

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Tuesday, November 19, 2019 - 7:00 p.m.
MC CBA Hearing Room
30 Schuyler Place, 2nd 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, Harold Endean, (3)
John Kostrowski, Jr.

Alternate Members: Timothy Braden, Sean Donlon, Kimberly Hurley, Nick Marucci, (5)
Chris Walthour

Absent: Vice Chairman Jeffrey Betz, Keith Lynch (2)

ALSO PRESENT: Staci L. Santucci, Esq., Assistant County Counsel
Evelyn Tierney, Board Secretary

APPROVAL OF MINUTES:

Minutes of the meeting held on October 24, 2019, were previously distributed. John Kostrowski, Jr., 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 Theodore Maglione, Harold Endean, John Kostrowski, Jr., (8)
Timothy Braden, Sean Donlon, Kimberly Hurley, Nick Marucci, Chris Walthour

NO: None (0)

APPROVAL OF RESOLUTION:

Resolution for approval for the matter heard and decided by the Board on October 24, 2019 was previously distributed. **MC#2019-12 K. Hovnanian c/o The Residences at Columbia Park (Block 9101, Lot 6) v. Township of Morris.** John Kostrowski Jr. made a motion to approve the resolution. Harold Endean seconded the motion. The Board approved the resolution by the following roll call vote:

YES: Chairman Theodore Maglione, Harold Endean, John Kostrowski, Jr., (8)
Timothy Braden, Kimberly Hurley, Sean Donlon, Nick Marucci, Chris Walthour

NO: None (0)

CASE TO BE HEARD

MC#2019-15 Xavier Pimenta (Block 701, Lot 5 worksite: 46 Waterloo Valley Road) v.
Township of Mount Olive

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:

Justin A. Marchetta, Esq., *representing the applicant*
Jonathan Testa, Esq., *representing the municipality*

Counsel Santucci swore in the witnesses.

Frank Baguiao, Construction Official, Township of Mount Olive
D. Scott Bigley, P.E., 4G Structural Engineers, expert witness on behalf of Xavier Pimenta
Robert Dzialo, Operations Manager for Xavier Pimenta

The following items were noted, marked and stipulated to by the parties:

- A-1 Appeal application dated October 16, 2019
- A-2 Applicant package dated November 14, 2019 including exhibits A-1 through A-3
- A-4 Photo of Shipping Container door (813687 – 45G1, MGW., TARE., NET., CU. CAP.)
- M-1 Municipal package emailed November 19, 2019
- M-2 Municipal Enforcing Agency’s Documents brief, and seven (7) photographs marked A-G
- M-3 DCA Bulletin 07-1 “Subject: Pre-manufactured Construction”
- M-4 Print out of code section (N.J.A.C 5:23-3.7 Municipal approvals of alternative materials, equipment, or methods of construction

Mr. Frank Baguiao testified, that he is a licensed Construction Official since 2013, and has been the Construction Official for the past three months after the passing of the previous official. He is also the electrical subcode official and has held that position for the past six years in the Township of Mount Olive. The Notice of Unsafe Structure dated October 2, 2019 was issued by the interim Construction Official Mr. Bzik. Mr. Baguiao testified that at the time of the issuance of the Notice of Unsafe Structure there was no permit application filed with the municipality. He noted that the municipality has no records, drawings or architectural drawings on file with either the Zoning or Building Department for the shipping container structure located on the subject property. Mr. Baguiao inspected the site on November 13, 2019 at which time he took seven (7) photographs which were marked M-2. He stated that no sticker could be located on the shipping containers from the ICC (International Code Council) that the containers were approved as is required per the ICC, see N.J.A.C 5:23-3.7 - Municipal approvals of alternative materials, equipment or methods of construction. He further stated that the foundation underneath the structure which is located near a slope is unknown, and there could be a potential for shifting or collapsing of the structure as a result.

Furthermore, he noted, the installation of the roof is unknown and the corner block on one of the containers appears to be welded off-set. The areas that can be seen do not provide sufficient detail to assure the safety of the structure. Mr. Baguiaio stated that it is his opinion a permit for this type of structure is required as per the Uniform Construction Code.

Cross examination and questions by the Board followed. Footings would be required in Mount Olive Township for structures that are larger than 200 square feet. The structure in question is larger than 200 square feet and no footings could be identified since no inspections took place. No denial letter was ever issued because no permit application was submitted to be reviewed.

Mr. D. Scott Bigley, P.E., 4G Structural Engineers, expert witness on behalf of Xavier Pimenta testified that he has a Civil engineering degree from Lehigh University dated 1984, and has been a registered professional engineer for the past 30 years. Mr. Bigley stated that he is licensed in seven states including New Jersey, as well as being the Chairperson on two appeal boards in Pennsylvania. He issued the report dated September 19, 2019 addressed to Mr. Pimenta marked A-1. Mr. Bigley stated that he inspected the structure in September 2019. Mr. Bigley performed a structural analysis regarding the C-joint rafters and determined that they were adequate to support the anticipated snow load and prevent ponding. The framing is stiff enough to support the roof slope that is less than 1/4 inch per foot. The shipping containers are designed to transfer the load to the base through the four corner posts. The floor on a bottom container is not in contact with the roof of another container. He stated that each container only supports the load in that container and the roof of the top container only supports the snow load. The corrugate wall panel was checked for the axial loads applied and it was determined that they will safely support the anticipated load. At the time of the inspection in September the embankment appeared to be stable. He testified that he did analyze the containers for code required wind loads and they were able to support the service loads. It is Mr. Bigley's opinion that the corner blocks were welded together sufficiently, and it is not a structural concern. He further noted that usage of these containers as storage for equipment is more than adequate than what the containers were built for.

Cross examination followed. Counsel Testa provided DCA Bulletin 07-1 "Subject: Pre-manufactured Construction", revised August 2019, marked M-3 including a table identifying the requirements for the various pre-manufactured construction uses. A copy of N.J.A.C 5:23-3.7 - Municipal approvals of alternative materials, equipment, or methods of construction was marked M-4 and provided which reads under bullet 1. "A field evaluation label and report or letter issued by a nationally recognized testing laboratory verifying that the specific material, equipment, or method of construction meets the identified standards or has been tested and found to be suitable for the intended use". Mr. Bigley noted that the containers fall under the ISO standard which requires the gross weight and capacity marked on the containers as shown on the picture marked A-4.

Counsel Testa noted that the New Jersey Division of Codes and Standards requires a Form AC462 to be issued for a shipping container to show a repurposed use to a building.

Discussion by the Board followed. Chairman Maglione asked for the details on the statement made by Counsel Testa as to Form AC462 and the specification of a building.

Counsel Testa noted that he had a conversation with Mr. McKay from the DCA earlier in the day whom provided guidance on the shipping containers usage and the re-purposing.

Chairman Maglione noted that there is no witness to testify on behalf of Counsel Testa's conversation with Mr. McKay and the Board members may weigh the statement as they wish.

Robert Dzialo, Operations Manager for Xavier Pimenta, testified that he attempted to apply for a permit on November 6, 2019 with the completed permit application forms, marked A-3, and was told by the building department staff that they would not accept the paperwork until prior approval for zoning was received. He noted that he left with the documents and spoke to the zoning official who advised him that the zoning application was under review. Cross examination and questions by the Board followed.

The site is a class B recycling facility, with the storage containers used for storing heavy machinery such as millers and crushers. The site is shut down, and a safety fence has been installed. Currently, multiple zoning issues are being addressed.

Discussion by the Board followed, and it was noted that the appellant built the structure without a building permit, and acknowledges that a permit was required. This Board has no jurisdiction over zoning issues.

John Kostrowski, Jr. made a motion to uphold the "Notice of Unsafe Structure" dated October 2, 2019 "Demolish the above structure by November 1, 2019, or correct the noted unsafe conditions by October 22, 2019", and to remove the structure within fifteen (15) business days from the date of this hearing, November 19, 2019. The motion was seconded by Harold Endean.

The motion was approved by the following roll call vote:

YES: Chairman Theodore Maglione, Harold Endean, John Kostrowski, Jr., (8)
Timothy Braden, Sean Donlon, Kimberly Hurley, Nick Marucci, Chris Walthour

NO: None (0)

The parties were advised that the written decision/resolution will be approved at the next meeting of the Board, and mailed to all parties shortly thereafter.

A five minute break was announced.

The Chairman announced the next appeal to be heard.

MC#2019-11 Asma Norris (Block 16, Lot 25 worksite: 27 Parker Road) v. Township of Chester
(1st mtg. date 9/26/2019, 2nd mtg. date 11/19/2019)

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:

John H. Suminski, Esq., *representing the municipality*

Counsel Santucci swore in the witnesses.

Ben Farneski, Construction Official, Township of Chester
Asma Norris, Applicant/Owner in Fee

The following items were noted, marked and stipulated to by the parties:

- A-1 Appeal application dated August 29, 2019 received by the CBA Secretary on September 9, 2019 including Notice of Unsafe Structure dated August 12, 2019 “Demolish structure by 10/12/19”
- Letter dated September 23, 2019 from municipal attorney notifying that the municipality providing notice to withhold on proceeding with the Unsafe Structure Notice for a 60-day period if the property owner erects a safety fence around the building and within the 60-days demolish or otherwise address the Unsafe Structure.
- Letter dated November 8, 2019 from municipal attorney including Notice of Unsafe Structure dated August 12, 2019, seven (7) photographs marked M-1 through M-7, and a copy of N.J.S.A 5:23-2.32.

The Board secretary noted for the record that she received a phone call from John Norris at 2 p.m. stating that he is also the owner of 27 Parker Road and noted that Mr. Norris said he understood that there is a hearing tonight. He did not receive any notification because the appeal was filed by his ex-wife. He provided his contact information and wanted the Board to be made aware, that if the hearing would proceed he would not be present since he is a truck driver and on the road.

It was noted that the Board mailed all notices to the address provided on the appeal documents per USPS Regular & Certified Mail.

Ms. Norris stated that she owns the property with her ex-husband John Norris and she stated that he was given information of today meeting/appeal hearing via email.

John Suminski made a motion to dismiss the appeal on two basis, 1. Filed untimely, and 2. The appeal does not contest the action of the construction official. The appeal states that the owner does not have the funds to comply with the order.

The Chairman noted that it has been the Board’s past practice to hear appeals filed outside of the 15 day period.

Counsel Suminski provided an opening statement wherein he indicated that the property in question, 27 Parker Road, is a building that was formerly used for commercial purposes and not residential. He stated that the building was reported to the construction official by concerned neighbors and indicated that it is a vacant building is in danger of collapse with the back of the building already being collapsed. He noted for the record that the building has no utilities and is in a bad state of repair.

The Construction Official inspected the building multiple times, and has tried to work with the owners in order for the building to be either renovated or demolished. Counsel Suminski stated that real estate taxes have not been paid, and the tax sale certificate was sold a couple of years ago with less than a year to go before a tax-foreclosure occurs.

Mr. Farneski testified that he is the Construction Official, Building Subcode and Mechanical Inspector for the Township of Chester for the past fourteen years. Approximately six months prior to the issuance of the Notice of Unsafe Structure on August 12, 2019, he was made aware by concerned neighboring homeowners that the property was in disrepair with windows and doors open. He testified that police had been called to the property for unauthorized occupants including juveniles and that he contacted both of the homeowners, Asma and John Norris. He further noted that he has attempted to work with the owners in order for the building to be demolished or brought to compliance. He had advised Ms. Norris that he would have to issue an Unsafe Structure Notice, with penalties and Court proceedings if the issues weren't addressed. After approximately three months he noted that he reached out again and Ms. Norris advised him that she could not afford the price quotes she had received from contractors to demolish the property. The P.O. Box address is the only address on file with the township and was used to mail/contact Mr. & Mrs. Norris.

On August 1, 2019 Frank Farneski and the building subcode official inspected the property and took the photographs marked M-1 through M-7. The Unsafe Structure Notice was issued on August 12, 2019 and mailed to the P.O. Box address per USPS Regular and Certified Mail which was returned marked return to sender/unclaimed on September 10, 2019. Mr. Norris did not show interest in complying at first, but did contact Mr. Farneski and they agreed to extend the enforcement of the demolition requirement for a 60 day period to allow for additional time to demolish the building. Mr. Farneski stated that he allowed for the extension but he required that a safety fence around the property be installed to keep people out. Mr. Norris did receive a permit for the fence and installed an 8 foot chain-link fence around the premises and called for an inspection today, November 19, 2019.

Cross examination followed. Ms. Norris stated that once she was made aware of the safety concerns by Mr. Farneski she did hire a contractor to close up the windows and doors as shown on the photograph marked M-1.

Questions by the Board followed. The purpose of the fence was a temporary safety measure in order to work with the homeowners to hire a contractor to demolish the property. Mr. Farneski confirmed that the completion of the fence is irrelevant, and that it does not provide any more time for the requirement to demolish the building originally set to be completed by October 12, 2019.

Ms. Norris testified that she has been in divorce proceedings for the past six years and the building has historical value. She said she tried to revive it, but circumstances did not allow for it to happen. She stated that they are at the point where the building needs to be demolished. She is not against the demolishing of the building and is aware of the safety concerns brought up by the municipality which she addressed by having a contractor close up the windows and doors. Ms. Norris stated that her ex-husband installed the fence around the perimeter and applied for the permit, and she had nothing to do with it.

Ms. Norris stated that she needs more time to address the issues. She testified that when her husband left the homestead he cleared out all their accounts and she was left with nothing, and she indicated that she cannot afford to pay for the demolition. Ms. Norris stated that her ex-husband has substantial amounts of money to cover the cost of (\$15,000 to \$20,000 dollars) to demolish the building. She stated that the family court judge would have to grant permission to both homeowners to demolish the property and that neither of them can do it without the judge's approval. She further noted that there are two IRA accounts that are under court control that could be used to fund the demolition and that this process will take time.

Chairman Maglione stated that the Board has no jurisdiction over any court matters, and can only decide on the violation issued under the Uniform Construction code.

Counsel Suminski noted that there are two time sensitive issues, 1. The property went for tax sale on October 26, 2017 and will be up for tax sale foreclosure within the next few months, therefore no further delays should be granted. 2. The township has been more than lenient with extending the time periods in which to have the building demolished. The potential for someone to get injured is a concern of the township; and therefore, the township is not willing to provide any additional extensions and requires that the building is demolished within 30 days of this hearing.

Chairman Ted Maglione made a motion to uphold the "Notice of Unsafe Structure" dated August 12, 2019 and to demolish/remove the structure within 30 days from the date of this hearing, November 19, 2019. The motion was seconded by John Kostrowski, Jr. Discussion followed. A letter will be provided to Ms. Norris tomorrow, November 20, 2019 indicating the decision made by the Board at the hearing. The motion was approved by the following roll call vote:

YES: Chairman Theodore Maglione, Harold Endean, John Kostrowski, Jr., (8)
Timothy Braden, Sean Donlon, Kimberly Hurley, Nick Marucci, Chris Walthour

NO: None (0)

The parties were advised that the written decision/resolution will be approved at the next meeting of the Board and mailed to all parties shortly thereafter. 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#2017-8 Estate of Edward Cantor (Block 12 Lots 1.10, 1.12) v. Township of Chester (*1st mtg. date 10/26/2017 - stayed pending Superior Court proceedings to 12/17/2019*)

MC#2019-6 Reiter & Rayter, Tatiana & Wyczeslav (Block 96, Lot 47, worksite: 30 Katie Court) v. Township of East Hanover (*1st mtg. date 3/28/2019, 2nd mtg. date 5/23/2019, 3rd mtg. date 8/22/2019 HD – stayed on 8/15/2019 pending "New Jersey Appellate Division" appeal conclusion*)

MC#2019-7 Reiter & Rayter, Tatiana & Wyczeslav (Block 96, Lot 47, worksite: 30 Katie Court) v. Township of East Hanover (*1st mtg. date 5/23/2019, 2nd mtg. date 8/22/2019 stayed on 8/15/2019 pending "New Jersey Appellate Division" appeal conclusion*)

MC#2019-17 Carant Limited Partnership (Block 1700, Lot 2 worksite: 1200 Bloomfield Avenue) v. Township of West Caldwell/*ESSEX COUNTY* (*1st mtg. date 11/19/2019, stayed, scheduling conflict/municipal attorney - review of procedural issues raised by municipal counsel*)

MC#2019-18 John Zhang c/o Alcott Manor (Block 163, Lot 7 worksite: 161 Mendham Road) v. Mendham Township Fire Prevention Bureau (*1st mtg. date 11/19/2019, 2nd mtg. date 12/17/2019*)

MC#2019-19 Rao, G.U. (Block 3201, Lot 21, worksite: 168 Route 46) v. Township of Mount Olive (*1st mtg. date 11/19/2019, 2nd mtg. date 12/17/2019*)

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

MC#2019-16 Chris Caiazza (Block 13404, Lot 1.04 worksite: 35 Morristown Road) v. Township of Long Hill

CORRESPONDENCE

- Appeal application dated November 4, 2019 filed by Thomas D. Flinn, Esq., on behalf of Timothy Vorhies, Sr., (Regarding Block 40801, Lot 147 Owner in Fee: Richard Bates worksite location: 27 Timberbrook Road, Rockaway). Appeal returned for no standing to file the appeal (Notice and Order of Penalty issued to a neighboring homeowner)
- Budget Balance as of November 19, 2019 = \$3,307.90

OLD BUSINESS --- NONE ---

NEW BUSINESS

- Discussion regarding the Boards policy on accepting and transferring matters due to conflict issues. It was noted that the policy to transfer cases to another County CBA Board will remain in place wherein a member of the Board is the Official who issued the Violation Notice, and there may be a perception of a conflict.

NEXT MEETING: Regular Meeting, Tuesday, December 17, 2019 at 7:00 p.m.

ADJOURN: On motion duly made and seconded, the meeting adjourned at 9:00 p.m.

Evelyn Tierney, Board Secretary