MINUTES

CRESSKILL PLANNING BOARD

August 23, 2011

Mr. Galdi called the meeting to order at 7:34 PM and announced the requirements of the Open Public Meetings Act had been fulfilled.

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

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Mr. Laurita made a motion to approve the minutes of the August 9, 2011, meeting. The motion was seconded by Mrs. Schultz. All present were in favor of the motion. Motion approved.

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Correspondence

Letter of Introduction from Mr. Edward M. Rossi, Construction Official, dated August 17, 2011, sending Mr. Frank DeCarlo, to this Board for approval. Mr. DeCarlo wishes to construct a new single-family dwelling at 97 Heather Hill Road. Application #1411 was received on August 19, 2011 and is currently under review.

Letter of Introduction from Mr. Edward M. Rossi, Construction Official, dated August 18, 2011, sending Mr. Jacob Vivat to this Board for approval. He would like to construct a new single-family dwelling at 265 Piermont Road. There are variances required, one for sides, rear and one for lot frontage. No application has been received. No one was present. File.

Three copies of ordinances were received from Ms. Barbara A. Nasuto. Ordinance No. 11-13-1415, Acquisition of Land – Block 63.02, Lots 3 and 3.01, known as 40 Fifth Street and 36 Fifth Street. The Borough has determined that there is a need to acquire portions of the aforesaid properties for road widening purposes and/or other public purposes. The Board is in agreement with this ordinance and a memo was sent to Ms. Nasuto stating the Board's approval.

Ordinance #11-17-1419, Amend Chapter 275 Zoning, Article XVIII – Enforcement and Penalties. The Board is in agreement with the Ordinance and a memo was sent to Ms. Nasuto stating the Board's approval.

Ordinance #11-16-1418, Ordinance Authorizing an Emergency Appropriation – N.J.S.A. 40A:4-53 for the Preparation and Execution of a Borough-Wide Reassessment of the Previous Revaluation of Real Property. The Board is in agreement with the Ordinance and a memo was sent to Ms. Nasuto stating the Board's approval.

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Other Business

Mr. Rick Baretta of 113 Union Avenue was present with issues regarding the construction of the Capital One Bank on the corner of Union Avenue and County Road. Also present was Mr. Bill Baretta. He got a phone call today from Hubschman Engineering notifying him that their wall will be coming down in the next week or two in order to construct the new cement wall that will be going up alongside their property. Mr. Baretta noted that they came before the Planning Board on May 13, 2008, with an attorney in regards to four particular items. Two of the items were environmental and the construction of the wall along his property. His concern was what was the wall going to look like, a six foot cement wall that they were not accustomed to having for security when people go through the drive-thru. During the course of that meeting, and he has the notes from the meeting as well as the notes from the attorney that represented him, he was told by the Planning Board, when Hubschman was representing Capital One or the gas station, that their two-foot wall that is there now, was going to remain and they were going to construct a cement wall three feet from their property line, and in between the walls it would be filled in with dirt and they were going to build a six foot wall. So, the six foot wall less their two foot wall would leave a four foot wall that would be visible to them. They were going to put up a row of arborvitaes along that planter to block the wall and on top of the wall they were going to construct a fence.

Today he was informed that they are tearing down his wall and they are building a cement wall with no arborvitaes. Mr. Azzolina stated that this is the first he is hearing of any change in the plans, which he assures him there will be no deviation from what this Board approved. He seemed to recall that there was also some conversation about perhaps doing a stucco coating on the face of the wall, all of which he believes the plans were revised to reflect. Mr. Galdi also agreed and mentioned that the walls would be terraced. Mr. Azzolina thinks that there may be some constructability issues. He thinks that with the Baretta's consent, they would maybe remove the wall that is on their property and then obviously put it back to the same condition.

Mr. Baretta noted that he met with the builder today and he is a nice guy on the site. He even has concerns about how they plan on doing it. According to what he was planning on doing, his wall was coming down and he was just told a six foot cement wall was going up. The builder said that to resolve this he could maybe put some kind of brick finish on it to make it look nicer. Mayor Romeo asked what happened to the three feet in between. Why are the Baretta's left holding the bag? Mr. Baretta stated that according to Mr. Hubschman, when he marked out the property, the wall is on Capital One's property. Mr. Baretta told Mr. Hubschman that when he represented him when he got a variance for his construction he was told that was his wall. Now he represents them and he is saying that it is their wall.

