

MINUTES

CRESSKILL PLANNING BOARD

FEBRUARY 27, 2018

Mr. Morgan opened the meeting 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. Morgan, Ms. Bauer, Mr. Calder, Mr. Durakis, Mr. Mandelbaum, Mr. Ulshoefer, Mr. Malone and Mr. Rummel. Also present were Mr. Paul Azzolina, Borough Engineer, and Mr. Schuster, Planning Board Attorney.

Mr. Calder made a motion to approve the minutes of February 13, 2018, meeting. The motion was seconded by Mr. Ulshoefer. All present were in favor of the motion. Motion approved.

Correspondence

Application for Soil Erosion and Sediment Control Plan Certification for 27 Clark Street, Tal Tanne. No application has been received. File.

Voucher from Mr. Steven Schuster for services rendered relative to the Cresskill Planning Board for the month of November 2017 in the amount of \$2,656.27. Motion to approve made by Mr. Durakis, seconded by Mr. Calder. All present were in favor. Motion approved.

Memo from Ms. Barbara A. Nasuto regarding Ordinance 18-04-1516, An Ordinance Replacing the Entire Contents of the Existing Affordable Housing Ordinance of the Borough of Cresskill to Address the Requirements of the Fair Housing Act and the Uniform Housing Affordability Controls (UHAC) Regarding Compliance with the Borough's Affordable Housing Obligations. File.

Notice of Public Hearing from the Borough of Alpine for 7 Hemlock Drive, Joseph LaBarbiera, for variances for the building of a swimming pool. File.

Subdivision Committee

Councilwoman Tsigounis reported that Application #1527, 46 Heather Hill Road, Harry McCormick, was received on February 23, 2018, and it looks like it is just architectural. Mr. Azzolina noted that this started off as a Building Department application only so they probably didn't prepare any site plan as we typically require. The Construction Official determined that with the magnitude of the modifications, and they were proposing to keep the foundation, it is now a complete knockdown. We need a site plan.

Report from the Borough Engineer's Office

Mr. Azzolina noted that the applicants for 340 Lafayette were present, Application #1526. Mr. Uri Rapaport, the architect, was present. Mr. Azzolina noted that this is a knockdown of an existing split-level dwelling and new construction without variances of a center hall Colonial in compliance with FAR, setbacks, height, etc. Mr. Rapaport had a picture of the front of the house. Mr. Azzolina noted that the initial plan submittal did not include any elevation drawings at all. Then an e-mail transmittal was made to his office providing the street elevations only. The other views were not shown and given what we are talking about, probably not an issue, although he does have one question for the architect as far as the shaded areas shown on the second-floor plan. He asked Mr. Rapaport what they represent. Mr. Rapaport noted that they are the roofs that are not part of the second floor. They are part of the first floor that have no second floor over it, the breakfast area and a small portion of the mudroom behind the garage, which is only one story.

Mr. Azzolina noted that this is a two-story house and as with any new construction in Cresskill these days, there is always a lot below grade. Mr. Azzolina noted that the basement area is excluded from the FAR calculations. Mr. Rapaport noted that the whole first floor, except for the garage, is a basement with a little bedroom and a full bathroom and open space and mechanical room and that is usually what the market calls for. There is a main beam holding up the first floor. Mayor Romeo asked what the room was that is off the master suite. Mr. Rapaport noted that it is a dressing room. Mr. Schuster asked how many square feet the house was. Mr. Rapaport noted that the first floor is 2,400 square feet and overall it is 3,724 square feet not including the basement and excluding the garage of 440. The lot is 12,800 square feet. The lot is 120 x 104. The house is three houses south of the intersection of Lexington and Lafayette.

Mayor Romeo stated that there are big blue pines in the front. Mr. Azzolina noted that there is one in the right-of-way and there are a couple along the common boundary and this will be the first project that is reviewed under the new tree ordinance. He asked if the applicant was aware of the new tree ordinance. The applicant stated that he was not. It is effective February 7, 2018. It has more to do with what you are allowed to do and what you are not allowed to do. Basically, the ordinance speaks to disturbances within 15 feet of the footprint. A couple of the trees that are being talked about are right at that number. The tree in the back is quite significant, a 60" oak tree. There is a 28" pine on the side, a 10" pine on the sideline, and in the right-of-way is a 20" pine that you need the DPW Superintendent's approval to remove that. The ordinance now limits what you can and cannot remove from the site. He believes all the trees, other than the pine that is in the right-of-way, fall within that 15-foot zone. He doesn't think that there is going to be any violation of that ordinance. They are maintaining the existing buffer along the rear property line. The plan shows that it is to remain and he just wants to confirm with the builder that that is in fact the proposal. Mr. Lumaj stated that they are not going to touch that.

The 60" oak is right on the line. Mr. Azzolina stated that the reason that this ordinance may be a little cumbersome is that the canopy of this tree is clearly within 15 feet of the new house and existing house. He is not quite sure how the 15 feet would always be interpreted. If you measure from the foundation to the tree it is probably 15 to 15 ½ feet. But the canopy certainly extends over the new house. There is no measurement shown. He is just scaling the drawing. There could be instances where it could be contested. Mr. Ulshoefer stated that you have to come down and get a permit and somebody would come out and inspect it to see if you can or cannot remove some of those trees. It is not like the old days where you can just come in and do whatever you want to do.

Mayor Romeo stated that the 60" oak has a five-foot circumference. He asked how old the tree was. Councilwoman Tsigounis noted that it is what they call a Heritage tree. Mr. Azzolina thinks the way the ordinance reads is that there is no replacement for the trees that are within that zone. Councilwoman Tsigounis thinks that the Heritage tree is in a different definition. Mr. Azzolina doesn't remember any reference to a Heritage tree. The engineer asked if the ordinance was on the website yet. Mr. Azzolina didn't think so but told him that he could get a copy from the Borough Hall.

Mayor Romeo asked if they could do the foundation without cutting the tree down. Mr. Lumaj said they could trim the tree. Mr. Calder said that it is on the property line and didn't see how it could impact the construction. Mr. Lumaj noted that this tree is not on the property line. Mr. Azzolina noted that the other trees are in the purview of the Building Department now. There is a fee that is sighted in the ordinance that needs to be posted. The DPW is responsible for the pine in the right-of way. As far as replacement, he doesn't think it is required under this proposal assuming they are in agreement with the trees being within 15 feet of the new construction.

Mr. Azzolina stated that everything else about the plan, he assumes, that he has Soil Conservation District Application filed. He has not received that yet. He did not receive drainage calcs, but there is nothing really very unique about this application. They just need to see the calculations to verify the size of the seepage pit. Once the tree issue is resolved, he would recommend approval at this time, subject to the Building Department reviewing the tree issue.

Mr. Ulshoefer made a motion to approve, second by Mr. Durakis. All present were in favor. Motion approved.

Mr. Azzolina noted that application 1525M, 26 Cresskill Avenue, Lumaj Builders LLC, is still under review. It is a major subdivision. There is certain information that needs to be depicted on the plan that they are currently reviewing. He will report on that at the next meeting. Mayor Romeo asked who the owner of the property was. Mr. Lumaj noted that he was the contract purchaser. Mr. Azzolina stated that he needs certification from the owner that he is authorized to make this application. That needs to be submitted as part of the application and he has to revise the application itself because he is listed as the owner. If he is not the property owner, he has to have the property owner's consent. That is one of the deficiencies and there are some others on the plan and he will finalize that memo some time this week. Mr. Lumaj stated that he is not the owner, but he will be. He put a deposit on the property.

Old Business

None.

Public Hearing – Housing Element and Fair Share Plan

Mr. Steven Lydon, Burgis Associates, is our Planner, and is here to present the Housing Element and Fair Share Plan. He is going to give a brief background of where we have been, what our past housing achievements have been in Cresskill, and there have been many, and where we are going from 2015-2025.

Generally speaking, since 1975, towns have had a constitutional obligation to provide for affordable housing. About 10 years after that, in 1985, New Jersey passed a Fair Housing Act. That Act had a lot of things and one of those was it established a council on affordable housing, which is better known as COAH. COAH did a lot of things when it was functioning. It set forth rules and published affordable housing obligations for each municipality in the State. It created housing regions and it created mechanisms to regulate the production and occupancy of affordable units. Since about 2004, it has basically failed to function.

So, what has Cresskill done. Cresskill has received COAH approval for both its second-round housing plan, which covers the period from 1993-1999 and is also one of the very few Bergen County towns that received third-round certification. The process of creating affordable housing here in Cresskill is not foreign. All third-round certification approvals, including Cresskill's, were determined to be invalid by the New Jersey Supreme Court in March of 2015. In March 2015, the court ruled that COAH was dysfunctional and it abandoned the COAH process and communities, such as Cresskill, that got approval,

and sent it back to the courts, which is what it was before the Fair Housing Act was adopted and COAH was established in 1987. When it invalidated Cresskill's approval, though, it didn't leave you out high and dry, it gave you temporary immunity from Builder's Remedy lawsuits. It gave you a certain amount of months to file something called an Declaratory Judgement Action, which was only available to participating municipalities. The fact that Cresskill had gotten sub-cert in the third round allowed you to use this process. Just as with the COAH process, the DJ action is a voluntary process. Cresskill did choose to file the action, and it was filed on July 6, 2015.

Each of the courts appointed a Special Master to work with the individual municipalities in getting through this process. Cresskill was very fortunate to get Ms. Shirley Bishop as our Special Master, who has been very helpful to us and has been helpful throughout the process and continues to be helpful. As part of the 2015 decision, the courts made a Fair Housing Center, which is an advocacy group, looking for more affordable housing, an interested party in each of the DJ actions. That means they get a seat at the table and, ultimately, we needed to, with Ms. Bishop's help, mediate with them. Fortunately for Cresskill, they are the only interested party in this case, other than the Borough itself. There are no interveners and that makes the process go a lot smoother.

One large issue that affected the town, is when the Supreme Court threw out the COAH process, they didn't tell the towns what your obligation was. COAH used to do that and now no one is establishing the number. Fair Share took it upon themselves to establish a number. They are an advocacy group. What ultimately happened is obligation is still unresolved, but that is not quite as significant for most Bergen County towns as it sounds like at first. How can you do a housing plan if you don't know what your obligation is. The reason is not so important in Bergen because almost all the towns are using a tool called the vacant land adjustment. The numbers that Fair Share provided to the communities as their obligation couldn't possibly have been met with the amount of vacant land that you have in Cresskill. The vacant land adjustment lets you look at the vacant land that you have in town, lets you take off things for flood plans, steep slopes and wetlands, and then it uses a presumptive density to establish what your real obligation is. The other thing it does is the vacant land adjustment just divides your number into two. You get the RDP and you get the unmet need. It's not a 50/50 split. The RDP is important because that is where you have to come up with a concrete plan to solve for. The unmet need is something you can use a couple mechanisms and tools to try to satisfy some of that but you are never going to do away with the unmet need obligation.

So, what does this mean for Cresskill? What we are seeking tonight is to extend the temporary immunity and, in fact, make it permanent to 2025 so that Cresskill will not be subject to Builder's Remedy lawsuits during the next eight years. The way you do that is the Planning Board approves the Housing Plan and its appendices and the Mayor and Council endorses it. It goes to Ms. Bishop and she writes up the report. You have a hearing in front of the judge. We've talked to Ms. Bishop. She has seen the plan. She is the only one who has seen the plan besides you and the judge will grant the Judgement of Repose.

