



Board of Appeals of Baltimore County

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October 28, 2016

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614 Bosley Avenue
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RE: *In the Matter of: Paul Godwin – Legal Owner*
Charles and Ingrid Castronovo – Petitioners
Case No.: 15-055-SPH

Dear Counsel:

Enclosed please find a copy of the Order of Remand issued this date by the Board of Appeals of Baltimore County in the above subject matter.

By copy of this letter, the Board of Appeals case file is being returned to the Administrative Law Judges for further proceedings consistent with the foregoing Order.

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: Paul Godwin
Charles and Ingrid Castronovo
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
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

Jeanne Walsh
Louis and Ann Workmeister
Donald Durham
Jacqueline Hogarth

IN THE MATTER OF	*	BEFORE THE
<u>PAUL GODWIN – Legal Owner</u>		
<u>CHARLES AND INGRID CASTRONOVO – Petitioners</u>	*	BOARD OF APPEALS
PETITION FOR SPECIAL HEARING FOR		
THE PROPERTY LOCATED AT	*	OF
1452 SHORE ROAD		
15 th Election District; 6 th Councilmanic District	*	BALTIMORE COUNTY
	*	Case No. 15-055-SPH

* * * * *

ORDER OF REMAND

This matter was before Administrative Law Judge John E. Beverungen (“ALJ Beverungen”), Office of Administrative Hearings (OAH), for consideration of a Petition for Special Hearing filed by Charles and Ingrid Castronovo (the "Petitioners"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”). The Petitioners sought the following relief: (1) to determine whether an adjoining property located at 1452 Shore Road is currently in violation of the lot coverage limitations imposed by Section 33-2-603 of the Baltimore County Code (B.C.C.); (2) whether the proposed construction of a stairway and a two level deck on Subject Property would increase the amount of lot coverage maintained on the property in violation of Section 33-2-603 of the B.C.C.; (3) whether the proposed construction of a stairway and a two level deck on the property located at 1452 Shore Road, which is owned by Paul Godwin (the “Subject Property”) violates Section 102.1 of the B.C.Z.R.; (4) whether the proposed construction of a stairway and a two level deck on the property located at the Subject Property would violate the limitation on extending non-conforming structures and uses no more than 25% of the ground floor area of the existing building; and (5) whether a plan for the proposed development of Subject Property can be approved by Baltimore County without review by all required agencies of substantial amendments/alterations thereto.

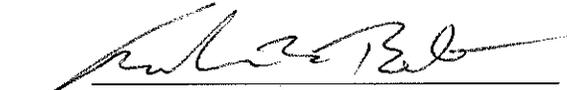
Previously both ALJ Beverungen and this Board determined that they lacked jurisdiction to hear this matter. The Board's Opinion and Order dated June 5, 2015 was appealed to the Circuit Court for Baltimore County.

On February 25, 2016, Judge Judith Ensor of the Circuit Court for Baltimore County remanded this matter to the Board of Appeals for further proceedings after finding that the "dismissal of Petitioners' case for lack of jurisdiction was incorrect as a matter of law."

Therefore, it is this 28th day of October, 2016, by the Board of Appeals of Baltimore County

ORDERED that the above captioned case is **REMANDED** to the Office of Administrative Hearings for further proceedings pursuant to the February 25, 2016 Memorandum Opinion and Order of Circuit Court for Baltimore County.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Andrew M. Belt, Panel Chairman


Benfred B. Alston


Maureen E. Murphy

RECEIVED

MAR 09 2016

IN THE
MATTER OF
CHARLES CASTRONOVO, ET AL.

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IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Case No. 03-C-15-6323

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

MEMORANDUM OPINION

Currently before the Court is Charles and Ingrid Castronovo's ("the Castronovos" or "Petitioners") Petition for Judicial Review (Paper 1000), which was filed on June 12, 2015. The Castronovos seek review of the Baltimore County Board of Appeals' (the "Board of Appeals" or the "Board") decision that the Board lacks jurisdiction to hear their case. Petitioners' Memorandum in Support (Paper 11,000) was filed on October 22, 2015. The Memorandum in Opposition (Paper 13,000) was filed on December 2, 2015. Petitioners filed their Reply (Paper 14,000) on December 17, 2015. The matter was heard on February 2, 2016. Having read and considered the entire file, including the parties' respective pleadings, and having considered the arguments of counsel and the relevant case law, this matter will be remanded to the Board of Appeals for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

The Castronovos own the property located at 1501 Shore Road, Middle River, Maryland. Paul Godwin ("Mr. Godwin" or "Respondent") owns the property directly adjoined to the northwest of Petitioners' parcel, located at 1452 Shore Road, Middle River, Maryland. The instant case began when the Castronovos filed a Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("BCZR"). Petitioners claimed that Mr. Godwin's

“property is in violation of various Baltimore County laws and regulations.” Baltimore County Administrative Law Judge’s Opinion and Order of Dismissal (“ALJ Opinion”) at p. 2. They sought a determination as to (1) whether the property located at 1452 Shore Road violates § 33-2-603 of the Baltimore County Code (“BCC”); (2) whether the proposed construction of a stairway and a two level deck on the property located at 1452 Shore Road increases the amount of lot coverage maintained on the property in violation of § 33-2-603 of the BCC; (3) whether the proposed construction of a stairway and a two level deck on the property located at 1452 Shore Road violates § 102.1 of the BCZR; and (4) whether the proposed construction of a stairway and a two level deck on the property located at 1452 Shore Road violates the limitation on extending non-conforming structures and uses no more than 25% of the ground floor area of the existing building, as provided in § 104.3 BCZR. Record (“R.”), Petition for Special Hearing and Attachment.

On October 30, 2014, Baltimore County Administrative Law Judge (“ALJ”)¹ John E. Beverungen presided over a public hearing on the Petition. By Order dated November 6, 2014, ALJ Beverungen indicated that the relief sought by the Castronovos required “an interpretation of the Baltimore County Code (B.B.C.), *not* the B.C.Z.R.” ALJ Opinion at p. 2 (emphasis in original). He found that an interpretation of the BCC was not authorized under BCZR § 500.7. Thus, the ALJ found that he lacked jurisdiction to consider Petitioners’ case and dismissed the Petition.

The Castronovos then appealed this decision to the Board of Appeals; a *de novo* hearing was held on April 6, 2015. At that time, no testimony was taken; the parties simply argued their respective motions. The Castronovos argued that the hearing should not proceed until the Board of Appeals received “a written recommendation from the Department of Environmental

¹ BCC § 3-12-104(b) acknowledges that “[a]ny reference to the Zoning Commissioner, the Deputy Zoning Commissioner or the Hearing Officer in the Charter, the Code or the Baltimore County Zoning Regulations shall be deemed to be a reference to the Office [of Administrative Hearings].”

Protection.” Transcript (Tr.) April 6, 2015, Hearing at p. 8. Mr. Godwin argued that the Petition should be dismissed for lack of jurisdiction. By Order dated June 5, 2015, the Board of Appeals granted Respondent’s preliminary Motion to Dismiss. The Board found “that though there might be some small components that could be falling under the Zoning Regulations that the meat of this matter still falls within The Baltimore County Code and therefore is beyond the purview and jurisdiction of this Board.” Tr. at p. 24. Following the Board of Appeals’ decision, the Castronovos filed a Petition for Judicial Review.

DISCUSSION

The Board of Appeals found that it lacked jurisdiction to hear the Petition for Special Hearing because, in its estimation, the “meat of this matter” involves interpretation of the BCC. Therefore, the question before this Court is whether the Board of Appeals’ decision regarding its jurisdictional authority is legally correct. When reviewing a decision of the Board of Appeals that is based upon an error of law, the reviewing court need not give deference to that decision and “may substitute its own judgment.” *Lee v. Maryland Nat. Capital Park & Planning Comm’n*, 107 Md. App. 486, 492 (1995).

Petitioners filed this matter under BCZR § 500.7, which grants the Zoning Commissioner and the Board of Appeals “the power to conduct such hearings and pass such orders thereon as shall, in his [or its] discretion, be necessary for the proper enforcement of all zoning regulations . . . [and] to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.” Additionally, BCZR § 500.6 indicates that “the Zoning Commissioner shall have the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order thereon, subject to the right

of appeal to the County Board of Appeals as hereinafter provided.” Therefore, jurisdiction is determined based upon whether any property right will be affected by the application of the relevant BCZR sections to a particular property.

As an initial matter, the party filing a Petition for Special Hearing must have standing. The Castronovos, as interested persons, have standing regarding Respondent’s compliance with the BCZR pursuant to BCZR § 500.7. *See* BCZR § 500.7 (stating that “[t]he power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing . . . to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.”); *see also* BCZR § 500.10 (stating that “any person or persons . . . aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the County Board of Appeals.”); *see generally* *Marzullo v. Kahl*, 366 Md. 158, 165 (2001) (indicating that, while a Baltimore County resident was not permitted to appeal the issuance of a building permit for a neighbor’s property, the resident was permitted to institute a Special Hearing under BCZR § 500.7 to determine the neighbor’s compliance with the BCZR). Petitioners’ waterfront property, located at 1501 Shore Road, is directly adjoined on its northwest side to Respondent’s waterfront property, located at 1452 Shore Road. As neighbors and owners of property adjacent to Mr. Godwin’s property, the Castronovos have standing to file a Petition for Special Hearing regarding Respondent’s compliance with the BCZR.

Next, the Petition for Special Hearing and *de novo* appeal must be filed with regard to a violation of the BCZR. BCZR §§ 500.6–500.7. The Castronovo’s Petition for Special Hearing sought relief as a result of alleged violations of BCC § 33-2-603, BCZR § 102.1, and BCZR §

104.3. Without question, the Baltimore County Office of Administrative Hearings² and the Board of Appeals have jurisdiction with regard to the issues involving BCZR § 102.1 and BCZR § 104.3 as they require the interpretation of the BCZR.

In addition, BCZR § 500.7 grants authority to hear cases regarding non-conforming uses. BCZR § 101.1 defines non-conforming use as a "legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." BCZR § 103.5 and § 104.5 specifically address non-conforming uses and both sections incorporate BCC § 33-2-603, which is the basis for the Castronovos' first and second issues raised in the Petition for Special Hearing. BCZR § 103.5(C) states:

The county shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on June 13, 1988. If the existing use does not conform with the provisions of the local protection program, its intensification or expansion may be permitted only in accordance with Section 104.5 of these regulations and with the variance provisions and procedures outlined in § 32-4-231, § 33-2-205, or § 33-2-603 of the Baltimore County Code, whichever is or are applicable.

BCZR § 104.5 indicates:

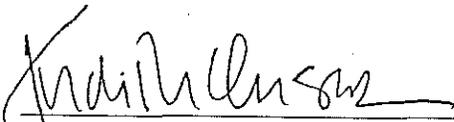
Any use which becomes or continues to be nonconforming which exists within the Chesapeake Bay Critical Area on or after the effective date of this section is subject to the provisions of Section 104.1, 104.2, and 104.3 and to the variance provisions and procedures of § 32-4-231, § 33-2-205, or § 33-2-603 of the Baltimore County Code, which is or are applicable.

Both BCZR § 103.5 and BCZR § 104.5 require compliance with those procedures and provisions detailed in BCC § 33-2-603. As a result, the Board of Appeals must have the authority to review the cross-referenced sections of the BCC, including BCC § 33-2-603. Without such authority, the Board of Appeals would not be able to evaluate whether Respondent is in compliance with the requirements of BCZR § 103.5 and BCZR § 104.5.

² See *supra* note 1.

CONCLUSION

For the reasons set forth above, the Board of Appeals' dismissal of Petitioners' case for lack of jurisdiction was incorrect as a matter of law. Therefore, the matter will be remanded to the Board of Appeals for further proceedings.

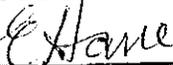


JUDITH C. ENSOR, Judge

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JULIE L. ENSOR, Clerk

Per



Assistant Clerk

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IN THE
MATTER OF
CHARLES CASTRONOVO, ET AL.

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IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Case No. 03-C-15-6323

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

ORDER

Having read and considered Petitioners' Memorandum in Support of Petition for Judicial Review (Paper 11,000), Respondent's Memorandum in Opposition to Petition for Judicial Review (Paper 13,000), and Petitioners' Reply Memorandum in Support of Petition for Judicial Review (paper 14,000), and having read and considered the entire file, including the record and transcript from the *de novo* hearing before the Board of Appeals, and having considered the relevant case law and the arguments of counsel, the Court finds that the Board of Appeals' dismissal of Petitioners' case for lack of jurisdiction was incorrect as a matter of law. Accordingly, it is hereby ORDERED this 25TH day of February, 2016, that this matter is REMANDED to the Board of Appeals for further proceedings.


JUDITH C. ENSOR, Judge

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JULIE L. ENSOR, Clerk

Per 
Assistant Clerk