

**TOWN OF ELSMERE
BOARD OF ADJUSTMENT
MEETING MINUTES
January 24, 2023
6:30 P.M.**

PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

CHAIRMAN	JAMES PERSONTI	PRESENT
BOARD MEMBER	JOHN ACTON	PRESENT
BOARD MEMBER	PATRICIA BOYD	PRESENT
BOARD MEMBER	RON RUSSO	PRESENT
BOARD MEMBER	JOHN SMITH	PRESENT
Code Enforcement Officer, Nicole Facciolo – Present		
Code Enforcement Officer, Scott Allen - Present		

PUBLIC COMMENT: None

APPROVAL OF MINUTES:

Minutes from the October 25, 2022, Board of Adjustment Meeting

ACTION: Board Member Smith made a motion to approve the minutes from the October 25, 2022, Board of Adjustment meeting with no corrections. Board Member Russo seconded the motion.

VOTE: All in favor Motion carried

OLD BUSINESS: None

OPENING STATEMENT:

Administrative Assistant for the Code Department Denise Lardani read the opening statement.

NEW BUSINESS:

Review Petition 22-09 Tax Parcel # 19-00800-106

Nizar Nisar, owner of the Property, spoke on his own behalf as the Appellant, Elsmere Code Enforcement Officer Scott Allen and Code Enforcement Officer Nicole Facciolo represented the Town as Appellee. Prior to hearing any testimony, all witnesses who are expected to testify were sworn in by Chairman James Personti.

Chairman Personti introduced the new evidence, Exhibit 22-09 CF-CK. Pictures were taken on 01/24/23 at 10:45 am., at the property of 1330 Maple Ave. The pictures showed several piles of dog feces including a picture of dog feces on the Town of Elsmere Public Hearing sign that was placed in the yard.

The Appellant was asked to provide an opening statement. In his statement he informed the Board of Adjustment that in four months he is being charged a sum of \$4,000.00. He stated there are two petitions but the one he is trying to appeal is 301 but there is also 071 which is also the sum of \$2,000.00. He stated the violation was for a pool that the tenant had corrected. Mr. Nazir paid the \$100 fine which was returned due to the violation being corrected with in the 48 hours allotted.

Mr. Nisar asked if the pictures that he was presented are dog waste and how does he know if they are from his tenant's dog and if they are even on his property of 1320 Maple Ave. (incorrect address).

Mr. Nasir stated that he was out of town and could not appeal the first \$2,000.00 fine but he is appealing the second one dated December 1, 2022. He does not understand how he can accumulate \$4,000.00 in fines in four months. He would understand better if the Town were doing something to the property to clean it up but they are not. Where does the charge come from and it is almost 60% of the rent and he thinks it is ridiculous. He would like to hear from the Officers as to how the ridiculous charges are calculated.

Mr. Nasir feels it is like the justice system once you are in it you will never get out of it. He does not understand how if he gets a violation every year he will get a \$2,000.00 fine and why. He stated the County, nor the City of Wilmington have fines as such.

Mr. Nasir wants to know how the Town can move the money from his violations to his taxes and charge a late penalty. He feels this is not true because he paid his taxes. This is not a tax balance at all. He stated it is illegal to take the violation cost and moving it towards his taxes.

Board Member Russo questioned all of the violations that are in the petition packet corrected? The citations he is referring to are the high grass, trash, swimming pool, trampoline, fence in disrepair, etc.

Mr. Nasir stated that yes all of the violations have been corrected immediately. In fact he has the letter that came with a returned check stating the violation was corrected before a fine was issued.

Mr. Nasir stated with today's pictures he feels isolated or targeted against 1320 Maple Ave (incorrect address) and the fact that the Town took pictures today of dog waste. He said he will fix it, but that does not mean that the dog waste is on my property.

Board Member Boyd asked are you stating the dog waste does not belong to your tenant, that some random dog just ran into your yard?

Mr. Nazir responded he has a strict policy that no pets are allowed.

Board Member Boyd asked, and you believe your tenant does not have a dog?

Mr. Nazir's response stated the current picture that was presented today does not state that this was on my property and how do I know this.

Board Member Russo stated let's ask the Code Officer who took the pictures to identify the property of where the pictures were taken. Mr. Nazir agreed.