By the numbers, Cresskill's affordable housing obligation is three components. It has always had three components. There is a rehabilitation obligation. There is a prior round obligation, which is from the earlier two COAH housing rounds from 1987 to 1999, and a prospective need going forward to 2025. Rehabilitation are those dilapidated housing units, and that is a term in the COAH regulations, that are occupied by low and moderate-income households. They assume that they are dilapidated house, using their terms, occupied by low and moderate-income households. In the past, you have satisfied your rehabilitative number, so you only had to look going forward. Fair Share, the advocacy group, thought there were 52 dilapidated units here in Cresskill. We said, "show us." They went out one afternoon and they found four and that became the rehabilitation obligation. In the spending plan, which is attached to the housing plan, they have money set aside to rehabilitate some more units. Mr. Calder asked if it was grants. Mr. Lydon explained that it can be but also to fix up the houses not using tax payer dollars but using the Affordable Housing Trust Fund. You have over \$1 million in that trust fund. You need to spend that money within four years of getting the certification or Judgement of Repose or the State is likely to try to take it away and give you nothing in return. So, there is money in the rehabilitation program to do

some more homes. It benefits the housing stock in town, it benefits the residents, and ultimately, when they move out, they end up with a much nicer neighborhood for new people to move in. It is only four.

The prior round obligation was 70 units, but you, as a community, solved that. So, you don't have to worry about the prior obligation. You had a prior obligation of 70 units and you have 70 credits. You're done.

That gets us to the prospective need. Fair Share's expert, Mr. David Kinsey, came up with a prospective obligation of 328 units in Cresskill. There is not any way you are ever going to meet 328. He has never been here, and they realized that the numbers were obviously bogus. They gave Cresskill and a lot of other communities an opportunity to take a 30% cut off the top of that, which we did. That got the number down to 230. Still an outrageous number that you could never possibly meet. So, we did a vacant land adjustment process, and, working with Ms. Bishop, we went through the properties, property by property, and we got that 230 obligation down to 41 units. It is still a lot of units, but the good news doesn't quite stop yet. Because of the efforts that Cresskill has made in the past, a lot of those units were created by Sunrise Assisted Living facility, which you get 10 credits out of that, and Cresskill Plaza, you get six units of credit. There are two projects which have been approved but not yet constructed, North Jersey Community Bank and River View Associates, you get another three units. That puts you to about 39 or 40 units. The S&K Auto Center on Broadway, needs to be redeveloped and we are suggesting that an affordable housing zone go on that property and that property get redeveloped for inclusionary housing units and eliminate that site, which is an eyesore, and give you more COAH credits and it will solve the RDP obligation. It is in basically a non-residential area. It is close to town.

Mr. Calder stated that the 230 was reduced to 41. Where does the 189 unmet come from? Mr. Lydon noted that it gets converted. The number was 230 and they did a RDP of 41 so the rest of that, the 189 gets converted to unmet need. The primary difference between RDP and unmet need is that nobody expects you to meet the unmet need. By definition, you can't do it. There are a couple of strategies that they have and you will be presumed to have satisfied your unmet need obligation with a plan to agree what you can do. So, 41 is actionable, and in Cresskill it is actually fairly easy to accomplish because you have a lot of credits in the bank, sort of speak, from past housing activities.

The 189 number represents the unmet need. There are couple of things they are going to do to address that. The basic overlay zone, which would allow the current users to redevelop them, there would have to be an affordable housing component associated with that. The densities are a little higher for Cresskill, they are 15 units to the acre, but it is actually fairly low in Bergen County. Mr. Lydon questions whether or not that density with a 20% set aside, if they are going to create units that they sell or 15% set aside, where 15% of the units have to be affordable if they are rental, will actually cause redevelopment in most cases to occur. The Hamrah site is one of these sites. That building is now fairly old. The use is no longer in there. Someone is already looking to scrape that and start over. That one will get developed. The commercial zone, they are going to allow second story residential apartments in there, which actually we already do, but now they'll have to have a 15% set aside for affordable units. That may or may not happen. Maybe it happens on one property if someone is knocking down the building for other reasons maybe they'll put a second story on. He doesn't think they will get a lot of affordable units in there.

Mr. Calder asked if those set asides were court mandated numbers or our numbers, the 20% and 15%. Mr. Lydon noted that those are COAH regulations. They are basically price points so that someone who is making 80% of the median regional income level can afford to live there with spending 30% of their income on rent. That is for a moderate-income family. For a low-income family, it is 52% of their income. The rents are somewhere in the \$500 to \$600 range. Mr. Calder asked what constitutes a unit, four bedrooms, three bedrooms, two bedrooms? Mr. Lydon noted that for the unmet need they can be one bedrooms, basically. In a RDP project, let's say you are going to get 10 affordable units, no more than 20% of them can be one bedrooms. No less than 20% of them have to be three bedrooms. You are limited on how many one bedrooms you can do, you have to do a certain amount of three bedrooms and the balance can be either four bedrooms, which are not required, so they end up becoming two-bedroom units. Because the unmet need doesn't have a set figure like that, it is very hard to say, "this has to be a two bedroom, this has to be a three bedroom." So, what happens is they typically become one

bedrooms. So, there is less stress on the community as far as traffic, parking, school-aged children, etc. Mr. Calder asked what a unit was. Mr. Lydon noted that there are no size requirements, even on a three-bedroom unit. The size is only regulated by the number of bedrooms and in an inclusionary development, usually 20% of them have to be three-bedroom units. Unmet need doesn't quite work that way.

The other thing that Fair Share is requiring of all towns, and, by the way, there is a settlement agreement with Fair Share Housing, so if this plan is adopted and endorsed by the Mayor and Council and sent to Ms. Bishop for the judge, they are not going to object to it, they are requiring this of all towns that if, for some chance, there is an application that has more than five residential units in it, and it is approved, or it is rezoned for that, you would have to have a 20% set aside if it is for sale, or 15% set aside if it is for rental, regardless of where it is in the community. They have been through the town's vacant land. There would have to be a fire that takes out a major building or something catastrophic like that to get something that has more than five units in Cresskill. You just don't have the land to deal with it. Mr. Calder asked if that settlement could be invalidated or set aside. He noted that third round COAH was so he was wondering how secure it is. Mr. Lydon noted that this is going to be approved by a judge. He is going to issue an order approving the plan and giving us a Judgement of Repose. And, part of the Judgement of Repose is going to be immunity against Builder's Remedy lawsuits. COAH was around for a long time, and a town that had certification was never successfully sued under the COAH watch. In fact, a town that had certification was never sued for affordable housing. This will be issued by the Superior Court. The way it worked was the Supreme Court designated 15 Trial Judges throughout the State to hear Mount Laurel cases. In Bergen, because there are so many towns, Judge Toskos brought on Judge Meehan and Judge Padovano to assist him. Judge Meehan has retired and Judge Padovano is still on the bench and Judge Toskos is retiring this summer. He thinks Judge Toskos will probably issue orders granting the Borough the Judgment of Repose and the immunity. He doesn't think he will be retiring before that.

That is the rehabilitation obligation of four units, the prior round obligation is done. The prospective need: 189 unmet needs – you will never solve it; 41 RDP – you will solve it. And you will solve it by just rezoning the S&K property. Unmet need he went through that. The overlay zonings and the other ordinance of five or more units if they get constructed.

Associated with the plan are some appendices. They are the nuts and bolts of how the housing plan gets implemented and it addresses questions like the bedroom distribution and the distribution between low and moderates, no more than 50% moderate and 50% low and of that low 13% of them have to be very low. The spending plan is important because it says how you are going to lay out your spending. You will spend about \$2 million between now and 2025. That is a projection. You have about \$1 million in the account. Based on past collections, he projects that they will get that much between now and 2025, because each one of these houses going up on the East Hill makes a contribution of about \$22,000 or \$17,000 and that's a good amount of money. Four or five of them a year and you have \$100,000. Plus, there is money from the Willow Run development that is still coming in that was not accounted for.

Two good things on the spending plan. He put in the language in a couple different places that you will never, ever, ever spend treasury funds on the spending plan. If he over-projected how much money you are going to collect, and you get to the point where you only have about \$27,000 in that spending plan, they are going to redo the plan. You are never, ever, ever going to spend municipal tax dollars on the spending plan. That is point #1. Point #2 is you want to spend it down to about that number because if you don't spend it, Trenton is going to take it and leave you with nothing except the obligation. He put in there a number of different ways to spend the money. There is a program called Market to Affordable. You can buy a house that is not in great shape. You can use the Housing Trust Fund money, which is not municipal tax dollars to buy it, to renovate it, and then make it available to low and moderate-income persons either to sell it to them at a reduced price or let them be a renter in there and keep the property. For simplicity sake, he did it as a sale unit. The other thing is there are no group homes in town. You might want to buy one of those somewhat dilapidated homes, renovate it with outside funding money and your Housing Trust Funding money and give it to Cerebral Palsy or ARC or some other non-profit agency. The benefit of a group home is you help somebody with special needs and you get a credit for each bedroom in that house. If you buy a five-bedroom dwelling and there is room to add another two

bedrooms and make it a seven-bedroom dwelling, you might get seven credits for that. It is always a rental property, so it helps you in that regard, and for rentals, you also get a 2-for-1 bonus until you're maxed out, so you might actually get 14 credits. For unmet needs you don't get all these credits. So, spend the money. Don't worry about overspending the money, because if you get close, they will amend the plan and stop spending money until you get more money coming in. The spending plan is very important.

The other thing he didn't talk about is accessory apartments. There is a program in the COAH regulations that allows you to have homeowners do additions to their property or just convert some of their house and make it an accessory apartment. You need to spend money. You need to give that property owner either \$20,000 or \$25,000 depending on if you have a moderate-income family in there or a low-income family, and it effects their rents. You can do no more than 10. He thinks he put nine in the plan, so he put \$220,000 in the spending plan to do accessory apartments. For someone who may be struggling with some money, but has a larger house, someone who is house rich but is cash poor, it is another way to help your residents in town. They build an addition or just put up a wall and they can have an accessory apartment which you will help fund with no taxpayer dollars and they get a modest income for that. It may affect their taxes a little bit.

Mr. Calder asked if any of those have been done in town. That would be a big chunk of the RDP. Over 20%. Mr. Lydon stated that Ms. Bishop let them put that in the RDP, but nobody has done this yet. He suggests that the town do it. It would nice if it works. You can spend more. Those numbers are the minimums. He can amend the plan to include more.

This plan is relatively painless because the Borough has done a good job with the Affordable Housing in the past. Mr. Durakis asked about the ordinances. Councilwoman Tsigounis noted that they are still reviewing them, and they will be included in the packet.

Mr. Lydon noted that Appendices A4 and A5 should be done by an administrative agent and they are the one that does things like qualifies low income households. They are the ones who establishes rent and things like that.

Mr. Morgan opened the meeting to the public. No public was present. Mr. Morgan closed the meeting to the public.

Councilwoman Tsigounis made a motion to approve the Fair Share Housing Plan and Resolution. Mr. Morgan seconded the motion. On Roll Call: Mayor Romeo, Councilwoman Tsigounis, Mr. Morgan, Ms. Bauer, Mr. Calder, Mr. Durakis, Mr. Mandelbaum, Mr. Ulshoefer, and Mr. Malone voted yes. Motion approved. The resolution shall become a permanent part of these minutes.

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. Durakis to adjourn the meeting at 8:35 PM, seconded by Mr. Mandelbaum. All present were in favor. Motion approved.

The next four regular Planning Board meetings are scheduled for March 13, March 27, April 10, and April 24, 2018, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary