

MINUTES

CRESSKILL PLANNING BOARD

FEBRUARY 23, 2010

Mr. Vaccaro called the meeting to order at 7:35 PM and announced the requirements of the Open Public Meetings Act had been fulfilled.

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

Mr. Galdi made a motion to approve the minutes of the February 9, 2010, meeting. The motion was seconded by Mr. Morgan. All present were in favor of the motion. Motion approved.

Correspondence

Application for Soil Erosion and Sediment Control Plan Certification for 187 Broadway, Application #1396, Frank DeCarlo. File.

Notice from Rutgers, Center for Government Services, regarding the Planning and Zoning Administration Courses for Spring 2010. File.

Vouchers from Mr. Steven V. Schuster for April 2009 in the amount of \$1,476.83, May 2009 in the amount of \$796.83, June 2009 in the amount of \$633.63 and July 2009 in the amount of \$1,000.83. Motion by Mr. Morgan to approve, seconded by Mr. Vieni. All present were in favor. Motion approved.

Subdivision Committee

Councilwoman Tsigounis had nothing new to report.

Report from the Borough Engineer's Office

Mr. Azzolina reported that on Application #1396, FDC Contracting, 187 Broadway, they have done a preliminary plan review. The drawings as submitted are substantially complete. There are couple of minor odds and ends that need to be addressed. He wanted to call to the Board's attention a couple things. Mr. Frank DeCarlo was present. The property has an existing home on it to be demolished. The applicant is proposing to construct a new single family dwelling. The little wrinkle to the design is putting a garage under on a relatively flat lot. It will look similar to the one on East Madison Avenue. In order to do that, he is constructing two four foot high retaining walls along the perimeter of the driveway. The way the calculation is presented on the plan, the engineer has not recognized the grade differential at the southwest corner of the dwelling. Typically, we use the average grade at the top of the wall and the

bottom of the wall, which when you apply it to the grade, would result in a height variance. He doesn't know if that is something that the applicant is considering or if he would like to change the plan. He believes that it is a foot or so. He doesn't know if it is something he can make up in the roof, but it is probably pretty flat already. Another option on these types of lots is to do a detached garage which typically would result in a building coverage variance. The way they have applied it in the past is they have taken the average grade at the top and bottom of the wall. He thinks the height would be 29 feet as proposed. If he is going to go for a height variance, the applicant needs to know how he is going to advertise.

The FAR is compliant. Mr. DeCarlo noted that they could probably take the foot out of the house. There is an 8'5" basement and a 9' first floor so he has room to do over the house. The whole idea was to design the house and make it as variance free as possible and just to come in for just the two variances that that were asking for which were the side yard and total aggregate. No other bulk variances at all. He was unaware of this until now. He will adjust the house to get rid of the height and he will come in for just the total aggregate and side yard. The house that is there now is on the property line and they are going to center the house and have two 11 foot side yards. The lot is 140 feet deep.

With that understanding, Mr. DeCarlo needs to know how to advertise properly. If he is saying he can adjust the architectural, that is fine. He would recommend that the Board schedule the Public Hearing. He has some other comments that he will finalize toward the end of the week. He would recommend the hearing be the second meeting in March. Mr. Vieni made a motion to schedule the Public Hearing for March 23. The motion was seconded by Mr. Morgan. All present were in favor. Motion approved. Mr. DeCarlo noted the date.

Application #1395, 265 Highland Street, Himansu Amin. Mr. Glen Stubaus, the engineer was present. Mr. Stubaus noted that this particular property has an existing house, which had a non-conforming side yard where the garage was. They prepared drawings and went to see Mr. Rossi and told him that they planned on adding on to the house and that all the additions would be conforming to the zoning requirements but that the area where the existing non-conforming garage is would become part of the living space of the house, because they constructed two new garages on the side street, but it would remain a one-story structure as it was before. Mr. Rossi gave them the go ahead. They applied for the permit and the permit was granted. During the construction, the contractor, during his work, took down the walls, constructed the new house, the roof was installed, the windows installed, etc., at which point the project was stopped because too many walls were removed and, therefore, it became a new structure and they had to appear here.

Mr. Azzolina noted that he did review the plan. Mr. Stubaus provided him a calculation of the building height based on the first floor elevation. He discussed it with the construction official and with the Board's attorney. The only issue in his mind would be the manner in which there is an existing non-conformity that Mr. Stubaus spoke about and how that would be treated. Based on his discussions with the Board attorney, in the past, we have recognized those existing non-conformities as not new variance conditions, therefore, there would not be a need to have a new hearing on the matter. Given the fact that this is pretty much well under way with the site improvements, the drainage improvements have not been installed yet, but they do have a drainage design proposed, the ground elevation was basically maintained as the existing ground elevation, so there wasn't really a whole lot of grading required for the redevelopment of the site, with that understanding, he didn't require a detailed site plan like he normally would, the architectural site plan provided is sufficient for his review. It is just really a matter of how the Board wishes to proceed in the matter so that Mr. Rossi can get the necessary clarification that he is seeking from the Board.

The contractor was present and noted that he has been building houses for 25 years. He stated that according to the drawing, he had to knock down those walls. He didn't know that after 40% of the knockdown, he would have to go for new construction permits. When Mr. Rossi told him that, he was told that he would have to come here. He didn't know that he shouldn't have taken down more than 40%. Mr. Stubaus noted that when the job was stopped and he came to see Mr. Rossi again to see what the problem was and he said that once you take away 50% of the building it become a new building and it

has to come before the Planning Board, he asked Mr. Rossi where the regulation was so he could read it. Mr. Azzolina noted that it was under partial destruction in the zoning ordinance. Mr. Stubaus noted that that was what he was given.

Mayor Romeo asked Mr. Azzolina if he was OK with it now. He stated that he was OK with it if the Board was OK with it. Mr. Vaccaro had no problem with it. Mr. Azzolina stated that the project being as complete as it is, there is not a whole lot he could do. Mr. Vieni asked what doesn't meet the Zoning Code right now. Mr. Azzolina stated just the existing side yard setback. Mayor Romeo stated that that is grandfathered. Mr. Galdi noted that the grandfather is thrown out once it becomes a new building. Councilwoman Tsigounis agreed. Mr. Galdi asked about the drainage. Mr. Azzolina noted that they have two 500 gallon seepage pits proposed and they will have to inspect that when they are doing the excavation. They will make sure the ground is good and the soil is good. That should be adequate for the increased impervious coverage. There was an existing dwelling on the property. Mr. Vieni asked if the footprint goes above and beyond the footprint of the old dwelling. Mr. Azzolina noted that it does and pointed it out on the drawing.

Mr. Galdi made a motion to approve, seconded by Mr. Vieni. All present were in favor. Motion approved.

Mr. Salvatore stated that if they are selling the house and it is new construction, they will need a New Home Warranty to get a CO. Mr. Stubaus noted that under the New Home Warranty Program, if you are using the existing foundation the State won't provide the warranty. Mr. Azzolina asked if that was the State program. Mr. Stubaus noted that the State doesn't want to be responsible for what it doesn't know is under the ground or what the old found footings were and they won't warranty it as new construction. That is just the State program.

Mr. Azzolina noted that the other wrinkle to this is the fact that if it is new construction it will also be subject to a COAH fee as well. Mr. Amin asked about the escrow amount and he believes he paid about \$1,450. Mr. Azzolina noted that he will bill against that amount and as long as there is no resolution he doesn't see that amount being exceeded. Mr. Schuster stated that this has been a problem because they are supposed to be taking a legal escrow alone of \$1,500. Obviously, he is not going to be doing anything with this application so it doesn't make any difference, but he doesn't understand why this money is not being collected on an ongoing basis. Mr. Vaccaro noted that there are no legal fees involved. Mr. Azzolina noted that at this point it is strictly his review fees and then they will be inspecting the seepage pits and they will do an as-built review once they are done. Assuming there are no problems, they probably won't exceed the \$1,450 amount.

Application #1397L, 158 Truman Drive, Abigail Alvarez. Mr. Michael Virgona, the landscape architect, was present. Mr. Virgona noted that this is at the corner of Truman and Pendergast. The Alvarez family, years ago, were going to build a house and they actually excavated for the house in the center area. Since then, they built a house across the street. They own in Alpine. One day they may sell it, or it may be a home for their daughter. It is currently two one acre lots. They are very environmental and she is into gardening. What she would like to do is neaten the site up. For the past four years, it has been a construction zone for staging the house across the street that they have been building. They want to neaten up the grades. They want to leave the excavation the way it is but they want to create an amphitheater with a vegetable garden down below and an herb garden with six inch high raised beds. He pointed out the areas of gravel and where she could drive her car up and park if she wanted. There exists, what was built several months ago, a stone wall that utilized all the blasted rock that came out of the two properties. They are looking to create a 3-1 slope. He noted that the upper portion is about eight to ten feet higher than the bottom.

Mr. Virgona noted that they were thinking about one or two simple gazebo structures where you can get out of the sun. He noted that they would grow different lettuces and herbs, tomato plants, asparagus, okra, onions, scallions, garlic, Swiss chard, kale, carrots, so as the seasons change for different vegetables they would have different things growing. Ms. Tsigounis asked what the total acreage was. Mr. Virgona noted that there are two acres. This does not qualify as farm land because that has to be five acres.

Mr. Laurita asked what kind of equipment they would use to service this. Mr. Virgona stated that the purpose of this is so she can eat organic vegetables. There are also apple trees and cherry trees around the perimeter and they have sourced out a grower that has varieties of trees that are less susceptible to disease because she wants organic. It will be serviced by small equipment. Mr. Virgona noted that the garden would only service a couple families. There is actually only about 60 x 60 feet of growing area.

Mr. Virgona stated that what he is asking for is they need to put a deer fence around the garden. He pointed out on the plan where the fence would go. In order to grow vegetables, you need to keep deer out and in order to keep deer out you need a minimum of an eight foot tall fence. Mr. Azzolina noted that there are variance issues associated with the application. Mr. Virgona brought a piece of the fence that he is proposing. He noted that when it is out in the landscape it disappears. It is made of wire. Mayor Romeo asked if he could do it with less than an eight foot fence. Mr. Virgona stated that he absolutely could not. The deer will clear a six foot fence with no problem. They say if you do a solid fence, six feet, and the deer can't see what is on the other side, they may not jump over it.

Councilman Tsigounis is worried about what the neighbors would say about the fence. Mr. Azzolina noted that is why he will have to come in for a public hearing because the fence necessitates a variance. Mr. Virgona stated that what they are not looking at is a 40 foot tall house, but rather a green oasis, a vegetable garden, and if they are her neighbors, they are probably going to have the ability to pick vegetables, delicious tomatoes and cucumbers, from her garden, so he doesn't think any of her neighbors are going to object to this. She is more than willing to share it with all of her neighbors and friends. There is not enough to give it to the whole community, but certainly her neighbors and friends. The fence is 40 feet off the street in one spot, 20 feet off in another spot and 28 feet off in another spot. All the dimensions are on the plan.

Mr. Vaccaro noted that the problem here is the fence. Mr. Azzolina stated that one of the problems is the fence. There are also two accessory structures, or primary structures, in this case. Mr. Virgona noted that they were an afterthought and he doesn't want that to determine whether or not she gets approval or not. The important thing for her is the vegetables. Mr. Azzolina noted that it is really the height of this thing. If it is an accessory structure, you are limited to 15 feet. Mr. Virgona stated that he just wrote that on dimension on that thinking the worst case scenario and 15 feet is fine. Mr. Azzolina stated that that would not need a variance and the only true variance then would be that fence height and that fence location because it is basically in the front yard setback. The other discussion would be if that fence is a permanent structure or a temporary structure, which would be another wrinkle to the argument. Mr. Morgan noted that you would also have to show the posts and how they would actually look and the distance between the posts, whether it be 20 feet or 10 feet or whatever. Mr. Virgona noted that he didn't put a distance but he could get that from the fence contractor. The posts on his fence are at least 20 feet apart.

Mr. Schuster asked if he was going to bring in any dirt onto the site. Mr. Virgona stated that he would and it would probably be at least 100 yards of topsoil being brought in. Mr. Azzolina noted that that is one of the other comments that they would have is a soil movement application would have to be executed and calculations would have to be provided. The site is very rocky and that is one of the experiences they had when they started to build the house. There was a substantial amount of blasting. There was not a substantial amount of soil on the property to begin with. Mr. Azzolina explained that the application as presented is incomplete. They are still in the process of reviewing it. He is finalizing a memo. Once the plans are a little further along, then it can be scheduled for a hearing. They are not there yet. He recommended that Mr. Virgona come in to get some feedback from the Board to see if it was feasible to advance it at some point in the future. He believes that the plans needs to be revised and supplemented to include a zoning schedule and certain other critical information that the public needs to see before we get to scheduling a hearing on the application. He should finalize the memo by the end of the week or the beginning of next week and will get it to Mr. Virgona.

Mr. Virgona noted that Mrs. Alvarez wanted the accessory structure but it didn't make sense where she wanted it, so he drew two accessory structures thinking maybe he could get approval for either location,

but they will probably only just do one. They would both be at grade. One is shown at the highest point of the property and one is shown at the lowest point of the property.

Application #1398, 144 Truman Drive, Song, c/o Kulick Development, is under review. Mr. Azzolina has had preliminary discussions with the developer and the applicant's engineer. The plans are incomplete as presented. They are going to finalize the memo on that. The architectural drawings were not provided. The plan as presented right now requires a variance so they may revise the footprint.

Mr. Azzolina reported that as a little history for this property, he believes that about four or five years ago there was an application before this Board for this property. He believes that they had some form of approval. They actually started working on the property. They put up a construction fence. He thinks they did a little preliminary foundation work, probably ran into rock, got scared and abandoned the project. This is a new owner and a different dwelling.

Old Business

Resolution for Application #1392, 234 Vaccaro Drive, Kulick Development was presented. Mr. Galdi introduced the resolution, seconded by Mr. Morgan. On Roll Call: Mayor Romeo, Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan and Mr. Laurita all voted yes. Mr. Mozur and Mrs. Schultz were absent. Motion approved. The original resolution shall become a permanent part of these minutes.

New Business

Mayor Romeo noted that he has two ordinances that they want to change or supplement. Mr. Salvatore explained that they have two problems. One was the house with the hockey rink. They are trying to get something that would restrict that. He changed that so that 50% of the structure has to be living area. He had copies of what he did and distributed it. The change would be that a minimum of 50% of the new dwelling shall be utilized as living quarters. Now it says 1,200 square feet. Mr. Schuster stated that you would have to define what the terms are. Mr. Azzolina suggested that it be at first floor level or above. The majority of the living space in the ice rink house was actually in the basement. You would also have to define living space, and that would not include the garage. You would also have to define cellar or basement. Mr. Schuster noted that in certain circumstances, especially the way the ground is pitched, it could be a cellar or a basement, depending on exactly where you are. Mr. Laurita feels that primary use should be a factor. If you have 80,000 square feet, you are saying 50% has to be the living space. So 40,000 square feet you put a house and the other 40,000 you put a 17,000 square hockey court, you are still within the rules. Mr. Schuster noted that when you start talking about a two-lane bowling alley, is that a living area, elevator space, is that a living area? Mr. Salvatore noted that that is why he put "excluding recreational use." Exercise room would not be included in the living area. Mr. Azzolina noted that you can say indoor recreation areas including, but not limited to, bowling alleys, exercise areas, indoor swimming pools, etc.

The second ordinance is the definition of a knockdown. There are about two or three places you have to look in the ordinance to get this. Mr. Salvatore noted that the closest thing we have is partial destruction and that talks about non-conforming uses. Mr. Azzolina noted that it is definitely a grey area. Mr. Vaccaro stated that Mr. Rossi would rather see a percentage than two walls. When you are talking about walls, you can say 50%. When you count the walls, if you have two 40 foot walls and two 80 foot walls, if you say 50% of that you are talking about linear feet, not square feet. Mayor Romeo feels that it is not square footage but a percentage of the perimeter. Mr. Azzolina stated that you have to distinguish whether you are talking about the foundation and the first floor and then you should further say and it's at all points during the construction because somebody might get cute and say I started taking this down and then later they took more down. He thinks 50% is the number that most towns use. Washington Township has sort of a similar type of ordinance on their books. It is definitely open to interpretation but

the 50% is utilized as the threshold. When they review the plans, if they find it questionable, they will throw it back at their professionals for them to certify and the architect to say here is the perimeter of the building and we are proposing to take down this much. Mr. Galdi feels it shouldn't be based on walls. It should be the perimeter instead of the walls. Ms. Tsigounis asked what the UCC says. She thought it specifies a percentage of the structure, not walls. Mr. Galdi said the UCC says once you go 50%, you have to comply totally with the rules and regulations of a new construction.

Mayor Romeo thinks we should make it easy for the building inspector. Mr. Azzolina stated that you couldn't use the walls and take the interior portion of the house out. You are really forced to do something with the perimeter wall structure. You would need to leave up 50% of the existing structure. He is saying 50% of the exterior walls. Mr. Laurita stated that if you had two 40 and two 80 foot walls and you took more than 180 linear feet down, it is a new construction. Mr. Salvatore asked, if you call it new construction, in order to get a CO, doesn't he need to get a new home warranty? Mr. Azzolina thinks there is some wrinkle in the law that if you are building it for yourself you don't. Mr. Salvatore agreed that if you are building it for yourself you don't need a new home warranty. Mr. Salvatore noted that a lot of these builders do this and call it a renovation to avoid getting a new home warranty because it is expensive.

Mr. Galdi wanted to have the new home warranty looked into. Mr. Azzolina wanted more time to go over this to give Mr. Salvatore his input.

Mr. Vieni asked about ordinances for wind generating equipment. He has been running into this in other parts of the country. He is sure that it is going to be coming down our pipe, especially on the hill. He wanted to know if we had any ordinances on solar energy. He feels it is only going to be a matter of time before those two elements are here. Mayor Romeo noted that the wind element would probably be taken care of by the height variance. As far as solar energy, as long as the construction code official feels that by putting it up it is not endangering the house, then you would be allowed to put it up. There are building codes that deal with that. Mr. Galdi noted that there are going to be codes coming up on all of that stuff because you are definitely going to get in to that more and more. Mr. Vieni noted that there are parts of the town that have the money to look into something like that. Mayor Romeo agreed that it is something that should be looked into. For the wind equipment, you need to have that very high and we would never permit it. Mr. Vieni noted that you don't have to put up the ten ton blades that are up for the utilities. They have household units that one can utilize also.

Mayor Romeo noted that Mr. Salvatore is writing up the Forward Planning Committee ordinance. He asked how many members there should be on the committee. Ms. Bauer thought the same number that is on the Planning or Zoning Boards. Mr. Schuster asked what groups should be on the committee. Mr. Vieni asked what the purpose of the committee is. Mayor Romeo stated that it is to plan out the next decade for the Borough of Cresskill. You need police, fire and ambulance, emergency services, on the committee. You need a representative from the schools. You need a representative from the Council, a representative from the Planning Board, DPW, Finance Chairman and you should have at least two people from the public. You also should have Mr. Hakim, the Planner and the Mr. Azzolina, Borough Engineer. They would meet about four times a year. Mr. Schuster asked if the planner and engineer would be members of the committee or be retained. Mayor Romeo feels that they should come to the meetings and maybe be part of several of the committees. It should be made up of department heads, some council members, a Planning Board member, a Zoning Board member and two or three people from town. Mr. Salvatore thought the engineer and planner would be better as advisers. Mayor Romeo agreed.

Mayor Romeo stated that police, fire and EMTs would be the emergency services portion. Schools could be another member. DPW could handle all the infrastructure. For finance we have the finance chairman. You might need an attorney. They should meet four times a year. They should plan out, with some input from the public, and write a report, based on what they think we should be planning. The first year should be a lot of stuff because you can plan out all of the next ten years. You can plan what to do in two years, what to do four years, in year six and lay out the whole ten years. Mr. Salvatore noted that you can have subcommittees. Mr. Galdi feels you should have somebody to do research, somebody that can go in to

the schools to base things on the long term. How are things going, and what's happening in town. Are you having a population growth that you would need more classrooms or are you going more technical stuff? You need somebody to go into that stuff to come back with that information to put it all together. Mayor Romeo thought that maybe the committee just calls on these guys to come in to report. The head of the DPW gives a report, the finance chairman gives a report, the school gives a report, and then five or six people sit here and gather all this information and Mr. Hakim and Mr. Azzolina write the report that says this is what we plan.

Mayor Romeo asked what the areas are that we should be addressing. He feels that we should be addressing infrastructure, public services, environmental, emergency management, demographic, finance and government. He also said that you can get a lot of ideas off the Master Plan. Mr. Galdi stated that transportation should also be on that. Mr. Schuster asked if they were going to do this every year. Mayor Romeo stated that they were. This will keep people busy and involved. Right now you will plot out 2011 to 2020. Next year you report what you have accomplished and then you go to 2021. To ask 5-7 people to meet four or five times a year really isn't a burden. This would include short term and long term goals.

Mayor Romeo explained that he got a call today from somebody that wants to take 50 Piermont Road, which is the old Suburbanite building, which is now a gym and workout area, and keep it like that, but also make it a teen club for kids to go to at night. Mr. Rustin, the Mayor of Tenafly owns a piece of that and asked Mayor Romeo his thoughts on it. The Board would need a lot more information.

Other Business

None.

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

Motion was made by Mr. Galdi to adjourn the meeting at 8:47 PM, seconded by Mr. Morgan. All present were in favor. Motion approved.

The next four regular Planning Board meetings are scheduled for March 9, March 23, April 13, and April 27, 2010, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary