

RIVERTON BOROUGH ZONING BOARD
MINUTES
October 18, 2007

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 May 25, 2007.
2. Posting notice and publication in the Burlington County Times of this meeting by the applicants.

ROLL CALL

PRESENT: Kerry Brandt, Edward Smyth, Richard Mood, William Corbi, and Patricia Manzi.

ABSENT: Ken Mills, Alfred DeVece, Craig Greenwood, and Janine Miller.

OFFICIALS: Board solicitor Janet Smith, board planner Tamara Lee, and Secretary Ken Palmer were present.

MINUTES: A motion was made by Ed Smyth, seconded by Bill Corbi, and unanimously approved to adopt the minutes of June 21, 2007 as distributed.

PUBLIC HEARINGS:

Variance Application by Carlos Guzman, PO Box 380, Totowa, NJ 07511, for Waiver or Relief from Ordinances 22-16 and 128-97 (Expiration of Variances) for approved twins on 8th & 9th Streets, Block 1700, Lots 2.01, 2.02, 2.03, and 2.04

The chair introduced the topic and asked the board if personal or business conflicts prevented any member from hearing the application. There were none. Following resolution of questions regarding proof of notice to the property owners it was concluded that all jurisdictional requirements had been met and Janet stated the hearing could proceed. The applicant's attorney Thomas Ehrhardt stated that the applicant and his architect would testify. Mark Guzman and his architect Walter "Hank" Croft were sworn in.

Testimony – The chair reviewed the history of the site plan application filed by the previous owner of the property and the approvals granted including use variances, subdivision, bulk variances, and final site plan approval to erect four semidetached dwellings for age restricted housing. Copies of the prior resolutions regarding the site plan application approvals being considered for variances were distributed to the members for review. Board solicitor Janet Smith added some details. Mr. Ehrhardt summarized the application as seeking relief from the two sunset provisions of the code regarding starting construction within six months of approval of the variances (Section 22-16) and completing construction within two years of the approval (Section 128-97). A minor change to the proposed and approved design of the dwellings is also requested. The applicant desires an additional six months to complete all requirements and conditions of the original approval and at least a one year extension of the completion requirement. The six month tolling had expired prior to the applicant purchasing the property and the delay in beginning construction caused by the issues necessitating this variance application do not permit completing construction by the two year tolling. Janet explained that the board may wish to consider granting extensions prior to any further approvals being considered. The chair stated that he feels that the issue of dates must be definitively established. The applicant agreed to a defined start date and completion date. Janet summarized that before construction can begin, additional research has determined that: the subdivision needs to be re-filed as a major subdivision via map filing instead of the minor subdivision that was filed by deed; and the site plan was never modified per condition of the approval and never signed (perfected). The question of how the COAH requirement was to be satisfied was never resolved.

Janet Smith reviewed her report which stated that case law allows time limits to be set on variances as well as providing for extensions for good cause. The board can and should consider whether due diligence was exercised. Since the only issue is whether to waive the ordinance deadlines and the use variances previously granted are not at issue, the current members can hear this matter and decision can be rendered by a simple majority vote of the members present.

Tamara Lee reviewed her report where she discussed that the subdivision had been incorrectly filed as minor rather than major. Further, an agreement has never been reached on how to satisfy the Borough's Round Three COAH obligation. Tamara feels the board needs to consider why it has taken so long to begin construction, if the applicant has shown due diligence, and if anything has changed in the town's codes or other circumstances that would lead the board to conclude differently than it did during the site plan hearings.

Mr. Guzman testified that he finally closed on the property in August 2006, following protracted negotiations. Part of the delay was due to questions over whether the subdivision was minor or major. Based on the opinion of the board's engineer that it was a minor subdivision the subdivision was filed as such and Mr. Guzman concluded the purchase. Correspondence between Mrs. Smith, Mr. Arango and the attorney for the applicant's bank related to the subdivision questions were entered as exhibits A1 and A2. Mr. Guzman testified that when he purchased the property all he had was proof that there were four building lots and the renderings approved during the site plan approval. It was his opinion that the renderings did not meet the requirement of a design that compliments the town and age restricted needs. He also needed complete working plans before he could begin construction. He initially approached Mr. Croft in the fall of 2006 to see if the plans could be redesigned. Mr. Guzman testified that additionally as owner of the existing apartments he had to devote considerable time and effort to correcting existing deficiencies and maintenance issues. By the time he could devote his full efforts to redesigning the houses, it was winter and the finance market had greatly softened to where he might be unable to obtain the construction financing. In the February-March 2007 time period, Mr. Guzman officially retained Mr. Croft to prepare a full set of construction plans for the redesigned homes. Following numerous revisions and with possible financing in hand he and Mr. Croft approached the Borough zoning and construction officials for permits only to find out that the site plans he was given had never been revised or perfected as conditioned in the approval. Also he discovered that the time period for beginning construction had expired and the time period to complete construction would expire in November 2007. He retained Mr. Ehrhardt to help straighten things out and to seek any extensions, waivers, or additional variances needed to go forth with construction.

As to why it took so long to complete the working plans, Mr. Croft testified that the plans presented during the site plan hearings were testified to as preliminary and that the original applicant felt they were suitable. Mr. Croft stated that he was completely taken by surprise when he learned that Mr. Flamini had sold the property. When Mr. Guzman approached him, he became aware that Mr. Guzman's opinion of what was suitable differed greatly from Mr. Flamini's. Once many questions regarding contractors and other design issues were resolved; preparation of the working plans began in May 2007, and were completed in July. Mr. Croft stated it is not unusual to take several months and revisions until the client and architect were in full agreement and all details are worked out.

Bill Corbi asked if Mr. Guzman had ever been informed that the variances had or may be expiring and the answer was no. Mr. Guzman stated that he was not aware of the six month requirement and he thought the two year time period began when construction started. The chair asked if the attorneys involved with the purchase had ever apprised Mr. Guzman of concerns about the variances or site plans. Mr. Guzman stated that during the purchase the only issue that kept coming up was the subdivision issue and once that was supposedly resolved, the purchase was completed.

Mr. Ehrhardt and Janet discussed the validity of and agreed that consideration of the difficulty in obtaining financing can be considered. Janet was also concerned that the new revisions and cost of the units may price the homes out of the market range of the intended purchasers. Mr. Guzman stated that he feels he and Mr. Croft have come up with a set of plans that will result in a better designed home and within the desired price range of the higher end empty nester wishing to downsize from their existing home, avail themselves of age restricted housing and plans that allow for aging in-place.

The chair reviewed that the site plans need to be perfected, the subdivision properly filed, and the COAH issue resolved. Mr. Guzman testified that he was prepared to satisfy the COAH obligation as suggested by Tamara Lee. He is prepared to make a payment of \$35,000.00 to the Borough for deposit in the proper account as directed. The chair asked the applicant if he was aware that he could either pursue the extensions or choose to reapply. Mr. Guzman stated he wished to pursue the necessary extensions and the minor changes to the design.

There was no additional testimony and no additional questions from the board. The chair asked for a motion to open the matter to the public. Pat Manzi motioned and Rich Mood seconded opening the hearing to public comment. All persons were sworn in before commenting.

- Brian Craig, 711 10th Street, expressed surprise that the applicant as a developer was not aware at closing of the expiration of the variances.

There was no further public comment and Rich Mood motioned and Bill Corbi seconded to close the hearing to public comment.

Deliberation – The chair asked Janet to summarize the issues to be considered and approvals needed. Janet stated that all approvals being requested were decidable by a simple majority of the five members present. She reviewed that to grant approvals and variances the board needs to be convinced that the applicant has shown due diligence in pursuing the matter and that there is no detriment to the town by granting any approvals. The chair stated that the members should also be prepared to state for the record the reasons for their votes. Mr. Ehrhardt summarized his client’s position that he had shown due diligence in both maintaining the existing apartments and in moving forward with the plans to construct the new homes. While granting that errors had been made regarding knowledge of the ordinances, Mr. Ehrhardt feels his client relied on professional opinion and he does not know why the matter of incorrect filing of the subdivision as well as lack of concern or awareness of the expiration provisions of the ordinances were not better flagged by the applicant’s professionals or the title company. He does not feel his client should be penalized for relying on professional opinions. Mr. Guzman stated he feels he has exercised due diligence, acted in a professional matter, and has been present almost every week since he purchased the properties. Ed Smyth asked and received answers concerning the applicant’s professional background. Mr. Ehrhardt would like the board to consider the positives and move forward.

The chair asked Janet to summarize what is needed from the board. Janet suggested that the first thing the board should do is to consider whether an extension of the time is warranted. If the board decides in the affirmative then the timeframes should be set, the conditions needed defined, and lastly the board should consider the modification of the building plans. There were no further questions of the applicant and the chair asked if the board was prepared to consider motions on the matter.

Patricia Manzi motioned that the board approve the extensions contingent on scheduling specific deadlines and Ed Smyth seconded the motion. The chair reviewed from Janet’s and Tamara’s memos what the board should consider in approving or denying this motion and the members should state why they are voting for or against the motion. Mr. Ehrhardt and Mrs. Smith discussed whether the board was properly instructed on the points of the law they were considering and agreement was reached. The motion was approved by a poll vote of 3-2 as follows:

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|------------|-----|-----------|-----|
| Mr. Brandt | nay | Mr. Smyth | aye |
| Mr. Mood | aye | Mr. Corbi | nay |
| Mrs. Manzi | aye | | |

Mr. Brandt feels that due diligence was not exercised, the reasons not fully explained, and that conditions have sufficiently changed in town to warrant that the site plan needs to be re-considered. Mr. Smyth feels while professional shortcomings should not be the final deciding point; the merits of the plan due warrant it proceeding. Mr. Mood feels the applicant was right to rely on professional advice and that he acted appropriately and has proceeded properly to rectify the problems. Mr. Corbi does not feel due diligence was exercised. Mrs. Manzi feels due diligence was exercised.

Janet suggested the board consider setting the timelines and the conditions for approving the site plan. The applicant needs to prepare a final site plan incorporating all comments in the original approving resolution. The subdivision needs to be re-filed as a major subdivision. The site plan needs to be perfected following satisfaction of all contingencies defined in the original resolutions and at this hearing. The COAH obligation needs to be satisfied before the site plan is perfected. All outside agency approvals of plans approved by the board's engineer and planner must be obtained before the plans are consider approved. The need for the applicant to retain a new engineer was discussed. The chair feels that the time frames be reasonable but not open ended. Following discussion on the steps and time needed to permit construction to commence and then complete construction, Kerry Brandt motioned that the board grant an extension of Section 22-16 to April 30, 2008 to begin construction on the four units and that Section 128-97 be extended to have construction completed by January 31, 2009. Rich Mood seconded the motion. There was no further discussion and the motion was approved by a poll vote of 5-0 as follows:

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| Mr. Brandt | aye | Mr. Smyth | aye |
| Mr. Mood | aye | Mr. Corbi | aye |
| Mrs. Manzi | aye | | |

The chair asked the applicant and Mr. Croft to review the design changes and reasons for the changes. Testimony was provided to explain the scope and reasons for the changes. Exhibits showing the old and new renderings of the proposed units were entered as A3 and A4 respectively. Testimony was provided that all agreements regarding grading of the sites would be maintained. Testimony included that the age restricted use was still in effect and that the intent of the changes was to better provide for in-place aging and use by the occupants. Tamara feels the intent of the age restricted use is preserved. The chair stated the changes should be opened to public comment. Pat Manzi motioned and Rich Mood seconded to open the hearing to public comment and there being none, Rich Mood motioned and Ed Smyth seconded to close the hearing to public comment. There being no further comment or questions, Kerry Brandt motioned and Richard Mood seconded that the board approve the amendment to the site plan for the revised footprint and design changes as presented in the revised plan and exhibit. There was no further discussion and the motion was approved by a poll vote of 5-0 as follows:

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|------------|-----|-----------|-----|
| Mr. Brandt | aye | Mr. Smyth | aye |
| Mr. Mood | aye | Mr. Corbi | aye |
| Mrs. Manzi | aye | | |

Mr. Guzman thanked the board and following some discussion about the next steps, the hearing was concluded.

OLD BUSINESS

Planning Board & Council Matters – The secretary reported that the planning board had tabled any action on the Proposed Historic Preservation Changes to Chapter 128-Zoning Code and Sidewalk Signs issues. Councilman Brown was not present to report on Council activities.

Mandatory Education – The secretary briefed the members on the upcoming education sessions that will be conducted by the NJPO at the annual League of Municipalities Conference in Atlantic City in November. Members interested in attending either of the two sessions should notify the secretary and he will coordinate registering them with the NJPO.

CORRESPONDENCE – None current

NEW BUSINESS

Vouchers and Invoices:

- 10/18/07, Janet Zoltanski Smith, \$1,014.00, for services connected with the Guzman application. (To be paid from escrow.)
- 10/18/07, Janet Zoltanski Smith, \$663.00 for professional advice services from July through October.

Richard Mood moved, Patricia Manzi seconded, and the vote was unanimous to pay the invoices as presented. The secretary will make sure they are signed and submitted for payment.

PUBLIC COMMENT ON GENERAL ZONING ISSUES

There were no members of the public present at this portion of the meeting.

Meeting adjourned at 10:30 PM.

Tape is on file.

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