RIVERTON BOROUGH ZONING BOARD
MINUTES
April 18, 2007

Pursuant to the Sunshine Laws and other statutes of the State of New Jersey, the regular meeting of the Riverton Zoning Board of Adjustment was called to order at 7:40 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 of a schedule of all meetings on the official bulletin board in the Borough Office and publication of the schedule in the Burlington County Times on January 27, 2007.
2. Posting notice and publication in the Burlington County Times of this meeting by the applicants.

REORGANIZATION - 2007

Solicitor Janet Smith administered the oath of office to new alternate member Craig Greenwood.

ROLL CALL

PRESENT: Edward Smyth, Richard Mood, Ken Mills, Alfred DeVece, William Corbi, Patricia Manzi, Craig Greenwood, and Janine Miller.

ABSENT: Kerry Brandt.

OFFICIALS: Board Solicitor Janet Zoltanski Smith, Councilman William Brown, and Secretary Ken Palmer were present. The presence of the planner and engineer were not required. Mary Lodato was not present.

MINUTES: A motion was made by Fred DeVece, seconded by Janine Miller, and unanimously approved to adopt the minutes of February 21, 2007 as distributed.

PUBLIC HEARING:

APPLICATION FOR USE VARIANCE TO CONVERT PORTION OF A COMMERCIAL BULDING TO A RESIDENCE IN THE NEIGHBORHOOD BUSINESS DISTRICT, BY MP TOWNSEND, LLC, 523 HOWARD STREET, BLOCK 903, LOT 25:

The vice chair introduced the topic and asked the board if personal or business conflicts prevented any member from hearing the application. There were none. Review of the submissions showed that all jurisdictional requirements had been met and Janet stated the hearing could proceed. The applicant/owner Michael Turley and his architect Richard Sauder were sworn in and applicants attorney Thomas Ehrhardt was introduced.

Testimony – Janet reviewed the applicable sections of the code concerning apartments in commercial structures within the Neighborhood Business district. Mr. Ehrhardt stated the applicant desired an interpretation whether a use variance was needed or if the proposed use could be treated as a conditional use under the zoning code which permits an apartment over a business in the district. Mr. Ehrhardt feels that the proposed use is similar to the intent of the code and may be considered a conditional use. Ken Mills stated he feels it does not meet the provisions of the code. Ken asked if the possibility of adding a second floor to the structure had been considered. The answer was yes but deemed not feasible and will be explained later as needed. Ed Smyth feels the proposed use before the board does not meet the code and a use variance is needed to proceed. Ed reviewed why the conditional use was established when the neighborhood business district was expanded. Janet suggested the board consider a motion that interpretation of the ordinance is that a conditional use of an apartment over a business in the neighborhood business district requires that the apartment be separated from the business and that it be over the business on an upper floor. Fred DeVece motioned that the interpretation is as so stated by the board's attorney and that the board feels a use variance is required for this application. The motion was seconded by Rich Mood. After discussion the

motion passed by a poll vote of 7 to 0 as follows:

Mr. Smyth	aye	Mr. Mood	aye
Mr. Mills	aye	Mr. DeVece	aye
Mr. Corbi	aye	Mrs. Manzi	aye
Mr. Greenwood	aye		

Janet suggested that Mr. Ehrhardt present the applicants case for a use variance. Michael Turley and his sister are the principals of the LLC and have owned the property for a year. The store-front area is currently rented out to a retail establishment. A portion of the rear area is used by the applicant as a studio for his commercial photography business. Mr. Turley wishes to construct an apartment in the remainder of the rear of the building for his family and for occasional use of the kitchen area for set pieces for his and his wife's photography work. He likens the concept to an artist's loft where the business is conducted essentially as an integral part of the residence. His wife is a photographer also. Living on site also will provide additional security for his equipment which is valuable and his livelihood. Living on site also permits greater utilization of the studio and the ability to better care for the family. The old garage entrance at the front of the building would be used as parking for the proposed residence, delivering product as needed, and an entrance for business clients. There will be little customer traffic to his business. Mr. Turley described the plans for the residence. He also described the construction of the building which is a single story block structure with large steel girders and a very high ceiling. He testified that a second floor residence could not be constructed within the existing structure; a second story would have to be added. Asked if the space could be used for office space, the applicant testified there would be parking issues since there is no off-street parking suitable for such a use and he feels the proposed use will have less of an impact on the town and its parking problems. The location is close to the River Line for his clients and to the park for use of the family. Except for plans to restore the exterior of the building to its original styling, no major changes to the exterior are planned. Locating his residence in the building may actually lessen the number of vehicles arriving and departing the site. The applicant is not aware of similar uses in the district or town unless they are preexisting. The board was not aware of any similar use currently existing.

