

**RIVERTON BOROUGH PLANNING BOARD
MINUTES
February 18, 2014**

The Public Session of the Planning Board was called to order at 7:05 PM by Secretary Ken Palmer. 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 February 3, 2014.
2. Required Service of notice and publication in the Burlington County Times on February 2, 2014.

PRESENT: Ken Mills, Craig Greenwood, Robert Kennedy (8:00pm), Joseph Threston, Mayor William Brown, Councilman Armand Bianchini, Mary Lodato, Deborah Weaver, Richard Gaughan, and Robert Martin.

Also Present: Solicitor Tom Coleman, Planner Tamara Lee, and secretary Ken Palmer.

ABSENT: Kerry Brandt and Joe Della Penna.

REORGANIZATION - 2014

Mrs. Lodato, Mr. Bianchini, and Mr. Threston were first sworn in by Mayor William Brown and later by Solicitor Tom Coleman. Secretary Palmer announced that he continues as an employee of the Borough to serve as the secretary of the planning board. Ken stated that of course this was at the pleasure of the board.

Chairman: Kerry Brandt was nominated by Bob Martin and seconded by Ken Mills to serve as chairman for 2014. The nominations were closed. A voice vote was taken and the vote was unanimous.

Vice Chairman: Ken Mills was nominated by Bob Martin and seconded by Craig Greenwood to serve as vice chairman for 2014. The nominations were closed. A voice vote was taken and the vote was unanimous.

Calendar of Board Meetings for 2014: Ken Mills motioned and Deb Weaver seconded that the board continue to meet on the third Tuesday of the month at 7:00 pm in Borough Hall. The vote was unanimous. Joe Threston motioned and Bob Martin seconded that Resolution P2014-01, the calendar of meetings for February 2014 through January 2015 be adopted, published in the Burlington County Times, and posted in Borough Hall. The voice vote was unanimous.

Solicitor: Thomas Coleman, Esq. of Raymond, Coleman, Heinold, Norman, LLP, was nominated by Ken Mills and seconded by Joe Threston to serve as the Planning Board Solicitor for 2014. The nominations were closed. A voice vote was taken and the vote was unanimous.

Planner: Tamara Lee, of Tamara Lee Consulting LLC, was nominated by Ken Mills and seconded by Deb Weaver to serve as the board's Planner for 2014. The nominations were closed. A voice vote was taken and the vote was unanimous.

Engineer: William Kirchner, of Environmental Resolutions, Inc., was nominated by Ken Mills and seconded by Joseph Threston to serve as the board's Engineer for 2014. The nominations were closed. A voice vote was taken and the vote was unanimous.

Resolution – Appointment of Solicitor, Planner, and Engineer: Resolution P2014-02 announcing the appointment of board professionals for the period February 2014 through January 2015 was reviewed. A motion was made by Joe Threston and seconded by Ken Mills to adopt the resolution, publish it in the Burlington County Times, and formally notify the appointed parties and request they submit contracts. The voice vote was unanimous.

Administrative Officer: The secretary reviewed that the position dovetails with Mary Longbottom's position as Borough Clerk, is normally considered part of her duties, is required by the Municipal Land Use Law, and that Mary is the only qualified person in the Borough. Mary Longbottom was nominated by Joseph Threston and seconded by Craig Greenwood to serve as the Administrative Officer pursuant to N.J.S.A. 40:55D-3 for the Planning Board for 2014. The nominations were closed. A voice vote was taken and the vote was unanimous.

Board Secretary: While not required, Ken Mills motioned and Joe Threston seconded that for the record the board recognizes Ken's continued position as board secretary.

MINUTES: A motion was made by Joe Threston and seconded by Craig Greenwood to adopt the minutes of the December 17, 2013, regular meeting of the planning board as distributed. The voice vote was unanimous.

Vice Chairman Ken Mills took over as chair of the meeting.

PUBLIC HEARING:

Case# 2014-01, Appeal by John Latimer of decisions made by the Zoning Official re: 603 Bank Avenue, Block 400, Lot 3

Introduction: Chairman Mills introduced the topic. Board solicitor Tom Coleman asked if there were any members who should recuse themselves. Mrs. Lodato, Mr. Greenwood, and Mr. Gaughan were recused. Mr. Coleman introduced the topic and discussed the rights of the parties. Mr. Coleman discussed the process to be followed.

