

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Monday, July 28, 2022 – 7:00 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: Herold Endean, Timothy Braden (2)

ABSENT: Kimberly Hurley, Nick Marucci (2)

ALSO PRESENT: Staci L. Santucci, Esq., Assistant County Counsel
Sheila M. Leary, CPM, Board Secretary
Shelly Burd, Administrative Exec. Assistant
Commissioner Stephen H. Shaw

APPROVAL OF MINUTES: Draft minutes of the meetings held on June 30, 2022, and July 18, 2022, were previously distributed and unanimously approved as submitted

APPROVAL OF RESOLUTIONS: None

CASE TO BE HEARD:

MC#2022-7 MJZ LLC (worksite 172 Smithtown Rd, Mount Olive Twp., Block 900, Lot 49) v Twp. of Mount Olive

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, MJZ LLC, on June 28, 2022.

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

Appearances:

Appellant, MJZ LLC; Lawrence P. Cohen, Esq.
Witnesses, Joseph Zaccarino; Frank Holzworth
Municipal Attorney for Mount Olive, Jonathan Testa, Esq.
Witness – Frank Baguiao – Mount Olive Construction Official; Colin Baker, Fire Sub-Code Official

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

Appellant Exhibits

1. Building Permit
2. Application for Certificate of Occupancy with Final Plumbing and Health Approvals
3. Bill for Electrical Contractor, Including Electric Heat Installation, dated 01/28/80
4. Construction Permit, dated 10/01/13
5. Plan/ Construction Plan for Reinforcement of Foundation
6. Letter from Construction Company Delivered to Construction Code Official, dated 11/08/21
7. 2021 Incomplete Permit Application Received from Testa
8. Cohen Correspondence to Construction Code Official Baguiao, dated 11/24/21
9. Notice and Order of Penalty, dated 10/26/21

Municipal Exhibits

1. Notice and Order of Penalty dated October 26, 2021.
2. Copy of N.J.A.C. 5:23-2.14
3. Blank Sticker received from Appellant
4. Correspondence from Construction Official, dated November 24, 2021
5. Correspondence from Construction Official, dated December 17, 2021
6. April 20, 2022 Photographs of subject property depicting violations
7. Storage Building Plan for Frank Holzworth– June 1978; Revised October 1978

Jonathan Testa, Esq., appearing on behalf of Mount Olive, began his remarks on the record by noting the untimely filing of the appeal which requires the appeal to be filed within 15 days of the issuance of the violation. Chairman Maglione explained that the appeal was accepted as timely due to a communication misunderstanding and document tracking.

Mr. Testa called his first witness, Frank Baguiao, Construction Official for Mount Olive Township, who confirmed the issuance of the subject, Notice and Order of Penalty, dated 10/26/21. Mr. Baguiao testified that the basis of the inspection was information received regarding a business being operated at the property without the requisite approval and construction without permits. An inspection of the property was conducted by Mr. Baguiao, Fire Marshal Marc Muccione and Fire Sub-Code Official Colin Baker, on 10/21/21. Violations were issued based on the findings of the inspection. Exhibits 1, 3, 4, 5, 6 (photos 1, 2, 4, 5, 6, 9, 11, 12, 14) and exhibit 7 were referenced to illustrate the violations and other findings of the inspection.

Lawrence P. Cohen, Esq., appearing on behalf of the Appellant, MJZ, LLC, cross examined Mr. Baguiao regarding his testimony and established that, subsequent to the issuance of the Notice and Order of Penalty, Mr. Baguiao had met with Mr. Cohen and witnesses, Joseph Zaccarino and Frank Holzworth, in Mr. Baguiao's office November 5, 2021, regarding the violations and the steps necessary to address the matter. Mr. Cohen questioned Mr. Baguiao regarding the contents of the property file which did not contain Appellant's Exhibit 1 (Township of Mount Olive Building Permit, dated July 16, 1979, issued by Building Inspector, Philip Walski). Mr. Baguiao admitted that the permit was provided to him by the current property owner, Mr. Zaccarino, at the time of their meeting. Mr. Baguiao denied telling Mr. Zaccarino that other documents and files were missing from the construction department for years. Mr. Baguiao confirmed that he did not amend the violation subsequent to the production of the building permit and the 1980 Certificate of Occupancy.

A brief discussion among the Board members regarding transcripts of a municipal zoning matter, concerns regarding work that may or may not have been done on the property, as well as an incomplete property file/record, was followed by the continuation of Mr. Cohen's cross examination of Mr. Baguiao. Mr. Cohen referenced Municipal Exhibits 4 and 5 to clarify Mr. Baguiao's understanding of the events associated with the dates of the correspondences to Mr. Cohen and Mr. Zaccarino on November 24, 2021, and December 17, 2021, respectively.

Mr. Cohen concluded his cross examination with questions regarding Mr. Baguiao's understanding of the 1980 laws relating to fuel tanks and permitting authorities at that time.

Final procedural comments regarding the transcripts of the municipal trial (on appeal) were exchanged between the parties.

The matter will be continued to the next meeting date.

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

MC#2022-9 WCGP LLC (worksite 10 DeHart St., Morristown, NJ, Block 6101, Lot 11) v Town of Morristown

CASE(S) WITHDRAWN:

MC#2022-8 40-91 Fox Hill Drive LLC (worksite Fox Hill Dr., Bldg. 1, Block 406, Lot 1) v. Town of Dover (withdrawn July 21, 2022)

CORRESPONDENCE: None

OLD BUSINESS: None

NEW BUSINESS: None

NEXT MEETING: August 25, 2022.

ADJOURN: On motion duly made by Board member John Kostrowski, Jr., and seconded by Chairman Theodore Maglione, the meeting adjourned at 10:46 P.M.

Sheila M. Leary, CPM

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Board Secretary