When Mr. Hubshcman was asked at the hearing if the existing wall on the Baretta property was going to be removed, Mr. Hubschman responded that "no, it was going to remain." Mayor Romeo asked if it was possible that Mr. Hubschman screwed up and they don't own the wall. Mr. Azzolina stated that it was possible, but this is the first time he is hearing about it so he will look into it. Mr. Baretta noted that they have Mr. David Watkins on retainer and they are going to push it to the limit. They have a $17,000 wall and they don't want to be told now that they made a mistake and now they are going to tear the wall down. Mayor Romeo stated that he won't have any problems with us because we will back him.

Mr. Schuster stated that they have no right to touch his wall, if it is his wall, without his permission. Mr. Baretta asked what would happen if the measurements were wrong and the wall is on Capital One's property. Mr. Schuster noted that that would get a little dicey because there would then be a problem with Mr. Hubschman's engineer or surveyor on how they surveyed the property and that would be a big issue and then it becomes a matter of whether you can agree on something, or you are going to have to file an action of title to determine who owns the property. That would be a lawsuit.

Mr. Baretta noted that the next situation is the environmental problem. He stated that they need to be told to turn the machines off because they have a major issue.

Mr. Laurita noted that it has been three and a half years that this property has been sitting there. Mr. Baretta noted that in order for him to put the wall there, he relied on the professionals. He hired Mr.

Hubschman. Mayor Romeo noted that we have to rely on the professional. Mr. Baretta noted that there were surveys done when he did his wall. Mr. Hubschman was hired by him and he got all his approvals and he did his building and so on and so forth. Capital One comes to the Planning Board, they hire Mr. Hubschman, they got all their approvals. Everyone knew there was a wall on Baretta's property. Mr. Schuster stated that if that was an issue, it should have come up when they came in with their application to begin with and it obviously didn't happen.

Mr. Baretta noted that the environmental issue was also part of that same meeting in May 2008. Mr. Richard Hubschman was representing the gas station, stated that monitoring wells were there for 10 years without any indication of contamination. He also indicated that the property owner would present him with a "no further action" letter from the DEP. They never received that letter. Mr. David Watkins is representing the Barettas. In the three years that this has been going on, they started looking into the property. Since day one, they find contamination on the gas station property. They start drilling wells. The Barettas get attorneys to represent them to make sure they are doing the right thing and spending a lot of money. They find contamination on their property as well. They drill wells on their property. They are told by the attorney that they have to let them do it. Three years go by. Mr. Baretta wants to know how Mr. Richard Hubschman makes a statement in May 2008 that for 10 years it has been monitored and there is no contamination and that they will get their letter and, as soon as they get on the site, they find all sorts of contamination that is in the ground so far that they say this contamination could have gone back 50 years.

Mr. Laurita questioned why they started digging and then they stopped for a long time. What happened between that time? Mr. Baretta noted that they are in the process of digging the foundation. Mr. Schuster stated that he remembers that when Ackerman Dairy was where Dunroven is now, they used to do oil changes in the northwest corner and they used to dump the oil right out there which is right at the back of their property.

Mr. Schuster noted that the other issue is that if the survey was incorrect when they got their approval, that would void the approval they got from the Planning Board. Mayor Romeo noted that they will not get a "no further action" letter from the DEP now because it is contaminated. The only thing they will get is that they are monitoring it. Mr. Schuster stated that he spoke with Mr. Richard Hubschman last week because he heard a rumor that the deal was dead. Mr. Hubschman told him that they spent $400,000 to clean the property up and they were moving ahead with the project and they would have to maintain monitoring wells on the site.

Mr. Baretta asked how you let that building go up when his property is not clean yet. He was told that he would have a letter stating that his property was clean and that then they could go build. They put this building up and find that they can't remediate this problem, Capital One is sitting there in the bank and he is left holding the bag. Mayor Romeo stated that it won't get that far.

Mayor Romeo told Mr. Baretta that Mr. Azzolina will contact Mr. Rossi in the morning to get to the bottom of this and if they have to put a stop work order on it, they will. Mr. Baretta gave Mr. Azzolina copies of the minutes from the meeting he was referring to as well as the notes from his attorney that he made the day after the meeting. He also gave him the letters showing the dates that they found the two properties contaminated. They hired a company to make sure that they are doing the remediation the right way, but were also told that it could take three years.

Mr. Baretta also noted that the builder told him that where they are putting the building in based on that wall going straight up. If they have to move the wall, they have to move the building and they have to re-draw everything. Mr. Schuster noted that they actually came in twice because they got bought out in the middle and they changed the design of the building.

Mr. Baretta stated that for two weeks they have been putting in soil, tamping it down and pulling it out. This has been going on for two weeks. Mr. Azzolina noted that site remediation is beyond municipal over sight. This is something that is handled at the State level. Most likely, this project is being handled under the new program, licensed site remediation, where companies such as HL Petroleum basically oversee

their own work instead of having to wait for the DEP to review their action plans and remedial investigation course because that used to take years. Supposedly under the new procedure things are more expedited. His assumption, based on driving by occasionally, has been that what's going on now is strictly a demo and site remediation. It is standard procedure when you excavate out contaminated soil and backfill it with clean fill. He will investigate and pull both files with regards to the retaining wall. It is a point of contention and the fact that Mr. Hubschman did both plans obviously doesn't make sense.

Mayor Romeo spoke with Mr. Rossi and the job will be stopped tomorrow morning at 8:00 AM.

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Old Business

Mr. Marty Lucibello was present. He was here for 16 Emerson Street. He knows that we don't have all the paperwork because he spoke with Mr. Azzolina. He wasn't familiar with what he had to submit. He wanted to check with Mr. Schuster to see if he got the letter from the attorney. Mr. Schuster noted that he spoke with Larry last week to touch base with him. There are a lot of other things that are going on that don't really pertain to what we do here. The letter that he has means that he can move ahead. The letter confirms that he can act for them as far as submitting the application. Mr. Lucibello knows that he needs to submit more copies of the application for review.

Mr. Azzolina stated that at the last meeting he spoke with Mr. Lucibello and he indicated that he submitted several weeks ago revised plans but the Board has not received them. It turns out that they were dropped off at the Building Department and they didn't get distributed. Mr. Azzolina received his copy of the plan. Basically the applicant's engineer has revised the plan to address the major concerns of the Board. One was the size of the dwelling, so he is now showing a revised footprint that is reduced in width by about 4.29 feet on the north side of the dwelling and overall length of the dwelling of 1.16 along the easterly building line. Another issue that the Board had was the coverage of the property. Basically the applicant was proposing the use of pervious concrete to lessen the stormwater runoff. The design now deletes that provision. He has a standard asphalt driveway. The dimensions of the driveway have been revised. He now has a backout dimension of 26 ½ feet opposite the garage doors, whereas that was closer to 24 feet on the last plan. He still is seeking the waiver or variance, however the Board is going to interpret that, for the driveway location. The throat of the driveway is set back at 10 feet, but at the garage door area, they are proposing it to be set back five feet from the property line. He has not received revised architectural drawings. In discussing this with the applicant, his proposal is to get this footprint approved, and then have the architect finalize the drawings for the home based on that footprint, with the understanding that it will be a conforming dwelling with respect to floor area requirements and height.

Mr. Azzolina spoke to Mr. Lucibello regarding the drainage proposal. What he discovered this morning in meeting with the DPW Superintendent, there is actually a storm drain across the frontage of the property. There is an inlet opposite the northerly corner. There actually is a pipe that goes out the back of that inlet, most likely to a buried manhole and then there is a pipe that runs along the frontage to another manhole that is right at the end of the street by the school playground. It most likely will make more sense to relocate the seepage pit to the front yard area so they can do an overflow connection either to that inlet or into that storm drain. That was basically the major comments that we had relative to the original design. The applicant is looking for some direction from the Board relative to anything else.

He has a standard asphalt driveway with 1,000 gallon seepage pit to handle the increase in runoff from the roof area. The rest of the drainage patterns will basically remain substantially as is. The property naturally grades off to the east, basically towards Mr. Lucibello's existing home. He has reduced the footprint from almost 2,000 square feet to 1,765 square feet. What he recommended to Mr. Lucibello is to get some feedback from the Board and then he will provide his engineer with some final comments on the revised plan and he can revise the plans finally and come back to the Board at the next meeting and hopefully obtain an approval. He doesn't need any variances. That is predicated on the Board agreeing that the driveway offset is a waiver, which is a deviation on the site plan ordinance as opposed to a

deviation from the zoning ordinance. Waivers do not require a Public Hearing, whereas variances do. Mr. Galdi noted that this plan makes a lot more sense than the previous plan. This is a conforming lot. He doesn't need any bulk variances. Mr. Azzolina views the driveway condition as a waiver as opposed to a variance. The existing grade is being maintained.

Mr. Galdi asked if they were going to have some sort of trap to catch the water so that it isn't going down that slope into the other property. He wanted to know if they were going to pick it up and bring it around to seepage pits in the front. Mr. Azzolina noted that that is something he will discuss with their engineer. It may be just a standalone seepage pit that will only handle the overland flow if that is absolutely necessary. He is going to be handling the roof area into the seepage pit system. The only change that he sees is the driveway location. That is a bit of an increase that may warrant a second seepage pit. Mr. Lucibello would be willing to do that. He is going to revise the plans and come back at the next meeting.

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Subdivision Committee

Councilwoman Tsigounis reported that new Application #1411, 97 Heather Hill Road, Frank DeCarlo, was received on August 19, 2011, and is currently under review. Mr. DeCarlo was present. Mr. DeCarlo noted that he designed the house around the zoning. It has existing non-conforming conditions. Everything falls within the sliding scale of a 75-foot frontage lot. The existing non-conforming conditions are the square footage of the lot and the frontage of the lot. Everything else proposed will fall within the R-10 Zone requirements with the sliding scale that will fit a 75-foot frontage house. They meet the FAR, coverages, height, and they actually centered the house. They built a very similar house over at 187 Broadway. This house has a little more contemporary look, a little modern look. Not over the top. Not your typical colonial they have been doing over and over.

This house is a little narrow, but a little deeper. The property goes back 120 feet. There are no variances at all. Mr. Azzolina noted that the only potential variance condition would be relative to the height depending on how this Board views the front of the house, since this is a garage under. Typically what we have done with garage unders is take the average of the bottom of the wall and top of the wall at the one corner and the other corner would be over by the front door. What he would do when you have a difference in elevation at the wall, the driveway is down and the wall is up, is he would average the two values is the elevation. The code says you take the elevation at the two front corners of the dwelling. He takes the mean elevation at the wall, which 96.39 and the other corner is 98.6, and you get an average of 97.5. When you subtract that from the ridge elevation, you have a height of 29 feet. Mr. Azzolina explained that they had a similar situation at the Broadway location.

Mr. DeCarlo noted that they didn't want to put a flatter roof. They already have a very low pitched roof, and they are trying to give it some character. This stipulation puts them over. They are trying not to go for variances so they are trying to design a house that is variance free and fits all the zoning. Councilwoman Tsigounis noted that they can't go much lower on the slope of the roof. Mr. Azzolina noted that the big question is where that grade plane is established for this type of garage under. Mr. DeCarlo noted that right now the plan shows it at 28 feet. They don't want to go for a variance. Mr. Azzolina noted that he is correct if the Board agrees that the two front corners is the average grade. He also stated that we have allowed applicants to use the proposed grade at the two front corners. With this particular home style, there is some interpretation as to what is the proposed grade. Historically what he has done is to average out the top of wall and bottom of wall, basically you are the midpoint of the wall as that corner elevation and then use the other corner. If the Board is of the decision that the top of wall is more representative of the corner elevation, then that is for the Board to determine.

Mr. Galdi thinks you should take the mean of the corners. Mr. Azzolina noted that they took the means of the high and low of the wall on the Broadway application. Mr. DeCarlo remembers that that is how they did it on Broadway. Mr. Azzolina noted that they could maybe play with the grading a little bit to make the numbers work.

Mr. Azzolina noted that the other issue they have had with garage unders is relative to drainage. Most likely they won't have that situation. His property slopes off to the east and slopes off to the west. Mr. DeCarlo noted that the water runs downs the driveway and hits a trench. He is putting a 1,000 gallon seepage pit in this driveway to make sure that they overkill the drainage so that they are not going to have a problem.

Mr. Azzolina will review the plan and prepare a memo for Mr. DeCarlo. Mr. DeCarlo noted that he will adjust his elevations to make it work and will get it to Mr. Azzolina.

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Report from the Borough Engineer's Office

Mr. Azzolina had nothing further to report.

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New Business

None.

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

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Motion was made by Mr. Laurita to adjourn the meeting at 8:22 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 September 13, September 27, October 11, and October 25, 2011 at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary