10 units per

acre depending on the residential zone. He showed that the current apartments equate to approximately 5.5 units per acre and the planned town homes would equate to six units per acre. Thus the proposed density is compatible in character and use with the existing development in the Borough. He introduced as exhibit A-1 an annotated copy of the Borough's zoning map to illustrate his testimony. He discussed the need to create a desirable visual environment. Discussing the requirement to demonstrate that the plan creates a desirable visual environment, case law was cited where a proposed plan improves the existing visual environment. The architect has designed the structures so they are compatible with existing styles. Exhibit A-2 was entered which added landscape concepts to the concept elevation plans. The exhibit showed the front elevation with the many existing trees. The rear elevation showed a berm, trees and landscaping. This exhibit helps show that the plan will create a desirable visual impact. Testimony then moved to the requirement that the good things outweigh the bad. The bad points were listed:

- non compliance with lot size, density and use
- an increase in existing traffic
- impact on environment – there is nothing there now.

The planner contends that it cannot be demonstrated that these points do not substantially outweigh the positive aspects of the plan. Ed Smyth stated that the applicant must demonstrate that the positive points outweigh the bad. The planner stated that the plan gives people in town the ability to stay in town as they downsize; an opportunity not available now. It was contended that perhaps the residents won't walk, it is too far. It was stated that the plan will generate tax dollars above the tax costs in services provided. It will be visually appealing and improve the existing environment. It complies with the goals of the Master Plan. As to COAH requirements, it was noted that the Borough currently satisfies COAH. The planner has talked with COAH and while the new regulations have not been confirmed, the applicant is committed to help the Borough meet any changed requirements. It was stated that the existing apartments could be used as credits towards any revised COAH requirements. Fritz Moorhouse asked about the impact on wastewater treatment. Mr. Stout stated that had not been done yet. Mr. Colaguori stated that they wanted to concentrate on the use issues tonight. All site plan issues will be fully addressed when that portion of the hearing is reached. The planner addressed the issue of usable yard area. There is very little individual area and it will be maintained by the homeowners association. There is a large amount of common area that can be used. Studies have shown that older residents do want to have to maintain a large yard and if they have one would prefer maintenance be performed by someone else. Asked to summarize the positive and negative criteria of the application as per the State law as well as the special reasons, the planner listed:

- the site is well suited to the proposed use
- it creates a higher end of housing than currently exists on the site
- it provides a place to live for people wishing to downsize and remain in the Borough where that opportunity does not currently exist.
- the plan preserves environmental integrity
- the plan limits traffic impact
- it complies with the goals of the Master Plan
- housing quotas under COAH will be met
- the plan minimizes impacts on schools, traffic, and infrastructure.

There are negative criteria but they are not substantial as defined in the Land Use Law and are outweighed by the positive aspects of the plan. Mr. Colaguori again cited the law with emphasis on the term substantial. The board can vary the terms of the ordinance if the substantial requirements are satisfied. Mr. Scangarella stated that he feels the plan meets all the requirements and if not, he requests the board state why and give the applicant the opportunity to address the board's concerns. Mr. Colaguori stated that this concluded the testimony on the use variance. He asked if the Board would consider hearing from the resident Mr. Sauer. The chair stated he intended to comply with that request but wished to hear board questions first followed by comments from the board's professionals.

Board Questions and Professional Comments – The chair asked if there were questions from the board. Fred DeVece asked if the Borough's senior quota had been met. When confirmed that he meant COAH requirements, it was stated that the Borough's plans and efforts regarding affordable housing currently comply with COAH. The chair asked for clarification on the statement concerning how the applicant would help the Borough meet its requirements. Mr. Scangarella replied that the third round of COAH is being finalized. Until the rules and regulations are finalized, all requests for extensions of COAH Certifications are currently frozen. The applicant

