

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

DATE: Thursday, September 27, 2018 - 7:30 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, Vice Chairman Jeffrey Betz, (5)
Harold Endean, John Kostrowski, Jr., Craig Villa

Alternate Members: Timothy Braden, Sean Donlon, Keith Lynch (3)

ABSENT: William Asdal, Kimberly Hurley (2)

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

The Chairman on behalf of the Board congratulated First Assistant County Counsel W. Randall Bush, Esq., on his retirement and expressed the Boards appreciation for his guidance in legal matters, especially his extensive legal knowledge and expertise. The Chairman presented a Resolution Honoring Mr. Bush for his long time commitment to the Board in carrying out his responsibilities as Special Counsel with diligence and professionalism.

APPROVAL OF MINUTES:

Minutes of the meeting held on July 26, 2018 were previously distributed. Harold Endean made a motion to approve the minutes as submitted. John Kostrowski, Jr. seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Harold Endean, (7)
John Kostrowski, Jr., Timothy Braden, Sean Donlon, Keith Lynch

NO: None (0)

NOT VOTING: Craig Villa (1)

CASE TO BE HEARD

MC#2018-10 FTI re: 383 Newark Pompton Tpk. (Block 3302, Lot 20) v. Township of Pequannock

Appearances:

Robert Grant, Construction Official
Wayne Bischoff, Owner of FTI, Agent/Contractor

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, Robert Grant and Wayne Bischoff.

Counsel Bush requested 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:

Marked A-1

- Appeal application received by the MCCBA on August 16, 2018 including:
 - a. Letter issued by the Township of Pequannock Construction Department listing items 1 through 21.
 - b. Letter dated June 18, 2018 issued by Michael Savarese, R.A., MSA Associates
 - c. Copy of a portion of a plan entitled “Proposed Right Side Elevation”.

Marked A-2

- E-mail from Mr. Bischoff dated September 24, 2018 at 10:10 am.
- E-mail from Mr. Grant dated September 25, 2018 at 9:35 am.
- E-mail from Mr. Bischoff dated September 25, 2018 at 9:39 am.
- E-mail from Mr. Serventi dated September 25, 2018 at 2:53 pm.

Marked M-1

- Document package provided with email dated August 17, 2018 from Robert Grant including:
 - a. Notice of Violation and Order to Terminate dated October 30, 2017.
 - b. Letter issued by the Township of Pequannock Construction Department listing items 1 through 18.
 - c. Copy of Certified Mail Receipt addressed to Wayne Bischoff, FTI – Refused 11/3/18.

Marked M-2

- E-mail from Mr. Grant dated September 27, 2018 at 1:39 pm including pages marked on the bottom right 1 through 16.

Marked M-3.

- Letter provided by Mr. Grant dated June 20, 2018 addressed to George Serventi, Owner in Fee of the property located on 383 Newark Pompton Turnpike, Pompton Plains, NJ, Block 3302, Lot 20.

Municipal Construction Official Robert Grant stated:

1. The Notice of Violation and Order to Terminate dated October 30, 2017. The appeal was filed in August of 2018.
2. The Owner of the property Mr. Serventi is not present, and contrary to the appeal application that Mr. Bischoff filed as the Agent of the Owner, Mr. Serventi indicated that he did not authorize Mr. Bischoff to act on his behalf or to file the appeal. Mr. Serventi can be reached by cell phone.

Mr. Grant stated that the Notice of Violation and Order to Terminate dated October 30, 2017 was issued and mailed to both parties, Mr. Serventi, Owner in Fee and Mr. Bischoff, Agent/Contractor as listed on the permit application. Mr. Grant also indicated that he has no objection for the Board to proceed with hearing the matter.

The Notice of Appeal & Hearing Date was mailed by the Board Secretary via regular and certified mail to all parties dated August 16, 2018.

The appeal was filed by Mr. Bischoff with the following applicant statement:

“Architect submitted changes; Building Inspector refuses to accept them.”

Mr. Bischoff stated that Mr. Serventi the owner is aware of the permit issues.

The Chairman noted that the Board has three choices, to either 1. Proceed to hear the matter, 2. Not hear the case because the person who filed in not an authorized agent to represent and act on behalf of the owner in fee, or 3. Postpone the matter until a letter is received by the Board in regard to whom is authorized to represent the owner.

Discussion followed and it was noted that there is no issue with the date of the filing; rather the issue at hand is of owner representation since the Owner in Fee is the party that needs to secure the Certificate of Occupancy. The Owner is not present, and cannot be questioned by the Board. There is no negative to hear the case. Due diligence was performed to notify the owner. The appeal was filed based on the Construction Official not accepting the letter from the architect dated June 18, 2018. The matter is about code compliance.

The Chairman stated that the Board would proceed with the hearing. The permit jacket lists the Agent/Contractor as Mr. Bischoff. The Owner in Fee Mr. Serventi was notified of the Notice of Violation that was issued back in October of 2017, and has been notified of this hearing. He is aware of the hearing and chose not to attend. The only issue to be considered by the Board is the denial to accept the architect letter dated June 18, 2018 by the Construction Official.

Mr. Grant testified and provided a timeline of what occurred. Mr. Grant identified the documents previously marked M-2. Mr. Grant issued a Notice of Violation and Order to Terminate dated October 30, 2017 which including an itemized list marked 1 through 18 identifying various issues. Pages three (3) through six (6) are copies of the Uniform Construction Code requirements, and International Building Code 2015, New Jersey Edition “[BS] 1405.10.1.2.1 Flashing at foundation”, and “[BS]1405.10.1.3 Clearances”. Items disputed by Mr. Bischoff are highlighted. Page seven (7) contains an email notification to Mr. Bischoff dated November 10, 2016 which was issued after the initial review of the building plan application prior to construction noting the following (see hand written comments on Page eight (8) “2 layers of water barrier required behind brick veneer IBC 1405.10.1.3”, “Manufacturer specs required for brick veneer IBC 1405.10.1”, and “Weep screed required at foundation 1405.10.1.2.1”). Page nine (9) is a copy of the original release plans side elevation referencing the NJUCC rehab sub code and the IBC 2015 codes. Pages ten (10) and eleven (11) are copies of code sections NJAC 5:23-2.21 Construction Control (a) Responsibilities, (e) Construction Contractor services. These sections provide the responsibilities of a contractor on a project. Mr. Grant stated that in his opinion the issue is not a minor issue. If a building does not have proper drainage, it will deteriorate. The culture stone is not 36’ inches high as noted, it reaches the whole front of the building, floor to roof and was installed without footings. MSA Architects took the project over on June 14, 2017 (See page 13), and not later as noted. Page fifteen (15) is an email conversation between Mr. Grant and Mr. Bischoff that took place on July 18, 2017 regarding items that were discovered when Mr. Grant drove by the building on his way to work. The wall had been built after the new architect came on the project. It was not a “light drainage item mistakenly designed” by the new architect as noted.

The wording in the letter dated June 18, 2018 as noted, “The full wall height stone veneer over the cement stucco with metal lath has been installed over a year ago. An installer omitted the weep screed and extended the veneer down to grade. During that time period the veneer performed extremely well, with no signs of delamination or open joints” in his opinion misses the intend of the code. Mr. Grant stated that he does not believe the architect has the authority to sign off and take responsibility for something that is not code compliant. Mr., Grant further stated that Mr. Bischoff has known about the issues, and was advised at the initial review process before the permits were issued and the wall was built.

Mr. Bischoff testified that the first set of plans, which did not include a weep screed designed by Bleeker Associates, were approved by the Construction Official. Approximately a year later Bleeker Associates was removed for various reasons and MSA Architects was hired. MSA Architects worked off the existing plans, and placed a weep screed on the plan. Mr. Bischoff stated that he advised MSA architects about the

completed wall construction and that they should certify the plan without the weep screed, which they did by issuing the June 18, 2018 letter that is not being accepted by the Construction Official and why he filed the appeal. The cultured stone is decorative and the weep screed is a minor item that was put in by the architect by mistake. The building was built to plans that were approved by the Construction Official.

Mr. Grant stated that Mr. Bischoff failed to address the issues provided to him before the permits were issued on the initial plans, and he decided not to address them.

Discussion by the Board followed. An Architect could provide alternatives to a code requirement, but not to state that a code requirement is not important or to omit a requirement, which is not under the architect's purview. The plans note that construction has to be performed to all applicable codes and standards. The Chairman asked Mr. Bischoff if he had the Manufacturer Specification and Installation guide for the stone veneer. Mr. Bischoff indicated that he did not bring them, but could provide them if necessary. MSA architect provided the weep screed on the plans when they took over the project in June of 2017, which Mr. Bischoff notes as a minor mistake, and that the wall with the stone veneer had been built. It was noted that the same architect, MSA architect whom designed a fix to the wall and added the weep screed on the plans ultimately provided the letter dated June 18, 2018.

Chairman Ted Maglione made a motion to deny the appeal. The appellant failed to present any argument, documentation or information that would supersede the applicable code regulations. John Kostrowski, Jr. seconded the motion. The motion was approved by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Harold Endean, (8)
John Kostrowski, Jr., Craig Villa, Timothy Braden, Sean Donlon, Keith Lynch

NO: (0)

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

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

CASE TO BE HEARD

MC#2018-12 Karla Gallegos (Block 40807, Lot 387 worksite: 19 Cliffside Trail) v. Township of Denville

Appearances:

Keith Paterson, Esq., representing the appellant
Karla Gallegos, Owner in Fee
Ed Pasternak, Esq., representing the municipality
Sal Poli, Construction Official

Counsel Paterson stated for the record that an agreement was reached. The appellant, Ms. Gallegos agreed to pay a total fine of \$4,000.00 dollars to the Township of Denville by making eight (8) monthly payments of \$500.00 beginning November 1, 2018, and agreed to maintain the exterior of the property on 19 Cliffside Trail, Denville, NJ.

Counsel Pasternak concurred with the settlement agreement as indicated by Counsel Paterson. A written agreement will be entered into by the parties, and a copy of said will be forwarded to the Board and made part of the Minutes.

The Chairman thanked the parties for working out a mutual agreement. 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 (*stayed pending Superior Court hearings*)
- MC#2018-7** Nancie O. Ludwig (Block 11910, Lot 1 worksite: 15 King Road) v. Township of Roxbury (*1st mtg. date 7/27/2018, 2nd mtg. date 9/27/2018, 3rd mtg. date will be 11/15/2018 HD*)
- MC#2018-8** Green Valley Space Rentals (Block 2402, Lot 3, Premises: 80 Passaic Avenue, Florham Park) v. Borough of Florham Park Local Enforcing Agency – Fire Headquarters (*8/23/2018 1st mtg. date, 2nd mtg. date 10/25/2018*)
- MC#2018-9** Yuri Klebanov (Block 107, Lot 1, worksite: 27 Knollwood Drive) v. Township of East Hanover (*1st mtg. date 8/23/2018, 2nd mtg. date 9/27/2018, 3rd mtg. date will be 10/25/2018 HD*)
- MC#2018-11** Kinnelon Heights, LLC (Block 10201.01, Lot 16 worksite: 16 Breckenridge Terrace) v. Borough of Kinnelon (*1st mtg. date 9/27/2018, CO NA OCT & NOV, 2nd mtg. date 12/20/2018*)
- MC#2018-13** John Street Associates, LLC (Block 10102, Lot 2 worksite: 4 John Street, Rockbottom Entertainment Building) v. Township of Morris (*1st mtg. date 9/27/2018, 2nd mtg. date 11/15/2018*)

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

- MC#2018-6** Brian Foley (Block 71, Lot 1 worksite: 247 Cemetery Hill Road) v. Washington Township, WARREN COUNTY
- MC#2018-14** Bonnie Gannon v. Town of Morristown Fire Prevention – (\$50.00 ticket - Violation of Fire Lane/Morristown Memorial Hospital)

CORRESPONDENCE

Budget Balance as of September 27, 2018 = \$2,919.90

OLD BUSINESS

NEW BUSINESS

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

Evelyn Tierney, Board Secretary