

IN THE MATTER OF  
RICHARD & DENISE JONES-LEGAL OWNER  
LOCATION: 8207 LONGPOINT ROAD  
BALTIMORE, MD 21222

RE: CIVIL CITATION NO: 113868

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-13-013

\* \* \* \* \*

OPINION

This case comes to the Board of Appeals of Baltimore County on appeal from the Findings of Fact and Conclusions of Law and Final Order of the Administrative Law Judge dated November 20, 2012, in which the Respondents were found in violation of Baltimore County Zoning Regulations (BCZR) §431; 101, 102.1, ZCPM; failure to cease illegal home occupation; failure to cease parking of commercial vehicle on residential property. The Administrative Law Judge imposed a \$25,000.00 civil penalty which was suspended in full so long as the subject property was brought into compliance pursuant to his Order and there were no further violations of this sort. The penalty would be imposed if there were to be a subsequent finding against the Respondents for the same violation. A timely appeal was filed by the Respondents. A hearing before the Board was held on January 15, 2013. Respondent, Richard Jones, appeared pro se, and Baltimore County was represented Jonny Akchin, Esquire, Assistant County Attorney. Although this appeal was to be on the record, the Board accepted testimony and evidence as the

Appellant alleged that he did not have an opportunity to question his accusers. A non-public deliberation was held following the hearing.

Section 431 of the BCZR reads as follows:

- A. A commercial vehicle exceeding 10,000 pounds gross vehicle weight or gross combination weight may not be parked on a residential lot for a period exceeding the time essential to the immediate use of the vehicle.
- B. One commercial vehicle per dwelling unit may be parked on a residential lot for a period exceeding the time essential to the immediate use of the vehicle subject to the following conditions.
  - 1. The gross vehicle weight or gross combination weight shall not exceed 10,000 pounds.
  - 2. The owner or operator of the vehicle shall reside on the lot.
  - 3. The vehicle shall be parked within a fully enclosed structure or, alternatively, if not within a fully enclosed structure:
    - a. No materials, products, freight or equipment shall be visible.
    - b. The vehicle shall display no advertising other than lettering, figures or designs located on the driver's door or front passenger's door.
    - c. The vehicle shall be parked in a side or rear yard.

Section 101 of the BCZR defines a commercial vehicle as

“any vehicle with a gross vehicle weight or gross combination weight over 10,000 pounds or any vehicle, regardless of weight, which: (1) is used for the transportation of materials, products, freight, other vehicles or equipment in furtherance of any commercial activity; (2) is used "for hire"; or (3) displays advertising thereon. Identification of the vehicle's manufacturer model or dealer shall not be considered as advertising. Commercial vehicles shall not be deemed to include any farm vehicle or farm equipment actually and regularly used on a farm, satellite farm or

farmette; school or church vehicle located at a civic, educational, social, recreational or religious institution; recreational vehicle as defined in Section 101; trailer (or mobile home) as defined in Section 101; vanpool or historic vehicle as registered with the State Motor Vehicle Administration. As used herein, gross vehicle weight or gross combination weight means the weight recorded by the State Motor Vehicle Administration on the vehicle's registration certificate or recorded by the manufacturer on the certificate of origin if no specific weight is recorded on the registration certificate". Home occupation is defined as "any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence, other than a permitted sign, as stated in Section 450.4, to indicate that the building is being utilized for any purpose other than that of a dwelling; and in connection with which no commodity is kept for sale on the premises, not more than one person per dwelling is employed on the premises other than domestic servants or members of the immediate family, and no mechanical equipment, other than computers, printers, fax machines, modems, standard office copy machines and similar office equipment, is used except such as may be used for domestic purposes".

The Administrative Law Judge determined that the Respondents had parked two different trucks, at different times, with commercial advertising, on their residential property on a continuing basis and that a crab and seafood business was being carried out from Respondents' garage which constituted the violations charged. The Administrative Law Judge reviewed photographs which showed two different trucks in question to be parked at different times in violation of the County Code. The photographs showed numerous people waiting and loading baskets of crabs into their vehicles. At the hearing before the Administrative Law Judge, the Respondent, Richard Jones, stated that friends would come to his house to eat crabs but he had no explanation for the pictures showing baskets being loaded into vehicles and driven away. Mr. Jones stated that he did not carry on a seafood business from his home, and he would move his truck.

At the hearing before this Board, Respondent, Richard Jones, argued that he did not have a fair hearing before the Administrative Law Judge because he was unable to cross-examine Mr. Erickson, a neighbor who made the initial complaint and took some of the photographs. The Board advised him that he could question Phillip Mills, the Code Enforcement Inspector, and any photographs taken by Mr. Erickson would be given the weight they deserved. Mr. Mills had also taken photographs which would be considered along with Mr. Erickson's photographs and the file from the hearing before the Administrative Law Judge (County's Exhibit 1).

The County called as its witness Phillip Mills, the Code Enforcement Inspector from the Department of Permits, Approvals, and Inspections. Mr. Mills made eight (8) visits to the subject property between July 2012 and October 2012. Mr. Mills testified that the inspections were generated by a letter Mike Mohler received from Mr. Erickson stating that violations which were first reported in 2009 were continuing. Mr. Erickson had produced photographs for Mr. Mohler which purported to show commercial activity in front of subject property (County's Exhibit 2a-d) as well as on the property (County's Exhibit 3a-b). Two separate trucks were observed to be parked in front of the subject property as well as in the driveway. More recent photographs taken in May 2012 show the activity continuing (County's Exhibit 4a-e). These photographs show the truck in the driveway and people on the property, suggesting commercial activity. The back door of the truck is open. Mr. Mills testified that the items you can see in the truck, along with the seafood shells in the yard, suggest a commercial business is being operated on the property.

Mr. Mills then conducted his own inspection and took photographs (County's Exhibit 5a-b). On many of his visits, he observed debris in the yard. On July 3, 2012, he visited the property and issued a correction notice. When he visited the property on September 12, 2012, he observed the truck on the property. Although Mr. Mills did not see any business transactions, he testified that based upon the evidence, the truck, the debris, a boat, and the baskets, he believes that Mr. Jones was operating a commercial business out of his personal residence.

Mr. Richard Jones testified and denied operating a commercial business out of his home. In regards to the pictures of the baskets on his property, Mr. Jones pointed to the children's bikes and said that he has grandchildren and they keep their toys in the baskets. He also pointed out that the driveway in the pictures had been updated. He has made improvements to the home. In response to County's Exhibit 2b, he remembers using the truck to transport small boxes of white tiles which he unloaded at his home. Construction has been done and he used his truck to pick up and haul away building materials. He tries to keep the yard clean however, as he has grandchildren, when they come over to eat crabs, they leave a mess. He was not sure what was going on in the photographs taken by Mr. Mills on September 2, 2012 (introduced at the hearing before the Administrative Law Judge and part of the file) or why all the people were coming and going from his garage and driveway. He testified that he believes that his neighbor, Mr. Erickson, just makes complaints because he wants to control what Mr. Jones does at his home. Mr. Jones runs an oyster and clam business in Virginia and a real estate business in Maryland.

The Board applies in this matter the standard of review as set out in the *Baltimore County Code* (the Code), § 1-7(g)(6), which states in pertinent part:

In a proceeding under this section, the board may:

- a) Remand the case to the code official;
- b) Affirm the final order of the code official;
- c) Reverse or modify the final order if a finding, conclusion, or decision of the code official:
  - i) Exceeds the statutory authority or jurisdiction of the code official;
  - ii) Results from an unlawful procedure;
  - iii) Is affected by any other error of law;
  - iv) Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
  - v) Is arbitrary or capricious.

Furthermore, even if the Board disagreed with the conclusions of the Administrative Law Judge, this Board cannot substitute its judgement on facts presented for that of the Administrative Law Judge. This standard of review was defined by Judge Paul Hammond, later Chief Judge, in *Snowden v. the City of Baltimore*, 224 Md. 443, 448 (1961):

"Judicial function in appeals from an administrative agency is well established and defined. The court will correct illegal actions and those which are arbitrary and unreasonable because they are not based on substantial evidence, but it will not substitute its own independent judgement or its own judgement on the facts for those of the agency by which the carrying out of state policy has been delegated.

\*\*\*the heart of the fact finding process is often the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences are reasonably to be drawn from the factual evidence. "The Court may not substitute its judgement on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not

rightness.” \*\*\*It may be (although we do not so say) that we would have drawn different inferences or conclusions from the evidence, or that we think the Board’s action to have been unfortunate or erroneous, but it is the judgement of the Board, not ours, which controls if reasonable men could have done as the Board did, or as has been said, the test is reasonableness, not rightness.”

The testimony and evidence before the Administrative Law Judge clearly established that the Respondent, Richard Jones, was parking his commercial vehicle at his residence located at 8207 Longpoint Road. It is also clear from the photographic evidence that he was operating his seafood business from his personal residence.

This Board unanimously adopts the Administrative Law Judge’s determinations and conclusions. Moreover, as to Respondent’s contention that the County needed to bring in Mr. Erickson, we find Respondent’s contention totally without merit. Mr. Mills visited the subject property and was able to testify as to what he observed. The photographs speak for themselves. The Board feels that we are able to decide this case without the testimony of Mr. Erickson.

Therefore, this Board unanimously finds that the Administrative Law Judge did not exceed his statutory authority or jurisdiction, that the procedure was lawful, that there was no error of law, that the Administrative Law Judge’s determination is supported by competent, material and substantial evidence in light of the entire record as submitted, and is not arbitrary or capricious. Therefore, for the reasons set forth above, this Board affirms unanimously the decision of the Administrative Law Judge dated November 20, 2012.

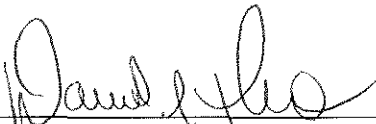
**ORDER**

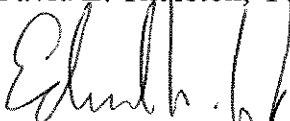
THEREFORE, IT IS THIS 31<sup>st</sup> day January, 2013, by the Board of Appeals of Baltimore County

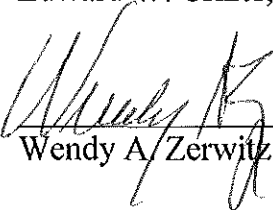
**ORDERED** that, for the reasons as stated above, the decision of the Administrative Law Judge for Baltimore County dated November 20, 2012 be and the same is hereby **AFFIRMED**.

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**

  
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David L. Thurston, Panel Chairman

  
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Edward W. Crizer, Jr.

  
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Wendy A. Zerwitz