

IN THE MATTER OF
2816 OLD NORTH POINT ROAD, LLC
2816 OLD NORTH POINT ROAD
BALTIMORE, MD 21219

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA- 13-032

RE: Civil Citation: 121691

* * * * *

OPINION

This case comes to the Board on appeal of the Final Order of the Administrative Law Judge (ALJ) dated May 14, 2013, which Order imposed a civil penalty of Six Thousand Dollars (\$6,000.00), with all but Five Hundred Dollars (\$500.00) suspended; with the remaining penalty to be assessed if subsequent findings against Respondent occur. On May 29, 2013, Legal Owner and Respondent, 2816 Old North Point Road, LLC, by and through its Attorney, Melvin J. Kodenski, filed a notice of appeal with the Office of Administrative Hearings.

On Appeal, the Respondent argued that the primary use for the property was that of a tavern and as such the presence of storage container did not constitute an improper use of the property as a Class II Trucking Facility. Respondent further asserted that the ALJ's ruling was not supported by the evidence as the ALJ did not consider the legal analysis in their post hearing legal memorandum as evidence in spite of his direction to them at the hearing. Respondent contended that the record clearly demonstrates that the containers on site were used for storage and not involved in a trucking enterprise. Respondent argued that the ALJ represented to the parties that legal and factual arguments contained in post hearing memorandum would be treated as evidence in lieu of having formal testimony during the administrative hearing. Respondent

asserts that affirmative defenses, including the accessory uses of the containers, as set forth in his post hearing memorandum were never addressed or considered as evidence by the ALJ.

Baltimore County, represented by Assistant County Attorney, Jonny Akchin, contended that the record supported the decision and shipping containers are not allowed by right or special exception, as the property is zoned BL-AS.

Appeals from Code Enforcement hearings are limited to the record created before the Hearing Officer. That record includes all exhibits and other papers filed with the ALJ/Hearing Officer, and the written findings and final order of the ALJ/Hearing Officer (*Baltimore County Code Section 3-6-303*).

In deciding a code enforcement appeal, per Section 3-6-304, the Board of Appeals

“may:

- (i) Remand the case to the Hearing Officer
- (ii) Affirm the final order of the Hearing Officer, or
- (iii) Reverse or modify the final order if a finding, conclusion, or decision of the Code Official or Hearing Officer:
 - 1. Exceeds the statutory authority or jurisdiction of the Code Official or Hearing Officer,
 - 2. Results from an unlawful procedure;
 - 3. Is affected by any other error of law;
 - 4. Subject to paragraph (2) of this section, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - 5. Is arbitrary or capricious.”

Decision

After hearing arguments by counsel, reviewing the file, which includes the transcript of the ALJ's proceeding, this Board finds that it must remand the case back to the ALJ.

On Appeal, the Respondent properly argued , as evidenced by the ALJ opinion that : “Neither by signage nor testimony has the County established that the mere presence of the storage containers on the subject site constituted it as a Class II Trucking Facility; or for that matter, an “underlying truck facility” (See Page 3 of ALJ Opinion) . We find nothing in the record where the County properly asserted the purpose of the containers, demonstrating proof of their use or otherwise met their burden of proof. Nor do we find anything in the decision that the affirmative defenses in the Respondent’s post hearing memorandum was properly considered. Therefore, we conclude the decision reach by the Administrative Law Judge was not supported by the record.

The Board, feels it is necessary to remand this matter to the ALJ take further testimony regarding the use of the sea containers by the Appellant and so that he might clarify his Final Order and make specific findings of fact and conclusions of law in support of his opinion.

ORDER

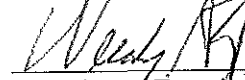
THEREFORE, IT IS THIS 18th day of September, 2013 by the Board of Appeals of Baltimore County,

ORDERED that the matter in Case No.: CBA-13-032 is hereby REMANDED to the Administrative Law Judge for further testimony and to clarify his decision as follows:

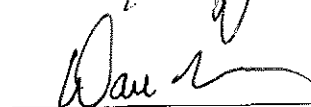
To set forth specific Findings of Fact and Conclusions of Law under which he establishes the functional use of the storage containers as it pertains to the current use of the property and whether or not the County has met its burden of proof to assess the fines imposed by the citation.

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**



Wendy A. Zerwitz, Panel Chairman



David L. Thurston



Richard A. Wisner



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

September 18, 2013

Melvin J. Kodenski, Esquire
19 E. Fayette Street, Ste 400
Baltimore, MD 21202

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

RE: *In the Matter of: 2816 Old North Point Road, LLC – Owner/Appellant*
Case No.: CBA-13-032

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,

A handwritten signature in black ink that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure
Duplicate Original Cover Letter

c: 2816 Old North Point Road, LLC c/o Woodrow Nash, Resident Agent
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold E. Jablon, Director/PAI
Lionel Van Dommelen, Chief of Code Enforcement/PAI
M. Stuart Kelly, Code Enforcement Inspector/PAI
Nancy C. West, Assistant County Attorney
Michael Field, County Attorney