Latimer Testimony: Mr. Coleman asked Mr. Latimer's attorney, Barbara Casey to present their case. Mrs. Casey introduced herself and asked for the record the reason the three members recused themselves. Mrs. Lodato is a witness in the matter as she is the zoning official. Mr. Greenwood works for Mr. Latimer. Mr. Gaughan is a former chair of the planning board and feels he has taken a position on the matter. Mrs. Casey stated that they had retained a court reporter to prepare a thorough record of the proceedings. (Secretary Note: If and or when a transcript is provided, it will be made a part of these minutes.) Mrs. Casey introduced the parties she represents. Mrs. Casey stated that the intent was to present testimony and evidence why the appellants feel the determination by the zoning official regarding what is the front yard of 603 Bank Avenue is incorrect. Copies of two books were identified and distributed (referred to in the minutes as Book 1 or Book 2):

- "Application Submissions and Evidence - Book1" contained copies of the legal documents and public record documents that were compiled to support testimony,
- "Application Submissions and Evidence - Book 2" contained copies of the exhibits that would be referenced during testimony.

(Secretary Note: It was attested to and confirmed during testimony that the identification of appellant's exhibits corresponded to their identification in the two books. For clarity these minutes use the "book" exhibit identification.)

Mrs. Casey introduced the witnesses who were sworn in and the professionals qualified and accepted by the board by voice vote (as shown below where applicable):

- Paul Schopp - historian (motion by Weaver, second by Brown, 5 aye, 1 nay)
- Anthony Dirosa - licensed land surveyor and civil engineer (motion by Threston, second by Martin, unanimous)
- Richard Cureton - licensed architect (motion by Martin, second by Weaver, unanimous)
- Michelle Taylor - licensed planner (motion by Brown, second by Bianchini, unanimous)
- John Latimer - appellant
- Kate Latimer - appellant
- Elaine Latimer - appellant

Mrs. Casey described the two books in greater detail. As to proof the appeal was filed, John Latimer attested to the 8 emails contained in Book 1, Tabs 1A-1H. Kate Latimer attested that the exhibits in Book 1, Tabs 2A-2D were the responses received by the OPRA request for Borough records related to the matter. Mrs. Casey

reviewed that the appellants hope for resolution that the riverbank is the front yard line and Second Street is the rear yard line. They will present evidence that the riverbank has historically been considered the front yard. Reference was made to recent zoning related plans for the property contained in Book 2, Tabs 1-3 that did not appear to define the front yard as anywhere else than the yard fronting the riverbank and that the question of what is the front or rear yard was not in question until the zoning official issued the determination that the river bank side of the property was the rear yard.

Mr. Schopp was asked to present historical evidence that the riverbank is/was considered the front of the property. Mr. Schopp referenced a report he prepared, "Analysis of Riverton's Riverfront Founder's Mansions" (Book 2, Tab 4), as well as three historical maps prepared in 1859, 1877, and 1919 (Book 2, Tabs 5-7) which he stated showed that the riverfront properties including 603 Bank were always considered as fronting on the riverbank.

Mr. Dirosa was asked to present his professional findings regarding the application. Mrs. Casey asked and the board secretary attested that exhibits Book 2, Tabs 2A and 3A were copies of the property plans submitted with and are part of the files for the two variance applications submitted by Dr. Muhr for 603 Bank Ave. Mr. Dirosa testified that the plans in Book 2, Tabs 2A and 3A indicate that the front yard is indicated as fronting on the riverbank and the rear yard was on Second Street. Referencing property deed research shown in exhibits Book 2, Tab 8 and Book 2, Tabs 9A-9K, Mr. Dirosa testified that the deeds continually reference Bank Avenue and/or riverbank and support that the riverfront side of the properties were considered the front of the property. Mr. Bianchini asked if the public has access to the properties today via the gate on the 601 Bank Avenue. Mr. Dirosa stated that the deeds specifically allow access to the adjoining lots by the landowners. Board planner Mrs. Lee asked and received clarification on items in the various deeds and what was referred to as the northern boundary.

Mr. Cureton was asked to describe the photographs presented in exhibits Book 2, Tabs 10A-B and Tabs 11A-H. They were photographs of riverfront properties taken by him and to support his architectural testimony. Mr. Cureton referenced three qualities critical to architecture; firmness or structural integrity, commodity or the functionality of the building and property, and delight or the aesthetics/architectural beauty. The first quality is not relevant to the application, the other two are. The vision along the riverfront properties is clearly the intended vision or delight side. The commodity side of the properties were clearly to the rear where the out buildings or today's garages and originally privies were intended to be located and this side was never along the bank or river side of the properties. Second Street and also Carriage House Lane as it was originally used were intended to serve as service road access to the riverfront properties. He feels it is only appropriate to treat the portions of the properties in question as facing the river as the front of the properties.

Ms. Taylor referenced exhibits Book 2, Tabs 12-16 which were her report, maps, and photos. Mrs. Taylor also referenced various exhibits contained in Book 1 Tab 3A-T to refer to laws, cases, and codes to support what can be considered a right of way or, the location and definition of a structure or accessory use. She also discussed nonconformities. Answering questions from Mrs. Casey, Ms. Taylor stated it is her opinion that the side facing the river is and was intended to be the front yard for the properties having current addresses 603 - 701 Bank Ave. Further if the Second Street side of the property is found to be the front yard, then the existing configuration of 603, 605, 607, and 701 Bank Avenue are nonconforming - a finding never previously made. Ms. Taylor contends that the riverfront homes were always oriented toward the river and that the historical use of the riverfront properties has always included that the portion of the properties facing the river was the front yard. Mr. Threston asked if Ms. Taylor feels Bank Avenue exists for all the properties from 601 - 701 Bank Ave. Ms. Taylor replied yes as an "other" right of way under the MLUL. Mrs. Weaver asked if the definitions/provisions in the deeds continue forward and Mrs. Casey stated that in her opinion yes, unless specifically changed.

Mrs. Casey concluded the appellant's testimony by asking Tamara Lee if she had reviewed the plans for the two "Muhr" variance applications. Mrs. Lee stated she did not have them in her possession but had reviewed the

minutes and resolutions. Mr. Mills commented that as a member of the zoning board and present for both applications he recalled the zoning board had attempted to clarify the issue of the address being Bank Avenue when access was from Second Street.

Mr. Coleman asked if Mrs. Casey wished to move items into evidence. Mrs. Casey identified the "mounted" items used during testimony as well as the two books and certain originals of the exhibits including sealed copies of the deeds to be entered as evidence. Mr. Coleman stated a motion from the board to accept the evidence was in order. Mr. Threston motioned, Mr. Martin seconded, and the board unanimously approved to accept the items as evidence.

Mrs. Casey was asked to summarize the appellant's presentation. For over 150 years the properties identified as 601-607 and 701 Bank Avenue have faced the river, that their addresses are in accordance with the borough code and consistent with the term frontage. The Second Street side of the properties contain the accessory structures. This arrangement is indicative of properties throughout the borough as the rear of the property where you have secondary access to the property and where you have two potential front yards where one is the front yard and one is the rear yard determined by use, functionality, and history. The two prior variance applications for 603 Bank Avenue in 2008 and 2011 indicated that the riverfront was the front yard which is consistent with the historical definition and use of the property. The current plans asked if a pool is permitted in the front yard of a property which is shown as the location of the pool on the riverfront side. The plan shows an alternate location in what, from its description and current use, is shown as the rear yard. Ruling the riverfront the rear yard treats the property as having two rear yards which will be inconsistent with the code and prove a substantial detriment to both 601 and 605 Bank Avenue. The appellants are asking the board to find that the front yard is the riverfront side and Second Street is the rear yard line for 603 as well all the properties with Bank Avenue addresses from Howard through Fulton Streets.

There being no further questions by the board for the appellants, Mr. Mills asked Mr. Coleman to review where things are. Mr. Coleman stated that it is the burden of the appellant to prove Mrs. Lodato was incorrect. A large volume of evidence has been presented for the first time tonight and the board and its professionals need a chance to consider whether it useful or relevant in making its determination regarding Mrs. Lodato's decision. Mr. Jeffrey Baron, attorney for the property owners certainly wishes to present testimony and cross examine the witnesses.

Mr. Baron stated the evidence presented tonight is being seen by him and his clients as well as the board and its professionals for the first time tonight and he feels it is not possible for everyone to properly review the material without time between now and the next meeting. He also feels that an application was not properly filed. It was explained that according to borough code Mr. Latimer had followed the proper procedure to register an appeal and that there is no formal application required. Mrs. Casey stated that the appellants and, she feels Mr. Zimmerman also, wishes that the matter move forward and that a decision be reached sooner rather than later. Mrs. Casey feels at least input from the public should be heard. Mr. Coleman stated that the board is under certain time requirements to resolve the matters and needs to keep that in mind. Mr. Mills asked Tamara her opinion and she replied that she is not prepared to provide any opinion on the evidence presented to night and wants to review their planner's report. She also is very interested in hearing input from the public present at the meeting and to hear and review material from the Zimmerman's. Mr. Baron stated he also want to hear from the public first and feels at least tonight they should be heard.

Public Comment: The consensus of the board was to hear from the public. A motion was made by Mrs. Weaver and seconded by Mr. Bianchini to open the hearing to public comment. All persons making comment were sworn in before speaking. Board members asked folks to be concise and brief as possible so everyone who wishes to may comment.

- Roger Prichard, 201 Fulton, was a former board member and amazed at the amount of material presented for the first time tonight without chance to review. He stated that he feels whenever there is ambiguity in a code or law it should be the legislative intent of the codes or rules. The zoning code must be based and

interpreted as to how it supports the Master Plan. He asked to read a letter into the record that he had sent to the board secretary. The letter was penned by Mr. Prichard and contains multiple signatures. Mr. Coleman stated the letter can be attributed only to those present and not otherwise precluded from speaking at this hearing. Mr. Prichard read the letter which stated that it was the intent of the master plan and governing code to preserve and protect the open and accessible vistas of the riverbank; and that requests the current board and borough government address any deficiencies in the current code as soon as possible to protect the intent of the master plan. Mr. Coleman asked Mr. Prichard and Mr. Latimer to attest that they did sign the document as read and both affirmed they did. Mr. Coleman stated that unless the board objected, the letter be admitted and marked as Peoples Exhibit 1 (P1) and distributed to the board and those wishing a copy. There was no objection and copies were made and distributed. Mr. Baron asked Mr. Prichard what qualified him to make professional representations regarding the master plan and Mr. Prichard replied that he is a civil engineer and had taken courses in developing a master plan. Mr. Baron asked several other questions and Mr. Prichard summarized his answers that the letter provides an opinion of former members that the decision of the zoning official is contrary to the intent of the master plan. Mr. Baron questioned Mr. Prichard's qualifications to offer opinions regarding the intent of the current master plan and subsequent reexamination of the plan.

- Ken Smith, 503 Bank Avenue, commented that as a resident of the town who lives along the riverfront he has always considered the riverfront side the front yard and believes that it is the current intent of the master plan.
- Lawrence Antonucci, 701 Bank Avenue, commented that he has always considered Bank Avenue and the river bank the front of his property and that swimming pools should not be in the front yard.
- Scott Zimmerman, 3 Seventh Street, believes that the front yard has to be along a street, the river is not a street nor is the property accessible from the river. The only access is from Second Street.
- Francine Conover, 13 Cuthbert, stated she is confused as to what is a front yard. She believes the front door of the Latimer's house at 601 Bank faces Howard Street. She was informed that the location of the door does not necessarily determine what is the actual front of the structure.
- Mike Kearney, 309 Bank Avenue, asked for an explanation that a court case apparently ruled that Bank Avenue is an easement and not a street. Mrs. Lee commented that while it varies many properties along the river define Bank Avenue as an easement and that Bank Avenue is a public right of way that cannot be expanded in any manner.
- Keith Wenig, 206 Cinnaminson, stated he was a member of the planning board that reviewed the demolition permit request for the old garage on 603 Bank and that he feels the board would never have okayed a permit which would subsequently allow the construction of a garage in the front yard of a property.
- Judith Zimmerman, 603 Bank Avenue, stated she feels there is no consistency as to whether a street exists or not along hers and neighboring properties including the Casein property.
- Fred Lynn, 621 Thomas Avenue, stated that he has worked on several of the riverfront properties in question and all the owners always considered the riverfront the front of their property.
- Walter Croft, 2 Woodside Lane, stated that as an architect practicing in the town since 1995, and serves on architectural review commission, and agrees that an interpretation that the river side of the property is the front yard is correct.
- Harold Zimmerman, 603 Bank Avenue, considers himself a Rivertonian. Every pool designer contacted feels the riverfront side is a very appropriate location, but it needs to be treated carefully and be appropriate for the house and environment. He commented that while the initial deeds referred to Bank Avenue, sometime between 1861 and 1903 the description changed to the river wall or riverbank. Since 1903, Bank Avenue does not appear on any of the deeds.
- Emily Antonucci, 701 Bank Avenue, commented that these homes face the river. It needs to be determined/decided to allow pools in the front yards of these homes.

There was no further comment and Mr. Threston motioned and Mrs. Weaver seconded to close the hearing to public comment.

Zimmerman Testimony: Mr. Coleman stated that it was appropriate to allow the Zimmerman's to present

their testimony and cross examination. Mr. Baron stated that he wished to at least begin his cross examination. A five minute recess was requested and Mr. Threston motioned and Mr. Martin seconded that a five minute recess be taken. Mr. Threston moved and Mr. Bianchini seconded that the meeting resume. Mrs. Casey stated she and her clients are prepared to move forward and hopefully resolve the matter tonight; but, that is up to the board. Mr. Mills agrees that it would be desirable to move forward but given the hour of the evening it may be necessary to declare the hearing be continued. Also he is not certain how feasible it might be to schedule a special meeting before the next regularly scheduled meeting. Mr. Coleman commented that the board can continue to March 18 at 91 days without exceeding the time limit. Mr. Baron proceeded to state his objection to some of the documents, that it is his opinion that he should be able to cross after having been able to review the material, that there has been no testimony regarding the zoning officer's decision, and that it should be his decision on when it is appropriate to cross, and he wishes to properly preserve the record. He feels he can easily conclude his testimony and activities at the next meeting in a reasonable amount of time. When asked if he was prepared to cross anyone tonight, Mr. Baron stated he could properly cross examine Mr. Cureton and Mr. Schopp tonight.

Mr. Baron proceeded to cross examine Mr. Cureton. Mr. Baron asked Mr. Cureton if it was his contention that the pool belongs on the second street side of the property. Mr. Cureton replied it is his contention that the front yard and vistas along the river should be maintained and preserved and if a pool is allowed it should be toward Second Street. Mr. Cureton was asked and stated that he considered Second Street an improved street. Asked if he had been on the Zimmerman's property and observed an improved roadway on the riverbank side of the property, Mr. Cureton replied he had not observed an improved roadway.

Mr. Baron cross examined Mr. Schopp. Asked to explain the title borough historian, Mr. Schopp explained that he has extensively studied the history of the town as a service to the Historical Society; but, that he has been advised by the mayor that the Borough Council at their second meeting in March will make him the official historian for the borough. Mr. Baron proceeded to question Mr. Schopp regarding the maps he had referred to during his testimony. Asked where the "vignette" map has been recorded as an official map, Mr. Schopp replied where it has been found and that it is a published map with a copyright but has never been officially "recorded" to his knowledge. Asked who authorized the preparation of the map, Mr. Cureton stated that the map was prepared during a time when the making and selling of maps was very popular. While maps were authorized, they were also created and sold on a subscription basis. Asked if the 1877 map was an official map, Mr. Cureton stated it was published in an Atlas published by a surveyor and publisher. The map states it was prepared by surveys done by the surveyor as he was a cartographer. The map was not certified and was authorized by the publisher for making a profit. The Sanborn map was a "fire insurance map" prepared by the Sanborn Map Co. and used by fire insurance agents to rate properties for fire insurance. It was prepared for profit and to serve the insurance industry. The company is still in business preparing maps. Mr. Baron stated that was all the cross he was prepared to do tonight and wishes to continue following a chance for he and their professionals to review the material.

