

IN THE MATTER OF

PULLEN TOUR SERVICE, INC.
3118 HAMMONDS FERRY RD

13TH ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-12-048

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OPINION

This matter is before the Board on an appeal of a decision of Administrative Law Judge Lawrence M. Stahl (ALJ) on March 21, 2012. In that Opinion Judge Stahl ordered the Respondent, Pullen Tour Services, LLC to pay a fine of Fifteen Thousand (\$15,000.00) Dollars, civil penalty to be imposed if a site plan for the subject property was not approved by June 15, 2012 and environmental and RA agreements on the said property were not entered into by September 30, 2012. The ALJ further ordered that the Fifteen Thousand (\$15,000.00) Dollar civil penalty would be imposed if there was a subsequent finding against the Respondent for the same violation.

The Respondent filed an appeal in the matter requesting a ninety (90) day extension of the time in which to file the site plan. Respondent does not contest the Findings of Fact by the ALJ but solely requests a ninety (90) day extension from June 15, 2012 within which to file the site plan.

A hearing was held on May 30, 2012 before the Board. Mr. Pullen was present and was not represented by Counsel, although attorney, Erika E. Cole, Esquire had entered her appearance on his behalf and filed the appeal. Mr. Pullen stated that his engineer from Richardson Engineering, LLC, had indicated to him that he would try to attend the hearing, but he was occupied at another hearing in the same County building and did not appear.

The County was represented by Assistant County Attorney Dayna L. Kipnis, who entered her appearance on May 15, 2012. Ms. Kipnis had a copy of a letter addressed to Mr. Pullen in which Ms. Cole indicated that she was withdrawing her appearance in this matter and also indicated that she had notified the Court of her withdrawal. The Board's file did not reveal that Ms. Cole had submitted any type of withdrawal notification to this Board prior to the hearing on May 30, 2012.

Mr. Pullen was given the opportunity to obtain a postponement to obtain Counsel or to proceed on the basis that he was requesting a ninety (90) day extension. He chose to proceed.

Background

This matter has a lengthy history beginning back in April of 2006. At that time, Respondent Pullen Tour Services, Inc. maintained a tour bus service company at 3118 Hammonds Ferry Road and was the subject of an active violations before the Division of Code Inspections and Enforcement, having received a citation for code violation with respect to bus parking within twenty (20) feet of a residential home as well as fumes coming from the buses and going into the homes.

At that time, Respondent had filed a Petition for Variance from Baltimore County Zoning Regulation (BCZR) as follows:

1. From § 409.A2 and 409.A2.6 to permit a paving surface of compacted stone without paint striping in lieu of the required paint striped durable and dustless paving surface;
2. From § 243.3 to permit a rear yard setback of 1.5 feet in lieu of the required 50 feet;
3. From § 243.2 to permit a side yard setback of 1.5 feet in lieu of the required 50 feet;
4. From § 243.4 to construct a building 1.5 feet in lieu of the required 125 feet to the nearest boundary line of a residential zone; and
5. From § 243.1 to permit a front yard setback of 1.5 feet in lieu of the required 75 feet.

A hearing was held before the Deputy Zoning Commissioner at that time. Several neighbors appeared in protest of the various variance requests. In the decision dated May 17,

2006 the Deputy Zoning Commissioner granted four (4) variances, increasing the requested setbacks slightly 10 feet in lieu of the required 50 feet for the first one; and 5 feet in lieu of the required 50 feet for the remaining setbacks. He stated that the Petitioner should submit landscape and lighting plans to the Baltimore County Landscape Architect for review and approval to insure that the new building is properly screened from the adjoining residential uses, and to buffer adjacent properties from the visual impact of the new building.

An appeal was filed from this decision to the Board of Appeals and a hearing was held before the Board on May 9, 2007. On August 9, 2007, the Board issued an Order denying all of the variances requested. That decision was appealed to the Circuit Court for Baltimore County. On June 30, 2009, Judge Judith Ensor of the Baltimore County Circuit Court issued an Order upholding the decision of the Board of Appeals, denying the five (5) variances requested by the Petitioner.

On September 7, 2011, Respondent Pullen was given a Correction Notice by Code Enforcement and Inspection giving him fifteen (15) days to have a site plan approved on the Company's location at 3118 Hammonds Ferry Road. On September 26, 2011, Respondent was given a second citation indicating that a hearing would be held on November 2, 2011 in Towson, with respect to the site plan and indicating that the County needed an approved site plan on file to avoid the hearing and a fine of Fifteen Thousand (\$15,000.00) Dollars. As previously stated, the hearing was conducted before the ALJ on March 14, 2012, with the subsequent decision being issued on March 21, 2012.

Decision

Mr. Pullen indicated at the hearing before the Board that site plan had been submitted by his Engineer and he was assured that the site plan was in the process of being approved. He stated that

he requested the ninety (90) day extension on the basis that he could not afford a Fifteen Thousand (\$15,000.00) Dollar fine, and he was not sure that all of the people who would be reviewing the plan would be able to do so by the deadline of June 15, 2012.

The Board took a brief recess and returned to inform the parties that the Board would grant a forty-five (45) day extension of the time period for approval of the agreement from June 15, 2012 to July 30, 2012. The Board also extended the approval for the environmental and RA agreements on the said property from the date of September 30, 2012 to the date of November 14, 2012. The Board indicated that there would be no further extensions in the event that the agreements were not approved by the above dates.

While Assistant County Attorney, Ms. Kipnis was not in favor of the extensions, she agreed to accept the Board's position in this matter.

ORDER

THEREFORE, IT IS THIS 7th day of June, 2012 by the Board of Appeals of
Baltimore County

ORDERED that the Fifteen Thousand (\$15,000.00) Dollar civil penalty imposed and suspended by the Administrative Law Judge in the above matter will be imposed if a site plan for the subject property is not approved by July 30, 2012; and if the environmental and RA agreements on the said property are not entered into by November 14, 2012; and it is further

ORDERED that the Fifteen Thousand (\$15,000.00) Dollar civil penalty will be imposed if there is a subsequent finding against the Respondent for the same violation; and it is further

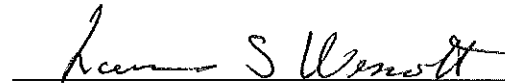
ORDERED that if not paid within thirty (30) days of billing, the civil penalty and any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property; and it is further

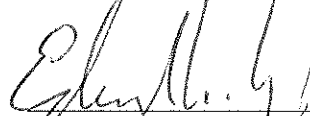
ORDERED that the County is directed to inspect the property to determine whether the violations have been corrected.

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*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Wendell H. Grier, Panel Chairman


Lawrence S. Wescott


Edward W. Crizer, Jr.