

Present: Hartmann, Peterson, Connors, Canonico, Stambaugh, Betesh
Forrester (Attorney)
Cranmer (Planner)
Absent: Walsh, DeNofa, Dodge

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

Minutes:

A motion was made by, Ms. Canonico, seconded by, Mrs. Peterson to adopt the minutes of the June 4, 2008 meeting. All approved.

Planning Board Representative: no report

Correspondence:

- First Fidelity Investments: request to withdraw

Ms. Stambaugh arrived: 7:40 pm.

Unfinished Business:

Kane Collision:

d/b/a Anthony's Auto Body
Bl: 2, Lot: 20

Adoption of Resolution

A motion was made by Ms. Canonico, seconded by Mr. Betesh to adopt & memorialize the resolution of approval for Kane Collision d/b/a Anthony's Auto as submitted.

Roll Call:

Affirmative: Connors, Canonico, Stambaugh, Betesh

Negative: None

First Fidelity Investments:

Bl: 21, Lot: 1

Adoption of Resolution

withdraw without prejudice

A motion was made by Ms. Canonico, seconded by Mrs. Peterson to approve the resolution to grant the request to withdraw the application without prejudice for a 2nd façade sign.

Roll Call:

Affirmative: Hartmann, Peterson, Connors, Canonico, Stambaugh, Betesh

Negative: None

A motion was made by Mr. Betesh, seconded by Mrs. Peterson to adopt & memorialize the resolution of approval to withdraw the application of First Fidelity as submitted

Roll Call:

Affirmative: Hartmann, Peterson, Connors, Canonico, Stambaugh, Betesh

Negative: None

Unfinished Business:

Shrewsbury Patterson LLC

Continuation of Hearing

d/b/a Walgreens

Bl: 2, Lot: 10

Board Secretary advised that all board members present tonight have been qualified on this application

Mr. Peter Falvo, Esq represented the applicant

Mr. Falvo presented a smaller version of A-4 and were handed out to board members

Mr. Paul Grygiel, Planner, gave his education & professional background and was accepted as an expert witness.

Mr. Grygiel reviewed the application, and any materials associated with the application & property in question with regard to the proposed use & described same. He also reviewed the Boroughs Master Plan & Zoning Ordinance as it applies to this property. He stated the following:

- Property is 1.37 acres
- intensely developed with an industrial/commercial building covering the entire property or 96% lot coverage
- limited parking & circulation
- existing building is 45,000 sq. ft.
- surrounding area is generally commercial (banks, offices and some residential)

Mr. Grygiel described the variances that the applicant is requesting:

- Use variance for the use of a Walgreens in the LI Zone, which is not permitted
- Bulk variances with regard to the site plan
- Signs
- Impervious coverage
- Front yard set back

Mr. Grygiel stated that a use variance must demonstrate certain criteria, and he feels that this use variance can be granted in accordance with the statutory criteria & the Municipal Land Use Law, and he will give the positive & negative criteria.

Positive Criteria:

- Applicant must demonstrate that the site is particularly suitable for the proposed use or it is inherently beneficial, and he feels that this site is generally suitable for retail use, and it does state that the Master Plan did suggest that the LI Zone be eliminated & replaced with commercial zoning.
- the site is adequately sized for the proposed use of a pharmacy & associated improvements
- the site is located at a signalized intersection of a county road, giving access from a major street & secondary street

- the site is suitable by giving a highly visible location on a heavily traveled road
- consistent with the commercial use on Shrewsbury Ave
- the site is large enough to accommodate the improvements, and will reduce the amount of impervious coverage from 96% to 86%
- improvements will enhance the esthetics of the area, by removing a building with limited set backs
- provide green space, new plantings & a new building
- provide a more efficient flow of traffic by moving the building back from Shrewsbury & Patterson Ave
- site is particularly suited for retail especially a drug store use, given its location & size and he feels that the public health, safety and welfare are advanced by the fact that the site is suitable for this type of development

Negative criteria:

- applicant must prove that there will not be a substantial detriment to the public good
- property could be developed in accordance with the current zoning for a light industrial use i.e.: bank or new car sales etc, or the building could be reused
- impacts on the neighboring residential, it must be understood that some development will take place
- even with the new development, new trips, there would be some impact but it would not be a substantial detriment compared to a permitted development to this property, the applicant is proposing a layout that would allow for buffering & screening between the parking, the activity within the building from the neighboring properties, and he doesn't feel that there would be any substantial detriment to the public good from this use, if permitted
- impacts on the Master Plan & Zoning Ordinance, there would not be any substantial detriment, the Master Plan has recognized the evolution of Shrewsbury Ave and became a more commercial location, and promotes retail along Shrewsbury Ave
- the permitted uses in the LI zone would not be appropriate given the change in character of the area, a re-occupancy for light industrial would generate truck traffic and not make sense in this commercial corridor, and would not make sense next door to a residential property and the P1 zone
- the proposal acts favorably to many uses today, and many other retail commercial uses

Mr. Falvo asked if there would be a negative impact due to fumes, vapors etc? Mr. Grygiel said that yes, if the building were to be reused, since the site is covered with limited room to allow for truck movement or any type of vehicular movement. If the property would be cleared for an industrial use, they are generally more intense in terms of commercial traffic. It may not be a more intense use, but it would be some type of industrial manufacturing use with more trucks & more activity.

Mr. Falvo referred to banks & fiduciary institutions, professional buildings, compared to what is being proposed, would those types of uses have more of any impact on the

surrounding properties & traffic than the proposed use? Mr. Grygiel said that the permitted uses mentioned could be intensely developed and have a traffic impact i.e. similar or worse than what is being proposed, but also in terms of hours of operation and other aspects of the uses. They are at least similar or worse, but the pharmacy that is being proposed is in line with what is in the area today, and where the rezoning is going.

Mr. Falvo referred to NJ SA 40L55D - 2, which delineates the ---- (inaudible) of zoning, what is being proposed satisfies the basic elements i.e.: health safety & welfare, and that the pharmacy would serve the general public, what other elements are being satisfied by this application?

Mr. Grygiel stated that the health issue & welfare is promoted by the site suitability for retail use, plus the pharmacy would promote the public welfare, as well as a desirable & visual environment would be advanced. They are also promoting the conservation of historic sites & districts open space, energy etc by discouraging improper use of land. This land is already developed and they are replacing the obsolete building with a new modern more attractive and better design uses, and ones that can comply with storm water, zoning requirements and standards that are expected with new development. The applicant is proposing to reuse the property in Shrewsbury rather than developing an undeveloped site.

Mr. Falvo asked Mr. Grygiel if it is his opinion that the proposed is consistent with the recommendations of 2001 & 2004 Reexamination reports of the Master Plan? Mr. Grygiel said yes, with the exception that the Re examination Report refers to shopping centers or a consolidated arrangement and this property is not large enough to allow for a meaningful mixed use or larger scale development, but the applicant has designed to allow cross access to neighboring properties to allow this development to have shared access and other shared features to make it more unified on that side of Shrewsbury Ave., and the fact that they can reconcile that the Master Plan or Zoning Ordinance does not permit this type of use, when ½ of it is already there, and would further the intent.

Mr. Falvo asked Mr. Grygiel if the esthetic improvement is substantial and would have a positive benefit to the area? Mr. Grygiel said yes, and this could be a special reason to grant the use variance.

Mr. Falvo asked the board if they wanted Mr. Grygiel to testify on the bulk variances that are being requested or to wait if they get pass the use variance? Mr. Hartmann said to wait.

Mr. Forrester asked Mr. Grygiel from a use variance perspective, can the use be accommodated without the bulk variances being requested? Mr. Grygiel said that the use itself could be accommodated on the site, but it is not clear that it would make sense. To develop a smaller pharmacy building would not make sense. The zoning requirements would require certain variances, especially the variance with regard to parking. There is a good justification for the necessity of the variance.

Mr. Forrester said that his testimony with regard to the use is it or is it not contingent upon the granting of the bulk variances? Mr. Grygiel said yes it is. Mr. Forrester asked if the use would only be appropriate with certain bulk variances? Mr. Grygiel said yes.

Mr. Hartmann asked if there were any questions from the board? There were none.

Mr. Forrester asked if the site was 1.37 acres, and the Mater Plan suggests a shopping center use? Mr. Grygiel said that it did refer to "multiple uses". Mr. Forrester asked based upon his experience as a Planner, what are your expectations of getting multiple retail uses in a building located on that size property? Mr. Grygiel said that it is unlikely, especially with a 25% building coverage. He stated that the parking requirement is 1/150 sq. ft. and a building could not be built meeting the parking requirements.

Mr. Forrester asked Mr. Grygiel if Walgreens could be characterized as a multi retail use? Mr. Grygiel said within the Walgreens itself it would meet the intent, with the pharmacy, food sale, and other items. Mr. Forrester asked if the multiply retail use could be limited by the size of the property, but it is basically being met by the type of uses that Walgreens would have in the building that they are proposing? Mr. Grygiel said yes, this is not a single operation selling, but rather several different services being offered within the single use being proposed for the property.

Mr. Falvo stated that the location and parking are a result of input that the applicant received from the informal meeting of Mayor & Council, and the informal before the Planning Board when they were considering the adoption of the Ordinance that would make this a permitted use, one of the reasons that the building is located from Shrewsbury Ave is because the Mayor & Council want to achieve a more "down town" character, where the buildings are closer to the street with parking in the back. There was also an effort made to retain the driveway along the eastern part of the site because there was a contemplated development going toward Newman Spring Road and this would provide another means of ingress and egress for the development and would encourage pedestrian traffic from the other uses to the Walgreens. They could have gone in and pushed the building back along with other things, but would have frustrated what the municipality wanted to perceive. Mr. Hartmann said that he has a better understanding of how the community wants proceed other than him, and until they change the zoning and until they send a letter explaining what they want, and they change the Master Plan, he is "stuck" with what is and not what should be. Mr. Falvo said that the engineer can give some additional information as well.

Mr. Cranmer asked Mr. Grygiel if he has reviewed what impact this use would have on the adjacent land use, particularly the residential use to the east of the site, one of his concerns is the location of the driveway of the drive through facility related to noise, lights, glare etc. Mr. Grygiel stated that there would not be any worse impacts than most permitted uses. Mr. Cranmer asked if there would be an outdoor speaker? Mr. Grygiel was not sure how the operation would work for a drive through for a pharmacy vs. a fast food restaurant or a bank, with a commonly used speaker. He feels that there would be a possibility of that type drive through window with certain other zones as well. There are

ways to provide measures to deal with that, either through the design of the drive through operation itself or through fencing or other types of buffering or to rearrange it on the site. The site plan proposed is more conceptual for the use variance, at site plan there are techniques that can be used to mitigate those types of impacts.

Mr. Cranmer asked Mr. Falvo if there will be an external speaker? Mr. Falvo said during the hours of operation assuming that they are open from 7:00 am to 10:00 pm if someone pulls in there will be speakers similar to a drive in window at a bank. The Walgreens speakers in Neptune are located near the draw, between the wall and the car. They are also providing fencing and landscaping along the eastern side of the property. Mr. Falvo advised that they have had conversations with the next door neighbor and they have agreed that they would construct an "eyebrow" driveway for them so they can enter and exit the property with ease. Mr. Cranmer asked what is an eyebrow driveway? Mr. Falvo explained that it is a semi circular driveway in front of their house. It will be discussed at the time of site plan.

Mr. Cranmer asked if they are aware of the development to the north? Mr. Grygiel said yes, but he doesn't know about the specifics of the application. Mr. Cranmer explained some of the points of the proposed development, and asked if this use would be harmonious with the future development to the north. Mr. Grygiel said yes, and that this proposed use would add greenery and sidewalks around the perimeter of the site and improvement relationships with neighboring properties and be appropriate for residential developments.

Mr. Cranmer asked what makes this use complimentary to the surrounding residential uses vs. a light industrial use? Mr. Grygiel said that characteristics of retail with the limited truck traffic to a few a week vs. the possibility of constant traffic coming and going and making deliveries in the middle of the night, which could exist with an industrial use. This use provide a valuable service for the people who live nearby by walking to the store, where a light industrial use could not provide that type of service for residents.

Mr. Cranmer referred to the secondary access to be provided to the neighboring properties for the use, is it your opinion that this concept plan and the relief that is being sought is consistent with smart growth planning techniques? Mr. Grygiel stated to the extent that it provide additional means of circular, yes. In terms of smart growth the building would be located closer to the street and give a more traditional appearance than a commercial project that is set back from the road, it is more in keeping with a town center setting, and with respect to inter connection this would reduce the amount of pavement needed for curb cuts and people could walk to the multiple uses.

Mr. Cranmer asked what steps are being taken by this applicant to integrate this use and the surrounding developed pattern in the area, and described the surrounding uses?

Mr. Grygiel said that this use integrates into the area in terms of the building arrangement being in line with the future changes. This use is more complimentary to the

surrounding uses rather than what is permitted in the zone i.e. car sales, and a bank with a drive through.

Mr. Cranmer asked if there are an undue hardships that are created by this application, as part of the use variance, do you feel that the adequate proofs can be provided by the applicant? Mr. Grygiel said that yes, there are some hardships with regard to the site, 2 frontages for example which changes the depths along both frontages of the property, it would be difficult to provide an adequate front yard. There would be other benefits for the other variances that would outweigh the detriments with regard to the improvements, reductions in non conforming conditions with regards to set backs & coverage, signs that are being requested would provide adequate identification for the use that would promote traffic safety. He feels that the parking standards are excessive for a modern retail development; he feels that the variance could be granted, with adequate parking even though they are not providing the amount required by the Ordinance.

Mr. Forrester referred to the bulk variances and asked if they are associated with the use the design? Mr. Grygiel said some of the bulk issues would relate to any use of this property given the location on a corner lot, so the minimum front yard is more so to any use. Mr. Forrester asked if the inability to comply with the maximum parking requirement is that related to the use? Mr. Grygiel said it would be related to any retail use. Mr. Forrester asked if it is related to the square footage of the store? Mr. Grygiel said yes. Mr. Forrester asked if you build a smaller store you wouldn't need as many parking spaces? Mr. Falvo said that they will bring a plan showing that if they complied with all of the set back requirements, or any commercial use, you would have a postage size building that could be constructed.

Mr. Forrester asked Mr. Grygiel, based upon his examination of the site and the surrounding neighborhood primarily north on Shrewsbury Ave, the uses north would be similar to what (inaudible) to this property? Mr. Grygiel said that this type of use would make sense there, and it wouldn't have the characteristics of a corner lot. He would concur that retail is appropriate on Shrewsbury Ave and consistent with the Master Plan. If the use & site plan are both granted it would be appropriate that conditions be attached that relate to further uses north on Shrewsbury Ave so we are not looking at this as an individual piece of property? Mr. Forrester asked if there should be some concern with the relationship between those uses and traffic access to the property to the north? Mr. Grygiel said that the uses would be in line with the Master Plan, and his client would be willing to provide access easements, which would be in line with smart growth so people could walk and drive through the uses.

Mr. Connors stated that he is concerned with traffic; he asked if there will be parking on both sides of Patterson Ave to the corner? Mr. Cranmer said that the parking regulations will not be changed at all.

Mr. Connors stated that it took him 3 minutes 52 seconds to make a left onto Shrewsbury Ave, and this is before this use is approved, and there is no where near the cars in the area right now, he asked, if this use will be controlled with ingress & egress? Mr. Grygiel that will be up to the town to enforce; and you will have to ask the engineers to work that out, he feels that improvements can be made with a new development.

Mr. Betesh asked why do we have to assume that something has to be done with the property? Mr. Grygiel said that people who own property want to do something with it, and the Master Plan, since 200, has been promoting a change or redevelopment of this area. Mr. Betesh said that right now there is an industrial use on the site, and obviously this type of use would make the property commercially more viable & valuable, but without the variance the property is “retarded” in value and limited in its value, and another industrial use could go in there or the existing industrial use can be intensified as long as it is within the current zoning requirements. Between the current conditions and zoning requirements there could be 25 trucks a day, which may be true, but we don’t know that. Do we look at the worse case scenario as a jumping off point to evaluate this or do we look at the practical reality as to what they do, and what would happen in a change of the Master Plan. There may be changes of foot in the Master Plan and they may come to fruition but right now they are not there, so the board is dealing with the existing zoning requirements and he is just questioning why we have to start from that assumption.

Mr. Grygiel said this site would be “retarded” in value assuming there was no use variance granted, because there may be other factors at work, the landlord may not be actively seeking new uses in anticipation of some changes happening. If the use variance is not granted he/she may go out and try to get other type of uses, uses that are permitted i.e. offices, bank or car sales. As a Planner he must look toward the future and assume something will be there.

Mr. Betesh asked why is the building so close to the street, without a set back? Mr. Grygiel said he is under the understanding that certain municipal representatives had indicated a desire to have a building a bit closer to the street, in order to minimize of pavement that one sees driving by a site, having the building looking like a “down town” type setting. Laying out the site this way would allow access to the neighboring properties in order to a have cross easement, which has to be at the most eastern portion of the site. Mr. Betesh stated that this also constrains the visual appearance where the current buildings are located, so having the buildings further creates a wider boulevard effect. Mr. Grygiel stated that it is a 15’ front set back, which can be discussed at the site plan. As a Planner he doesn’t feel that it is an improper arrangement to have a building at that set back.

Mr. Betesh asked if the applicant has any number of uses for the drive through on a daily basis? Mr. Falvo said not tonight. Mr. Ney said that he could answer that, and stated approximately 5% of the cars that enter the site 5% go to the drive through at the peak hour only. Mr. Betesh said that at 10:00pm a speaker would be most objectionable. Mr. Ney said that is a noise that can be regulated.

Mr. Forrester stated that historically Shrewsbury Ave (on the Shrewsbury side) has been maintained differently than the Tinton Falls side, and there is a 150' set back and all of the development along Shrewsbury Ave has been within consideration of the 150' set back, and he realizes that a 150' set back cannot be done on this property. One of the concerns of this board and the Borough is visual appearance of the east side of Shrewsbury Ave. Mr. Grygiel said that a greater set back wouldn't necessarily result in a more desirable visual environment, unless you required landscaping and an additional buffer. Mr. Betesh said that we will do that.

Mr. Grygiel feels that the constraints of this property, we will start running into a "postage stamp" size building, which would be allowed, and that there could be parking, with no restrictions to parking close to the street. The applicant could push the building back and comply with the front yard set back and still have 1-2 rows of parking, which is not as attractive as a nicely designed building up against the street. Currently there are a limited amount of parking spaces, but a greater building set back would result with a whole row of cars up against the street. That would have to be looked into as an option between the two.

Mr. Hartmann asked, why another drug store, what would pose people with knowledge & money to invest in another drug store? Mr. Falvo said to make a better mouse trap. He said that currently Walgreens in Neptune is "killing" CVS, CVS would love to do half the volume that Walgreens does. The convenience of products, the availability of the pharmacy. Mr. Hartmann said that the ultimate result would be that some of the other existing drug stores would have to suffer demise. Mr. Falvo said that they wouldn't suffer demise, but it's the convenience and the great location.

Mr. Forrester said its the consideration of whether its an economically viable use. Mr. Hartmann said that the board has talked about the health & welfare of the community and the innuendo that we need a drug store, it would be convenience to 80 houses that will be developed to the north and he says "maybe" or "maybe not" when there is another drug store within striking distance already. Mr. Falvo asked how many banks do you have in town? Mr. Hartmann said too many.

Mr. Greg Schecher, Walgreens representative, explained why Walgreens is looking to go in. If you break down the market, Rite Aid is up the street which is in trouble financially, if you have been in the store their pharmacy is awful, they don't carry a lot of the medicines. He doesn't feel that it's not economics but need, described the pharmacies in the area, and most of the drug stores only carry ½ of the prescriptions that Walgreens carries from the exotic to the mundane and available whenever you walk in the door, and that is what Walgreens prides themselves on. They are going to have prescriptions available whenever the public needs. They bring the cost of drugs down lower, and many of the products in the store, and the local pharmacists do have a place in this area. Walgreens doesn't put the smaller druggist out who has a following, and local drug stores will not want to open up next to a Walgreens. They serve a purpose, they bring down prices, and they serve the community, and they are always good neighbors. Walgreens

doesn't create the type of nuisance that a string of retail stores will, with the constantly going in and going out of business. They are a triple rated company, they take pride in the appearance of the store, they treat their employees well, and he feels that this is a better use for this site.

Mr. Forrester advised the board from a planning perspective they are not approving a Walgreens, they are approving a use so it could be a Rite Aid. Mr. Hartmann said that he is being asked to approve another drug store. He accepts what is being stated with regard to the competitive nature and positioning, but he doesn't know.

Mr. Schecher asked Mr. Hartmann where he would go for drugs if he lived on Patterson Ave? Mr. Hartmann said Rite Aid, Foodtown, A&P, CVS. Mr. Schecher asked if they have always have his prescription? Mr. Hartmann said that he doesn't notice a difference between the vendors.

A motion was made by Mr. Peterson, seconded by Mr. Connors to open the meeting to the public. All approved.

Mr. Michael Bell, 43 Trafalgar Place, Shrewsbury NJ disclosed that Walgreens has purchased his business. Mr. Bell asked questions with regard to the set back of the front of the building @ 15' and whether or not the building could be made smaller?

Mr. Hartmann reminded Mr. Bell that this is only a use variance hearing not a site plan. Mr. Bell stated that this is a good use for the property; it does generate traffic, but not the traffic that would be generated from a retail use. It's a good beginning for the Patterson Ave to Rt. 35 corridor for new development. Other uses could go on the site but a retail pharmacy is a good use, and especially for the neighborhood. The only concerns he would have on the site plan would be the drive through.

Mr. Sal Izzo, Patterson Ave lives adjacent to the property in question. He has concerns with the ingress/egress of his clients with this property. Mr. Forrester explained that this hearing is for the use only, and how it is going to be used would fall under the site plan and the impact that the driveways will have on your business, with regard to buffering, lighting, parking spaces etc. Currently the board is only dealing with the use of the property. He explained that this board can consider and impose conditions as to how the site plan will take place. If this board is inclined to grant the use variance it doesn't mean that it is a cart blanche that they can do what they want.

Mr. Bill Johnson, Shrewsbury Manor, asked questions with regard to the parking requirement of 1/150 for the existing use? Mr. Falvo stated that the traffic expert will have to answer the question. Mr. Grygiel stated that it would 3 spaces/1,000 or 1 space for 250 sq. ft. or 1 space for 350 sq. ft. (3.5/1,000). Mr. Johnson asked what is the parking requirement for the Walgreens? Mr. Grygiel said that he recommend 3spaces/1,000 for the retail use in a suburban setting, where some towns have 5 spaces per 1,000, and more down town settings could be 1 ½ spaces per 1,000. He feels that the parking that is being proposed is close to what is appropriate for the use. He doesn't know what the requirements are from Walgreens.

Mr. Johnson said that it is his understanding that the B3 Zone would include the property south of Patterson or the Nursing Home, is there a proposed calculation for the parking for the B3? Mr. Johnson was advised no.

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

Mr. Falvo stated that he will bring Mr. Grygiel back next month for any questions of the board. He is requesting that board members not present listen to the meeting or read the Transcript.

Mr. Forrester announced that this matter will **be carried to August 6, 2008** without further notice.

Mr. Falvo grants any time extensions needed

Break 9:03 to 9:15 pm. All present at roll call

Antoinette Mussorrafiti:
Bl: 69.04, Lot: 24, 37

Continuation of Hearing

Mr. Hartmann announced that Mr. John Giunco, Esq. will not be able to attend tonight hearing for Ms. Mussorrafiti and asked to have this matter carried to the September 3, 2008 and agrees to any extensions. Board members agreed to grant the request.

Mr. Forrester announced that this matter will be carried to the **September 3, 2008** without further notice.

A motion was made by Mrs. Peterson, seconded by Ms. Canonico to adjourn the meeting at 9:18 pm. All approved.