

RIVERTON BOROUGH ZONING BOARD
MINUTES
November 19, 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, William Corbi, Craig Greenwood, Charles Veasey, Robert Kennedy, Deborah Weaver, and Barry Wells.

ABSENT: Joe Della Penna.

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 Chick Veasey, and unanimously approved to adopt the minutes of the October 15, 2009 regular meeting as distributed.

PUBLIC HEARINGS

Use variance application by managing member Jim Brandenburger of 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).

Application Incomplete: Following a review of the jurisdictional requirements there was a problem in verifying that the required notices to property owners had been properly mailed. After consulting with Board Solicitor Janet Zoltanski Smith and discussions with the applicant's attorney David Oberlander, it was concluded that the applicant would need to republish in the paper and re-notice the property owners that the hearing would occur at the December 17, 2009 board meeting.

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.

Testimony: The chair reviewed that this matter had been deemed jurisdictionally complete last month and had been continued at the applicant's request because Mrs. Miller was unable to attend due to a personal emergency. No members needed to recuse themselves from the matter and Janet Smith stated the hearing could proceed. Mrs. Miller was sworn in and explained her need for two variances. After resolving some questions as to the actual size of the lot, Mrs. Miller explained that the property used to have a fence across the front of the property and along the Fifth Street side of the property which was in poor condition and in need of replacement. She had removed the old fence and wishes to replace fencing along the Fifth Street side beginning approximately 14 feet back from the front of the house and extending along the Fifth Street side to a concrete drive and extending along the driveway to the detached garage at the rear of the property. There would be a gate for an existing sidewalk to the rear entrance to the home. She also wishes to install a section of fence that connects the side yard fence to her home. The fence would be located approximately 1 foot inside the sidewalk and approximately 8½ feet from the curb. Mrs. Miller's property is on a narrow lot and is located on the corner of Fifth and Cinnaminson Streets. Her home is located across the street from the elementary school and the street-side side yard is a little over 6-feet from the property inside the sidewalk to the side of the house. She wishes to erect a scalloped vinyl picket fence that varies in height from three to 3 to 3 ½ feet to relieve trespassing by people and animals on her property and lessen the accumulation of trash and leaves that blow onto the property. Locating the fence further back from the property

line would effectively delete any usable space in the rear yard since, the home and rear yard are very narrow. Mrs. Miller feels there is no detriment to the proposed location and there are no sight line issues since the fence does not extend to the corner. Also, the proposed height allows a clear view of the driveway and sidewalk. Mrs. Miller also wishes to remove a set of structurally unsound wood steps and a small wood deck at the rear of the house. The steps and deck would be replaced by a raised 12x15 foot concrete patio/deck with steps to the ground level. The steps and patio would be approximately 9-feet from the street side property line and 12 feet from the adjoining property. Mrs. Miller is requesting a variance to expand a nonconforming structure to add the larger deck and for relief from the required side yard setback along Fifth Street. The deck and a small ground level concrete patio will provide needed usable living space for outdoor use and entertaining. The location of the deck is within the required rear yard setbacks and does not exceed the allowable impervious coverage requirements. There was no additional testimony or questions from the board and a motion was made by Ken Mills and seconded by Bob Kennedy to open the hearing to public comment. There was none and a motion was made by Ken Mills and seconded by Craig Greenwood to close the hearing to public comment.

Deliberation: The board discussed that it felt it best to consider the fence and deck separately and the applicant agreed. There was no further discussion and the chair asked if Janet would guide the board in crafting variances for the fence and then for the deck. Janet suggested the board might consider a variance to permit erecting a 3 to 3½ scalloped vinyl picket fence beginning approximately 14 feet +/- from the front of the house extending approximately 6-feet from the side of the house to the side yard property line approximately 12 inches inside the sidewalk and extending along Fifth Street to a concrete driveway near the rear of the property and then along the driveway to the detached garage. A gate will be at the existing side walk to the rear of the home. Ken Mills made a motion to approve the fence as suggested by Janet and Chick Veasey seconded the motion. The motion was approved by a poll vote of 7 to 0 as follows:

Mr. Brandt aye Mr. Mills aye
Mr. Corbi aye Mr. Greenwood aye
Mr. Veasey aye Mr. Kennedy aye
Mrs. Weaver aye

Various members commented that they felt there was no detriment and that a hardship existed to allow the applicant to fully enjoy and utilize the rear yard of her home.