Janet asked the applicant to address why he feels the residential use is beneficial to the town beyond why he feels it is good for him since the use, if granted, goes beyond his proposed use and goes with the site. She specifically mentioned that: the proposed use stays with the site, the use creates a residence where none exists now, the use mixes commercial and residential use in close proximity to each other, there is apparently no yard area, there is no offsite parking, and there is no space for a buffer. Janet also asked if the plan was feasible from a construction code perspective. Mr. Turley stated that according to the Borough Construction official, the project could be done and comply with the building codes. Mr. Turley explained the location of the structure in relation to the surrounding buildings. Mr. Turley feels the currently vacant space is not suitable for retail space based on the parking needs for a larger retail use. Parking is not available for office space use. Asked if a second story could be added, Mr. Turley stated the existing structure was too high to make a second story feasible. Also, he feels it is safer to have the residence on the first floor. Statements from the board provided history that the building was originally a new car dealership with a showroom in front with service/storage in the rear. The old showroom serves the current retail use. Mr. Turley does not intend to rent out the apartment but to live in it for the foreseeable future. The height of the building and its construction realistically rules out erecting a second story. Mr. Turley feels the proximity to the school, the park, the windows in the building, and the seclusion of the rear area all serve to make the space suitable for a residential use in the building. He feels the proposed use would have the least impact on the town, is ideal for his needs, and it would be beneficial for the town to foster this kind of use.

Ken Mills stated that while the site as currently configured may not be suitable for all commercial use, the site could possibly be reconfigured for better retail/commercial uses. Since there has been no site plan filed or professional review, the uses are pure conjecture at his time. Mr. Ehrhardt stated that the building is not suitable for straight commercial/retail use without major renovations. Janet asked if there was a hallway present now and the answer was no it would part of the residence construction. Janet stated that the circumstances being discussed were current only to the present use and it is conceivable the owners could rent the entire site to a single tenant with renovations to be made to accommodate a single commercial/retail use. Janine Miller asked if there were building code issues to properly separate the residence from the commercial space. The answer was yes but that would be an issue for the construction code officials and the builder to ensure the construction met codes. Mr. Corbi feels the applicant purchased the site as a commercial site and it should probably remain as such. Mr. DeVece also feels the

site should be retained for commercial use and if a residential component is to be added, it should be built above the current structure.

Mr. Sauder, the architect, was introduced and following presentation of his credentials, testified to his experience with mixed use structures. He feels the building and site does not lend itself to multiple commercial tenants. He feels the proposed mixed use provides the best use with the least impact on the town. He doesn't feel there is a detriment to the proposed use and it will benefit the town by permitting more complete utilization of the resource. The building is approximately 18 feet high now and to overbuild the existing roof to allow a second story would result in a second story starting at least 20 feet high. An elevator for a single tenant is not justified. He doesn't feel there is sufficient frontage to support more than one mercantile establishment which needs frontage exposure to be viable. He feels the structure will support the planned use.

