

**WYCKOFF PLANNING BOARD  
MAY 9, 2007 REGULAR MEETING MINUTES**

Regular Meeting: May 9, 2007 - 7:30 p.m.  
Location: Court Room  
Second floor, Memorial Town Hall

Board Member Attendance: Gordon Stanley, Chairman; Robert Steinbruch, Vice Chairman; David Connolly, Mayor; Joseph Fiorenzo, Twp. Comm. Rep.; Randy Hoogerheyde; Gerry Chi; Dan Hartigan; Robert Kane, Alt. Absent: Fred Depken; Kathy Scarpelli.

Staff Attendance: Peter Ten Kate, Boswell Engineering Representative; Joseph Perconti, Board Attorney; Susan Schilstra, Administrative Officer/Secretary.

The following statement, in accordance with the Open Public Meeting Act, was made by the Chairman, Gordon Stanley, "The regular May 9, 2007 Meeting of the Wyckoff Planning Board is now in session. In accordance with the Open Public Meetings Act, notice of this meeting appears on our Annual Schedule of Meetings. A copy of said Annual Schedule has been posted on the bulletin board in Memorial Town Hall; a copy has been filed with the Township Clerk, The Record, The Ridgewood News and the North Jersey Herald and News - all newspapers having general circulation throughout the Township of Wyckoff. At least 48 hours prior to this meeting the Agenda thereof was similarly posted, filed and mailed to said newspapers."

Approval of the April 11, 2007 Work Session Minutes  
Approval of the April 11, 2007 Regular Business Minutes

**1 RESOLUTION TO APPROVE VOUCHERS FOR PAYMENT**

**RESOLUTION #07-05**

Board Member Hartigan made a motion to memorialize this resolution to approve voucher for payment. Second, Board Member Hoogerheyde. Voting in favor: Mr. Kane, Mr. Chi, Mr. Hartigan, Mr. Hoogerheyde, Mr. Fiorenzo, Mr. Steinbruch, Mayor Connolly, and Chairman Stanley.

**2 PUBLIC HEARING(S) SCHEDULED FOR THE 7:30 P.M. BUSINESS MEETING**

**2A BARRISTER HOME CONSTRUCTION, INC. (BARRISTER AT DEEP BROOK) BLK 497 LOTS 7, 8.01, 10 & 11.01 (RA-25); Ravine Avenue. Preliminary Major Subdivision/ variance.**

*The site presently contains four (4) lots. One lot, which contains an existing residential dwelling, fronts on Grandview Avenue. The largest of the three lots, known as the Mason family property, was previously zoned by Court Order for Affordable Housing/Multi-family for 99 condominiums. The application proposes to subdivide the remaining three (3) lots into nine (9) conforming lots and to construct a new single family residence on these lots. A total of six (6) new homes are proposed by the application.*

Mr. Robert Milanese, the principle of Barrister Home Construction and applicant, Mr. Russell Huntington, the applicant's attorney, Mr. Andrew Missey, the applicant's engineer and Mr. Peter Steck, the applicant's planner, were present.

Marked as identification at this time were the following exhibits:

- A-15 Site Plan with revision date of April 19, 2007
- A-16 Colored rendering of the first page of the site plan with revision date of April 19, 2007
- A-17 Soil erosion/sediment control calculations with a revision date of April 24, 2007
- A-18 Drainage calculations with a revision date of April 24, 2007
- A-19 Aerial view of the proposed site with an overlay of the revised site plan
- B-16 Boswell McClave Report dated May 3, 2007
- B-17 Kauker & Kauker Report dated May 3, 2007

Mr. Andrew Missey, who was previously sworn and still under oath, continued with his testimony regarding the application. He stated that the following changes have been made to the site plan:

1. On proposed Lot 8.01 the lot frontage along the proposed road has been increased from 158' to 195' and the dwelling has been shifted about 45' southeast from its previously proposed location. The retaining wall originally proposed at the rear of the property has been deleted, and the grading has been revised.
2. On proposed Lot 8.02 the lot frontage has increased 3' and the proposed dwelling was shifted about 45' southeast from its previously proposed location. The retaining walls originally proposed along the rear (westerly side) and from the front of the lot have been deleted. The wall proposed along the easterly side yard has been shifted toward the front yard and reduced in height from 4' to 3'.
3. On proposed Lot 10 the lot frontage has decreased from 163' to 130' and the proposed dwelling is shifted about 30' southeast from its previously proposed location. A new retaining wall is proposed in the side yard on the southeast side.
4. On proposed Lot 11.01 there are some minor grading revisions and relocation of the proposed seepage pit system in the rear (northeast) yard.

5. On proposed Lot 11.02 the proposed dwelling is shifted about 45' closer (southeast) to the cul-de-sac. An open detention basin system is now proposed in the rear yard of this lot. A new storm sewer from the cul-de-sac is piped through an easement to the proposed open detention basin.
6. On proposed Lot 11.03 the detention system originally proposed for this lot has been eliminated. Runoff is now proposed to flow from the infiltrator retention system into the open detention basin now proposed for Lot 11.02.
7. Proposed Lots 11.04, 11.05 and 11.06 have not been revised.

Mr. Missey added that the Limit of Disturbance Line has been adjusted on each of the nine (9) lots and reflected on Sheets 1, 4, 5 and 6 of the revised drawings. The steep slope calculations on Sheet 5 have been revised for each of the proposed lots along Deep Brook Road to reflect the revised Limit of Disturbance Line dwelling locations. The landscape plan has also been adjusted accordingly. The surface of the detention system will be native grasses. The detention system will be located approximately 54' from the proposed garage on proposed Lot 11.02. There will be a retaining wall and fencing located around the above ground detention basin.

Committeeman Fiorenzo asked if there was a landscape plan with lot by lot plantings.

Mr. Missey said a planting list is located on Sheet 4 of 7 on the revised site plan. He added that trees removed are due to grading changes for each individual lot so that each dwelling can have a rear yard.

Mr. Huntington said the applicant is committed to preserving as many trees as possible.

Mayor Connolly added that on proposed Lot 8.02 if the driveway is shifted then 4 to 5 trees will not need to be removed.

Vice Chairman Steinbruch said that on proposed Lot 11.02 twelve (12) trees will be removed in order to construct an above ground detention basin. If the detention system were located underground how many trees would need to be removed?

Mr. Missey said an underground detention system is a smaller footprint and fewer trees would need to be removed.

Vice Chairman Steinbruch asked if viewing this above ground detention system from Ravine Avenue how much of the retaining wall with a berm can be seen.

Mr. Missey said the modular block retaining wall cannot be seen from Ravine Avenue. It is similar to an in ground pool and would be surrounded by a split rail fence with wire mesh.

Board Member Hoogerheyde asked if each lot can have its own zero percent in run off. Mr. Missey said once the roadway is introduced then run-off is formed and a detention

system is needed. Vegetation will aid in holding back 60% of the stormwater runoff to the basin.

Vice Chairman Steinbruch asked what the difference is with the filters that were proposed at the meeting in March.

Mr. Missey said a 2 stage filtration system is used above ground and a 1 stage filtration system is used below ground. Both systems need to be inspected semi-annually and would need to be maintained by a Homeowner's Association in order to mow the grass and vacuum out the grid chamber.

Committeeman Fiorenzo asked Mr. Missey to clarify the three (3) different slope categories which pertain to the roadway disturbance. What is the total square footage of the roadway right of way that is being disturbed?

Mr. Missey said that 44,000 square feet or 1 acre will be disturbed. In Steep Slope Category 1 - 10 percent of the right of way will be disturbed, in Steep Slope Category 2 - 5.7 percent will be disturbed, and in Steep Slope Category 3 - 3.4 percent will be disturbed for a total of 19.6 percent disturbance.

Committeeman Fiorenzo asked Mr. Missey to explain the proposed road alignment.

Mr. Missey said the proposed roadway is located further away from the ravine and kept on higher ground which is aesthetically pleasing to the site. The conservation limit of disturbance area is 13.3 acres or 26.3 percent of the site.

Committeeman Fiorenzo said that people will still be able to enjoy the ravine since the limit of disturbance cannot be touched or used by the property owner.

Mr. Missey then drew with a red marker the limit of disturbance area on exhibit A-16 and A-3 for the Board Members to see.

Committeeman Fiorenzo said that additional Planning Board approval would be required if the property owners were to disturb this area that Mr. Missey had marked.

Mayor Connolly asked if the Homeowner's Association is responsible for maintaining the conservation area.

Mr. Huntington said that each individual property owner would need to maintain their portion of the conservation area.

Board Member Hartigan said that between the conservation easement area and limit of disturbance is the homeowner going to be made aware that he cannot disturb this area. Mr. Huntington said this will be shown on the final subdivision plat.

Mayor Connolly asked what the square footage of disturbance is on the present roadway.

Mr. Missey said 16,000 square feet of roadway is presently disturbed and 44,000 square feet will be disturbed for the new roadway. He then marked Exhibit A-3 with a red marker the existing roadway and existing pool and 2 dwellings and their present location to the ravine. The new subdivision would keep the houses further away from the ravine.

Municipal Engineering Representative Ten Kate said a proposed grass paver access drive to the proposed open detention basin should be extended to the proposed water quality treatment unit for access to maintain the unit. He added that both Township of Wyckoff and Homeowners Association should be added to the final plat on Sheet 7 of 7 with regards to property variable width drainage easement.

Mr. Peter Steck, who was previously sworn and still under oath, continued with his testimony regarding the application. He referred to new exhibit A-19 which shows an aerial view of the proposed subdivision and the placement of the revised lot lines. An above ground or surface detention system is shown on the map. He said that an underground detention system is more aesthetically pleasing and more expensive. All of the proposed lots are conforming. Variance relief is requested for the proposed right of way roadway disturbance.

Committeeman Fiorenzo asked Mr. Steck to address the C-1 variance criteria with regards to the roadway.

Mr. Steck said the positive criteria of the C-1 variance is practical difficulty or unnecessary hardship. The hardship is that the ordinance results in a hardship when it is applied to a public right of way. The nature of the right of way is to be disturbed to accept a road. Wherever the road can be located will require a variance. The steep slopes that are being disturbed will not damage or be located near the stream corridor of the ravine.

Mr. Huntington said the ravine is being protected with the proposed roadway location.

Committeeman Fiorenzo said the roadway could be located further north to the ravine but the current location will protect the ravine. He asked Mr. Steck to address the C-2 variance criteria.

Mr. Steck said the intent of the steep slope ordinance is to minimize and regulate the disturbance. The steep slopes that are being disturbed are isolated and will not damage the ravine.

Board Member Hartigan asked if by changing the configuration of the roadway could this application be variance free.

Mr. Steck said wherever the roadway is placed a variance will be required because of the steep slope ordinance.

Mr. Huntington asked Mr. Missey to clarify the point of entry for the roadway opposite Fox Hollow Road.

Mr. Missey said that when you create a new road in proximity of an existing right of way you want the new public right of way to align with the existing right of way or to be offset by 100' to 150' and that is why the proposed location of the street is directly opposite Fox Hollow Road.

### **A FIVE MINUTE RECESS WAS TAKEN AT THIS TIME**

Chairman Stanley opened the application to the public.

Mr. Stuart Lieberman, counsel for Save the Ravine Alliance, said that he represents the organization that is opposed to the ravine application. He said that there is no reason this applicant should deviate from the steep slope ordinance. The ravine is a cultural resource and vital resources should be preserved. There will be an environmental detriment to polluting the water down stream if this subdivision is constructed. He added that he has two expert witnesses that are not present tonight.

Mr. Lieberman called Mr. Milanese as his first witness.

Mr. Milanese, the applicant, was sworn. He stated he purchased the first lot approximately 10 years ago. He said that he was aware of the steep slope ordinance when he purchased the remaining 2 lots on this site in 2006. He added that he was a consenting owner when the Mason application was first presented to the Planning Board in 2006.

Mr. Lieberman said that the applicant purchased the remaining Reid and Mason parcel after the steep slope ordinance was enacted in 2004. He asked if the applicant thought the prior application may save this application from any negative effects of the steep slope ordinance because an argument may be that they were grandfathered.

Mr. Milanese said he was aware that he had purchased property with the right to develop it and the right to seek variances.

Mr. Huntington said this line of questioning is irrelevant and he would like his point of objection for the record. People are allowed to buy and sell land and they buy it subject to the ordinances and they buy the development rights their predecessor in title may have possessed.

Mr. Lieberman said it is relevant to the C-1 variance criteria since the property was purchased after the steep slope ordinance was adopted.

Board Attorney Perconti overruled Mr. Huntington's objection.

Mr. Lieberman continued with his questioning and the economics of just reconstructing the original three houses they were located on this site.

Mr. Milanese asked if economics is relevant to this application.

Mr. Huntington again objected to the concept of economics as the Board well knows it's not relevant.

Mr. Lieberman concluded his cross examining of Mr. Milanese and asked that Mr. Missey be questioned next. He asked Mr. Missey to explain the road placement according to the steep slope ordinance.

Mr. Missey, who had been previously sworn, said the location of the roadway is located further from the ravine. He said the right of way required a reconfiguration of the topography of the land which necessitates a complete disturbance within the steep slope limits and triggers the need for a variance.

Mr. Lieberman said Mr. Missey suggested the Board should interpret the steep slope ordinance in a way that avoids the incongruity of a steep slope variance.

Mr. Missey said he did not ask the Board to interpret the ordinance. He gave the Board the facts and figures consistent with how the plans were prepared and why the variance was being sought. Mr. Missey reiterated again to Mr. Lieberman that he is an engineer and not a professional planner.

Mr. Lieberman questioned Mr. Missey about the deed restrictive areas.

Mr. Missey said there are 3 ½ acres of deed restricted area which are steep slopes. He added that there is milder terrain along Ravine Avenue and on the remainder of the property.

Mr. Lieberman asked Mr. Missey to explain the individual deed restrictive areas on each individual lot.

Mr. Missey said the individual deed restrictive areas on each individual lot could be modified in the future with subsequent Planning Board approval.

Mr. Lieberman questioned Mr. Missey about the outdoor detention basin size, the timing of discharge, maintenance of the system and security issues regarding the basin.

Mr. Missey said the outdoor detention basin is 5500 square feet in area and will be surrounded by a 3' fence. The basin would drain substantially within 24 hours. An

underground system would be more aesthetically pleasing. A 3" orifice will be located on the bottom of the basin with a trash rack which captures and prevents objects from getting to the orifice and clogging it. A water quality device will be installed for screening. The detention basin will be maintained by the Homeowner's Association. The Township of Wyckoff maintains street storm drains. He added that an underground detention system is easier to install and maintain.

Mr. Lieberman asked if a dam permit is required.

Mr. Missey said a dam permit will not be required because this detention system is considered an excavated basin on the basis of it's depth from the top of the bank to the lowest level within the basin.

Committeeman Fiorenzo asked what relevancy to this application is a dam permit needed.

Mr. Lieberman said he was concerned with the correct permits being requested of DEP if this application was approved. He then asked Mr. Missey how many trees would be removed in order to construct this subdivision.

Mr. Missey said 275 trees will be removed from this site in order to construct the homes and the detention basin. The replacement trees will be deciduous trees.

Mr. Lieberman concluded his cross examining of Mr. Missey and asked that Mr. Steck be questioned next. He asked Mr. Steck to explain the C-1 variance criteria and the steep slope ordinance.

Mr. Steck, the applicant's planner who had been previously sworn, said a C-1 variance is being requested by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property there is undue hardship upon the developer of such property.

Mr. Lieberman asked Mr. Steck if he has read the Master Plan.

Mr. Steck said he reviewed the relevant portions of the Wyckoff Master Plan.

Mr. Lieberman read from page 3 of the 2004 Re-examination Report provides that one general objective of the township is to preserve the historic and scenic sites and maintain the quality of the environment especially with open space, noise, air and water quality. He asked Mr. Steck if this site was a historic site.

Mr. Steck said this site is not a historic site. He said that the Municipal Land Use Law (MLUL) defines a historic site as any real property, man-made structure, natural object or configuration or any portion or group of the foregoing of historical, archaeological,

cultural, scenic or architectural significance. He added this property is not referenced in the historical element of the Wyckoff Master Plan or designated on the zoning map. He added that he studied the most recent re-examination report which is the operative one.

Mr. Huntington said this site is subject to no special designation by the Township of Wyckoff that imparts any enhance regulation beyond the zoning code.

Mr. Lieberman asked if Mr. Steck if he reviewed the steep slope ordinance. The purpose of this ordinance is to create development controls, and to provide for the preservation of critical slope areas in the Township of Wyckoff. He asked Mr. Steck to explain the placement of the roadway.

Mr. Steck said he reviewed the steep slope ordinance. Through a planning perspective the road has been placed the furthest from the ravine as possible.

Mr. Huntington said the applicant does not know the thought process of the Township Committee when it adopted the steep slope ordinance. He also objected to Mr. Steck being questioned as an ecological expert.

Mr. Lieberman said that he has no other questions of this witness.

Chairman Stanley said that due to the lateness of the hour this meeting will conclude.

Board Attorney Perconti said that Mr. Lieberman should have his witnesses present at the next Planning Board meeting. The cross examination of these three witnesses has been completed and the direct testimony of Mr. Lieberman's new witnesses will begin on Wednesday, June 13, 2007 at 7:30 p.m.

There being no further business, a motion to adjourn the meeting was made and seconded and passed unanimously. The meeting concluded at 10:35 p.m.

### **PUBLIC HEARING – TO BE CONTINUED AT THE JUNE 13, 2007 MEETING**

**BARRISTER HOME CONSTRUCTION, INC. (BARRISTER AT RUSSELL FARMS)**  
BLK 377 LOTS 1 & 18.05 (RA-25); Sicomac/Russell Avenue. Preliminary Major Subdivision.

*This application proposes to create a seven (7) lot residential subdivision creating six (6) new single family residential lots on two (2) existing residential parcels totaling 5.66 acres.*

Respectfully Submitted,

Susan Schilstra, Planning Board  
Administrative Officer/Secretary