Janet suggested that the board might consider granting approval to expand a nonconforming structure to permit an approximately 12x15 foot raised concrete deck with attached concrete patio at grade and that the deck will be approximately 12 feet from the adjoining property and approximately 9 feet from the Fifth Street side property line which is less than the required side yard setback for a corner property. Craig Greenwood motioned the deck be approved as suggested by Janet and Chick Veasey seconded the motion. The motion was approved by a poll vote of 7 to 0 as follows:

Mr. Brandt aye Mr. Mills aye
Mr. Corbi aye Mr. Greenwood aye
Mr. Veasey aye Mr. Kennedy aye
Mrs. Weaver aye

Mr. Brandt feels there is no detriment and that the deck may have not have required a variance under the revised zoning code currently before Council.

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.

Testimony: Chairman Brandt and Robert Kennedy recused themselves from the matter due to possible conflicts of interest and the meeting was turned over to vice chair Ken Mills. Mrs. Smith stated that Mr. Wells is eligible to vote on this matter. Janet reviewed the history of the application. Mr. Eversmyer had applied for variances at the September meeting to install fencing needed to secure a recently installed swimming pool. Portions of the new fence would occupy the same area as what was testified to as a hedge that was planted and complied with variances

granted in 1998. No evidence of the previously approved variances for the hedge was available at the hearing. Approval for the fencing was granted contingent on evidence being presented that the existing hedge fully complied with the previous adopted 1998 resolution. Subsequent to the September hearing and prior to adopting and memorializing the resolution in October, evidence was found that indicated the existing hedge did not comply with the granted approvals and that contingencies of the original approval had not been completed. Given the passage of time and no way to present the 1998 approval was followed, it was suggested and agreed to by the applicant that he would amend the current application to seek additional new approvals for the existing hedge as well as the fencing required to meet the code to secure the swimming pool. Filing an amended application would require republishing notice and notifying property owners of the new hearing.

The secretary stated that all jurisdictional requirements were complete. Mr. Eversmeyer was sworn in and presented his case. He stated for the record that he thought he had maintained the hedge as approved and did not realize it was not in compliance. He further testified that he had paid an engineer for the required sight triangle study. He recalled he had submitted the study and thought that the issue had been resolved. Janet and Ken suggested that Mr. Eversmyer start at the beginning and define the existing hedge and then the fencing required for the pool.

Existing hedge: Mr. Eversmyer testified that the hedge is maintained to be no closer than 1 foot from the sidewalk and within the property lines along Fulton and Fourth Streets. The hedge extends from existing bushes on the adjoining property to the front property line and then along the front property line on Fulton to the corner of Fulton and Fourth Streets. The hedge extends from the corner of Fulton and Fourth Streets along Fourth Street to the rear of the property and then along the rear property line to where it connects to an existing wood fence. The hedge is maintained at a height of three feet from the adjoining property, across the front, and approximately 50+ feet along Fourth Street. The hedge increases to four feet the remainder of Fourth Street and along the rear property line.

Fencing: The applicant has already installed a four foot aluminum picket style fence approximately three foot from the property line and within the existing hedge along the rear of the property and along Fourth Street. The fence is almost invisible when the hedge is in leaf. The fence must comply with the codes to suitably enclose the pool area secure the swimming pool. He proposes to install a similar fence approximately 27½ feet from the porch at the side of his home to connect with the existing hedge and fence along the 4th Street side of the property. The fence installed within the hedge along 4th Street extends no further forward than the proposed connection to the new side yard fence. All the fencing is open picket style with 4-inch spacing. A single gate is proposed in the side yard fence and a double 5-foot wide antique style gate exists in the hedge and is connected to the new installed fencing in the hedge along 4th Street. The gates must also comply with the pool codes that they open out, be self-closing and latching and that the latches are at least 54" from the bottom of the gate and fencing. The antique gate will have suitable transparent Plexiglas type inserts to prevent climbing. The plan also showed where suitable fencing and a gate is proposed to secure the side yard where it adjoins the neighboring property. It will tie into an existing fence. It was stated by Janet and the board that that portion of the fence by design and location did not need to be part of any variance. The applicant feels it would be a hardship to lose the open full access to his rear yard and lessen the aesthetics of the property to install the fence just around the pool due to existing structures in the yard. It would also lessen the ability to enjoy the rear yard and reduce the period landscaping of the yard.

There was no further testimony or questions from the board. Deb Weaver motioned and Craig Greenwood seconded to open the hearing to public comment. John Laverty stated he feels the applicant meticulously maintains the property and feels the proposed design fully fits in with the aesthetics of the neighborhood and the property. There was no further comment and Deb Weaver motioned and Chick Veasey seconded to close the hearing to public comment.

Deliberation: The board and Janet further clarified the location and heights of the existing hedge. The vice chair stated if there were no additional comments or questions from the board that perhaps Janet would guide the board in what she feels is needed to grant the applicant's request while addressing the board's concerns. Janet offered that the board might consider approving a variance granting approval for a hedge that is three foot in height extending from bushes along the adjoining property line approximately 12 to 15 feet to the front property line and then extending along the front of the property to the corner of Fourth and Fulton Streets. The three-foot high hedge will then extend approximately 50+ feet along 4th Street and increase to a height of 4-feet to the rear of the property line and then continue approximately 15 feet along the rear property line where it meets an existing fence.

The hedge will be maintained trimmed a minimum of 1-foot from all sidewalks. Applicant is further granted a variance for a 4-foot aluminum picket style fence that is a minimum of three feet from the sidewalk and within the existing hedge, extending along the rear property line to 4th Street and along 4th Street to a point just in front of the porch that wraps around the side and rear of the house. Approval is granted for the 58 inch antique double gate in the fence along 4th Street that is constructed and latched to meet the requirements of the code for swimming pool enclosures. Lastly, a variance is granted to erect a section of same type of four-foot fence with a suitable latching gate that extends approximately 27½ feet from the side of the house just in front of the porch to connect to the fence and hedge along 4th Street. Craig Greenwood motioned and Bill Corbi seconded that the board approve the application variances as suggested by Janet. A poll vote of 6 to 0 with two recusals approved the motion as follows:

Mr. Brandt recused	Mr. Mills	aye	
Mr. Corbi	aye	Mr. Greenwood	aye
Mr. Veasey	aye	Mr. Kennedy	recused
Mrs. Weaver	aye	Mr. Wells	aye

Request for Interpretation of Zoning Code by Maryann Shea, 205 Bank Avenue.

Maryann Shea, owner of property located at 205 Bank Avenue, Riverton, New Jersey, has applied for an interpretation of the zoning code. Janet Smith stated she needed to recuse herself from the matter. Prior to stepping down, Janet swore in Mrs. Shea. Janet offered technical guidance that the board is being asked for an official interpretation of the zoning code regarding a request by the applicant; and, that the board should, following all testimony and discussion, make its determination referencing the specific section(s) of the code it considered.

The applicant, Maryann Shea, is the owner of 205 Bank Avenue, Riverton, New Jersey 08077. The current use of the property is as an eight unit apartment house which is grandfathered under the current code of the Borough of Riverton. Mrs. Shea is involved in a court case and is requesting an official interpretation of the code to determine if a row of Leyland Cypress trees on her property constitute a living fence or are at most a landscape buffer. The applicant maintains the trees are a buffer and are not a fence. The trees are between the parking area and the apartment building and serve to buffer the parking lot from the street and apartment building. The applicant feels the trees also serve the Master Plan which advises that it is desirable that off-street parking should, where possible, be buffered from the street. The applicant has previously received a letter from the Borough's Zoning Code Enforcement Officer that the trees in question do not constitute a fence based on the definition of a fence in Chapter 128-56A of the Code of Riverton. The applicant has also received an opinion from the Borough's Solicitor that he does not feel he needs to overrule the opinion of the Zoning Code Enforcement Officer.

Tamara Lee, the Zoning Board Planner and the Borough Planner, was sworn in and testified. She was the planner who assisted the Planning Board in rewriting the Master Plan and in amending the Zoning Code in 1998. Tamara offered her opinion that a fence is defined to enclose or provide an access barrier while a buffer or screening is defined to screen or hide an area or structure from public view. In her opinion a grouping of trees serving to offer screening from the parking area and the building and the public street did not constitute a fence by definition or purpose.

The board carefully reviewed a plot plan as well as photographs provided by the applicant to determine the location of the trees and their impact on the property. The board also carefully reviewed the portion of the code dealing with fences particularly Chapter 128-56A which defines a fence. It was the general opinion of the board that they did not think the trees were a fence.

The hearing was opened to the public and Joe Augustyn and John Lavery spoke. Joe Augustyn feels that the trees in question do not constitute a fence since they don't define the property lines or divide the property. Mr. Augustyn feels the current fence ordinance may be open to interpretation and should be reviewed and perhaps changed to remove any possible ambiguities. Mr. Augustyn feels that the prior opinions offered by the Zoning Code Officer and the Borough Solicitor reinforce the opinion of the board. John Lavery agreed that the current fence ordinance could be reviewed and hopefully revised to remove some of the ambiguity that may currently exist. The hearing was closed to public comment.

There was no further discussion except that the board felt it should limit its interpretation as to whether or not the trees in question were a fence. Ken Mills made a motion seconded by Craig Greenwood that based on Chapter 128-56A which defines a fence, the Leyland Cypress trees between the house and the parking area do not constitute a fence because in their review the trees do not enclose any part of a lot or divide or separate the lots or parts thereof from any such lot or from any adjacent property. The motion was approved by a poll vote 7 to 0 of the members as follows:

Mr. Brandt aye Mr. Mills aye
Mr. Corbi aye Mr. Greenwood aye
Mr. Veasey aye Mr. Kennedy aye
Mrs. Weaver aye

OLD BUSINESS

Planning Board & Council Matters – The secretary reported that Council had passed at first reading changes to the zoning code and requested the planning board to review the changes. The planning board had reviewed the changes and made several minor amendments and recommended Council considers the amended ordinance. Council will conduct a public hearing at the December council meeting. A copy of the draft ordinance had been sent to the members prior to the meeting. The secretary reviewed the amendments and clarifications recommended to the draft by the planning board. Janet Smith and the members discussed concerns regarding the location of detached auxiliary buildings in the draft. The board members concurred that it was the board’s intent when recommending the change for side yard setbacks for auxiliary buildings, that auxiliary buildings should be restricted to the rear yard and must not extend forward of the rear building line of the primary structure. Janet has already communicated this suggested change to Borough Solicitor Bruce Gunn. The board authorized that both Janet and the chair contact Bruce and/or Councilwoman Wells to try and confirm that the draft can be changed to address this concern before it is considered by Council in December. The board concurred that the remainder of the draft changes as amended by the planning board were fine and the changes addressed several outstanding recommended changes by the zoning board.

CORRESPONDENCE

None received.

NEW BUSINESS

Vouchers and Invoices

1. 11/19/09, Janet Zoltanski Smith, \$461.50, for professional services from 9/17-10/22/09 for the Eversmyer, 400 Fulton Street. (PAY FROM ESCROW)
2. 11/19/09, Janet Zoltanski Smith, \$461.50, for general professional services and guidance from 4/29-11/18/09.

PUBLIC COMMENT ON GENERAL ZONING ISSUES

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

Meeting adjourned at 10:30 PM (motion by Ken Mills, second by Craig Greenwood)

Tape is on file.

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