

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS MINUTES

DATE: Thursday, January 26, 2017 - 7:30 p.m.
OIT CONFERENCE ROOM, 30 Schuyler Place, 4th Floor

Chairman Theodore Maglione called the meeting to order
Pledge of Allegiance
Open Public Meeting Statement

Chairman Maglione read a resolution into the record honoring outgoing member Edward Bucceri. His exemplary service as a volunteer on the Board for nineteen years is truly an accomplishment and cannot be measured. The Board will sorely miss Ed and speaking for all members the Chairman wished Ed the best for the future.

Chairman Maglione welcomed newly appointed member John Kostrowski, Jr., and thanked all members for their continued service on the Board.

Chairman Maglione requested a roll call.

PRESENT:

Regular Members:

Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, John Kostrowski, Jr., (5)
Harold Endean, Craig Villa

Alternate Members:

Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (4)

ABSENT: William Asdal (1)

ALSO PRESENT: W. Randall Bush, Esq., First Assistant County Counsel
Evelyn Tierney, Board Secretary

APPROVAL OF RESOLUTION:

Approval of Resolution 2017-1 (2017/18 CBA Meeting Time/Dates). The Board reviewed the 2017/18 meeting date schedule for any potential conflicts. Harold Endean made a motion to approve the resolution as submitted. Discussion regarding the possibility to move the meetings to a larger room was tabled until after the cases listed on the Agenda are heard. Kimberly Hurley seconded the motion. The Board approved the resolution as submitted unanimously.

APPROVAL OF MINUTES:

Minutes of the meeting held October 27, 2016 were previously distributed. Chairman Ted Maglione made a motion to approve the minutes as submitted. Harold Endean seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Ted Maglione, Vice Chairman Jeffrey Betz, Harold Endean, Craig Villa, (5)
Sean Donlon

NO: None (0)

NOT VOTING: Timothy Braden, Kimberly Hurley, John Kostrowski, Jr., Keith Lynch (4)

CASES TO BE HEARD

MC#2017-1 Prime Construction and Remodeling, LLC (worksite: 39 Kings Road, Suite 1) v. Borough of Madison

NOTE: The following is a summary of the hearing on this matter. The official recording of the hearing serves as the official record of this matter.

Appearances:

Representing the Municipality:

Raymond M. Codey, Attorney for the Borough of Madison

Representing the appellant:

David Bruno, Esq., The Bianchi Law Group, LLC

The parties indicated that they reached a settlement of the matter, and placed the following stipulation on the record.

- Prime Construction & Remodeling LLC was listed as the Agent/Contractor on the Stop Construction Order and Notice and Order of Penalty dated 12/12/2016.
- Prime Construction & Remodeling LLC was listed on the original filed building permit jacket application. The municipality denied that permit application, and Prime Construction & Remodeling LLC advised the client of the denial and the requirements for the permit to be issued.
- Prime Construction & Remodeling LLC did no work on the property and did not receive any compensation.
- Prime Construction & Remodeling LLC neglected to close out the permit.

The appellant withdraws the appeal, and the Borough agrees to hold Prime Construction & Remodeling LLC harmless from any fines or penalties, as they are an innocent party and not liable.

Chairman Maglione made a motion to accept the stipulation of settlement between the appellant Prime Construction & Remodeling LLC and the Borough of Madison. Both parties agree that the matter is withdrawn before the Board and no further action is necessary. Craig Villa seconded the motion. The Board approved the motion by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, John Kostrowski, Jr., Harold Endean, Craig Villa (5)

NO: None

NOT VOTING: Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (4)

The Chairman continued with the Agenda. Next appeal to be heard is:

MC#2016-27 Denise Luque (Block 2801, Lot 4 worksite: 39 Kings Road, Suite 1) v. Borough of Madison

NOTE: The following is a summary of the hearing on this matter. The official recording of the hearing serves as the official record of this matter.

Appearances:

Representing the Municipality:

Raymond M. Codey, Attorney for the Borough of Madison

Representing the appellant: N/A (pro se)

Preliminarily, Mr. Codey made the following three-part motion for the matter to be dismissed by the Board:

1. Ms. Luque does not have the authority to represent the Owner in Fee, Deborah Cattano as indicated in an e-mail dated January 16, 2017.
2. The Boards "Rules of Procedures" require that a corporate entity must be represented by an attorney. The 1/13/2017 construction permit application the Borough received from Ms. Luque is from Babbas Bakery LLC.
3. The vague description listed on the appeal application.

The borough believes the Board does not have jurisdiction to hear the matter.

Discussion followed, and it was noted that Denise Luque was listed on the Stop Work Order and Notice and Order of Penalty both dated 12/12/2016 as "Other" in addition to the Owner in Fee, and Agent/Contractor. The Borough withdrew the motion for dismissal, and agreed that the appeal should be heard by the Board.

The following witnesses were sworn in by Counsel Bush:

Russell Brown, Construction Official, Borough of Madison
Bruce Barrios, Fire Subcode Official, Fire Fighter
Edward Nunn, Jr., Fire Captain, Fire Official, Fire Marshall

Mr. Brown testified that he has been the Construction Official for the Borough for the past ten years, before that time he was employed for two years in Roxbury Township, and five years in Mount Olive Township. He issued a Stop Work Order and a Penalty Notice to Ms. Luque in December 2016 for work without a permit by changing the previous hair salon use to a bakery. The building is a mixed use (R-2 & B). There are residential units above the bakery. Ms. Luque had hired an architect who prepared design plan standards. The concerns are with the ventilation of the hood and baking units in proximity to the residential units above the bakery and the building layout. Mr. Brown testified that he and Mr. Barrios saw that the refrigeration units were installed. Discussion occurred with Ms. Luque via email that work at the bakery cannot be performed without a permit. When Mr. Nunn and Mr. Barrios got entry in December 2016 they found a completely constructed bakery. The Notice of Violations were then issued. A construction permit has subsequently been issued on January 13, 2017 to Babbas Bakery, LLC as the tenant, listing Denise Luque as the Contractor.

Counsel Bush swore in Denise Luque.

Ms. Luque cross-examined Mr. Brown. Questions by the Board followed. Chairman Ted Maglione asked if a permit was issued on January 13, 2017 and who was the person listed as the responsible party. Mr. Brown stated the permit was issued to Babbas Bakery, LLC listed as the tenant, and Denise Luque as the Agent/Contractor. A letter was received from the owner, Deborah Cattano, on January 16, 2017, three days after the permit was issued stating that Denise Luque is not her tenant or is authorized to act as the agent on her behalf. Mr. Brown indicated that the municipality acted under the premise that Denise Luque had the lawful right to proceed since she signed all documents. Mr. Brown stated that at that point, the municipality was heavily involved and months of correspondence had been exchanged Ms. Luque and the Borough.

Next witness Captain Edward Nunn testified. He is responsible for suppression activities, emergency response, and the administration of the prevention bureau including conducting annual inspections at all commercial properties within the Borough. He explained the approval process. He recalls that in approximately October 2015 zoning approval was given to open a bakery at the location. He typically allows for a few month to pass before he reaches out for a status update. The location in question was visible and he noticed no work when driving by. A few months passed again and he had verbal conversations during those months with Ms. Luque in which she indicated that she was still in lease negotiations with the owner. At one point he noticed the windows being taped. In the spring of 2016 he noticed the front door open so he went and spoke with Ms. Luque. At that time, they talked about the process and what was required going from an empty store/former nail salon to a bakery. The concerns discussed were the location and venting of the appliances to be installed. He advised Ms. Luque that she needed to hire a design professional to prepare drawings to be presented to the health department for review and approval. Once approved the plans would be provided to the construction office to issue the appropriate permits. After that discussion he left and nothing further appeared to occur on the premises. In early December 2016 he knocked on the door to check to see if anything had been done and noticed that it was a fully fitted out bakery with refrigeration units and the oven in place and appeared to be hooked up. Ms. Luque cross-examined Mr. Nunn. Questions by the Board followed. The permit that was issued on January 13, 2017 removed the Stop Work Order dated December 9, 2016.

Next witness Bruce Barrios, Fire Subcode Official, Fire Fighter testified. He stated that he was called by Edward Nunn to meet him at the location on December 8, 2016, at which time he took the pictures that are part of the appeal. The bakery was essentially set up with appliances in place, a gas line hooked up/attached to the ovens and the refrigeration units in place. The main concerns are the gas line hooked up to the oven since it is unknown how it was run without having any type of inspection or pressure testing of the line to see if it is leaking. Secondly, it is unknown what electrical work occurred, and if outlets were moved. Any unknown electrical work is a fire concern. He noticed new ceiling tiles, which would have disturbed any existing wiring. There is a stairway to a residential unit.

Ms. Luque cross-examined Mr. Barrios. Since the issuance of the permit on January 13, 2017, no inspections have occurred. The original Stop Work Order was issued listing all parties including the property owner, and entities the municipality thought was appropriate. An email was received on January 16, 2017 advising the municipality that the permit applicant was not the agent of the owner. Denise Luque asked Mr. Brown when he found out that she was not on the lease. He testified that he found out via Debrorah Cattano's January 16, 2017 email.

Ms. Luque testified next. She testified that her electrician and plumber submitted the building permits in September 2016, along with CAD drawings. She reviewed a print out of the community portal report (SDL), which showed Electrical and Plumbing as passed. She testified that as some point that she was in the building department office and was told by the front desk person that the permits were approved and she was given a price for the permits but did not make the payment at that time. The person (Lisa Quinn she believes) said that she could get started and she did. The electrician and the plumber did work and are continuing. A refrigeration unit was installed on the roof. She checked with the town and was told that there is no permit required. Subsequently in December 2016, she found out that a mechanical permit is needed. Once she was aware, she provided a mechanical permit application to the Borough. The oven and the gas line is not hooked up. She believes that a lot of misinformation has been presented. Approximately seven months passed from the time they rented the space until work took place. Since December 2016 work has been ongoing and the contractors have not been fined or said to her that they could not do work. Ceiling tiles were replaced after her conversation with the Board of Health that required washable ceiling tiles. She is not sure what constitutes construction and what does not.

Plumbing became an issue and she does not understand why, since they are not replacing or moving any piping. Electrical wiring that is in place is the same that it was for the nail salon. She paid three thousand dollars to the refrigeration equipment company for CAD drawings after they assured her that the drawings would be sufficient for submittal to the town. She could not continue to engage the architect due to the financial burden. She inquired with the State back in September 2016, and spoke to a person named "Marcel" who is the head of construction, and another person who is the plumbing official (she cannot recall his name). Both individuals indicated to her that as long as she is a zone 3, and under 4,800 square feet in size a licensed electrician or plumber can submit the permit and do the drawings for the work. They also told her that this was of such minimal scope; architectural drawings would not be required.

Cross-examination followed. Mr. Codey questioned Denise Luque regarding when the work in the bakery first started. Mr. Luque stated the work in the bakery started when the ovens were delivered in March 2016. The rest of equipment started coming in in September 2016 after the permit. Due to an issue with the moving company, only one bakery case was delivered in September 2016, the second bakery case was not moved to the facility until October 1, 2016. Ms. Luque was unaware that permits were needed before the work was started in March 2016. Permits were filed for electrical, plumbing, mechanical, construction and demolition but were not approved as of March 2016. The permits from September 2016 were not valid. The only valid permit was from January 13, 2017. Ms. Luque stated that she met with the Health Officer early on in the process. There were no plan approval before she started the process due to a change in Health Officers. She hired an architect, Mr. Gogan at the end of September 2016, when the municipality rejected the CAD drawings. A permit application was re-submitted. No inspections have been called for since the permit was issued on January 13, 2017.

Questions by Board members followed. Ms. Luque stated that she first went to the building department in September 2016, and she did not pay for any permits. A Lisa informed her that she could start the work but did not hand her any permits. Ms. Luque received the zoning permit in late November 2016. She was unaware of the procedures. Piping was already there for plumbing from where pedicure chairs used to be. She was using existing plumbing in the wall, which was on the plans from NJ Restaurant CAD drawings. The property owner wanted the venting to be used for the hood system to go through the vent that was used for the nail salon because it was out of the wall. No evaluation was done. Nothing has been hooked up, except taping in the wall where the sink will be located, and a grease trap was installed.

At the conclusion of all the testimony for the appeal, Mr. Codey stated that the Borough is willing to reduce the penalty, requiring that all necessary inspections be performed to assure compliance with all applicable codes. The fine will be reduced to one thousand dollars (\$1,000), to be paid before the Certificate of Occupancy is issued. Denise Luque agreed to the settlement.

Chairman Ted Maglione made a motion to accept the parties settlement agreement. The appellant admits fault by working without a permit, and the municipality has consented to a total fine of one thousand dollars (\$1,000) which will be payable prior to the issuance of a Certificate of Occupancy. Vice Chairman Jeffrey Betz seconded the motion. Discussion followed. The Board approved the motion by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, John Kostrowski, Jr., (5)
Harold Endean, Craig Villa
NO: None
NOT VOTING: Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (4)

The Chairman advised that the decision is effective tonight with a written resolution to be issued and approved at the next meeting and forwarded shortly thereafter.

The Chairman thanked everyone for attending the meeting, and continued with the items on the Agenda.

CASES POSTPONED (*correspondence received/ issued - made part of the case files*)

- MC#2015-20** Center Court at Morristown LLC (Block 9003, Lot 10 worksite: 65 Columbia Rd) v. Township of Morris Bureau of Fire Prevention (11/19/15 1st meeting date, stayed pending Superior jurisdiction decision, Board will be kept updated on progress – status update received 4/20/16, and 11/14/16)
- MC#2016-24** P. Belpasso (Block 1708, Lot 4) v. Borough of Fair Lawn, Bergen County (February TBD)
- MC#2016-26** Wildrik Blok & Linda Wagner-Blok (Block 2005, Lot 7 worksite: 2 Crescent Rd.) v. Borough of Florham Park (February TBD)

CASES WITHDRAWN (“*Withdrawal Confirmation*” letters issued to all parties and made part of the case files)

- MC#2016-22** Hannon Floor Covering Co. (Block 100, Lot 14 worksite: 321 Route 10) v. Township of East Hanover
- MC#2016-25** Avalon Bay Communities Inc. v. Town of Boonton (*ESCROW APPEAL*)

CORRESPONDENCE

- **MC#2016-23 NA** – CASE FORWARDED TO PASSAIC COUNTY – CONFLICT OF INTEREST – Order issued by Hon. Judge Minkowitz dated December 7, 2016 remanding an underlying action by Hanover Township, Construction Official, Sean Donlon. Correspondence received on January 3, 2016 (reconsideration of the judge’s ruling, will not be filing before the board until the judge decides our motion)

Budget Balance as of January 26, 2017 = \$2,266.90

OLD BUSINESS

- Discussion regarding paragraph two “Rules of Procedures” and “Notice of Appeal & Hearing Date” concerning counsel representation (see attached inquiry & response from the Department of Community Affairs Office of Regulatory Affairs dated November 28, 2016). The Board requested inquiries to neighboring CBA Board attorney’s regarding their process, and rules of procedures and provide an update to the Board accordingly at the next meeting.
- Discussion regarding the possibility to move the meeting date from Thursday to Tuesdays, as well as location change to a larger hearing room. The Board agreed to keep Thursdays as the day of the week to meet, and to revisit the location issue on as a needs basis.

NEW BUSINESS

- Announcement of appointments by the Freeholder Board per Resolution #21 dated January 6, 2016.
- 2016 Annual Report distribution
- 2017 Membership qualification & contact information (please review and advise secretary of any necessary updates)

NEXT MEETINGS: Thursday February 23, 2017

ADJOURN: On motion duly made and seconded, the meeting adjourned at 9:55 p.m.

Evelyn Tierney, Board Secretary