

**RIVERTON BOROUGH ZONING BOARD
MINUTES
May 20, 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 7:30 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, William Corbi, Joe Della Penna, Charles Veasey, Robert Kennedy, Deborah Weaver, and Barry Wells.

ABSENT: Ken Mills and Craig Greenwood.

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

MINUTES

The chair asked if everyone had received and reviewed the minutes. The secretary commented he had been informed of a revision needed on page 5 to correct the wording to correctly reflect the comments being referenced. There was no further comment and a motion was made by Bill Corbi, seconded by Chick Veasey, and unanimously approved to adopt the minutes of the April 15, 2010 regular meeting as amended.

PUBLIC HEARING

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 last month 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. Dr. Anthony Cherico, Rev. Alan K. Salmon, and Gregory M. Costantini were sworn in by Janet. During the course of testimony the following were entered as exhibits:

- INT-2, 2a 1946 blueprint of the 1st floor offices
- INT-3, 1946 blueprint of the 2nd floor apartment
- INT-4 1946 blueprint of the 3rd floor apartment
- INT-5 Letter from Rev. Salmon
- INT-6,7,8 Copies of the three PSE&G April 2010 utility bills for the three units (3rd floor, 2nd floor, 1st floor respectively)
- INT-10 Copy of 1982 survey appraisal describing the building being purchased by Dr. Cherico
- INT-11 Copy of 12/13/1982 Deed of Sale of 408 Main Street to Dr. Cherico from Dr. Dixon
- INT-12,13 Copies of the 1/1/1981 leases to the two apartments by Dr. Dixon to the tenants
- INT-14 Copy of 1/1/2010 lease between Anthony T. Cherico and John Cherico for the 2nd floor
- INT-15 Copy of 1/1/2010 lease between Anthony T. Cherico and John Cherico for the 3rd floor
- INT-16 Copy of 1/1/2010 lease between Anthony T. Cherico and Anthony T. Cherico, MD & Associates for the 1st floor

Dr. Cherico provided copies of the blueprints of the building from 1946 prepared for Dr. Dickson which showed the doctor's offices on the first floor, a three bedroom apartment on the second floor, and a one bedroom apartment on the third floor. Dr. Cherico, offered a copy of a letter to him from Rev. Alan Salmon former Rector of Christ Episcopal Church which provided his recollections of the doctor's office and two apartments at 408 Main Street during the time he was rector of the church. Rev. Salmon attested to the information and stated he personally knew the tenants and Dr. Dixon. Dr. Cherico explained which unit each of the utility bills applied to. It was noted that the tax bill states it is for a three-unit building. The survey appraisal described that the property contained a doctor's office and two apartments. Dr. Cherico explained the three 2010 leases all dated 1/1/2010. The minimal rent for the two apartments was in exchange for the management and maintenance services to the building provided by son John. Kerry asked if the rent for the two apartments was reflected in tax returns and it was answered most likely not since it was \$12.00 a year for each apartment.

Kerry reviewed that in his opinion there are two issues to be resolved: are there any grandfathered uses; and, if there are, have any of them been abandoned. Barry Wells asked if there were materials missing from what was requested. Kerry stated there were and he reviewed the list of items requested via e-mail to Dolores DeFritas that she was asked to provide to Dr. Cherico and the purchasers as soon as possible. Barry Wells asked if the concern was one of abandonment and if so what evidence of payment of rent by the son was required. He asked this because he wondered if the Chericos, as testified to previously, had moved in as a family, did that constitute abandonment of the rental apartments. Kerry stated that he wasn't sure himself but right now he wanted to make sure everyone was aware of what had been requested and what had been supplied. Kerry stated it is Dr. Cherico's responsibility to provide evidence that abandonment has not occurred. There was additional discussion including that Dr. Cherico had not had sufficient time to gather all that was requested. Board members felt they needed more supporting evidence such as utility bills and leases. The board was also sympathetic to the short notice provided Dr. Cherico.

Dr. Cherico testified that the main practice had been moved to 600 Main Street in 2000 because the offices at 408 were too small. He testified that he had also moved the practice completely out of the building when he placed the building on the market. Dr. Cherico testified that all the utilities had remained in his name and the leases reflected this. The chair and other members concurred that they felt additional information was needed to properly document the history of the use of the building since Dr. Cherico has owned it. Asked about tax payments and more information as to when his son had resided at the address Dr. Cherico stated that he had supplied all the paper and answers that he was going to provide. He thought the board was turning the entire process into a game and that they had more than enough information to render an interpretation. It was his opinion that the entire process was ridiculous. The chair tried to explain that he and the board most certainly did not treat the process lightly and wished to make sure both Dr. Cherico's rights were protected as well as the rights of the neighbors and the goals of the Borough were protected. Dr. Cherico is of the opinion that the board is requesting personal information that is none of its business. It was discussed that any supporting information such as tax returns be redacted to only support the information that supported the claimed use of the property. Again Dr. Cherico demurred stating that he thought personal tax information was beyond the scope of what the board needed or could request and if the board insisted, they could go through his attorney. Janet explained that perhaps his attorney could assist Dr. Cherico in properly providing the needed documentation while protecting his personal information. Janet explained to Dr. Cherico that supplying the information needed to render an opinion is more beneficial than leaving the board with insufficient legal supporting information to consider that what may have been grandfathered at the time he purchased the property has not subsequently been abandoned.

Barry Wells asked if there was any formal request before the board on which it is required to act; or, if everything comes to a halt, does it all go away. Janet replied that an informal request had been initiated and there is nothing in the Borough's code providing for a formal request. It was reviewed that the issue arose when the appraiser for the mortgage company for the purchasers did not know how to appraise the building and needed some formal documentation that the claimed use was indeed correct and permitted. Therefore the request was allowed to proceed with no requirement that formal notice be given. Janet stated that as she

understands it Dr. Cherico is representing that there are two apartments upstairs and a doctor's office downstairs and that these uses are grandfathered and have not been abandoned. As Janet sees it, the board has been asked and needs to interpret if under the code: first that the uses were indeed grandfathered, and secondly if any of the uses have been abandoned. Janet further stated that while it appears the first floor may have been intended to continue to be used as a doctor's office, she recalls that Dr. Cherico testified at the last meeting that it was the intent for he and his family to reside on the upper floors as their residence. Thus there is a legitimate issue as to whether a case exists that at the least the apartment use may have been abandoned and it is up to Dr. Cherico to provide the proof that the uses were not abandoned.

Barry Wells again asked if the board should be making a formal opinion without a formal document requesting such an opinion. It was explained that while there is not a formal request to provide an interpretation, the parties clearly stated and agreed at the last meeting that it was desirous that the mortgage company be provided with legally supporting documentation of the use of the property. Bob Kennedy asked what kind of power the board's interpretation has. Janet explained that the zoning board is empowered to provide an interpretation of the code when requested and that properly done carries considerable weight. The finding is memorialized by resolution and in effect becomes "res judicata" and having once been decided is very difficult to change if the parties ask again in the future. In other words it essentially becomes law. That is why the board is encouraged to examine all the information available and to request any information it feels is needed to come to a fair decision. It is in the state law that one of the duties of the board is to provide such interpretations.

Barry stated he does not feel he has sufficient information to decide and he does not feel Dr. Cherico has been given sufficient time to respond. He feels Dr. Cherico should be given time to reconsider and supply additional information to support his opinion that the uses are grandfathered and have not been abandoned. The general consensus of the board agreed with Barry. Kerry asked Janet if the board needs to continue to move to a decision. Janet stated that if the request is withdrawn, the board needs act no further. However, she is not aware that the request has been withdrawn; only that at this time Dr. Cherico has stated he will not provide any more information. When asked, Janet felt that while the typical tolling of time may not apply, she feels the board still has time to continue the matter until next month. When the question was again asked from the board as exactly what was at issue and who requested what, the secretary volunteered and read from the minutes including that both the owner and purchaser agreed that a resolution of the use questions was needed and wanted. Mr. Skorny, one of the purchasers, reviewed that initially the purchasers wanted the interpretation; however, Dr. Cherico also agreed the issue needed to be resolved so he knew what he kind of property he was selling. Janet reminded all that the interpretation was limited to the current use of the property and the board feels it needs additional information before it can reach a decision. Mr. Skorny stated he feels it will be very difficult to sell the property if the commercial use of the first floor is restricted to a doctor's office. Janet stated the interpretation cannot change the use and that is why she issued a review letter which was provided to the board and other parties outlining the proofs the board needed to make a decision. In her opinion she doesn't feel there has been any evidence provided that the first floor has been used for anything other than a doctor's office. If Dr. Cherico or a future owner of the building was to seek a change of use, Janet commented that case law is pretty clear that an existing nonconforming use cannot be expanded or changed to another nonconforming use. Dr. Cherico asked if the building could be sold as a single family residence and Janet stated yes since that is what the building is zoned for in the residential district. However, selling it as such would definitely constitute abandonment of any grandfathered uses. Mr. Costantini, commented that he owns and rents commercial property and feels it is not unusual for there to be periods when a unit remains vacant. He stated that is even more true in the current business climate and he feels non rented time should not constitute abandonment. Mr. Costantini feels a few months utility bills cannot support abandonment or not. The chair stated there is nothing in the code that states there is a length of time involved; but, it is his understanding that if you change the use, that constitutes abandonment of the grandfathered use.

