

**WYCKOFF PLANNING BOARD  
MAY 13, 2020 PUBLIC BUSINESS MEETING MINUTES**

Public Work Session: 7:30 p.m. via ZOOM video conferencing and YouTube live stream  
Public Business Meeting: 8:00 p.m. via ZOOM video conferencing and YouTube live team

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

“The regular May 13, 2020 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.”*

Pledge of Allegiance.

**Board Members in Attendance:** Robert Fortunato, Chairman; Kevin Purvin, Vice Chairman; Tim Shanley, Mayor; Michael Homaychak, Sarah Caprio, Anthony Riotto, John An and George Alexandrou.

**Absent:** Glen Sietsma, Scott Fisher and Rudy Boonstra.

**Staff Present:** Kevin Hanly, Board Attorney; Mark DiGennaro, Township Engineer; Nancy Cole, Executive Administrative Assistant and Maureen Mitchell, Board Secretary.

**OLD BUSINESS**

Approval of the April 14, 2020 Work Session and Regular Business Minutes

The April 14, 2020 Work Session and Business Meeting Minutes were approved during the Work Session.

Approval of Payment Resolution #20-05

Payment Resolution #20-05 was approved during the Work Session.

**RESOLUTIONS TO BE MEMORIALIZED**

AZZAWI 612 Lawlins Rd BLK 230 LOT 17

(The applicant proposes to install a 6’ white vinyl privacy fence in the front yard)

THE GRACE CHURCH 555 Russell Avenue BLK 411 LOT 2  
(The applicant is requesting a 190-day extension of time to perfect the approved subdivision.  
The time to perfect the subdivision expires on April 14, 2020.)

LONEGAN, STEVEN & LORRAINE 726 Wyckoff Ave. Blk 216 Lot 10.01  
(The applicant proposes to construct an addition to the existing home into the rear yard setback)

TOWNSHIP OF WYCKOFF and TIMOTHY BRACKETT 358 Crescent Avenue Block 203 Lots  
1.02 and 1.03.

(The application proposes an exchange of lands between the owners of lot 1.02, Township of  
Wyckoff and lot 1.03, Timothy Brackett to abolish the existing ingress/egress easement)

The four (4) Resolutions were approved 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 34 additional parking spaces to the  
site which currently has 50 parking spaces and 58 spaces are required)

It was announced during the Work Session that the application will be carried to the June 10,  
2020 meeting for public hearing.

### **FOR REVIEW AND DISCUSSION**

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

(The applicant's Attorney submitted a proposal for consideration of the denied application)

Chairman Fortunato stated that the applicant's Attorney, Bruce Whitaker, submitted a letter dated  
March 30, 2020 in connection with the denial of the soil movement application. He added that Mr.  
Whitaker is participating in the ZOOM meeting and would like to address the matter.

Mr. Whitaker said he is not disputing the denial of the soil movement application and it is not his  
intention to interrupt the Board's decision-making power in finalizing the Resolution. The purpose  
of his letter was to formulate a procedure to adhere to the Resolution as it pertains to the soil  
removal aspect. He stated that he understands the Board's main concerns were the inability to  
inspect the drainage system during the installation process and that the imported soil was not  
sufficiently tested and should therefore be removed. He proposed that the applicant, Mr. Kayal,  
will take the necessary steps to remove the imported soil. Once the soil is removed, the entire  
drainage system that was installed will be fully exposed as will the back of the retaining wall. At  
that time Mr. DiGennaro, the Township Engineer, will have the ability to inspect the entire retaining  
wall and drainage system. Should Mr. DiGennaro require any modifications to be made based  
upon his inspection, Mr. Kayal will make the modifications. Mr. Whitaker went on to say that once  
Mr. DiGennaro is satisfied that the drainage system and retaining wall are acceptable  
according to the Township of Wyckoff Engineering standards, Mr. Kayal will provide  
documentation of the quantity of soil to be imported, the source of the soil, and an appropriate  
soil test from a licensed laboratory indicating that the soil meets acceptable standards. In addition,  
Mr. Kayal will install the seepage pit which his Engineer testified to during one of the meetings  
and is shown on the submitted plans. Finally, Mr. Whitaker stated that all the work will be done  
with the appropriate and required inspections by Mr. DiGennaro.

Board Attorney Hanly stated that there are two (2) issues at hand. The first issue deals with voting on the Resolution. Under the Statute 40:55D-10g (2), only the Board Members who voted for the action stated in the Resolution may vote on memorializing the Resolution and must do so with a majority of votes. The three (3) Board Members who voted against the action may not vote on the Resolution. The second issue deals with Mr. Whitaker's proposal letter. The Township does not have an ordinance that deals with a re-hearing or re-consideration of a Board decision. Mr. Hanly stated that he learned of an informal procedure by a Board in the Township of Wyckoff to allow additional testimony to be provided. The procedure that would have to be followed would be to have an applicant, within 45 days of memorializing the Resolution, move for a re-hearing. The applicant could do so by filing a letter such as the one submitted by Mr. Whitaker on behalf of his client, Mr. Kayal. The Board would have to agree to accept the additional testimony and schedule a hearing for which the applicant would have to notice neighbors within a 200' radius and publish a legal notice in the newspaper. This model appears to be a procedure to eliminate the need for an appeal. If the Board agrees to hear additional testimony, the applicant can come back to present that testimony and the Board would then vote on whether to reconsider the decision or not. That is the informal procedure that has been followed in the past however the Township does not have an Ordinance pertaining to the model rule. Mr. Hanly stated that we are in unchartered waters however this procedure protects the Board and gives the applicant an opportunity to present arguments. Mr. Hanly stated that the Board is here this evening to memorialize the Resolution, not to accept new testimony or for a re-hearing.

Mr. Whitaker stated that his letter is not a request for reconsideration. Once the Resolution is passed, there must be a next step. He added that in his letter he proposed what the next steps could be. Mr. Whitaker stated that neither he nor his client have any desire to re-hear the case.

Chairman Fortunato expressed concern that two (2) of the Board Members who voted for the action in the Resolution are not present at the meeting and both were deeply involved in the hearing process for the application. He added that he feels it would be best if the Board postponed acting on the Resolution until Mr. Boonstra and Mr. Fisher are in attendance to participate in the discussion and the vote.

Mr. Whitaker then raised an issue of recusal which he directed towards Chairman Fortunato due to a possible conflict of interest that recently came about. Mr. Fortunato stated that he will take that under consideration. He added that considering that, the Board should not take any action on the matter this evening.

Mr. Whitaker stated that the Board is required to create and pass a Resolution within 45 days of a decision. After 45 days an applicant has the right to go before the court and have a Resolution written by a judge. Mr. Hanly advised Mr. Whitaker that in representing the applicant, he has the right to waive the 45-day requirement. Mr. Whitaker said he will discuss the matter with his client, Mr. Kayal.

Mayor Shanley suggested forming a three-member sub-committee of the Planning Board to meet with the Board Attorney and the Township Engineer to evaluate the Board's options and make recommendations to consider at the next meeting.

Chairman Fortunato stated that the memorialization of the Kayal Resolution will be carried to the next meeting.

**05-13-20PM**

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**Planning Board**

There being no further business, a motion to adjourn the Public Business Meeting was made, seconded, and passed unanimously. The meeting concluded at 8:40 p.m.

Respectfully submitted,  
Maureen Mitchell, Secretary  
Wyckoff Planning Board