

**Borough of Cresskill
Zoning Board of Adjustment
Minutes Mar. 24, 2016**

Present: Ms. Furio , Mr. Merzel, Mr. Kassis, Mr McCord , Ms. Batistic
Mr. Van Horne (Board Attorney), Ms. Bauer (recording secretary),
Absent:, Mr. DePalo, Mr. Corona, Ms. Westerfeld,
The meeting was called to order at 8:03 pm.

Ms. Furio announced that the meeting had been published as required by the Sunshine Laws of the State of New Jersey.

Minutes of the Feb.25, 2015 meeting were approved.

Applications

1279 Ramirez-Moreno/Gomez-Osorio 155 Jefferson Block 33 Lot 316

	Required		Existing	Proposed	Variance Req'd
Height	28 ft		30.76 ft	30.76 ft	2.76 ft
Side Yard Abutting/Lot	15 ft.		12.24 ft.		Granted 2/27/14
Combined Side Yards	35 ft.		22.24 ft.		Granted 2/27/14
Max. Livable Fl. Area FAR	Variable 38.82%		44.92%		Granted 2/27/14
Lot Frontage	100 ft.		50 ft.		
Lot Depth	100 ft.		144 ft.		
Bldg Coverage %	20%		22.21%		Granted 2/27/14
Impervious Coverage	Variable 34.90%		47.73%		Granted 2/27/14
Lot Area	10,000 sq. ft.		7365.78 sq. ft.		

Applicants are applying for an existing height variance.
The other variances were granted on 2/27/14 Docket # 1236.

Mr. Van Horne said we have 5 Board members present...

Mr. David Watkins, attorney for the applicants, said we are here for a Yes or No. We will accept it.

Mr. Van Horne said if the height differential is established, as you have it, at 2.76, then you don't need a super majority. But if the board does not accept that, and wants to measure it itself...

Mr. Watkins said I'm not acceding that. We cannot accede to that.

Mr. Watkins said if the board accepts the calculations then its just *majoring*.

Mr. Van Horne said what I like you to do is tell us what this is about. You summarize the application and then I'll advise the board as to the issues.

Mr. Watkins said what I am going to do is open up the opening statement, Indicate to the board what our opinion, position is then you will ask the board whether or not they concur.

Mr. Van Horne said correct.

**Borough of Cresskill
Zoning Board of Adjustment
Minutes Mar. 24, 2016**

Page 2 of 7

1279 (Cont.) Ramirez-Moreno/Gomez-Osorio 155 Jefferson Block 33 Lot 316

Mr. Watkins said Good Evening my name is David Watkins. I have offices in Closter. I represent the applicant. Subject property is Block 33 Lot 316, 155 Jefferson, Cresskill. The house is constructed. My client went for a C.O. It was determined that the house exceeded the height requirements of Cresskill. Mr. Hubschman was retained. He designed the plan, Mr. Hubschman's position is that the height is less than 10% over that which is mandated by the ordinance. If that's the case than all I would need is just a majority. If the board does not concur with that, what I would need is what is called a super majority which would be 5 affirmative votes. Be that as it may, to comply, you would have to have a flat roof on this house. The house is constructed. I don't think that my clients did anything intentionally. I am not spinning that. The question for the board is to determine is whether or not its less than 10% above the requirement which only requires a majority . The board thinks that Mr. Hubschman's methodology is incorrect then I would need 5 affirmative votes, which is called super majority.

Mr. Van Horne said that's correct. The board has to decide, at this point, if they want to accept Mr. Hubschman's representation and testimony as Mr. Watkins has represented. And have the borough engineer confirm the height of the structure and the elevations. We have been given pictures/ photographs of the building..

Photographs of the building were shared by the board members. The photo of the front of the house showed a pile of dirt at the left corner of the house.

Mr. McCord said it would help if Mr. Hubschman told us how he calculated the height.

Mr. Watkins said not a problem, The sole issue right now is just how Mr. Hubschman calculated the height. If the board perceives that his analysis is incorrect, then I reserve the right to re-call him .

Mr. Michael Hubschman was sworn in.

Mr. Van Horne accepted his qualifications

Mr. Watkins said the one issue tonight is the height of the subject building. How did you measure the height ?

Mr. Hubschman explained that they used the data on the architects plan. We came up with a peak elevation which was 34.5 and we also measured some fill placed- we measure the height in Cresskill from the proposed grade at the part of the house at the front 2 corners.

Mr. Watkins asked how many houses have you shown in Cresskill.

Mr. Hubschman said we've done hundreds.

Mr. Watkins asked have you always measured the height the same way ?

Mr. Hubschman said we have always measured the height from the 2 front corners.

Mr. Watkins asked has there ever been an objection or opposition by anybody by the way you measured the height?

Mr. Hubschman said no that's the way we measure it on all the houses.

Mr. Watkins asked was that a hundred and some ?

Mr. Hubschman said at least 50 to 100.

Mr. Hubschman said that's what we did. We took a location survey of the property our licensed surveyor in the office. From the fill elevation, the average numbers, we were trying to mitigate that height- maybe, we may even put some more fill- but we cannot fill on the right side of the house because the driveway is right there. That was the problem. That's how we measured the 2 front elevations.

Mr. Watkins asked when you did that calculation what number did you come up with ?

Mr. Hubschman said 30.76'.

Mr. Watkins asked what is the zoning ordinance ?

Mr. Hubschman said 28'. So it is slightly less than 10% variance.

Mr. Watkins asked did you always measure the same way in Cresskill ?

**Borough of Cresskill
Zoning Board of Adjustment
Minutes Mar. 24, 2016**

Page 3 of 7

1279 (Cont.) Ramirez-Moreno/Gomez-Osorio 155 Jefferson Block 33 Lot 316

Mr. Hubschman said we've been measuring from the proposed grade.

Mr. Watkins asked how long have you been a professional ?

Mr. Hubschman said since 1986- 30 years.

Mr. Watkins said it depends on the board. We can continue but if the board does not agree with the analysis we have to carry. Again the house is built. I don't know what I am supposed to be doing.

Ms Furio asked the front left side as you are looking at the house ?

Ms. Furio displayed the photo she was using.

Mr. Hubschman said he did not have a copy of that photo, but the one he had showed the same thing.

Mr. Watkins asked if the photos were taken under Mr. Hubschman direction and when were they taken.

Mr. Hubschman said they were taken yesterday under his direction.

Ms Furio asked the one I'm looking at is P1?

Mr. Hubschman agreed.

Ms. Furio asked you were saying 'proposed grades'.

Mr. Hubschman said the finished grade.

Ms. Furio asked the hunk of dirt is where you measured from?

Mr. Hubschman agreed that's where we measured from.

Mr. Merzel asked what's the height of the front right ?

Mr. Hubschman said on the driveway side its 102.9, the left corner is 104.6. So its 1 ½ foot higher on the left, on the hump.

Ms. Furio said it seems like it was just pushed in there to gain the calculation to bring it just under the 10%.

Mr. Watkins said these heights are measured are always the same way.

Ms. Furio said I understand that but what you measure it to.

Mr. Watkins said I could have recommended a concrete wall, but we chose not to do that.

It was decided to call the pile of dirt a berm

Mr. Van Horne asked when was the height difference discovered?

Mr. Hubschman said it was in 2015. We were retained to do the 'A Built'. We checked the height to see if it was over, and it was over.

We tried to mitigate in the front. It's a very small lot on a very narrow house.

Mr. Watkins said to make this required. What would the roof be ?

Mr. Hubschman said the roof peak is 5', so you would have a flat roof.

Mr. Merzel asked what is the ceiling height on the first floor and on the second floor.

Mr. Hubschman said 9' on the first floor and 8' on the 2nd floor.

Mr. McCord asked is there an attic ?

Mr. Hubschman said its small, it goes up 5'.

Mr. McCord asked is there a crawl space ?

Mr. Kassis said there is a cathedral ceiling in the foyer. The archway goes above the gutter line

Mr. Hubschman said that's a 2 story foyer. But its only about 10' wide. On the 2nd floor there is a bedroom.

Mr. Kassis asked whether there was a proposal as part of the application, when the add-a-level was put, on to change the grade ?

Mr. Hubschman said no, the architect's plan shows some grades but only shows about 4'7" first floor to grade in the front. The lot slops down. The height might have been OK, they put on the 2 additions'

Mr. Hubschman indicated the 2 additions on the plan. Where it came out the front, it sloped down.

This where the error comes in. The architect did not include that in his calculation.

Mr. McCord asked is there a basement below the ground ?

**Borough of Cresskill
Zoning Board of Adjustment
Minutes Mar. 24, 2016**

Page 4 of 7

1279 (Cont.) Ramirez-Moreno/Gomez-Osorio 155 Jefferson Block 33 Lot 316

Mr. Hubschman said there is a basement . In the front its more than half exposed. There is a 3’ difference between front and back. It meets the height in back.

Mr. Kassis said if you make the Berm another 2’ high. You can just decide to make it higher and then the house would comply ? There is no regulation in Cresskill zoning laws on how to measure in a situation like this what the true height is ?

Mr. Hubschman said you raise it 2 feet but you cannot raise it on the right side..

Mr. Kassis said there is no window there so technically you can build up that berm almost to the bottom of that cantilevered front.

Mr. Watkins said under your ordinance that is accurate. We chose not to, aesthetically it did not make sense, and we certainly do not want to put a flat roof on this. We are not going to rip the house down, and a flat roof would look horrible.

Mr. Kassis said I feel that this could be a precedence. This is the 2nd time we are hearing something similar to this. To me this is important enough to have the town engineer determine if something like this is legitimately a way to consider height. My fear is that anybody would come around and just build that up . We have had that discussion in the past. The language that I hear here from both of you is : “hey, we are good guys, we could have made it another 2’

Mr. Hubschman said it sort of has to be reasonable.

Mr. Kassis said I don’t know what reasonable is. So technically, anybody could build a house two or three feet above what is required, and just put a berm in front.

Mr. Watkins said Mr. Van Horne and I have known each other for 30 years. He will tell you that each application is independently looked at. Nothing sets a precedent under the laws of the state of New Jersey. My recommendation would be, if we could get through this application, may be your recommendation to the Mayor and Council to solidify this ordinance and make it clearer. Right now I think I can do what you want and win in court. Not suggest I’m going to court. I think that the ordinance should be reviewed and maybe a better definition of where you measure the height from.

Mr. Kassis said in all due respect the proposed height would have to be stipulated in your application for this project when it started. Now, changing the height of the soil and bringing in fill would also require a permit for that if you are going to exceed the number of yards permissible. So in order to make this higher you can’t just bring soil in without getting Boro approval. And you also need Boro approval to change the grade on the property if that was to occur for drainage and for the impact on the run-off for the neighboring house. Lets not mince words. There was no application for the grade change. There was nothing in the application for a grade change, there was no permit issued for bringing soil in to raise the grade. The front elevation is based on the average of the two corners. Unfortunately, if this had been picked up soon enough, the driveway elevation could have been increased with the same permitting procedure, and this whole thing could have been corrected more precisely. So lets stick to the facts.

Mr. Watkins said if the board were inclined to get past this application and approve it, we would stipulate we would go to Azzolina & Feury your engineer and would comply with any drainage requirements that they may impose. That would resolve that issue and sit like that in resolution.

Mr. McCord asked is there a plan to do some sort of landscaping with this dirt pile.

Mr. Watkins said yes, and we would submit a landscaping plan, if the board is inclined to approve this application, to your Boro engineer for review..

Mr. Hubschman said we would grade it out more towards the front, and put new sod in.

Ms. Batistic asked (Mr. Hubschman) how did you measure the grade elevation 104.59 at the corner ?. Was it a laser measure or what method ?

Mr. Hubschman said ‘Total Station’.

**Borough of Cresskill
Zoning Board of Adjustment
Minutes Mar. 24, 2016**

Page 5 of 7

1279 (Cont.) Ramirez-Moreno/Gomez-Osorio 155 Jefferson Block 33 Lot 316

Ms. Batistic said we were discussing whether this was to be considered as a height variance, a 'C' or a 'D'. Half an inch on the dirt would bring it to a 'D'. When this Bern settles, then it will become a "D" variance

Mr. Watkins said lets approve it before it becomes a 'D' variance

Mr. Hubschman said maybe we want to add another half a foot. Basically that is what it would look like as a C variance.

Mr. Kassis said if a structure, a brick wall of a fixed type was to be installed, and dirt put into that, of a decorative nature, something that looks more than bags of dirt emptied out onto the ground, you would not worry about the elevation change due to decomposing of soil . It would give a better appearance than we are looking at right now. I live down the street, so I pass the house every day. I knew it was too tall just by looking at it. For the proposal for the front, come back with some better ideas than a pile of dirt.

Mr. Hubschman said a decorative wall would be a good idea.

Mr. Kassis said I'm just suggesting that there are methods. I'm not instructing you to do that.

Mr. Watkins said if the board would consent to the application, there are a lot of 'subject to' s and we would consent to them absolutely.

Mr. Van Horne said to Mr. Watkins, I am sure you can explain to your client how seriously the board has to consider an application like this.

Mr. Watkins said we get it straight. I did not represent them when all the stuff happened. I'm here after the fact. I'm just trying to remedy something that hopefully would be satisfactory to the Boro, to the Board and to my Client. I did not do this. I am here to remedy it.

Mr. Kassis said for the record, it is the average of the 2 corners. Of whose grade or existing grade. Its one of the two but it has to be official.

There was a discussion with Mr.Hubschman and Board members regarding the interpretation of the height definition.

Mr. McCord said I do not see any slop in this street.

Mr. Hubschman said its very flat.

Mr. Kassis said if there wasn't the mound there the garage side and the left side would be at the same grade.

Mr. Hubschman agreed.

Mr. Kassis said the topographical notation says 102 straight across the property, and in the back you have 106. There is a grade difference which is evident in the exposed foundation. You see to the left side (south side) the 104 does show. On the 104 that shows there, what is the grade level of the berm that is there ?

Mr. Hubschman said that is the grade the 104.59 is the top of the berm.

Mr. Kassis said I am having trouble justifying how that is got to be at least 16" taller than this area
Mr. Kassis indicated on the plan.

This is 102 and this is 104 there is a 2 inch difference. There's no way that that is only 2" higher.

There was a discussion with Mr. Hubschman and Ms Batistic on the interpretation of the plan.

Mr. Hubschman said the bottom of the berm is 102, that is a 2 foot difference.

Ms. Batistic said it is not a gradual slop. Its flat and then the bern jumps up.

Mr. Hubschman agreed..

Ms. Batistic asked this was the existing house and they added in the front and in the back ?

Mr. Hubschman said yes, this came before the Board of Adjustment. The existing house is the center piece.

**Borough of Cresskill
Zoning Board of Adjustment
Minutes Mar. 24, 2016**

Page 6 of 7

1279 (Cont.) Ramirez-Moreno/Gomez-Osorio 155 Jefferson Block 33 Lot 316

Ms. Furio said I understand that this is the way you have done it for 30 years, but it almost seems like we are dropping a plumb from the top and deciding where we need it to end and filling it in underneath to get where we need to go.

Mr. Watkins said that's why I suggested that maybe this is something that the Mayor and Council might like to revisit.

Ms. Furio said and they will. I also think that feeling very uncomfortable with the way this was done, and that everything is at its own merits, but this all still too soft to decide that this is the way we are going to do it and we are all OK with this. If I'm not mistaken, we are deciding tonight on whether or not we are going to accept the way that these are being measured...

Mr. Van Horne said and whether our Boro engineer concurs with the way the measurement was done.

Mr. Merzel asked what's the difference between being 10% and not being 10% ?

Ms. Furio said half an inch.

Mr. Watkins said one requires 5 member votes and the other requires a majority.

Mr. Merzel said my feeling is, and every member will judge for himself, that for something this important, for half an inch, I think that the town engineer should take a look, give his opinion, and then we take it from there.

Mr. Kassis said I feel similarly. If there is going to be a grade change here which could possibly incorporate a retaining wall- decorative, something that looks good- that the town engineer make a determination that it does not have a negative impact on the neighbors, that within conformity of the variances being sought, and he can confirm that whatever the height of that wall is going to be, it will be measured precisely to the peak of the roof. So that there is no question in our minds, when we are ready to consider this. I am not prepared to vote on it tonight.

Mr. Watkins said certain things I argue and certain things I don't. I will defer to the board on the disposition tonight.

It was agreed that the application would be carried to the April ZBOA meeting (April 28, 2016). Ms Furio will contact Paul Azzolina, Boro engineer, in regard to a review of the application.

Mr. Watkins said We are going to amend the plan to show some kind of wall in the front. I'm going to give that to Paul to review..

Mr. Van Horne said let him measure first and then he can work with Mr. Hubschman.

Mr. Merzel said I would prefer that he measures it the way it is now, before they make any changes. I would have preferred that they had measured this before they had put in the dirt mound,

Mr. Watkins said somebody vetted this from the Building dept. that's how it came out.

Mr. Merzel said did they measure it without that mound ?

Mr. Watkins said without, in November. I wasn't here.

Mr. Merzel asked the mound was not there? I would like it returned to the way it was, without any of that dirt over there. So the town engineer could come and look at it the way it was, see the whole basement, when they denied it. That's the way it should be, and then we take it from there.

Ms. Batistic said my understanding is that there was an 'As Built' done prior to...

Mr. Merzel said my position is that the dirt has to be removed..

Ms. Batistic said I agree

Mr. Merzel said I would like to make that point officially to the board.

Mr. Kassis said that I would defer to our town engineer for that. He will make an assessment and if, and, this is not a request, in the event that a permanent structure was installed, that that would be subject to the review and consideration, and that you come back to the board. I am speaking for myself, I would be more comfortable voting on something that has a definitive number, verified by our engineer, and something that cannot be easily removed, and settle, and look appealing, and prevent run-off that could flood somebody's basement.

**Borough of Cresskill
Zoning Board of Adjustment
Minutes Mar. 24, 2016**

Page 7 of 7

1279 (Cont.) Ramirez-Moreno/Gomez-Osorio 155 Jefferson Block 33 Lot 316
Mr. Watkins said thank-you very much and I will see you on the 28th.

Memorialization

NONE

Meeting adjourned at 8:42 pm