

IN THE MATTER OF	*	BEFORE THE
<u>JOHN W. KENYON III</u> – Respondent and	*	BOARD OF APPEALS
<u>JOHN W. KENYON, IV</u> – Intervening Respondent	*	
102 Linden Terrace	*	OF
Towson, MD 21286	*	
RE: Citation 103185 for operating a	*	BALTIMORE COUNTY
rooming/boarding house and Citation 102546	*	Case No: CBA-12-047

* * * * *

OPINION

This matter comes before the Board on appeal from John W. Kenyon, III, Respondent and John W. Kenyon, IV, Intervening Respondent from a decision of Administrative Law Judge Lawrence M. Stahl dated January 17, 2012 and also an appeal of Judge Stahl's Ruling on a Motion for Reconsideration dated March 19, 2012. Oral Argument based upon the record before the ALJ was held before this Board on July 27, 2012. Respondent and Intervening Respondent were represented by Douglas E. Riley, Esquire of Treanor, Pope & Hughes, P.A. The County was represented by Dayna L. Kipnis, Assistant County Attorney. No briefs were filed in support of the positions of either party.

BACKGROUND

On September 15, 2010, John W. Kenyon, III (herein referred to as Kenyon, III) purchased the property at 102 Linden Terrace, Towson, MD 21286. It appears that the purpose of this purchase was to allow his son John W. Kenyon, IV (herein referred to as Kenyon, IV) to live in the home while he was attending Towson University. Other students also lived in the home, and this issue will be discussed later in this opinion. There is no evidence on the record

with respect to the initial problem involved in this matter. A letter in the file to ALJ Stahl from Kenyon, III, indicates that he was first cited on September 8, 2011 for a non-conforming curb cut and driveway on Linden Terrace. It appears that Kenyon, III utilized a contractor who had not obtained a permit for the job. The citation is not in the file, however, according to the letter, Kenyon, III states that he immediately contacted a local engineering firm, Gerhold, Cross & Etzel, for assistance in complying with the order. He was referred to Richard Truelove, P.E., Inc. and Mr. Truelove was engaged to remedy the situation. Truelove evidently contacted the Bureau of Highways, prepared a plan, and obtained a permit by letter dated October 19, 2011 from Robert T. Burgess, Chief of the Bureau of Highways, to construct the curb cut. Pursuant to that permit a new curb was cut, the old curb cut which went into a garage on the property was removed and the work was completed on or about October 27, 2011 at a cost of approximately Five Thousand Dollars (\$5,000.00).

The letter granting the access permit via Mr. Burgess is in the file of the administrative hearing.

On November 8, 2011, Mr. Burgess wrote Kenyon, III a second letter indicating the circumstances of the original situation of the illegal curb cut and stating that a permit was granted on October 19, 2011 for the construction of the new means of ingress and egress to the property. This was conditioned on the closing of the existing entrance which the letter states was accomplished. Mr. Burgess went on to state that "further review of the overall situation and mitigating circumstances surrounding the entire process has forced this Bureau to retract any and all permits and requests that the entire area be restored to its original condition prior to any construction having taken place at 102 Linden Terrace. Should you wish to appeal this decision

you may do so in writing by contacting Edward C. Adams, Jr., Director, Department of Public Works, 111 W. Chesapeake Avenue, Towson, MD 21204.

The letter from Kenyon, III indicates he wrote a letter to Mr. Adams on November 15, 2011, requesting an explanation of the revocation of the building permit for the curb cut and parking pad (that letter is not in evidence). Mr. Adams replied by letter dated December 13, 2011, a copy of which is in this file. In this letter Mr. Adams states:

Baltimore County will not accept the new entrance or a replacement entrance the purpose of which is to make the backyard area of this home accommodating for a zoning violation use such as a boarding house.

The letter of Kenyon, III also indicates that after the January 11, 2012 hearing, before ALJ Stahl, Mr. Truelove was engaged to identify “the overall situation and mitigating circumstances” that caused the permits to be canceled and to prepare a new plan and to draw a new permit. The letter indicates that Truelove has been working with the Public Works office, since the ALJ’s order, to bring the access issue into compliance with the County regulations. The letter states “he [Truelove] has understood from the county staff member he is working with that any action was on hold while the situation was being reviewed and a decision had been made on his questions on the matter.”

Just prior to the letter of November 8, 2011 revoking the permit to construct the new driveway access, a Code Enforcement Inspector from the Department of Permits, Approvals and Inspections, visited the property on November 1, 2011 and issued a correction notice for operation of a non-permitted rooming/boarding house resulting in a possible fine of \$200.00 per day.

On December 8, 2011, John Kenyon, III transferred the property at 102 Linden Terrace to his son John Kenyon, IV. On December 7, 2011, the Inspector from Code Enforcement issued

two citations. Citation 103185 proposing a civil penalty of One Thousand Dollars (\$1,000.00) for operating a boarding/rooming house and citation 102546 proposing a civil penalty of One Thousand Dollars (\$1,000.00) for failure to obtain a rental registration.

On January 10, 2012 the inspector returned to the site and found that the deed had been transferred from John Kenyon III to John Kenyon IV as sole owner. They determined that Mr. Kenyon, IV could have two (2) roommates and be in compliance and dismissed and closed the case.

On January 11, 2012, a hearing was held before ALJ Stahl. While the decision indicates that John Kenyon, III appeared at the hearing, that does not appear to be correct in that John Kenyon, IV appeared at the hearing but had not been served. It was determined that John Kenyon, III was no longer the owner of the property and that John Kenyon, IV, the current owner of the property was in compliance with respect to the number of people in the home and with respect to the rental registration.

Neither John Kenyon, III, nor John Kenyon, IV was represented by Counsel before the ALJ.

During that hearing, the ALJ stated that he would find that Mr. Kenyon was in compliance with respect to the number of people in residence at the home and was not violating the rooming/boarding house law and was also in compliance with the registration. The issue with respect to the curb cut was raised during the hearing and the ALJ stated that in order to be in compliance it would be necessary for Mr. Kenyon to restore the ground, affected by the curb cuts to the original condition and continue to maintain it properly. He imposed a civil penalty of One Thousand Dollars (\$1,000.00) and suspended it in full if the property was brought into compliance by the removal of the illegal curb cut and parking pad and the ground disturbed

thereby was restored to its original condition by February 27, 2012. Should the property not be restored as he dictated, the One Thousand Dollars (\$1,000.00) penalty would be imposed. The ALJ's Order does not cover the dismissal of citations 103185 and 102546.

The ALJ also ordered that if the penalty was not paid within 30 days of billing, the civil penalty and any expenses incurred by the County as authorized should be imposed and placed as a lien against the property.

On February 29, 2012 a letter was sent to Kenyon, III at 102 Linden Terrace from Lionel VanDommelen, Chief of Code Enforcement indicating that Mr. Kenyon was in violation of the ALJ's order and must pay the One Thousand Dollars (\$1,000.00) penalty as ordered.

By letter dated March 6, 2012 Kenyon III requested ALJ Stahl to reconsider his decision of January 17, 2012. Judge Stahl denied the request for reconsideration by letter dated March 19, 2012.

Subsequently, on March 27, 2012, another citation was issued to Mr. John Kenyon, III and John Kenyon, IV, with respect to the property assessing a penalty in the amount of Two Thousand Dollars (\$2,000.00) indicating failure to comply with the Order of the ALJ dated January 17, 2012.

On March 30, 2012, a letter from Arnold Jablon, Director of Permits, Approvals and Inspections was sent to Kenyon IV at 102 Linden Terrace indicating that a lien of One Thousand Dollars (\$1,000.00) was placed against the property and if the charges were not paid within 30 days, interest at the rate of 1% per month would begin to accrue.

On April 4, 2012 Douglas Riley, Esquire filed a Notice of Appeal and Supporting Petition. Pursuant to that Appeal, a hearing was held before the Board on July 26, 2012.

POSITION OF THE PARTIES

A) Position of Respondent

The Respondent takes the position that the Administrative Law Judge has no jurisdiction with respect to requiring curb cuts on the curbs of county roads. The Respondent contends that the jurisdiction for public roads comes under the Department of Public Works and that the Department of Public Works has the exclusive power to make decisions with respect to roads and the adjacent property owners. Under Section 18.3-304 of the Baltimore County Code.

Since the ALJ had no jurisdiction over the issue, the Respondent contends that there is no right to appeal until such time as an attempt is made to enforce the decision of the ALJ.

They contend the citation issued on March 27, 2012, setting a hearing date of April 18, 2012 to enforce the ALJ's decision in this matter, is the date from which an appeal can be taken to this Board. Mr. Riley filed his appeal for Respondents on April 4, 2012.

In addition, Respondent contends that the fines assessed against Kenyon, III and Kenyon, IV, were invalid. Kenyon, IV was never served and became the owner of the property on December 8, 2011. The violations with respect to the rooming house and registration citations were therefore dismissed at the hearing. Kenyon, IV, filed a Motion to Intervene in this matter in April but it has never been ruled on. In addition, Kenyon, IV, never agreed to the curb cut remediation as contended by the County.

B) Position of Baltimore County

The County's position is basically that an appeal to this Board of Appeals should have been taken within fifteen (15) days of the ALJ's decision as set forth in BCC § 3-6-301(a). Therefore, the appeal was untimely and the Board should dismiss the appeal. In addition, the

County contends that Kenyon, IV appeared at the hearing before the ALJ Stahl and agreed to remedy the curb cut in accordance with the requirements set forth by Judge Stahl during the hearing.

DECISION

It appears that this case started on one track and got switched to another track at the end of the hearing. Two original citations, 103185 and 102546, were prepared by the Code Inspectors of the Department of Permits, Approvals, and Inspections and were served on John Kenyon, III the original owner of the property. The property was transferred to John Kenyon, IV on December 8, 2011 and it appears that the property then came into compliance. Kenyon, IV was living there with one other individual and the proper registration fee was paid, therefore at the hearing conducted on January 11, 2012, the ALJ found that there was no violation with respect to the citations 103185 and 102546.

However, during the hearing, a representative of the Towson Manor Village Community Association and other residents of the area raised the question of the second curb cut going onto the property and a parking pad that had been constructed thereon off of Linden Terrace. Judge Stahl then stated that Baltimore County has in fact ordered that the second curb cut and parking pad be removed and assessed a One Thousand Dollars (\$1,000.00) fine if the removals were not accomplished within a 45 day period. It is not clear, who ordered the curb cut to be removed from Baltimore County, however there is a memo to the file from Kimberly Wood, Code Enforcement Inspector indicating that "after further investigation, the deed has been transferred from the father to son as sole owner on December 2011, therefore he may have two roommates and be in compliance hearing will be dismissed and case closed." On that memo in hand writing

is a foot note “imposed fine, suspend fine, 45 days to restore curb” It appears that the order to restore the curb cut came from the Director of Department of Permits, Approvals, and Inspections.

It also seems clear, although there was no testimony before the ALJ, that the issue of the curb cuts was being considered by the Department of Public Works.

The Board has listened to the transcription of the proceedings before ALJ Stahl. The county contends that Kenyon IV agreed to the conditions set forth by the ALJ for restoration of the curb cut and parking pad to its original condition and the possible fine involved. However, it appears to the Board that Mr. Kenyon was asked by the ALJ if he understood what the ALJ was proposing to do to correct the situation. While Mr. Kenyon IV indicated that he understood, what the ALJ intended to propose in his order, this Board cannot find that Kenyon, IV agreed to the proposal.

Under the Maryland Rules, Rule 2-324 – Presentation of Certain Defenses. Subject matter jurisdiction may be raised at any time even though it was not raised below. See *Coroneos v. Montgomery County, 2005, 869 A.2d 410, 161 Md.App. 411* and *Ecolono v. Division of Reimbursements of Dept. of Health and Mental Hygiene, 2001, 769 A.2d 296, 137 Md.App. 639.*

The Board will allow the Respondents to raise the issue of subject matter jurisdiction, as argued before the Board, even though it was not raised below.

Section 14-3-304 of the Baltimore County Code (BCC) states:

(b) *Authority of Director to require improvements.*

(1) The Director of Public Works may require the owner of property that abuts a road, street, alley, curb, gutter, sidewalk, or footway in the county to make an improvement where the Director finds that the improvement is needed to alleviate a condition that threatens the health, safety, and welfare of abutting property owners.

Section 18-3-304(3)(d) sets forth an appeal procedure to the County Executive. It states as follows:

(1) (i) A person feeling aggrieved by the terms and conditions of the required improvements may apply to the County Executive or the County Executive's designee for a hearing on the terms and conditions of the required improvements.

(ii) At the hearing, the County Executive or the designee shall give the person an opportunity to be heard.

(2) (i) At the hearing, the County Executive or the County Executive's designee may revise, alter, affirm, or rescind the decision of the Director of Public Works, in whole or in part.

(ii) The decision of the County Executive or the County Executive's designee is final and may not be appealed to the county Board of Appeals or to a court.

The Board finds that since the Department of Permits, Approvals and Inspections lacked jurisdiction over the issue of curb cuts to Linden Terrace, the ALJ also lacked jurisdiction. Therefore, there was no occasion for appeal until the Department attempted to enforce the ALJ's decision. The Administrative Law Judge found that there was no violation of the rooming/boarded house rules and the rental registration rules, and the Board will affirm that finding. We reverse the findings of the Administrative Law Judge with respect to the fines concerning the curb cut and remand that issue to the Director of Public Works for processing in accordance with Section 18-3-304 of the Baltimore County Code.

ORDER

THEREFORE, IT IS THIS 9th day of August, 2012 by the
Board of Appeals of Baltimore County

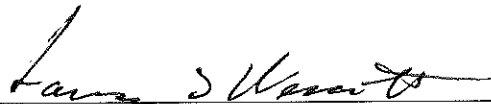
ORDERED that the decision of the Administrative Law Judge finding that the issues with respect to citation 103185 with respect to rooming/boarding house and citation 102546 with respect to Rental Registration had been satisfied shall be **AFFIRMED**; and it is furthered

ORDERED that the findings of the Administrative Law Judge with respect to the curb cuts and parking pad on the property and the assessment of a One Thousand Dollar (\$1,000.00) civil penalty be and is hereby **REVERSED** and **REVOKED**; and it is further

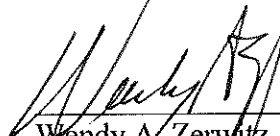
ORDERED that the issues with respect to the curb cut and parking pad on the property at 102 Linden Terrace shall be referred to the Director of the Department of Public Works.

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 Chair



Wendy A. Zerwitz



Edward W. Crizer, Jr.