

**WYCKOFF PLANNING BOARD
MAY 8, 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 May 8, 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”*

“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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Board Member Attendance: Rob Fortunato, Chairman; Kevin Hanly, Vice Chairman; Tom Madigan, Mayor; Rudy Boonstra, Township Committee Representative, Board Members Michael Homaychak and Sarah Caprio.

Board Members Absent: George Alexandrou, Kevin Purvin, Scott Fisher, Glenn Sietsma and John An.

Staff Present: Joseph Perconti, Planning Board Attorney; Mark DiGennaro, Township Engineer; Pete Ten Kate, Boswell Engineering Representative and Maureen Mitchell, Board Secretary.

OLD BUSINESS

The April 10, 2019 Work Session and Regular Business Minutes were approved during the Work Session Meeting.

RESOLUTIONS TO APPROVE VOUCHERS FOR PAYMENT

Payment Resolution #19-05 was approved at the Work Session.

FOR REVIEW AND RECOMMENDATION

ORDINANCES #1875 and #1876 were recommended for approval at the Work Session.

FOR COMPLETENESS REVIEW**726 WYCKOFF NORTH, LLC** BLK 216 LOT 10.01 (RA-25) 726 WYCKOFF AVE.

Minor Subdivision.

The application was deemed complete at the Works Session and will be placed on the June 12, 2019 meeting agenda for Public Hearing.

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 incomplete at the Work Session.

FOR COMPLETENESS REVIEW/PUBLIC HEARING**VAN ALSTYNE, ANITA & MICHAEL** BLK 214 LOT 95 (RA-25) 370 Harvey Court.

The applicant proposes to install a 37' length of 6' high solid fence from the end of the existing fence to the side of the home.

Anita and Michael Van Alstyne were sworn. Mrs. Van Alstyne stated that they have an existing fence along the Godwin Avenue side of their property. The area of the property from the end of the existing fence to the house is unfenced and they now wish to enclose that area with the same type of fencing. Mr. Van Alstnye stated that in addition to providing privacy to their property the new section of fence will screen their generator which is placed on the side of the home. Mr. Hanly asked if they planned to place plantings in front of the fence. Mr. Van Alstyne stated that they will plant evergreen plantings as per the Township code. Mr. Boonstra stated that he appreciates the type of fencing that was chosen as it is made of wood and will weather nicely making it practically un-noticeable.

OPEN TO THE PUBLIC

NO ONE APPEARD

CLOSED TO THE PUBLIC

Mr. Boonstra made a motion to approve the fence application for 37 Harvey Court Block 214 Lot 95 subject to the Township requirements for plantings and maintenance of such plantings.

Second, Mr. Homaychak. Voting in favor: Ms. Caprio, Mr. Homaychak, Mr. Boonstra, Mr. Hanly, Mayor Madigan and Chairman Fortunato.

CARAFELLO, KELLY & WILLIAM BLK 455 LOT 34 (RA-25) 185 Fox Hollow Rd.

The applicant proposes to install a 6' white vinyl privacy fence on front yard #2 facing Fox Hollow Road and an address sign post on the corner of the property where the 2 front yards meet.

Kelly Carafello was sworn. She stated that she and her husband have two young children and a dog. Their property abuts a parcel of land owned by Ridgewood Water. There are often deer in their yard and they would like to enclose the yard for the safety of the children and their dog. Chairman Fortunato brought attention to the fact that the applicant is proposing a solid white 6' fence and asked if they would consider a fence that was open at the top such as the one their bordering neighbor has. Ms. Carafello stated that she does not particularly care for the style with the lattice top and she would prefer the solid fence for added privacy. Mr. Fortunato stated that the Board typically recommends a fence with an open top rather than a solid wall of white in the front yard. Mayor Madigan stated that he does not object to the solid fence. Mr. Boonstra asked the applicant to clarify if they were planning to tie in to their neighbors fence which has the lattice top. He added that he would prefer to see the lattice or open top fence rather than the solid white

fence in the front yard. Mayor Madigan said that in light of the fact that the adjacent neighbor has the lattice top fence it would be more aesthetically pleasing to do the same. Mr. Boonstra said that it is strictly due to the fact that it is in the front yard that he is recommending the open top fence. Mr. Hanly and Mr. Homyachak concurred. Ms. Caprio said that the applicant can push the fence back 7 feet and then choose any fence they like. Ms. Carafello said that if they were to move the fence back 7 feet they would have to remove a tree.

OPEN TO THE PUBLIC

Steven Clark of 457 Weisch Lane lives next door to the applicant and stated that he does not have a problem with his neighbor's proposed fence.

CLOSED TO THE PUBLIC

Mr. Boonstra asked the applicant if she would consider placing an open top fence on the front exposures to Fox Hollow and Weisch Lane and the area that is not facing front could be a solid fence. Mr. and Mrs. Carafello stated they are agreeable with that stipulation.

Mr. Boonstra made a motion to approve the application of 185 Fox Hollow Road Block 455 Lot 34 under the condition that the portion of the fence facing Fox Hollow Road and Weisch Lane will have a decorative open feature at the top and the rest of the fence can be a solid fence. Also, Township planting requirements will be adhered to and maintained. Second, Mr. Hanly. Voting in Favor: Ms. Caprio, Mr. Homyachak, Mr. Boonstra, Mr. Hanly, Mayor Madigan and Chairman Fortunato.

FOR PUBLIC HEARING

FOUR GEMS BLK 237 LOT 8 (B1A) 244 Everett Avenue.

Amended Site Plan. The applicant proposes to remove a portion of the building's brick foundation and replace it with cement block.

Sophie Sedarat Esq. came forward on behalf of the applicant. She stated that approvals for the renovation and expansion of the building were given in December 2018. When the builders brought in their mason, it was apparent that there was a problem with the foundation. Brick had been used to construct the foundation instead of mason block and the brick is now bowing and there is water seepage. The applicant is seeking to replace the brick foundation with a more structurally sound foundation of mason block. Speaking to the concerns of Mr. Boonstra during the Work Session, only 3% of the existing structure was to remain under the original plans adding it furthers the objectives of the Township to have a structurally sound foundation. With that, Ms. Sedarat introduced the architect.

Christopher Canzani of Canzani Architects was sworn. He stated that the new proposal is to remove all of the existing walls in order to replace the existing foundation with a more substantial foundation. He added that the initial plans were to demolish all but approximately 3% of the building. Mr. Boonstra, Chairman Fortunato and Vice Chairman Hanly were all in agreement that they did not recall any testimony during the hearing in December whereby it mentioned that it was almost a complete teardown. As they recall it was an expansion and renovation.

Ms. Sedarat stated that it was clearly shown on the original site plan as to what was staying and what was to be demolished.

Mayor Madigan stated that although he was not present at the hearing in December, he is sympathetic to the situation that the owner now finds himself in and that he appreciates the applicant's spirit of intent to make the building safe by rebuilding the foundation.

Chairman Fortunato expressed concerns about the legality of having this hearing and that there would not be a quorum since 2 of the members present were not at the original hearing.

Mayor Madigan stated that it is his belief that if a Planning Board approved an application and now the applicant has discovered that he needs to replace the foundation of that same approved building without changing the design, footprint or parking and the objective is to make the building structurally sound, it can be voted on by new or previous Board members because the application has already been approved by the Planning Board.

Sophy Sedarat explained to the Board that the applicant is not here tonight to request changes to the design or the footprint. The Same building that received the approval of The Board is the same building that is going to be built adding; we are simply asking if this Board can reasonably conclude that if everything else is in conformity with the original Resolution of approval, can the applicant simply replace the foundation with a more structurally sound one that is in conformance with the original Resolution of approval. Ms. Sedarat also said that the site plan that was presented to the Board , and approved, showed approximately 3% of the structure would remain and that site plan was part of the Resolution.

Chairman Fortunato asked for clarification as to when a renovation becomes a demolition. Township Engineer DiGennaro said that if the walls on the non-conforming side are kept in place to preserve the non-conformity of the setback it is a renovation however if those walls come down then it is a demolished building and a rebuild should be made to conform.

Bruce Bohuny of Brooks Builders was sworn. He stated that Mr. Saxton, the owner of the property, is about to make a large investment in this community which he is excited about and he wants to do the right thing by replacing this very faulty foundation. He said that the setbacks are all in line with that Business District and in keeping with the neighborhood. If you look at the site plan you can see that most of the building is coming down. Nothing is going to change with regard to the footprint of the building.

Brian Saxton was sworn. He stated that the main reason he is here before The Board tonight is because many of the builders who were bidding on the project came back to him with comments about the bowing foundation and the water seepage issues with the foundation. He was told that it was a significant issue. With that Mr. Saxton stated that he sent a letter to Township Engineer DiGennaro about the situation and asked for guidance. It was that letter that started the process of how his appearance before The Board this evening came about.

Chairman Fortunato stated that he wants to make sure that the matter is handled properly. Mr. Boonstra said that he was concerned with the process of continuing an approval of an application that was approved last year adding; if our legal Counsel, Mr. Perconti, says that we can proceed with this then we will do so.

Mr. Homyachak stated that he has always been told that if the building has a disaster and you rebuild on the exact same footprint, including the foundation, it is allowed. Mr. Boonstra stated that has not been his experience.

Ms. Sedarat stated that the purpose of coming before The Board is to ask if the applicant can move forward with construction with the Resolution of Approval that exists. She said that she and Attorney Perconti undoubtedly spent a significant amount of time looking through case law and statutory nuances to see if procedurally this could be done. Ms. Sedarat stated that no case law was found to show that this cannot be done adding that it is almost germane to a field change

which is at the discretion of The Board. The language in the Resolution states that this is a C-1 Hardship variance. Under NJSA 40:55-D 70 (c)(1) there are 3 things that trigger a hardship, one being: "by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon".

Chairman Fortunato asked Ms. Sedarat if the newly constructed building could be made conforming in light of the fact that the entire structure is coming down. Ms. Sedarat asked her client's Engineer to answer that question for The Board.

Mark Palus, the project Engineer was sworn. He explained that if the building were to be shifted in order to conform, the entire design would have to change. If we were to slide the building back it would encroach on the parking lot which has been designed at accepted standards with 18' deep parking spaces and 24' wide aisles. If we push the structure back we will either have substandard parking spaces and aisles or we would lose 3 spaces in addition to having to move the ADA space which is closest to the building. The ADA space would have to be pushed across the aisle. Chairman Fortunato asked how many spaces are required for the proposed building. Mr. Palus said that 9.2 are required and the applicant is proposing 10 spaces adding that moving the structure would create a loss of 3 parking spaces.

Mr. Homyachak reiterated his belief that if other than replacing the failing foundation nothing is going to change from the original approved application, it is essentially approving the same application.

Chairman Fortunato stated that The Board will defer to Counsel Perconti who has instructed that we can move forward this evening to rubber stamp what has previously been approved.

Mr. Boonstra agreed that the Board should defer to Counsel adding that his concern is not with the facts of this case but with the process of it. He pointed out that often when something unusual is presented there is a reliance of one side or the other on case law and in this instance there is no case law.

Mayor Madigan said that he believes that there is no case law because logically most issues of this sort happen in the field and may not be brought to light. In this case the applicant had concerns and did due diligence to be above board in addressing the matter.

Mr. Hanly said that while there is no case law he feels that the applicant has been very forthright by bringing the issue to Mr. DiGennaro's attention and then by coming before the Board with his project Professionals and should be commended for doing so.

Ms. Caprio stated that the applicant is not making any changes to what was previously approved by The Board other than making the building safer and more structurally sound.

OPEN TO THE PUBLIC
NO ONE APPEARED
CLOSED TO THE PUBLIC

Mr. DiGennaro suggested that The Board classify this as a field change and let the owner move forward with the construction process.

Mr. Boonstra asked Attorney Perconti to reaffirm that the action being taken by The Board this evening is a legally appropriate action. Mr. Perconti confirmed that it is a legally appropriate action.

Board Member Homyachak made a motion to affirm the plans that were previously submitted with a change in the methodology of construction (considered a field change) whereby the foundation will be replaced due to structural deficiencies and will be supervised by the Township Engineer. Second, Ms. Caprio. Voting in favor: Ms. Caprio, Mr. Homyachak, Mr. Boonstra, Mr. Hanly, Mayor Madigan and Chairman Fortunato.

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

Respectfully submitted,

Maureen Mitchell, Secretary
Wyckoff Planning Board