

RIVERTON BOROUGH PLANNING BOARD
MINUTES
July 15, 2008

The Public Session of the Planning Board was called to order at 7:03 PM by Chairman Joseph Katella. Public Notice of this meeting pursuant to the Open Public Meetings Act has been given in the following manner:

1. Posting notice on the official bulletin board in the Borough Office on January 18, 2008.
2. Required Service of notice and publication in the Burlington County Times on January 25, 2008.

PRESENT: Joseph Katella, Muriel Alls-Moffat, Joseph Creighton, Mayor Robert Martin, Councilwoman Suzanne Wells, Mary Lodato, Jeff Myers, and Armand Bianchini.

Also Present: Solicitor Charles Petrone, Planner Tamara Lee, Engineer Mark Malinowski, and Secretary Ken Palmer.

ABSENT: Keith Wenig

PUBLIC HEARINGS

Amended Site Plan by Shoppes of Riverton LLC For Proposed Bank on the Pad Site, Block 1501, Lots 21 & 22

Introduction and Housekeeping: The chair introduced the topic and introduced David Oberlander, counsel for the applicant. The secretary attested that the applicant had properly noticed and that all jurisdictional requirements had been met and the board solicitor concurred that the hearing could proceed. The secretary noted that alternate member Mr. Myers is eligible to vote. The following were sworn in as they intended to offer testimony:

- Applicant James Brandenburger of Shoppes of Riverton LLC
- Joseph F. Coyle, Sr. Vice President, Beneficial Bank
- Jerry W. Childers, Architect with Beneficial Bank
- Andrew Ott, applicant's Engineer

Testimony and Board Questions: Mr. Oberlander reviewed the history of the project including that approval of the concept plans for the pad site were to be revisited when a tenant was secured. The applicant has secured a tenant and they are here tonight to present formal plans for a building to be erected for Beneficial Bank. Mr. Oberlander discussed the approvals and variances being sought. Mr. Coyle was introduced and explained the history of Beneficial's involvement and the desire to construct a new building with drive through facilities. They have received all federal and state approvals to relocate the bank from its present facilities on Main Street. When relocated, the present building will be sold. They do not intend to sell to another bank. Mr. Coyle offered that the site may be well suited as a restaurant. Mr. Childers was introduced and attested to his credentials and work with Beneficial Bank. Exhibits A1-an enlarged colorized plan of the site and A2-an enlarged sheet 1 of the submitted plans were entered and used to illustrate his testimony. Mr. Childers described the site, why it is necessary to reorient the bank from the original concept, why it was imperative to have three drive through lanes, and why locating them at the side was not practical. Mr. Oberlander discussed the variances and encroachment on the adjoining lot. He stated there is no detriment since the lots are operated as a unified center and there was no impact on the public or other uses of the site. Members of the board discussed their concerns with the impact and possible safety concerns of merging traffic from the drive through and vehicles attempting to enter the drive through from the wrong direction. The use of signage and low barriers to discourage incorrect entry and control traffic were presented and discussed. Mr. Childers discussed why the bank feels the proposed traffic flow best utilized the site and existing entrances to the center. No new entrances or changes to existing entrances from the center are planned. The zero rear yard setback was discussed and since the entire site is treated as a unified site, there is no impact or detriment. The need for the three proposed drive through lanes was discussed. Following a lengthy discussion of the proposed traffic flow and control, Board members still had concerns over the planned location and orientation of the drive through lanes and impact on traffic flow on and off the site.

Board engineer Mark Malinowski reviewed his report. Applicant's engineer Mr. Ott discussed the variances needed and why he feels there is no detriment. The slight increase of impervious coverage and the lack of any stormwater impact were discussed. The loss of four parking spaces was discussed and the fact that the entire site still had a surplus of eight spaces above the number required. The loss of one additional spot to ease traffic flow was discussed. The submission requirements were discussed and either were agreed to be supplied or that waivers would be requested. The need for internal traffic flow documentation was not settled. Mr. Ott feels a waiver for traffic flow is warranted. The proposed building plan and design is as presented except for possible façade changes and choices of materials. It was agreed that the previously approved deed restrictions and cross easements may be sufficient to guarantee that the entire three lot site will continue to be treated as a unified site. Mark's comments on page three and four of his report were discussed in detail. Comment one regarding the orientation of the building, the location and design of the drive through lanes and the impact on the site and town was discussed in detail and no complete agreement was reached. It was agreed that internal traffic flow was the concern since the off site impact of the use of the center was previously discussed and covered in the original approvals and subsequent changes mandated by the county. Mr. Ott had no concern with technical comments 2 through 11 and they were agreed to with some subject to possible plan changes. The data requested in comment 12 will be supplied. Comment 13 was agreed to. The change recommended in comment 14 will be made. Comment 15 is to be discussed further. Comment 16 was agreed to. Testimony was offered on comment 17 that minimal general trash will utilize the existing dumpster site. Other trash is stored internally and subject to secured bonded removal. The applicant agreed to resolve the points made about the existing dumpster sites. Comments 18 through 21 were agreed to. Comment 22 dealing with signage will be discussed/resolved as part of the signage package discussion. The chair summarized that details regarding traffic data and lighting are unresolved at this time.

Planner Tamara Lee discussed her report. Tamara stated that while she is more comfortable with the plans following the testimony and review of the engineer's report, she still has concerns. She still feels a traffic expert's testimony that the site is safe is needed. Tamara also has concerns about how the bank and its requirements are being treated as either separate from or part of the entire site. Tamara's outstanding issues were discussed especially concerning the need for landscaping to minimize impact of light from vehicle headlights in the stacking and drive through lanes.

The signage package was discussed. Exhibits A3-A5 were introduced. A3 was a color perspective of the building proposed for the site. The style and proposed materials were discussed as well as how they fit in with the overall character of the site. A4 and A5 were colorized versions of the signage proposals submitted with the plans package. The number, size, and possibly placement of the signs will require variances. The issue of the effectiveness and types of external lighting versus internal lighting of the building signage was not resolved. The applicant would like to come to an agreement on the number, size and placement of signs and reserve decision on the lighting and final design. Various methods of external lighting were discussed as well as the forms of signs. Suzanne Wells feels the large "B" logo emblems are too much. Mr. Coyle stated they would be willing to forgo the "Beneficial" sign on the rear of the building but wants the logo emblems. Branches in Sicklerville, NJ and Port Richmond in Philadelphia were offered as good examples of the building proposed for Riverton. While no specific examples of the possible external lighting were offered, the branch at Broad and High Streets in Burlington was mentioned as close. The applicant and Beneficial stated they are willing to work on the issues. The scale and appropriateness of the design are resolvable issues.

The chair asked if the applicants were hoping for approval tonight and the reply was that they hoped to be "under roof" before winter. Board members concurred they were not prepared to vote on the matter tonight unless the applicant requested a vote. Mr. Coyle stated they would rework the signs. It was agreed that traffic flow and safety issues are restricted to onsite issues. The scale of the building will be resolved. The consensus of the board is they feel they need additional time to digest all that was presented this evening and would like to see the changes discussed before it makes a final decision. Tamara asked if revised plans would be submitted before any decisions. Mr. Petrone stated they have to submit revisions to document the changes already agreed to. The chair stated that it might be best to hear public comment tonight in case there were issues that might impact the decision.

Public Comment: A motion was made by Muriel Alls-Moffat and seconded by Councilwoman Wells to open the hearing to public comment:

- Jeff Mack, 311 Manor Court, is concerned about existing dead trees, drainage issues of the retention basin, and trash issues. He feels existing problems need to be resolved first and is concerned the additional construction will overtax the basin. He is concerned about the impact of lighting and that the existing lights have considerable offsite impact contrary to the original testimony and approvals. He feels the lights that shine on his property should be shielded. The applicant testified no additional lamp posts are planned, only possible minor relocation of fixtures at the front of the site and no changes at the rear along the adjoining properties. The CVS lights are supposed to be dimmed/extinguished after the close of business. This was previously resolved and is now reoccurring. Mr. Mack wants the existing issues resolved before any new approvals are granted.
- Nick Coletti, 309 Manor Court, is concerned about maintenance of the landscaping in the “green space” and basin area. He feels maintenance is lacking and needs better follow up. He is concerned that standing water in the basin may present a health issue with mosquitoes. The mayor asked if perhaps there was a better way to build the basin. Mr. Coletti doesn’t want to hear “it’s to code” answers where the safety of his and other small children are concerned. Mr. Brandenburger was sworn in and testified that some of the issues are of a recent nature. The trees were planted in the fall and relocated from the planned location to accommodate the neighbors. The trees will be replaced as needed and relocated within the sprinkler area. The base of the basin is sand and has been cleaned and replaced once when construction was completed. Maintenance of the basin is and will be ongoing. Asked if there was a better way of constructing the basin, Mr. Ott replied that sand is the best for good drainage. The sand will need to be maintained and replaced as needed on an ongoing basis. The normal maintenance cycle can be up to a few years but may need more frequent maintenance. It is and will be monitored. On the subject of fencing around the basin, it was reviewed that the need for a fence was originally agreed as not being needed or wanted; and, that the matter could be revisited as needed to reevaluate the need.
- Helen Mack, 311 Manor Court, voiced concerns about the drainage of the basin and the fact that significant amounts of water remain even after three days. She is concerned the nature of the basin and presence of frogs, etc. will attract small children and may present a safety issue. The chair expressed concern over maintenance issues and feels they should be revisited.

There being no further comment, Muriel Alls-Moffat motioned and Joseph Creighton seconded to close the hearing to public comment.

Continuation: There being no further discussion or testimony at this point the chair entertained a motion to continue the matter until the next meeting. Muriel Alls-Moffat motioned and Suzanne Wells seconded that the board grant a continuance until the August 19, 2008 meeting. A voice vote was unanimous and the following resolution was passed:

Be it resolved by the Planning Board of the Borough of Riverton, County of Burlington, and State of New Jersey that consideration on the application by Shoppes Of Riverton LLC for amended site plan approval and all related waivers, variances and other approvals as needed to construct a bank building at Block 1501, Lots 21 & 22 is continued, applicant having requested an extension of time for consideration of the matter until the regular meeting of the Board on August 19, 2008.

Minor subdivision application by Kevin & Stacianne Harris, 908 Cedar Street, Block 1600, Lots 10 & 11

Introduction and Housekeeping: The chair introduced the topic and introduced Thomas Ehrhardt, counsel for the applicant. The secretary attested that the applicant had properly noticed and that all jurisdictional requirements had been met and the board solicitor concurred that the hearing could proceed. The applicant was sworn in.

Testimony and Board Questions: Mr. Ehrhardt explained that the applicant was seeking a minor subdivision of the two lots he owns and that the proposed realignment of the adjoining lot line would create two fully conforming lots for frontage and square footage. No new nonconforming issues will be created and the existing

