

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

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

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

Minutes:

A motion was made by Mr. Edwards, seconded by Ms. Canonico to adopt the minutes of the February 3, 2016 meeting & closed session. All approved.

A motion was made by Mr. Edwards, seconded by Ms. Canonico to adopt the minutes of the March 2, 2016 meeting & closed session. All approved.

Correspondence: none

PB Rep Report:

Ms. Martinelly reported that the Planning Board reviewed 2 Certificate of Appropriateness applications, both will be returning with further information.

World Jeep submitted for an addition and driveway aisle change, the application was deemed complete and set for an **April 20, 2016 public hearing**.

Annual Report 2015:

Report was discussed and reviewed and will be forwarded to Mayor & Council.

A motion was made by Ms. Martinelly, seconded by Ms. Canonico to forward the report to Mayor & Council, no recommendations were made at this time... All approved.

Unfinished Business:

Maximiliano Bottino:

d/b/a Massimo Motor Works
Bl: 13, Lot: 9

Adoption of Resolution

reverse Zoning Official Decision

A motion was made by Ms. Canonico, seconded by Ms. Martinelly to adopt & memorialize the resolution of approval to Maximiliano Bottino, d/b/a Massimo Motor Works to allow the inspection of cars @ 430 Broad St.

Roll Call:

Affirmative: Martinelly, Canonico, Murphy, Schuster, Edwards

Negative: None

Court Reporter – See Transcript for full testimony.

Shore Investment, LLC:

Continuation of public hearing

d/b/a QuickChek

Bl: 3, Lot: 5

Mr. Kennedy stated that the meeting will begin with the procedural issues.

Mr. Kennedy marked the following into evidence:

B-7: Certification – S Canonico – listened 1/6/2016 & 2/3/316 tapes

Mr. David Cranmer – Board Engineer/Zoning Officer was sworn.

Mr. Kennedy stated that since there was a new owner entry, he asked board members if they had any conflicts, and named all of the owners. **See Transcript.**

Mr. Michael Convery, Esq represents Luke Oil North America, and he confers with general council l for Luke Oil North America, Mr. Johnathan Sokalow a publicly traded company, ownership are not clearly defined. He asked if anyone had any stock interest in Luke Oil North America and is difficult to pinpoint the owner. Mr. Kennedy asked if there were any potential issues or conflicts? There were none.

Mr. Shay indicated that Verizon is also part of this application. No conflicts from board members.

See Transcript for full testimony of Mr. Kennedy:

Mr. Kennedy addressed the “Standing” issue at the 2/3/2016 meeting.

Mr. Kennedy marked the following into evidence:

A-26: Shay Letter Brief – dated 2/1/2016

A-27: Shay Supplement Brief – dated 2/10/2016

O Luke Oil-2: Convery Letter Brief dated 2/22106 – Luke Oil

Mr. Kennedy summarized Mr. Shay’s Brief arguments on Standing

Mr. Kennedy summarized Mr. Convery’s Brief arguments on Standing

Mr. Kennedy stated that he has done a lot of research and he would recommend the following, and submits, offers and recommends that Luke Oil, under the circumstances should be granted “Standing” to participate in this case as an interested party.

Mr. Kennedy read the definition of an interested party into the record, and Luke Oil meets the qualifications of the definition. **See Transcript for details.**

Mr. Kennedy addressed the issue of the “Sherman Anti-Trust Act” & free enterprise and related principals. Mr. Kennedy indicated that he is not a “Sherman Anti-Trust” specialist. His opinion is that this issue has nothing to do with the duties of the Zoning Board **See Transcript for full testimony.**

Mr. Kennedy addressed the issue of the Monmouth County Planning Board approval. **B-8:** Monmouth County Planning Board review letter dated 2/8/2016. Read into the record. Discussion of same – **See Transcript for details.**

O-Luke Oil -3: Convery letter dated 4/5/2016 - to Mr. Kennedy read into record, plans should be revised to show what the MCPB requests.

A-28: Mr. Shay’s response to Mr. Convery, email dated 4/5/2016 12/26 pm re: MCPB Requests and submission of a revised plan

See Transcript for Mr. Convery’s testimony on the request not to hear the application until the applicant submits a revised plan, as per MCPB letter (B-8 dated 2/8/2016). Referred to in Cranmer letter 1/4/2016 asking for a revision to the site plan (2.6)

See Transcript for Mr. Shay’s response it is not the objective of an applicant that goes before a board to satisfy an objective competitor, subject to all outside agency approvals one of which is the Monmouth County Planning Board, the jurisdiction of the intersection is not up to the board but to the County. The applicant will be submitting a revised plan that complies with the County’s concern. This project will not be built without Monmouth County Planning Board approval, or the other agencies listed on page 12 of Cranmer’s letter. Testimony will be given as to the testimony that will be made to the County.

Mr. Cranmer stated that this is a typical matter of course, it’s the applicant’s case to make. He has requested revisions or changes and testimony on the traffic circulation pattern, drainage, and other revisions that have been requested. Applicant stated that they did not have any issues with those changes in the 1/4/2016 review letter.

It is his recommendation that the board continue with the process, which is a process this Borough has been doing for the 15 years that he has been Engineer. The County has the last say in the approval and can override the requests of the board in the County right of way.

See Transcript for full testimony.

Mr. Kennedy summarized this issue saying that the application has been deemed complete, by law, there is only a certain amount of time that the board has to review, approve or deny an application. If the board doesn't follow this then there is the potential for an automatic approval. He feels that the County and traffic issues will be resolved and the revised plans will be done before the relevant testimony is presented. Whatever the board approves is what has to be built. He would suggest that the board continue, but are sensitive with both the attorney's and they have heard the concerns and comments, and will try to get the County traffic issues clarified. He recommends that the board proceed.

See Transcript for full testimony.

Mr. Schwartz suggests that the board move forward.

See Transcripts:

Mr. Kennedy addressed the notice issues for January 6, 2016 & 2/3/2016 meetings and the renote issued.

A-29: Shay letter dated 3/2/2016 new notice not necessary but will renote

O-Luke Oil-4 Letter –Andrew Janiw - Beacon Planning 4/5/2016 to M Convery re: warehouse use in the rear of the property - for identification only

O- Luke Oil-5 Letter from M Convery to Kevin Kennedy 4/5/2016 re: 1990 use from a garage (permitted accessory use) to a pre-existing non-conforming warehouse use

See Transcript for Mr. Shay's & Mr. Convery's comments on the need for a new notice for D1 vs D2 variances.

Mr. Convery stated that he has aerials which show the Verizon building was there pre 1990 with 3 driveway access points on the site. In 1990 Bell Telephone applied to the Shrewsbury Planning Board for expansion of the parking lot. There was an application filed in 1990 in the County's records which was an application that went before the Shrewsbury Planning Board to increase the parking. Currently only 2 driveways exists. **See Transcript** for the description of a garage which is shown on the MCPB application and what currently exists.

See Transcript for full testimony

Mr. Shay stated that there is a section in the Ordinance that provides, under permitted uses, for telegraph & communication systems which was made into a permitted use. Mr. Cranmer identified it an existing non-conforming use. He stated that they noticed a D1 use for QuickChek, and an existing non conformity for the Verizon building, they will put the proofs on record for a D2 and a D1 if the use is determined that this is not a permitted use. This is a back door attempt to appeal the determination of Mr. Cranmer, which should not be permitted. We are bound by Mr. Cranmer's determination. Mr. Convery asked how Mr. Cranmer determined that this was a preexisting non-conforming use, based upon what he has in the record.

See Transcript:

Mr. Kennedy asked Mr. Shay if he is comfortable with the notice, he said more than comfortable, and read it into the record. Mr. Kennedy stated that the notice is clear and not misleading for the D1 & D2 variances. Mr. Kennedy touched on the 1990 application which he explained there is a new board, Zoning Officer has changed, and he feels that at the end of the day the attorney's or professional are not going to agree at the end of the day.

Mr. Kennedy explained the different use variances that can be applied. He explained that the applicant did notice for D1 & D2 relief and did reserve the right via the catch all phase. He doesn't believe that the average typical resident would pick up on the distinction between the D1 use variance & D2 variance. There has been several public hearings, and the objector did object and wanted a notice for a D2 variance, and they did, and now the objector is requesting additional clarification or notice. The objectors from Luke Oil will be here tonight and for the remainder of this application, and they will be able to make their own arguments to the QuickChek representatives. Mr. Kennedy stated that there has not been a known Appeal on the decision of the Zoning Officer, which can be made within 20 days of his decision, by either the applicant or the objector and no Appeal has been filed.

Mr. Kennedy stated based on his statements he has no objections to the applicant proceeding tonight. Mr. Kennedy asked Mr. Shay if he wants to carry or adjourn this hearing, so you can renote for another potential use variance. If there is an appeal QuickChek stands to lose the most. Mr. Shay said that they are proceeding tonight. He explained that there are two items being requested, D1 for QuickChek and they will be dealing with the existing non conformity for Verizon, the board will review.

Mr. Kennedy recommended that the board has jurisdiction to proceed, and defers to the Chairman and the board.

Mr. Schwartz said that the board is comfortable relying on Mr. Kennedy's statements in that the notice was adequate and the board should move forward.

See Transcripts for comments on marking the previous Transcripts.

Mr. Kennedy marked the following into evidence:

A-30: Transcript from January 6, 2016 – prepared by Betsey Condiotti - all rights reserved subject to Mr. Convery's objections

A-31: Transcript from February 3, 2016 – prepared by Betsey Condiotti -all rights reserved subject to Mr. Convery's objections

Break – 9:40 pm – 9:55 pm All present at roll call.

Mr. Schwartz announced that the applicant has requested a special meeting. Both Mr. Shay and Mr. Convery advised that they will be available. There will be a special meeting on April 27, 2016 @ 7:00pm. Mr. Shay advised that he will provide Transcripts for those who cannot make the meeting.

A motion was made by Ms. Canonico, seconded by Mr. Murphy to hold a special meeting on **April 27, 2016 @ 7:00** pm for Shore Investments d/b/a QuickChek without further notice and to carry the application to the **May 4, 2016** without further notice. All approved.

Mr. Kennedy announced that this application has been adjourned for QuickChek to the April 27, 2016 @ 7:00 pm meeting without further notice.

Mr. Shay has consented to extend the time in which the board has to act? Mr. Shay said yes, he agreed to an “open ended time frame”.

Mr. Convery stated that he is available on April 27, 2016 @ pm.

Mr. Shay advised that he will submit the special meeting fee of \$1,725.00.

A motion was made by Ms. Canonico, seconded by Mr. Murphy to adjourn the meeting @ 10:05 pm. All approved.