Kerry polled the board as to their feelings. Bill Corbi, Joe Della Penna, and Chick Veasey all felt not enough time to respond has been provided and that they needed more information. Kerry feels it is important to have enough information to make a decision. Bob Kennedy feels he does not have enough information. Barry Wells

is concerned that if the purchasers are the original requestors of the interpretation, they should be the ones to supply the documentation. Kerry stated his goal is to protect Dr. Cherico. Janet stated that if the seller and buyer wish to go ahead then it behooves them to work together. However, the information requested may only be available from the seller. If the seller won't provide the information, then the purchaser can certainly try but it may not be available except from the seller. Deb Weaver wondered if the issue could be broken down into two parts: defining the uses for the prospective buyer, and aiding the seller in how to market the property. Kerry asked Janet if a decision is requested now, can the board still vote to table the matter until next month. Janet responded that there appears to be time to continue the matter and the board can table the issue if it feels it needs additional information and that if by providing the time, additional information may be forthcoming. Mrs. Cherico, commented that she can't understand all the concern about John's rental agreements. She related the history of Dr. Cherico's setting up his practice in Riverton and their dealings with other professionals. She commented she couldn't recall any contacts being signed, it was all done by handshake and the realization that your word was your honor and you should be held to it. Additional back and forth discussion ensued with the purchasers stating it was up to Dr. Cherico how he wished to proceed. Janet stated it was advisable to expend the effort before a decision is made. Kerry asked Dr. Cherico if providing a compilation of the board's concerns would help. Dr. Cherico, stated that if he could leave with a specific list, it would help as long as the board didn't keep changing what it wanted. Janet ventured her opinion that probably sufficient evidence has been provided that could let the board reasonably conclude that the uses were grandfathered when Dr. Cherico purchased the property. However the board still feels it needs additional information to determine if any abandonment has occurred. The members all provided input as to what they thought was appropriate to reach a decision. It was agreed to by all parties that all the comments would be reduced to writing and a letter would be prepared and mailed to Dr. Cherico by the secretary no later than the following Monday. Dr. Cherico and the purchasers will be mailed a copy; and, the board and its counsel will receive a copy via e-mail.

A motion was made by Deb Weaver and seconded by Chick Veasey to open the matter to public comment. All persons commenting were sworn in.

- Keith Betton, 404 Main Street, commented that Dr. Cherico should be able to sell and get the best benefit as possible. He is concerned about the possible impact on the neighboring properties. He recognizes it is the board's job to determine the current use and doesn't feel it is too much to request information from Dr. Cherico to prove the use. He has rented properties for many years and has copies of information going back many years.
- Barry Solin, 406 Main Street, asked if the board was requesting a timeline of when the son lived there over the past 26 or 28 years. The answer was yes.

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

The chair asked if the parties had any further comment or questions for the board. Mr. Costantini spoke to the occupancy by the son. He has known the Chericos for a long time and he attested that he has seen John at the property and working there. He does not know what the agreement was. Joe Della Penna asked the son's age and the answer was 45. Dr. Cherico stated that he was not certain he could provide all the information requested or if the material even exists. There being no further comment or testimony, the chair asked if both parties were in agreement to continue the matter until next month. They agreed and a motion was made by Bob Kennedy, seconded by Joe Della Penna and passed unanimously to continue the matter until next month.

OLD BUSINESS

Adopt and Memorialize Resolution Case#2010-02, Approval of the 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. – The chair 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 voice vote of the members eligible to vote.

Planning Board & Council Matters – The secretary reported that COAH had updated the Borough on comments filed during the 45 day comment period. The secretary also 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

The secretary reviewed a copy of a letter to Council and Kerry from Maryann Shea suggesting changes to tighten up on the definitions of what constitutes dividing a property. Kerry asked if a member would volunteer to review the letter and report back to the board next month. The board would then issue a comment to the planning board.

NEW BUSINESS

Vouchers and Invoices

1. 05/07/2010, Tamara L. Lee LLC, \$135.00, for compliance review work on the Brandenburger/BWC Realty revisions to the site plans and subdivision documents during April. (PAY FROM ESCROW)
2. 05/20/10, Janet Zoltanski Smith, \$149.50, for professional services 4/14-5/14/2010 regarding the Aird Thress variance application for 523 Main Street. (PAY FROM ESCROW)
3. 05/20/10, Janet Zoltanski Smith, \$884.00, for general professional services and guidance in April and May 2010, mostly related to work regarding the zoning interpretation for the uses of 408 Main Street. (ALL paid from the zoning budget.)

There was no discussion and a motion was made by Chick Veasey, seconded by Deb Weaver, 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 10:12 PM (motion by Corbi, second by Veasey)
Tape is on file.**

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