

**RIVERTON BOROUGH ZONING BOARD
MINUTES
July 20, 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 7:35 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 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, Alfred DeVece, Alan Adams, and Bill Brown.

ABSENT: None.

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

MINUTES: A motion was made by Fritz Moorhouse, seconded by Rick Mood, and unanimously approved to adopt the minutes of June 15, 2005 as distributed.

HOUSEKEEPING: The chair reviewed several items concerning public comment during the meeting and hearings:

- Interruptions and inappropriate comments would not be permitted.
- During periods of public comment each person would be permitted five minutes during each period of public comment.
- While a person is certainly entitled to be represented by counsel, the chair whenever possible would prefer to hear directly from the speaker. If a person is going to be represented by counsel, the procedure will be for the person to identify him- or herself, announce they are being represented by counsel and then introduce their representative.

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 (CONTINUED):

Continuance – The chair stated that he had received a request dated July 18, from the attorney for the applicant requesting an additional continuance to complete their plans and make sure they were ready to proceed. The chair reviewed the correspondence with the board. To properly address the concerns of the board and environmental commission the scope of the project has changed. Mr. Colaguori stated that the changes will require re-notice and republication which the applicant will do prior to their next appearance. The chair again summarized the ramifications of not granting a continuance. If the board is not willing to grant a further continuance, the chair is prepared to request that the board vote to deny the application rather than having the clock continue to run and risk that the application be approved by default. Ken Mills made a motion seconded by John Trotman that the hearing be continued at the request of the applicant and that the continuance is conditioned upon the applicant re-noticing and republishing prior to appearing. There was no further discussion and the motion was passed by a unanimous vote 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 any and all variances to construct townhouses at 811-817 Cedar Street, Block 1700, Lot 2 is continued, applicant having requested a continuance for consideration of the matter until the next regular meeting of the Board on August 17, 2005.

This notice will be posted on the bulletin board and is the only official notice required of the continuation. The secretary will follow up with the applicant.

APPLICATION BY BRANDENBURGER/SHERIDAN, INC. FOR FINAL SITE PLAN APPROVAL AND ALL RELATED VARIANCES AS NEEDED TO DEVELOP THE FORMER "SITZLER" PROPERTIES ALONG MAIN & 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. John Trotman, Ken Mills and Fred DeVece stated they needed to recuse themselves from the matter. John and Ken have personal and business relationships with the applicant and Fred is an adjoining property owner. They stepped down for the hearing.

Introduction – Chairman Brandt reviewed that the main issues to be discussed were the traffic study and the COAH obligation. Mr. Heine attempted to interject that he represented clients and the chair reminded him that he was out of order and the matter was not yet open to the public.

COAH Obligation – The chair reviewed that the Borough, due to legal considerations, had not provided any definitive guidance on the COAH matter and he presented to the board two possible options as to how the applicant could satisfy the two unit obligation arising from the proposed construction. One option would have the applicant make a payment of \$35,000.00 per COAH unit for a total of \$70,000.00. This payment would be to the Borough which would put the amount into an appropriate escrow account. A second option would be to have the applicant provide the two units somewhere on the site. Without definitive guidance from the town, it is up to the board to arrive at a satisfactory resolution that does not leave the town with an unfunded obligation. Tamara explained that COAH's new retroactive growth share rules will cause the plan to generate a COAH obligation of two units for the Borough. If the developer does not satisfy the obligation, it becomes the responsibility of the Borough to make arrangements to satisfy the obligation. The desired result is to not have an unfunded obligation for the town. The payment of \$35,000.00 per unit is equal to the value of a regional contribution agreement (RCA) which the Borough could then seek to pay to another community as a method of satisfying the obligation. The Borough could also decide to use the funds in another manner to satisfy its obligation. Tamara concluded it is a reasonable number since it has a basis in fact and practice since it represents the current value for a RCA. The other option is to have the developer include the obligation within the residential component of the project. While it is not required for the board to come up with a decision, the Borough is caught in the middle of a dilemma in that it is currently certified under the old COAH rules which did not require meeting this new calculation method and it does not therefore have a currently approved method of meeting the obligation if it is not met by the developer. Because the RCA is a tried and approved method of satisfying a COAH obligation, the proposal therefore is based on current and accepted practices. At the chair's request, Tamara also reviewed the new Development Fee Ordinance requirements. The ordinance is currently approved by the state but contingent on the town making an early submission for third round certification under COAH. If the submission is not made in time, the ordinance will be revoked.

The applicant and Mr. Andrew Ott the applicant's engineer were re-sworn and Mr. David Shropshire a traffic engineer was sworn in and all provided testimony throughout the hearing. Mr. Oberlander, attorney for the applicant reviewed the progress of the application and the approvals granted to date. The applicant hopes to obtain final site plan approval tonight and is prepared to offer testimony that it has satisfied the conditions made at the last approvals. The review before the Architectural Review Committee has been completed and a favorable review obtained. The applicant desires to satisfy the COAH obligation and if the board grants approval, would prefer to make a financial contribution in lieu of providing the units on the site. Since the applicant prefers the financial consideration option, the chair is prepared if the board agrees, to accept this option which would also be in lieu of any obligations under the development fee ordinance. The consensus of the board was that proposed \$70,000.00

payment in lieu of option was acceptable.

Review comments and traffic study – Mr. Oberlander referred to the review letters from Rick Arango and Tamara Lee and wished to respond to them. The development as proposed will generate less traffic than if a pure buy-right commercial development was proposed. Mr. Ott testified point for point as to the issues raised in the review letters. The applicant is in the process of obtaining the necessary easements from NJ Transit for the stormwater hookups. Mr. Shropshire presented his credentials and the board was satisfied as to his being an expert in traffic matters. Mr. Shropshire reviewed the study previously submitted and addressed Rick Arango's comments. There will be no decrease in the levels of service currently in effect. They plan to approach the county to adjust the traffic light timing that should improve existing level of service impacts and make the intersection more efficient. As to the recommendation that the site entrance from Cinnaminson Street be made an entrance only, the applicant feels that may be an unreasonable burden to the success of the project and to the residents of the Borough. In addition one way flow would possibly be an enforcement issue. The chair is concerned that there not be an undue impact on the surrounding residents. The applicant is willing to entertain traffic calming methods. There was agreement that there should be no commercial traffic to and from the site on Cinnaminson Street. All deliveries and trash removal should use Main Street. It was agreed that traffic throughout the Borough is a problem; however, the concerns raised by residents at the prior hearing should be addressed as much as feasibly possible. Mr. Heine again tried to interject his right to cross examine and was again reminded he was out of order and would be recognized at the appropriate time. The chair stated he thought it was fair that a proposal regarding traffic concerns be worked out and then finalized following public comment. The applicant agreed to abide by all traffic signage requirements. The applicant's engineer stated all requirements for final lot plans would be submitted once final approvals firmed them up. The applicant agreed to a raised hump at the Cinnaminson Street entrance to calm traffic. There will a sign on Main Street to please not block the intersection. All deliveries will be restricted to the Main Street entrance. Tamara's concerns regarding lighting were reviewed. The applicant would like to light the site with lights similar to Main Street and with "can" lights along the residential area that provide forward lighting on the parking lot with a minimum of spillage into the residential area. With the Borough lighting existent on the residential portion of Cinnaminson Street, no additional lighting is proposed unless it is required. The applicant agreed to work with Tamara and PSE&G to investigate a historically appropriate lighting that provides the needed lighting with minimal impact on the residential area. The concerns on the lighting will also address concerns of the ARC review. The yard drain on the residential lot will be the responsibility of commercial site and an easement for maintenance will be included if needed and shown on the lot plan. The board had no further questions for Rick or Tamara on their reviews. The ARC review was read for the public's benefit. There were no concerns from the board on the ARC review that had not already been addressed. The applicant is seeking relief from the cultured stone recommendation of the ARC since he is not certain that type may be available and would like leeway in the final choice of stone while agreeing to the need to maintain the desired architectural character. The chair reviewed for the record that the Borough Fire Official had no concerns with the site or plans presented. The applicant stated their testimony was concluded. On the issue of performance bonds all applicable Borough ordinances will be complied with.

Public comment:

The chair asked and received a vote of approval to open the hearing to the public. The chair with Janet's guidance stated that comments will be restricted to five minutes and he requested that discourse be kept civil and that each person be allowed to speak without interruption. For cross examination purposes question(s) may be addressed to professionals, applicants, or board members and at the conclusion of the questions, time would be provided for responses. The chair also encouraged residents to personally speak their mind.

- John Trotman, 404 Seventh Street, stated he favored making the Cinnaminson Street an entrance to the site only. He feels a stop sign is needed at the intersection of 7th and Cinnaminson Streets for crossing Seventh Street to aid in the foot traffic to and from the park. It was commented that if it was local streets only involved, it was a local matter to resolve with only notification of state DOT required.

- Ed Cascarella, 603 Cinnaminson Street, does not want commercial traffic on Cinnaminson Street. He stated that he and another neighbor are represented by Michael Heine attorney at law. Mr. Heine introduced himself and stated he represented. Mr. Heine claims the chair has a close personal relationship with Mr. Brandenburger and should have recused himself from the matter. Mr. Heine took exception with the format of the public comment regarding cross examination by an attorney. Mr. Heine feels the chair is subverting the process regarding cross examination. Mr. Heine asked and received answers from the traffic engineer. Mr. Heine again objected when informed that his time had expired. To the assertion of a personal conflict, the chair stated that in a small town and in his time on the board there is probably no time he has not had at least some social contact with an applicant in town be it during a town sponsored, school related, or otherwise public social occasion. The chair stated he had no personal relationship with the applicant. He does not consider Jim and himself to be close personal friends by the definition of the term and does not consider it necessary to recuse himself. Mr. Heine continued to press the point and the chair stated he was out of order and to please let others speak. As to Mr. Cascarella's concern about deliveries, the chair stated that he intended that all deliveries be it a car, van, or otherwise should be via Main Street and not Cinnaminson. Mr. Oberlander stated he had no problem with Mr. Heine having additional time since he represented multiple clients; but he also understood that it was at the chair's discretion to set reasonable limits. The chair appreciated Mr. Oberlander's offer and stated if time permitted he would try and give additional time to everyone who wished it but would not favor any one individual.
- Donna Tyson, 206 Carriage House Lane, has problems with the traffic survey and commercial traffic delivery. She feels the Kaplan traffic study may not have been taken into consideration. She has concerns about the impact of any one-way restrictions. She feels there is inadequate enforcement of delivery hours and wants them as strongly controlled as possible. She doesn't feel the town can vacate Mattis Lane if it has made improvements and/or if there is no clear evidence who owns it. She feels the applicant should provide gas lights along Cinnaminson Street. The traffic engineer stated that he didn't know if the Kaplan study was part of the study. The applicant agreed that reasonable restrictions on delivery hours were okay. Janet stated that it was a commercial area and therefore subject to commercial noises and not similar to commercial use in a residential area. Councilwoman Alls-Moffat commented on the ordinance on the books concerning deliveries and the action of the recycling operation. If there is an ordinance on the books, the applicant stated they would strive to see if it was properly adhered to. Regarding Mattis Lane, the issue is being addressed. The applicant's engineer testified that the 20 foot buffer planned would allow access to any sewer lines under the lane. The chair stated that while having gas lamps was nice, the issue regarding additional gas lamps may be overly burdening the developer.
- William Henry Harris, 502 Cinnaminson Street, doesn't want the dog watering station adjacent to the war memorial removed. The applicant's engineer was not aware of anything connected with the memorial being removed and was not aware on any encroachments.
- Fred DeVece, adjacent business property owner, stated he thought that the fountain, walk and shrubbery were on the applicant's property and wanted to know, if that was true, was the applicant going to do anything to them. He feels an issue similar to Mattis Lane may develop there. Mr. Brandenburger stated that the brick walkway on his property is going to be demolished and other items if they are not part of memorial and on the site would need to be cleared to provide for the planned pathway and to ensure there is adequate access to the buildings. Janet was asked and confirmed that if there was no easement then it was the applicant's property unless the statutory time period had expired which makes for abandonment and that does not seem to be the case here. Regarding Mattis Lane, that issue is being researched.
- Michael Heine, 206 Carriage House Lane, questioned the right of the Borough to abandon Mattis Lane. He vigorously cross examined the applicant's engineer regarding Mattis Lane. Mr. Ott reviewed that part of what is known to the residents of the town as Mattis Lane is actually outside of the easement area and on the applicant's property because there is a drainage ditch in the easement area. The applicant proposes to properly tie in the street drainage in the area and to relocate the access provided by Mattis Lane to the other side of the site. Mr. Ott feels the proposed plans are an improvement over the current conditions and will better serve the town. Janet questioned why Mr. Heine is bringing this up at this time. When asked, Mr. Oberlander stated he believed a title search had been done.

- Tom Ehrhardt, 410 Thomas Avenue, asked about the grade in the parking lot and if speed bumps are planned in the parking lot. Mr. Ott reviewed the pavement humps planned at the entrances and stated no bumps within the lot were planned.
- Donna Tyson finds the whole issue of Mattis Lane a mystery and stated that the issue has not been brought up before because the town isn't really certain of the ownership of the area in question. It is being researched by the Borough. She questioned Mr. DeVece on his statement as to what was his property line. The chair agreed the issue needs to be properly resolved and is sure it will be. The board has to assume unless proven otherwise that it is presented with accurate facts. If it is later proven otherwise, the board has the right to rescind any variances granted upon misrepresentations. The board needs to move forward based on the issues as presented. He feels that vacating the lane as it exists will be an improvement. Janet mentioned she thinks the situation along Bank Avenue is similar in Riverton and Palmyra where no clear ownership has ever been established.
- Michael Heine feels the applicant has misrepresented his ownership of the properties in question and that any approvals granted are incorrect. He doesn't feel the board has a valid application before it upon which to grant the relief requested. The chair stated the board relies on the opinions of its solicitor. Janet asked if this issue was researched fully. Mr. Oberlander stated as this is a conditioned purchase, some of the ownership concerns may not have received the full attention in that they are more related to closing concerns and the applicant has been more concerned that they can obtain the approvals needed to proceed with the project. Mr. Oberlander stated the existence of Mattis Lane has been known from the start; but that he probably has not referred to the title report for some time. He agreed that if there is an ownership issue, the project especially as it pertains to the planned parking area cannot proceed unless the area is vacated to the property owner. He agrees the board cannot approve something the applicant doesn't have a right to and indeed the applicant won't build until he has the rights needed. Mr. Oberlander stated it is not inappropriate to acquire property rights after the fact. The chair asked Janet if there was a problem with the board proceeding tonight. Janet stated no but it will have to be contingent on the applicant having title to the property. Mr. Oberlander stated that he would hope the board would approve tonight contingent on the issue of Mattis Lane being vacated and the applicant obtaining ownership of the area. If that does not occur, they will come back before the board.

There being no further comments, there was a unanimous voice vote to close the hearing to public comment.

Board Comments and Deliberation and Vote:

The chair summarized where things were. The COAH issue appears to have been resolved with the applicant agreeing to contribute \$35,000.00 per unit or \$70,000.00 towards the resulting obligation. Commercial deliveries to the commercial site will be via the Main Street entrance. A traffic calming hump will be added to the Cinnaminson Street entrance. A sign requesting that the entrance not be blocked will be put up along Main Street. Shorter length lighting fixtures will be compatible with the gas lamps installed on Main Street and other fixtures will follow the recommendations in Tamara Lee's report and agreement from applicant to work with Tamara and PSE&G to come up with a satisfactory solution. The applicant will not be held to the specific stone style mentioned in the ARC review, but the chimney will be stone clad as recommended. All delivery services from businesses on the site will use Main Street. Unless required, the applicant will not add additional lighting on Cinnaminson Street. Final approval will be contingent on the applicant proving the easement does not exist or acquiring title to the property in question. The chair asked if there were any other points from the board members. With the guidance of the solicitor, a motion was made by Alan Adams and seconded by Richard Mood to grant final subdivision approval and final site plan approval with the following conditions:

- the applicant pay \$70,000.00 to the Borough to satisfy the resulting COAH obligation and in turn receive relief from the development fee ordinance,
- all commercial deliveries to and from the site will use the Main Street entrance and not the Cinnaminson Street entrance,
- a traffic calming hump will be added to the Cinnaminson Street entrance,
- signage will be erected on Main Street requesting that traffic waiting for the traffic signal or crossing gates not block the entrance to the property,
- lower height lights will be electric and of a style similar to the gas lamps on Main Street,
- there is compliance with the ARC review except for requiring a specific type of stone for the chimney,
- other site lighting will be in conformance to Tamara Lee's recommendations and the applicant will work with Tamara and PSE&G to come up with suitably styled fixtures,

- no additional lighting will be placed on Cinnaminson Street unless required by other approving agencies,
- a subdivision plat plan for the subdivision will be supplied,
- the recommendations of Rick Arango's letter will be followed except for making the Cinnaminson Street entrance one-way,
- that any public rights to Mattis Lane areas, if they exist, are vacated and an easement for maintenance of any sanitary lines is provided.

There being no further discussion, a poll vote of the members hearing the matter unanimously approved the motion 6 to 0 as follows:

Mr. Brandt	aye	Mr. Smyth	aye
Mr. Mood	aye	Mr. Moorhouse	aye
Mr. Adams	aye	Mr. Brown	aye

Kerry: Added that he had spoken previously why he was in favor of approving the application and had nothing further to add.

APPLICATION FOR FRONT YARD SETBACK RELIEF FOR A NEWLY CONSTRUCTED HOME, BY JAMES AND JANET BRANDENBURGER, 203 THOMAS AVENUE, BLOCK 600, LOT 1.02:

Continuance – Due to the late hour, the chair discussed with the applicants if they might wish to continue the matter until the next meeting. The applicants concurred and requested that the hearing be continued until the next meeting. Fritz Moorhouse motioned and Rick Mood seconded that the hearing be continued at the request of the applicant. There was no further discussion and the motion was passed by poll vote of 7 to 0 as follows:

Mr. Brandt	aye	Mr. Trotman	recused
Mr. Smyth	aye	Mr. Mood	aye
Mr. Mills	recused	Mr. Moorhouse	aye
Mr. DeVece	aye	Mr. Adams	aye
Mr. Brown	aye		

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 James and Janet Brandenburger for Front Yard Setback relief for their home at 203 Thomas Avenue, (Block 600, Lot 1.02) is continued, applicants having requested an extension of time for consideration of the matter until the next regular meeting of the Board on August 17, 2005.

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

OLD BUSINESS

Fence Ordinance Review Committee – The chair reported at Donna Tyson’s request, he had presented the proposed fence ordinance revisions to the planning board. He felt it was fairly well received. There were some concerns about the proposed front-yard fences and plastic fences. The revisions will now be considered by the full planning board and if deemed advisable will be recommended for Council consideration. The planning board may come back to the committee if they have major issues.

Reexamination of the Master Plan – Councilwoman Alls-Moffat reviewed that progress was stalled at present.

CORRESPONDENCE

- 7/13/05 copy to zoning board of a letter to the planning board from Tamara Lee concerning problems and allegations made with the Development Fee Ordinance approval and COAH related issues.

NEW BUSINESS

Tamara's Letter to the Planning Board – The chair distributed copies of the letter concerning COAH and the approval of the Borough's new Development Fee Ordinance. He asked the members to read it and Kerry expressed his support for Tamara. Additional copies were made available for the public if they wanted them. The chair briefly summarized the contents of the letter.

Vouchers and Invoices:

- None were presented.

PUBLIC COMMENT ON GENERAL ZONING ISSUES

The meeting was opened to public comment with a limit of five minutes set.

- James Moffat, 202 Fulton Street inquired why there was a police officer present at the meeting. The chair responded that at previous meetings there had been individual(s) present who had disrupted the meetings. Asked if the person was a member of the New Jersey Bar, the chair declined to further identify anyone. Mr. Moffat thinks it outrageous that the Borough has to pay for police overtime for an officer to be present because an attorney appears not to know how to behave in public.

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

Meeting adjourned at approximately 11:00 PM (actual time was not noted).

Next meeting is scheduled for 8/17/2005, 7:30 PM at Borough Hall.

Tape is on file.

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