

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

DATE: Thursday, January 25, 2018 - 7:30 p.m.
OIT CONFERENCE ROOM
30 Schuyler Place, 4th Floor, Morristown, NJ 07960

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, (3)
Harold Endean,

Alternate Members: William Asdal, Sean Donlon, Kimberly Hurley, Keith Lynch (4)

ABSENT: Timothy Braden, John Kostrowski, Jr., Craig Villa (3)

ALSO PRESENT: W. Randall Bush, Esq., First Assistant County Counsel
Evelyn Tierney, Board Secretary

APPROVAL OF RESOLUTION:

Approval of Resolution 2018-1 (2018/19 CBA Meeting Time/Dates). The Board reviewed the 2018/19 meeting date schedule for any potential conflicts. Chairman Ted Maglione made a motion to approve the resolution as submitted. Harold Endean seconded the motion. The Board approved the resolution as submitted unanimously.

APPROVAL OF MINUTES:

Minutes of the meeting held December 14, 2017 were previously distributed. Vice Chairman Jeffrey Betz made a motion to approve the minutes. Chairman Ted Maglione seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Harold Endean (3)

NO: None (0)

NOT VOTING: William Asdal, Sean Donlon, Kimberly Hurley, Keith Lynch (4)

CASE TO BE HEARD

MC#2017-6 Robert Powlett, Jr. (Block 10301, Lot 18 worksite: 42-44 Monroe Street)
v. Township of Morris

Appearances:

Robert Powlett, Jr., appellant

John Mills, III., Esq., *representing the municipality*

Albert Mastrobattista, Construction Official, Township of Morris

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.

Counsel Bush swore in the witnesses, Robert Powlett, Jr., appellant, and Albert Mastrobattista, Construction Official.

It was noted and stipulated by the parties that the following documents previously received by the Board Secretary and distributed to the Board members along with documents identified and marked during the hearing constitute the record:

- Notice of Violation and Order to Terminate, dated August 30, 2017 #V-17-00058.
- Notice and Order of Penalty, dated August 30, 2017 #V-17-00059.
- Application to the Morris County Construction Board of Appeals, dated September 7, 2017.
- Binder submitted by the appellant on January 16, 2018 to the Board Secretary “Defense Statement of Robert Powlett, Jr. For: Violations #V-17-00058, #V-1700059 issued August 30, 2017 and many other harassment Notice of Violations and Orders to Terminate”.

Exhibits Submitted by the Municipality and marked M-1 consisting of the following:

- 3-page Morris County Construction Board of Appeals resolution MC#2012-1 signed February 2, 2012.
- 2-page Tax record for Block 10301, Lot 18
- Notice of Violation and Order to Terminate, dated February 8, 2011 #V-11-00008
- Stop Construction Order dated June 19, 2012 #V-12-00032
- 2-page Notice of State of New Jersey, Department of Community Affairs, Division of Codes and Standards, Bureau of Rooming & Boarding House Standards, Notice of License Denial File Reference: 1422-0009

Counsel Mills indicated that the Notice of Violation and Order to Terminate, dated August 30, 2017 #V-17-00058 is the remaining violation. The previously issued Notice and Order of Penalty, dated August 30, 2017 #V-17-00059 should not be considered.

Construction Official Albert Mastrobattista testified that he has been the Construction official for the past twenty-five years licensed for building, plumbing and fire. Mr. Mastrobattista stated that in August 2017 he received a copy of a Police report that was issued after a resident living at the subject premises made a complaint. The report indicating that Mr. Powlett was operating a rooming house, and based on that information he issued Mr. Powlett the violation. Mr. Mastrobattista stated that he has not inspected the premises since 2011. In the township’s files, he discovered the documents from 2012 that had been addressed by the Fire Prevention Bureau. Mr. Mastrobattista believes that Mr. Powlett is renting out rooms to four unrelated individuals in his R5 zoned home, and therefore issued the violation notice for the change of use under NJAC 5:23-2.14(a).

Counsel Mills referred to the above noted package marked M-1, which includes a statement on page three under Whereas “Appellant was subject to a final decision from the DCA, which was still controlling”. Counsel Mills stated that when Mr. Mastrobattista received the police report listing the rooming house operation in 2017 he issued the Violation notice, believing that the rooming house was still in operation.

Mr. Powlett questioned Mr. Mastrobattista regarding the Violation that states “You did a change of use without a permit in violation of NJAC 5:23-2.14 (a) converted basement into rooming house”. When you were in the building in 2011 what did you observe. Mr. Mastrobattista stated that he saw a number of rooms with locks on the doors. An inspector accompanied him from the State as well as the Township Fire Inspector at the time, Mr. Duffy.

Mr. Powlett asked Mr. Mastrobattista “Did you do any type of inspection to find out if whether or not the basement was finished when the house was built or you just assumed”? Mr. Mastrobattista stated the tax records as included in M-1 indicate that the basement is unfinished.

Board questions followed. Chairman Maglione asked that it be explained what it means in accordance with the UCC to convert a basement into a rooming house, what is the difference between a finished basement and a rooming house.

Mr. Mastrobattista answered that a rooming house is where someone rents out rooms.

Member Lynch remarked that this violation does not talk about construction or any physical changes. The Violation strictly addresses the change of use from a single-family house to renting out rooms. The building code addresses how a house is being used.

Mr. Powlett testified that all the rooms in his house were built in 1961 and approved by the town with a permit. He did not build the house to be a rooming house. In the basement, he has six rooms, and he is paying high taxes a year for himself, his son and his daughter.

In August of 2017 when the violation was issued four unrelated persons were living at the house.

The Board does not have a copy of the August 2017 Police Report that Mr. Mastrobattista stated he relied upon to issue the violation. The report apparently indicated that multiple non-related individuals who pay rent reside at premises.

Member Donlan remarked that in the submitted M-1 package the Department of Community Affairs Report Fire Reference: 1422-0009 Notice of License Denial found that the premises were operating an illegal rooming/boarding house. Has the Department of Community Affairs been made aware of the present situation? Mr. Mills stated that the municipality has not notified them.

Mr. Powlett testified that in August 2017 the non-related individuals living at the house paid rent, as well as his son who also pays rent. He does not want to be a rooming house; therefore, he does not rent rooms to more than four individuals, since he is not sure what law is.

Board discussion followed regarding the various codes. Mr. Powlett read the following into the record:

“No certificate of occupancy shall be issued for any building use or intended to be used as a rooming house or a boarding house as such terms are defined in section 3 of the rooming and boarding house act of 1979 PL 1979 c496 NJSA 55:13B-1 except after filing by the owner with a construction official of a photocopy of a license to own a rooming or boarding house issued to the owner by the Department of Community Affairs”.

Counsel Bush asked Mr. Powlett if he has a license from the State of New Jersey Department of Community Affairs per the Statute that he just read into the record. Mr. Powlett answered that he did not and did not know he had too.

Discussion followed by the Board and the following code sections were reviewed:

“Uniform Construction Code 5:23-6.26 Basic requirements –Groups R-2 and R-4 (b) 8.
“As used in this subsection “rooming house” means any building and any part thereof, which contains two or more units of dwelling space which do not provide a private, secure dwelling space arranged for independent living and containing both full bath and kitchen facilities (exclusive of any such unit occupied by an owner or operator), including any residential hotel. The term does not include any hotel, motel or established guest house in which a minimum of 85 percent of the units of dwelling space are offered on a temporary basis only, for periods lasting

no more than 90 days, to guests who either maintain or intend to maintain a primary residence at a location other than the hotel, motel or established guest house. The term also does not include one-family residential dwelling units made available for occupancy by not more than five roomers. (Plan review – Building, Fire Inspection – Building)”.

The most recent adopted “International Building Code, New Jersey Edition) Section “310.7 states:

“Residential Group R-5 occupancies shall include all detached one – and two-family dwellings not more than three stories in height with a separate means of egress and multiple single-family townhouses not more than three stories in height with a separate means of egress designed and constructed in accordance with the *International Residential Code*. This Group shall also include: Care facilities that provide accommodations for five or fewer persons receiving care. Single residential occupancies, accessory to a dwelling unit, having no more than five roomers or lodgers, (Single occupancies, accessory to a dwelling unit, having more than five roomers or lodgers shall be classified as Group R-2 or I-1, as appropriate.). Group homes with 5 or fewer occupants in accordance with Section 308.3.4. Rooming houses with five or fewer residents.”

Mr. Powlett indicated that the rooms in the basement have no locks, and provide easy access to the outside through large windows in each room. Mr. Powlett further stated that he did not have more than four unrelated individuals residing at the house, and all research he found talked about five individuals or more.

Member Betz remarked that there appears to be two issues - what is the use group and based on what the Board reviewed it appears to be an R-5, then the activities within the facilities fall under another jurisdiction.

Board member Lynch remarked that the case tonight is for the violation issued. With the testimony that was provided, it was assumed that the use changed from an R-5 to an R-2, which is not the case. Based on the admitted testimony there are four renters, which remains an R-5 use group under the UCC regulations. Board member Asdal agreed with member Lynch and in addition remarked that the appellant has no right to be operating a rooming house not permitted by the Department of Community Affairs.

Harold Endean made a motion to rule in favor of the appellant that the Notice of Violation issued on August 30, 2017 is hereby reversed, finding that there was no change in use from the R-5 use group. The motion was seconded by Keith Lynch. The motion was approved by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Harold Endean, (7)
William Asdal, Sean Donlon, Kimberly Hurley, Keith Lynch

NO: None (0)

The Chairman thanked the parties and continued with the items on the Agenda.

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

MC#2015-20 Center Court at Morristown LLC (Block 9003, Lot 10 worksite: 65 Columbia Rd) v. Township of Morris Bureau of Fire Prevention (11/19/15 1st meeting date, stayed pending Superior jurisdiction decision, Board will be kept updated on progress – status update

received 4/20/16, 11/14/16, and 4/10/17 – status update received from municipal attorney John Mills, Esq. dated 9/6/2017)

- MC#2017-8** Estate of Edward Cantor (Block 12 Lots 1.10, 1.12) v. Township of Chester (*stayed to 1/25/2018 – pending Superior Court hearings*)
- MC#2017-13** RRT 2 Campus LLC (Block 202, Lot 3.20 worksite: 2 Campus Drive)
v. Twp. of Parsippany Troy Hills Division of Fire Prevention (*1/25/2018 1st mtg. date, 2nd mtg. date Feb TBD*)
- MC#2018-1** Watchung Hills at N. Plainfield LLC (Block 110, Lot 2 worksite: 641 Somerset Street)
v. Borough of North Plainfield - SOMERSET COUNTY (*1/25/2018 1st mtg. date, 2nd mtg. date Feb TBD*)

CASE WITHDRAWN (“Withdrawal Confirmation” letters issued to all parties and made part of the case files)

MC#2017-10 Dolores & Timothy Vorhies v. Township of Rockaway

CORRESPONDENCE

Budget Balance as of January 25, 2018 = \$2,219.90

OLD BUSINESS

NEW BUSINESS

- Announcement of appointments by the Freeholder Board per Resolution # dated January 5, 2018.
- 2017 Annual Report distribution
- 2018 Membership qualification & contact information (please review and advise secretary of any necessary updates)

Next meeting is scheduled for Thursday February 22, 2018.

ADJOURN: On motion duly made and seconded, the meeting adjourned at 9:00 p.m.

Evelyn Tierney, Board Secretary