

MINUTES

CRESSKILL PLANNING BOARD

SEPTEMBER 25, 2018

Mr. Morgan opened the meeting at 7:29 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, Mr. Calder, Mr. Durakis, Mr. Mandelbaum, and Mr. Rummel. Ms. Bauer arrived at 7:30 PM. 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 11, 2018, meeting, seconded by Mr. Mandelbaum. All present were in favor of the motion. Motion approved.

Correspondence

None.

Subdivision Committee

Councilwoman Tsigounis reported that two new Applications were received. Application #1542, 94 Heather Hill Road, FDC Development, LLC, Mr. Frank DeCarlo, was received on September 18, 2018, and is currently under review. Mr. Azzolina noted that he has received the application and he is waiting for architecturals. Mr. DeCarlo was present and presented the architecturals. There are no variances required. It is a tear down. Mr. Azzolina stated that he will review it between this meeting and the next and will try to resolve any issues that there are and be ready to report at the next meeting.

Application #1543, 29 East Madison, Cresskill Tavern, was received on September 20, 2018 and is currently under review. No one was present.

Report from the Borough Engineer's Office

Mr. Azzolina reported that he has had conversations with the applicant's architect for Application #1543, 23 East Madison, Cresskill Tavern, over the last couple of weeks. He advises him that they are converting some existing store fronts in the shopping plaza into a restaurant. He advised him that the Cresskill code does have a parking requirement based on the number of seats within the restaurant. He was unaware of that at the time. He is not sure if the site has enough parking or if they do in fact need a parking variance because of the aggregate uses within the complex. He will review the application and report on it at the next meeting.

Mr. Azzolina noted that the Mier Application #1538M, is scheduled for a public hearing at the next meeting, October 9. The other application that is currently under review is the Zerrener Application

#1540M. He has done a preliminary review but he has not yet finalized that. He will have that for the next meeting.

Mr. Azzolina has prepared a report for tonight's Public Hearing for Application #1536M, 26 Cresskill Avenue, Lumaj Builders, LLC.

Old Business

None.

Public Hearing – Application #1536M – 26 Cresskill Avenue

Mr. Mark Madaio, Legion Drive, Bergenfield, was present representing the applicant, Lumaj Builders, LLC. He previously submitted the affidavit of service and presented Mr. Schuster the originals proofs of mailing. The application is for the property located at 26 Cresskill Avenue. The property is about 225 x 165 feet. It is currently a single-family residence that backs to the railroad tracks. It is in a fully developed neighborhood and the applicant seeks to subdivide that property into three lots. That will only require a variance as to lot frontage for each lot. These are not undersized lots. They are all oversized lots. Each of the lots created is somewhere between 10 and 12% bigger than required. That doesn't mean they don't lack in frontage, but he doesn't want to start this process with people thinking that these lots are undersized. If anybody is of that idea, that is simply not true. Each of these lots is oversized. Each of them requires a variance as to frontage only. The application before the Board is for subdivision. He will also, at some point along the way, amend this application and likely submit plans to include site plans. That was included in his notice, but he would be like to be able to get some feeling from the Board as he moves forward with this about their feelings about the lots. Mr. Madaio stated again that there are no variances related to the houses. He received Mr. Azzolina's letter today. He doesn't see any extra variances that he spotted provided they go with their intention of placing the houses in a conforming manner. That is their intention.

Again, they are oversized lots, three lots, fully conforming structures, and they will demonstrate that. In fact, the 72 foot lot width, that you might be able to tell from the 500 foot map, they will be able to give a much more exact notion of that from the planner's testimony. No variances for the houses, oversized lots, etc.

There is a long history here. What they would like to do is start fresh without that history. Whatever happened years ago, with prior owners, and anything else, this is simply three lots that they believe fit into the neighborhood and they would like to present the witnesses to demonstrate that.

Mr. Madaio called Mr. Sean McClellan as his first witness. Mr. Sean McClellan, 101 West Street, Hillsdale, NJ, was sworn in by Mr. Schuster. He is an expert engineer that has testified before this Board many times before. His license is currently in good standing. He was accepted as an expert in engineering for the purposes of today's hearing.

Mr. Madaio stated that the subdivision plat was marked as Exhibit A1 and it was prepared by Mr. McClellan's office. This was dated January 3, 2018. Mr. McClellan noted that he has been involved in this project since December. He has had the opportunity to go to the property on more than a few occasions to ascertain what is currently there. At the time of the submission of the plans, there was a two-story framed dwelling, with a pool in the rear. It also had a detached garage. The property is fairly flat, concrete patio in the rear and a concrete driveway to the garage. At the time, there were a few non-conformities that were removed based on demoing what was there. The height of the existing house was 30.7 feet where 28 feet is allowed. The garage, which is an accessory structure, was 776 square feet, where 600 is allowed. Also, the height of the garage was 22 feet where 15 feet is allowed.

Mr. Madaio noted that the single-family home, which was on the property, actually had several variances that went along with it. Mr. McClellan agreed they were existing non-conformities. They are seeking no variances other than lot width for the subdivision or the homes.

The existing home had water, sewer, gas, and electric connections and met all the basic requirements for site plan and subdivision. They still have water, sewer, gas and electric but all have been turned off when they demoed the house. The availability of those services exists. Mr. McClellan agreed that they exist for the one lot. Mr. Madaio asked if the existing lot has any drainage control. Mr. McClellan stated that based on his site visit, it appeared that the roof leaders drained to the ground, they did not drain to any type of seepage pit structure. What they propose is somewhat different than that.

Mr. McClellan noted that the existing dimensions are 216 x 162 feet. They are proposing to divide it into equal amounts based on lot frontage. They will have 72 feet, 72 feet and 72.55 on the right all the way to the south and will have a little bit of skewed angle. Effectively, they will all be 72-foot lots and driving down the street wouldn't be able to tell the difference between any of the lots or the size of any of the lots. The depths of those lots are between 162 and 164 feet. The required depth is 100 feet. They are somewhere between 62 and 64 feet over in the depth of the lot.

Mr. McClellan noted that the lot all the way on the left is proposed Lot 6.01, the middle one is Lot 6.02 and the right lot is Lot 6.03. The lot area of Lot 6.01 is 11,676 square feet. That is 15% larger than what is required. Lot 6.02 is 15% larger also at 11,676 square feet. Lot 6.03 is 12,567 square feet and is over 15% larger. There are no deviations on these lots other than the lot frontage. They have the area and the buildings will meet all the required setbacks.

Mr. Madaio asked how they intend to address the stormwater and drainage issues. Mr. McClellan stated that each house will be equipped with a seepage pit. These size houses they are proposing will require between 2,500 and 2,700 gallons and they are proposing a seepage pit that will exceed a capacity of 3,000 gallons. Now there is nothing. That is consistent with a modern home and a home that controls its own drainage instead of letting that drainage create runoff or some other concern.

Mr. Madaio noted that they have shown a building envelope on those lots and Mr. McClellan designated that certain side yard dimensions are 15 feet as typical. Mr. Madaio marked Mr. Azzolina's letter as Exhibit A2. Mr. McClellan noted that the code reads as the side yard setbacks are 15 feet, but the combined side yard setbacks are 35 feet. So, technically the setbacks are 17.5 and 17.5. But you are allowed to put one side of the house at 15 feet which then, in turn, means the other one has to be 20 feet. One way or another, the side yards have to be no less than 15 feet and no less than 35 feet total. They are not, in this application for site plan, seeking a variance for that. They are building houses that fit.

Mr. Schuster asked if the houses that are being depicted, is that for information purposes or are they seeking site plan approval for those houses. Mr. Madaio noted that they will be seeking site plan approval. He figured that, in all likelihood, they will continue on this evening, as long as the Board welcomes them. And then at some point, they noticed for site plan approval, he believes they applied for site plan approval, and if they have not, he will amend the application accordingly. They have noticed for site plan approval as is the practice and he will get the Board full sets of those houses. Their intention is that this application be for subdivision and site plan.

Mr. Madaio continued explaining that they will comply with the side yard setbacks no matter how you cut it 17.5 and 17.5, 20 and 15, 15 and 20, however it is, they will comply. Mr. McClellan agreed. The building envelope is approximately 37 feet. Mr. Madaio asked if there were any soil movement issues that are required with regards to this lot. Mr. McClellan noted that it is essentially flat but there will be soil exported out based on excavating for the foundations of each building, but nothing that is abnormal.

Mr. Madaio noted that the lots are approximately 165 feet deep. This allows them to have a fairly deep backyard because the neighbor behind them is the train tracks. He asked Mr. McClellan if there were any other concerns with regards to the property that the Board should be aware of. Mr. McClellan stated that

they are giving 2 ½ feet of the property to the town to have from the center line to the new right-of-way line to be 25 feet so they are half way to the 50. Mr. Madaio again stated that, to be clear, there is only one variance, and that is for frontage.

Mr. Madaio asked Mr. McClellan if there is anything in Mr. Azzolina's report that they cannot comply with. Mr. McClellan stated that there is not. He asked if this was subject to County Planning Board approval and if it was deemed a minor or major. Mr. McClellan noted that it is a major subdivision because variances are required.

Mr. Morgan opened the meeting to the public. Mr. Mark Marzocchi, 50 Cresskill Avenue, Cresskill, wished to be heard and was sworn in by Mr. Schuster. Mr. Marzocchi thanked all the neighbors for coming tonight. He stated that they had a lot of other neighbors that were in attendance the last time, but due to the rudeness of the builder and the builder's attorney, a lot of them, tonight due to the weather, could not come. He stated that if anybody notices, in the morning, during school hours, there is a traffic jam on that block. It heads all the way sometimes to Grant, it goes up Cottage, it goes up all over the place. The police department was kind enough to do a traffic survey and re-route the traffic a little bit, move the parking lots, but in the morning, it is a major traffic issue there. By putting three houses there, you are only going to increase traffic. The children walking on the sidewalk are going to have to traverse more driveways. They are going to have to maneuver cars coming in and out. He can't say how many times that he, personally, driving out of his backyard of his house, backing up, looking there, it could be dangerous, especially with the kids coming and the cars going. Putting three houses is only going to add to the congestion in the morning. He is two houses north of the applicant. They have a current traffic issue where they are not allowing larger trucks to come down Cottage because of the turn and radius. The block cannot accommodate the trucks traversing down there. Now they have to come down from Grant and then come down Cresskill Avenue. So far, the plan seems like it is working, but the traffic is still there.

Mr. Marzocchi stated that Cresskill is a small community. Stacking three houses together on a block like that, as much as the attorney says the houses fit in the neighborhood, he doesn't live in his neighborhood so he doesn't think he can say it fits. Maybe from a building standpoint it fits, but from a safety concern, from a hazardous concern, it really, really does not fit, with all due respect. He disagrees with that comment. If you look at some of the issues that have been going on with houses so cluttered and stuff, as much as you might say it fits into this thing, it doesn't, because they are asking the Mayor and Council, if it did fit, and if it was correct, you wouldn't be here asking for a variance. So, it does not fit.

Mr. Marzocchi noted that he is a first responder and God forbid there is a major incident at the high school, and they have had several scares, nothing substantial. First responders coming down Cresskill Avenue have a difficult time coming down. They are better off coming down from Grant and coming in the reverse way. They have already spoken about that with the Borough and the SOPs and how to get in to this. This is a very, very tight area. From a standpoint of wanting to build three houses, he agrees that people have a right to do what they want with their land, but these lots cannot accommodate the amount of people, the amount of traffic and it's dangerous and he doesn't want to put his children or anybody else's children in harms way. Therefore, he, personally, is against putting three houses on this lot.

Ms. Janet Tessaro, 9 Cottage Place, Cresskill, wished to be heard and was sworn in by Mr. Schuster. Ms. Tessaro stated that regarding Mr. Madaio's letter, it stated that all lots shall be fully conforming and oversized except each lot shall have a frontage of 72 feet where 100 is required. Seventy-two feet is a lot smaller than 100 when you are driving down it looks like three houses are jammed together. When she moved here 40 years ago, and she knows things change and there is progress, but people look at Cresskill as a beautiful place. But jamming houses together, it makes it look more like Palisades Park, where she moved out of. They are looking for 28 feet on each lot. That is 84 feet in the front. That is a lot of footage. She completely disagrees with that. She understands that a variance is awarded to people who show some sort of hardship. She asked if that was true. Mr. Madaio explained that there are several different statutory standards. One is a C1 variance, which is hardship. One is a C2, or flexible C variance, which is one that applies to advancing the purposes of zoning. They are going to have a

planner testify who may be able to lay out some of their reasons and then she can come up and ask her any questions she would like if she is satisfied with what she says or not.

Ms. Tessaro wanted to know what hardship or what reason the developer has, other than monetarily, that warrants relief from this Board. Mr. Madaio stated that the fact that each of these lots is oversized as dimensionally are one of those reasons that applicants can very legitimately ask for C1 hardship variances based on frontage or other requirements. A key to that is also, of course, the negative criteria of fitting into the neighborhood. Ms. Tessaro happens to live on an 80-foot lot. That is fine, but, again, if we are measuring distance from a 100, their position remains that there are a great deal of undersized lots within both the 200 and 500 foot circle, which would make this fit in very nicely to the neighborhood, just as he is sure that Ms. Tessaro's home fits into the neighborhood. They do believe that carrying 15-20% overage and still meeting the frontage is a reason for a variance, both as a hardship and a flexible C. He would also note that this is not nothing or three. Obviously, the property could be developed with two oversized lots. They are not talking about the extra cars or extra driveway openings or extra from zero to three, we are talking about the marginal of the distinction of two and three, not the distinction between zero and three. That would be their reasoning. He thinks the planner will probably answer a lot of her questions.

Ms. Tessaro is also concerned that doing this would establish a precedent where other developers will come in and buy a couple lots and say they are going to be doing the same thing. And once again, you are jamming more homes into an area that would look better and be better for the community without jamming them in. Mr. Madaio stated that the Board knows that in Zoning Law, there is no such as precedent. Every property is unique. If this body chooses last month to give almost exactly the same thing here as he is asking for, he could not come here and throw it in their face and say they did it last month. What they believe is that the existing homes form neighborhoods and that does not make these lots in any way inconsistent. He will say that if somebody comes back here at some point with lots that are somewhere between 15-20% oversized, but still require a frontage variance, that is kind of a classic case for a hardship variance.

Ms. Tessaro stated that it should be noted that most of the houses were built before that 100-foot frontage came into play. They have been here for a long time. They love the community. She doesn't like what she sees with houses being put so close together. Ms. Tessaro approached the plan to look at the sizes of the lots. Mr. Madaio noted that the lots starting at lot 1 are 63, 50, 100, 86, 72, 72, 72, 75 and it is their belief that the planner will be able to read those numbers better and demonstrate to the Board that this is not at all uncommon. Ms. Tessaro is very concerned because they have high school and middle school students so that is at least 1,000 kids. A lot of them are driven to school but still some children walk to school. Looking at the two-car garages, how much space would there be in front of the houses for parking. They have a parking problem already. Mr. Madaio noted that they will be providing parking as per the RSIS and there is no extra accounting for street parking in that. He knows that traditionally when you have a lot like this, the neighbors get to like it because there is a lot of places to park in front where there probably isn't anybody else. It's usually wooded so people get to enjoy that experience. Often people like to walk there or walk their dogs there. Obviously, there is no component of the Municipal Land Use Law that says your driveways would affect the amount of street parking and that is a reason for much of anything, but that is an observation, and he respects the observation.

Ms. Tessaro stated that it reminds her of Palisades Park where you have maybe five feet between houses with two-car garages and there is no parking. She is concerned about the kids walking. She is concerned about the amount of traffic and congestion. On a day when there are activities at the school, graduation, games, etc., it is a problem. In her opinion, she thinks Lumaj Builders, and she has seen some of the work that he has done in the Heather Hill area, that two houses by Lumaj will be beautiful.

Mr. John Smith, 43 Grant Avenue, Cresskill, NJ, wished to be heard and was sworn in by Mr. Schuster. Mr. Smith noted that his family has been on his property since 1966. Mr. Smith asked if there were any plans showing the homes. Mr. Madaio noted that right now there is just the plan showing the subdivision. Mr. Smith remembers this as Mr. Lewis's property. When his family first moved there, it was part of the neighborhood and all the houses in the neighborhood were like a little island, a community on

themselves. They like where they are on the two little islands there. They like what they have and the way it is. He understands that there are two lots on that property. On an empty lot you can build a house. If they are building two houses on those lots, he cannot say that you can't build two houses. Three houses he doesn't agree with and he will not be happy with three houses on that property, which is kind of like in his backyard. Three houses, three families and maybe six to nine cars, or more, he sees as a problem. The standard of living and quality of life that he has enjoyed in this town of Cresskill for many years, he wants it maintained. He wants it to stay the same. He doesn't want it to change, to give up something that they are so used to and have. To have two houses is legitimate, it is a legitimate request and he can't argue that. Three houses is over the line. Asking special treatment to get three houses. Marginal difference on paper of space in between the houses, but it is not marginal for the people that live there and the neighborhood. It is big change. Marginal on the paper. The gentleman made it sound like no big deal, 23 feet here, 23 feet there, another home on the property. It changes the traffic, changes the parking and parking is a major issue with the high school students with their cars. They are having issues with two-hour parking there, which is not really enforced. People back out of those driveways and in the morning time it is very difficult to drive down there. They have the luxury of having a private street when the school year ends from June to September. Nobody is going down to the high school. It is very nice and quiet over there. They like it like that. Change happens all the time and they can't stop change. Two houses he can't complain or argue about. Three houses is over the line. He heard the word marginal, but it is not marginal to him. It is a big difference for them and their community and their neighbors. He has seen what has happened on 11th Street. Houses are very close on 11th Street. When he hears they want three houses over here, he doesn't want to see what they did on 11th Street happening over by him. He didn't have a voice on 11th Street, but he has a voice here.

There is a lot of development on the Hoke property, assisted living, apartments, stores and a lot of development right across the street from him and everything is jammed into that site over there. Traffic is an issue. Is the road going to be widened for the cars and the students. There is still an issue of the train crossing over by the Daibes property. He doesn't want to see more traffic and he doesn't want to see three houses over there for basically monetary gains. The guy that bought the house where there was one house, whether he duped somebody in to saying he could build three houses on here, there is two lots for two houses.

Ms. Dotti Rom, 3 Cottage Place, Cresskill, NJ, wished to be heard and was sworn in by Mr. Schuster. Ms. Rom agreed with Ms. Tessaro about Mr. Lumaj's homes. His homes are absolutely beautiful. She would love to have Mr. Lumaj be the builder of those two homes. She agrees with Mr. Marzocchi. She lives across the street with Mr. Marzocchi and to back out of that driveway when the children are walking to school, she personally feels that it is a safety issue. That third house means you have more cars, more families. That is her issue, safety.

Mr. Mark Lee, 10 Cottage Place, Cresskill, NJ, wished to be heard and was sworn in by Mr. Schuster. He agrees with Mr. Smith. His wife and children walk to school everyday and it is pretty dangerous right now. As Mr. Smith said, if there are three houses, there is a potential for four cars per house and that is a big difference for the quality of life in this town. With two houses you are still going to have cars, but he thinks it would fit better in the community that they are building.

Ms. Lisa Weddle, 14 Cottage Place, Cresskill, NJ, wished to be heard and was sworn in by Mr. Schuster. Ms. Weddle agreed with Mr. Smith. The area that is surrounded by Grant Avenue and Cresskill Avenue is kind of a little island. People have always talked about it having a park-like atmosphere to it. Most of the houses do have frontage that is longer. Hers is a historical house that has been there a long time. Most of them have frontages that are a good size. She is not sure about the houses, but if they are the tall houses that have the garages underneath and if there are a couple of them in a row, she would be concerned with that kind of layout.

Mr. Marzocchi had something from a neighbor that could not be present. Mr. Madaio objected as that is not allowed. Mr. Schuster explained that if someone had a written statement it cannot be evidentiary as part of this hearing. Generally, we can mark it for identification purposes only, but it is not to be considered as evidence in this hearing.

Mr. Madaio asked Mr. McClellan to once again describe the three lots for anyone that may not have arrived until 8:00, which one of his notices said was the time of the Public Hearing. He confirmed that Mr. McClellan is a licensed engineer that designed the subdivision and it creates three lots each with approximately a 72-foot frontage. The lot areas are each 11,676, 11,676, 12,569 and the lots are capable of being accessed by water, sewer, etc., and the lots all include on-site drainage. The existing lot is approximately 36,000 square feet. Each of the lots is approximately 15% oversized and requires only the singular variance as to frontage. Mr. McClellan agreed with all this information stated by Mr. Madaio.

Mr. Madaio called Ms. Lisa Phillips, a licensed professional planner since 1992. She has testified before other Boards in the State of New Jersey, but never before this Board. Her license is in good standing and is nationally certified. Her license number is 5167. She was accepted as an expert planner for the purposes of this hearing.

Mr. Madaio asked Ms. Phillips if she has represented any municipalities as their planner. Ms. Phillips noted that when she was with Burgess Associates she represented three or four municipalities. For twenty years she was the Planner for the Borough of Cliffside Park. She was the zoning officer in the Borough of Ho-Ho-Kus from 2012 to 2015. She has been on her own as a solo since 2002. She worked for Burgess Associates for 10 years. In that time, she attended a fair number of Planning Board hearings, Master Plans, Housing Plans, Fair Share Elements, and changes to Master Plans.

Ms. Phillips has two exhibits. One is a set of photographs, which was marked as Exhibit A3, and a Neighborhood Lot Width and Density Analysis, which was marked as Exhibit A4. She distributed both exhibits to the members of the Board. Ms. Phillips was retained by the builder to do a planning analysis and an overall view of the subject property and the appropriateness of the subject application.

Ms. Phillips noted that she went to the site to get a feel for the neighborhood and to photograph the site and the surrounding area. She then does an analysis with the Zoning Ordinance using the engineer's plan, but she also checks the ordinance and the Master Plan of the Borough of Cresskill additionally. She then compares it to what is proposed and then she prepares an analysis with rationalization and justification for the granting of the variance. Part of that is, when she does the photo exhibit, she tries to get the immediate surrounding area, as well as a few other areas outside of that just to get an idea. This was a very tight, concise, she thinks it was described as an insular, island-like neighborhood. The photos she took were just of the site and the immediate surrounding area.

Exhibit A3 is a series of eight photographs that indicate the subject site in its existing condition, which is after the dwelling was demolished, so the site is vacant. She took a photograph of the view southward along the west side of Cresskill Avenue opposite the site. There is a hedge row. The house actually fronts on Grant Avenue. The next photo is directly opposite. It is the rear yard of the house that fronts on Cottage but has frontage as well on Cresskill Avenue. The last photo on page one is the dwelling that is immediately north of the subject site on the same side. On page two, on the same side going north, is another dwelling that has been either a new build or a renovation in the past few years. The next photo is the northern corner of Cottage Place. The lower left is the dwelling on the southwest corner of Cottage Place and Cresskill Avenue. It is the same dwelling that she indicated on page one that has the large hedge row. Just a little bit outside the immediate neighborhood right at the curvature of Cresskill Avenue is a dwelling that is under construction. Next to it there is somewhat of a more modern dwelling as well. That is to give you the context. It is very mixed and has a lot of older Colonial types. The architectural styles do differ. Typically, it is a neighborhood of a lot of different lot sizes and a lot of different architectural styles. This isn't a neighborhood that is a consistent lot size or architectural style.

When Ms. Phillips was reviewing the analysis to try to justify this, she always looks at what exists out there now, whether it predated zoning, whether it is current, but just to show the context of the neighborhood. Sometimes you can have a zone that is a split area that might have different size regulations, but it is really the feel of the neighborhood not necessarily the zoning per se. Some of these lots may have been built prior to the zoning of the R-10 being in place, but again, it is the neighborhood

that the dwellings are proposed to be built in, so that is the context at which she has to look at this entire development.

Mr. Madaio noticed that Ms. Phillips examined in Exhibit A4, 15 different lots. Those are the 200-foot lots. Those are the properties that Mr. McClellan identified on his key map on the subdivision plan. Those are the ones that are of immediate relevance. The one photo that is outside of that is the newer dwelling at the northern curvature just to give the Board an idea of what is occurring there. Although some of the dwellings are older, there is some spontaneous, what she would call spontaneous redevelopment or spontaneous rehabilitation, within the neighborhood. Some of these homes have either been renovated or added on to or maybe there have been some tear downs with new dwellings. This is a neighborhood that is in some type of flux.

Mr. Madaio wanted to talk about the existing lots and dimensions and what conforms and what doesn't conform. In the A4 analysis of the area, of the 15 lots within 200 feet, only three comply both as to width and area. Those are Block 20, Lots 3 and 4, Block 19, Lot 4, and Block 19, Lot 3. Of the lots within 200 feet, only three, contrary to what might be thought of in the area, actually comply with both frontage and area. Eleven of the properties meet or exceed the lot size requirement of 10,000 square feet. There are 10 other lots that meet or exceed the lot size requirement other than theirs. But only four of those properties comply with the lot width. Of the 10 lots that have the total lot area, six don't comply with lot frontage. Ms. Phillips noted that it is four out of the 15 that comply with width. The fourth lot that complies with the lot width, Block 19, Lot 6, is only 8,916 square feet, does not comply with lot area.

Mr. Madaio asked Ms. Phillips that of the 11 of the 15 lots that don't have sufficient lot width, what are the widths that are shown. Ms. Phillips noted that they are 50, 63.7, 65, 75, 72, 72, 80, 85, 87, 75 and 75. The smattering of the 11 of the 15 lot widths that don't comply, some are bigger than them, some are smaller than them, but it is fair to say they are clustered around the 70s to low 80s. Ms. Phillips stated that she thinks it is important because when you look at the context of the neighborhood, they have to show in statutory criteria the positive and negative. In a situation like this, the negative criteria really needs to be looked at to make sure there is no substantial detriment. As with any change, and she understands the neighbors have lived there a long time and no one likes change, the Board has to make its decision on whether this change as proposed, based on the information given, is substantially detrimental to the neighborhood. The point is trying to show that this is not a consistent R-10 zone. These are unique. A lot of these are trapezoidal, they are almost pie shaped. This is a very unique section of the Borough. They are not trying to impose something that is so great. When you look at the house sizes as well, she would like to discuss that a little bit about what presently exists out there now, and she did do an OPRA request. So, if you wonder where she got her information, she does the research, and she pulls tax cards, so she has the assessment cards from some of them. Some of it is observational, some of it is the New Jersey tax maps. But basically, the detailed information to the square footage of the houses and things is right from the tax assessment cards. They have lot sizes that range anywhere from 6,434 square feet to 16,400 square feet, meaning densities, which is the dwelling units per acre, is anticipated to be 4.3 in this zone, and the densities that exist are 2.6 on the larger lots, all the way up to 6.7. The average lot size is actually 11,470 square feet. Mr. Madaio noted that their lots are 11,600 square feet, so, all three of their lots actually exceed the average lot size of the 15 lots within 200 feet.

Ms. Phillips further noted that the house sizes on just those 15 properties within the 200-foot area is 1,232 square feet is the smallest up to 3,408 square feet, with an average of about 2,100 square feet. If they are looking at the analysis in terms of if they do a two lot subdivision, in terms of the character of the neighborhood, not just the size of the lot frontage, but when you look at the scale of the homes, if you were permitting a two lot subdivision as of right, using the FAR calculated within the 125 feet, it would be 13,525 square feet, and that would be about a 17,000 plus lot. But, how they calculate FAR would be based on 13,000 and each house would be almost 4,100 square feet when the average is 2,000 and they do only range from 1,200 to 3,400. She thinks those houses would be larger and possibly much more out of scale with the neighborhood than what is proposed.

Mayor Romeo asked what the depths of the lots were. Mr. Madaio noted that the lots are 164. Mayor Romeo noted that the FAR stops at 125. Ms. Phillips stated that that is what she based it on and where she got the 13,525 square feet from. Mr. Madaio noted that the point there is that if it were two homes, they could be much, much larger homes and be out of character for the neighborhood. And they would be far larger than required and far larger, even complying with FAR, than what is permitted and way larger than what is there. Ms. Phillips stated that with three homes, each would be limited to 3,100-3,200 square feet, which is closer in scale and more in scale with what the new rehabilitated or new builds in the area. These would be more in keeping with the newer homes. Mr. Madaio explained that the danger in keeping with just two lots, is you wind up, even with FAR controls, what would be the two biggest houses in the neighborhood. The smaller lots necessitate smaller homes, which are consistent with the neighborhood and also consistent with the fact that 11 of the 15 lots within 200 feet don't have adequate width.

Mr. Madaio marked as Exhibit A5, a Tax Map superimposed with a 200-foot radius circle and a 500-foot radius circle with dimensional sizes of all relevant properties. This is undated. Mr. Madaio asked Ms. Phillips to list the widths of the properties starting from Grant on the east side of the street. The first property is 75, followed by the proposed 72, 72 and 72, followed by 86, 100, 50 and 63. Of the properties on this side of the block, only one conforms as to width. Going down the right side of Cottage Place you have 84 and 80 and neither has sufficient frontage. Now, making a right on Grant from Cresskill Avenue, starting with the Smith property, you have 100, 77, and 98 (which is outside the 200 feet). Next, he went to the 500-foot circle and the first house from Madison and up Grant on the left side of the street. The first house is 87, followed by 72, 72, 39, 136, 50, 50, 100, 60, 100, 77, 50, 50, 60, and 79. None of this is in her analysis.

Ms. Phillips has analyzed with a great deal of scrutiny the 200-foot area. Mr. Madaio noted that the 200-foot circle and the 500-foot circle gives some sense of what is actually out there in the field. Ms. Phillips agreed. Mr. Madaio wanted to know what are some of the standards that would apply with regard to seeking this variance, what proofs are they required to submit, and what proofs does she think they satisfied and in fact submitted so far. Ms. Phillips noted that the proofs are the positive criteria, which is either the C1 or the C2, or a combination of both. The negative criteria is the applicant would have to show and the Board would have to accept that there is no substantial detriment to the public good, nor substantial impairment to the Master Plan. That is why she said earlier that she always looks at the Master Plan to see what the goals are and see if the land designation that is proposed or recommended for the site actually meets the zoning and if not, are they consistent with the Master Plan. Mr. Madaio stated that the language is substantial detriment, not just detriment, substantial detriment. Ms. Phillips noted that that is statutory.

Ms. Phillips explained that one of the core cases that she is going to site talks about a better planning alternative. One of the things that she briefly mentioned that she wants to go into a little more is the density. It is not just about the lot width, per se, but the density that is proposed for the R-10 zone. In the zoning ordinance of the Master Plan, what we contemplated here is what is considered medium density. That is the R-10 zone at 4.3 dwelling units per acre for a single-family home. The proposed density is actually less because they are oversized lots. The proposed density for two of the lots is 3.7 and for the larger lot is 3.5. They are actually less than contemplated in the zoning ordinance and actually less dense than eight of the 15 properties. She mentioned that the densities of the surrounding properties do range from 2.6 to 7.2. The density is actually less than anticipated. When you are talking about the number of people, or curb cuts anticipated, they are right in line with the density that would be anticipated in this area based on the lot area. When looking at the Master Plan, there are a few objectives that she thinks they affirm with this application. They preserve and enhance the residential character of the community, maintain the predominantly medium density residential fabric of the borough while simultaneously continuing to permit a varied housing supply to accommodate a broad range of population including small young families, individuals, growing families and retired people. She thinks with those statements, it is in recognition of the fact that Cresskill wants to maintain the small-town charm but realizes that there are varied housing options that need to be addressed, that the densities have to stay in line. Again, when you look at this from a density perspective, they are under the proposed density.

The one core case she is going to site is an Appellate Division case. Typically, when looking at a C2 variance, they use the Kaufman case, which was a Planning Board application in Warren Township and that is where the C2 argument first came about because C1 is based on hardship. They don't have a hardship, but in recognizing the C1, they are three times the required the lot size. So, this is a unique property in the sense that they are more than three times the required 10,000 square feet. In that sense, they do have some type of unique situation with the property. In terms of the development occurring, the Kaufman case said, it is not necessarily just the hardship, but if you can show a better planning alternative than what is recommended in the zoning, then that is what the C2 is about. It is called a flexible C. Not everything relates to the specific land and topography and lot arrangement.

The second case is actually an Appellate Division case out of Montvale, Green Meadows vs. Montvale, and she worked with an attorney that was very involved with the case, so she is very familiar with its impact on the density. That was a density case and the Appellate Division actually upheld the Superior Court where they didn't just remand it back to the Board, they actually overturned the Board's denial of an oversized lot that was somewhat trapezoidal in nature and it had lot frontage and a side yard variance with that one, but it met the lot area. In this case, that is exactly what they have. In that case, the court found that the grant of the variance to permit a large property to be divided into two lots conforming in respect of area, but marginally insufficient with respect to frontage and side yards was also consistent with the statutory objective. Mr. Madaio explained, just to be clear, their current size is over 36,000 square feet. Ms. Phillips noted that when she did the FAR on that, they could have an 8,000 square foot house, based on the 125-foot depth. Mr. Madaio noted that they are actually 3.6 times the size of the lot required and closer to four lots than three lots, rounding this. So, while they are not exclusively arguing this on a hardship, the square footage exists here for 3.6 lots and their position is that somehow making that only two lots, simply because they lack frontage, but they are grossly over as to area, is exactly what these cases are talking about.

Ms. Phillips continued with the positive criteria and stated that they affirmed the Master Plan goals recognizing that change occurs and that they have to look at different housing options and looking at properties and keeping within the density of the medium density of the R-10. By proposing three lots instead of two, she thinks that you actually preserve the character and the scale of that neighborhood more so than if you have the two larger homes and this is only because of one variance. They are not seeking other variances. Typically, when you have a frontage variance, you also implicate side yards, sometimes coverage or FAR. In this case, the homes are going to comply fully. You will have more than adequate side yards that were contemplated in the ordinance. They are not seeking any kind of bulk requirements and certainly not an FAR.

They also promote the purposes of the Municipal Land Use Law. One of them is to promote the establishment of appropriate population densities. Also, to provide sufficient space and appropriate locations for a variety of residential uses in open space. She thinks the Municipal Land Use Law is affirmed also by this application. Mr. Madaio reiterated that even with the three lots, the densities are less than is required due to the lot sizes. Ms. Phillips stated that that goes to the intensification also, and when people say it is overly intense for that, it is not. We need the FAR, which is definitely a measure of intensity and they need the lot area. Again, density and intensity. Mr. Madaio stated that they don't have to guess what an appropriate density is because theirs is actually less than the ordinance. Ms. Phillips agrees.

Ms. Phillips stated that for the negative criteria you have to look at if this is a substantial detriment. As she stated earlier, any type of change in a neighborhood is going to cause some issues. People like it the way they have it. They are used to having that one house in that neighborhood. But when you look at it practically, and from all the evidence, this is really the best planning alternative and there is not any substantial detriment to the immediate area. In terms of the Master Plan, they are within the moderate or medium density land use category. That does talk about the density they would like to see, which is 4.3. They are actually less than that. When you look at everything, she believes that the Board would be able to grant the variance and she believes they have addressed both the positive and negative criteria based on the fact that this is not a consistent R-10 neighborhood. It is very unique in terms of not only lot area sizes, but also types of dwellings and sizes of dwellings within that Cresskill Avenue neighborhood.

Mr. Schuster stated that for the Board's purposes, the application is complete as far as testimony. Mr. Madaio noted that this portion is. Although, as he said, he has noticed for actual site plan approval of the architectural plans and the site plans for how they sit on the site. Of course, if they reach that point, they will move into that phase. So, for tonight, he is done with witnesses. Mr. Schuster asked if he was basically looking for the Board to act on the application for subdivision this evening, and then come back on a subsequent date for site plan approval. Mr. Madaio noted that intention is to first think about subdivision and if anybody would like to see the house plans in order to further think about the subdivision, then he will just continue forward. He knows one thing is for sure and that is he doesn't have anybody else he is presenting tonight.

Mr. Schuster again asked if what Mr. Madaio plans on doing this evening then is to complete the application as it pertains to the subdivision approvals. He is not going to present any other testimony as to the site plan approvals. In other words, is he looking for the Board to act on the subdivision. Mr. Madaio stated that his intention is to get through the public's questions, possibly hear some Board questions, get some sense of what the Board would like to see here, whether they are comfortable with the idea of moving directly forward into site plan, or whether that is a fool's errand, and then make some decisions. The best answer he can give is to make sure the public is fully heard, then make some decisions on how he and the Board intend to move forward.

Ms. Tessaro wished to be heard. She asked if children's safety is being considered in this negative criteria that is being talked about. That is a big concern that she has. Ms. Phillips noted that there are curb cuts along the whole stretch there. She thinks that homeowners themselves will be concerned. She is sure if they are backing out or backing into the property they are going to be aware. The day she went, unfortunately there wasn't any traffic on this street. They are not adding any extra driveways per density or lot area than would be contemplated in the ordinance.

Mr. Marzocchi wished to be heard. He wanted to thank Ms. Phillips for stating that the area was tight in the beginning of her testimony and that they are on their own island, because that is exactly what they are saying as residents. Where they are going with this whole thing is that the neighborhood is overwhelmed with these children and it is a detriment to their children to do this. He stated that his neighbor, Ms. Eleanor Orange, is 102 years old. He sat down with her and basically what Eleanor said to him was that she hopes her birthday wish is that these houses do not get here. Mr. Madaio interjected and said that this is hearsay, and this is a valid objection to a comment being made. It is fully appropriate to object, with an objection based on a court rule, which he has now made. You cannot introduce "this lady said, please make this right for my birthday," "please I have been here 103 years," that is not admissible testimony in any context. Mr. Schuster stated that there has been an objection made by counsel. Under certain circumstances hearsay is permitted, but in this situation, we are not going to allow it because there is absolutely no basis upon which there can be a cross examination by the applicant, which you are entitled to do. This is not like a Supreme Court hearing where you don't get to cross-examine the witnesses against you. Mr. Marzocchi stated that he was going to the particulars of the neighborhood and the history of the neighborhood and the things that they are looking at.

Mr. Marzocchi explained that if you look at this neighborhood, this neighborhood is over a 100-years old and most of the houses in question here have been here long before this Master Plan had been put together. This particular neighborhood at one time was the elite neighborhood of Cresskill. It housed the Mayor and his particular house was actually four blocks away and moved. Without looking at the history and where they come from prior to the high school even being there, this block, this area, was considered the elite area of the neighborhood. It became overpopulated, oversized, and they are in this situation now because of the fact the high school has grown, the neighborhood has grown, the intersections have grown, and everything is all clustered together, and the point here is he has two little boys and his issue is the safety for his boys.

Mr. John Smith wished to be heard. He heard testimony before that it goes from zero houses to three houses. He would like to clear that up. It was one house and two lots. His thinking is it goes from one house to two, not zero to three. In that neighborhood, it was one house for over 100 years. He heard

testimony from the expert witness that because of frontage and square footage and comparisons 500 feet away, that it makes it okay to have smaller lots and squeeze the houses in. From all of them here, for 100 years, that one house fit that property, fit that neighborhood, so he doesn't know how three houses fit compared to one. There is an issue with impervious coverage and water. They just had tremendous rain and his neighbor across the street, the brook overflowed 15 feet from the back of his house. The town has expanded and expanded and added more houses and nothing has been done for the drainage of the water. The County and the State haven't done anything to the reservoirs to save the water. The water comes and it floods. It has no where to go. We lose the water.

Mr. Morgan closed the meeting to the public.

Councilwoman Tsigounis wanted to address what the Board is supposed to be looking at. The two issues whether is the change substantially detrimental to the public good and does it effectuate the purposes of the Master Plan. Regarding the first issue, is the change substantially detrimental to the public good. We have heard the public speak tonight and we heard the testimony from the expert witnesses. The planner did testify that there is no consistent lot size or architectural style in this particular area of Cresskill and that it tends to be kind of a unique area in the sense that the fabric is varied in different housing stock. The engineer testified, however, that a person driving down the street would not be able to tell the difference between the individual lots that are created through the subdivision. There, to her, is a disconnect. There, to her, is a detriment that the new lots that are being created are going to be a cookie cutter piece that will stand out like a sore thumb in the midst of this particular island community where the residential fabric is of a varied housing stock, which effectuates the purpose of the Master Plan. Therefore, she would like the applicants to consider their testimony on whether or not this is, in fact, substantially detrimental to the public good and effectuating the purposes of the Master Plan. She is trying to explain that there seems to be a disconnect between the testimony of driving down the road and not being able to tell the difference between the lots and yet there is a varied context here.

Ms. Phillips stated that Mr. McClellan was talking about the difference in the 72-foot width. He was saying the one lot was bigger. Since one lot was 72.5 and the other two were 72 feet, he was saying you wouldn't be able to tell the difference between the lot width sizes, not necessarily the architectural styles because at that point they hadn't discussed that yet. Councilwoman Tsigounis stated that that is her case in point, her testimony went through all the different 200-foot and 500-foot radius lots and all of the lots were varied. All of the lots had different sizes to them so by implementing this consistency, it does become more like Palisades Park or Fairview. She is also understanding that there is reason to believe that this may not be beneficial to the public good. There is reason to disagree with the testimony of the experts.

Mr. Madaio stated that Mr. McClellan was testifying that you couldn't tell the difference between 72, 72 and 72.5. Mr. Schuster thinks it is up to Mr. McClellan to answer the question. Councilwoman Tsigounis noted that she agrees that that is what he is saying. That is exactly what she is saying. That is not in context with the varied lot sizes in the area. Mr. Madaio noted that if they complied, they would be 100, 100 and 100 and there would be no deviation either. And they could certainly make some of them smaller and some of them bigger if deviation were the purpose. Their goal was to create three of the biggest lots they could to get as close to the requirement as they could. They are not looking to duplicate a hodgepodge, although if that were the Board's pleasure they could create a 62, an 82 and leave a 72 so they would be all different. That is not their purpose here. Their purpose here is to create the three largest lots they could that most closely conformed, all of which being over as to lot area, but slightly under as to frontage. He agreed that what Mr. McClellan meant was that they were the same. Councilwoman Tsigounis stated that driving down the street, you wouldn't be able to tell the difference in the three lot sizes. It will be a little bit out of context with the neighborhood. Mr. Madaio noted that the one before it is 75.

