

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

MINUTES

DATE: Regular Meeting Thursday June 24, 2010 – 7:30 p.m.
FREEHOLDER PUBLIC MEETING ROOM

Chairman Bruce Alatary called the meeting to order and read the Open Public Meeting Statement.

Chairman Alatary requested a roll call.

PRESENT: Chairman Bruce Alatary, Jeffrey Betz - *arrived late*, Edward Bucceri,
Harold Endean, Kimberly Hurley, Vice Chairman Ted Maglione, Craig Villa (7)

ABSENT: Michael Spillane, Raymond Stromberg (2)

ALSO PRESENT:
Martin Barbato, Esq., Board Attorney
Evelyn Tierney, Board Secretary

The secretary reported that a quorum was present.

APPROVAL OF MINUTES:

- Minutes of the meeting held May 20, 2010 were previously distributed. Edward Bucceri moved the approval of the minutes as submitted. Vice Chairman Ted Maglione seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Bruce Alatary, Edward Bucceri, Vice Chairman Ted Maglione, Craig Villa (4)

NO: None (0)

NOT VOTING: Harold Endean, Kimberly Hurley (2)

CASES TO BE HEARD

Tower Associates Realty, LLC (Block 6101, Lot 2) v. Morris Township MC#2010-17

The Chairman stated that the appeal is for a request of a variation (NJAC 5:23 6.31 Table G) relative to a change in Use Group. The appeal was dated May 7, 2010.

Appearances:

Lawrence A. Calli, Esq., law office of Porzio, Bromberg & Newman, representing the appellant
John Mills, III, Esq., representing the municipality

Attorney M. Barbato swore in the witnesses:

Albert Mastrobattista, Construction Official
Frank J. Rawding, A.I.A.

Opening statements followed. Mr. Mills stated that the structure is located on 402 Mt. Kemble Avenue. Prior to the proposed change the dwelling was in an R-5 Use Group consisting of a single family unit. The proposed use is to convert it to an office on the 1st floor and residential use on the second floor. For that change the dwelling moves into the R-3 Use Group for which the NJ Administrative Code mandates a sprinkler system.

Mr. Calli stated that his client received a use variance from the Morris Township Zoning Board to convert the property into a mixed use with an office on the 1st floor and a residential unit on the second floor which under the rehabilitation sub code changes the use classification. The appellant understands that the code is properly cited and request a variance from the Board of the sprinkler system requirement due to the cost and practical difficulty such installation would be. The variation if granted will not compromise the integrity of the code and does not pose a safety issue to the occupants. Testimony by the architect will prove that the safety for the residents has been addressed and numerous ways of egress are provided.

The Chairman advised that the Board has four criteria to follow when considering a variation which are:

1. Statement of the requirement from the subcode from which variation is sought
2. Statement of the manner by which strict compliance with said provisions would result in practical difficulties
3. Statement of the nature and extent of such practical difficulties
4. Statement of feasible alternatives to the requirement of the subcode which would adequately protect the health, safety and welfare of the occupants or intended occupants and the public generally.

Those are the attributes the Board looks at when deciding to grant a variance.

Mr. Mastrobattista testified that an application was received by his office for a modification of use from an R-5 single family to convert to an R-3 use group with an office in the basement (1st floor level) and a residential unit on the second floor. The change from an R-5 to an R-3 use group triggers under Table G, the code requirement of a sprinkler system. Mr. Mastrobattista stated that he believes in his professional opinion that the proposed use has heightened safety risks. The garage in the proposed use will be converted into office space.

Cross examination and questions by the Board followed.

Mr. Rawding testified that the use group changes from a single family unit to an R-3 use group. The property is a raised ranch with a proposed business unit in the basement/1st, with 2/3 of it being under grade on a slope lot. The former garage is becoming the front entrance to the real estate office. All three sides would provide sufficient access for Fire Fighting apparatus. The water main would need to be extended for a sprinkler system 14-15 feet below the present basement. The cost to install the new line would be disproportioned to the cost of the complete renovations.

The storage and utility components are changed into an office. There are two forms of egress on the second residential unit. A 2 hour fire separation between the floors is in place and the existing stair case is being removed. An interconnected alarm system is to be installed.

He believes that with the cost of a sprinkler system being higher the cost of the inside renovation itself provides a hardship. The basement office space will have no kitchen installed. It consists of offices, reception area and a restroom. He believes with the means on egress that are provided to the resident on the second floor that a life safety issue is not in effect.

Cross examination and questions by the Board followed concerning the location of the utility components and the egress windows, as well as the 2 hour fire wall protection.

Closing statements followed. Mr. Mills stated that the township is satisfied that the applicants stipulation that the code was correctly applied in this case.

Mr. Calli stated that his client would incur practical difficulty of putting in a sprinkler system due to the significance of the high cost considering the topographical issues. There are no safety issues. The variation request should be granted. The mean of egress proposed, including the 2 hour fire separation and the interconnected alarm are visible alternatives to assure the life safety of the occupants on both floors.

The Chairman made a motion to deny the request for a variance based on the practical difficulty having not been demonstrated and that the two alternatives do not substantially make up for the lack of a sprinkler system as so required by code. Edward Bucceri seconded the motion. Discussion followed. The motion was voted on by the following roll call vote:

YES: Chairman Alatary, Edward Bucceri, (2)

NO: Ted Maglione, Harold Endean, Kimberly Hurley (3)

NOT VOTING: Craig Villa (1)

The motion failed. Extensive discussion followed.

The Chairman made a motion to grant the variance based upon the practical difficulty and alternatives proposed by the appellant including a 2-hour fire barrier to the second floor and the removal of the stairs. The Board is modifying the denial of Request for Variation and requiring the conversion of the window furthest from the entry door on the lower level/basement to be an egress qualified window and window well. Kimberly Hurley seconded the motion. The motion was voted on by the following roll call vote:

YES: Chairman Alatary, Ted Maglione, Harold Endean, Kimberly Hurley (4)

NO: Edward Bucceri (1)

NOT VOTING: Craig Villa (1)

The parties were excused and the Chairman continued by calling the parties to the next appeal.

161-163 Madison Avenue, L.L.C. (Block 1402, Lot 3) v. Town of Morristown MC#2010-19

The Chairman stated for the record that Board member Jeffrey Betz has joined the meeting.

Appearances:

Joe Sordillo, Esq., McElroy, Deutsch, Mulvaney & Carpenter, LLC, *representing the appellant*
Vijayant Pawar, Esq., *representing the municipality*

Counsel Sordillo stated that he is withdrawing his appeal before the Board after extensive discussion outside with the municipality and his client. The municipality is withdrawing the Notice issued by the municipal official. The Chairman advised that there is nothing to be heard and that the appeal will be marked as withdrawn on the docket and no action is taken by the Board.

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 MC#2006-34/1 (*remanded appeal by Appellate Div. July 08 - 1st Mtg. Date 10/2/08, 2nd Mtg. Date 12/11/08, 3rd will be 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. Iaciovano. Another status update was received on December 9, 2009 from the municipal attorney, Mr. Iaciovano, indicating that the parties are close to a settlement agreement. Status update request sent by the Board Secretary dated April 26, 2010. A status update was received on May 18, 2010 from the municipal attorney, Mr. Iaciovano indicating that the parties were working on a settlement agreement, and the Board will be notified once it is finalized. The documents were made part of the file.

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 (*stayed open ended with monthly status update*)

Weber Homes at Mountain Lakes LLC v. Town of Boonton **ESCROW APPEAL** MC#2010-10 (*stayed open ended @4/22/2010 meeting, pending litigation*)

Scheller Properties LLC (Block 20, Lot 50) v. Township of Washington MC#2010-21 (*stayed open ended 6/23/2010 pending litigation*)

Fox Hills at Rockaway Condominium Association, Inc. (Block 11302, Lot 48 1 JFK Circle) v. Township of Rockaway/Fire Prevention Bureau MC#2010-4 HD (9/23/2010 -3rd Mtg. Date)

Mr. & Mrs. Therriat (Block 22, Lot 3.01 worksite: 216 Oak Street) v. Town of Boonton MC#2010-12 (July 22nd – 2nd Mtg. Date)

Eleven-Ten Associates (Block 3, Lot 13.04 worksite: 92 Hartmans Corner Road) v. Washington Township – **WARREN COUNTY** MC#2010-13 (July 22nd – 1st Mtg. Date)

William Schaefer (Block 4401 Lot 42) v. Township of Pequannock Bureau of Fire Prevention MC#2010-14 (July 22nd – 2nd Mtg. Date)

Loyola Retreat House (Block 8901, Lot 3, 161 James Street) v. Town of MC#2010-20 (July 22nd – 2nd Mtg. Date)
Morristown Fire Prevention Bureau

Union Cemetery Association (Block 2, Lot 14) v. Township of Washington MC#2010-22 (July 22nd – 2nd Mtg. Date)

CASE WITHDRAWN (“*Withdrawal Confirmation*” letters faxed & mailed to all parties)

Leslie Ann Cooper – Hodulich & Cooper (Block 116, Lot 16) v. Twp. of Mendham MC#2010-5

OPEN ACTION ITEM --- NONE---

OLD BUSINESS --- NONE---

NEW BUSINESS --- NONE---

NEXT REGULAR MEETING: Thursday July 22, 2010

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

Evelyn Tierney, Board Secretary