

## **MINUTES**

### **CRESSKILL PLANNING BOARD**

**NOVEMBER 9, 2021**

Mr. Ulshoefer opened the meeting at 7:26 PM and announced the requirements of the Open Public Meetings Act had been fulfilled.

Members present at roll call:

Mayor Romeo, Councilman Kaplan, Mr. Ulshoefer, Mr. Malone, Mr. Rummel, Mr. Sutura and Ms. Tsigounis. Ms. Bauer arrived at 7:32 PM. Also present were Mr. Paul Azzolina, Borough Engineer, and Mr. Dean Stamos, Board Attorney.

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Mr. Rummel made a motion to approve the minutes of the October 26, 2021, meeting, seconded by Mr. Malone. All present were in favor of the motion. Motion approved.

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### **Correspondence**

Letter of Introduction from Mr. Bob Rusch, Construction Official, dated October 19, 2021, sending JKP Broadway Associates, LLC to this Board for approval. They will be purchasing the business at 130 Broadway. There is no tenant change. Ms. Wendy Berger was present representing the applicant. This is just a change of ownership. It is an existing commercial warehouse building. It is about 67,000 square feet with 70 parking spaces, four loading docks. The tenant is Unilever or a subsidiary of Unilever and the tenant is remaining. They are just purchasing the building. Mr. Stamos will provide them with a letter of approval.

Letter of Introduction from Mr. Bob Rusch, Construction Official, dated November 3, 2021, sending Mr. Tomer Hershkowitz to this Board for approval. He is seeking a driveway waiver (as per 218-E(1)(c)) at 22 Center Street. No one was present.

Letter of Introduction from Mr. Bob Rusch, Construction Official, dated November 1, 2021, sending Ms. Elena Reitman to this Board for approval. She would like to open a medica spa at 15 Broadway, Suite 105. The business would offer aesthetic injectables as well as laser rejuvenation and body sculpting. She will also be installing a new sign but has not yet submitted plans.

Application for Soil Erosion and Sediment Control Plan Certification for 243 East Madison Avenue, Cresskill 243 LLC. File.

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### **Subdivision Committee**

Ms. Tsigounis noted that we received a revised application for Application #1571, 103 Huyler Landing Road, Adam Forem, dated October 27, 2021. They are here tonight for an informal.

Also received is a new Application #1576, 54 Willis Avenue, Paylex Projects II, LLC, received November 3, 2021. This is currently under review. The plans were distributed. This is for a new single-family home. There are no variances required. They are removing the existing home and replacing it with a new home in the same general vicinity. They are planning on putting in a small pool in the rear. Mr. Azzolina stated that there were no architectural drawings received with that. They were informed to come back to the next meeting for Mr. Azzolina's report.

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**Report from the Borough Engineer's Office**

Mr. Azzolina stated that on site plan Application #1571, 103 Huyler Landing Road, Adam Forem, the applicant's engineer, Mr. Michael Hubschmann, as well as the architect, are present. This is an application that they have been looking at for quite a while. A determination was made that this is a major development based on the area of disturbance and the increase in impervious area as well. Major modifications were made to the stormwater management system.

Mr. Michael Hubschman, who has testified before the Board many times over the years, was present. He is the engineer on the project. He noted that 103 Huyler Landing Road is a 68,000 square foot lot and is part of the Tammy Brook Development. It has remained vacant for all of these years. It slopes up towards the rear. The Tamcrest development is directly behind them. They are proposing a single-family dwelling. There is a lot of rock. They are coming into the high end of the property. Parking court in front, driveway going around to a garage, single-family dwelling that is a one and two-stories. It has a pool and cabana. There are no variances associated with it. In talking with Mr. Azzolina, they added, after they were unfortunate to be between Hurricane Ida and the nor'easter, so they added a lot of drainage. Rather than go with the seepage pits which they normally do, they have a real pipe detention storage system on site. That meets the major development requirement, which is if they are adding more than a quarter acre of impervious, they fall into that category, which has a lot more stringent stormwater rules.

The architect is present and it will be a beautiful house on the hill with a beautiful view. Mr. Colin Murtaugh, with Workshop/APD, is the architect on the project. It is a two-story single-family home as of right within all the zoning guidelines, under 33 feet, 2 ½ story home with a full basement. Mayor Romeo asked if they would be doing any blasting on the property. Mr. Murtaugh stated that they were anticipating a possibility of blasting, but they won't know until they start the excavation. They did do some test pits and there was shallow rock in some locations and there was also deep soil 10 plus feet deep. They will understand that once they start the excavation. The square footage of the house is 6,500 square feet. Mr. Hubschman noted that it is not going to the maximum. It is well under all the requirements.

Mr. Azzolina noted that there is an existing non-conformity associated with the frontage of the property which was granted years ago when the Tammy Brook subdivision was granted. Mr. Hubschman stated that the FAR is at 16.1% where they can go up to 20%. The impervious coverage is 25.4% where they are allowed 35%. It is well under. The frontage is 132.4. It is an approved building lot. It is on the curve. Mr. Hubschman was asked where the diverted water was going to go. He stated that it will go into a pipe and then into the easement. There is an existing drain line that they are not touching and they are connecting right at the bottom of the hill. Everything is piped to the low point and through that detention system. There are two five-foot diameter pipes. It is a very large storage system.

Ms. Tsigounis made a motion to approve the application, seconded by Mr. Rummel. All present were in favor. Motion approved. Mr. Stamos will provide them with a letter of approval.

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Mayor Romeo asked if anyone was present that wasn't here for the public hearing. Ms. Reitman was now present for 15 Broadway, Suite 105 for the medical spa. She is a physician that does aesthetic medicine. We received a Letter of Introduction from Mr. Rusch that was presented during correspondence. Ms. Tsigounis re-read the Letter of Introduction. This is the Horizon Building. She does Botox and fillers. The Board was fine with it. Ms. Tsigounis told her that when she does her sign, she will need to bring the plan to the Building Department. Letter of approval sent to Ms. Elena Reitman stating the Board's approval and informing her that she needs to bring her plans for the sign in for approval.

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Resolution for Application #1575, 8 Mountain View Road, Lumaj Homes LLC, was introduced by Mr. Rummel, seconded by Mr. Malone. Mr. Stamos noted that this is an application where the existing home will be demolished and has existing non-conforming lot size and lot frontage. The only variance they sought are combined side yards. They met the two side yards but not the combined of 35. On Roll Call: Mayor Romeo, Councilman Kaplan, Mr. Ulshoefer, Ms. Bauer, Mr. Malone, Mr. Rummel, Mr. Sutera and Ms. Tsigounis all voted yes. Motion approved. The original resolution shall become a permanent part of these minutes.

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### **Old Business**

None.

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### **Public Hearing – Application #1567M – 268 East Madison Avenue**

Mr. Matthew Capizzi, 11 Hillside Avenue, Tenafly, was present representing the applicant, Jane Reilly. This is an application at 268 East Madison where they are seeking to subdivide this existing lot into three building lots. The lot is in the R-10 Zone. It is an oversized lot for the zone. It has approximately 200 feet of frontage and 250 feet of depth. It is the largest lot in the area by far. The lot itself consists essentially of two building lots and what they are seeking to do is create three lots. Two of the lots will have 75 feet of frontage and approximately 130 feet of depth and one lot will have an L-shape or flag lot configuration that will have 50 feet of frontage and will extend out 250 feet along the easterly side of the property. Mr. Michael Hubschman prepared the site plans that are before the Board. On that subdivision site plan, they have shown some conceptual footprints. These footprints certainly are not final in form but just are provided to the Board for an example of how homes of a certain size and scale can be constructed on the new building lots. As far as variances that are required, they need one variance as to each lot and that is to lot width. The R-10 Zone requires a minimum lot width of 100 feet and as he mentioned, two of the lots will have 75 feet of frontage and one will lot will have 50 feet of frontage. They certainly acknowledge they could do two lots here as of right. They think a three-lot scenario is a better design for the neighborhood, in large part because, as you will hear from the testimony from some of their professionals, a large majority of the lots in the neighborhood are 75 feet or smaller in width. So, you have homes of a certain size and scale on the 75 and 50-foot-wide lots than you would on a 100-foot-wide lot.

There are some newer developments in the area, one or two newer homes on lots that are 100 and 125 feet in width that have homes that are probably around 4,000 to 4,500 square feet in size. They submit to the Board, and you will hear from the professionals, that a home of something around 3,000 square feet in size is more appropriate given the development pattern that exists within the neighborhood.

The team of professionals is Mr. Michael Hubschman and the planner is Brigitte Bogart who has some exhibits and testimony that she will be presenting as part of their case. He would like to start with Mr. Hubschman going through the existing neighborhood and the proposed subdivision, proposed lot line configuration and then take it one step at a time from there.

Mr. Stamos reviewed the notice, the affidavit of service and the affidavit of publication and everything is in order. Mr. Steven Schuster, stood and stated that he would like to make an application relative to the notice considered to be deficient. Mr. Schuster noted that the specific particulars are there is no indication what Zone this property is in, there is no indication what ordinance is being exception, and there is no indication what variance is being requested. These details are necessary, and the Board has jurisdiction. Mr. Stamos asked Mr. Schuster to state his name which he did – Mr. Steven Schuster, 170 Palisade Avenue, Cresskill, NJ. Mr. Stamos reiterated what Mr. Schuster said that the Zone is not noted, the ordinance for which there is an exception being depressed is not noted and what variances being sought is not noted.

Mr. Capizzi noted that there is no requirement in the statute for the notice to contain the Zone in which the lot is located. There is no requirement in the statute or applicable case law to require a specific citation to the ordinance that is being deviated from, and, in fact, the notice does provide for an indication that they are seeking variance relief under Section C1 and C2 of the Municipal Land Use Law and it goes on to further describe the actual deviations, namely the lot width variance that is required and the extend of the deviation as to each respective lot. He thinks the notice certainly adequately apprises the public of the relief that is being sought by way of this application.

Mr. Schuster doesn't see any reference in this notice about Section C1 and C2. Mr. Capizzi asked to see what Mr. Schuster was looking at. After looking at what Mr. Schuster was looking at, he stated that Mr. Schuster is correct. He did note that they needed subdivision approval pursuant to 48 Section 50 of the Statute. He did call out the nature of the variances that were required but not whether they were bulk or use variances. He thinks the notice still adequately apprises the public of the relief that is required by way of this application. Mr. Schuster doesn't believe that the notice also applies to the standard form notice set forth in the New Jersey Zoning and Land Use Administration book. Mr. Capizzi said there is no requirement that they comply with that book. Mr. Schuster noted that it is a suggested form, it's not a requirement. A requirement is a reasonable notice, and the fact of the matter is, for a reasonable notice, you should know what the Zone is. Mr. Capizzi stated that the specific reference to the ordinance that is being sought the deviation from is not a requirement to be in the notice. The notice essentially is intended to invite a member of the public to understand the nature of the application that is being sought in general terms, which this notice certainly does, and then it directs the members of the public to the municipal building should they desire to review the application and associated plan materials.

Mr. Shuster stated that the New Jersey Zoning and Land Use Administration uniform notice talks about the fact for a specific type of variance, either use variance or bulk variance and he doesn't believe this notice complies with that specific format that was used, but it requires a reasonable notice of the application being presented and he doesn't think this satisfies that requirement. Mr. Stamos stated that he doesn't have his book with him, but he knows that statute requires the date, time and location of the meeting and the nature of the relief sought as minimum points to meet. Whether you call it a bulk variance, it is certainly not a use variance because that would be a different situation, and here he references ancillary variances for minimum lot frontage. He thinks we can certainly note Mr. Schuster's objection on the record and Mr. Capizzi can decide if he wants to proceed at his risk, and if this matter gets appealed, his objection is on record and can be decided at a later date.

Mr. Schuster wanted to make one more notation. This is a notice for the public. It is not a notice for a lawyer and the average person is not going to know specifically or the necessary information to review the plans and look up the ordinances with the notice that is provided and that is his prime position. Mr. Capizzi noted that there are plenty of ordinary people here in the audience this evening which he thinks speaks volumes to the adequacy of the notice and they are certainly prepared to accept the risks and are prepared to proceed despite Mr. Schuster's objections.

Mr. Stamos stated that Mr. Schuster's objection to the notice and his position that it is invalid are certainly noted on the record. Preliminarily, he believes it meets the minimum requirements for the notice, but Mr. Capizzi is advised of the objection and can certainly decide if he wants to proceed at his risk or peril. Mr. Capizzi said that he is prepared to proceed. He doesn't believe there is any risk. Mr. Stamos noted that there is a counsel that has objected to the form of the notice and believes it is insufficient and upon preliminary review and looking at it, it is his opinion that it does meet the requirement of providing notice to the public and the nature of the relief sought. Whether it says bulk variance or just variance, he thinks it is satisfactory in terms of advising the public as to the relief being sought. He thinks that the Board can take jurisdiction.

Mr. Michael Hubschman, 263 S. Washington Avenue, Bergenfield, NJ, was sworn in by Mr. Stamos. He is a licensed professional engineer and planner. He will be testifying as a professional engineer tonight. He has been here many times and he was accepted as an expert. Mr. Hubschman stated that he has the subdivision set for the major subdivision. Everything that requires a variance is specified as a major subdivision. There are four sheets. There was one revision dated June 14, 2021. He also has an aerial

photo that shows the neighborhood. It was created today by his office. The aerial photo was marked as Exhibit A1 and the subdivision plan set was marked as Exhibit A2.

Mr. Hubschman stated that the existing conditions of the entire property are 51,000 square feet with slightly over 201 feet of frontage, 251 feet of depth. It is a rectangular parcel. There is an existing single-family dwelling approximately towards the front center probably about a 1,500 square foot footprint. That existing driveway is on the left side or the east side. There are some old, dilapidated structures on the east that are proposed to be removed. The remainder of the site is basically vacant. Everything slopes from the east towards the west, southwest. The lot contains two tax lots, Lots 37 and 38. According to the key map, the approximate size of the existing lots are 75 x 250 and 126 x 250.

Mr. Hubschman noted that they took a look at the neighborhood and there are a lot of 75-foot lots and some smaller going towards the west so they are proposing the two 75-foot lots and they are in the R-10 Zone that requires a 10,000 square foot minimum. The two lots in the front, 75 x 130, those are slightly over 10,000 square feet. The remainder is 30,900 square foot lot with a 50-foot frontage where they would propose a house in the rear. For purposes of record, the lots would be called 37.01, 37.02 and 37.03. As Mr. Capizzi mentioned, they are requesting the three variances for lot frontage where 37.01 is 51.85 feet, where 100 feet is required, 37.02 and 37.03 are similar with 75-foot frontages, where 100 feet is required. As far depth requirements, area and all those parameters are met with this configuration. Mr. Hubschman noted that when they designed it, they held the two lots with the 10,000 square foot minimum.

Mr. Hubschman showed on sheet 2, a preliminary site plan with the same house that was built on Park Street with a 60-foot-wide lot. It is a good looking Colonial house that fit on the property. They took those homes and just sort of placed three of them on the properties to get an idea. They are not the exact homes, but it gives you an idea of what the development would be. The rough dimensions of the conceptual homes are 1,580 square feet and the rear house was 1,685 square feet footprint. The overall width of the houses are approximately 38 feet by about 42 feet. They are all on narrower lots than these lots. They would meet the FAR and the side yards and front and rear yards. This is the type of homes that would be on these lots.

As far as driveway access, the two 75-foot lots would have the driveways backing out onto East Madison, and the rear lot, what they are calling the flag lot, with 51 feet of frontage, has a long narrow driveway going to the rear, you would turn around in the rear and drive out onto East Madison. This would be subject to site plan approval. This is not the exact house that would be on the lot. Mr. Capizzi asked if there was something they could do to call out the existence of the that lot. Mr. Hubschman noted that they didn't receive a fire review letter yet, but they would put a placard out there with the house number and maybe the mailbox out there. It is a very large lot at 31,000 square feet.

Mr. Capizzi noted that they received a letter from Mr. Azzolina's office today that brought up some issues. One of them was about a hydrant. Mr. Hubschman stated that the RSIS requires a hydrant within 400 feet of the property. They have sort of an agreement/disagreement about that. There is a hydrant on the corner of Oak, but if the Board approved it, they would add another hydrant. Mr. Capizzi stated that that is something that could certainly be accommodated on the site as far as an installation of a new hydrant. Mr. Hubschman noted that they would put the hydrant right on East Madison.

Mr. Capizzi noted that these houses are all conceptual but asked about conceptual drainage plans. Mr. Hubschman said that they were proposing typical seepage pits for the houses on this property. If they treated it as a major development, it wouldn't change much. In a major development, the detention gets a little bit more. You have to retain 50% of the two-year storm. It is more stringent. The lot configuration wouldn't preclude them from complying with that regulation. Mr. Hubschman also noted that they have to provide treatment for the driveway water runoff too.

Mr. Hubschman noted that there is a steep slope area that looks like a man-made area. It is slightly over 25% by the house. That is sort of graded up and then there is a little area around the existing house. It is not really a development hinderance where if you were on a steep slope on the side of a mountain or something where it is really restrictive or something. This is just a small area that is considered a steep

slope by ordinance. Mr. Capizzi asked if there were any issues with stabilization or soil erosion that would result from the existence out on the site. Mr. Hubschman noted that there would be none.

As far as tree removal, there was a count of 20-30 trees that were noted to be removed. Ms. Bauer said there were 60 trees. Mr. Hubschman said there were 60 on the site. Mr. Azzolina noted there were 60 trees with 30 trees to be removed. Mr. Hubschman said there were a lot of small, brushy, overgrown in the rear that will all be cleaned up by the development. There are some that are in poor health. As far as tree remediation, that can be accomplished on these properties. Mr. Hubschman stated that they will try to clean up the property and create a buffer around the sides. Also some street shade trees. Mr. Azzolina requested that they replace the curbing along the street. That is something they can certainly accommodate.

As far as the electric being underground, Mr. Hubschman said the poles are on the other side of the street, so they would have to have a riser pole put in. The electric company doesn't like to go across the road underground so you would have to have a pole. It is possible but he doesn't know if it is feasible.

Mr. Sutera asked about the orientation of the flag lot. How would the home sit relative to the neighboring homes? Mr. Hubschman stated that he put the driveway on the higher side so the house should be pushed more towards the higher level on the property. Mr. Sutera asked about the home relative to the homes in the front. Mr. Hubschman says it sits about two-and-one-half to three feet lower. Mr. Capizzi stated that it was their intention to vegetate the rear property lines of those interior lots. Mr. Hubschman agrees. They would probably have it landscaped.

Mr. Stamos stated that the property is approximately 201 feet wide and exactly half of that is 100 feet which is what is permitted in the zone. They are seeking to create a lot with a width of 50 feet. Mr. Hubschman stated the lot width in the rear is 116. That lot is 31,000 square feet. Mr. Stamos noted that the comment was that three lots would be better for the neighborhood, but has a flag lot like this been approved anywhere? Mr. Hubschman doesn't recall anywhere. Most of the subdivisions have been rectangular. Mr. Stamos said that this type of development and orientation really is not what is normal in the area. Mr. Hubschman stated that it seemed that the two larger lots of 100 x 250 wouldn't fit in with the neighborhood. Mr. Stamos noted that we don't have any architectural plans, but what Mr. Hubschman is saying is that similar homes have been constructed elsewhere that would fit, but we don't know for sure. Mr. Hubschman stated that they would have to come back to the Planning Board for site plan approval, but just as an example, those are the houses on Park Street that are on 60-foot lots.

Mr. Stamos said that we are being asked for a subdivision that may or may not require further variances when they come back for site plan. Mr. Hubschman doesn't think they would come back and ask for variances. The intention of raising the issue of houses of a similar size and scale is that the lot width itself limits and restricts the intensity of development by virtue of, for example, the sliding scale of the FAR based upon lot width, and that would create a home more in keeping with what exists in the neighborhood. Essentially the width itself is a controlling enough parameter to limit the intensity of development as opposed to a 100-foot-wide lot. Mr. Stamos understood, but we have heard several applications at 75-foot wide where applicants have come in and said they need a certain size house in Cresskill and need a two-car garage and can't meet the combined side yard setback and thus they 30 feet instead of 35 feet.

Ms. Tsigounis explained that it was always because it was a hardship in the existence. Part of our job as a Planning Board is to hear where the hardship is here. She doesn't see there being a hardship for reducing or asking for under the required 100 feet just to cut it up to get an extra lot in the back. Mr. Capizzi stated that it is not a hardship case. It is a C-2 case. Ms. Tsigounis noted that that is when the Planning Board is a little bit more amenable. Mr. Capizzi stated that there are certain stipulations they can make on the record, certain deed restrictions that they could explore with the Board as far as the fact that they are creating undersized lots and the acknowledgement of the fact that they are creating undersized lots today. Deed restrictions essentially require the developments to maintain certain setbacks even though they are required by municipal zoning. Which deviations are permitted in certain circumstances, if we agree to put certain deed restrictions on the parcel, there would be no Board for the property owner to seek relief from. They would be bound by those deed restrictions.

Ms. Bauer asked how they suggest getting it out of the 15% steep slope ordinance. Mr. Hubschman said that the ordinance says it allows you to build between 15 and 25% slope with certain restrictions as to drainage and so forth and they would comply with that. It's basically up to the Borough Engineer and the review during that. There was a slight area that is slightly over the 25% which is sort of in the middle and that is an area that was sort of humped up by the owner so they can look at that.

Mr. Stamos said that they mentioned that the topography goes south to southwest. Mr. Hubschman stated that it goes east to west. Mr. Stamos asked what the elevations are. Mr. Hubschman noted that it goes from elevation 104 to 80.8 in the rear. That is almost a 25-foot drop from the front left to the back right. Mayor Romeo asked how they control the water runoff with a 25-foot waterfall coming down there. Mr. Hubschman said they would do that by having the driveway pitch out and having seepage pits for the house. That is the existing grade situation. That is natural sheet flow going from east to west. If the lot is going to be developed, you would probably terrace the rear yard which would bring down a lot of surface runoff. Everything now is uncontrolled. Right now it is a pristine wooded area. Mr. Capizzi asked if what he is saying is that the post-construction scenario from a drainage standpoint would be a betterment from what exists today. Mr. Hubschman said it totally is because it would be controlled. Since it is considered a major development, they would provide some reductions in runoff.

Ms. Tsigounis said she has a hard time understanding why the drainage, now in its natural condition, would be below standards if improvements were made. Mr. Hubschman stated that it is always better when you develop a property properly with terracing and adding drainage structures, seepage pits and proper grading and trying to grade as much as possible more towards the road. Right now it is all uncontrolled. Everything goes towards the house. Ms. Tsigounis noted that that is why asking for three houses is asking for a lot.

Mr. Capizzi asked Mr. Hubschman how the additional lot impacts the drainage scenario of the lot. If it was two lots versus three lots. What is the impact to the neighborhood relative to the additional lot. Mr. Hubschman stated that if you had two lots, you could have more coverage because you are not restricted by the 125-foot depth requirement for impervious coverage. So, if you had two lots, you could have 30% of impervious coverage based on the entire lot area. Where now, you have 30% based on only the 125-foot depth. The back lot too is pretty restrictive. You would have a lot more impervious coverage with two huge homes and circular driveways.

Mr. Capizzi asked Mr. Hubschman about the terracing and regrading and some of the regional benefits from that. Mr. Hubschman explained that whenever you regrade a lot or terrace it, that slows the runoff because you create an almost level area in the rear yard rather than a sloped area. The soil conditions will change so you will have something that is vegetation versus an impervious surface. There is a bit of a balance. Mr. Hubschman stated that on the flag lot, that will all be minor paving and probably a buffer. They are building a new house on the lot 28 behind that lot so you will probably buffer that whole area. The impervious areas will be probably caught by either gutters, leaders, trench drains, and seepage pits. If they talk about terracing and retaining walls, that reduces some degree of elevation change. Mr. Hubschman noted that that mitigates the slope because you will be stepping down. It will slow all the runoff running off the rear yard. Each of those areas will have some element of retention.

Mr. Ulshoefer stated that they are taking out all these trees and if you didn't take it out in the back, maybe you wouldn't have to have all that water running to other areas. He has driven up there when it was raining. You don't see a whole lot of water. When you take out all these trees, where is the water going to go. Mr. Hubschman noted that they would be replacing all the trees. Mr. Ulshoefer noted that you can't get a tree in five minutes. The point is with the trees, they are the ones that are holding the ground. He pointed out all the trees being taken out on the plan that he colored in yellow. When you do that, you are making it worse when all those trees are gone. Now you are stirring up the ground and everything else. Mr. Hubschman stated that they work with the Borough Engineer a lot and they would make sure there would be no adverse effect on runoff and Mr. Azzolina would oversee any type of development.

Mr. Capizzi asked Mr. Hubschman if removing these 30 trees would impact his ability or preclude him from stabilizing the site. Mr. Hubschman said, not at all. They would add trees, add buffer trees around the perimeter. They will probably level the rear yard. They will terrace it a little bit. Despite them removing the

30 trees plus or minus, they will still be able to comply with the RSIS requirements. Mr. Capizzi asked how many of the trees were triggered by the additional lot in the rear. Mr. Hubschman noted that the other scenario would be to just have three deep lots which would almost be better. Then you would only be taking trees down in the front and you would have nice deep lots and all of the trees in the rear, about 20 or so wouldn't necessarily have to be taken down. Mr. Capizzi stated that if they did that type of configuration, the lot widths get a little smaller. Mr. Hubschman noted that the lots would be about 67 feet wide. The rear portion of the properties would remain undisturbed to a certain extent, unless it was somehow restricted, maybe the rear 30-40 feet of a very deep lot. Then again, you would be restricted by the 125-foot depth requirement for impervious coverage. In the ordinance, when you have a lot that is less than 100 feet, you can only count 125 feet of the depth for impervious coverage and FAR. That controls the size of the house. You can't take advantage of the whole 250 feet.

Mr. Azzolina noted that Mr. Hubschman covered a majority of the comments in his report. On page 6 of 12 in his report, critical areas, he identified that portion in the center of the site at 25%. He wanted to know what methodology he used to define the limits as to where the upper limits of the slope were and the lower limits of the slope were. Mr. Hubschman noted that he got it from the topo survey, from the contours. They do it that way. Mr. Azzolina asked about the limits. If you look at the plan, there are other areas on the site where you can say okay this small area is greater than 25%. Mr. Hubschman said the ordinance isn't that clear. Mr. Azzolina noted that that is his point. There is some interpretation involved in the ordinance. The majority of the site is right around that 15% slope. Mr. Hubschman said the majority of the site is less than 10 to probably up to 15.

Mr. Azzolina stated that as Mr. Hubschman indicated, he has presented a conceptual site plan for the three lots as proposed. If the Board were to approve it, naturally they would be required to return back to the Board for site plan approval for each of the lots for the specific house and the zoning schedule indicates that they will conform with the ordinance so they are basically restricting themselves so that they will not be able to request variances in the future for any of the lots.

Item B is a soil moving plan, so recognizing that this is a construction on a sloped area, he asked Mr. Hubschman if he performed any calculations of defining the soil required to effectuate this grading plan. Mr. Hubschman stated that he hasn't yet because houses are sort of borough type houses. They would do that if they got further into the development. Mr. Azzolina asked if he had any ballpark estimate available. Mr. Hubschman said he had some soil removal from the basement areas. It is kind of humped up in the front so they will probably push that grade to level it back a little bit more. It's probably nothing more than following the existing grades. Mr. Azzolina stated that under the critical area ordinance, a more specific soil moving plan is required to demonstrate though that the lot is developable as proposed so that may be something that the Board wants to see at this time rather than later.

Stormwater Management is C. Mr. Azzolina's position has been that theoretically this would be a major development if the properties were to be utilized to the fullest potential. Right now, the limit of disturbance is carved to be 0.9 acres, below the one-acre threshold. The reality of the situation he would think is that whoever buys that back lot would want to utilize that area in the westerly portion, the southwest corner of the site for a pool, patio, etc., none of which is shown on this plan. None of the sites have patios or decks or any other amenities. He thinks the reality of the situation is that that would be the desire of any homeowner. His belief is that ultimately more than one acre and/or one quarter acre of impervious surface will be created on this property, so he believes that a more stringent stormwater management design is required. He thinks there is going to be a bit of an issue with that given the low point on the site. The low point on the site does not have access to any public storm drain for overflow conditions. Has any consideration been given to that reality of the property? Mr. Hubschman agreed that the low point is too low to drain back to the street so the low area would have to be through seepage pits. Mr. Azzolina noted that there really is no ability to provide an overflow system unless you were to acquire an easement through somebody else's property to perhaps tie into Palisades if the storm drain system is even capable of handling it. As Mr. Hubschman accurately stated, major developments are required to reduce the peak rate of runoff from the site. He has not yet received those calculations. If the Board were to consider this a major development, he would obviously review those calculations. He would have to demonstrate that the required reductions are being achieved for the two-, ten- and 100-year storm events as well as provide



water quality and recharge for the site. Those are all strictly defined in the stormwater management ordinance. That is something to be provided should the design remain in this configuration.

Item D – Proposed Tree Removal and Replacement – Thirty trees are proposed to be removed. Certain tree removals are recognized as being permitted as being in the building footprint and 15 feet of distance therefrom. Plans as presented do not show a mitigation plan. That is something that the applicant would be required to provide as well as street shade trees along the immediate street frontage along East Madison Avenue.

Item E – Building Sewer – Regarding the building sewer, there is an existing building sewer servicing the existing dwelling. He believes they are not proposing to use that existing connection. Mr. Hubschman agreed. There would be three new connections in the roadway that was resurfaced approximately two years ago. That is not a great thing, but if it approved in this configuration, the applicant would be required to restore the roadway, the surface course with infrared methodology. And would be required for all services required to service the dwellings. Given the number of lots and the number of services, it may require a curb-to-curb mill across the entire street. This is a possibility. They would have to see how that evolves with the utility companies.

Item F – Curbing – He spoke about the entire curb being removed and replaced in kind.

Item G – Underground Wiring – He spoke about the underground wiring. He agrees that a rising pole would be required. Perhaps Rockland Electric would be required to do a conduit below the roadway in order to create any underground services to the dwelling but that would be subject to future discussions with Rockland Electric.

Mr. Azzolina noted that he spoke about macadam restoration and the fire hydrant. He believes that an additional hydrant would be required in order to reach the back dwelling if it were to be approved as presented. That back dwelling is certainly greater than 400 feet from any hydrant in the area. Applications to outside agencies are required, the Tax Assessor for the number of proposed lots. We haven't received any reviews from any emergency services in town. Most importantly is the Fire Department relative to the visibility of the rear lot. The Construction Code Official, Public Works Department for the road opening permits, his office, application has to go to the County Planning Board because it is a major subdivision, and approval from Bergen County Soil Conservation District is required.

Mr. Ulshoefer opened the meeting to the Public. Ms. Sharon Fried, 173 Palisade Avenue, Cresskill, wished to be heard. Her property is east of the proposed subdivision. In order to get to the back lot that they are proposing, they are proposing a driveway that goes the back of her entire lot. She is on the corner of Palisade and Madison. Mr. Hubschman noted that it is about 20 feet from the rear of her lot to the driveway and it will go all the way back. Ms. Fried said she can picture it.

Mr. Louis Sicheri, 279 E. Madison, Cresskill, wished to be heard. He wanted to know how many tons of fill they will need to regrade the property to get proper drainage. Mr. Hubschman stated that they haven't done the calculations yet.

Mr. Robert Soudant, 166 Palisades Avenue, Cresskill, wished to be heard. He wanted to know, after all is said and done, between the long driveway, the turn around space, the properties, sidewalks, patios, everything, how many square feet of impervious surfaces will be there. Mr. Hubschman stated that it would be whatever the building code allows. He estimates about 10,000 square feet, which is about 20%. The two front lots are only permitted 3,000 square feet each. They will have two-car garages facing the street and just drive right in. Mr. Soudant noted that ever since they constructed Tammy Brook and then Tamcrest, the amount of water continues to mount. It never backs off despite all the promises of retention. Mr. Hubschman noted that the rainfall of Ida was way over the top of anything we have seen.

Mr. Donald Skog, 157 Palisade Avenue, Cresskill, wished to be heard. His question is Mr. Hubschman is saying 10,000 square feet of impervious but you have not put in swimming pools, patios and other items that will cover more impervious and he is very concerned about water runoff. He might be affected, but the

three houses on Palisades Avenue just west of him will be seriously affected. What is the estimate of further development when the developers get in there, what is the estimate of more impervious coverage. Mr. Hubschman stated that the zoning wouldn't allow more than what he said for the three lots, including patios, decks and pools, unless they came for a variance, so everyone would be noticed for that.

Mr. Capizzi noted that this subdivision would allow for less impervious coverage than an as of right subdivision. Mr. Hubschman agreed because then you would have 30% of the entire 50,000 square feet. You could have the remaining 15,000 square feet of impervious. Mr. Capizzi noted that several of the neighbors talked about the impact of drainage. Is creating these three lots going to result in a situation where the drainage is going to be worse for these people along Palisades. Mr. Hubschman stated that the code requires for it to be better actually, by installing seepage pits and retention basins on site. The code requires for a two-, ten- and 100-year storm, which is about eight inches in 24 hours and for a two-year storm, they have to reduce the runoff by 50% of what is existing. A ten-year storm is 75% of what is existing, and a 100-year storm is 80% of what is existing. By code, it has to be less than what is existing.

Ms. Cynthia Lash, 162 Palisade Avenue, Cresskill, wished to be heard. Ms. Lash doesn't understand that if you build three homes, the drainage, the soil erosion and all that, they will be in a better position than if they build two homes for soil runoff, sewers and everything else. Mr. Hubschman stated that the way the zoning code is, if you have a 100-foot-wide lot, then you can have 30% coverage on the entire property. If you go less than 100 feet, say they are going to 75 feet, they can only count 125 feet of their depth for their 30%. The lots are 250 feet deep. So 125 feet of the property is not counted in the calculation with a 75 foot wide property. If it is a full depth lot with a 100-foot width, it is a 25,000 square foot lot, you can have 30% coverage on that which is 15,000 square feet, per lot, or a total of 30,000 square feet. Mr. Capizzi stated that by virtue of the subdivision, a portion of the lot remains outside of the impervious coverage calculation. Approximately half of the lot is not permitted in the impervious coverage and FAR calculations. So, with the subdivision you are allowed approximately 9,000 square feet impervious coverage total for the three lots versus 30,000 square feet impervious coverage for the two lots.

Ms. Tsigounis explained that they are trying to build on lots that have frontages of 75, 75 and 50. They are talking numbers right now and if granted what they would be allowed to do. Our whole issue is planning and proper planning for this site we are very fearful that it is going to be overbuilt. Although there are mechanical means of adjusting for what they are planning on constructing, we know nature works its own way. The general sentiment is, although you could make improvements on three lots, they are still asking for one important piece of taking an allowable 100 foot minimum and subdivide that in to three, 75, 75 and 50. Mr. Capizzi stated that it is not an overdevelopment if the numbers show you that you end up with a less intensive development... Ms. Tsigounis said that it is numbers. We are talking common sense and planning and we live here. It has happened in Tammy Brook. Look at what Ida did. We have retention basins and they all overflowed. It's all coming down. People are voicing their opinions. Although they are saying what they are allowed to do, they are still asking for the Board to grant them the variance on the width, which is the instigator on this project. Mr. Capizzi stated that a member of the public had inquired as to whether Mr. Hubschman's testimony that the subdivision results in less impervious coverage was accurate. All he did was work through the math to establish what he had said was correct. Ms. Tsigounis said that she was just reiterating the fact that the minimum 100-foot frontage variance was granted. That is a huge part of what the application is asking.

Mr. Capizzi noted that as part of his justification for the C2 benefits that the planner will speak to when she testifies is that the three-lot subdivision brings about several public advantages, one of which is a less intense form of development, betterment of a drainage scenario, etc. That is why the testimony from Mr. Hubschman is pertinent because they are under a C2 basis. The case is based upon the C2 benefit which talks about regional benefits in granting subdivisions. Part of what he is trying to listen to in Mr. Hubschman's testimony is what those benefits are. They are not trying to mislead anybody about the nature of the application. They recognize they need variance relief. He talked about it in his opening. Mr. Schuster raised some points relative to variance relief. Mr. Hubschman talked about variance relief in his direct testimony. Mr. Stamos talked about variance relief. There is nobody hiding from the fact they need variance relief. They recognize it and that is why they are here this evening. What they are trying to do first of all is address the questions of the public and the concerns that they have through Mr. Hubschman's testimony.

and to the extent that he can establish that there are benefits from the subdivision from Mr. Hubschman, that is also what he is trying to do.

Mr. Sutura wanted to go back to the water that would travel down the 50-foot driveway. Wouldn't that compromise two of the houses and wouldn't it cause additional water runoff to the immediate property. Mr. Hubschman said that it is curved, and it would flow and there would be a retention or a seepage pit system for that. None of this is really designed yet. They just want to present a scenario that is going to be developed and they would have to come back to the Board with house plans and more detail for each of the lots. Also, the driveway would pitch back towards the house. There would be catch basins along the driveway every 100 feet or so.

Mr. Steven Schuster, 170 Palisades Avenue, Cresskill, wished to be heard. Mr. Schuster stated that at this point, all this runoff distance is really theory. You don't know at this point in time what is going to be constructed and when you know you will have a better idea. Mr. Hubschman noted that people are asking what can you build and what coverage is permitted. Mr. Schuster asked if they said there were two tax lots on this property with two tax bills. Mr. Hubschman said there were two tax lots. He wasn't sure if there were two tax bills. Mr. Schuster said if that's the case they already have a two-lot subdivision where they can go in and get a building permit tomorrow. Mr. Capizzi stated that they recognize that they can do two lots here.

Mr. Schuster asked about the orientation of the houses on the lots and if that has already been decided. Mr. Hubschman noted that their proposal would be to have the house facing east. Mr. Schuster stated that they don't have on the plan how big the houses would be. They will be two story houses? Mr. Hubschman agreed. Mr. Schuster asked if they would have visibility into the backyards of all the neighbors there. Mr. Hubschman said just as much as everyone else in that area. Mr. Schuster said they would look right into everybody's back yard there. They will have no privacy. Mr. Hubschman disagreed. Mr. Schuster asked if there were any flag lots in the Borough of Cresskill. Mr. Hubschman didn't know. Mr. Schuster asked if a flag lot had ever been approved. Mr. Hubschman didn't know. A planner might know that. Mr. Schuster noted that the neighbor at 269 is a 125-foot lot and said that most of those houses are 100-foot lots. Mr. Hubschman said most of the lots are 75 and the planner has all of that.

Mr. Schuster asked that isn't it a fact that as far as from a development standpoint, isn't a flag lot the same as development under the Land Use Act. Mr. Capizzi interrupted and told Mr. Stamos that Mr. Schuster is making legal arguments. Mr. Schuster stated that he is not making legal arguments he is asking a question. Mr. Capizzi is objecting to the question because it is directed to the wrong professional.

Mr. Capizzi asked for a five-minute recess.

Returning from the five-minute recess, Mr. Capizzi would like to have an opportunity to revisit the plans and see if they can rework it to a certain degree to address the concerns brought by the members of the public and the Board and come back on another date. Given the holidays and Thanksgiving and Christmas, if they could carry it for a date in January, that would be appreciated.

This hearing will be carried to January 11, 2022. Mr. Stamos instructed the public that there will not be further notice given. Ms. Fried requested that notice be sent out again because there were many neighbors that were unable to attend tonight and may want to be in attendance at the next meeting. Mr. Stamos noted that legally we made the decision that the notice was sufficient for tonight so by law this is the notification and we can't require the applicant to submit another notice. Mr. Capizzi stated that given the gap in time, it is not an issue for them to re-notice. He will put a new notice in the paper and by certified mail. This is something he does not have to do.

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### **New Business**

None.

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**Other Business**

None.

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Mr. Ulshoefer opened the meeting to the public. No public wished to be heard. Mr. Ulshoefer closed the meeting to the public.

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Motion was made by Ms. Tsigounis to adjourn the meeting at 9:10 PM, seconded by Mr. Malone. All present were in favor. Motion approved.

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The next four regular Planning Board meetings are scheduled for November 23, December 14, December 28, 2021, and January 11, 2022, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo  
Recording Secretary