

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Thursday, April 22, 2021 - 3 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., Keith Lynch

Alternate Members: Timothy Braden, Sean Donlon, Kimberly Hurley, Nick Marucci (4)

ABSENT: Herold Endean (1)

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

APPROVAL OF MINUTES:

Minutes of the meeting held on March 25, 2021 were previously distributed. Chairman Ted Maglione made a motion to approve the minutes as submitted. Alternate Member Kimberly A. Hurley, seconded the motion. The Board approved the minutes as submitted unanimously.

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, (8)
John Kostrowski, Jr., Keith Lynch, Sean Donlon, Nick Marucci

NO: None (0)

NOT VOTING: Harold Endean (1)

APPROVAL OF RESOLUTIONS: Morris County Construction Board of Appeals Resolution 2021-3, for approval of the matter heard and decided by the Board on March 25, 2021, was previously distributed. MC#2020-10, Michael Battista (529 Waterfront Properties LP – BOA 6-20) v. Harding Township – Escrow Appeal. Jeffrey Betz made a motion to approve the resolution. John Kostrowski Jr., seconded the motion. The Board approved the resolution as submitted by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, (5)
John Kostrowski, Jr., Keith Lynch, Nick Marucci

NO: None (0)

CASE TO BE HEARD:

MC#2021-1, Randy & Sherri Bahr (1163 Orchard Dr., Block 145.03, Lot 17) v. Hillsborough Township

Appearances:

Appellants – Randy & Sherri Bahr
William Willard, Esq., Municipal Attorney for Hillsborough Township
Richard B. Perlman, Building Subcode Official for Hillsborough Township

Witness were sworn in by Assistant County Counsel, Staci L. Santucci, Esq., and the parties agreed to the suggested stipulation of the exhibits. Chairman Maglione explained the hearing process and order of procedure to the parties.

The Board considered the following documents that were previously received by the Board Secretary and distributed to the Board members, constitute the record:

A-1 Randy Bahr Letter “We were issued...”

A-2 New Jersey Admin Code | PAW Document Page

A-3 Application to the CBA12/22/20

A-4 Cross Section for Review

M-1 Cover letter to the Board of Appeals

M-2 Page 1 -Application Jacket – Construction Permit and
Page 2 -Certification in lieu of oath

M-3 Floor Plan for Review

M-4 Cross Section for Review

M-5 Required Inspection Checklist – Given with Permit

M-6 Page 1 - Violation No Insulation Inspection
Page 2 – Signature Page

M-7 Violation Enforcement Details

M-8 Explanation Letter (12/10/20) from John Felder

M-9 UCC N.J.A.C. 5:23-6.6(e) 17

M-10 2018 IECC Code – Table R402.1.2 Insulation and Fenestration Requirements by Component

M-11 Volume 30 Number 1 Spring 2018 Code Communicator – Page 10

M-12 Volume 30 Number 1 Spring 2018 Code Communicator – Page 4

M-13 For Use in Rehab 2015 IECC Part IV – Energy Conservation International Residential Code
Jersey Edition - Page 423

M-14 2018 IECC International Residential Code – Jersey Edition - Page 441

M-15 Conflict Letter (1/29/21)

M-16 Owners Letter (11/15/2)

M-17 Owners Letter “I was given a violation....”

Richard Perlman, Building Subcode Official for Hillsborough Township, presented his case and relied upon the stipulated municipal exhibits in support of the issuance of the construction violation, for failure to call for a required (insulation) inspection. Mr. Perlman explained that other than the failure to install insulation, his review of the plans, inspection/documents, appeared to be appropriate.

Chairman Maglione inquired as to whether or not an alternative solution was offered to Mr. Bahr. Mr. Perlman confirmed that an alternative product, Fan-in-a-Can (combustion air system) was suggested due to the language in the code, “indirectly heated or cooled.” Mr. Perlman explained that this method would ensure they were no longer directly or indirectly heating or cooling the space.

Chairman Maglione asked Mr. Bahr if he had any questions for Mr. Perlman and Mr. Bahr indicated he did not. Mr. Bahr stated that he had never seen Municipal Exhibit #15 (Conflict Letter dated 1/29/21), and the contents were not accurate. Mr. Bahr explained that he had never intended to insulate his basement as he understood that the work he was doing was cosmetic in nature.

Mr. Bahr referenced Appellants Exhibit #2 (New Jersey Admin Code | PAW Document Page); we simply did not perform any work that would have created a conditioned space, directly or indirectly and did nothing with the HVAC system.

In response to Mr. Bahr’s presentation, Mr. Perlman explained how the rehab code directs the reader to the energy code and specifically the author’s (Rob Austin) reference to the thermal envelop in Municipal Exhibit #11.

Chairman Maglione inquired as to the scope/amount of the basement involved in the drywall project and whether or not Mr. Bahr was interested in creating a conditioned space as a potential solution. Br. Bahr indicated that he was not interested in the additional expense as it would not benefit him as the homeowner.

Discussion with the Board members continued with an exchange between Mr. Braden and Mr. Perlman regarding Mr. Austin and whether or not Mr. Perlman had contacted Mr. Austin for clarification of the information relied upon in Municipal Exhibit #11. Mr. Perlman responded that he not contacted him specifically about this matter. Mr. Braden continued with questions regarding the Mr. Perlman’s understanding of the factors of an unconditional space, i.e. no AC or Heat – would this necessarily be unconditioned space. Mr. Perlman indicated this would be unconditioned space if it was isolated.

Board member Keith Lynch inquired as to whether or not the basement ceiling was insulated and if not, why would Mr. Bahr be required to insulate elsewhere in the same space. Member Kimberly A. Hurley inquired of Mr. Perlman as to the potential of a variance for the homeowner to consider. Member John Kostrowski, Jr. continued the discussion with regard to the ductwork and the logic of requiring insulation given the facts of this matter and the mere presence of ductwork does not render a space conditioned and therefore not under the jurisdiction of the energy code relied upon by Mr. Perlman.

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; and

NOW, THEREFORE BE IT RESOLVED that the Board, by motion of Member Keith Lynch in favor of the Appellants, Randy & Sherri Bahr, reverse the action, decision, notice and order of the enforcement agency; Chairman Theodore Maglione seconded the motion. The regular board members as shown on the voting record below approved the motion:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Keith Lynch, Sean Donlon

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

MC#2017-8 Estate of Edward Cantor (Block 12 Lots 1.10, 1.12) v. Township of Chester- *stayed pending Superior Court proceedings*

MC#2019-23 Madison Movie Development LLC (Block 2702, Lot 24 worksite: 14 Lincoln Place) v. Borough of Madison. Stayed pending BOA/other jurisdiction determination

MC#2020-7 Thomas Caltabellotta (Block 25, Lot 35 worksite: 6 Cambridge Road, Morris Plains, NJ v. Township of Parsippany – Stayed due to disruption of municipal operation/ COVID-19 (medical illness)

MC#2020-9 Matthew & Marybeth Massoud 27 Iroquois Ave v. Lincoln Park. Stayed due to disruption of municipal operation/ COVID-19 (medical illness)

CASE(S) WITHDRAWN:

MC#2019-6 Reiter & Rayter, Tatiana & Wyczeslav (Block 96, Lot 47, worksite: 30 Katie Court) v. Township of East Hanover

MC#2019-7 Reiter & Rayter, Tatiana & Wyczeslav (Block 96, Lot 47, worksite: 30 Katie Court) v. Township of East Hanover

MC#2021-3 Larry D & Anna Marie Skoog 324 Front Street Belvidere NJ v Town of Belvidere (Warren County Transfer)

CORRESPONDENCE:

- Budget Balance – April 22, 2021 = \$2,646.93

OLD BUSINESS - Discussion followed regarding the need to fill the alternate member vacancy with a qualified candidate (subcode electrical/plumbing background)

NEW BUSINESS –

NEXT MEETING: May 27, 2021 **7:00 P.M.**

ADJOURN: On motion duly made and seconded, the meeting adjourned at 4:03 P.M.

Sheila M. Leary, CPM

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Board Secretary