

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Tuesday August 22, 2023 – 6:00 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 (1)

ABSENT: Harold Endean, Timothy Braden, (2)

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

APPROVAL OF MINUTES: Draft minutes of the meeting held on July 27, 2023, previously distributed and unanimously approved as amended.

APPROVAL OF RESOLUTION:

CASE TO BE HEARD:

MC#2023-8, Egbert Whitney Residence, LLC, (25 Egbert Avenue, Morris Township, Block 3103, Lot 27) v Morris Township, New Jersey

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, Andrew DeLaney, Esq.
Witnesses: Brad Conway, Authorized Representative of the LLC

Appearing on behalf of Morris Township, Lisa Thompson, Esq.
Witnesses: Albert Mastrobattista, Construction Official/Building Inspector for Morris Township, NJ

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

Exhibits	Description
A	Photo – Fence in disrepair
B	Photo – Pool cover with standing water
C	Photo - Break in fence
D	Photo – Back yard elevation
E	Photo – End of fence
F	Photo – Railroad ties
G	Photo – Pile of dirt and debris
H	Photo – Pile of dirt and debris
I	Photo – Open pathway to pool
J	Photo – Main entrance to pool
K	Photo – Gap in fence
L	Photo – Areas of fence knocked down

Appellant Exhibits

Exhibits	Description
A	Notice of Unsafe Structure – Violation V-23-00052
B	Photo – Chain Link Fence w/lock
C1	Photo - Pool Area – Pool Cover
C2	Photo - Pool Area – Pool Cover w/ladder to the Right
C3	Photo - Pool Area – Pool Cover w/hose to the lower Left
C4	Photo - Pool Area – Pool Cover Close-up with Grommets

This matter was heard, Tuesday, August 22, 2023, at 6:00 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 witness. Thereafter, the Appellant would present their case and the Municipality would likewise be provided an opportunity to cross examine the Appellant/witness.

Regarding the Notice of Unsafe Structure, Chairman Theodore Maglione requested a discussion among the Board members prior to the Municipality’s presentation of their case. Specifically, the language and reference to a, “barrier,” under the Pool/Spa Code, and its relationship between the pool, cover and fencing. The Board members concluded this discussion in agreement that the “barrier” is part of the “pool structure.”

Ms. Thompson introduced her witness, Albert Mastrobattista, Construction Official/Building Inspector for Morris Township, and asked Mr. Mastrobattista to confirm that the Notice of Unsafe Structure was issued on July 18, 2023, due to the insufficient fencing around the pool area. Ms. Thompson stated that this matter is simple and the violation is seen in Municipal Exhibits A – L, and confirms the Township’s position that barrier/fence is insufficient and in violation of the Code.

Mr. DeLaney cross examined Mr. Mastrobattista and established that the Notice of Unsafe Structure failed to state where the fence was missing a section(s). Mr. DeLaney further clarified that it is not the opinion of Mr. Mastrobattista that the pool should be demolished. Mr. Mastrobattista stated that there would not have been a Notice issued if there had not been missing fence sections.

Upon direct examination, Mr. DeLaney established that Mr. Conway is the authorized representative of the LLC and familiar with the Notice of Unsafe Structure, dated July 18, 2023. Mr. Conway explained that the property has several hundred feet of chain link fencing, 4 feet high, with two locked gates (Exhibit M-B) that cannot be accessed by a toddler. Mr. Conway stated that in preparation for the hearing, he walked the entire perimeter of the fencing and identified a “gap” of 5-6 feet behind a shed and due to the topography, a vertical retaining wall,

made of railroad ties, creates an elevation, 8 feet tall, that could not be characterized as an attractive nuisance.

Mr. DeLaney concluded his direct examination by asking Mr. Conway whether or not he would have closed any/all gap(s) if the Township had been specific in their Notice. Mr. Conway stated that, with sufficient time to contract a fence company willing to do the job, he would have done it.

Ms. Thompson cross examined Mr. Conway who confirmed that he did find the gap, that in 25 years of owning the property, he never knew was there. Mr. Conway further explained that he thought the Notice of Unsafe Structure was related to the pool cover.

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, concluded that the evidence confirms that an immanent hazard exists with the insufficient pool fencing/barrier. Member John Kostrowski, Jr., made a motion to affirm the enforcement agency’s Notice of Unsafe Structure, N.J.A.C. 5:23-2.32(a)2, dated July 18, 2023, with Keith Lynch, 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 unanimous vote, affirmed the enforcing agency’s Notice of Unsafe Structure and due to the immanent hazard, ordered the repair/replacement to be completed within 30 days, as shown on the voting record below:

<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	✓			
Jeffrey Betz, Vice Chairman Certified Fire Official, Fire Protection Subcode Official, Construction Official, Building Inspector – RCS, Fire Protection Inspector HHS, Housing Code Official, Inspector Hotels & Multiple dwellings	✓			
John Kostrowski, Jr., - Regular Member Master Plumber, Plumbing Subcode Official/Insp. ICS/HHS, Construction Official, Building Inspector RCS/ICS	✓			
Keith Lynch - Regular Member Certified Fire Official, Fire Protection Subcode Official, Construction Official, Electrical Contractor, Electrical Insp. HHS, Building Subcode Official/Insp. HHS	✓			
Sean Donlon – Regular Member , Construction Official, Building Subcode Official/Insp. HHS/ICS/RCS, Housing Code Official, Insp. Hotels & Multiple dwellings	✓			

CASE(S) POSTPONED

CASE WITHDRAWN:

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

CORRESPONDENCE: Budget \$4,095.93

OLD BUSINESS:

NEW BUSINESS

NEXT MEETING: Special Meeting August 31, 2023, at 12:00 P.M.

ADJOURN: On motion duly made by John Kostrowski, Jr., and seconded by Kimberly Hurley, the meeting adjourned at 7:50 P.M.

Sheila M. Leary, CPM

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Board Secretary