

IN THE MATTER OF:
UNITED, LLC
205 E. Joppa Road Ste 106
Towson, Maryland 21204

Re: Fire Inspection Report Citation

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO: CBA-13-031

* * * * *

OPINION

This matter comes before the Board as an Appeal from a Baltimore County Fire Inspection Report Citation dated February 25, 2013 which required the owners of 205 E. Joppa Road, Suite 106 to install a fire sprinkler system. An evidentiary hearing was held before this Board on July 17, 2013. Larry Caplan, Esquire appeared on behalf of Appellant, United, LLC. Assistant County Attorney, Jonny Akchin appeared on behalf of Baltimore County.

FACTS

This appeal involves a Baltimore County Fire Inspection Citation dated February 25, 2013 issued by Baltimore County Fire Marshal Edward A. Ochab, III which required the installation of a fire sprinkler system for Suite 106 of the Ridgely Condominiums located at 205 East Joppa Road, Towson, Maryland 21204. (Appellant's Exhibit 3). The Ridgely Condominiums is a primarily residential Condominium, with six commercial units existing on the building's first floor. None of the units, residential or commercial, have sprinkler systems presently installed. Suite 106 is owned by United, LLC who recently purchased the unit to be used as a Psychiatrist's Office. Testimony was heard from United, LLC representative William Howard, who explained that the unit had been purchased as a place for his wife to see patients

in her Psychiatry practice. Mr. Howard further testified that he was never informed by the owners of the Ridgely that the installation of fire sprinklers would be required to utilize the unit. Mr. Howard further testified that it was his understanding, and the understanding of the management of the Ridgely that a November 17, 2012 letter from Zachary R. Stith, Fire Director of the Baltimore County Fire Department granted a waiver of fire sprinkler retrofit requirements for the Ridgely Condominiums. (Appellant's Exhibit 4). Mr. Howard received estimates for the cost of installing a sprinkler system solely to Suite 106 which totaled \$16,515.00. (Appellant's Exhibit 3). Mr. Howard further testified that the Ridgely Condominiums would have to allow the Appellant to access areas of the building not contained in Suite 106 and would have to make upgrades to current plumbing in order for such a system to operate. Captain Bruce Schultz of the Baltimore County Fire Marshall's Office testified on behalf of the County and explained that his office considered the November 17, 2012 waiver from Baltimore County fire sprinkler retrofit requirements to apply only to residential tenants and does not apply to commercial tenants of the Ridgely Condominiums.

DECISION

Baltimore County Code §14-2-10 defers to the Fire Prevention Code of Baltimore County regarding County Fire Code issues. Fire Prevention Code of Baltimore County Section 1:13.3.2.24.2.3 sates the following:

EXISTING HIGH-RISE BUILDINGS: The entire building shall be required to be protected by an approved automatic sprinkler system by October 13, 2013.

Exception: In the case of a residential Building established as a Condominium Cooperative Regime:

(1) After receiving notice, a building owner(s) shall file with the authority having jurisdiction for approval the estimate and statement required by subsection (2). The filing shall be made on or before January 1, 2003.

(2) A building owner shall file an estimate of the cost of compliance with this regulation, including the cost compliance with this regulation, including the cost for hazard insurance without compliance and the cost for hazard insurance with compliance and (1) a statement of intent to comply with this regulation or (2) in the case of a residential building established as a condominium or cooperative regime, a statement, on a form determined by the authority having jurisdiction, signed by at least seventy-five percent (75%) of all Condominium unit ownership or cooperative unit shareholders authorizing and accepting a waiver of compliance with this regulation, notwithstanding any risk non-compliance.

At issue before the Board is the question whether a condominium unit used for commercial purposes is eligible for the waiver contemplated in the Fire Safety Code.

In support of its argument that commercial properties are not eligible for waiver, the County notes the use of the language “Residential Building” in the Fire Safety Code. The County argues that the use of such language illustrates the fact that the County Council did not intend commercial tenants to receive waivers.

Absent from the Fire Safety Code and the County Code itself, is any definition of the term “residential building”. However, it is clear from the testimony presented by both parties that the Ridgely is a “residential building”. But for the six units on the first floor, the entire Ridgely consists of residential condominiums. The Board can find nothing in the Fire Safety Code that would lead us to believe that because a building has commercial units, that it cannot be deemed a “residential building” as referred to in the Code.

It is also clear that the November 17, 2012 letter from Fire Director Zachary R. Stith to the resident Manager of the Ridgely was unambiguous in granting a waiver from the fire sprinkler retrofit requirements and makes no mention of, nor excludes the commercial units on the first floor. Mr. Howard testified that he was shown this letter by representatives from the Ridgely who still believe that his unit is included in the waiver.

Captain Schultz testified that his office had made similar determinations regarding other commercial condominium units in the Towson area and that determination was in keeping with the spirit of the Fire Code Regulations. Captain Schultz, however, conceded that such determinations were made when the buildings in question were more of a mixed use residential/commercial type. Captain Schultz was not aware of a prior decision that solely affected one unit in an entire building. While the Board recognizes the importance of requiring sprinkler systems, we do not find that it is the intention of the Fire Safety Code to require an owner of a single condominium unit to bare the expense of bringing a building's water pumping infrastructure into compliance with sprinkler retrofit requirements when a waiver has been granted. Consequently, the Board finds that the Appellant's unit is included in the waiver granted in the Ridgley.

CONCLUSION

The Board finds in light of the evidence presented that Unit 106 of the Ridgley Condominium located at 205 E. Joppa Road, Towson, Maryland 21204 is included in the waiver granted by Zachary R. Smith, Fire Director, on November 17, 2012 that is effective until January 1, 2015, at which time, a request for waiver must be renewed.

ORDER

THEREFORE, IT IS THIS 21st day of August, 2013 by the Board of Appeals of Baltimore County

ORDERED Unit 106 of the Ridgley Condominium located at 205 E. Joppa Road, Towson, Maryland 21204 is included in the waiver granted by Zachary R. Smith, Fire Director, on

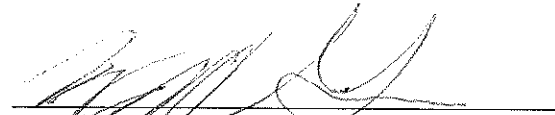
November 17, 2012 that is effective until January 1, 2015, at which time, the request for waiver must be renewed.

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**



Andrew M. Belt, Chairman



Wendell H. Grier



Wendy A. Zerwitz



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

August 21, 2013

Larry Caplan, Esquire
Levy, Mann, Caplan, Hermann & Polashuk, LLP
400 Redland Court, Ste 110
Owings Mills, MD 21117

Jonny Akchin, Assistant County Attorney
Baltimore County Office of Law
111 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: United, LLC – Owner/Appellant*
Case No.: CBA-13-031

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 cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure
Duplicate Original Cover Letter

c: United LLC/William Howard, Representative
Charito Quintero-Howard
Zachary R. Stith, Fire Director/Fire Marshall's Office/Baltimore County Fire Department
Captain Bruce Schultz, Fire Marshall's Office/Baltimore County Fire Department
Edward Ochab, Inspector/Fire Marshall's Office/Baltimore County Fire Department
John J. Hohman, Chief /Baltimore County Fire Dept.
Nancy C. West, Assistant County Attorney
Gregory Gaskins, Deputy County Attorney
Michael Field, County Attorney