

MINUTES

CRESSKILL PLANNING BOARD

NOVEMBER 24, 2009

Mr. Vaccaro called the meeting to order at 7:43 PM and announced the requirements of the Open Public Meetings Act had been fulfilled.

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

Mr. Galdi made a motion to approve the minutes of the November 10, 2009, meeting. The motion was seconded by Mr. Mozur. All present were in favor of the motion. Motion approved.

Correspondence

Copy of letter from Mr. Paul Azzolina to the Honorable Mayor and Council dated November 11, 2009, regarding the Engineer's Performance Guaranty Estimate for the DiReese Sanitation Services Property located at 32 Piermont Road. File.

Letter from Ms. Elizabeth Kumar, owner of Whiskers and Tails, Inc., dba Bark Avenue, dated November 11, 2009, requesting a copy of the minutes and transcript for the November 27, 2007 Planning Board Meeting. Ms. Barbara Nasuto took care of sending her the minutes from said meeting.

Copy of letter from Mr. Steven Schuster to Mr. Richard Hubschman, dated November 11, 2009, regarding the Developer's Agreement for 191 County Road LLC. File.

Letter from Mr. John Manfredonia dated November 10, 2009, regarding the subdivision and site plan applications that are being heard tonight. Attached is the notice of hearing sent to property owners within 200 feet of the subject property. File.

Letter of Introduction from Mr. Ed Rossi, Construction Official, dated November 11, 2009, sending Ms. Nancy Radovich of 177 6th Street to this Board for approval to construct a single family dwelling at 388 11th Street. Application #1391 was received on November 12, 2009 and is currently under review.

Letter of Introduction from Mr. Ed Rossi, Construction Official, dated November 18, 2009, sending Mr. Demetrios Milliaressis to this Board for approval to locate the 3.75 Real Estate Group at 145 County Road. They are a concept real estate company which allows for full participation by all realtors in the area. Mr. Milliaressis was present and explained that his company is a full service lower cost commission to the community. It is 3.75% of which 1.75% will go to them and 2.00% is given to all the participating brokers. This is a full service, licensed real estate office, but the concept being, what they believe, is a fair commission. Parking will not be a problem. They just have one employee. It will be very internet driven. Mr. Galdi made a motion to approve, seconded by Mr. Morgan. All present were in favor. Motion approved. Letter of approval sent to 3.75 Realty Group with copies to the Building Department and Ms. Barbara Nasuto.

Subdivision Committee

Ms. Tsigounis noted that one new application was received. Application #1391, 388 11th Street, Nancy Radovich, was received on November 12, 2009, and is currently under review.

Report from the Borough Engineer's Office

Mr. Azzolina noted that he has received the architectural drawings for Application #1390, 52 Westervelt Place, Greg Hagopian and he just has to confirm the FAR and a couple other minor details.

Old Business

None.

Public Hearing – Applications #1386M, 1387 and 1388, 37 & 41 Allen Street

Mr. John Manfredonia was present representing the applicant, 37 Allen Street, LLC, Alfonso Diaspara, the owners of 37 Allen Street and 41 Allen Street. We are here today to get approval for a subdivision and site plan approval. The application proposes to take two lots, one 60 x 180, the other 40 x 180 and make them both equal size, 50 x 180 so that two homes can be constructed on each of these lots. There are variances they are seeking in connection with this application and they are: Number 1, undersize lots, they are going to be 50 x 180 if the subdivision is approved. Number 2, they are going to need a variance for the side yard requirements. They propose 10 feet on each side yard, where 15 feet is required for one side yard and 35 feet is required for combined side yards. They are also seeking a variance on impervious coverage, 35% is required and they are proposing 45.06%. There are no FAR variances. As an official matter, they did publish this for a public meeting. They advertised in The Record and they sent notices to property owners within 200 feet. Said notice has been provided to the Board.

