

# MINUTES

## CRESSKILL PLANNING BOARD

JULY 12, 2011

Mr. Vaccaro called the meeting to order at 7:35 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, Mr. Laurita and Mrs. Schultz. Also present were Mr. Jason Pitingaro, Borough Engineer (in for Mr. Azzolina) and Mr. Steven Schuster, Board Attorney.

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Mr. Galdi made a motion to approve the minutes of the June 28, 2011, meeting. The motion was seconded by Mr. Morgan. All present were in favor of the motion. Motion approved.

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### Correspondence

Book from Urban Planning on cycling. Given to Ms. Bauer.

Resolution for Application #1409, Mr. Kipperman, 15 E. Madison Avenue. Mr. Galdi asked what the hardship was as stated on Page 6, Item D. Mr. Schuster explained that the hardship is that they wouldn't be able to develop the property. It is a dilapidated piece of property and he is going to upgrade it and those are the reasons. Mr. Galdi asked how you can upgrade or enlarge a non-conforming use. Mr. Schuster noted that the use is a conforming use, but one of the variances is going to be made worse by about a foot-and-a-half and the other is going to be made better by about a foot-and-a-half. His understanding of the ordinance is that they have to have a minimum of 1,500 square feet for that building in that zone and they only have 1,400 and change. He listed that as a variance as well. Mayor Romeo noted that every store on Union Avenue no one could re-occupy because no one has enough parking and we would have a ghost town, so we have to give them the variance.

Mr. Laurita stated that they are going to enhance the corner. Mr. Schuster noted that we could pass this as a Special Circumstance C variance. Mr. Galdi stated that that is exactly what he is talking about. By doing that, you eliminate the next guy from coming in and claiming the same hardship again. This was granted under special circumstances. Nobody showed up to oppose. That is what should be listed for something like this, a backup of what you did and why you did it. Councilwoman Tsigounis suggested just removing the word "hardship." Everyone agreed that removing the word hardship would solve the issue.

Mr. Galdi made a motion to approve the resolution, with the correction. The motion was seconded by Mr. Laurita. On Roll Call: Councilwoman Tsigounis, Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan, Mr. Laurita and Mrs. Schultz all voted yes. Motion Approved. The original resolution shall become a permanent part of these minutes.

Voucher from Mr. Steven Schuster for services rendered relative to the Cresskill Planning Board for the month of June 2011 in the amount of \$1,982.38. Motion by Mr. Vieni to approve, seconded by Mrs. Schultz. All present were in favor. Motion approved.

Vouchers from Hakim Associates for Planning Board consulting for \$390 and \$910 for the period 6/1/11 – 6/30/11. Job No. 0504 covers coordinating with the Borough, coordinating with ANJEC and reviewing draft ANJEC contract in the amount of \$390. Job No. 0501 covers coordinating with the Borough, preparing a letter to NJDEP, visiting Hillside Avenue and Cresskill Avenue properties in the amount of \$910. Mr. Morgan asked if these bills were reviewed by anybody in the office. Mayor Romeo stated that the ANJEC one has because we are getting grant money to pay for this. The other one he did go look at these properties because two people came in and said they wanted to sell their properties. Mr. Galdi made a motion to approve, seconded by Mrs. Schultz. All present were in favor. Motion approved. Mr. Schuster asked if we could get that money back or take it from Open Space. Mayor Romeo stated that we could do that.

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### **Subdivision Committee**

Councilwoman Tsigounis had nothing to report.

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

Mr. Jason Pitingaro was present for Mr. Azzolina. He had the report for Mr. Spasso. He distributed reports to everybody. Mr. Pitingaro explained that they provided everything that they have asked for. They included the planters they will be providing and the shrubs that they will be planting. There is no wall. The planter is 16" high with a 36" high shrub inside it. The planter is fiberglass. It is about 20-30 lbs. and each will be filled with soil so they will be about 60-80 lbs. There are a total of nine of them. The cops are OK with that. Mr. Galdi noted that these would be about 52" tall and it was more for a visual barrier. Mr. Pitingaro noted that visually it definitely will provide what the Board is looking for. It is not going to provide a physical barrier to a moving vehicle. Mr. Galdi noted that that was never our intention.

Mr. Pitingaro also stated that there was also an issue of site distance and that turned out to not be an issue. If you are at the site and you pulled up to the stop bar, there is no way you can see to the left. You have to inch forward anyway, beyond where the seating is going to be. Mr. Galdi stated that this is an extra precaution because if cars get both green lights, they are moving past this spot and if they see someone eating out there, they might stop and someone behind them might not stop because they are too busy watching the diners. Mr. Laurita asked if this was considered safe. Mr. Pitingaro noted that as far as a vehicle protection, it is not, but that is not what they are looking for. He thinks this benefits the diners too. It gives them some privacy.

