


*NOTICE OF FINAL DECISION
OF BOARD OF APPEALS*

RE: Case No. V-83-09 Arrow, Inc.

Enclosed herewith is a copy of the Board Order setting forth the action taken by the Board of Appeals in your case on the following date: November 3, 2010.

CERTIFICATE OF SERVICE

This is to certify that on December 6, 2013, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Anne F. Carter
Administrator

cc: Petitioner
Adjoining Property Owners
DPIE/Enforcement Division
Office of Law
City of Mount Rainier
Other Interested Parties

BEFORE THE BOARD OF APPEALS FOR PRINCE GEORGE'S COUNTY, MARYLAND
Sitting as the Board of Zoning Appeals

Petitioner: Arrow, Inc.

Appeal No.: V-83-09

Subject Property: Lots 1-6, Block 5, Rogers Second Addition to Mount Rainier Subdivision, being 3210-3220 Rhode Island Avenue, Mount Rainier, Prince George's County, Maryland

Municipality: City of Mount Rainier

Counsel for Petitioner: Lawrence N. Taub, Esq.

Counsel for County: Anne C. Magner, Esq., Associate County Attorney (for Prince George's County/
Department of Environmental Resources ("DER"))

Counsel for City of Mount Rainier: Linda S. Perlman, Esq.

Witnesses: Larry Solomon, Principal of Arrow, Inc.

William Edelen, Code Enforcement Officer, Property Standards Group, DER

Robert Gentry, Property Standards Inspector, DER

Shirley Chinn, Property Standards Inspector, DER

Heard: July 7, 2010; Decided: November 3, 2010

Board Members Present and Voting: Bobbie S. Mack, Chairperson
Albert C. Scott, Vice Chairman
Anastasia T. Johnson, Member

RESOLUTION

Pursuant to Section 27-229(a) of Subtitle 27 of the Prince George's County Code (the "Zoning Ordinance"), this appeal was brought to the Board of Appeals, sitting as the Board of Zoning Appeals for the Maryland-Washington Regional District in Prince George's County, Maryland (the "Board"), from the determination of the Property Standards Inspector, Department of Environmental Resources ("DER"), to issue Zoning Violation Notice Z-332-2-10 (the "Violation Notice"), citing Petitioner with violation of Zoning Ordinance Section 27-253(a)(1) (Use of a building, structure and land without a valid use and occupancy permit) and Section 4-118(c); Sections 27-596(a), 27-598(a) and 27-593(a)(1) (Sign(s) displayed without a permit issued by DER); and Section 27-593(a)(11) (Sign(s) placed on a municipal, County or State street right-of-way), on M-U-TC (Mixed-Use Town Center) zoned property located at Lots 1-6, Block 5, Rogers Second Addition to Mount Rainier Subdivision, being 3210-3220 Rhode Island Avenue, Mount Rainier, Prince George's County, Maryland.

Evidence Presented

The following testimony and record evidence were considered by the Board:

1. The subject property is zoned M-U-TC (Mixed-Use Town Center) and is improved with a one-story masonry building built in 1930 (Lot 1), two-story brick building, with basement, built in 1940 (Lot 6), and parking area (Lots 1-5). Exhibits ("Exhs.") 8, 9(A) & (F), 31 (Att. B).
2. The subject property is located within the municipal limits of the City of Mount Rainier ("City"). Exhs. 8, 18.
3. On or about September 15, 2009, DER issued the Violation Notice to Arrow, Inc. ("Petitioner") for:
 - a. using a building, structure and land without a use and occupancy permit ("U&O permit") in violation of:

- i. Section 27-253(a)(1) of the Zoning Ordinance¹ and
 - ii. Section 4-118(c) of the County Code)²;
- b. having an illegal sign on the property without a sign permit in violation of Sections 27-593(a)(1), 27-596(a) and 27-598(a)³; and
- c. placing unauthorized sign(s) on a municipal, County or State street right-of-way in violation of Section 27-593(a)(11).⁴

The Violation Notice noted that change of an owner/tenant required a new use and occupancy permit and required Arrow, Inc. to cease use of the premises and remove all vehicles, equipment, materials, and items related to the use until a valid U&O permit, including final approval of the permit, was granted by DER. Arrow was directed to remove A frame sign(s) from the property and on the right-of-way. Exh. 3.

4. Robert Gentry, Property Standards Inspector, testified that the Violation Notice resulted from a complaint received concerning signs displayed at the subject property without permits and the business operating without a valid U&O permit. Exh. 3. The inspector testified that County permit records revealed that the current business (es) operating on the subject property did not have a valid U&O permit. He also stated that the Certificate of Use and Occupancy listed the subject property's owner as "Arrow Leasing Corp." and occupant as "Arrow Inc." Exh. 16.

5. Mr. Gentry further testified that at a July 7, 2010 inspection of the property he observed several yellow Pensky box trucks parked in the front of the property along with several rental vehicles. Exhs. 17(C), (E) and (F). He photographed "Thrifty Car Rental" and "Penske Truck Rental" signs on the property for which permits had not been issued. Exhs. 17(A) through (E). He explained that a small, metal County placard with a permit number is placed on a sign to signify that the particular sign is in compliance with sign requirements and he was unable to find such a County placard on any of the signs on the subject property.

6. Counsel for the County explained that Exhibit 23 consists of two different permits - a 1972 permit (U&O permit #1937-72U) for the office only on Lot 6 and a 1977 permit (U & O permit #14588-77-U) for Lots 1-6 for automobile and trucks for rental and auto repair services.

7. U&O permit # 1937-72U and U& O permit #14588-77-U were issued to Arrow Leasing Corp. as owner of the property. Exh. 23.

8. Arrow Leasing Corp. was listed as the property owner and Arrow, Inc. as the occupant, on a permit application made in October 1988 (Exh. 20), which led to the November 1988 issuance of the Certificate of Use and Occupancy for U&O permit 7502-88-U. Exh. 16.

9. In 1988, ownership of the subject property had been transferred from Arrow Leasing Corp. to Arrow Inc. Exhs. 8, 18 and 19, third page.

10. State land records (Exh. 18) show that the property is made up of Lots 1-6 (outlined in Exh. 9(F)).

11. U&O permit # 7502-88-U (Exh. 16) was issued for an auto and truck rental/auto repair service for Lot 6 only.

¹ See Exh. 21.

² Section 4-118 states, in pertinent part, that no change in use group, owner, or tenant of a building, structure or land shall be permitted, wholly or in part, until a new use and occupancy permit has been issued by the Building Official certifying compliance with State or local laws, ordinances and regulations. Exh. 21.

³ See Exh. 22.

⁴ *Id.*

12. Counsel for the County/DER stated: The subject property is made up of six lots (as outlined on Exhibit 9(F)) and detailed in the Maryland State Assessment and Taxation records for the property (Exh. 18), which listed Arrow Inc. as the property owner. Counsel stated that Arrow Leasing Corporation is listed as the owner on the U&O permit #7502-88-U (Exh. 16), but that it was not the entity that then owned the property, and the Violation Notice was issued to the actual owner, Arrow Inc. The County's position is that based on the signs on the property and the testimony of the County inspector, the occupant of the property is Thrifty Car Rental, not Arrow Inc., although Arrow Inc. is listed on U&O permit #7502-88-U as the occupant. The County contends that neither Arrow, Inc. nor Thrifty Car Rental has a valid U&O permit and that both of them are required to obtain one under Sections 27-253 and 4-118(c). Exh. 21. He explained that when a U&O permit is issued in the name of Arrow, Inc. as owner, it will be a new U&O with a new permit number, just as when application was made for "Change of Occupant" in 1988 (Exh. 20). (Emphasis supplied.)

13. Counsel for Petitioner argued that in 1988 title transferred from Arrow Leasing Corp. to Arrow Inc. and when a permit change was sought from Arrow Leasing Corp. to Arrow Inc. an administrative mistake occurred in processing the application. Petitioner agrees to change the ownership name for clarification and correction, but argues that this constitutes a technical change and should result in a corrected U&O permit, not a new U&O permit. Counsel agrees that Lots 1-6 are the relevant lots and the site plan accompanying the corrected permit should reflect all six lots. Exh. 16. In addition, he states that U&O permit #14588-77-U issued to Petitioner's predecessor, Arrow Leasing Corp., for the subject property encompassed "part of lot 1 and all of lots 2-6". Exh. 23.

14. Counsel for Petitioner argued that Arrow Inc. is the actual occupant (Exhs. 16 and 20) of the property. He submits that Section 4-123(a)(2) of the Prince George's County Code defines "Occupancy" as the ownership or tenancy of a building, structure or land. He contends that under this definition, if not an owner, an "occupant" can otherwise only be a tenant of the owner and neither Thrifty Car Rental nor Penske Trucks is a tenant of the owner Arrow Inc. He states that neither of those businesses pays rent in any form to the property owner; to the contrary, the owner pays those entities a percentage of its income for the benefits it receives from those companies. He stated that there is no lease agreement, expressed or implied, between Petitioner and the businesses (or any entities connected with those businesses) and Mr. Solomon testified that neither Thrifty nor Penske had any property interest at all in the subject property. The license agreement between the property owner and Thrifty (Exh. 24) and the agency agreement between the property owner and Penske (Exh. 25) make no reference to a landlord-tenant relationship involving the subject property and no such reference can be implied from the terms of the agreements. Exh. 31. He interprets that both of these documents involve only the business arrangement between Arrow Inc. and these entities.

15. Counsel for the County argued that the County's policy is that all trading names should be shown on use and occupancy permits. Counsel contended that the license agreement between Arrow Inc. (licensee) and Thrifty states that "LICENSEE desires to obtain, and THRIFTY has agreed to grant a License authorizing LICENSEE to operate a Thrifty Business within the Licensed Territory....", which indicates that Mr. Solomon is operating a business under the name "Thrifty". Exh. 24, page 2, Recital 3. Counsel states that there is a similar recital in the Pensky agreement where it states "WHEREAS, Agent owns and/or controls and manages an establishment at the address set forth above, and desires to operate at said location a rental agency for Penske-owned or supplied trucks...." Exh. 25, page 1.

16. Counsel for Petitioner stated that Mr. Solomon believes that a sign permit was issued for the signage on the property, but if a valid permit does not exist, Petitioner will apply for the proper sign permits.

17. With regard to any sign(s) in the right-of-way, Counsel for Petitioner stated that the property is located within the Mount Rainier M-U-TC and is governed therefore by the City of Mount Rainier Mixed-Use Town Center Zone Development Plan ("Development Plan"), dated July, 1994. He states that on page 58 of

the Development Plan, Rhode Island Avenue (originally 130 feet) is now a State road and the State recognizes 88 feet with the rest being in the City's right-of-way for sidewalks.⁵ Counsel believes that the disputed signs are located beyond the curb and outside the right-of-way and the County's assumption that the signs are located within a right-of-way may be wrong.

18. Counsel for the County requests that Petitioner be required to obtain: a valid U&O permit showing Arrow, Inc. as the owner of the subject property and the subject property as Lots 1-6; a valid permit showing the current occupant, e.g., Thrifty Car Rental and/or Arrow Inc. T/A Thrifty Car Rental; valid sign permits for all signs at the subject property; and removal of all signs located in the right-of-way. Exh. 30.

19. Post-hearing submissions by the County included information that the permits for other comparable businesses – U&O permit applications #7158-1985-00 (Exh. 26) and #1694-1994-00 (Exh. 27) – were never issued. Exh. 30, Attachments (Exh. 26 Supplement and Exh. 27 Supplement). In support of its policy argument that Thrifty Car Rental needs to obtain a U&O permit showing it as the occupant of the property, the County submitted copies of Thrifty Car Rental business cards, a copy of a valid U&O permit issued to Thrifty Car Rental as the occupant of another property in the County, three (3) different valid U&O permits issued for different occupants of a property in Clinton (1982-1999) while the property remained under the same ownership, six (6) different valid U&O permits issued for five different occupants of a property in Capitol Heights (1979-2008) while the property remained under the same ownership, and three (3) different valid U&O permits issued for three different occupants of a property in Temple Hills (1989-2001) while the property remained under the same ownership. Exh. 30, Attachments (Supplemental Exhibits A through E).

20. Post-hearing submissions by Petitioner included a "Certificate of Occupancy" (Case No. 7502-1988-01) listing "Arrow, Inc." as both the owner and the occupant, and a copy of the original site plan submitted for the current U&O permit (7502-88-U) describing the subject property as part of Lot 1 and all of Lots 2-6. Exh. 31, Attachments A and B.

After hearing all the testimony and reviewing the evidence presented, the Board finds that:

1. The subject property is located at 3210-3220 Rhode Island Avenue and is zoned M-U-TC (Mixed-Use Town Center).
2. The current U&O permit #7502-88-U for the subject property indicates that the property owner is Arrow Leasing Corp. with only Lot 6.
3. In 1988, ownership of the subject property was apparently transferred from Arrow Leasing Corp. to Arrow Inc. Exhs. 8, 18 and 19, third page.
4. Zoning Ordinance Section 27-253(a)(1) prescribes that use of a building, structure and land may not be permitted without a valid use and occupancy permit. Section 4-118(c) prescribes that when ownership has changed, a new permit must be issued reflecting the new owner.
5. A new and valid use and occupancy permit reflecting Arrow, Inc. as the new owner was never issued.
6. On or about September 15, 2009, Violation Notice Z-332-2-10 was issued to Arrow, Inc. for various violations, including not holding a valid use and occupancy permit as the owner of the subject property. Exh. 3.
7. To comply with Section 27-253 a new permit should reflect that Arrow, Inc. is the current owner and the current occupant(s), e.g., Thrifty Car Rental and/or Arrow Inc. T/A Thrifty Car Rental, of the subject property.
8. The new permit should reference Lots 1-6 in its description of the subject property.

⁵ Using a measurement tool on the PGAtlas website, it was determined that the curb-to-curb measurement across Rhode Island Avenue in front of the building on the subject property was approximately 90 feet. Exh. 29.

9. The evidence is un rebutted that sign permits were not obtained for the signs displayed at the subject property pursuant to Sections 27-593(a)(1), 27-596(a) and 27-598(a).

10. Petitioner is ordered to remove any sign(s) that are determined by DER to be located in the right-of-way of the subject property pursuant to Section 27-593(a)(11)).

BE IT THEREFORE RESOLVED, unanimously, that the determination of the Property Standards Inspector, Department of Environmental Resources, to issue Zoning Violation Notice Z-332-2-10, dated September 15, 2009, be and is hereby AFFIRMED.

BOARD OF ZONING APPEALS

By: (Original Signed)
Bobbie S. Mack, Chairperson

NOTICE

Within thirty (30) days from the date of this decision, any person, firm, corporation, or governmental agency who was a party to the Board's proceedings and is aggrieved by its decision may file an appeal to the Circuit Court of Prince George's County.