

HOWARD COUNTY BOARD OF APPEALS HEARING EXAMINER

In the Matter of

**MOLSEN HAGHIGHAT &
SADEID HAGHIGHAT**

Civil Citation Nos. CE 12-102(a) & (b),
June 26, 2014

Respondents

FINAL ORDER

This matter came before the Howard County Board of Appeals Hearing Examiner on October 16, 2014 for a hearing on Department of Planning and Zoning (DPZ) citations for violations of Howard County Zoning Regulations (HCZR) §§ 105.0.B&C and 101.0.O involving the continued storage of construction equipment on RR (Rural Residential) zoned property known as 11279 Old Hopkins Road. On June 26, 2014, pursuant to Howard County Code (HCC) Title 24, "Civil Penalties," and Subtitle 3 of Title 16 of the HCC, Department of Planning and Zoning Inspector Tamara Frank issued Molsen Haghighat and Sadeid Haghighat (Respondents) HCZR civil citations CE12-102(a) & (b).¹ The civil citations were served by certified and regular mail.

¹ The code enforcement data entry system assigns a year (YR) and property identification number (PIN) to a case. The assigned PIN "follows the property." Consequently, subsequent code enforcement actions concerning a specific property may have the same YR-PIN case number, followed by letters (a), (b), (c) etc., (YR-PIN (a)), or a combination of letters and numbers (YR-PIN (a-1), (b-1), (a-2), (b-2) to distinguish citations issued to multiple Respondents and/or separate enforcement actions.

At the outset of this hearing, Respondent Molsen Haghighat through counsel motioned to dismiss because the Hearing Examiner had previously issued two code enforcement Orders concerning 11279 Old Hopkins Road with the same underlying CE 12-102 case number. The June 12, 2013 Order concerned civil citation Nos. CE 12-102(a)&(b), in which Respondent was held in pertinent part to be in violation of Sections 105.C.7 and 128.D.7 for the off-street parking or storage of unregistered, inoperable, wrecked, dismantled or destroyed motor vehicles on RR zoned property (an RV, maroon van, trailer, and trucks).

The May 22, 2014 Order concerned four civil citations: CE 12-102(a-1), CE 12-102(b-1), CE 12-102(a-2) & CE 12-102(b-2). On DPZ's motion, the Hearing Examiner dismissed Citations CE 12-102(a-2) and (b-2), which were issued for the continued storage of construction equipment on an RR zoned property. DPZ subsequently issued new notices of violation and civil citations for the storage of construction equipment on the Property and these citations are the subject of the instant appeal. The Hearing Examiner also dismissed Citations CE 12-102(a-1) and (b-1) because

Nowelle A. Ghahhari, Assistant County Solicitor, represented the Department of Planning and Zoning (DPZ). Zoning Regulations Inspector Tamara Frank appeared for the hearing and testified. Michael Walls, Esquire, represented Molsen Haghighat (Respondent), who appeared for the hearing and testified.

The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

DPZ introduced into evidence the exhibits as follows.

1. Notice of violation, CE 12-102(a), May 1, 2014, issued to Sadeid Haghighat
Notice of violation, CE 12-102(b), May 1, 2014, issued to Molsen Haghighat
- 2A-G Photographs, April 30, 2014
3. Civil citation, CE 12-102(a), June 26, 2014, issued to Sadeid Haghighat
Civil citation, CE 12-102(b), June 26, 2014, issued to Molsen Haghighat
- 4A-J. Photographs, October 15, 2014
5. Letter to Anthony LaRose from Molsen Haghighat, date-stamped May 23, 2013 re: addition of partial walls
6. Letter to Molsen Haghighat from Anthony LaRose, June 13, 2014, determining that addition of partial walls would create a detached garage
7. Building permit application (signature date June 13, 2012), location drawing, engineered construction drawing

DPZ Testimony and Evidence

1. Zoning Inspector Tamara Frank testified to being a being a DPZ zoning inspector who initially received a complaint about an illegal building being constructed on the Property. During her inspection, she observed construction equipment being stored on the premises. She

Respondents were not adequately served notice that the May 1, 2014 hearing involved these citations.

The Hearing Examiner acknowledges the apparent need to tweak the data entry system to prevent continued litigation on this issue. In the quasi-judicial interest of forestalling continued confusion, the Hearing Examiner will hereon include the civil citation date in all Order titles ((YR-PIN) (letter/number), date of citation).

inspected the property on April 30, 2014 and observed construction equipment in the rear portion of the Property. She introduced DPZ Exhibit 2A-G, copies of the photographs documenting her observations at this inspection. These photographs depict a yellow skid loader, a small yellow piece of construction material, a backhoe and a white piece of equipment (a loader).

2. On May 1, 2014, she personally served notices of violation to Molsen Haghighat (CE-12-102(a)) and Sadeid Haghighat (CE-12-102(b)), whom she identified as the property owners according to the State of Maryland Department of Taxation and Assessments (SDAT) website. DPZ Exhibit 1. The notices charged Respondents with the storage of construction equipment on RR zoned property in violation of HCZR §§ 105.0.B&C and 101.0.O. The notices instructed Respondents to remove all construction equipment from the property within 10 days of the date of the notice.

3. On June 24, 2014, Inspector Frank reinspected the Property and determined the construction equipment had not been removed. On June 26, 2014, Inspector Frank issued civil citations to Molsen Haghighat (CE-12-102(a)) and Sadeid Haghighat (CE-12-102(b)) with cover letters for the continued storage of construction equipment on RR zoned property in violation of HCZR §§ 105.0.B&C and 101.0.O. DPZ Exhibit 3.

4. It was Inspector Franks' further testimony that she reinspected the Property on October 15, 2014. She introduced DPZ Exhibit 4A-J, copies of her photographs taken on October 15, 2014. These photographs show a yellow backhoe, mechanical lift, yellow equipment used for excavating or loading, what appears to be a blue mechanical lift and the carport roof. This

construction equipment is not permitted to be stored in residential zones and they are not motor vehicles, which HCZR § 103.0 defines as "[a]ny self-propelled vehicle or trailer that is not operated on rails and which if designed to be driven, towed or used on a public street or highway would be required by the Maryland Vehicle Law to be registered and licensed. Motor vehicles, including trailers, box trailers and cargo containers may not be used as a shelter for on-site storage."

5. The Inspector further stated that the County is seeking a five hundred dollar fine and the removal of all construction equipment within 30 days.

6. On cross-examination, Inspector Frank testified to receiving a complaint about the Property on August 12, 2012. When queried, she acknowledged her awareness of an existing building permit for the carport depicted in the photographic exhibits. She also testified that the construction equipment might have been used in the very beginning of the carport construction process. On further cross, she testified to the carport having a roof, but that carports have no walls. She does not know of any additional work that needs to be done on the carport.

7. The Hearing Examiner questioned the Inspector about whether the construction equipment shown in DPZ Exhibits 2 and 4 had been moved or removed. The skidder and white loader are gone.

8. On redirect, Inspector Frank testified that when carport construction begins, load-bearing footers are dug as a base for the roof posts, which DILP inspectors must review. She explained that the building permit (#B12002028), which was opened in 2012, is still open and active until final DILP inspection. The permit had been closed on March 11, 2014, according to an email to her from Bruce Forejt, DILP building and supervisor, explaining that DILP Inspector Ken

Brown had closed out the permit as completed and inspected. The building permit was reopened on April 14, 2014 at Mr. Haghighat's request through Messrs. Forejt and Brown because Mr. Haghighat said the project was incomplete. She is unaware of any additional carport construction work needed as of March 2014, based on her inspections. She also testified that walls could not be lawfully erected on the carport, as the resultant structure would create two new violations (height and setback requirements).

Testimony of Respondent Molsen Haghighat

9. Mr. Haghighat testified that between April 30 and October 15, 2014, the auger in DPZ Exhibit 2A was used to build the fence shown in the pictures. All the equipment shown in DPZ Exhibit 2A was used for fence construction and debris moving and cleaning. The lift is for changing lights on the Property. The backhoe and/or blue lift is a ladder. The red lift is used for household work. The yellow 4B is used as a bucket.

10. Ten days after he was served notice of the violations, the county initiated closing the permit. He spoke with Mr. Brown, who told him the Zoning office had requested the permit be closed. Mr. Brown reopened the permit. It was his further testimony that he and the Inspector had agreed the carport would be open only at three feet from the ground. More work needs to be done on the carport, including protecting the carport perimeter. The carport must be closed and he will need the equipment to complete the project. The workers are on hold due to an injury and related litigation.

11. On cross-examination, Mr. Haghighat testified that he installed the fence before the end of June 2014. Concerning the need to install partial walls, Mr. Haghighat testified that DPZ

Exhibit 5 is a letter from him to Mr. LaRose date-stamped May 23, 2013. The letter, which he read into the record, states that the carport is exposed to natural debris, snow and rainfall, that the RV needs to be kept safe and that he needs to "put side up to eight foot opening" (down from top). He also read into the record a June 13, 2013 response letter to him from Anthony LaRose, DPZ Zoning Supervisor, Division of Public Service and Zoning Administration. In this letter, Mr. LaRose informs Mr. Haghighat that the addition of partial walls to the carport would create a detached garage, and that a carport is an open-sided shelter for an automotive vehicle. The letter also informs Mr. Haghighat that HCZR § 128.A.12 imposes a 20-foot side and rear property line setback for detached garages and that the carport, being located 10 feet from the side and rear property lines, cannot be converted to a detached garage without variance approvals.

12. The Hearing Examiner questioned Mr. Haghighat about what he submitted with the building permit application and whether the application included the construction of walls. He replied that a carport is closed on the top but insisted his carport must be partially enclosed along the top part. On this issue, DPZ introduced the building permit application as DPZ Exhibit 7.

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.

Conclusions of Law

The relevant Zoning Regulations in this code enforcement proceeding are as follows.

§§ 105.B&.C

B. Uses Permitted as a Matter of Right

The following uses are permitted as a matter of right in the RR District, except that only the uses listed in Section 106.1 shall be permitted on County preservation easements.

1. Farming, provided that on a residential lot or parcel of less than 40,000 square feet no livestock shall be permitted. However, residential chicken keeping is allowed as noted in Section 128.0.
2. Conservation areas, including wildlife and forest preserves, environmental management areas, reforestation areas, and similar uses.
3. One single-family detached dwelling unit per lot.
4. Convents and monasteries used for residential purposes.
5. Governmental structures, facilities and uses including public schools and colleges.
6. Private recreational facilities, such as parks, athletic fields, swimming pools, basketball courts and tennis courts, reserved for use by residents of a community and their guests. Such facilities shall be located within neighborhoods and communities where all properties are included within recorded covenants and liens which govern and provide financial support for operation of the facilities.
7. Carnivals and fairs sponsored by and operated on a nonprofit basis for the benefit of charitable, social, civic or educational organizations, subject to the requirements of Section 128.0.D.
8. Seasonal sales of Christmas trees or other decorative plant materials, subject to the requirements of Section 128.0.D.
9. Underground pipelines; electric transmission and distribution lines; telephone, telegraph and CATV lines; mobile transformer units; telephone equipment boxes; and other, similar public utility uses not requiring a Conditional Use.
10. Commercial communication antennas attached to structures, subject to the requirements of Section 128.0.E. Commercial communication towers located on government property, excluding School Board property, and with a height of less than 200 feet measured from ground level, subject to the requirements of Section 128.0.E. This height limit does not apply to government communication towers, which are permitted as a matter of right under the provisions for "Government structures, facilities and uses."
11. Volunteer fire departments.

C. Accessory Uses

The following are permitted accessory uses in the RR District, except that only the uses listed in Section 106.1 shall be permitted on County preservation easements. More than one accessory use shall be permitted on a lot, provided that the combination of accessory uses remains secondary, incidental and subordinate to the principal use.

1. Any use normally and customarily incidental to any use permitted as a matter of right in this district. Accessory structures are subject to the requirements of Section 128.0.A.
2. Accessory houses, limited to the following:
 - a. Farm tenant houses and similar uses customarily accessory to agricultural uses, provided that these uses shall not be permitted on parcels of less than 50 acres, and one unit shall be permitted for each 25 acres of that parcel; or
 - b. Caretakers' dwellings and similar uses customarily accessory to residential estate uses, provided that these uses shall not be permitted on parcels of less than 50 acres and one unit shall be permitted for each 50 acres of that parcel.
3. Accessory apartments, subject to the requirements of Section 128.0.A.
4. The housing by a resident family of:
 - a. Not more than four non-transient roomers or boarders; or
 - b. Not more than eight mentally and/or physically disabled persons or persons 62 years of age or older, provided the use is registered, licensed or certified by the State of Maryland; or
 - c. A combination of a and b above, provided that the total number of persons housed in addition to the resident family does not exceed eight.
5. Home occupations, subject to the requirements of Section 128.0.C.
6. Home care, provided that if home care is combined with housing of mentally or physically disabled persons or persons 62 years of age or older, as allowed by Subsection 4.b above, the total number of persons receiving home care at any one time plus the number of persons being housed shall not exceed eight.
7. Parking:
 - a. Off-street parking of 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. Private off-street parking is restricted to vehicles used in connection with or in relation to a principal use permitted as a matter of right in the district.
 - b. Off-street parking or storage of unregistered, inoperable, wrecked, dismantled or destroyed motor vehicles shall not be permitted, except as provided by Section 128.0.D.
8. Storage of recreational vehicles or boats, provided that on lots of 20,000 square feet or smaller, such storage shall be limited to the following:
 - a. One recreational vehicle with a length of 30 feet or less; and
 - b. One boat with a length of 20 feet or less.

§ 101.0.O

O. All uses are prohibited 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.

The storage of construction equipment of RR-zoned property is not a use permitted as a matter of right or as an accessory use.

The evidence indicates Respondent has continuously stored construction equipment on his Property since April 30, 2014, when Inspector Frank observed and documented the presence of this equipment near the carport or under it. The specific equipment stored onsite at any time has changed, but the storage use is persistent. Certainly, as Inspector Frank recognized, some construction equipment may have been needed onsite, but she also testified to being unaware of any additional work needed as of April 2014, based on her inspections.

The evidence also demonstrates that Mr. Haghighat pulled the carport building permit on or about June 13, 2012, some two years and four months prior to the date of this proceeding. The Hearing Examiner does not find credible Mr. Haghighat's testimony that some of the offending construction equipment is needed for work yet to be done on the carport, those partial walls which DPZ has clearly advised Respondents are unlawful. Whether a partial wall runs from the roof to three feet above the concrete base or from the base to some height below the wall is immaterial as a matter of law; a partial wall is still a wall. Importantly, the building permit which Mr. Haghighat opened in 2012 and had reopened ten days after being served notice of the violations, does not authorize this work. Moreover, DPZ Exhibit 7, the construction drawing submitted with the permit application, includes a side view with the note "open on all sides" and arrows pointing to the roof and base. This evidence convinces the Hearing Examiner that there is no lawfully authorized work yet to be done on the carport.

There being no authorized construction work still to be performed on the carport under the June 2012 building permit, Respondent has no need to store the offending construction equipment on his property. The Hearing Examiner does not find Respondent's testimony about

the lifts, backhoe and/or blue lift ladder being used for changing lights or household work to be credible.

The Hearing Examiner thus concludes the civil citations for the storage of construction equipment on the property were properly issued after the requisite notices of violation pursuant to Title 16.602 of the HCC. Multiple photographs taken by the Inspector on April 20, 2014 and October 15, 2014 show the continued storage of construction equipment on the Property. Such storage is neither a permitted use nor an accessory use in the RR zoning district.

ORDER

It is therefore this **12th day of November 2014**, by the Howard County Board of Appeals
Hearing Examiner, **ORDERED** that:

1. A civil fine is imposed in the amount five hundred dollars.
2. Respondents Molsen Haghighat and Sadeid Haghighat shall pay the fine within thirty calendar days of the date of this Order.
3. Respondents Molsen Haghighat and Sadeid Haghighat shall remove all construction equipment from the premises no later than thirty calendar days from the date of this Order.
4. It is **FURTHER ORDERED** that any replacement or substitution of the construction equipment depicted in DPZ Exhibits 2 and 4 with other construction equipment is an ongoing violation of HCZR §§ 105.0.B&C and 101.0.O.
5. It is **FURTHER ORDERED** that the County inspect the property to determine whether the violations have been corrected.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

NOTICE TO RESPONDENTS: The 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.

A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the order. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard on the record by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.