

HOWARD COUNTY BOARD OF APPEALS HEARING EXAMINER

In the Matter of

**SCOTT SHEARER/SGS ASSOCIATES, LLC &
GREGG PARATER**

**Civil Citation Nos. CE 11-129-IV & V
Citations Issued January 29, 2015**

Respondents

ORDER

This matter came before the Howard County Board of Appeals Hearing Examiner for a April 30, 2015 hearing on Department of Planning and Zoning (DPZ) civil citations for violations of Howard County Zoning Regulations (HCZR) §§ 101.0.O, 104.0.B&.C and 110.0.4.d.(1).(b)(i), involving, respectively, the leasing of garages to commercial tenants and storage of related commercial equipment and the maintenance of a structure which fails to meet the interior side yard setback, on R-SC (Residential: Single Cluster) zoned property known as 6370 Meadowridge Road, Elkridge, MD 21075. On January 26, 2015, pursuant to Howard County Code (HCC) Title 24, "Civil Penalties," and Subtitle 3 of Title 16 of the HCC, Department of Planning and Zoning (DPZ) Zoning Regulations, Inspector Curtis Braithwaite individually issued Scott Shearer/SGS Associates and Gregg Parater Civil Citation CE 11-129-IV for the leasing of garages to commercial tenants and storage of related commercial equipment and Civil Citation CE11-129-V for the maintenance of a structure which fails to meet the interior side yard setback. The citations were sent by registered and regular mail to Respondent Scott Shearer, as resident agent of SGS Associates, LLC, at 13288 Highland Road, Highland MD., 20777 and to Respondent Gregg Parater at 8569 Willow Wisp Ct., Laurel, MD., 20723.

David Moore, Senior Assistant County Solicitor, represented the Department of Planning and Zoning (DPZ). Zoning Regulations Inspector Curtis Braithwaite appeared for the hearing and testified. Respondents Scott Shearer and Gregg Parater appeared for the hearing and testified. Respondents' witnesses John Beck and M. Najib Roshan appeared for the hearing and testified. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

DPZ requested a five thousand dollar civil penalty/fine and an Order directing Respondents to allow access to the Property, including the interior of the garages, to confirm abatement of the commercial use and the submission of a variance petition within 45 days of the Order.

DPZ introduced into evidence the exhibits as follows.

1. Civil Citations 11-129-IV & 11-129-V issued to Scott G. Shearer, SGS Associates, LLC, January 29, 2015
2. Photograph of commercial garages, September 23, 2014
3. Civil Citations 11-129-IV & 11-129-V issued to Gregg N. Parater, Owner
- 4A-C. Photographs of vehicles, April 29, 2015

Respondents introduced into evidence the exhibits as follows.*

1. Savage Mill retail lease, John Beck, Tenant, March 2015
2. Contract proposal for garage, November 8, 2007
3. Department of Inspections, Licenses and Permits data, detached garage building permit, December 20, 2007
4. September 27, 2013 email to Cindy Hamilton, from M. Najib Roshan, LS, discussing attached wall check survey dated September 26, 2013
5. Wall check survey, August 13, 2013 with enlargement showing building with 7.5 setback, Plat prepared by Progressive Engineering Consultants
6. Photographs of old detached garage included with appraisal of Property
7. March 27, 2014 letter to SGA [sic] Associates and Gregg Parater, from Kent Sheubrooks,

Chief, DPZ Division of Land Development approving WP-14-099 waiver in reference to adjointer deed, with attachments

* Exhibits 2-7 were pre-marked as 1-6. During the hearing, the Hearing Examiner referred to the exhibits by the exhibit number as marked, not by the exhibit number as introduced into evidence.

Testimony of Scott Shearer Called as a DPZ Witness

1. Scott Shearer testified being one of the property owners of 6370 Meadowridge Road, Elkridge, MD 21075. On DPZ's introduction of DPZ Exhibit 1, Mr. Shearer identified it as a copy of CE 11-129-IV and CE 11-129V, including a cover letter and certified mail receipt. The two citations and cover letter were sent to him at his home address, 13288 Highland Road. He is the sole owner of SGS Associates, LLC, which is one of the owners of 6370 Meadowridge Road (the Property).

