

MINUTES

CRESSKILL PLANNING BOARD

SEPTEMBER 27, 2016

Mr. Morgan opened the meeting at 7:33 PM and announced the requirements of the Open Public Meetings Act had been fulfilled.

Members present at roll call: Mayor Romeo, Mr. Morgan, Ms. Bauer, Mr. Calder, Mr. Moss, Mr. Durakis and Mr. Mandelbaum. Also present were Mr. Paul Azzolina, Borough Engineer, and Mr. Schuster, Planning Board Attorney.

Mr. Durakis made a motion to approve the minutes of the September 13, 2016, meeting. The motion was seconded by Mr. Mandelbaum. All present were in favor of the motion. Motion approved.

Correspondence

Notice from Ms. Barbara A. Nasuto stating that the Planning Board meeting scheduled for November 8, 2016 has been rescheduled for November 1, 2016. File.

Notice of Public Hearing for Application #1488, 51 Phelps Avenue, scheduled for September 27, 2016, before the Cresskill Planning Board. File.

Letter from Mr. Constantine Stamos, Attorney for Frank DeCarlo, Application #1484M, 177 5th Street, stating the following:

“As you are aware, this firm represents Mr. DeCarlo in relation to his application relating to the above-referenced property. The question was raised whether the doctrine of Res Judicata would apply to the prior decisions relating to this property. It is our position that it would not apply and that this Board can properly hear and decide this application on its own merits. This application is thirty (30) years later, filed by a different party, Mr. DeCarlo. It involves different proposed lot sizes, 65 ft. x 100 ft. and 60 ft. by 100 ft. while the prior applications proposed 75 ft. by 100 ft. and 50 ft. by 100 ft. in the first application and 63 ft. by 100 ft. and 62 ft. by 100 ft.

“Further, the prior applications did not appear to provide a specific model and design of home. In the present application, the applicant is proposing a specific style of home that has the garage located somewhat below grade and has different variance relief for several of the bulk requirement conditions.

“In the New Jersey and Land Use Administration 2015 edition by William M. Cox, in Section 19-3.2(a), it is noted that for the doctrine of res judicata to be applicable, it must be shown, among other things, that:

- 1) The second application is substantially similar to the first;
- 2) The same parties or their privies are involved;
- 3) There must be no substantial change in the application itself or conditions surrounding the

- property;
- 4) There must have been an adjudication on the merits in the first case;
 - 5) Both applications must involve the same cause of action.

“As previously stated, there is different relief sought in terms of the size and scope of it and there is a different factual setting. Therefore, we believe that clearly the doctrine of res judicata does not apply and this Board should proceed with hearing and deciding the application on its merits.

“Should you require anything further, please feel free to call me.”

This letter is for the public hearing scheduled for tonight. File.

Voucher from Steven V. Schuster for services rendered relative to the Cresskill Planning Board for the month of August 2016 in the amount of \$1,475.12. Mayor Romeo made a motion to approve, seconded by Mr. Durakis. All present were in favor. Motion approved.

Subdivision Committee

Mr. Morgan noted that new Application #1489M, 46 Pershing Place, Avi Lavon, was received on September 21, 2016, and distributed tonight and is currently under review.

Report from the Borough Engineer's Office

Mr. Azzolina noted that for 269 E. Madison Avenue, JongAe Pak, c/o Mr. Kim, Application #1486, his office had spoken to the applicant's engineer the other day with some minor revisions. He believes that they have been incorporated into a plan that he received tonight which has a 9/22/16 revision date. Assuming on final review that the revisions have been incorporated, he recommends that the Board consider approval of this application at this time. There are no variances. Previously there was a question regarding the FAR and the three-car garage. What they have done was eliminate the third garage bay. They have elevated the structure. The applicant's architect is here.

There was discussion at the last meeting when a neighbor, Mrs. Sicheri, who lives at 279 E. Madison, was present and he believes she was going to ask the developer to consider relocating the driveway. It remains in the originally proposed location. There is nothing in the code that would mandate that the driveway location remain the same. There is something in the code that mandates the orientation of the dwelling remain the same, which it has. The front of the dwelling used to face E. Madison Avenue and it still does. This house has a garage which the existing structure does not. They have elected to relocate the driveway to the side street. The neighbor noted that the new driveway will be directly across from her driveway.

Another neighbor, Mr. Micheal Chen, directly behind them on Engleside Street, noted that currently when it rains or the neighbor waters their lawn, all the water goes to his side because there is no drain on the street. Currently there is a hump right where he is trying to put the driveway and all the water will flow to his driveway. His property is north of the subject property. He is afraid if he grades it higher, all the runoff is going to come back on his property. He lives at 11 Engleside Street.

Mr. Sicheri noted that it is his understanding, in speaking with the builder, that he is going to have the driveway grade off to Engleside Street, which is amazing because there is a big grade on the property already, so you would have to raise the grade considerably to get that driveway to drain off to Engleside Street. Mr. Chen noted that that means it would be higher than his property, which means that the water will spill over to his property. Mr. Azzolina noted that he believes his property is depressed in relation to this property. They are meeting the existing grade at the top of that wall that is along the common boundary between Mr. Chen's property and the subject property. The grading as depicted on this plan, the lawn area grades toward Engleside Street. There is a

high point indicated in the roadway at elevation 122 and then it drains to the south towards E. Madison Avenue at elevation 120. Whatever runoff enters Engleside will flow south to E. Madison Avenue. The runoff from the roof areas will be wholly addressed by a subsurface retention detention system. He doesn't believe that Mr. Chen's property will be negatively impacted by any runoff from this property.

Mr. Sicheri finds that to be very counterintuitive because that property is already on a grade and now you are going to elevate the driveway so that it pitches towards Engleside Street. That is a considerable amount of elevation for this property. Mr. Azzolina noted that they are not actually elevating the grade. He stated that from the rear yard, whatever doesn't infiltrate into the lawn area, will then enter the roadway and flow south.

Mr. Chen stated that when they paved the road many years ago, they were supposed to put in a drain and the marking was there and he guesses the money wasn't there for it because they started cutting it but they didn't finish it and they ended up putting blacktop over it where the concrete was. In speaking with the road engineer at the time, he said they really need a drain there but they didn't put one in. And they tried to crown the road so that the road drains to E. Madison Avenue, but currently now, because it settled, all the water doesn't go to E. Madison, it goes to his yard. Mr. Azzolina stated that they can certainly look at that as part of a municipal improvement project. It is good to know that. He doesn't feel that this development will exacerbate that problem though.

Mr. Sicheri wanted to know if they will be required to elevate the driveway. Mr. Azzolina noted that as he looks at the topography indicated, he is proposing a garage door elevation of 122 and the existing grade in that existing side yard area is approximately 121, so you are talking 12 inches to zero inches at the curb line. There is not going to be a significant elevation. There are no retaining walls proposed as part of this plan. He is meeting the existing grade. The garages will be approximately 35 feet from the curb. It will be approximately one foot over the 35 feet so it is really not a significant fill. If you had significant fills, you would have retaining walls, all of which are not present on this plan. They are basically utilizing the existing topography. They are not really modifying it in any substantial manner. The driveway drains to the street. The bottom of the driveway at the curb elevation is shown to be 121.3. The elevation at the corner at the intersection of E. Madison Avenue and Engleside Street is elevation 120, so there is a one foot drop south so any water than runs off the driveway, sheds off the driveway, will enter the gutter and flow south.

Mr. Chen asked how far from his property is the proposed driveway. Mr. Azzolina noted that it is approximately 50 feet.

Mayor Romeo stated that if there was supposed to be a drain on Engleside Street, he will look into it and get it straightened out.

Mr. Sicheri noted that another consideration on this property is that this neighborhood is very well wooded. He has six trees on his property that are over 30 feet high. This property there has to have 30 trees that are that high. He knows people have a tendency to clear cut everything. He would like the Board to recommend to the builder to please maintain some of the healthy tall trees. Mayor Romeo asked Mr. Kim if he was clear cutting. Mr. Kim noted that he hasn't decided yet. Mr. Schuster stated that according to the plans they are taking out six trees. Mr. Sicheri noted that the property is considerably wooded and it would be nice to keep a handful. Mr. Kim said that sometimes you have to take down trees if they are not in good shape. They have to be healthy to keep them. Right now there are trees left. Mr. Chen noted that there is one towards the back of the house that is broken and has to be taken down before it falls onto his property or house. It hangs over his property. There have already been limbs that have fallen off the tree onto his property.

Mr. Azzolina noted that with those stipulations, he recommends that the plan be approved. Mr. Mandelbaum made a motion to approve, seconded by Mr. Durakis. All present were in favor. Motion approved.

Mr. Azzolina stated that the other application that they are currently reviewing is Application #1487, 182 Madison Avenue, Jane Lee. That application remains incomplete. He explained that he had conversations with her architect's office earlier in the week. They identified several numerical discrepancies between what was proposed three years ago and what is today. He asked Ms. Lee, who was present, if there were any updates to the plan, or if they were still working on that. Ms. Lee noted that she had revised plans with her tonight. Mr. Azzolina

recommended that they not be distributed because they need to be submitted to Ms. Nasuto at the Borough Hall tomorrow. If everything works, they will be able to approve it at the next meeting. It is too late to take any action tonight.

The current architect was present with Ms. Lee. The architect noted that he got a report from the engineer last week. He revised the plan so he is pretty sure that it is now the same as the site plan. He also changed the architect's name and address. There were also discrepancies between the drainage calculations on the two plans. They took out the drainage calculations on the architectural plan. The drainage is now only on the site plan. Mr. Azzolina noted that regarding the characterization of the roof, they stated that it is not a flat roof. The architect stated that it is not a flat roof. Mr. Azzolina said that it has a very minimal pitch, assuming to drain it, but essentially it is a flat roof and will appear that way.

Mr. Azzolina stated that it has no variances and they had to modify the plans several times to eliminate the variance conditions. The height is 28 feet. The pitch is 2 on 12. Mr. Azzolina noted that there is nothing in our code to preclude that. The architect asked if there was a minimum that the Board would recommend. Mr. Azzolina stated that as an architect it is up to them. We don't have anything in our code that would preclude flat roofs. It is an architectural design. He needs to review these plans. There is a hatch to get up to the roof. They do not plan on using the roof for anything. He thinks we had a lengthy discussion about this house three years ago and it was approved.

