

December 19, 2023
Regular Meeting
7:00p.m.

STATEMENT:

PUBLIC NOTICE of this meeting pursuant to the Open Public Meetings Act has been given by the Riverton Borough Planning Board in the following manner:

Public Notice of this meeting has been given in the following manner:

- 1) Posting written notice on the official bulletin board and the door of the Borough Hall on January 30, 2023.
- 2) Having written notice published in the Burlington County Times on February 2, 2023.
- 3) Forwarding written notice for informational purposes only to the Courier Post on January 30, 2023.

This Regular Meeting of the Riverton Borough Planning Board was held on the above date at 505A Howard Street.

Edward Ruggiano was sworn in as the Class II Member by Solicitor.

Roll Call: Mayor Cairns Wells, Mr. Ruggiano, Councilman Wilburn, Mr. Della Penna, Ms. Reis, Mr. Martin, Mr. Paszkiewicz, Mr. Aird, Mr. Brandt, Chairman Threston. Ms. Reis, Mr. Paszkiewicz, Mr. Flade was absent. Solicitor Koutsouris, Engineer Hanson and Planner Taylor were all present.

MINUTES:

Motion made by Mr. Ruggiano and seconded by Mr. Della Penna to approve the meeting minutes of the November 28, 2023 Regular Meeting.

Ayes – All members present.

Nays - None.

Abstentions – None.

RESOLUTIONS:

Motion made by Mr. Martin and seconded by Mr. Della Penna to approve the resolution for 619 Elm Terrace.

Ayes – All members present.

Nays - None.

Abstentions – Ruggiano.

OLD BUSINESS:

James C. Tucci
2 Linden Avenue
Block 200, Lot 5 & Block 201, Lot 5
Bulk Variance

Chairman Threston asked Mr. Floyd to come forward and discuss the documents that were submitted. Mr. Floyd advised that he circulated the title policy for the property and the previously mentioned case decision. Chairman Threston asked if there was a title report. Mr. Floyd indicated that there is no title report, but the Title Policy speaks to the aspects relevant to the application. Mr. Floyd advised that if Mr. Tucci were to have a new title policy and report issued, nothing would change. The Title Policy was entered as A-18 for the record. Chairman Threston asked to see the survey, which was presented by Mr. Floyd.

Chairman Threston asked Attorney to enumerate the concerns, which are as follows:

- 1) Deed restrictions on property may not be referenced as an exception in the Title Policy. The flip side is that Boards do not require applicants to provide the Title Policy with each application. Members have to be satisfied with the information provided by the applicant because usually it reverts to prior policy, use, etc.
- 2) Where is Bank Avenue and where does it stop and what authority does the individual property owner have on the property outside of Bank Avenue?

Mr. Floyd advised that the Title Policy is more thorough than any search or abstract. This is the be all, end all of title work. There is nothing recorded regarding any restrictions on the fence where it is proposed to be installed. Mr. Floyd reiterated that the fence would mimic that for the pocket park and that the fence would be removable. Chairman Threston advised again that the concern is where is that boundary along Bank Avenue so that the Board can make sure that it is done properly the first time if approved. Mr. Floyd advised that the fence would align with the other fencing along Bank Avenue and the pocket park. Mr. Wilburn advised that he is not entirely sure that those fences are where they are supposed to be. Mr. Floyd advised that the application before the Board is for his client and all proofs have been provided as required under the MLUL and would urge the Board to take an action.

Chairman Threston asked if there is any other information to share with the Board at this time. Mr. Floyd distributed A-16 and A-17, which are additional pictures taken since the last meeting. Mr. Tucci verbally explained the pictures. Attorney asked to confirm that hydrant is pictured, yes.

Mr. Ruggiano asked how far back the fence would. Mr. Tucci advised that he does not have it, but it would be 2 feet behind hydrant. Mr. Ruggiano advised that there is a 10-foot utility

easement and the fence cannot be in the easement. Mr. Floyd advised that the applicant would abide by any utility easements.

Attorney advised that any public comment at the last meeting is still part of the record.

Roger Prichard came forward and was sworn by the Attorney. Mr. Prichard suggested that a revised drawing with the fence should be required.

Wanda Swanson came forward and was sworn by Attorney. Ms. Swanson understood that a concern was about getting hurt and asked how many people have been injured in that area. Chairman Threston advised that he is not aware. Ms. Swanson asked if the other fences received permits. Chairman Threston advised that he does not know, as that is a question for the Borough office. Ms. Swanson asked as to the chances that other property owner puts fences in. Chairman Threston advised that this application does not set precedent for future applications. Ms. Swanson advised that she understands that there are certainly issues, but does the public have the right to access water, as she does in front of the nursing home. Chairman Threston advised that it is a good question, as much of the property is private and there has been testimony that their property has been used by the public for various reasons without permission. Ms. Swanson said that the Board does not have the authority to tell the public what they have access to along Bank Avenue. Chairman Threston advised that the only jurisdiction the Board has is to vote on the application from Mr. Tucci this evening.

Mindie Weiner 629 Elm Terrace and was sworn by Attorney. Ms. Weiner asked what the Board's jurisdiction was tonight. Attorney advised that the Board is to vote on the application as presented. Ms. Weiner as to confirm that applicant must be here this evening for a variance from something that is not permitted, so the Board would have to give the property owner. Attorney advised that is correct. Ms. Weiner stated that she can see both sides, but it is a big decision for the Board to consider given the nature of the application.

Mr. Floyd surmised the testimony from last meeting advising that it is next to the park and has a break in the seawall, making this a unique application because the property North of the park keeps people out of that property.