2. Mr. Shearer testified to being aware that one of the structures on the Property is located within a setback from an adjoining property owner and does not dispute being in violation of the setback. Mr. Shearer further testified to discussing the setback violation with the other owner of the Property, Gregg Parater. He hopes the hearing will result in a solution that will abate the violations. Until recently, the garage spaces on the Property were being leased to commercial tenants. The last tenant vacated the Property the weekend before the hearing. From here on in, he will store only antique vehicle equipment in the garages. Some are static, but can run. They are in working order, but may have a dead battery. All vehicles on the Property are registered. Some trucks are eligible to be driven on public roads, including trailers. Mr. Shearer identified DPZ's Exhibit 2 as a photograph of the garages on the Property. In

response to the Hearing Examiner's questions about the six-bay garage, Mr. Shearer explained that it was erected in 2007.

Testimony of Gregg Parater Called as a DPZ Witness

3. Gregg Parater testified to the second owner of the Property and having received CE 11-129-IV and CE 11-129V, including a cover letter. The two citations and cover letter were sent to him at his home address. DPZ Exhibit 3. He is looking to the County for assistance because he and Mr. Shearer are uncertain as to what direction to take.

4. Concerning the commercial tenants on the Property, Mr. Parater testified that they are all gone. He personally has a construction trailer on the Property, which he will remove. He does not intend to store any vehicles or equipment on the Property. A trailer, snowplow and an RV had been stored on the Property, but these were removed before the civil citation was issued. Referring to DPZ Exhibit 4A-C, photographs of vehicles on the Property, Mr. Parater testified that the yellow trailer seen in DPZ Exhibit 4A and B is his. He was not familiar with the other trailer depicted in DPZ Exhibit 4A-C or the boat shown in the exhibit.

Testimony of DPZ Zoning Regulations Inspector Curtis Braithwaite

5. Zoning Inspector Curtis Braithwaite testified to being a DPZ Zoning Inspector. DPZ Exhibit 4A-C contains photographs he had taken during his April 29, 2015 site inspection and they document the vehicles and commercial equipment he observed on the Property. He had observed these and other vehicles and equipment on the Property and in the garages during

prior inspections. He spoke to someone whose name he did not know during a December 2014 visit. This person told him that he was renting space from the owners. On April 29, 2105, he observed sawdust by a garage door, which he believed might evidence the continued presence of this commercial tenant.

6. In response to Hearing Examiner questioning, Inspector Braithwaite testified to observing two flatbed trailers and a boat trailer during the April 29, 2015 inspection. The yellow trailer shown on the left in DPZ Exhibit 4B is "tagged," having an up to date license plate. The other two trailers in DPZ Exhibit 4A-C are not tagged. In the R-SC zoning district, residents are permitted to park or store only one commercial vehicle. A trailer is a motor vehicle under the Zoning Regulations.

Testimony of John Beck Called as Respondents' Witness

7. John Beck testified to having been a hobbyist who leased space in one of the garages on the Property. He had spoken to Inspector Braithwaite during the inspector's August 2014 site inspect. The garage was used for storage. The hobby became a business and Mr. Beck leased space at a new location. Respondent Exhibit 1 is a copy of his lease agreement for space at Savage Mill LLP, for a term beginning on April 2015. On cross-examination, Mr. Beck explained that he began storing wood in the garage in August 2014 and leased the new space in April 2015.

Direct Testimony of Scott Shearer

8. Scott Shearer introduced multiple exhibits intended to demonstrate the construction history of the garages on the Property and his efforts to bring the encroaching garage into compliance. Respondents Exhibit 2 is a November 8, 2007 contract proposal to obtain a building permit to demolish two existing garage buildings, remodel a 24'x95' garage and construct a 12'x41' add-on garage. Respondent Exhibit 3 is Department of Inspections, Licenses and Permits market analysis list identifying the applicable building permit as BO7004677, issued to SGS Associates on December 29, 2007, to "demo existing garage and rebuild 26,385sf" at 6370 Meadowridge Road. According to Mr. Shearer, the contractor utilized the Hannah Wilson/Jesse H. Yawn Properties plat included with Respondents Exhibit 6.

9. Mr. Shearer further testified to applying for a building permit in 2013 for what he called the "final five" addition/structure on the slab shown DPZ Exhibit 2, when DPZ determined the existing structure was in violation of the 7.5' setback. The permit being "flagged" meant it could not be issued. To resolve the setback encroachment, Respondents proposed what Mr. Shearer called a "land swap" with the adjoining property owner of Parcel 160, through which a small section (143sf, according to the attached legal description) in the southwest corner of Parcel 160 would be conveyed to Parcel 161 (the Property) and a somewhat larger section of Parcel 161 (568sf, according to the attached legal description) on the westerly side of Parcel 160 would be conveyed Parcel 160 through a boundary lot adjustment. This effort is documented in Respondents Exhibit 4, a September 27, 2013 email to Cindy Hamilton, from M. Najib Roshan, LS, discussing an attached wall check survey dated September 26, 2013,

Respondents Exhibit 5, an August 2, 2013 wall check survey and Respondents Exhibit 6, a March 27, 2014 letter to SGA [sic] Associates and Gregg Parater, from Kent Sheubrooks, Chief, DPZ Division of Land Development approving WP-14-099 waiver in reference to adjoinder deed, with attachments, including the "Plat of Hannah Wilson and Jesse H. Yawn Properties" a drawing used when the Property was conveyed to SGS Associates, LLC.

10. In response to the Hearing Examiner's questioning, Mr. Shearer explained that the permit under BO7004677 for a detached garage rebuild was the permit for the attached garage shown in DPZ Exhibit 2. The add-on was never completed due to lack of funds.

11. On cross-examination, Mr. Shearer testified that Respondents Exhibit 5 shows a blowup on the August 2, 2013 survey highlighting the location of the garage within the 7.5' setback side setback. He did not have a copy of the actual permit application. He does not know if the drawings submitted for the permit were accurate but he later learned they would not have been if the structure had been built with the setback based on the Hannah Wilson/Jesse H. Yawn Properties plat included with Respondents Exhibit 6. The building was finished around October 2008 and payment was made for a final building inspection.

12. Mr. Shearer also consented to meeting with DPZ at the Property to confirm abatement of the commercial use/equipment storage/commercial vehicle parking violations, including inspection of the interior of the garages.

Testimony of M. Najib Roshan Called as Respondents' Witness

13. Najib Roshan testified to becoming involved with the Property in 2013. Reviewing the plat prepared by Progressive Engineering Consultants he testified that the drawing entitled "Plat of Hannah Wilson and Jesse H. Yawn Properties" (the Wilson/Yawn Plat) was not accurately drawn. (Respondents Exhibit 6). The total area of the encroaching structure is about 100sf. He prepared an accurate land survey in 2013. Respondents Exhibit 6.

14. On cross-examination, Mr. Roshan testified that the Wilson/Yawn plat does not show the setbacks, only building locations. The location of the garage as built, based on the Wilson/Yawn plat, is therefore inaccurate. Two garages were demolished, but the foundation and slabs were retained and extended, and the garage built in 2007 was located as shown on what the Hearing Examiner understood be the August 2, 2013 wall check survey, which shows the applicable setbacks. Respondents Exhibit 5. He also testified that Respondents had started to prepare a variance petition but the petition has not yet been submitted to DPZ.

Direct Testimony of Gregg Parater

15. Gregg Parater testified to the 2007 building permit having been properly pulled, even though the drawings were incorrect. He and Mr. Shearer met with DPZ about the setback issue during which DPZ agreed to help them resolve the problem. DPZ also suggested developing the property and so Messrs. Parater and Shearer met with developers (a civil engineer) on December 11, 2014, who set out an 18-24 month time line and described issues with the Property, including access sight lines. They then met with Mr. Roshan to discuss a potential access through the neighboring townhouse development. They stopped everything

when they received the citations, which gave them 14 days to abate the violations. On cross-examination, Mr. Parater testified that he had had previous notice of the violations, but that the County had told them in October that they would give them some latitude.

BURDEN OF PROOF

Pursuant to HCC 16.1605(d), in an appeal of a citation issued under Section 16.1603 of Subtitle 16, Enforcement of The Howard County Subdivision and Land Development Regulations and the Zoning Regulations, the burden of proof is on the county to show, by a preponderance of the evidence, that the alleged violator has violated the laws or regulations in question. However, it is the alleged violator's burden to provide all affirmative defenses, including the defense of nonconforming use.

ANALYSIS AND CONCLUSIONS OF LAW

A. Due Process Notice Preliminary Matters

1. Notice of the violations. HCC § 16.1603 et seq. authorizes the DPZ director (which includes the director's designee per § 1600.(d)) to issue a citation to an alleged violator after the issuance of a notice of violation if the violation continues after the reasonable time stated in the notice of violation has passed. Inspector Braithwaite did not testify specifically as to the issuance and substance of the requisite notices, nor was a copy of each notice of violation introduced into evidence, as is DPZ's standard practice in code enforcement hearings. However, the January 29, 2015 civil citation cover letter sent to Respondents references the notices

having been issued on October 13, 2014 (DPZ Exhibits 1 & 3) and Respondents' testimony acknowledges notice of the violations notice prior to receipt of the civil citations. With the exceptions addressed next in reference to the citations for commercial equipment storage, the Hearing Examiner concludes the civil citations comply with the due process notice requirements embodied in HCC § 16.1603 et seq.

2. Civil Citation 11-129-IV. CE 11-129-IV charges Respondents in part with a violation of HCZR §104.0.B&.C. These sections address permitted and accessory uses in the RC (Rural Conservation) zoning district. The Property, though, is located in the R-SC district, where permitted and accessory uses are controlled by § 110.0.B&.C. It is within the discretionary power of the Hearing Examiner to dismiss a citation citing to the wrong provision of the HCZR or Subdivision and Land Development Regulations. In this case, §§ 110.0.B&.C and 104.0.B&.C both address permitted and accessory uses. No section authorizes the commercial leasing of garages to commercial tenants and the record is devoid of any suggestion that DPZ did not issue a notice of violation informing Respondents of the violation for the leasing of the garages to commercial tenants.

The Hearing Examiner is dismissing CE 11-129-IV as to the citation for the storage of commercial equipment. It is DPZ's burden of proof and persuasion to prove alleged violators have violated the laws or regulations in question and it has failed to do, there being no evidence of record to support the issuance of a notice of violation and civil citation for improper commercial equipment storage. Had Inspector Braithwaite observed "related

commercial equipment" being stored on the Property before issuing the notice of violation and had he observed this equipment during the January 15, 2015 site inspection directly preceding the issuance of the civil citation on January 29, 2015 (according to the cover letter, not the citation, which has an October 30, 2014 date), he should have documented his observations photographically and presented them in evidence. This is standard operating procedure.

The Inspector did testify to observing three trailers on the Property during his April 29, 2015 site inspection (the day before the hearing). He documented this observation photographically. DPZ Exhibit 4. HCZR § 103.0 defines a "commercial vehicle" as "[e]very motor vehicle and trailer licensed by the State, designed or used for transporting goods or equipment in the furtherance of any commercial enterprise; a motor vehicle that is designed and used to carry people for compensation, including school buses but excluding taxicabs." In the R-SC district, the parking or storage of commercial vehicles, including trailers, is controlled by HCZR § 110.0.C.7.a, which restricts the off-street parking of such vehicles to no more than two commercial vehicles on lots of three or more acres and no more than one commercial vehicle on lots of less than three acres and further restricts the parking of such vehicles to those used in connection with or in relation to a principal use permitted as a matter of right in the district.

In every case where DPZ has taken code enforcement action through the citation administrative hearing process for the parking of an impermissible number of commercial vehicles, the notice of violation and the civil citation expressly and necessarily notice the alleged violator that he or she is in violation of the Zoning Regulations for storing more than the

permitted number of commercial vehicles on the Property. There is not such notice in the civil citation. We do not know what the notice of violation charged Respondents with, not being in evidence. The Hearing Examiner therefore instructs DPZ that its abatement inspection of the Property shall not include an inspection for the presence of commercial equipment or for more than one commercial vehicle. Respondents are on notice that DPZ may in the future cite them for a violation of the one commercial vehicle parking limit.

Civil citation 11-129-IV, except as dismissed, was properly issued after the requisite Notices of Violation. Scott Shearer testified to being the sole member of SGS Associates, LLC, which is a co-owner of 6370 Meadowridge Road. Gregg Parater is also a co-owner of the Property, having testified at the outset of the hearing that his name is on the deed. SGS Associates, LLC and Gregg Parater are the persons responsible for abating the violations by bringing the subject property in compliance with the Zoning Regulations. HCZR § 101.0 prohibits all uses unless specifically enumerated as a use permitted as a matter of right or as an accessory use in the various districts as provided by these regulations. HCZR § 110.0.B&C contains the permitted and accessory uses in the R-SC zoning district. The leasing of garages for commercial use is not permitted.

B. Md. Code Ann., Cts. & Jud. Proc. § 5-114 & the Setback Violation Citation (CE 11-129-V)

Md. Code Ann., Cts. & Jud. Proc. § 5-114 (2013) bars actions against a Property owner for a building or structure setback line violation under certain conditions. Of import to this case

are §§ 5-114(b)(2), (3) & (4).

(2) A governmental entity may not *initiate* an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred if the building or structure was constructed or reconstructed:

- (i) In compliance with an otherwise valid building permit, except that the building permit wrongfully permitted the building or structure to violate a setback line restriction; or
- (ii) Under a valid building permit, and the building or structure failed to comply with a setback line restriction accurately reflected in the permit.

(3) For purposes of paragraph (2)(i) of this subsection and notwithstanding any other provision of State or local law to the contrary, a building permit that was otherwise validly issued, except that the permit wrongfully permitted the building or structure to violate a setback line restriction, shall be considered a valid building permit.

(4) For purposes of paragraph (2) of this subsection, the date on which the violation first occurred shall be deemed to be the date on which the final building inspection was approved.

(Emphasis added.)

Section 5-114(a)(2) states, "A "Building permit" or "permit" includes a site plan and other documentation submitted in support of an application for a building permit and providing the basis for the issuance of the building permit."

In plain English, §§ 5-114(b)(2), (3) & (4) offers no protection for an infraction of a building or structure setback line where a building or structure was constructed without benefit of a permit (there is no valid permit because the property owner did not pull a permit.) If the property owner/contractor/engineer/builder pulled a building permit (DILP issued a building permit), then DPZ/the county has a three-year window of discovery, commencing on the date of final inspection approval, to investigate and pursue a setback line infraction if the permit

either 1) erroneously allowed a structure or building to be located within a setback based on incorrect or incomplete information provided by the applicant; i.e., the permitting issuing agency erroneously issued the building permit or, 2) the building or structure as constructed did not comply with the building permit in accordance with a correct setback line shown on a permit plan or documented in the permit; i.e., the permitting agency erroneously approved the final building inspection.

The Hearing Examiner is dismissing CE 11-129-V, the citation for the maintenance of a structure that fails to meet the interior side yard setback, it being more than three years since the final building inspection of the garage, which occurred sometime in 2008.¹ Section 15-114(2)(b) requires a governmental entity to act promptly. The recent Hearing Examiner decision and order in BA 707-D (decided February 9, 2015) highlights the centrality of the discovery rule for pursuing a building/structure setback line restriction code enforcement action implicating older permits.² In this case, a neighbor who filed a zoning complaint alleging in pertinent part a neighbor's replacement amateur ham radio antenna violated a setback requirement, appealed DPZ's decision to close out the complaint, DPZ having found no violation of the Zoning Regulations. DPZ counsel argued in closing, consistent with this Order, that § 5-114(b)(2) barred DPZ from taking any action against the Property owner for the alleged setback violation. Due to

¹ The Hearing Examiner ruled orally at the hearing that Respondents were required to submit a variance petition, subject to the admittedly inartful statement that this ruling would be subject to her review of the impact of DPZ's interpretation of § 5-114. A Hearing Examiner decision is not final until it is in writing.

² § 5-114 ultimately had no bearing on the appeal, the antenna at issue being a replacement, not a non-compliant structure that could be repaired or maintained in place, making it subject to setback line restrictions enacted in 1993.

the real institutional hamper impeding any DPZ prosecution of a building or structure setback line violation implicating an older building permit, the Department of Inspections, Licenses and Permits having purged all pre-2003 building permit records during a computer upgrade (to the searchable current on-line Accela system referenced below), counsel maintained the former Property owner who had erected the original antennas circa 1992, a rabbi, chaplain of the county fire department and a licensed amateur radio operator, was entitled to a presumption that he obtained the necessary building permit because of his status. DPZ extended this presumption of a valid permit to the current property owner, who testified to the former owner representing to him that he had obtained all necessary permits. DPZ counsel also asserted, wrongly, that it was Appellant's burden to prove the absence of a valid building permit to prevail in the appeal under the allocation of proof.

There is no reported case law on § 5-114(b)(2), for good reason: it is very difficult to obtain accurate building permit records or the lack thereof with the passage of time and setback line violations are commonly not discovered until a change in property ownership occurs, an applicant applies for a building permit for an improvement or change of use on the property or a neighbor makes a complaint about the encroachment long after the final inspection. The Court of Appeals alluded to this obstacle in footnote 28 of *Remes v. Montgomery County*, 387 Md. 52 874, A.2d 470 (2005) (a case involving zoning merger doctrine and setback encroachments decided on other grounds): "The County has already expressed, however, its doubt about its ability to prosecute a code violation that occurred more than three

years ago. See Md. Code (1973, 1998 Repl.Vol.), § 5-114 of the Courts and Judicial Procedure Article, addressing setback line restrictions."

This difficulty may explain, in part, DPZ's incorrect argument, when read against § 5-114(b)(3), that a "valid permit" is a building permit issued for a structure or building *and* which correctly shows on a site plan or otherwise documents all applicable setback line restrictions. If it had been DPZ's intent to prosecute the setback line restriction violation under this interpretation, it would have failed to meet its burden of proof with respect to § 5-114(b)(2), having improperly shifted the burden to Respondents. Respondents did not invoke § 5-114(b)(2) as an affirmative defense. The Hearing Examiner raised § 5-114(b)(2) as a potential bar to the issuance of the citation during Mr. Shearer's direct testimony. The Hearing Examiner did so in the interest of fairness because Mr. Shearer agreed to the Hearing Examiner directing a series of questions to him during his direct testimony about the exhibits he wanted to introduce into evidence and his answers would establish a time-line and generate findings about the 2007 building permit issued for the encroaching garage. If DPZ had pursued the setback line restriction issue believing it could do so under its incorrect reading of § 5-114(b)(2), it was DPZ's burden to prove § 5-114(b)(2) did not *initially* impede its prosecution of the building setback violation through the demonstrated absence of a "valid permit" and to present evidence that it had conducted the obligatory due diligence investigation, including reviewing the 2007 building permit and site plan, prior to issuing the notice of violation and the civil citation and DPZ has not done so. The testimony elicited from Mr. Shearer about the 2007

building permit during cross-examination—well after the issuance of the civil citation—certainly does not persuade the Hearing Examiner DPZ would have met its obligation under § 5-114(b)(2), in this alternative scenario, to affirm the absence of a "valid building permit" before initiating the code enforcement action against Respondents. Surely, Inspector Braithwaite's initial due diligence investigation in this scenario would have been relatively simple. He needed only to have accessed the permit information on DILP's website, <https://accela1.howardcountymd.gov/citizenaccess/>, an online, searchable building, fire and licenses database and print out the data. If this database did not include the permit site plan or other documents relating to the setback issue, he could have walked down the hall to the DILP permits review shop and conducted a search for the hard copy, assuming DILP retained it in a backup file.

Lastly, the Hearing Examiner recognizes the considerable monies Respondents spent attempting to abate the alleged setback violation, which DPZ never should have prosecuted. The Hearing Examiner strongly cautions DPZ to bear in mind such potential costs by reckoning with § 15-114(b)(2) before initiating future enforcement actions against a property owner or responsible person for a building setback line violation involving an older building permit.

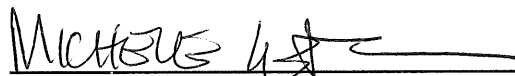
ORDER

It is therefore this **20th day of May 2015**, by the Howard County Board of Appeals Hearing

Examiner, **ORDERED**:

1. That Civil Citation CE 11-129-V, issued for the maintenance of a structure that fails to meet the required interior side yard setback, is **DISMISSED**. Respondents are not required to obtain approval of a variance petition for the encroachment or to demolish/remove that portion of the garage/building/structure encroaching into the 7.5-foot side yard setback. The existing garage/building/structure, excluding any additions, alterations or change in use, may remain in its current location as a noncompliant structure/building.
2. It is **FURTHER ORDERED** that Civil Citation 11-129-IV, as it concerns the "storage of commercial equipment" related to the commercial leasing of garages, is **DISMISSED**.
3. It is **FURTHER ORDERED** that within 10 calendar days of this Order, Respondents shall arrange with the Department of Planning and Zoning to inspect the Property only to the extent of confirming the abatement of the garage use as commercial lease space for tenants by contacting Zoning Enforcement Supervisor Anthony LaRose, Respondents shall provide access to the interior of the garages, as agreed. This inspection shall occur within 30 days of this Order, absent extraordinary circumstances.
4. It is **FURTHER ORDERED** that the Hearing Examiner declines to impose a civil fine in this case.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

NOTICE TO RESPONDENTS: Respondents are advised that pursuant to Section 16.1608.(c) of the Howard County Code, all fines are due and payable by the date indicated in the citation; and are payable to the Director of Finance of Howard County. Pursuant to Section 16.1609, a final order issued by the Hearing Examiner may be appealed within 30 calendar days of the date of this order by the alleged violator to the Board of Appeals in accordance with Section 16.304 of this title.* If an alleged violator appeals the final order of the hearing examiner, the alleged violator may request the stay of any civil fine imposed by a final order pending the final resolution of an appeal. Pursuant to Section 16.1610, if a final order of the Hearing Examiner includes a civil fine and the

order is appealed to the Board of Appeals, the alleged violator shall post security in the amount of the civil fine to the director in a form acceptable to the Director of Finance. After all appeals are exhausted, if a civil fine is reduced or vacated, the security shall be reduced proportionately; any surplus shall be returned to the alleged violator; and any balance shall be used to satisfy the civil fine; or is not reduced or vacated, the security shall satisfy the fine assessed and accrue to the benefit of the county. Pursuant to Section 16.1611, if a final order issued by a Hearing Examiner assesses a civil fine and the alleged violator does not pay the fine within the time required by the order, the Hearing Examiner shall certify to the Director of Finance the amount owed that shall become a lien on the property on which the violation existed; and be collected in the manner provided for the collection of real estate taxes. Pursuant to Section 16.1612, if an alleged violator fails to comply with an order to correct a violation within the time provided in the order, the county may seek a court order authorizing entry on to the property to correct the violation and may procure the performance of the work by county employees or by contract to correct the violation. The cost and expense of work performed under this section a lien on the property on which the violation exists upon certification to the Director of Finance of the amount owed.

* Howard County Code Sec. 16.304.(a), Appeal to Board of Appeals, provides in pertinent part that the Board will hear the appeal of a citation issued under subtitle 16 of this title on the record in accordance with section 2.210(b) of this Code (Section 2.210(b) of the Board of Appeals Rules of Procedure.)