Mrs. Casey asked Mr. Schopp if historians only rely on certified maps and Mr. Schopp explained that he relies on a wide variety of material, as much as he can find, to try and conduct a thorough historical research. Mrs. Casey asked Ms. Taylor the source and findings of her research of borough ordinances and she replied that Borough Clerk, Mrs. Longbottom had provided her access to the official ordinance books of the borough and had found no evidence that Bank Avenue was ever vacated. Mr. Baron referred to the "Dolecki" court case regarding Bank Avenue and stated that regarding easements, restrictive covenants, and such, the board cannot interpret them; but, it can and is charged with considering the validity of an appeal of the decision of the zoning official regarding the code and to render an interpretation of the code when requested.

Mr. Coleman advised the board that the board could entertain a motion to carry the Appeal to March 18. Mr. Baron stated they would provide a copy of their planner's report to the board approximately two weeks before the meeting. He would also supply the board secretary the case law he was citing. Mr. Threston motioned and Mr. Brown seconded that the hearing of the Appeal be carried to the March 18th meeting and it was approved

by unanimous voice vote. Mrs. Casey consented and also asked that the board agree to carry the related Interpretation to March 18. A motion was made by Mr. Threston, seconded by Mr. Brown and unanimously approved by voice vote to carry the Interpretation to the March 18th meeting. A five minute recess was requested and Mr. Threston motioned and Mr. Brown seconded that a five minute recess be taken. Mr. Brown moved and Mr. Greenwood seconded that the meeting resume.

CORRESPONDENCE/ANNOUNCEMENTS

1. **Five vouchers/invoices to be presented under New Business.**

OLD BUSINESS

Environmental Commission – Joe Threston reported that there was nothing new to report.

Minor Site Plan Applications – Mary Lodato reported that none had been submitted.

Council Matters of Importance to the Board – Mayor Brown reviewed Council elections and appointments and assignments; and, that a new full-time police officer had been hired.

Affordable Housing – Deb Weaver reported that she had spoken with Habitat for Humanity and they were very interested in renewing the agreement with the Borough. They have offered to come to a board meeting and make a presentation. Tom Coleman asked if Deb would obtain something in writing regarding a new agreement.

Mandatory Education – Ken Palmer reported that Rich Gaughan had attended and passed the recent NJPO sponsored course offered through Alaimo Associates. All board members required to be certified are certified.

NEW BUSINESS

Invoices and vouchers:

1. 1/6/14, Raymond Coleman Heinold & Norman, LLP, \$971.50, general business advice, research, and correspondence concerning the appeal of zoning officer's decision regarding 603 Bank Ave. during December 2013, and prepare for and attend December 2013 board meeting. (BOARD BUDGET-PROFESSIONAL SERVICES)
2. 2/5/14, Raymond Coleman Heinold & Norman, LLP, \$2,082.00, continued general business advice, research, and correspondence concerning 603 Bank Ave. during January 2014. (BOARD BUDGET-PROFESSIONAL SERVICES)
3. 2/3/14, Tamara L. Lee, PP, \$1,680.00, planning services rendered during January 2014 regarding the appeal of zoning officer's decision regarding 603 Bank Ave. (BOARD BUDGET-PROFESSIONAL SERVICES)
4. 2/3/14, Tamara L. Lee, PP, \$945.00, planning services rendered during January 2014 regarding the request for zoning interpretation of "Front Yard" as it applies to various riverfront properties Northeast of Howard St. (BOARD BUDGET-PROFESSIONAL SERVICES)
5. 1/2/14, *Burlington County Times*, \$40.70, charge for Notice of Decision published for the Brandenburger Linden Avenue subdivision. (BRANDENBURGER SUBDIVISION ESCROW)

It was discussed that there are no application and/or escrow requirements in the Borough for appeals or interpretations. Tamara Lee commented stated that this is the first municipality she had been in that did not have an application process and escrow requirement for appeals and interpretations. There was concern voiced about the impact of this unplanned expenditure on the budget. Tom Coleman commented that he feels that no matter the decision reached on the matters, there may be an appeal. A motion was made by Joe Threston, seconded by Craig Greenwood and unanimously approved to pay the vouchers as presented. The secretary will have them signed and submitted for payment.

PUBLIC COMMENT – Bill Brown motioned and Deb Weaver seconded to open the meeting to public comment. There was none and Joe Threston motioned and Bill Brown seconded to close the meeting to public comment.

Meeting adjourned at 11:02 pm. (motion by Threston, second by Weaver)

Next meeting is at 7:00 pm on 3/18/2014

Tape is on file for one year.

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