

**RIVERTON BOROUGH PLANNING BOARD
MINUTES
July 17, 2012**

The Public Session of the Planning Board was called to order at 7:00 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 on the official bulletin board in the Borough Office on January 18, 2012.
2. Required Service of notice and publication in the Burlington County Times on January 25, 2012.

PRESENT: Kerry Brandt, Ken Mills, Joe Della Penna (7:15), Craig Greenwood (7:15), Robert Kennedy, Joseph Threston, Mayor William Brown, Councilman William Corbi, Mary Lodato, Deborah Weaver, Tracy Foedisch, Robert Martin, and Michael Powers.

Also Present: Solicitor Tom Coleman and secretary Ken Palmer.

ABSENT: None.

MINUTES: A motion was made by Ken Mills and seconded by Joe Threston to adopt the minutes of the June 19, 2012, regular meeting of the planning board as distributed. The voice vote was unanimous.

CORRESPONDENCE/ANNOUNCEMENTS

1. 7/10/12, NJLM "Mayor's Advisory," regarding the Appellate Division's decision regarding the trust funds issue, copies distributed to the board.
2. 4 vouchers/invoices as presented under New Business.

PUBLIC HEARINGS

Site Plan Waiver & Variance Application: Case# 2012-03, Porch Club of Riverton, 213 Howard Street, site plan waiver, variance application for setback relief and any and all use and/or other bulk variances required to construct a handicapped access ramp to the building.

Introduction: The chair reviewed the purpose of the hearing to consider: Site plan waiver and bulk variances for setback relief and any other bulk variances required to construct a handicapped access ramp to the building. The chair asked if any members needed to recuse themselves from the hearing. Kerry Brandt and Robert Kennedy stated they would recuse themselves due to a possible conflict of interest. Board solicitor Tom Coleman discussed that because a use variance was needed (expansion of a nonconforming use), the mayor (Class I) and Council member (Class III) needed to recuse themselves. All recused members left the meeting and returned following conclusion of the hearing. Tom Coleman discussed that the first and second alternates (Weaver and Foedisch) would be eligible to vote on the matter as replacements for Brandt and Kennedy. The Class I and Class III members are not replaced; there are only seven members permitted for the hearing and that a "super majority" of five votes is needed to approve any use variances. The non-voting alternates may and are encouraged to participate in any discussion even though they cannot vote on the matter. Vice Chairman Ken Mills assumed chairing the hearing. The applicant's attorney Mr. William Sitzler, Esq. of Saponaro & Sitzler was introduced. Mr. Sitzler introduced Michelle Daniel, Porch Club Treasurer and Walter (Hank) Croft, applicant's architect as witnesses for the applicant and asked they be sworn in. Both were sworn in by Mr. Coleman and Mr. Croft attested to his credentials.

Testimony: Mr. Sitzler questioned Ms. Daniel and Mr. Croft. Testimony was provided that the club needed the handicapped access for both handicapped members of the club and for handicapped members of the public attending functions held at the club. Currently the building is not considered handicapped accessible. Mr. Croft testified as to the design of the proposed ramp, its location and the impact on the architecture and character of the neighborhood. The decision on the location on the side of the building was based on its minimal impact on the neighborhood and the facade of the building and use of space already occupied by an existing sidewalk and access landing. In addition, the existing doorway is suitable for handicapped access and, its location provides the only entrance that would not require additional interior modifications to provide access

to the main level of the building. The entrance will also provide immediate access to additional interior changes to cloak room and restroom facilities. The proposed location also provides the least increase in impervious coverage. Hank also reviewed the currently proposed construction and architectural details for the ramp. With testimony concluded, Mr. Coleman reviewed that in his opinion, the necessary additional proofs needed to justify the use variance for expansion of an existing nonconforming use had been provided. Except for the minor increase in impervious coverage all bulk variances to be considered appeared to be pre-existing.

Board Discussion and Questions: Questions and discussion by the board members confirmed that the proposed access was: scooter/wheelchair accessible; that the adjoining property's driveway would not be blocked; the current main entrance on 4th Street is not suitable for location of the ramp; and, that the proposed location appears to provide the least impact. Possible alternate construction and architectural details of the ramp and railing were discussed as well as screening of the adjoining property either by greenery or fencing. Drainage issues were discussed and that the plans should not change the current site drainage. It was confirmed that the proposed ramp except when viewed head on is essentially behind or otherwise screened from view with the exception of the neighboring property. Any required modifications or replacement of the existing sidewalk will be made in kind. Additional screening was discussed.

Public Comment: Joe Threston motioned and Mary Lodato seconded to open the hearing to public comment.

- Mary Murphy, 211 Howard Street, commented that she owns and lives on the property adjoining property and that her driveway is next to the Porch Club property. She is not opposed to the need for handicapped access; but, she has concerns that the location will impact her property and may bring liability issues. She feels that there are current water accumulation issues now and that they may increase. People have used her drive way to drop off people previously and she feels that use of the entrance as the primary entrance will increase especially by visitors who park along Howard Street. She is concerned about possible liability issues if someone is injured while on her property. Mrs. Murphy feels she is the only person that will be impacted by the location of the proposed access. She feels some form of privacy barrier provided by a fence is appropriate to lessen noise and privacy issues caused by the use of the porch club. She is also concerned about impacts on her property value.

There was no further comment and a motion was made by Deb Weaver and seconded by Joe Threston to close the hearing to public comment. Mr. Sitzler asked Hank and Michelle to comment. Hank stated that he felt that the location is essentially flat and that if there are issues, they could be easily addressed, possibly by some form of a minor landscape berm. If necessary some topography lines could be shot and the grading easily adjusted. Michelle stated she feels landscaping and if needed landscape drains would be preferred to fencing and concurred that the club would attempt to alleviate any drainage problems caused by the plans. Joe Della Penna feels it is important that the neighbor and the club come to an agreement now before final action is taken, since once, if the application is approved, they cannot come back to the board. Mr. Coleman stated that any resolution to the issues may impact the variances being requested and any conditions made to any approval and that the parties are best served by coming to an agreement before the board renders a decision. Joe feels that the applicant needs to come back to the board with firmer decisions on how any of the issues raised will be addressed. A motion was made by Mary Lodato and seconded by Deb Weaver to reopen the hearing to public to comment, and Mrs. Murphy was asked if the options and solutions discussed would help address her concerns. She feels the demarcation of her property line is needed to help against liability issues. Regarding possible liability Mr. Sitzler commented that in his professional experience Mrs. Murphy's exposure would be based on there being some form of contributory negligence or a condition on her property for her to be held liable. He feels the issues raised by Mrs. Murphy are not dissimilar to issues between adjoining property owners now. Mrs. Murphy feels that she alone is being put at increased risk. Deb Weaver asked if any discussion regarding signage and barriers was beyond the scope of the application. Tom Coleman stated that these issues are properly site plan issues and he feels that unless the board feels a site plan should not be waived, those kinds of issue are best left to be resolved between the parties. However, the board can condition approval on any agreed solutions being included. As to possible property value impacts, Mr. Sitzler could not venture an opinion. There was no further comment and Mary Lodato motioned and Deb Weaver seconded to close the hearing to public comment.

Board Deliberation: Ken Mills stated that he feels there are significant concerns from the board that board feels it needs more definitive answers to before it can render a decision. Among those concerns are drainage

issues, privacy barriers, and the design and construction of the ramp. Mrs. Daniel stated that the club has a very limited budget to work with and wishes to resolve any potential comments and still be able to provide the needed handicapped access to the building. Mr. Sitzler, stated that he has been led to understand that the club is willing to provide additional privacy protection and address any drainage concerns if shown to exist or which will be created by the construction. Ken Mills stated and the members concurred that they needed more definitive and concrete decisions from the applicant to make sure they know what they will be voting. Ken stated the board needs: definitive plans on addressing drainage issues; how and what form any barriers will take to address privacy and property demarcation issues; final design and construction plans for the ramp; and hopefully knowledge that the neighbor and the club feel comfortable with the plans. The chair asked if the board was in its right to request that the matter be continued and what are the requirements. Mr. Coleman stated that if the applicant concurs, they need to request a continuance waiving time to prepare answers and plan revisions to satisfy the board's concerns. The board simply needs to adopt a motion to the request and all that is required in the way of notification is an announcement to those present and the posting of notice of the continuance on the bulletin board by the board.

Continuance: Mr. Sitzler stated the applicant had no objection to the request and wished to continue the matter until the next meeting in order to address the board's concerns and that they agreed to a waiver of all time. There being no further discussion, a motion was made by Ken Mills and seconded by Joe Threston, that the hearing be continued until the August meeting so all stated requirements can be met and that a notice to that effect be posted on the bulletin board of Borough Hall. The voice vote was unanimous that:

Be it resolved by the Planning Board of the Borough of Riverton, County of Burlington, and State of New Jersey that consideration on the application by Porch Club of Riverton for site plan waiver and approval of all related variances as needed for construction of a handicapped access ramp on the premises, at 4th & Howard Streets (Block 403, Lot 4) is continued, applicant having requested an extension of time for consideration of the matter until the next regular meeting of the Board on August 21, 2012.

The secretary will post the required continuation notice. Mr. Coleman reviewed that no additional notification is required by the applicant and all present tonight are properly notified of the continuance. Mr. Sitzler and Mr. Croft stated that they would continue to keep the secretary informed of further developments including if a further continuance was needed.

The recused members rejoined the meeting and Chairman Brandt resumed chairing the meeting.

Variance Application, Case# 2012-04, Beatrice and Michael Horn, 107 Lippincott Avenue, variance application for setback relief to erect a fence in the rear yard of a corner property.

Introductions: The chair announced the matter and the secretary stated that all jurisdictional requirements except the proof of taxes have been met. Tom Coleman stated that if the board concurred, the hearing could continue. Mr. Kennedy as a neighboring property owner, recused himself and Mrs. Weaver was informed she would vote on the matter. Mr. and Mrs. Horn were sworn in and testified.

Testimony: The applicants testified that they were replacing deteriorated fencing surrounding their swimming pool and that they were also planning to install a fence along the rear property line to define the rear yard of the property and to provide privacy and security for the family and pets. They feel it is a hardship living on a corner property to lose the ability to secure and enjoy a significant portion of the rear yard if they must meet the code setback requirements. Further, to properly fence in the in-ground pool requires that a portion of the fence must be within the required setback. Replacing the existing deteriorated fence will improve the appearance of the neighborhood. The variance being requested would allow extending the existing fence to the rear of the property as well as allowing the rear property line fence being extended to join the side yard fence. The existing wood stockade style fence from the rear of the house and along the Second Street side of the property will be replaced by an accented, six foot privacy vinyl fence. The rest of the existing pool fencing will be replaced with a four foot vinyl picket fence. The fence along the rear property line will be a five foot aluminum decorative style picket fence. The portion of the side yard fence that extends along the rear property line that is

within the setback and connects with the rear property line fence will be the same as the side yard fence but would gradually decrease in height to the aluminum fencing. There was no further testimony.

Board Discussion: The chair asked for comments and questions from the board. There was discussion that because all of the existing fencing that currently is within the setback area is being replaced by fencing of a different design, type, and material, that a variance is also needed for the portion of the fence being replaced. Ken Mills stated he feels that any variances granted should include the replaced fencing as well as the new fencing that also requires a variance. The board concurred that the existing fencing being reconstructed be included in any variances granted. The applicants had no objection to modifying the application as long as it assured that all the fencing within the setback was approved. Asked to define the hardship, the applicants reiterated the loss of use of the yard and the need to properly fence in the pool. They also feel it is a hardship to not be able to provide privacy as well as being able to completely fence in the property along Second Street and the rear property line to contain pets and discourage trespassing. Asked to define the benefits vs. detriments, the applicants feel that replacing existing deteriorated fencing is a benefit and that continuing the fencing along the side and rear property line better defines the property. In answer to the concern of the board of the impact of a stark, large, solid fence along the street, the applicants stated they planned to have some landscaping shrubbery along the fence. Also, the applicants feel that installing an open style fence would encourage a reaction by their dog to anyone walking along the street. The solid fence will discourage that behavior.

Public Comment: Joe Threston motioned and Mary Lodato seconded to open the hearing to public comment.

- Pat Lynch, 301 Second Street, that she fully supports the new fence and that replacing the existing ugly deteriorated fence is a welcome improvement. Pat feels that completing the fencing along the street will discourage trespassing and possible acts of vandalism if the current open access behind the existing/replaced fence remains open to the street.

There was no further comment and a motion was made by Mary Lodato and seconded by Joe Threston to close the hearing to public comment.

Deliberation: The board proceeded to deliberate the issues and sought answers from the applicants as needed. When there was no further discussion and the board was ready to propose a motion, they asked for guidance by Mr. Coleman to make sure they covered all the variances and or conditions. Tom suggested that sufficient testimony and evidence had been supplied that if the board was so inclined, it could approve the application by granting variances to permit:

1. Replacing the existing wood and wire fencing that currently extends into the required 44.64 foot side yard setback to 2.48 feet from the property line with the style(s) and type(s) submitted on the application.
2. Installing new fencing of similar type and height to extend the side yard fence approximately 13 feet to the rear property line.
3. Extending the side yard fence along a portion of the rear property line to join with the new rear property line fence that will lie within the 44.64 foot side yard setback.
4. Permitting the new fence along the rear property line of the type and style submitted on the application to extend into the 44.64 foot side yard setback to join with the side yard fence that extends along a portion of the rear property line and is within the setback.

There was no additional discussion and Ken Mills motioned and Joe Threston seconded to approve the application and grant the variances as suggested by Mr. Coleman. The motion was approved by a poll vote of 9 to 0 as follows:

Mr. Brandt	aye	Mr. Mills	aye
Mr. Della Penna	aye	Mr. Greenwood	aye
Mr. Threston	aye	Mr. Brown	aye
Mr. Corbi	aye	Mrs. Lodato	aye
Mrs. Weaver	aye		

Comments from various board members on their votes stated that hardships exist, and that the benefits of replacing the existing deteriorated fencing outweigh any perceived detriments of increasing the amount of fencing in the setback area. In addition the board appreciated that only support was voiced by the neighboring property owners. Mr. Coleman's firm will prepare Resolution P2012-07 memorializing the approval.

OLD BUSINESS

Affordable Housing – Tom Coleman stated that the board's work is done for now. There has been no move to take the Borough's funds. Copies of the signed agreements have been forwarded to Tamara and Quality Management and Habitat for Humanity. Both organizations expressed pleasure with the agreements and Tom believes QMA may be ready to secure a new property for a home within 30 days.

Council Matters of Importance to the Board – The mayor reported that the QMA and Habitat agreements had been signed by the Borough as well as all resolutions to be sent to the state.

Environmental Commission – Joe Threston reported that the commission is working on projects for Sustainable Jersey program and also pursuing getting credit for projects previously completed that appear to meet program criteria. The next meeting of the commission will be on Thursday the 19th.

Minor Site Plan Applications – Mary Lodato reported that an application may be submitted for a Subway store in the Shops at Riverton center.

NEW BUSINESS

Invoices and vouchers:

1. 7/2/12, Tamara Lee Consulting, LLC, \$225.00, services during June 2012 on affordable housing issues and revised spending plan. (DEVELOPMENT FEES TRUST FUND)
2. 7/9/12, Raymond Coleman & Heinold, LLP, \$700.00, services during June 2012 on affordable housing issues and revised spending plan. (DEVELOPMENT FEES TRUST FUND)
3. 7/9/12, Raymond Coleman & Heinold, LLP, \$100.00, legal services during June and attending the June 2012 board meeting. (PLANNING BOARD PROFESSIONAL SERVICES)
4. July 2012, Burlington County Times, \$42.42, publish Martino Notice of Decision. (MARTINO ESCROW ACCOUNT)

A motion was made by Mayor Brown, seconded by Ken Mills, and unanimously approved to pay the vouchers and invoices as presented. The secretary will have them signed and submitted for payment.

PUBLIC COMMENT – A motion was made by Ken Mills and seconded by Joe Threston to open the meeting to public comment. There being none, a motion was made by Ken Mills and seconded by Joe Threston to close the meeting to public comment.

Meeting adjourned at 9:26 PM. (motion by Mills, second by Threston)

Next meeting is at 7:00 pm on 8/21/2012 in Borough Hall.

Tape is on file for one year.

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