

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES

DATE: Regular Meeting Thursday March 25, 2010 – 7:30 p.m.
FREEHOLDER PUBLIC MEETING ROOM

Vice Chairman Ted Maglione ran the meeting and called the meeting to order and read the Open Public Meeting Statement.

Vice Chairman Ted Maglione requested a roll call.

PRESENT: Vice Chairman Ted Maglione, Jeffrey Betz, Edward Bucceri, Harold Endean, (7)
Kimberly Hurley, Raymond Stromberg, Craig Villa

ABSENT: Chairman Bruce Alatary, Michael Spillane (2)

ALSO PRESENT:

W. Randall Bush, Esq., Assistant County Counsel
Evelyn Tierney, Board Secretary
ABSENT: Martin Barbato, Esq., Board Attorney

The secretary reported that a quorum was present.

APPROVAL OF MINUTES:

- Minutes of the re-org meeting held January 28, 2010 were previously distributed. Edward Bucceri moved the approval of the minutes. Kimberly Hurley seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Vice Chairman Ted Maglione, Jeffrey Betz, Edward Bucceri, Harold Endean, (6)
Kimberly Hurley, Raymond Stromberg,

NO: None (0)

NOT VOTING: Craig Villa (1)

APPROVAL OF RESOLUTION: NONE

Board member Craig Villa excused himself from the proceedings. Counsel Bush requested consent from the attorneys that Mr. Villa may observe from the audience level as a new member. No objection was made by the attorney.

CASE TO BE HEARD:

James & Shannon Leckie v. Township of Chester

MC#2010-1 Hear or Dismiss

Appearances:

John P. Michalski, Esq., law offices of McElroy, Deutsch, Mulvaney & Carpenter, LLP, *representing the Township of Chester*

Board Attorney W. Randall Bush swore in the witnesses:

James Fania, Construction Official

James Leckie, Owner in Fee

Shannon Leckie, Owner in Fee

Mr. Michalski made an opening statement indicating that the violation regarding a subcode for an outlet being placed without the required distance to the sink.

Mr. Leckie stated that he is requesting a variation from the requested 24 inch space to 26 inches as the outlet has been installed.

Mr. Fania testified that the code cited is section NEC 210.52 (C)(1) which states Receptacle outlets shall be installed so that no point along the wall line is more than 24 inches measured horizontally from a receptacle outlet in that space. The subcode official could not make the meeting and is not in attendance. The Board questioned the expertise of Mr. Fania to testify on behalf of the electrical subcode. Mr. Michalski indicated that there are no factual disputes rather a question if the variation should be granted.

Counsel Bush for the record stated that the subcode official who issued the “Not Approved” sticker is not in attendance. While Mr. Fania, the Construction Official is in attendance, he is not qualified in the electrical subcode capacity. Mr. Fania’s testimony would be hearsay and actual testimony of the electrical subcode official would be needed if the factual basis of the appeal is being questioned or if the cited section of the Electrical Code is even applicable in this case.

Mr. Leckie was asked if he would like to proceed or have the matter stayed until such time the electrical subcode official is available to testify. Mr. Leckie requested to continue with the matter and have the Board settle the matter. Vice Chairman Maglione stated that the Board will proceed.

Questions followed. The construction is a remodel not new construction. Mr. Fania agreed that the work was a rehab, and not new construction. No variation has been requested by the applicant directly with the municipality. Mr. Leckie stated that he was told by the electrical subcode official that the red sticker failing the inspection was issued and did not give him any further instructions. Mr. Leckie filed the appeal with the Board for the “Not Approved” red sticker which did not have any code sections listed only stated “Countertop Receptacles not within 24” both sides of sink”.

Discussion by the Board followed. The rehab code if applicable does not have a requirement of the 24 inches. There was no official Notice of Violation issued by the municipality, only a red sticker without any code requirements listed. Furthermore, the electrical code official is not in attendance to testify.

Ed Bucceri made a motion that the Notice “NOT APPROVED” red sticker was improperly issued and therefore should be dismissed. The motion was seconded by Kimberly Hurley. Discussion followed. The motion was voted on by the following vote:

YES: Jeffrey Betz, Kimberly Hurley, Raymond Stromberg

NO: Edward Bucceri, Harold Endean, Vice Chairman Ted Maglione

The motion tied and therefore, the motion failed.

Vice Chairman Ted Maglione made a second motion that the Notice “NOT APPROVED” red sticker was improperly issued and that the Board finds that under the rehab code the distance of the outlet to the sink would not be a violation. Harold Endean seconded the motion. The motion was voted on by the following vote:

YES: Edward Bucceri, Jeffrey Betz, Harold Endean, Kimberly Hurley, Raymond Stromberg (6)
Vice Chairman Ted Maglione

NO: None

The motion passed and the parties were advised that the written decision/resolution will be approved at the next meeting of the Board scheduled for April 22, 2010 and mailed to all parties shortly thereafter.

Vice Chairman Maglione continued with the items on the Agenda. Board member Villa rejoined the meeting.

CASES STAYED/POSTPONED *(Postponement requests/consent and case correspondence was made part of the file)*

Mr. Bove, Jr. (Block 40.08, Lot 23) v. Twp. of East Hanover

MC#2005-37 *(pending Court Decision)*

Ron Clark & Robyn Valle (Block 40501, Lot 13) v. Twp. of Rockaway

MC#2006-9 *(stayed pending litigation)*

Tucker Kelley (Block 30503, Lot 12) v. Twp. of Rockaway

by Appellate Div. July 08 - 1st Mtg. Date 10/2/08, 2nd Mtg. Date 12/11/08, 3rd Mtg. Date 2/26/09 – stayed open ended with a monthly update request) Letter sent to parties dated March 26, 2009 by Board secretary requesting a status update. A status update was received on April 3, 2009 from the municipal attorney, Mr. Iacofano. Another status update was received on December 9, 2009 from the municipal attorney, Mr. Iacofano, indicating that the parties are close to a settlement agreement. The documents were made part of the file.

MC#2006-34/1 *(remanded appeal)*

Fox Hills at Rockaway Condominium Association, Inc. (Block 11302, Lot 48
1 JFK Circle) v. Township of Rockaway/Fire Prevention Bureau

MC#2010-4 (June 24th – 2nd Mtg. Date)

Leslie Ann Cooper – Hodulich & Cooper (Block 116, Lot 16) v.
Twp. of Mendham

MC#2010-5 (May 20th – 2nd Mtg. Date)

James J. Mahoney P.C. (Premises: 2740 Route 10 West Morris Plains) v.
Twp. of Parsippany-Troy Hills Fire Prevention Bureau

MC#2010-6 (April 22nd – 2nd Mtg. Date)

William Schaefer (Block 4401 Lot 42 – Denial of Permit 2/25/2010,
Block 2604, Lot 19 Notice of Unsafe Structure 2/17/2010 = worksite:
441 Turnpike) v. Township of Pequannock

MC#2010-7 (May 20th – 2nd Mtg. Date)

CASES WITHDRAWN (“Withdrawal Confirmation” letters were faxed & mailed to all parties)

Linda Kajian (Block 3001, Lot 3) v. Township of Pequannock MC#2009-27 HD (NOTE:
*Dismissed by Board at 1/27/2010 meeting for non-appearance by parties. Letter of withdrawal received 2/3/2010
from appellant’s attorney Mr. Donnelly)*

John Galiher (Block 38, Lot 42.04) v. Township of Chatham MC#2009-30

Morristown Epsteins LLC (Block 6004, Lot 8) v. Town of Morristown MC#2009-31

Hofmann Design Build, Inc. (Block 48.04, Lot 20 worksite: 82 Hampton Road, Chatham) v. Township of Chatham MC#2009-36

Vito Inghilterra c/o Mohawk Farms (Block 374, Lot 4, worksite: 305 Parsippany MC#2010-2
Road, Owner in Fee: Mohawk Farms) v. Twp. of Parsippany-Troy Hills – ***Applicant requesting refund of the
appeal fee, NOTE: (Appeal received 2/1/2010 scheduled for 2/25/2010 - withdrawn 2/16/2010 (appeal was
filed regarding a \$500 penalty notice).*** Edward Bucceri made a motion to approve the request for the
refund of the appeal fee. Kimberly Hurley seconded the motion. The Board approved the request of the
refund of the appeal fee by the following roll call vote:

YES: Vice Chairman Ted Maglione, Jeffrey Betz, Edward Bucceri, Harold Endean, (5)
Kimberly Hurley

NO: Raymond Stromberg (1)

ABSTAIN: Craig Villa (1)

Robert & Alison Iati (Block 45, Lot 26.04) v. Township of Randolph MC#2010-3

OPEN ACTION ITEM

- Distribution of 2009 Annual Report
- Distribution of 2010 Morris County Manual

OLD BUSINESS --- NONE---

NEW BUSINESS --- NONE---

NEXT REGULAR MEETING: Thursday April 22, 2010

ADJOURN: On motion duly made and seconded, the meeting was adjourned at 8:10 p.m.

Evelyn Tierney, Board Secretary