

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.: 2307872

\* \* \* \* \*

**ORDER ON MOTION FOR RECONSIDERATION**

This matter comes before the Board of Appeals for Baltimore County (the “Board”) as a Motion for Reconsideration of an Opinion and Order dated April 24, 2024. In that Order we dismissed the appeal noted by the Rockaway Beach Improvement Association, Inc. and residents of the Rockaway Beach community (“Appellants”) of a ruling by Administrative Law Judge (“ALJ”) Maureen E. Murphy, in a code enforcement case regarding Citation Number CC2307872 (“Citation case”). The Appellants were witnesses and concerned citizens in the Citation case. The actual parties to the case were Baltimore County which had issued the citation, and William and Theresa Tunney, who reside at 717 Rockaway Beach Avenue, Essex, Maryland 21221, and who were the cited parties. The citation alleged that the Tunneys had landscaped their property in a way that impinged on the water view of the adjoining neighbors in violation of a 2006 ruling by Zoning Commissioner William Wiseman and this Board’s related ruling on November 6, 2023, in a special hearing regarding a deck that violated the 2006 Wiseman order. ALJ Murphy had dismissed the citation, ruling that landscaping *per se* was not within the ambit of either the Wiseman order or the 2023 Board opinion. The dismissal came as a complete surprise to everyone. The Tunneys had not sought any relief on that basis, requesting instead some simple guidance from the ALJ as to which parts of the altered landscape were in violation

and which were not. The ALJ had not requested any briefing or argument on the propriety of dismissal, the basis for her ruling, or the scope of the Wiseman order or this Board's recent decision. From the recording, it appears that the ALJ had decided to dismiss the case before she heard from any of the participants.

The present Appellants were the primary County witnesses and/or interested non-party participants at the Citation hearing. They had initiated the 2023 special hearing case, and a slightly different iteration of the Appellants had initiated the case leading to the 2006 Wiseman order. After the ALJ dismissal, the Appellants filed an appeal to the Board. The County and the Tunneys filed Motions to Dismiss. The Office of People's Counsel intervened on behalf of the Appellants.

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 and issued the written Opinion and Order referred to above. Appellants have asked us to reconsider that decision because we did not fully address two of their legal concerns: (1) that the general statute authorizing appeals of administrative orders controlled the appeal of the Citation case and the Appellants were permitted to appeal on that basis; and (2) even if the particular County Code regarding appeals in citation cases limited appeals to either the County or the cited party, the special circumstances of this case made the Appellants a *de facto* party standing in the place of the County. The Board held a public deliberation on June 20, 2024, and unanimously denied the Motion for Reconsideration.

The Appellants initially cite the Ann. Code of Md., Local Gov't Art. § 10-305(b) which permits (but does not require) local boards of appeals to handle appeals from any administrative

order regarding a zoning matter or the violation of an ordinance delegated by the State to a county. The State provision authorizes counties to establish Boards of Appeals but does not mandate the scope of the authority of any such Board. The general provision establishing this Board and outlining its jurisdiction is found in the County Charter at § 601 *et seq.* The Charter specifically authorizes the Board to hear zoning matters as described in Title 10 of the State Government Article, *supra*, and to hear all County administrative and adjudicatory appeals. §§ Sec. 602(a) and (d). The Baltimore County Code (“BCC”) at § 32-3-401 authorizes the Board to hear appeals of **all** zoning matters and grants standing to “[a] person aggrieved or feeling aggrieved”. Finally, BCC § 3-6-301(a) specifically authorizes this Board to review orders in citation cases which are appealed by the County or by the recipient of the citation. Witnesses or any other relevant participants are not mentioned.

The general authority of the Board of Appeals is governed by the County Charter and the BCC. While the Charter gives broad authority to the Board to review administrative matters, the BCC provides specific authority in citation cases. BCC § 3-6-301(a) indicates quite explicitly that “a violator or the county” may appeal a code enforcement order. As we stated in our earlier opinion, 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. BCC § 3-6-301(a) by its terms limits the right to seek appellate review in a citation case to the County and the cited party. Arguably § 3-6-301(a) and § 32-3-401 conflict. To that extent, Maryland law is clear that where a general statute and a specific statute conflict, the specific statute controls. *Maryland National Capital Park and Planning Commission v. Anderson*, 395 Md. 172, 191-93 (2005); *State v.*

*Ghajari*, 346 Md. 101, 116-18 (1997). We also noted in our original opinion the illogic of permitting witness appeals given the number of citation cases and the correspondingly huge number of witnesses or arguably interested or aggrieved persons who could then note an appeal. It is not an overstatement to say that permitting such a procedure could overwhelm the Board's ability to function. We addressed this issue in our original opinion, and there is no basis for us to reconsider that determination.

The Appellants also argue that we did not adequately address the principle that they could be formally placed in the shoes of the County for the purposes of pursuing an appeal. They cite a Circuit Court opinion in a zoning matter where Judge Lawrence R. Daniels permitted interested citizens to **intervene**, and thereby be heard, in a zoning matter that had been appealed to the Circuit Court from this Board. *See In Re Howard H. Conaway, Jr. et al.*, 03-C-99-11441. In so doing, Judge Daniels noted the importance of citizen participation in the litigation of zoning questions. The Board largely agrees with Judge Daniels' sentiment. At the same time, there is nothing in Judge Daniels' opinion that can be understood as permitting citizen participants to be **substituted** for Baltimore County in any zoning matter. Baltimore County is a governmental entity, with governmental functions, governmental internal controls, governmental policy-making responsibilities, and governmental perspective over the entire County. This is only one small case in the midst of thousands of zoning matters throughout the entire County. But even given the case's relative insignificance in the grand view, it is unthinkable that a small group of private citizens could essentially become Baltimore County even for the very limited and rather laudable purpose of trying to restore some rationality and orderliness in one relatively minor zoning case in eastern Baltimore County. As the Board has noted, Baltimore County has not

handled this matter well. It could have noted an appeal and once again handed over responsibility to the Appellants. But it did not do so, and the simple fact is that that County decision can **never** generate the type of relief that the Appellants have requested. The government remains the government even when it acts in ways that some of its citizens view as improper or inadequate. There is no case law nor statutory basis supporting the Appellants' position, and this Board has no authority whatsoever to recognize the Appellants as a legal substitute for the County.

Once again, we understand how frustrating this entire matter is for the Appellants. What should have been a straightforward matter in front of an ALJ has become quite the opposite, and not through any actions of the community, the witnesses, or the interested citizens. As we said in our earlier opinion, the only relief that the community has under these circumstances is to file a petition for a special hearing and to re-initiate that cumbersome, expensive, and time consuming process. In the meantime, the Board is required to follow the controlling legal principles, and those principles do not permit the Appellants to pursue an appeal in a citation case.

### **ORDER**

**THEREFORE, IT IS THIS** 26th day of June, 2024, by the Board of Appeals of Baltimore County

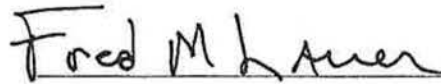
**ORDERED** that the Motion for Reconsideration filed by Marcyanna and William Siegman, Michael and Patricia McDonough, Kevin McDonough, and the Rockaway Beach Improvement Association, Inc. is **DENIED**.

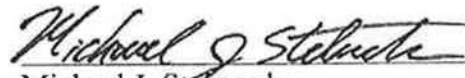
In the matter of: William and Theresa Tunney – Respondents  
Rockaway Beach Improvement Association, Inc., et al. – Appellants  
Order on Motion for Reconsideration  
Case No.: CBA-24-019

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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June 26, 2024

Kevin McDonough, President  
Rockaway Beach Improvement Association  
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Essex, Maryland 21221

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Baltimore County Office of Law  
400 Washington Avenue, Suite 219  
Towson, Maryland 21204

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

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

Enclosed please find a copy of the Order on Motion for Reconsideration 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, appearing to read "Krysundra Cannington".

Krysundra "Sunny" Cannington  
Executive 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., et al. – Appellants

Case No.: CBA-24-019

June 26, 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