

# MINUTES

## CRESSKILL PLANNING BOARD

August 9, 2011

Mr. Vaccaro called the meeting to order at 7:33 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. Vieni, Mr. Laurita and Mrs. Schultz. Also present were Mr. Paul Azzolina, Borough Engineer, and Mr. Steven Schuster, Board Attorney.

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Mr. Galdi made a motion to approve the minutes of the July 26, 2011, meeting. The motion was seconded by Mrs. Schultz. All present were in favor of the motion. Motion approved.

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### Correspondence

Voucher from Hakim Associates for Borough Planning Consulting – 7/1/11-7/31/11 – in the amount of \$130.00. This is for the ANJEC Grant. Motion by Ms. Bauer to approve, seconded by Mrs. Schultz. All present were in favor. Motion approved.

Voucher from Mr. Steven Schuster for services rendered relative to the Cresskill Planning Board for the month of July 2011 in the amount of \$1,997.68. Motion by Mr. Galdi to approve, seconded by Mr. Vieni. All present were in favor. Motion approved.

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### Subdivision Committee

Councilwoman Tsigounis had nothing to report.

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### Report from the Borough Engineer's Office

Mr. Azzolina had nothing new to report. He spoke with Mr. Lucibello who said he submitted four plans to the Borough two weeks ago for Emerson Street. He did not receive a copy of them. No one knew anything about these plans. Mr. Vaccaro stated that he doesn't own the property. Mr. Laurita noted that he heard that it has been passed on to the State and that the State is involved. Mr. Schuster noted that he has a call in to the lawyers. At this point he has a contract that has been approved but there has to be a finalization by the State to approve it. This is a bureaucratic problem. Mayor Romeo asked if we were allowed to hear it if he doesn't own it. Mr. Schuster stated that all he needs to have is an interest in the land, which means that he either has to be the tenant, the contract purchaser with permission, which he believes he has, or as long as he has an interest in the property. If he never gets title, that is his problem.

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**Old Business**

None.

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**New Business**

None.

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**Public Hearing – Application #1410 – 28 Beechwood Road**

Mr. Vaccaro stated that this is a Public Hearing for Application #1410, 28 Beechwood Road. Mr. Marc Flusche, attorney for the applicant was present and was sworn in by Mr. Schuster. He is located at 545 Route 17 South, Suite 2005, Ridgewood. Mr. Schuster noted that there are a few housekeeping issues to take care of. He doesn't have a copy of the affidavit of mailing. That was not submitted. Mr. Flusche noted that when he went to the Borough Hall he was told they don't have an actual check list of what needs to be done. Mr. Flusche will submit the affidavit. Mr. Schuster also noted that he has the public notice but doesn't have the affidavit of publication. Mr. Flusche noted that he has the affidavit from the paper and can submit that.

Mr. Schuster noted that they did not service any of the utilities in the Borough. They have the certified list from the assessor's office and the taxpayers' list, but he has no receipts that he ever served United Water or Rockland Electric or Cablevision or any of the other utilities. Mr. Flusche noted that he will definitely have to send out the notices to them. Mr. Schuster stated that the problem that we have is that it is a jurisdictional requirement for us to conduct the hearing. The law says we cannot conduct the hearing unless the notices are sent out. Mr. Flusche stated that they were definitely not sent out because he was following the list that he was given.

Mr. Schuster suggested that for everybody that is here, we will announce the new hearing date and we are not going to require them to send out new notices or republish. They are not within two hundred feet of any borough property so they don't have to do that. They are not on the border of another municipality so they don't have to do that. They are not on a County road so they don't have to notify the County, but some people do anyway. Mayor Romeo asked if we could waive this. Mr. Schuster noted that you can't waive this. He suggests that we continue the hearing, he is not going to have to republish in the newspaper again, he is not going to have re-notify the other people again, but he is going to have to notify the other people on the list, which means he has to notify the utilities and he would also recommend that he notify the County of Bergen as well.

Mr. Schuster stated that we will make an announcement about the hearing tonight. Mr. Flusche will then send out, via certified mail, to those utilities that are on the list, United Water, Rockland Electric, Cablevision, Public Service, and New Jersey Bell. The next hearing date is two weeks from today. In the meantime, Mr. Flusche will provide an affidavit of mailing and an affidavit of publication. The affidavit of mailing can be combined for the first group of notifications and the second group of notifications.

Mr. Flusche stated that he didn't get the list of utilities for this hearing. He remembers getting a similar list for the Zoning Board, but he didn't receive it from the Borough for the Planning Board hearing. He presented to Mr. Schuster what he received from the Borough. Mr. Schuster stated that if he is saying, as an officer of the court, that he didn't receive the list of utilities, then he doesn't have to notify them. Somebody is supposed to do that at the Borough Hall. Mr. Flusche noted that he just received the 200 foot list. Mr. Schuster noted that if he didn't receive the list of utilities, he doesn't have to notify them and we are back to the first two issues of the affidavits, which we can do after the fact. Mr. Flusche noted that he can absolutely do that because he has them.

Mr. Schuster stated, based on representation of council, that in fact he never got the list of utilities. He did notify the homeowners, so we are going to proceed with the hearing today, subject to the provisions that he will actually submit the affidavit of publication from The Record and, secondly, that we are going to get an affidavit of mailing about the certified receipts that he did send out.

Mr. Raul Mederos, Imagen Architecture, LLC, 233 12<sup>th</sup> Street, Unit 3G, Palisades Park, NJ, was sworn in by Mr. Schuster. Mr. Mederos noted that he is the architect on file. His license number is 18571. He has testified here two weeks ago and has testified before the Board in Closter. He is testifying as an architect. His license is in good standing in the State of New Jersey.

Mr. Mederos noted that they submitted the drawings that conform to all the zoning requirements of the Town of Cresskill. They received their permits to begin construction. As the work progressed and demolition was happening, the contractor in the field noticed that some of the walls that were indicated on the plans to remain were taken down because they seemed faulty. Their intention was to make sure that this was going to be a safe project and make sure it was built correctly. They didn't understand that when they do something like tear down a wall that wasn't supposed to be torn down or indicated on the plans to be remaining, they should contact the construction official to notify him so that he can assess the condition of the lack of stability or any fault that the existing wall might have so that he can either deem that it is OK to remove it or not. Instead of doing that, the wall came down, all with the best intentions, and an official came by and noticed that there were a lot of walls taken down and the work was stopped, which led them to being here today.

Mr. Flusche stated that all they are asking to do is build the same exact structure in the same exact way, with the one wall being fixed already to enable them to finish the project in the same way that it was already approved as a renovation. It would now be deemed new construction. Mr. Schuster asked if they had an engineer here today. Mr. Flusche noted that they did not have an engineer with them. He has read Mr. Azzolina's report and agreed that an engineer may have been a good idea.

Mr. Schuster noted that they acquired the property and they were going to leave part of the structure standing and build a new a house on the existing structure. Once they were engaged in doing that, they discovered certain structural deficiencies in the foundation. Mr. Flusche agreed with this and stated that one of the walls that were indicated to remain was taken down to remedy this without taking the step of asking the construction official first. Mr. Schuster stated that then they were in violation and they had to come in and make an application here.

Mr. Mederos showed a display, marked as Exhibit A1, that shows what used to exist, what currently exists, and what they are proposing. There is no schedule on this exhibit. That is on the architectural drawings. The architectural plans were marked as Exhibit A2. Mr. Mederos explained that to help clarify what they used to have and what they propose to do, the lighter blue lines on Exhibit A1 show the existing walls, so you can see in the current conditions they are showing some existing walls, and the darker blue lines show what they are proposing. The foundation is just about all in place for this proposed design.

Mr. Schuster noted that the proposal was to build a single-family house. Mr. Mederos stated that it is going to have an FAR of 2,307 square feet. He noted that 440 square feet is deducted for the garage space. It is shown on Sheet A1 of the architectural plans. The cellar is not counted because it is more than 50% below grade. Mr. Schuster asked about the actual garage. Mr. Mederos noted that the existing garage was a one-car garage. They are going to have a two-car garage by using some of the existing living space.

Mr. Schuster asked the reason they had to build the house like this. He wanted to know the reasons they are asking for the relief from the Board. Mr. Mederos didn't understand what relief they were asking for because the design conforms to the zoning requirements of Cresskill. Mr. Schuster noted that they have some pre-existing non-conformities that once they demolished the house no longer exist. He noted that they advertised for minimum lot area, minimum lot frontage and minimum lot depth, which are existing. Then they advertised for side yards and aggregate side yard variances. He asked why they needed those.

Mr. Mederos stated that the initial project was approved and they did start construction. The new work did conform with the zoning requirements. He does understand now, having been here two weeks ago, that any non-conformance, even if the lot is 9,999 square feet, you need to go for a variance. Mr. Flusche stated that the story of the project gives the idea of where they are at and how they got here. When the original plans were submitted and approved and permits were obtained, this structure could have been built then. A mistake was made, no doubt, where it triggered the 50% demolition.

Mr. Schuster asked how big the existing house was. Mr. Mederos noted that it was 906 square feet. Mr. Schuster noted that now they are going to build a house that is 2,307 square feet. Mr. Mederos stated that it is actually 3% less than the maximum FAR allowed. Mr. Galdi noted that what was approved before no longer exists. The minute they took the wall down it became null and void, it no longer exists and you can no longer make reference to that anymore. The minute you took the last wall down, you lost all your variances. Now you require all new variances. He wanted to know why they couldn't shrink the house back and meet the side yards. Mr. Mederos noted that his drawings indicated for those walls to remain. Mr. Galdi stated that you have to forget what was there and approved. We are dealing with something new now and you have to meet that criteria and you have to get all those variances back.

Mayor Romeo explained that when he originally found that the house had been torn down, he thought that something had been perpetrated, but after speaking to the building inspector who went up to look at the walls, they were, in fact, truthful in saying that the walls were damaged and were falling apart. The mistake they made was in not calling him to come up and look at it and then we wouldn't be here at all.

Mr. Schuster asked why they need a house that is twice as big as what was there before. Mr. Flusche stated that a house this big would be permitted by all the zoning requirements in Cresskill, it just maybe wouldn't be in this configuration. Mr. Schuster asked if it would be true that it wouldn't be economical to build a 900 square foot house now. Mr. Mederos agreed. Mr. Schuster also noted that they are developing the area and there are other houses like this being built on the block. Mr. Flusche noted that there is a house right across the street that is almost the same thing. Mr. Schuster stated that it will enhance the area because it is a newer house. Mr. Mederos agreed. Mr. Flusche stated that it was a foreclosure with broken windows and boarded glass. He believes that everything in the house would conform except for the setbacks on the sides. Mr. Flusche explained that the entire foundation is already made, which is another reason for the hardship. If they couldn't complete the plan the way it is, they have to rip out the thing they fixed. If you look at the house, the left side where the garage is, was supposed to remain. That was the faulty wall/footing. That has already been replaced and inspected in accordance with modern code. The only way to build the house and change it is to rip that out again.

Mr. Schuster noted that those are architectural and engineering issues. They are not really hardship issues. Basically what they are saying is it is not economical to build a house like this. It is going to upgrade the housing stock because they have all houses there. It is going to be a benefit to the neighborhood because it is going to look better than what was there. Mr. Mederos noted that what was there was very unattractive. This is better curb appeal. If you lose the width based on the width of the garage, it will be a big detriment to the overall design. Mr. Schuster asked if they were going to encroach into the front yard any further than what was there. Mr. Mederos stated that they are going to have more than a 25 foot setback. Mr. Schuster asked about the other houses in the area. Mr. Flusche noted that there is a house across the street that has been built straight up with virtually the same setbacks that they would have, if not smaller ones, which is a very attractive one. There is a house on the same side of the street that has the same setbacks as their house.

Mr. Vaccaro asked if they could comply with everything in the engineer's letter. Mr. Flusche has reviewed the letter and knows that there are things that will have to be changed and updated but doesn't see a problem with any of it. He will bring it to his engineer. Mr. Mederos noted that everything seems very reasonable.

Mr. Galdi brought up the raising of the grading in the rear and how it will impact the runoff. Mr. Mederos noted that they specified a seepage pit. Mr. Galdi stated that they have to take the elevation between the

two lots into consideration and when you say seepage pits, that has to be based on the porosity of the soil, the size tanks you are going to put in and how many of them in order to catch the runoff.

Mr. Vaccaro opened the meeting to the public. Mrs. Gerry D'Andrea, 21 Beechwood Road, Cresskill, was sworn in by Mr. Schuster. Mrs. D'Andrea wanted to say that she thinks this will be an enhancement to the neighborhood. There are four other houses that are new in the neighborhood and she would like to see this done rather than having it sit there looking the way it does right now. She has no objection to this.

Mr. Galdi made a motion to close the meeting to the public, seconded by Mrs. Schultz. All present were in favor. Motion approved.

Mr. Vaccaro asked if they could comply with everything that the Borough Engineer is asking for. Mr. Flusche will contact his engineer and he will get in touch with Mr. Azzolina. Mr. Mederos thinks that everything in the report is reasonable. Mr. Galdi would like them to review that whole plan to see if it was possible to reduce that garage from two to one to bring that building away from the side to try to meet the criteria of the side yard. Mr. Mederos noted that usually the house gains a lot more curb appeal based on the width and the presence it has on the street. The garage wing was an existing condition, which they are not exacerbating in any way because the proposed second floor is set back in a way where it conforms to the side yard requirements so it lets through the amount of light and air in the neighborhood. Mr. Galdi understood that but the first floor is an encroachment on the property line. Mr. Mederos stated that that is an existing condition so they are not changing anything.

Councilwoman Tsigounis agrees with what Mr. Galdi is saying, however based on the history of this application that is where they started, with the existing side yard. Mr. Galdi noted that the history is gone so we have to get the answers as to why they need the variance. Councilwoman Tsigounis noted that the history is gone because the wall was defective. She thinks this is unique to this project and there should be no precedent for any other application. We have to judge it as it is and where they have come from and for that reason. Mr. Mederos explained that to change that, it would become an entirely new project for a house that already has foundations built and in place.

Mr. Schuster explained that the applicant has made the application as presented. We are going to vote on the application that is before us, subject to certain requirements in the engineer's report. Mayor Romeo agrees with Councilwoman Tsigounis and stated that we wouldn't be having this hearing if the wall didn't come down. If the wall wasn't damaged or sub-par then they wouldn't be here. The mistake they made is in not going to the Building Department right away.

Mr. Vaccaro noted that any approval would be subject to all the engineer's requirements and any inspections required and Mr. Schuster receiving the affidavits of mailing and publication by the end of the week.

Mrs. Schultz made a motion to approve, subject to the above, seconded by Mr. Vieni. Mr. Laurita stated that he is in favor of it. He noted that he is looking at an 18 window house that they are building where there was only two windows before and they were leaving walls up. They are putting in a two-car garage and using the basement and he is astonished that they would leave walls up. On Roll Call: Mayor Romeo, Councilwoman Tsigounis, Mr. Vaccaro and Ms. Bauer voted yes. Mr. Galdi voted no because he thinks they should have more inquiries in reducing the house and eliminating the one garage to meet the criteria. Mr. Vieni, Mr. Laurita and Mrs. Schultz voted yes. Motion approved.

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#### **Other Business**

None.

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

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Motion was made by Mr. Vieni at 8:30 PM to go into Closed Session, seconded by Mrs. Schultz. All present were in favor. Motion Approved.

Motion was made by Mr. Laurita to close the Closed Session at 8:42 PM, seconded by Mr. Galdi. All present were in favor. Motion approved.

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Motion was made by Mr. Galdi to adjourn the meeting at 8:43 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 August 23, September 13, September 27, and October 11, 2011 at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo  
Recording Secretary