

**RIVERTON BOROUGH ZONING BOARD  
MINUTES  
June 17, 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 7:40 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.

**ROLL CALL**

**PRESENT:** Kerry Brandt, William Corbi, Joe Della Penna, Charles Veasey, Deborah Weaver, and Barry Wells.

**ABSENT:** Ken Mills, Craig Greenwood, 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 Bill Corbi, seconded by Joe Della Penna, and unanimously approved to adopt the minutes of the May 20, 2010 regular meeting as distributed.

**PUBLIC HEARING**

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

The chair explained that this is a continuation from April and May of a request for an interpretation of the zoning code as to the possible grandfathered current uses and/or the abandonment of the uses for the property located at 408 Main Street. Following the May meeting, a letter was sent to Dr. Cherico outlining the documentation the board would like to see to help reach a decision. The materials submitted had been provided to the board prior to the meeting. Kerry reviewed the materials submitted by Dr. Cherico. Kerry noted that Dr. Cherico was not present at the meeting; and, that Dr. Cherico had stated, in his correspondence submitted with his materials, that he would not attend and provided instructions for communicating the board's decisions to him. The chair asked if the members had any comments on the materials before he opened the matter to public comment. There was none and a motion was made by Chick Veasey and seconded by Joe Della Penna to open the matter to public comment. All persons commenting were sworn in.

- Muriel Betton, 404 Main Street, asked what leases had been supplied and who leased what. The chair explained as well as allowed the public to examine them and the summary listing of them.
- Patricia Solin, 406 Main Street, asked if there was a need to differentiate between the leases for the office and the upper floors and what leases were supplied. It was explained that leases for all three units for the period 2005-2010 have been supplied.
- Barry Solin, 406 Main Street, stated he found the lease amounts confusing at best.
- Pat Solin asked if the board felt that, as testified to by Dr. Cherico, that John had been a more or less regular presence except for when he was supposedly in the Navy. Kerry asked if Pat was tactfully referring to the public information as to John's incarceration. Pat stated yes and Kerry stated the board was aware of this information and it raised concerns as to when John could have possibly been considered a renter.

- Keith Betton commented that while he had seen the second floor with the kitchen, he had never been to the third floor. Further he had always had the impression that the two floors were being used as a single family residence by the Chericos and that the third floor was used for bedrooms. Over the course of time once John finished high school, Keith recalls John was there at times, but most of the time he does not recall him most of the time. Keith does not consider John as a steady tenant. It was also thought that John had lived in Palmyra or Pennsauken. Janet asked if anyone knew if John's grandmother lived in Palmyra or Pennsauken since testimony had been previously provided that John lived with her for awhile. No one was sure.
- Pat Solin referenced a news item from The Philadelphia Inquirer in 1988 that stated John was from Palmyra. Janet asked if what she was referring to could be marked as an exhibit. Marked as P-1, was 5 pages (2 pages of fires in Riverside 1980-1986, the newspaper item regarding John's first incarceration, and 2 pages from the State DOC public website regarding the second incarceration). Joe Della Penna asked Pat if when the Chericos moved into 408 in 1982 they moved in as a family. Pat stated yes and the Chericos had been the only tenants from 1982 forward. Pat stated that the information she offered cast some doubt on when John could have been in the Navy for four years. Janet Zoltanski Smith described for the record her letter to the board regarding the periods of John's incarceration and she mentioned that the leases for 2005-2007 are to John and have his signature even though he was incarcerated during those times. Kerry stated that he and the board appreciate the delicacy of the subject of John's incarceration and both the Bettons and Solins reluctance to make an issue of it. However, the board was interested in any additional evidence or testimony that would allow them to help them try and determine if the grandfathered uses of the office and two apartments had been abandoned.
- Keith Betton stated that since the Chericos purchased the property in 1982 there had never been another tenant. Further, Keith felt that the office had not been used since the practice was moved to 600 Main Street even during the period after the fire when the practice temporarily moved to a location in Cinnaminson. Janet referred to prior testimony from a patient that she had been seen in the 408 office. Keith stated that approximately three years ago when his son helped clear things out of the building, there is no way the first floor could have been used as a doctor's office. It was cluttered, filthy, and full of stored items including personal effects and furniture in all the first floor rooms. Kerry stated that given the building has been on the market for the last three years, he could overlook the last three years. However, if anyone felt that there was evidence that the office was being used as something other than an office, Kerry stated the board would like to know. Keith stated that the amount of material present and conditions certainly appeared there was no way the first floor could have been used for an office for some time.
- Pat Solin stated she was surprised as to the testimony regarding the number of patients seen at the 408 office on weekends or after hours; since the traffic at the site did not support those statements. She stated the lack of traffic was evident from when he moved the practice.
- Muriel Betton stated that she and her family were patients and not once after the practice was moved did she or her family have the option to see the doctor after hours or at the old office. They only knew that there were regular hours Monday-Friday and someone else was on call on weekends. Janet asked if anyone was aware that Dr. Cherico continued to see patients at 408 after he moved the practice until he moved out.
- Keith Betton stated not to his knowledge; and certainly not his family.
- Pat Solin stated that, based on the volume of traffic, she couldn't attest to the volume of patients that Dr. Cherico testified to.
- Keith Betton stated that as he remembers, the first floor was always dark nights and weekends after the practice moved in 1998. Chick Veasey stated that he thought Dr. Cherico had stated that it was only used for emergencies.
- Muriel Betton stated that there was nothing there, he had moved out of the house. Kerry again stated that the period he is concerned about is the period between when the practice was moved in 1998 up until when Dr. Cherico moved to Palmyra Harbor in 2007.
- Keith Betton stated he did not recall seeing anyone in the first floor after hours or on weekends after 1998. Keith also recalled that Mrs. Cherico who was friends with the church organist at his church had permitted a friend of the organist to store personal effects/furniture in the old front waiting room area and that had

occurred from at least 2003 through 2007. Chick Veasey asked Keith if there was stuff in every room and Keith stated it appeared so especially the front rooms where people would come in the office. Keith stated it looked like any office related material was old, unused, and just stored there. Deb Weaver asked if there was any evidence that the facility was set up to see/treat patients or if there was even a phone and Keith stated he didn't think so.

- Barry Solin stated the only times he recalls seeing lots of people was on the 4th of July when friends were there to watch the parade.
- Pat Solin commented that she and the other neighbors were reluctant to bring up the personal items and considered the Chericos good neighbors. However, they are concerned that the building has not been used as it has been testified to and are interested in the board's decision.
- Muriel Betton stated she is concerned about the future impact on the neighborhood especially if it is possible the building would become multiple apartments with a nonresident owner/landlord.
- Keith Betton stated that in the immediate area any multi-family units were owner occupied with at the most one or two rental units and he hopes it remains so.

There was no further public comment and a motion was made by Deb Weaver and seconded by Joe Della Penna to close to public comment.

Kerry stated that he thought the board had a difficult task to balance not only the rights of the property owner but also the neighbors and the intent of the zoning code. He feels there are five issues. First is the issue of the uses being grandfathered. He feels there is sufficient evidence that the uses existing when Dr. Cherico purchased the property were grandfathered. The consensus of the board was that the uses were grandfathered when Dr. Cherico purchased the property. Kerry stated he felt the next three issues were if the third floor or second floor or first floor use had been abandoned. Fifth, is if the first floor use is not abandoned, what exactly is the grandfathered use. Janet stated she feels that based on the proofs provided, the board can only define the first floor use as a medical or doctor's office. Barry Wells asked Janet if there is any distinction between residential or commercial uses to the standards for determining abandonment. Janet stated no. Kerry reviewed the points provided in Janet's letter concerning case law regarding abandonment.

Janet reviewed that while an owner will claim they never intended to abandon the use, the courts looked at all the factors not just the stated intent when they rendered their decision. In the matter before the board, Janet feels there are several significant facts. First is that there is no longer a kitchen on the third floor based on the "as exists" plan prepared by Mr. Croft for the possible purchasers. Second is the fact that Dr. Cherico never attempted to rent out the third floor when it was known the son was not available and they could have used it as a rental unit. Third is the statement made by Dr. Cherico that he purchased the property with the intent to use it for his office and a residence for his family. He had to ask the existing tenants to leave. There is the fact that the only washer and dryer in the building are on the third floor in what was the third floor kitchen. The failure to provide any contradicting evidence by supplying pictures leaves the board no alternative but to use the evidence it has been provided. Janet feels that a stated intent is not enough; rather, the board needs to consider all the facts. Janet feels the board needs to move on to consider the issues and the members should make very clear through their comments why they decided the way they did. The chair stated that if there were no objections he was ready to move forward and reach some conclusions. Joe Della Penna motioned that the use of the first floor as a doctor's office and the second and third floors as rental apartments were grandfathered uses when Dr. Cherico purchased the property. Following discussion it was determined that only those members who had been in attendance for all three meetings could vote. Only members Brandt, Corbi, Veasey, Weaver and Wells are eligible to vote on the matter. Joe withdrew his motion. Bill Corbi remade the same motion and it was seconded by Chick Veasey. The motion that the uses when purchased were grandfathered passed by a poll vote of 5 ayes - 0 nays with comments as follows:

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

Mr. Brandt stated the evidence provided including old plans and testimony regarding the use prior to Dr. Cherico made it clear to him that the uses were grandfathered. Mr. Corbi stated he agreed that the evidence provided that the uses were ongoing back to at least 1946 if not earlier. Mr. Veasey stated he doesn't feel there is any question that he purchased the property with grandfathered use as a doctor's office and two rental units. Mrs. Weaver stated that it was clear to her that all the evidence and testimony supported that there was long standing use of the property as a doctor's office on the first floor and two rental units on the second and third floors. Mr. Wells stated he agreed with everyone else that Dr. Cherico had done a thorough job of documenting the uses that existed when he purchased the property.

The chair suggested that the next issue is to determine if the uses had been abandoned. Chick Veasey asked for clarification of the intent to abandon. He feels that if no change was made and there was no other use then perhaps there is no abandonment. Kerry feels that the apartment use may have been abandoned since there was no attempt to rent the third floor unit when the son clearly could not rent it. He also is concerned there is no longer a kitchen on the third floor and the room was being used as a laundry room. There is also Dr. Cherico's testimony that he intended to use the upper floors for his family. However, the fact that he has continued to maintain separate utilities and sewer for the three units could indicate intent to maintain the separate units. But again, based on the evidence supplied that he modified the third floor unit so that it essentially became an integral part of the second floor unit. Joe Della Penna asked if the board had to consider the abandonment as one issue or if it could split the two. Kerry stated that each use could be considered separately or together. Janet concurred it is up to the board. Barry Wells feels that while there are factors supporting both sides and that he leans toward the fact that the use of the separate apartments may have been abandoned he is not certain cleaning out the office to sell the property is abandonment. However, if the office has truly not been used for a long period before the building was put on the market, then perhaps the use was abandoned. Kerry suggested and the board concurred that they consider the apartments and office separately with the apartments first. Deb Weaver is also concerned over the factors considered for abandonment. If changes are made that indicates abandonment, then there is abandonment; but, were any changes made. She questions the validity of the leases to support actually renting the units and that she feels the utility bills support abandonment. The fact there is no kitchen on the third floor speaks to abandonment even if there were no changes to maintain the separate access to each unit. Further discussion indicated the board feels the use of the two apartments may have been abandoned. Bill Corbi made a motion that the use of separate apartments on the second and third floor were abandoned after Dr. Cherico took possession of the property. Barry Wells seconded the motion. The motion that the use of the separate rental apartments on the second and third floors was abandoned by Dr. Cherico passed by a poll vote of 5 ayes - 0 nays with comments as follows:

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

Mr. Brandt stated that although the separate entrances and utilities were preserved, the leases for a dollar a month which never changed over the years did not support actual intent to use the apartments as rental units. There was no attempt to rent the one unit when the son could clearly not occupy it. The plan prepared for the purchaser indicates the kitchen on the third floor had been changed to be used as a laundry room. The failure to provide any pictures to support the use as two separate units had actually remained leaves him no choice but to decide on the testimony and evidence provided. Mr. Corbi stated that although the separate entrances maintained the appearance of two separate units, he feels the testimony provided by Dr. Cherico that he intended to use the upper floors as a residence for his family indicates abandonment of the upper floors as two rental units. Never attempting to rent the third floor while the son was incarcerated further indicated that the use of the third floor as a rental unit was no longer intended. Mr. Veasey stated that while there were no structural changes made, he doesn't feel that use of the upper floors by Dr. Cherico, his wife, and 16 year old son as their family residence shows intent to use the two floors as separate rental units. The existing tenants were asked to leave the separate units. Mrs. Weaver commented part of her decision was based on Dr. Cherico's testimony that he moved his family into the building with the intent to use the upper floors as their residence.

Even though the separate utilities were maintained; the questionable nature of the leases and lack of pictures or additional supporting evidence did not convince her that the intention was to maintain the use as two separate rental units. Laundry facilities only being on the third floor and a kitchen only on the second floor, clearly indicated to her that the intended use of the two floors was as a single family residence. Mr. Wells stated he believes moving in as a family with a teen aged son using the third floor does not constitute using the upper floors as two separate units. He feels the doctor failed miserably even when provided with ample time to provide documentation supporting his claimed use. The testimony that the reduced rate for the leases was in exchange for the maintenance and supervision of the property does not hold up, since you can't perform those duties when incarcerated for an extended period of time.

The chair asked for comments on the use of the first floor. Barry Wells stated he had a problem with the apparent long period of vacancy from 1998-2005 or until the building was put on the market. He feels the board has to keep in mind that it has an obligation when considering grandfathered nonconforming uses to encourage returning the uses to conforming uses when possible. He feels there were no records or proofs provided that the premises continued to be used as a doctor's office after the practice was moved in 1998. Contrary to the claimed use is testimony that the first floor waiting rooms were used to store personal effects/furniture and unused office furniture and that the area was no longer suitable for office use. Kerry stated he thought that Dr. Cherico may have seen patients at the old office while he still resided at 408. However, if he didn't see patients after he relocated the practice, or used the first floor as storage of office and personal effects, then perhaps the office use was abandoned. Barry Wells is concerned that justice is best served by leaning towards returning the use to the current permitted uses of the zone and thus preserving the neighborhood. Janet commented that she does not think that justice in this case includes protecting the property value of the neighbors as it does when considering granting variances. Rather, in this case, it must be based on the use that occurred in the house. Barry asked if the definition of justice applies only to the person asking for the interpretation or for both sides. Janet stated that it is not sufficient to base a decision solely on the impact of preserving the property values by returning it to a single family home. If in fact the board finds the property was used as doctor's office not abandoned, the board must find the first floor was used as a doctor's office. The board also cannot consider types of housing. Kerry asked if parking can be considered and Janet stated this is not a variance and the board is only considering abandonment of a grandfathered use. Janet again clarified that the justice to the neighbors in this matter is the fact the board is even considering abandonment. The intent behind grandfathering uses is to not take away things or lively hoods of people that they already have or had before the code was changed. While the intent of the zoning code may be to return a use to the current permitted uses; it must be proved that the grandfathered use was clearly abandoned. Kerry stated that he is very sensitive to possibly taking away what may have been part of Dr. Cherico's plans for he and his family and the decision cannot be taken lightly. He is also sensitive to the personal issues such as the incarceration. However he is also concerned that the first floor was being used as a storage area when it was supposedly a doctor's office. Joe Della Penna asked if the first floor is also considered abandoned then the building goes back to a single family residence. That was affirmed. Joe then asked if the first floor has not been abandoned then what is the board's decision on the use of the building. Is it a single family residence on the upper floors with a doctor's office on the first floor? Janet stated that was her feeling based on the law. She wants the parties to clearly understand that the first floor cannot be considered a general commercial use; rather it is narrowly confined to what it was actually being used for. That is not to say a purchaser could not come forward with a use variance request; but, that is an entirely different application and they would have to fulfill the burden of proofs necessary to grant a use variance. Deb Weaver stated she feels from examining the timeline, considering the testimony provided by the neighbors, and the lack of further documentation by Dr. Cherico, that for the period following 1998 shows there was an intent to abandon the office use. Kerry spoke to the lack of physical changes. While the kitchen on the third floor appears to have been used as a laundry room doesn't mean kitchen appliances can't easily be hooked back up. It appears the physical separation of the three units has been maintained. Kerry also realizes that what it takes to maintain an auxiliary office may not be the same as for a main office; but, testimony has been provided that perhaps the first floor did not even meet those standards. The board concluded that, as Janet had explained, there is little case law to provide a clear one way or another decision and it needed to carefully weigh the apparent intent of the owner. Barry Wells made a motion that the

use of the first floor as a doctor's office had been abandoned by Dr. Cherico. Deborah Weaver seconded the motion. The motion that Dr. Cherico abandoned the use of the first floor as a doctor's office passed by a poll vote of 4 ayes - 1 nay with comments as follows:

Mr. Brandt aye     Mr. Corbi   aye  
Mr. Veasey nay     Mrs. Weaver   aye  
Mr. Wells   aye

Mr. Brandt felt Dr. Cherico had the burden of proof and failed to satisfy it. He has a problem taking away something; but, testimony was provided that indicated the first floor was clearly no longer in a condition to be used as an office. Mr. Corbi thanked the public for trying to fill in some of the blanks. He was on the fence but the knowledge of the periods of incarceration, inconsistencies of the timeline and leases, and failure to meet the burden of proof led to his decision to vote aye. Mr. Veasey doesn't feel he abandoned the use. He felt that testimony that even an occasional patient being seen after the practice had been moved and Dr. Cherico still lived upstairs did not show the use as a doctor's office had been abandoned. Mrs. Weaver feels the use was abandoned because he moved the practice in 1998, he did not provide sufficient supporting evidence that he continued to use the area as an office, and there was testimony provided that appeared to support he no longer used the space as a doctor's office even before he decided to put the building on the market. Mr. Wells doesn't feel the proof needed that it was not abandoned was provided by Dr. Cherico and he had to decide based on what was provided.

## **OLD BUSINESS**

**Planning Board & Council Matters** – The secretary reported that a final decision on the fate of COAH had not yet been made and that meanwhile the Borough has appointed personnel to represent the Borough at the mediation to resolve the objection filed to the Borough's submission. The downtown revitalization grant will provide additional sidewalks. There is a site plan being submitted for the old bank building on Main Street. Progress continues on BWC Realty Associates continues the process of obtaining final approvals and sign offs for the old post office property.

**Mrs. Shea's proposed changes to the fence ordinance** – Chick Veasey reviewed the contents of the proposal with the board. Mrs. Shea feels adding the words entirely and/or entire to the definition of a fence would remove the confusion that led to the lawsuit against her. Chick proposed to the board that the board was able to interpret the code as it exists and that adding her suggested revisions may confuse the issue. Janet concurred stating that such a revision might lead to more confusion especially along lot lines. For instance, does a fence along a property line which leaves gaps for a side walk or driveway become not a fence because the openings mean it is not entirely enclosed separates the entire part of the property? The board concurred that the suggested changes while they may have helped Mrs. Shea in a narrow interpretation of her case may serve to make the existing code harder to interpret or enforce. The board felt a short note to the committee and the planning board should be prepared. The secretary will communicate this information.

## **CORRESPONDENCE**

**Letter from Thomas Ehrhardt, Esq. concerning Mr. Guzman owner of Cedar Lane Apartments** – The secretary reviewed that Mr. Guzman is seeking refund of his COAH payment for the townhomes since the project has been abandoned based on the LOI from the State DEP on the wetland impacts on the portion of the property that was to be used to build the townhomes. Mr. Ehrhardt was informed by the Borough that his client needed to provide proof that the payment was made before a refund can be considered. At this time there is no action needed by the board.

## **NEW BUSINESS**

### **Vouchers and Invoices**

1. 06/11/10, Remington, Vernick & Arango, \$1,550.00, for completeness and compliance review of revised site and subdivision plans for BWC Realty Assoc. LLC (old post office) 3/16-4/15/10. PAY FROM ESCROW
2. 06/11/10, Remington, Vernick & Arango, \$2,040.00, for completeness and compliance review of revised site and subdivision plans for BWC Realty Assoc. LLC (old post office) 4/16-5/15/10. PAY FROM ESCROW

There was some discussion over the amount of the charges; but in the end the board decided to approve the invoices. A motion was made by Joe Della Penna, seconded by Bill Corbi, 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 approximately 09:50 PM (motion by Corbi, second by Veasey)**

**Tape is on file.**

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