

Chairman Martinelly called the meeting to order @ 7:30 pm

Salute to the flag, roll call, open public statement read.

Present: Martinelly, Canonico, Murphy, Daly, Edwards, Roache, Pietricola
Absent: Schuster, Carnes
Attorney: Kennedy
Engineer: Cranmer

Minutes:

A motion was made by Ms. Canonico, seconded by Mr. Pietricola to adopt the Executive Session minutes of the May 3, 2017 meeting as submitted. All approved

A motion was made by Ms. Canonico, seconded by Mr. Daly to adopt the minutes & Transcript of the May 31, 2017 meeting as submitted. All approved.

A motion was made by Mr. Murphy, seconded by Mr. Pietricola to adopt the minutes of the June 7, 2017 meeting minutes as submitted. All approved.

A motion was made by Mr. Pietricola, seconded by Mr. Roache to carry the 6/7/2017 Executive Session minutes to 8/2/2017 due to lack of voting members. All approved.

Unfinished Business:

M/M P Carnes

18 Meadow Dr

Bl: 22, Lot: 4

Building Coverage

variance

A motion was made by Mr. Roache, seconded by Mr. Pietricola to adopt & memorialize the resolution of approval to M/M P Carnes as submitted for the construction of a shed 12' x 16' creating a building coverage.

Roll Call:

Affirmative: Martinelly, Roache, Pietricola

Negative: None

M/M Kevin Diehl:

78 Obre Place
Bl: 28, Lot: 38

Adopt Resolution

garage in f/y setback

A motion was made by Mr. Murphy, seconded by Mr. Pietricola to adopt & memorialize the resolution of approval to allow a garage in the front yard, with conditions as submitted.

Roll Call:

Affirmative: Martinelly, Murphy, Roache, Pietricola

Negative: None

A motion was made by Mr. Carnes, seconded by Mr. Roache to open the meeting to the public for items NOT on tonight's agenda. All approved.

No comments/questions

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

Court Reporter in attendance for Quick Check:

Shore Investments, LLC:

d/b/a Quick Check
Bl: 3, Lot: 5

Continuation of public hearing

Mr. Kennedy marked the following into evidence:

B-10: Monte Edwards – Certification 5/31/2017 meeting

B-11: Robert Pietricola – Certification 5/31/2017 meeting

Mr. David Cranmer, Engineer/Zoning Officer was sworn in

Mr. Kennedy pointed out that tonight's testimony will be the cross of the objectors Planner Mr. Janiw Mr. Shay agreed & Mr. Convery agreed
Mr. Shay pointed out that Mr. Gasiorowski was not in attendance.

Mr. Andrew Janiw, Planner remained under oath.

Mr. Shay asked Mr. Janiw questions with regard to his employment with Luke Oil.
Mr. Convery objected to the line of questions by Mr. Shay, Mr. Kennedy noted Mr. Shay's objections.

See Transcript for full line of questioning.

Mr. Shay submitted the following into evidence.

Mr. Kennedy marked:

A-32 Green: Resolution – Shrewsbury Zoning Board -Use Variance bulk variance, waiver of site plan approval & design application
Mobil Oil, 401 Shrewsbury Ave. & Newman Springs Rd.,
Shrewsbury NJ dated 1995 – 6 pages.

Mr. Convery objected to this exhibit been marked, gave his reasons – See Transcript

Mr. Kennedy stated that Mr. Janiw has already been accepted and qualified as a witness, so we are not going to un-qualify him. This board has been fairly liberal on both sides with allowing questions to be asked, and he suggests that we continue that. The board members can ultimately determine if the exhibit is relevant they do not have to rely on it. The objection is noted and the document is now marked.

Mr. Shay asked Mr. Janiw questions with regard to A-32 Green resolution.

Mr. Janiw testified that he did not review the resolution, but he did review historic Ordinances adopted 12/7/1948 amended 9/1/1955, where gas stations were permitted in several of the “B” zones, permitted uses in the B1 Zone, and read the permitted uses into the record permitted service stations, and then later on they were deemed prohibited throughout the Borough. Reviewed the 1972 expansion of the pre-existing non-conforming use granted by the Mayor & Council. Mr. Janiw said that the resolution does not say what the resolution was granted for.

Mr. Shay reviewed page 3 paragraph #5 of the 1995 resolution. Mr. Convery objected to the 1995 resolution, which he doesn’t understand the purpose is of going over an approval that is 22 years old. He feels that someone should ask Mr. Shay where he is going with this testimony, and how it relates to the qualifications of his expert.

Mr. Shay said that he is asking questions with regard to a resolution adopted by this board involving the only gas station which happens to be the objector to this application.

Mr. Kennedy recommended that Mr. Shay continue with the line of questioning whether or not it’s relevant and is something that the board will deem appropriate.

Mr. Shay referred to the resolution, paragraph 10, page 6 conditions placed on the application, no renting or leasing of motor vehicles on the site. Mr. Janiw said that he has never been on the site and couldn’t answer his questions.

Mr. Shay referred to A-1, 1/4/2017, Aerial by Boehler Engineering, referred to the location of the Luke Oil on Shrewsbury Ave. Mr. Janiw testified that no research was not done on this gas station.

Mr. Kennedy marked the following:

A-33 Green, Resolution, Mobil Board of Adjustment, Tinton Falls, NJ dated 9/26/1985
592 Shrewsbury Ave. Mr. Convery objected to this exhibit being entered. Gave reasons. Mr. Kennedy indicated we are moving on.

Discussion as to whether or not it is customary to mark into evidence a resolution from another town. Mr. Kennedy said no, but that he accepts it out of the abundance of caution. Mr. Convery pointed out that the resolution in question refers to a sign ordinance. Mr. Convery reviewed the resolution and advised why it is important. Mr. Kennedy notes for the record Mr. Convery's objection.

Mr. Janiw referred to the resolution for a price sign change, this was an existing gas station, not a new use, and the resolution is from Tinton Falls.

Mr. Shay asked if the board denies this application, would Luke Oil be the only remaining gas station in Shrewsbury? Mr. Janiew said Luke Oil has been for some time.

Mr. Shay read Section #9410.3 Prohibited Uses into the record, which include restaurants or other eating or refreshment places including but not limited to lunch wagons, diners, road stands, and any food dispensing establishments which permit or provide facilities for the consumption of food out of doors on their premises. Prohibits gasoline filling and service stations and prohibits fuel storage other than facilities for use on the premises. Mr. Shay said that they are seeking relief under Ordinance under a D1 criteria variance, is that correct. Mr. Janiw said for numerous uses that are prohibited.

Mr. Shay explained that the Quick Check application incorporates all of those uses? Mr. Janiw said the application before the board is not specific for a Quick Check, the application is for the sale of gasoline, convenience store and restaurant.

Mr. Shay referred to the automotive sales & storage adjacent to the applicants property, is that a prohibited use in the zone as well? Mr. Janiw said no, it is a permitted use HCPO (94-10.9) and read it into the record. Mr. Shay referred to the property to the north with restaurants which are prohibited uses, Simmons Pond, Day Care, located in the B1 Zone, these are commercial uses. Mr. Janiw said that it is a commercial district.

Mr. Shay referred to Transcript page 100, paragraph #8 Janiw's testimony to allow certain services to be allowed, except for gas stations in the Master Plan has not been mentioned. Mr. Shay asked Mr. Janiw where in the Master Plan that it supports his proposition? Mr. Janiw said that the Master Plan does not recommend the inclusion of gasoline service stations as a permitted use to be considered by the legislative body. The Master Plan refers to food services Section V, under Policy's and read it into the record, "the Borough will encourage mixed use, retail, and food service development in appropriate locations within the Borough that will provide employment for present and future residents and contribute to a balance of sable economic base.

Mr. Shay asked for the definition of retail, which Mr. Janiw read into the record, the prohibition of gasoline service stations with regard to "retail", the sales is prohibited and will remain prohibited in the Master Plan. **See Transcript for full testimony.**

Mr. Shay asked Mr. Janiw if convenience stores/gasoline stations are they retail trade, under the S.I.C. Mr. Janiw stated that the S.I.C. is outdated and replaced.

Mr. Kennedy marked the following:

A-34 Green – S.I.C. Code – Standard Industrial Classification Code describes a combination of NAICS & Codes for various uses 19 pages,
Down loaded from the internet (Wikipedia)

Mr. Cranmer said that we do not recognize or reference it in our Ordinance as to whether or not Use Group A is permitted and Use Group B prohibited. When acting as the Zoning Officer he does refer to it to see if a particular use is in the same use category as one that may be listed as a permitted use and that guides him in determining whether a use is permitted in the zone or is not permitted.

Mr. Shay asked Mr. Janiw if paragraph D of the Master Plan “use retail” Does not provide the board with a foundation for them to decide this application, Mr. Janiw said that is correct.

Mr. Shay referred to the fact that Monmouth County has control over the intersection of Shrewsbury Ave & Apple for any recommended changes. Mr. Janiw said that the County would have to approve any changes. **See Transcript...**

Mr. Shay referred to the Verizon building, and it is his opinion that the Verizon use is not an existing non-conforming use? Mr. Janiw said that Mr. Cranmer asked for testimony justifying the use, acknowledged it was non-conforming, and he agrees. The question is legitimizing the non-conformity, what changed, when it changed, when it became a non-conforming use, because at one point it was conforming and applications related to it where under the purview of the Planning Board. This board in 1990’s had applications for Verizon before the Planning Board indicating that the use was permitted, and Mr. Cranmer determined that it is no longer a permitted use. How did it become a non permitted use, and Mr. Janiw feels that sufficient evidence was not entered by the applicant tracing the history of what changed, why it changed and how it changed. Mr. Shay said that would be a decision of the board to warrant a decision for an existing non-conforming use. **See Transcript for full testimony.**

Mr. Janiw said that he has not been in the Verizon structure or have had the opportunity to speak to any Verizon representative, and the Mr. Convery has requested that someone from Verizon be available for questions, and it was not granted.

Mr. Shay referred to the 1955 Arhitectual’s which show essentially is the same footprint that exists today on the site. Mr. Janiw said footprint yes, but he cannot speak as to contents, except for the outdoor storage that has been expanded, which the aerials show the expansion of the outside of the facility over the years. Mr. Janiw referred to an Architectual not a Site Plan, and there is storage to the rear and side of the property. Mr. Shay asked if both of the buildings have been set independently of each other for 60 years (not touching, independent foundations). Mr. Janiw said that they are 2 non connected buildings.

Mr. Shay had no further questions.

Mr. Convery asked Mr. Janiw questions with regard to his testimony with Mr. Shay. Mr. Janiw said that he was questions for over 1 hour and half on his previous testimony on the merits of this application. Resolutions marked tonight have nothing to do with the merits of this application since they were granted on existing service stations. The application before the board is for a new gas station. No testimony was given for an underserved market. These merits must prove that the site can accommodate the expansion. Mr. Janiw referred to Medici Reconciliation & the Stalanos Stoupas the Zoning Board of Adjustment – Township of Edison (10/9/2015) L4208-13 Mr. Shay objected, Mr. Kennedy noted his objection for the record.

See Transcript for lengthy testimony.

Mr. Janiw stated that the S.I.C. Code should not be allowed into evidence.

Mr. Convery asked if Ms. Cofone, Mr. Seckler, or Verizon representative is here tonight? Mr. Janiw said no. There was an exchange of previous testimony on which building supports which building.

Mr. Convery asked Mr. Janiw questions with suitability of the location of the gas station, Mr. Janiw said no Mr. Shay referred two other gas station uses that are held to a different standard on this site. Mr. Shay asked Mr. Janiw if anything he said in his last testimony has been challenged by the applicant's Planner? Mr. Janiw with respect to the Medici criteria, no.

Mr. Convery had no further questions.

Mr. Shay asked Mr. Janiw questions with respect to page 103 of his testimony, and his reference to Cox, and Mr. Shay read his quote from COX. **See Transcript for testimony.**

Mr. Convery referred to Mr. Janiw's testimony of Stoupas Vs Zoning Board, Township of Edison, Blueberry application, he referred and the new state-of-the-art safety systems to protect the neighborhood. **See Transcript for full testimony.**

Discussion between Mr. Murphy & Mr. Janiw as to what the definition of "retail" and if a car wash, and the servicing of cars in a car dealership would be permitted in the zone, Mr. Cranmer explained that the HC/PO zone permits servicing ancillary to new and used car sales, Mr. Janiw said and repairing. Mr. Cranmer said that it is permitted as part of a car dealership in the HC/PO zone. **See Transcript for full testimony.**

Mr. Kennedy asked Mr. Convery if he has any other witnesses. Mr. Convery said no, he rest.

Mr. Shay pointed out that there has been only 1 person to attend these meetings, which was Ms. Russo and she has not been back, with no others from the general public.

Mr. Kennedy pointed out that Mr. Shay has rested as well as Mr. Convery and Mr. Gasiorowski is not in attendance.

A motion was made by Ms. Canonico, seconded by Mr. Daly to open the meeting to the public for comments on this application. All approved.

No comments/questions

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

See Transcript for full testimony of Mr. Kennedy:

Mr. Kennedy stated that this has been a long and difficult application process, with participation by all the professionals here, with many issues. He explained that there will be attorney summations, board deliberations, and then the board vote, which board members will state why they support the application or why you don't support the application, which is an important process. These deliberations will govern, dictate, and control what he will include in the application. In the event that there is Litigation a Court wants to see that the deliberative process was fair, not flawed, not arbitrary, not capricious, not unreasonable, and they want to see that the ultimate decision is well reasoned and not arbitrary, not capricious and not unreasonable. The application will not cause substantial detriment to the public good, or will be cause substantial detriment to the public. Certain standards have to be met for the Bulk C variances, D1, D2. This process would be the same for this application or a deck on a single family home, new retail or restaurant.

Mr. Kennedy explained that what we do from this point on matters. This will be picked apart, analyzed, debated, and criticized by whoever leaves this room unhappy. This has been a complicated hearing, many issues, with many sub-issues and he feels that we will need a "road map" of the specific issues to be voted upon. It's not an easy motion to approve or to deny the application.

Mr. Kennedy reminded the board he did ask the attorney's if they wanted to submit a "road map or elements of the vote" and Mr. Kennedy said he did not receive anything. He feels that a "road may" is necessary for the elements and standards of vote the board is voting on. Mr. Kennedy said that he doesn't have a road map prepared tonight and he doesn't feel that he could have prepared something until the conclusion of the applicant's case and the conclusion of the objector's case.

Mr. Kennedy would like to defer to the next meeting so he can prepare an outline of the more fundamental questions or issues that will be voted upon. Board can accept or reject it.

Mr. Kennedy referred to the “limitations” that can be placed upon the operation, to one operator, who would suggest that both attorneys’ Brief that issue and submit a legal Brief with 10 days to the Board Secretary with a copy to each other and to Mr. Gasiorowski and review it at the next meeting. If the application is approved conditions are very relevant, if the application is denied conditions are not relevant.

Mr. Kennedy feels that it would be better served if he could put together an informal “road map”. He feels that the attorneys can give their summations tonight, and we can vote, OR give summations tonight and vote next time, or have the summations at the next hearing, and discuss the “road map” and vote.

Mr. Shay suggested that they do a summation, which is not evidential, all we are doing is putting the facts together as they feel the case is appropriate. He can have a written summation prepared for the board review, as well as councils review, a week before the next meeting. The board will have it in their hands and be able to see what their respective position is and rather than wasting 1-1 ½ hrs. presenting summations they will rest on the written summations. He will answer any questions that board members have and they will have a written explanation as to what our case all about, recitation on the factual content of their witnesses and testimony of the witnesses and the “road map” as to whether or not they have proven or not proven the D1 & D2 are applicable, and will lay out the C variances with a written document in hand. At that point in time he doesn’t feel that it would be necessary unless the board feels that it would be appropriate to spend ½ hr. 45 minutes for a summation.

Ms. Martinelly said that is what Mr. Kennedy has been asking for.

Mr. Convery feels that it would be a benefit to everyone. If they Brief the issues on conditions.... And he has a problem with putting conditions on the application. He wouldn’t want to put a submission before the board before he knew what was going to go on with that, he might want to address that. If you want a submission and they have opened the opportunity to argue orally whatever the result of the condition issue, he is all for it.

Mr. Shay said that they could address the conditions on the resolution of approval, if that is the direction the board intends to go on in some point in time, the applicant will address whether or not we can live those conditions or not and whether or not we object to those conditions. Case law is clear on conditions, reasonable conditions are permitted to be placed on resolutions of approval, and his client will determine if they are reasonable or not. He doesn’t feel that it needs to be a Brief.

Ms. Canonico said that they need to understand, the exact variances that we are voting on or being sought after, and she wants a clear understanding as to what she will be voting on.

Mr. Shay said that they can lay out their case, just as a jury trial give your summations before a jury and they will consider the facts as presented on the record. Summation will be all the pieces to the puzzle, addressing all the proofs for the D1, and give the reasons why all the testimony supports the particular application. Mr. Kennedy will help the board determine what is appropriate and what is not. You can use your own memory to what the testimony was or was not and ultimately it is up to the board to make a determination as to what was presented on the record.

Mr. Kennedy asked if Mr. Gasiorowski object to submitting a Mr. Convery said absolutely it was his position that if there were conditions imposed it would go to the suitability of the site and the application, his position was that if the board is going to impose conditions on approval then his argument was that the site is not particularly suitable. Mr. Kennedy asked if he would have an objection to submitting a summation.

Mr. Shay wants clarity that it will not be additional summation. Mr. Shay said that he would exchange the summations.

Mr. Convery said that there is a page limit in the Appellate Division, and if he puts his summation out at 60 pages it's not going to be the greatest thing in the world, what are we submitting a legal Brief? Mr. Shay said no a summation.

Ms. Martinelly said that the board needs an outline. Mr. Kennedy said that is helpful.

Mr. Kennedy said as part of their summation process they can create a roadmap of what the board is voting, so you are aware of what you are voting on. If Mr. Shay, Mr. Convery & Mr. Gasiorowski agree to submit. He stated that if the application is approved we usually impose conditions,

Mr. Kennedy suggested that the summations be submitted by 7/21/2017 from all attorney's involved.

Mr. Kennedy reminded that there will be no new witnesses, all parties have rested.

Mr. Shay gave a verbal extension of time on the application.

Mr. Kennedy announced that this matter will be carried to August 2, 2017 without further notice, at that time the board will deliberate and board vote, summaries will be on file 10 days prior to August 2, 2017 for public view. Mr. Convery asked if they are only submitting their summaries by 7/21/2017, no conditions, or briefing. Mr. Kennedy said that the conditions will be addressed if the board approves the application.

A motion was made by Ms. Canonico, seconded by Mr. Pietricola **to carry the application of Quick Chek to August 2, 2017 without further notice. All approved.**

A motion was made by Ms. Canonico, seconded by Mr. Roache to adjourn the meeting at 10:15 pm. All approved.