nonconformity on the other side of the existing house is subject to a prior variance and will not be increased or affected by the subdivision. There is an existing deed restriction on the original vacant lot that restricts building a residence on the vacant lot due to its size. Only an appurtenant structure to a residence on another lot can be constructed. The applicant testified he and his family have resided at the location for seven years. With family additions they would like to subdivide the property to better manage their property. The applicant feels that the subdivision is not a detriment to the area since the size of the two lots will be comparable to other lots along Cedar Street in the area. He feels the restriction is no longer applicable since the proposed subdivision creates two conforming lots. He receives a single tax bill for the two lots and realizes a subdivision is required. The restriction was placed on the one lot by the original developer Riverton Acres which no longer exists. Mr. Ehrhardt stated that a legal search could not find any current existence of the developer or its successors. Evidence of the search was offered as exhibit A1. Mr. Petrone stated that the planning board cannot remove a deed restriction even if the grantor no longer exists; only the courts can. Chuck reviewed the rather detailed process to have a deed restriction lifted. If the board was to grant approval it must condition the approval that building on the vacant lot is "at the owners risk" due to the restriction. Mr. Petrone recommends that the restriction be removed prior to a subdivision being granted. Mr. Ehrhardt stated the applicant is aware that the board cannot lift the restriction but feels a variance is warranted in receiving the subdivision since the proposed subdivision removes the cause for the original restriction. Mr. Ehrhardt offered that the applicant wishes to subdivide the property into two fully conforming lots by the current code. The remainder lot does have an existing approved variance from the side yard setback that will not be impacted by the subdivision. Suzanne Wells asked if the board can approve a subdivision even if a restriction exists on the subdivided lot. The answer is yes; however Mr. Petrone feels it is not in the best interest to do so. The chair stated he feels there must be compelling reasons for the board to do so. Tamara Lee offered that except for the restriction the application is essentially "by right." However, the board cannot grant a subdivision that creates an unbuildable lot and the deed restriction makes the lot unbuildable. She suggested that if the board feels it should grant approval, it should condition any approval on the owners having the restriction lifted before the subdivision is finalized. Mr. Harris reviewed that their family has outgrown the need and ability to maintain the large lot, that they wish to create two buildable sites consistent with the surrounding area, and that they had not made a decision to sell the lot and remain in the existing home or to build a new home and sell the existing home. The mayor asked Suzanne if the plans were consistent with possible changes to the zoning code and Suzanne responded they were.

Public Comment: There was no further testimony or questions from the board and a motion was made by Muriel Alls-Moffat and seconded by Joseph Creighton to open the hearing to public comment:

- William J McMahon Sr., 845 Homewood Drive, stated his property abuts the back of their lot and he is concerned about what will be built on the lot and the impact on the trees and impact on his lot.
- Pat McMahon, 845 Homewood Drive, feels the new lot will be a small lot and doesn't want to see new construction like occurred on 8th Street. She feels a rancher is appropriate. It was explained that as long as a building conforms to the bulk requirements and building codes, there is no control over the size or design of the structure. She wants assurances that only a house whose style belongs on the lot is built. Muriel asked if anyone else in the area had restrictions on their property.
- Margaret Strenski, 910 Cedar Street, doesn't know if she has any restrictions and would not object to the subdivision.
- Brad Young, 907 Cedar Street, has no restriction that he is aware of. He has heard that the previous owners received two tax bills and appealed the assessment on the smaller lot because a home could not be erected on it. Muriel stated the proposed lot appears to be a conforming lot and Mary Lodato stated it will be as far as the front footage and square footage are concerned.
- Bennet Landsman, 909 Cedar Street, does not object to the subdivision since it will conform to the current code; but, is concerned about the trees. It was explained that the first trees along the property line are the Borough's and protected and any action on them must be taken before the Shade Tree Commission. The applicant discussed the trees on the property and feels a decent sized structure can be erected with minimal impact on the existing trees.
- Bill Kupper, 910 Cedar Street, stated he is not against the subdivision.
- Mike Fosbenner, 702 10th Street, stated he feels people are more concerned about what might be put on the property than the subdivision itself.

There was no further comment and Muriel Alls-Moffat motioned and Jeff Myers seconded to close the matter to public comment.

Deliberation – The chair summarized that it appears the public is more concerned about what might be erected on the site rather than the subdivision itself. Additionally, if the board grants the subdivision without conditions, it is granting approval to create an unbuildable lot. Mr. Ehrhardt, stated that as he understands the law, the owner of the lot would be building on it at his own risk if the restriction remains and the board can grant the subdivision. There were questions/concerns from the board as to what it can approve. Mr. Petrone stated that the board could grant the subdivision conditioned on the restriction being lifted before the construction can occur. Mary Lodato is concerned that the existence of the restriction could be lost and permits issued with the restriction still in place. The mayor doesn't like the "jagged" side yard line. Suzanne Wells commented that the jagged property line on the Homewood Drive subdivision was the subject of many irregularities on the site and required variances while the application before the board does not. Mary Lodato feels that the subdivision should only be approved if contingent on the deed restriction being removed. Mrs. Harris was sworn in and stated that they were not aware of the restriction on the smaller lot when they purchased the property. Because the proposed subdivision creates two conforming lots, she feels it should be granted. Muriel asked if this is the only restricted lot, why the subdivision shouldn't be permitted if the proposed lot conforms. Chuck Petrone stated that there was no assurance that this was the only restricted lot. The original description of Riverton Acres doesn't describe which current lots are included and it cannot be determined that the lot in question is the only one. Suzanne Wells asked if the board could grant a subdivision conditioned that it was not final until the restriction is lifted. Mr. Petrone was not sure. The chair asked Mr. Petrone if the board could approve the application with conditions so the applicant can move forward to have the deed restriction removed. Mr. Petrone answered affirmatively. Mr. Ehrhardt stated again that he believes the board has the power to grant a variance on the deed restriction. The chair advises against a variance and feels the restriction needs to be lifted to proceed. Suzanne Wells motioned and Muriel Alls-Moffat seconded that the board grant the subdivision application contingent on the deed restriction being removed. There was no further discussion and a poll vote was taken and the motion passed by a vote of 5 to 2 as follows:

Mr. Katella	nay	Mrs. Alls-Moffat	aye
Mr. Creighton	aye	Mr. Martin	nay
Mrs. Wells	aye	Mrs. Lodato	aye
Mr. Myers	aye		

MINUTES: A motion was made by the Suzanne Wells and seconded by Muriel Alls-Moffat to adopt the minutes of the June 17, 2008 regular meeting as distributed. The voice vote was unanimous.

CORRESPONDENCE/ANNOUNCEMENTS

- 1. 6/19/08, Copy of letter from Benjamin Spinelli, Executive Director & Secretary, NJ DCA, NJ State Planning Commission, re: Proposed Repeal and Proposed New Rule for Plan Endorsement of local plans.**

OLD BUSINESS – Due to the late hour, except as reported below, all other old business topics on the agenda were tabled until the next meeting.

COAH Activity – Muriel reported that there is interest in the property at the corner of Bank and Main as a possible COAH approved site. Mr. Moccia has stated he is interested in the town purchasing his apartment building at 204 Main Street and using it for COAH housing. Muriel feels either of these sites would satisfy the new requirement under the current COAH findings. Muriel commented that the Borough still has a 15 unit unmet need. She has asked COAH officials if the Borough satisfies all its needs, can it stop anyone from purchasing a property and converting it to a COAH qualified unit. The answer was no. Muriel also understands the League of Municipalities is preparing to file suit against the most recent proposed COAH rules. She continues to be concerned that the Borough has to spend the funds it has or risk having them taken by COAH and spent for us. Mary Lodato reviewed the advice of the zoning board's attorney Janet Zoltanski Smith on how small group homes must be treated as a single family residence and Chuck Petrone quoted laws that it applies to a maximum of 15 people. The law does provide protections on the types of people, but developmentally disabled are allowed.

Smart Future Grant/Environmental Resource Inventory Study – The project is completed, resolutions prepared and final submissions to the state are in progress.

NEW BUSINESS – No invoices/vouchers presented and no other new business.

PUBLIC COMMENT – The chair noted for the record that there were no members of the public present.

Meeting adjourned at 11:40 PM. (motion by Suzanne Wells, second by the mayor)

Next meeting is on 8/19/2008 at 7:00 pm in the Borough Hall.

Tape is on file.

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