

Meeting called to order by Chairman Martinelly @ 7:30 pm

All saluted the flag & the Presiding Officers Statement was read

Roll Call:

Present: Martinelly, Forrest, Barnett, Carnes, Colella, Poling  
Attorney: Asadi  
Engineer: Cranmer  
Absent: Carroll, Anderson, Dena-Reger, Doran-Eulner, Hemel

**Minutes:**

A motion was made by Mr. Forrest, seconded by Mr. Barnett to adopt the minutes of the April 17, 2019 meeting as submitted. All approved.

**Correspondence:** none

**Planning Board Business:** none

**Zoning Board Rep:** none

**Unfinished Business:**

**Mr. Michael Panter, Esq:**

**Adoption of Resolution**

**Bl: 30, Lot: 9**

A motion was made by Mr. Forrester, seconded by Ms. Poling to adopt the Certificate of Appropriateness to Mr. Michael Panter for the demolition of his barn due to a deteriorated condition, and the proposed new construction of a smaller barn, as submitted.

Roll Call:

Affirmative: Martinelly, Forrest, Poling

Negative: None

A motion was made by Mr. Barnett, seconded by Ms. Poling to open the meeting to the public for items not on the Agenda.

**Mr. Mike Santos, 31 Heritage Dr, Shrewsbury was sworn.**

Mr. Santos explained that he lives at 31 Heritage Drive, in Heritage Greens. His lot runs along a portion of the Conrail Line, and it carries a 30' wide Landscape Buffer in the rear portion of his property, where he is restricted from developing the area. Currently he is seeking permission to construct a pool using part of the landscape buffer. He is seeking some guidance on the right course of action on what to do to be able to use this portion of his property.

Mr. Asadi stated that the property in question is part of a subdivision that was approved by this Board some time ago, and one the conditions to the subdivision was that a rear buffer be maintained between the subdivision and the railroad tracks. Normally a buffer encroachment would be a matter of Deed Restriction, but when a Planning Board or Zoning Board creates such a condition its not a variance from that condition, it becomes a change in the conditions of the resolution or modifications of the conditions to a resolution. The Standard of proof for the change or modification to the conditions in a resolution is a showing of changed circumstances. He has “glanced at the resolution which approved the subdivision and another condition was that the Homeowners Association either be formed or if it was formed that they modify their Association Governing Documents to also include language about this buffer, and that provision had to be sent to the Board Engineer & Board Attorney for review.

Mr. Asadi indicated that his concern about the application and a way for them to proceed In a way so that the board can make a determination that could be sent into an Appeal, not only for the applicant to come in with a showing of changed circumstances that would rise to the level of giving the board the authority to act, if the board was so inclined, to act in the applicant’s favor. But also to make sure that any favorable action you might take on his application also include a review of the HOA documents that were approved at the time. What the board needs to avoid is a circumstance where this board gives him the “green light”, if you were inclined to do so, to build the pool and the neighbor next door sues him and says that there is a HOA document that says that he cannot do that. So whatever we do and the actions that are taken, we have to make sure that they stick.

Mr. Asadi suggested that Mr. Santos hire an attorney who is familiar with Land Use matters and can handle a matter like this, because for his own sake you have to make sure that when spend the money, and you are approved by, you want to make sure that the approval cannot be upset by another member of your community.

Ms. Martinelly asked if a neighbor could object? Mr. Asadi said that a neighbor can appear like anyone else, they will be noticed. He feels that the original subdivision application did require notice and if so, the modifications to those conditions would also require notice.

Mr. Carnes asked if there is another locations for the pool? Mr. Santos said he needs approximately 12’ into the buffer. Mr. Santos said that the landscape buffer is meant to protect the residences along the railroad with trees. Mr. Santos said that the pool must be 8’ from the home, and the pool is 8’ wide with another 2’ for 12’ wide. There is approximately 20’ from the house to the buffer.

Ms. Martinelly suggested that Mr. Santos get an attorney to represent him with the proper noticing.

