

IN THE MATTER OF
MARK DUBBERT
10 Patterwal Court
Reisterstown, Maryland 21230

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-11-027

Civil Citation No. 86796

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OPINION

This matter comes before the Board of Appeals for Baltimore County (the "Board") as a Record Appeal from Administrative Law Judge's May 16, 2011 decision regarding a Code Enforcement Violation at 10 Patterwal Court in which the property owner was found to have violated Baltimore County Zoning Regulations (BCZR) §428, failure to tag or remove all untagged or disabled vehicle; and § 101.1, 102.1 of the Zoning Commissioner's Policy Manual (ZCPM), failure to cease all service garage activities on residential property. The property owner was fined One Thousand (\$1,000.00) Dollars. On August 2, 2011 the parties appeared before this Board for oral arguments as to the record appeal from the Managing, Administrative Law Judge, Lawrence Stahl's Decision. Reuben Handy, Esquire appeared for the Appellant. Baltimore County Code Enforcement Inspector, David Kirby appeared on behalf of Baltimore County.

BACKGROUND

Testimony was presented to the Hearing Officer that upon complaints from neighbors, an initial inspection of the subject property was carried out on November 12, 2010, at which time one (1) vehicle was found on blocks in the driveway and three (3) untagged vehicles were parked on the property. As a result of this inspection a Correction Notice was issued. Prior to the case going to a hearing, a re-inspection was done on December 12, 2010, at which time the property was brought into compliance and the hearing cancelled.

On January 31, 2011 another complaint inspection was done by Code Enforcement, at which time

the inspector found one (1) vehicle on a trailer parked in the street and one (1) untagged vehicle on the property itself. On February 8, 2011 the inspector found the vehicle on the trailer and the other untagged vehicle, both on the property owners driveway. The record reflects that no Correction Notice was issued at this time. On April 15, 2011, a subsequent inspection revealed one (1) untagged vehicle on the premises and a tagged vehicle, which the property owner had been working on. A Citation was issued for the untagged vehicle and for failure to cease service garage activities. A pre-hearing inspection revealed one (1) untagged vehicle on the premises.

BOARD'S OPINION

BCZR § 101.1

BCZR, § 101.1, states a service garage as being “a garage other than a residential garage, where motor driven vehicles are stored, equipped for operation, repaired, or kept for *remuneration*, hire, or sale.

In applying the “Plain Meaning Rule” of statutory interpretation, this Board has to look no further than the “plain meaning” of the language of the statute itself to ascertain its intent. As noted by counsel for Mr. Dubbert, the Webster’s Third New International Dictionary defines *remuneration* “as to pay for any service, loss or expense; recompense.”

It is clear from the record that no evidence was presented that Mr. Dubbert received any pay, or was hired to perform car repairs for others. The Managing Administrative Law Judge found the act of Mr. Dubbert giving one (1) of his repaired vehicles to his daughter, constituted a remuneration of some emotional or familial value. This Board does not find that the “plain meaning” of remuneration includes such behavior. Consequently, this Board finds that the County has not met its burden of proof in regards to a violation under BCZR § 101.1

As it is the County’s burden to prove each element of an alleged violation, it appears that that it has failed to adequately establish the underlying premise of the violation. While it appears that BCZR § 101.1 has been construed to prohibit a wide range of automotive repair activity in the past, this Board may only look to the plain meaning the statute in interpreting whether a violation has occurred.

BCZR § 428.1

Pursuant to BCZR § 428.1 no “inoperative” motor vehicles may be stored outside on a residential lot; nor may any “unlicensed” motor vehicles for a period exceeding fifteen (15) days. Based on the testimony of Code Enforcement Officer, David Kirby, it is clear that Mr. Kirby observed untagged vehicles on Mr. Dubbert’s property throughout a fifteen (15) day time period.

Pursuant to Baltimore County Code § 3-6-203 of Subtitle 2, “Enforcement”, ordinarily before issuing a citation, a “Correction Notice” is issued after the inspection reveals a violation. While the record reflects that a Correction Notice was issued in the prior case involving Mr. Dubbert’s property, that case was closed before coming to hearing and the record reflects that no such Correction Notice was issued for the citation at issue.

Pursuant to *Baltimore County Code* § 3-6-205 (b) (2) if both the Code Official and the Director establish written criteria for any circumstances in which the issuance of a Correction Notice is not required, than a citation without a Correction Notice first being issued is permissible. This Board finds that the record does not reflect that the existence of any such criteria was established.

This Board finds that the ability to cure the circumstances of a violation is the intended purpose of such a Correction Notice, and in this matter the Appellant was precluded from availing himself to such a procedural remedy. While the Board concedes that the Code sections at issue, are somewhat confusing, it is bound to follow the procedure that has been codified by statute. Consequently, this Board finds that the Appellant cannot be found to be in violation of BCZR § 428.

CONCLUSION

Based the findings stated above, the Board finds that the Administrative Law Judge's May 16, 2011 decision in regard to the violation of BCZR, § 101.1 was unsupported by competent material and substantial evidence and therefore is REVERSED and that the process used to issue the Appellant a citation pursuant to BCZR § 428.1 was procedurally deficient as enumerated in *Baltimore County Code* § 3-6-203 and § 3-6-205 (b) (2) and is therefore also REVERSED.

ORDER

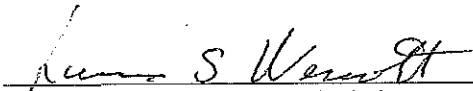
THEREFORE, IT IS THIS 18th day of August, 2011 by the Board of Appeals of
Baltimore County

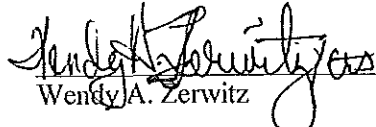
ORDERED that the decision of the Administrative Law Judge dated May 16, 2011 be and the
same is hereby REVERSED; and it is further


ORDERED that, for the reasons stated, the total civil penalty of Two Thousand (\$2,000.00)
imposed by the Administrative Law Judge shall be RESCINDED.

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*.

BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence S. Wescott, Panel Chairman


Wendy A. Zerwitz


Andrew M. Belt