Code Enforcement Officer Nicole Facciolo stated yes she can identify the pictures were taken at 1330 Maple Avenue. She also stated when the two-hundred-foot notices were delivered, the tenant of the property came outside asking what the sign was for, Officer Nicole Facciolo told the tenant the dog feces was a violation and it needed to be cleaned up and he failed to do so.

Board Member Russo asked the Code Enforcement Officer if she saw a dog while she was there. Officer Nicole Facciolo stated she did not see a dog but the tenant did not deny having a dog either.

Board Member Russo stated now knowing what Officer Nicole Facciolo stated that it was 1330 Maple Ave., that it was dog feces and there was no denial by the resident of the feces being from his dog, what is the position that you now take on the dog feces being on your said property? Do you believe it is correct or not correct?

Mr. Nazir stated at this point these pictures do not prove the feces is on his property or caused by his tenant if in fact he has a dog.

Board Member Russo asked are you suggesting that a dog came onto your property and defecated several times?

Board Member Boyd stated that you have a sworn Officer stating that she took the pictures at 1330 Maple Avenue this morning. You need to accept the fact that your tenant has probably not told you about a dog. Also you should take the pictures to your tenant and show it to them.

Code Enforcement Officer Nicole Facciolo stated that most of the feces are old and blended in with the grass. Also, the yard is fenced in so how that could not be the tenant's dog.

Chairman Personti stated that unfortunately the homeowner or tenant is responsible for maintaining the property whether it is them that put it there or not. It is the Town Code to maintain the property.

Board Member Boyd stated that if in fact the tenant does not have a dog and it is a stray dog that is coming into the yard of 1330 Maple Avenue maybe the tenant should close the gate that is in the picture and this would prevent the dog from coming into the yard and defecating on the property.

Mr. Nazir stated that just seeing the pictures at the meeting and not knowing if it is his property he cannot correct it but if it is his he will correct it by tomorrow. He stated the big issue is that the fines have now been charged to his taxes.

Chairman Personti stated that the fees keep going up due to so many violations that are happening with in a year. The fee structure has been passed by Council and it is a Town Ordinance. He stated you could always attend a Council meeting and suggest having it changed. That the Board of Adjustment is here to enforce the Code that is in place.

Board Member Boyd stated that is clearly spelled out on the citation about the Town Code.

Chairman Personti stated that usually the violations don't go past the \$1,000.00 fine and he is curious as to how this has happened.

Mr. Nazir stated he never got a \$1,000.00 fine. He received two invoices that were \$2,000.00 each.

Code Enforcement Officer Allen stated the Pool violation was issued and yes it was corrected. The citation states there is 48 hours to correct the violation it is essentially a warning. If it is corrected in 48 hours there is not a fine assessed. The pool permit was pulled before the 48 hours were up. The violation was for not having a permit first. Since the violation was rectified before the 48 hours yes, we did send the check back. However, it was still a violation, the Code Officer was still there and it stays on the property record. In total in the packet there was 9 citations issued through out the course. Also Mr. Nazir stated that New Castle County and the City of Wilmington will go and clean up the violation of which the Town has. There has been at least one abatement on the property for high grass and weeds and it is a charge in the packet as well.

Code Enforcement Officer Allen stated that each invoice that is created means it is not rectified with in the 48 hours, it states clearly that if it is not paid that it will be moved to the property taxes. Also, on every citation issued, it states the repeat public nuisance ordinance.

Mr. Nazir questioned are you talking about the citation or the \$2,000.00 citation?

Code Enforcement Officer Allen stated it appears on all of them.

Mr. Nazir asked what crime I committed that allows you to charge me \$2,000.00? He admitted there was a violation with the Pool and the tenant made a mistake and pulled the permit for the Pool and corrected the violation. I paid the fine and the Town returned my check saying it was already fixed. Then, a month later I get an invoice that says \$2,000.00. Although you say I violated something and I paid for it but you sent the check back saying I paid for it and now I am going to charge you \$2,000.00.

Code Enforcement Officer Allen stated it is because the Town has had to go to your property so many times for the violations.

Mr. Nazir stated that is the problem, once it fell into the justice system the property is never going to get out. My property will never get out of the public nuisance.

Board Member Boyd and Chairman Personti stated that is not true. If you did not receive any violations, you would not receive the public nuisance fine.