intends to assist the Borough in meeting any changed requirements especially if changes result from granting the applicant's application. The chair asked if any of the existing apartments satisfy COAH requirements. At present, the answer is no because none are rent restricted. That could be changed however. The chair feels that if granting the application impacts COAH by increasing the number of COAH units needed, it could be a major negative impact on the Borough. Mr. Scangarella stated that demographics for the Borough have declined over the past 10 to 20 years. The chair stated that these are cyclical in nature and could easily reverse in the coming years. Mr. Colaguori stated that over the past approximately 40 years, the town's population has shown a net decline while the percentage of 65+ has increased and is above average for the County. Ken Mills asked if there was a subdivision plan involved. It was answered that no only a site plan because only the units would be sold and owned fee simple while the land would remain in the hands of the developer/homeowner's association. Lou Colaguori emphasized that there would be no absentee landlord situation. The apartments are not being sold or converted. The plan provides and enhances the multiplicity of use. The chair questioned about subsequent owners. Lou feels that anything memorialized in the resolution and built into the master deed will ensure that these concerns are taken care of. Ken Mills wants to know if there are other options for parking to meet the parking requirements other than a variance. The applicant is willing to accommodate the concerns. History has shown that there has been more than sufficient parking spots for the apartments and the loss proposed would still leave a net surplus; but, the applicant is willing to make sure sufficient spaces exist to meet current and future needs. Rick Arango suggested that the applicant's engineer "ghost" the necessary spaces on the plan and then if the need arises, the Borough has the record to show where they were proposed. Kerry is concerned that the zone is R8 and needs to know why it should be changed. The board cannot rezone and it needs to be convinced as to why it should grant a variance. Mr. Scangarella replied that the apartments are preexisting and can continue as a nonconforming use. It is very possible a case could be made to possibly build more apartments with less of a hurdle to jump as a continuation of a nonconforming use than the proposed plan. The current ordinance defines town homes but does not provide for their use. The proposed units comply with the definition. The apartments are the only garden apartments in town and they comply with the existing definition. There is a need in the Borough for the town home type of unit. They are a recognized building tool to provide age restricted housing for an aging population. Lou believes the people of the town now desire this type of housing. Ed Smyth asked the age of the apartments and was informed that they are approximately 50+ years old. Ed acknowledges that the apartments are grandfathered but as a new use they are not allowed. A question about the standards for the retention basin was answered that the RSIS would apply. There are many issues involved. There are many concerns of the Borough's citizens. Mr. Scangarella feels that apartments were neglected in the zoning plan. The chair disagrees. The Borough, because of its age, is full of nonconforming uses and in the big picture it is not possible to delineate or accommodate every existing use as a separate zone. The simple intermixing of uses often on adjoining properties within an area makes that an impossible task. The zones were delineated based on the predominant characteristics of use in the zone and addressed the stated goals of the Master Plan. Mr. Scangarella feels it is not fair that anything the applicant wishes to do that doesn't involve single family detached homes requires a variance. The chair replied that much of Riverton contains nonconforming uses. The board cannot rezone. Lou stated that the board is not being asked to rezone. It is being asked to recognize that a legitimate variance exists in this instance only. It is not spot zoning and not rezoning; but a request to grant a variance based on the criteria presented. He feels the plan as presented satisfies the needs of the Land Use Law and goals and objectives of the Borough's Master Plan; and as such allows the board to grant a variance. The chair asked if there were comments from the board's professionals. Tamara Lee, the board's planner feels it was an excellent presentation and she thanks the applicants planner for his candor in presenting both the good and bad points in the plan. Tamara would like to go through things point by point. The big issues are two and in her report – density and traffic. Density was a major issue when the Master Plan was written. The town is very densely populated, perhaps too much so. Subsequent development/redevelopment should work to lessen the density not increase it. Traffic is a problem and any future development/redevelopment should work to lessen the impact of traffic and to make the town more pedestrian friendly. Existing multi-family uses are okay, but there should be no more because they will only serve to worsen the density and traffic problems. The proposed density is more than the zone allows and Tamara is not certain how many units would need to be removed to meet the density of the zone. New multi family housing will increase density and traffic in the area and both are specific items the Master Plan recognized needing to be reduced. She does not think the applicant has met the burden of enhanced proof. He has not met demonstrated that if the plan is such a good idea, why isn't it in the ordinance. It is not in the ordinance because multi family housing specifically more of the same was considered to be a detriment to the state of Riverton. These are the two big items why Tamara feels the burden has not been met.

There are other points that have been made that may seem like nit picking, but since they are on the record require a response. She appreciates the architecture and the effort put into the design. However they are not carriage houses. The carriage houses in the town are single family units and the proposed units exceed the mass of existing carriage houses. The chair thanked Tamara for her summary and looks forward to her more detailed response. The chair asked the board's engineer Rick Arango if he had any comments. Rick responded that his were more site engineering related and he preferred to leave planning and use related issues to Tamara.

Public Comment – The chair asked if there was anyone present who would absolutely be unavailable to comment at a future meeting. Frank Cioci is concerned that he has been to two hearings and is concerned the public has not had a chance to speak. There is not a real estate professional present to address what is needed for the Borough. The chair assured him that when the hearings reached the point for public comment, ample opportunity would be provided to address the board as well as the applicants. Neither of the site plan applications is at that point yet. As agreed to at the beginning of the hearing, the floor was opened to allow a statement by William E. Sauer, 903 Cedar Street. He stated that he was the former chair of the zoning board. He was a real estate broker and appraiser. He is familiar with real estate and feels the use is excellent for the site. He has lived in the area since 1958 and feels the apartments as managed by Mr. Flamini's partnership have been great neighbors. He has added to his home several times and feels the proposed use will not detract from the value of his property. He has known the applicant for a long time. He approves of the proposed use, is himself an empty nester, and is interested in owning one of them. He feels the plan is similar to ones in Haddonfield. He thinks the higher-end price of the new units will elevate property values in the area.

Continuance – The chair, board and applicants agreed that it was a good point to break the proceedings and continue them next month. Fritz Moorhouse made a motion seconded by Fred DeVece 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 agreed to a continuance for consideration of the matter until the next regular meeting of the Board on October 20, 2004.

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

Rick Arango asked if would be helpful if he met with the applicant's engineer in the interim. The chair stated that it would be up to the applicant and his professionals if that was warranted. There was no objection from the board.

OLD BUSINESS

Adoption and Memorialization of Resolutions – There were none.

Fence Committee – The chair stated that no additional meetings had been held.

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 reviewed the correspondence.

- 7/26/04, copy of letter to Cindi Vee from Rick Arango regarding submission of the report on proposed lighting that was to be prepared by PSE&G.
- 9/1/04, Rick Arango's review of the Cedar Lane Mews application.
- Letter from the attorney for Brandenburger requesting continuance.
- Announcement from Rutgers University concerning the Fall 2004 Zoning and Planning Course schedule.
- Announcement from the National Business Institute of NJ Land Use seminars.
- Pre-registration for the annual League of Municipalities Conference in November is available through Borough Clerk, Mary Longbottom.
- A question and answer sheet from the State on the impact of the new Smart Growth – Fast Track Law.
- Copies of the Environmental Commission's booklet on the Pompeston Creek.

NEW BUSINESS

Vouchers and Invoices:

- Kenny Palmer – voucher for \$20.00 for copying July 21, 2004 tapes for Brandenburger's attorney. Pay from escrow.
- Rick Arango – invoice for \$2,240.00 for work on the Cedar Lane Mews application. Pay from escrow.
- Rick Arango – invoice for \$2,190.00 for work on the Brandenburger application. Pay from escrow.
- Rick Arango – invoice for \$115.00 for continuing review of plans for the Cindi Vee B&B application. Pay from escrow.

The secretary stated that he continually reviews the escrow accounts with the Borough Treasurer and contacts the applicants as needed to maintain sufficient funds in the accounts. Fritz Moorhouse moved, Rick Mood 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.

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 10:30 PM.

**Next meeting is on 10/20/2004, 7:30 PM at Borough Hall.
Tape is on file.**

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