

**RIVERALE PLANNING BOARD**

March 27, 2008

The Regular meeting of the Riverdale Planning Board opened on the above date at 7:30 p m Chairman Steven Loesner read the sunshine law.

**ROLL CALL:** Present: Mayor William Budesheim (arrived 7:34 p m.)  
Councilman Joseph Falkoski  
Al Heimall  
George Lang  
Glenn Venza  
Vincent Pellegrini  
Michael Reilly (Alt No 1)  
Bobby Roberts (Alt. No. 2)  
Vice-Chairman Brendan Magennis  
Chairman Steven Loesner

Absent: Bradley Clinton

Also present is John Barbarula Esquire, Board Attorney, and Paul Darmofalski P.E., Board Engineer.

**APPROVAL OF MINUTES:**

**February 28, 2007**

Thereupon Vice-Chairman Brendan Magennis set forth the motion seconded by George Lang to approve the February 28, 2008 minutes as submitted

**ROLL CALL:** Ayes: Magennis, Lang, Falkoski, Heimall, Pellegrini,  
Venza, Roberts, Loesner  
Nays: None  
(8 Ayes – 0 Nays – Motion Carried)

**THE RECORD NOTES THAT MAYOR WILLIAM BUDESHEIM IS IN ATTENDANCE AT 7:34 P.M.**

**RESOLUTION**

**1. Master Plan 2008**

Attorney John Barbarula read the Resolution into the record. Thereupon Al Heimall set forth the motion seconded by Glenn Venza to approve the Resolution as written and submitted.

**ROLL CALL:** Ayes: Heimall, Venza, Falkoski, Pellegrini, Lang,  
Roberts, Magennis, Lang  
Nays: None  
Abstain: Budesheim  
(8 Ayes – 0 Nays – 1 Abstain – Motion Carried)

**APPLICATION TO BE DEEMED COMPLETE OR INCOMPLETE:**

**1. Application MSD0312008 / Anthony Pio Costa Subtrust B / Windbeam Road / Block 36.01 Lots 13 and 14**

Chairman Loesner stated that the board received a copy of a letter from Darmofalski Engineering dated March 15, 2008 recommending the application be deemed complete.

Thereupon Al Heimall set forth the motion to deem this application complete and also to have a geotechnical engineer review this application for the Board based on recommendations from the board engineer Mayor William Budesheim seconded the motion.

**ROLL CALL:**                    **Ayes: Heimall, Budesheim, Falkoski, Venza, Pellegrini,  
Lang, Reilly, Magennis, Loesner**  
**Nays: None**  
**(9 Ayes – 0 Nays – Motion Carried)**

**The attorney for Pio Costa came forward to ask if the completeness review was subject to the geotechnical review? Attorney Barbarula stated that the application has been deemed complete. The geotechnical review will be part of the hearing. The hearing date for this application is April 24, 2008.**

**2. Application No. Board of Adjustment 03142008 / ICR Alexan Riverdale / Riverdale Road / Block 19 Lots 8.01, 8.03, 8.04, 9.01 13.01 and Block 30 Lots 2 and 31**

Councilman Falkoski asked if he could address the Board Attorney regarding this application. Councilman Falkoski stated he assumed this application is coming to the board as a "D" Variance. Normally when an application comes before the board as a use variance, say I want to build a gas station in a residential zone, and it is granted, it doesn't affect the rest of the ordinance. The other lots are still bound by what is written in the ordinance. Councilman Falkoski stated so the board does not have the authority to change an ordinance. As far as this application, the Ordinance was written specifically to address this development, and it specifies particularly that the intent and purpose was to create an area where we would have age restricted housing. So to grant a variance based upon this, the board is not looking for a use variance in his opinion, they are looking for a zoning change. Councilman Falkoski stated he does not think the Board of Adjustment has the jurisdiction to do that.

John Barbarula stated that the board cannot grant a zone change. The applicant has submitted an application to request a use variance on this piece of property. And they have the burden to show that it is not a zone change, they are trying to show that this is purely a use variance and that it is not adverse to the master plan, that negative and positive criteria will be met. They could have gone in for a zone change, but what I have been presented with is an application to treat this as a variance. They apparently believe that they have the proof to do this.

Councilman Falkoski stated, so another words they have the jurisdiction to come to this board and the board will then make the determination whether this is a use variance or a zoning change. Attorney Barbarula stated the board could listen to the applicant and then decide that this is a zone change and send the applicant back to the Mayor and Council. John Barbarula stated the application states that they want to eliminate the restriction of the zone for 55 years of age and older. The planner's testimony should show why this is a use variance and one of the questions you could pose to them is; are we really in the wrong type of application. All you have right now is the procedural bones of an application. You have not heard testimony yet, but this could have gone either way. They do have the right to proceed this way, however; after testimony if the board feels that they should have gone for the zone change, then the board can and will instruct them to do so. The applicant has to meet the burden of proof. John Barbarula will make copies of the legalities and case law in regards to this type of case.

Mayor Budesheim stated he felt the right thing to do was to go for a use variance, and not a zone change. Councilman Falkoski stated that if our attorney feels that this is the right application then his question has been answered.

Chairman Loesner stated that would be the first order of business when the application is open, and that will be to see if board has the jurisdiction to hear the application.