Ms. Weiner asked if there is another break. Mr. Floyd advised that at Fulton Street and the Yacht club provide public access points. Ms. Weiner stated she understands that each application is unique, but still feels as though this sets a precedent. Chairman Threston submitted that it certainly not an easy decision. Mr. Wilburn advised that the seawall is continuous and will not keep people out of the area.

Mr. Pro came forward and advised that Mr. Wentz on Bank Avenue has had two lawsuits.

Mr. Kearney came forward and asked about the ten-foot easement, which Mr. Ruggiano explained. Mr. Kearney noted that Bank Avenue may be different.

Mr. Charlie Williams came forward and was sworn in by Attorney. Mr. Williams advised that he does not believe there is a utility easement on his deed, other than the street and

Mr. Kirk Fullerton advised that Mr. Threston comments hits the nail on the head that this is a unique application, specific to Mr. Tucci.

Mr. Joseph Rainer came forward and was sworn by Attorney. Mr. Rainer advised that he lived here for several years before he ever knew that this was private property. Distractive nuisance dictates that the water is the problem, and it is liability. He has a pool and has to have a fence, one that is attractive and serves a purpose. Borough has other places to fix up and place a boat launch that assumes the responsibility and liability. 20% of properties have the fencing, which has been replaced several times over, which should require approvals, so this application should be approved.

Mr. Jim Quinn came forward and was sworn by Attorney. Mr. Quinn indicated that the fences are grandfathered in and asked if the activities are grandfathered in as well. Attorney advised that adverse possession would be required under State law, which would require a court decision. Attorney advised that access to the water and a reasonable part of the shore, the Delaware has rights of access, but they are not unlimited, as you cannot go over any obstacle in your way. Lateral access requires that you have the right to access and enjoy, so if you access from the park or another pieces of land, that is sufficient. Perpendicular access requires reasonable access, which does not mean that every property must provide access. As long as there is reasonable access, there is compliance with State statutes. If everyone puts a fence up, there may be an issue. Attorney advised that a review of GIS indicates that there is a tidelands claim line that follows the property, north and south of his property as well. There is no state claim for the front yard area that is the subject of this application.

Mr. Pro advised that the accesses provided at the end of the street are murky so should perpendicular fences be provided. Chairman advised that the members of Borough Council can decide.

Mr. Kearney advised that he believes that lateral access can also be considered trespassing.

Ms. Swanson asked if their fences will have a wire. Chairman Threston advised no.

Motion made by Mr. Ruggiano and seconded by Mr. Aird to close public comment.

Ayes – All members present.

Nays - None.

Abstentions – None.

Planner advised that there has not been testimony as to the return of the fence on the Southside.

Mr. Wilburn asked as to the ownership of the concrete wall. Attorney advised that it is on the adjacent lot, as depicted on the survey.

Mr. Della Penna asked as to the status of the deed for the property. Mr. Floyd advised that he could provide as a contingency of approval. Mr. Floyd provided a copy of the deed, submitted as Exhibit A-19. Mr. Floyd advised that this deed is insured under the title policy.

Chairman Threston asked for a description of the relief request. Attorney advised that the application is for a use variance for the installation of fence, as indicated on A-1, set back two (2) feet behind the hydrant and not within any utility easement. Mr. Tucci will give up the South side perpendicular and confirmed that no footings nor lighting will be installed, that he is responsible for the submission of one-call and that a new survey will be provided as part of fence permit application.

Mr. Aird asked if there is anything that can state that this is a unique application. Attorney advised that every property is unique, but can say that this application and/or approval is not precedential.

Motion made by Mr. Aird and seconded by Mr. Ruggiano to approve the use variance for Tucci, 2 Linde Avenue.

Ayes – All members present.

Nays - None.

Abstentions – None.

Chairman Threston thanked members of public and called for a short recess. The meeting reconvened at 8:31p.m.

NEW BUSINESS:

Attorney Incolingo advised that he is requesting a continuance to the January 23, 2024 Regular Meeting. Attorney advised that there are only five (5) sitting members that can vote, so a postponement is requested so that seven (7) members can hear the application. Attorney advised that the applicant would not be required to provide additional notice.

Motion made by Mr. Aird and seconded by Mr. Martin to carry the application for 14 Broad Street to the meeting of the January 23, 2024 Regular Meeting.

Ayes – All members present.

Nays - None.

Abstentions – None.

COMMITTEE REPORTS:

Ordinance Review Committee Update -- Chairman Threston advised that the Committee met, and that additional information is required at this time.

Council Liaison Report -- Mr. Wilburn advised that Mayor has been a tremendous help over the years. Swore in new Municipal Clerk Kelly Andrews. Council is working on budget transfers. Cannot turn off heat in winter is 1/3 at 6 pm at school gym.

Environmental Commission Report -- upcoming meeting on Thursday at 7 pm at Brewery 33. Cathy Simon hosted a meeting for Green Teams in the area.

Minor Site Plans Report -- nothing at this time.

PUBLIC PORTION:

No members of the public were present. Public portion was not opened.

Chairman advised that Mayor Cairns Wells will be outgoing after 8 years and thanked Ms. Hack for her hard work for the Board and the Borough, noting that she will be missed, but we look forward to working with the new Mayor.

Secretary asked if the Board is ok with placing the application on the agenda with some recommended changes.

There being no further business to attend to, motion made by Mr. Della Penna and Mr. Ruggiano that the meeting be adjourned, and so declared by Chairman Threston.


Meghan Jack, Secretary