

**RIVERTON BOROUGH ZONING BOARD  
MINUTES  
April 15, 2010**

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 7:35 PM by Chairman Kerry Brandt.

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 25, 2010.
2. Posting notice and publication in the Burlington County Times of this meeting by the applicants.

**ROLL CALL**

**PRESENT:** Kerry Brandt, Ken Mills, William Corbi, Craig Greenwood, Charles Veasey, Deborah Weaver, and Barry Wells.

**ABSENT:** Joe Della Penna and Robert Kennedy.

**OFFICIALS:** Solicitor Janet Zoltanski Smith and Secretary Ken Palmer were present.

**MINUTES**

The chair asked if everyone had received and reviewed the minutes. There was no comment and a motion was made by Chick Veasey, seconded by Deb Weaver, and unanimously approved to adopt the minutes of the March 18, 2010 regular meeting as distributed.

**PUBLIC HEARING**

**Variance Application by Douglas Aird and Heather Thress, 623 Main Street, (Block 906, Lot 7) to construct an addition that will expand the nonconforming structure.**

**Testimony:** The chair announced the matter and the secretary stated that all jurisdictional requirements have been met. No members needed to recuse themselves from the matter and Janet Smith stated the hearing could proceed. Mrs. Thress was sworn in and explained the project. The applicants wish to add a small 3'-10" x 14'-7½" 1-story addition to the side of the house for a ½ bath and living space. The existing house is nonconforming because it is part of a twin home and the side of the house lies within the required side yard setback. The addition will maintain the existing building line set back of the structure which is approximately 6.71 feet from the side lot line and the roof details will extend less than the roof details of the current structure. The floor plan of the house does not allow for the addition to be otherwise located without major renovations. The applicants need the addition to better accommodate the needs of their family and small children. The design of the addition will maintain the exterior design of the existing house and will have minimal visual impact on the neighborhood. The chair asked if there was additional testimony or questions from the board. There being none the chair requested the hearing be opened to public comment. Ken Mills motioned and Craig Greenwood seconded to open the hearing for public comment. There was none and Ken Mills motioned and Chick Veasey seconded to close the hearing to public comment.

**Deliberation:** Following discussion of what the approval should require, Janet was asked to review and suggest a motion. Janet suggested the board might grant a variance to allow construction of an addition that does not extend beyond the existing rear or side building lines consistent with the plans submitted and does not encroach any further into the side yard than the existing structure. Barry Wells motioned and Deborah Weaver seconded to approve the application as suggested. The motion was approved by a poll vote of 7 to 0 as follows:

Mr. Brandt aye      Mr. Mills   aye  
Mr. Corbi   aye      Mr. Greenwood aye  
Mr. Veasey aye      Mrs. Weaver   aye  
Mr. Wells   aye

Various members commented that they felt the variance was minimal, that a hardship exists, there is minimal impact on neighborhood, and there is no further encroachment.

**Request for Interpretation of Zoning Code Regarding Determination of Current Use of Property at 408 Main Street.**

The chair explained to the board that this matter had come up only in the last few days and that the contact purchasers of the building were seeking an interpretation of what is the current use of the building. He explained that while the purchaser was requesting the interpretation, the owner also needed to consent to the interpretation and have a chance to provide testimony. Further, while it is very possible that a conclusion may not be reached tonight he thought it was unfair to make the parties wait another month before even considering the matter. Rather he wished to have testimony heard tonight and then further research as needed can be conducted. Janet stated the board is being asked to provide an interpretation as to what is the current use, what use(s) were/are grandfathered, and if there has been any abandonment of the use(s).

Dr. Anthony T. Cherico was sworn in and stated he consents to the interpretation. He testified that he is the current owner and that he purchased the building in 1982 from Dr. T. Bruce Dixon who used the first floor as an office and rented out the two apartments on the second and third floor. Dr. Cherico testified that he understood Dr. Dixon had used the building as such from 1945 until he sold it in 1982. Dr. Cherico stated that his research showed the building had been used for a Doctor's office at least from the turn of the last century. Doctors Marcy and Rogers were mentioned as prior occupants. Dr. Cherico testified that when he purchased the building there were two apartments and the office. The office occupies the entire first floor and there is an apartment on each of the second and third floors. Access to the office was from an entrance on the front of the building. Access to the apartments was from a side entrance that has a stairwell to the upper floors. All entrances to all three levels from the stairwell are secured and there is separate access to each unit from the stairwell. When purchased, the second floor apartment consisted of two bedrooms, living room, dining room, kitchen, and a full bath. The third floor had a kitchen, bedroom, living room, and full bath. The first floor office has nine rooms consisting of a waiting room, three rooms used for reception and files, five exam rooms and a ½ bath. After he occupied the building he continued to use the first floor office. He and his wife occupied the second floor and his son lived on the third floor. Janet asked if the son used the kitchen and Dr. Cherico stated yes and that they had also installed a washer and dryer on the third floor. He vacated the office in the last few weeks and his son is vacating this weekend in preparation for final sale. Kerry asked what alterations had been made. Dr. Cherico stated that approximately a year ago the furnace was replaced on the second floor and that fire code alterations were required to separate the furnace area from the bathroom. He testified that no alterations had been made to the access to each unit. He has maintained the three electric and three gas meters. There is a single bill for both water and sewer but the charges are based on the building having three units.

Ken Mills asked what the board was being asked for. Dr. Cherico stated he understood that the buyer wished to maintain the two rental units/office scenario. Asked when he put the building on the market, Dr. Cherico stated it has been on the market for four years. Janet asked how long he has continued to use the office on the first floor since she understands he relocated the practice to larger facilities at 600 Main Street. Dr. Cherico replied he has maintained the office at 408 for file storage and to see patients on weekends and weeknights after regular office hours. He has continued to use the office for night and weekend office hours rather than opening the main office. Ken Mills and Barry Wells again asked for clarification of the issues. The chair explained that until the testimony tonight there have been questions as to what was the prior and current use of the building and asked the board to maintain an open mind until all testimony was presented, issues discussed, and the legal ramifications researched. The building is in the R4 residential zone which does not permit strictly commercial

use. Janet stated that the information presented to the zoning officer was unclear and the zoning officer could not make an interpretation. Also there are legal issues to consider. Currently the uses of the building are not permitted and it must be determined when they were permitted and subsequently grandfathered. Also there is an issue if any of the uses have been abandoned. Barry asked if there is a period of elapsed time that constitutes when a use is grandfathered. Janet explained that the use(s) must have been legal at some point in time for them to be legally grandfathered when subsequent changes to the code no longer permit the use(s). The testimony being presented tonight has not been available or presented prior to now. Kerry stated that while bills, etc. can be used as supporting evidence, he feels the board needs to determine how the building was used and has been used up to the present. Janet stated that only the testimony and further research can allow for an interpretation to be made to determine that the use was indeed legal at one time and there has been no abandonment.

Kerry asked how Dr. Cherico came by the history of the building. Dr. Cherico replied that he obtained the knowledge from his patients that were patients as adults or children of the prior occupants of the office. Prior to his purchase of the building and office he had used some of the space with Dr. Dixon and Dr. Dixon had occupied the office from 1945. Through conversations with the son of a previous occupant, a Dr. Rogers, Dr. Cherico learned that Dr. Rogers and before him Dr. Marcy who used to live next door at 406 Main Street had used the building as a doctor's office. Dr. Cherico volunteered that he understood that at sometime in the past, perhaps during the 1920's, the second floor had been used as a maternity hospital. When he purchased the building from Dr. Dixon there two people living upstairs. One lived rented the second floor apartment and the other rented the third floor apartment.

Dr. Cherico stated that when he bought the building he bought it with the intention of using it as an office and as a residence for himself and his family so he had to ask the occupants of the apartments to leave so he and his family could use the upper floors. Asked how old his son was when they occupied the building, Dr. Cherico replied he was sixteen and he lived on the third floor. Janet asked if he knew when the use of the second floor changed from a maternity hospital to an apartment. Dr. Cherico stated he did not know for sure; but that he knew from Dr. Dixon that he had used the first floor as his office and rented the upper floors to tenants from the time he purchased the office in 1945.

Janet asked when Dr. Cherico had last seen a patient had last seen patients at 408 Main Street and he replied about four weeks ago. Asked how many patients he treated on average at the 408 office since moving the main office, Dr. Cherico replied it varied with the season but on the average he thought it was five or six over a weekend mostly during the winter. Dr. Cherico was asked and confirmed that the only access to the upper floors was via the stairwell and access to each unit was only from the stairwell.

Kerry asked if there were other questions from the board for Dr. Cherico. There were none and he thanked Dr. Cherico for his testimony especially on such short notice. Kerry asked if there were others being requested to present testimony prior to hearing from members of the public. Robert Yearly, the Borough Fire Official, was asked by the board provide testimony. He was sworn in and testified that he is required to inspect a building for smoke and carbon monoxide detectors any time a home is sold or the tenants change. He stated he has recently performed an inspection of 408 and it was in compliance. He stated the building is as has been described from what he saw. He did not go into every single room; only where he is required to check. He concurred that the only way to access the upper units is through separate locked entrances from the side stairwell. He did not see evidence of recent renovations. He did notice a kitchen on the second floor. He did not see the kitchen on the third floor but he did not need to look for one as part of his inspection. Asked if a unit had to have a kitchen to be considered an apartment, Mr. Yearly stated he thought that was so. Janet asked if he saw a bathroom on the second floor and Bob replied yes. On the third floor he did not see a bath but there were closed doors and he did not need to open them to verify the presence of the required detectors.

Raymond Skorny one of the contract purchasers of the building and Delores DeFritas a realtor with Riverline Realty were sworn in. Dr. Cherico asked if the statements sworn to were correct and he stated yes. Mr. Skorny

testified that he and Kirk Fullerton are the contract purchasers of the property and that they were purchasing it as having three units. There is a discrepancy between the tax records and the mortgage appraiser as to the number of units and they requested a ruling from the board. An exhibit marked as INT-1 was provided that showed the existing floor plans of the building prepared by Walter Croft, Architect. Dr. Cherico was asked and explained the plans to the board. Dr. Cherico testified that while there is currently no stove in the third floor kitchen, there is a refrigerator and microwave and gas service for a range. Mr. Skorny testified that he had been through the building and that there was a complete kitchen on the second floor and what he described as a kitchenette with a washer and dryer on the third floor. There is no kitchen on the first floor. Asked what he hoped to use the building for, Mr. Skorny and Ms. DeFritas testified that the purchasers hoped to use it for three rental units. However if that was not allowed they would probably wish to use the building as one rental unit on the first floor and a second unit on the second and third floors. Mr. Skorny stated they did not wish to use the building for a commercial use. Mr. Skorny also agreed that his proposed use was not really under consideration at this time; however with the discrepancy between the tax records and the bank appraisal they wanted to know how many units there are and what use was allowed/grandfathered. Mr. Skorny testified that the appraiser had appraised the upper floors as two apartments but did not know how to appraise the first floor since it was just empty rooms without a full bath or kitchen. Dr. Cherico offered that he believes the back room on the first floor was maybe the original or part of or the kitchen and has a large sink and gas service. He agreed that it was not a kitchen when he purchased the property and never had used as such since he owned it and Dr. Dixon owned it before him. Kerry stated that he thought the board was being asked to interpret what is the current legal use of the building; and while it may or may not impact the proposed use, the board should restrict itself to determining the current use. Kerry stated that in his current uninformed opinion he feels the building cannot be interpreted as three apartments; but, as most perhaps two apartments and a commercial use on the first floor. Kerry feels that given that the site is in the R4 zone, the purchaser can use it either as a permitted single family residence or for whatever is determined as a grandfathered use. Janet concurred that is basically correct. Janet feels the testimony presented so far indicates that the first floor has been used as a doctor's office at least since perhaps 1945 and that there may have been two apartments on the second and third floors. Mr. Skorny asked that if not at this meeting perhaps by the next a decision could be made. Janet replied that was the intent. Barry Wells asked if it was important to distinguish whether the first floor use was specifically as a doctor's office or a professional office use. Kerry stated he thought it might be since it could make a difference in the number of employees and traffic. Kerry asked if there was any further testimony. Mr. Skorny stated again that they hoped to use the building for residential purposes. Kerry asked if there were further questions from the board and there were none. Kerry asked if Dr. Cherico wanted to have anyone else to speak on the matter. Dr. Cherico stated he had asked a patient to attest to the use as a doctor's office. Mrs. Wark, 406 Howard Street, was sworn in and testified she is a patient and was also a patient of Dr. Dixon before that. She has been seen at both 408 Main Street and the new office. She also testified that she recalls her father telling her that other doctors had their offices there before Doctors Cherico and Dixon. Mrs. Wark could not recall the last time she was seen at 408 but that it has been several times since the main practice was moved. She also recalled that when Dr. Dixon had the practice, there were two apartments on the upper floors.

A motion was made by Ken Mills and seconded by Bill Corbi to open the matter to public comment.

- Patricia Solin, 406 Main Street, was sworn in and testified that the Chericos have always been good neighbors since the Solins moved into their home in 1983. Mrs. Solin stated that she recalled being told by Mr. Kroll, from whom the Solins purchased the house, that his father-in-law, Dr. Marcy, had moved his practice from his home at 406 next door to 408 and she guessed that had occurred perhaps much earlier in the last century. Mrs. Solin learned from Mr. Kroll and her historical research that Dr. Marcy had purchased/built the home in the late 19th century and had later purchased the 408 property so he could relocate his practice. Asked by the board if she knew any history of the upper floors, Mrs. Solin stated that she only new that in the last 27 years only the Chericos had lived there and she was not aware that the units had ever been rented to anyone else. While Dr. and Mrs. Cherico had moved out several years ago, their son John had continued to live there off and on continually since the Solins had lived at 406 Main. Mrs. Solin stated she was concerned that the character of the home and area be maintained. She is concerned

about changes to the structure, parking concerns, and she feels three apartments is too dense a use. She is also concerned about changes within the Historic District. Kerry explained that at this point the board is only being asked to interpret what is the current allowed use of the property. Janet explained that there is no application before the board requesting a particular use. Rather, an interpretation is being sought as to whether the use can only be what is currently permitted or if there are grandfathered uses. Mrs. Solin stated that as far as she knew the upper floors had never been rented and had always been used just by the family and son. Mrs. Solin stated that as far as she was aware, that after Doctor and Mrs. Cherico moved out about three years ago, the building had been on the market and only the son had actually continued to live there. Mrs. Solin asked if way the Chericos had used the upper floors means the use as rental apartments had been abandoned and Janet stated that was one of the issues to be resolved in rendering the interpretation. There was some additional discussion regarding the parking; but, it was stated that it was not relevant to the issue of determining the use. Mrs. Solin stated she feels the anxiety of her and her neighbors is the possible impact on the character and conditions of the neighborhood if the property is to become a fully occupied multi-unit rental property. Janet stated while her concerns are valid, they are really beyond the scope of what is before the board. Kerry stated that he understood Mrs. Solin's concerns; but, there are current codes and requirements that have to be followed regarding any possible future changes to the property and further any deviation from those requirements would require variances and noticing of all neighboring property owners. Kerry also explained that the board would be asked to consider the results of all research and legal considerations and would then attempt to render a determination as to either the currently permitted or grandfathered use(s). Kerry thanked Mrs. Solin for the time she put into her comments and that her observations and testimony were important in establishing the background as to the actual use of the property over time.

There was no further public comment and a motion was made by Ken Mills and seconded by Chick Veasey to close to public comment. The chair asked if the parties had any further comment or questions for the board. Mrs. DeFritas commented that the tax records say the property is three units; but, the mortgage appraiser could only class it as two units. The purchaser needs to know if is two or three units and what are the permitted uses. Mrs. DeFritas stated only the Chericos know for certain what living arrangements existed and what if any rental arrangements existed. Janet asked Dr. Cherico how old his son was when they moved in and Dr. Cherico stated 16. Kerry asked if the son paid rent and the answer was yes bur not when he was 16. Janet asked if the Chericos had ever rented to anyone other than their son and the answer was no. Asked if the son had always lived there, the answer was yes except when serving in the Navy. Barry Wells asked for clarification on the stairway entrance and it was explained that the stairway was the only access to the upper floors and that the entrances to those floors as well as the first floor from the hallway were secured by doors with dead bolts. Kerry stated that his intent tonight was to gather as many facts as possible and that the board needed to consider both uses and abandonment issues. The board and Janet intend to review the testimony, case law, and other research as needed to hopefully allow the board to present an interpretation by next month. Kerry requested that if there are additional facts to be presented to please get them to the board as soon as possible. Dr. Cherico commented that his son was moving out this weekend and the office was already vacant and he was concerned that these actions not constitute abandonment. Kerry and Janet both commented that these actions constitute the normal process of selling the property and are not considered abandonment. Craig Greenwood asked how the property was owned. Dr. Cherico stated the building was privately owned by him and the practice is a corporation and it paid rent.

## **OLD BUSINESS**

**Adopt and Memorialize Resolution Case#2010-01, Approval of the Site Plan and Subdivision application by BWC Realty Associates, 203 Thomas Ave., for 613-615 Main Street, block 906, lot 4 in NB zone, to rehabilitate the existing building for permitted use(s) and to subdivide the site to define three new lots for the construction of three single family detached residences fronting on Cinnaminson St. –** Chairman Brandt asked Vice Chairman Mills to conduct this portion of the meeting since he was not present for the hearing. Ken asked if the members had received and read the resolution and if there were any comments or

questions. There were none and Deborah Weaver motioned and Barry Wells seconded to adopt and memorialize the resolution by title. The motion was passed by a unanimous poll vote of 4-0 of the four members eligible to vote as follows:

Mr. Mills aye            Mr. Veasey aye  
Mrs. Weaver aye        Mr. Wells aye

Kerry resumed chairing the meeting.

**Planning Board & Council Matters** – The secretary reported that the planning board does not meet until next week and he was not of any Council matters. The secretary briefed the board that the process is ongoing to seek final approvals from the county and to prepare the final site plans and subdivision documents for signature for the former post office property now owned by BWC Realty Associates.

**CORRESPONDENCE**

None received.

**NEW BUSINESS**

**Vouchers and Invoices**

1. 04/01/10, Remington Vernick and Arango, \$3,395.00, for work on the Brandenburger/BWC Realty applications from 2/16-3/15/2010. PAY FROM ESCROW
2. 04/01/2010, Tamara L. Lee LLC, \$900.00, for work on the Brandenburger/BWC Realty applications during March. PAY FROM ESCROW
3. 04/15/10, Janet Zoltanski Smith, \$1,202.50, for professional services February-April 2010 for the BWC Realty Associates, applications for the former post office property at 613-615 Main Street. (PAY FROM ESCROW)
4. 04/15/10, Janet Zoltanski Smith, \$286.00, for general professional services and guidance in March-April 2010.

The secretary stated that with these invoices the BWC Realty escrow account will go short and he would advise the applicants. There was no further discussion and a motion was made by Chick Veasey, seconded by Craig Greenwood, and passed by unanimous voice vote to pay the invoices as presented. The secretary will make sure they are signed and submitted for payment.

**PUBLIC COMMENT ON GENERAL ZONING ISSUES**

The chair stated for the record that no members of the public were present.

**Meeting adjourned at 9:50 PM (motion by Corbi, second by Mills)**

**Tape is on file.**

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