

IN THE MATTER OF:	*	BEFORE THE
RAINBOW HALL, LLC	*	BOARD OF APPEALS
10729 Park Heights Avenue	*	
Owings Mills, Maryland 21117	*	OF
Re: Code Enforcement	*	BALTIMORE COUNTY
Citation No.: CC 1512243	*	Case No: CBA-17-020
	*	
* * * * *		

OPINION

This case comes before the Baltimore County Board of Appeals (the “Board”) as a record appeal of Administrative Law Judge, Lawrence Stahl’s (“ALJ Stahl”) November 4, 2016 decision. ALJ Stahl ordered payment of a civil penalty in the total amount of \$200.00 against Appellant Rainbow Hall, LLC (“RHL”) arising from a Code Enforcement Citation number CC1512243 (the “Citation”) for violations under Baltimore County Zoning Regulations (“BCZR”) section 503.1¹. The Citation states that on or about October 3, 2015 and on or about October 31, 2015, property located at 10729 Park Heights Avenue, Owings Mills, Maryland 21117 (the “Subject Property”) violated the final order of the Baltimore County Board of Appeals issued in Case# 10-280-SPH because two events were held on the premises on those days. The Board held a hearing on this matter on January 5, 2017. Michael T. Wyatt, Esquire appeared on behalf of Appellant. R. Brady Locher, III, Esquire, Assistant County Attorney, appeared on behalf of Baltimore County.

BACKGROUND

As the case comes before the Board as a record appeal, the Board’s review is based on the audio record of the hearing provided to the Board, documents entered at that hearing and the

¹ Preliminarily, Counsel for RHL put forth the position that pursuant to Baltimore County Code 3-6-205 (c), the charges set out in the Citation should be considered a non-cognizable event because it failed articulate facts sufficient to describe the nature of the violation and did not state a particular code section that had been violated. Counsel for RHL also argues that a corrective notice should have been issued by Code enforcement prior to the issuance of the Citation. These aspects of Respondent RHL’s preliminary questions (or motion to dismiss) will be addressed later in this opinion.

parties' oral argument presented to the Board at a hearing held on January 5, 2017. This review established that the Subject Property is located in a R.C.2 (Agricultural) Zone in Baltimore County. Respondent RHL has owned the Subject Property since April 10, 2002². The Subject Property consists of three residential houses; two of which are rented, and a mansion; which consists of the unoccupied "Main Mansion" and a separate wing previously used a "Hospital Wing" that is occupied by at least five tenants.

This review established that Baltimore County Inspector David Kirby ("Inspector Kirby") did not conduct an onsite inspection of a property located at 10729 Park Heights Avenue, Owings Mills, Maryland in Baltimore County ("the Subject Property"). In lieu of a physical inspection, Mr. Kirby testified that he received physical evidence from Michael McCann, Esquire in the form of (1) photographs of Subject Property that evidenced an event taking place at the Subject Property on October 31, 2015³ and October 3, 2015⁴, (2) a letter dated March 8, 2012 to Michael L. Snyder, Esquire, former attorney for RHL, from the County Attorney concerning what use will constitute a zoning violation on the Subject Property (the "Snyder Letter")⁵ (3) copies opinions from the Board of Appeals (the "BOA") dated February 24, 2012⁶ and the Circuit Court for Baltimore County (the "Circuit Court") dated October 12, 2012⁷ relating to the prohibited uses of the Subject Property, (4) a promotional flyer (the "Flyer") purporting to announce an upcoming event sponsored Baltimore Symphony Associates to be held on October 31, 2015 for the benefit of the Baltimore Symphony Orchestra (the Flyer shows that the attendees should R.S.V.P. and the price of tickets were \$60 or \$65)⁸ and (5) an image of a website purporting to announce a wedding

² See Respondent RHL Ex. 2.

³ See, County Ex. 6A through 6D.

⁴ See, County Ex. 7A through 7B.

⁵ See, County Ex. 3.

⁶ See, County Ex. 1.

⁷ See, County Ex. 2.

⁸ See, County Ex. 4

reception to be held at the Subject Property on October 31, 2016 (the “Wedding Reception Announcement”).⁹ The Wedding Reception Announcement requested that attendees “please RSVP [o]n or before August 23, 2015”. The materials given to Mr. Kirby by Mr. McCann were admitted into evidence without objection.

Witnesses for the County

Mr. Kirby testified that after reviewing the material provided to him by Mr. McCann, particularly the Flyer (County Ex. 4) and the Wedding Reception Announcement (County Ex. 5) he had reason to believe that RHL had violated the use restrictions on the Subject Property imposed by the BOA opinion. As a result, Mr. Kirby issued the Citation, dated January 27, 2016, that RHL was in violation of BCZR Section 503.1 because “On or about October 3, 2015 and on or about October 31, 2015, property [Subject Property] was in violation of the final order of the Baltimore County Board of Appeals issued in case #10-280-SPH¹⁰.”

Mr. McCann, attorney of record in the BOA hearing and the appeal to the Circuit Court, testified that he provided County Exhibits 2 through 7D to Mr. Kirby. He further testified that as a result of his prior involvement in the previous cases he had in his possession copies of the BOA opinion and the Circuit Court Opinion, and a copy of the Snyder Letter. He also testified that the photographs of the Subject Property on the days in questions along with the Flyer and information about the Wedding Reception Announcement were provided to him by Carrie Wilson, a neighbor who lives adjacent to the Subject Property and who was involved in the BOA litigation.

Mrs. Wilson testified that she lives next door to the Subject Property and that while standing on her property she took photographs of vehicles at the Subject Property and the Main Mansion on October 3, 2015 and October 31, 2015. See, County Ex. 6A through 7B. Mrs. Wilson

⁹ See, County Ex. 5.

¹⁰ See, Respondent RHL Ex.1.

also testified that she provided Mr. McCann with the Flyer and information about the Wedding Reception Announcement on the internet.

Witnesses for Respondent RHL

Mr. Henry Wright, owner of RHL, testified that the Subject Property consists of three residential houses; two of which are rented, and a mansion; which consists of the unoccupied "Main Mansion" and a separate wing previously used a "Hospital Wing" that is occupied by at least five tenants. Mr. Wright stated that over the years the Subject Property, particularly the Main Mansion, has had several uses including a nursing home and a church. The Main Mansion is approximately 35,000 square feet.

Mr. Wright testified that with respect to the October 3, 2015 wedding reception, he gave Rich Ganzemiller, the brother of an employee of RHL, and Josie Moore, the bride, permission to host their reception at the Main Mansion on the Subject Property because RHL's employee has maintained the property for a number of years. Mr. Wright also testified that with respect to the October 31, 2015 fundraiser, he is a contributor the Baltimore Symphony Orchestra ("BSO") and when its management asked him if the BSO could use the Main Mansion for a fundraiser to raise money for poor children to attend the concerts, he gave it permission to do so.

Mr. Wright testified that he received no money or tax considerations for allowing the Main Mansion to be used by Mr. Ganzemiller on October 3, 2015 or the BSO on October 31, 2015. He also testified that he was unaware of the full extent of the activities that occurred at the Main Mansion on the days in question; however, he was aware of tickets being sold for the BSO fundraiser, that many people would attend each event and that they would be catered.

On behalf of Respondent RHL, Mrs. Jean Lubkey testified that she lives at 10733 Park Heights Avenue, Owings Mills, Maryland and that she has been a tenant at one of the ranch houses located on the Subject Property since March of 2008. She testified that she is aware of a family living in a separate wing of the Main Mansion. She further stated that she frequently visits the

Main Mansion to check on it and that while she is there she enjoys the accommodation and sometimes plays billiards.

Mrs. Lubkey testified that BSO charitable fundraiser took place at the Main Mansion on October 31, 2015 and that the Ganzemiller wedding reception took place at the Main Mansion on October 3, 2015. She also testified that she is a board member of the Baltimore Symphony Associates and she helped plan the BSO fundraiser. She said that approximately 65 people attended the fundraiser and that the cost of the food and beverages was about \$45.00 per person. She testified that members of the BSO asked Mr. Wright if they could use the Main Mansion to host a fundraiser and he consented. She also testified that Mr. Wright did not participate in the BSO fundraiser; however, in order to host the fundraiser she needed Mr. Wright's consent and could not host it without his permission. Mrs. Lubkey testified that she attended the Ganzemiller wedding reception and that 60 to 70 people attended. She stated that food and beverages were provided to the guests.

DISCUSSION

A. Standard of Review

BCC Section 3-6-304 states as follows:

(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 ... Hearing Officer
 - (i) Exceeds the statutory authority or jurisdiction of the ... Hearing Officer;
 - (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.

“With regard to agency factual determinations, the standard of review is whether the finding is ‘unsupported by competent, material, and substantial evidence in light of the entire record as

submitted,' also known as substantial evidence review." *Charles County Dep't of Soc. Servs. v. Vann*, 382 Md. 286, 295 (2004) (citations omitted). A reviewing body gives less deference to an agency's legal conclusions, and will not uphold an administrative decision premised solely upon an erroneous conclusion of law. *HNS Dev. LLC v. People's Counsel*, 425 Md. 436, 449 (2012).

B. Relevant Statutes and Authority

BCZR Section 1A01.1.(B) [General provisions of an R.C.2. Zone] states that:

"(Purposes) The R.C.2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." See, Attachment A - Section 1A01, et. Seq. - R.C.2 (Agricultural) Zone.

BCZR Section 1A01.2. (B) - Uses permitted as of right in an R.C.2 Zone does not allow the Main Mansion to be used for events. The Respondent RHL has not been granted a special exception to use the Main Mansion as a place to hold events.

Baltimore County Code ("BCC") Section 3-6-101(b)(1)(viii) (Definitions) of Title 6 (Code Enforcement) states that "Code" means the "Zoning Regulations.

BCC Section 3-6-101(c) states that "Code enforcement" means the enforcement of a code or the County Code in accordance with this title."

BCC Section 3-6-205 (c)(1)(i) [Contents of citation.] states that "The citation issued under this section shall [B]e in writing and describe with particularity the nature of the violation, including a reference to the Code or County Code provision the violator has allegedly violated."

In the BOA opinion dated February 24, 2012, which was affirmed by the Circuit Court and not appealed, held that "the hosting of events by Rainbow Hall, L.L.C. at the main house on the Property is a zoning violation in the RC2 zone."

In the BOA opinion dated February 24, 2012 held that events hosted at the Main Mansion are not permitted at the Subject Property regardless of whether or not income was earned or some other consideration was exchanged, for use of the property to host such events.

BCZR Section 503.1 states that:

“Any violation of regulations and restrictions adopted pursuant to this ordinance shall be a misdemeanor, punishable by a fine not to exceed \$100 or by imprisonment not to exceed 30 days, or both fine and imprisonment. Any person who shall violate such regulations and restrictions shall be deemed guilty of a separate offense for every day that such violation shall continue.”

There is little dispute that a BSO fundraiser was held at the Main Mansion at the Subject Property on October 31, 2015 and that a wedding reception was held there on October 3, 2015. Respondent RHL first argues that the Citation fails to articulate sufficient facts to describe the nature of the violation and did not state a particular code section that had been violated. This Board disagrees. Pursuant to BCC Sections 3-6-101(b)(1)(viii) and Section 3-6-101(c), the violation of a zoning regulation is within the purview of Code Enforcement. The Citation issued by Code Enforcement clearly provided notice to Respondent RHL that it had violated the zoning restriction stated in the BOA opinion dated February 24, 2012 and pursuant to BCC 3-6-205 (c) (1)(i), describes with particularity the nature of the violation. The opinion unequivocally states that “the hosting of events by Rainbow Hall, L.L.C. at the main house on the Property is a zoning violation in the RC2 zone.” As the named party in the BOA case and the appeal to the Circuit Court, Respondent RHL knew, or should have known, that hosting the BSO fundraiser and the wedding reception at the Main Mansion would constitute a zoning violation. Moreover, the Snyder Letter from the County Attorney clearly puts Respondent RHL that hosting events at the Main Mansion would constitute a zoning violation.

Respondent RHL’s position that it has been five years since any type of event was hosted at the Main Mansion does not overcome the plain language of the BOA opinion that no such events are to take place; the opinion does not provide a sunset provision for the prohibition against holding events at the Main Mansion. Also, the plain language of the BOA opinion does not reference frequency of the events even though Respondent admits that two catered events were held at the Main Mansion during the month of October, 2015.

Although the management of RHL or Mr. Wright did not participated in the planning, staffing or providing food and beverages for the two events, he admitted that he gave his consent to host the events at the Main Mansion. The Respondent RHL also argued that it did not receive compensation of any kind in exchange for hosting the two events. The BOA opinion makes it clear events are not permitted at the Main Mansion even if there is a lack of consideration in exchange for use of the Main Mansion to host events. In this case, non-participation in the two events, or the hosting of the events for no consideration, does not excuse Respondent RHL from the fines under the Citation. Respondent RHL knew, or should have known, that the merely allowing the events to be held at the Main Mansion constitutes a zoning violation under the BOA Opinion.

Respondent RHL also argued that in lieu of the Citation, Mr. Kirby was obligated to issue a corrective notice. BCC Section 3-6-205 states that:

(a) Authority to issue. The Code Official or the Director may issue a citation to a violator at any time.

(b) Not required.

(1) The Code Official and the Director are not required to issue a correction notice before issuing a citation.

(2) The Code Official and the Director shall establish written criteria for any circumstances in which the issuance of a correction notice is not required.

Mr. Kirby is not required to issue a corrective notice before issuing a citation. The BCC establishes the duties of each County department with respect to land use regulation, zoning, and related matters. The Department of Permits, Approvals, and Inspections (“PAI”) administers and enforces laws and regulations associated with zoning. BCC Section 3-2-1103. The PAI has a variety of tools at its disposal to resolve zoning issues that occur in the County. A Correction Notice is just one such tool that may be used at the discretion of Mr. Kirby but failure to issue said

notice does not infringe upon his perceived need to issue a citation¹¹. See, *Falls Road Community Association, Inc., et al. v. Baltimore County*, 437 Md. 115, 142; 85 A.3d 185, 201 (2014) (identifying the discretionary authority, pursuant to BCC Sections 3-6-201, 3-6-203, 3-6-205, for zoning violation enforcement and corrective measures).

The Board finds in reviewing the record of the May 27, 2016 hearing on this matter and the arguments heard before this Board on July 17, 2016, the Findings of Fact and Final Order issued by the Administrative Law Judge on November 4, 2016 upholding the violations of BCZR Section 503.1 for violating the Zoning Regulations established by Baltimore County Board of Appeals Case No.: 10-280-SPH by hosting two events at 10729 Park Heights Avenue, Owings Mills, Maryland on October 3, 2015 and October 31, 2015 is affirmed and the penalty of \$200.00 is properly imposed.

ORDER

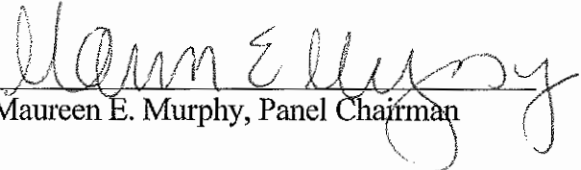
THEREFORE, FOR THE REASONS STATED ABOVE, IT IS THIS 8th day of March, 2017 by the Board of Appeals of Baltimore County

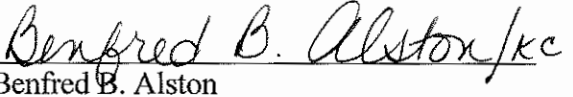
ORDERED that the November 4, 2016 Findings of Fact and Conclusions of Law Final Order of the Administrative Law Judge in this matter be, and is hereby **AFFIRMED**.

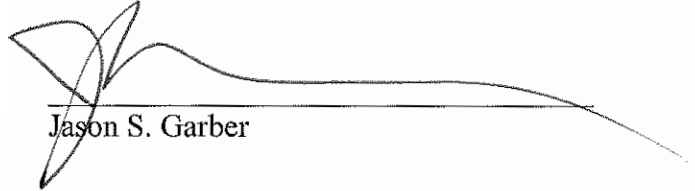
¹¹ In his opinion, ALJ Stahl stated that he reviewed the County current policy relating to the criteria for issuance of a citation without a prior correction notice issues by the Department of Permits and Development Management dated November 23, 2009. The policy sets forth numerous circumstances in which a citation may be issued immediately without a prior correction notice. See, ALJ Stall Finding of Fact and Final Order dated November 4, 2016 at Page 3. Since the May 27, 2016 hearing, the Criteria for Issuance of a Citation Without Prior Corrective Notice was reissued on August 29, 2016.

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 Chairman


Benfred B. Alston


Jason S. Garber



Baltimore County of Board of Appeals

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March 8, 2017

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RE: *In the Matter of: Rainbow Hall, LLC*
Case No.: CBA-17-020

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,

Sunny Cannington
Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Henry Wright/Rainbow Hall, LLC
David Kirby, Inspector/Code Enforcement
Lionel van Dommelen, Chief/Code Enforcement
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Michael R. McCann, Esquire
Valleys Planning Council
Carrie Wilson