

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS  
MINUTES**

Thursday, April 14, 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, (5)  
John Kostrowski, Jr., Keith Lynch, Sean Donlon

**Alternate Members:** Timothy Braden, Kimberly Hurley (2)

**ABSENT:** Herold Endean, Nick Marucci (2)

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

**APPROVAL OF MINUTES:** Draft minutes of the meetings held on December 16, 2021, and January 27, 2022, were previously distributed.

Minutes of the meeting held on December 16, 2021 were previously distributed. Keith Lynch made a motion to approve the minutes as submitted. Chairman Theodore Maglione, seconded the motion. The Board approved the minutes as submitted unanimously.

**YES:** Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, (7)  
John Kostrowski, Jr., Keith Lynch, Sean Donlon, Timothy Braden, Kimberly Hurley

**NO:** None (0)

**NOT VOTING:** Harold Endean, Nick Marucci (2)

Minutes of the meeting held on January 27, 2022 were previously distributed. Keith Lynch made a motion to approve the minutes as submitted. Vice Chairman Jeffrey Betz, seconded the motion. The Board approved the minutes as submitted unanimously.

**YES:** Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, (7)  
John Kostrowski, Jr., Keith Lynch, Sean Donlon, Timothy Braden, Kimberly Hurley

**NO:** None (0)

**NOT VOTING:** Harold Endean, Nick Marucci (2)

**APPROVAL OF RESOLUTIONS:** None

**CASE TO BE HEARD:**

**MC#2021-9** V-Fee Realty Investments LLC, 90 East Main St. (Block 801, Lot 20) Mendham Borough  
v Mendham Borough (pending agreed settlement)

**Appearances:**

Appellant's Attorney, Derek W. Orth, Esq.  
Municipal Attorney for Mendham Borough, Jonathan Testa, Esq.  
Witness - John A. Zaragoza, Fire Marshal for Mendham Borough

*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 received and accepted the appeal on October 29, 2021, wherein John A. Zaragoza, Fire Marshal for Mendham Borough issued a Notice of Violation and Order to Correct Fire Code Violations, *motor vehicles that are being stored in the structure must be removed until a change of use pursuant UCC regulations is applied for and approved by the Construction Official.*

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

- Appeal Application Package

**Exhibits:**

Appellant: Letter Brief, Dated March 17, 2022 (5 Pages)

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**Municipality:**

- M-1 Notice of Violation and Order to Correct, dated September 3, 2022.
- M-2 Relevant provisions of the New Jersey version of the "2015 International Fire Code" and N.J.A.C. 5:70-2.10 thru N.J.A.C. 5:70-2.12 (e).
- M-3 Correspondence exchange between Appellant's representatives and Borough's Local Enforcing Authority, between September 3, 2021, and September 8, 2021.
- M-4 Correspondence exchange between Appellant's representatives and Borough's Local Enforcing Authority dated September 9, 2021.
- M-5 Appellant's "Request for Time Extension Application," dated September 9, 2021.
- M-6 Correspondence exchange between Appellant's representatives and Borough's Local Enforcing Authority dated September 13, 2021.
- M-7 Correspondence from Fire Official to Appellant's representatives and Borough's Local Enforcing Authority, dated September 14, 2021, forwarding "Extension Response."

- M-8 “Time Extension Request Decision,” issued on September 14, 2021.
- M-9 Correspondence from Borough’s Local Enforcing Authority, dated October 19, 2021, issuing an “Order to Pay Penalty and Abate Violations” to Appellant’s representative.
- M-10 “Order to Pay Penalty and Abate Violations,” dated October 19, 2021.
- M-11 Correspondence between Appellant’s attorney Borough Engineer regarding, “Change in Use” application between October 19, 2021, and October 20, 2021.
- M-12 Appeal Package/Notice of Appeal, filed on October 22, 2021, and received by Morris County Construction Board Appeals on October 27, 2021.
- M-13 “All Violations Associated With 11/4/21 Inspection,” report.
- M-14 Photograph depicting vehicle being brought to Subject Property on January 6, 2022.
- M-15 N.J.A.C. 5:70-3.1
- M-16 N.J.A.C. 5:70-3.2
- M-17 Relevant provisions of the Construction Code Communication, at Vol. 2, Number 2 p. 4; and Vol. 2, Number 4 p. 11.
- M-18 Appellant’s MLUL Zoning Change of Use or Occupancy Application, dated September 9, 2021.
- M-19 Standard Uniform Construction Code Application for Change of Use.

Chairman Maglione noted that both the Appellant’s attorney as well as the Municipal attorney included the word, “USE” in their written briefs and requested that their oral presentations include clarifying language such as, “zoning,” “building,” or “group”.

Vice Chairman Betz expressed concern regarding the timeliness of the appeal and the belief that the appellant waived appeal rights, consistent with the Fire Code, by the action of completing an application for an extension of time.

Chairman Maglione provided a historical summary of the DCA’s opinion regarding leniency relating to timely filings to avoid preferential treatment to the municipality.

Mr. Testa, for the municipality, offered a legal basis in exhibit M1 to support the premise that an appeal of the Notice of Violation and Order to Correct, in this matter, was waived pursuant to NJAC 5:70-2.10(d)2. Further, Mr. Testa emphasized, by way of exhibits M4 and M5, that the communication and request for an extension of time should be sufficient for a stipulation to the violations with further discussion of the penalty remaining a separate issue.

Mr. Orth, for the appellant, explained the requirements of the automatic admission statute with specific examples relating to the proof of service as provided in exhibit M3, and in exhibit M9 as procedurally flawed.

Discussion among the Board members continued with an exchange of thoughts regarding questions as to whether a Notice of Violation is flawed if use group are incorrect. With the denial of the site plan, can the Borough issue a permit and would the denial necessarily toll the time. Agreeing that use groups are a separate issue from the imminent hazard created by the appellant’s placement of vehicles within a structure and the remedies relied upon by the local enforcement authority by and through the Fire Code.

Mr. Testa, for the municipality, called his witness John A. Zaragoza, Fire Marshal for Mendham Borough, and questioned Mr. Zaragoza regarding his observations at the time of the inspection and the timeline as it

related to the sequence of events subsequent to the issuance of the Notice of Violations and Order to Correct (Fire Code Violations). Mr. Zaragoza described the subject structure, previously used for indoor tennis/racquetball, containing 45-50 vehicles with no fire suppression system, other combustible materials, and petroleum distillates. Mr. Zaragoza testified that he requested and was granted entry and inspection of the structure on April 14, 2022, the date of this hearing, and noted the exits on the first floor of the structure were blocked by 2 x 4 boards, creating an even greater life safety condition.

Mr. Orth, for the appellant, cross examined Mr. Zaragoza regarding the \$50,000 fire suppression system the appellant applied for after having received the Notice of Violations and Order to Correct, along with the good faith effort of the appellant to seek a contractor to install the appropriate fire suppression system, subsequent to approval of a recently filed site plan. Mr. Orth had no further questions for this witness and restated his belief, for the record, that the violation was not issued properly, and the \$5,000 penalty was excessive and should be mitigated.

Board member John Kostrowski, Jr. asked Mr. Orth if his client would be willing to remove the cars before the fire suppression permits and Mr. Orth responded by indicating that he did not know.

Chairman Maglione having confirmed that no other questions remained, stated that the vehicles were still located in the structure and the appellant had taken no good faith action to remove the vehicles and therefore, the penalty should be upheld.

The Board, by motion of Member John Kostrowski, Jr., in favor of the Municipality, Mendham Borough, affirmed the penalty decision of the enforcement agency; Vice Chairman, Jeffrey Betz seconded the motion. The motion was approved by the following roll call vote:

**YES:** Chairman Ted Maglione, Vice Chairman Jeffrey Betz, John Kostrowski, Jr., Keith Lynch, Sean Donlon

**NO:**

**NOT VOTING:** Tim Braden, Kimberly Hurley

The parties were advised that the resolution will be approved at the next meeting of the Board and mailed to all parties shortly thereafter. The parties were excused, and the Chairman continued with the items on the agenda.

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

**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

**CASE(S) WITHDRAWN:**

**MC#2021-8** Agro Foods Inc., 481 Schooleys Mtn. Rd (Block 19, Lot 4) Washington Township v. Washington Township (MARCH 9, 2022)

**MC#2021-11** John W. Starger, Worksite: 874 Tabor Rd. Parsippany-Troy Hills (Block 526, Lot 3) v Parsippany-Troy Hills (FEBRUARY 15, 2022)

- MC#2022-1** Fabio & Elena Pappalepore, 20 Raynor Rd, Morristown, NJ 07960, (worksite: 51 Ralph Place, Morristown, NJ, Bock 3105, Lot 18) v Town of Morristown, NJ (APRIL 11, 2022)
- MC#2022-3** Scott & Sheri Braun, 23 King Rd, Landing, NJ 07850, (Bock 11910, Lot 4) v Township of Roxbury, NJ (APRIL 2, 2022)
- MC#2017-8** Estate of Edward Cantor (Block 12 Lots 1.10, 1.12) v. Township of Chester (APRIL 13, 2022)

**CORRESPONDENCE:**

- Budget Balance as of April 14, 2022 = \$3,141.93

**OLD BUSINESS:** NONE

**NEW BUSINESS:** Chairman Theodore Maglione requested the preference of the Board members regarding in person meetings as opposed to remote meetings. The Board members unanimously preferred in person meetings. Commissioner Stephen H. Shaw explained the County's acquisition efforts to provide hybrid technology for continued remote access to meetings. For the time being, meetings will remain remotely accessed. Regarding the scheduled meeting on April 28, 2022, the Board agreed to meet as scheduled at 7:00 P.M., regardless of whether or not any cases are to be heard, as a brief afternoon meeting to approve minutes and/or any resolution, creates a hardship for the majority of the members.

**NEXT MEETING:** April 28, 2022, at 7:00 P.M.

**ADJOURN:** On motion duly made by John Kostrowski, Jr. and seconded by Chairman Theodore Maglione, the meeting adjourned at 8:26 P.M.

*Sheila M. Leary, CPM*  
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Sheila M. Leary, CPM  
Board Secretary