

IN THE MATTER OF
CHRISTIANE ROTHBAUM -
RESPONDENT/LEGAL OWNER
300 Hopkins Road
9TH Election District
5th Councilmanic District

RE: CODE VIOLATION
CIVIL CITATION No.: 101475

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO.: CBA-13-012

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OPINION

This comes before the Baltimore County Board of Appeals as a record appeal of a Final Order of the Administrative Law Judge dated September 27, 2012, regarding violation of Baltimore County Building Code Council Bill 47-10, Part 121.3, to remove a portion of a rear deck located at 300 Hopkins Road in the Rodgers Forge area of Baltimore County (the "Property") (Citation No. 101475). A civil penalty in the amount of \$1,000 was imposed with the requirement that owner, Christiane Rothbaum, remove a portion of the rear deck alleged to be in violation of the rear setback.

Ms. Rothbaum, filed a timely appeal of that Order. At the hearing before this Board, Art Buist represented Ms. Rothbaum and Jonny Akchin, Assistant County Attorney, represented Baltimore County.

Background

This case has an assorted procedural background. Ms. Rothbaum originally sought to enclose her back porch but was denied a request for variance on June 30, 2011 by Administrative Law Judge Lawrence Stahl. Ms. Rothbaum then received a building permit on August 22, 2011 to remove the existing window and install French doors; to remove the covered deck and to construct a covered deck with steps to grade. No variance was required for that project.

However, after complaints from the neighborhood, Inspector Rodney Larrick of Baltimore County Code Enforcement, visited the subject property on September 21, 2011. Inspector Larrick instructed Ms. Rothbaum's contractor to revise the building permit to show field setbacks and an open covered deck. Inspector Larrick followed up on September 28, 2011 and learned that the contractor had not revised the permit as instructed.

On October 28, 2011, Inspector Larrick visited the property in anticipation of a scheduled meeting with County officials, Councilman Marks and the community association representative. A Correction Notice was issued on November 2, 2011 (same Citation No. 101475) to remove the portion of the deck which was allegedly in violation of the rear setback lines.

On December 8, 2011, the County issued another Citation (same Citation No. 101475) and wrote that the lower deck violated the setback of 37'6" and Ms. Rothbaum had failed to bring the lower deck into compliance. A hearing was scheduled for January 18, 2012.

On January 18, 2012, Administrative Law Judge Timothy Kotroco heard the case and suspended the \$1,000.00 fine pending the filing for a variance to legitimize the lower deck. ALJ Kotroco did not order that the deck be removed. Neither the County nor Ms. Rothbaum appealed that decision. ALJ Kotroco then issued an Order of Extension on February 17, 2012 to permit Ms. Rothbaum more time to file for a variance until March 19, 2012.

As a result, on or about March 15, 2012, Ms. Rothbaum applied for a variance. That case was heard by ALJ Beverungan on June 8, 2012. In his Opinion and Order dated June 14, 2012, ALJ Beverungan denied the variance. However, he also wrote in the body of his decision that he did not believe that a variance was needed for the lower deck. Neither the County nor Ms. Rothbaum appealed that decision.

After that variance was denied, the County, on September 19, 2012, issued another Citation (same Citation 101475), but changed the basis for the violation to:

Baltimore County Building Code Council Bill 47-10, part 121.3, failure to comply with Building Official order. Variance case 2012-0221A denied June 14, 2012 to allow at grade deck with setback of 24.33 feet and to remove the structure in questions within 30 days.

As a result of the September 19, 2012 Citation 101475, a hearing was held before ALJ Stahl on September 27, 2012. ALJ Stahl upheld the Citation and ordered the removal of the portion of the deck alleged to be in violation.

Ms. Rothbaum timely appealed the September 27, 2012 Order which is the subject of our review.

Law

Appeals from Code Enforcement hearings are limited to the record created before the Administrative Law Judge. That record includes all exhibits and other papers filed with the Administrative Law Judge, and the written findings and final order of the Administrative Law Judge (*Baltimore County Code §3-6-303 9"BCC"*).

In deciding a code enforcement appeal, under BCC, § 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 of counsel, reviewing a Memorandum of Law submitted on behalf of Ms. Rothbaum and reviewing the entire record, this Board finds that Citation 101475 issued on September 19, 2012 which is the subject of this appeal, was based on an incorrect provision of the law (i.e. Baltimore County Building Code Council Bill 47-10, Part 121.3). Because the statutory basis for the Citation was incorrect, ALJ Stahl's decision to uphold that Citation was in error and was arbitrary and capricious under BCC, §3-6-304. Baltimore County Building Code Council Bill 47-10, Part 121.3 was adopted by the County Council on June 7, 2010. Part 121 is entitled "Unsafe Structures and Equipment." The specific subsection for which Ms. Rothbaum was charged (Part 121.3) permits the Building Official to institute remedial action to raze an "unsafe structure." By its very title, Part 121 deals with building and structures found to be "unsafe."

As admitted by Inspector Larrick at the hearing before ALJ Stahl on September 19, 2012, no part of the deck was found to be "unsafe." (T. 9:21:36 – 9:21:58). Inspector Larrick further confirmed that the Citation was not issued for a building violation but rather for a zoning violation. Council Bill 47-10 is "an Act concerning the Building Code of Baltimore County." Therefore, we find that ALJ Stahl's decision to have Ms. Rothbaum's deck removed and the imposition of a monetary fine was in error. We agree with Ms. Rothbaum's argument that ALJ Stahl could have, and should have, reviewed the statutory basis for the Citation which was before him.

This Board also notes that ALJ Kotroco did not order the removal of the portion of the deck which was alleged to be in violation. Rather, ALJ Kotroco only ordered a \$1,000.00 fine be imposed and suspended that fine pending the variance hearing. While Ms. Rothbaum did not

appeal ALJ Kotroco's decision, neither did the County. At that point, the County was only successful in having a fine imposed.

After ALJ Beverungen denied the variance, the ongoing violation to which the County was entitled was a fine, not the removal of the deck. Yet, on September 19, 2012, the County issued another Citation (same Citation No. 101475) and changes the statutory basis seemingly to have the structure removed. If removal was the ultimate goal of the County, the County should have appealed Judge Kotroco's decision.

For all the forgoing reasons, the Board reverses the decision of ALJ Stahl dated September 27, 2012.

ORDER

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


ORDERED that the decision of the Administrative Law Judge Stahl dated September 27, 2012, be and the same is hereby **REVERSED**.

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**


Maureen E. Murphy, Panel Chair


Lawrence S. Wescott


Wendy A. Zerywitz