

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Thursday, June 30, 2022 – 7:00 P.M.
Webex Video 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)
John Kostrowski, Jr., Sean Donlon

Alternate Members: Harold Endean, Timothy Braden (2)

ABSENT: Keith Lynch, Kimberly Hurley, Nick Marucci (3)

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

APPROVAL OF MINUTES: Draft minutes of the meetings held on April 28, 2022, were previously distributed. The Board unanimously approved the minutes as submitted.

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, (6)
John Kostrowski, Jr., Sean Donlon, Timothy Braden, Harold Endean

NO: None (0)

NOT VOTING: Keith Lynch, Kimberly Hurley, Nick Marucci (3)

APPROVAL OF RESOLUTIONS: None

CASES TO BE HEARD:

MC#2022-4 Tesla Energy Operations Inc., 1 Chapin Rd., Unit #4, Pine Brook, NJ 07058
(worksite:8 Baer Ct., Morristown, NJ 07960, Bock 2601, Lot 29) v Morris Twp., NJ

Appearances:

Appellant, Felix Alberto
Witness, Nicholas (Tesla)
Municipal Attorney for Morris Township, Gregory Emond, Esq.
Witness - Gregory Chontow – Morris Township Electrical Inspector

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.

The Morris County Construction Board of Appeals (hereinafter, “Board”) received and accepted the appeal filed by Appellants, Tesla Energy Operations Inc on April 19, 2022.

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

Appellant, Felix Alberto
Witness - Nicholas Meyer (Tesla)

Municipal Attorney for Morris Township, Gregory Emond, Esq.
Witness - Gregory Chontow – Morris Township Electrical Inspector

The Board considered the following documents, stipulated to by both Mr. Alberto and Mr. Emond, that were previously received by the Board Secretary and distributed to the Board members, constitute the record:

Appellant Exhibits

Original Filing Documents

- Application to the Morris County Construction Board of Appeals
- Correspondence to the Morris County Construction Board of Appeals RE: No Need For Fire Rated Wall Around Tesla Batteries
- Correspondence to the Morris County Construction Board of Appeals RE: Explanation for Delayed Filing
- Email from Scott Borsos, DCA – 3/31/22 to Felix Alberto
- Section R327 – Stationary Storage Battery Systems
- Code Communicator Article – Volume 33, Number 1, Spring 2021
- Denial of Permit – 21-2057
- Filing Fee – Check No. 794484 - \$100.00
- Permit Application
- Construction Inspection – Permit Number 21-2057
- Construction Inspection – Permit Number 21-2057A

Municipal Exhibits

- Cover letter – June 23, 2022 - Gregory Emond, Esq.
- **Exhibit A**-Section R327 of the 2018 International Residential Code;
- **Exhibit B**-Flow Chart for the Installation of Stationary Storage Battery Systems;
- **Exhibit C**-UL9540 2nd Edition Chapter(s) 1; 23; and 42;
- **Exhibit D**-National Fire Protection Association NFPA 855 Chapter 15; and
- **Exhibit E**-N.J.A.C. 5:23-3.6

Concerning the installation of battery storage units (ESS) at 8 Baer Court, Morristown, NJ 07960, the municipal electrical inspector, Gregory Chontow, denied final installation approval for the ESS system due to the installation not following the requirements of UL 9540 second edition, latest version. The latest version contains requirements for NFPA 855 among others. Since the fire protection requirements of NFPA 855 were not followed the installation was not approved.

The Appellant, Felix Alberto, was of the opinion that UL 9540 - 14, the original edition, was the controlling requirement. This original edition does not contain the reference to NFPA 855 and therefore the fire protection requirements are not valid.

The Board heard testimony from both parties and questioned both parties concerning the applicability of both versions of UL 9540 and neither party presented documentation regarding the manufacturer's instructions or UL9540 and UL 9540A. After a lengthy discussion John Kostrowski, Jr. made a motion to affirm the municipality's determination that UL 9540 second edition was the controlling installation requirement and Chairman Ted Maglione seconded the motion. A vote was taken of the five (5) voting Board members with two (2) Board members voting in favor of the motion and three (3) Board members opposing the motion.

The motion was defeated, and UL 9540 -14 was found to be the controlling installation requirement, and the additional installation requirements which the municipality sought to require under UL 9540 second edition were found to be not applicable. The Morris County Construction Board reversed the decision of the enforcement agency.

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

MC#2022-5 Host Realty Hotel, LLC % Ryan LLC d/b/a Sheraton Parsippany (worksite: 199 Smith Rd, Parsippany, NJ 07054, Bock 735, Lot 3) v Twp. of Parsippany, NJ

CASE(S) WITHDRAWN:

MC#2022-2 NVR Inc., d/b/a Ryan Homes (worksite 8 Swackhammer Way, Budd Lake, NJ 07836, Block 4100, Lot 80) v Mount Olive Township, NJ

MC#2022-6 Robert Praisner, DMD (worksite 55 Collis Lane, Chester, NJ 07930) v Mount Olive Township, NJ

CORRESPONDENCE:

- Budget Balance as of April 28, 2022 = \$3,441.93

OLD BUSINESS: Chairman Maglione discussed the Imminent Hazards statute as it relates to enacting the Board's procedures and protocols, and only after the municipality presents the matter explicitly stated as an imminent hazard. Vice Chairman Betz expressed concern in postponing an appeal while balancing the responsibility of ensuring the safety of the community. Vice Chairman Betz offered to the Board a future presentation as to what the Fire Service's concerns are with regard to topics of that nature.

NEW BUSINESS: NONE

NEXT MEETING: Special Meeting TBA for the purpose of approving the Resolution resulting from the hearing of MC#2022-4 Tesla Energy Operations, Inc. v Morris Township. Next regularly scheduled meeting is July 28, 2022.

ADJOURN: On motion duly made by John Kostrowski, Jr. and seconded by Vice Chairman Jeffrey Betz, the meeting adjourned at 8:46 P.M.

Sheila M. Leary, CPM

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Board Secretary