

IN THE MATTER OF
BARRY MEHTA- LEGAL OWNER.
5550 Baltimore National Pike
Baltimore, MD 21228

RE: Fire Inspection Violations

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA – 10-014

* * * * *

OPINION

This case comes to the Board on appeal of a report written by the Baltimore County Fire Department listing various violations of National Fire Safety Code for the property located at 5550 Baltimore National Pike, Baltimore, MD 21228 (the "Property").

A public hearing was held on December 9, 2009. Barry Mehta, the legal owner of the Property was *pro se*. Baltimore County was represented by Paul Mayhew, Assistant County Attorney.

Evidence

Officer Nathaniel Mack, a code enforcement specialist with the Baltimore County Fire Department, described the Property as a 3 story commercial building consisting of a basement level and a first and second floor. A Church occupied the first floor. The second floor was occupied by tenants in a quad style living arrangement with community living space in the middle of the floor. Officer Mack testified that on October 9, 2009, he received a telephone call from another Baltimore County agency and learned that the Property was being occupied while several violations were pending. On that date, Officer Mack visited the Property and issued a Fire Department Report listing seven (7) violations. (County Ex. 1).

With regard to the first violation, Officer Mack observed that, on October 9, 2009, the exit doors to the building were either bolted shut with a latch or screwed shut. Officer Mack testified that the National Fire Safety Code prohibits exit doors from being locked because occupants are prevented from exiting the building in the event of a fire or emergency. He explained that these bolt locks, although they can be slid open, were prohibited by National Fire Safety Code. On cross examination, Officer Mack agreed that if the latches were removed from the exit doors, the violation would be corrected.

With regard to the second violation, Mr. Mehta was cited for not having a fire alarm system that was UL certified. Because the Property is being used as a rooming and lodging house, a fire alarm system is required. The UL certification requires the Fire Marshall to verify the system. This citation was issued because the Fire Marshall had never been requested to verify the system with a licensed contractor. A letter dated January 16, 2008 from "T.H.E. Electric Co., Inc.", the licensed contractor which installed this fire alarm system, was admitted into evidence. (County Ex. 2). The letter stated that a UL authorized contractor was ready to proceed with the inspection but that Mr. Mehta was not responsive. (County Ex. 2). Accordingly, the electric permit was cancelled as of January 16, 2008. (County Ex. 3).

As to the third violation, because the building is being used as a rooming or boarding house, it is required to have an automatic sprinkler system throughout the building. Mr. Mehta countered this violation by submitting a copy of the applicable Life Safety Code section which states that the requirement for a sprinkler system only applies to "new" lodging or rooming houses. (Petitioner Ex. 8a). He then argued that his rooming house has been in existence since 1987 and therefore can not be "new." He testified that smoke detectors were installed in each room. Mr. Mehta also produced a copy of a docket entry for the case of *State of Maryland v.*

Barry Mehta, Case No.: 2233417456 in which he was found "Not Guilty" for failing to install a fire sprinkler system.

As to the fourth violation, Officer Mack observed that the emergency lighting for the building was not functioning. The National Fire Code requires that emergency lighting must be functioning in the event of a power outage.

As to the fifth violation, Officer Mack observed that only 1 light was illuminated over 1 of the exit doors. It is required that each exit door be illuminated at all times.

With regard to the sixth violation, Mr. Mehta was required to file for a change of occupancy to have the Church occupy the first floor. The use on record with the County is for an office. In response to this violation, Mr. Mehta submitted a copy of a Building permit sticker which is titled: "Commercial Occupancy Inspection Record" showing various Baltimore County agencies had inspected a property, although there was no property address listed. (Petitioner Ex.3). It was Mr. Mehta's contention that this sticker is proof that the County (and in particular the Fire Department) had knowledge of the commercial use of the building and that he was not required to show a change in occupancy. Mr. Mehta also submitted a Site Plan dated May 5, 2003 on which it was a hand written notation read: "Existing Church." However, this document was marked for identification only and not admitted into evidence (Petitioner Ex. 5). Finally, Mr. Mehta submitted a copy of a lease for the Church dated August 27, 2001 for a lease term beginning on September 1, 2001 and ending on August 31, 2006.

The seventh and final violation was to cease and desist occupancy of the building because the above alleged violations had not been corrected.

In addition to Officer Mack's testimony, Lieutenant Patrick Taylor of the Baltimore County Fire Department also testified for the County. Lieutenant Taylor testified that he has had

a lot of involvement with Mr. Mehta over the years. In July of 2007, there was a fire in the basement of the building. Lieutenant Taylor inspected the Church at that time to see what commercial uses were there. Mr. Mehta told Lieutenant Taylor that the Church had moved out of the Building. At the time, a tattoo parlor was located on the 3rd floor.

With regard to the UL Certification of the fire alarm system, Lieutenant Taylor explained that the process is that the contractor pulls the permit to do the work. After the system is installed, the Fire Department is notified to test the equipment with the contractor. In this case, the system was installed 1 ½ years ago and no inspection was requested. While Mr. Mehta subsequently requested that he be permitted to test the system with the Fire Department, Lieutenant Taylor explained that the inspection must be completed with a licensed contractor. In this case, the contractor, T.H.E. Electric Co., Inc., withdrew the permit claiming that it could not work with Mr. Mehta. As a result, Mr. Mehta needs to hire another UL certified contractor to conduct the inspection to correct this violation.

Mr. Mehta was made aware of this issue and admitted that he has not hired another contractor claiming that it was either too difficult to find a contractor or too expensive. Mr. Mehta did hire Simplex Grinnell to perform a service test of a fire panel. (Pet. Ex. 2). Unfortunately, Petitioner's Ex 2 - which appears to be a receipt for work - is for property located at 5551 Oakland Mills Road, Columbia, MD 21045 and not for the Property at issue. Mr. Mehta further argued that the Property should be exempt from this certification process because there is a pull station at each exit door and that he regularly performs fire drills.

Mr. Mehta testified that the building was built in 1960 and that he purchased it in 1984. In 1986, he decided that he wanted to live on the second floor of the building and filed plans for an addition. Petitioner's Ex. 4, the Site Plan was marked for Identification purposes and not

admitted into evidence. He also submitted a document entitled "Update/Message Form" dated August 16, 2006 from an "Inspector" with the initials "C.E.K." in regard to Case No.: 05-5259. (Pet. Ex. 5). The written information on this document indicates that a site plan was received and that the case would be closed. It is unclear what case this document is referring to or how this document supports any of the Petitioner's contentions.

With regard to the alleged failure to obtain a Use and Occupancy Permit, Mr. Mehta countered that he believed the zoning for the Property – CMCC – allows the use of a Church as a matter of right and therefore, he need not obtain a use and occupancy permit. He also argued that Petitioner's Ex 3, which appears to be a sticker that was previously affixed to something and is entitled "Building Permit No. 73554 and 93654 for Suite 22 and Hallways only" supports his argument. The sticker shows the initials of various Baltimore County agencies including "Fire Prevention." Mr. Mehta claimed that this was proof of commercial occupancy and satisfies the use and occupancy permit violation. However, it is unclear from Petitioner's Exhibit 3 the address for which this sticker applies.

Finally, Mr. Mehta submitted a copy of the Rental Housing License dated August 5, 2008 as proof that the County knew that there were already 5 dwelling units in the Property. (Pet. Ex. 9).

Decision

In accordance with BCC, Sec. 603, entitled "Rules of Practice and Procedure", all hearings held by the Board shall be heard de novo, unless otherwise provided by legislative act of the County Council. A de novo hearing was held in this case and both sides had the opportunity to present their respective positions.

With regard to the first violation – locking the doors against egress – Mr. Mehta did not dispute that the doors were locked but stated that he thought that one could still exit since there were double doors. Mr. Mehta understood that that the removal of the latches would eliminate this violation. Based on the evidence presented, this Board finds that Mr. Mehta is in violation as stated in County Ex. 1.

With regard to the second violation – providing UL certification for the fire alarm system that has been installed – the evidence presented showed that Mr. Mehta was provided prior notice of this violation and that, while Mr. Mehta has had ample time to hire another contractor to perform the certification, he has failed to do so. The system was installed in the Building over 1 ½ years ago. At the hearing, Mr. Mehta was notably proud that he had hired Simplex Grinnell to perform a service test of the system and that the invoice read that the system was working properly. Unfortunately, the service call as reflected in Pet. Ex 2 is for a property located in another County. Even if there was a record of a service call for this Property, the UL certification is still required to be performed between the County and a licensed contractor. Given the previous fire in 2007 which was caused – in Mr. Mehta’s words - “by a homeless person who fell asleep on a couch while smoking,” the need for certification by the Fire Marshall is overdue. If Mr. Mehta wishes to operate a rooming house, then his efforts should be directed to the safety of the occupants and not on attempting to find a way to avoid the certification. Toward that end, the Board does not find any merit to Mr. Mehta’s argument that the rooming and lodging use “has been around” and is not a “new” use. The undisputed evidence showed that Mr. Mehta did not apply for a change in use and therefore, the use on record with the County is for an office building. Thus, the Board finds, based on the evidence presented, that Mr. Mehta is in violation as set forth in County Ex. 1.

With regard to the sprinkler system, the Board finds that the rooming and lodging use is “new” as stated above with regard to the Fire Alarm system. Mr. Mehta needs to file a change in use with the County. As with the fire alarm, safety of the occupants of the rooming house is of paramount concern to this Board. The Board finds, based on the evidence presented, that Mr. Mehta is in violation for not having a sprinkler system installed as set forth in County Ex. 1.

With regard to both the emergency lighting and illumination of the exit signs, there was no evidence presented that Mr. Mehta was anything other than in violation. Mr. Mehta did testify that he had replaced a burned out light bulb the day before the Board hearing. The Board finds, based on the evidence presented, that Mr. Mehta is in violation for not having the emergency lighting functioning and exit signs illuminated as set forth in County Ex. 1.

With regard to the proof of occupancy for use of the first floor for a Church, the evidence presented showed that the use on record with the County was for a commercial office building and that Mr. Mehta had not applied for a change in this use. Mr. Mehta’s belief that the zoning classification permits this use without application for the occupancy is misplaced. Zoning is defined as use classification applicable to the land. (*Abrams, Guide to Maryland Zoning Decisions, 4th Edition*). Separate and apart from the permitted zoning use however, is the requirement that the *building* on the land is safe for occupancy. As a result, the zoning itself does not exempt Mr. Mehta from obtaining the proper use and occupancy permits needed for the Church and rooming and lodging house. The Board finds, based on the evidence presented, that Mr. Mehta is in violation for not providing proof of change in occupancy for Church assembly.

Because the Board has found Mr. Mehta in violation as set forth herein, there should be no occupancy of the building until all violations have been corrected.

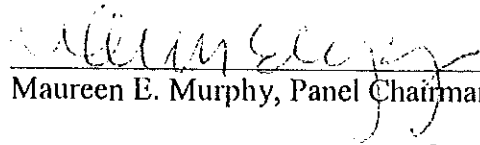
ORDER


THEREFORE, IT IS THIS 23rd day of February, 2010, by the
County Board of Appeals of Baltimore County

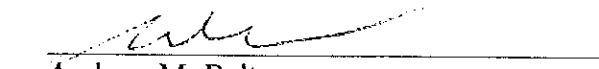
ORDERED that the Property Owner, Barry Mehta, is in violation of the items listed on County Ex. 1 and that he shall cease and desist occupancy of the building until the violations have been corrected.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Wendell H. Grier


Andrew M. Belt