

IN THE MATTER OF
WILLIAM F. KERCHNER, JR. – APPELLANT
1005 St. Charles Avenue
Baltimore, MD 21229
13TH ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

RE: CODE ENFORCEMENT
VIOLATION/CIVIL CITATION
[Civil Citation No.: #CO0097399
Violation BCC Section 13-7-310; BCZR Section 101,
102.1, 1B01.1D]

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO.: CBA-12-017

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OPINION

This matter comes before the County Board of Appeals on an appeal from a decision of the Administrative Law Judge dated September 16, 2011 assessing a civil penalty of \$500.00, of which all but \$100.00 was suspended pending the property being brought into compliance on or before December 1, 2011, against William F. Kerchner, Jr. 1005 St. Charles Avenue, Baltimore, MD 21229, for failing to remove all junk and debris and maintaining an open dump on residential property. The Respondent/Appellant, William F. Kerchner, Jr., filed a timely appeal from the decision of the Administrative Law Judge, and oral argument was held before the Board on November 23, 2011, scheduled to begin at 10:00 am. At 10:15 am, the Appellant had not appeared. Prior to the Board convening, a call was placed to the Appellant however there was no answer. The Chairman called the case at 10:15 am and dismissed same as the Appellant had failed to appear. Immediately following the dismissal, the Appellant appeared, stating that he had been in the wrong place. The Chairman then reinstated the appeal and the matter was allowed to proceed. The Appellant, William Kerchner, appeared *pro se*; Lionel VanDommelen, Chief of Code Enforcement/PAI, appeared on behalf of Baltimore County. A non-public deliberation of the case was held on November 30, 2011 at 9:00 a.m. The Board members reviewed the record and tape of the hearing before the Administrative Law Judge and considered the arguments of Mr. Kerchner and Mr. VanDommelen..

Background

This case came before the Administrative Law Judge for a hearing on a citation for violations under the *Baltimore County Code* (BCC) Section 13-7-310 and the Baltimore County Zoning Regulations (BCZR) 101, 102.1, and 1B01.1D for failure to remove all junk and debris and maintaining an open dump on residential property. Williams J. Kerchner Jr. and Chip Raynor, Baltimore County Code Enforcement Officer testified at the hearing.

Inspector Raynor testified that he had received a complaint regarding the subject property and on July 7, 2011 went to the Appellant's home to carry out an inspection. When the Appellant would not let him on to the property, the inspector contacted the police department to assist him. Appellant questioned the right of the county inspector to enter onto his private property. The Inspector testified that he then walked the property and took pictures of the damage from a fire on Appellant's property, high grass and numerous items of what he referred to as "junk, trash and debris". A citation was issued, giving Appellant until July 22, 2011 to cut all grass, clean the front and rear of the property of all trash and debris, and, if items were of value to the Appellant, to store the valuable items properly. Inspector Raynor returned to the property on July 26, 2011 for a second inspection. He requested permission from the Appellant and was allowed on the property. He testified that only the grass had been cut.

Inspector Raynor re-inspected the property for a third time on August 10, 2011. After requesting permission he was again allowed on the property and noted that the junk, debris and trash still had not been removed. He told the Appellant he had until August 12, 2011 to clean the property and, when he failed to do so, issued him a second citation on August 17, 2011 for the continuing violations, citing BCZR 101,102.1, and 1B01.1D, maintaining an

open dump, and BCC 13-7-310, failing to remove all trash and debris. Inspector Raynor testified that at each of the inspections, the Appellant asked him what property he wanted him to remove as he did not consider any of the items to be junk or trash. Photographs taken by Inspector Raynor on July 26, 2011, August 10, 2011, and September 1, 2011 were entered into evidence.

The Appellant testified, asking if he could read from prepared notes. The Administrative Law Judge told the Appellant he was limiting his testimony to why the items on his property should not be considered junk, trash or debris. He would not consider Appellant's arguments that the inspector should not have come onto his property. When the Appellant again asked if he could read from his prepared notes the Administrative Law Judge told him that he could submit his notes as a written statement of his testimony and advised him that they would be considered as part of the record.

Appellant testified before the Administrative Law Judge that his home was being reconstructed as the result of a fire and took exception to the characterization of the items as trash, junk and debris. He said that some these items were related to the construction and were things which he could not keep in his house due to the size such as pipes and lumber. He placed tarps over these and other items. He did not know which items were being described as the junk, trash and debris because no one would tell him. He testified that the construction should be done by the end of November.

Decision

An appeal to the Board of Appeals for a code violation is on the record made before an Administrative Law Judge. The responsibility of this Board in Code Enforcement cases has been set forth in Baltimore County Code § 3-6-304, which states:

"After hearing argument and a summary of the evidence presented at the Code Enforcement hearing, this Board has the authority under BCC, §3-6-304 to do the following:

- (a) *Disposition options.* In a proceeding under this subtitle, the Board of Appeals may:
 - (1) Remand the case to the Hearing Officer;
 - (2) Affirm the final order of the Hearing Officer; or
 - (3) Reverse or modify the final order if a finding, conclusion, or decision of the Code Official, the Director, or the Hearing Officer:
 - (i) Exceeds the statutory authority or jurisdiction of the Code Official, the Director, or the Hearing Officer;
 - (ii) Results from an unlawful procedure;
 - (iii) Is affected by any other error of law;
 - (iv) Subject to subsection (b) of this section, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (v) Is arbitrary or capricious."

The Board is not entitled to substitute its judgment for that of the Administrative Law Judge, and deference is due the totality of the Administrative Law Judge's decision in examining the Appellant's petition for appellate review and considering the oral arguments.

In its review of this matter, the Board considered the definition of an open dump as defined in Sections 101.1. of the Baltimore County Zoning Regulations (BCZR). An open dump is defined as "any land publicly or privately owned, other than a sanitation landfill, on which there is a deposit and accumulation, either temporary or permanent, of any kind of organic or inorganic refuse, including but not limited to waste materials, waste products, wastepaper, garbage, empty cans, broken glass, rags and all other kinds of organic or inorganic refuse, but excluding scrap for the use in manufacturing processes on the premises, or waste materials resulting from such processes, or resulting from the construction or

elimination of facilities for such processes”. The Board also considered that Section 13-7-310 (a) of the Baltimore County Code (BCC) states that a “person may not place, leave, dump, or allow to accumulate any garbage, rubbish, trash, or manure in an improved or vacant building or premises, or upon a open lot or alley so that the garbage, rubbish, trash or manure may become food for rats or a rat harborage.”

In his decision, the Administrative Law Judge stated that in reviewing the testimony and evidence presented, including the photographs presented by both the inspector and the Appellant, he found the characterization of the inspector to be more accurate. He acknowledged that some of the items in the yard could be related to the construction and believed that the Appellant could remove them from the yard once the construction is completed. He would not address whether the inspector violated the Appellant’s Fourth Amendment rights and told the Appellant that it was not the inspector’s job to tell him which item were junk as what may be junk to one person might be valuable to another. If there were items he wanted to keep, he had to properly store them. The Administrative Law Judge, in his decision, was cognizant of the fact that once the construction was completed, some of the trash may be removed. He stated that as the basis for his suspending part of the fine and ordering that property be re-inspected after the anticipated completion date for the construction. He also stated that if the construction was not completed, the Appellant could ask for additional time.

In his argument before the Board, Appellant states that he was never told what items constituted junk, trash, or debris and were subject to removal. He was never told how to store items he wanted to keep. He argued that nowhere is the “appearance of property” defined. He presented pictures taken by him after Inspector Raynor’s pictures

were taken to show that the trash is no longer on his property. He argues that he was prejudiced at the hearing because he could not read from his notes nor was he allowed to argue that his Fourth Amendment rights had been violated. He felt there were improper conversations at the bench prior to the hearing between the Administrative Law Judge and Inspector Raynor.

In response to the Fourth Amendment concerns, Mr. VanDommelen argued to the Board that the County Code does allow inspectors to enter people's property upon a complaint having been made.

The burden of proving a violation of the Code rests with the County. In the instant case, after reviewing all of the evidence, the file, and tape of the hearing, the Board agrees that County has met their burden and is not convinced that the problem has been remedied. The Board considers the definitions set forth above and believes they are applicable in this case. The pictures still show that the front yard is overgrown, there are weeds throughout the rear and side yards, there is debris next to the garage such as ladders, a wheelbarrow, an old door, and chairs. In front of the garage are various items covered with tarps. The pictures presented by the Appellant do not show as much of the area as the pictures taken by Inspector Raynor and so the Board is not convinced that the problem does not exist. If Appellant's home reconstruction was to be completed by November, it should be completed by now and the items stored in the rear yard should be removed.

The issue of the Fourth Amendment rights is for a Court of Law to decide and not this Board.

Conclusion

The decision of the Administrative Law Judge was neither arbitrary nor capricious and was supported by competent, material and substantial evidence. The Board does not find any error of law or unlawful procedure. There was no evidence that anything improper occurred when Inspector Raynor was speaking with the Administrative Law Judge prior to the hearing. The Administrative Law Judge did not exceed his authority or jurisdiction.


ORDER

THEREFORE, IT IS THIS 6th day of December, 2011, by the Board of Appeals of Baltimore County


ORDERED that the decision of the Administrative Law Judge dated September 16, 2011 be same hereby is **AFFIRMED**.

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*.

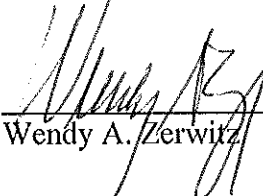
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Chairman



David L. Thurston



Wendy A. Zerwitz