Mr. Cranmer asked if that would be an Amended Sub-Division approval? Mr. Asadi said it would be an application for a Modification to the Conditions through a resolution. It's a little different from a modification of site plan or subdivision approval. Since the Statute states that when you're inclined to modify conditions to a resolution the standard proof is changed circumstances. This board has original jurisdiction so it would be heard here, which he assumes that this board did have jurisdiction, with no "D" variances in the subdivision, which would have to be checked into.

Mr. Carnes asked if it would be ok for everyone else in the neighborhood to come in? He wants to protect the interest of what was already in place. Mr. Asadi said that if this is a popular sentiment among that row of houses, he would assume that part of that rationale for making this buffer a condition was to protect the future homeowners along that train line. If the people who have now settled in there and lived there see this as a burden, and they all come in and say this is a restriction that doesn't do us any good. He feels what they should do first petition the Homeowners Association and see if the HOA would be willing to act to propose amendments to their governing documents as it relates to the buffer. Then the Association might need to come in and ask for relief from the condition which required HOA documents be prepared.

Mr. Asadi said that if we are going to do it that would be the cleanest way. It is also his understanding that not all the property owners in the development are affected by this condition. Ms. Martinelly thinks that it only affects 10 houses along the strip.

Mr. Asadi said that the board might want to look into circumstances around the pools, it may be a little problematic, and to avoid a big disaster maybe that would motivate the HOA to take some appropriate action, if that is what the members of the Association want, to come before this board and apply for a modification, maybe a change in circumstances, rather than prospective homeowners moving in, vs people who are living in these homes and believe that they do not need this buffer. Mr. Santos said that he was not aware of this condition.

Mr. Santos said that he has spoken to the HOA President and he said that he would be helpful.

Mr. Colella asked what would be the best direction for Mr. Santos to take, and to approach it the right way. Mr. Asadi said that the best way would have the HOA come in to avoid one homeowner at a time coming in. Mr. Cranmer feels that Mr. Santos should consult a legal counsel. The HOA will have to join in the application. You cannot relax a condition of approval on one particular lot. Review the HOA document and Title Documents, see if a Deed Restriction has to be lifted. Make an application and notice the same property owners/properties and present the case. New Jersey Transit would need to be contacted, and have some input to the 30' setback.

Ms. Martinelly again suggested that Mr. Santos get an attorney and prepare his case, and the board will take a good hard look at it.

A motion was made by Mr. Carnes, seconded by Ms. Poling to close the meeting to the public. All approved.

**Schwartz Mazda:**

585 Shrewsbury Ave  
Bl: 3 Lot: 6

Mr. Asadi announced that this application not being heard tonight, will re-notice for future meeting.

**Completeness/Site Plan new parking area.**

**Affordable Housing Ordinance:**

**Board reviewed & discussed Ordinances: 2019-58 & 2019-59, 2019-60**

**No comments or changes:**

A MOTION WAS MADE BY MR. FORREST, SECONDED BY MR. CARNES TO FORWARD THE ORDINANCES TO MAYOR & COUNCIL WITH NO COMMENTS OR CORRECTIONS.

**Ordinance 2019 – 1058-** Affordable Housing Ordinance. The Requirements of the Fair Housing Act & the Uniform Housing Affordability Controls (UHAC) Regarding Compliance with the Boroughs Affordable Housing Obligations

**Ordinance 2019-1059** – Amending Chapter 94- Land Use & Development – Amending the AH-MF-8 Affordable Housing Multi-Family Overlay Zone District & to Amend the Zoning Map to include AH-MU-8 Zone to Facilitate the Provision of Affordable Housing in the Borough.

**Ordinance 2019-1060** – Ordinance Amending Chapter 94, Land Use & Development of the Code of the Borough of Shrewsbury, Modifying the AH-MU Zone to Facilitate the Provision of Affordable Housing the Borough.

Roll Call:

Affirmative: Martinelly, Forrest, Barnettt,,Carnes, Colella, Poling

Negative: None

.A motion was made by Mr. Carroll, seconded by Ms. Poling to adjourn the meeting at 8:30 pm. All approved.