

**MINUTES OF THE BOROUGH OF NORTH CALDWELL PLANNING BOARD
REGULAR MEETING HELD JUNE 10, 2019**

Chairman Brower called the meeting to order at 7:30 p.m. The following members were present:

ROLL CALL

PRESENT: Chairman Brower, Mr. Campbell, Councilman Rees, Dr. Spinelli, Mr. O'Sullivan, Ms. Nathans

ABSENT: Mayor Alessi, Mr. Barba, Mr. Fishbone

Others present: Mr. Dusinberre, Esq., Attorney

ADEQUATE NOTICE of this meeting of the Borough of North Caldwell Planning Board was given as follows: Notice was sent to The Progress and Notice was filed with the office of the Borough Clerk.

APPROVAL OF MINUTES

None

ITEMS FOR DISCUSSION

Chairman Brower opened the discussion by making an announcement that the application from Pulte Homes of NJ was carried from the May 20th meeting.

Chairman Brower also indicated that the 2019 Periodic Reexamination of the Master Plan was being tabled from the agenda in order to coordinate the appropriate public notices for consideration at an upcoming Regular Meeting. He asked Mr. Dusinberre and Mr. O'Sullivan to coordinate.

Chairman Brower explained the procedure to be followed for the hearing of applications before the Planning Board.

APPLICATIONS

APPLICATION FOR REAR YARD SETBACK VARIANCES

Pulte Homes of NJ, Limited Partnership
150 Allen Road, Suite 303
Basking Ridge, NJ 07020
Blocks 104, 105 and 106, various lots

Mr. Robert Gaccione, Esq. of the firm Gaccione Pomaco, Belleville, New Jersey entered an appearance as Counsel on behalf of the applicant, Pulte Homes of NJ, Limited Partnership.

Mr. Dusinberre asked that testimony for this application restart and not be a continuation from previous testimony for this application. He also asked if the application would be presented as a singular blanket application for all variances or if they were being presented on a lot-by-lot basis. Mr. Gaccione confirmed that testimony would restart and the request was for a single blanket application.

Mr. Gaccione described the application as a request for bulk variances for rear yard setbacks for the construction of decks at 13 lots in the Reserve at North Caldwell development. Mr. Gaccione advised he intended to call four witnesses, Mr. James Mullen, Director of Land Entitlements for Pulte Homes, Mr. Peter Ciliberto, P.E., Engineer, Mr. Bill Feinberg, Architect and Mr. Michael Tobia, Professional Planner.

Mr. James Mullen 150 Allen Road, Suite 303, Basking Ridge, New Jersey was presented as a witness and was sworn in by Mr. Dusinberre.

Mr. Mullen stated his function with Pulte Homes is to gain government approvals for Pulte's projects. He then gave a brief description of the application noting that on a prior application before the Board for amended site plan approval the focus was on architecture and it was not until after gaining the amended site plan approval that Pulte Homes realized that some of the lots in the development were too shallow to support decks.

Mr. Mullen testified that Pulte customers want decks and that decks provide simple one floor living. Mr. Mullen further testified that currently 10 of the 62 properties in the development are closed while 2 are under contract. The 2 under contract (21 Hilltop & 3 Sagamore) are included in this application. Block 105, Lot 11 is a 'Hilltop' model while Block 106, Lot 21 is a 'Furman' model. The other 11 setbacks in the present application are not closed or currently under contract.

Mr. Mullen further testified that some of the lots cannot fit a 10' x 12' deck out of the setback when fitted with the smallest offered models. Mr. Mullen specified that 12 of the 13 lots within the application are the smallest model home. Mr. Gaccione indicated that Mr. Ciliberto will provide additional testimony on the 13th lot.

Mr. Mullen offered an update on the drainage situation. Mr. Dusinberre asked if the discussion was related to the rear yard variance request presented tonight. Mr. Mullen indicated that it was not related and it was determined to be not necessary to discuss drainage as part of the present application.

Chairman Brower invited members of the Board and staff to question the witness.

Mr. Spinelli asked for an explanation on the oversight for the need for this variance in the original application. Mr. Mullen responded by explaining that the lot-by-lot fit-out occurred much later in the process and was a simple oversight earlier.

Mr. Campbell asked if the 2 properties under contract were marketed with decks to which Mr. Mullen said they were not marketed with decks.

Chairman Brower asked for confirmation that the smallest homes still do not accommodate a deck on the lots within the application. Mr. Mullen confirmed.

The meeting was opened to the public to question Mr. Mullen on his testimony.

Mr. Paul Scagnelli, 7 Stonybrook Drive, came forward and asked how many of the 13 lots within this application had building permits. Mr. Mullen indicated that only 2 were under contract and under construction. Mr. Scagnelli asked for clarification that no individuals or families were affected by the lack of deck and Mr. Mullen confirmed.

Mr. Bernard Doyle, 31 Glenview Road, asked Mr. Mullen to identify the location of the decks, whether the decks are lit and to discuss impacts to his particular property. Mr. Gaccione

indicated that the Mr. Ciliberto would provide testimony as to the location and insight on the impacts. Mr. Mullen testified that Pulte does not offer lighting on their decks.

No other members of the public has questions for Mr. Mullen.

Mr. Peter Ciliberto, P.E. of Najarian Associates, Inc. 150 Allen Road, Eatontown, New Jersey was presented as the next witness to be heard as a professional engineer. Mr. Ciliberto was sworn in by Mr. Dusinberre. Mr. Ciliberto has previously been accepted by the Planning Board as a professional witness and Mr. Gaccione requested he be accepted as a professional witness for this application based on past acceptance. The Board agreed.

Mr. Ciliberto displayed a mounted exhibit of the following document for his presentation:

Mr. Ciliberto advised that he prepared the original site plans and amended site plans for the Reserve at North Caldwell development. He next described the site based upon the site plan submitted as part of the application and identified the 13 lots that are the subject this application. He noted that the proposed decks are to be 10' deep by 12' wide with stairs on the side of the deck with no stairs in the rear yard.

Mr. Ciliberto stated that most of the 13 lots are the smallest lots in the development and that none of the lots in question backup to existing dwellings. Five of the lots (Block 106, Lots 17-21) backup to detention basin 2 and are 180 feet from the nearest resident on Glenview, five lots (Block 104, Lots 22-26) backup to detention basin 1 and open space and three lots (Block 105, Lots 5, 10 and 11) backup to lots within the development. Of all the lots, Block 105, Lot 5 is the largest but cannot accommodate a deck without a variance due to it being pie shaped. He further testified that with the addition of the proposed decks, all of the properties will meet the impervious coverage maximum of 35%.

Chairman Brower invited members of the Board and staff to question the witness.

Mr. Rees asked if the decks are considered 1st floor decks and what is the effective elevation from the backyards. Mr. Ciliberto testified that the decks are from the 1st floor which would lead them to be approximately 8-10 feet in height from the backyard elevations. Additional discussion centered on the grading plans and the deck elevation to which Mr. Ciliberto testified that the decks would not be greater than 10-11 feet above grade.

Specific to the houses behind detention basin 2, Mr. Campbell asked how high the decks would be above the property at 31 Glenview Road. Mr. Ciliberto reviewed the grading plan and indicated a grade change from approximately 580' to 613', indicating a 33 foot height differential.

Ms. Nathans asked about the difference in size between the Hilltop and the Furman and was told that the architect will testify to that.

Chairman Brower asked for additional discussion on the 3 lots backing onto the Hilltop site. Mr. Ciliberto testified that these 3 lots do not currently back up to any dwellings but would back up to future dwellings.

The meeting was opened to the public to question Mr. Ciliberto on his testimony.

Mr. Doyle, 31 Glenview Road, asked for the height of the decks behind detention basin #2. Mr. Ciliberto testified that the decks would be at elevation 613 and the top detention basin wall is at 596, making the decks 17 feet above the detention basin #2 structure with a 180' horizontal offset.

Paul Scagnelli, Stonybrook Drive, asked if there was any impact on the conservation easements to which Mr. Ciliberto indicated that the current application has no impact to lots with conservation easements.

Mr. Scagnelli asked about the required setbacks from the conservation easements and other specific questions for homes party to the conservation easement but it was determined that the questions were irrelevant to the present application and Chairman Brower requested the meeting remain focused on the present application.

Dan Gallagher, 36 Ferndale Road, asked if there was another way to construct the decks or if hardships had been presented in support of the requested variances but was told the applicant's planner would provide testimony on the matter. He also asked if blasting would be required for construction of the decks. Mr. Ciliberto indicated that footings would be required for the decks but blasting was not required.

Mr. Rees asked a question to clarify the depth of the setback being requested. Mr. Gaccione confirmed the request was only for a 10' x 12' deck and not looking for any additional variance beyond the deck.

Mr. Bill Feinberg, 1010 Haddonfield Berlin Road, Voorhees, New Jersey was presented as the next witness to be heard as a professional architect. Mr. Feinberg was sworn in by Mr. Dusinger. Mr. Feinberg has previously been accepted by the Planning Board as a professional witness and Mr. Gaccione requested he be accepted as a professional witness for this application based on past acceptance. The Board agreed.

Mr. Feinberg testified that there will no changes in the previously approved building footprints. He went on to describe the size (10' x 12') of the decks and materials of construction (composite decking with vinyl railings). Stairs will be offered as an option on the decks but the stairs will not intrude into the rear yard setback beyond the deck. He further specified that Block 105, Lot 11 is contracted as a Furman while Block 106, Lot 21 is contracted as a Hilltop. He went on to outline the model houses which could conceivably fit on each of the other lots within the application.

Mr. Feinberg presented Exhibit A-1, dated June 10, 2019 which was comprised of 3 photos with representative decks proposed within the application. Mr. Feinberg stated most of the proposed decks will be accessed from kitchens through a sliding glass door and will provide one floor living. He testified that stairs would be built to the side of the deck.

Chairman Brower invited members of the Board and staff to question the witness.

Ms. Nathans asked for the square footage of the Hilltop model and the Furman model. Mr. Feinberg testified the Hilltop provides 2,908 sf and the Furman provides 2,794 sf.

Mr. Spinelli asked for confirmation that the pictures in Exhibit A-1 represent materials of the proposed deck and not the actual deck. Mr. Feinberg confirmed and indicated that the actual layout of the deck is pending.

Mr. Campbell asked if the stair access on the side actually represented a 10' x 22' size deck. Mr. Gaccione indicated that the planner would speak to that in his testimony.

Mr. Rees asked if Pulte was meeting the "look alike" condition for lots 17-21 and asked if smaller homes could be built to accommodate a deck without a variance. Mr. Feinberg stated that the "look alike" is being met and that a smaller home can be built.

Chairman Brower asked if composite materials would be used throughout the deck to which Mr. Feinberg confirmed.

Ms. Nathans asked if all footprints of the buildings were the same. Mr. Feinberg introduced Exhibit A-2 (Bentley model representation), A-3 (Bentley model plan) and A-4 (Bentley model with walk-out) so as to provide another vantage of another model. He confirmed that all decks would be accompanied by 3 flights of stairs with 3 landings.

Mr. Dusinberre asked for the highest height of any of the decks and if the grades would allow for a 3-flight stairway that does not protrude beyond the face of the deck. Mr. Ciliberto responded to say the highest height was 11'-12'. Mr. Feinberg confirmed that the stairs would not protrude beyond the face of the deck.

Mr. Dusinberre asked how many of the basements are walk-outs and if the square footage provided in earlier testimony excludes this space. Mr. Feinberg testified that 9 of the properties are walk-outs and the previously provided square footage does not include the optional finished basement.

Mr. Dusinberre repeated an earlier question as to whether smaller homes could be built. Mr. Gaccione indicated that smaller homes can be built but that is a business question for Mr. Mullen.

The meeting was opened to the public to question Mr. Feinberg's on his testimony.

No members of the public stood to be heard.

Mr. Michael Tobia, P.P., 546 Van Buren Road, Morristown, New Jersey was presented as the next witness to be heard as a professional planner. Mr. Tobia was sworn in by Mr. Dusinberre. Mr. Tobia has previously been accepted by the Planning Board as a professional witness and Mr. Gaccione requested he be accepted as a professional witness for this application based on past acceptance. The Board agreed.

Mr. Tobia briefly described the application noting that the applicant seeks variances for decks only and that no other changes to the lots or structures are requested.

Mr. Tobia stated that decks do not need to meet setback requirements in other towns.

Mr. Tobia repeated testimony already heard from prior witnesses concerning the variance requests.

Mr. Tobia provided the following proofs for the variance requests.

1. Decks are a standard recreational feature that provide indoor to outdoor living.
2. Decks are wallless and roofless with no foundations and have little "massing".
3. Decks cannot be constructed within the available 40' rear yard setback due to shallowness or narrowness of the lots.
4. The lots in question backup to basins, open space or homes within the development.
5. Decks only add 0.8-1.4% coverage.

Mr. Tobia said the C-2 argument is met because there is a clear benefit that outweighs the detriments. An \$800,000 or \$1,000,000 home should include a deck and the lack of a deck makes the sale of the home difficult.

Decks provide outdoor living as an alternative to indoor living.

Mr. Tobia said the C-1 argument is met because strict enforcement of the 40' setback allows nothing in the rear yard; this is harsh. The application meets the Municipal Land Use Law (MLUL) because it provides adequate air, light and opened space. The decks will add no significant "massing" to the neighborhood.

At Mr. Gaccione's request, Mr. Tobia provided the negative criteria. The application is good to the neighbors, no encroachment into setbacks of neighboring homes, the coverage requirement will be met, the building materials will be pleasing, deck sizes are limited and stair cases will not encroach further into the setback, revised plans will be prepared if approved, no changes in other approvals requested.

Chairman Brower invited members of the Board and staff to question the witness.

Ms. Nathans asked Mr. Tobia to discuss the detriments of the proposed application. Mr. Tobia indicated that he did not see any detriments in the current application. As an example, these would be proximity to neighboring properties, impacts from shadowing, negative impact on circulation. However, he testified that none of these detriments are applicable in this application.

Mr. Dusinberre asked Mr. Tobia if this is effectively a request to rezone the entire area. Mr. Tobia did not believe it to be a rezoning request and referred to the Redevelopment Plan which allows deviations to be considered by the Planning Board.

The meeting was opened to the public to question Mr. Tobia on his testimony.

Dan Gallagher, 36 Ferndale Road, agreed that outdoor space is a positive element to home living but questioned how it could be missed. Mr. Tobia testified that the complexity of other issues led to the oversight of the decks.

Mr. Gallagher asked if the 0.8-1.4% impervious coverage increase still complies with the requirements. Mr. Tobia referred to Mr. Ciliberto's previous testimony that the increase would still be compliant and agreed that lot coverage relief is not required or requested within this application.

Mr. Gallagher asked why the application is being heard by the Planning Board rather than the Zoning Board. Mr. Dusinberre referred to the Redevelopment Plan which calls for the Planning Board to retain jurisdiction.

Mr. Dusinberre asked about the similarity of the proposed decks to the existing decks on site and whether the lot coverage calculation includes the stairs. Mr. Gaccione responded by reaffirming that the application is not seeking a variance on lot coverage. Mr. Dusinberre suggested the possibility of a motion which conditions the removal of stairs if lot coverage requirements cannot be met.

The professional testimony was closed at this time.

The meeting was opened to the public for additional comments. Nobody stood to be heard at this time.

Mr. Gaccione asked for 5 minutes to speak with his clients and was granted his request.

Although the meeting had already closed to the public, Mr. Gallagher asked if he could be permitted one last question and was granted his request. He asked about the possibility of

additional landscape buffers being provided in key locations to which Pulte agreed was acceptable.

The meeting was re-closed to the public.

Mr. Gaccione advised the Board that he had no further witnesses and briefly summarized the application.

Mr. Rees indicated his concerns at lots 17-21 due to the height of the deck and lack of buffer.

Mr. Campbell agreed with Mr. Rees and added his concerns regarding flood lights. He was also concerned about a blanket request for 13 properties being paramount to rezoning. He also added that he struggled with the process in which rear yard decks were overlooked in the early planning stages. Mr. Gaccione indicated that his applicant would be willing to place lighting restrictions on the property deeds and add landscaping buffers where requested.

Dr. Spinelli made a motion to deny the application and provided reasons.

Mr. Gaccione requested an adjournment to reconsider the application and it's options. Dr. Spinelli was not encouraged by the application and felt that only smaller houses which eliminate the need for a rear yard setback variance should be considered.

A second was made by Mr. Rees on Dr. Spinelli's motion to deny.

Chairman Brower indicated that he was concerned about bringing this application back to the Board for a 3rd hearing and was unclear as to the reasons for an adjournment. Mr. Gaccione responded by indicating that the applicant may wish to consider smaller homes. Chairman Brower indicated that any adjournment should seek to address smaller houses, fewer lots within the application and increased greenery.

Dr. Spinelli asked if those modifications should be considered a new application.

Mr. Dusenberre suggested three possible courses of action: adjournment, withdrawal or continuation of the application with changes required to be submitted within a specific time limit. Mr. Gaccione indicated that the revisions could be made for the August 12, 2019 Planning Board meeting. Mr. Gaccione waived time constraints.

At this time, Dr. Spinelli withdrew his motion and Mr. Rees withdrew his 2nd on the motion.

Mr. Dusenberre noted that no further notice is required.

CITIZENS TO BE HEARD

Chairman Brower opened the meeting for citizens to be heard. There were no members of the public present.

ADJOURMENT

Chairman Brower requested a motion to adjourn at approximately 10:30 pm. A motion was made by Mr. Campbell and seconded by Ms. Nathans. All members voted in the affirmative.

Kevin O'Sullivan
Planning Board Secretary