

RIVERTON BOROUGH ZONING BOARD
MINUTES
October 15, 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 7:30 PM by Chairman Kerry Brandt.

Public Notice of this meeting, pursuant to the Open Public Meetings Act, has been given in the following manner:

1. Posting notice of a schedule of all meetings on the official bulletin board in the Borough Office and publication of the schedule in the Burlington County Times on 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, Joe Della Penna, Craig Greenwood, Charles Veasey, Robert Kennedy, Deborah Weaver, and Barry Wells.

ABSENT: None.

OFFICIALS: Solicitor Janet Zoltanski Smith and Secretary Ken Palmer were present.

REORGANIZATION

Chairman Brandt announced that the mayor had appointed Robert Kennedy as a regular member replacing Ed Smyth and Barry Wells as an alternate member. Deborah Weaver is now first alternate and Barry Wells is second alternate. Mr. Kennedy and Mr. Wells were sworn in to their respective offices. The chair welcomed the new appointees.

MINUTES

The secretary reviewed a correction to the minutes as distributed. A motion was made by Ken Mills, seconded by Craig Greenwood, and unanimously approved to adopt the minutes of the September 17, 2009 regular meeting as amended.

PUBLIC HEARING

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.

Continuation: The chair announced that Mrs. Miller was unable to attend due to a death in the family and seeks approval by the board to grant a continuance at her request until the next meeting. Not wishing to penalize the applicant for matters beyond her control and after consulting the board's attorney, the chair stated that he would like the board to consider granting the continuance as long as it is confirmed that the application was jurisdictionally complete. Ken Mills so made the motion and to approve a resolution to that effect. The motion was seconded by Robert Kennedy and passed by 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 Janine Miller for variances concerning side yard setbacks for a fence and deck on a corner property at 500 Cinnaminson Street (Block 903, Lot 1) is continued, applicant having requested an extension of time for consideration of the matter until the next regular meeting of the Board on November 19, 2009.

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

OLD BUSINESS

Adopt and memorialize Resolution Case #2009-07 for the 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 chair recused himself from discussion and consideration and asked Ken Mills and Janet Zoltanski-Smith to review the matter. Ken reviewed that the current application involved variances needed to install fencing that complies with the code regarding enclosing a swimming pool. The applicant had testified that the existing hedge had been previously approved by the board and complied with the approval. He has already installed the fencing of the same height within the hedge and was seeking approval for that and a fence from the hedge to the house that completes the enclosure. The applicant did not have a copy of the original approving resolution and did not think he could locate it; but, represented the hedge as complying with the approvals granted at the original hearing 10 or 11 years ago. At the hearing, the board had considered and decided that the fencing installed within the existing hedge was okay since the hedge was represented as approved and compliant. The board further approved the current application contingent on the current hedge being in compliance with the approvals granted at the prior hearing. Janet had stated she remembered the matter and would research her files. Janet had located the records and had forwarded copies of the prepared resolution and surveys to the secretary who distributed them to the board prior to tonight’s meeting.

The original resolution states that the board approved a hedge not to exceed 2 and ½ feet in height and that an engineering report be provided that a suitable sight triangle exists at the street intersection corner. Janet feels the current height of four feet and the testimony surrounding that height represents more than a minor discrepancy and that it should be resolved. Janet reviewed the options regarding the matter. She stated that if the board determines that testimony provided was in error or misrepresented what was originally approved and that the facts presented were material in the decision reached by the board; the board can deny memorializing the resolution and compel the applicant to re-appear and provide further testimony. If the applicant chooses to reappear, the matter must be re-noticed and republished. Janet stated that only the members who approved the current application can make the decision and they need to decide if the discovered discrepancies are serious enough, that if known at the time of the hearing, would have changed the results of their deliberation or the conditions of the approvals granted. Janet stated that if the board denies memorialization, she can prepare a resolution memorializing that decision or the board can vote to take a more informal and less negative approach by notifying the applicant of the board’s action and giving the applicant the opportunity to properly notice the intent to reappear before the board. Ken asked that the members discuss the matter and that a decision be reached. Janet provided guidance that the members could decide either: that the discrepancies are not important or would not have changed their decisions; or, that if known at the hearing, would have impacted their decision. The four members reviewed the facts and concluded that their decision that the fence installed in the hedge was not a problem was because it was the same height as what was represented as the previously approved height of the hedge. This is clearly not the case after reviewing the original approvals. The members also concluded that even though it is a living hedge, the difference between the approved 2 and ½ feet and the current three to four feet height is significant and needs to be resolved. Janet also advised the board that if the applicant agreed to reappear in November, that he could ask that the new hearing could be to consider an amended application that includes resolving the discrepancies in addition to the variances requested in the current application.

Asked for guidance on the motion needed, Janet suggested the board consider a motion to not memorialize the resolution of the action taken at the October meeting and to advise the applicant that the board declined to do so since there was misinformation presented about the prior approvals and resolution; and, that a new hearing for an amended application with proper notification is required. Craig Greenwood motioned and Chick Veasey seconded that the motion as suggested be approved. Janet stated a poll vote of the four members who approved the application was in order. The motion was passed by a unanimous poll vote of 4 to 0 as follows:

Mr. Mills	aye	Mr. Greenwood	aye
Mr. Veasey	aye	Mrs. Weaver	aye

Janet stated she would draft a letter to be sent by the secretary to notify the applicant of the decision and that the materials she supplied the board be included. It was agreed that the letter should also include the option for the applicant to present evidence that differed from the materials sent to him. Kerry resumed chairing the meeting.

Planning Board & Council Matters – The secretary reported that he had nothing from the recent Council meeting and that there was nothing new from the planning board because they do not meet until next week. Kerry reported that he had heard that Jim Brandenburger had asked to make an informal presentation to the planning board of the idea of building residential units over the row of shops at the Shoppes of Riverton on Broad Street and that the units would be deed restricted as COAH units. He was presenting this proposal as a possible way of assisting the Borough meet its COAH obligation and that no plans yet existed beyond presenting the idea for the board’s consideration. The secretary confirmed that this was on the planning board’s agenda and that no additional information than what Kerry had stated existed at this time. If the planning board feels it is a viable idea, absent rezoning the area, the matter would need to come before the zoning board since one or more use variances would be needed. Secretary Palmer added that if the board members wished to learn more, the planning board encourages the public to attend their board meetings and comment on planning related matters. Kerry also reviewed what he understands is the timeline the planning board faces to meet the deadlines set by COAH.

Required Education Courses Update – The secretary stated that he would shortly provide the course offering information to the members that need to attend a course. The only announced courses to date will be the NJPO courses offered at the annual League of Municipalities Conference in Atlantic City in November.

CORRESPONDENCE

None received.

NEW BUSINESS

Vouchers and Invoices

None received.

PUBLIC COMMENT ON GENERAL ZONING ISSUES

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

Meeting adjourned at 8:55 PM (motion by Ken Mills, second by Chick Veasey)

Tape is on file.

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