

RIVERTON BOROUGH ZONING BOARD
MINUTES
December 17, 2009

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 7:50 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 21, 2009.
2. Posting notice and publication in the Burlington County Times of this meeting by the applicants.

ROLL CALL

PRESENT: Kerry Brandt, Ken Mills, Craig Greenwood, Deborah Weaver, and Barry Wells. Muriel Alls-Moffat, regular member of the Planning Board was present per law to provide a quorum to hear the BWC Realty Assoc. use variance application.

ABSENT: William Corbi, Joe Della Penna, Charles Veasey, and Robert Kennedy.

OFFICIALS: Solicitor Janet Zoltanski Smith, Planner Tamara Lee, and Secretary Ken Palmer were present.

MINUTES

The chair asked if everyone had received and reviewed the minutes. There was no comment and a motion was made by Ken Mills, seconded by Craig Greenwood, and unanimously approved to adopt the minutes of the November 19, 2009 regular meeting as distributed.

PUBLIC HEARINGS

Variance Application by Diane and Michael Jassmann, 211 Elm Avenue, (Block 501, Lot 19) for bulk variances to construct a kitchen addition and deck on house that is on a nonconforming lot and the addition will exceed permitted impervious coverage.

Testimony: The chair announced the matter and the secretary stated that all jurisdictional requirements have been met. No members needed to recuse themselves from the matter and Janet Smith stated the hearing could proceed. Mr. Jassmann and his architect Walter Croft were sworn in and explained the project and variances needed. Applicant wishes to remove an approximate 10' by 6' mudroom and concrete steps and add an approximate 14' wide by 16' deep kitchen/breakfast room with basement underneath. In addition a slate patio area will be removed and replaced by a 14' wide by 10' deep wood type deck with gravel underneath to promote drainage. The addition will maintain the existing set back of the structure which is 10 feet from the side lot line. However, the eaves of the addition will encroach by 1½ to 2 feet; thus the need for a side yard setback variance. The deck will result in a total impervious cover of approximately 42.9% where 40% is permitted. The deck will maintain the same side yard setback as the house on that side of the property. The lot is nonconforming in that the frontage is 49 feet where 50 feet is required. The applicant feels the application will not impact the neighbors and does not substantially impair the intent and purpose of the zoning code. Mr. Croft clarified that the eaves of the existing structure encroach the side yard setback similarly to the planned addition. Janet explained that the nonconforming lot is not really an issue; but, the side yard setback encroachment and exceeding the allowable lot coverage are issues. In addition the applicant is expanding a nonconforming structure since it also encroaches the side yard setback and the addition will expand that encroachment in a similar manner. The chair asked the applicant to define the hardship(s) that will exist if the plans were restricted to conforming to the code and to explain why there is no impact on the neighbors. There is grass between the planned deck and wheel track drive way and the existing patio does not drain onto the neighbors property. The applicant feels the approximate 2.9% excess in property coverage is minor and not an impact. The size, location, and design of the addition fits in with the existing house and provides the least redesign needed to the existing house. It also provides needed living space. The functional use of the deck would be restricted if made smaller than the planned 14x10 feet. The chair asked if there was additional testimony or questions from the board. There being none the chair requested the hearing be opened to

public comment. Ken Mills motioned and Craig Greenwood seconded to open the hearing for public comment. There was none and Ken Mills motioned and Deborah Weaver seconded to close the hearing to public comment. **Deliberation:** Deb Weaver asked if the side yard encroachment by the eaves needs to be defined. Mr. Croft replied that the eaves would encroach by no more than two feet leaving an eight foot setback. There was no further discussion and Janet was asked to review what was needed to approve the application. Janet suggested that in order to approve the application, the board might grant: a variance to allow construction of a kitchen/breakfast addition where only the eaves of the addition may encroach the side yard setback to within 8 feet of the property line; a variance to allow the construction of a 10x14 foot deck that will result in a maximum impervious lot coverage of 43%; and a variance to expand a nonconforming structure whose eaves encroach the side yard setback. Ken Mills made a motion to approve the application as suggested and Craig Greenwood seconded the motion. The motion was approved by a poll vote of 5 to 0 as follows:

Mr. Brandt aye Mr. Mills aye
Mr. Greenwood aye Mrs. Weaver aye
Mr. Wells aye

Various members commented that variance were minimal, there is no impact on the neighbors and the existing narrowness of the lot contributed to the encroachment.

Use variance application by BWC Realty Associates, 100 Park Avenue, for 613-615 Main Street, block 906, lot 4 in NB zone, to subdivide the former Post Office property at 613-615 Main Street and erect townhomes and rehabilitate the existing building for permitted use(s).

Housekeeping: Mr. Brandt stated that he would have to recuse himself from this hearing. This would leave only four members to hear a use variance where five votes are required to approve use variances. Attempts to have any of the missing zoning board members come in were unsuccessful. Board counsel Janet Smith and counsel for the applicant David Oberlander had conferred and agreed that the law permits securing the services of a regular public member of the planning board to provide the minimum number of members to hear an application. Muriel Alls-Moffat, the most senior regular member of the planning board was contacted and agreed to be a substitute member of the board for the purpose of allowing the hearing to proceed. Muriel attested that she had been briefed on the application, understood the application and concept drawing, and professional reviews provided the members and could provide an impartial consideration of the application. Mrs. Smith and Mr. Oberlander had no objections to allowing Muriel to sit on the hearing. Chairman Brandt thanked Muriel for coming in on such short notice and assisting the board. Mr. Brandt stepped down and turned the meeting over to Ken Mills.

