

**HOWARD COUNTY BOARD OF APPEALS HEARING EXAMINER**

In the Matter of

**Civil Citation No. CE 13-108**

**LORMAN LYKES**

Respondent

**Preliminary Order**

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**PRELIMINARY ORDER**

This matter came before the Howard County Board of Appeals Hearing Examiner for a November 11, 2014 hearing on a Department of Planning and Zoning (DPZ) civil citation for violations of Howard County Zoning Regulations (HCZR) §§ 108.0.B & .C and § 101.0.O, involving the maintenance of three dwelling units within a single-family detached dwelling on R-20 (Residential: Single Family) zoned property known as 4033 Saint Johns Lane. On February 2, 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 (DPZ) Zoning Regulations Inspector Curtis Braithwaite issued Lorman E. Lykes Civil Citation CE 13-108. The citation was sent by registered and regular mail to Respondent at 4033 Saint Johns Lane.

Nowelle A. Ghahhari, Assistant County Solicitor, represented the Department of Planning and Zoning (DPZ). Zoning Regulations Inspector Curtis Braithwaite appeared for the hearing and testified. Respondent Lorman Lykes 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. Letter to Valerie Parkham from Anthony LaRose, DPZ Zoning Supervisor, re: illegal rental property at 4033 Saint Johns Lane  
Notice of Violation, CE 13-108, October 4, 2013
2. Civil Citation, CE 13-108, February 7, 2014

3. Department of Inspections, Licenses and Permits (DILP) rental housing agreement for 4033 Saint Johns Lane
4. Two-Family Conditional Use petition filed by Lorman Lykes, October 13, 2014

#### **DPZ Testimony and Evidence**

1. Zoning Inspector Curtis Braithwaite testified to being a DPZ Regulations Inspector and receiving a zoning complaint about illegal rental property at 4033 Saint Johns Lane (the Property), specifically that the home was being used as a three-dwelling unit. The Inspector met Mr. Lykes at the property by appointment and conducted an inspection of the premise's interior. The three-level home had separate dwelling units in the basement, on the first floor and on the second floor. They are separate units because each unit had a full kitchen and bath. He recalled there being a main door through which all tenants entered the units.

2. Inspector Braithwaite referred to DPZ Exhibit 1, which includes the NOV issued to Lorman Lykes on October 4, 2013. Based on a September 23, 2013, inspection, the NOV informs Mr. Lykes that the premises are in violation of HCZR §§ 108.B & .C and § 101.0 by maintaining three dwelling units within a single-family detached dwelling on R-20 zoned property. The NOV instructs Mr. Lykes to abate the violation by reducing the number of dwelling units from three to one or by obtaining conditional use approval for a two-family dwelling unit (and eliminating the third unit). The NOV further instructs Mr. Lykes to abate the violation with 30 days of the notice.

3. Inspector Braithwaite issued Mr. Lykes a civil citation on February 7, 2014 for the maintenance of three dwelling units within a single-family detached dwelling on R-20 zoned property. Based on a second inspection, when Mr. Braithwaite did not enter the premises, Mr. Lykes has not brought the property into compliance.

4. DPZ introduced DPZ Exhibit 3, a rental license for the premises issued on June 19, 2013, for an accessory apartment. The Inspector explained an accessory apartment use includes a unit with a kitchen and bath and that the dwelling is being used as three separate dwelling units. DPZ also introduced DPZ Exhibit 4, a copy of the Conditional use petition submitted by Mr. Lykes. The Conditional Use, if approved, would allow two dwelling units, but Mr. Lykes would still need to remove the third unit.

#### **Respondent's Testimony**

5. Mr. Lykes testified to attempting to bring the property into compliance by reducing the number of units from three to two. He resides there, as does a tenant. There is one family living there, himself and his children. The basement apartment was rented to a family, but he asked them to live. The dwelling (what he called the apartment) has three separate entrances. It was his understanding that even though there are three families living at the premises, there are only two units, because the basement and the first floor are adjoined. When he bought the house, there were two families residing there and the first floor and basement were considered one unit. He installed kitchen equipment in the basement with the thought of his mother living in the basement, but she has yet to move in. His intention is that his extended family (himself, his mother and children) live on the first floor and basement, with the second floor used as a rental unit. As the Hearing Examiner understood Mr. Lykes' later testimony, there are two households currently in residence. He and his son live in the lower unit (the basement and first floor) and his tenant lives on the second floor. At DPZ's request, Mr. Lykes agreed to DPZ inspecting the premises to ensure compliance with the HCZR.

### **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**

The Civil Citation was properly issued after the requisite Notices of Violation pursuant to Title 16.602 of the HCC. Lorman Lykes is the property owner of 4033 Saint Johns Lane and the person responsible for abating the violations by bringing the subject property in compliance with the Zoning Regulations.

The evidence of record indicates that Mr. Lykes has submitted a Conditional Use petition for a two-family dwelling. He also agreed to the County inspecting the premises to ensure compliance with county law. HCZR § 103.0 defines a dwelling unit as "[a] single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking limited to one kitchen, and sanitation." To abate the violation, Mr. Lykes must be granted the Two-Family conditional use petition and demonstrate through an inspection that there are only two dwelling units on the premises. Alternatively, if the conditional use petition is denied, Mr. Lykes must demonstrate, through an inspection, that there is only one dwelling unit on the premises.

**ORDER**

It is therefore this **6<sup>th</sup> day of January 2015**, by the Howard County Board of Appeals

Hearing Examiner, **ORDERED**:

1. That Respondent is ordered to seek approval of the Two-Family Conditional Use petition submitted to DPZ. The Hearing Examiner takes note that a hearing on the petition is scheduled for January 26, 2015.
2. It is **Further Ordered** that if the petition is granted, Respondent shall permit the Department of Planning and Zoning to inspect the premises to ensure there are only two dwelling units in compliance with the Howard County Zoning Regulations.
3. It is **Further Ordered** that in the event the petition is denied, Respondent shall reduce the number of dwelling units to one in compliance with the Howard County Zoning Regulations and permit the Department of Planning and Zoning to inspect the premises for compliance.
4. It is **FURTHER ORDERED** that the Hearing Examiner is retaining jurisdiction over this case. Should Respondent not abate the violation, Respondent is on notice that DPZ may request a continuation hearing for further enforcement action, including a civil fine.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

*MICHELE LEFAIVRE*

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**Michele L. LeFavre**