

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Tuesday, November 29, 2022 – 6:00 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, (5)
John Kostrowski, Jr., Keith Lynch, Sean Donlon

Alternate Members: Harold Endean (1)

ABSENT: Kimberly Hurley, Timothy Braden (3)
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 November 17, 2022, previously distributed and unanimously approved as submitted.

APPROVAL OF RESOLUTIONS: Morris County Construction Board of Appeals Resolution 2022-6 Regarding **MC#2022-7** MJZ LLC (worksite 172 Smithtown Rd, Mount Olive Twp., Block 900, Lot 49) v Twp. of Mount Olive. By motion made by Keith Lynch and seconded by Chairman Theodore Maglione the Board unanimously approved the amended 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 Keith Lynch, Certified Fire Official, Fire Protection Subcode Official, Construction Official, Electrical Contractor, Electrical Insp. HHS, Building Subcode Official/Insp. HHS	✓			
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#2022-12 Lallygone LLC, (worksite 159 Kanouse St., Boonton, NJ, Block 71.08, Lot 36.01) v Town of Boonton, NJ (Member Keith Lynch recused himself from hearing this matter)

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, Lallygone LLC, John D. Coyle, Esq.
 Witness – George Nader, PE

Appearing on behalf of the Town of Boonton, Jonathan Testa, Esq.
 Witness – Ronald Auth, Construction 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:

Exhibit No.	<u>Municipal Exhibits</u> Description
Exhibit “1”	Notice and Order of Penalty dated June 21, 2022.
Exhibit “2”	Copy of <u>N.J. IRC R602.1.8</u>
Exhibit “3”	Copy of <u>N.J.A.C. 5:23-2.19</u>
Exhibit “4”	Framing Inspection Notes from September 28, 2021 and April 7, 2022
Exhibit “5”	Inspection Log of 159 Kanouse Street, Boonton, NJ
Exhibit “6”	Notice and Order of Penalty dated June 2, 2022
Exhibit “7”	Copy of <u>N.J.A.C. 5:23-2.18</u>
Exhibit “8”	E-mails between Representatives of Appellant and the Municipal Enforcement Agency from June 21, 2022 through August 4, 2022
Exhibit “9”	Letter from George Nadar to Ronald Auth dated June 9, 2022
Exhibit “10”	Letter from Paul Giammona to Ronald Auth dated July 12, 2022
Exhibit “11”	Photographs provided with Letter from Paul Giammona to Ronald Auth dated July 12, 2022
Exhibit “12”	Manufacturer’s specifications of ML Campbell Polarex Sealant
Exhibit “13”	E-mail between Ronald Auth and Appellant from July 28, 2022
Exhibit “14”	Photograph of plywood provided to the Municipal Enforcing Agency

Exhibit "15"	Quality Board Information for SandePLY Plywood 12mm (1/2") 4'x8' from manufacturer Endesa
Exhibit "16"	E-mail between Jeffrey Jordan, Manager of Green Forest Products and Jonathan Testa, Esq.
Exhibit "17"	Certification of Jonathan Testa, Esq.
Exhibit "18"	Letter from Paul Giammona to Ronald Auth dated October 18, 2022
Exhibit "19"	Photographs of exposed finished sheathing from September 2022
Exhibit "20"	Application and Notice of Appeal

Exhibit No.	<u>Appellant Exhibits</u> Description
A-1	08/10/2022 Application to Morris County Construction Board of Appeals
A-2	06/21/2022 Notice of Violation and Order to Terminate
A-3	Construction Board of Appeals Applicant Statement
A-4	05/10/2022 Brick City Reconstruction letter to R. Auth and Town of Boonton
A-5	M.L. Campbell Wood Finishing Systems Product Information (PI) Sheet
A-6	06/06/2022 Structural MD Urgent Engineering letter to R. Auth
A-7	Worksite notes
A-8	07/12/2022 Brick City Reconstruction letter to R. Auth and Town of Boonton
A-9	08/04/2022 R. Auth email to L. Anderson
A-10	Plywood label
A-11	Photo – half bath
A-12	Photo – Side of house master bath
A-13	Photo – Side of upside hall bathroom
A-14	Photo – Upstairs hall bathroom
A-15	Photo – Back wall of masters
A-16	Photo – Side of front bedroom
A-17	Photo – Laundry room
A-18	Photo – Side wall of masters
A-19	Photo – Master bedroom closets
A-20	Photo – Front small bedroom
A-21	Photo – Front bedroom in front of hall bath
A-22	Photo – Garage back of house
A-23	Photo – Garage side of house
A-24	Photo – Above garage door
A-25	09/15/2022 Morris County Construction Board of Appeals – Consent to Extension of Time for Decision
A-26	Morris County Construction Board of Appeals – Rules of Procedures
A-27	10/18/2022 Brick City Reconstruction letter to R. Auth and Town of Boonton

This matter was held over from the regular meeting on Thursday, November 17, 2022, and continued until this special meeting date, Tuesday November 29, 2022. Chairman Maglione began with a brief description of the procedure to be followed in which the Municipality would present their case and the Appellant would be provided an opportunity to cross examine the Municipal witness. Thereafter, the Appellant would present their case and the Municipality would likewise be provided an opportunity to cross examine the Appellant/witness.

Mr. Coyle requested a threshold evidentiary motion regarding exhibits previously provide by the Town of Boonton. After a brief explanation, the Board Members were asked to excuse themselves for a ten-minute break to provide Mr. Coyle an opportunity to express his concerns regarding two specific exhibits (Municipal Exhibits 16 & 17). The Board members returned at 6:25 P.M., and another roll call confirmed that all present members listed above, had returned and the hearing continued.

Mr. Testa called his witness, Ron Auth, Construction Official for the Town of Boonton, to provide testimony regarding the issuance of the Notice of Violation and Order to Terminate (V-22-00011) issued June 21, 2022. Mr. Auth, relying on Municipal Exhibits 1, 2, 4, and 5, explained the sequence of events leading to issuance of the violation and specifically, the repeated failure, after numerous unsuccessful site visits, of the property owner to comply with the (wood) structural panel sheathing standards as required by NJ IRC R602.1.8. Specifically, plywood not specified for exterior use on a residential property.

Mr. Testa continued his examination of Mr. Auth with questions regarding seven pages of email correspondence between representatives of the Appellant and Mr. Auth, more specifically described in Exhibit 8, with a detailed explanation of the actions that needed to happen to correct the issues. Mr. Auth confirmed that after a year of failed site visits, the plywood sheathing had not been brought into compliance and no sufficient evidence existed to show that the sheathing was acceptable or in any way compliant with the standard required by the code. Exhibit 3, a copy of Copy of N.J.A.C. 5:23-2.19, Special Technical Services, was introduce and not objected to by the Appellant and supported the Municipality's argument for the purpose of Exhibit 7, a copy of N.J.A.C. 5:23-2.18, (Inspections).

Through a series of photos offered in Municipal Exhibit 19, Mr. Testa questioned Mr. Auth regarding the images of the plywood as of September 2022, and Mr. Auth's testimony of his observations of the evidence of, "delamination" of the exposed plywood and the structural deficiencies seen in the images and at the time of his site inspection in mid-September 2022. Mr. Auth further testified that because the sheathing had been covered by Tyvek, foam and vinyl siding, there was no way to confirm the manufacturer's specifications of ML Campbell Polarex sealant had been applied and/or applied correctly.

Upon cross examination of Mr. Auth, Mr. Coyle revisited the testimony regarding Municipal Exhibit 12, and inquired whether or not it was fair to say that although Mr. Auth had not observed the application of the sealant, he had been notified by a professional (Paul Giammona, RA) that the product was properly installed and the sheathing was adequate for exterior use. Mr. Auth was further questioned about his understanding of the meaning of the letter, Exhibit 10, from Mr. Giammona, dated July 12, 2022, and stated that he doubted Mr. Giammona because his status as a 3rd party and professional involvement with the property came after the issuance of the violation.

Mr. Coyle's use of Municipal Exhibits 8 & 18, provided the witness an opportunity to testify as to his conclusions regarding the professional difference of opinions between himself and Mr. Giammona. Mr. Auth maintained his opinion regarding the unreliability of the evidence provided by Giammona's certification that the treated sheathing was equivalent to exterior grade plywood.

Mr. Coyle presented the Appellant’s case with George Nader, PE, appearing and testifying that he attempted to correct both the structural issues as well as the concerns outlined in the Notice of Violation. Relying on Exhibits 15, 13 and 19, Mr. Nader testified that it is his professional opinion that the sealant used on the plywood was the equivalent of exterior grade plywood.

Upon cross examination, Mr. Testa questioned Mr. Nader who confirmed that he (Mr. Nader) was not present at the time the sealant was applied to the sheathing, but that he trusted the supervisor who was present for the application and therefore, believes the sheathing is equivalent to the standard exterior grade plywood.

The Board heard testimony from both parties and after a lengthy discussion, Member John Kostrowski, Jr., made a motion to affirm the enforcement agency’s Notice of Violation and Order to Terminate, dated June 21, 2022, with Member Sean Donlon 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 affirmed 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	✓			
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 John Kostrowski, Jr., Master Plumber, Plumbing Subcode Official/Insp. ICS/HHS, Construction Official, Building Inspector RCS/ICS	✓			
Regular Member Sean Donlon, Construction Official, Building Subcode Official/Insp. HHS/ICS/RCS, Housing Code Official, Insp. Hotels & Multiple dwellings	✓			
Alternate Member Harold Endean, Electrical Contractor, Construction Official, Electrical Subcode Official, Electrical Inspector, HHS	✓			

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:

CORRESPONDENCE: Budget \$4,041.93

OLD BUSINESS:

NEW BUSINESS

NEXT MEETING: Regular Meeting December 15, 2022

ADJOURN: On motion duly made by Chairman Theodore Maglione, and seconded by Vice Chairman Jeffrey Betz, the meeting adjourned at 8:57 P.M.

Sheila M Leary, CPM

Sheila M. Leary, CPM
Board Secretary