

IN THE MATTER OF
WLLIAM AND THERESA TUNNEY
717 ROCKAWAY BEACH AVENUE
ESSEX, MARYLAND 21221

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-24-019

RE: Civil Citation No.: CC2307872

* * * * *

OPINION AND ORDER

This matter comes before the Board of Appeals for Baltimore County (the “Board”) as a Motion to Dismiss Appeal. It arises out of a Code Enforcement hearing (hereafter “the citation case”) brought by Baltimore County against William and Theresa Tunney, who reside at 717 Rockaway Beach Avenue, Essex, Maryland 21221 (the “subject property”). The Citation number is CC2307872. The citation case was heard before Administrative Law Judge (“ALJ”) Maureen E. Murphy on December 14, 2023. At the conclusion of the hearing the ALJ dismissed the citation. The ALJ issued a written decision on January 9, 2024.¹

The present Appellants were the primary County witnesses and/or interested non-party participants at the citation hearing. They are the Rockaway Beach Improvement Association, Inc. and residents of the Rockaway Beach community² (collectively “Appellants”). After the dismissal, the Appellants filed this appeal to the Board. The County filed a Motion to Dismiss through its counsel, Assistant County Attorney Marissa L. Merrick. The Tunneys filed a similar motion through their counsel, Jennifer R. Busse, Esquire. The Appellants filed a response. The

¹ The written decision mistakenly refers to the subject property as 315 Blue Grass Lane, Hampstead, Maryland 21074.

² The individuals, all of whom were present, but not all of whom testified, were Marcyanna and William Seigman, Michael and Patricia McDonough, and Kevin McDonough.

Office of People’s Counsel through Peter M. Zimmerman, Esquire, sought to intervene on behalf of the Appellants and filed a Memorandum in support of the appeal.³

The Board held a virtual hearing on March 13, 2024, limited to the question of the propriety of the appeal. The Board then held a public deliberation on April 11, 2024. The Board found unanimously that the appeal must be dismissed.

This is a most unusual case. It began in 2005 when one of the Tunneys’ predecessors in interest constructed an outsized house in the wrong spot at 717 Rockaway Beach Avenue, a waterfront lot in eastern Baltimore County. This generated an objection from the present Appellants as well as others in the Rockaway Beach community. The parties worked out the issues between themselves, and as a result of two hearings, then Zoning Commissioner William Wiseman issued an opinion in 2006 incorporating the parties’ compromise. Mr. Wiseman permitted the house to remain intact but in exchange, consistent with the parties’ agreement, ordered there could be no further development on the water side of the subject property because of the danger that any such development would impinge upon the water views of the immediate neighbors (hereinafter “Wiseman order”).

In 2022, the matter re-appeared when the Tunneys, as new owners of the subject property, constructed a low deck on the water side. The Appellants filed a Petition for a Special Hearing requesting a determination that the deck violated the Wiseman order. The matter was heard by ALJ Paul M. Mayhew, who determined by an Order issued October 22, 2022, that the deck indeed violated the 2006 order. The Tunneys appealed to the Board which also ruled on November 6, 2023, (hereinafter “the Board opinion”) that the deck contravened the 2006 order. One Board

³ The Tunneys requested that the Board not permit People’s Counsel to participate. The Board denies that request.

member dissented. The majority opinion quite clearly stated that the Wiseman order prohibited landscaping that would impair the water view.⁴ This ruling was not dicta; it was necessary to the final decision to define the exact boundaries of the Wiseman order so that the parties would have reasonable guidance going forward without the necessity of filing repeated petitions for special hearings every time some new circumstance arose.

It appears from the record in the citation case that while the matter was pending before the Board, the Tunneys planted shrubbery on the water side arguably impacting the water view. The Appellants notified the County which issued a citation indicating that the Tunneys were in violation of the Wiseman order and the Board opinion. The matter came before the ALJ who made no ruling on the factual question as to whether the shrubbery did violate the Wiseman order and/or the Board opinion. Instead, the ALJ dismissed the citation ruling from the bench, and as was followed by a detailed written order, that landscaping *per se* was not within the ambit of either the Wiseman order or the Board opinion.⁵ The Tunneys did not request dismissal on that basis or any basis; indeed, the Tunneys had, quite sensibly and intelligently, simply asked the ALJ to offer guidance as to which of the shrubs, if any, offended the Wiseman order and the

⁴ One piece of evidence cited in the Board's opinion is an email from the original owner relinquishing previously granted permission to re-landscape because that contemplated landscaping would have negatively impacted the neighbors' water view.

⁵ The ALJ stated in her oral ruling that ALJ's are not "bound" by decisions of the Board of Appeals. Whether such a pronouncement is correct as to the Board's rulings on general principles of law, she may well have been bound in this matter by the principle of "the law of the case" which requires that rulings in subsequent stages of the same or related case adhere to final decisions in earlier parts of that case. *Arizona v. California*, 460 U.S. 618 (1984); *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 816 (1988); *Reier v. State Department of Assessments and Taxation*, 397 Md. 2, 22 (2007); and *Stokes v. American Airlines*, 142 Md. App. 440, 446-47 (2002).

Board opinion and then to impose no fine. Had the ALJ followed the Tunneys’ suggestion, the matter would now be over.⁶

The Appellants were distressed with the ALJ opinion, and they requested the County to appeal the ALJ ruling. The only significant communication to Appellants was by Code Enforcement which indicated that Appellants did not have standing to appeal. The County did not specifically say whether it would note an appeal or not. In point of fact, the Assistant County Attorney told the Board at the March 13, 2024, hearing that the County has not appealed an adverse ruling in a zoning citation case during her entire tenure overseeing such cases going back to 2016. When it finally became apparent that the County was not going to take any action, the Appellants noted this appeal.

BCC § 3-6-301(a) indicates quite explicitly that “a violator or the county” may appeal a code enforcement order. BCC § 32-3-401 that governs general appeals to the Board of Appeals with its emphasis on a generic “aggrieved” person, would appear not to apply to appeals from code enforcement hearings because if it did, it would make § 3-6-301(a) superfluous. As best the Board can tell, there has never been an appeal to the Board by a non-party interested person in a citation case, and the absence of such an event contributes to the conclusion that § 3-6-301(a) has been consistently interpreted to preclude such appeals. Finally, given the sheer number of citation cases and hence the vast number of witnesses or arguably interested or even so-called aggrieved persons, the potential for huge numbers of appeals – the vast majority of which one

⁶ If the ALJ had made a simple factual finding as to the question presented in the citation case, this Board would undoubtedly have affirmed that decision given the great deference that the law requires be accorded to a factual finding by the first level factfinder. In its present posture, the Board expressly avoids any comment on how the factual question presented in the citation case should be resolved.

imagines would be meritless – also leads to the conclusion that the statutory scheme does not contemplate non-party appeals.

People’s Counsel and Appellants also argue that even if there is no general right to witness appeals, the highly unique facts of this matter would justify it here. A central feature of this argument is that there is a denial of due process because, as the argument goes, the Appellants are powerless to challenge the ALJ ruling. The problem with this argument is that Appellants are not without a remedy – they can file yet one more Petition for Special Hearing to ask first an ALJ, and then possibly this Board, to rule on the propriety of the shrubs. This means, of course, that ultimately this matter will most likely end up generating, or having generated, at least five ALJ hearings and three Board of Appeals hearings, spanning two decades.

Under all of the circumstances over the past eighteen years, it is understandable that the Appellants attempted this appeal. But understandable or not, the Baltimore County Code just does not allow witnesses or other interested non-parties to appeal a citation case. Accordingly, the appeal in this matter is dismissed.

THEREFORE, IT IS THIS 24th day of April, 2024, by the Board of Appeals of Baltimore County hereby

ORDERED, that the appeal filed by Rockaway Beach Improvement Association, Inc. and the individual Appellants in case number CBA-24-019 regarding Citation number CC2307872 is hereby **DISMISSED**.

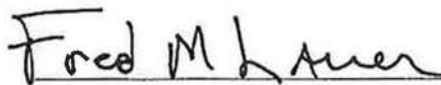
In the matter of: William and Theresa Tunney – Respondents
Rockaway Beach Improvement Association, Inc. – Appellants
Case No.: CBA-24-019

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*.

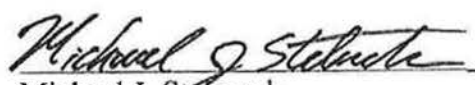
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Joseph L. Evans, Chair



Fred M. Lauer



Michael J. Stelmack



Board of Appeals of Baltimore County

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April 24, 2024

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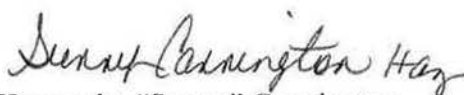
RE: In the Matter of: *William and Theresa Tunney – Respondents*
Rockaway Beach Improvement Association, Inc. – Appellants
Case No.: CBA-24-019

Dear Messrs. McDonough, Busse, Merrick, Zimmerman and Demilio:

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,


Krysundra "Sunny" Cannington
Legal Administrative Secretary

KLC/taz
Enclosure
Multiple Original Cover Letters
c: See Distribution List Following

In the Matter of: William and Theresa Tunney – Respondents
Rockaway Beach Improvement Association, Inc. – Appellants

Case No.: CBA-24-019

April 24, 2024

Distribution List

William and Theresa Tunney
Michael and Patricia McDonough
Marcyanna and William Siegman
Maureen E. Murphy, Chief Administrative Law Judge
Adam Whitlock, Chief of Code Enforcement/PAI
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law