

Present: Martinelly, Murphy, Ventre, Schuster, Carnes
Kennedy (attorney)
Cranmer (Engineer)
Absent : Schwartz, Canonico, Daly, Edwards

Vice Chairman Martinelly called the meeting to order @ 7:00 pm

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

Minutes:

A motion was made by Mr. Schuster, seconded by Mr. Murphy to adopt & memorialize the following meeting minutes as submitted: April 6, 2016, April 27, 2016, May 4, 2016
All approved.

Oath of Offices to:

Mr. Jack Schuster – Regular member
Mr. Phil Carnes – Alt #2

Correspondence:

PB Rep Report

Ms. Martinelly reported that the Resolutions for World Jeep – for a Lube Center was adopted & M/M Ibrahim for solar panels in the Historic District.

Unfinished Business:

Court Reporter – See Transcript for full testimonies.

Shore Investments LLC d/b/a QuickChek:

Continuation of Public Hearing

Bl: Lot:

Mr. Kennedy marked the following:

B-14 - Mr. Murphy – Certification 5/4/2016 meeting

B-15 – Mr. Phil Carnes – Certification of meetings: 1/6/2016, 2/3/2016, 3/2/2016
4/6/2016, 4/27/2016, 5/4/2016

Mr. Carnes did not have any conflicts with any of the owners of the proposed Quick Check application.

Mr. Convery asked to have a hand delivered letter dated 5/4/2016, delivered to Mr. Cranmer, Mr. Kennedy, the Board Secretary, and Mr. Shay, marked into evidence. Mr. Shay objected to marking the letter as evidence, after a discussion the letter will be marked for identification purposes only:

Luke Oil - O-6 – letter from Mr. Convery to Dave Cranmer, dated 5/4/2016 for introduction only.

Mr. David Cranmer, Zoning Officer/Engineer sworn.

Ms. Martinelly suggested 10:30 pm be the cut off for testimony tonight.

Mr. Mathew Seckler, Traffic Engineer – previously sworn.

Mr. Convery reviewed Mr. Secker's testimony from 5/4/2016 with respect to traffic counts on the site starting @ 7:00 am, how many trucks are being utilized at the site, and what the differential between service vehicles and employee vehicles, and that there is sufficient parking on the site being provided, trip generations from the I.T.E. Manual, and the appropriate land use code in order to calculate the parking requirements of the D.O.T.

Mr. Convery pointed out that the parking requirements for a 3,000 sq. ft store vs a 5,000 sq. ft. store would increase in the trip generations due to the proposed store is larger than most of the free standing stores. Mr. Seckler stated that this is typical for a convenience store with gas, and larger than a stand-alone convenience 7-11 usually 2000-3000 sq. ft. Mr. Seckler doesn't feel that the rear building is not retail. Mr. Convery asked if the use was considered to be retail, would you have to establish the trip generation for both the convenience store, and for the gas station and then add the two together for a total trip generation figures? Mr. Seckler said that if it was on a State Highway they would have a pre-application meeting with the D.O.T. to determine the trip generation rates to be utilized. They are using the appropriate Land Use Code for this use.

See Transcript for full testimony.

Mr. Convery and Mr. Seckler discussed the signalized intersection. Mr. Seckler said that he has dealt with them on other applications, and he feels that making left turns make this a positive site for this application, as well as the shared driveway.

Mr. Seckler and Mr. Convery discussed the traffic counts on January 13 & July 4, starting @ 7:00 am. Mr. Convery asked if he is aware that the Monmouth County Planning Board Development Regulations, require a start time of 6:00 am. Mr. Seckler feels that the MCPB will determine if they need to submit more data, and they did not do a Saturday morning count, and they are aware of that regulation.

Mr. Seckler & Mr. Convery discussed the reason and conditions of the January 13 counts and if they considered the "in school session" time of the schools in the areas.

Mr. Seckler advised that the data for the Fort Monmouth Redevelopment is not included in his study. Discussion with Mr. Seckler & Mr. Convery if the redevelopment will have an effect on the site, Mr. Seckler said that the traffic going into this site is "pass by" the traffic is already on the roadway.

See Transcript for full testimony.

Mr. Seckler reviewed the “level E” service at Apple Street, and the County will decide what the appropriate level of service for this intersection. His analysis shows that the decrease of delay on Apple Street approach, will only have to wait another 6 seconds. Mr. Seckler stated that his trip generation calculations are accurate, and no studies are needed for Patterson Ave/Shrewsbury Ave or Sycamore/Shrewsbury Ave.

Mr. Seckler referred to A-37 –and read the figures into the record, which the increase is minimal, the site has been designed efficiently and the access points are unchanged to the Verizon site, and will not have a significant impact for onsite circulation or off site circulation. Discussion on changing the one way in to two way access or straightening out the southern driveway.

Mr. Convery referred to the cross easement discussed. Mr. Seckler advised they have not done a study to determine if there is a positive or negative impact. He explained what studies would have to be analyzed.

Mr. Thomas Hirsh, Esq representing RRR Properties – Shrewsbury Village adjoining properties. Mr. Hirsh referred to A-23- Cranmer Engineering letter 1/14/2016, referred to page 10 Paragraph: **2.3**: No left hand turns out of Shrewsbury Village site to Shrewsbury Ave. to investigate a shared access driveway.

Mr. Hirsh asked the proposal would be a good traffic & planning concept. Mr. Seckler said it can as long as the intersection can operate safely & efficiently as long as the cross access can be designed not to negatively affect the onsite circulation, and can meet the legal issues. No discussions have taken place with the owners of the property.

2.4: MCPB should be contacted with respect to the feasibility. Mr. Seckler said that they have not made a submission to them or arranged for a meeting.

Mr. Shay indicated that it is the applicant’s position that there no Ordinance requiring a Cross Access Agreement, no specific requirement, his client has indicated that they have no interest in connecting to Mr. Hirsh’s property, and they do not want the imposition placed on his client’s property, and there has been no discussions with Monmouth County, they are aware of their application and that is where it stands, no professionals have been authorized in any way shape or form to do a study on any access to Mrs. Russo’s property what so ever, and to “cut to the chase” that is the representation he has made to the board. Mr. Shay indicated that Mr. Sudler has not authorized anything, and he has indicated to Mrs. Russo that they do not wish to have any interconnection at this point in time. They have negotiated contractual item that will have to vent itself out subsequent to this application. That is the position of the applicant and it will be the position of the applicant after this application. There is no Ordinance in the Borough that requires any kind of cross access, if there is one he would like to hear about it, and they would be willing to address it. Nothing within Monmouth County that mandates it. That is their position and that’s way the application run.

See Transcript for full testimony.

Mr. Hirsh asked questions with regard to the Monmouth County Planning Board and if an application had been made. This is an issue that has been raised by the Board Engineer which is not a separate issue. Mr. Shay again stated that it is a contractual issue and there isn't an Ordinance that requires or mandates a cross easement. Ms. Martinelly stated that it is mentioned in Cranmer's Engineer review letter and it is now being addressed. Mr. Kennedy agreed and this is a topic for discussion.

Mr. Shay indicated that the owner of the property does not desire, at this point, in this application, to remotely discuss with the adjacent property owner access to Ms. Russo's site. It should have nothing to do with this application.

Mr. Convery stated that this is a use variance and the board has every right to not only review Mr. Cranmer's position, but to also hear testimony from witnesses as well as Mr. Hirsh to determine if this board does believe that this application would be benefited by the cross easement.

Mr. Kennedy feels that the board is getting ahead of itself and we should let Mr. Hirsh finish with his questions. Ms. Martinelly agreed.

Mr. Hirsh asked if any information was ever requested on the type of businesses by you or anyone related? Mr. Seckler said no, he has not and is not aware of any information. He was asked about the grade change that was mentioned, Mr. Seckler said that the site to the north is lower the site before the board, and there may be some areas that there are no grade changes along the common property line. Mr. Seckler indicated that there would be additional traffic to Patterson Ave to avoid the lights at Patterson Ave. Mr. Hirsh indicated that the owner would close off the rear access to Patterson Ave if the cross easement is worked out. Mr. Seckler said that he is not aware of the traffic counts for the cars would utilize the cross easement to Apple Street. Mr. Hirsh indicated that the adjacent property owner's traffic engineer feels that there would be a 50-50 split using the easement, he asked Mr. Seckler if that would have an impact on the level of service at the Apple Street intersection? Mr. Seckler could not answer with a study being done. Mr. Seckler indicated that the level of service overall is "C", the exiting signalized driveway from the site is level "C" in pm and "D" in the am. Mr. Seckler testified that there would be no significant adverse impacts.

See Transcript for full testimony...

A motion was made by Mr. Ventre, seconded by Mr. Schuster to open the meeting to the public for questions of Mr. Seckler. All approved.

No comments/questions.

A motion was made by Mr. Ventre, seconded by Mr. Schuster to close the meeting to the public. All approved.

Mr. Shay asked Mr. Seckler to explain the impacts from Brookdale Community and Fort Monmouth and other uses in the area, he referred to a letter from MCPB from Victor Fermanack, 2/8/2016 (B-8) he indicated that they are not requiring any additional information for external uses outside of Quick Chek, and they will comport with any reasonable conditions placed upon the application from the MCPB.

Mr. Shay read the 3 conditions from MCPB: 1 way access into the site or provide an island to restrict left hand turns out of the driveway, and the applicant will provide a "pork chop" island which will prohibit left hand turns out, mountable curbs, timing of lights at Apple Street will be complied with, letter to Victoria Zabat Principal Engineer 2/12/2016, from Edward Sampson all comments will be complied with (B-8). Request from Alias Saranmickolow dated 2/3/2016, will comply. Mr. Seckler indicated that all the cross access easements that he has worked on both parties subject to the cross access have agreed to that cross access agreement.

See Transcript for full testimony

Mr. Hirsh asked Mr. Seckler if he has had any meeting with the Development Review Committee? Mr. Seckler said that they try to meet with the representatives with the MCPB and he met with them a year ago, prior to the application being filed June/July 2015. Mr. Hirsh stated that they would prefer the cross access easement, but they didn't think that they have any jurisdiction.

Mr. Shay asked Mr. Seckler if there is anything in any of the paperwork or correspondence that relates to any requirement by the County mandating or recommending a cross access agreement. Mr. Seckler said no.

Break; 8:40 pm to 8:50pm. All present at roll call.

Christine Nazzaro Cofone, Planner was sworn, and accepted as an expert witness in Planning.

Ms. Cofone testified that she has done an extensive investigation of this site, and listed the items included in her investigation. Ms. Cofone also described the two uses on the site – outdoor storage & the implementation building/warehousing building and the dormant front office building – since 2012. **See Transcript**

Ms. Cofone described the proposed Quick Chek:

- New retail/fuel & convenience store (5,460 sq. ft.)
- 16 fueling positions
- 13 seats inside & 8 seats outside
- HCPO Zone – retail permitted – restaurant use not permitted
- HCPO includes anything permitted in the B1 zone & P1 Zone & Industrial uses (Read B1 Zone into the record)
- D1 – proofs for Quick Chek/fuel dispensing reviewed & special reasons

- There are 6 lights along Shrewsbury Ave & this site is based on pass by traffic, and this site having the left turn out is a benefit as shown in the listed 16 letters in 40:55D-2.
Criteria “G” is advanced by this application & variances are minimal
Criteria “H” flow of traffic – benefits the site. The free flow of traffic will be satisfied, Criteria “M” sufficient use of land, this use can exist with other uses. Master Plan recommends rehabilitating underutilized sites, which this site is and is 75% impervious coverage and they are increasing that slightly.
- Described the surrounding area

See Transcript for full testimony of Ms. Cofone in detail.

- No substantial detriment to the public good,
- Read the prohibited uses in the zone
- no substantial detriment to the Master Plan or Zone Plan in Shrewsbury – read from the section of the Master Plan giving the “objectives” & Guiding Principles
- Reviewed the Medici Reconciliation
- No substantial detriment to the public good if this use variance was granted

See Transcript for full testimony on variances being requested:

As listed in Cranmer Engineering Review letter page 3.

See Transcript for full testimony on rear Verizon building:

Cranmer Review letter 1.3 – non conforming status

Mr. Shay advised that they have re-noticed for the D1 use variance for the Verizon building, D2 variance expansion of a non- conforming use, and to have 2 uses on the lot.

A-38: Resolution Planning Board September 20, 1990 granting site plan approval to NJ Bell Telephone B1: 3, Lot: 5, and various letters, minutes, Engineer letter from Leon S Avakian Engineering

Ms. Cofone read from the B1 Zone permitted uses. Mr. Shay pointed out that in 1990 the uses on the site included an office use which was deemed to be a permitted use, and the use in the rear of the building could also be deemed a permitted use? Mr. Cofone said yes. She read pages 10 & 11, from the 1990 minutes, the testimony from the NJ Bell representative, the description of the implementation building, which is all storage of cable wheels and telephone poles. These two uses have existed for over 50 years, different companies NJ Bell or Verizon but the same use.

See Transcript for full testimony on the pre-existing non- conforming use.

Referred to A-2 – and the existing parking, Quick Chek cannot utilize the parking for the Verizon use and the Lease indicates that the Verizon portion cannot utilize the parking on the lease area, it will exist as it does today. Ms. Cofone explained a D-2 variance, for the existing use, if there is an expansion and will the circulation of the implementation be impacted, since there are two access points the board can be comfortable that there will not be an expansion of a non-conforming use. **See Transcript full testimony.**

Ms. Cofone addressed the proofs that are required for a D2 variance, the negative & positive criteria and the impact on the Zone Plan. The use can operate even though it's been expanded. No detriment to the rear portion of the site.

Ms. Cofone stated that if the board didn't feel that it was an expansion of a non-conforming use or a lawful pre-existing use the board would have to find that the use can be established. She stated that the HCPO zone incorporates telephone exchanges, telegraph and express offices, together with the fact that the rear of the site butts a railroad and it's in a commercial corridor, car dealerships and a shopping centers. It is her opinion that this site is suitable, since the use has operated for 60+ years.

No questions from board members

Mr. Michael Convery, Esq represented objector.

Mr. Convery asked Ms. Cofone "general" questions on the variances & uses being requested.

- for the back portion of the property (Verizon building)
- The historical use of the property from 1990
How the 1990 documents were received, and if they were the only documents she reviewed and were they supplied by Mr. Shay i.e. site visit with Mr. Hale (A-38)
- Did she review any building permits dated 2002, that were associated with garage area after the 1990 application
- Mr. Convery asked Ms. Cofone to describe what she saw in the garage area
She advised there were offices, 4 Verizon trucks, wires, overhead doors to allow a drive in access with enough room for 55 spaces inside the building

OB-7 – Building Permits – C.O. dated 12/30/2009, Building Permits 4/22/2002. Sketch Drawing - removing the interior drainage

OB-8- Luke Oil - Site Plan Application, Monmouth County Planning Board Final Approval 4/23/1990 (4 pages).

Mr. Shay asked Ms. Cofone if she knew why the expansion of the parking lot was before the Planning Board? Ms. Cofone said it was a permitted use, and there were 2 permitted uses on the property, there was one operator for both uses, there was one Master Tenant, and she disagrees with Mr. Cranmer that the use is non-conforming, this use is a permitted use in the zone through the inclusion of the permitted uses in the B1 Zone, includes telephone exchanges, telegraph express offices, it could be interpreted as a permitted use. She feels that a garage was a permitted accessory use in 1990 as per 94-8.19.

Mr. Shay stated that there were a variety of different other uses or proofs that are needed in this application, Ms. Cofone was clear that she has categories it as:

- As a permitted use
- Existing non-conforming use
- Expansion of a non-conforming use
- A non permitted use

Ms. Cofone referred to OB-7 –Fire permit for the removal of 550 gallon waste oil tank, water separator, remove trench drains & patch concrete floor. She feels that these a not use related permits.

Mr. Convery asked if the offices were added to the Verizon Building in 2002 after the floor was patched and the building permit was sought?

Mr. Kennedy asked if Mr. Shay wants a break, he said no.

Mr. Shay referred A-33 Floor Plan, 1956 Office Building.

Ms. Cofone referred to the minutes of 6/19/1990, stating the operations in the building have expanded within the building, but the capacity as far as head count is the same. The office may have expanded but it was and is now a permitted use in the zone. There is nothing in Shrewsbury to preclude you from having 2 permitted uses on 1 lot.

See Transcript for full testimony.

Mr. Convery & Ms. Cofone are available **June 29, 2016 @ 7:00 pm special meeting without further notice to the public.**

A motion was made by Mr. Ventre, seconded by Mr. Murphy to authorize a special meeting on June 29, 2016, @ 7:00 pm for the purpose of reviewing a potentially acting upon the Quick Chek application, and any other matters designated without further notice to the public. All approved.

Mr. Shay stated that on behalf of his applicant he extends the time of decision

No public in attendance.

A motion was made by Mr. Ventre, seconded by Mr. Murphy to adjourn the meeting @ 10:40 pm All approved.