

Present: Betesh, Canonico, Walsh, Waterbury, Fisher, Clark, Garley
Forrester (Attorney)
Cranmer (Planner)
Absent: Peterson, Stambaugh

Vice Chairman, Mr. Betesh, called the meeting to order at, 7:30 p.m.
All saluted the flag, and the presiding officer's statement was read.

Mr. Forrester gave the Oath of Office to the following:
Mr. Fisher - regular member (expires 12/2012 - when he arrives
Ms. Clark - Alt #1
Mr. Garley - Alt #2

Minutes:

A motion was made by, Ms. Waterbury, seconded by Ms. Canonico, to adopt the minutes of the July 1, 2009 meeting as submitted. All approved.

Planning Board Representative: no report

Correspondence:

Gorwin d/b/a Memory Lanes:

Mr. Forrester brought an issue to the board's attention with reference to having 2 principle uses on one lot. He explained that he has been corresponding with Mr. San Filippo on just how the bowling alley came into existence and the storage of the Volvo cars in the "easement". Lots 16 & 17 are currently used by the bowling alley but they do not own these 2 lots. He stated that it would be his opinion that the use of the Volvo Dealer and the bowling alley would be 2 principal uses and; variances could be granted. Board members asked questions about the situation. Ms. Waterbury stated that the issue would have to be addressed at the time of site plan since there is vehicle storage, and testimony will have to be given on 2 principal uses. Mr. Forrester stated that the storage is being used under a recorded easement, which did not have any municipal approvals. Mr. Betesh said that the principal use of the lot is bowling, and there is a parking lot ancillary to the bowling, and the question is "if there is another use parking on the lot, does that rise to another principal use or something less than a principal use?" Ms. Waterbury feels that it would be principal if it was not ancillary to the main use of the property, and it is not ancillary or accessory to it. Mr. Forrester said that it will have to be addressed whether it's on this application or a future application. Ms. Waterbury asked if the Zoning Officer was asked to make a determination? If he does determine that there were 2 principal uses then they would have the opportunity to appeal it to the Zoning Board. It should be brought up during site plan to see if this would impact the parking for the site. Mr. Forrester said that he would get back to Mr. San Filippo to give him the "feeling" of the board.

Mr. Fisher arrived 7:50 pm & signed his Oath of Office for regular member.

Paul David Partywares:

Mr. McKenna requested that this matter be carried to 9/2/09 without further notice

Mountain Builders:

Mr. Zager requested this matter be carried to 9/2/09 without further notice.

Planning Board Report:

Ms. Waterbury has been appointed as the Zoning Board Rep to the Planning Board
No report

Unfinished Business:

Gorwin Corp.

d/b/a Memory Bowling
Bl: 7, Lot: 1

Adoption of Resolution

A motion was made by Ms. Canonico, seconded by Ms. Clark to adopt & memorialize the resolution of approval for a Use Variance for Gorwin Corp., d/b/a Memory Bowling Recreation as submitted.

Roll Call:

Affirmative: Betesh, Canonico, Waterbury, Clark

Negative: None

Farrell Landscaping:

Bl: 29, Lot: 9

Continuation of Hearing

Mr. Paul Zager, Esq represented the applicant.

Mr. Jim Higgins, Planner, was sworn & accepted as an expert witness

Mr. Higgins testified that he reviewed the site plan, Ordinance, Master Plan, visited the site, and Mr. Cranmer's letter and he was present last month and listened to Mr. Farrell's testimony, and described the site & zone:

- 94,000+ sq. ft. narrow deep site
- utilized as a landscape supply & contractors yard for many years
- there is a small office with an office & bays
- the applicant is proposing to construct a new 9,600 sq. ft. building in 2 phases of 4,800 sq. ft for each phase
- new landscaping in the front of the property
- new drainage for the site
- improvements to the rear of the site
- the area is mixed uses similar to this use in the LI Zone, as well as uses in the PI zone

- the use is a preexisting non conforming use, not specially permitted in the Ordinance

Mr. Higgins explained that a use variance has 6 separate categories, D1, D2, D3, D4 Section 70D MLUL, and this use is a D2 variance which is an expansion of a preexisting non conforming use. A D1 variance would be for a new use on a site, which is not permitted in a zone, and an applicant would have to reconcile the use with the fact that it is not a use in the Master Plan or Zoning Ordinance. The D2 variance for a preexisting non conforming use which is going to be on the site for the foreseeable future, the standard would be is whether or not what the applicant is proposing will bring the site, aesthetically more into harmony with the surrounding, and functionally more in harmony with the surrounding are and generally improve the site. There is not need for reconciliation since the use is existing and will continue to be there. The applicant does not have to justify why the use is consistent with the Master Plan/Zoning Ordinance. What the applicant is showing will make it a better use for the site in terms of appearance and relationship with other uses in the surrounding area.

Mr. Higgins explained that the applicant will be cleaning up the site and put his equipment, which is currently being stored inside and outside the buildings. They will be additional landscaping in the front of the property, and reducing the impervious coverage by approximately 5,650 sq. ft. or 6% of the site from 93% to 87%, which still requires a variance, but it is an improvement. They will be eliminating a landscaping variance, 15% required, and the applicant will be increasing the landscaping to a minimum of 18%.

Mr. Higgins feels that it is his opinion that these are the special reasons for granting the variance requested by the applicant. There is no substantial detriment to the public good, rather an improvement to the surrounding properties and the appearance of Shrewsbury Ave. No substantial negative impact to what is being proposed in terms of the relationship with the Master Plan. The use is there and will continue to be there, whether or not the application is granted by the board. There are no inconsistencies with the Master Plan, which describes the character of this area and what is being proposed is consistent with what is being proposed, even though it is not consistent with the Zoning. The site will be brought into “more” conformity, and with the applicant giving up the right to sell horse manure that is a substantial benefit to the area.

Mr. Higgins testified that the new drainage is included with the site plan, which will be a condition of this approval that the storm water information be approved to the satisfaction Mr. Cranmer.

Review of Mr. Cranmer's letter dated 8/1/08

- 1.7: “enhanced burden of proof”, Mr. Higgins stated that the use currently exists and the courts stated that when the use exists you do not have to.

Mr. Higgins stated that special reasons do exist in order to grant the variance. There is no substantial detriment to the granting of the variance, with the construction of the building that is being proposing, and the preexisting use of the landscaping, construction material, and contracting business being run on the site.

1.3: the uses of Fine Customer Cabinetry & Able Repair Center exist and are permitted in the LI Zone, which will continue on the site.

Mr. Cranmer pointed out that this would constitute 2 principle uses on the site. He asked if they existed at the time of the adoption of the Zoning Ordinance which rendered unlawful?

Mr. Higgins said that he doesn't know if they are unlawful, and he doesn't recall a provision in the Ordinance that prohibits more than 1 principal use on a site. The Ordinance should specifically state that, he did not look for it. Mr. Forrester feels the issue is under the Land Use. Mr. Higgins stated that an ordinance will define the principal permitted use, in commercial zones; ordinances typically permit multiple permitted uses on a single site unless there is a specific prohibition in the Ordinance.

Mr. Farrell testified that he has had a welder in the rear bay since 1950's, it is now rented by a carpenter, and in one of the other bays Monmouth County rented the space for their trucks. He testified that all of his renters have licenses through the Borough.

Mr. Cranmer suggested issuing a certificate of non conforming for the business.

Mr. Forrester said that if there is evidence that the uses pre existed the Zoning Ordinances. Mr. Cranmer stated that the Borough has used this procedure in another application.

Mr. Farrell described the uses:

- 3 Monmouth Truck stores their snow plows for District 3 which was combined with District 6 in 1980's, which is now Monmouth Truck and a welder
- 2 bays - have tradesman a carpenter
- 3 bays he uses for mechanical work
- 2 bays he uses for his sons race cars

Ms. Waterbury asked if the bays that were used by Monmouth County are now utilized by the tradesman (carpenter & repair center)? Mr. Farrell said yes.

Mr. Forrester advised that if we can establish what is there and you receive a certificate of non conformance and you do not have to go through this process again. Mr. Farrell asked what happens if the carpenter moves out, do I have to return to the board? Mr. Forrester stated that the Certificate of Non Conformance would state that"***you have a use that is unique to your business, but also a combined use which is now permitted within the LI Zone***", you would have an area that you can lease to other people.

Mr. Higgins stated that it would not be limited to a trade contractor. Mr. Forrester said that it would be acknowledged that they existed and it would not only be the expansion of the landscaping business, so Mr. Farrell would not have to come back. Ms. Waterbury

said that they would recognize the con conforming use that predated the Ordinance, the Certificate of non conformity would state that they have permission to continue. If they do not predate the Ordinance then they would have to get the variance. Mr. Forrester said that these uses on the property are all uses that are permitted in the LI Zone.

Mr. Cranmer reminded the board that there is a provision in the Ordinance that when there is a change of use from a permitted use to a prohibited use there must be a site plan approval. When you have a single use there is a single administrative staff in the office, when there are multiple uses you then have multiple administrative staffs, which increases the parking need, which is the purpose of site plan approvals. In 1959 when they put the scale on the property a waiver of site plan approval was granted, other than that approval the boards file is relatively absent of previous board actions for the site.

Mr. Cranmer feels that the board should acknowledge what is there with the intent of the expansion of use of Farrell Contracting and the new buildings will serve no other purpose other than the storage of equipment and the board can acknowledge that there is a carpenter, and other trade uses with the limited number of bays or square footage that can be dedicated to the other uses that have existed on the site at the time of the adoption of the Ordinance. The appropriate course of action would be to hear the testimony of Mr. Farrell as to what he intends to do. Make a finding of fact that the board does or does not have to take exception to the trade uses renting a center portion of the bays, and the board may find it appropriate to limit the number bays or square footage which will be dedicated to tenant space and a portion which will be dedicated to the principal use. Mr. Forrester stated that the board can determine that they do exist and can continue and issue a Certificate of Non Conformance for them.

Mr. Cranmer suggested that a condition of approval could be added that the applicant has the right to lease out a certain portion of the gross floor area to the tenants which are permitted in the LI Zone.

Mr. Fisher said that is the only issue with the expansion and that is to insure that the number of tenants. Mr. Farrell said that all of the tenants or new tenants are under the perimeters of the LI Zone, and they get a Mercantile License and whatever is necessary from the town.

Mr. Cranmer said that if any of the “uses” change then the applicant would have to come before the board and secure either a site plan approval or waiver, proving that there isn’t a change and that they do have adequate parking. Mr. Farrell asked if it was a “like” to “like” then he wouldn’t need a variance? Mr. Cranmer said that it wouldn’t be a variance it would be a site plan approval if it was a change in use of the property.

Mr. Cranmer asked Mr. Farrell if the 2 buildings will be dedicated to his use only? Mr. Farrell said that he wants to receive site plan approval for the entire site; the first building will be put up for his equipment, and maintenance of the equipment. Mr. Cranmer asked if he will be having water or sanitary sewer service to the buildings? Mr. Farrell said yes, 1 lavatory in each building, and no office space in either building.

Mr. Cranmer said that the applicant is seeking a use variance for the expansion of a non conforming use, Farrell Contracting, and as part of the expansion they are seeking permission to construct 9,600 sq. ft. for the storage of equipment, maintenance of the equipment which is all part of the use. As part of the use variance a schematic drawing was presented which indicated the existing building and the tenant spaces which will continue, and the 9,600 sq. ft. will be solely for Farrell Contracting, that may be what the board needs.

Ms. Waterbury asked Mr. Farrell if he knew the sizes of the existing 10 bays? Mr. Farrell said that there is approximately 4,600 sq. ft., the bays are smaller, and that is the reason why he needs to build the new buildings.

Mr. Cranmer asked if the office space will be vacated and moved to the new building? Mr. Farrell said no. Mr. Cranmer said that everything that exists will remain; there will be an additional building area for additional service bays and storage. That would clearly define what the principal use is and what the tenant uses are.

Mr. Zager said that there are 2 uses that are used by the Farrell family, Farrell Contracting & Farrell Landscape Supply. The carpenter exists there and the trucks are there. If they can secure their use variance then they will return for the site plan approval. The buildings will be built in phases. First building of 4,800 sq. ft. will be Farrell Landscape Supply, Farrell Contracting & materials. If the second building is built it would be used for other tenants, but if that means they have to come back for site plan they would rather do it now. Mr. Cranmer suggested that if the applicant came back with the 2nd building he would have to return for another use variance. Mr. Farrell said that he doesn't want to go through this again, that is why he wants the site plan approval.

Mr. Cranmer suggested that all of the proofs be entered to protect the applicant and the board from the appeals from any objectors. Mr. Zager said that Mr. Higgins is prepared to testify that the proposed use is suited for the site. The only testimony that has been heard is the expansion of a non conforming use.

Mr. Betesh asked if the applicant is seeking approval for the construction of the 2 buildings. Mr. Cranmer said that they are seeking a use variance relief to enable them to construct 9,600 sq ft. of building area as the expansion of an existing non conforming use. If in the future the applicant rented out the space to a non conforming use they would have to seek another use variance.

Mr. Farrell explained that he is only going to construct 1 building, if down the road and the economic situation changes in order to put the 2nd building up, and if it is with a non conforming use he would return to the board for a use variance.

Mr. Zager stated that they want an approval for 9,600 sq. ft. as a non conforming use for ½ of the square footage and a use variance for the other ½. He stated that Mr. Higgins will be able to supplement the record and they would accept a restriction that 1 of the 4,800 sq. ft. is not for rental but for the use of Farrell Properties, phase 2, if built, the use variance would be for rentals. Mr. Cranmer suggested to seek a use variance for the ability to use any or all up to a maximum of 50% of the gross floor area for the principal use or..... (in audible), this way if Mr. Farrell uses 4,800 sq. ft. it only leaves 2,800 sq. ft. for the ability to rent

Mr. Cranmer said that a landscape supply is substantially different than a warehouse flex space type of use where you have multiple trades' people that have their own tenant spaces, not only from a use variance but also for a site plan, if the intent is to have "flex space" that needs to made part of this procedure. Ms. Waterbury feels that the flex space changes the testimony of Mr. Higgins, and she agrees with Mr. Cranmer's comments.

Mr. Farrell wants to be able to construct the first building, get it up, put his equipment in, and down the road (5, 10 years or so) put up the 2nd building, if at the time, if he decides to rent out the 2nd building he would come back before the board. He needs to get the site plan approval, put his building up, and get his site done so he move on.

Mr. Cranmer explained that the applicant wants to put up 2 separate buildings, and he feels that Mr. Farrell should see a use variance for the expansion of his non conforming use for the construction of a building to house your equipment, without a square footage attached to it, and then he can develop his site plan with the 9,600 sq. ft. and he design his storm water management based on the 9,600 sq. ft., and it can be built in phases. If at the time when they build the second building and he is going to lease it out and he will be having the flex space then he can return for another use variance for the new tenants, and he will not have to apply for another site plan. He suggested that when they design the site plan to consider the worse case parking requirement so he can accommodate any use.

Ms. Waterbury said that we have a plan and it was considered at the time of the use variance, and she likes the expansion of the non conforming use, and confirming that there are 3 uses and the tradesman on site.

Mr. Zager said that he would like to amend the application as Mr. Cranmer suggested without the limit of the square footage not to exceed 9,600 sq. ft. or not to exceed 50% to Farrell and the non conforming uses, and 50% to the future subject to site plan approval. They would also develop the site to accommodate any future flex uses and return to the board in the future for a waiver of any other site plan approvals.

Mr. Cranmer asked Mr. Higgins if he is prepared to add additional testimony? Mr. Higgins said yes. He did give testimony toward the suitability of the site, and the enhanced burden of proof.

Mr. Cranmer asked if he had any idea as to what type of tenant he would have?

Mr. Farrell said that if and when the 2nd building was constructed, the tenant would have to be acceptable to the LI Zone or the zone that is in place at the time, or compatible to the uses on the property. Mr. Cranmer stated that they will have to quantify what percentage of the additional development would be dedicated to the existing use and what will be dedicated to the intended development or the percentage of the entire property.

Mr. Farrell advised that 5 bays are rented and he uses 5 bays.

Mr. Cranmer asked for a break for a discussion with the applicants Planner.

Break 9:15 pm to 9:25 pm. All present at roll call.

Mr. Cranmer stated that the applicant will be amending the application.

Mr. Zager asked Mr. Farrell if everything that he testified to tonight and last month was accurate? Mr. Farrell said yes.

Mr. Zager referred to exhibit A-1, he asked Mr. Farrell if the existing storage space is approximately 8,554 sq. ft.? Mr. Farrell said yes that is correct; and 4,300 sq. ft. is currently used by his business, and since 1946 he has rented out the other half to trades people (carpenter, welders, the County, and truck businesses). He is now proposing to building an additional 9,600 sq. ft.. He is now amending his application to be able to continue the same percentages of the rental space vs. the space that he uses for his 2 businesses.

Mr. Zager asked Mr. Farrell if when he builds the first building he wants the ability to use the entire building for his business but if he wanted to rent 2,400 sq. ft. and keep 2,400 sq. ft. is would be the same percentage.

Mr. Zager asked Mr. Farrell if and when he builds the 2nd building he is asking that the same percentages be applied? Mr. Farrell said that is correct, and as in the past any tenant that has a Mercantile License, and tenants that are in effect at the time of the Zoning Ordinance, and comply with the requirements of the LI Zone.

Mr. Zager asked Mr. Farrell if the rental phase of his business has been consistent since his father owned it? Mr. Farrell said that is correct, and the tenants that he has are low maintenance with respect to traffic & employees. Mr. Farrell said that he is requesting that the same percentages of not greater than 50% be applied, and would accept the condition that only those uses that are allowed in the LI Zone or trades man, manufacturing or processing.

Mr. Higgins stated that he is familiar with the site and area as he previously testified to. He explained that he will give testimony to the granting of a D1 or straight use variance, plus what is being proposed to the expansion of the pre existing use of the site. But due to the fact that some of the new building will be utilized for trade contractors, light

industrial uses which are permitted in the LI Zone, he feels that they should look at it as if it were a D1 variance. The primary test is whether or not the general welfare is advanced due to the suitability of the site for the use and in this instance he believes that it is. This is one of the few sites in the Borough that is appropriate for this type of use, especially with the use of the trade contractors, depth of the site, and the site has had the mixed uses for many years. What the applicant is proposing is appropriate for this site.

Mr. Higgins stated that this application is advancing the sufficient space in appropriate locations which includes industrial type uses, and this application is advancing that purpose. In addition to provide for a more desirable visual environment, and the esthetic improvements that are being proposed to the site with the new landscaping and the reduction of impervious area, and the improvement of the 18% of impervious goes toward the advancement of the site.

Mr. Higgins stated that he sees no negative impact; in fact, the improvements will be a positive impact to the surrounding area. This type of use is anticipated in the Master Plan, when describing "...including construction companies, hardware and wholesale supply facilities and other light manufacturing uses, as well as business service uses", which is consistent with the what the applicant is proposing.

Mr. Higgins addressed the negative impacts. The board will condition any approval with the submission of site plan for this boards approval, showing traffic circulation, lighting, drainage etc., which is under the control of the board. Clearly there aren't any negative impacts from those aspects of the application. There are positive planning reasons for both the D1 and D2 variance, and sees not significant impact and the application can be reconciled with the Zoning Ordinance & Master Plan.

Mr. Walsh asked if the 50% for tenants is approved, does this give them the right for outdoor storage or is the storage only for Farrell's? Mr. Zager stated that outdoor storage is not permitted in any part of the Borough. Mr. Walsh said that it will continue for the existing non conforming uses but it will not continue for the new uses. Mr. Farrell said that he would agree to a condition attached to the use variance which would not permit his tenants any outdoor storage.

Mr. Forrester summarized the use of the property:

- 50% of the limitation would be for trade contractors and similar LI uses permitted in the zone
- 50% of the aggregate total square footage in any phase of the enclosed 1st floor area of the development

1.12 - 113 a-h: Can be addressed at site plan

2.1: Storage of materials not permitted within 50' of any public street, and not within the front yard area. Mr. Zager explained that Monmouth County and took 15' when they widened Shrewsbury Ave. and the drainage is in the front of the property. Mr. Zager asked Mr. Farrell if he will be moving the storage in 25' on

both the north and south side from the road. Mr. Farrell stated that the plan does show that on Sheet 4 there is a proposed landscaped area, 2 of the bins will be removed from both sides of the property, landscaped and retaining walls will be added. Mr. Cranmer asked if he can comply with the requirement that the outdoor storage materials not be within 50' of the street? Mr. Farrell said no, he can provide 25'. Mr. Farrell feels that since he lost 15' to the County he is still within the 18% coverage on his property he would remove the bulk storage to 25' from the street line or 35' from the curb line.

2.2: Storage of material not permitted within 5' from side yard. Mr. Cranmer asked if he could comply with the requirement? Mr. Farrell said no, his lot is very narrow and he is currently a couple feet off now. Mr. Cranmer suggested that at the time of site plan the non conformity be recognized and not to grant a variance. Mr. Farrell explained that losing 5' on each side or 10' on 770' long he would lose 7,000 sq. ft. of usable space. Mr. Zager said that he will seek a waiver of the requirement. Mr. Zager asked if any of his neighbors have complained about his property with either that they don't meet the 5' or that the storage is on the property lines? Mr. Farrell said no.

2.4: Storage not to exceed 10' in height. Mr. Farrell said that he would comply

2.5: will comply

2.6: will comply

2.7: will comply

2.8: discussion by board, will accept condition

Mr. Cranmer said that the issues open are the 50' - 25' front yard & 5' side yards

A motion was made by Ms. Canonico, seconded by Ms. Waterbury to open the meeting to the public. All approved

There were no comments/questions

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

Mr. Zager requested a straw poll vote at this time.

Ms. Waterbury stated that based on the discussion and the limitations of the uses and the defining of the tenants she would not have any objection to the approval. The items that will be held off to site plan are not items that would not sway her in any way with regard to the "use".

Mr. Walsh said that he has no problem with the use and there will be further discussion with regard to the "tenant use" and the on site parking.

Ms. Canonico stated that she is in favor of the application.

Mr. Betesh concurs, with the placement of the conditions as discussed the Borough is protected and he would be in favor of the application.

Mr. Fisher concurs with all comments and the applicant has made several concessions during the application and he is in favor of the site improvements which are being proposed.

Ms. Clark also concurs with all of the comments made and does not have any issues with the application.

Mr. Garley concurs with all of the comments and all of the concessions with be a great improvement to the site.

A motion was made by Ms. Waterbury, seconded by Mr. Walsh to approve the application of Farrell Properties, for extension of a non conforming use as amended with the following:

- No more than 50% of the aggregate development of the site is to dedicated to tenant space, which would be limited to tradesman, contractors or similar light industrial uses. 50% of the aggregate development of phased construction
- The use of the storage bins - will be prohibited within 25' from the front property line
- The existing storage bins - will be less than 5' from the property
- Bulk material stored outdoors shall not exceed a maximum height of 10'
- Tenants will be prohibited from any outdoor storage
- Granting of a certificate of non conformity which recognizes that the present use of the site includes landscape supply, contractor business as well as 50% of the floor area to be occupied by tenants of specified trades
- Landscaping shall be designed to buffer the existing & proposed uses, which will eliminate the existing non conformity landscaping on the site
- Part of the granting of the use variance would only allow trades, contractors and similar light industrial use to the maximum of 50% of the development
- Only recognizing the non conformity of the front yard and signs, and not approving any signs or set backs other than the 25' front yard set back for the storage bins
- Non conforming side yard set backs are not being recognized
- All maintenance will be indoors
- All other items in Mr. Cranmer's review letter will be addressed at site plan

Roll Call:

Affirmative: Betesh, Canonico, Walsh, Waterbury, Fisher, Clark

Negative: None

Resolution 9/1/09....

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