

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Thursday, November 17, 2022 – 7:00 P.M.
Webex Video Special Meeting/Hearing

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, (4)
Keith Lynch, Sean Donlon

Alternate Members: Timothy Braden (1)

ABSENT: John Kostrowski, Jr., Kimberly Hurley, Herald Endean, (4)
Nick Marucci

ALSO PRESENT: Staci L. Santucci, Esq., Assistant County Counsel
Sheila M. Leary, CPM, Board Secretary

APPROVAL OF MINUTES: Draft minutes of the meeting held on September 22, 2022, previously distributed and unanimously approved as submitted.

APPROVAL OF RESOLUTIONS: Morris County Construction Board of Appeals Resolution 2022-5

Regarding **MC#2022-11** Fong S. & Jui C. Lin, 20 Greenwood Avenue, Block 6, Lot 22, Chatham, NJ v Borough of Madison, NJ. By motion made by Vice Chairman Jeffrey Betz and seconded by Chairman Theodore Maglione the Board unanimously approved the resolution as submitted.

<i>VOTING RECORD</i>	<i>Yes</i>	<i>No</i>	<i>Abstain</i>	<i>Absent</i>
Regular Member & Chairman Ted Maglione, Builder, Professional Engineer, Construction Official, Building Subcode Official/Insp. HHS, Special member - Escrow	✓			
Regular Member & Vice Chairman Jeffrey Betz, Certified Fire Official, Fire Protection Subcode Official, Construction Official, Building Inspector – RCS, Fire Protection Inspector HHS, Housing Code Official, Inspector Hotels & Multiple dwellings	✓			
Regular Member Sean Donlon, Construction Official, Building Subcode Official, Building Inspector HHS, ICS, RCS, Housing Code Official, Inspector Hotels and Multiple Dwellings	✓			

CASES TO BE HEARD:

MC#2022-7 MJZ LLC (worksite 172 Smithtown Rd, Mount Olive Twp., Block 900, Lot 49) v Twp. of Mount Olive

MC#2022-12 Lallygone LLC, (worksite 159 Kanouse St., Boonton, NJ, Block 71.08, Lot 36.01) v Town of Boonton, NJ (HELD OVER TO A SPECIAL MEETING OF THE BOARD)

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.

County Counsel Staci L. Santucci, Esq. swore in the witnesses.

Appearing on behalf of the Appellant, MJZ LLC, Lawrence Cohen, Esq.
Robert Katchen, licensed electrician; Frank Holzworth, previous property owner (172 Smithtown Rd.)

Appearing on behalf of the Township of Mount Olive, Jonathan Testa, Esq.
Witness – Frank Baguiao, Construction Official; Colin Baker, Fire Subcode Official

The Board considered the following documents, stipulated to by the parties that were previously received by the Board Secretary and distributed to the Board members, constitute the record:

Municipal Exhibits

Exhibit No	Exhibit Description
1	Notice and Order of Penalty dated October 26, 2021.
2	Copy of N.J.A.C. 5:23-2.14
3	Blank Sticker received from Appellant
4	Correspondence from Construction Official, dated November 24, 2021
5	Correspondence from Construction Official, dated December 17, 2021
6	April 20, 2022, Photographs of subject property depicting violations
7	June 9, 1978, Floor Plan - Storage Building - Revised October 12, 1978

Appellant Exhibits

Exhibit No	Exhibit Description
1	Building Permit
2	Application for Certificate of Occupancy with Final Plumbing and Health Approvals
3	Bill for Electrical Contractor, Including Electric Heat Installation, dated 01/28/80
4	Construction Permit, dated 10/01/13
5	Plan/ Construction Plan for Reinforcement of Foundation

6	Letter from Construction Company Delivered to Construction Code Official, dated 11/08/21
7	2021 Incomplete Permit Application Received from Testa
8	Cohen Correspondence to Construction Code Official Baguiao, dated 11/24/21
9	Notice and Order of Penalty, dated 10/26/21
10	Certificate of Approval, dated 11/03/14

This matter was first heard at the meeting held on Thursday, July 28, 2022, and continued until this meeting date, November 17, 2022. Chairman Maglione began with a brief summary of the issues and findings from the July hearing and advised the parties that the Board would not consider transcript testimony from another proceeding or the provisions of the “Right to Know Law.”

Mr. Cohen continued his cross examination of Mr. Baguiao with the presentation of Appellant’s Exhibit 4, Construction Permit, dated 10/01/13. Mr. Baguiao confirmed that he had seen it but that the content of the document was unclear to him. Mr. Cohen then directed Mr. Baguiao to Appellant’s Exhibit 10, Certificate of Approval, dated 11/03/14. Mr. Baguiao confirmed the Certificate of Approval, Exhibit 10, was the approval of the work, granted permission to be performed in Exhibit 4, Construction Permit. Mr. Cohen asked Mr. Baguiao who the Construction Official was in 2013 and 2014, to which Mr. Baguiao responded, Gary Lindsay.

A brief discussion regarding Mr. Baguiao’s reference to a partial Certificate of Occupancy was followed by Mr. Testa’s re-direct of Mr. Baguiao. Municipal Exhibit 1, Notice and Order of Penalty, dated 10/26/21, offered by Mr. Testa as evidence that the building subcode work was done without a permit in the office, loft and staircase of the storage building. Chairman Maglione challenged Mr. Testa’s assertion by requesting documentation to support the claim. Mr. Testa then offered Municipal Exhibit 7, June 9, 1978 Floor Plan-Storage Building-Revised October 12, 1978. Mr. Baguiao confirmed his understanding that this exhibit was signed by an architect and included a notation for a, 5-inch concrete floor (unheated). Mr. Baguiao further stated that Exhibit 7 did not include any electrical plan or information.

Mr. Testa completed his re-direct examination of Mr. Baguiao with Municipal Exhibit 2, Application for Certificate of Occupancy with Final Plumbing and Health Approvals. Mr. Baguiao affirmed that there were subcode violations related to electrical, plumbing, HVAC, and fire subcode violations.

Mr. Cohen again questioned Mr. Baguiao regarding Municipal Exhibit 7 and where that exhibit was found. Mr. Baguiao stated that it had come from the Zoning Office. Mr. Cohen concluded his questioning of Mr. Baguiao’s understanding of the sign off of the Plumbing and Health officials in Appellant’s Exhibit 2. Mr. Baguiao responded by stating that, “it wasn’t part of the original.”

The Board, having unanimously agreed that they were satisfied that they had heard enough testimony regarding the storage building, requested that the parties move on to the two (2) fire subcode violations – work done without permits for outside fuel tanks.

Mr. Testa began his direct examination of his witness, Colin Baker, Fire Subcode Official for Mount Olive, since 2018. Mr. Baker confirmed that he was present for the inspection of the property on 10/21/21, based on a complaint of a business being operated on the property and observed fire subcode violations associated with 3 exterior fuel tanks (2 fuel tanks at the rear of the property and 1 propane tank located between storage units. Mr. Baker specifically described the violations as: 1) no protective bollards, 2) improper labeling, 3) enclosed space, and 4) installed without a permit. Mr. Testa introduced Municipal Exhibit 6 (photos of the various tanks) to assist Mr. Baker with his recollection of the inspection on 10/21/21. Mr. Baker explained the safety hazards associated with his findings and confirmed that the property owner had not, to his knowledge, made any effort to rectify the violations.

Mr. Cohen's cross examination of Mr. Baker began with questioning regarding the inspection on 10/21/21 and continued with Mr. Baker's recollection of the municipal building file not containing permits for the installation of the tanks. Mr. Baker confirmed that he did not know when the tanks were installed, the size of the propane tank, or how the home on the property was heated. Mr. Baker did acknowledge his awareness that records were missing from the building department's file. Mr. Cohen completed his questioning of Mr. Baker by asking if he had looked at the violation before it was sent to the property owner and Mr. Baker confirmed that he had looked at it before it was sent.

Mr. Cohen called his first witness, Frank Holzworth, the original property owner, who stated that he had developed the storage building, lived on the property and had obtained all permits required for the building and fuel tanks on the property. Mr. Holzworth testified that Neil Cappers of Hackettstown, NJ, had installed the propane tank, obtained the required permits, inspections and provided the propane. Mr. Holzworth confirmed that at no time did the town notify him that the installation of the fuel tanks was improper. Mr. Cohen clarified his question by asking if the fuel tanks were installed and on the property at the time that house was later built and inspected; Mr. Holzworth confirmed that the fuel tanks were there at the time the house was built in 1988 and when the property was sold to MJZ in 2018. Mr. Holzworth stated that the house was heated by a buried, 1000-gallon, fuel tank which was later abandoned and replaced with (2) 330-gallon tanks inside the house. Per Mr. Holzworth, this was done in 2010, with the requisite permits and inspections. Mr. Holzworth further testified that in 2013, a permit and inspection was completed for a reinforced foundation in the garage.

Mr. Testa's cross examination of Mr. Holzworth began with an informative discussion regarding use groups, (R) for a residential use group and (U) for a garage use group. Mr. Testa identified permit #20060227, for (2) 330-gallon oil tanks with a certificate of approval. Mr. Holzworth stated again that Neil Cappers of Hackettstown, NJ, had installed the propane tank, obtained the required permits, inspections and provided the propane, but could not recall when that installation had occurred. Mr. Testa directed Mr. Holzworth to Municipal Exhibit 6 (photos) 14, 15, 18, 19, for questioning regarding the location and condition of the tanks.

On re-direct Mr. Cohen asked Mr. Holzworth if he had been on the property continuously since the time he sold the property to MJZ; Mr. Holzworth confirmed that he has been on the property regularly since that time.

Mr. Cohen called his final witness, Mr. Robert Katchen, a licensed electrician, familiar with the property. Mr. Katchen stated that he was involved with the wiring of the fuel tanks and confirmed that his father, now retired, had installed the tanks and obtained permits and inspections as required. Municipal Exhibit 6 (photo) 19 was provided for Mr. Katchen’s identification and confirmation that the photo accurate depicts the tank as being the same tank that he worked on (“pulled wire for”).

Mr. Testa’s cross-examination of Mr. Katchen was completed with the assistance of Municipal Exhibit 6 (photos) 20, 18, 16, and 15. Mr. Katchen did not recall working on the tank shown in photo 20 or photo 16, but confirmed that he had worked on the tank in photos 18 and 15. Mr. Testa asked Mr. Katchen if he was a licensed electrician at age 10 when he worked with his father on this property. Mr. Katchen denied being a licensed electrician at the age of 10.

The Board heard testimony from both parties and after a lengthy discussion, Chairman Theodore Maglione made a motion to reverse the enforcement agency’s Notice and Order of Penalty, dated October 26, 2021, due to a lack of sufficient evidence, with Vice Chairman Jeffrey Betz seconding the motion. A vote was taken of the five (5) voting Board members and pursuant to the authority granted to it under N.J.A.C. 5:23A - 2.3, the Board unanimously reversed the enforcing agency decision as shown on the voting record below,

<i>VOTING RECORD</i>	<i>Yes</i>	<i>No</i>	<i>Abstain</i>	<i>Absent</i>
Regular Member & Chairman Ted Maglione, Builder, Professional Engineer, Construction Official, Building Subcode Official/Insp. HHS, Special member - Escrow	x			
Regular Member & Vice Chairman Jeffrey Betz, Certified Fire Official, Fire Protection Subcode Official, Construction Official, Building Inspector – RCS, Fire Protection Inspector HHS, Housing Code Official, Inspector Hotels & Multiple dwellings	x			
Regular Member Keith Lynch, Certified Fire Official, Fire Protection Subcode Official, Construction Official, Electrical Contractor, Electrical Insp. HHS, Building Subcode Official/Insp. HHS	x			
Regular Member Sean Donlon, Construction Official, Building Subcode Official/Insp. HHS/ICS/RCS, Housing Code Official, Insp. Hotels & Multiple dwellings	x			
Alternate Member Timothy Braden, Construction Official, Building Subcode Official, Building Inspector RCS, ICS, HHS	x			

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

MC#2022-13 Dimaris Fuentes & Arturo Thur de Koos, 17 Penn Ave, Block 1810, Lot 17, Dover, NJ v Town of Dover

MC#2022-14 Frank Petrucci, 29 Jay Road, Block 115, Lot 27, Chatham, NJ v Chatham Township

CASE WITHDRAWN:

CASES RETURNED (not heard subsequent to legal review):

CORRESPONDENCE: Budget \$4,041.93

OLD BUSINESS:

NEW BUSINESS

NEXT MEETING: Special Meeting Tuesday, November 29, 2022; Regular Meeting December 15, 2022

ADJOURN: On motion duly made by Board member Keith Lynch, and seconded by Vice Chairman Jeffrey Betz, the meeting adjourned at 10:19 P.M.

Sheila M. Leary, CPM

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Board Secretary