

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Thursday, March 14, 2024 – 5:00 P.M.
Morris County Commissioners Public Meeting Room
Administration & Records Building
10 Court Street
Morristown, New Jersey 07963-0900
Webex Video – Public Access

<https://morriscountynj.webex.com/morriscountynj/j.php?MTID=mc8ef7343b629bafdbe46d0da7620c1f3>

Password: Mbdj7bhP6Z6

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

Alternate Members: Timothy Braden, (1)

ABSENT: Harold Endean, Kimberly Hurley, Nick Marucci (3)

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

EXECUTIVE SESSION (Statement Read by Staci L. Santucci, Esq.)

By motion of John Kostrowski, Jr. and seconded by Chairman Theodore Maglione, the Board went into Executive Session to discuss pending litigation. 5:06 P.M. – 5:34 P.M.

The Board Returned to the Regular Session of the Open Public Meeting at 5:34 P.M.,

By motion of Chairman Theodore Maglione and seconded by John Kostrowski, Jr.

STATEMENT OF REASONS TO AMEND – RESOLUTION 2023-2

MC#2023-6 Morris Blue Inc. / CoHome, (42-46 Miller Road, Morristown, NJ) v Town of Morristown)
Per Hon. Stuart A. Minkowitz, A.J.S.C. (11/30/23) Docket No: MRS-L-1383-23

Statement of Reasons – Chairman Theodore Maglione

First, I must determine what uses do not apply to the house. It is not R5 that the appellant maintains. Per the testimony of the appellant there are more than 5 unrelated occupants of the home - therefore R5 is not applicable. It is not an Oxford House - Oxford House is a distinct entity. The UCC makes allowances for Oxford House - But CoHome is not an affiliate of Oxford House and therefore the Oxford House code provisions do not apply.

What use group is it? Per CoHome's testimony, there are between 6 - 16 residents. Some of these residents have disabilities per multiple references by CoHome. CoHome presented an abundance of testimony. Most of this testimony was glowing biographies of the residents. How the present residents are able to perform emergency fire drills expeditiously. But there is no assurance or provision by CoHome that future residents will be able to evacuate as proficiently. What happens when new residents move in? What happens when these residents age? There is a potential for 16 elder residences with disabilities. From my opinion this would greatly reduce their ability to evacuate during an emergency. The code requires that we are forward looking. We cannot take a snapshot of today and assume that conditions will not change in the future. We cannot overlook or provide a variation based upon current residents with no absolute guaranty that future residents will be able to comply. CoHome is unable to make that guaranty.

Both CoHome and Morristown submitted the Construction Code Communicator (Fall 2022) and from this reference they are compatible with the R 4 use group as there are between 6-16 residents. The residents meet Condition #1, they can evacuate without assistance and Condition #2, they require limited verbal or physical assistance to complete building evacuation.

Now the issue becomes, do they receive custodial care. It should be noted that the issue of custodial care is a primary factor in determining the correct use group. From the definition provided in the Communicator, and as the testimony was presented, I believe that custodial care is provided and by the fact that residents are classified, by the appellant, as having disabilities. I am not a health expert. But the term disabilities connotes either a physical or mental condition which is given a different consideration from the general population. I am not being derisive or dismissive. But hopefully being in a compassionate and caring society, consideration is provided by the UCC to allow for disabled citizens to integrate into the general public. And from the general definitions of custodial care outlined in the Code Communicator, I believe that these residents do receive custodial care.

To further substantiate that custodial care is provided, is the Carriage house or other structure on the property; testimony from the zoning board hearing with Morristown as well as during the hearing was presented. There was testimony regarding having caretakers reside in another structure on the property. The appellant wants to have an employee of CoHome live on the premises. Note it is not a tenant which could generate income for CoHome. But an employee whose sole function is to assist the residents, or in my opinion, provide custodial care. Per the appellants expert, Mr. Diskint, at the zoning board meeting, on page 4 of 16, stated that additional onsite assistance would be beneficial for developmentally disabled adults. Again, I take this to mean that custodial care is required. Due to the information listed, I made a motion to uphold the Notice of Violation and in favor of Morristown.

Statement of Reasons – Vice Chairman Jeffrey Betz

There are many factors that I have considered in making my decision that this residence is an R-4 and that the requirements of the NJ Codes and Regulations should be applied to 42-46 Miller Road.

Regarding evacuations from a fire emergency and Use Group standpoint, there is currently no guidance or criteria for the vetting of residents who may need to evacuate (though Morristown EXHIBIT M-23 can be considered as a benchmark), especially from the third floor. The third floor is open to a single unenclosed stairwell. The MCCBA is responsible to ensure the safety of all occupants including the need to look to the future occupant's ability to evacuate. No documentation or LEA witnessing of evacuation drills was provided. The ability for the residents to meet the requirements of the Fall 2022 UCC document (APPELLANTS EXHIBIT C) outlining the need for evacuation of less than 3 minutes for self - evacuation versus "SLOW EVACUATION" is questionable. I have witnessed many evacuation drills and conditions that can impact a timely evacuation in all weather conditions/hours of the day. The size of the structure and potential for delayed alarm due to the lack of a central or multi-station detection/alarm system is identifiable as a high-risk possibility. Review of the number of occupants and the physical conditions of

the structure including the layout of the single unenclosed means of egress reflects environments that have led to multiple fatalities in the State of New Jersey. These incidents have prompted both state and national regulations to address the risks to the occupants and responding fire service personnel. Thus, the NJ UBC Section 310 definitions, Bulletin 15-3 and APPELLANTS EXHIBIT C - all identify this structure and its current use in my opinion as a R-4. (I do not believe BULLETIN 04-2 is relevant to this appeal).

The laws and guidance of the NJ UCC/UFC come from tragedies and experiences that identified risks and concern for individuals with disabilities. The age and size of this structure play a major role in the ability to recognize an emergency, respond, and safely evacuate.

I reviewed the documentation submitted by the Municipality identified as Morristown Exhibit M-14: Morristown Board of Adjustment. Decided January 18th, 2023. Memorialized March 1st, 2023.

This material contains information identified as Item 8: “That on average, no more than 12 individuals are in the residence at one time. I highlight the statements that raise concern that the number of residents is considerably greater than 6 - 10 individuals. I am looking at the total number of individuals within this structure. Item 9: Mr. Diskint testified that the proposed habitation of a secondary structure as a caretaker unit to be occupied by an employee of the applicant to provide additional on-site services to the residents. Specifically, Mr. Diskint testified that the presence of a caretaker would provide additional overnight supervision for the residents and in the event of emergencies. It was implied that there is a need for supervision of the occupants of the residence by a future caretaker. From the testimony I heard, and documents presented, I believe that there is custodial care by those staff living in the residence, though it may not be recognized by CoHome.

The MCCBA cannot label the individuals residing in this residence as disabled as that information is private. But the development of the organization to create safe and appropriate housing for individuals does identify that this is a unique population. The codes are developed to ensure that reasonable safeguards are in place for all. It may be seen by some that the adopted codes are a great burden and expense, but a resulting tragedy is borne by the entire community including those authorized to enforce the codes, those serving the community as first responders, and those working to provide that unique community an opportunity for housing.

In correspondence (See Morristown EXHIBIT M-9) from Amy Herrera – General Counsel representing CoHome, in statements within the correspondence of March 10, 2023, at 2:41 PM, to Brian Mulligan, does recognize the need for additional fire protection systems by stating, “Lastly, you may be interested to know that while we maintain that we are not required to have an automatic sprinkler system, we are currently considering the installation of one, alongside an additional means of egress, when we replace the roof.”

The Appellant should comply with the municipal findings as this property is operating as an R4 use group.

Statement of Reasons – Board Member Keith Lynch

I voted in the affirmative after the testimony regarding occupancy and building usage kept bringing me back to the R4 use group. Discussions describing how the facility can be envisioned as an R5 kept falling short.

The number of occupants, the capacity of the individuals and their varied reliance upon the organization of the home and the direction from the home’s operators placed the use into the defined R4 occupancy.

My decision is consistent with my understanding of the applicable code sections as submitted into evidence.

Statement of Reasons – Board Member Sean Donlon

Having voted in support of the motion I offer the following statement of reason. Within the hearing we heard about Group R, residential group homes, oversight, custodian care, Oxford House, evacuation, and occupancy load.

I arrived at my decision relying on the following exhibits and/or UCC documents. First, Bulletin 042, which was issued in July, 2004, revised in December, 2019. The DCA put out this bulletin in regard to the Oxford House, basically classifying it as an R5. However, they determine that it's not a rooming house or boardinghouse and no license is required, but there are conditions that have to be met. One of the lines in the body of the bulletin, “Construction Officials continue to have an obligation to enforce necessary safety

requirements.” In this context, in the case of homes sponsored by Oxford House Inc.. It goes on to further say, “including a degree of oversight” and, “reasonable accommodations in the application of the building subcode.” Again, homes sponsored by the Oxford House Inc., would be classified as an R5.

The second exhibit is from the executive director, the cover letter to the Board of Appeals, and I just direct you to the last paragraph, 1 line. From the director, “I have further testified that we are in keeping with the requirements outline for those under the Oxford House use group.” No proof of sponsorship has been provided saying they are an Oxford House.

Continuing, I relied on exhibits from Morristown; Exhibits 6, 7 and 8. Exhibit 6 is out of the International Building Code, 2021, Section 3:10, Residential Group R. It further breaks down the R use groups within the code. Second, Exhibit M-7, group home, youth, and occupancy classifications updated. The key line for this is the opening line, “all buildings design, start with use group classification.” It does continue into custodian care, which if there is assistance provided, and it also comments on how fast you can evaluate.

The third, Exhibit M-8 from Morristown, is bulletin 15:3, and again, it was issued in 2015. The subject is, Group Classification for Residential and Institutional Occupancies. The purpose of this bulletin was to assist in determining the correct designation for residential occupancies. The second line in the bulletin, which is important, says the “defining criteria for making this determination are, the number of occupants, the ability of those occupants to evacuate and whether the occupants are transient.”

Having this information led to my decision; the high occupancy, oversight/custodial care, lack of sponsorship from the Oxford House and information that current and or future tenants may have challenges, which would result in slower evacuation.

Again, I voted in support of this motion.

APPROVAL OF MINUTES: Draft minutes of the meeting held on January 11, 2024, previously distributed and unanimously approved by motion of John Kostrowski, Jr., and seconded by Chairman Theodore Maglione.

APPROVAL OF EXECUTIVE SESSION MINUTES: Draft minutes of the executive session meeting held on January 11, 2024, previously distributed and unanimously approved by motion of John Kostrowski, Jr., and seconded by Chairman Theodore Maglione.

APPROVAL OF RESOLUTION:

CASES TO BE HEARD - NONE

CASES POSTPONED –

MC#2024 -2, 7 Campus Drive LLC (Block 202, Lot 3.08), Parsippany, NJ 07054 v Township of Parsippany-Troy Hills, NJ 07950 (4/25/24)

MC#2024 -3, Novalis Roofing & Siding LLC (worksite: 95 Westminster Road, Chatham Twp., NJ 07928), v Chatham Township, NJ 07928 (4/25/24)

CASE(S) WITHDRAWN - NONE

CORRESPONDENCE: Budget Balance as of March 14, 2024 - \$2,430.73

OLD BUSINESS:

NEW BUSINESS

NEXT MEETING: April 25, 2024, at 6:00 P.M.

ADJOURN: On motion duly made by John Kostrowski, Jr., and seconded by Chairman Theodore Maglione at 6:06 P.M.

Sheila M. Leary, CPM

Sheila M. Leary, CPM
Board Secretary