

MINUTES

CRESSKILL PLANNING BOARD

MAY 28, 2013

Mr. Vaccaro opened the meeting at 7:40 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. Vieni, and Mr. Calder. 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 May 14, 2013, meeting. The motion was seconded by Mr. Morgan. All present were in favor of the motion. Motion approved.

Correspondence

None.

Subdivision Committee

Councilwoman Tsigounis had nothing to report.

Report from the Borough Engineer's Office

Mr. Azzolina reported that he received, via e-mail, a revised plan for 236 Grant Avenue, Application #1432, that addressed the majority of his comments. There are still a couple of minor things that he will discuss with them. They also have their soil movement Soil Conservation District approval that is still outstanding. If they get that within the next couple weeks, we will be able to formally approve that application.

Mr. Azzolina had sent via e-mail to Mr. Lavon, as well as his professionals, his review comments for 79 Cedar Street, Application #1431. He distributed the report to the Board members. As the Board is aware, the primary issue was relative to the neighbor's garage access. Mr. Lavon and his attorney, Mr. Mark Maryanski, were present. Mr. Azzolina has had several conversations with Mr. Lavon in that regard. Mr. Lavon has been attempting to communicate with the neighbor, but unsuccessfully to this point. Mr. Guenther was supposed to be present at this meeting but he was not in attendance.

Mr. Azzolina noted that relative to the plan, there are some relatively minor technical comments which are enumerated in the memorandum. The major issue is the driveway. Mr. Lavon noted that he tried to meet with Mr. Guenther and discussed moving the driveway to the left side of the house where it would fit. If they do that, they would not have to go for any easement. Mr. Vaccaro noted that Mr. Lavon has been calling Mr. Guenther every day and he has been in the Borough Hall every day looking to speak with Mr.

Vaccaro. Mr. Guenther is saying one thing and Mr. Lavon is saying something else. Mr. Guenther is telling Mr. Vaccaro that Mr. Lavon told him he has to get the easement. Mr. Lavon denied that. Mr. Lavon doesn't want to get the easement. What he told Mr. Guenther on Wednesday is let's try to see how we could solve this. Mr. Guenther told him he does not want to discuss it anymore. Everything is going to be dealt with at the Board. He called him twice a day from Sunday to Friday and he did not return his calls. Today he rode there to try to find him and no one was there.

Mr. Lavon suggested moving the driveway to the left because they have 20 feet. Then they don't need the easement. Mr. Azzolina has a few ideas, but Mr. Guenther isn't present to discuss it. Mr. Lavon stated that Mr. Guenther did not want to speak with him and that everything is going to be discussed at the Board. Mr. Mark Maryanski, the attorney for Mr. Lavon, noted that the different options available as far as the easement, is the easement to them and to the Borough, is the least attractive option. There was some discussion after the last meeting between Mr. Lavon and Mr. Guenther about him buying the portion of the property to accommodate his driveway where it is. That didn't get anywhere. It seems that the best option from everybody's standpoint is to have his own driveway on the other side of the house. There is room to accommodate it. There is no easement required to encumber Mr. Lavon's property, which would diminish the value of Mr. Lavon's property. The impervious coverage would probably be a wash for Mr. Guenther.

Councilwoman Tsigounis asked about the access to the garage if the driveway were on the other side. Mr. Maryanski noted that the door would have to be moved from where it is now to the side. Mr. Azzolina noted that in anticipating this discussion, he prepared some rough sketches of what they are talking about. Alternate A is the five foot, plus or minus, wide easement, basically running from the street line up to the garage. The second option was the purchase of the strip of land, which assumedly would run the entire length of the depth of the property, but that would then entail another application, a minor subdivision application, involving the two parties and assumedly there would have to be some exchange of consideration there. Mr. Lavon noted that the five feet line would end in the middle of his garage on his property. He asked Mr. Guenther why he needed five feet. He thought he could use just two feet.

Mayor Romeo asked if he bought three feet, he would assume that Mr. Lavon would be tearing the rest of it out and there would be just a lawn there. Mr. Lavon agreed. Mr. Azzolina agreed that five feet is being generous, that would give him a 12 foot wide driveway. Mayor Romeo asked what the maximum Mr. Guenther would need to make this work. Mr. Azzolina noted that five feet would be the maximum he would need. The minimum he would need to confirm. Sometimes the surveyors have different opinions so basically to make sure that the two surveys make sense, it would make sense for Mr. Lavon's surveyor to confirm the offsets that are shown on the other survey from about 20 years ago to make sure we are talking the same dimensions. If the dimensions are correct, approximately two feet would be the minimum and up to five feet would be the maximum and you would just make sure that driveway fits. It is still going to be a little tight.

Mr. Lavon just wants to make clear to the Board that he told Mr. Guenther that he has no problem if he drives there with no easement. He doesn't know how he presented it but he told him, don't worry about it, he is going to leave him enough space and it is going to stay the same as it was 30 years before. Mayor Romeo asked him how he was going to sell it. It is not a problem as long as Mr. Guenther and Mr. Lavon own the properties, but it is the next two owners that will have a problem. We need to solve it now while it is in front of us. Councilwoman Tsigounis stated that you can't not deal with it now and it is not right to make him move his driveway to the other side and go through the expense of entering his garage in another way. The only way she sees it is all five feet only for the reason that maybe the driveway is nine feet but maybe there is a planting shrub or something to make Mr. Lavon's property look nicer. You want to have the best of both worlds and to have the driveway come right up the property line without some kind of buffer might not be desirable. The property is 75 feet wide. It is not right to develop the property and force Mr. Guenther on to this additional expense. She doesn't feel it is right to make him pay for this. Mr. Guenther did say at the last meeting that he was willing to buy the property at a fair price.

Ms. Bauer suggested taking a fraction of the assessed value to determine how much the land would cost. Mayor Romeo agreed that there has to be some kind of formula based on the square footage and the

assessed value. Mr. Vaccaro stated that first Mr. Guenther said he wanted to buy it and then he said he doesn't want to pay for it. Mr. Maryanski stated that to be fair, right now he has no legal right to use that property. It's not fair if Mr. Guenther gets something for nothing if he doesn't pay for that property. It is not fair to Mr. Lavon either, whether it is an easement or buying a portion of the property.

Mr. Vieni asked if there is someone else in Mr. Guenther's family that can get involved. Mr. Vaccaro didn't think there was. Mayor Romeo noted that they have to get Mr. Guenther down here and present him with some solutions. He asked Mr. Schuster if he would sit with him and guide him a little bit. Mr. Maryanski asked if Mr. Guenther was going to pay for the land, wouldn't it make more sense for him to pay for a driveway on the other side of his house? Mr. Azzolina noted that he has several alternatives that he will review with the Board.

Mr. Azzolina explained that currently the existing garage is a one-and-a-half car garage. There is only one garage door, but it is an oversized garage so he has storage on the right side of the structure. The garage door proper is on the east wall of the building. If you were to relocate the driveway and maintain the existing garage, you could move the door, but it is not a square building so the dimension north-south is not as deep as it is east-west, so that is not the greatest thing if you have an oversized vehicle. That would entail modifying the structure, which, quite honestly, it is kind of an old structure so it may or may not withstand that modification. In order to do that, Mr. Guenther's property is pretty steep in the back, so it would entail some retaining wall construction. There is obviously a cost element not yet defined that would be associated with that proposal. The other proposal would be to put in on the back of the building, this way you maintain the current orientation of the garage. It would be just flipping the door from the front of the garage to the back of the garage, but that would necessitate even more encroachment into the slope, more retaining walls, longer driveway, so that, most likely, is a more costly alternative, but it maintains the existing configuration of the garage.

Another option would be to construct a new garage, more or less at the back of the existing dwelling. Once again, you would have to extend the driveway, build a new garage and then probably do some retaining walls closer toward Cedar Street because it is pretty steep at the beginning of the property. The existing driveway on the other side, and the reason he is saying you may need more than five feet, is just to maneuver into that existing garage. He doesn't even know, necessarily, without seeing it on paper, that the five feet is even adequate. That remains to be determined.

Perhaps what might be the best solution here is to build a new garage at the front of the structure, which would then reduce the new driveway length. It is permissible under our code for steep slope areas such as this. If you have an existing grade in the front of your property that ranges from 12 to 20%, which his rough calculation on the other side of the property indicates that it does, that it is probably around 15 or 16% on this side of the property, you are permitted to build an accessory building ten feet from the street line. That would theoretically fit. Yes, you are going to be paying for a new building. Sometimes it is easier and cheaper to build a new building than it is to mess with an older building and your driveway length is much reduced. You are probably going to still need a couple retaining walls three to four feet high in the right of way area, but then you are pulling right into the garage with a short driveway length.

Mr. Galdi stated that that sounds a lot more expensive than him paying for a few feet. Mr. Azzolina stated that it all comes down to what, in his mind, he was willing to pay. If in his mind he was willing to pay \$20,000, he will have to decide what to spend it on. Mr. Galdi stated that if you are building a new garage, putting walls, now look at your expenses. He doesn't think he is going to do it. Mr. Azzolina has no idea what Mr. Guenther's number is. There are a number of ways to approach this. Mr. Galdi asked about changing the entrance. If you put the door on the side, is the garage long enough to accommodate a car. Mr. Azzolina stated that minimally it will if it happens to be a small car. There happens to be a small car in the garage right now and most likely it will fit. Obviously it limits the next buyer.

Mayor Romeo noted that we have to find out what Mr. Guenther is willing to pay and find out prices for all of these options. Mr. Vaccaro said that we have to sit with him again and tell him that he said he was willing to pay for this and give him the options and what they would cost. Mr. Azzolina noted that there would be additional costs involved if he were to buy the piece property in order for it to be recorded

because there would have to be a subdivision. Mr. Vaccaro noted that the question would be if Mr. Guenther all of a sudden says that he doesn't want to pay for this. Where do we go from there? Mr. Galdi thinks that he may now feel like he is going to want to be paid for his inconvenience. Mr. Schuster also doesn't think Mr. Guenther will come up with a penny. Mayor Romeo said that Mr. Guenther did say that he would buy the piece of property at the last meeting. Mr. Maryanski noted that he is not going to get something for nothing. He is going to pay for whatever rights he gets. Mr. Galdi feels that the cheapest and best way out of this is for him to realize that if he still wants to have his driveway where it is, he needs to pay the man for his property and then you don't have to build a new garage or go through walls and all this other stuff. You can't have it both ways. Just because he had the use of it for 50 years doesn't mean that he owns it. If he wants it, he has to buy it. That's his best way out.

Mr. Maryanski stated that if you compared the cost, he may want to build the garage. If he wants the easiest way out, he would want to buy the property. Mr. Galdi stated that you have to come up with a fair price. Mr. Schuster said that the cheapest way is an easement. Mr. Maryanski noted that then you would have an encumbrance on the property. They figured out that the price of the property is approximately \$119 per square foot. If you buy five feet, it would be about \$60,000. Mr. Schuster noted that that would increase the assessment of Mr. Guenther's property also.

Mayor Romeo asked Mr. Schuster if we could grant an easement for the life of Mr. Guenther and then it would revert to Mr. Lavon. Mr. Schuster stated that you could have an encumbrance, but it would be of a limited duration. Mayor Romeo noted that if it was done this way, as soon as there is a new owner, even if it was a family member, the easement goes away. Mr. Lavon noted that Mr. Guenther would never go for that because he offered it to him for free, just drive on the property, and Mr. Guenther said no. What happens when he wants to sell it? Mr. Lavon changed the plans and left him on the side 20 feet to accommodate him. Mr. Maryanski asked if they do an easement and say until Mr. Guenther dies, aren't you back to the same problem you have now. Mayor Romeo stated that you are helping an old man, and you have a businessman that wants to thrive in the town, which we want, and then nobody get hurt, but then eventually, whoever buys it, they have to know that they have to get their own driveway because this is not an option anymore.

Mr. Schuster noted that the easement they did on Broadway stated that the easement is extinguished when the neighboring property gets redeveloped. Mr. Lavon wanted to know how they were going to get a meeting together with Mr. Guenther because he has not been able to speak with him. Mayor Romeo stated that he will set up the meeting. Mr. Maryanski stated that if Mr. Guenther thinks he is getting something for nothing, we have a problem. Mr. Schuster noted that the cheapest and easiest way to do this is with an easement and have it extinguish. You would have to establish whether it will be his life or transfer of title to somebody else. Mr. Morgan asked if that paper would be put on his deed. Mr. Schuster noted that it would be recorded. Mr. Schuster stated that they are conveying their interest to Mr. Guenther. There is an encumbrance on that property, which is the easement.

Mayor Romeo explained that they have to get Mr. Guenther in a room and explain to him that no one is trying to take advantage of him, but the laws have changed and they have to accommodate each other. He will give him all the alternatives with a ballpark amount of what each would cost. Mr. Morgan asked if there was anything in there for him to use that driveway for nothing like he has been for all these years. Mayor Romeo said he could do that, but the owner of the property is refusing to do that.

Mr. Schuster noted that once Mr. Guenther receives the benefit of the easement, it increases the value of his property and reduces the value of the property next door. It will increase the taxable value of Mr. Guenther's property. Mayor Romeo noted that Mr. Guenther wants a piece of paper that he signs from the town saying that he can use that piece of property. He thinks the town is going to protect him. But the town has to protect Mr. Lavon as well. Mr. Galdi stated that the town can't give away Mr. Lavon's property.

Mr. Maryanski noted that they had another idea. If Mr. Guenther doesn't want to lay the money out to purchase the property, they can work something out where Mr. Lavon will give him a mortgage on his property in lieu of paying for the property and when he dies, he would be paid off. Mayor Romeo will talk

to him. Mr. Lavon asked if they had to prepare an offer from their side with their offers. Mayor Romeo will talk to him and see where they stand and then contact Mr. Lavon. He will have to explain everything to Mr. Guenther. Mr. Galdi noted that you can't say that Mr. Guenther can keep using the property and then all of a sudden Mr. Lavon sells the property and then he will have a problem with the buyer. The only way is to deal with it now. You have to come up with a fair price. Mr. Maryanski thinks that Mr. Guenther is under the notion that he is not going to pay a dime for this easement. Mayor Romeo will sit with him and explain what has to happen because of the law. He will advise him to get an attorney to advise him to get this resolved.

Mayor Romeo noted that there are five of these same conditions on Palisades Avenue. Mr. Vaccaro noted that we are in a predicament. Mr. Lavon owns that piece of property. There is nothing in the deed that says it is a shared property. Mr. Guenther has to accept one of the scenarios or negotiate a seven foot driveway at the narrowest point that is on his property. Mr. Vaccaro asked Mr. Lavon a simple business question. Say the property is worth \$30,000. Would he be willing to split the cost with Mr. Guenther? Mr. Maryanski said that Mr. Guenther has to understand that he can't use the Board to force Mr. Lavon to give him something for nothing. Mayor Romeo agreed that that is not what is going to happen.

Mr. Azzolina noted that once he takes care of the other items in his memo, plus the driveway issue, which is the last item in his memo, the plan can be approved. In his memo Item #22 reads as follows: "In accordance with the comments offered by the Planning Board at the May 14, 2013, meeting, reasonable accommodations shall be made by the Applicant to permit the adjoining property owner (Walter E. Guenther, Block 54.01, Lots 73 & 74, #73 Cedar Street) to maintain the common paved driveway access along the southeasterly limits of the subject property via Easement Agreement or future Minor Subdivision application; or to mutually cooperate with the adjoining property owner in the construction of an alternate driveway access to the existing garage structure or any new (replacement) garage structure, which improvements may be wholly located on the adjoining property (i.e., Lots 73 & 74). The Applicant is therefore asked to apprise the Board as to the current status of any negotiations with the subject property owner in this same regard. A note describing the resolution of this matter shall be added to the Plan once a final determination has been made in this regard."

Mayor Romeo asked what the cost would be to purchase the piece of property at five feet and at three feet. It was determined that at five feet for approximately 80 feet back to the garage, it would be about \$48,000. At three feet it would be \$28,800. Mr. Maryanski noted that they have no problem with any of the items in Mr. Azzolina's memorandum, including the last one. Mr. Schuster stated that it would be conditional on working the driveway issue out. Mr. Azzolina agreed with that. Ideally, he expected Mr. Guenther to be here tonight. Mr. Maryanski asked, if it is conditional on working this out, what if it can't be worked out? Mayor Romeo will keep trying to get in touch with Mr. Guenther to get this resolved. Mr. Lavon asked if this is going to be resolved this week, can they get their approval before the next meeting. Mayor Romeo stated that we need to get something in writing. Mr. Schuster said that we need a recordable document in hand or all bets are off. Mr. Vieni asked if the other points in the memo can be taken care before the next meeting. Mr. Lavon stated that they would be taken care of before the 11th.

Old Business

None.

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 8:30 PM, seconded by Mr. Morgan. All present were in favor. Motion approved.

The next four regular Planning Board meetings are scheduled for June 11, June 25, July 9, and July 23, 2013, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary