

**WYCKOFF PLANNING BOARD  
SEPTEMBER 11, 2019 PUBLIC BUSINESS MEETING MINUTES**

Public Work Session: 7:30 p.m. Second Floor Court Room, Memorial Town Hall  
Public Business Meeting: 8:00 p.m. Second Floor Court Room, Memorial Town Hall

The meeting commenced with the reading of the Open Public Meeting Statement by Chairman Fortunato.

“The regular September 11, 2019 Public Business Meeting of the Wyckoff Planning Board is now in Session. In accordance with the Open Public Meeting 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.” Formal action may be taken.

Chairman Fortunato read this statement into the record: *“All applicants are hereby reminded that your application, if approved, may be subject to the terms, conditions and payment of the Affordable Housing Development Fee requirements of the Township. Information can be obtained from the Code of the Township of Wyckoff, Chapter 113-8 on the Township’s website, [www.wyckoff-nj.com](http://www.wyckoff-nj.com)”*

*“This meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.”*

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The meeting began with the Pledge of Allegiance and a moment of silence to honor the anniversary of 9/11.

**Board Member Attendance:** Robert Fortunato, Chairman; Kevin Hanly, Vice Chairman; Tom Madigan, Mayor; Rudy Boonstra, Township Committee Representative; Michael Homaychak, Kevin Purvin, Scott Fisher, Sarah Caprio and John An.

**Board Members Absent:** George Alexandrou and Glenn Sietsma.

**Staff Present:** Thomas Garlick, Acting Planning Board Attorney; Pete Ten Kate, Boswell Engineering Representative, Mark DiGennaro, Township Engineer and Maureen Mitchell, Board Secretary.

**OLD BUSINESS**

Approval of the August 14, 2019 Work Session and Regular Business Minutes  
The August 14, 2019 Work Session and Business Meeting Minutes were approved during the Work Session.

**RESOLUTIONS TO APPROVE VOUCHERS FOR PAYMENT**

Resolution #19-09

The Resolution for Payments #19-09 was approved during the Work Session.

**RESOLUTIONS TO BE MEMORIALIZED**

**VALENTA, MICHAEL** BLK 308 LOT 7.01 (RA-25) 15 Lyons Place.

The applicant proposes to re-locate the existing side yard fence past the plane of the house. He is also proposing to extend the existing boulder wall along the side yard fence and fill in with 80 – 100 cubic yards of soil to level the side yard. Approved.

**GRACE METHODIST CHURCH** BLK 411 LOT 2 (RA-25) 555 Russell Avenue  
Minor Subdivision approved.

**TEVLIN,** BLK 269 LOT 4 (B-1) 314 Franklin Avenue.

The applicant proposes to install a parking lot ingress/egress apron and seepage tank to capture storm water from the parking lot. The application was deemed complete at the July 10, 2019 Planning Board meeting. Approved.

**CHRIST, IAN** 742 Birchwood Drive BLK 430 LOT 8 (RA-25)

The applicant proposes to build retaining walls and move soil in excess of 100 cubic yards to level the property. Approved.

The Resolutions were memorialized during the Work Session.

**FOR REVIEW AND RECOMMENDATION****ORDINANCE #1887**

AN ORDINANCE TO AMEND CHAPTER 186, "ZONING", OF THE CODE OF THE TOWNSHIP OF WYCKOFF, ARTICLE VII, "NONCONFORMING USES AND STRUCTURES", SECTION 186-37, "CONTINUANCE OF EXISTING USES AND STRUCTURES"

The Board Members reviewed and approved Ordinance #1887 during the Work Session.

**APPLICATIONS CARRIED**

**GALASSO ENTERPRISES, LLC** BLK 203 LOT 3.04 (L-2) 825 Windham Court North.

Amendment to Existing Site Plan. Applicant proposes to add 56 additional parking spaces to the site which currently has 50 parking spaces).

The applicant has requested an adjournment of the Public Hearing until the October 7, 2019 meeting. The Board Members voted during the Work Session to approve the request for an adjournment until the October 7, 2019 Planning Board meeting with the condition that the applicant appear before the Board with a status update before any additional extensions are approved.

**APPLICATIONS CARRIED****403 GOFFLE PARTNERS 403 Goffle Road BLK 491 LOT 11 (B-2)**

The applicant proposes to add a free standing sign 5' from the property line, add 2 ADA compliant parking spaces and 3 additional parking spaces totaling 5 new parking spaces.

Board Members An, Caprio, Fisher and Vice Chairman Hanly were not in attendance at the August 14, 2019 Planning Board meeting. They each submitted a signed Certification that they listened to the recording of said meeting from which they were absent and are therefore eligible to participate in a vote on this matter. Copies of the signed Certifications are on file in the Planning Board Office in Memorial Town Hall.

Jeffrey Lehrer, the applicant's Attorney, came forward. He stated that his client is prepared to comply with all of the requirements cited in Mr. Ten Kate's report adding that the main issue at this point is the number of parking spaces to be granted by variance. Chairman Fortunato stated that there are some other items that need clarification. Mr. Lehrer asked Kiersten Osterkorn, the Engineer, to come forward to address the Board Members questions.

Ms. Osterkorn presented the site plan with a revised date of August 26, 2019 which was marked exhibit A-1. The photo submitted by the resident objector at the August meeting was marked exhibit O-1 and Mr. Ten Kate's reports were marked exhibits B-1 dated 9/4/19 and B-2 dated 9/9/19. Ms. Osterkorn commented on the items in Mr. Ten Kate's report that were to be addressed as follows:

- All tenants will use the current common dumpsters and the dumpsters are currently adequate in size. The dumpsters will be enclosed.
- Traffic will flow clockwise from Wyckoff Avenue to Goffle Road. The entrance on the eastern side will accommodate 2 way traffic and the western driveway will be an exit only. Directional arrows will be added.
- The east side of parking space #37 will be striped.
- The existing site landscaping and buffer will continue. New landscaping is proposed around the proposed site sign on Goffle Road.
- The LED lighting will not exceed 3,000k color temperature as per Township Code.

Township Engineer DiGennaro stated that there is a floating curb parallel to Wyckoff Avenue and inquired if this is to be removed. Ms. Osterkorn said that it serves no purpose and it shall be removed.

Board Member Fisher asked if the existing dumpsters are standard for restaurant use versus a nail salon. Ms. Osterkorn replied that she is not aware of any standard size for a particular business. Mr. Fisher inquired further as to whether the 9'x16' dumpster is sufficient to accommodate a restaurant in addition to the other retail businesses on the property. Ms. Osterkorn stated that in her opinion the existing dumpster is sufficient.

Mr. Fisher stated that the site plan shows employee parking on the southerly side of the building. Upon reviewing the dimensions in that area, specifically with regard to parking spaces 33 and 34, Mr. Fisher stated that there would be no access for fire fighting vehicles in that area should there be a fire in the building. He recommended, in the interest of safety, eliminating spaces 33 and 34 to facilitate the free flow of traffic around the building without any impediment. Mr. Lehrer stated that if the Board wants the 2 employee parking spaces eliminated they will be eliminated.

Mayor Madigan asked if the applicant was successful in obtaining the easement from the adjacent property which was mentioned as a possibility at the August 14, 2019 meeting. Mr. Lehrer stated that they were unable to obtain the easement.

Mr. DiGennaro stated that there were 35 existing spaces and the applicant proposed 37. The 2 additional spaces are to be removed which results in a zero net loss. The net gain is that you will have standard compliant parking stall sizes, complaint ADA spaces and safe travel access widths which makes the site safer than what existed previously.

A lengthy discussion took place regarding the parking variance. Ms. Osterkorn stated that the applicant is requesting a variance for 73 parking spaces, which would allow for an on-site consumption restaurant in the shopping center. Chairman Fortunato stated that the applicant does not currently have a tenant opening a restaurant at the location so there is no reason to grant the variance based on something you are contemplating. Ms. Osterkorn asserted that the reason for the request for 73 spaces is because with 64 spaces there can be no on-site consumption however with 73 spaces there can be on-site consumption. The applicant does not want to be precluded from having an on-site consumption restaurant on the property. Mr. Lehrer asked if the application is approved for 64 spaces, will the applicant have the right to have a restaurant in the shopping center based on the 64 spaces. Mr. DiGennaro affirmed that a restaurant is absolutely allowed as long as it adheres to the number of seats in relation to the number of required parking spaces. Mr. Lehrer inquired as to whether his client could come back before the Board in the future to apply for an additional parking variance should the need arise. Chairman Fortunato stated that the applicant can come back with a tenant who will testify as to how many tables they will have and what hours they are going to operate and the Board will certainly consider the need, however every application is evaluated on its own merits and no one is ever entitled to a variance.

Mr. Lehrer asked if his client can start work prior to the memorialization of the resolution. Mr. DiGennaro stated that the revised plan must first be submitted as well as a letter stating that the applicant will proceed with work at his own risk.

OPEN TO THE PUBLIC  
NO ONE APPEARED  
CLOSED TO THE PUBLIC

Board Member Homyachak made a motion to approve the application for 403 Goffle Road with the following conditions: 2 proposed employee parking spaces on the southerly side of the building will be eliminated, directional traffic arrows will be added to the parking lot, the floating

curb will be removed, sidewalk to be striped as discussed, revised plans will be submitted, letter to proceed with construction at own risk will be submitted and recognition of 64 parking spaces for purposes of determining tenant parking requirements. Second, Mr. Purvin. Voting in favor: Mr. An, Ms. Caprio, Mr. Purvin, Mr. Homyachak, Mr. Fisher, Mr. Boonstra, Mr. Hanly, Mayor Madigan and Chairman Fortunato.

**KAYAL, GARY** 225 Van Houten Avenue BLK 258 LOT 13 (RA-25).

The applicant proposes to import approximately 774 cubic yards of soil to raise the level of the rear yard and to construct a 3'-4' boulder retaining wall to contain the soil.

Board Members An, Caprio, Fisher and Vice Chairman Hanly were not in attendance at the August 14, 2019 Planning Board meeting. They each submitted a signed Certification that they listened to the recording of said meeting from which they were absent and are therefore eligible to participate in a vote on this matter. Copies of the signed Certifications are on file in the Planning Board Office in Memorial Town Hall.

Mr. Kayal was reminded that he was sworn at the August 14, 2019 meeting and is still under oath.

Mr. Kayal stated that he brought photographs of the property showing it in its finished state. Board Member An asked how the project could now be complete when the applicant stated at the August meeting that the work was 90% complete and a stop work order had been issued. Mr. Kayal stated that he was not working on the retaining wall or soil movement adding that he was putting down sod, mulch, landscaping, installing an irrigation system and a fence. The stop work order, in his opinion, pertained to the wall and the soil which he completed prior to the August 14, 2019 meeting even though a stop work order had been issued.

Board Member Fisher presented color photos of the Library parking lot, directly adjacent downhill from the Kayal property, and asked Mr. Kayal if he was familiar with the rain storm that flooded the Library parking lot with rainwater and mud. Mr. Kayal stated that there were many rain storms and he does not believe the runoff came from his property because he planted sod. He suggested that the photos were taken before he put the sod down. Mr. Fisher inquired about the purpose of the 3 gravel chutes on top of the wall, in between the trees. Mr. Kayal said that in the event of a heavy rain storm, the rain will pass through those 3 depressions of gravel and bleed through behind the wall. Mr. Fisher asked if those short depressions are capable of retaining all of the water in the event of a heavy rain storm and prevent rainwater and soil from running down to the Library. Mr. Kayal said that he is not sending any more water towards the Library property adding that the Library property sits lower than his so water will naturally run towards the Library.

Ms. Caprio asked Mr. Kayal where his roof leaders drained to before he tied them into the new drainage system sending the water to the rear of the property. Mr. Kayal stated that the leaders previously dumped rain water onto the lawn next to the foundation of his home. Ms. Caprio pointed out that the roof leaders are now draining to the rear of the property near the Library property where previously the leaders dumped onto the

lawn near Mr. Kayal's home. She added, in essence, the 100' of rear yard property that would have absorbed the water is now being directed straight to the library property.

Board Member Boonstra stated that the Library has had no issues with runoff from the adjacent property, which is now Mr. Kayal's property, for 48 years. The water problem developed at the time that the applicant began this project. He went on to say that the applicant is testifying that there will not be any further water issues because he installed sod in his yard however there is no proof of that. Mr. DiGennaro was unable to inspect what is underneath the ground with regard to drainage because no permits were applied for until after the work was done. Mr. DiGennaro found out that the project was underway when he was notified by the DPW that the library was having water issues due to runoff from the Kayal property. When Mr. DiGennaro visited the property, the soil was already on site and the boulder retaining wall was almost completed so he did not have an opportunity to inspect the installed drainage system. Ms. Caprio asked Mr. Kayal if he has any evidence of the manifold system being implemented. Mr. Kayal stated that he has photos on his phone.

Mayor Madigan expressed concerns about the soil that was imported and the fact that it has not been verified or tested. Mr. Kayal responded by saying that landscapers move soil on a daily basis from one site to another and no one expects anything because there is no rule that soil has to be certified when it is being moved. He added that thousands of yards of soil get trucked around this county on a daily basis without any permits or inspections. Chairman Fortunato advised Mr. Kayal that had he come before the Board with his soil movement application prior to importing the soil, the Board would have asked for certification of clean soil. Mr. Boonstra agreed; especially in light of the fact that the soil is running into the Library where children attend on a daily basis.

Mr. Boonstra asked if the County gets involved with soil movement of this capacity. Mr. DiGennaro stated that the County requires that they are to be notified when any site work will disturb more than 5,000 square feet in area. He also pointed out that Mr. Kayal's application has a notation stating there was a simultaneous filing with Bergen County Soil Conservation District. Mr. Boonstra asked Mr. Kayal if he contacted Bergen County Soil and if so, has he obtained approval from the County for the soil movement. Mr. Kayal replied that he did not know that he had to contact the County. Mr. Boonstra said that it is stated in Mr. Kayal's documents that a review with Bergen County is pending. Mr. Kayal said he did not read the documents that his Engineer prepared and did not know he needed to get approval from the County. Chairman Fortunato asked if Bergen County Soil should have been notified prior to the soil being moved. Mr. DiGennaro stated that the County should have been notified in advance because their goal is to make sure that soil erosion control measures are in place before there is any significant disturbance to a property. Mr. Kayal said that he had silt fence in place.

Board Member An commented that Mr. Kayal did not consult with the Township Engineer regarding the removal of trees, he did not obtain permits for soil movement and the construction of a retaining wall and he did not contact Bergen County for prior approval of the soil movement. He asked Mr. Kayal how, as a Professional Landscaper, he did not know that he was required to meet any of those requirements. Mr. Kayal

stated that he did not know that the project was going to turn into such a big job. Mr. An asserted that as a Professional Landscaper, who does jobs such as this for his clients, he cannot understand how Mr. Kayal did not know he needed permits and prior approvals for a project such as this.

A discussion regarding the septic system, which is in the rear yard, ensued. Mr. Kayal presented photos marked as exhibits A-2 thru A-6. He pointed to exhibit A-4 to show that the existing septic system is in the middle of his back yard closest to the new patio area. Mr. Fortunato asked if soil was placed over the septic. Mr. Kayal stated that the elevation of the septic was the benchmark for the level of the back yard. The highest level of the back yard was the area where the septic system is and the property sloped downward from there to the property line in the rear. Mr. Onello (the Engineer of Record) stated that when he visited the site, the septic clean outs were at grade. Chairman Fortunato said other than Mr. Kayal's testimony, the Board has no way of knowing what was actually done on this property. Mr. Kayal said that photos exist.

Mayor Madigan asked who will testify as to the safety and integrity of the wall. Mr. Kayal stated that his engineer, Angelo Onello, inspected the wall and can provide testimony. Mr. Onello came forward and stated that in his professional opinion the wall is structurally sound. Very heavy boulders were used to construct the wall and clean crushed stone was placed throughout the back of the boulder wall with proper drainage behind it. Mr. DiGennaro asked Mr. Onello if he is prepared to issue a certification statement, signed and sealed, that the wall is structurally sound. Mr. Onello said he is prepared to provide such a certification. Chairman Fortunato asked Mr. Onello to provide that certification prior to the October 7, 2019 meeting.

Mr. Fisher asked the Mr. Onello if he performed drainage calculations on the water that is being retained behind the new wall adding that normally, leader drains on a roof that size would go into a 1000 gal seepage pit. He went on to say that the current rate of discharge is much greater now that you have the roof leaders draining directly to the wall and into the woods onto the library property where previously the roof leaders drained close to the foundation of the house. Mr. Fisher asked how much water the free standing rock wall can withstand. Mr. Onello stated that the wall is not holding any water; the water is bleeding through the wall. Mr. Fisher pointed out that if the stormwater is bleeding through, it is draining into the woods onto the Library property. Ms. Caprio stated that the water is draining at a faster rate of discharge. Mr. An concurred stating that if the rainwater discharges at the base of the home, it has the entire length of the rear yard to disperse versus channeling the water via piping from the roof leaders directly to the wall along the rear of the property.

Mr. DiGennaro suggested that the applicant install 1 or 2 dry wells and have the roof leaders drain to them with overflows into underground gravel behind the wall and then we can prove there is zero net increase in runoff whereas currently now we cannot. Mr. Kayal stated that while that is an option he would prefer to wait to see what happens during the next rain storm. He feels that now that he has installed the sod and landscaping there will no longer be a runoff problem. It will be a tremendous effort and expense to install the dry wells. If there is significant runoff he will agree to install the dry

wells. Mayor Madigan asserted that he does not believe that the Board should have someone before them dictate what the terms and conditions should be. Ms. Caprio added that if the wait and see approach fails we could have a flooded library again which could result in a substantial financial detriment to the Township for one of its municipal buildings.

Mr. Boonstra said that what he hears is that Mr. Kayal would prefer to avoid the expense of installing the dry wells. He also stated that he is not at all comfortable with the potential runoff of soil into a Municipal building when we do not know what is in the soil. This is a public facility which children attend every day. He is very concerned that something will fail there and waiting for the next 1 or 2 rain storms does not assuage his concerns. Mr. Boonstra announced that he is preparing notes to justify a motion to deny this application which means the retaining wall and the soil would have to be removed by a deadline. He added that Mr. Kayal would have the option to appeal to a Superior Court Judge in Hackensack, but that he himself will not make a decision to allow this to stand. We do not know what is under your lawn and I have a significant concern for public safety.

Chairman Fortunato stated that the meeting was going to be adjourned and advised Mr. Kayal to come back to the October meeting prepared to present the photographs that he stated he has of the pre-existing condition of the yard with regard to the septic location, the drainage system during the installation and a soil test report. Mr. Kayal stated emphatically that he moved substantially more soil at his previous home and was not asked to have the soil tested adding, this is ridiculous. Mr. Boonstra addressed Mr. Kayal stating that he created a runoff situation that had not existed for 48 years in that library basement. Mr. Kayal argued that he did not create the water problem because the water was already going there. Mr. Boonstra went on to say that the water issues began when the applicant started removing trees and moving soil. The runoff was invasive into the building which is an ongoing problem and there are photos dated August 21, 2019 as evidence that it is an ongoing problem. Mr. Boonstra stated that he is extremely concerned that we do not know what is in that soil and if for no other reason than the fact that the construction area is 60' from a library, a soil test would have been required upon submission of this application. Chairman Fortunato said that the Board would have requested the soil testing anyway as they have done so with the last 6 soil movement applications that came before The Board.

There being no further business, a motion to adjourn the Public Business Meeting was made, seconded and passed unanimously. The meeting concluded at 10:43 p.m.

Respectfully submitted,  
Maureen Mitchell, Secretary  
Wyckoff Planning Board