Mr. Azzolina also had a report prepared for tonight's Public Hearing for Application #1488.

Old Business

None.

Public Hearing – Application #1484M – 177 Fifth Street (Continued)

Mr. Morgan announced the continuation of the Public Hearing for Application #1484M, 177 Fifth Street, Paul J. Chiusana. Mr. Schuster noted we are proceeding with this Public Hearing without further notification of the public. The issue that was pending at that time was whether or not this application was sufficiently different from the prior applications to warrant a review by the Board. The burden of proof is on the applicant to show that, in fact, this is a new application from the old application. We will make a finding as to that and then, depending on how that goes, we will move into the actual application process.

Mr. Constantine Stamos, from the law firm of Ferraro & Stamos, LLP, was present on behalf of the applicant, Mr. Frank DeCarlo. As was read into the record earlier as part of the correspondence, he did submit a letter that detailed what he thought was the support for the argument that the doctrine of Res Judicata does not apply in this situation. The prior applications were for 75 and 50 in terms of the frontage for the two lots and in a subsequent application was for 63 feet and 62 feet by 100 for the lots. That was 30 years ago. The neighborhood is different. The parties are different. That application was just a subdivision application. This is subdivision and site plan approval because they are proposing a specific house on the 60 x 100 lot, that has its own variance relief. He thinks that is sufficient difference and a material difference in that there is a specific home proposed that they are going to present tonight as opposed to a simple request for a subdivision. As an ancillary point, in reviewing the prior resolutions as well, is that in both resolutions, the Board found that there wasn't proper notice in those applications, yet there was still a finding or determination. Normally when there is a jurisdictional issue like that, the Board would lack jurisdiction to even decide that case. If it were approved, someone could come in and argue that the decision or approval was void. He can make a reasonable argument that even deciding it in a negative aspect, that those decisions are void because there wasn't proper notice and that the Board shouldn't have even heard those applications. But again, the Board heard them, but in light of that, as well as the differences that they are putting forth to the Board, he thinks that this Board can properly hear this application.

Mr. Schuster would like to mark in the letter that was read in the correspondence as an exhibit. It was marked as Exhibit A1. Mr. Calder asked if proper notice was given this time. Mr. Schuster noted that we decided that last time proper notice was given to the last meeting and that we were not going to require further publication or notice of mailing since everybody was notified to be at the last meeting and it was just being carried over without further notice, which is permitted. Mr. Calder noted that he is within the 200 feet radius and he did not get a notice. The proof of mailing and the green return receipt card was found showing proof that he was indeed notified. Mr. Calder then recused himself from this hearing.

Mr. Schuster noted that the letter shows that there is a substantial passage of time, different relief is being requested, there is different personnel on the Planning Board this time, the plan is different from the time it was then so the Board can make a finding if they want to, due to the fact there is sufficient difference to warrant a new hearing on this matter at this time. Mr. Durakis made a motion to proceed with the hearing, seconded by Mr. Mandelbaum. On Roll Call: Mayor Romeo, Mr. Morgan, Ms. Bauer, Mr. Moss, Mr. Durakis and Mr. Mandelbaum all voted yes. Motion approved.

Mr. Stamos stated that the property is 177 5th Street, currently Block 36, Lot 178. Historically there were five separate 25 x 100 foot lots and at some point in the 60's or 70's, they were consolidated into the one current lot, where one home sits almost entirely on the one side of the property. The rest is vacant with a detached garage and basically brush. The application is for subdivision and site plan approval. The relief being sought is minimum lot area, minimum lot frontage, minimum front yard for the existing property, the new home will comply, minimum side yard, minimum total side yard, minimum side yard for the driveway, but it is only six inches and maximum building coverage. He has with him, Ms. Stephanie Pantale, the architect and Mr. Michael Hubschman, the engineer.

Ms. Stephanie Pantale, 70K Chestnut Ridge Road, Montvale, NJ, was sworn in by Mr. Schuster. She has appeared many times before this Planning Board and before the Zoning Board. She is a licensed architect in the State of New Jersey and her license is currently in good standing. She was accepted as an expert architect. The architectural drawings were marked as Exhibit A2. They are dated August 24, 2016, Revision 2, consisting of four sheets. Ms. Pantale prepared the plans.

Ms. Pantale explained that this is a single-family home of a very modest size. It is 2,400 square feet. The first floor is 1,176 square feet and the second floor is 1,225 square feet. It is approximately 30 feet wide. The front has the front door and living room and the garage is under as you look at the house. She played around with some of the elevations so it is not a straight-type of boxy structure. It's vinyl siding with some stone mix. It has a covered front porch. It has a two-car garage with a full basement. The stairs come down into a little playroom, mechanical room and a bedroom, an egress window and a full bath. There will be a total of four bedrooms, three upstairs and one in the basement. Basically you come in the front door and right up the stairs. There is a hallway and a nice size living/family room. There is a powder room and you walk straight to the kitchen area with a dining room. It is one big open space. There is a butler's pantry. It is a very open plan. There is a coat closet towards the front.

Upstairs there are three bedrooms with one of them being the master. There is a nice size walk-in closet and a master bathroom. There is a Jack-and-Jill bathroom between the two bedrooms with a laundry above the foyer as you come up the stairs. There is a small patio in the back. The house is 28 feet in height that is permitted. However, the engineers work it out, she will adjust the height accordingly to make it work.

Mr. Schuster noted that this is one house on one of the subdivided lots. Ms. Pantale stated that that is correct. Ms. Bauer asked if there were any variances. Mr. Stamos noted that the engineer, who is also a planner, will discuss the variances.

Mr. Michael Hubschman, 263 S. Washington Avenue, Bergenfield, NJ, was sworn in by Mr. Schuster. He is a licensed professional engineer and planner. He has appeared before this Board many times before. His license is in good standing. He was accepted as an expert in the areas of engineering and planning. His colored version of the site plan was marked as Exhibit A3.

Mr. Stamos asked if Mr. Hubschman or someone in his firm prepared the site plan. Mr. Hubschman noted that that was correct. Mr. Hubschman is fully familiar with the subject property and the proposed development and the neighborhood. The property is located on the westerly side of 5th Street. The lot is 125 feet wide by 100 feet deep. It is generally level. The existing house, 177, is located on the three or two-and-a-half lots on the left side of the property. They are proposing to subdivide the lot almost in half, a 65-foot lot and a 60-foot lot, and construct the new three-bedroom dwelling, with one bedroom in the basement that Ms. Pantale had mentioned. They are requesting variances for lot area, lot width, having to do with the subdivision to create the two lots. There are some other variances because of the existing house. The existing front yard is deficient. The proposed total side yard is deficient. The proposed total side yard on the new lot is 30 feet, where 35 feet is required. The building coverage for the proposed lot is 20.4%, which is about 30 square feet over because of the covered porch in the front with the stairs on it. They meet the FAR for the zone.

Mr. Hubschman noted that they looked at the neighborhood and at the different sized lots in the neighborhood and he has it colored in the corner. There were 33 building lots within 200 feet. Nineteen of the lots are 50 feet in width, which are actually smaller than this lot. Eight of the lots are between 62 and 75 feet. Out of the 33 lots, there are 27 that are not conforming, which is 81.8%. There are six conforming lots in the neighborhood.

Mr. Hubschman stated that they are seeking the C2 variance, which was also contrary to the other cases in 1986, that were seeking hardship variances. At the time, the C2 variance was just put into law in 1984. In 1986, he guesses they didn't go with that type of variance. In the C2 variance is generally where the purposes of zoning are advanced and there is no detriment caused by the subdivision. The purposes of zoning, and there are about 13 purposes of zoning, and he went through the list and he found that they advance three purposes. One is they promote the general welfare by basically providing a new development in the area. A new house, preserving the neighborhood values, is considered promotion of the general welfare. Purpose C, providing adequate light, air and open space, they are providing 15-foot side yards on the new house. They meet the FAR requirements. The existing dwelling to remain on that lot is fitting in the neighborhood. And E, which is the most important purpose of zoning, is to establish an appropriate population density. That is a purpose of zoning. Just going through those numbers where 82% of those lots are similar in size, he thinks that they are advancing that purpose. The lot sizes are consistent with the neighborhood and you can see that with most of the adjoining lots, they are consistent.

Mr. Hubschman explained that there is no detriment either. They are providing a two-car garage and off-street parking for the other house, seepage pits for drainage and they will do whatever Mr. Azzolina requested in his letter. Mayor Romeo asked about the parking on the existing house. Mr. Hubschman stated that they are proposing an 18-foot parking area for the existing house which meets the RSIS standards. That is one of the variances. The new house is 26 feet from the house to the north. Mr. Stamos asked, from a planning perspective, if this was a more appropriate or a better alternative to build something this size for the neighborhood as opposed to one extremely large home. Mr. Hubschman feels that this fits into the neighborhood and the lot sizes are all a lot smaller and the homes are smaller. He showed a Google map, which was marked as Exhibit A4, and it shows the sizes of most of the smaller homes on this side of the street and across the street.

Mr. Stamos asked if the benefits outweigh any detriments. Mr. Hubschman said that yes from a C2 standpoint, they are not asking for any hardship waiver, because that would be considered self-created.

Mr. Morgan opened the meeting to the public. Mr. Nick Essiaf, 186 6th Street, Cresskill, wished to be heard and was sworn in by Mr. Schuster. Mr. Essiaf noted that he has the property behind the subject property. That lot could use a lot of clean-up. The value that property is going to bring to the neighborhood far outweighs what is there now. There is a garage and a shed that is leaning on his fence. There are a lot of trees that need to be cleaned up. He has a couple of little kids that play in the back yard. It would be nice to get that cleaned up and looking nice. He has four very nice trees along the back of his property that would benefit greatly from taking out what is there so they could grow bigger and healthier. Watching what Mr. DeCarlo has built across the street from where he lives, looks very appropriate and will help out the look and value of the neighborhood. He is thoroughly in favor of moving forward.

Mr. Morgan closed the meeting to the public.

Mayor Romeo asked Mr. DeCarlo if he was going to be purchasing the existing house at some point. Mr. DeCarlo noted that he has the first right of refusal but has no plans at this point. Mr. Morgan is concerned with the parking at the old house. There is no garage for it anymore. Mr. Hubschman stated that they are showing a small driveway in the front. It is 18-foot wide for two cars. Presently there is a small driveway, one-car width.

Mr. Azzolina asked the applicant to address the variance conditions that he identified in his report to get them into the record. The retaining wall heights in the front yard which then segways into the calculation of the building height. Mr. Hubschman noted that they are not seeking a height variance. They are going to adjust the height of the roof and the floors. Mr. Azzolina had mentioned that since this is a garage under, there are two retaining walls on the side of the driveway as you go down. The method that Mr. Azzolina and Board has adopted is when there is a wall near the edge, the height is measured at the two points, except if there is a wall, you measure the average height of that wall. That will bring the height in excess of the 28 feet. It would be 29.25. They are going to adjust the height to bring in down the 1.25 feet. Mr. Azzolina asked if the retaining walls are going to be in excess of four feet. Mr. Hubschman explained that they will be for about five feet as it goes down. It is five feet at the corner. Mr. Azzolina noted that there is still a slight variance condition for that five feet, per our code. The maximum height in the front yard is four feet, so it does need that additional variance for that five feet. Mr. Stamos stated that they will amend the application based upon this review to include the variance request for the short stretch of retaining wall height from between five to ten feet of retaining wall. The wall height goes from two feet to five feet.

Mr. Azzolina asked Mr. Hubschman to touch on the other issue raised on page 7 of his report regarding the stormwater management and upgrading the design. Mr. Hubschman noted that Mr. Azzolina is requesting a 1,000-gallon seepage pit and he has no problem with any of his requests. Mr. Azzolina stated that calculations will be provided. Tree removal per Shade Tree Commission along the right-of-way. Mr. Hubschman stated that whatever is required will be done. Mr. Azzolina noted that the roadway was resurfaced in 2012 and he recommends that any utility installations be restored with infrared pavement techniques. Mr. Hubschman agreed. Mr. Azzolina stated that they just have to make sure that Public Service and United Water are aware of that requirement when they are making applications.

Mr. Azzolina asked if they were going to be installing underground electric, telephone, or cable services to the dwelling. Mr. Hubschman noted that they are probably not able to do that because the pole is way over on the south. They haven't had any discussions with Rockland. Mr. Azzolina noted that, theoretically, they would need to request a de minimus exception from the RSIS requirements that require underground services.

Mr. Morgan asked if they were agreeable to work with Mr. Azzolina and all of his suggestions. Mr. Hubschman noted that they will abide by everything in the letter.

Mr. Moss made a motion to approve, seconded by Mr. Durakis. On Roll Call: Mayor Romeo, Mr. Morgan, Ms. Bauer, Mr. Moss, Mr. Durakis and Mr. Mandelbaum all voted yes. Motion approved.

Public Hearing – Application #1488 – 51 Phelps Avenue

Mr. Mark Maryanski was present representing the applicant, Mr. Avi Lavon, Kishkush, LLC. Mr. Maryanski explained that this is an after the fact variance for an application and amended site plan. The approved plan for the single family home that was constructed at 51 Phelps Avenue, called for a 25-foot front yard setback, which would comply with the R-10 requirement in that zone. However, during the course of construction, as it turns out, the final as-built plan showed that the actual setback is 24 ½ feet to the fascia of the structure and 24.7 feet to the foundation. This was discovered when the applicant applied for the Certificate of Occupancy. They are here seeking a variance rather than to push the house back.

Mr. Maryanski called the applicant, Mr. Avi Lavon and he can explain how this occurred. Mr. Avi Lavon, 79 Cedar Street, Cresskill, was sworn in by Mr. Schuster. Mr. Maryanski asked Mr. Lavon if he was the principal of Kishkush, LLC, which is the owner of the property. Mr. Lavon noted that he is the owner and he is the sole member. He constructed the new single-family home that is on the property. The original approved plan called

for a 25-foot setback. The reality is that it is 24 ½ feet. Mr. Lavon explained that he was working with the approved site plan that he submitted. At the time they built the house, the town was doing the new street and the curbing. When he checked the plan, he found that the distance between the curb and the setback was 8 feet, 5 inches. He measured from the curb, which is a new curb, just constructed in front of the house, to the porch, 35 feet. Now, when they see the CO, the map came back, he suddenly found that from the curb to the setback it is 10 feet, 5 inches. This is the difference. When he spoke to the surveyor, he was claiming that happened because the map was done in the winter time and he was not able to measure it correctly and there is two feet difference. So this is how it happened. With the measurement, he measured it according to the map. And also, when he checked the appendixes of the map, he couldn't find any appendixes saying that it is the winter time, or that it is not accurate, so he took it even more and made it 35 feet. But, the second map that came, came with a different setback. This is his mistake. He used the map that was submitted to the Board and that is how it happened.

Mr. Schuster stated that that is an interesting prequel, but that doesn't establish the criteria that you need to establish to get a variance. Mr. Maryanski asked Mr. Lavon what it would entail at this point to meet the setback to change the structure and how difficult would it be. Mr. Lavon noted that it would be very difficult, because it is not just the porch. It is the supports, it is the roof of the porch, it is the support column, it is the walkway, it is a big deal. It is going to be a big, big deal to change it. If you measure on the other map that he was submitted, he is over. And that was approved by the Board when he started out. Mr. Maryanski stated that this was an honest mistake. Obviously, there was no intent. He would have no reason to intentionally do this. Mr. Lavon stated that it was the opposite. He had nothing to gain from that and he took even extra to make sure that he was not violating any code and he is meeting all the codes. Mr. Maryanski also stated that he has purchasers for the house to purchase the house as it currently is. Mr. Lavon stated that he does and it would impact them as well.

Mr. Schuster asked if Mr. Lavon was the current owner. Mr. Lavon stated that he was the owner and has a contract to sell the house to somebody else. Mr. Schuster stated that that is also interesting prequel but doesn't again establish the requirement to get the variance. Mr. Maryanski said that the only thing they could say at this point is that obviously they are not claiming a technical hardship under the variance terms because it would be a self-created hardship, although it would entail a practical hardship to correct this setback at this point. Mr. Schuster stated that they may want to tell the Board the special reasons why they should get the relief requested. Mr. Maryanski noted that they are suggesting that the benefits of granting the variance at this point would outweigh any detriment under the flexible C standard. Mr. Schuster asked how the setback compares to other setbacks in the area. Mr. Lavon said that it is a corner lot so it does not affect the house to the east, which is very far away. The house to the right, to the west is more forward to the street. Mr. Schuster asked if that house is closer and encroaches on the setback. They are closer than he is. Mr. Lavon said the house to the east is far away. Mr. Schuster asked how big the discrepancy is between what they have and what they are supposed to have. Mr. Maryanski noted that they are 6" to the fascia of the house and 3 1/2" to the foundation of the house. It is under a foot. It is less than a 10% variation. Mr. Maryanski said that it is a de minimus violation.

Mr. Schuster stated that the deviation is de minimus, and even though it is not in accordance with the ordinance, it is consistent with other houses in the area. Mr. Maryanski stated that there is a point raised in the memo to the Board about the depth of the front porch. Mr. Lavon noted that he received a memo from Mr. Azzolina today. What he told the Board is what he did. He measured 35 feet and that is how he marked the line. The difference of a few inches is no advantage to him. It was an honest mistake. That is what happened.

Mr. Schuster noted that the variation to the front yard you are supposed to have is less than 12". With the façade is 6" and without the façade is 3". From there to the curb is 35 feet. Mr. Azzolina stated, just so the Board is clear, they are not talking about the main box of the structure, they are talking exclusively about the covered front porch. That is considered to be the front most portion of the dwelling. It is not anything other than the covered porch area. Mr. Schuster noted that the 6" is a de minimus encroachment and it is consistent with the setbacks of the other houses in the area. Mr. Maryanski agreed. He also asked that the Board, under the circumstances, understand that it was an honest mistake and not intentional and they ask for the Board to allow them to correct the problem with a de minimus variance grant rather than having to tear the porch apart.

Mr. Morgan opened the meeting to the public. Mr. Serge Labudev, 15 Cedar Street, Cresskill, wished to be heard and was sworn by Mr. Schuster. Mr. Labudev stated that when they built the house, they raised the property

about three feet high above his and built a retaining wall of rocks and at the bottom they put big, he would say, not nice rocks and on the top he just laid loose rocks. On top of the three feet he installed a six-foot fence. It completely blocks his view and the total wall height is nine feet. It is right on the line of his property and he doesn't like it too much. It looks ugly and he was told that it is wrong and it is going to be redone and nothing ever happened. When it is raining or when he turns the sprinkler on, all the rock is constantly wet and the water comes on to his property. In his opinion, it is completely dangerous and if he built a wall like that, he wouldn't pass inspection. No proper drainage. He raised it three feet and on top of that he installed a six-foot fence. It is a total of nine feet high.

Mr. Azzolina noted that the approved site plan did depict the elevation of the rear yard area with a retaining wall. It did not depict the fence that was added after the fact. The retaining wall varied in height from 2-3 feet at the easterly limit and then transitioning to zero. Looking at the as-built condition, it looks like the applicant extended the wall to the west. There it is approximately 12" high. That is a minimal, a de minimus change, in his opinion with respect to the extension of the retaining wall. Regarding the aesthetics of the completed construction, one of the true issues, one of which he believes has been resolved, there was encroachments on to Mr. Labudev's property, which assumedly has been fixed. But one of the issues that he has discussed with the applicant was to have his surveyor come back to confirm that the remediation that was done did, in fact, remove encroachments. Regarding the loose stones that are on top of the larger boulders, he had suggested previously to the applicant, and he suggests once again, that he use what are called stacking stones, that you buy a pallet of stacking stones, but that would allow for proper placement to fill in all gaps from the top of the larger stones to the bottom of the fence to improve the aesthetics of that curved wall and then to make sure that all holes at the bottom of the fence are backfilled with mulch to redirect any flows into the rear yard. The vast majority of the rear yard does not drain onto the Labudev property. There may be perhaps some small area in the planting bed along the fence that may find its way onto that property, but the way the rear yard of this property is graded, it is graded from the fence to the south so that it would exit the property along Cedar Street, south of the Labudev property. He believes some minor corrections to the mulch along the fence can be made. He would recommend that the builder utilize his suggestion from a month ago and place some stacking stones on top of the larger boulders, rather than going with the rounded stones that are not aesthetically pleasing to the person who is looking at it the most.

Mr. Lavon stated that the retaining wall was on the plans and it was approved. The plan didn't call for what aesthetic stone he had to pick. He did his best and he met Mr. Azzolina and Mr. Rossi and another inspector and the neighbor was complaining about 2" of encroachment. The Board has to understand that 2" is not like 11 stories of borders. A few months ago, he wanted to fix it, but the neighbor would not allow him to step on his property. He was waiting patiently. He contacted the Building Department and spoke with Mr. Rossi a few times and they said it is out of their hands. So he was waiting since April to get the approval from the neighbor about the 2" just to chop the boulders. Then after a while, the Mayor, he believed, stepped in and finally he was getting his approval to go and fix the wall. So he fixed the wall and he changed a few stones because he took stones and replaced them. Then he suggested to plant a few shrubs along the fence for the neighbor, to be a good neighbor and he left the shrubs, but didn't plant them. His wife went to the neighbor and said for the rough time, they wanted to apologize. They didn't want to harm anyone and they wanted to plant the shrubs. The neighbor didn't want the shrubs. He told the landscaper to take them back. The neighbor then called the police and said he didn't want anybody stepping on his property. So, he did what he had to do. About a month ago, he fixed the wall, he fixed the encroachment. Everything was done. He is not sure what more he has to do. He is sorry that they have different taste. But the plan doesn't call for aesthetic stone. He did his best. He doesn't think it is fair to ask him now to please the neighbor with aesthetic stones.

Mr. Schuster said that he doesn't think it is the neighbor's fault that Mr. Lavon didn't build it according to the plans. You are here because you are encroaching on the front yard. In addition, you had part of your stone wall on the neighbor's property. Some people look at things differently. The fact of the matter is, you didn't do what you were supposed to do. It is his property. You are here today because you want a variance from the Board so you can sell this house. Mr. Lavon noted that he did the most he could to fix it and it took long, not because he was dragging his feet. It took long because they didn't allow him, for a few months, to step on his property. Mr. Schuster noted that they didn't have to. It is his property and he doesn't have to let you on it if he doesn't want to. As a practicality he thinks he would, but that is up to him.

Mr. Conrad Pinto, 21 Cedar Street, Cresskill, wished to be heard and was sworn in by Mr. Schuster. Mr. Pinto lives on the right side of the subject property. He just moved there recently and had to put up a fence because he has two pets. He had a fence that was six feet high and he had to take it down and fix it. He was curious to know how the town rules and how the rules apply. Mayor Romeo asked Mr. Pinto where his fence was located. Mr. Conrad noted that his fence was located on the sides and in the front. He was told to take it down because it was 4 ½ feet in the front. He has the iron gates in the front and they are 4 ½ feet. They said no it has to be four feet so they said take it down or fix it. He did not come before the Zoning Board for a variance. He was told he could try but he would be turned down. The side is six feet from the back corner forward 25 feet and then it goes down to 4 ½ feet. Mayor Romeo said he would come for a variance since it is a see through fence. He doesn't see any reason why they wouldn't have allowed him to have it. Mr. Pinto was advised that they wouldn't allow it to go through because these are the town rules and it would be a waste of time. He felt intimidated.

Ms. Labudev, (Mr. Labudev's daughter), 15 Cedar Street, Cresskill, wished to be heard and was sworn in by Mr. Schuster. Ms. Labudev wanted to point out that when Mr. Lavon first started building the house and they started tearing down the property, they would work all over their property without permission and without talking to them. Then they started leaving tools on their property without their permission. Once they started building the retaining wall, they went on their property and they weren't happy with that since the retaining wall was six inches on their property. There was somebody from Zoning that was called and they did that all without their permission and without talking to them about anything. As the Board can understand, they don't want them on their property for those reasons. Another thing is that the retaining wall that they built, they don't have to look at it. They never have to see it. They never have to think about it. Once they sell the property, the new property owners don't have to look at it, don't have to see it, they don't have to worry about it. They put down huge stones, really, really big, and they put the fence on top of it. There are many gaps between the stones because they are not square, they are natural shaped, which is OK, but what they did to fix that is put loose rocks in between to help fix the problem, which she doesn't think is a permanent solution and those loose stones will be going onto their property during a storm or anything else and they will end up having to clean that up and those gaps will be there again. Another thing is that when we did not want to give them permission to go on our property, we finally did, with supervision. When they fixed the retaining wall going on our side, they cut it with supervision. There was someone there. Later that day, after they were done, after all of that was done, they came back to our property without permission, without supervision and put plants on the property, which was trespassing again. This is why they don't really have good relations with them. The lady (Mrs. Labudev) did come by. She said they did bring them the shrubs because they wanted them to be happy and wanted to alleviate the problem. However, they do not want to have shrubs there. They never did. It's kind of their personal thing. The very next day, they come home and the shrubs were gone. Someone went on their property and trespassed again without their permission.

They also have the fence. It technically is the back of their property. From the retaining wall, which is three feet, it goes up another six feet, so even though it is regulation, it is still blocking their view. If they were to put a fence there in the exact spot, like two inches apart, they would not get approval like that. It is blocking their view completely and it feels like you are inside of a box. When they were buying the property it was completely different. You could see the yard and she doesn't understand why such extremes are necessary. They actually have neighbors that live across the street that couldn't be here, but they sent a letter. The letter was marked as P1. Mr. Schuster noted that it can't serve as evidence because they are not here. It was marked as part of the file.

Another issue is, before everything was redone, there were a lot of trees on the property. All of them were completely removed. She is pretty sure that some of them were close enough to the road that they would have had to get permission from the town to remove them. She is not sure if that was ever done. Mayor Romeo stated that he would imagine that that was done. Usually they have Mr. Terhune go up and check and get permission.

Mrs. Dalit Lavon, 79 Cedar Street, Cresskill, wished to be heard and was sworn in by Mr. Schuster. Mr. Lavon stated that she is a designer. She noted that while she was designing this property she was trying to make it nice and look nice in the neighborhood. It was a very old house and very old bushes and even dead animals were there. When they started doing the design around the house, she was thinking how she was going to make it as nice as possible. She debating about what she was going to do. They decided to take boulders. These are the boulders that the whole property is designed with. She thinks it is very nice. Everybody that goes around there likes it. The whole property is built from these boulders. It is not something that was found in the garbage or like

trying to save money. The tractor was working there with her all the time because this is the type of thing where you have to find the right size. It is not like a retaining wall and you have to it the right way. Mr. Azzolina came several times to see that it was done right because it is very important. Right after they finished it, they started digging for the house. All that job with that retaining wall was done a year ago. It was before last summer. What she is trying to say is that they had enough time to tell them that they don't like it and maybe they could have done something. They don't want to do anything against the neighborhood. They are trying to build nice houses. They live on Cedar Street. They like it. They like the town. They love the neighbors. They like the shape of the houses. She is trying to do her best as a designer to make it fit the neighborhood. For her, she is very insulted just to hear that somebody is so unhappy with it. The only thing they forgot to say is that they were dropping garbage into the backyard while they were building. They didn't say anything. Eventually, they were shooting paintballs on the finished house and they had to go to the police. So don't look at them like innocent people. She does appreciate very much how it bothers them. She doesn't want the neighbors to be upset.

Mayor Romeo stated that every time he gets involved with one of these he always gets bit in the butt. He doesn't know why, but he tries. So, this is what is going to happen. Mr. Labudev and Mr. Lavon obviously don't get along and they don't like each. That may change. But right now we need to come to a conclusion here. Mr. Lavon is going to buy the box of stacking stones that Mr. Azzolina suggested and he is going to fix the wall the right way. Mr. Labudev is going to be made as satisfied as possible, but he is not going to be the judge of the satisfaction, the Borough Engineer will decide. The fence is legal. Mr. Azzolina believes Mr. Rossi has issued the proper permits for the fence. The elevation of raising the property was legal. Mr. Azzolina stated that that was depicted on the approved plans. For the Board's information, he wanted to clarify the retaining wall types on the property. There are two types of retaining walls. Along Cedar Street frontage, he would classify it as a Palisades square type of stone. Those were utilized there. He personally didn't see those stones going in. He believes that perhaps one of his staff members did. Going up what would be the northerly side line, a different type of boulder was utilized. It is a sandstone, which is a rounded, smaller type of stone. There is that difference. He does believe that you can accomplish the leveling off with smaller stacking stones. Another option would be to redo the walls entirely with a modular product and then there is no debate.

Mayor Romeo stated that we are trying to get this done with the least pain possible for both parties. Somewhere along the way we have to end this. Mr. Lavon wants to build here and he does good work and his wife is a designer so he needs to bend a little. He is going to buy the stacking stone and fix the wall to make it look nice and Mr. Labudev will not judge it, he may watch, but Mr. Azzolina will decide if it is what it should be. If Mr. Labudev wants some bushes, they will put bushes in. If not, they will leave it alone. Mr. Labudev will let them go on the property to finish the wall. If he wants somebody to supervise it, Mayor Romeo will be happy to have somebody from the Police Department or the Building Department there as a witness while this is going on so there is no discomfort and so both of them can stay away from each other. Mr. Lavon would like for it to be done this week if possible. He would appreciate it because he has been waiting for weeks.

Mayor Romeo wanted Mr. Labudev to know that he is not going to be 100% satisfied. Mr. Lavon is not going to be 100% satisfied. But that is the way you settle an argument. Nobody is wrong. Mr. Azzolina told Mr. Lavon what stone to buy a month ago. Mayor Romeo noted that they will check the fence and make sure that it is up to code.

Mr. Moss made a motion to approve the variance, seconded by Mr. Durakis. Mr. Schuster noted that the approval will be subject to the revision of the retaining wall. On Roll Call: Mayor Romeo, Mr. Morgan, Ms. Bauer, Mr. Calder, Mr. Moss, Mr. Durakis, and Mr. Mandelbaum all voted yes. Motion approved.

New Business

None.

Other Business

None.

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

Motion was made by Mr. Moss to adjourn the meeting at 9:24 PM, seconded by Mr. Durakis. All present were in favor. Motion approved.

The next four regular Planning Board meetings are scheduled for October 11, October 25, and November 1, and November 22, 2016, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary