

**MINUTES OF THE BOROUGH OF NORTH CALDWELL PLANNING BOARD  
REGULAR MEETING HELD JULY 16, 2018**

Chairman Brower called the meeting to order at 8:00 p.m., lead the salute of the flag and requested a roll call:

**ROLL CALL**

PRESENT: Chairman Brower, Mr. Campbell, Mr. Barba, Dr. Spinelli, Mr. Zichelli, Mayor Alessi, Sandra Nathans

ABSENT: Mr. Fishbone, Mr. Rees

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 the Star Ledger and Notice was filed with the office of the Borough Clerk.

**ANNOUNCEMENTS**

Chairman Brower announced that written correspondence was received from Michael Piromalli, Esq. on behalf of Pulte Homes of NJ requesting an adjournment of Pulte Homes of NJ's rear deck variance application to the August 13, 2018 Planning Board meeting. Chairman Brower acknowledged the application will be carried to August 13, 2018.

**APPROVAL OF MINUTES**

A motion was made by Mr. Barba to approve the minutes of the July 9, 2018 Conference Meeting of the North Caldwell Planning Board and a second made by Ms. Nathans.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Mr. Barba, Dr. Spinelli, Mr. Zichelli, Mayor Alessi, Sandra Nathans

ABSENT: Mr. Fishbone, Mr. Rees

**APPLICATIONS**

**APPLICATION FOR FINAL MAJOR SUBDIVISION APPROVAL**

Borough of North Caldwell  
141 Gould Avenue  
North Caldwell, NJ 07006  
Block 606, Lot 1, 400 Mountain Avenue, Walker Property

Mr. Zichelli recused himself to represent the Borough of North Caldwell before the Planning Board on this matter.

Mayor Alessi recused himself.

Mr. Dusinberre reminded the Board that the original subdivision for the Walker property was previously brought before the Board for a courtesy review and that tonight the applicant seeks a vote from the Board that acknowledges the final plat meets the NJ Map Filing Laws and the Chairman and Secretary are authorized to sign the plat.

Mr. Zichelli briefly described the application and history of the subdivision of the Walker Property, noting that the project was before the Planning Board on August 21, 2017 for a courtesy review. Mr. Zichelli advised that a final plat was not available for the August 21, 2017 presentation because a wetlands transition area waiver averaging plan were requested from the NJDEP and these areas are required to be plotted on the final plat. The wetlands transition area waiver averaging plan was recently approved by the NJDEP and the information plotted on the final plat.

The Final Plat was marked as Exhibit A-1 and a color rendering of the subdivision was marked as Exhibit A-2.

Dr. Spinelli made a motion to acknowledge the final plat meets the NJ Map Filing Laws and to authorize the North Caldwell Planning Board Chairman and Secretary to sign the Final Plat for the Walker Property Subdivision.

A second was made by Mr. Barba.

Upon roll call:

AYES: Dr. Spinelli, Mr. Campbell, Chairman Brower, Mr. Barba, Ms. Nathans

ABSENT: Mr. Fishbone, Mr. Rees

RECUSED: Mayor Alessi, Mr. Zichelli

APPLICATION FOR PRELIMINARY MAJOR SUBDIVISION

Robert Mariani, Applicant  
Donna L. Feulner, Property Owner  
243 Mountain Avenue  
North Caldwell, NJ 07006  
Block 902, Lot 5, 243 Mountain Avenue

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

Mr. Dusinberre discussed adequacy of notice, specifically that an affidavit of service was not submitted in customary form. An original notice of publication in proper form from The Progress was however provided.

Mr. Robert Mariani and Ms. Donna L. Feulner as applicant and owner entered an appearance and were both sworn in by Mr. Dusinberre.

Mr. Dusinberre asked Mr. Mariani a series of questions concerning the production and mailing of notices to residents within 200' of the subject property. Mr. Mariani's answers were satisfactory to Mr. Dusinberre that proper notice was provided.

Mr. Mariani introduced J. Michael Petry, P.E., R.A., P.P. as his one and only witness.

Mr. Petry, P.E., R.A., P.P. of Petry Engineering, Inc. 155 Passaic Avenue, Fairfield, NJ was sworn in by Mr. Dusinberre. Mr. Petry has previously been accepted by the Planning Board as a professional witness and the Board agreed that based on past acceptance he be accepted as a professional witness for this application.

Mr. Petry testified that he will present 6 exhibits in support of the application. He then proceeded to introduce and discuss each exhibit.

Exhibit A-1, aerial photograph (2015) with subject property highlighted. Mr. Petry described the subject property in some detail noting that it is located in the R-2 Residence Zone (R-2 Zone) as are all properties within 200' of the applicant's property.

Exhibit A-2, series of 6 photographs taken on July 16, 2018 of the property, house and the house located at 231 Mountain Avenue. Mr. Petry described each photograph.

Exhibit A-3, colorized boundary and topographic survey. Mr. Petry described the exhibit. Mr. Petry also described the setback of the house at 243 Mountain Avenue and noted that it is in line with houses along Mountain Avenue from Smull Avenue to the south. Mr. Petry also testified that the core of the existing house at 243 Mountain Avenue dates to 1849.

Mr. Petry described the property, topography and improvements. He advised he was engaged to determine what can be done with the property with the goal of maintaining all or a part of the existing house and creating one additional lot.

Mr. Petry reviewed the requirements of the R-2 Zone and the Borough steep slope requirements.

Mr. Petry testified that applying the steep slope requirements to the property yields a density of 3.91 lots and the steep slope area increases from the required minimum lot size of 15,000 s.f. to 19,350 s.f.

Mr. Petry stated that the existing house size and location does not allow for the creation of 3 lots while maintaining the structure.

Exhibit A-4, conceptual 3 lot subdivision. Mr. Petry reviewed the exhibit stating that it shows the removal of the existing structures from the property in question, construction of a roadway and

the creation of 3 conforming single family lots (5.01, 5.02 and 5.03). Mr. Petry noted that to be conforming, a house constructed on proposed lot 5.01 must front on Mountain Avenue. He further argued that proposed lot 5.03 conforms for lot depth.

Mr. Petry advised it is his client's preference to not demolish the existing house in order to create a 3 lot subdivision, rather they wished to maintain the existing house and create one new lot.

Exhibit A-5, conceptual grading plot plan. Mr. Petry described the exhibit as showing the creation on one additional lot with a conceptual house while maintaining the existing house on a large lot. Mr. Petry then described the proposed lot to be created and described 2 required variances. One variance is for not meeting the minimum lot width at the front setback and the other for not having the required lot area within 150' of lot depth.

Mr. Petry acknowledged the proposed lot is a "flag lot" but stated that it is justifiable under the C(2) criteria.

Mr. Petry noted that the proposed house location shown on exhibit A-5 on proposed lot 5.02 and on Exhibit A-4 on proposed lot 5.03 are in virtually in the same location.

Mr. Petry stated that in his opinion, maintaining the existing house promotes the conservation of a historic siting. The proposed 2 lot subdivision provides a lower density than allowed by ordinance. The proposal represents an appropriate density for a residential use. The existing house located to the south (231 Mountain Avenue) of the proposed subdivision is significantly less impacted with the creation of one additional lot opposed to the 3 lot subdivision; the construction of a driveway is less impactful than a road. A road would create a setback violation for the existing house at 231 Mountain Avenue. In Mr. Petry's opinion, these are all benefits to the community and abutting property owners.

In regard to detriments, Mr. Petry offered that they are minor in nature. The negative associated with the creation of a flag lot is offset by the fact that the proposed location of the house on the 2 lot subdivision is in virtually the same location depicted on the 3 lot subdivision.

Mr. Petry further testified that the proposed application is in keeping with current zoning, that being single family housing. Mr. Petry repeated that the proposed new home would be in virtually the same location with either the 2 or 3 lot subdivision. Finally, Mr. Petry offered that the 2 lots created would be substantially larger than zoning requires. Mr. Petry offered that the application poses no substantial detriment to the public good and is better than what is permitted.

Mr. Petry testified the existing property offers a fairly unique situation. The house dates back 170 years and the property has ample area. The proposed subdivision reduces density over what is permitted and eliminates the need for additional roadway dollars. Mr. Petry stated he believes the application has met both the positive and negative criteria and warrants approval.

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

Mr. Barba asked for and received clarification regarding features depicted on Exhibit A-5. Mr. Barba asked if the applicant investigated the historic value of the house and who the first owners of the property were. Mr. Petry responded no.

Mr. Campbell asked if the 20' setback depicted on Exhibit A-5, directly behind 231 Mountain Avenue should not be a 30' front yard setback. Mr. Petry replied it is a side yard setback but would accept a condition of approval that the new house be setback 30'.

Mr. Petry acknowledged that the proposed subdivision will cause the waterfall feature of an existing pool to encroach into the 20' set back requirement for a pool. Mr. Petry stated that the proposed new lot line can be adjusted or the waterfall removed to correct this.

Mr. Dusinberre asked if the proposed flag lot did not have the staff and the flag portion of the lot only fronted on Mountain Avenue, would the subdivision meet zoning standards. Mr. Petry replied in the affirmative. Mr. Dusinberre noted that the staff is therefore just to provide lot access.

Mr. Zichelli asked if the staff of any flag lot is typically used only for access. Mr. Petry replied yes, but the staff excludes the necessity of constructing a road.

Mr. Dusinberre asked if the applicants have spoken with any of the neighbors. Mr. Mariani responded he spoke with "Brian" from 231 Mountain Avenue (lot 6) and he welcomes the application, that it will increase his property value. Mr. Mariani also advised he is friendly with

Christine (Mylod), the neighbor behind his property, and she prefers the subdivision to the condition of the existing lot.