Mr. Madaio asked Mr. McClellan about the lot to the immediate right of the subject property. Mr. McClellan noted that it is 75 feet. The one to the immediate left is 86. Then you have 100, then 50 and then 62. Councilwoman Tsigounis stated that that is what she is disputing, the fact that they are talking about numbers. They are not talking about context, where the context of the neighborhood in that

particular area has a varied housing stock. They're welcome to smaller and larger lots. She thinks, if this goes through, it will be completely obvious that there are three new homes put up that will make it look like a disconnect with the rest of the neighborhood. Mr. McClellan noted that there are three other areas where there are three lots that are consistent: Block 17, Lots 2, 3, and 4, go 60, 50 and 50; Block 104 goes 60, 50 and 50. There are chunks where there are lots basically the same. So, here you have an area that goes 72, 72, 72 and then it breaks up again.

Mr. Schuster said that according to the density analysis, the three proposed lots are all narrower than the four most closely effected lots. Also, these lots square footage are all less than three of the most closely effected lots. Ms. Phillips agreed. Block 20, Lot 8.02 is not. Mr. Schuster asked how big the original improvement was on this site. Ms. Phillips stated that the house was 2,345 and the garage was 776 square feet and there was a pool. Mr. Schuster asked if they would accept the proposition that it is permissible for the municipality to upgrade a prior zoning in the area. Mrs. Phillips stated that you create a lot of non-conformity. She asked if he was talking about when it went to an R-10. Mr. Schuster stated that it is a common land use technique. Ms. Phillips noted that you try to keep the lots conforming, so yes, it is permissible.

Mr. Madaio asked if the Board would like to handle site plan simultaneous with subdivision or would the Board like to handle site plan only in the event of approval of the subdivision. Mr. Schuster noted that it is the applicant's application so if they want to present it all at one time, they can do that, or if they want to bifurcate it in some way, he thinks that is permitted under the case law. It is up to the applicant.

Mr. Madaio believes that they have submitted proofs satisfactory for the purpose of the subdivision. He would take one minute to sum on some of those issue and then he would like a vote on the subdivision. Depending on what that is, people will have their options. In the event his client can only build two homes, he doesn't think they will need any approvals for that, other than site plan, which, of course, will not require any variances. They would likely have three-car garages and significantly larger homes, but again, they would be no variance builds. They wouldn't be here asking for relief. Of course, they believe they have demonstrated, and these cases have meaning, that yes they are allowed to upzone, but if you upzone, and 11 out of the 15 properties within 200 feet weren't conforming whenever this upzoning took place, then you also have to bear the burden of the fact that when you try to weigh the negative criteria and positive criteria, when 70% of the area is lesser sizes than them, and only three of the 15 within 200 feet conform, three of the 15 lots within 200 feet conform here, you can't ignore the fact, for the purposes of both the positive and negative criteria, that what is out there is out there. The fact that you are allowed to upzone, that is a given. They believe they have demonstrated under the appropriate case law that this would be completely consistent with the area, completely consistent with the ordinance, requires only frontage variances, does not require any thing to do with density, coverage, runoff, impervious coverage, anything. The only issue is frontage, which is a classic for the flexible C, when you have sufficient lot areas and something in the neighborhood of 12 of the 15 lots within 200 feet don't conform. Eleven of the 15 lots within 200 don't conform as to frontage.

Mr. Madaio believes that they presented a case that renders those proofs relative obvious. This is not, as you know, a contest over what everybody says, or how many people say yes, or how many people say no. The Board is tasked with considering applications within a certain very narrow set of statutory criteria. It is the application of that criteria that you have to do, not simply make a determination of what seems on its face to be the most popular, easiest decision. Although, he's noted some very unpopular decisions as well. The Board hasn't shied away from challenge. They believe they proved the case. They would like a vote on the case. Then everybody will make a decision tomorrow where this goes. If his only option for his client is left with two very large homes, that would clearly be out of character with the area, then that die had been cast, if that is the option.

Mayor Romeo stated that they are entitled to an approval because of the size of the property. The question is whether it is going to be two lots or three lots. When we take this vote, do you want the Board to vote two or three or do you want the Board to vote yes or no on three lots. Mr. Schuster stated that the application is for three lots so that is what the Board will be voting on. Mr. Madaio noted that the two lots will be a non-variance minor subdivision because it is on one deed. What is before the Board and what

he would like is a vote on three, based on the proofs they have submitted. Then they will make a decision on whether they come back for two, is there some other process that is involved, do they come back for two very large homes with at least three-car garages, whatever it will be. But they are here for three. The fact that they may have to apply for a two-lot subdivision doesn't faze anybody.

Councilwoman Tsigounis made a motion to disapprove the three houses, because we do want to do what is best for the public good, so she made a motion to disapprove. Mr. Mandelbaum seconded the motion. Mr. Schuster clarified that voting yes is to deny the application. On Roll Call: Mayor Romeo voted yes and the reason being that this is one of the most narrow streets on the block and one of the most heavily trafficked. It is basically a nightmare there from 8:00-9:00 in the morning and 3:00-4:00 in the afternoon. When he was a boy, this was a dead-end street and then they built the high school and it opened all of this up, so, these people have to live with that. Today they were flooded out. They had two ambulances, two fire trucks down there and they had to borrow the senior citizen buses from SunRise to get the kids out of there. Try to imagine that along with everything else here. They are great builders and one of the top three builders in the town. In this case it is a detriment only because of the traffic on the street. So, he votes yes for denial. Councilwoman Tsigounis vote yes. Mr. Morgan agreed with the traffic issue and voted yes. Ms. Bauer voted yes. Mr. Calder voted no. Mr. Durakis voted yes and noted that the middle school was moved up there about 4-5 years ago and that even increased traffic further because the sixth graders were moved up from the elementary schools and created a middle school. Having the middle school and the high school there has just increased traffic that much more on that block. Mr. Mandelbaum and Mr. Rummel voted yes. Motion approved.

Mr. Madaio thanked the Board for their time.

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 9:38 PM, seconded by Mr. Rummel. All present were in favor. Motion approved.

The next four regular Planning Board meetings are scheduled for October 9, October 23, November 13, and November 27, 2018, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary