

**RIVERTON BOROUGH ZONING BOARD
MINUTES
October 19, 2005**

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 23, 2005.
2. Posting notice and publication in the Burlington County Times of this meeting by the applicants.

PRESENT: Kerry Brandt, John Trotman, Edward Smyth, Richard Mood, Ken Mills, Fritz Moorhouse, Fred DeVece, and Bob Hoag.

ABSENT: Bill Brown.

OFFICIALS: Solicitor Janet Smith, Councilwoman Muriel Alls-Moffat, Board Engineer Rick Arango, and Secretary Kenny Palmer were present.

MINUTES: A motion was made by Fritz Moorhouse, seconded by Rick Mood, and unanimously approved to adopt the minutes of September 21, 2005 as distributed.

REORGANIZATION: Prior to the commencement of any hearings, Robert Hoag was sworn in as a new alternate member of the board.

PUBLIC HEARINGS:

APPLICATION BY CEDAR LANE MANOR t/a CEDAR LANE MEWS FOR SUBDIVISION, DEVELOPMENT, SITE PLAN APPROVAL, USE, AND BULK VARIANCES TO CONSTRUCT TWO-FAMILY DWELLINGS AT 811-817 CEDAR STREET, BLOCK 1700, LOT 2 (CONTINUED):

The chair asked the board if personal or business conflicts prevented any member from hearing the application. There were none.

Introduction – Chairman Brandt reviewed the application and reviewed with the members the types of variances he thought were needed to consider granting the application. The chair introduced Louis Colaguori, the applicant's solicitor.

Testimony – Mr. Colaguori provided an overview and discussed the history of the application. This is a continuance of the hearing on the original application which has been substantially modified to take into consideration many of the concerns raised by the board, its professionals and the community during the prior presentations. The applicant has reduced the number of proposed units from 16 town homes to four residences to be built as two two-family detached homes on either end of the current apartment complex. The four residential lots would be subdivided from the existing lot and sold as fee simple lots. It is proposed that the lots would be deed restricted as for age restricted housing and that a homeowners association would be formed to maintain the age restricted covenant and to provide the necessary common services familiar to age restricted developments. The applicant also concedes that all previously granted use variances should be rescinded as they are not applicable to the amended application. The applicants also concede that since they do not have a riparian claim of ownership to the portion of the property along the creek, that the portion of the property that can ever be developed is approximate 4 ½ + acres and not the 8 ½ + acres on the site. Their planner will provide testimony in support that all the criteria including the special criteria for granting a use variance have been met. He will also provide testimony that supports granting the subdivision and the beneficial needs for granting the bulk variances.

The applicant's planner, Thomas J. Scangarello, PP was sworn in. He distributed a hand out entered as Exhibit

10/19/2005-A which provided the talking points regarding his testimony to the use variance. Mr. Scangarello proceeded to review all the positive and negative criteria as well as the special criteria need to support having a use variances granted. Included in his testimony was that the amended plan saves the integrity of an environmentally sensitive area, provides a currently unmet need to the older citizens of the Borough, that the positive criteria greatly outweigh any negative criteria, and the use of twin homes reduces the overall impervious lot coverage. The chair responded that the board must carefully consider the special reasons or criteria and if they are not met, the board legally cannot grant the use variances. The chair feels that while it is a positive that a new identified need is being met, there are negatives issues. The chair discussed his concerns. He feels that subdividing the property rather than preserving the area is making it worse by increasing density in an already dense site. Increasing density is counter to the goals of the Master Plan. Four units will not support a homeowner's association. He doesn't see the special reasons being met. It is less suited to other permitted uses in the R8 district and there are no other twin homes in that area. Finally, the chair feels it impairs current zoning. Mr. Scangarello replied that the plan provides a specific type of housing for a group of people that is not currently provided and has been identified as a need in the town. Based on what currently exists, the plan is an improvement. He feels the site is well suited for the proposed development. It meets the low/no maintenance need for age restricted housing. The chair again stated his concern that the reasons have not been met. The four fee-simple lots proposed are no different than the rest of the town. Mr. Colaguori summarized that they feel they have presented their case and are willing to stand or fall on its merits.

Walter Croft, the applicant's architect was sworn in and provided testimony as to the style and construction of the proposed units met the particular needs more common to age restricted housing. He described that these will be higher end units that will appeal to the targeted client of older empty nesters wanting to down size yet remain in the town and retain the feel of the large older homes they have occupied.

Joseph Raday, the applicant's engineer from Stout Caldwell was sworn in. Mr. Raday provided testimony to support the need for granting the various bulk variances. The decreased front footage on two of the lots allows for the preservation of the foliage buffers and minimizes any encroachment of the building site (property not construction) into the wetlands area. The side yard variances are supported in that more open space is maintained. The rear yard issue does not apply to the new lots, only the existing lots and is minimal in its impact. The parking variance is needed for the apartments and extends an existing non-compliance with the parking requirement of the ordinance. In reviewing the board engineer's report it was noted that there were no outstanding issues. In reviewing the board planner's review, the applicant stated they had no problem with the recommendations regarding stabilizing ground cover in the areas defined in her report.

The COAH requirements and resulting obligations were discussed and the applicant agreed to work within all established regulations to meet its obligation needs. The chair revisited the density issue and the figures were discussed. It was agreed that the density of the new lots was not an issue; however, the increase of density on the remaining apartment lot is a concern. The applicant feels the increase in density is not that great given the existing density. The applicants stated they had concluded their planned testimony and wished to address any concerns or questions from the board. Ed Smyth commented that the issue is hard to follow. He sees as positive the decrease from 16 to 4 units. Ed wanted to know if the applicant was seeking a variance for a valid hardship or that the benefits outweighed the detriments. The answer was the latter since the only hardship is not preexisting but is self imposed by wanting to develop the site. Regarding the pros and cons, Ed cannot see the inherent benefit. The town already has duplexes. It will only benefit eight people given that they will be age restricted. Ed feels there is the need for more convenience than afforded by the site. There were no further questions from the board and Rick Arango, the board's engineer, stated he had no issues from an engineering standpoint.

Public Comment – The hearing was opened to public comment on the application. All speakers were sworn in before commenting.

- Michael Robinson, Six Second Street, spoke as for the Borough's Environmental Commission. He referred to the points in the correspondence previously mailed to the board members and the applicant. Additional copies were provided as needed. Revisions to the plan have made some of the issues moot. Points 1, 2, and 4 of the latest note were discussed. The issue of donation of property along the creek was discussed and it was conceded that the matter was outside the scope of the application. There is concern on the possible intrusion of one of the new lots into the wooded slope.

- Deborah Lord, 551 New Albany Road, Moorestown NJ, is President of the Pompeston Creek Watershed Association and she referenced the plan and the mitigation efforts needed. She is also concerned with the impact of the one lot on the wooded slope area. In answer to Michael’s and Deborah’s comments, Mr. Colaguori conceded that the applicant shared concerns over the environmental impact of the area. The applicant is willing to work with the agencies to help preserve the site and to meet all requirements regarding stabilization of the site and mitigating any impact. The applicant plans to exercise due diligence to avoid damaging the existing shade trees where possible. It is noted that sedimentation in the creek is a concern and the applicant will follow all required, accepted and appropriate steps to not worsen the situation. Ms. Lord feels that the proposed and existing standards do not solve the problem of sedimentation and hopes the applicant is willing to try harder. Mr. Scangarello stated they are willing to work closely with the environmental commission and the watershed association to mitigate and resolve concerns. Asked if the applicant will meet any new requirements being developed, the answer was yes. Concerning the proposed plant legend in the plan and the desire of the commission and association to utilize native species, the applicant requested a listing and they would look into.
- John Shaw, 703 Ninth Street, asked about the new sewers for the units and if the existing residents on the street could tie in. The answer was no since they will be laterals to the existing main. They will utilize injector pumps to force flow to the existing gravity main. The applicant will review all plans with the municipal sewage authority.
- Mike Robinson asked for clarification on certain issues. The applicant is willing to pursue more stringent means than silt fences to control sedimentation during construction. The applicant will endeavor to protect all remaining trees. The homeowners association will probably be the best avenue to pursue compliance with the principles agreed to at this hearing. On working directly with the watershed association, Mr. Colaguori stated it is preferred to work with the local bodies in the Borough and they can bring in whatever experts they wish. Mr. Colaguori thanked Michael and the commission for helping the project to mature especially in trying to address the environmental concerns.

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

Deliberation and Voting – The chair asked if the members had any additional comments or questions. Ed Smyth commented that the applicant had tried to address the concerns raised. Ed asked for clarification of the variances being requested. Lou responded that the “C” bulk variances were being requested as C2 variances since they comply beneficially with the ordinance. The “D” use and density variances not only require the beneficial proofs but the special enhanced quality of proof that it is consistent with the Master Plan. Ed stated he hasn’t been completely sold on those proofs. The chair stated and Janet Smith concurred that the board should consider the “D” variances first and the “C” variances second. Janet stated that the board could consider both “D” variances together since the project cannot go forward without both variances.

Motion 1

Following discussion, a motion was made by Fred DeVece and seconded by Fritz Moorhouse that the former use variance be rescinded and that use variances be granted to permit construction of two two-family detached (or twin) homes as proposed on the plan and as defined in the ordinance; and to grant the density increase for the existing apartments caused by subdividing the four new lots; with such approvals contingent on receiving other approvals as required to complete the development. There being no further discussion, a poll vote of the members hearing the matter approved the motion 5-2 as follows:

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

Kerry commented that he did not think the special reasons had been proved. He concedes the need exists but, the plan does not meet the proofs required. He feels the plan as presented is a detriment to the Master Plan and hurts the zoning ordinance. John Trotman feels it is not a good use in the R8 district. Ed Smyth stated the applicant answered his questions, the existing complex has been well maintained and he feels the environmental concerns are in good hands. Ken Mills feels the applicant has made great strides in addressing the concerns raised. Fritz agreed with Ken.

Motion 2

Following discussion, a motion was made by Fritz Moorhouse and seconded by Rick Mood to approve the subdivision creating the four lots for the construction of age restricted housing as indicated on the plans; contingent that the project complies with all federal requirements to meet age restricted housing; and that deeds are to be submitted to the zoning board for review and approval; and that the applicant comply with all COAH Round Three Growth Share obligations. There being no further discussion, a poll vote of the members hearing the matter approved the motion 6-1 as follows:

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

There were no additional comments on the votes.

Motion 3

The board referred to Tamara’s letter, specifically points 4.2 through 4.6 and related paragraphs in defining the bulk variances needed. It was determined that variances were needed for:

- the 65 front footage on the two lots
- the less than 25 foot side yard aggregate setback for the zone and the zero setback between the attached units
- the rear yard setback for the apartments
- the number of parking spaces required for the apartments
- The extension of the non-conforming compliance with the location of the parking spaces for the apartments per 128-65D(1) and 128-65A of the code.

Ed Smyth motioned and Fritz Moorhouse seconded that bulk variances be granted as enumerated above and per paragraphs 4.2 – 4.6 and related paragraphs of Tamara Lee’s letter of 9/14/2005. There being no further discussion, a poll vote of the members hearing the matter approved the motion 5-2 as follows:

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

Kerry stated that his reasons were along the same lines as stated before. John Trotman stated he felt there were too many variances needed.

Motion 4

Following comment that review by the Architectural Review Commission was not required, a motion was made by Fritz Moorhouse and seconded by Fred DeVece to grant preliminary and final site plan approval contingent on: consulting with the ARC on the plans; obtaining all county and state approvals as required; that the engineers letter be complied with; that Tamara’s letter be complied with; that the final plans be signed off by both the board’s engineer and planner; and that the Environmental Commission submit input to the applicant and board’s engineer. There being no further discussion, a poll vote of the members hearing the matter approved the motion 5-2 as follows:

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

There was no additional comment on the votes.

OLD BUSINESS

Fence Ordinance Review Committee – The secretary reviewed that consideration of the draft ordinance by the planning board was tabled at the last meeting due to time constraints.

Reexamination of the Master Plan and Petitioning COAH for Third Round Certification – The chair discussed that Muriel had distributed a questionnaire from the planning board’s Reexamination of the Master Plan Subcommittee soliciting input from the board members at the previous meeting. Kerry apologized that he had not yet responded. Muriel stated that several members had already replied to her. Kerry distributed copies of the questionnaire to members who had not received one and requested that the members reply either directly to Muriel or to him.

CORRESPONDENCE

- 9/14/05, memo from Michael Robinson of the Environmental Commission requesting the board incorporate the commission’s previous concerns from the attached copy of their letter of May 20, 2005. (Copies distributed to the board.)
- 9/19/05, copy of Tamara Lee’s 9/14/05 review of the latest plans for the Cedar Lane Mews application. (Copies distributed to the board.)
- 10/5/05, copies of 9/21/05 letter from Walter Croft, ARC Chairman to mayor and 10/11//05 response from Mayor Martin concerning ARC’s participation in planning and zoning application matters. (Copies distributed to the board.)
- 10/14/05, copy of 10/13/05 letter from Janet Smith to the board concerning the Cedar Lane Mews application. (Copies mailed directly to the board)

NEW BUSINESS

Vouchers and Invoices:

- 9/28/05, Remington, Vernick & Arango Engineers (9/13/05), \$1,070.00, for Brandenburger/Sheridan application work, July 16 – August 15, 2005. (PAY FROM ESCROW)
- 9/28/05, Remington, Vernick & Arango Engineers (9/13/05), \$140.00, for Cedar Lane Mews application work, July 16 – August 15, 2005. (PAY FROM ESCROW)
- 10/18/05, Remington, Vernick & Arango Engineers (10/13/05), \$260.00, for Cedar Lane Mews application work, August 16 – September 15, 2005. (PAY FROM ESCROW)
- 10/5/05, Tamara Lee (10/3/05), \$340.00, for Cedar Lane Mews application work, 9/1-9/30/05. (PAY FROM ESCROW)

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. The secretary reviewed that he advises the applicants when shortages arise in escrow accounts. To date, accounts have been made current when advised that shortages exist.

Conflict with November Meeting and League of Municipalities Convention: The chair asked if any members had a conflict between attendance at next month’s meeting and the LOM convention. There were none.

Review of Section 128-64 “Off-street Parking – The chair reviewed that there was a request to Council that the section be revised to alleviate businesses having to request variances for parking when there is a permitted change of use at an existing site where parking issues already exist. The request to Council was that portions of the section be repealed. Council has referred the matter to the planning and zoning boards and is seeking input on the matter.

The chair reviewed his preliminary response to the mayor with the board and asked for the members to review the matter and get back to him with any comments. The secretary reviewed that Kerry's letter had been distributed to the planning board. The planning board is also reviewing the matter and their consensus is initially supportive of Kerry's response. The zoning board's preliminary take is also supportive along the lines of the chair's letter.

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 11:30 PM.

Next meeting is scheduled for 11/16/2005, 7:30 PM at Borough Hall.

Tape is on file.

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