

# **MINUTES**

## **CRESSKILL PLANNING BOARD**

**APRIL 27, 2010**

Mr. Vaccaro called the meeting to order at 7:44 PM and announced the requirements of the Open Public Meetings Act had been fulfilled.

Members present at roll call: Mayor Romeo, Councilwoman Tsigounis, Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan, Mr. Mozur, Mr. Laurita and Mrs. Schultz. Also present were Mr. Paul Azzolina, Borough Engineer, and Mr. Steven Schuster, Board Attorney.

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Mr. Galdi made a motion to approve the minutes of the April 13, 2010, meeting. The motion was seconded by Ms. Bauer. All present were in favor of the motion. Motion approved.

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### **Correspondence**

Notice from Rutgers Continuing Studies regarding a conference on Current Issues in Planning and Zoning on Friday, June 11, in East Windsor. File.

Memo from Ms. Barbara Nasuto regarding three ordinances before the Mayor and Council: Ordinance No. 10-11-1390 to Amend Chapter 275, Zoning, Article IV, R-40, R-15 and R-10 One-Family Residence Zones; Ordinance No. 10-12-1391 to Amend Chapter 218 Site Development Plan; and Ordinance No. 10-09-1388, an Ordinance to Create a Forward Planning Committee. The Planning Board is in agreement with all three ordinances. Memo sent to Ms. Nasuto confirming the Board's agreement.

Letter of Introduction from Mr. Edward M. Rossi, Construction/Zoning Official, sending Mr. Rich Miller, agent for Mr. Naperschat and William Lee to this Board for approval. Mr. Naperschat is the owner of 41A Union Avenue. Mr. Naperschat would like to change the use of the second floor of his building and have the new tenant, Mr. William Lee, open his S.A.T. school there.

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### **Subdivision Committee**

Councilwoman Tsigounis distributed a new subdivision application that was received. Application #1399, 45 Monroe Avenue, 15 Wakelee Drive Corp was received on April 19, 2010. It is currently under review. Mayor Romeo noted that this house was condemned by the Building Department because of mold.

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### **Report from the Borough Engineer's Office**

Mr. Azzolina had nothing to report.

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**New Business**

Mr. Bob Naperschat from Point Pleasant, NJ, was present, regarding 41A Union Avenue. He noted that he owns the building that houses Hanami Restaurant. The upstairs is now vacant. There is a CO on it. It is a non-conforming building. Mr. William Lee would like to put an SAT school in there. He noted that two years ago he put in about \$20,000 to upgrade it for fire codes. A fire escape was put in the back, exit signs were put in and it was approved by Mr. Rossi that everything was OK. It was also approved by Mr. Pressler at that time. Mr. Vaccaro asked if this was going to be a State approved school and if that is the case, don't they need State approval on the school and if they do, what about the handicapped. Mr. Naperschat noted that the building is a non-compliant building. He doesn't know if this is actually a school that has to be State approved. Mr. Laurita asked if this was a school that prepares students for the SATs, because that is different from a full school. Mr. Lee noted that there would be between 15 and 20 in a class at a time.

Mr. Naperschat noted that there are two exits, one out the fire escape and the main exit. Mr. Vaccaro is concerned about the State requirement and the handicapped. Mr. Naperschat noted that he has two bathrooms. Mr. Lee stated that he is currently teaching SAT classes in Cherry Hill.

Mr. Schuster noted that we let these types of classes go in up at the circle. We have to determine whether we are going to allow this as a use and whether or not he requires any permits from the State, which is something that he is going to have to determine for himself. Mr. Miller was present representing Mr. Naperschat, and he noted that it is not a school in itself, it is an SAT preparation school. It is really just classes to prep you for the SAT. Mr. Schuster noted that that doesn't answer the question. The question really is by the nature of what you are doing there, is there a requirement to get some sort of State approval or state permit. He doesn't know the answer to that question. Anything that we approve here from our standpoint, would be subject to them getting any permits they need, if any at all, from the State. Mr. Naperschat noted that that was fair.

Mayor Romeo had no problem with them occupying the second floor. He stated that they need to check with the Board of Health, with the Fire Department and with the Building Department to get the required approvals. Mr. Schuster asked about any potential parking situations. Mr. Naperschat noted that they will be dropping the kids off for the class and leaving.

Mr. Vaccaro noted that we could approve this tonight, subject to the Fire Department approval for the occupancy, the Board of Health approval, and to check with the State. Mr. Naperschat asked why they have to go to the State because this is not a State sanctioned business. Mr. Vaccaro doesn't know that. Mr. Naperschat noted that it is not a school, it is not receiving State funds. Mr. Schuster stated that he does not know whether or not he needs to get State approval. He doesn't know whether this is going to require any kind of State licensure or not. He is just saying that if you do require it, you have to get it. That is all he is saying. Mr. Schuster noted that as far as the town is concerned, subject to the approvals from the Fire and Health Departments, they are approving it as far as a use is concerned. He stated that the onus is on the owners to find out if they need any kind of State approvals. Mayor Romeo asked Mr. Lee if he needed to apply to the State for anything when he started this business. Mr. Lee stated that he did not.

Mr. Galdi made a motion to approve, subject to whatever clearances and approvals they need from all the other agencies. The motion was seconded by Mr. Morgan. All present were in favor. Motion approved.

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**Old Business**

None.

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**Other Business**

Mr. Schuster had the resolution for Application #1396. He has not received the affidavit of mailing from Mr. DeCarlo. A letter was sent to Mr. DeCarlo asking for the affidavit of mailing. Mr. Schuster is still waiting for the affidavit of mailing. The resolution will be held until the next meeting.

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**Public Hearing – Application #1398 – 144 Truman Drive**

Mr. John Manfredonia, attorney for the applicant, Song, was present and noted that they are seeking site plan approval with a variance for 144 Truman Drive. They are seeking a rear yard variance. Seventy-five feet is required and they seek a variance of 46 feet. He has with him Mr. Mark Palus, a licensed engineer and planner, who will testified about the proposed construction. They have reviewed the memo from Mr. Azzolina and since the last meeting, have submitted revised plans to him and many of the conditions stipulated in the memo have already been taken care of. As part of tonight's proceedings, they will stipulate that any conditions that Mr. Azzolina or the town requires with respect to engineering will be complied with. They have sent out the notices pursuant to Mr. Schuster's request at the last meeting.

Mr. Schuster noted that everything appears to be in order as far as the notices are concerned. Mr. Mark Palus, 170 Kinnelon Road, Kinnelon, NJ, was sworn in by Mr. Schuster. Mr. Palus stated that he is licensed as a professional engineer and a professional planner in the State of New Jersey. He has testified before boards before in New Jersey as a professional engineer, but not before this Board. He has testified in front of approximately 50 municipalities in New Jersey. He has testified as a professional planner in front of about 30 municipalities. Mr. Schuster asked if Mr. Palus has testified before any Boards in Bergen County. Mr. Palus noted that he has testified in Franklin Lakes, Wyckoff, Oakland, Alpine, and Westwood. Mr. Schuster accepted Mr. Palus as an expert planner and engineer.

Mr. Manfredonia asked Mr. Palus to explain the proposed construction for which they are seeking approval. Mr. Palus wanted to make sure that the Board had the most recent plan. He noted that the most current plan has a revision date of April 7, 2010. Mr. Schuster marked this as Exhibit A1. Mr. Palus noted that this is Block 91.10, Lot 2 and is located on the southerly corner of Truman Drive and Pendergast Court. The lot is currently vacant. It had previous site plan approval for a home that fronted Pendergast Court. It began excavation and blasting on the property several years. For whatever reason, construction stopped. The property has changed hands and the new owner is looking to pick up construction. What they are proposing is a new single-family home on the property which would front Pendergast Court. It will basically have a circular driveway, with a side-loading garage and a pool directly behind the home to the rear. They are in the R-40 zone. As far as the bulk requirements go, they are conforming to all but the one variance they are asking for tonight, which is the rear yard. The building coverage and lot coverage conform.

Mr. Manfredonia asked, with respect to the front yard of this property, why, in his opinion as a professional planner, it's preferable to have the front yard facing Pendergast Court as opposed to Truman. Mr. Palus noted that Truman Drive is a little bit more of a main thoroughfare. Pendergast Court only has four or five different building lots on it. From a vehicle traffic standpoint and from an accessibility and ingress/egress out of the lot, Pendergast Court is going to be preferable. It is going to be a lower intensity use, and you will be less likely to have a problem backing out and pulling into the driveway. In addition, if you look at the rough geometry of the lot, it is a little irregular in shape, but it definitely has a longer frontage on Pendergast Court. Typically, when you say "where is your front yard?" many municipalities, in fact, define it as, on a corner lot, the portion that has the longer frontage. Just from a use standpoint, it sits up better facing Pendergast Court. From a neighborhood standpoint, if you look at the intersection of Pendergast and Truman, as you move west along Truman and you come to Vaccaro, the adjacent lot has another home under construction. That home is being oriented towards Vaccaro so it is not fronting on Truman either. There is really no neighborhood or streetscape in this area that they are out of character with. The lot next to them is facing Vaccaro, they are facing Pendergast and nobody is facing Truman. It would be consistent with the other homes in the neighborhood.

Mr. Manfredonia noted that Mr. Azzolina, in his memorandum, indicated, had the front yard been facing Truman, there would have been a variance required in that case as well, if you had to put the swimming pool in the side yard. Mr. Palus agreed and noted that if you flipped the house and had it facing Truman, they would then need a side yard variance for the pool, so it was either a rear yard variance for the house or a side yard variance for the pool. Mr. Manfredonia asked Mr. Palus to point out exactly where the rear yard variance is. Mr. Palus pointed out the 75 foot setback line that runs right through the middle of the house. When you orientate the house towards Pendergast, your building envelope is very narrow and tight, probably about 30 feet deep, which is not a viable dwelling. What they are proposing is to go to a minimum of 46 feet at the corner of the house, where 75 feet is required. If this was designated as the side yard, in other words if they were allowed to choose their rear and side yards, the side yard requirement is 30 feet and they are 50% larger, they would not need the variance. Because this is designated as the rear yard, that is why they need the variance. They would conform to it as a side yard.

Mayor Romeo asked about Lot 1. Mr. Palus explained that the house on Lot 1 would be facing Vaccaro. It is currently under construction. This house is 75.3 feet from the property line. Their house will be another 46 feet from that line. There will be 121 feet from structure to structure. The pool is 18 feet from the property line. Mr. Manfredonia asked, giving the distance from the proposed dwelling and the house next door, would the proposed construction impede the light, air and space of the adjoining neighbor. Mr. Palus stated that it would clearly not. The ordinance specifies certain yard setbacks in order to maintain adequate space between buildings in this zone. They are going to exceed all combined required distances between buildings, so clearly the proposed buildings in conjunction with the neighboring property is going to meet the intent of the ordinance. Mayor Romeo asked about privacy hedges. Mr. Palus noted that something like that would be appropriate and helpful to both property owners. Mr. Manfredonia stated that they could certainly agree to that.

Mr. Manfredonia asked Mr. Palus if he has reviewed Mr. Azzolina's memorandum. Mr. Palus noted that there is an April 13 memorandum, with an appendix to it that includes an earlier memorandum of March 23. Mr. Palus affirmed that he has had the opportunity to go through that and they tried to make the revisions to this plan to address this memorandum. Mr. Manfredonia noted that in the memorandum there is one design waiver that they seek, which is the 200 radius survey. Mr. Azzolina pointed out that they do have the tax map on the drawing, which should suffice, to avoid the expense of doing this survey of people within 200 feet.

Mr. Manfredonia stated that they will stipulate that whatever the Borough Engineer requires, they will comply with should they have any further comments to what they have done since the last meeting.

Mr. Vaccaro opened the meeting to the public. Mr. Steven Sans, 220 Vaccaro Drive, wished to be heard and was sworn in by Mr. Schuster. Mr. Sans asked if this property backs up to the lake. Mr. Palus noted that the lake was a good distance from the property, it is hundreds of feet away, and he pointed out approximately where it was on the plan. Mr. Sans asked if all the water runoff was going to be handled on the property or are they planning to have the drainage go into the lake. Mr. Palus noted that when the subdivision was created, each of these lots was estimated that they would create 10,000 square feet of impervious coverage. He didn't do the subdivision, but he is assuming that the lake is the primary detention facility for the subdivision. Mr. Sans noted that when he built his home, he had to handle all the runoff from the roof and the driveway and everything else on the property, not going into the lake or pond. Since then, he has noticed that a couple of other people got variances for that to empty into the pond. With the recent storms, it is becoming a problem because the pond wasn't designed to handle that. It was designed to handle normal runoff. He has an issue if there is extra runoff going into the pond that should be handled on the property. Mr. Palus noted that they do have what would be classified as extra runoff and in order to offset that they are providing a series of seepage pits.

Mr. Palus explained that the subdivision was designed based upon certain assumptions on each property. They are exceeding those assumptions, in other words, they are putting down more impervious than was originally contemplated. As a result, they need to handle that on site. They do have some seepage pits on site to handle that excess. Anything more than they are allowed, they are handling on site. The calculations that were submitted to Mr. Azzolina and what they will show is that they are containing the entire excess for the 100 year storm. Mr. Azzolina stated that he will agree with Mr. Palus that calculations were submitted. He doesn't necessarily agree that they are complete at this point. He will have some further comments on it. He has a draft memo, which is not yet finalized. He doesn't believe that the design as currently set forth accounts for the necessary deductions in the peak flow rates. When the subdivision was designed, it was designed to

accommodate 10,000 square feet of runoff of impervious area from each of the lots. As Mr. Palus indicated, his property is around 13,500 square feet of impervious, so he has accounted for about 3,500 of impervious, but he really needs to account for that in a different manner. It may be just a matter of adding maybe just one or two more seepage pits other than what is shown now, but that is not a difficult or expensive thing to do. The systems are designed to have overflows, which this design does reflect one overflow via the municipal storm drain system which will ultimately discharge into the pond. The detention system within the subdivision is a series of ponds which are all interconnected. The fact that there is a small overflow into the pond will not materially influence the water elevation in the pond. The other seepage pits system overflows into the storm drain on Truman Drive which ultimately winds up at a different pond to the west. The net result of the plans, once approved by his office, and if the Board grants the application, he sees no negative impact onto the adjoining property owners with respect to the runoff.

Mr. Manfredonia noted that the original application requested a 43.3 feet rear yard and now they are asking for 46 feet. Mr. Palus explained that they need that little extra room to give the builder a margin for extra thick stucco or sheathing or something so they don't get to 46.3, which is right on the nose and something goes over an inch and they are at 46.2 and they have to come back to the Board, so they thought it would make more sense to just go to 46 feet so they wouldn't have any future issues. They didn't think the extra couple inches would have any material impact on the application. The revised plans do reflect a 46.0 variance request.

Mr. Manfredonia asked Mr. Palus if he believes that the rear yard variance that they seek will bring a substantial improvement to the community. Mr. Palus noted that it is substantial improvement to the development of this property, which is part of the community. As he explained before, developing the lot facing Pendergast has significant benefits as opposed to facing Truman, so to that degree, he believes it is an improvement to the community. Mr. Schuster asked how that would be. Mr. Palus noted that as discussed, due to the shape of the lot, having more frontage on Pendergast lends it to be the standard front yard for the property and possibly more significantly, when you take a look at the access to the property, Pendergast Court being a lower usage street and a lower traffic rate, is more suitable for a residential use, which is what this property is zoned for. If you would take the home and front it on Truman Drive, provide side-loading garages, which is typical for homes in this neighborhood and try to construct something within the required building envelope, you would have about a 75 foot building width. If you assume that you lose 25 feet of it for the garage, it would leave you with a 50-foot wide main building on the first floor. You can certainly build a home 50-foot wide, but if you look at this neighborhood and the other homes in the neighborhood, you would actually be building a home out of character. This home, including the garage, is 122 feet long. The footprint of the house is 4,823 square feet. The floor area, including the garage, is 7,669 square feet. This is a significant home, but in keeping with the character of the neighborhood.

Mr. Manfredonia asked Mr. Palus, in his opinion as a professional planner, would the Municipal Land Use Laws be advanced through deviation of the ordinance. Mr. Palus noted that this is an opportunity to develop the property in a more efficient, more useful manner with the granting of the requested variance. Mr. Manfredonia asked if the variance can be granted without a substantial detriment to the public good. Mr. Palus stated that as they compared it to and related it to the impact on the adjacent lot, they are going to be further away from the adjacent structure than this ordinance requires buildings to be, so they are still providing ample light, air and space and there will be no detriment to the master plan or its ordinances. Mr. Manfredonia asked if the variance can be granted without substantially impairing the intent and purpose of the Municipal Land Use Law. Mr. Palus stated that they are exceeding the intent and purpose of the Municipal Land Use Law when you look at it from a little bit more global perspective in terms of the required setbacks.

Mr. Galdi made a motion to close the meeting to the public. Ms. Bauer seconded the motion. All present were in favor. Motion approved.

Mr. Galdi commended the applicant on their effort to achieve what we have requested of them and the Borough Engineer. He made a motion to approve the application, subject to all the recommendations that the Borough Engineer has requested. Mr. Morgan seconded the motion. Mr. Manfredonia stated that they also need the design waiver for the 200 foot radius. On Roll Call: Mayor Romeo, Councilwoman Tsigounis, Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan, Mr. Mozur and Mr. Laurita all voted yes. Motion approved.

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Mr. Vaccaro opened the meeting to the public. No public wished to be heard.

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Motion was made by Mr. Galdi to adjourn the meeting at 8:38 PM, seconded by Mr. Morgan. All present were in favor. Motion approved.

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The next four regular Planning Board meetings are scheduled for May 11, May 25, June 8, and June 22, 2010, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo  
Recording Secretary