

HOWARD COUNTY BOARD OF APPEALS HEARING EXAMINER

In The Matter of

Civil Citation No. CE 13-056

THOMAS BIANCODINE

Respondent

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

This matter came before the Howard County Board of Appeals Hearing Examiner on February 20, 2014 for a hearing on a Department of Planning and Zoning citation for violations of the Howard County Zoning Regulations (HCZR), Sections 108.C.7.b and 128.D.7, the off-street parking or storage of an unregistered, inoperable, wrecked, dismantled or destroyed motor vehicle on R-20 (Residential: Single) zoned property known as 8016 Aladdin Drive. On December September 12, 2013, 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 Curtis Braithwaite issued Thomas Biancodine (Respondent) a Howard County Zoning Regulations violation citation. The citation was sent by registered and regular mail to Respondent at 8016 Aladdin Drive, Laurel, MD 20723.

Nowelle A. Ghahhari, Assistant County Solicitor, represented the Department of Planning and Zoning. Zoning Regulations Inspector Curtis Braithwaite appeared for the hearing and testified. Respondent Thomas Biancodine failed to appear for the hearing.¹

¹ The hearing was originally scheduled for December 5, 2013, which the Hearing Examiner postponed to January 9, 2014 owing to illness. Respondent was notified of the new hearing date. On the morning of January 9, Respondent informed the Hearing Examiner Administrative Assistant by email that he was ill and unable to attend the hearing. When the hearing was rescheduled to January 16, Respondent informed the Assistant on January 15 by email that

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, June 13, 2013
2. Civil citation, September 12, 2013
- 3A-F. Photographs, January 6 and February 19, 2014

Findings of Fact

1. Zoning Inspector Curtis Braithwaite testified to receiving a complaint about the off-street parking or storage of unregistered, inoperable or wrecked motor vehicles on the premises. He inspected the property on June 12, 2013 and observed a black Dodge pickup truck with expired tags.

2. On June 12, 2013, Inspector Braithwaite issued a notice of violation to Respondent, whom he identified as the property owner according to the State of Maryland Department of Taxation and Assessments (SDAT) website. The notice charged Respondent with the off-street parking or storage of unregistered, inoperable, wrecked, dismantled, or destroyed motor vehicles on R-20 zoned property in violation of HCZR Sections 108.C.7.b and 128.D.7. The notice was sent by certified mail. DPZ Exhibit 1.

he cannot "make it on short notice due to lack of transportation and other factors." By letter of January 17, 2014, the Hearing Examiner (on the Assistant's signature) informed Respondent of the new hearing date, February 20, 2014. This letter also counselled Respondent that "[t]he new date provides you with ample opportunity to make any transportation arrangements. You are advised that the Hearing Examiner will not reschedule this hearing date. The hearing shall start promptly at 10:15 a.m., with or without your attendance. Appeals of a Hearing Examiner Order to the Board of Appeals are "on the record," meaning that the Board will review the Order based solely on the evidence and testimony presented at the February 20, 2014 hearing, the Hearing Examiner learned Mr. Biancodine had requested yet another hearing date by email received at 10:15 a.m., the scheduled hearing time.

3. Inspector Braithwaite continued to monitor the property and observed the same vehicle. On September 12, 2013, he issued Respondent a certified civil citation for maintaining the off-street parking or storage of unregistered, inoperable, wrecked, dismantled or destroyed vehicles on R-20 zoned property. DPZ Exhibit 2. The civil citation is based upon violations of HCZR Sections 108.C.7.b and 128.D.7 and instructed Respondent to abate the violations and pay the fine by September 26, 2013, or, alternatively, to request a hearing. DPZ Exhibit 2. Respondent neither abated the violations nor requested a hearing. Inspector Braithwaite forwarded the citation to the Hearing Examiner for a hearing.

4. It was Inspector Braithwaite's further testimony that he reinspected the property on February 19, 2014 and observed the Dodge pickup truck, a Buick sedan, and a BMW sedan in the rear yard. The two sedans are in violation because they are untagged and the pickup truck tags are expired. DPZ Exhibits 3A-D, date stamped January 6, 2014, photographically depict the Inspector's observation during a site visit that day. They depict a Dodge pickup truck with expired tags, a Buick sedan with no tags and a BMW sedan with no tags. DPZ Exhibits 3E-F, date stamped February 19, 2014, photographically depict the Inspector's observation during a site visit the day before the hearing. They depict the three vehicles parked in the rear of the Property.

5. Inspector Braithwaite further stated the County is requesting a five-hundred dollar fine and an Order directing Respondent to abate the violations by removing the vehicles within thirty days of the issuance 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 Braithwaite on January 6, 2014 and February 19, 2014 show two untagged/unregistered motor vehicles and one motor vehicle with expired tags in the rear of Respondent's Property at 8016 Aladdin Drive, Laurel, MD 20723.

HCZR Section 108.C.7.b prohibits the off-street parking or storage of unregistered, inoperable, wrecked, dismantled or destroyed motor vehicles, except as permitted by Section 128.D.7. Section 128.D.7 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.²

It is clear from the photographs in evidence that Respondent is storing unregistered vehicles in the rear portion of the Property. These vehicles are visible at ground level from the public street right-of-way, as the numerous photographs demonstrate.

² Pursuant to Section 128.D.7 unregistered, inoperable, wrecked, dismantled or destroyed motor vehicles shall not be permitted, 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.
- b. An unregistered, inoperable, wrecked, dismantled, or destroyed motor vehicle placed under a tarp or car cover shall not be considered to be screened.

ORDER

It is therefore this **10th day of March 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED** that a civil fine be imposed in the amount of five hundred dollars.³

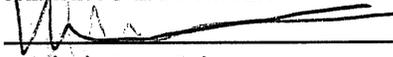
Respondent Thomas Biancodine is **FURTHER ORDERED** to pay the fine within thirty calendar days of the date of this Order.

It is **FURTHER ORDERED** that Respondent Thomas Biancodine remove the vehicles from the premises, locate them within a completely enclosed building or screen them so they are not visible from ground level from any adjacent properties or public street rights-of-way no later than thirty calendar days from the date of this Order.

It is **FURTHER ORDERED** that any replacement or substitution of the three vehicles depicted in DPZ Exhibit 3 with other untagged, inoperable or wrecked vehicles on the Property is an ongoing violation of HCZR Sections 108.C.7.b and 128.D.7.

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

³ 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.

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 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.