

Andrew Clarke, ABC Surveys, LLC, previously sworn in on June 13, 2017, was recalled. Mr. Clarke revised the plans (Minor Subdivision and Proposed Development Plan revised 7/6/17) to reflect the elimination of the cul-de-sac at the end of Sixth Street. The three categories of steep slope disturbances are now identified on the plan. The property has steep slopes a third of the way in on the property, along the left side of the property and at the rear of the property. Mr. Clarke also updated the site data chart although the proposed heights of the dwellings are incorrectly listed as two stories rather than 2.5 stories. The table also includes existing and proposed coverage for the lots and in the right-of-way with an increase in coverage on the site of approximately 2,300 SF and approximately 2,600 SF in the right-of-way for a total increase in coverage of a little less than 5,000 SF. The proposed tree removal schematic added to the Proposed Development Plan (p.2) will be superseded by the landscape architect's plan.

The cul-de-sac with the 30° radius has been changed to a dead-end road which will save some of the trees in the right-of-way. There will be less grading adjacent to the roadway and less pavement which is a benefit. The roadway will end 10' beyond the driveway on Lot 11.01. The roadway should function as it always has for the houses on the street. Garbage trucks will probably operate the way as they do now or they will back out of the street. The same is true for fire trucks. The proposed dead-end road poses no problematic condition to public safety.

The drainage is essentially the same. An inlet has been added east of the roadway. Water will be routed to the storm water system as proposed earlier. An inlet will be installed on Lot 11.01 to get to the dry well. All the water on Lot 11.02 will be directed to the dry well and into the storm sewer in the roadway. Overall there will be a net improvement in storm water over what exists. Mr. Clarke went to the site on a day where there was heavy rain and he didn't find water ponding in the corners: Some water was ponding opposite the existing driveway and on Lot 3 across the street from the property. The changes on the site will improve this because the roof water will be captured plus a curb will be installed to keep it off the property across the street. Mr. Clarke is confident there will be a net improvement in the water on the site.

Mr. Clarke tabulated the steep slope disturbances which exceed what is permitted so a variance is required. Disturbance of the steep slopes will have no negative impact. The disturbance is a third of the way into the property where the proposed houses will be situated and will be removed. The steep slope disturbance on the left side of the property will be eliminated as well. Some of the steep slope in the rear will remain. A good construction process will be needed to control the soil until it stabilizes.

The applicant is willing to accept the Borough Engineer's comments identified in his revised letter of July 17, 2017, as conditions of approval of the application. Mr. Clarke testified to comment #20 in the revised comment letter. The roadway will function as it always has for

residents and emergency services vehicles. Regarding comment #18, Mr. Clarke saw the sanitary sewer pipe continuing in the direction toward the end of the roadway but didn't find a manhole so this will require further investigation. If it turns out to be a stub, the sewer line will be extended and the applicant will get the requisite Treatment Works Approval (TWA) permit. The proposed inlet on Sixth Street, comment #30, will conform to Residential Site Improvement Standards (RSIS) and municipal standards. It's a moderate inlet. The applicant will confer with the Borough Engineer on the type of inlet.

Mr. Keane asked about the topography of the property. The top of the residences will be the highest point. The water will be carried with grading toward the house and then captured in the storm water management system. The roof water will go to the dry well and any residual water will flow into the roadway. Little water will go to the street behind the property and the improvements to the property should improve water conditions on the street behind the applicant's property. In response to Mr. Hoefling's question about snow removal, Mr. Clarke testified that snow will be plowed to the back of the street where there will be an inlet which is beneficial. Because of the grade, melting snow will flow to the inlet.

The hearing was opened to questions from the public.

T. J. Mahlstadt, 81 Pleasantview Avenue, asked for a definition of an inlet and if the grading on the site will create a canal. Mr. Clarke responded that an inlet is a drain. The inlet will connect to the piping that runs to Livingston Avenue. The grading/swale won't create a canal. It's a slight berm, 8" to 10," that is not noticeably high that will keep the water on site. The directional arrows on the Proposed Development plan show the flow. Mr. Clarke doesn't anticipate the water going over the berm as half of the water on the site will be captured by the leaders and gutters on the houses. The design was contemplated so that water shouldn't leave the site. In response to Mr. Mahlstadt's question about a pipe, Mr. Clarke responded that installing a pipe is not warranted.

Carmine Randazzo, 77 Pleasantview Avenue, asked how long it will take for the dirt to settle. Mr. Clarke anticipates it will take two to three weeks. Mr. Randazzo responded that he's a contractor and it takes five to 10 years for the dirt to settle and his property is going to get flooded as the property is 5' higher than his. He asked why one big house couldn't be constructed rather than two. Mr. Clarke responded that he's been an engineer for 30 years and is not sure what Mr. Randazzo is referring to with the dirt settling. The applicant will be removing dirt that's already settled and the site will be subject to inspection. Mr. Randazzo asked about the impact of removing so many trees with deep roots. The landscape architect will address this question.

Debbie Picorale, 91 Pleasantview Avenue, also asked about the berm becoming a canal and what happens if the water is worse than it is now as she and neighbors know it will worse and they'll be stuck. Mr. Sheehan responded that the engineer's testimony is that it will work

plus the applicant has to post a performance and maintenance bond to ensure that the site will be developed as proposed. Mr. Lynch added that the site will be subject to inspections that will also ensure the work is being done properly. If not done properly, the applicant will have to take action to fix it. Mr. Lynch believes any increase in water after development will more likely be the result of the homeowners' doing something beyond this application such as creating a patio or adding a sump pump, but these are also subject to inspections. This project will not make the neighbor's water situation worse. New homes include plans to control the water which existing houses may not have.

Paul Loria, 14 East 5th Street, asked if the dry wells will collect surface water. Mr. Clarke responded that a drain has been added to the front right of Lot 11.01 to collect surface water if there is any including snow melt. The inlet is at a naturally low spot so any water will flow to the inlet and then to Livingston Avenue as that is the way the grade is pitched. If the inlet is covered with leaves or otherwise clogged, it's in the public right-of-way and the Borough is responsible for clearing it out.

Peter Fuchs, 11 Woodruff Court, asked about the water on the lots to the east (Lot 18.01 and 18.02), the water between proposed Lots 11.01 and 11.02 and the inlet noting that the cul-de-sac on Woodruff Court fills up with water by Lot 27 (behind the proposed subdivision). Mr. Clarke responded that the water from roofs on all the houses (those approved for the 62 Livingston Avenue subdivision and those proposed in this application) will be captured and directed to the storm sewer in the roadway. There will still be some natural rainfall between the lots but it will be less than what occurs today. He isn't sure what is causing the water to pond on Woodruff Court unless there's an issue with the main drain on Livingston Avenue. He doesn't expect Livingston Avenue to have major flooding conditions from the storm water collected from the proposed lots and inlets.

Paul Church, 17 Woodruff Court, lives on Lot 27 right behind the proposed subdivision and asked about the run off to his property, the trees between his property and the applicant's property and the size and height of the proposed houses. The steep slopes will be mitigated so there will be fewer slopes since the grade will be pitched across the lot rather than to the back. Less water will run to his property. The trees will be removed and new ones will be planted. The building coverage of the existing house is 1,376 SF. The proposed houses are 1,993 SF representing an increase of 600 SF. The mean roof height of the proposed houses is 27': A roof height of 40' would not be permitted.

Anthony Sblendorio, principal of Back to Nature, was sworn in and accepted as a licensed professional landscape architect. The following exhibits were marked (note: exhibits from the June 13, 2017, hearing were marked with the letter E):

- Exhibit A-17 – Tree Removal Plan showing the trees to be removed and the tree removal schedule indicating the reason for removal. Each tree is marked with a

letter. The Borough's tree ordinance provides an exemption for the removal of trees that are dead, diseased or dying. Thirty five trees will be replaced. Fifteen of the trees to be removed are exempted because they are dead, diseased or dying, and 31 require a tree removal permit. Referring to Exhibit E-9, the white pines at the back will be removed. They have thinned out at 35' to 40' and provide little canopy. Mr. Sblendorio described the trees to be removed. Some are diseased and some are hazardous.

- Exhibit A-18 – Tree Replacement Plan showing the trees that will remain and the new trees to be planted. Four types of native trees will be incorporated on the site including American hollies, eastern red cedars, dogwoods and red oaks. The American hollies to be planted across the back of the lots are thick at the bottom to provide screening and a great habitat for wildlife. The dogwoods are good understory trees, take the shade and will be planted in the wooded area.
- Exhibit A-19 – Existing Site Character – Trees to be removed. Collage of photos showing the types of trees to be removed from the site.
- Exhibit A-20 – Proposed Site Character – Trees to be Replaced. Collage of photos showing the types of trees to be planted on the site. As testified earlier, the dogwoods fill in the understory and take shade. American hollies and eastern red cedars will be planted across the back.

The Board asked about the choice of trees and noted that no landscaping is proposed along the right side of the site and would like to see trees there. The trees along the rear were chosen based on sunlight and because they are native species. The applicant is willing to amend the landscape plan to add trees along the side most likely a mix of evergreens and understory dogwoods which would increase the number of trees to be planted from 35 to 45. Mr. Kapner asked if the tree roots help with drainage. Any tree roots will help with drainage. The shrubs at installation will be 8'. The bottom of the shrubs will be dense and will remain dense providing a buffer or living fence that doesn't exist now because the trees in back are tall and are bare at the bottom. The applicant also proposes to plant additional trees in the public right-of-way. These will be field located and planted around existing trees. Mr. Sheehan asked about the maintenance of the trees in the right-of-way. Mr. Lynch responded that they will be considered street trees and maintained as such by the Borough. The trees will be spaced/staggered so that they have room to grow and won't result in a bare under-canopy. The hollies will be about 5' apart on center and the dogwoods in the rear will be 10' to 12' apart. Ten trees, some of which are fairly large, have been saved with the revised plans. Removal of some of the trees will allow the canopy of others to expand which is good.

The hearing was opened to questions from the public.

Paul Loria, 14 East 5th Street, asked about the trees to be removed near his lot and the timeline for construction and planting. The stumps will be removed. Mr. Splendorio proposes to maintain the woodland area and fill in areas where trees have been removed with dogwoods. The landscaping will be installed at the end of the construction.

Carmine Randazzo, 77 Pleasantview Avenue, asked where the water is going to go as the roots of eastern red cedars will pitch up. The engineer has already testified to the water and drainage on the site.

Paul Church, 17 Woodruff Court, asked about planting behind the lots and the bamboo creeping onto his property. The area at the back of the property which fronts his back yard will be planted with hollies that will be planted at 8' but grow to 15' and eastern red cedars also to be planted at 8' that grow to 15' to 20.' Some deciduous trees will also be planted. The bamboo is not good but the planner will discuss it. Mr. Church is all in favor of removing the existing trees at the back and replanting with hollies, eastern red cedars and red oaks.

Sue Randazzo, 77 Pleasantview Avenue, asked about the height of the hollies and eastern red cedars and how they will help with the water. Mr. Splendorio responded that the hollies, if maintained, will grow to 12' to 14' in five years. The engineer has addressed the water issue but the applicant has agreed to plant along the side of the property which fronts the rear of her property. Ms. Randazzo commented that she doesn't want to look at a big house and the trees aren't going to help since her property is 5' lower.

T. J. Mahlstadt, 81 Pleasantview Avenue, asked multiple questions about the trees and impact on water, the number to be removed and the size to be replanted. Mr. Splendorio responded that trees always absorb water. The previous plan proposed a cul-de-sac. Ten trees will be saved as result of eliminating the cul-de-sac. Forty six trees will be removed. Originally 35 were going to be replaced but 45 will now be replaced as the applicant has agreed to plant along the side of the property. Mr. Mahlstadt also asked about larger trees stating that an 8' tree is a bush. Mr. Splendorio responded that what is proposed provides great screening and 8' is a good height to start.

Stacey LaForge, 87 Pleasantview Avenue, stated that the trees will grow to 15' but the houses are 27' high. Mr. Splendorio responded that the red oaks to be planted in the back grow to 60' to 80'. At five years they will be 15' and in seven to 10 years they will be 27.' Red oaks could be planted along the side along with the hollies.

Peter Fuchs, 11 Woodruff Court, noted that the trees in the back will be removed and asked if the new trees, which will be thick at the bottom, will fall on in the houses in a wind storm since the roots won't be developed. The existing trees will get stronger as a result of removing others.

Michael Tobia, previously sworn in on June 13, 2017, presented his credentials as a licensed professional planner. Mr. Tobia described the following exhibits previously marked on June 13, 2017:

- Exhibit A-9 – Photograph of the one-story house on the western side of the property that will be Lot 11.02. Lot 11.01 will be to the right. The property is a bit underdeveloped with a gravel driveway and non-conforming rear yard. The house will be demolished as part of the subdivision application.
- Exhibit A-10 - Photograph of the eastern side of the property, which is vacant, where the second house will be located.

The existing lot at 18,623 SF is one of the larger lots in the area. Sixth Street intersects with Livingston Avenue and dead ends at the back of the street. There are three houses on the street plus the approved subdivision on Livingston Avenue that hasn't been developed. The two options for the site are to: 1) build one really big house of 6,000 SF or more which is twice as large as the proposed houses, or 2) subdivide the lot so that the resulting lots are more similar to the lots in the neighborhood.

Mr. Tobia described the two houses built as part of the Carluccio subdivision (11 and 15 Sixth Street) as shown on Exhibit A-12. The property was subdivided into two lots of 8,000 SF on 80' wide lots. Mr. Tobia believes these are two of the nicest houses in the neighborhood. Two years ago the Board approved the subdivision at 62 Livingston Avenue to create two lots with an average lot size of 8,450 SF on lots that are not as wide as those proposed in this subdivision with houses that are a little smaller than those proposed in this application. The lot size requirement in the R-2 Zone is 15,000 SF. Mr. Tobia noted that the four most relevant lots are between 8,000 SF and 8,900 SF. The lots across Livingston Avenue are typically 6,000 SF. On Block 153, the typical lot is 7,100 SF. The sub-neighborhood has smaller lots than contemplated by the zoning; therefore, two houses on smaller lots are a better zoning choice than building one large house. Mr. Tobia likes the elimination of the cul-de-sac, the planting proposed and development of the roadway.

Mr. Tobia went on to address the variances requested for lot area, lot width at setback, building coverage and rear-yard setback. As testified, Mr. Tobia believes two small lots are better than one large lot. The lot width at setback goes with the lot area. The proposed lots are 92' and 93.55' wide where 110' is required. The 92' wide lots fit better with what's in the neighborhood and are wider than those previously approved for the other subdivisions. The proposed building coverage is identical for both lots at 1,993 SF where the maximum allowable building coverage is 1,670 SF and 1,692 SF for Lots 11.02 and 11.01, respectively. The increase in building coverage is mostly to allow for two-car garages. Better housing as a result of the two-car garages produces benefits that outweigh a one-car garage. The existing

house does not conform to the minimum rear-yard setback of 40.’ The applicant originally proposed a rear-yard setback of 36’ but modified the plans to create a bump out for the kitchens resulting in a rear-yard setback of 38.3’ which is only 1.7’ shy of the required setback. The rear-yard setback variances are only required for the area of the kitchens: The rest of the rear façades meet the setback requirement. In addition, the bump outs for the kitchen are only one-story high. A variance is also required for the width of the driveways which are proposed to be 18’ rather than the required 16.’ The extra 2’ allow more room for a vehicle door to swing out and to move things around when vehicles are in the driveway. Both driveways go straight back.

The proposed houses meet the building height requirement and front-yard setback and exceed the side-yard setback requirements. In addition, the proposed development on the lots is under the impervious coverage and the houses comply with the number of allowable stories. The front porticos now comply. The steep slopes disturbance is minor with the existing “bumps” most likely the result of previous grading. Mr. Tobia has been involved with all three subdivisions on Sixth Street and Livingston Avenue and testified that sometimes zoning flexibility is good for the neighborhood. The Carluccio development gave the neighborhood a shot in the arm.

Mr. Tobia addressed the negative criteria. The subdivision is not going to be a substantial detriment to the public good or impairment of the zone plan and zoning ordinance. It will be an asset the neighborhood. As noted, momentum started 10 years ago with the Carluccio subdivision. The variances required reflect the existing buildings in the neighborhood. The height of the proposed houses is below the threshold and 2.5 stories are what is seen in the neighborhood. When finished, Mr. Tobia can’t see a substantial detriment to the neighborhood. The application benefits a, c, e, g, i and m of 40:55D-2 of the Municipal Land Use Law promoting the efficient use of land as the lot is an underutilized parcel where development would be more appropriate.

Mr. Tobia responded to questions from the Board. He is not a realtor but is of the opinion that the value of houses in the neighborhood will go up as a result of development of the site. The properties on Pleasantview Avenue are separated from Sixth Street and he sees no detriment to those properties. The development will enhance the life style and image of the neighborhood which will benefit the properties on Fifth Street and also on Woodruff Court but to a lesser extent. The Board is concerned about the house being razed and the lot sitting vacant and asked for a timeline for development.

Howard Weinerman, developer of the property, was sworn in and responded that he has no intention of demolishing the house and walking away. If approved, he would file for a demolition permit and once the house is razed would immediately file for the building permits. He anticipates that it will take six to seven months from demolition to completion. Mayor Morgan noted that nothing has happened at 62 Livingston Avenue in the two years

since the Board approved the subdivision. Mr. Weinerman has talked to the developer of 62 Livingston Avenue who plans to start work in the fall. Mr. Weinerman would also like to start work in the fall at the same time. He needs to work with the developer of 62 Livingston Avenue on the roadway improvements but he has agreed to complete the roadway improvements even if 62 Livingston Avenue doesn't get developed.

The hearing was opened to the public for questions regarding Mr. Tobia's testimony.

T. J. Mahlstadt, 81 Pleasantview Avenue, asked about the number of variances and number of houses on the street noting there will be four houses on the north side of Sixth Street and only two on the south side. Five variances are required. The subdivision is not a variance. The houses on Livingston Avenue were built decades ago so they are smaller.

Sue Randazzo, 77 Pleasantview Avenue, asked Mr. Tobia if he had a photograph of the back of the Carluccio house as it was built right up to the house on Livingston Avenue. Mr. Tobia did not have a photograph and responded that except for the bump outs for the kitchens, the proposed houses on Lots 11.01 and 11.02 meet the rear-yard setback and the side-yard setbacks exceed the requirements so they have more room. The houses could have been closer. Ms. Randazzo commented that her property is 5' lower so she is going to be looking up at a monster house.

Debbie Picorale, 91 Pleasantview Avenue, asked again about water from the site. The engineer previously testified to the water.

The hearing was opened to public comments but the Board agreed to re-open the hearing to questions for Mr. Weinerman.

Sue Randazzo, 77 Pleasantview Avenue, asked about Sixth Street Associates and who will be responsible for water from the site now and in the future. Mr. Weinerman is the co-president with his father of Sixth Street Associates, LLC a limited liability company formed when he entered into a contract to purchase the property six to eight months ago. The plans will be submitted to the Building Department and have to be approved before construction can begin. The Building Department won't issue permits or allow construction to start if the plans aren't correct. Mr. Lynch added that Ms. Randazzo can call the Building Department if there are any issues and someone will go out to the site.

The hearing was opened to the public for comments.

Sue and Carmine Randazzo, 77 Pleasantview Avenue, were sworn in and presented a photograph of their backyard taken from the kitchen window with a marker showing the start of the new house which was marked as Exhibit O-1. A photograph of a brick wall with a tape measure was marked as Exhibit O-2. The proposed house is 27' high and their property

is 5' lower. The 8' trees are not going to screen the house. Mr. Randazzo moved from Brooklyn for the country and now they're putting up big houses. He built a big house but he left a back yard of 70.' Mr. Sheehan noted that it will be 90' from Mr. Randazzo's house to the proposed house on Lot 11.01 and it helps that his property is lower. Mr. Randazzo continued saying the water will be a problem on his lot even with his backyard. He's a contractor and has to guarantee his work and no one is willing to provide a guarantee that any water problems will be fixed. Mr. Lynch responded that the applicant has to post a performance guarantee and then a maintenance bond for two years. Mr. Randazzo concluded that there would be no problems if one big house were built rather than the two houses proposed.

T. J. Mahlstadt, 81 Pleasantview Avenue, was sworn in and stated that he moved to New Providence from Berkeley Heights in 1996. He loves the town but the empty lot with trees is going to go away and there will be four houses on the north side of the street and only two on the south side. He believes his property value will go down. Thirty percent of the property owners have done work on their homes. The subdivision is a big deal and it's a business trying to make more money.

Gerald Gross, 87 Pleasantview Avenue, was sworn in. He's lived in town for 20 years and he wants to limit harm: The Board should deny the application to limit the harm because the application will result in more storm water, less green space, lower property values and the property will be less aesthetically pleasing. He thanked the Board for eliminating the cul-de-sac which will reduce the impervious coverage. The development will worsen the drainage. Mr. Gross would like to see Lot 11.01 moved 4' away from Pleasantview Avenue. He would also like Sixth Street extended no farther east than the driveway at Lot 11.01 and the driveway to be tapered from 18' to 16' which will reduce impervious coverage. Impervious coverage would be reduced by 500 SF and these suggestions may save trees and reduce water on the site. He would also like to see the size of the houses reduced to the size of those approved at 62 Livingston Avenue so the houses are more consistent.

Mr. Gross stated that the expert witnesses were rationalizing their opinions based on what the developer wants. Smaller houses would reduce the building coverage and eliminate the variance for the rear-yard setback. The expert witnesses' testimony is such that it supports the developer so he can get more money for the houses rather than do what's best for the neighborhood. The Board should listen to the neighbors because they are more credible than the witnesses. Gerald Gross Exhibit (Showing Two Missing Trees) was marked as Exhibit O-2. The exhibit consists of three sheets. The first sheet shows the proposed tree removals as shown on the Proposed Development Plan, revised 7/6/17. The second sheet titled Large Trees close to Mahlstadt Property Line, Not reflected on Survey has four photographs of Tree A marked on the first sheet of the exhibit. The third sheet titled Large Tree close to Gross Property, Not reflected on Survey has four photographs of Tree B marked on the first sheet of

the exhibit. Because these trees were omitted on the Proposed Development Plan, the Board should not believe the accuracy of the surveys.

The houses constructed on the Carluccio subdivision are smaller with two stories and less living space. This development will cause greater harm than the Carluccio and 62 Livingston Avenue subdivisions. The Board should not approve the application because it sets a precedent for the potential subdivision of other lots in the neighborhood on the northeast corner of Fifth Street and at 84 Livingston Avenue. Mr. Gross asked the Board to deny the application or alternatively approve it with the recommendations he proposed.

Debbie Picorale, 91 Pleasantview Avenue, was sworn in and re-iterated the concerns expressed by Mr. Gross. The homeowners stay on Pleasantview Avenue because of the trees and the beautiful back yards. She doesn't want to see houses and shrubs and asked the Board to consider the neighbors' concerns.

The hearing was closed and the Board discussed the application. Mr. Kapner initiated the discussion stating that the Board is between a rock and a hard place: The property owner wants to build and the neighbors don't want him to build. He's heard both sides but isn't sure how the application doesn't benefit the public good. Mayor Morgan recalled the Eggers Court application where there were similar concerns about water. There was some water remediation and the neighbors on Hansell Road never had a problem with water. The engineer has testified that the storm water management as proposed will work plus Mr. Lynch and the inspectors will keep an eye on this. In addition, most people don't have the extensive landscaping proposed. It's important to look at the town as a whole. Mayor Morgan believes the neighbors are getting a lot from the developer in terms of water remediation and landscaping. He realizes the application is not popular with the neighbors but he can't see any reason to deny it.

Mr. Hoefling moved to approve the application. Mr. Kapner seconded the motion. Members voting in favor: Gene Castagna, Bill Hoefling, Gary Kapner, Mayor Morgan, Robert Sartorius, Denise Torsiello and John Keane.

F. OTHER BUSINESS

No other business.

G. MISCELLANEOUS BUSINESS

No miscellaneous business.

H. MINUTES

Mr. Sartorius moved to approve the minutes and Mr. Kapner seconded the motion. The minutes were approved as submitted.

I. ADJOURNMENT

Mayor Morgan moved and Mr. Hoefling seconded the motion to adjourn. The meeting was adjourned at 10:50 p.m.

Respectfully submitted,
Margaret Koontz
Planning Board Secretary