Introductions: Ken Mills introduced the application as stated above, thanked Muriel for agreeing to provide a quorum to hear the matter, and introduced Mr. Oberlander. The secretary attested that all jurisdictional matters had been met and Janet stated the hearing could proceed. Mr. Oberlander stated that the applicant was aware that a unanimous vote of all five members was needed to approve the application for a use variance and wished to proceed rather than seek a continuance as permitted. Mr. Oberlander introduced the following who would were applicants or their professionals who would provide testimony and asked that they be sworn in:

- Jim Brandenburger, principal of BWC Realty and a developer
- Michelle M. Taylor, PP of Taylor Design Group
- Joseph R. Hirsh, PE of Environmental Resolutions, Inc.
- Dr. Paul G. Gena, a principal of BWC Realty

Janet swore in the above.

Testimony: Mr. Oberlander reviewed that the application was to:

- Preserve the currently vacant former post office building,
- Rehabilitate the building for permitted commercial uses in the NB district,
- Subdivide the property to permit construction of 4 single family townhome residences as two semidetached structures on Cinnaminson Street,
- Preserve and improve the existing mixed use character of the area with primarily commercial use along Main Street and residential use on Cinnaminson Street,

- If the entire site is maintained as all NB use, the property will probably remain vacant for a prolonged period of time and very may likely result in the structure being expanded to better utilize the site as allowed in the zone or perhaps demolished and replaced by a structure more suited to fully utilize the uses permitted in the NB zone,
- Provide the economic means to preserve the area and allow the needed rehabilitation of the post office building,
- The entire approximately 30,000 sq. ft. site is currently zoned as NB and the use variance(s) will permit the site to be subdivided to permit residential use on Cinnaminson Street,
- Applicant is only seeking the use variance(s) that will allow the project to proceed and they understand the requirement and intend to submit all required full site plan and subdivision applications for approval.

Janet stated that the board needs to understand and should consider the impact of the substantial bulk variances that will be needed to allow approval of any site plans and subdivisions in its consideration of the merits of granting the use variance(s). Mr. Oberlander stated that he agrees in principal with the statement and that while only the use variance(s) are being requested at this hearing, the board will certainly consider the impact of bulk variances in considering the merits of the site plan and subdivision applications. These topics should be addressed in the testimony.

Jim Brandenburger was asked to present the application. Jim explained that the existing building built during the depression as a WPA project is essentially sound but requires extensive rehabilitation to preserve the structure, upgrade the mechanicals, and permit the current habitable areas to be utilized for a use permitted in the NB zone. The basement currently houses the mechanicals, is used for storage, and will not be converted to Class A space. As a point of interest, there is still about 10 ton of coal in the basement used for the original coal fired heating plant since replaced. Jim referred to a photo board, entered and marked as exhibit A-1, of eight photographs to review the existing mixed but primarily commercial nature of Main Street near the site and the residential use on Cinnaminson Street. By subdividing the rear of the site, which was the parking/loading area for the post office, it allows the construction of residences which will preserve the residential use and zoning of most of Cinnaminson Street. Also the economic proceeds from the residential construction will provide the needed capital to rehabilitate the existing building. Jim feels the proposed plan make sense and best fits in with current development in the area and is similar to the development he did for Riverton Square. Jim distributed and referred to a revised concept plan labeled Concept plan #8, entered and marked as exhibit A-2, to explain the layout of the subdivision of the site. The revised concept plan shows the access to parking for the current building being from Cinnaminson Street via a 20 foot right of way along the southern side of the site. The original concept plan had proposed access from Main Street but had been changed due to concerns from the neighboring property owner as well as the possibility of not being able to obtain approval from the county since Main Street is a county road. The remaining 100 feet of frontage on Cinnaminson Street would be subdivided into four 25 foot wide by 100 foot deep residential lots on which four single family residence townhomes erected as two semidetached structures would be built. The proposed townhomes will be in character with the new townhomes constructed as part of the Riverton Square project as well as match the characteristics of the mix of existing single family detached and semidetached homes along the street. Jim feels that except for the bulk variances needed for the subdivision and construction of the proposed residential buildings, no additional variances are required and are similar to the variances considered and granted for the other recent townhomes. Jim distributed an 8x10 photograph, entered and marked as exhibit A-3 to show the existing homes across Cinnaminson Street from the rear of the site and explain how the proposed subdivision would further enhance the residential character of the street. Janet Smith interjected that she felt it important that all the exhibits be retained by the board and Dave Oberlander stated he would make sure they were left with the board secretary. Jim feels his proposal represents a much better use than what could result if the site remains entirely an NB zoned site. He feels the site could be potentially redeveloped to allow denser use, provide warehousing and storage, as well as much more parking than what is being proposed. The proposed development will provide two-car off street parking for each residence. The plan provides for eight spaces (including one handicapped space) that will provide most of the possible 14 spots required that may be required based on the proposed occupied square footage. Additional parking is available at the Riverton Square site as well as the current space along the 120 foot frontage on Main Street. Jim stated that he has a potential client for the site which fits and provides medical prosthetic devices used in the treatment of neck and head injuries. For them the eight spaces would probably be more than adequate. While other permitted uses may change/increase the parking

requirements, Jim feels they can easily be handled by the excess number of spaces at Riverton Square. Ken Mills asked why the entrance plans were changed and Jim explained that concerns by the neighbor of traffic alongside his home, loss of a parking space on Main Street, and the previously mentioned county concerns led to the change. Jim asked that the board understand that he is planning single family semidetached homes not what may be understood or considered multifamily structures. Speaking to the possible impact on the school system, Jim stated that from the new housing he has constructed there has only been one new student entered in the school system and the type of ownership envisioned for the townhomes would very likely not result in additional new students or only a very small number. Jim stated he also understood that the school system would actually welcome new students to help better utilize the existing system. Jim stated that unless there were additional questions, he would like to allow his planner to offer testimony. Janet Smith asked and received clarification on the existing walkway along the current building. Jim explained that the concept plan was based on a drawing of the current building and site with the proposed changes added. Otherwise the plan shows existing conditions.

Mr. Oberlander introduced Michelle Taylor and had her present her qualifications as a planner which were accepted by the board. Michelle spoke to the permitted uses in the NB zone and referred to an aerial photograph of the site and surrounding area, entered and marked as exhibit A-4. Michelle reviewed that the photo provided references for the location of the photos in exhibit A-1 and provided testimony as to why it is important from a planning perspective that the existing building remain to preserve the character of Main Street. She testified that the proposed townhomes enhanced and preserved the current R4 zoned area across Cinnaminson Street. Riverton Square has currently underutilized parking capacity which will adequately address any onsite parking concerns. Michelle feels the current parking requirements of the Borough are too high based on currently accepted downtown parking standards and should be reduced. She referred to a recently completed study of the downtown area commissioned by the Borough which concluded that the downtown area does not need additional parking than already exists. She referred to the statements in the study that spot surveys made at multiple times of the day on business, weekend and holidays supported the conclusion that there was sufficient parking. She feels the proposed plan supports the Borough's and State's master plans and the results of the reexamination report of the Borough's plan.

Michelle presented evidence that the positive criteria of the plan outweigh any preserved negative impact including:

- It retains the quaint historic character of the district,
- Promotes the conservation of historic sites and natural resources in the state,
- Prevents urban sprawl and degradation of the environment,
- The current structure provides character but needs serious revitalization and possible remediation to bring the structure up to current standards for commercial occupancy
- The plan assures the current building will be preserved,
- Rather than try and provide residential use over the commercial structure, the plan provides for more desirable separate residential use in character with the area,
- A more desirable visual aspect will be provided by replacing the existing parking area with the townhomes and providing screened parking.

Mr. Oberlander asked if the proposed subdivision area is suitable for the proposed residential use and Michelle presented her reasons why she thought it was. Mr. Oberlander asked if Michelle feels that granting the variance(s) advances and protects the general welfare and Michelle stated she did. Mr. Oberlander asked and Michelle affirmed that in her opinion the plan satisfies the special reasons needed to support granting use variances.

Michelle discussed possible negative impact:

- The plan will not result in an increase of dust and noise from the proposed residences,
- There will be no additional traffic impact over what the post office originally generated,
- There is no impact or need for new/additional public utility requirements by the proposed infill project
- She does not feel there is any resulting negative impact on the neighborhood,
- There is no negative visual impact by the plan,
- Based on the current master plan and other reports there are no detrimental impacts from the plan because the existing structure will not be visually changed to provide accessory housing and that desirable infill housing

will be provided to better utilize the site; it is Michelle's opinion is the positive criteria outweigh any perceived negative impact and that the special criteria have been met to warrant granting the use variance.

Janet asked if the two single family detached homes would accomplish the same result. Michelle stated aside from the fact that it is not workable for the applicant, she feels they would be out of character given the current mix of older single family detached homes, older nonconforming semidetached homes, and the approved new townhomes. Janet followed up that two single family detached homes on two lots which fully comply with the surrounding R4 zone would result in the need for far fewer bulk variances. Michelle replied that the resulting larger homes on lots that exceeded the size of several surrounding developed lots would be out of character and would not serve the purpose to blend in and ease the transition from commercial to residential. Jim testified that the proposed use of townhomes better eases the transition and are more in character with the adjoining townhomes. He also feels that the presence of two larger homes on large lots compared to other neighboring residential lots is not in character with the pre-existing smaller detached homes several of which are on lots as narrow as or narrower than the proposed lots. Jim also stated that he feels that permitting only two homes would not make the project economically possible to pursue. Ken asked Michelle if she feels a rear entrance to the commercial site is preferable to a front entrance. Michelle replied that a driveway on a street provide a break in the pedestrian flow and also lose a parking spot on the street. She feels customers will utilize an on-street spaces while the employees will utilize the off-street spot and only minimally utilize the driveway to arrive and leave from work. Also based on her experience, customers prefer to utilize parking as close to an entrance as possible rather than more remotely located spots. Janet asked that based on the testimony wouldn't be better to seek a zoning change rather than seek variances. Michelle stated that it might be a possible if very expensive change. She also feels that zoning use is usually considered on a more macro level whereas the proposal here is for a very micro level confined to one lot. Mr. Oberlander offered zoning changes are a complicated process and the applicant is only interested in best redeveloping the site; and, that seeking such a specific lot based change might be considered spot zoning. Ken asked if the loading dock area might be removed/changed to increase the number of possible parking spaces. Jim replied that they had looked at removing it; but the area is an integral part of the structure with a full foundation and basement underneath. Janet asked if the intent of the zoning plan is to reduce the density in the area, how does permitting additional structures accomplish this goal. Michelle stated she feels the proposed use is less dense than what is permitted in the current NB zone and that the proposed use is a less dense use. Janet replied that the proposal would result in a more dense residential use in an area already deemed more dense than desired and that the intent of the current code was to prevent increased density and promote less dense use. Michelle stated she feels that a downtown area requires for vitality and that the proposed use is more consistent with what exists rather than the current zoning requirements. Muriel commented that the recognized historic character of the town may require zoning requirements that are possibly not consistent with generally accepted norms and must be specific to preserve the town's specific goals. Muriel asked and received clarification from Jim of how the proposed on- and off-street parking would be utilized. Deb Weaver asked about the impact on traffic along Cinnaminson Street. Jim stated the proposal is designed to maintain the residential character of the street and will result in less commercial traffic than existed when the post office was fully operational. Also, should the proposal not be permitted, he feels any strictly permitted business use of existing site may greatly increase commercial traffic on the street. Deb is still concerned that Cinnaminson Street can properly support commercial traffic and allow access to the site. Jim replied that the proposed uses of the building would be serviced by the commercial carriers such as UPS, etc. or smaller commercial delivery trucks that will almost certainly access the site from Main Street. Similar situations currently exist with other businesses along this part of Main Street and deliveries are made. In fact, businesses throughout the downtown face a similar situation of access being limited to Main Street and there does not appear to be any negative impact. The board could restrict the rear access to not allow commercial deliveries but that would probably make the site less desirable and harder to sell. Jim feels that traffic flow in the downtown area is a known commodity and the proposed use can accommodate the conditions with no impact on the area. Michelle stated that the number of spaces required to meet the current codes are far less than the number of existing spaces and most likely any future commercial use of the planned site will be far less than the traffic generated by the post office when it was a fully operational facility. There was additional discussion on the possible merits of the four proposed residences versus a lesser number of units. Jim continued to present his opinion that more than two units were needed and that the proposed plan maximizes the quality of life issues with the homes and aesthetic concerns. Asked by the board, Jim replied that he planned to do the rehabilitation prior to any possible sale and that the only way he could accomplish this is to have the residential development he proposes. Tamara stated she feels it is important for the board to remember that while economic needs and conditions have been presented, economic

concerns are not valid points in considering the merits of a variance request. Barry Wells commented that as he understands the proposal is to rehabilitate the building using the proceeds from the residential development; but how does that reconcile with the fact that there already may be a potential purchaser of the building. Jim commented that the association has an offer to purchase the building contingent on gaining approval for the plans being presented. The potential purchaser being mentioned is only interested in purchasing the rehabbed structure not as it currently exists.

Paul Grena was recognized and said he would like to speak not only as a principal of the application but as well as a 20 year resident of the town and current president of the Riverton Improvement Association. He stated that he actually started the process when he learned that the Post Office was relocating to Riverton Square and the old building would be vacant. He has a business in town and with the currently vacant bank building on the same block he was quite concerned that the business area be maintained and not be allowed to possibly deteriorate. When he visited the site and realized that the building was in need of some necessary maintenance sooner rather than later his concerns grew. His maintenance concerns were further heightened when he learned that basic landscaping maintenance was only being done because Tom Schweich who resides next door and maintains his dental practice in his home was seeing to it. Paul stated he analyzed things as a businessman not as a professional developer and concluded that the best thing for Cinnaminson Street was to enhance and preserve its residential character. He was also able to determine that under the currently zoned NB use and bulk requirements for the site, a potential developer could add several thousand square feet to the existing building and/or even erect another building behind it and even provide pull-up business use parking access along Cinnaminson Street – all the while remaining within the conformity of the NB requirements. This would significantly increase traffic on Cinnaminson Street and certainly detract from the residential character of the street. Paul doesn't want or feel such a potential use is best for him, the neighbors, or the town. This is why he feels Michelle and Jim maintain that the proposed use before the board best meets the needs of the town and still provides a minimum impact on the existing character of the area. He is concerned that if the current proposal before the board does not become a reality, the site will be purchased by a developer who is only interested in maximizing the by right permitted use of the site regardless of any impact on the aesthetic characteristics of the area or the neighbors. Given the current less than ideal economic climate he approached Jim as a successful developer in town to try and develop a plan that would expedite the needed rehabilitation of the property and hopeful expeditious occupancy by a viable business and still preserve the character of the area. Paul felt that Jim's successful development of Riverton Square including the successful marketing and sale of the new townhomes when everyone else seemed to feel that residences in that area would be impossible to market made Jim the ideal person to hopefully solve what he thought was an undesirable but very possible outcome. BWC Realty was formed to hopefully prevent this envisioned possible outcome and has positioned itself to be first in line to purchase the site. Regardless if the plan presented cannot proceed, the site will be purchased and redeveloped. The current NB codes provide a wide latitude to a redeveloper to maximize the site while all while maintaining by right designs. Simply maximizing permitted use of the site almost certainly will not result in it being the best fit for the town or area. This proposal is not made lightly since marketing business property is certainly not easy as is readily apparent even in Riverton. Paul feels that while any developer will only proceed with what is economically viable there needs to be a proposal that includes the needs and goals of the town. He feels the board must take into consideration not only what is allowed but what in reality will happen. He doesn't believe fully conforming single family detached homes can sell in the area and the desired type of tenants will not be obtained. Thus he feels the board must consider variances that will help ensure that not only is the site redeveloped as a viable property but that provision are made that it truly is best for the community. Muriel stated she was still not convinced the proposal was the answer. Asked if there was further testimony, Mr. Oberlander stated that he didn't feel the engineer needed to testify to the use variance and that everyone would be available to answer questions. Mr. Oberlander reviewed the types of permitted uses that are allowed by right and would require no variance and would go straight to the planning board for approval of a by-right plan. Asked if the current proposal would prevent possible allowed uses that do not really support the character of the area, Jim replied probably not but he would accept restrictions as part of any variance approvals.

Before opening the matter to public comment, Ken asked if Tamara had any comments. Tamara reviewed that the comments about the appropriateness of the current zoning code as it supports the master plan were not warranted. The current code fully supports the goals of the master plan. Tamara acknowledged that the goals of the master plan must remain fluid and responsive to the realities of the present and warrant changing as conditions change;

however, that is not what is being considered. The master plan states that the density requirements for a zone should be considered the minimum desired density for a zone and should encourage less density rather than increased dense usage in a zone. As to permitting adding residences on lots such as the current site, Tamara stated that would have resulted in split zoning of a lots which is not warranted except on much larger undeveloped sites intended to be subdivide and contain mixed uses. This clearly is not applicable to fully developed lots in the middle of a small town and additionally the Borough provided clear direction that it did not want split zoning. Tamara feels the plan has merits as presented but she is not sure the needs and concerns of the neighboring area have been fully addressed. Tamara continued to resolve some questions concerning the density calculations. While acknowledging that current parking requirements may not be the best, Tamara feels the issue revolves more around traffic conditions and that the existing parking while perhaps sufficient based on the spots available is not properly distributed as to promote full usage. For the record Tamara clarified that warehousing is not permitted in the NB zone. She also stated the board should take into consideration that while demolition was possible it was also testified that demolition was highly unlikely. The allowance for residences on the site has merits but more information is needed as to how they would compare to existing structures. The possible need for signage and commercial traffic on Cinnaminson Street needs to be considered. Janet asked and was provided clarification that the plan was changed to provide access from Cinnaminson Street rather than Main Street primarily to resolve concerns of the neighbor that the new flow of traffic would severely impact the residential use of the property which didn't currently exist. Janet raised the increased commercial use of the street and Jim replied that there is already commercial usage and that he did not feel his proposal would result in a significant increase. As to Janet's concerns about parking, Jim reiterated that even with Riverton Square almost fully occupied there was ample unused parking that would easily accommodate any overflow and it is easily accessible. Michelle commented that she often concludes presentations to a town in support of commercial development that she hopes the business traffic is viable enough to eventually cause a parking shortage. That shows usage is reaching its maximum economic potential for a town.

Public Comment: Ken Mills stated that he felt rather than continue to debate increasingly narrow points it was time to open the matter to public comment. There was no opposition and a motion was made by Craig Greenwood and seconded by Barry Wells to open the hearing to public comment.

- Tom Schweich, 617 Main Street, was sworn and commented he is a dentist and long time resident of the property adjoining the site. He maintains his practice in the home. He supports the application and feels the possible commercial access on Cinnaminson Street is not a problem. When the post office was fully functional, there were multiple trips by tractor trailers each day all without incident and he doesn't feel that the proposed use will present anything close to that type of usage. He was the primary person who encouraged Jim to revise the plan to provide access from Cinnaminson Street rather than Main Street as being less of an impact on the area. Asked by Janet why he felt that access from Main Street was a problem, Tom replied that besides the intrusive nature of traffic passing close to his home, the impact on Main Street was even worse. Not only would it reduce the number of on-street parking spots available for business patrons including his patients; but when traffic is impacted by the train it would be an increased problem if there were vehicles trying to enter or leave the site especially for commercial vehicles. Lights from traffic leaving the site would directly impact the neighbor across the street. Also the width of any possible entrance between the properties is closer to being a driveway rather a fully functional access need on a busy main street. Access from Cinnaminson Street would allow for a much less intensive traffic impact than on Main Street.
- John Laverty, 616 Main Street, was sworn in offered extensive testimony which is summarized as follows:
 - While the possibility of the less than desirable use being made of the site may exist there is a review and approval process in place that ensures a complete hearing process.
 - Any plans for demolition and or construction of new/additional structures on the site are again subject to thorough review and approval before they can proceed.
 - John lives across the street from the site and contrary to offered testimony, he does not recall ever being approached by the applicants for his thoughts on the matter.
 - If the proposed use is so beneficial to the residents of Cinnaminson Street, why are no residents present to support the project.
 - Contrary to the testimony from and on behalf of the applicant John stated he intended to show that the proposal was asking to put too much on the site.

- While both the master plan and subsequent reexamination continue to support increased business development within the NB zone, neither encourage new residential growth.
- John feels that the provision for accessory apartments over a business as a conditional use was created not to encourage new residential growth in the zone but rather to encourage conversion of existing strictly residential uses within the zone that were no longer marketable as just residences but were better suited for use as a permitted business use on the first floor; but, to still permit full utilization of the building where a conditional use as an apartment was a more viable option than only permitting a business on the upper floor(s).
- The proposed project does not address any possible COAH impact under the third round requirements.
- John understands the urgency of obtaining the use variance(s) to allow the project to proceed; but, the urgency is financial and economic in nature and not a valid consideration for granting a use variance.
- All variance need to demonstrate either an existing hardship or existing special circumstances. The applicants appear to be using the special circumstances; yet, John feels the special circumstances cited are a result of the proposed plan not because they already exist.
- The application must show that the proposed use is consistent with the master plan; but, as alluded to by the board's planner, John does not feel the proposed use is consistent with the master plan.
- John reviewed the bulk requirements for the NB district and feels that the variances needed to allow the proposed plan are not present on the current site but only created by the proposed plan. Variances created by a proposed use are in fact a negative criteria and do not support approval.
- John feels the offered positive criteria and negative criteria are at best reversed and he doesn't feel there are any positive aspects to the plan.
- Why is the application bifurcated. While allowed and there is the consideration of the expense entailed to present a full site plan, the issues are so closely intertwined that they need to be considered as a whole. The variances cannot be considered separately since the use variance sets the ground for the bulk variances.
- He doesn't feel there is any legal means to compel the applicants to apply the economic proceeds from the residences to rehabilitate the existing structure as testified as a reason to approve the application.
- The representation that the new residential units improve the tax base is not considered factual. Residential use is only tax revenue neutral at best; but, usually consume more revenue than they contribute; whereas the opposite is generally true for business uses.
- He feels that the contention that two single family residential detached homes are too large for the area is not supported by the fact that several very large homes have been built on lots that only minimally supported the size yet were readily marketed.
- As to the contention that R4 zoning is not appropriate for the area the town continues to feel otherwise.
- The statement that the Riverton Square site is over parked is not valid since there is no guarantee that while the existing and possible remaining use may not utilize the available parking, future changes in use may require all the spaces.
- The current existing site can provide all needed onsite parking without having to rely on offsite availability.
- John then provided testimony based on field measurements, aerial surveys, and the available space in the building that the required parking requirements can be met on the existing site, the proposed plan does not come anywhere close to providing even the minimum required number of spaces. Thus John contends the proposed use will actually result in an overuse of the site and subdivision is not supported.

Mr. Oberlander appealed to the board that he felt the discussion besides considered overly long for a public comment was also digressing to issues not relevant to the application before the board. Janet felt that it does go to show the intertwined nature of the variances needed. Ken asked if John was close to finishing and John stated that he just wanted to emphasize that he doesn't believe all the ramifications have been properly considered before the board can even begin to consider approving the application. Further he does not feel the site can support subdivision and still properly meet the requirements of the NB zone and creation of nonconformities is not warranted.

- Kerry Brandt, 719 Main Street, was sworn in and stated that it is a difficult zone. When the entire town was rezoned as part of the new master plan, possible redevelopment considerations for existing developed lots that greatly exceeded the average lot in the NB zone could not be provided since split lot zoning was specifically not to occur. Now that the site is being sold, Kerry feels that possible multiple zoning uses may be a valid

consideration. However, it is not sold and cannot be subdivided as planned. He feels that the residential use for the Cinnaminson Street area has merit. He feels that, if feasible, access to the existing building should be from Main Street to relieve the Cinnaminson Street residents from an unneeded intrusion that has existed for too long. The rear of the existing site is an eyesore that should be properly buffered. The site is not currently R4 and cannot be held to those standards. It is NB and subject to those requirements. He feels that COAH issues are already addressed by the current codes. He feels the use of the proceeds from the residences will occur no matter what since the applicants will have to at least minimally rehabilitate the building including any remediation even to just sell it as is with no redeveloped interior.

There was no further public comment and Craig Greenwood motioned and Deb Weaver seconded to close the hearing to public comment.

Deliberation: Ken asked if the members had additional questions or concerns. Muriel addressed a concern to Janet that she has never been on a board or at a meeting where the chair has recused himself and then stood up to give testimony on the same matter. Janet and Ken explained that recusal from considering or participating in a matter does not mean the person gives up the right to voice his views as a citizen only that he cannot participate in the deliberation and rendering of any decision. Dave Oberlander asked to summarize that they are only seeking the use variance(s) that will permit them to pursue full site plan approval and subdivision approval. The applicants understand that without subsequent site plan and subdivision approvals, any granted use variances are essentially moot and useless to them. As to the positive criteria they must prove special reasons. There are three potential ways to do that: one is that the use is inherently beneficial which does not apply here; second is to demonstrate a hardship exists which they are not claiming; and the third way is to show they advance the general welfare and that the site is specifically suited for the proposed use. The testimony offered regarding residential character of Cinnaminson Street presents ample proof that they have established special reasons. As to demonstrating there are no significant negative criteria, Dave offered that he feels the applicants have demonstrated there is no substantial detriment to the public good and there is no significant impairment to the zoning plan. Rather, the proposed use promotes the business character of Main Street and the existing building and preserves and enhances the residential character of Cinnaminson Street. Janet asked Dave to specifically describe the use variance being requested by his client. Dave stated that the applicants were requesting a use variance that allows continued permitted use of the existing building and in addition to erect four single family residences in the form of two semidetached buildings the final layout to be determined during the site plan and subdivision approval process. Barry Wells asked how the board should respond to Mr. Laverty's position that, assuming his calculation of the number of required parking spaces is correct, are available on the existing site but cannot even be minimally met if the site is subdivided. Barry feels stating that the basement and other areas not currently considered habitable space will not be used as Class A space is insufficient. Dave responded that it is not unusual that as part of the site plan approval process require the basement and other areas currently not utilized as habitable office space cannot be made usable and only the existing habitable space can will be used. The available parking will be what it is. Barry stated he doesn't agree with the comment about parking since it has been presented that the site as it currently exists preserves the historic building and provides space for any required parking while the proposed subdivided site will not meet even the minimal requirement. The proposed use creates the problem where it doesn't currently exist. Dave stated that granting the use variance does not in of itself allow the applicant to subdivide the lot and redevelop the remainder of the existing site unless the variances need to approve the subdivision and redevelopment site plan are approved. Jim stated that for the sake of discussion he accepts John's calculations. However, Jim stated that he was quite certain that even if the site remains as is, it will never be sold with the existing parking area retained as is. Jim feels it will be developed in some manner. Jim categorically stated that he won't use the basement. It is not suited for Class A space now and will not be rehabbed as such. Jim referred to three pictures of the basement, entered and marked as exhibit A-5, to show why he does not feel the space could ever be made suitable as Class A office space. Jim stated he will accept deed restrictions on what can be used as office space. The planned 8 spaces meet the intended use planned. As to the allegation that the use of the proceeds from the residential portion might not be used for rehabilitation of the existing building, Jim stated that if the plans are fully approved, rehabilitation of the existing site will not be delayed until the residences are built and sold. Everything will be going on at the same time and the proceeds are the only viable source of the funds needed to pay for the rehabilitation. Jim thinks his plans are best use for the site and wants to see them rather than perhaps someone else propose a more dense use redevelopment that is permitted as a pure commercial site. Jim feels he has addressed John Laverty's

concerns. While Jim agrees with John's position that residential development usually results in more revenue being expended than collected; Jim does not feel that is the case here since trash collection and other municipal services are already being provided and the addition of four more units will have a positive impact on revenue provided. Barry asked what Tamara meant when she said the use goes against the master plan. Tamara explained that the 4,000 sq. ft. zone referred to the residential zone, not NB, and that the plan does not support more substandard dense residential use. Any use variance goes with the land. A use variance without the subdivision will create a split zoned lot and the requested subdivision will create substandard lots. Dave Oberlander supports that a contingency that the use variance be vacated if subdivision cannot be approved. Barry Wells asked if the applicant can't make it work without the variance and Jim replied that the stated goals of the project can't happen unless the use variance is approved which allows the site to be subdivided to provide the current NB use on Main Street and residential use on Cinnaminson Street. Ken Mills asked if there were no further comments, is the next step to consider a motion. Janet suggested that the applicant is requesting a use variance to permit the continued permitted NB use of the existing building and to erect two single family semidetached buildings totaling four residences on Cinnaminson Street contingent on subdivision and site plan approval. Ken asked if anyone is prepared to make a motion. Muriel asked if she understood if that if given the use variance is contingent on subdivision and site plan approval, how can board know what will happen during the site plan and subdivision process. Dave Oberlander replied that all future development and redevelopment is based on approval of the site plans and subdivision; but, since variances are needed, that gives board great leeway to compel satisfactory plans. Jim stated that approval gives them the ability to know the parameters of how to proceed. Muriel, feels things are too vague and not concise enough to know what she is voting for. Jim stated Riverton Square was approved in a similar fashion. Ken requested the board remain focused on what is being asked for tonight. Ken stated that now is the time for a motion. Janet asked if anyone was prepared to make the motion realizing that if you make the motion to approve you need to vote to approve. Barry commented that the office has been empty for some time and needs to find a use. The board is concerned about what the general neighborhood feels about the project. Janet asked if the board is prepared to vote now without a site plan and if so is anyone prepared to make a motion. Deb Weaver is concerned about density and impact of new homes on existing homes. Deb stated she is not comfortable she has enough information to decide now. Barry feels for Deb and he is troubled by potential lack of parking, density, and not following master plan. Barry likes idea but not comfortable with what has been presented. Jim feels he needs a concrete allowance on the number of units to know if he can proceed. Janet asked if Jim wanted to pursue a possible nay vote rather than unanimous approval. One nay vote kills the issue but unanimous approval allows Jim to proceed to get full approvals. Janet reminded Jim that he needed a unanimous vote to approve to have the required five votes. Jim appreciated Janet's view but he wants to know what more the board needs to allow a vote. Jim was not sure what the issues are. Muriel stated she is concerned about density of proposed plan. Barry seconded that concern. Janet feels the board is uncomfortable to render a decision based on what has been presented. Jim stated he realizes that he needs all five votes to approve tonight and feels he needs to look more closely at the numbers and cannot render a decision tonight on what he can make work. Janet asked if they were considering asking for a continuance and willing to waive all time restraints? Jim and David responded yes and wished it to be open ended. Janet replied any continuance should not be indefinite and cannot get stale time and board wise. Jim requested and was granted a five minute recess to discuss the matter off the record with the rest of the applicants and professionals. Following the recess, Jim stated he is concerned about being asked to move the driveway back to Main Street. Conceptually he feels he could come down to three units with: a 20 foot driveway, and then a forty foot single residence lot and a 40 foot semidetached lot. Janet asked if they were still asking for substandard lots. Jim commented he doesn't feel he can go forward with less than approval for three residential units and needs to permit access to post office building from Cinnaminson Street. Barry asked what the revised numbers do for board on concern for density. Ken Mills stated he was not aware of another area in town that is comparable with a request to allow creating substandard lots and housing types. There is no standard for townhomes or twins. Tamara is more comfortable with three rather than four residential units and agrees residential use better on Cinnaminson Street. Janet asked if the board has enough information to decide. Tamara stated that any approval would be contingent on site plan approval. Muriel does not feel comfortable voting based on details provided tonight. Craig feels three units better for buffering and density concerns. Barry applauds idea of confining commercial to Main Street and residential to Cinnaminson Street. Jim feels Tamara's idea of three units with a single next to drive way and a twin next to other twins smoothes the transition. Jim does not feel it is worth pursuing a vote tonight unless there is a high degree of confidence in approval and he does not feel that is the case. Tamara reviewed that the applicant has a right to bifurcate the application; and that since approval would be contingent on obtaining approvals for all subdivision and site plan submissions with the variances needed; that

failure to obtain those approvals would void the use variance. Muriel feels she needs to see more detail. Jim stated that conceptually the plan will be the same except to change the one lot to have a single family detached residence and thus reducing the density to three residences. Muriel asked if the board is being asked to vote on allowing one single family unit and one twin. Jim stated yes, it would be for one single family detached unit and a single family semidetached residence totaling three residential units. Ken asked if Muriel and the board felt comfortable voting on that tonight. Muriel stated she is still not comfortable voting on what she has before her. Jim feels he needs to review things further and feels it is best to request a one month continuance and come back in January. Mr. Oberlander stated the applicants wish to request an open ended continuation to determine if they wish to continue the matter or not. Janet stated such a continuance raises several noticing and continuity issues and she feels the board is better served by granting a continuance until January with the applicant deciding by then to either continue the hearing or deciding to withdraw the application. The applicant and their counsel agreed to the January date and to waive time. It was further reviewed that the same five people would continue to consider the matter unless a sufficient number of zoning board members not present tonight review a written or audio (the tapes) transcript of tonight's proceedings and can properly attest they are thoroughly familiar with the matter and testimony to date and feel they can render an informed decision if a vote is called for. If sufficient zoning board members are available to hear the continued matter, then Muriel would not be required to be present.

Continuation: Craig Greenwood made motion to continue the matter until January 21st with the applicant suspending the timing of the hearing. Barry Wells seconded the motion and it was passed by a unanimous voice vote:

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 BWC Realty Associates, 100 Park Avenue, for 613-615 Main Street, block 906, lot 4 in NB zone, to subdivide the former Post Office property at 613-615 Main Street and erect townhomes and retain the existing building for permitted use(s) is continued, applicant having requested an extension of time for consideration of the matter until the next regular meeting of the Board on January 21, 2010.

This notice provides the only official notification required of this continuance granted by the applicant and a copy will be posted in Borough Hall. Mr. Brandt resumed chairing the meeting.

OLD BUSINESS

Adopt and memorialize Resolution Case #2009-08 for the Variance Application by Janine Miller, 500 Cinnaminson Street, (Block 903, Lot 1) for replacing a fence beyond the permitted set back lines on a corner property and for a concrete deck – The chair referenced the resolution by title and asked if everyone had received and read the resolution and if there were any comments. Only members who approved the application can act on the resolution. Ken Mills motioned and Craig Greenwood seconded that the resolution referenced by title be adopted and memorialized. The motion carried by a unanimous voice vote of the four zoning board members present and eligible to vote on the resolution.

Adopt and memorialize Resolution Case #2009-07a for the Amended Variance Application by Dennis Eversmeyer, 400 Fulton Street, (Block 900, Lot 1) for placement of a fence beyond the permitted set back lines on a corner property – The secretary explained he had labeled the resolution as 7a to preserve continuity with the application; and the fact that the board had voted to not adopt the original resolution since the contingencies of the original approval could not be met; and the applicant filed an amended application that was approved last month and is represented by this resolution. There was no objection; and the chair referenced the resolution by title and asked if everyone had received and read the resolution and if there were any comments. Only members who approved the application can act on the resolution. Ken Mills motioned and Deb Weaver seconded that the resolution referenced by title be adopted and memorialized. The motion carried by a unanimous voice vote of the four zoning board members present and eligible to vote on the resolution.

Adopt and memorialize Resolution Case #2009-10 for the Request for Interpretation of Zoning Code by Maryann Shea, 205 Bank Avenue – The chair referenced the resolution by title and asked if everyone had

received and read the resolution and if there were any comments. Only members who approved the application can act on the resolution. Craig Greenwood motioned and Ken Mills seconded that the resolution referenced by title be adopted and memorialized. The motion carried by a unanimous voice vote of the four zoning board members present and eligible to vote on the resolution.

Planning Board & Council Matters – The secretary reported that Council had passed at second reading the proposed revisions to the zoning code and they were now in effect. Copies of the adoption were distributed to the board and Janet for their records. The chair stated he had submitted the preliminary 2010 budget as requested by Council.

CORRESPONDENCE

The secretary reported that at the request of planning board counsel Tom Coleman, he had provided the chair a copy of a FCC Declaratory Ruling for cell towers defining the time periods in which a local board must consider applications to either erect a tower or attach equipment to an existing tower. The secretary also reported opinions had been issued that due to the existing time requirements in the Municipal Land Use Law for hearing applications, it was felt these federal requirements did significantly impact decisions in New Jersey.

NEW BUSINESS

Vouchers and Invoices

1. 12/01/09, Remington, Vernick & Arango Engineers, \$495.00, for engineering review work connected with the Brandenburger/BWC Realty use variance application from 10/16-11/15/09. PAY FROM ESCROW
2. 12/01/09, Tamara L. Lee LLC, \$405.00, for planning review work and attend board meeting connected with the Brandenburger/BWC Realty use variance application during November. PAY FROM ESCROW
3. 12/01/09, Tamara L. Lee LLC, \$135.00, attend 11/19 meeting and provide testimony for Shea zoning code interpretation request. PAY FROM BOARD PROFESSIONAL SERVICES BUDGET
4. 12/01/09, Tamara L. Lee LLC, \$67.50, attend 11/19 meeting during Miller hearing. PAY FROM ESCROW or BOARD PROFESSIONAL SERVICES BUDGET
5. 12/01/09, Tamara L. Lee LLC, \$67.50, attend 11/19 meeting during Eversmyer hearing. PAY FROM ESCROW or BOARD PROFESSIONAL SERVICES BUDGET
6. 12/17/09, Janet Zoltanski Smith, \$143.00, for general professional services and guidance in November.
7. 12/17/09, Janet Zoltanski Smith, \$331.50, for professional services in November for the Janine Miller, 500 Cinnaminson Street application. (PAY FROM ESCROW)
8. 12/17/09, Janet Zoltanski Smith, \$234.00, for professional services in November for the Dennis Eversmyer, 400 Fulton Street application. (PAY FROM ESCROW)

Following discussion that the charges by Tamara for her attendance during the Miller and Eversmyer applications were solely due to her requested presence for the Shea interpretation matter, the board concluded that these charges should be charged against the board's general budget as was the Shea matter. There was no further discussion and a motion was made by Ken Mills, seconded by Craig Greenwood, and the voice vote was unanimous to pay the invoices as discussed. The secretary will make sure they are signed and submitted for payment.

PUBLIC COMMENT ON GENERAL ZONING ISSUES

The chair stated for the record that no members of the public were present.

Meeting adjourned at 12:05 AM, 12/18/09 (motion by Ken Mills, second by Craig Greenwood)
Tape is on file.

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