



MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

Minutes

Wednesday, February 19, 2025 – 6:00 P.M.

Morris County Commissioners Public Meeting Room

Administration & Records Building

10 Court Street

Morristown, New Jersey 07963-0900

Remote via Cisco WebEx Video Conference

Join link:

<https://morriscountynj.webex.com/morriscountynj/j.php?MTID=m4b3780fb3aa049916b972878522ffbae>

Chairman Theodore Maglione called the meeting to order.

Pledge of Allegiance

Open Public Meeting Statement

Chairman Theodore Maglione requested a roll call.

PRESENT:

Regular Members: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz,
John Kostrowski, Jr., Keith Lynch, Sean Donlon (5)

Alternate Members: Kimberly A. Hurley, Timothy Braden, Larry D. Ott (3)

ABSENT: Nick Marucci, (1)

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

APPROVAL OF MINUTES: Draft minutes of the meeting held on January 30, 2025, previously distributed and unanimously approved by the Board.

RESOLUTION(S) FOR APPROVAL:

Morris County Construction Board of Appeals Resolution 2025-2

Resolution to Deny Acceptance of Appeal Application - 382 Route 46, Mount Olive Township

CASE(S) TO BE HEARD:

MC#2024 – 13: J&J Farms Creamery Co., Inc. v Parsippany-Troy Hills, NJ

The following appearances were noted on the record, and witnesses were sworn in by counsel:

Appearing on behalf of the Appellant, J & J Farms Creamery, Tim Arch, Esq.

Witnesses:

Brian Tannenhaus, P.E. - BD Engineering, LLC

Kenneth Fry, P.E.- BD Engineering, LLC

Moshe Rosen – Appellant Representative

Witnesses:

Ken Gauharou – Electrical Sub Code Official

Steve Krayniak – Construction and Code Enforcement Inspector

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

Municipal Exhibits

Exhibit Number	Description
M-1	Inspection Log
M-2	E-mail Correspondence with DCA
M-3	Email Communication with J&J Following August 8 th Inspection
M-4	Various Photographs of Facility Taken by Steven Krayniak
M-5	Specifications for Damp Rated Electronics Utilized in Facility
M-6	Literature Regarding Damp Cold Storage Concerns

Appellant's Exhibits

Exhibit Number	Description
A-1	Colmac Coil Manufacturing Cutsheet
A-2.1; 2.2 & 2.3	Site Plan – 3 sheets
A-3.1 3.2	Psychrometric Chart
A-4	9-5-2024 Memo from Ken Fry
A-5	9-16-2024 Memo from Ken Fry
A-6	10-11-24 Memo from Brian Tannenhau
A-7	Insulation Certificate
A-8	Calc-Rite Sheet
A-9	ASHRAE Handbook Section
A-10	Email correspondence chain Re/ 100 Jefferson
A-11.1 through 11.6	Pictures of Site – Dated Jan. 22, 2025

This matter was heard, Wednesday, February 19, 2024, at 6:00 PM, in the Morris County Commissioners Public Meeting Room. 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 witnesses. Thereafter, the Appellant would present their case, and the Municipality would likewise be provided an opportunity to cross examine the Appellant's witnesses.

Mr. Balwin, on behalf of Parsippany, began his direct examination of Steve Krayniak, Construction Code Enforcement Inspector, referring to Exhibit M-1, Inspection Log and the site inspection of late August 2024, which occurred subsequent to the courtesy visit on July 16, 2024, for the purpose of meeting with the contractor/foreman.

Mr. Balwin directed Mr. Krayniak's attention to Exhibit M-5, "*Specifications for Damp Rated Electronics Utilized in Facility*", and questioned him with regard to the existence of standards used to determine damp or dry conditions. Mr. Krayniak testified that Exhibit M-5, along with the email exchange between members of the enforcement agency and the DCA, marked as Exhibit M-2, helped to inform the enforcement agency's opinion.

Mr. Krayniak further testified that information from the NFPA code regarding cold storage, damp or dry, with potential operational concern and variables i.e. fixtures contribute to a damp storage classification.

Mr. Baldwin requested clarification of Mr. Krayniak's testimony to summarize the potential operational concerns as it relates specifically to the alteration and conversion of a warehouse and the variables, i.e. Fixtures, that may contribute to the damp storage.

Chairman Theodore Maglione requested clarification of Mr. Krayniak's qualifications to speak to the design of the Appellant's project and whether or not Mr. Krayniak was a thermo-engineering expert. Mr. Krayniak testified that he is not a thermo-engineering expert.

Chairman Theodore Maglione stated that the weight would be on the design of the project submitted by two licensed, professional engineers, hired by the Appellant.

Mr. Baldwin concluded his direct examination of Mr. Krayniak, with Exhibit M-4, "*Various Photographs of Facility Taken by Steven Krayniak*," requesting that Mr. Krayniak describe the images, why they were important to the need for clarification from the DCA regarding cold storage climate control and temperature range products/fixtures. Mr. Krayniak testified to the importance of the time spent seeking clarification from the code regarding damp and dry storage.

Mr. Arch began his cross examination of Mr. Krayniak by directing him back to the municipality's Exhibit M-5, for damp rated fixtures and Appellant's Exhibit A-10 "*Email correspondence chain Re/ 100 Jefferson*" specifically drawing his attention to the language regarding design techniques used in the transition from one condition to another. Mr. Krayniak testified that he went in with the belief that the space was a damp condition.

Mr. Arch continued to question Mr. Krayniak regarding the timeline of the project, to determine the point at which the engineer's designs, were disregarded in favor of the municipality's opinion that the space was damp.

Mr. Baldwin, on a brief redirect of Mr. Krayniak, inquired as to whether this issue, damp vs. dry, has ever come up in the past and if he communicated with the DCA. Mr. Krayniak testified that he has communicated with the DCA and relies on the code as he understands it.

Board Member John Kostrowski, Jr., asked Mr. Krayniak to confirm that the electrical plans were reviewed and Mr. Krayniak testified that the plans were code compliant. Mr. Kostrowski, Jr. asked Mr. Krayniak if he had requested clarification from the Appellant's engineer or Architect, who has previously stated that the location was dry. Mr. Krayniak testified that he has in the past, "given the benefit of the doubt, but, in this case, I relied on my experience." Mr. Kostrowski requested that Mr. Krayniak provide the code section that refers to the reliance on experience for decision making.

Board Member Timothy Braden question Mr. Krayniak with a hypothetical question: "If you had no experience as a Construction Code Enforcement Inspector, would you defer to the engineer if the engineer said the design was ok"? Mr. Krayniak did not answer the hypothetical.

Chairman Maglione requested that Mr. Arch proceed with the Appellant's witnesses, Brian Tannenhaus, licensed Design Engineer, and Kenneth Fry, licensed Mechanical Engineer.

Mr. Arch questioned both Mr. Tannenhaus and Mr. Fry as to their professional opinion of the location as being damp or dry. Mr. Tannenhaus testified that the location is dry. Mr. Fry testified that the location is dry.

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Mr. Balwin briefly cross-examined Mr. Fry as to relative humidity and conditions within the building and whether he knew the dew point relative to the refrigeration condition within the building. Mr. Fry testified that he would have to calculate that. Mr. Baldwin provided the dew point and had no further questions.

Board Member Larry Ott asked Mr. Fry if the calculations of his design plan, in this case, were ever questioned. Mr. Fry testified that they were not. Mr. Ott then asked Mr. Krayniak if he had taken the design plans to another engineer for review of the calculations. Mr. Krayniak testified that he had not.

The Board heard testimony from both parties and after a lengthy discussion, Board member John Kostrowski, Jr., made a motion to reverse the enforcement agency's written decision, described in its correspondence dated October 10, 2024, deeming the project to be a damp location, with Chairman Theodore Maglione seconding the motion.

Statement of Reasons – Board Member John Kostrowski, Jr.

The testimony, experience and qualifications of the engineer's data confirmed the location to be correctly characterized as a dry location.

Statement of Reasons – Chairman Theodore Maglione

With two experienced, professional engineers, testifying that the space/location is dry and the municipality's failure to quantify the location as damp or dry, supports the finding in favor of the Appellant.

The Board, pursuant to the authority granted to it under N.J.A.C. 5:23A - 2.3, may affirm, reverse, or modify the action, decision, notice or order of the enforcement agency or remand the matter to the enforcing agency for further action.

A vote was taken of the five (5) voting Board members, by unanimous vote, reversed the enforcement agency's decision as shown on the voting record below.

The Morris County Construction Board has unanimously voted to reverse the decision of the enforcement agency's determination of the Appellant's project located at 100 Jefferson Rd., Block 737 Lot 5, Permit# 23-CP-2277, deemed (erroneously) to be a damp location.

<i>VOTING RECORD</i>	<i>Yes</i>	<i>No</i>	<i>Abstain</i>	<i>Absent</i>
Ted Maglione, Chairman Builder, Professional Engineer, Construction Official, Building Subcode Official/Insp. HHS, Special member - Escrow	✓			
John Kostrowski, Jr. Master Plumber, Plumbing Subcode Official/Insp. ICS/HHS, Construction Official, Building Inspector RCS/ICS	✓			
Keith Lynch Certified Fire Official, Fire Protection Subcode Official, Construction Official, Electrical Contractor, Electrical Insp. HHS, Building Subcode Official/Insp. HHS	✓			
Sean Donlon Construction Official, Building Subcode Official/Insp. HHS/ICS/RCS, Housing Code Official, Insp. Hotels & Multiple dwellings	✓			
Kimberly Hurley Licensed Architect	✓			

CASE(S) POSTPONED:

MC#2025-1: 104 N. Beverwyck Rd., #127, Lake Hiawatha, NJ v Parsippany-Troy Hills, NJ

CASE(S) WITHDRAWN:

MC#2024 – 9: 82 Sunset Dr., Chatham, NJ v Chatham Township, NJ (*February 12, 2025*)

CORRESPONDENCE: Budget Balance as of February 19, 2025 - \$2,320.03

- Budget Balance as of January 30, 2025 - \$2,320.03

OLD BUSINESS:

Escrow/Professional Fees Application - previously distributed and unanimously approved as drafted by the Board.

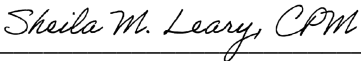
NEW BUSINESS:

2024 Annual Report - previously distributed and unanimously approved as drafted by the Board.

- 2025 Membership Qualifications & Contact Information
- 2024 Summary of Appeals

NEXT MEETING: Thursday, March 27, 2025, at 6:00 P.M.

ADJOURN: 7:55 P.M.



Sheila M. Leary, CPM
Board Secretary