

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MEETING MINUTES**

Thursday, June 27, 2024 – 6:00 P.M.
Morris County Commissioners Public Meeting Room
Administration & Records Building
10 Court Street
Morristown, New Jersey 07963-0900

Chairman Theodore Maglione called the meeting to order.
Pledge of Allegiance
Open Public Meeting Statement
Swearing In of Alternate Board Member Larry D. Ott
Chairman Maglione requested a roll call.

PRESENT:

Regular Members: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz,
John Kostrowski, Jr., Sean Donlon (4)

Alternate Members: Nick Marucci, Larry D. Ott (2)

ABSENT: Keith Lynch, Kimberly Hurley, Timothy Braden (3)

ALSO PRESENT: John Barbarula, Esq., Special Counsel,
Sheila M. Leary, CPM, Board Secretary

APPROVAL OF MINUTES: Draft minutes of the meeting held on April 25, 2024, previously distributed and unanimously approved by the Board.

CASES TO BE HEARD:

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

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.

Special Counsel John Barbarula, Esq. swore in the witnesses.

Appearing on behalf of the Appellant, Novalis Roofing & Siding LLC, Jonathan Novalis

Appearing on behalf of Chatham Township, Nicholas Liodice, Esq - McManimon | Scotland | Baumann LLC

Witness – Jack Daniels, Construction Official

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

Municipal Exhibits

Exhibit	Description
M-1	Letter Brief – Tiena M. Cofoni, Esq.
M-A	Document – 50 N.J.R. 955(a)
M-B	Emails To/From Construction Official & CodeAssist@dca.nj.gov

Appellant’s Exhibits

Exhibit	Description
A-1	<p style="text-align: center;">Appellant Jonathan Novalis – Original Application Packet</p> <ul style="list-style-type: none"> a. Appeal Letter to Construction Board of Appeals by Jonathan Novalis, Novalis Roofing & Siding LLC b. Signed Application to Construction Board of Appeals c. Payment of Appeal Fee - Check for \$100 d. Building Permit Obtained after the issuance of the fine e. Photographic Evidence f. 2 site photos provided by Building Inspector Jack Daniels g. Sections of the New Jersey Administrative Code h. Email Correspondence with the Building Inspector i. Full Email Exchange between Jonathan Novalis and Building Inspector Jack Daniels j. Full Email Exchange between Jonathan Novalis and Client (George DiBari)

This matter was heard, Thursday, June 27, 2024, at 6:00 PM, in the Morris County Commissioners Public Meeting Room. Chairman Maglione began with a brief description of the procedure to be followed in which the Municipality would present their case and the Appellant would be provided an opportunity to cross examine the Municipal witness. Thereafter, the Appellant would present their case and the Municipality would likewise be provided an opportunity to cross examine the Appellant/witness.

Mr. Loiodice introduced his witness, Jack Daniels, Construction Official for the Township of Chatham. Mr. Loiodice described the only remaining issue as being the payment of the \$2,000 penalty; and

Mr. Novalis confirmed that the \$2,000 penalty, issued by the enforcement agency, was the only remaining issue. Mr. Loiodice began his examination of Mr. Daniels, by requesting that he provide the background facts that lead to the issuance of the Notice of Penalty for performing work without a permit.

Mr. Daniels explained that while traveling down the road, going to inspections, he saw that work was being done and specifically saw new sheathing on the roof of 95 Westminster and documented his observations with photographs from the street. Mr. Daniels stated that he waited to see if there was a permit for the work, on file with the office, and determined that a permit had not been obtained and no notice of the work was provided. Immediately thereafter, Mr. Daniels testified that he issued a Notice & Order of Penalty, Violation #V-24-001. Mr. Daniels stated that Mr. Novalis, after receiving the Notice & Order of Penalty, “decided to talk back and forth about trying to resolve the situation.” Further, Mr. Daniels described a

conversation with Mr. Novalis wherein a reduction of the penalty was dismissed as not being an appropriate value.

Mr. Loiodice asked that Mr. Daniels cite the statutory basis for the violation and Mr. Daniels responded by providing N.J.A.C. 5:23-2.14(a), and further explained that sheathing is not exempt from the renovation section of the rehab code. Mr. Loiodice concluded his direct examination of Mr. Daniels by requesting and receiving confirmation that the worksite was a single-family residential structure.

Upon cross examination, Mr. Novalis asked Mr. Daniels how many sheets of plywood sheathing he observed. Mr. Daniels responded that he saw a partial sheet at the garage ridge, but that he could not see, without being granted permission to go on the property, and that he had no idea.

Mr. Daniels stated that there was no minimum number of sheets of sheathing that could exempt the need for a permit. Mr. Loiodice, upon redirect examination of Mr. Daniels, inquired as to whether or not the statute identifies a code requirement relative to the number of sheets of sheathing for a permit application to become mandatory. Mr. Daniels confirmed that there was no minimum amount that would exempt the need for the permit.

Board member John Kostrowski, Jr. asked Mr. Daniels what he had been willing to reduce the penalty to, in an effort to resolve the matter. Mr. Daniels stated that he was willing to reduce the penalty from \$2000 to \$250. Board member John Kostrowski, Jr., followed up with a question regarding any communication, i.e., in person, email or a phone call, prior to issuing the violation. Mr. Daniels stated, "No." Mr. Daniels did not attempt to communicate with Mr. Novalis.

The Board Chairman, Theodore Maglione, asked Mr. Daniels a number of questions regarding the distinction between the installation of sheathing in cases of new construction as opposed to replacement of sheathing for repairs and renovations/reroofing. Mr. Daniels stated that there is no requirement for an inspection of repairs/reroofing. Mr. Daniels further stated that inspections for new construction are performed using a wall bracing requirement by observing the nailing pattern and blocking at the seams. Mr. Daniels concluded his explanation by stating that he does not go on the roof when conducting a new construction roof inspection. Chairman Maglione confirmed, through his questioning of Mr. Daniels, that the violation and penalty was issued for work without a permit, although the work that had been done, did not require an inspection.

Vice Chairman, Jeffrey Betz, asked Mr. Daniels how frequently permits are obtained for projects involving a reroofing; and Mr. Daniels approximated this to be 15-20 times per year. Mr. Daniels clarified that his recommendation is that notification should be made to the building department whenever work is done on a roof that may require sheathing to be replaced.

Upon redirect, Mr. Loiodice asked Mr. Daniels to clarify or confirm that minor work, per the code, requires a permit. Mr. Daniels confirmed that minor work does require a permit.

Mr. Novalis began the presentation of his case with a statement outlining the three main reasons for appealing the \$2000 penalty issued by the Township for failing to obtain a permit. Listed among them were, 1) the code is not clear; 2) inconsistent application and enforcement from town to town; 3) lack of constructive engagement from/by Mr. Daniels. Mr. Novalis explained that he is the third-generation owner/operator of Novalis Roofing & Siding LLC, with a reputation for exceeding code requirements and industry standards. Mr. Novalis stated that building inspectors should work cooperatively with contractors to ensure compliance and a mutual understanding of the code and the enforcement thereof.

Mr. Loiodice asked Mr. Novalis if it was his belief that Mr. Daniels was in any way required to engage with the supervisor at the worksite. Mr. Novalis replied that there was no requirement, but that it would have been the professional thing to do. Mr. Novalis confirmed that this was the first violation issued by Mr. Daniels and his company experienced another encounter with Mr. Daniels at a subsequent jobsite, involving the reroofing of a multifamily townhome structure that did not involve sheathing replacement.

Vice Chairman Jeffrey Betz asked Mr. Novalis how many roof projects his company works on in an average year. Mr. Novalis stated that Novalis Roofing & Siding perform work on approximately 200 roofs per year, of which 95% are single dwelling, residential structures.

Board member Sean Donlon asked Mr. Novalis to confirm whether or not there was some negotiations with Mr. Daniels and Mr. Novalis confirmed that Mr. Daniels rejected the settlement offer of \$1.

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.

The Board heard testimony from both parties and after a lengthy discussion, Board member John Kostrowski, Jr., made a motion to affirm the enforcement agency's Notice & Order of Penalty, Violation #V-24-001, dated January 22, 2024, and to modify the penalty, [to be reduce from \$2000 to \$1000], with Board member Larry D. Ott seconding the motion.

Statement of Reasons – Board Member John Kostrowski, Jr.

The appellant had an opportunity to accept the offer of the Township for a significantly reduced penalty – fine of \$250 rather than \$2000

The Code Communicator – Fall 2019 provided the requirement of a permit with no de minimis sheathing provision

Statement of Reasons – Alternate Board Member Larry D. Ott

There was no question that Mr. Novalis understood the requirement of the permit.

There was no question that Mr. Novalis understood the Code

Mr. Novalis was aware of changes in the Code Communicator – Fall 2019

A vote was taken of the five (5) voting Board members and pursuant to the authority granted to it under N.J.A.C. 5:23A - 2.3, the Board, by a majority vote, affirmed the enforcing agency decision as shown on the voting record below

The Morris County Construction Board has affirmed and modified, by a simple majority, the decision of the enforcement agency to issue a (reduced) penalty for violation of N.J.A.C. 5:23-2.14(a). The Board reduced the penalty from \$2,000 to \$1,000.

VOTING RECORD	Yes	No	Abstain	Absent
Ted Maglione, Chairman Builder, Professional Engineer, Construction Official, Building Subcode Official/Insp. HHS, Special member - Escrow		✓		
Jeffrey Betz, Vice Chairman Certified Fire Official, Fire Protection Subcode Official, Construction Official, Building Inspector – RCS, Fire Protection Inspector HHS, Housing Code Official, Inspector Hotels & Multiple dwellings		✓		
John Kostrowski, Jr. Master Plumber, Plumbing Subcode Official/Insp. ICS/HHS, Construction Official, Building Inspector RCS/ICS	✓			
Sean Donlon – Regular Member , Construction Official, Building Subcode Official/Insp. HHS/ICS/RCS, Housing Code Official, Insp. Hotels & Multiple dwellings	✓			
Larry D. Ott – Alternante Member Electrical Subcode Official/Inspector HHS, Construction Official	✓			

CASES POSTPONED:

MC#2024 - 5, FGM, LLC (worksite: 100 Riveredge Dr., Chatham, NJ), v Chatham Twp.
NJ 07928

(Pending Agreed Settlement)

CASE(S) WITHDRAWN: -

CORRESPONDENCE:

- Budget Balance as of June 27, 2024 - \$2,413.53

OLD BUSINESS:

- Amending Morris County Construction Board of Appeals – Rules of Procedure

NEW BUSINESS:

- Attorney’s Report
- Resignation of Alternate Board Member Harold Endean 5/30/24
Motion made by Chairman Theodore Maglione to accept the resignation of Harold Endean and seconded by Vice Chairman Jeffrey Betz and unanimously approved.
- Pending review - Escrow/Professional Fees Application

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

ADJOURN: On motion duly made by Chairman Theodore Maglione and seconded by Vice Chairman Jeffrey Betz at 7:31 P.M.

Sheila M. Leary, CPM

Sheila M. Leary, CPM
Board Secretary