



THE PRINCE GEORGE'S COUNTY GOVERNMENT

BOARD OF ZONING APPEALS

BOARD OF ADMINISTRATIVE APPEALS

COUNTY ADMINISTRATION BUILDING, UPPER MARLBORO, MARYLAND 20772
TELEPHONE (301) 952-3220

NOTICE OF FINAL DECISION

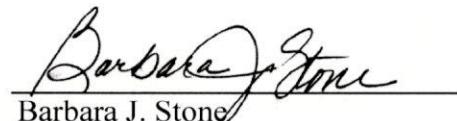
OF BOARD OF APPEALS

RE: Case No. AA-1700 Dimitri Krassensky and Judith L. Walter

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: July 11, 2018.

CERTIFICATE OF SERVICE

This is to certify that on July 9, 2019, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Barbara J. Stone
Administrator

cc: Petitioner
DPIE/Inspections Division
Office of Law
Town of Riverdale Park

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

Date: July 8, 2019

Petitioner: Dimitri Krassenky and Judith L. Walter

Appeal No.: AA-1700

Subject Property: Lot 10 and Part of Lot 11, Block 42, Riverdale Park Subdivision, being 4804
Riverdale Road, Riverdale, Prince George's County, Maryland.

Counsel for Prince George's County Department of Permitting, Inspections and Enforcement
("DPIE"): Calisa Smith, Esq., Associate County Attorney

Witnesses: Juan Swann, DPIE Inspector

Heard and Decided: July 11, 2018

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

RESOLUTION

This appeal was filed with the Board of Appeals for Prince George's County, Maryland, sitting as the Board of Administrative Appeals, from the determination of the Department of Permitting, Inspections and Enforcement, Inspections Division to issue Violation Notice No. 3709-2018, dated January 25, 2018 and received on February 22, 2018, citing Petitioners with violation of 2015 IRC Section R-105.1 as amended by P.G. Code Section 4-111(a) and requiring Petitioners to obtain the required permit(s) for work done . . . or remove the same. Work included but not limited to an accessory structure over 150 square feet (sea container), on R-55 (One-Family Detached Residential) zoned property located at Lot 10 and Part of Lot 11, Block 42, Riverdale Park Subdivision, being 4804 Riverdale Road, Riverdale, Prince George's County, Maryland.

Evidence Presented

The following testimony and evidence were presented to the Board for consideration:

1. The subject property contains 9,000, is zoned R-55 (One-Family Detached Residential) and improved with a single-family dwelling, gravel driveway and shed (sea container). Exhibits (Exhs.) 5, 6 and 7 (A) thru (F).
2. On January 24, 2018, Department of Permitting, Inspections and Enforcement (DPIE) Inspector Juan Swan issued a Correction Order to Petitioners stating, "Remove storage (sea container) within 30 days". Exh. 12.
3. Building Violation Notice (BVN # 3709-2018), dated January 25, 2018, was subsequently issued to Petitioners for violation(s) related to the subject property ("Violation Notice").¹
4. Attorney Calisa Smith explained that the Petitioners were issued the Violation Notice because a sea container/storage container/shipping container was found on the subject property which does not fall within the unpermitted use exception of Section 4-111(a) that is typically applied to accessory structures (tools, shed, storage shed and playhouses). She argued that the installation of the container structure on the subject

¹ The Violation Notice specified that permit(s) for work done must be obtained or remove the same. It further stated that work included but was not limited to an accessory structure over 150 square feet (sea container). Exh. 2.

property required a building permit which had not been obtained. She stated that DPIE's position is that the subject structure, therefore, is in violation of the code. Exhs. 2 and 14.

5. *Sec 4-111 (a) "Section 105.2, Work Exempt from Permit. Notwithstanding the foregoing, except for classified historic sites and property located within Chesapeake Bay Critical Area Overlay Zones, permits shall not be required for the following, provided that the construction does not result in any violation of this Subtitle: a one- story detached accessory structure (tool, storage shed, playhouse and similar uses) on one- and two-family dwelling properties with less than one hundred fifty (150) square feet of floor space not designed or intended for occupation or habitation..."* Exh. 14.

