

**MINUTES OF THE BOROUGH OF NORTH CALDWELL PLANNING BOARD  
REGULAR MEETING HELD APRIL 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. Rees, Dr. Spinelli, Mr. Fishbone, Mr. Zichelli, Mayor Alessi, Sandra Nathans

**ABSENT:** Mr. Barba

**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.

**APPROVAL OF MINUTES**

A motion was made by Mr. Alessi to approve the minutes of the April 9, 2018 Conference Meeting of the North Caldwell Planning Board and a second made by Mr. Fishbone.

Upon roll call:

**AYES:** Chairman Brower, Mr. Campbell, Mr. Rees, Dr. Spinelli, Mr. Fishbone, Mr. Zichelli, Mayor Alessi, Sandra Nathans

**ABSENT:** Mr. Barba

**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. 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 8 of the 62 properties in the development are under contract. Of the 8 under contract, one is for a master down for an older couple and 4 others have first floor bedrooms. Mr. Mullen advised that the model home under construction is built with a master down.

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

Neither the Board nor staff had any questions for Mr. Mullen.

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

No members of the public stood to be heard.

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:

*Deck Variances, Preliminary/Final Major Subdivision Plan for Hilltop at Essex County, Block 101: Lot 3: Tax Map Sheets 2 & 3, Borough of North Caldwell, Essex County, New Jersey, prepared by Peter A. Ciliberto, Jr., P.E., dated January 31, 2018, 1 sheet.*

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 exhibit 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.

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 backup to detention basin 2, five backup to detention basin 1 and open space and three backup to lots within the development. 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 sunrooms that are being offered as options on new homes are included in the variance application. Mr. Ciliberto responded they are not. Mr. Rees asked that the decks be described and what the view from the decks and neighbors will be. Mr. Ciliberto advised that all decks will be at the first floor level and described general heights of the decks and distances to retaining walls.

Mr. Fishbone asked what the front yard setback requirement is and was advised 30'. He also asked what is the depth of the smallest home offered. After consultation with the architect, Mr. Ciliberto responded approximately 48'.

Mr. Brower about setbacks to proposed retaining walls and Mr. Campbell inquired about the height of the decks. Mr. Ciliberto provided answers.

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. Dusinberre. 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.

Mr. Feinberg stated most of the proposed decks will be accessed from kitchens through a sliding glass door and will provide one floor living.

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

Mr. Rees noted that the drawings submitted depict the stairs on the rear of the decks. Mr. Feinberg answered the stair option is only available on the side of the deck.

Mr. Rees asked why decks were not included in the original or amended plans. Mr. Mullen responded that the focus at the time of the site plan amendment application was on architecture and the decks were not thought of at the time.

Mr. Feinberg restated that the sunroom option will not be offered where a variance would be required.

Mr. Fishbone noted that the plans submitted are not correct, that they do not match the footprints of the houses offered by Pulte Homes and the decks show stairs on the rear of the decks rather than the side. Mr. Feinberg agreed that the plans submitted are incorrect and advised the plans provided are from another Pulte Homes project.

Mr. Fishbone noted that the addition of stairs on the side of the decks will broaden the variance.

There was discussion among the witnesses and Board members concerning the model house that will fit on the 13 lots in question. The plan depicts the Furman model, but the Hilltop model will also fit. The proposed houses have depths of 48' to 50'.

Mr. Fishbone asked if a 40' deep house would fit on the lots in question. Mr. Feinberg responded that such a house would not meet the upscale product standard Pulte Homes wants to build for this neighborhood and that a 40' depth would not yield the square footage desired.

Mr. Dusinberre pointed out that all models are offered with finished basements that will add square footage to each house. Mr. Feinberg responded that finished basements are an option and the square footage associated with a finished basement is not included in the base price of a new house. He did not however, disagree with Mr. Dusinberre's comment.

Mr. Rees stated that variances are being requested for something that has not yet been constructed.

Mr. Dusinberre asked if only the Furman and Hilltop models are offered on the lots in question, will the look alike standard be met? Mr. Feinberg advised the standard will be met.

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 wall less and roofless with no foundations.
3. Decks cannot be constructed within the available 40' rear yard setback.
4. The lots in question backup to basins, open space or homes within the development.
5. Decks only add 1% coverage.

Mr. Tobia said the C-2 argument is met because there is a clear benefit. An \$800,000 or \$1,000,000 home should include a deck.

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 and only the Hilltop and Furman models will be built on the 13 subject lots.

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

Mr. Dusinberre responded to Mr. Tobia's assertion that it is unfair to the applicant to adhere to a 40' rear yard setback. He asked if another model house could be developed that is not as deep and with a finished basement to provide additional square footage. The response was yes, but that "something had to give" with a smaller home, such as a first floor master bedroom.

Mr. Rees asked for confirmation as to what is located behind lots 22, 23, 24 and 17 to 21. The response was detention basins or open space. Mr. Rees stated he had no problems with these lots but has issues with lots 5, 11 and 10. Mr. Tobia explained what the view of these decks would be from neighboring properties.

Mr. Brower stated that the Board was presented with a development that includes small lots and the expectation is small houses would be constructed on them. Mr. Brower also advised the applicant that he takes offense to Mr. Tobia's comment that other communities permit decks in the rear yard setback.

Mr. Fishbone asked why decks were not considered originally. Mr. Tobia responded that the original focus was on architecture and the need to meet the look alike standard.

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

Mr. Gaccione asked for 2 minutes to speak with his clients and was granted his request.

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

Mr. Rees asked if deck stairs can be switchback construction and was answered in the affirmative.

Mr. Fishbone asked if any of the 13 lots in question have been sold. Mr. Mullen replied no.

Dr. Spinelli commented that the plans look cut, copied and pasted from other drawings. He also noted that testimony was given that decks are a benefit to buyers, are considered standard offering for new home construction and bring indoor living outside, yet they were not included in the original plans.

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

A second was made by Mr. Campbell.

Mr. Fishbone stated he agrees with Dr. Spinelli and that Pulte is a sophisticated builder and it is difficult to believe decks were not originally considered. He also believes most of the decks backup to open space and do not affect neighboring properties.

Mayor Alessi said he agrees with Mr. Fishbone and the Board is faced with a conundrum.

Dr. Spinelli stated the Board was not provided with actual plans with sufficient detail to review.

Mr. Gaccione stated that more detailed plans can be provided.

Mr. Brower noted that Pulte Homes are premiere builders and should have previously considered decks and the challenge of deciding this application should not be on the Board.

Mr. Dusinberre advised that Dr. Spinelli's motion and Mr. Campbell's second needs to be withdrawn.

Mr. Gaccione acknowledged there is a res judicata issue if the Board were to vote against the application.

Mr. Gaccione requested an adjournment until at least the May 21, 2018 Planning Board meeting for the purpose of discussing the application with his client and possibly modifying both the plans and the application. Mr. Gaccione waived time constraints.

Dr. Spinelli withdrew his motion and Mr. Campbell withdrew his second.

Mr. Dusinberre noted that no further notice is required.

### **CITIZENS TO BE HEARD**

Chairman Brower opened the meeting for citizens to be heard. There were no comments from the public.

### **ADJOURNMENT**

Chairman Brower requested a motion to adjourn at 9:55 pm. A motion was made by Mr. Fishbone and seconded by Ms. Nathans. All members voted in the affirmative.



Frank Zichelli  
Planning Board Secretary