

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS  
MINUTES**

Thursday May 25, 2023 – 4:00 P.M.  
Webex Video Meeting

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:** Kimberly Hurley, Timothy Braden (2)

**ABSENT:** Nick Marucci, Harold Endean (2)

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

**APPROVAL OF MINUTES:** Draft minutes of the meeting held on January 18, 2023, previously distributed and unanimously approved as submitted.

**APPROVAL OF RESOLUTIONS:** None

**CASE TO BE HEARD:** MC#2023-6, Morris Blue/CoHome, 42-46 Miller Road, Block 7301, Lot 2.02, Morristown, NJ v Town of Morristown

*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, Morris Blue / CoHome - Nathaniel Diskint, Executive Director and Amy Herrera, Esq., General Counsel

Appearing on behalf of the Town of Morristown, Frank J. Dyevoich, Esq  
2 Witnesses – Town of Morristown - Brian Mulligan, Construction Official and James Campbell, Administrative Officer for the Zoning Board of Adjustment

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	Description
M-1	Certificate of Habitability
M-2	Original Drawing
M-3	Revised Drawing
M-4	Violation V-22-0089
M-5	Violation V-22-0090
M-6	2021 IBC NJ Edition Code Section 310.5
M-7	Construction Code “Communicator Group Home-Use and Classification-Updated”-Fall 2022
M-8	NJ UCC Bulletin 15-3
M-9	Email Thread-Morristown and CoHome-Re-Use Group Classification
M-10	Violation V-23-0020
M-11	Violation V-23-0021
M-12	Affidavit from Mr. Diskint
M-13	NJ UCC Bulletin 04-02
M-14	Memorializing Resolution Morristown Board of Adjustment, Memorialized March 1, 2023
M-15	Print out of CoHome’s website
M-16	Timeline of Chronological events for CoHome
M-17	Proof of Service for mailing of violations
M-18	Acknowledgement of violations receipt via email from Ms. Herrera
M-19	New Jersey Department of Human Services, Division of Mental Health and Addiction Services, definition of Oxford House
M-20	Current Directory of New Jersey Oxford Houses via Oxfordhouse.org
M-21	N.J.S.A. § 30:11B-2 – Definitions for New Jersey Statutes on Community Residences for the Developmentally Disabled
M-22	N.J.S.A. § 30:11B-3 – Requirement to provide assistance in self-care
M-23	N.J.A.C. § 10:44A-1.3 – Definitions for New Jersey Administrative Code on Standards for Community Residences for Individuals with Developmental Disabilities
M-24	N.J.A.C. § 10:44A-6.2 – Emergency Evacuation Plans requirement enumerated in New Jersey Administrative Code on Standards For Community Residences for Individuals with Developmental Disabilities

Appellant’s Exhibits

Exhibit	Description
A-A	Notice and Order of Penalty – V-23-00020 (2 Pages)
A-B	Notice and Order of Penalty – V-23-00021 (2 Pages)
A-C	Construction Code Communicator Vol. 34 No. 3 Fall 2022 Pages 15 &16
A-D	NJ DCA Bulletin 04-2; SUBJECT: Oxford House (2 Pages)
A-E	Sworn Affidavit of Nathaniel Diskint (3 Pages)

This matter was heard, Thursday May 25, 2023, at 4:00 PM, via Webex videoconference. 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/witness.

Mr. Dyevoich introduced his witness, Brian Mulligan, Construction Official for the Town of Morristown since September 2021. Mr. Dyevoich introduced Municipal Exhibits M-10 and M-11 for review and identification by Mr. Mulligan as Violation# V-23-00020 and Violation# V-23-00021, further described as Notice and Order of Penalty, N.J.A.C. 5:23-2.23 (f) Changing the Use of a Building Without Approval (from an R-5 to an R-4). N.J.A.C. 5:23-2.3 Occupying a Building Without a Certificate of Occupancy.

Mr. Dyevoich questioned Mr. Mulligan regarding any past experiences with either the property address and/or Mr. Diskint that would cause him (Mr. Mulligan) to be less objective and/or stricter with Mr. Diskint than any other resident of the Town of Morristown. Mr. Mulligan denied any past experience with the property or Mr. Diskint that would suggest he was less objective or stricter in this case.

Mr. Dyevoich continued his examination of Mr. Mulligan with questions regarding how he came to suspect that the property may have violations of the UCC. Mr. Mulligan explained that at some time around September of 2022, he was reviewing a revised drawing of a permitted project (carriage house for storage only) and noted that the drawing listed the space as a, "community room." Mr. Mulligan testified that he decided to visit the property and found rough plumbing for a kitchen and bath, resulting in his issuance of a Stop Work Order, along with a Notice of Penalty for performing work without a permit.

Mr. Dyevoich continued his direct examination of Mr. Mulligan with the use of Municipal Exhibits 6, 21, 23, 7, 12, 13, 19 and 20 to support the Town's belief that the property was functioning as a Group Home, with caregivers (custodial care), for persons with developmental disabilities and not as a single-family dwelling.

Upon cross examination of Mr. Mulligan, Ms. Amy Herrera revisited his testimony regarding his understanding of when the use group may have changed from an R-5 to an R-4 classification and specifically what would make the use group non-compliant as an R-5. Mr. Mulligan stated that he had no information prior to September of 2022. Mr. Mulligan added that the number of residents with disabilities living in the home, either greater than or less than six, would still require code compliance for a group home. Ms. Herrera, reminded Mr. Mulligan that although he had not met any of the residents, he had been invited to the home, and declined the offer. Ms. Herrera further questioned Mr. Mulligan as to whether or not he believes that all individuals who have intellectual or developmental disabilities, also have psychiatric or mental complications. Mr. Mulligan clarified that he is not a doctor but that he spent a lot of time on the definition of mental as being a mind complication as it relates to the building code.

Mr. Dyevoich's redirect examination of Mr. Mulligan began with Exhibit-13, NJ UCC Bulletin 04-02, relative to the anti-discrimination language of paragraph three, and Mr. Mulligan's understanding of the language by contrast to that of Ms. Herrera's understanding. Mr. Mulligan stated that you cannot discriminate against having an Oxford House in a residential area and must be capable of prompt evacuation if fewer than 16 residents. Mr. Dyevoich asked Mr. Mulligan if the Bulletin mentions a home without signifying that the home is sponsored by Oxford House with regard to this exception and Mr. Mulligan confirmed that that the Bulletin does specify homes sponsored by Oxford Homes Inc.

Ms. Herrera presented the Appellant's case by way of an introduction of what CoHome is and provided context to the Exhibits that were presented by the Town of Morristown. Ms. Herrera explained that CoHome is a nonprofit that provides family style housing for adults with disabilities who want to live with

their peers. As explained by Ms. Herrera, Co-living is a rapidly growing movement among those tired of living alone and are seeking companionship and intention in their lives, with many of CoHome’s residents who previously lived independently in Morristown and experienced the stigma associated with adults with disabilities. Further, Ms. Herrera stated her belief that this appeal is because of the stigma associated with the belief, by some, that these adults cannot live independently.

Ms. Herrera stated that the false assumptions made by the Town of Morristown violates the rights of the residents under Federal law, by comparison to other protected groups. Ms. Herrera explained that while she understands there may be well intentioned people, concerned about a vulnerable population, they do more harm than good when they fail to appreciate the wide spectrum of adults with disabilities.

The violations issued by the Town of Morristown, in Ms. Herrera’s opinion, falsely state the change of use from an R-5 to an R-4 and incorrectly characterize the residence as a group home. More specifically, Ms. Herrera explained that Co-Home is a group of individuals who have chosen intentionally, to live together as a family and share chores, meals, decisions, activities etc.. The residents come and go as they please and are responsible for their own schedules.

Ms. Herrera dismissed each of the Town’s Exhibits relied upon to suggest that Co-Home is a group home, or in any manner, in violation of the code and asked that the Board honor these residents, not as victims of their disabilities, but rather as active agents of their own lives, having independently chosen to live together and should not be held to a different standard because of their disabilities.

Mr. Dyevoich, through his cross examination of Ms. Herrera and Mr. Diskint, questioned their understanding and definitions of various disabilities and relied on New Jersey Administrative Code on Standards for Community Residences for Individuals with Developmental Disabilities to illustrate the Town’s belief that Co-Home is an R-4 group home with residents who require assistance with daily care.

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.

The Board heard testimony from both parties and after a lengthy discussion, Chairman Theodore Maglione, made a motion to affirm the enforcement agency’s Notice of Violation and Order, dated April 17, 2023, 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, by a majority vote, affirmed the enforcing agency decision as shown on the voting record below:

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

<b>Keith Lynch - Regular Member</b> Certified Fire Official, Fire Protection Subcode Official, Construction Official, Electrical Contractor, Electrical Insp. HHS, Building Subcode Official/Insp. HHS	✓			
<b>Sean Donlon – Regular Member</b> , Construction Official, Building Subcode Official/Insp. HHS/ICS/RCS, Housing Code Official, Insp. Hotels & Multiple dwellings	✓			
<b>Kimberly Hurley - Alternate</b> Licensed Architect		✓		

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

**MC#2023-3**, JDM Property Holdings LLC, 199 Pomeroy Road, Block 737, Lot 3.1, Parsippany, NJ v Parsippany-Troy Hills, NJ (**Hear or Dismiss 6/22/23**)

**MC#2023-4**, Patricia Strata, 59 Park Road, Block 193, Lot 4, Parsippany, NJ v Parsippany-Troy Hills, NJ

**MC#2023-5**, Venture X Parsippany, 8 Campus Way 105, Parsippany NJ v Parsippany-Troy Hills, NJ

**MC#2023-7**, Marble Hill Condo Assoc., 835 Belvidere Rd, Lopatcong, NJ v Lopatcong, Twp., NJ  
(**Transfer from Warren County – Accepted 5/23/23**)

**CASE WITHDRAWN:**

**MC#2023-1**, George Street Commons, LLC, 9 George Street, Block 2202, Lot 2, Morristown, NJ v Town of Morristown, NJ (Withdrawn January 25, 2023)

**MC#2023-2**, Werum Software System, 5 Sylvan Way, Block 202, Lot 4.3, Parsippany, NJ v Township of Parsippany-Troy Hills, NJ (Withdrawn April 20, 2023)

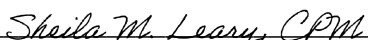
**CORRESPONDENCE:** Budget \$4,141.93

**OLD BUSINESS:** Alternate Position vacancy – Commissioner Shaw

**NEW BUSINESS:** Proposed - New CBA Application Form, previously distributed and unanimously approved as amended.

**NEXT MEETING:** Regular Meeting June 22, 2023

**ADJOURN:** On motion duly made by Chairman Theodore Maglione, and seconded by Vice Chairman Jeffrey Betz, the meeting adjourned at 7:30 P.M.

  
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Sheila M. Leary, CPM  
Board Secretary