6. Petitioner Judith Walter contended that the Building Violation was not issued for the disputed structure being "not typical" but because the accessory structure was considered to be over 150 square feet.² Petitioner argued that the structure is not over 150 square feet. She maintained that the above exception permitted for accessory structures that are 150 square feet or less should applied also to the sea container. She stated that she has searched the Code to find any section stating that a "sea container" cannot be a storage accessory structure. Exhs. 1 and 2. She stated that the "storage shed" had been in use for ten years on the subject property. Exh.1.

7. DPIE Inspector Juan Swann testified that on January 24, 2018 he visited the property, took photographs of the property and found that the sea container was in violation. Inspector Swann stated he did not have the opportunity to measure the size of the container. He described the container as a commercial structure for which a permit must be obtained. He also reasoned that only structures that are allowed are storage structures under 150 square feet and *residential* in nature. Exhs. 11 (A) thru (C).

8. Inspector Swann stated that the container structure that he saw on the property did not qualify under one the exception prescribed under of Section 4-111. He stated that he met with Mr. Krassenky and issued a correction order. Inspector Swann explained that: he notified the property owners by Violation Notice No. 3079-2018 on January 25, 2018; the corrective action required removal of the container or obtain a permit within 30 days (February 25, 2018); and after a re-inspection (July 6, 2018), he observed that the container remained on the property of which he took photographs. Exhs. 11 (A) thru (C) and 13 (A) thru (C).

9. Counsel Calisa Smith stated that the unpermitted use exception includes certain categories and that none of their uses are commercial. She stated that Petitioners' actual use of the structure does not change what the structure actually is. Exh. 14.

10. Judith Walter made a motion to dismiss the appeal stating that there is nothing in the Violation Notice stating that the nature of the structure triggered a violation. Specifically, she stated that nothing in Section 4-111 mentioned the (commercial/residential) nature of the structure. She stated the conclusion that the structure is of commercial nature is solely the opinion of Inspector Swann. She further stated that the only highlighted description of the violation in the Violation Notice was for a structure limited to 150 square feet. She argued that if now the violation pertains to the nature of the structure, Petitioners were not placed on proper notice. Exh. 14. She submitted again that Inspector Swann never measured the size of the container.

Findings

Based on the evidence adduced, the Board finds that:

1. Sec 4-111 (a) "Section 105.2, stated that permits shall not be required for the following, provided that the construction does not result in any violation of this Subtitle: a one- story detached accessory structure (tool, storage shed, playhouse and similar uses) on one- and two-family dwelling properties with less than one hundred fifty (150) square feet of floor space not designed or intended for occupation or habitation.

² The Violation Notice also stated that violations occurred under 2015 IRC Section R-109.1, PG Code 4-352(1)(24), 2015 IRC Section R-114.1 and P. G. Code 4-116(a).

2. The actual square footage of the sea container is in dispute before the Board and was not determined by Inspector Juan Swann prior to issuance of the Violation Notice. No objective evidence on this dispositive issue was presented at the hearing.
3. The Violation Notice did not place Petitioners on notice that the nature of the accessory structure should be similar to a tool, storage shed and playhouse. Section 4-111 aptly provides that reference, however, the list suggests that it was not exhaustive and the Board, based on the totality of the evidence adduced, is not prepared to conclude that the container at issue was not (as argued by Petitioners) and cannot be similarly used as the statutorily listed structures without further guidance.

BE IT THEREFORE RESOLVED, unanimously, that the Motion made by the Petitioner is GRANTED. The determination of the Department of Permitting, Inspections and Enforcement (Violation Notice) be and is hereby DISMISSED.

BOARD OF ADMINISTRATIVE APPEALS

By:



Bobbie S. Mack
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.