

HOWARD COUNTY BOARD OF APPEALS HEARING EXAMINER

In The Matter of

Respondent

MATTIE T. SIMMONS

Civil Citation No. CE 13-104

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER**

This matter came before the Howard County Board of Appeals Hearing Examiner on September 18, 2014 for a hearing on a Department of Planning and Zoning citation for violations of the Howard County Zoning Regulations (HCZR), Sections 125.0.A.7.b and 128.0.D.8, the off-street parking or storage of an unregistered, inoperable, wrecked, dismantled or destroyed motor vehicle on NT (New Town) zoned property known as 5425 Killingworth Way, Columbia, Md., 21044. On May 27, 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 Mattie Simmons (Respondent) a Howard County Zoning Regulations violation citation. The citation was sent by registered and regular mail to Respondent at 5425 Killingworth Way, Columbia, Md. 21044.

Nowelle A. Ghahhari, Assistant County Solicitor, represented the Department of Planning and Zoning. Zoning Regulations Inspector Tamara Frank appeared for the hearing and testified. Respondent failed to appear for the hearing. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

DPZ introduced into evidence the exhibits as follows.

1A-B. Photographs of green/blue vehicle, July 1, 2014

- 1C. License tag # JKL076, green/blue vehicle, June 10, 2014
2. Notice of Violation, September 16, 2013
3. Civil Citation, June 11, 2014
- 4A-C. Photographs of green/blue vehicle September 17, 2014

Findings of Fact

1. Zoning Inspector Tamara testified to receiving a complaint about the off-street parking or storage of an unregistered, inoperable or wrecked motor vehicle on the premises. She inspected the property on September 10, 2013 and observed a green/blue Dodge vehicle with flat tires and expired tags.

2. On September 16, 2013, the inspector issued Mattie T. Simmons, whom she identified as the property owner according to the State of Maryland Department of Taxation and Assessments (SDAT) website, a Notice of Violation by certified and regular mail. DPZ Exhibit 2. The notice charged Respondent with the off-street parking or storage of unregistered, inoperable, wrecked, dismantled, or destroyed motor vehicles on NT (New Town) zoned property in violation of HCZR Sections 125.0.A.7.c and 128.0.D.8. DPZ Exhibit 2. The notice instructs Respondent to correct the violations by registering, tagging, repairing the vehicle, or by moving it into the garage or removing the vehicle from the property within 30 days of the date of the notice of violation. The notice was sent by certified and regular mail.

3. Inspector Frank continued to monitor the Property. On June 10 and July 1, 2014, she inspected the Property and documented her observations photographically. The vehicle was still on the property and in the same location and shape as the initial inspection. DPZ Exhibit 1A-B. DPZ Exhibit 1C, taken on June 10, 2014, depicts a Dodge vehicle with tag # JKL076.

4. After obtaining information from Howard County Police that the vehicle tags had expired, Inspector Frank issued Respondent a Civil Citation on June 10, 2014 by certified and regular mail for the continued off-street parking or storage of unregistered, inoperable, wrecked, dismantled, or destroyed motor vehicles on NT (New Town) zoned property in violation of HCZR Sections 125.0.A.7.b and 128.0.D.8. DPZ Exhibit 3. The citation instructs Respondent to abate the violations and pay a \$250.00 fine by June 25, 2014, or, alternatively, to request a hearing. Respondent neither abated the violations nor requested a hearing. Inspector Frank forwarded the citation to the Hearing Examiner for a hearing.

5. It was Inspector Frank's further testimony that she inspected the property on several occasions. On September 17, 2014, she observed the same Dodge vehicle in the same location. The tires were flat and had blocks behind them and the vehicle appeared not to have been moved in some time, based on the litter, leaves and debris around it.

6. DPZ counsel stated the County is requesting a **five-hundred dollar fine** and an Order directing Respondent to abate the violations by registering, tagging, repairing the vehicle, or by moving it into the garage or removing the vehicle from the property within 30 days of the Order.

Conclusions of Law

The Civil Citation was properly issued after the requisite Notice of Violation pursuant to Title 16.602 of the HCC.

Photographs taken by Inspector Frank on June 10, July 1, and September 17, 2014 show a green/blue Dodge motor vehicle in the same location with expired tags, flat tires and objects behind the tires to prevent movement.

HCZR Section 125.0.A.7.b states "[t]he off-street parking requirements of Section 133.0 of these Regulations shall be applicable. Section 133.0 regulates the type and location of off-street parking for residential lots. Section 128.0.D.8 provides additional regulations for motor vehicle storage in residential districts and permits, in relevant, the parking or storage of unregistered, inoperable, wrecked, dismantled or destroyed motor vehicles when such vehicles are located within a completely enclosed building or are not visible from ground level from any adjacent properties or public street rights-of-way.¹ It is clear from the photographs in evidence that Respondent is storing an unregistered and/or dismantled/inoperable vehicle on the Property. This vehicle is visible at ground level from the public street right-of-way, as the numerous photographs demonstrate. They are also ineligible for any exception under Section 128.0.D.8.

¹ Pursuant to Section 128.0.D.8, the off-street parking or storage of unregistered, inoperable, wrecked, dismantled or destroyed motor vehicles is not permitted in residential districts, except that:

a. Parking or storage of such vehicles shall be permitted provided the vehicles are within a completely enclosed building or are not visible from ground level from any adjacent properties or public street rights-of-way. An unregistered, inoperable, wrecked, dismantled, or destroyed motor vehicle placed under a tarp or car cover shall not be considered to be screened.

b. In addition, one such vehicle per calendar year may be parked or stored outside, in a location visible from adjacent properties or streets, provided the vehicle is:

- (1) Recently purchased, pending inspection, for up to 180 days; or
- (2) Being advertised for sale, for up to 180 days; or
- (3) Being actively repaired or restored for up to 180 days, or for an extension of this period approved in writing by the Department of Planning and Zoning after an application is received showing good cause; or
- (4) Being held pending settlement of insurance, estate or similar claims.

c. All such vehicles must be owned by a resident of the property and used in connection with or in relation to a principal use permitted as a matter of right in the district.

d. Vehicles made nonconforming by Zoning Board Case No. 954R shall be removed within six months of August 22, 1994. Historic vehicles as defined under Section 13-936 of the Transportation Article of the Annotated Code of Maryland and made nonconforming by ZRA-5, shall be removed by November 6, 1996.

e. Vehicles designed or utilized for farming operations, as defined in Section 13-935 of the Transportation Article of the Annotated Code of Maryland as amended, shall be exempt from these provisions.

ORDER


It is therefore this **12th day of October 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED** that a civil fine be imposed in the amount of five hundred dollars.²

Respondent Mattie T. Simmons is **FURTHER ORDERED** to pay the fine within thirty calendar days of the date of this Order.

It is **FURTHER ORDERED** that Respondent Mattie T Simmons register/tag the vehicle, repair it and demonstrate to Inspector Frank that the vehicle is operable, or move it into the garage, or remove the vehicle from the property within 30 calendar days of this Order. The five hundred dollar fee shall be waived if Respondent complies with this Order.

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: 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;

² Pursuant to HCC Section 16.608, the civil fine is \$250.00 for each violation. Each day a violation continues after the issuance of a notice of violation is a separate offense.