

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

The Public Session of the Planning Board was called to order at 7:00 PM by Vice Chairman Ken Mills. 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 19, 2014.
2. Required Service of notice and publication in the Burlington County Times on February 21, 2014.
3. Change of Location notice posted on bulletin board and published in the Burlington County Times on March 7, 2014.

**PRESENT:** Ken Mills, Joe Della Penna, Craig Greenwood, Robert Kennedy, Joseph Threston, Mayor William Brown, Councilman Armand Bianchini, Mary Lodato, Deborah Weaver, and Robert Martin.

**Also Present:** Solicitor Tom Coleman, Planner Tamara Lee, Engineer Bill Kirchner, and secretary Ken Palmer.

**ABSENT:** Kerry Brandt and Richard Gaughan.

**MINUTES:** A motion was made by Joe Threston and seconded by Bob Kennedy to adopt the minutes of the February 18, 2014, regular meeting of the planning board as distributed. The voice vote was unanimous.

**PUBLIC HEARINGS:**

**Case# 2014-03, Request by Latimer and Lewis, Inc., 202 Broad Street, for preliminary and final site plan approval, conditional use approval for an apartment over a business, and approval of any and all existing or created variances to enlarge the business premises at Block 800, Lots 15 and 16; 202 Broad Street and 435 Thomas Avenue.**

**Introduction:** Chairman Mills introduced the application. The secretary reviewed that the application was jurisdictionally complete. Mr. Coleman asked the board's professionals if they considered complete. Both Mrs. Lee and Mr. Kirchner agreed the application was complete and could be heard. Mr. Threston announced that he needed to recuse himself as he is an employee of the county and the application requires county planning approval. Mr. Greenwood announced that he needed to recuse himself as he is employed by the applicant.

**Continuation:** Mr. Coleman asked applicant's attorney, Barbara Casey to present the application. Mrs. Casey introduced herself and stated that due to a number of questions and issues raised by the County Planning Board and the board's engineer and planner, that the applicant wished to take the time to resolve these issues and submit revised plans. The applicant is requesting that the board grant a continuance at applicant's request until the April board meeting. Mrs. Casey stated that the applicant hoped the board would also permit the applicant's professionals to meet with the board's professionals as needed outside of the meeting to resolve any issues. The board had no objection with the professionals meeting to resolve any issues. Mr. Brown made a motion seconded by Mr. Della Penna that the application be deemed complete and that the continuation at the applicant's request be granted. The motion was approved by a unanimous voice vote. The secretary read the following for the record and stated that notice of same will be posted on the Borough Hall bulletin board and that no further notice is required:

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 Latimer & Lewis, Inc. for preliminary and final site plan approval with conditional use approval and all related variances for 202 Broad Street and 435 Thomas Avenue (Block 800, Lots 15 & 16) is continued, applicant having requested an extension of time for consideration of the matter until the regular meeting of the Board on April 15, 2014.

**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 reintroduced the topic. Board solicitor Tom Coleman reminded the members who had recused themselves that they should refrain from making any comments on the matter. The secretary advised the board that Mr. Della Penna who had been absent from last month's meeting had requested to listen to the tapes of the February meeting in order that he might fully participate in the matter, and that he had submitted a signed affidavit to that effect. Mr. Coleman reviewed where things were left last month and developments during the time between meetings. Appellant's presentation had been concluded and the property owner's cross examination had begun. Appellant's attorney Mrs. Barbara Casey and the property owner's attorney Mr. Jeffrey Baron concurred and Mr. Coleman asked Mr. Baron to continue.

**Zimmerman Testimony/Presentation:** Mr. Baron cross examined appellant's witness Anthony Dirosa, appellant's land surveyor, concerning the deeds presented in appellant's exhibits and particularly when references to Bank Avenue appeared to disappear as a legal description of the Zimmerman property to be replaced by the existence of an easement. Mrs. Casey and Mr. Baron continued to debate whether the absence of a description means that it no longer exists. Mr. Baron cross examined appellant's planner Michelle Taylor regarding the legal authenticity of "official" maps and whether she feels that the maps presented as exhibits satisfy the definitions of maps in the MLUL and its definitions. He also questioned how she determined that Bank Avenue is a street under the MLUL. Ms. Taylor referred to Appellant Exhibit 17 in her testimony that Bank Avenue existed on filed plans for the town. This exhibit was a larger representation of material contained in her report contained in Book 2, Section 12, labeled as pages 3-5 and 21-24 of 30 in which she referenced a circa 1855 subdivision plan of the town. Mr. Baron and Mrs. Casey also rebutted each other and Ms. Taylor concerning the term street. There were questions as to whether "Bank Avenue" actually exists on the properties beyond Howard Street. Mr. Coleman and Mrs. Lee both presented evidence that a definition of street exists in at least three sections of the Borough's codes, in particular: Sections 57-13, 111-16, and 113-3. Mrs. Casey and Mr. Baron continued to debate the issue and Mr. Baron concluded his cross examination by stating that the zoning official could only make a determination based on the content of Chapter 128 the zoning code of the borough and nothing presented by the appellant so far proved the code contained information that would have lead to a different determination. At this time a request for a five minute recess was made. Mr. Threston motioned and Mr. Brown seconded and it was unanimous that a five minute recess be allowed. Mr. Threston motioned and Mrs. Weaver seconded and the board was unanimous that the meeting and hearing resume.

Mr. Baron introduced Neil K. Johnson the Zimmerman's architect. Mr. Johnson was sworn in and following presentation of his credentials was unanimously accepted by the board with a motion by Mr. Threston and second by Mr. Kennedy. Mr. Johnson referred to exhibit O-1 which was a plot plan and was similar to the drawing labeled ZA-1 in Appellant's Book1, Section 2D but without the handwritten notations on the copy in the book but with other handwritten notations. Mr. Baron's questioning was related to the efforts to determine what was the front and rear yard of the 603 Bank Avenue property. Mrs. Casey asked Mr. Johnson to explain how he had come to mark on the original plan that the Delaware side was the front yard. Mr. Johnson stated it was based on prior surveys from the 2008 and 2011 variance applications for the property that he had referenced and didn't indicate otherwise until he was informed differently by Mrs. Lodato. Mr. Baron as well as Mr. Threston, Mr. Mills, and Mr. Della Penna of the board further questioned Mr. Johnson to ascertain how he came to originally think the Delaware River was the front yard and Second Street the rear until Mrs. Lodato stated otherwise.

Mr. Baron called on Mary Lodato who was sworn by Mr. Coleman. Mrs. Lodato testified that she is the Borough Zoning and Code Enforcement Official and has been in that position since 2006. Mrs. Lodato testified that she recalled the plan submitted by Mr. Johnson initially showing the front yard as the Delaware River side and the rear yard as the Second Street side and recalls the discussion of what is the front yard. Asked how she arrived at her decision that the front yard was not the Delaware, Mrs. Lodato stated that it was based on her review of the Borough's zoning code. She stated that while she was aware of the language of the minutes and resolutions of the prior variance applications for the property, she did not feel the code supported anything else than her decision. Mr. Martin asked if Mrs. Lodato had consulted Mr. Coleman and Mrs. Lodato stated yes,

which was also confirmed by Mr. Coleman. Mrs. Lodato stated she was concerned that this property might be subject to any special conditions/exceptions such as impact other properties along the river; such as the Doleky property. Once she ascertained this was not the case, Mrs. Lodato stated she relied on the zoning code to make her determination. Mr. Threston asked Mrs. Lodato if she considered it being thorough to check with Mr. Coleman and Mrs. Lodato stated yes. Mrs. Casey asked Mrs. Lodato if she had looked at and reviewed the plans and resolutions regarding the 2008 and 2011 applications for the property. Mrs. Lodato replied that she was aware of the terminology used in those applications; but, that as she understood the code, she could not make any different decision than what she did. Mrs. Casey asked if Mrs. Lodato was familiar with Chapter 89, Sections 1 and 2 of the Borough Code concerning numbering of buildings and Mrs. Lodato replied yes. Asked if this section and others would have had a major impact on her decision, Mrs. Lodato stated she understood that she had to base her decision on what was in the zoning code.

Mr. Baron next re-called Harold Zimmerman the property owner who affirmed he understood he was still under oath. Mr. Baron asked what kind of research he had done. Mr. Zimmerman referred to a copy of the "1890" map of the town that has been in his family for 75 years. It was marked and accepted as exhibit O-3 and also identified that it existed in Appellant's exhibit Book 2, Section 12, page 24 of 30. Mr. Zimmerman stated that as he viewed the map, the map did not show Bank Avenue extending as an actual street where his property is and he feels it ended at Howard Street. Mr. Baron questioned Mr. Zimmerman regarding exhibit O-4 prepared by Mr. Zimmerman which was a set of mounted photos and a plan of the home. Through questioning and referencing the photos, Mr. Zimmerman testified that he believes the portion of the house as well as that portion of the property was never used as or intended to be the front or entrance to the home. Members Threston, Martin, Kennedy, and Brown also questioned Mr. Zimmerman regarding his opinions of the intended and actual use of the home. Mr. Martin asked if the fact that nothing has apparently been built on or added to the portion of the property facing the river establish a precedence that it was intended to be the front of the property. Mr. Coleman stated it could possibly establish precedence and if that precedence has been established for a considerable period of time it could persuade a board or court to determine the matter in that fashion. Mrs. Casey asked if Mr. Zimmerman was a professional planner or engineer and he stated no. Mrs. Casey asked several additional questions regarding Mr. Zimmerman's concerning the map he had referenced as well as his familiarity with the code regarding the orientation of his home and determination of what yard is which.

Mr. Baron called John Latimer who was re-sworn. After ascertaining Mr. Latimer's professional credentials and past service as a member of Borough Council and the planning board, Mr. Baron asked about the last major revision of the zoning code. Asked who was responsible for the zoning code revision, Mr. Latimer stated he, the then mayor, the then zoning board's attorney, and borough engineer. Asked why nothing was put in the code that for properties fronting the river, that side of the property was the front yard. Mr. Latimer provided an explanation as he remembered it.

Mr. Baron called P. David Zimmerman who was sworn and presented his credentials and noted for the record he was not related to the property owner. Mr. Threston motioned, Mr. Martin seconded and the board accepted Mr. Zimmerman's credentials. Mr. Zimmerman reviewed the documents he consulted in his research and his findings and conclusions that the rear yard faces the Delaware River and the front yard faces Second Street. Key to that conclusion was definitions of front yard and front lot line in the ordinance. Mr. Zimmerman also referred to exhibit O-5 which were maps that exist in various sections of the master plan that do not show Bank Avenue going into the Latimer and Zimmerman properties. Mr. Martin asked if Mr. Zimmerman was familiar with Goal 3, Objective 1 of the master plan and how he came to the conclusion his findings didn't run counter to that objective. Mr. Zimmerman answered by referencing: the borough tax map, his conclusions that Bank Ave. ended at Howard Street, that there is no public open space on the owner's property, that from public access points on Howard Street and Fulton Street there is no "premier" view of the property, and that the proposed pool location won't impact the public view of the property. Mrs. Casey asked several code related questions regarding definitions and Mr. Zimmerman's conclusions based on them. There was no further testimony. Mr. Mills asked Mr. Coleman about the time limits available to the board and Mr. Coleman felt carrying the matter to the April meeting may be past the deadline unless the appellant granted an extension.

**Public Comment:** The consensus of the board was to press on and to hear from the public before summations. A motion was made by Mr. Threston and seconded by Mr. Della Penna 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 and to not simply reiterate previous public comments.

- Mike Kearney, 309 Bank Avenue, is concerned that if Bank Avenue is not considered a street and if 309 Bank Ave. also abuts Carriage House Lane, does that mean the side abutting Carriage House Lane is the front. This doesn't seem to make any sense since he believes everyone including himself has never considered or treated the front yard as being anywhere else than the side facing Bank Avenue and the river. It was reviewed that last month it was stated that while it does vary, many properties along the river define Bank Avenue as an easement but that also Bank Avenue is a public right of way that cannot be expanded in any manner.

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

**Board Professionals' Comments:** Mr. Mills asked if the board's professionals wished to comment. Mrs. Lee stated that she doesn't question the planning policy regarding the river and the difficulty of dealing with public vs. private interests particularly along the improved portion of Bank Ave. She believes there is a disconnect between the planning policy of the master plan and the zoning ordinance and she agrees in the planning policy. However, Mrs. Lodato's decision had to be based solely on following the zoning ordinance. Since there is nothing in the ordinance that lays out that riverfront properties are treated differently, such as how corner properties are treated in the ordinance; Mrs. Lodato had no alternative but to treat them like any other property; and Mrs. Lee feels that is what she did. Mrs. Lee stated she was not involved in the previous zoning variances on the property so she could offer no insight as to how the decisions were reached. Mr. Coleman referred to the privileged memo he had distributed earlier in the day in response to the legal brief submitted by Mrs. Casey in which he disagreed that the 2008 and 2011 decisions of the zoning board constituted res judicata, that is, binding precedent, or are entitled to collateral estoppel or preclusive effect. In those decisions the board was not asked to determine the front yard and back yard. However, if the board over the course of the last two months has heard historical fact that leads them to believe that Bank Ave. does exist in some form or fashion and that the interpretation of the master plan suggests the land be kept open, then respectfully the board should overturn the decision Mrs. Lodato made relative to zoning.

**Latimer/Zimmerman Summations:** Mr. Baron stated that he feels the board must reject the appeal. Mrs. Lodato and the board can only determine the matter by examining the zoning code. If the code does not do what you feel it should, then change the code. But, in the matter of the appeal any decision must be limited to what is in the code. After 1862, there is no mention of Bank Ave. on any deed presented as evidence. You can't find Bank Ave. but you can find reference to a private road. When you look at the maps that are over 100 years old you may or may not see the road, but there is no current official document that shows Bank Ave. in the property's location. He also reviewed many points where he believed appellants had not proven their case including how he believed legal determinations apply. He believes there is no res judicata or estoppel based on the decisions for the prior applications.

Mrs. Casey stated that, based on the zoning code, determining if a yard is front, side or rear shall be based on the relationship of the property or building in relation to adjacent properties. Mrs. Casey contends that the 2008 and 2011 applications included a finding of fact that the front yard was the Delaware River side and the Second Street side was the rear yard. If the garage had been approved for the front yard without the necessary use variance it would have been void. To not grant the appeal would allow the property to have two rear yards with structures allowed on the river side and the Second Street side.

**Board Deliberation and Decision:** Mr. Coleman stated that he and the secretary had calculated that if the board carried the matter to April 15, that would be day 119 of the 120 days permitted without appellant granting an extension. Mr. Mills stated he feels the board may be ready to reach a decision and asked if anyone had questions on or wished to discuss anything presented this month or last month. Mr. Coleman was asked to provide advice. Mr. Coleman summarized that this is an appeal of the zoning official's decision regarding the front and rear yard of the property. Based on what has been presented over the last two months the board needs

to make a motion either: that the appellant has not met its burden to support overturning the decision and thus deny the appeal; or, that the burden of proof has been satisfied that the decision was incorrect and should be overturned and in effect the zoning permit denied. The board should be prepared to establish why the motion should be supported. Mr. Brown motioned that the board should find that the Delaware River side of the property at 603 Bank Ave. is in fact the front yard despite what the code states in terms of a front yard abutting a street and that the zoning code official's decision should be reversed and the zoning permit issued on that decision be rescinded. Mr. Martin seconded the motion. There were no further motions or discussion. A poll vote was taken with aye signifying approval to overturn the decision and nay supporting the decision. Mr. Coleman specifically requested that reasons for the vote be provided. The motion to grant the appeal carried by a vote of five ayes and two nays as follows.

Mr. Mills	aye	Mr. Della Penna	aye
Mr. Threston	aye	Mr. Brown	aye
Mr. Bianchini	nay	Mrs. Weaver	nay
Mr. Martin	aye		

Mr. Mills stated this is the third time he has been involved in determining the front yard of this property. He firmly believes the Delaware River is the front yard of these properties and the town has always thought so too. He has received differing opinions from attorneys he highly respects and feels and supports the zoning official in the job she is doing. He feels that it might have been better to have brought the matter to the board before the decision was made and that what has been presented did not change what he feels is the front yard.

Mr. Della Penna felt it was a very difficult decision and that the code must be made to support the master plan and planning decisions of the town. He feels that history supports that the homes on the riverbank were intended to have the river be their front yard view.

Mr. Threston wishes this matter had been worked out between the neighbors and not becoming a burden on all the taxpayers of the town. The fact that history seems to support and the current adjacent neighbors all feel that the riverfront is the front yard of their properties supports that in relation to the adjacent properties this property's front yard is also the riverfront. He feels this should have been properly addressed when the code was last revised in 1998-99.

Mrs. Weaver feels she and most likely her fellow board members must be feeling overwhelmed by all that has been placed before them by both sides. She feels the current code is flawed in more than just this area and must be made to clearly support the master plan and planning goals of the town. She feels that Bank Ave. stops at Howard St. She feels that property owners have a right to enjoy their property without encroaching on sensitive issue in a small town without obstructing peoples views. The code must be clarified.

Mr. Martin supports the material to support overturning the decision.

Regarding Case# 2014-02 the request for interpretation of the code, Mr. Coleman stated that the board is not under a time constraint. Mrs. Casey informed the board that the Latimer's were withdrawing the request. Mr. Coleman stated that it would be appreciated if the decision to withdraw the request be communicated in writing.

## **CORRESPONDENCE/ANNOUNCEMENTS**

**1. 4 vouchers/invoices received as of 3/14/14 to be presented under New Business.**

## **OLD BUSINESS**

**Affordable Housing** – Deb Weaver reported that she had passed along Mr. Coleman's request to Habitat for Humanity for a draft of a new agreement and asked if Tom had received it. Tom replied not yet. Deb reported that all the annual reporting for COAH was complete except for some information regarding planning activity. Mr. Coleman updated the board on the latest developments at the state level regarding COAH.

The rest of Old Business was tabled until the next meeting due to the late hour.

## **NEW BUSINESS**

### **Invoices and vouchers:**

1. 2/28/14, *Burlington County Times*, \$127.16, three board notices published during February. (BOARD BUDGET)
2. 3/2/14, Tamara L. Lee, PP, \$1,128.75, planning services rendered during February 2014 regarding the appeal of zoning officer's decision regarding 603 Bank Ave. (BOARD BUDGET-PROFESSIONAL SERVICES)
3. 3/5/14, Raymond Coleman Heinold & Norman, LLP, \$1,797.00, general business advice, research, and correspondence concerning the appeal of zoning officer's decision regarding 603 Bank Ave. during February 2014, and prepare for and attend February board meeting. (BOARD BUDGET-PROFESSIONAL SERVICES)
4. 3/5/14, Raymond Coleman Heinold & Norman, LLP, \$175.00, general business services, research, and correspondence concerning the subdivision deeds for the Brandenburger subdivision during February 2014. (102 LINDEN/BRANDENBURGER SUBDIVISION APPLICATION ESCROW)

A motion was made by Joe Threston, seconded by Deb Weaver and unanimously approved to pay the vouchers as presented. The secretary will have them signed and submitted for payment.

**Zoning Code Change from Council** – Councilman Bianchini reviewed that Council has considered a request by the Historical Society to place historical markers on properties in the residential zones and this requires a change to the zoning code regarding signs in residential districts. Council is requesting that the planning board consider recommending the change necessary to permit the markers. Armand answered questions from the board regarding the markers. There was no further discussion and the board concurred that the project furthers the recognition of the architectural history of the town. Joe Della Penna motioned, Mary Lodato seconded, and the board by unanimous voice vote approved that the board endorses and recommends that Council adopt the ordinance to revise the zoning code and that the board adopt:

**Resolution # P2014-03 – Resolution Endorsing Proposed Ordinance To Amend Chapter 128, Article XVI, Section 68 Of The Riverton Zoning Code To Allow Historical Markers On Historically Significant Properties In Residential Districts.**

**PUBLIC COMMENT** – Joe Threston motioned and Craig Greenwood seconded to open the meeting to public comment. There was none and Joe Threston motioned and Craig Greenwood seconded to close the meeting to public comment.

**Meeting adjourned at 11:40 pm. (motion by Threston, second by Greenwood)**

**Next meeting is at 7:00 pm on 4/15/2014**

**Tape is on file for one year.**

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