

IN THE MATTER OF THE  
TIMOTHY N. HARVEY, SR., APPELLANT /  
LEGAL OWNER  
4538 MOUNT ZION ROAD

5<sup>th</sup> ELECTION DISTRICT  
3<sup>rd</sup> COUNCILMANIC DISTRICT

CODE ENFORCEMENT  
Citation No.: 65283

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO.: CBA-10-026

\* \* \* \* \*

### OPINION

This matter is before the Board on an appeal from the Finding of the Code Enforcement Hearing Officer with the Department of Permits and Development Management dated November 30, 2009, in which the Hearing Officer found that the Appellant/Respondent, Timothy N. Harvey, Sr., was in violation of Baltimore County Zoning Regulations (BCZR) section 1A01.1; 1A01.2B91, 1A01.3B4, failure to maintain 1 principal dwelling on RC 2 residential property. The Hearing Officer assessed a penalty of One Thousand Dollars \$1,000.00. Appellant Timothy N. Harvey, Sr. filed a timely appeal, and a hearing was held on the record before the Board on March 11, 2010. Appellant, Timothy N. Harvey, Sr. was represented by Elwood E. Swam, Esquire, and the County was represented by Nancy West, Assistant County Attorney, Office of Law for Baltimore County. The parties were allowed to file briefs, which were due on July 23, 2010. A Public Deliberation was held on August 17, 2010 at 9:30 a.m..

### Background

On September 8, 2009, October 2, 2009 and October 29, 2009, Appellant Harvey, Sr. was cited by Code Enforcement Officer Dave Kirby for violating the Section 3-6-205 of the Baltimore County Code (BCC) and violations under the Baltimore County Zoning Regulation

(BCZR) §1A01.1, 1A01.2B91 and 1A01.3B4. At that time Appellant had failed to maintain one (1) principal dwelling on a RC 2 residential property on his property, located at 4538 Mount Zion Road in Baltimore County.

A hearing was held before the Code Enforcement Hearing Officer, Margaret Ferguson, on November 17, 2009. Mr. Harvey, Sr. appeared and was represented by Elwood E. Swam, Esquire; and Code Enforcement Officer David Kirby, appeared representing the County. Ms. Ferguson ordered that Respondent Harvey, Sr. be assessed a civil penalty of One Thousand Dollars \$1,000.00; and further ordered that the One Thousand Dollars \$1,000.00 fine should be suspended on the condition that the Respondent ceases the residential use of the accessory structure by February 1, 2010 or obtain the required permits.

Under BCC Section 1-7(g)(3), any appeal is heard in accordance with the Rules of Procedure adopted by this Board. Under the appellate procedures enacted by the County Council (Section 1-7(g)(4):

The board hearing shall be limited to the record created before the code official. The record shall include, but not be limited to, the recording of the testimony presented to the code official, all exhibits and other papers filed in the code enforcement hearing, and the written findings and order of the code official. The unavailability of a recording is not grounds for dismissal of the final order. If a transcription of the recording is requested by the appellant, the appellant shall pay the cost. In lieu of a recording, the violator and the division of code inspection and enforcement may present written summaries of the testimony presented to the code official.

### Argument

A protestant, Joseph Beal, a neighbor, contends that the Harveys do not run a working farm. He stated that several different tenants have lived in the accessory building for about seven (7) years. He admitted that he knew of the situation but only recently complained.

The Applicants/Appellants acknowledge that the dwelling is a "tenant" house and that it is occupied by individuals that work the land. He stated that a tenant house is a matter of right under RC 2. Mr. Harvey further indicated that the property has been occupied by the his daughter and other persons. There was also discussion with regards to the meaning and definition of tenant. and the argument of the Appellants is that there is no definition which suggests that a tenant house must be a building on a farm occupied by persons working on that farm.

Ms. West pointed out that the Code Enforcement Hearing Officer had sufficient evidence in the file, including photos revealing a large 2-story building with cream colors and a residential door; a residential mailbox; cars were seen parked next to the bulding and a grill and residential garbage were visible. In addition a television satellite dish was visible on the roof. The Hearing Officer found that the evidence clearly indicated that the converted building was being used as a residence. Ms. West requested that this Board affirm the Hearing Officer, based on the credible evidence she had before her at the hearing below.

#### Issue

In an appeal to the Board of Appeals from a final order of the hearing officer in Code Enforcement case, Baltimore County Code § 3-6-303 mandates that the hearing shall be limited to the record created before the Hearing Officer, which shall include the recording of the testimony presented to the Hearing Officer (or a written summary of the testimony presented by the parties); all exhibits and other papers filed with the Hearing Officer; and the written findings and final order of the Hearing Officer.

The standard of review to be applied by the Board in this case is set out in BCC Section 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.

With regard to the civil penalty in the amount of One Thousand Dollars \$1,000.00 imposed by the Hearing Officer, BCC §33-5-108(b) permits the Hearing Officer to impose a civil penalty as provided in Title 5, Subtitle 3. Title 5, Subtitle 3 also permits the Hearing Officer to impose a civil penalty as provided in the general Code Enforcement regulations contained in Article 3, Title 6 of the BCC. Accordingly, BCC §33-5-302 provides the Hearing Officer with the authority to impose a reasonable civil penalty.

The issue before this Board is one that requires a determination that the conversion of the barn on the property into two (2) apartments qualifies as a tenant house, and is that permitted as a matter of right in the RC 2 zone? As the Hearing Officer opined, the term tenant house does not appear in the Baltimore County Code; however the Hearing Officer emphasized that the Appellant's property is not a farm nor was there any evidence before her indicating that the residence of the accessory structure were farm workers.

The Appellants acknowledge that the 2-story building is a tenant house; not a residential dwelling, but disputes the contention that the tenant house must be occupied by persons working the land.

The Hearing Officer found that the building is being used for residential purposes and that the residents 'are tenants' of the Appellants.

COMAR 15.15.03.02 states as follows in regard to the term tenant in an agricultural meaning:

.02 Definition.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Tenant.

(a) "Tenant" means an individual fully engaged in the operation of a farm.

(b) "Tenant" does not include a landowner or a person who has a financial interest in the landowner, including a shareholder interest, partnership interest, or membership interest, full, limited, or otherwise.

(2) "Tenant house" means an accessory structure in which a tenant resides consisting of not more than 2,000 square feet, unless provided otherwise by the Foundation, calculated by first multiplying the exterior footprint of the portions of the structure with multiple stories by the number of stories with windows, and then adding the exterior footprint of any portions of the structure with one story, but excluding basements, attics, porches not used as living space, garages, and unenclosed decks.

Additionally, in COMAR 15.15.03, under the Maryland Agricultural Land Preservation Foundation (MALPF), the criteria for 'tenant' on agricultural property is as follows:

"Tenant" means an individual fully engaged in the operation of a farm.

The Board has heard oral argument and reviewed the record below. The Board concludes that the actions of the Hearing Officer were not arbitrary, capricious or an abuse of authority as

provided by law.

This Board, therefore, finds that the determination of the Hearing Officer as to the activities taking place at the site in question, including her determination that those acts constitute violations of the *Baltimore County Zoning Regulations* and the *Baltimore County Code*, is supported by substantial, competent and material evidence (including, but not limited to, the testimony of Inspector David Kirby), and is neither arbitrary nor capricious.

This Board feels that the Appellants use and definition of 'tenant house' in a RC 2 zone is not by a matter of right. Even though the BCZR is not sufficient clear on this wording, the Board feels that a 'tenant house' is only to be used in a working farm in an agricultural setting. Tenant house is not to be used just for a matter of convenience.

In addition, the Board will reduce the fine by Nine Hundred Dollars (\$900.00) for this citation. The total civil penalty, therefore, will be One Hundred Dollars (\$100.00), pursuant to Section 33-5-302.

With that one modification the Board will affirm the decision of the Hearing Officer.

**ORDER**

**THEREFORE, IT IS THIS** 15<sup>th</sup> day of September, 2010, by the Board of Appeals of Baltimore County,

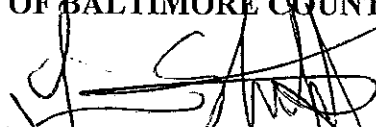
**ORDERED** that the decision of the Hearing Officer in Case No. CBA-10-026 (Citation No.: 65283) be and is hereby **AFFIRMED**; and it is further

**ORDERED** that civil penalty imposed by the Hearing Officer in the amount of Nine Hundred Dollars (\$900.00) shall be reduced and the total civil penalty assessed in Case No.

CBA-10-026 026 (Citation No.: 65283) be and is hereby in the amount of One Hundred Dollars (\$100.00).

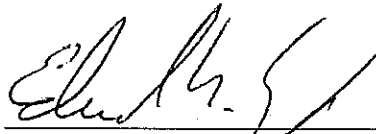
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY**




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Lawrence M. Stahl, Chairman



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Edward W. Crizer, Jr.,



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Andrew M. Belt