

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

All saluted the flag & the Presiding Officers Statement was read

Roll Call:

President: Martinelly, Collins, Moran, Teller, Carroll, Betesh, McDonald
Attorney: Hirsh
Engineer: Cranmer
Absent: Burden

Minutes:

A motion was made by Mr. Carroll, seconded by Mr. Collins to adopt the October 21, 2015 meeting minutes as submitted. All approved.

Correspondence: none

Planning Board Business:

Mr. Teller will be leaving the board
Mr. McDonald will be leaving the board

Planning Board Rep: no report

A motion was made by Mr. Betesh, seconded by Mr. Collins to open the meeting to the public for items not on tonight's agenda. All approved.

No comments/questions

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

Unfinished Business:

J.J.B. Realty, LLC:

Adoption of Resolution

d/b/a South Jersey Dance Theatre

Bl: 34, Lots 9 & 10

A motion was made by Mr. Betesh, seconded by Mr. Collins to adopt the resolution of approval to South Jersey Dance Theatre, LLC for a change in use and minor site plan approval as submitted.

Roll Call:

Affirmative: Martinelly, Collins, Teller, Carroll, McDonald
Negative: None

Ms. Martinelly stepped down

Mr. Collins took the seat as Chairman

M/M F Moore:

2 lot subdivision

30 Corn Lane

Bl: 60, Lot: 5

Mr. Collins summarized the process to the public with respect to the question and answering from witnesses.

Mr. Philip San Filippo, Esq represented the applicant.

Mr. San Filippo explained that the property in question is a through lot from Corn Lane to Williamsburg in the R1 Zone. The board took jurisdiction at the 8/19/2015 meeting.

Mr. Robert P Freud, Planner/Civil Engineer Dynamic Engineer, Lake Como NJ was sworn and accepted as an expert witness in Planning/Engineering.

Mr. Freud summarized the variance relief being requested:

A-1: Minor Subdivision Plan revised 8/4/2015 with yellow highlights

- Corn Lane east - west – Williamsburg Drive east - west
- R1 Zone (45,000 sq. ft.) single family homes southern limits of this portion of the R1 Zone, adjacent to the south is the R1A single family cluster zone (22,500 sq. ft.), to the west on Silverbrook Road is the R3 single family zone (15,000 sq. ft.) There are 3 zones within a 500' radius – and the character of the neighborhood by the lots and the structures within the 3 zones. The lot in question is located in the R1 Zone. Bl: 62, Lot: 5 (272' x 288' or 1.8 acres or 78,000 sq. ft. This is a unique lot because it is a through lot and has frontage on 2 roads with similar classified residential streets. Currently there is a tennis, gazebo, swing set. There are no environmental constraints, there are some further south but do not encroach on this property.
- 2 existing non-conforming, 43' front yard setback, small shed is 1.7 from the side yard property line.
- The applicant is proposing to subdivide the property into 2 residential lots with frontage on improved streets.
- **Lot 5.01** – 30 Corn Lane – existing residential home, requires a variance for minimum lot area of 33,592 sq. ft. where 45,000 sq. ft. is required in the R1 Zone, and continuation of the existing non conformity of 43' for the front yard, and a variances for the rear yard setback of 33.6 where 50' is required in the R1 Zone.
- **Lot: 5.02** fronts Williamsburg Drive – which will be conforming in lot area and a building envelope to allow a conforming development.
- **Lot 5.01** – maximum lot coverage for impervious area 24% proposed where 20% is permitted about 1,000 sq. ft. Maximum building coverage of 10.44% where 10% is permitted about 150 sq. ft.

- Mr. Freud reviewed the Kaufman vs Planning Board of Warren Township – C2 variance and the benefit to the community.

Mr. Freud described the surrounding area, R1, R2A and R3 zones, different lot sizes and characters of the area. Analyzed the surrounding with 500' and presented:

A-2: Subdivision Plan Rev: 1 8/14/2015 – color coded dated 11/12/2015 Property in question marked in green, pink color less than the area of the variance being requested of 33,000 sq. ft., yellow color represents greater area of 33,000 sq. ft. Mr. Freud broke down the zones and the number of homes represented in each, 37 lots – 26 are less than 33,000 sq. ft. or 70% are equal to or smaller in size than the proposed lot. The R3 zones were not included in the summary since it is a 15,000 sq. ft. requirement. Overwhelming majority are in the 33,000 sq. ft. area or less.

Mr. Freud stated that the results of 5.01 (Corn Lane) to the north will face 3 lots that are less than 30,000 sq. ft. in area and the results of the subdivision will be consistent with the surrounding properties in the area, and in closer conformity of the surrounding area by lot area and density and a better zoning alternative.

C2 variance and the Positive and negative Criteria

Under the Kaufman Case:

- Creates a lot that is closer conformity to the surrounding area lots
M.L.U.L. is advanced through the subdivision
D: to ensure the development of the individual municipalities does not conflict with the development and general welfare of neighboring municipalities, county and state. Subdivision provides appropriate housing and upland developable area within the metropolitan planning area of the state and is consistent with the state plan.
E: Establishes appropriate population densities
G: Sufficient space in appropriate area for a variety of agricultural residential recreational commercial and industrial uses. Provides single family housing in single family rezoning consistent with the Zoning & Master Plan of Shrewsbury Located on an improved street, no public improvements are needed for this lot.
I: Promotes a desirable visual environment through creative development techniques in good civic design and arrangement. Creation of the lot on Williamsburg will provide a more esthetic visual environment along Williamsburg Drive.
M: Encourage coordination of the various public & private procedures and activities shaping land development with the view of lessening the costs of such development and to the more efficient use of land. The roads are there, the utilities are there, the services are already provided and is the most efficient way to create a developable lot.

Negative Criteria:

- Existing dwelling Lot: 5.01 front yard setback already, no additional impact
- Rear yard setback can be mitigated through additional evergreen plantings
- Coverage variances, minimal in nature, the building coverage less than 150 sq. ft,

- There is no substantial detrimental to the public good as a result of the granting of the variances
- No substantial detriment to the Zone Plan or Ordinances from granting of the variances or subdivision
- Improvement and benefit to the community

Mr. Freud reviewed the review letter of Mr. Cranmer 7/14/2015: all are agreeable conditions and will comply

1.8: Restrictions or covenants are not present, Williamsburg Drive is a fully improved public street and available for access

2.0: Will perfect the subdivision by Deed which the MLUL permits
Letter of No Interest received from the MCPB

2.5: Will comply with underground utilities on northern property line

Discussion on how to mitigate the building & impervious coverages variances.

Mr. Freud explained that the building coverage variance is for less than 150 sq. ft. and he doesn't feel that there could be mitigation, impervious coverage they would be agreeable to provide screening and/or storm water development criteria through drywells or storm water detention on Lot: 5.01

Determination of Res Judicata:

Mr. San Filippo explained that there was a prior denial of a subdivision application in 1992, to divide the lot into equal lots of 39,000+sq ft. Originally they did come in with the same plan and made aware of the plan, and then Res Judicata was applied. They revised the plan to show 1 conforming Lot: 5.02 of 45,000 sq. ft. and Lot: 5.01 would be 33,593 sq. ft. This application is substantially different than the denial in 1992 application

And they feel that the Res Judicata is not a bar to current application, based upon those factors and ask Council to advise the board, and to make the determination that it is substantially different.

Five elements to Res Judicata:

- The application is not the same application that was denied in 1992 – we now have 1 conforming lot and 1 non-conforming lot
- Same parties are not involved. This home has changed ownership several times over
- Substantial changes in the application over the 23 years and the conditions have changed over the 23 years, and Williamsburg was not fully built out in 1992 when this matter came before the Planning Board, the character of the neighborhood has changed as testified by Mr. Freud
- If there was an application presented and then applicant withdraw the application based on comments from the public and the board and this could only be done with the permission of the board, but there was adjudication on the merits

- Both application do not involve the same cause of action – different plan, different set of relief, existing home on a larger lot including 3 on Corn Lane, and 2 preexisting conditions which cannot be avoided and will prevail.
- 3 of the 5 elements for Res Judicata have been extinguished and therefore Res Judicata should not be a bar to this board to hear and to decide this application.

Mr. Hirsh said that the Res Judicata is the board's decision. The board should ask questions of the witness, then the public can ask questions of the testimony this witness has given, once the case rests the public will be sworn in and they can give testimony on Facts. First the board will make a decision as to whether Res Judicata applies or not, if it does its finished, if it doesn't you will consider the merits of the case, with respect to the variances.

Mr. Hirsh advised that Mr. San Filippo has been accurate, the fact that we have a different owner doesn't due-away with the Res Judicata. Mr. Hirsh gave a history of Res Judicata, if is there a significant change in the facts of the application itself and/or the surrounding circumstances. The board must determine if this application is a significant change than the 1992 application. The board will hear all of the testimony and the public.

Mr. Betesh asked if there will be a motion for the determination of Res Judicata.
Mr. Hirsh said yes, you have heard all of the merits of the application.

Mr. Betesh asked to have the benefit to the community reviewed. Mr. Freud recapped:

- The formation of a developable lot on Williamsburg to provide consistent neighborhood character fronting Williamsburg and eliminating the rear yard amenities which presently front Williamsburg.
- Overall density of the neighborhood and area with regard to lot size and the subdivision creates 2 lots from 1.8 acres which 1 is appropriately sized and the other is approximately $\frac{3}{4}$ acre but together they fit into the fabric the density of the community, by being in the corner of the R1 – R1A.

Mr. Betesh asked if the addition of 1 lot increases the density. Mr. Freud said that the lot is larger than what the zone contemplates, by creating 2 lots even though 1 is undersized the net result is that you have density more consistent with the 45,000 sq. ft. zoning for the R1 zone.

Mr. Collins asked what is the rear yard setback on the existing lot? Mr. Freud referred to A-2 and advised that the majority of the patio is greater than 16' to the new property line.

Mr. Carroll had some concerns about the plantings proposed. Mr. Freud suggested that the buffer be planted on Lot: 5.02 with a recorded Deed Restriction in place. Mr. San Filippo suggested a 15' Conservation Easement running the entire width of 5.02.

Mr. Cranmer asked if this lot was part of the Azalea subdivision since the rear line of the lot in question forms the side yard of Williamsburg Drive, was this lot part of the original larger piece of property to form Williamsburg? Mr. San Filippo said he doesn't think so, he feels that that northerly line of Williamsburg was the northerly line of the vacant land

known as Azalea Farms which became the Azalea Farms subdivision which is part of Williamsburg Drive. Mr. San Filippo stated that he reviewed the Title of the property and it did not indicate that this lot was ever part of the Azalea Farms. Mr. Cranmer asked if this is a lot that adjoined or abutted that property but it did gain a 2nd frontage by virtue of the subdivision? Mr. Freud said that the final plat filed in May 16, 1989 indicates that Williamsburg Drive was created to coincide with the southerly boundary of this lot.

Mr. Cranmer said that it is Mr. Freud's testimony that this is a unique piece of property with 2 frontages, gaining the 2nd frontage not of its own making. If this lot were part of the original Williamsburg subdivision would the density if this lot were included would still have resulted in the same number of lots and net density of the neighborhood? This is a cluster development. Mr. Freud said yes, if this lot was part of Azalea Farms development it would have been included in R1A zoning and available for cluster sizing of 22,500 sq. ft., by changing the density by 1 or 2 lots is not going to have a substantial impact on the density, he feels that there was enough open space to cover.

After a discussion on adding to the Williamsburg subdivision and where there is enough open space to offset one more lot to be in the cluster zone of R2 cluster of 22,500 sq. ft., and Lot: 5.02 would be larger than the cluster zone and it was decided no it would not and the density would be appropriate and it would not change the zoning.

Mr. Freud clarified and explained that looking at a "cluster" the density is based on the overall lot area and you are not allowed to exceed that number of lots in the development. Mr. Cranmer's question was if they bring the Williamsburg fronting lot into the subdivision. If this was originally part of the subdivision, would they violate the overall density of the subdivision by adding an additional smaller lot or is the subdivision at the threshold and an additional smaller lot would "tip it over" and it would not have been approved as such. He did take a look at the open lots, and approximately 29 acres with 26 lots within the area, which mean there is about 48,783 sq. ft., and if you add one lot or even both lots and bring it to 28 total lots, the average lot area would be 48,100 sq. ft. it's a minimal difference. The density doesn't change significantly and it doesn't cross the threshold of making the subdivision anything that is more than what would have been allowed if it was part of the subdivision application.

Mr. Cranmer advised that the lot will remain R1 zone.

A motion was made by Mr. Moran, seconded by Mr. Carroll for questions of the witness. All approved.

Ms. Regina Dedick, 209 Williamsburg Dr asked questions in reference to R1 zone and wetlands/soil conditions vs open space, was the density going to change on the 1992 application? Mr. Freud said the cluster zoning were removed from the property and had no impact on this application. The property is not constrained by wetlands or impacted wetlands buffers. Any wetlands do not have any impact on this lot or the developability of this lot. Mr. Collins asked if the facts which applied to the 1992 application have changed now on this property in question. Mr. Freud said it is his opinion that it is not

underlying reason for the denial, the reason for denial that it was filed as a hardship variance, and they are not presenting this application as a hardship variance.

Mr. Hirsh stated that Ms. Dedick was quoting a section from the Borough's Master Plan "The R1A cluster is designed to protect the sensitive and environmental area's along Parker's Creek, which includes a 100 year flood hazard areas, 500 year flood prone areas, on a site specific basis. Areas with shallow depth to water table or sensitive vegetation including special trees". Mr. Hirsh he doesn't know if the board specifically that there is an adverse effect on these two lots as a result, because there are other areas that were emphasized "to provide for compatibility with existing 1 acre lots extending along Sycamore Ave". In the resolution that is the part that is underlined. Just because it's in the Master Plan doesn't mean that is a reason That is for this board decide.

Mr. Betesh asked for purposes of Res Judicata how important is it that the reasoning of the original decision be different in terms of saying that it is a different application?

Mr. Hirsh said, what is critically important is are the facts different. That could be one reason that may not have changed, but there could be 10 other things that changed, it's the overall application and weighing the difference between the two.

Ms. Dedick asked, the subdivision should not impact her property as far as water?

Mr. Freud said that the application is for a subdivision, and application for development on the new lot would be submitted and reviewed for compliance of all requirements.

Mr. Chris Dilascia, 206 Williamsburg Dr. asked questions with regard to lot line and how it will benefit the town. Mr. Freud said that the benefit from a planning perspective is the consistency within the community and neighborhood. He asked how moving a line between two properties makes it substantially different than the last application. Mr. Freud explained that the previous application proposed 2 undersized lots with 2 lot area variances, with this application the lot facing Williamsburg Drive will be conforming in lot area, lot width and depth and has a building envelope that would allow a new home with all building setbacks. One conforming lot is the difference between the 2 lots.

Mr. Mathew Goldzweig, 214 Williamsburg Dr, in 1992 "premises are unique" what has changed since 1992 to make this property "unique". Mr. Freud said that he hasn't read the full transcript from the previous application, but it is unique due to the fact that the subdivision created a duel frontage lot, which has not changed since 1992. Mr. Goldzweig asked in 1992 has anything changed to create more open space? Mr. Freud said no.

Mr. Dave Usechak, 20 Corn Lane, referred to the high water table and how will it not impact the neighboring properties environmentally? Mr. Freud said that the new lot would require a development permit, grading plan, plot plan, foundation plan and how ground water is addressed, subject to review of the engineer & building department.

Mr. Collins reminded the board that this is not an application to develop the second lot and bordering Williamsburg Drive, this is for subdividing the present lot.

Mr. San Filippo asked Mr. Freud if he would describe the techniques that are used today to address ground water concerns or high water table concerns as compared to what did or did not exist in 1992. Mr. Freud that since the time of the resolution storm water management requirements & regulations have evolved. In 1998 the State adopted new storm water management regulations which set the threshold, a ¼ acre of new impervious requires storm water management mitigation even for small projects i.e. a single family has changed in leaps since 1998, which have been adopted by the municipalities which allows them to enforce mitigation of impacts of storm water, elevation of(inaudible) are different since that time.

Ms. Louise Usechak, 20 Corn Lane asked questions in regard to the following and Mr. Freud answered all of the questions presented to him.

- what is the new rear yard setback – 33.6
- Clarification as to why this lot should be consistent to lots than 30,000 sq. or less and why is this desirable in an R1 Zone – 20 & 30 Corn Lane are in the R1 Zone
- Square footages of the surrounding properties and described all
- Is this a better planning alternative to down grade the zoning and the differences that help to define the character of the neighborhood –
Mr. Freud said that this will bring an oversized lot into closer conformity not only to the R1 zone, but that of the neighborhood.
- Efficient use of the land – Mr. Freud said that you quoted the MLUL and in this case a developable lot can be created on an existing street with all public infrastructures
- Was the cluster zone in Azalea farms was efficient use of the land knowing the degree of wetlands on site? Mr. Freud said that was an efficient planning tool to allow the same number of homes with the same density on smaller lots
- How do you define “no detriment to the public good? Mr. Freud said that they look at the overall impact and the public good is that they have a developable lot closer in conformity to the lot area than the lot that exist today.
Mr. Hirsh explained that the MLUL – one of the burdens an applicant has is to establish the negative criteria that will not be a substantial detriment to the public good or general welfare. Courts have interpreted that can mean to the surrounding properties. The other negative side of the coin is that it will not substantially impair the intent of the Zone Plan & Zoning Ordinance
- What the reason for subdivision – Mr. San Filippo stated to have the ability to create, from an oversized lot on a through lot to create a conforming within surrounding area in the zone and similar size lots in the zone.
- Mitigation of storm water – Mr. Freud we have not gotten to storm water management design, and that will be reviewed the Engineer for compliance..
Mr. Cranmer explained the process of what will happen for development for this conforming residential use, for compliance for any variance, with a grading plan, storm water management plan, all will be reviewed and determine what will have to be mitigated. Mr. Betesh stated that this application is only for the subdivision of 1 lot and subdividing it into 2 lots.

- When measuring consistency why wasn't the additional R1 lots included? Mr. Freud explained that they looked at the lots within 500' of the property.
- Where is the buffer going to be? Mr. Freud explained that there will be 15' landscape buffer along the common lot line with the landscaping on Lot: 5.02. Mr. Hirsh suggested that this be Conservation Easement, and must remain in place and maintained by the owner of Lot: 5.02.
- Another discussion on whether or not this lot was part of the Azalea Farms subdivision, where only 24 lots were approved in order to avoid the CAFRA Regulations. Mr. Freud said that this is not part of Azalea Farms and it would not affect the density if it was included.
- Why is needing more variances better than only 4 variances which the 1992 application requested. Mr. Hirsh stated that they don't have to show the plan is better, they have to show that it is different. They cannot use the fact that more variances are needed to justify the difference for Res Judicata.

Mr. Joseph Sapone, 5 Azalea Lane, will the existing lot with the residence be out of compliance with zoning? Mr. Freud said yes. Mr. Sapone asked how will the 2 lots make it better for the neighborhood. Mr. Freud explained having 2 lots will be much closer into conformity with zoning and the community. Mr. Sapone confirmed the new rear yard setback for the existing home of 33.6 – Mr. Freud said that it is a variance.

Ms. Kathy McQuillan, 80 Silverbrook Rd, asked for a description on what currently exists on the north side Williamsburg Drive entering from Silverbrook Rd. Mr. Freud referred to A-2 and described what currently exists.

A motion was made by Mr. Moran, seconded by Mr. Teller to open the meeting up to the public for comments under oath. All approved.

Mr. Cranmer asked Mr. Freud what was the reasoning to make the conforming lot (45,000 sq. ft.) front Williamsburg rather than Corn Lane? Mr. Freud explained doing it this way created a buildable lot with a developable building envelope which would be consistent with the Zone Plan. The existing conditions on Corn Lane already exists. Mr. Cranmer asked if the building envelope for Lot: 5.02 is larger than the lot to the east (Lot 7.01). Mr. Freud doesn't feel that doing the reverse would not bring the lot more into conformity of the Zone Plan or the established pattern of development. He feels that it is more appropriate to deal with the variances associated with the undersized lot rather than defer the variances to a Development Application.

Mr. Andrew Dedick, 209 Williamsburg Drive, was sworn. He gave his concerns with the ground water issues that he has had in the past.

Ms. Regina Dedick, 209 Williamsburg Drive was sworn. She gave her concerns with the ground water issues and the issues on her property.

Mr. Cranmer explained that the water issues were not the result of a subdivision but the result of a redevelopment of an individual lot. Since 2003 when he believes that home was redeveloped there weren't the storm water management regulations that we have today. There wasn't any soil samples, boring and he doesn't know what the ground water table is, nor does the applicant know. When he receives a Development Permit for a house he will look at the run off, the tennis court that currently exist is approximately the size of a house that could be built, he would look at the net change in run off. He doesn't feel that the applicant would have any difficulty in complying with our Storm Water Management Regulation, without the necessity of the installation of dry wells. The existing undersized lot have variances being requested for the impervious coverage, not because they are increasing the degree of impervious, but they will remove the lot area against which that is measured. The applicant will have to introduce mitigation measures for the existing lot (Lot: 5.01). Roof leaders of the existing home will need some type of mitigation systems. If the soils are not conducive to a dry well approach they will have to do something different, and if they are unable to come up with a mitigation strategy that meets the Ordinance they will not be able to perfect the subdivision. Mr. Cranmer explained that he will be the one to review the process for mitigation, and should be made a condition of approval.

Mr. Betesh stated that one of the variances that is being requested is that we allow the impervious coverage to exceed what is allowed by the Zoning Ordinance, and if this application is approved the mitigation will be subject to a satisfactory plan for the mitigation, and the board cannot waive the condition and approval of the Board Engineer. Mr. Cranmer agreed.

Mr. Moore, owner of 30 Corn Lane was sworn. He stated that the basement in the Schultz house is enormous, and his basement is not the footprint of the house. Mr. San Filippo suggested limiting the impervious to 20% to both lots. Mr. Cranmer said he would not suggest that and each lot should be handled on its own. Mr. Hirsh said that limiting the impervious coverage could be a Deed Restriction so it is enforceable and a record of the limitation.

Mr. Joe Sapone, 5 Azalea Lane, was sworn. He has concerns with the surface water and if it's going to work. Mr. Cranmer said that if they cannot give a grading plan and storm water management strategy that satisfies the criteria they will not receive a building permit. On lot 5.01 they will have to prove that they have a mitigation strategy before the subdivision map/Deed is signed off on. Mr. Sapone feels that they have not proven their case and he is not in favor of the subdivision.

Mr. Jim Breslin, 80 Silverbrook Rd, was sworn. He stated his concerns with the water in the area, he feels that if there is a water problem it's only going to get worse. He bought the house knowing about the water issues, and he does run 2 sump pumps.

Mr. Cranmer stated that the surface water run-off is easy to control, there are rules and regulations in place. This is a substantially larger lot, and the impervious coverage, lot

coverage, building coverage are measured as a metric of the lot size, they could without any approval from the board through a Zoning Permit construct a house that 2-3 times the size of the house that presently exist, without any variances or any appearance before the board.

Mr. Paul Sperber, 31 Corn Lane, was sworn. He is directly across from the Moore property for 35 years, and he is total opposition to the requested variance. He feels that this question was adjudicated on January 15, 1992, nothing of substance has changed since the ruling, and he would not like to see any change, what is being asked for was decided in 1992, and this would be "spot zoning" and he feels that changing the R1 will degrade the quality on Corn Lane, and another house squeezed onto the property seriously damages the environmental conditions of Corn & Williamsburg Dr and reduces the desirability of his home and the future value of his home. The granting of the variances solves their problem, they sell leave town and he is left with the consequences of the board's decision.

Mr. Hirsh advised that this is not spot zoning, it is not changing the use on the lot. An application for a 2 lot subdivision will not create spot zoning, and the use is not being changed.

Ms. Louise Usechak, 20 Corn Lane was sworn. Stated her concerns as follows:

- This is an R1 zone and the conditions have not changed and no subtenant change has been presented over the 1992 denial – the property line has moved 21' to Corn Lane
- The impact will not change for properties down the street
- The only property has been subdivided to the Campbell estate with the condition that the circular driveway will not front Sycamore Ave only Elm Lane
- In 1985 she chose her property due to the larger lot size and the privacy that they would receive
- Ms. Usechak said when the Williamsburg development was proposed she did go and read the Master Plan, and Williamsburg was subdivided from Corn Lane originally.
- When Williamsburg Drive was constructed in the rear of her property they planted trees, her backyard adds to the graciousness of the Moore's backyard and theirs enhance her backyard.
- Ms. Usechak feels that if the application is granted to subdivide you are putting her property in between a $\frac{3}{4}$ site with the current house of 5,211 sq. ft. and $\frac{1}{3}$ acre zoning.
- Ms. Usechak indicated that the developer only developed 24 homes in order to avoid any CAFRA Regulations.
- She feels that the only reason why Azalea Farms was placed in an R1A cluster zone was due to the seasonal high water table.
- She feels if the subdivision is allowed they will end up with impacts and not negligible and there wouldn't be anything that they could do to "roll the clock" back.

- There isn't any benefits to adjacent properties from this subdivision to the neighborhood in general or to the town.
- Document entitled "The Cost of Community Services in Monmouth County" and Ms. Usechak doesn't feel that creating an additional lot is a benefit to the town, currently Corn Lane & Williamsburg are defined by lots sizes and open space.
- Document from "Soil Survey of Monmouth County" soil map based on an aerial photo – adding density is not a plus for a town for a tax base.
- They have the towns storm sewer system running through their property and the Moore's property
- The storm water management system, the detention basin where the water drains is eroded on both sides of the weir.
- The applicant has not proved any positive benefits to the Master Plan in real terms, which was sincere to protect the 1 acres as 45,000 sq. ft.. This is an attempt to undermine the Shrewsbury Ordinance and the Master Plan in an attempt to create a developable lot, which was not the intent.
- The proposed will be a detriment to the surrounding property owners
- Even though the DEP found no wetlands, there are wetlands soil, seasonal high water table that meets the wetlands parameters and wetlands vegetation
- Ms. Usechak doesn't want to see their property subdivided or the Moore's property subdivided for the reasons that she has presented.

Ms. Usechak wanted to present the Cost of Community Services in Monmouth County brochure and a Soil Survey of Monmouth and a Petition. Mr. Hirsh advised Ms. Usechak that Petitions are not allowed to be introduced because you cannot cross examine, there is no way to know what they knew and what information they had when they signed. (See Transcript for further testimony).

Mr. Collins asked Mr. Freud if the Azalea Farms homes are bordered by 1 (one) acre properties? Mr. Freud stated that he has read the Zoning for the R1A and it does mention perimeter lots should be 1 acre lots as opposed to the 22,500 sq. ft. with the understanding that 1 (one) acre is 45,000 sq. ft. in Shrewsbury Lot 5.02 is 45,000 sq. ft. it's not a standard acre it's a Shrewsbury acre.

Mr. Hirsh asked Mr. San Filippo if he objects to the submission of the documents that Ms. Usechak presented. Mr. Hirsh stated that this is an administrative hearing and the board has the discretion to allow things to be taken in for whatever value they may or may not have. He asked board members with respect to the Soil Survey. Mr. San Filippo stated the document is not your main tool as to whether a minor subdivision should be granted or not, as to res judicata or to the validity or non validity of the variances being request.

A motion was made by Mr. Betesh, seconded by Mr. Moran for the board not to accept the document (Soil Survey) as evidence and is not relevant and it will not be made part of the record. All approved.

A motion was made by Mr. Betesh, seconded by Mr. Moran for the board not to accept the document (Cost of Community Services in Monmouth County N.J) and is not relevant and it will not be made part of the record. All approved.

Mr. San Filippo explained why – See Transcript for explanation.

Mr. Richard Ancas, 81 Silverbrook, was sworn. He stated that there's only a limited number of parcels in the Borough and for every piece you give up is one less you have later on, density is changing, more cars, infra structure. He feels adding another house to the density of the town is poor judgement. Once it's gone it's gone forever. In twenty years on Silverbrook has grown tremendously. See Transcript for further testimony.

Mr. Chris Dilascia, 206 Williamsburg Drive was sworn. He stated that he purchased his home due to the wooded lot across from his home. He would like the board to consider the benefits of the downstream consequences when someone builds a house and how he and his neighbors will be affected. He feels that the board members will make the right decision and this is an important decision.

Mr. Mathew Goldzweig, 214 Williamsburg Drive, was sworn. He stated that the reasons why the 1992 application was denied have not changed, you are now trying to cut up the pie, it's not a unique property, open space is still a concern, R1 is major concern, he is asking that it doesn't go any further. They purchased their Azalea home because the house is set back from the street, bigger lots, now they are asking to change the character of 2 neighborhoods (Corn Lane & Azalea). He feels the entire plan will change Azalea for the benefit of one, and a major deviation from the character, the plan, and the Zoning laws. Courts have stated that where an application or appeal relating to a specific piece of property, the purposes of this act would be advanced by deviation from the Zoning Ordinance requirements and the benefits would substantially outweigh any detriment the board shall have the power to grant a variances from departure of the regulations. In this instance the major deviation is not substantially outweighed by the tremendous detriments. The lot area is nonconforming by 25%, the applicant has a nonconforming impervious surface by 20%. They do not want exasperate the water issue by allowing more nonconforming structures and create more impervious surface. The setback is nonconforming by 33%, and building coverage. The variances being requested should be proof enough that the application will change the plan, character and neighborhoods to the detriment of the community while further no zoning for the Borough. He is asking the board not to change the character, charm and the plan of Corn Lane and Azalea Farms.

Mr. Moran asked Mr. Freud what are the lot sizes across the street? Mr. Freud said 20,000 sq. ft. less than ½ acre.

Ms. Louise Usechak, 20 Corn Lane, in 1984 when the Master Plan was done that there were variable lot sizes in and throughout the area, they were clean to protect the historic nature of the area, and the feeling that this is a defined neighborhood. The lots are an acre on her side of Corn Lane, and the others are less than her lot and the Moore's, and was under the protection of the Borough.

Mr. J.R. Moore, remained under oath, he stated that only in hurricane Irene did he have any water issues in the basement and the back right side of the property there is some pooling from an extreme rain, there are no issues with his property, there do not have wetlands at all. Visually from the back or front of his property will it look different than what you see today.

Ms. Kathy McQuillan, 80 Silverbrook Rd, was sworn. Stated that all of her utilities are in her basement. They pump water 9 months out of the year with 2 pumps.

**Ms. Holly (last name inaudible) 81, Silverbrook Rd gave her concerns with the significant changes that were put before the Planning Board in 1992, asked the board to consider what would be good for all of the neighbors.

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

Mr. San Filippo summarized the application. He stated that the board has listened to a lot of testimony from the neighbors and they have legitimate concerns, but they all had to do with water issues, which in many cases those are off site conditions which they have no control, and in fact, by law do not have any bearing on the merits of this application. We have established by the planning testimony of Mr. Freud and the exhibits that have been presented and graphically illustrated in the 500' radius around this site that this subdivision is appropriate, this subdivision at least to one of the lots is conforming with the zoning criteria for the R1 and is conforming with intent of what was intended by Azalea Farms, which is to have the perimeter lots (the outer lots) also be 1 acre or greater lots and they conform to that intent. He believes that that every variance has some detriment, the Land Use Law doesn't say that if it is a detriment you can't grant it, it has to be a substantial detriment. You have to weigh the substantiality, its 51-49 it's some percentage of that greater, and when the tips of the balance that it is substantial then the board can appropriately deny variance relief. They do not believe that what has been presented would be a substantial detriment to the public good for the reasons that Mr. Freud has expressed and the analysis that he did of the surrounding properties within the 3 zones that are within the 500', and they do not believe that this is a substantial impairment to the Zone Plan and Zoning Ordinance of the Borough of Shrewsbury. They believe in fashioning this subdivision to recognize that....inaudible, instead of creating 2 nonconforming lots, they created 1 conforming lot and 1 nonconforming lot. Mr. Freud testified that the 1 nonconforming lot is in many cases substantially greater than the lots on the north side of Corn Lane and other lots within the zone. Mr. San Filippo believes that the variance relief is appropriate and he asks the board to find.

Mr. Collins asked if the first issue that the board has to do is to address is the Res Judicata issue? Mr. Hirsh said that is correct, you can have a discussion amongst the board now and then a motion will be made that Res Judicata does apply or a motion that Res Judicata does not apply, and then further discussion if you choose and then a vote. Mr. Collins asked, if Res Judicata does apply then we are done? Mr. Hirsh said yes, that is it, you don't vote on denying or granting the subdivision/variance, you are saying that this is not a new application and it is governed by that doctrine.

Discussion of Res Judicata issue:

Mr. Betesh said that it is his understanding of Res Judicata is that the application has to be substantially similar. While this is a subdivision of 2 lots he feels that by definition the fact that they are only asking for 1 nonconforming and 1 conforming lot, and by its nature is substantially different from an application where they were asking for 2 nonconforming lots. On that basis his understanding of the law would be that this would not be the same issue and would not be the same application.

Mr. Moran stated that one of the statements made was "similar to the lots on Sycamore Ave" and it's been 27 years since that occurred and he would agree that Res Judicata would apply.

Mr. Collins asked if anyone else has a different point of view on the Res Judicata issue? There were no comments. Mr. Collins asked for a motion on the Res Judicata issue.

A motion was made by Mr. Betesh, seconded by Mr. Teller that the issue of Res Judicata does not apply to the Moore application, and the application should go forward.

Roll Call:

Affirmative: Collins, Moran, Teller, Carroll, Betesh, McDonald

Negative: None

Discussion on the approval/denial of the application for minor subdivision and associated variances and conditions:

Mr. Moran stated that he is empathetic to the neighborhood with the feelings. This was a document that was 27 years ago and things have changed. The lots north of Corn Lane, even the smaller lot of the subdivision is going to be larger than most of the lots in the area. With the fact that if there is going to be development on the property they would have to meet the constraints, construction requirements etc. that is where the opportunity is that it will all be done correctly, and the fact that the owner is on the smaller lot.

Mr. Collins said that he has some concerns with the buffer on the smaller property and the patio close to the property line.

Mr. McDonald there is empathy for the neighbors with their water problems, but there are 5 big beautiful homes & big lots on Sycamore Ave, but they don't sell in Shrewsbury. They are presenting a different plan and this must be looked at from that standpoint.

Mr. Carroll said that they will be putting a big house on a small lot, and there are water issues, and he is sympathetic with the issues.

Mr. Teller said that this is one of the more difficult applications to judicate but most of the problems are with the water potentials once something goes on the property, but this is something that they have to leave up to the Engineer, and the conditions as placed on the properties.

Mr. Betesh said that he is sympathetic with the neighbors. He would like to take the water issue off the table, and assume that this is 20' higher and the water was not an issue, now we are dealing with...the water is an issue and has to be addressed but it is not an issue for this application. The issue for this application is whether or not this particular lot will have an impact on the division. It is his opinion, it looks like that if it was subdivided it would not be substantial from anything that is around there. It might be for one house or another, and if it was his house, he too would be objecting too. He doesn't feel that given the lot sizes and what is in the neighborhood this would be very different. The benefit of bringing the house to a similar size is not compelling, it is positive, it's not like someone cannot get into their house because they cannot get into their driveway and need to rearrange the property, it is much more subtle. He doesn't see a substantial detriment in having this large lot brought back to a normal size lot. He doesn't see a tremendous benefit, but he doesn't see a big detriment. A lot of what we heard tonight were very legitimate and serious problems with the water, water table, ground water, run off, but he doesn't feel that putting a house and taking away the tennis court is going to make a big difference. He agrees with Mr. Cranmer that the applicant could very easily build a bigger house on the lot, totally conforming, and cover the same amount of ground, same amount of impervious coverage, you would have all of these issues and we wouldn't even be sitting here. Water issue is serious and should be addressed. Anything the board does has to be conditioned on protection for the neighbors to make sure that the water is not a problem. The engineer will make sure that is under control. Taking that out of the equation the rest seem relatively benign and for that he would probably vote in favor.

Mr. Cranmer said that the comments from the public indicate concerns about the water table. The management of surface water we can handle. With respect to possible conditions that would safe guard the public from any detriments with respect a future development, clearly condition #1 would be for Lot: 5.01 a mitigation strategy for the lot, with respect to Lot: 5.02 there isn't any impervious variance being sought so there isn't any necessity currently for that similar mitigation strategy. Lot: 5.02 is a larger lot and one of the controls could be to restrict the building or impervious coverage lower than what would be permitted in the zone in the form of a Deed Restriction to indicate the potential with respect to the water table and recharge where 20% would be permitted the

board is granting 16%, building coverage allowed 10% board approved 8% or 9%. We do have the flexibility due to the variance situation. That would be his recommendation. Mr. San Filippo said that he has spoken to his engineer and he feels that 17% impervious on Lot: 5.02 and 9% building on Lot: 5.02 would achieve what Mr. Cranmer is trying to achieve. Mr. Cranmer reminded the board that an applicant doesn't have the ability to waive the requirement to mitigate the run off which exceeds the maximum allowable on Lot: 5.01. He explained that the applicant could choose the mitigation.

Mr. Hirsh asked for some clarity in the numbers. Mr. Cranmer stated Lot: 5.02 building coverage would be limited to 9% and 17% on Impervious Coverage. Mr. Cranmer reminded board members that our Ordinance excludes patios, decks, outdoor walkways. Another safeguard could be that those impervious surfaces be included and counted against the maximum permitted on this lot, and would be in the form of a Deed Restriction. The difficulty becomes when the homeowner decides to put in a pool or a shed, those Deed Restrictions don't come to light unless someone goes and looks for them. Mr. Hirsh said that on the application it will ask if there are any prior approvals, and the Deed Restrictions are not for the property owner, but rather for the town, and they are recorded.

Mr. Cranmer said that one thing that they could do for protection of future water conditions is to lower the amount of impervious surface allowed and to include all impervious surfaces in the allotted coverage as described by the D.E.P.

Mr. Cranmer indicated that the wording should read: **"On Lot 5.02 the impervious surface calculations shall specifically include all exterior decks, patios, terraces and walkways, along with roof areas and driveway" as shown in Section: 94-10.16**

Mr. Collins asked Mr. Cranmer about the Easement between the two lots. Mr. Cranmer explained that if we are going to require a buffer then it will have to be a recorded Easement and require that the buffer be maintained in good condition, with a specified amount of landscaped buffering, a 15' wide buffer area could hold a year round buffer. **Mr. Hirsh required that the applicant submit a metes and bounds description for the Easement, so it is defined. Mr. San Filippo advised that this subdivision is going to be filed by Deed. Mr. Cranmer feels that there should be a minor subdivision plan that accompanies the Deed with all the notations and conditions for future enforcement. Mr. San Filippo agreed, the Easement can be placed in the Deed and the Deed will be reviewed and signed by the Planning Board.**

A motion was made by Mr. Carroll, seconded by Mr. Moran to approve the application for minor subdivision, with variances and conditions to be finalized in the Resolution.

Roll Call:

Affirmative: Collins, Moran, Teller, Carroll, Betesh, McDonald

Negative: None

Resolution....12/16/2015.....

Ms. Evelyn Bonanno:
440 Sycamore Ave
Bl: 28 Lot: 45

Certificate of Appropriateness
Solar Panels

Ms. Evelyn Bonanno appeared before the board for a Certificate of Appropriateness for solar panels on her home @ 440 Sycamore Ave, which is located in the Historic District.

After a lengthy discussion on where the solar panels will be located, the board felt that they needed more information as to the color, size and location on each of her buildings on the property, one being her home located next to Sycamore Ave.

Board members had concerned with the panels being able to be seen from the street.

Ms. Bonanno agreed to return next month with the information that is being requested.

A motion was made by Mr. Moran, seconded by Mr. Carroll to adjourn the meeting at 11:35 pm. All approved.