

**MINUTES OF THE BOROUGH OF NORTH CALDWELL PLANNING BOARD  
REGULAR MEETING HELD AUGUST 12, 2019**

Chairman Brower called the meeting to order at 8:00 p.m. The following members were present:

**ROLL CALL**

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

**ABSENT:** Mr. Barba

**Others present:** Mr. Dusinberre, Esq., Attorney, Steve Bolio, Planning Board Engineer

**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.

**APPLICATIONS**

Chairman Brower noted that the application for Rear Yard Setback Variances from Pulte Homs of NJ, Limited Partnership has been withdrawn, as noted on the agenda. Mr. Dusinberre confirmed receipt of the request to withdraw the application and further added that any future request for rear yard setback variances across these properties would require a new application which follows the same procedures.

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

**APPLICATION FOR AMENDED PRELIMINARY AND FINAL MAJOR SUBDIVISION**

70 Grandview Avenue, LLC,  
Amended Preliminary and Final Major Subdivision  
Block 1903, Lot 2

Mr. Michael S. Rubin, Esq. of the Law Office of Michael S. Rubin, LLC, Caldwell, New Jersey entered an appearance as Counsel on behalf of the applicant, 70 Grandview Ave., LLC and introduced the project as well as his professionals in attendance.

Mr. Rubin introduced and qualified Charles J. Stewart, P.E., P.L.S. for testimony as a licensed professional engineer. Mr. Stewart noted that his firm had recently been acquired by Suburban Engineering. Mr. Dusinberre noted that Mr. Stewart has previously been accepted by the Planning Board as a professional witness. The Board agreed and accepted Mr. Stewart as a professional witness.

Mr. Stewart was sworn in as witnesses by Mr. Dusinberre.

Mr. Stewart began his testimony by discussing the revised sanitary sewer design which accounts for field work and survey work which located the existing sewer and invert elevations. Mr. Stewart indicated that the applicant is seeking a de minimis exception to the RSIS requirements for easements to be no less than twenty feet in width. The plans maintain the fifteen foot width of the existing sanitary sewer easement presently in place.

Mr. Rubin asked Mr. Stewart to speak on the items identified in section G.3, G.4 and II.K within Mr. Ferriero's August 6, 2019 letter. Each of the items required clarifications or minor revisions to construction details. Mr. Stewart indicated that he had no objection to any of the comments and will provide revised construction details as specified.

Mr. Rubin indicated that the remainder of the engineering items will be discussed by Michael Petry and opened the testimony to questions from the Board.

Mr. Spinelli asked for confirmation that the proposed easement width is fifteen feet and opened discussion on the requested exception. Mr. Stewart testified that the width of the proposed easement would be consistent with the proposed width of the re-aligned easement. He further testified that the sanitary sewer is between four and eight feet deep and a fifteen foot easement is adequate for future maintenance.

Mr. Rees asked about responsibility of the easement and the sewer line to which Mr. Dusinger confirmed it is the Borough's responsibility. Mr. Dusinger asked for the opinion of the Planning Board Engineer to which Mr. Bolio indicated he takes no exception to the request. Mr. Fishbone asked if the slopes are acceptable for the easement to which Mr. Stewart indicated there would not be any issues with access across the easement due to proposed grades or slopes.

Mr. Bolio asked if the remainder of the items in the Ferriero Engineering review letter would be addressed. Mr. Rubin confirmed that the remaining items would be discussed by a second engineer, Michael Petry.

Mr. Fishbone asked for additional discussion regarding access rights to the easement. Mr. Rubin confirmed that the Borough has rights to the easement. He also testified that the shrubbery has been removed from the easement and the easement itself will be carried through the deeds for each property.

Mr. Rees asked if the existing sanitary manhole was located. Mr. Stewart confirmed that one manhole was buried underground but was located and accounted for within the final design.

Chairman Brower opened questions to the public for Mr. Stewart.

Dan London from 108 Mountain Avenue came to the front to ask a question regarding an off-site storm sewer manhole. He was told that the next witness, Michael Petry would testify and be able to answer that question.

Mr. Rubin introduced and qualified J. Michael Petry, P.E., P.P. for testimony as a licensed professional engineer. Mr. Dusinger noted that Mr. Petry has previously been accepted by the Planning Board as a professional witness. The Board agreed and accepted Mr. Petry as a professional witness.

Mr. Petry was sworn in as witnesses by Mr. Dusinger.

Mr. Petry summarized his work on the project associated with an operation and maintenance plan and an updated stormwater report. He testified that he revised the original stormwater report in response to the review letter from Ferriero Engineering in order to account for more appropriate and accurate runoff conditions. He summarized the general overview of the property and proposed runoff and drainage conditions.

Mr. Petry testified that the project qualifies as a major development by NJDEP standards and will meet the associated requirements. Additionally, he testified that the project meets the need

to reduce peak runoff conditions. The peak runoff values are controlled by a combination of individual underground detention basins for each lot plus an underground detention system and water quality control system designed primarily for roadway and driveway runoff. The system designed for the roadway and driveways will be situated on Lot 2.04 and parallel with Grandview Avenue.

Mr. Petry further testified that the designed system is NJDEP approved to meet water quality standards and the holding capacity of the system allows for a reduction in peak runoff for the 2-year, 10-year and 100-year storms. Mr. Petry testified that the peak runoff and total runoff to neighboring properties is reduced by this project. Mr. Petry indicated that while the peak runoff to Grandview Avenue is reduced, the total runoff to Grandview Avenue is increased.

In summary, Mr. Petry confirmed that he received the letter from Ferriero Engineering and agrees to comply with all comments and conditions within the report.

Mr. Petry also provided testimony as to the landscaping plan for the project. He testified that all proposed landscaping does not conflict with the utilities or the detention system. He also testified that the two large trees on the northerly lot line of Lot 2.01 are close to the proposed house. Efforts will be made to protect the tree but roots may be impacted during construction.

Mr. Rees asked Mr. Petry to provide additional explanation on drainage area #5 which is directed towards basin #5. In response, Mr. Petry introduced Exhibit A1 – Drainage Area Map prepared by Petry Engineering and it was dated August 12, 2019. Mr. Petry explained each of the drainage areas and how they are captured by each underground basin. He further explained that drainage area 5 is comprised of the streets, driveways and some front lawns. Drainage area 5, along with drainage area 4 shown on Exhibit A1, travel through the water quality system prior to ultimate discharge into the Grandview Ave stormwater system. He further testified that detention basins 1, 2 and 3 have their own separate connection onto Fairview Ave. Mr. Petry testified that the drainage basins have a 100-year storm design.

Mr. Rees asked for additional explanation regarding the water quality control system and the required maintenance. Mr. Petry referred to the need to treat “dirty water” coming from pavement surfaces which might contain oils, grease or other similar materials. Mr. Petry then provided a description of the system and maintenance needs.

Mr. Rees asked what was captured in the cartridges associated with the water quality system. Mr. Petry testified that the cartridges are designed to provide an 80% reduction in total suspended solids, as required by the NJDEP.

Mr. Rees asked for a confirmation that there are a total of 18 cartridges, to which Mr. Petry confirmed. Mr. Rees asked if it would be accurate to assume a replacement cost of \$250/cartridge which totals \$4500 for replacement of all cartridges in addition to another \$1,000 per year for DPW manpower associated with regular inspection, maintenance or cleaning of the system. Mr. Petry testified that these were fair estimates.

Mr. Rees asked why honey locust trees were selected for the street trees and what, if any, impact is realized by the stormwater system. Mr. Petry testified that these trees are appropriate for the system and would be the least problematic due to the small size of the leaves.

Mr. Campbell asked about the depth of basin 5 and the water quality system. Mr. Petry indicated that the depth is approximately six and one half feet below grade at the detention system’s outfall and confirmed that the system does not handle any recharge.

Mr. Rubin summarized by indicating the applicant's intention to comply with every line item in the Ferriero Engineering report. Chairman Brower allowed the blanket response in lieu of going through each item line by line.

Chairman Brower opened questions to the public for Mr. Petry.

Sherri London, 108 Mountain Avenue, asked if blasting would be a necessary means of construction and what potential impact it might have on neighboring properties. Mr. Petry testified that blasting should not be required and any rock excavation could be handled by rock-hammering. He indicated that the re-design of basin #5 eliminated the need for blasting.

Paul Scagnelli, 7 Stony Brook Drive, asked about the post-construction runoff conditions. Mr. Petry clarified his earlier testimony as to the way the system handles total flow versus peak runoff. Mr. Petry testified that peak runoff is reduced but the total volume is increased.

Mr. Scagnelli asked about how runoff would be handled during construction and whether the entire stormwater system could be fully functional at the beginning of the project. Mr. Petry testified that the systems are designed to allow for a detention system to be installed early in the project and they can be phased accordingly.

Mr. Scagnelli asked if the detention systems can be installed first, before any other construction. Mr. Petry testified that they would serve no purpose.

Mr. Dusinberre related the question to site vulnerability during construction. Mr. Dusinberre asked if the applicant could provide a phasing plan that provides a best effort attempt to reduce site vulnerability during intense storms. Mr. Petry indicated that temporary settlement basins could be constructed on-site to address this concern. Mr. Dusinberre asked if this would be incorporated into the Soil Erosion Plan to which Mr. Petry confirmed it would. Mr. Bolio agreed that this would be an acceptable way to handle the concern.

Mr. Dusinberre asked the applicant if he objected to a potential approval being conditioned upon design revisions by Mr. Petry subject to review and approval by the Borough Engineer. Mr. Rubin had no objection to this scenario.

Chairman Brower opened the Board's discussion with questions about the maintenance requirements and costs. Mr. Bolio felt it would be appropriate to have the applicant maintain the system during the performance bond period plus the two year maintenance bond period plus an additional two rounds of clean-out and cartridge replacements.

Mr. Rubin questioned the legality of going beyond a two year maintenance bond.

Chairman Brower indicated that a developer's agreement would need to review and address this cost. Mr. Rubin agreed to defer this conversation as part of the developer's agreement.

Chairman Brower, seeing no further public coming forward, closed the public portion of the application.

Mr. Rubin waived his opportunity for a closing statement.

Mayor Alessi thanked the applicant for receiving Mr. Scagnelli's comments for a phased approach and felt positively about the application and ultimate development of the site.

Mr. Rees restated his concerns about the maintenance costs of the stormwater system to be owned by the Borough.

Mr. Fishbone felt that the revised design incorporates a better stormwater system and ultimately is a benefit to the Borough since it incorporates the newest regulations of the NJDEP.

Chairman Brower agrees that there is an added burden on the Borough with the proposed stormwater system but is ultimately a benefit to the community.

Mr. Fishbone indicated that the project is a drastic change for the better for the site. The design is improved and the applicant will likely see cost savings as a result of the re-aligned basin #4 which should be considered in the long-term maintenance needs. Overall, he felt the application provided for a good change.

Mr. Brower reiterated the importance to discuss the maintenance costs of the proposed public stormwater infrastructure as part of the Developer's Agreement.

Mr. Dusinberre invited discussion regarding the de minimis exception requested for the sewer easement width. Mr. Campbell, Mr. Fishbone and Chairman Brower all indicated they had no objection to the request since the easement will remain consistent with other connecting easements.

Dr. Spinelli made a motion to approve the application for Amended Preliminary and Final Major Subdivision for the following reasons:

1. The applicant did overcome the burden of proof for a de minimis exception to the sanitary sewer easement;
2. The applicant did overcome the burden of proof to relocate the existing sanitary sewer line;
3. All items within Ferriero Engineering's letter dated August 6, 2019 will be fully satisfied; and
4. The applicant did overcome the burden of proof for the design of drainage area 5 and basin 5.

Dr. Spinelli conditioned his approval on items based on testimony provided and summarized below:

1. The applicant will design a revised Soil Erosion Plan which incorporates temporary stormwater basins on the site to reduce the vulnerability of the site during severe weather;
2. The applicant, through a Developer's Agreement, shall come to a mutual agreement regarding maintenance costs of the stormwater system; and
3. The applicant shall comply with all other items discussed on record as part of the application.

Dr. Spinelli felt that approving the application achieved the following:

1. Approval of application would not prevent neighboring properties to maintain using their properties as currently zoned;
2. Approval of application would not present hardship to neighboring properties or property owners; and
3. Approval of application is in keeping with good zoning practice.

A second was made by Mr. Campbell.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi,

NO: Mr. Rees

ABSTAIN: Ms. Nathans

ABSENT: Mr. Barba

Chairman Brower called for a ten minute recess at this time, approximately 9:25pm.

### **APPROVAL OF MINUTES**

Chairman Brower called the meeting back to order at approximately 9:35pm.

A motion was made by Mr. Campbell to approve the minutes of the May 13, 2019 Conference Meeting of the North Caldwell Planning Board and a second made by Mr. Fishbone.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi

ABSTAIN: Ms. Nathans

ABSENT: Mr. Barba

A motion was made by Mr. Campbell to approve the minutes of the May 20, 2019 Regular Meeting of the North Caldwell Planning Board and a second made by Mr. Fishbone.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi

ABSTAIN: Ms. Nathans

ABSENT: Mr. Barba

### **ITEMS FOR DISCUSSION**

Chairman Brower and Mr. Dusinberre introduced the items on the agenda for the remainder of the meeting. The items listed on the agenda will be presented by the Borough's Planner, Tom Behrens from Burgis Associates.

At this time, Tom Behrens, P.P. from Burgis Associates with an address at 25 Westwood Avenue in Westwood, NJ was qualified by Mr. Dusinberre and accepted by the Board.

Mr. Behrens was sworn in as a professional by Mr. Dusinberre.

Mr. Behrens presented a summary of the Master Plan Re-Examination Report of April 10, 2019 which was distributed to the Board. Upon hearing the full summary, the Board had no further questions or comments.

Mayor Alessi made a motion to approve Planning Board Resolution 19-8.1 entitled Resolution of Adoption In the Matter of the Master Plan Re-Examination Report of April 10, 2019.

A second was made by Mr. Campbell.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi, Ms. Nathans

ABSTAIN:

ABSENT: Mr. Barba

Mr. Dusinberre reminded the Board that the next item on the agenda, adoption of a Housing Element and Fair Share Plan, is emanating from and in furtherance of the Borough's settlement agreement with the Fair Share Housing Authority.

Mr. Behrens presented a summary of the Housing Element and Fair Share Plan dated August 2, 2019 and reviewed each of the components of the plan. Mr. Dusinberre clarified for the Board that the plan creates an opportunity for a developer but does not require affordable housing in particular areas. Upon hearing the full summary, the Board had no further questions or comments.

Mr. Fishbone made a motion to approve Planning Board Resolution 19-8.2 entitled Resolution Adopting a Housing Element and Fair Share Plan.

A second was made by Ms. Nathans.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi, Ms. Nathans

ABSTAIN:

ABSENT: Mr. Barba

Mr. Dusinberre explained to the Board that the next five items on the agenda are ordinances from the Mayor and Council by which the Planning Board must report on their consistency with the Master Plan. These items are, again, in furtherance of the settlement agreement and fair share housing obligations.

Mr. Behrens indicated that he was familiar with the ordinances and could speak to their consistency with the Master Plan.

Mr. Behrens provided a summary of Borough Ordinance O-7-19 Affordable Housing Mandatory Set-Aside. Upon completion of his summary, Mr. Behrens testified that the ordinance is consistent with the Master Plan. Upon hearing the full summary, the Board had no further questions or comments.

Mr. Campbell made a motion to approve Planning Board Resolution 19-8.3 entitled Consistency Report Pursuant to N.J.S.A. 40:55D-26 (re: Borough O-7-19 Affordable Housing Mandatory Set-Aside).

A second was made by Dr. Spinelli.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi, Ms. Nathans

ABSTAIN:

ABSENT: Mr. Barba

Next, Mr. Behrens provided a summary of Borough Ordinance O-8-19 Updated Development Fee Ordinance. Upon completion of his summary, Mr. Behrens testified that the ordinance is consistent with the Master Plan. Upon hearing the full summary, the Board had no further questions or comments.

Mr. Campbell made a motion to approve Planning Board Resolution 19-8.4 entitled Consistency Report Pursuant to N.J.S.A. 40:55D-26 (re: Borough O-8-19 Updated Development Fee Ordinance).

A second was made by Mayor Alessi.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi, Ms. Nathans

ABSTAIN:

ABSENT: Mr. Barba

Next, Mr. Behrens provided a summary of Borough Ordinance O-9-19 Affordable Housing Regulations. Upon completion of his summary, Mr. Behrens testified that the ordinance is consistent with the Master Plan. Upon hearing the full summary, the Board had no further questions or comments.

Mayor Alessi made a motion to approve Planning Board Resolution 19-8.5 entitled Consistency Report Pursuant to N.J.S.A. 40:55D-26 (re: Borough O-9-19 Affordable Housing Regulations).

A second was made by Mr. Fishbone.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi, Ms. Nathans

ABSTAIN:

ABSENT: Mr. Barba

Next, Mr. Behrens provided a summary of Borough Ordinance O-10-19 Bloomfield Avenue Overlay (BAO) Zone. Upon completion of his summary, Mr. Behrens testified that the ordinance

is consistent with the Master Plan. Upon hearing the full summary, the Board had no further questions or comments.

Mr. Fishbone made a motion to approve Planning Board Resolution 19-8.6 entitled Consistency Report Pursuant to N.J.S.A. 40:55D-26 (re: Borough O-10-19 Bloomfield Avenue Overlay (BAO) Zone).

A second was made by Dr. Spinelli.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi, Ms. Nathans

ABSTAIN:

ABSENT: Mr. Barba

Lastly, Mr. Behrens provided a summary of Borough Ordinance O-11-19 Fairfield Road Overlay (FRO) Zone. Upon completion of his summary, Mr. Behrens testified that the ordinance is consistent with the Master Plan. Upon hearing the full summary, the Board had no further questions or comments.

Mr. Fishbone made a motion to approve Planning Board Resolution 19-8.7 entitled Consistency Report Pursuant to N.J.S.A. 40:55D-26 (re: Borough O-11-19 Fairfield Road Overlay (FRO) Zone).

A second was made by Mr. Campbell.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Dr. Spinelli, Mr. Rees, Mr. Fishbone, Mr. O'Sullivan, Mayor Alessi, Ms. Nathans

ABSTAIN:

ABSENT: Mr. Barba

At this point, Chairman Brower opened the meeting to the public.

### **CITIZENS TO BE HEARD**

Paul Scagnelli, 7 Stony Brook Drive, came to the podium and asked about the status of the Planning Board meeting minutes and whether they have been posted to the website.

Mr. Dusinberre responded by stating that there are no statutory requirements for the Planning Board to post agendas or minutes on the Borough's website. However, it was also noted that all of the agendas and completed minutes had recently been posted to the website.

**ADJOURMENT**

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

Kevin O'Sullivan  
Planning Board Secretary