



Morris County  
Construction Board of Appeals

**2014**  
**ANNUAL REPORT**

# **MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS**

## **2014 ANNUAL REPORT**

The Morris County Construction Board of Appeals, established in 1977 by the Morris County Board of Chosen Freeholders, serves as a quasi-judicial body to hear appeals filed by owners of properties in Morris County from decision and actions, or inaction made by a municipal official relative to the New Jersey Uniform Construction Code, Uniform Fire Code, or the Developer Escrow Law. Such activities that may aggrieve owners may be action taken or inaction by the Construction Code Official, a Construction Subcode Official, a Uniform Fire Code Official, or other Municipal Professionals.

The Morris County Construction Board of Appeals consists of five regular members and five alternate members including two certified fire officials. There are two special members assigned to the Board to hear cases involving municipal escrow fees. Membership and qualification of members are required by Uniform Construction Code Regulations 5:23 A-1.3 (a) and (b), Board terms are four years. The volunteers who serve on the Morris County Construction Board of Appeals bring to the Board a diverse background and wealth of professional and personal experience. Board members are also required to attend training sessions sponsored by the Department of Community Affairs. Members of the Board who are Licensed Inspectors, Subcode Officials or Construction Officials also are required as a condition of their license to complete training provided by the NJ Department of Community Affairs. The training consists of both administrative topics and topics within the technical area of their licenses.

Hearings are held at the call of the Chair, usually on the fourth Thursday of each month, at 7:30 p.m. in the Freeholder Public Meeting Room. Meetings are open to the public and legally advertised through the Daily Record and Newark Star Ledger. Special meetings, if necessary, are held to conduct Board business, or to hear open cases as requested by Appellants. Formal resolutions (decisions) prepared by the Board and Board Counsel are approved by the Board members at the meeting following the hearing.

The resolutions are filed with the N.J. Department of Community Affairs, and the N.J. Division of Fire Safety, as appropriate in Trenton, pursuant to state regulations. Copies are sent to the applicant, the municipality, and to their attorneys. Copies are also forwarded to the Board of Chosen Freeholders, County Administrator, County Counsel, and the County's insurance representative.

Records of cases, which have been heard or withdrawn, are disposed of in accordance with records management procedures implemented by the State and County.

Minutes of all hearings and resolutions adopted by the Board are kept in bound minute books as public records as required by N.J.A.C. 5:23A-2.3. Access to records continues to be controlled in accordance with Morris County Policy and Procedure 4:4.01, Public Records.

Assistant County Counsel Randall W. Bush, Esq., advised the Board on legal matters in 2014.

Mrs. Evelyn Tierney, Secretary to the Board continues to support the Board as well as Mary Jeanne O'Grady who assists in the day to day basis and at the hearings when necessary. As the Board Members typically carry a full time commitment in their primary occupation, Mrs. Tierney and Mrs. O'Grady keep the members and Counsel to the Board apprised of new developments; schedules and coordinates the hearings; generates and issues correspondence; and are the point persons for all external communication with Citizens, Local, County and State Government.

The Board performed its statutory obligations in 2014 with a complete complement of professionals. The Board composition consists of multiple layers of qualified personnel in all disciplines so the chances are minimal that an absence or conflict situation will affect the Board's ability to hear an appeal with competent, unbiased members in a timely manner. The Board has continued to improve communication by relying extensively on email communication between the Members, Secretary and Counsel as well as updating the following website with Board information and forms @ [www.morrisplanning.org](http://www.morrisplanning.org) .

The Board uses a digital recorder to record the hearings, which provides high quality direct to media files. The files are more readily copied and transferred when requested for transcripts.

The Board continues to be a member of the International Code Council which provides a discount in the purchase of ICC sponsored codes and allows Board Members who choose to participate in one or more code making forums to do so.

During calendar year 2014, the Board met five times.

The following is a summary of the cases filed with the Morris County Board:

<u>Morris County CBA 2014 Docket</u>	<u>Totals</u>
Cases Carried Over from Prior Years	4
Cases Filed in 2014	16
Cases Dismissed/Settled @ hearing/Closed in 2014	1
Cases Withdrawn in 2014	12
Cases forwarded/transferred to Somerset County in 2013 (due to conflict of interest)	3
Decisions issued by the Board in 2014	2
Cases Carried to 2015	2

Sixteen appeals were filed in 2014 adding to the four appeals carried over from the previous year.

Three appeals were forwarded to Somerset County due to potential conflict of interest.

Two appeals were decided by the Board in 2014. Resolutions were issued to document the decisions in the cases.

Brief highlights about each case are included in the attached “Summary of Cases Decided by the Board in 2014”.

Records are kept of all appeals filed consistent with the County Records Retention Policy.

***The following documents are attached to this report:***

- Summary of Cases Decided by the Board in 2014
- Rules and Procedures
- Morris County Municipalities represented by the Board in 2014
- NJAC 5:23A Construction Board of Appeals Regulations
- Member Information (Qualifications & Terms)

The Construction Board of Appeals represents 38 out of 39 Morris County Municipalities. Florham Park Borough has its own Construction Board of Appeals.

As Chairman, I would like to express our gratitude and appreciation to the Board Members, Board Counsel and Board Secretary for their dedication and commitment to serving the Board of Chosen Freeholders and Morris County residents throughout the year. The total hours devoted by the Board members in preparing for, hearing cases, and preparing decisions cannot be tabulated.

On behalf of the Board, we extend our thanks and appreciation to the Board of Chosen Freeholders for personnel assigned to the Board, County Counsel's office for their assistance, County Administrator, John Bonanni for the use of the department's conference room prior to our meetings, and the Department of Building and Grounds and security staff for their assistance in providing parking and access for the Board members during evening meetings.

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Theodore Maglione  
Chairman

## 2014 SUMMARY OF APPEALS

Case#	Appellant	Municipality	Description		Action Taken						
					Statute	Date Filed	Hearing Date (1)	1ST POSTP (2)	2ND POSTP (3) Hear or Dismiss	Add. Date (Board Quorum) N/A	Status
MC#2013-14 ■	NK Architects	Township of Morris	(Block 3201, Lot 3), 10 Washington Valley Road. Notice of Violation and Order to Terminate dated 10/22/2013 "Failure to install sprinklers in front entrance canopy"		UCC	11/6/2013 (Hand Delivered)	11/21/2013	12/19/2013	1/23/2014 HD		Case withdrawn 1/8/2014
MC#2013-15 ■	German Martinez	Town of Morristown	(Block 1801, Lot 7) worksite: 45 Ridgedale Avenue., Notice of Violation and Order to Terminate dated 10/23/2013 "Finished Basement without permits"		UCC	11/8/2013	11/21/2013	1/23/2014	3/27/2014 HD		Case withdrawn 2/14/2014
MC#2013-16 ■	Garadesa, LLC	Borough of Butler	(Block 26, Lot 7) worksite: 26 Kiel Avenue. Notice of Violation and Order to Terminate dated 12/13/2013, "NJAC5:23 - 2.15(a) Failure to obtain all prior approvals"		UCC	12/20/2013	1/23/2014				Case withdrawn 1/22/2014
MC#2013-17 ■	J. Killion, LLC	Borough of Lincoln Park	(Block 5, Lot 25 worksite: 4 Beaver Brook Road.) Notice of Violation and Order to Terminate dated 12/5/2013 "Occupying new structure without a certificate" Notice and Order to Pay Penalty dated 12/5/2013		UCC	12/19/2013 incomplete 12/23/2013 completed	1/23/2014	2/27/2014			Case withdrawn 2/27/2014