Janet asked that while it is common to have mixed use buildings in cities, is it common practice to have residential units on the same floor as the commercial uses. The architect did not really provide an answer. Mr. Sauder asked the board for clarification on the town's code regarding apartments over businesses and it was provided. Asked to speak to the suitability of the proposed use, Mr. Sauder stated it is appealing for what the owner wants, meets the owner's needs, and is the best multiple use with the least impact on the town. Mr. Corbi asked if the existing structure could be modified to lower the height and add a second story. The existing structure is block and steel girders and would require a major renovation, the expense of which probably can't be justified. Mr. Ehrhardt asked Mr. Sauder to restate his objection to adding a second story and he again referred to the need to overbuild the roof to permit the addition of a second story which will result in the need to have an approximately 20 feet high stairway to reach the second story. Mr. Turley stated if a second story was added, it would be at least 6-8 feet higher than the neighboring two-story structure. Vice chair Mills asked the applicant if he had considered other uses than what is being proposed. Mr. Turley reviewed his previous thoughts and why he feels that the proposed use is not only best for him but also best for the town. He feels if it was reasonable to use the site differently, it would have been. Instead it has stood vacant or underused for a long time. Mr. Turley stated again that it is his intent to use the structure as proposed for the long term. He feels it is what he needs and he has no plans to move if the use is permitted.

There were no additional questions from the board and the vice chair asked for a motion to open the matter to the public. Ed Smyth motioned and Rich Mood seconded opening the hearing to public comment. All persons were sworn in before commenting.

- Cynthia Brooks, 304 Broad Street, stated she has known the applicant for a long time on a professional level. She herself runs a business on the first floor and lives above it on the second floor in the district. She appreciates the artist in residence concept and feels the proposed use serves that concept. She asked if there is any other situation in the town where this concept exists. The studio on Main Street was mentioned; but, it was also mentioned that the living space was on the second floor. Janet stated that there is nothing in the code currently related to "artist in residence." Cynthia asked if the proposed use would be marketable. Janet stated that while it may be marketable, that is not the issue. The issue is that what is proposed is not permitted and the board needs to determine if it is suitable for the area, benefits the town, and serves the overall good of the Borough. Just because it is marketable doesn't satisfy the reasons to provide a use variance. In addition there are not the amenities usually connected with residences at this site.
- Roy Vollmer, 521 Howard Street, stated he had his architect business next to the site. He supports the application and feels the site is great for an artist in residence use. He mentioned examples in Philadelphia and New York City where factory or strictly commercial sites had been successfully renovated to mixed use or strictly residential use. He feels that as long as the health, welfare, and safety issues are addressed there is no problem with the residential use being on the first floor. Professional photographers are more artists than business people and their work is particularly suited to artist in residence use where it is more a studio with living accommodations rather than an apartment. When he first moved to town he operated his architect business out of his home. Janet asked and received details of how Mr. Vollmer operated out of his home. Janet stated that the code does provide for home based occupations; but, that in those cases the occupation use is ancillary to the residential use. The home based occupation dedicates a portion of the residence for business use. It does not, as is being proposed here, convert a primarily commercial use to an ancillary residential use. Perhaps the master plan and codes need to be revised if there is deemed a need for this type of use; but, that is not the case now. Janet reviewed that the second floor residence concept came about because of the many

structures in the district that had already had that type of use or it provided a way to utilize multilevel structures in the district that because of the particular conditions in the district were better suited to that type of mixed use rather than strictly residential use.

There was no further public comment and Fred DeVece motioned and Janine Miller seconded that the hearing be closed to public comment.

Deliberation – There were no further questions of the applicant and Ken asked if the board was prepared to make a motion on the matter. Tom Ehrhardt suggested he summarize things for the board and he was asked to do so. He summarized the applicant's position that the rear of the site does not lend itself to for multiple business use, it is particularly suited to a studio/residence use, it is not a detriment to the public good, he feels the use was contemplated by the conditional mixed use provisions in the district and maximizes the possible use of the site. Mr. Ehrhardt went on to further define why he feels the proposed use meets the ideals of the Master Plan.

