

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

DATE: Thursday, October 26, 2017 - 7:30 p.m.
OIT CONFERENCE ROOM
30 Schuyler Place, 4th Floor, Morristown, NJ 07960

Chairman Theodore Maglione called the meeting to order.
Pledge of Allegiance
Open Public Meeting Statement
Chairman Maglione requested a roll call.

PRESENT:

Regular Members: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, (5)
Harold Endean, John Kostrowski, Jr., Craig Villa
Alternate Members: William Asdal, Timothy Braden, Sean Donlon, Kimberly Hurley, (5)
Keith Lynch

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

APPROVAL OF MINUTES:

Minutes of the meeting held July 27, 2017 were previously distributed. John Kostrowski, Jr. made a motion to approve the minutes. Harold Endean seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Ted Maglione, Timothy Braden, Harold Endean, John Kostrowski, Jr., (5)
Keith Lynch

NO: None (0)

NOT VOTING: William Asdal, Sean Donlon, Vice Chairman Jeffrey Betz, (5)
Kimberly Hurley, Craig Villa

CASE TO BE HEARD

MC#2017-7 Joseph Cetrulo (Block 8501, Lot 40 worksite: 12 Canfield Road) v. Township of Morris

Appearances:

David Burton Brady, Esq., Brady & Correale, *representing the applicant*
John Mills, III., Esq., *representing the municipality*
John Cetrulo, Owner in Fee
John P. Stoppi, P.E., Zari Consulting Group
Albert Mastrobattista, Construction Official, Township of Morris

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.

Counsel Bush swore in the witnesses, John Cetrulo, John Stoppi and Albert Mastrobattista.

It was noted and stipulated by the parties that the following documents previously received by the Board Secretary and distributed to the Board members along with documents identified and marked during the hearing constitute the record:

- Appeal application dated and received by MC CBA on September 21, 2017 containing Applications for Variation
 1. Dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.14(j) Basic Requirements for Group A-2, Vertical Opening Protection – Denied 9/19/17
 2. Dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.14(c)2 Basic Requirements for Group A-2, Panic Hardware – Denied 9/19/17
 3. Dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.31(g) Automatic Sprinkler Systems, which would require sprinklering the entire building – Denied 9/19/17
 4. Dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.31(c)4 Means of Egress, Vertical Opening Protection, which would require enclosing all stairwells in 1 hour fire resistance rated construction - Denied 9/19/17
 5. Dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.29(a) Mixed use buildings, Automatic sprinklering throughout Building – Denied 9/19/17
 6. Dated 9/14/2017 Relative Group Hazard, NJ Rehab Code, NJAC 5:23-6.31(b), which also includes compliance with the basic requirements of NJAC 5:23-6.10 through 6.30 – Denied 9/19/17
 7. Letter dated August 31, 2017 issued by John P. Stoppi, PE, FPE, Senior Consultant, Zari Consulting Group Inc.

- M-1 - Municipal document package received on October 19, 2017 – Floor Plans on two 8 ½”x14“ pages, and one regular size page containing hand written code sections identified and marked by counsel at hearing

- Applicant documents package dated October 25, 2017 consisting of:
 - Copies of eleven (11) pictures submitted by Counsel Brady with his October 25, 2017 submission
 - A-1 - One page size 11”x17” showing 1st and 2nd Floor plan prepared by Lyons McConnell, LLC dated 6/4/14 - marked by counsel at 10/26/17 hearing
 - A-2 Foam board with seven pictures mounted showing the inside of the house – marked by counsel at 10/26/17 hearing
 - A-3 Foam board with four pictures mounted showing fire apparatus and signs – marked by counsel at 10/26/17 hearing
 - A-4 Letter dated October 17, 2017 issued by Tom Callahan, President, Sawyers Controls Systems Inc., marked by counsel at 10/26/17 hearing

Counsel Mills indicated that the construction official received six variation applications from the applicant Mr. Cetrulo. The primary reason is not to disturb the historic nature of the building, which is an older mansion.

Construction Official Albert Mastrobattista testified that he has been the Construction official for the past twenty-four years licensed for building, plumbing and fire. Mr. Mastrobattista stated that he saw Mr. Cetrulo in the municipal offices after a zoning board meeting. Mr. Mastrobattista advised Mr. Cetrulo that he would have to sprinkler the building, and recommended that he hire a design professional to review the rehab code to find out what was required to convert the current R5 use group to an R-3/A-2 mixed-use group. Mr. Mastrobattista stated that he reviewed six variation applications for departure from the code violations primarily, sprinklers, fire separation, and vertical opening protection. Taking into consideration the historical section of the code, it allows for one open stairwell. He denied all six applications on September 19, 2017 because his opinion is that the intention of the building is to be used as an event/wedding venue, which changes the use group and requires sprinklers throughout the building.

Counsel Mills stated that the parties are before the Board with this appeal in order for Mr. Cetrulo to make an economic decision whether or not to spend time and money before the Board of Adjustment. The requirement to sprinkler the building would be a driver in Mr. Cetrulo’s decision to continue with the process of the use group change.

Counsel Brady stated that his clients bought the property on 12 Canfield Avenue. It is an unusual house called Glynallyn Castle built in 1913 by an industrialist approximately 25,000 sq. ft. in size. In 1952, the General Drafting Company took over the property and ran a business operation until 1997. The property went back under private ownership until ending in foreclosure. His clients bought the property in 2014 as their residence and have been renovating it ever since. After a meeting before the Board of Adjustment, Mr. Mastrobattista brought up the change of use issue that would trigger the sprinkler requirements under the rehab code. Before continuing the process before the Board of Adjustment, they decided to address the issue and filed the necessary variance applications with Mr. Mastrobattista, which were denied on September 19, 2017. Mr. Cetrulo is a restaurateur and owns a liquor license, which allows him to conduct up to twenty-five off site premises events per year. The proposal is to have twenty-five catered events a year at the castle. The kitchens would be used for re-heating food only. The proposed change in use triggered the applications. Mr. Stoppi is qualified to testify regarding variations from the code requirements. The associated expense to install sprinklers in the castle is a concern as well as the aesthetic impact that it would have on the structure, which is on the National Historic Registry.

Counsel Mills stipulated to the statement made by Counsel Brady.

John Cetrulo testified that he bought the property in 2014 and it took about a year and a half for renovations updating the smoke and carbon monoxide alarms and reconstructing two chimneys that were destroyed. The living space is approximately 19,000 – 24,000 square feet with an approximate 10,000 sq. ft. finished basement totaling approximately 30,000 sq. ft. The property is on the National Registry of Historic sites. Mr. Cetrulo proposes to conduct up to twenty-five events a year in the locations highlighted in blue on the floor plans marked little hall/main entrance, great room, library, west porch, dining room, billiard room and the basement dungeon. The basement dungeon is accessed by stairs from the first floor kitchen and great room, and exited to the outside through a hallway to an outdoor staircase. Small weddings with one to two hundred guest are proposed. Luxury bathroom trailers would be brought in for the events.

On the four floors, there are eight standpipes with a wheel and a commercial firehose hooked up. Backflow was installed when renovation took place to assure the operation of the standpipes. Pull stations, strobe lights and commercial fire extinguishers are located at each standpipe location and are serviced yearly. Mr. Cetrulo indicated that he contacted the Morris Township Fire Department to employ a fire watchman for the proposed events at a cost of a \$25.00 one-time permit fee, and a trained firefighter at a cost of \$69.00 dollars per hour.

Questions by the Board regarding the proposed area to be used for the functions marked in blue on the plans followed. Mr. Cetrulo stated the proposed basement dungeon area is approximately 7,800 sq. feet and the upstairs 1st floor area to be used is approximately 4,000 sq. feet. The plan was reviewed in more detail.

John Stoppi testified that he holds a Master degree in fire protection engineering from the University of Maryland, and a bachelor degree in mechanical engineering from Penn State University. He is also a licensed fire protection engineer in New Jersey and a certified Building Inspector for all trades in the State of Pennsylvania. His consulting firm specializes in building code consulting and fire protection engineering. Mr. Stoppi stated that per his August 31, 2017 letter his review of the rehab code would require a review of the change of use section, which lists the necessary requirements when changing from a lower hazard occupancy to a higher hazard occupancy. The higher hazard occupancy is Group A2. For his analysis/review, he worked with an occupancy load of one hundred or less with a maximum of twenty-five events a year. The rehab code provides two avenues for compliance: 1) prescriptive adherence to all the sections that are referenced, or 2) performance scoring as noted in the International Building Code 2015 edition. Mr. Stoppi stated that the scoring method failed and he decided to apply the prescriptive code requirements as noted on page two of his report, which are:

- Installation of an automatic sprinkler system throughout the entire building or compartmentation, both vertical and horizontal, of the Assembly use from the R-5 use and the installation of 1-hour fire resistance rated fire barriers to separate the Assembly use from the R-5 use, including the use of fire rated doors.
- Enclosure of all stairs and vertical openings with 1 hour fire resistant rated construction
- Installation of panic hardware on all doors exiting from the Assembly space
- Installation of emergency lighting throughout the building
- Installation of illuminated exit signs with battery backup power supply
- Installation of carbon monoxide Detectors
- Interior finish compliance

Mr. Stoppi stated that the castle has the following installed fire safety systems, which are not required by the rehab code and may be considered as an alternative instead of the requirements as noted above:

- Manual Fire Alarm System with notification appliance and monitoring throughout the building
- Automatic fire detection system with notification appliances and monitoring throughout the building
- Class III Fire Standpipe System designed to protect the entire building

Because of the age of the castle, the historic nature of the building and the construction methods that were used (plaster ceilings, brick facade, steel framing), the installation of a fire suppression sprinkler system would require pipe routing throughout the building including modifying the ceilings which would destroy the historic integrity of the castle. When taking into consideration the existing fire protection measures, the installation of emergency lighting, illuminated exit signs, backup power for up to 90 minutes, and a fire watchman the variations in his opinion can be granted.

Questions and comments by the Board regarding the standpipe system followed. There is no validation presented that the system is functional or certified in its capacity. Mr. Cetrulo stated that the plumbing inspector required that the backflow preventer and standpipe pressure were tested. The water in the system has seventy-five pounds of pressure. The system should have been tested for a flow pressure ratio, as well as a hydrostatic test. The Uniform Fire Code in Subchapter 4 – Retrofit addresses the temporary use change, and in this case would bring about a conflict, and the applicant would be in violation for “windowless story” in the basement. There is not enough data or facts to work with. No occupancy design has been provided. The fire code addresses the fire watchman, but that would not be a substitute for an automatic fire sprinkler system. The building is approximately 30,000.00 feet. There is lacking information and documentation of a formal submission made to the township with sealed engineering drawings, which would include occupancy loads.

No other reason than aesthetics and the difficulty of installation of a sprinkler system was provided. If the Board approves the variations it becomes part of the building and would not limit another future owner to expand the building and the events to more than twenty-five events per year. The severity of the variations requested is for the complete building to change to an A-2 use group.

Mr. Mastrobattista was asked that if he would receive sealed plans from the applicant would he approve the variation request, and he stated that the only way for him to issue an approval is if the Board approves all six-variation requests.

The board members indicated that there is not enough information at this time to approve the current request. A licensed architect can provide alternative designs to change the current use to an A-2 use group per the code.

Mr. Stoppi stated that fire risk is defined by probability multiplied by consequence. The probability in this case is very low because of the temporary occupancy, fire watchman, fire systems, and the consequence is

low. If a fire would occur, the fire watchman and the smoke detection system throughout the building would detect a fire appropriately.

No closing statements were offered.

Counsel Bush indicated that the Board is ready to deliberate and decide. Discussion followed and it was noted that every one of the applications stated that the prescriptive compliance would destroy the historic nature and the integrity of the building. There has been no testimony tonight that the historic nature would be impacted at all. A presumption could be made, but no evidence was placed on the record whether that would occur. The integrity of a building is generally interpreted as structural, and again no evidence was provided that the building would lose its structural integrity by complying with the code requirements.

1) A motion was made by Harold Endean to uphold the municipality's decision to deny the Variation request dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.14(j) Basic Requirements for Group A-2, Vertical Opening Protection. The motion was seconded by John Kostrowski, Jr., and approved by the following roll call vote:

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

NO: None (0)

NOT VOTING: William Asdal, Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (5)

2) A motion was made by Vice Chairman Jeffrey Betz to uphold the municipality's decision to deny the Variation request dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.14(c)2 Basic Requirements for Group A-2, Panic Hardware. The motion was seconded by Chairman Ted Maglione, and approved by the following roll call vote:

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

NO: None (0)

NOT VOTING: William Asdal, Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (5)

3) A motion was made by Vice Chairman Jeffrey Betz to uphold the municipality's decisions to deny the Variation request dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.31(g) Automatic Sprinkler Systems, which would require sprinklering the entire building. The motion was seconded by Craig Villa, and approved by the following roll call vote:

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

NO: None (0)

NOT VOTING: William Asdal, Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (5)

4) A motion was made by John Kostrowski, Jr., to uphold the municipality's decision to deny the Variation request dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.31(c)4 Means of Egress, Vertical Opening Protection, which would require enclosing all stairwells in 1 hour fire resistance, rated construction. The motion was seconded by Harold Endean, and approved by the following roll call vote:

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

NO: None (0)

NOT VOTING: William Asdal, Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (5)

5) A motion was made by Harold Endean to uphold the municipality's decision to deny the Variation request dated 9/14/2017 NJ Rehab Code, NJAC 5:23-6.29(a) Mixed use buildings, Automatic Sprinklering throughout Building. The motion was seconded by Vice Chairman Jeffrey Betz, and approved by the following roll call vote:

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

NO: None (0)

NOT VOTING: William Asdal, Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (5)

6) A motion was made by John Kostrowski, Jr., to uphold the municipality's decision to deny the Variation request dated 9/14/2017 Relative Group Hazard, NJ Rehab Code, NJAC 5:23-6.31(b), which also includes compliance with the basic requirements of NJAC 5:23-6.10 through 6.30. The motion was seconded by Harold Endean, and approved by the following roll call vote:

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

NO: None (0)

NOT VOTING: William Asdal, Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (5)

The parties were excused and the Chairman 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, 11/14/16, and 4/10/17 – status update received from municipal attorney John Mills, Esq. dated 9/6/2017)

MC#2017-6 Robert Powlett, Jr. (Block 10301, Lot 18 worksite: 42-44 Monroe Street) v. Township of Morris (11/16/17 3rd meeting date – Hear or Dismiss)

MC#2017-8 Estate of Edward Cantor (Block 12 Lots 1.10, 1.12) v. Township of Chester (11/16/17 - 2nd meeting date)

MC#2017-10 Dolores & Timothy Vorhies v. Township of Rockaway (*ESCROW APPEAL*) (12/14/17 2nd meeting date)

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

MC#2017-9 Centro Biblico of NJ (worksite: 39 W. Blackwell Street) v. Town of Dover Fire Prevention Bureau 10/26/17 1st meeting date) Appeal filed October 11th, HN issued, appeal withdrawn October 13th. Requesting refund of appeal fee **ACTION TAKEN:** Discussion by the Board followed, and it was noted that the Board Secretary processed minimal correspondence. Chairman Ted Maglione

made a motion to approve the request for the refund of the appeal fee. John Kostrowski, Jr. seconded the motion. The motion to refund the appeal fee was approved by the following roll call vote:

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

NO: None (0)

NOT VOTING: William Asdal, Timothy Braden, Sean Donlon, Kimberly Hurley, Keith Lynch (5)

The Secretary was requested to process the necessary documents to refund the appeal fees.

CORRESPONDENCE

Budget Balance as of October 26, 2017 = \$2,766.90

OLD BUSINESS

- Board Secretary reported to the Board that the tablet request to hold paperless meetings at this time is not feasible due to budgetary considerations and security concerns.

NEW BUSINESS

- Recommendations will be made to the Freeholder Board to re-appoint the board members whose term is expiring December 31, 2017. The Chairman advised that he enjoyed being the Chair, but would be more than happy to step down and provide the opportunity if any other Board member is interested to serve as the Chairman in 2018. Please inform the Board Secretary ASAP.

NEXT MEETINGS: Thursday November 16, 2017

ADJOURN: On motion duly made and seconded, the meeting adjourned at 9:30 p.m.

Evelyn Tierney, Board Secretary