## THE FOLLOWING CASES WERE FILED IN 2014

Case#	Appellant	Municipality	Description		Action Taken						
					Statute	Date Filed	Hearing Date (1)	1ST POSTP (2)	2ND POSTP (3) Hear or Dismiss	Add. Date (Board Quorum) N/A	Status
MC#2014-1 ■	Ace Cleaning & Restoration (Owner: Eliahu Arman)	Township of Parsippany Troy-Hills	(Block 528, Lot 12 worksite: 3 Minnehaha Boulevard) Order of Penalties dated 1/22/2014 "Made a false or misleading written statement & Failed to obtain a construction permit"		UCC	2/7/2014 (Hand Delivered)	2/27/2014	3/27/2014	4/24/2014		Case withdrawn 4/9/2014
MC#2014-2 ■	Nadia Garber Levytsky	Township of Parsippany Troy-Hills	(Block 114, Lot 21 worksite: 16 Oakdale Road) Notice and Order of Penalty dated 1/24/14, Notice of Unsafe Structure "Failed to abate by 11/19/13" per Notices issued on 10/7/13. Notice and Order of Penalty dated 1/24/14 "Failed to obtain a construction permit". Notice of Violation and Order to Terminate dated 1/23/2014		UCC	2/11/2014	2/27/2014	3/27/2014			Case withdrawn 3/21/2014

## 2014 SUMMARY OF APPEALS

Case#	Appellant	Municipality	Description		Action Taken					
MC#2014-3 N/A <span style="color: green;">■</span>	Mr. & Mrs. Kehoe	Borough of Wharton	(Block 1810, Lot 15) Notice of Unsafe Structure issued 4/17/2014	UCC		<b>CASE FORWARDED TO SOMERSET COUNTY DUE TO POTENTIAL CONFLICT OF INTEREST</b> -Appeal document package forwarded to Somerset County on 5/7/2014 copying all parties to the appeal.				
MC#2014-4 <span style="color: magenta;">■</span>	McEntee Construction Co., LLC (Owner: Cornerstone Chapel of the CMA)	Township of Pequannock	(Block 902, Lot 18) "Notice and Order of Penalty "Failed to obtain a construction permit" issued 5/5/2014 - Requested to be heard at the June CBA hearing date. Refund of appeal fee: Denied by Board @ 8/28/2014 meeting	UCC	5/19/2014	6/26/2014				Case withdrawn 6/26/2014
MC#2014-5 <span style="color: magenta;">■</span>	Rui Pires	Township of Morris	(Block 6705, Lot 15) Notice of Violation and Order to Terminate dated 5/28/2014, Notice and Order of Penalty dated 5/28/2014 "Finished off garage into room"	UCC	6/9/2014	6/26/2014				Case withdrawn 6/26/2014
MC#2014-6 N/A <span style="color: green;">■</span>	James Standridge	Township of Mine Hill	(Block 1207, Lot 9) Notices issued #14-00030 - 34. Appeal documents dated June 9th, received by Board Secretary on June 12, 2014	UCC		<b>CASE FORWARDED TO SOMERSET COUNTY DUE TO POTENTIAL CONFLICT OF INTEREST</b> -Appeal document package forwarded to Somerset County on 6/12/2014 copying all parties to all appeal.				
MC#2014-6 N/A <span style="color: green;">■</span>	Madsen Restoration & Motorsports LLC	Township of Mine Hill	(Block 1207, Lot 9) Notices issued #14-00030 - 34 dated June 10th. Appeal received from attorney Bernd Hefe, Esq. on behalf of Madsen Restoration and Motorsports LLC (listed as Agent/Contractor on Notices issued by Mine Hill) received by the Board Secretary on June 13, 2014	UCC		<b>CASE FORWARDED TO SOMERSET COUNTY DUE TO POTENTIAL CONFLICT OF INTEREST</b> -Appeal document package forwarded to Somerset County on 6/16/2014 copying all parties to all appeal.				
MC#2014-7 N/A <span style="color: blue;">■</span>	Industrial Tube Corp.	Township of Hillsborough/ Somerset County	Premises: 297 Valley Road "Order to Pay Penalty and Abate Violations" dated 6/11/14	UFC	6/26/14 @ Somerset CBA, 7/11/14 MC CBA inc.	<b>CASE WITHDRAWN BY APPELLANT BEFORE APPEAL FEE, APPLICATION AND HEARING NOTICE WAS ISSUED.</b>				
MC#2014-8 <span style="color: cyan;">■</span>	Morristown Parking Authority	Town of Morristown	(Block 6004, Lot 1, 8, 12 & 16) Denial of plans for Re-programming Fire Alarms at four different locations	UFC	8/21/2014	8/28/2014				Resolution approved @ 9/25/2014 Mtg.
MC#2014-9 <span style="color: magenta;">■</span>	Tucker Kelley	Township of Rockaway	(Block 30505, Lot 13) Stop Construction Order dated 8/22/2014 signed and dated by Denville Twp. CO Sal Poli. "NJAC 5:23-2.31(d) prior approvals, Prior approvals must comply with local zoning ordinances"	UCC	8/25/2014 (Applicant requested a September hearing date)	9/25/2014	10/23/2014	11/20/2014 H/D	12/18/2014 HD#2	Case withdrawn 12/18/2014

**2014 SUMMARY OF APPEALS**

Case#	Appellant	Municipality	Description		Action Taken				
MC#2014-10 ■	Fin Assoc. c/o USLR	Township of Bridgewater Fire Safety Bureau - <b>SOMERSET COUNTY</b>	(Block 303, Lot 8.01) Order to Pay Penalty and Abate Violation issued 8/29/14 "NJAC 5:70-2.12, NJAC 5:70-3 - Violations #1, 2, 3, 6"	UFC	9/23/2014 appellant requested October hearing date	10/23/2014	11/20/2014		Case withdrawn 11/17/2014
MC#2014-11 ■	Damon Rusignola	Borough of Rockaway	(Block 38 Lot 27 Worksite: 138 Franklin Ave.) Notice of Violation & Order to Terminate issued 10/7/14 NJAC 5:23-2.23 (a) "Failure to obtain construction permits, proceeding with work without zoning approval"	UCC	10/16/2014	10/23/2014	11/20/2014	12/18/2014 HD	Case withdrawn 12/10/2014
MC#2014-12 ■	Chuck E Cheese/Thomas Mancuso	Township of East Hanover	(Block 99 Lot 9 Worksite: 145 Rt. 10), Notice and Order of Penalty issued 10/17/14 "Failure to obtain a construction permit - Converted a bathroom into a storage room"	UCC	10/29/14 Incomplete 10/30/14 Completed	11/20/2014			Case withdrawn 11/12/2014
MC#2014-13 ■	H. Lewis & Julie A. Stone	Township of Morris	(Block 9402 Lot 10) Denial of Permit dated 10/21/2014 - Garden Enclosure	UCC	10/31/2014	11/20/2014	12/18/2014		Resolution to be approved @ 1/15/2014 Mtg.
MC#2014-14 N/A ■	David Black	Township of Denville	(Block 61302, Lot 120.01) Rebuilding of stone wall	UCC		<b>CASE WITHDRAWN 11/7/2014 BY APPELLANT BEFORE HEARING NOTICE WAS ISSUED.</b>			
MC#2014-15 ■	Douglas Troast	Township of Pequannock	(Block 1201 Lot 20 Worksite: 164 West Parkway) Notice of Violation and Order to Terminate & Notice & Order of Penalty issued 12/1/14 NJAC 5:23-2.23(a) "Occupying a new single family dwelling without a valid Certificate of Occupancy"	UCC	12/8/2014	12/18/2014	<b>1/15/2015</b>		
MC#2014-16 ■	Danielle Kalb	Township of Parsippany Troy-Hills	(Block 391, Lot 1- Worksite: 3 Green Hill Road) Denial of Permit issued 12/16/14 "Change of Use from previous B use to a proposed 1-A Adult Day Care"	UCC	12/30/2014	<b>1/15/2015</b>			

**UPDATED 12/31/2014et**

- Purple = withdrawn cases
- Blue = resolution issued
- Gray = stayed cases
- Yellow = open cases
- Orange = Dismissed/Settled
- Green = Forwarded to other County CBA Board

- UCC Uniform Construction Code
- UFC Uniform Fire Code
- Escrow Municipal Fees PL 1995
- CASE RETURNED TO APPLICANT BEFORE HEARING NOTICE WAS ISSUED**



**MORRIS COUNTY  
CONSTRUCTION BOARD OF APPEALS**

***RULES OF PROCEDURES***

**BOARD RULES REGARDING FILING OF APPEALS**

Appeals will be considered to be complete when a completed UCC form or similar facsimile thereof is received by the Secretary of the Board with the \$100 filing fee (the fee is waived for failure to act on application for permit N.J.A.C.5:23A-2.1(e)). The appeal document must clearly indicate the action, which aggrieved the appellant. The appellant should provide copies of all pertinent documents to support the appeal.

**Any appellant that is a legally incorporated entity with more than one member or shareholder** must be represented by counsel. The Board recommends that appellants and municipalities be represented by counsel at the hearing. When counsel is required or retained, all correspondence with the Board must be issued through Counsel's office. The Board will not acknowledge other correspondence or requests by parties other than Counsel, where so retained.

In the event of an appeal filed by the contractor or agent and where the outcome of the appeal may require changes to the structure, systems or components, the entity filing the appeal shall, in the absence of the Owner of Record, provide proof, satisfactory to the Board, that the contractor or agent will be allowed access to the property or structure to implement any corrective action or repairs. In the case of a Request for Variation, the Contractor shall provide proof that the Owner of Record is in concurrence with the requested variation.

**Proof of Service** if not on the documents submitted shall be provided by the Local Enforcing Agency with a full copy of the file documents from the Municipality. **For PL 1995 appeals**, the Municipality must forward to the Board a copy of the full record of the application (N.J.A.C.5:23A-2.1c (1)).

**Ten (10) sets of copies** to be used at the hearing should be submitted to the Board within seven days prior to the hearing.

**All documents submitted to the board by either party must be copied to the adversarial party.** (N.J.A.C.5:23A-2.1(d)).

**All documents submitted** shall be in hard copy form, legible, and capable of additional reproduction in standard office equipment. Partial plans and other incomplete documents will not be accepted for use at the hearing.

## **BOARD RULES REGARDING SCHEDULING OF APPEALS AND ADJOURNMENTS**

**Appeals are required to be heard by the Board within ten (10) business days.**

In general the Board has established a schedule of regular meetings held on a monthly basis to hear appeals. The appellant may sign a waiver to permit the hearing to be scheduled beyond the ten day period at a regularly scheduled meeting of the Board. Unless the waiver is granted, the hearing before the Board will be held on a “hear or dismiss” basis within the ten day period.

**Appeals involving the Uniform Construction Code (UCC)** may be adjourned on the request of the Appellant for good reason, provided that there is not a life safety issue involving an occupied building with the outstanding violation notice. The Board may request the Local Enforcing Agency to concur on the request.

**Appeals involving the Uniform Fire Code (UFC)** may be adjourned on the request of the Appellant, for good reason, but only with the written concurrence of the Local Enforcing Agency.

**In the case of an extended stay in a life safety or other matter posing a significant risk to the occupants, employees, visitors or public in general,** the LEA may be requested to initiate an analysis that the continued operation or occupancy with the cited violations outstanding does not constitute an unreviewed safety question.

**Cases will be heard or dismissed at the third hearing scheduled by the Board to hear the appeal** (second request to reschedule the appeal) unless extenuating circumstances can be demonstrated to the Board, or if for any reason the Board is unable to convene a forum of five members. The Board may require an appearance by the parties to address any such requests at the Boards discretion.

**In general, scheduling and notification of hearings will be by formal communication** however where extenuating circumstances exist, telephone and facsimile may be used to notify board members and persons involved in appeals provided that at least 48 hours notice is given (N.J.A.C.5:23A-1.5(a)1).

**Appeals will be scheduled in the order that they had been submitted,** except in cases where an imminent hazard exists. **Imminent hazard cases are heard as a priority,** and the Board may schedule a special hearing to decide the case promptly.

**The Board reserves the right to adjust the hearing schedule at the meeting to accommodate special needs.**

## **BOARD RULES REGARDING WITHDRAWN CASES AND FEES**

**Appeals should be withdrawn prior to 1:00 PM the day of the hearing.** Failure to do so may require the parties to put an appearance on the record as scheduled.

**The Board will only acknowledge a request to withdraw an appeal from the Appellant, authorized agent or Counsel for the Appellant.**

## **CONDUCT OF HEARING**

### **5:23A — 2.2 Hearing Procedures**

**The hearing will begin with the Chairperson making opening remarks regarding:**

Statute under which the appeal is being brought

The nature of the appeal

The date of the action appealed from

The basis of the appeal

**The Chairperson** may request motions from the parties to the appeal regarding timeliness of the filing if it is unclear that the appeal was filed within the time limits prescribed by the regulations.

**The Chairperson** will request an affirmation from the parties to the appeal that the matter is not being addressed in any other forum or jurisdiction.

**Municipal Enforcing Agency and Appellant** will present all witnesses who may give evidence at the hearing. Witnesses to be sworn in.

**Opening Statement:** Representative of the enforcing agency, the municipality, or the professional hired by the municipality or municipal agency, shall explain the basis for the action, ruling, order, notice or fee.

**Opening Statement:** The appellant, or his or her representative, shall then present the basis for his or her disagreement.

**Municipal Enforcing Agency** will then present their witnesses to testify, who will then be cross examined by the appellant and then by the Board in the order of presentation.

**Appellant** will then present his or her witnesses to testify, who will then be cross examined by the Municipal Enforcing Agency and then by the Board in the order of presentation.

**Municipal Enforcing Agency** will present closing argument. Since the Board has just heard the case, this is intended to highlight areas and may be waived.

**Appellant** will present closing argument. Since Board has just heard the case, this is intended to highlight areas and may be waived.

There will be open discussion by the Board. In general the parties will not be allowed to provide additional testimony, comments or discussion regarding the Board's discussion, except for extenuating cases where the Board seeks additional information.

The Board will by motion, approved by a majority of the quorum, decide to uphold, modify, or reverse the action by the municipal official or provide any other decision as permitted by the regulations.

All questions concerning the presentation of evidence will be ruled upon by the chair. Evidence will be liberally construed; however, all evidence must be relevant. Hearsay evidence will not be admitted nor will documents unique to the appeal unless the authority who prepared the document is presented and sworn in as a witness.

Robert's Rules of Order will control the procedures. The Board's attorney will advise the Board or the chair on any legal procedures and is to render advice to the Board and to the chair and is not available to give advice to either appellant or the respondent on procedures.

The Board will draft a resolution to be voted upon at the next meeting when sufficient members are present to act on the resolution.

The Board's attorney may prepare the resolution as directed by the Board. In the event that the Board prepares the resolution, the Board's Attorney shall review and advise the Board of the adequacy of the resolution prior to the Board's adoption of same.

The Board's attorney shall, in his discretion, defend or prosecute any litigation, which may occur after a meeting of the Board and prior to the next meeting of the Board.

All applicable federal and state statutes and administrative code provisions shall govern the Board's action. This Rules of Procedure embrace the regulations that govern the Board's, and add local rules as required by the Board. In the case of conflicts, the Regulations take precedence over local rules.

The Board shall comply with N.J.S.A 10:4-8 (Open Public Meeting Act) and N.J.A.C 5:23A as well as all other applicable statutes when setting meeting dates.

The Board reserves the right to relax any of these rules as deemed appropriate.

## **MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS**

Municipalities

Represented (38)

Florham Park excluded

	2011	2012	2013	2014
Boonton				
Boonton Twp.				
Butler	1			
Chatham				
Chatham Borough	1			
Chester				
Chester Borough				
Denville			1	
Dover	1			
East Hanover	2	1	1	1
Hanover	1	1		
Harding				
Jefferson				
Kinnelon				
Lincoln Park		1		
Long Hill	2			
Madison	1	1		
Mendham				
Mendham Borough				
Mine Hill			1	2
Montville	1			
Morris Plains		1		
Morris Twp.	1	1	2	2
Morristown	5	1	1	1
Mt. Arlington				
Mt. Olive	1	1		
Mountain Lakes				
Netcong				
Parsippany-Troy Hills	3	1	2	3
Pequannock	1		2	2
Randolph	4	2		
Riverdale				
Rockaway		1	1	1
Rockaway Twp.		2	1	1
Roxbury				
Victory Gardens				
Washington	1			
Wharton			1	1
<i>Essex County</i>				
<i>Somerset County</i>	1		2	2
<i>Sussex County</i>				
<i>Warren County</i>	1			
<i>Passaic County</i>				

**TOTAL CASES:  
FILED**

**28**

**14**

**15**

**16**