Mr. Zichelli noted that the Borough zoning standards are intended to avoid flag lots and asked why flag lots are frowned upon by planners. Mr. Petry responded that flag lots typically place a house directly in people's back yard. He further noted that the proposed lot is the exception.

Mr. Barba inquired about the length of the proposed driveway for the new lot and noted that maintenance of such a long driveway will be difficult.

Chairman Brower inquired about the distance between the existing driveway and proposed driveway on the property. Mr. Brower also noted that Mountain Avenue is a busy street and asked about accommodations for service vehicles such as UPS and FedEx. Mr. Mariani responded that turn arounds are provided.

Mr. Dusinberre asked if application has been made to the Essex County Planning Board. Mr. Petry replied not yet.

Dr. Spinelli asked Mr. Petry to identify the existing house and driveway location on lot 6 (231 Mountain Avenue) as depicted on Exhibit A-1. Dr. Spinelli also asked how far the existing driveway would be from the proposed new driveway and how far from a new road.

Mr. Dusinberre asked Mr. Petry to describe the non-conformity that would be created for 231 Mountain Avenue if a new road were to be built. Mr. Petry explained that 231 Mountain Avenue would become a corner lot, therefore having 2 front yards and the front yard setback at the new road would be deficient. Mr. Petry noted that North Caldwell zoning standards do not prohibit the creation of variance situations on abutting lots.

Mr. Dusinberre asked if the proposed subdivision were approved and the parent house were sold, could the parent house be demolished and the remaining lot subdivided. Mr. Petry responded no.

Mr. Barba asked the applicants why they do not just tear down the existing house and create a 3 lot subdivision. Mr. Mariani responded that he does not want to move from North Caldwell.

Mr. Zichelli asked if the Municipal Land Use Law (MLUL) prohibits the creation of variance situations on abutting properties. Mr. Petry and Mr. Dusinberre advised it does not.

Mr. Dusinberre asked if the existing house on 231 Mountain Avenue (lot 6) could be demolished and a new conforming structure built. Mr. Petry responded yes.

There were no further questions from the Board or staff and no members of the public present. Chairman Brower opened the meeting for discussion by the Board.

Mayor Alessi noted that most times applicants seek to maximize the number of lots requested and commended the applicant for not doing so and for considering the cost to the municipality that a new road would cause.

Dr. Spinelli complimented Mr. Petry on a very eloquent presentation but questioned if sometimes good planning is to just leave it be.

Mr. Campbell noted that Mr. Petry made a good case on behalf of his client.

Mr. Barba stated a concern with the flag lot but noted that the 2 lot subdivision appeared to be the best approach.

Mr. Zichelli provided a historic prospective on flag lot applications before the Planning Board. Only twice in his memory during the past 30 years, has the Board been presented with flag lot applications. One, at 200 and 200A Mountain Avenue where the flag lots were approved and the other at Lilac Court where a new road was chosen over flag lots.

Mr. Brower noted that the Board is challenged when looking at the benefits of an application and doing the best for the Borough and that the Board needs to be aware of the precedent value that an approval provides for future applications.

Ms. Nathans stated that she struggles with a statement made that the application is in keeping with the character of the neighborhood and whether the flag lot is truly within the character of the Borough. She acknowledged that a 2 lot subdivision without the road is more desirable but questioned if a flag lot is keeping within the character of the community.

Dr. Spinelli made a motion to deny the application for the following reasons:

1. The burden of proof for a variance for proposed lot 5.02 for lot width was not overcome.
2. The burden of proof for a variance for proposed lot 5.02 for lot area within the first 150' of lot depth was not overcome.
3. Granting the application is not in keeping with the intent of the Borough master plan and good zoning practices.
4. Granting the application does not meet negative and positive criteria.
5. Denying the application will not prevent the applicant from using the property as it is presently zoned.
6. Denying the application will not present a hardship for the property owner or surrounding properties.
7. Denying the application is in keeping with good zoning and planning.

A second was made by Mr. Zichelli.

Upon roll call:

AYES: Dr. Spinelli, Chairman Brower, Mr. Barba, Ms. Nathans, Mr. Zichelli

NAYES: Mayor Alessi, Mr. Campbell

ABSENT: Mr. Fishbone, Mr. Rees

### CITIZENS TO BE HEARD

Chairman Brower opened the meeting for citizens to be heard. There were no members of the public in attendance; therefore there were no comments from the public.

### ANNOUNCEMENTS

Chairman Brower announced that Pulte Homes is scheduled to return on August 13, 2018 for a continuation of an existing application before the Board and a Conference Meeting is scheduled for August 6, 2018.

Mr. Dusinberre and Mr. Zichelli advised that the Borough Joint Insurance Fund has mandated training for land use boards that Mr. Dusinberre will provide the required training in September.

### ADJOURNMENT

Chairman Brower requested a motion to adjourn at 9:54 pm. A motion was made by Ms. Nathans and seconded by Dr. Spinelli. All members voted in the affirmative.



Frank Zichelli  
Planning Board Secretary