Mr. Schuster wanted to clarify that there are three separate applications since there are three separate application numbers. Mr. Manfredonia agreed that there are three. Mr. Schuster also noted that this is not a minor subdivision. This is a major subdivision, so technically all of the major subdivision requirements should have been adhered to before we got here to the hearing unless they are going to come in and ask for waivers from the Board as part of the application. Mr. Manfredonia noted that they submitted this as a minor subdivision and he did read Mr. Azzolina's memorandum, which indicates that the Municipal Land Use Law would characterize this as a minor subdivision, but apparently the Borough of Cresskill has a more restrictive requirement. Specifically, this would have been a minor subdivision, but for the fact that they are asking for variances, and they would ask that this Board treat this as a minor subdivision, consistent with the Municipal Land Use Law, even though the town may have a more restrictive requirement.

Mr. Schuster stated that it is because it needs variances. He noted that the Land Use Act provides that we are allowed to have more restrictive requirements for a subdivision. The way he sees it here is that they need to ask for a waiver from the strict requirements of the major subdivision. Mr. Schuster also pointed out that they make no reference to the application numbers in the notices. Mr. Manfredonia explained that he feels they provided adequate notice because it specifically talks about the need for a subdivision and they are going for site plan approval, two lots, two residential homes and all of that is spelled out. He doesn't believe you need to have the application numbers specifically mentioned in the notice. Mr. Schuster agreed that it is probably not necessary.

Mr. Schuster stated that he has certain reservations about the notices and the set up, but, at this point, if the applicant wants to proceed at his own peril, it is fine with him. Mr. Manfredonia would like to proceed.

Mr. Manfredonia called his first witness, Mr. Michael Hubschman. Mr. Hubschman, 263 S. Washington Avenue, Bergenfield, was sworn in by Mr. Schuster. He was accepted as an expert engineer and planner, licensed in the State of New Jersey.

Mr. Hubschman noted that there are two existing properties known as Lot 37 and Lot 35 & 36. Mr. Schuster marked the colorized plans, dated May 13, 2009, as Exhibit A1. There is an existing 60 foot lot which is to the east, and an existing 40 foot lot to the west. There was a single family house on the 40 foot lot that was torn down about two years ago. The applicant is proposing to raze the existing #41 and subdivide the properties. Instead of a 40 and 60, they want to subdivide them into a 50 and a 50. He did some research and found that this side of the street was subdivided in 1869. They were all subdivided into 50 foot lots all the way down towards the corner that was owned by the railroad company. Everything east of the corner pieces was owned by George Allen, who was a lawyer. Their proposal is to kind of bring it back to the way the whole neighborhood was originally subdivided so that there will be all 50 foot lots and, in doing that, they will require a few variances.

The first variance is the lot area. The lots will be 50 x 180 and will be 9,000 square feet. That requires a variance because 10,000 square feet is required. The second variance is for the 50 foot frontage where 100 feet is required in the zone. The two single family houses require two variances. They wanted to push the houses back because of the Hanami restaurant and the library. The house to the west is 35 feet back and the house to the east is 40 feet back. Because of that, they require an impervious coverage variance. They are 240 square feet over in the impervious coverage because they are pushing the houses back a little. He also included the wood decks in the coverage calcs which sometimes the Borough doesn't really require. Also, the Borough ordinance only allows them to take the first 125 feet of coverage, so there are three real kind of hardships. One being the existing commercial across the street, the decks and the fact that they are not allowed to count all the green area in the rear. Including the green area, if it were based on the whole lot, they are at 30.2% where 35% is allowed. So, obviously, there is a lot of green area on the property.

The second variance that is created by their proposed development is the side yard variance. In keeping with what's in the neighborhood, they wanted to hold a ten foot side yard. The zone requires 35 foot total, and you can't really put a 15 foot wide house, so they thought that was reasonable in the neighborhood. The architect will discuss the size of the houses, the coverage and the FAR requirements. They would like to hold the 10 feet so they can get a two-car garage. It is a 30-foot wide house. Some of the other houses they have done on a small lot are 28 or 30 feet wide and that is a pretty standard size. If you have 15 feet on each side, you would have a 20 foot wide house and it is just like a trailer and it doesn't work. The subdivision gets rid of the blighted house and puts two brand new houses in the neighborhood. They are providing adequate light, air and open space.

Mr. Manfredonia asked about drainage. Mr. Hubschman noted that they are providing seepage pits on each lot. There are two seepage pits per lot and everything grades out towards the street. Mr. Manfredonia asked, in his opinion, despite the fact that they are over on the impervious coverage, if the drainage system that is being proposed can handle the rainwater. Mr. Hubschman noted that the two 1,000 gallon pits are almost double what is required and they are over by 270 square feet and that is kind of an anomaly because you are only allowed to use the first 125 feet so they are actually only at about 30%.

Mr. Manfredonia asked Mr. Hubschman if he had a chance to read Mr. Azzolina's memorandum. Mr. Hubschman noted that he just received it and did go through it. Mr. Manfredonia asked him to address the sidewalk waiver that they are asking for. Mr. Hubschman noted that there are no sidewalks on this side of the street in the neighborhood so they are requesting a waiver. If the Board feels that they want them to, they would put in sidewalks. Another issue is the classification of the subdivision. They are asking this to be classified as a minor because it is basically moving the one lot line over ten feet. If they classify it as a major it just entails making a County application, which takes about three or four more months, costs more money, you have to post monuments and it is just more of an arduous task for something that is really a minor subdivision.

Mr. Manfredonia asked Mr. Hubschman if he is able to comply with the requirements in Appendix A in Mr. Azzolina's memorandum. Mr. Hubschman noted that he could. They are all pretty straight forward comments. They are asking them to add shade trees, which of course they would. Most of the others are mostly engineering

items. It talks about the minor subdivision approval, if it is classified as a minor, they would submit deeds for signature rather than doing a map.

Mr. Manfredonia asked Mr. Hubschman, in his opinion as a planner, if the Borough were to grant the subdivision, would that further the purpose of the Municipal Land Use Law and Zoning Plan. Mr. Hubschman stated that this is a hardship due to the existing size of the properties, and it does advance the purpose of zoning, provides adequate light, air and open space, it enhances the values of the neighborhood, of course, by putting two new homes there. Mr. Manfredonia asked if the two-car garages would minimize the impact of parking on the street. Mr. Hubschman noted that you really couldn't park on the curve, but the driveways are 40 feet long too so there is plenty of parking, even for guests. Mr. Manfredonia asked Mr. Hubschman, as a planner, would the benefits of deviating from the zoning requirements outweigh any detriments that may be imposed. Mr. Hubschman stated that he thinks that it provides for a house that is in keeping with the rest of the neighborhood. The side yard is a big variance but you really couldn't build a 20-foot house. It would just make a terrible appearance on the neighborhood. Mr. Manfredonia asked if the variances that they are seeking substantially impair the intent and purpose of the zone plan. Mr. Hubschman noted that there is no negative. There is no increase in traffic. They are two single-family lots now. It is a totally new development. It will have no negative impact on the traffic, on the drainage, on light, air and open space. They are surrounded by green area on the right. There is new fencing and new landscaping on the property so it is definitely not a detriment.

Mr. Manfredonia called his next witness. Mr. Chris Blake, 130 County Road, Tenafly, was sworn in by Mr. Schuster. He was accepted as an expert in architecture. Mr. Blake stated that they are proposing two single-family houses. Each house is very similar in their size, shape and zoning characteristics. Each house is 30 feet wide. Each house is approximately 59.4 feet deep. The total footprint of the house is 1,671 square feet, a portion of that being the garage. Mr. Schuster marked the architectural plans as Exhibit A2. The first floor footprint is 1,260 square feet, the garage space being 458 square feet, leaves them with 1,241 square foot footprint on the first floor. They have approximately 1,196 square feet on the second floor. Together the house is 2,437 square feet of livable area. The houses both meet the FAR requirements. They fall within the lot coverage requirements of the properties.

The houses themselves have a two-car garage in the front of each house with a foyer on the side. Towards the rear of the house is family room, a kitchen and a dining room. Everything is somewhat of a modest size. The family room is 15 x 20, the kitchen is 12 x 13, the dining room is 14 x 15, the garage is 20 x 22 and there is an 8 x 22 foot deck on the rear. There is one single bathroom on the first floor. On the second floor there is proposed four modest size bedrooms anywhere from 10.4 x 16, 11 x 14, 12 x 11 and the master being about 15.8 x 14. There is a master bathroom and a shared bathroom. There is a small laundry room as well. There is a full basement that is wide open at this point, obviously with a mechanical room. The houses are similar in character to the houses that are there now.

Mr. Schuster asked if there are steps up from the garage to the first floor foyer. Mr. Blake noted that there will be about three or four steps up from the grade to the main house. The house will fall within the height criteria. The exterior of each house has some subtle differences. There is a one story entry on one of the houses with a modest little front porch in the front of it. There are a couple of peaks in the front to break it up and step it so it has a variation of appearance, not just a flat board. They are talking about vinyl siding and shingles on the roof to match the existing houses in the neighborhood. The second house has more of a two-story foyer look with an arched top window over the front door. There are couple peaks but not as busy as the other one. A little bit more subtle and there is a little more stone work but predominately vinyl siding and materials that match the neighborhood.

Mr. Galdi asked if the chimney was encroaching within the ten foot sideline or is it recessed inside the building. Mr. Blake noted that it is encroaching in the sideline but it is not a problem to push it into the building. Mr. Azzolina noted that that is a permitted projection and it is not counted as long as it is less than two feet. Mr. Mozur asked about the FAR. Mr. Blake noted that the FAR required is 39% for the property. They are proposing 38.9%. Mr. Manfredonia noted that the design of the front of the houses was not going to be exactly the same so they won't look like a cookie cutter. Mr. Blake agreed and noted that it is still a challenge with a two-car garage and a foyer and a 50 foot property, but they do have different peaks, they have different windows and the front doors are different with one having a small porch and the other a more grand two story look with an arch type

window over the door. They will be different colors and slightly different textures and things like that to make them look different as well.

Mr. Schuster asked how many square feet the house next door to this property was. Mr. Hubschman noted that it is very similar but he did not know the square footage. Mr. Morgan asked about the water table and if it was a problem. Mr. Hubschman noted that it could be a problem but he is not sure. The house that was already knocked down had a basement in it.

Mr. Manfredonia was done with his questioning of the witnesses.

Mr. Morgan questioned Mr. Schuster about the minor/major issue. Mr. Schuster noted that our code provides that we can issue certain conditions. There are two conditions and one is the extension of utilities, which doesn't apply here because we have existing lots that are developed. The second issue is if it requires a variance. In this specific situation, even though we have two non-conforming lots, we are changing them around. In other words, at the end of the day, we are still going to have two non-conforming lots, one will be slightly more non-conforming and one will be slightly less. Based on the fact that there is going to be a variance requirement, we treat it as a major. We have in the past, granted waivers from some of the technical aspects. Since there is a public hearing, the big difference between a minor and a major is certain technical requirements dealing with the preparation of the site plan, the plats and all these types of things. From the standpoint of a public hearing, there really is no difference. The paperwork is somewhat different.

Mr. Laurita asked if the initial thing was to break the piece of property that is there right now. Mr. Schuster wanted to clarify one thing. He noted that one of the questions that was asked was whether or not there was a merger of title of the two properties. He has been supplied with a memo from council as well as some of the copies of the deeds and apparently they were transferred into different entities. They were related entities, but not the same, so therefore, under case law and statutes, it is not a merger of title. So, basically, all they are doing, at least from the standpoint of the subdivision, is taking a little bit of this lot and putting it onto that lot. Mr. Laurita asked if they were really not merging lots. Mr. Schuster noted that there was no merger at all.

Mr. Laurita noted that it seems to him that what you are doing is getting fragmented property here, building smaller facilities in the town and you don't want to do that. Mr. Schuster noted that basically what you are doing is you have two existing non-conforming lots. What you are doing is making one slightly more conforming and one slightly less. You have a 60 x 180 and a 40 x 180, so the non-conformity is the frontage of the lot or the width because the depth is an excess. What you have in this zone is a lot requirement of 10,000 square feet and these lots are 9,000 square feet, so really it is the width that is the big issue here. As far as the overall square footage, the non-conformity is relatively small.

Mr. Laurita stated that if he had a piece of property that is 15,000 square feet he could put a bigger house and take more of that land and then build a smaller house as long as he is within certain constraints. Mr. Schuster noted that one of the other issues that may come into play here, which has not really been addressed, but he will throw it out just for the information, is that one of the other theories behind the Land Use Act is that once you remove a non-conforming structure or use, it therefore is extinguished, which is another reason they are here. The argument could be made that it shouldn't be permitted because of the fact that is not a partial destruction of the property, it is a total demolition and therefore, they have to come in and explain all the technical requirements of why they should get the variance and, of course, that is why they have the engineer and planner here to testify about that.

Mr. Manfredonia noted that they do have two separate lots that are going to be, after the subdivision, 50 x 180, so that the variances are equally spread between the two lots. They obviously knocked down Clarence's house because it was condemned. On the minor vs. major issue, the applicants wish to seek a waiver of all the major subdivision requirements so that they can proceed as if essentially this is a minor subdivision. He could have Mr. Hubschman speak to that further if the Board wishes to hear that.

Mr. Vieni asked about the difference in the definition of the application to these two, meaning if you apply for a major you would have more paperwork. Other than the paperwork, is everything similar and the same. Mr. Schuster noted that there is more substantial engineering work when it is characterized as a major and Mr.

Hubschman is going to testify as to what is required. Normally for a minor you wouldn't even need a hearing. Because it is characterized as a major and he needs variances, that is why he needs a hearing, so in that sense, the notices to the public should be the same. The plans are not quite as detailed for a minor as they are for a major. Mr. Vieni asked then if it is more procedural for a major than a minor. Mr. Schuster noted that as far as the public is concerned, there really is no difference. As far as the detail and the level of the work that goes into the types of plans, that's more detailed. He is not sure that it is necessary in this case. These are existing building lots that have existed since 1869.

Mr. Hubschman noted that if this was a major subdivision his plans would be called a preliminary plat, and a minor subdivision has its own requirements. For a major the final plat would be the property plat. Mr. Hubschman briefly went over the requirements for a major subdivision. A. Submit ten plans to the Borough Clerk. B. applicant shall notify by registered and certified mail at least 5 days prior to the hearing all owners of property within 200 feet. C. Copies of preliminary plat shall be sent by the Borough Clerk to the secretary of the County Board, the Borough Engineers, the Board of Health and any other boards as required. D. The County Planning Board shall submit a report. (This is not required under a minor). G. At the hearing the Planning Board shall take into consideration all information and factors. H. Timing. I. Planning Board when reviewing applications for subdivision shall have the power to grant the variances. K. Good for three years.

Map Requirements: A. Key map showing the tract, tract name, tax map sheet, block and lot number (they always have this information on their plans). B. Name and address of record owners. Name and address of subdivider. Name and address of person preparing map. C. Tentative block and lot numbers. D. Acreage of tract to be subdivided (they always put in general notes). E. Center line profiles for new streets (not applicable) and land contours at 2 foot intervals for entire property (on second sheet).

Mr. Vieni stopped Mr. Hubschman and noted that the basic difference is County Planning Board approval. Mr. Hubschman noted that and the final plat and the setting of monuments. Mr. Vieni noted that as far as he was concerned, he said enough.

Mr. Vaccaro opened the meeting to the public. No public was present. Mr. Vaccaro closed the meeting to the public.

Mr. Schuster noted that we have three distinct applications and will vote on the three applications individually.

Mr. Galdi made a motion to approve Application #1386M. The motion was seconded by Mr. Vieni. Mr. Vaccaro wanted the Board to consider one thing. The basic intent of our zoning law is to update them. He realizes that there are two lots there that have already been subdivided, but there is a chance for them to become one conforming lot. That is the only question that he has in his mind.

On Roll Call: Mayor Romeo agrees with Mr. Vaccaro that we are going against our zoning ordinances by allowing the continuation of the two 50 foot lots by taking a 40 and a 60 and making them into two 50s, but he thinks we have to be practical here and if you merge them into one lot, you are basically making the property unsalable. Even though that is not our problem, it is our problem, because what is going to happen is it has now been made too expensive for a builder to build on, and the area that is there does not warrant a million dollar house so he is never going to sell it and all we are going to have is an overgrown 100 x 180 foot piece of property, which the Borough could end up buying some time in the future. But the fact is, the gentleman paid for the properties, he is entitled to improve them and if you look at Allen Street from 10 years ago to now, basically every house has either been built over, knocked over and rebuilt or renovated and this would be the completion of the last two houses. He thinks what he is requesting to do at this point is to get two 50 foot lots to build two more houses on and clean up that last corner. Mayor Romeo votes yes to allow the 60 and the 40 into two 50s. Mr. Vaccaro agrees with the Mayor and he does have reservations because it could be one lot. But basically speaking he would have to agree that with the cost of the land and everything and the way things are today and realizing that you can build on a 60 and a 40 if you wanted to, so he would rather see two 50s than a 60 and a 40 and he voted yes. Ms. Bauer voted yes. Mr. Galdi voted yes because he thinks it would improve the neighborhood in conjunction with what they have now. It would upgrade even though he would like it to be a 100 x 100, he feels as though two 50s would be more in standard with everything else in that particular area. Mr. Morgan, Mr. Mozur, Ms. Tsigounis, Mr. Vieni and Mr. Laurita all voted yes. Motion approved.

Mr. Laurita made a motion to approve Application #1387, 37 Allen Street, seconded by Mr. Galdi. On Roll Call: Mayor Romeo would like a stipulation put in there that since it borders on school property that they put a six foot fence across the back and separate that from the school yard. Mr. Manfredonia agreed. Mayor Romeo voted yes. Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan, Mr. Mozur, Ms. Tsigounis, Mr. Vieni, and Mr. Laurita all voted yes. Motion approved.

Mr. Galdi made a motion to approve Application #1388, 41 Allen Street, seconded by Mr. Laurita, with the same stipulation for the fence. Mr. Manfredonia agreed. On Roll Call: Mayor Romeo would like the fence to continue on this second property. He noted that they now have 180 feet of property that borders on municipal land. He would like to see it separated somehow so there is no doubt that when kids walk through there they are not walking on their property, either bushes or a fence. Mr. Hubschman thinks that something going from six feet to four feet would be OK. Mr. Manfredonia thought that is a good recommendation and agreed. Mayor Romeo voted yes. Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan, Mr. Mozur, Ms. Tsigounis, Mr. Vieni and Mr. Laurita all voted yes. Motion approved.

New Business

None.

Other Business

None.

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

Motion was made by Mr. Galdi to adjourn the meeting at 8:44 PM, seconded by Mrs. Schultz. All present were in favor. Motion approved.

The next four regular Planning Board meetings are scheduled for Tuesday, December 8, December 22, 2009, January 12, and January 26, 2010, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary