

IN THE MATTER OF	*	BEFORE THE
<u>JAMES G. HAMMOND</u>	*	BOARD OF APPEALS
PETITIONER/LEGAL OWNER	*	
FOR A SPECIAL HEARING ON THE	*	FOR
PROPERTY LOCATED ON THE W/S OF FALLS	*	BALTIMORE COUNTY
ROAD 2,200 FEE NORTH OF BROADWAY	*	
ROAD (11942 AND 11950 FALLS ROAD)	*	Case No.: 03-366-SPH
8 th Election District	*	
3 rd Councilmanic District	*	
* * * * *	*	* * * * *

OPINION

This Board has received the above noted matter on specific remand of the Circuit Court for Baltimore County.

The history of this case extends from its inception in February of 2003. The particular facts and procedural history are already set out in detail, not only in previous opinions of the Circuit Court for Baltimore County (specifically its opinion dated July 7, 2004 and March 21, 2007, the later being that which remands this case to us today) as well as the extensive history provided in the Opinion of Judge Hollander in the Court of Special Appeals decision concerning this matter noted in appeal number 00980 September Term, 2004.

Judge Souder's 2007, most recent opinion, was not appealed and is final. It determined that Petitioner Hammond's use of the property is not a lawful intensification of an approved use. Rather, she found that it was in fact an unlawful extension of the originally approved non-conforming use. The only issues on remand to this Board were whether or not the Appellant had vested rights to operate as he desired as well as whether or not the doctrine of equitable estoppel applied to insulate the Petitioner and his use from applicable zoning. As Judge Souder's Order is final, we shall limit ourselves to a discussion only of the vesting and estoppel issues.

The Board has reviewed the opinion of the Court of Special Appeals in this matter and the insight of that Court with regard to estoppel and vested rights claims.

Petitioner Hammond had relied on a letter from Mr. Moxley, an employee of Baltimore County that he could in fact utilize the property as he desired and as a result the County would be estopped from the changing their mind at this time. The Appellate Court noted with approval language explaining that the "doctrine of equitable estoppel cannot defeat a municipality's enforcement of its own ordinances because of an error of it's agent on which a third may have relied." (Hammond v. Jung, Court of Special Appeals of Maryland, Number 00980, November 15, 2005, 53.) The Court further noted that "the law is clear that in the absence of arbitrary, capricious or egregious conduct on the part of the County official, zoning estoppel does not apply." (Id. at 53).

The Board feels that this is not an uncommon situation, nor unreasonable that a County employee could be unintentionally wrong as to advice. We find no evidence to indicate that Mr. Moxley acted in any way that would indicate that he was being arbitrary, capricious or egregious in giving the advice; therefore, the Board does not believe that equitable estoppel is available to save Mr. Hammond's claim.

The related doctrine of vested rights is "derived from principles of common and constitutional law..." *Relay Improvement Association v. Sycamore Realty Company, Inc*, 105 Md. 701, (1995), Aff'd 344 Md. 57, (1996) (Hammond v. Jung, Court of Special Appeals of Maryland, Number 00980, November 15, 2005). It further states: "a landowner may rely on nothing other than a properly issued permit, and that a substantial change in circumstances will not be found unless the landowner begins actual above ground construction." *Relay*, at 725. (Hammond v. Jung, Court of Special Appeals of Maryland, Number 00980, November 15,

2005). The Court in Hammond, supra, noted with approval that the evidence indicated that Mr. Hammond had relied on the advice of Mr. Moxley as opposed to a validly issued permit and that in any event, there was not a change in the zoning classification of the property. Without these circumstances, vested rights would not apply. This Board has determined that absent those circumstances, and without a valid permit having been issued for construction, the doctrine of vested rights does not apply to the benefit of Mr. Hammond.

DECISION

Accordingly, this Board find unanimously, that neither the doctrine of equitable estoppel nor vested rights apply to the benefit of Mr. Hammond.

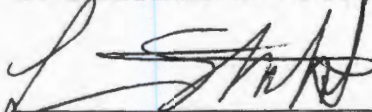
ORDER

THEREFORE, IT IS THIS 2nd day of October, 2009 by the
County Board of Appeals of Baltimore County

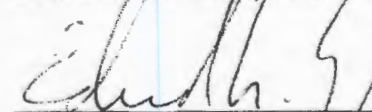
ORDERED Mr. Hammond's request to continue operations as he has, based upon those above noted legal concepts, be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

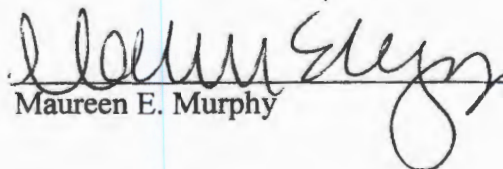
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence M. Stahl, Panel Chairman



Edward W. Crizer, Jr.



Maureen E. Murphy



County Board of Appeals of Baltimore County

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To file
TMK

October 2, 2009

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Baltimore, MD 21201

Peter M. Zimmerman, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: James Hammond-Legal Owner/Petitioner*
Case No.: 03-366-SPH

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure

Duplicate Original Cover letter

c: James Hammond
Barbara Jung
Kim Detrick
Ken Sadofsky
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning
John E. Beverungen, County Attorney

