

IN THE MATTER OF  
DANIEL AND VIENNA DIETRICH,  
LEGAL OWNERS – APPELLANTS  
11444 GLEN ARM ROAD  
GLEN ARM, MD 21057

RE: Code Enforcement Hearing;  
Civil Citation: CO-0103568

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA – 13-017

\* \* \* \* \*

OPINION

This case comes to the Board on appeal of the Final Order of Administrative Law Judge ("ALJ"), Lawrence M. Stahl, dated November 27, 2012. In his decision, Judge Stahl found that the Respondents had 1) failed to comply with the 30 inch setback listed for Permit No. : B703990 and Ordered that the Respondents restore the property to the extent possible to its condition before the violation, including the removal of the source of the violation; 2) he further found that the Respondents had failed to comply with the zoning variance granted in Case No.: 99-183-A, in which setbacks of 20 feet and 24 feet were granted in lieu of the required 50 feet and Ordered that the Respondents shall restore the property to the extent possible to its condition before the violation, and removal of the source of the violation.

The ALJ further Ordered that the garage structure located at 11444 Glen Arm Road constructed by the Respondents shall be stayed upon the filing of a Variance or other zoning relief request to cure the same, until all proceedings relative to that Variance or requested zoning relief shall be concluded.

Finally, the ALJ Ordered pursuant to his order, the subject structure and addition located at 11444 Glen Arm Road constructed by the Respondents, shall be stayed upon the filing of a Variance or other zoning relief request to cure the same, until all proceedings relative to that Variance or zoning request shall be concluded.

A hearing before this Board was held on March 12, 2013. Edward C. Covahey, Jr., Esquire appeared on behalf of Daniel L. and Vienna C. Dietrich, Appellants. Jonny Akchin and Adam Rosenblatt, Assistant County Attorneys, appeared on behalf of Baltimore County.

#### **Factual Background**

Respondents, Daniel L. and Vienna C. Dietrich purchased the property in question at 11444 Glen Arm Road on July 2, 1998. After purchasing the property, the Respondents determined to raze the main structure and construct a new building with an addition on the existing foundation, as well as, an accessory garage structure. Utilizing existing surveys, the owners obtained a setback variance (Case No. 99-183-A) of 24 feet in lieu of the required 50 feet for the main building and addition thereto.

The variance was appealed by Ms. Sarant, the next door neighbor to the Respondent, to the Board of Appeals for Baltimore County and the Board decided to permit the variance. That decision was affirmed by the Circuit Court for Baltimore County in Case No.: 03-C-007365.

Mr. Dietrich testified that he was a Master Plumber and HVAC Contractor and acted as his own General Contractor in the construction of the primary residence and the addition. He testified that he was familiar with surveys and carried out his own

measurements throughout, including simple subtraction to locate the structure and addition relative to the property line. He then located the garage structure on what he believed to be a location in compliance with the Code, requiring the 2.5 feet (property line). A concrete pad, oil tank and HVAC structure were also located on his property pursuant to his own measurements.

After receiving complaints on November 8, 2011 from Ms. Sarant and Mr. Zimmer acting as Power of Attorney for the adjacent property owner, Ms. Sarant, Glen Berry, Chief Building Inspector with Building, Plumbing and Electrical Inspections, Baltimore County Department of Permits, Approvals and Inspections testified that he met with the Respondents on the subject site. It was determined that the Respondents would commission a survey to determine the common property line from which setback measurements could be determined.

In December 2011, Mr. Zimmer forwarded a survey report prepared by surveyors G.W. Stephens, Jr. and Associates, Inc. ("GWS"), which determined that the garage was 2.1 feet from boundary line and therefore in violation of the Code. As a result of the report, the concrete pad, oil tank and compressor were subsequently removed from their location by the Respondents.

Mr. Berry stated that, not having received a survey to the contrary commissioned by the Respondents, he issued a Correction Notice on January 26, 2012. He suggested the following steps to be taken, including obtaining a survey showing the Respondents' garage structure was properly situated, obtaining a variance for the main building and addition, and/or altering their locations to meet Code requirements.

At the hearing before the ALJ, Richard Matz, a professional engineer at Colbert, Matz and Rosenfelt, Inc. ("CMR"), surveyors, testified that CMR had done several measurements/surveys and that he could not be certain which was correct. He introduced an exhibit which purported to show that the garage in question was not in violation of the Code, but that the building and addition would still be 4-5 inches in violation of the variance permitted setback.

The final conclusions which were agreed to by both parties in this matter, were that the garage in question, was less than 2.5 feet from the property line and the addition to the house was between 22 and 23 feet from the property line. The garage violated Baltimore County Zoning Regulation ("BCZR") Section 400.1, since it was less than 2.5 feet from the property line; and the two-story addition would violate the side yard setbacks for the property, which is 24 feet in accordance with the variance, but it was 22-23 feet from the property line.

The Respondents argued that the apparent violation falls within the equitable maxim of "*Di minimis non curat lex*"; that is, it is inconsequential.

#### **Issue**

**Whether or not the ALJ erred in finding a violation and not finding that the violation was inconsequential.**

#### **Decision**

An appeal to the Board of Appeals for a code violation is an appeal on the record made before the Code Enforcement Officer under BCC §3-6-303 (a):

(a) *Hearing on the record.*

- (1) (i) Except as provided in subsection (b) of this section, the Board of Appeals hearing shall be limited to the record created before the Hearing Officer, which shall include:
  1. Except as provided in paragraph (2) of this subsection, the recording of the testimony presented to the Hearing Officer;
  2. All exhibits and other papers filed with the Hearing Officer; and
  3. The written findings and final order of the Hearing Officer.

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 has considered the issues raised by Respondent/Appellant, reviewed the complete record and has concluded that the decision of the ALJ should be affirmed.

Both parties admit that there has been a violation of the BCZR Section 400.1. The garage is 2.1 feet off of the common property line and the addition to the main house is 4 to 5 inches from the 24 foot variance setback granted in case number 99-183-A. These differences may be inconsequential to Respondent, but it does not appear to be inconsequential to the neighbors. The Board will not substitute its judgment for that of the ALJ.

**ORDER**

**THEREFORE, IT IS THIS** 19<sup>th</sup> day of April, 2013 by the Board of Appeals of Baltimore County,

**ORDERED** that the decision of Administrative Law Judge in the above captioned case number CBA-13-017 be and the same is hereby **AFFIRMED** and we find that the Respondents have failed to comply with the 30 inches setback listed for Permit No.: B703990, and it is further

**ORDERED** that the Respondents shall restore the property, known as 11444 Glen Arm Road, to the extent possible to its condition before the violation, and removal of the source of the violation, and it is further

**ORDERED** that the Respondents shall comply with the zoning variance granted in Case No.: 99-183-A, in which setbacks of 20 feet and 24 feet were granted in lieu of the required 50 feet; and it is so Ordered that the Respondents shall restore the property to the extent possible to its condition before the violation, and removal of the source of the violation, and it is further

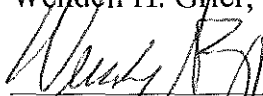
**ORDERED** that the Order pertaining to the subject of the garage structure located at 11444 Glen Arm Road constructed by the Respondents shall be stayed upon the filing of a Variance or other zoning relief request to cure the same, until all proceedings relative to that Variance or requested zoning relief shall be concluded, and it is further


**ORDERED** that the Order pertaining to the subject structure and addition located at 11444 Glen Arm Road constructed by the Respondents shall be stayed upon the filing of a Variance or other zoning relief request to cure the same, until all proceedings relative to that Variance or requested zoning relief shall be concluded.

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. Gier, Panel Chairman

  
Wendy A. Zerwitz

  
Lawrence S. Wescott



Board of Appeals of Baltimore County

JEFFERSON BUILDING  
SECOND FLOOR, SUITE 203  
105 WEST CHESAPEAKE AVENUE  
TOWSON, MARYLAND, 21204  
410-887-3180  
FAX: 410-887-3182

April 19, 2013

Edward C. Covahey, Jr., Esquire  
Covahey, Boozer, Devan & Dore, P.A.  
614 Bosley Avenue  
Towson, MD 21204

Adam Rosenblatt, Assistant County Attorney  
Dept. of Permits, Approvals and Inspections  
111 W. Chesapeake Avenue  
Towson, MD 21204

Jonny Akchin, Assistant County Attorney  
Dept. of Permits, Approvals and Inspections  
Real Estate Compliance Section  
111 W. Chesapeake Avenue  
Towson, MD 21204

Charles J. Herring, Esquire  
606 Baltimore Avenue, Suite 204  
Towson, MD 21204

RE: *In the Matter of: Daniel and Vienna Dietrich – Respondents/Appellants*  
Case No.: CBA-13-017

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa R. Shelton  
**Administrator**

TRS/klc  
Enclosure  
Multiple Original Cover Letters

c: Daniel and Vienna Dietrich  
Edward M. Zimmer  
Lawrence M. Stahl, Chief Administrative Law Judge  
Glenn Berry, Code Enforcement Inspector  
Nancy West, Assistant County Attorney

Virginia Sarant  
Lionel VanDommelen, Chief of Code Enforcement/PAI  
Donald E. Brand, Building Engineer  
Arnold Jablon, Director/PAI  
Michael Field, County Attorney