Ed Smyth commented that he doesn't feel the applicant has met the burden to justify a use variance. While Mr. Turley has testified why the use would be a convenience to him and that the site is currently underutilized and may be considered a detriment to the downtown; he has not demonstrated that it is best for the town that the site be changed to permit a residence in a commercial area. While the board does consider the particular merits of the application, the applicant, and the immediate effects of a proposal; the board must also consider the long term impact on the town and all the impacts granting the use variance might have. Ken Mills stated that the board cannot consider economics of a proposal when considering approving or denying an application especially a use variance. Apartments over businesses in the neighborhood business district are a conditional use and as such are subject to review and consideration on a case by case basis. The use must be suitable to the site. Janet added that it is important to keep in mind that apartments are not a permitted use anywhere in town and they are only a conditional use with strict definitions in the neighborhood business district. Also it should be noted that the artists lofts concept discussed are residential not commercial. Finally the application is a significant change in the nature of the property. Ken stated he feels if there is no more testimony to be given, the board needs keep the matter at hand in mind and needs to consider making a motion to approve or deny the application. The applicant is owed as much. Ed Smyth concurred and moved that the applicant's request for a use variance to construct an apartment on the first floor of the building be denied. Fred DeVece seconded the motion. Janet reviewed that for the motion as made, a vote of aye is a vote to deny the application and a vote of nay signifies a vote against denying the application. A poll vote of the board denied the application by a vote of 5 to 2 as follows:

Mr. Smyth	aye	Mr. Mood	aye
Mr. Mills	aye	Mr. DeVece	aye
Mr. Corbi	aye	Mrs. Manzi	nay
Mr. Greenwood	nay		

OLD BUSINESS

Sidewalk Signs – Fred DeVece stated he had not heard anything from Joe Katella since contacting him to be on the committee and asking to be kept informed. The secretary reviewed that there has not been any new activity since the board is concentrating on completing the reexamination of the master plan.

Proposed Historic Preservation Changes to Chapter 128 – Zoning Code – The secretary briefly reviewed the letter from the ARC regarding the proposed changes, copies of which had been distributed to the board. Janet asked about the attached table of contents. The secretary related it was supposedly related to a model property maintenance ordinance that is not overly intrusive and was included as a possible interest to the planning board. The history of property maintenance issues in the Borough was discussed and the ebb and flow of interest in the subject.

Council Matters – Councilman Brown related that there is interest in putting together a committee of ARC, Historical Society, planning board and zoning board members to discuss the preservation/maintenance issue. Council sees merit in the gist of the proposal and has tasked the planning board to consider and make a recommendation on the matter. Mr. Brown feels the current code enforcement officer is doing a good job. He has concerns regarding the use of the Health Department to address issues and their statement that they cannot enter a private property without just cause. Janet stated that when it comes to private property issues, public agencies are very restricted in the actions available to them. Mr. Brown stated there is a lot of concern over some properties that appear to be in a constant need of repair yet nothing was being done.

Mandatory Education Update – The secretary reported there was no update on new classes other than previously reported on the possibility of a class in Maple Shade in September. The secretary also briefed the board on his research on class requirements. He had obtained information from the state DCA web page that states the class must be taken one-time only. In addition, for members serving as of July 2006, when the law was enacted, the deadline for taking the course is January 2008.

CORRESPONDENCE

- ARC Response to the proposed changes to the zoning code by the Historical Society – copies provided to the board.

NEW BUSINESS

Vouchers and Invoices:

- 3/2/07, Janet Zoltanski Smith, $492.00, professional services 10/06 – 2/07 and meeting attendance in February.

Fred DeVece moved, Rick Mood seconded, and the vote was unanimous to pay the invoice as presented. The secretary will make sure the invoice is signed and submitted for payment.

Change Meeting Date – The vice chair suggested that the board consider changing the meeting date to the third Thursday of the month. There were unresolved issues raised. It was also discussed moving it just for the summer months; but again nothing was decided. It was noted by the secretary and Janet that procedurally all that had to occur was for the board to approve a resolution to the change the date and that the new dates would be published and posted. The secretary suggested that nothing be done for May as he had already discussed with possible applicants that the May date was the 16th. The matter was tabled until the May meeting.

PUBLIC COMMENT ON GENERAL ZONING ISSUES

There was none.

Meeting adjourned at 10:05 PM.

Tape is on file.

Kenny C. Palmer, Jr., Secretary
RIVERTON ZONING BOARD