

IN THE MATTER OF:
MELVIN SCHMUCK, JR.
209 First Avenue
Baltimore, Maryland 21227

Re: Baltimore County Code Violation
Citation No: 141002

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO: CBA- 14-034

* * * * *

OPINION

This matter comes before the Board as an appeal from a Findings of Fact and Conclusion of Law issued by Administrative Laws Judge upholding the violations of BCC §13-7-310/312; BCC §35-2-404(a)(1)(i)(ii)(iii)(iv); 35-2-404(1)(2); BCZR 1B01.1D : For failure to cease open dump conditions; Failure to remove junk, trash, and debris; Failure to replace/repair missing railing; Failure to repair flaking, chipping, and peeling paint on railing, sills, poles, and windows; Failure to repair gutters and downspouts of property; and imposing a penalty of \$5,000.00 with all but \$100.00 suspended. A hearing on the record was held before this Board on August 5, 2014. The Appellant, Melvin Schmuck, Jr., appeared *pro se*. Assistant County Attorney, Jonny Akchin appeared on behalf of Baltimore County. Phillip Mills, Baltimore County Code Enforcement Inspector was also present.

FACTS

This appeal involves a Baltimore County Code Enforcement & Inspection Citation issued on February 7, 2014 to the Appellant by Baltimore Code Inspector, Phillip Mills. Testimony was received that the citation was sent to the Appellant by first class mail to the last known address listed in the Maryland Sate Tax Assessment files. The citation came as a result of neighbor complaints which led to the inspections of the Appellant's property and which

revealed the presence of open dump conditions consisting of significant junk, trash and debris; missing railings; flaking, chipping and peeling paint on that part of the railing still remaining along with the windows, sills, and poles; gutters and downspouts damaged and in need of replacement/repair. Testimony was received that a Correction Notice was issued and a re-inspection took place on March 4, 2014 noting no change to the conditions on the site.

Melvin Schmuck, Jr. testified that he is receiving neighbor harassment and they are throwing trash into his yard. He has been unable to make necessary repairs because of financial hardship and personal health issues. He objects to the characterization of the 8 to 10 five (5) gallon buckets of stone, stored on his deck, as trash and debris. He plans to use the stone for future (property) projects. He has been unable to make necessary repairs to chipping & peeling paint and the gutters and downspouts because of a leg injury. When Mr. Schmuck was asked about seeking estimates on repairs by others, he stated that he had not. County Attorney Akchin noted, for Mr. Schmuck, that the County had the right to solicit contractors and place a lien on the Schmuck property, for the costs of those repairs, if he does not make the repairs himself, promptly.

DECISION

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 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.”

The focus of the Appellant’s argument in this matter is that the buckets of stone are for future use and are not trash or debris; the neighbors are harassing Mr. Schmuck by throwing debris into his yard and then calling the County for correction; and he has personal issues of health and financial hardship, making it difficult to make necessary repairs. These arguments constitute questions of fact which were to be determined by the Administrative Law Judge to which this Board must defer unless such findings of fact are “unsupported by competent, material and substantial evidence.” While Mr. Schmuck testified to these facts, no documents, photos, witnesses, or building plans were offered in support of his argument. Consequently, this Board must defer to the findings of the Administrative Law Judge and affirm his ruling.

CONCLUSION

The Board finds in reviewing the record of the March 5, 2014 hearing on this matter and the arguments heard before this Board on August 5, 2014, the Findings of Fact and Conclusion of Law issued by Administrative Law Judge upholding the violations of BCC §13-7-310/312; BCC §35-2-404(a)(1)(i)(ii)(iii)(vi); 35-2-404(1)(2); BCZR 1B01.1D : For failure to cease open dump conditions; Failure to remove junk, trash, and debris; Failure to replace/repair missing railing; Failure to repair all flaking, chipping, and peeling paint on railing, sills, poles, and windows; Failure to repair gutters and downspouts of property, is affirmed. A penalty of \$5,000.00 with all but \$100.00 suspended is imposed.

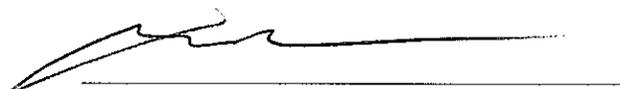
ORDER

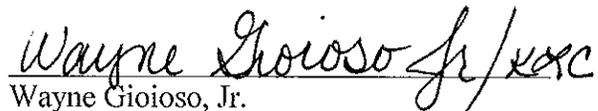
THEREFORE, IT IS THIS 18th day of September, 2014 by the Board of Appeals of Baltimore County

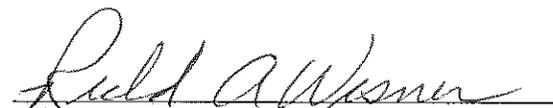
ORDERED that the Findings of Fact and Conclusion of Law issued by Administrative Law Judge upholding the violations of BCC §13-7-310/312; BCC §35-2-404(a)(1)(i)(ii)(iii)(vi); 35-2-404(1)(2); BCZR 1B01.1D : For failure to cease open dump conditions; Failure to remove junk, trash, and debris; Failure to replace/repair missing railing; Failure to repair all flaking, chipping, and peeling paint on railing, sills, poles, and windows; Failure to repair gutters and downspouts of property be and is hereby **AFFIRMED**. A penalty of \$5,000.00 with all but \$100.00 suspended is imposed.

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, Panel Chairman


Wayne Gioioso, Jr.


Richard Wisner



County Board of Appeals of Baltimore County

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September 18, 2014

Melvin L. Schmuck, Jr.
2804 Illinois Avenue
Baltimore, Maryland 21227-3721

Jonny Akchin, Assistant County Attorney
Dept. of Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: In the Matter of: Melvin Schmuck, Jr.
Case No.: CBA-14-034

Dear Mr. Schmuck and Mr. Akchin:

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 Ham".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Layia Brown
Lionel VanDommelen, Chief of Code Enforcement/PAI
Phillip Mills, Inspector/Code Enforcement
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Chief Administrative Law Judge
Nancy West, Assistant County Attorney
Michael Field, County Attorney