Mayor Romeo stated that we don't really have to vote on this. Mr. Schuster noted that they just came here for information purposes. This is for aesthetics. Mr. Pitingaro noted that this letter is to Mr. Rossi so he can go ahead and issue him his permits. Mr. Vieni stated that even though we don't have voting approval on this, he wanted to say for the record that he is against it. He is not against the tables outside, but just because of the location of the road, the volume of traffic, and he thinks it is a real high risk area. He would like to state that for the record. He really doesn't have a good feeling about this situation.

Mr. Galdi noted that that is what brought up the question of the barrier, because we all had that question of how safe is it on the main artery. Rather than nothing, we went to this. The alternative to this is that he can't have tables. Mr. Vieni noted that he doesn't know if we have the authority to do that. For the record, he is total against this. He is not against the tables, but the location of them relative to the road.

Mr. Pitingaro noted that he has the issue that is ongoing on Beechwood. They took a look at the plans. Basically they provided generally what they initially asked for, the existing conditions, the topo, the ground elevations at the front of the building, etc. The issue is going to be what the Board is going to consider, if anything, as existing there. The one wall there that remains, which doesn't meet the side yard set-back,

are you going to consider that as remaining, or the left wall that is demolished, he guessed the Board is not considering that remaining any longer. Councilwoman Tsigounis noted that the whole thing is demolished, it is over 50% demolished. Mayor Romeo noted that they knocked the whole thing down and then put it back up before we got there.

Mayor Romeo asked about the basketball courts. Mr. Pitingaro noted that the posts were incorrectly set, but have been correctly reset. The sidewalk is complete, the benches are complete, the bleachers are complete, the sub-base course for the pavement was installed today and they should be paving the court tomorrow. The light bases were put in today. The lights are on site. By the end of next week, the majority of the basketball court will be complete, maybe minus the coloring and the light probably will not be on because they are waiting for Rockland Electric.

Mayor Romeo asked about the walk. Mr. Pitingaro noted that the walk from the street to the court is a concrete sidewalk. That is done. It has to be something that is handicapped accessible. It actually works out very well. The way the sidewalk is set it meets right at street grade and you can basically roll onto the court. There are no fences around the court. They are continuing with the application for the walking track and the bridge. Mayor Romeo wants to push that next.

Mayor Romeo asked about Allen Street. Mr. Pitingaro stated that they are waiting on putting together a schematic for the different alternatives for the utility relocating. They have some ballpark estimates, but the total underground relocation is somewhere in the neighborhood of \$1 million. Mr. Vaccaro stated that there is more they would like to see to decide which way they want to go and what the cost is going to be. Mayor Romeo requested that they bring the information to the next meeting.

Mayor Romeo noted that the walking track has to be wide enough for a bike. He wanted to know how wide that would have to be. Mr. Pitingaro thought that eight feet would be wide enough. He spoke with one of the guys that was working on the courts now because they are doing a walking track in Woodland Park. He recommended that we don't use stone dust because it is going to become overgrown. He thinks the only real thing that you can use that is going to be durable, and especially if you want to use bicycles on it, is going to be asphalt. Mayor Romeo asked if we could put asphalt that close to the water. Mr. Pitingaro noted that you would need specific permits for that and stated that they are working on that. The wetlands will also need to be re-delineated in that area. Mayor Romeo asked him to tell Mr. Azzolina that he wants that done.

Mayor Romeo asked about the pavilion. Mr. Pitingaro noted that they have several mock-ups ready to go. All they need to do is decide on a package, what pavilion the town wants. They have a plan in place that is good for a 34 x 52 foot pavilion. Mayor Romeo noted that they need the information for the first meeting in August for the COW meeting so they can decide at that meeting which model. Mr. Pitingaro also mentioned the estimates for the soil testing in that area. Mayor Romeo told him to do it and get that going. He wants the pavilion in by September.

Mr. Pitingaro noted that the bridge is part of the walking track. He stated that if you are making an application to the DEP, you would include that and do it all in one shot. Mayor Romeo also requested that they start mocking up a parking area on Third Street, diagonal in. Also make plans for how many bushes they are going to need, because the guy across the street is going to start complaining. They may need a planting of some sort around the courts. Mr. Pitingaro noted that there is screening around the electrical control so they can continue that on. Mr. Morgan asked if the courts were fenced in. Mayor Romeo noted that they were not fenced in. They are going to try it for 60 days without being fenced. If it comes to be a problem, they already have prices on fences and they can be put up in a matter of a week.

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### **Old Business**

None.

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**New Business**

None.

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**Other Business**

Mayor Romeo wanted to discuss Beechwood Road. He noted that the guy came in for an addition to a house. What happened is it is a 75 foot lot, is 15 feet on one side and supposed to be 20 on the other. It is not because it is a Cape Cod that they added a garage and a breezeway on to. On one side where they added the garage, there is only an eight foot side yard. What this guy did is, he came in with a plan where he was going to take the basement wall on the right, the western side, move it in five feet underground, fill that piece in, and then build the house from there over. He was trying to circumvent having to go for a side yard variance. On the other side, he was going to move the second floor so he didn't have to go to the Zoning Board. According to Mr. Rossi, because of the way our code reads, he was allowed to do that. The mistake he made was he knocked the whole thing down. He then put the walls on two sides back up. When he drove by, he noticed the wall in the front was being help up with a board. The front stoop didn't have a door. He had a stop work order put on the house.

The owner went back the Building Department after the last meeting and told them they couldn't do this and it was the law and he was allowed to make the changes and as long as the new building doesn't require a variance he is allowed to move the house. Mayor Romeo feels that he is just trying to circumvent our rules. He has another property on Woodland and another property somewhere else in Cresskill. He has built some nice houses already in Cresskill.

Mayor Romeo had Mr. Salvatore put together some wording so that from now on if it's a knockdown, there is no question at all, because we have that covered. Mr. Schuster noted that we have had this discussion in the past. According to our ordinance, once you demolish a certain percentage, all bets are off. Mayor Romeo noted that that is what this guy did. He had it down, literally to the ground, and then took the two walls and put them back up and nailed them just so they would be two walls. They are not the original walls. Mr. Galdi agreed that once the building comes down, all grandfathered clauses and everything are out. Mr. Schuster noted that there is case law that talks about once you have it, as long as you don't expand it, you can keep it. Mr. Galdi stated that once it is destroyed, he no longer has it. Mayor Romeo thinks everybody agrees on that part.

The part that Mayor Romeo doesn't know, if you have an existing non-conforming house, we used to think that if you went to the Zoning Board, you would be allowed to go straight up because you are not impinging on anything, you are just going to the second floor and they always gave it. Councilwoman Tsigounis agreed. Mr. Schuster noted that you had the variance already. Now they are coming in and being cute because they don't want to go to the Zoning Board so they are moving the second floor in just enough so they don't need a variance because they have the side yards on the second floor. Councilwoman Tsigounis disagreed because the house is an entire structure.

Mr. Galdi noted that when you step off, you are no longer following the original line of the foundation going up. You pour your footings to handle the structure. When you step in, that line is no longer on that footing. Mayor Romeo wants to put wording in so that it has to go to the Zoning Board. Mr. Galdi noted that the entire building must meet the criteria of the original poured footing. The reading should always be that you have to follow the line of the footing and that eliminates your problem. Councilwoman Tsigounis agreed. Mr. Laurita asked what happens if somebody comes in to go before the Zoning Board for an upper step and he is already cockeyed on the first floor. As far as he is concerned, the Zoning Board shouldn't even address that situation on the first floor. He asked if they can. Mayor Romeo noted that they do address it because in the statute if you are adding a second floor they have to look at that. He stated that every house in Cresskill Gardens is non-conforming. There are 350 houses in Cresskill

Gardens and the majority of them are 75 x 100. If you took a regular six room ranch or Cape Cod, you had the side yards. But everybody added a garage, so they were all non-conforming on the side yard. He doesn't think any of them went for a variance.

Councilwoman Tsigounis noted that the wording isn't reading right. It makes it sound like it is just the proposed construction. Mr. Schuster noted that you have to look at the rest of the code also. Mayor Romeo noted that this is a work in progress. He is going to get everybody's comments to make sure that they get it right. It is his feeling that any existing non-conforming use, if you want to add to it, according to Mr. Salvatore, you have to come in for a variance and he is OK with that. Mr. Schuster noted that one of the issues that comes up is that it talks about "use." What you mean about the word "use" is you have to be able to define it. "Use" talks about commercial use or residential use, it doesn't really talk about things like setbacks and stuff like that. Using that word can be a little confusing. The other thing is once you knock it down, you lose everything. All bets are off. Mayor Romeo noted that everybody is in agreement about that part.

Mayor Romeo stated that when you have an existing non-conformity, which almost every house in town has, you need to go to the Zoning Board. If you don't do that, all this stuff is falling through the cracks. Mr. Galdi noted that new construction is different because they have to come in for all their permits and everything else and they have to state what they are doing. Mayor Romeo noted that we know what to do with new construction. Mr. Galdi feels that on any non-conforming use you must appear before any board the town wants. Mayor Romeo agrees but stated that that is not how it is now. Councilwoman Tsigounis stated that as soon as you touch something, you are responsible for making sure that it meets the present day code. Even if the existing structure doesn't meet the code, you are still going for the variance to alleviate that hardship. Mr. Galdi noted that upon their preparation for their addition, they must request an inspection by the construction official. Mayor Romeo wanted to know if everybody agreed that if you touch an existing non-conforming that you have to go before the Zoning Board. Mr. Schuster added that you have to go before the Zoning Board or Planning Board. Mayor Romeo agreed. Three or four of these have fallen through the cracks because they have come in and said that the second floor is in and they have the side yard and aggregate and the Building Department let them do it. Mayor Romeo told him that from now on everything goes to the Zoning Board or Planning Board. Most of it will go to the Zoning Board. There are three or four guys on the Zoning Board that actually go around and look at these things.

Mr. Galdi stated that if you take and erect a second floor, especially today when they need room for the in-laws or grandparents, they are removing the roofs and coming up, the lines really should follow the original footings. Everybody agreed. That is where your support is, in the foundation. When you come in, that first floor was never constructed to have a second floor on it. You will need the proper roof beams and floor beams to go in. You would have to double or triple them to make that up. You shift the bearing load and that is not being done.

Mayor Romeo noted that where the guy on Beechwood screwed up is that the side yard on the house he wants to build is eight feet. We don't give eight foot side yards on a 75 foot property. There was a garage and a breezeway there before he knocked the house down. His feeling is that we need to tighten this up. Mr. Schuster, Councilwoman Tsigounis, Mr. Salvatore and Mr. Pitingara will meet to tighten up this ordinance so from now on you have to go to the Zoning Board. Mr. Schuster is in agreement. Mr. Galdi stated that a decision needs to be made by someone, an engineer or architect or construction official, that knows what they are talking about. It has to be someone that knows that bearing loads are there for a reason. You are circumventing them when you shift it.

Mr. Laurita asked if that building ordinance covered all permits that require Zoning Board instructions. Mayor Romeo noted that existing non-conforming uses is what we are looking for. Mr. Vaccaro explained that they go to the Zoning Board only when the Construction Official sends them to the Zoning Board. Mr. Laurita wanted to know how many ordinances there were that require different kinds of building permits. Mayor Romeo noted that there is either new construction or additions. Those are the areas that we are looking at.

Mayor Romeo asked Mr. Schuster if a new construction comes in and needs no variances if we don't really have site plan approval. Mr. Schuster agreed and stated that that is what the cases have said. Mayor Romeo noted that everybody has always come to us because they realize it is a lot easier to comply and talk to us then it is to have the Building Inspector watch you put every nail in.

Mr. Vaccaro asked if we could adopt an ordinance that says any new construction has to come before the Planning Board. Mr. Schuster stated that we have that now. Technically, by statute, they don't have to come to us, but we have an ordinance in place that requires that. There is a question about whether or not that is viable. Mayor Romeo noted that the problem is that people come in and tell Mr. Rossi one thing and then do something else.

Mayor Romeo would like everybody to get their thoughts together and get this ordinance right. Mr. Rossi welcomes this because this is easier for him. The guy on Beechwood came in after the last meeting and told Mr. Rossi that he couldn't do this because it was against the law. Mr. Laurita asked if he needed a permit to knock the house down. Mayor Romeo noted that you need a demolition permit. Mr. Laurita stated that if he didn't get one, he should be fined for that. Mayor Romeo stated that the Building Department is taking care of that now. From now on this is going to be done the right way.

Mr. Schuster asked whether they want everybody to go to the Zoning Board or everybody to go to the Planning Board or will they be able to pick and choose. Mayor Romeo feels that the attorneys, the engineer and Councilwoman Tsigounis could pick the criteria. All new construction comes to the Planning Board. Mr. Schuster noted that the only way they get here is if they want to make a variance application pursuant to site plan or subdivision approval. Technically as an original application where there is a variance, it shouldn't come here at all. Mayor Romeo stated that if it is a bigger project and we think it needs engineering, he has no problem bringing it here.

Mayor Romeo informed the Board that they are going to put in a tree ordinance. It is not going to be that restrictive. You are not going to have to come in for a permit to cut down a tree and make a donation towards buying a tree somewhere else.

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

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The next four regular Planning Board meetings are scheduled for July 26, August 9, August 23, and September 13, 2011 at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo  
Recording Secretary