

- A-2 Two page document dated February 12, 2016 issued by Counsel David M. Watkins indicating the content of the variation application:
 - a. Energy Calculation- Com Check
 - b. Handicap Bathroom requirement
 - c. Slop sink

- A-3 Letter dated February 13, 2016 issued by Architect Douglas Radick responding to a letter dated November 20, 2015 of Construction Official, Gary Montroy.

- A-4 Site Plan; Grading, Drainage, & Utility Plan dated 8/15/2012 through 10/19/2015 issued by Hubschman Engineering, P.A.

- A-5 Two large Aerial photographs of the main farm entrance area showing the existing buildings and location of existing handicapped accessible bathroom and the location of the proposed new greenhouse/mercantile building

- M-1 Letter dated January 25, 2016 issued by Bergen County Construction Board of Appeals Counsel, John Libretti forwarding the appeal to Morris County due to a conflict of interest.

- M-2 Letter dated November 20, 2015 issued by the Borough of Closter Construction Official, Gary Montroy denying the variation application.

- M-3 Document dated November 2014 “Fact Sheet for Commercial Farm Buildings Standards under the New Jersey Uniform Construction Code, New Jersey Department of Agriculture in Consultation with the New Jersey Department of Community Affairs”.

An opening statement was made by appellant’s Counsel Watkins. There are two issues before the Board. Plans were provided to the Construction Official, Mr, Montroy, who is not in attendance, for the construction of a greenhouse on his client’s property. It’s the oldest farm in the State of New Jersey in continuous operation for 315 years. Litigation for a four year period took place and the outcome of that litigation was that his client was authorized to build a farm building for retail use not exceeding 5,400 square feet. His client applied in lieu of a large building for the construction of a greenhouse. That application was denied due to two issues:

- o Mr. Montroy deemed it a mercantile “M” use building
- o Location of handicapped bathrooms, a slop sink and heat loss

Borough of Closter Counsel Rogan indicated that the Borough will stipulate that the issues are relative to the construction of a new building on the site. The farm is 11 acres and was purchased by Mr. Vastano in 2012. The Borough has an issue with the retail aspect of the proposed new greenhouse building. The borough applied the UCC energy code requirements for a new building. The Borough’s position is that the variation was denied because the application was for the construction of a prefab greenhouse for mercantile use, which the applicant did not produce the required energy compliance calculations.

Appellant’s Counsel Watkins stipulated that there are two issues; the heat qualification, which they cannot meet, and the bathroom requirements that his client has not complied with for which he is seeking the variation approval from this Board.

The Borough continued and the first witness Joseph Zavardino, Building & Fire Sub Code Official, Borough of Closter testified regarding his qualifications, including listing the various municipalities where

he is employed. He reviewed the building permit application plans for the Borough as the building sub code official for this project. At the first review he determined the use of the structure to be “mercantile use”.

Objection was made by appellants counsel Watkins on the relativeness of this witness testifying since he is not the official issuing the variation denial.

Objection noted, and Board Counsel Bush stated that the Board will hear and place weight on testimony as it deems appropriate.

Mr. Zavardino continued with his testimony and provided details on how he reviewed the application and made his determination that the use would be an “M” use. It was requested to take into evidence a guidance document that was created in conjunction with the Department of Community Affairs and the Department of Agriculture for Commercial Farms. He is not aware of why Construction Official Montroy denied the variation application, but he would have also denied the variation application in this case.

Counsel Bush asked if the document had been provided to counsel Watkins. Counsel Watkins indicated that he had not seen or reviewed the 16 page document, but has no objection to the submission. The documents was marked M-3 (Title: Fact sheet for Commercial Farm buildings, Standards under the New Jersey Uniform Construction Code, dated November 2014, published by the New Jersey Department of Agriculture in consultation with the New Jersey Department of Community Affairs). The Board will apply weight to the document as it deems appropriate.

Cross examination followed and questions by the Board followed.

The next witness was Giuseppe LaMastra, Plumbing Sub Code Official, Plumbing Inspector and one of the Building Inspectors for Borough of Closter, employed for the past 12 years. He is familiar with the project and reviewed the submitted drawings for compliance with the UCC regulations. The submission for the greenhouse listed “heat units”, but no mechanical drawings were submitted. He did receive the drawings later in the review process. At one point it was brought to his attention that it is a mercantile use building and he was asked to re-review the plans. Deficiencies were noted for not complying with the National Standard Plumbing code 2009 section 70.21.2 for use and occupancy of a mercantile use building which requires a slop sink, bathrooms and possibly drinking fountains. He requested revised plumbing and mechanical drawings. During the course of the plan review the construction official stopped the review process.

Cross examination and questions by the Board followed. A handicapped bathroom is located approximately 175 feet away from proposed green house building, with a proposed handicap accessible portable bathroom installed adjacent to the proposed green house building. The question arose if that would satisfy the bathroom requirements. Plumbing subcode official LaMastra stated that in his opinion a portable bathroom is not a plumbing fixture, and the code is silent regarding portable bathrooms.

A five minute recess was taken.

After the break the next witness Frank Vastano, Owner Metropolitan Farm LLC testified. When he contemplated constructing a new building he thought of building a greenhouse structure as he has seen in farms around NJ in which farm-related items are sold in greenhouses. He stated glass buildings are for plants and that is what he is selling. A-5 shows the area of the proposed building with an existing handicapped bathroom he installed in 2015, approximately 175 feet away.

Cross examination and questions by the Board followed. Mr. Vastano stated that there are two other greenhouses on the property. The farm is closed in January and February, but he is selling eggs year-round at a self-serve refrigerator location by the main entrance. A question was proffered by the municipality as to what the practical difficulty would be to meet the UCC requirements for a new proposed building. Mr. Vastano replied that he cannot comply with the Energy Calculation/com check in a greenhouse and the installation of bathrooms would require sewer, water lines and revised plans. The sale of plants requires light to keep them alive and that's why he is proposing the greenhouse including a store to sell farm-grown and farm-related items.

Counsel Rogan provided a closing statement. There are seven farms in Closter and the Borough is highly involved in preserving open space. We are here tonight for a specific reason. The Uniform Construction Code provides specific regulation for new construction and the criteria for granting variation as provided in NJAC 5:23-.2.9. "(a) No variations or exceptions from the requirements of any subcode of these regulations may be made, except upon the following findings; 1. That strict compliance with any specific subcode provision, would result in practical difficulty to the owner; 2. That exception, if granted will not jeopardize the health safety and welfare of intended occupants and the public generally". In this instance, this is not a situation where a 315 year old farm and the applicant is coming in and saying we have a historic house and we don't want to disturb it. Those factors would be arguable for a variation request. In this case the request is for a brand new retail building. The appellant in his opinion has not shown practical difficulty since the building has not been built and there is no reason other than he does not want to spend the money to comply with the codes requirements for a new building. The Borough requests that the denial of the variation be upheld by the Board.

Counsel Watkins provided a closing statement. It is a farm and not a "Stop & Shop" retail store. His client wants to build a greenhouse to sell flowers that need light to stay alive. The practical difficulty exists because this is a farm and plants need light to live. He doesn't understand why his client is the only farm in Closter under litigation. The Board has the right to grant variations and he asked that the Board grants the variation.

Counsel Rogan indicated that there are other cases that were litigated including Closter v. Abram Demori House Farm. Board counsel requested that the written citation will be supplied to his office.

Extensive Board discussion followed.

Vice Chairman Jeffrey Betz made a motion to uphold the decision made by Closter Borough to deny the variation request. The farmers request for variations was based primarily for financial reason, and code compliance required by the Borough for the proposed newly constructed building outweighed the farmer's argument. The Board upholds the denial of the variation as issued by the Borough of Closter. The motion was seconded by Edward Bucceri. The motion was approved by the following roll call vote:

YES: Chairman Ted Maglione, Vice Chairman Jeffrey Betz, regular member Edward Bucceri, regular member Harold Endean, regular member Craig Villa, alternate member William Asdal, and alternate member Sean Donlon.

NO: Alternate member Timothy Braden

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.

CASES POSTPONED (*correspondence received/ issued - made part of the case files*)

MC#2015-3 Victor & Lynn Boyajian v. Township of Harding - **ESCROW APPEAL** Case filed March 6, 2015, stayed to allow for settlement discussions to April 28, 2016

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)

MC#2016-1 Somerset County YMCA (worksite: 2 Green St.) v. Borough of Somerville Bureau of Fire Prevention/Somerset County (1/28/16 1st mtg. date, 2nd mtg. date 2/25/16, 120-day stay requested 3rd mtg. date 5/26/2016)

MC#2016-4 Kristian Elverum (Block 55, Lot 7 worksite: 35 Meyersville Rd.) v. Harding Township (1/28/16 1st mtg. date, 2nd mtg. date 2/25/16, 3rd mtg. date 3/17/16 HD, 4th mtg. date 4/28/16 HD#2)

MC#2016-6 Robert & Kathleen Hulsy (Block 6606, Lot 2) v. Town of Morristown (4/28/16 2nd Mtg. date)

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

MC#2015-16 PaperMart, Inc., (Block 96 Lot 99.01) v. Township of East Hanover

MC#2015-22 C&S Associates c/o Lexington Apartments (worksite: 21 Oak Terrace) v. Borough of Somerville Bureau of Fire Prevention/Somerset County

MC#2016-2 Sunset Ridge Electrical LLC (Block 393.1, Lot 1 worksite: 251 Littleton Rd.) v. Township of Parsippany-Troy Hills

MC#2016-3 Littleton Plaza LLC, Owner in Fee (Block 393, Lot 1 worksite: 251 Littleton Rd.) v. Township of Parsippany-Troy Hills

MC#2016-7 Sterling Parc Apartments (worksite: 1500 White Pine Ct., Block 2701, Lot 23) v. Township of Hanover, Fire District No. 3 Bureau of Fire Prevention

CORRESPONDENCE

- Appeal forwarded by Somerset County CBA due to conflict of interest. Appeal documents received (Anthony Delia, TruckForm Inc.) on March 3, 2016 for a “Punitive Closing Order” issued March 1, 2016 by the Somerville Fire Official. E-mail and certified mail sent on March 3, 2016 to all parties advising that the MCCBA cannot hear the matter within the time required as per NJAC 5:70-2.19-3(c), and to contact NJ DCA pursuant to NJAC 5:70-2.19-2.

Budget Balance as of 3/17/2016 = \$2,042.90

OLD BUSINESS --- NONE---

NEW BUSINESS

- The 2015 CBA Annual Report was distributed.
- Discussion followed regarding the procedural process in handling Imminent Hazard/ Punitive Closing Order appeals. The Board secretary was asked to research and provide updates. The members will discuss further at the next meeting.
- Vice Chairman Jeffrey Betz provided information to the members regarding ICC voting privileges and a detailed informational sheet had been e-mailed to all members that might be interested.

NEXT MEETINGS: Thursday April 28, 2016

ADJOURN: On motion duly made and seconded, the meeting was adjourned at 10:00 p.m.

Evelyn Tierney, Board Secretary