

Morris County
Construction Board of Appeals

2013
ANNUAL REPORT

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

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The Morris County Construction Board of Appeals, established in 1977 by the Morris County Board of Chosen Freeholders, serves as a quasi-judicial body to hear appeals filed by owners of properties in Morris County from decision and actions, or inaction made by a municipal official relative to the New Jersey Uniform Construction Code, Uniform Fire Code, or the Developer Escrow Law. Such activities that may aggrieve owners may be action taken or inaction by the Construction Code Official, a Construction Subcode Official, a Uniform Fire Code Official, or other Municipal Professionals.

The Morris County Construction Board of Appeals consists of five regular members and five alternate members including two certified fire officials. There are two special members assigned to the Board to hear cases involving municipal escrow fees. Membership and qualification of members are required by Uniform Construction Code Regulations 5:23 A-1.3 (a) and (b), Board terms are four years. The volunteers who serve on the Morris County Construction Board of Appeals bring to the Board a diverse background and wealth of professional and personal experience. Board members are also required to attend training sessions sponsored by the Department of Community Affairs. Members of the Board who are Licensed Inspectors, Subcode Officials or Construction Officials also are required as a condition of their license to complete training provided by the NJ Department of Community Affairs. The training consists of both administrative topics and topics within the technical area of their licenses.

Hearings are held at the call of the Chair, usually on the fourth Thursday of each month, at 7:30 p.m. in the Freeholder Public Meeting Room. Meetings are open to the public and legally advertised through the Daily Record and Newark Star Ledger. Special meetings, if necessary, are held to conduct Board business, or to hear open cases as requested by Appellants. Formal resolutions (decisions) prepared by the Board and Board Counsel are approved by the Board members at the meeting following the hearing.

The resolutions are filed with the N.J. Department of Community Affairs, and the N.J. Division of Fire Safety, as appropriate in Trenton, pursuant to state regulations. Copies are sent to the applicant, the municipality, and to their attorneys. Copies are also forwarded to the Board of Chosen Freeholders, County Administrator, County Counsel, and the County's insurance representative.

Records of cases, which have been heard or withdrawn, are disposed of in accordance with records management procedures implemented by the State and County.

Minutes of all hearings and resolutions adopted by the Board are kept in bound minute books as public records as required by N.J.A.C. 5:23A-2.3. Access to records continues to be controlled in accordance with Morris County Policy and Procedure 4:4.01, Public Records.

Assistant County Counsel Randall W. Bush, Esq., advised the Board on legal matters in 2013.

Mrs. Evelyn Tierney, Secretary to the Board continues to support the Board as well as Mary Jeanne O'Grady who assists in the day to day basis and at the hearings when necessary. As the Board Members typically carry a full time commitment in their primary occupation, Mrs. Tierney and Mrs. O'Grady keep the members and Counsel to the Board apprised of new developments; schedules and coordinates the hearings; generates and issues correspondence; and are the point persons for all external communication with Citizens, Local, County and State Government.

The Board performed its statutory obligations in 2013 with a complete complement of professionals. The Board composition consists of multiple layers of qualified personnel in all disciplines so the chances are minimal that an absence or conflict situation will affect the Board's ability to hear an appeal with competent, unbiased members in a timely manner. The Board has continued to improve communication by relying extensively on email communication between the Members, Secretary and Counsel as well as updating the following website with Board information and forms @ www.morrisplanning.org .

The Board uses a digital recorder to record the hearings, which provides high quality direct to media files. The files are more readily copied and transferred when requested for transcripts.

The Board continues to be a member of the International Code Council which provides a discount in the purchase of ICC sponsored codes and allows Board Members who choose to participate in one or more code making forums to do so.

During calendar year 2013, the Board met nine times.

The following is a summary of the cases filed with the Morris County Board:

<u>Morris County CBA 2013 Docket</u>	<u>Totals</u>
Cases Carried Over from Prior Years	2
Cases Filed in 2013	17
Cases Dismissed/Settled @ hearing/Closed in 2013	1
Cases Withdrawn in 2013	8
Cases forwarded/transferred to Somerset County in 2013 (<i>due to conflict of interest</i>)	2
Decisions issued by the Board in 2013	4
Cases Carried to 2014	4

Seventeen appeals were filed in 2013 adding to the two appeals carried over from prior years.

Two appeals were forwarded to Somerset County due to potential conflict of interest.

Four cases were decided by the Board in 2013. Resolutions were issued to document the decision in each of the cases. One appeal was dismissed; case settled and closed “nothing to be decided by the Board”.

Brief highlights about each case are included in the attached “Summary of Cases Decided by the Board in 2013”.

Records are kept of all appeals filed consistent with the County Records Retention Policy.

One decision made in 2007 (Tucker Kelly vs. CBA & Rockaway Township Construction Office) was appealed and remanded by the Appellate Division of Superior Court back to the Board for reconsideration. The court ruled on a very narrow aspect of the appeal regarding the admission of hearsay evidence which should be reheard by the Board. The parties to the matter spent 2011 and most part of 2012 attempting to settle the matter. A hearing with all parties in attendance was held October 25, 2012, and a final hearing was held January 24, 2013. A resolution was adopted in February 2013.

An appeal concerning municipal fees filed in December 2009 (Deborah Post vs. Township of Chester MC#2009-35) and had been remanded to the Board for hearings in 2010 and 2011. The final hearing and decision occurred in February 2011. The appellant filed an appeal of the Board’s decision in Superior Court which is still pending.

The following documents are attached to this report:

Summary of Cases Decided by the Board in 2013
Rules and Procedures
Morris County Municipalities represented by the Board in 2013
NJAC 5:23A Construction Board of Appeals Regulations
Member Information (Qualifications & Terms)



The Construction Board of Appeals represents 38 out of 39 Morris County Municipalities. Florham Park Borough has its own Construction Board of Appeals.

As Chairman, I would like to express our gratitude and appreciation to the Board Members, Board Counsel and Board Secretary for their dedication and commitment to serving the Board of Chosen Freeholders and Morris County residents throughout the year. The total hours devoted by the Board members in preparing for, hearing cases, and preparing decisions cannot be tabulated.




On behalf of the Board, we extend our thanks and appreciation to the Board of Chosen Freeholders for personnel assigned to the Board, County Counsel's office for their assistance, County Administrator, John Bonanni for the use of the department's conference room prior to our meetings, and the Department of Building and Grounds and security staff for their assistance in providing parking and access for the Board members during evening meetings.

Theodore Maglione
Chairman









2013 Summary of Appeals

Case#	Appellant	Municipality	Description	Statute	Action Taken			Add. Date (Board Quorum) N/A	Status
					Date Filed	Hearing Date (1)	1ST POSTP (2)		
MC#2006-34/1 	Tucker Kelley	Township of Rockaway	(Block 30503, Lot 12, worksite: 388 Green Pond Road), Notice of Violation and Order to Terminate dated 9/28/2006, Notice and Order to Pay Penalty dated 9/28/2006 - NJAC 5:23-2.14 Construction without a permit.	UCC	10/2/2006	10/26/2006, 11/30/2006, 1/24/2007 & 2/25/2007 case heard. Resolution issued 3/22/2007	Appeal remanded back to CBA Board for a re-hearing by the Appellate Division. MC#2006-34/1 - 1) October 2, 2008 Special Meeting date, parties req. continuance for 60-days, 2) December 11, 2008 parties requested stay to February, 3) February 26, 2009, parties requested stay - Board stayed open ended with monthly update on settlement status. Written update received June and December 2009 and August 2010 from Mr. Iacofano. Scheduled for October 28, 2010 hearing date. Request for continuance dated 10/13/2010 from Mr. Pennella until December 16, 2010 meeting - Board approved continuance 10/14/2010 for December 16, 2010 meeting. Stayed to meeting convenient to all counsel MB in contact 2011 with the counsels. Appearance requested 12/15/2011 to provide a status update. Request to stay to February 2012 received 12/13/2011 to allow for municipal Board of Adjustment decision. Stayed to February 2012 (TBD) by letter dated December 14, 2011. Status update received 8/3/2012 - 10/25/2012 heard to be continued 12/20/2012 postponed to a Final hearing on 1/24/2013. Resolution issued 2/28/2013.		
MC#2012-13 	David Chiarolanzio	Borough of Madison	(Block 1105, Lot 28), Notice of Unsafe Structure dated 12/3/2012.	UCC	12/11/2012	12/20/2012	1/24/2013		Case withdrawn 1/21/2013

THE FOLLOWING APPEALS WERE FILED IN 2013

Case#	Appellant	Municipality	Description	Statute	Action Taken			Add. Date (Board)	Status
					Date Filed	Hearing Date (1)	1ST POSTP (2)		
MC#2013-1 	Mtn. Club Condo Assoc, Inc. c/o Impac Property Mgmt	Parsippany-Troy Hills Fire Prevention Bureau	Worksite: 2457 Rt. 10 E, Mt. Club Bldg. 40-2A, Order to Pay Penalty and Abate Violations dated 1/5/2012.	UFC	1/11/2013 (incomplete) completed 1/15/2013	1/24/2013	2/28/2013		Case withdrawn 1/23/2013
MC#2013-2 	Enver Mansur	Township of Boonton	(Block 50901, Lot 1.01), 844 Boonton Ave., Notice of Violation and Order to Terminate dated 12/17/2012, Notice and Order of Penalty dated 1/7/2013.	UCC					CASE FORWARDED TO SOMERSET COUNTY DUE TO POTENTIAL CONFLICT OF INTEREST -Appeal document package forwarded to Somerset County on 1/18/2013 copying all parties.
MC#2013-3 	Anthony D. Luzba, A'S 1 Remodeling Contractor, LLC	Township of Pequannock	(Block 2301, Lot 12), 52 Village Rd., Notice of Violation and Order to Terminate dated 1/3/2013, Notice and Order of Penalty dated 1/3/2013.	UCC	1/17/2013	1/24/2013	2/28/2013		Case dismissed by Board @ 2/28/2013 hearing (applicant failed to appear)

2013 Summary of Appeals

MC#2013-4 	Peter Behson, PJ Construction, Inc.	Township of Randolph	(Block 201, Lot 8), 36 Everdale Rd., Notice of Order of Penalty dated 1/23/2013, Notice of Violation and Order to Terminate dated 1/23/2013, Notice of Unsafe Structure dated 10/31/2011.	UCC	2/11/2013	2/28/2013	3/28/2013	4/25/2013 HD, case heard & carried to 5/23/2013, case heard and decided		Resolution approved @ 6/27/2013 Mtg.
Case#	Appellant	Municipality	Description		Action Taken					
	<i>Cases carried from previous years</i>			Statute	Date Filed	Hearing Date (1)	1ST POSTP (2)	2ND POSTP (3) Hear or Dismiss	Add. Date (Board Quorum) N/A	Status
MC#2013-5 	Francisco De Jesus	Town of Dover Fire Prevention Bureau	(Block 1217, Lot 2), 14 W. Blackwell St., Order to Pay Penalty and Abate Violations dated 2/11/2013.	UFC	2/26/2013 (incomplete) Completed 2/27/2013	3/28/2013	4/25/2013			Case withdrawn 4/19/2013
MC#2013-6 	David Fabisch	Township of East Hanover	(Block 96, Lot 91.02), 6 Littell Rd., Notice and Order of Penalty dated 2/6/2013. Refund of appeal fee: Denied by Board @ 4/25/2013 meeting.	UCC	3/1/2013	3/28/2013				Case withdrawn 3/28/2013
MC#2013-7 	Karen Schatz concerning Pietrantuono Property	Township of Long Hill	Appeal based on charges against escrow account, Invoice dated 2/11/2013 disputed amount \$1,058.60.	Escrow	3/26/2013	4/25/2013 witness NA	Special Hearing Date - Tuesday 6/11/2013	Postponement requested to 7/25/2013 HD, 9/30/2013 FINAL		Resolution approved @ 10/24/2013 Mtg.
MC#2013-8 	Phil Netco Assoc.	Township of Parsippany-Troy Hills	(Block 770, Lot 5), 199 New Road, Notice of Unsafe Structure (2) dated 4/11/2013, Notice of Violation and Order to Terminate (3) dated 4/11/2013, Notice of Order and Penalty(4) dated 4/11/2013.	UCC	4/24/2013	5/23/2013	6/27/2013	7/25/2013 HD, 8/22/13 HD2		Case withdrawn 8/8/2013
MC#2013-9 	DeFalco's Automotive and Towing	Borough of Chatham Fire Prevention	(Block 134, Lot 13), 24 Commerce St., Order to Pay Penalty and Abate Violations dated 4/14/2013.	UFC	4/24/2013 incomplete, completed 4/30/2013	5/23/2013				Case withdrawn 5/21/2013
MC#2013-10 	Robert Colangelo	Township of Parsippany-Troy Hills	(Block 98, Lot 45.5), Notice and Order to Pay Penalty (8), Notice of Unsafe Structure (3), and Notice of Violation and Order to Terminate (7) dated 5/9/2013.	UCC	5/17/2013	5/23/1013	7/25/2013	8/22/2013 HD		Case withdrawn 8/21/2013
MC#2013-11 	Richard Dubnoff, AFR Inc.	Township of Parsippany-Troy Hills	(Block 202, Lot 2.5), 9 Sylvan Way, Notice of Violation and Order to Terminate dated 5/14/2013.	UCC	6/3/2013	6/27/2013	7/25/2013	8/22/2013 HD		Case withdrawn 6/27/2013

2013 Summary of Appeals

MC#2013-12 ■	John Cronk	Township of Mine Hill	(Block 802, Lot 25) Warning issued/dated 8/22/2013 Bill Donnerstag-illegal above ground pool. Notice of Violation and Order to Terminate dated 8/29/2013, Notice and Order of Penalty dated 8/29/2013.	UCC	9/5/2013	9/30/2013 NA	CASE FORWARDED TO SOMERSET COUNTY DUE TO CONFLICT OF INTEREST - Appeal document package forwarded to Somerset County on 9/12/2013 copying all parties.			
Case#	Appellant	Municipality	Description	Statute	Date Filed	Hearing Date (1)	1ST POSTP (2)	2ND POSTP (3) Hear or Dismiss	Add. Date (Board Quorum) N/A	Status
	<i>Cases carried from previous years</i>									
MC#2013-13 ■	Brian Coombs	Township of Pequannock	(Block 2008, Lot 12), 445 B&C Route 23 Notice and Order of Penalty dated 9/9/2013, Notice of Violation and Order to Terminate dated 9/9/2013.	UCC	9/17/2013	9/30/2013				Resolution approved @ 10/24/2013 Mtg.
MC#2013-14 ■	NK Architects	Township of Morris	(Block 3201 Lot 3), 10 Washington Valley Rd. Notice of Violation and Order to Terminate dated 10/22/2013 Failure to install sprinklers in front entrance canopy.	UCC	11/6/2013 (Hand Delivered)	11/21/2013	12/19/2013	1/23/2014 HD		
MC#2013-15 ■	German Martinez	Town of Morristown	(Block 1801, Lot 7) worksite: 45 Ridgedale Ave., Notice of Violation and Order to Terminate dated 10/23/2013 Finished Basement without permits.	UCC	11/8/2013	11/21/2013	1/23/2014			
MC#2013-16 ■	Garadesa, LLC	Borough of Butler	(Block 26, Lot 7) worksite: 26 Kiel Ave. Notice of Violation and Order to Terminate NJAC5:23 - 2.15(a) Failure to obtain all prior approvals dated 12/13/2013.	UCC	12/20/2013	1/23/2014				
MC#2013-17 ■	J. Killion, LLC	Borough of Lincoln Park	(Block 5, Lot 25 worksite: 4 Beaver Brook Rod.) Notice of Violation and Order to Terminate dated 12/5/2013 - Occupying new structure without a certificate. Notice and Order to Pay Penalty dated 12/5/2013.	UCC	12/19/2013 incomplete 12/23/2013 completed	1/23/2014				

UPDATED 12/31/2013

Purple =	withdrawn cases
Blue =	resolution issued
Gray =	stayed cases
Yellow =	open cases
Orange =	Dismissed/Settled
Green =	Forwarded to other County CBA Board

UCC	Uniform Construction Code
UFC	Uniform Fire Code
Escrow	Municipal Fees PL 1995
CASE RETURNED TO APPLICANT BEFORE HEARING NOTICE WAS ISSUED	

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

RULES OF PROCEDURES

BOARD RULES REGARDING FILING OF APPEALS

Appeals will be considered to be complete when a completed UCC form or similar facsimile thereof is received by the Secretary of the Board with the \$100 filing fee (the fee is waived for failure to act on application for permit N.J.A.C.5:23A-2.1(e)). The appeal document must clearly indicate the action, which aggrieved the appellant. The appellant should provide copies of all pertinent documents to support the appeal.

Any appellant that is a legally incorporated entity with more than one member or shareholder must be represented by counsel. The Board recommends that appellants and municipalities be represented by counsel at the hearing. When counsel is required or retained, all correspondence with the Board must be issued through Counsel's office. The Board will not acknowledge other correspondence or requests by parties other than Counsel, where so retained.

In the event of an appeal filed by the contractor or agent and where the outcome of the appeal may require changes to the structure, systems or components, the entity filing the appeal shall, in the absence of the Owner of Record, provide proof, satisfactory to the Board, that the contractor or agent will be allowed access to the property or structure to implement any corrective action or repairs. In the case of a Request for Variation, the Contractor shall provide proof that the Owner of Record is in concurrence with the requested variation.

Proof of Service if not on the documents submitted shall be provided by the Local Enforcing Agency with a full copy of the file documents from the Municipality. **For PL 1995 appeals**, the Municipality must forward to the Board a copy of the full record of the application (N.J.A.C.5:23A-2.1c (1)).

Ten (10) sets of copies to be used at the hearing should be submitted to the Board within seven days prior to the hearing.

All documents submitted to the board by either party must be copied to the adversarial party. (N.J.A.C.5:23A-2.1(d)).

All documents submitted shall be in hard copy form, legible, and capable of additional reproduction in standard office equipment. Partial plans and other incomplete documents will not be accepted for use at the hearing.

BOARD RULES REGARDING SCHEDULING OF APPEALS AND ADJOURNMENTS

Appeals are required to be heard by the Board within ten (10) business days.

In general the Board has established a schedule of regular meetings held on a monthly basis to hear appeals. The appellant may sign a waiver to permit the hearing to be scheduled beyond the ten day period at a regularly scheduled meeting of the Board. Unless the waiver is granted, the hearing before the Board will be held on a “hear or dismiss” basis within the ten day period.

Appeals involving the Uniform Construction Code (UCC) may be adjourned on the request of the Appellant for good reason, provided that there is not a life safety issue involving an occupied building with the outstanding violation notice. The Board may request the Local Enforcing Agency to concur on the request.

Appeals involving the Uniform Fire Code (UFC) may be adjourned on the request of the Appellant, for good reason, but only with the written concurrence of the Local Enforcing Agency.

In the case of an extended stay in a life safety or other matter posing a significant risk to the occupants, employees, visitors or public in general, the LEA may be requested to initiate an analysis that the continued operation or occupancy with the cited violations outstanding does not constitute an unreviewed safety question.

Cases will be heard or dismissed at the third hearing scheduled by the Board to hear the appeal (second request to reschedule the appeal) unless extenuating circumstances can be demonstrated to the Board, or if for any reason the Board is unable to convene a forum of five members. The Board may require an appearance by the parties to address any such requests at the Boards discretion.

In general, scheduling and notification of hearings will be by formal communication however where extenuating circumstances exist, telephone and facsimile may be used to notify board members and persons involved in appeals provided that at least 48 hours notice is given (N.J.A.C.5:23A-1.5(a)1).

Appeals will be scheduled in the order that they had been submitted, except in cases where an imminent hazard exists. **Imminent hazard cases are heard as a priority,** and the Board may schedule a special hearing to decide the case promptly.

The Board reserves the right to adjust the hearing schedule at the meeting to accommodate special needs.

BOARD RULES REGARDING WITHDRAWN CASES AND FEES

Appeals should be withdrawn prior to 1:00 PM the day of the hearing. Failure to do so may require the parties to put an appearance on the record as scheduled.

The Board will only acknowledge a request to withdraw an appeal from the Appellant, authorized agent or Counsel for the Appellant.

CONDUCT OF HEARING

5:23A — 2.2 Hearing Procedures

The hearing will begin with the Chairperson making opening remarks regarding:

Statute under which the appeal is being brought

The nature of the appeal

The date of the action appealed from

The basis of the appeal

The Chairperson may request motions from the parties to the appeal regarding timeliness of the filing if it is unclear that the appeal was filed within the time limits prescribed by the regulations.

The Chairperson will request an affirmation from the parties to the appeal that the matter is not being addressed in any other forum or jurisdiction.

Municipal Enforcing Agency and Appellant will present all witnesses who may give evidence at the hearing. Witnesses to be sworn in.

Opening Statement: Representative of the enforcing agency, the municipality, or the professional hired by the municipality or municipal agency, shall explain the basis for the action, ruling, order, notice or fee.

Opening Statement: The appellant, or his or her representative, shall then present the basis for his or her disagreement.

Municipal Enforcing Agency will then present their witnesses to testify, who will then be cross examined by the appellant and then by the Board in the order of presentation.

Appellant will then present his or her witnesses to testify, who will then be cross examined by the Municipal Enforcing Agency and then by the Board in the order of presentation.

Municipal Enforcing Agency will present closing argument. Since the Board has just heard the case, this is intended to highlight areas and may be waived.

Appellant will present closing argument. Since Board has just heard the case, this is intended to highlight areas and may be waived.

There will be open discussion by the Board. In general the parties will not be allowed to provide additional testimony, comments or discussion regarding the Board's discussion, except for extenuating cases where the Board seeks additional information.

The Board will by motion, approved by a majority of the quorum, decide to uphold, modify, or reverse the action by the municipal official or provide any other decision as permitted by the regulations.

All questions concerning the presentation of evidence will be ruled upon by the chair. Evidence will be liberally construed; however, all evidence must be relevant. Hearsay evidence will not be admitted nor will documents unique to the appeal unless the authority who prepared the document is presented and sworn in as a witness.

Robert's Rules of Order will control the procedures. The Board's attorney will advise the Board or the chair on any legal procedures and is to render advice to the Board and to the chair and is not available to give advice to either appellant or the respondent on procedures.

The Board will draft a resolution to be voted upon at the next meeting when sufficient members are present to act on the resolution.

The Board's attorney may prepare the resolution as directed by the Board. In the event that the Board prepares the resolution, the Board's Attorney shall review and advise the Board of the adequacy of the resolution prior to the Board's adoption of same.

The Board's attorney shall, in his discretion, defend or prosecute any litigation, which may occur after a meeting of the Board and prior to the next meeting of the Board.

All applicable federal and state statutes and administrative code provisions shall govern the Board's action. This Rules of Procedure embrace the regulations that govern the Board's, and add local rules as required by the Board. In the case of conflicts, the Regulations take precedence over local rules.

The Board shall comply with N.J.S.A 10:4-8 (Open Public Meeting Act) and N.J.A.C 5:23A as well as all other applicable statutes when setting meeting dates.

The Board reserves the right to relax any of these rules as deemed appropriate.

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

Municipalities Represented	2009	2010	2011	2012	2013
Boonton		1			
Boonton Twp.					1
Butler	1	1			1
Chatham	2				
Chatham Borough		1			1
Chester	1	3			
Chester Borough					
Denville	1				
Dover					1
East Hanover		1		1	1
Florham Park	<i>NOT REPRESENTED BY THE MCCBA</i>				
Hanover	2		1	1	
Harding					
Jefferson					
Kinnelon	1				
Lincoln Park				1	1
Long Hill	1		2		1
Madison	1		1	1	
Mendham		1			
Mendham Borough	1	1			
Mine Hill					1
Montville	1	1	1		
Morris Plains				1	
Morris Twp.	4	1	1	1	1
Morristown	1	6	5	1	1
Mt. Arlington	1				
Mt. Olive	1		1	1	
Mountain Lakes					
Netcong					
Parsippany-Troy Hills	5	5	3	1	4
Pequannock	4	6	1		2
Randolph	3	1	4	2	1
Riverdale					
Rockaway				1	
Rockaway Twp.	1	2		2	
Roxbury	1				
Victory Gardens					
Washington		2	1		
Wharton					
<i>Essex County</i>					
<i>Somerset County</i>	1		1		
<i>Sussex County</i>	1				
<i>Warren County</i>	1	1	1		
TOTAL:	36	34	23	14	17