Board Member Boyd stated your fines are for a second repeated public nuisance fee. It clearly spells it out on the letter received on every citation. It also states that the fine will be applied to your taxes if not paid. If you are not reading the citations or taking them seriously, this is the consequences. The town is not just putting charges on your property with no reason.

Mr. Nazir stated that he is not disagreeing with the fact that there has been violations or he would just ignore all of them. He feels that since he has corrected most of them that there should be lenience and he feels that he is being charged a ridiculous fine for acknowledging the violation and fixing and having a check of mine returned because it was fixed but still be charged the \$4,000.00. To him it does not make sense.

Board Member Boyd stated this is an unfortunate example of you as the landlord not checking on your property. This affects the people that live in this town and you live in Hockessin. Your lack of actions on your property affects all of us. She stated luckily, I don't live by your property because I have seen the pictures and you should be embarrassed by how your property looked at the time of the pictures. All that it takes is a quick drive by to check on it.

Mr. Nizar says that he is taking care of his property and that if he was not, he would be at every meeting appealing his citations and the fact that he has had a tenant for 5 years. He said that people are having a hard time due to COVID. He feels that since the grass was high it got cut but it does not justify a \$2,000.00 fine. He feels the fines are abuse of the system. He thinks if he takes it to social media and posts it he feels the Town will get a lot of backlash for the \$4,000.00 fines in four months.

Board member Boyd stated in that timeframe you had multiple violations to warrant the fines.

Mr. Nizar questions where was his \$1,000.00 violation? He asked did I get it and where is it.

Code Enforcement Officer Nicole Facciolo stated yes you did receive it because you would not have gotten the \$2,000.00 fine without receiving the \$1,000.00 fine first.

Board Member Boyd responded that fine was issued a while ago. It was issued on June 1, 2022. If you look in your petition packet it is labeled exhibit number 22-09 AO. This shows that you did receive the first public nuisance paperwork.

Mr. Nazir asked to be showed the \$1,000.00 fine and Code Enforcement Officer Allen stated that it is in your petition packet, do you not have it with you? Mr. Nazir responded no I do not. Officer Allen asked would you like me to get you a packet. Mr. Nazir stated yes and show me, show me where I received the \$1,000.00 fine.

Code Enforcement Officer Allen went to the hallway and provided Mr. Nazir with a petition packet that he was previously sent with the instructions for the meeting.

Board Member Boyd again referred to exhibit number 22-09 AO.

Mr. Nazir asked was the fine paid? Code Enforcement Officer Allen stated he did not know if it was paid. Mr. Nazir asked for clarification as to how these invoices and charges are calculated.

Code Enforcement Officer Allen stated that the property receives 3 or more citations in a 12-month period meaning 3 separate days the Code Enforcement Officers had to go to your property because there were violations. If you correct the citation, there is no fine. If you do not correct it, you will receive a \$100.00 invoice. Obviously one of them was corrected and your check was returned. However, the Code Enforcement Officer still had to go to the property and create the citations. This includes time, manpower and supplies so the citations still are sitting on the property. Once you receive 3 citations in the 12 months span you will receive the \$1,000.00 fine for repeat public nuisance whether these have been corrected or not. If you receive another citation within the 12 months, you will receive a \$2,000.00 repeated public nuisance fine and if any citation is received within that 12 month period an additional \$2,000.00 fine is assessed.

Mr. Nazir stated again it's like the justice system once you get in it one will never get out. He stated he paid for the violation, acknowledged it and corrected them and even had my check returned but now I am getting a \$1,000.00 or \$2,000.00 fine. It is injustice. He wants to know why he has been put on the naughty list.

Code Enforcement Officer Allen stated because your tenants are neglecting your property and you are not checking on it. The property with the feces is not fixed as of this morning when the picture was taken at 10:45 am.

Mr. Nazir stated how can I fix the issues from this morning when I did not know about it?

Code Enforcement Officer Nicole Facciolo stated your tenant knows about the violations they and were told to clean up the feces when the sign for the public hearing was placed in the yard. She could have given you another citation for this. She asked when you have checked on the property to which Mr. Nazir stated I don't go every day.

Code Enforcement Officer Nicole Facciolo stated going back to where you keep stating it is like being in a judicial system and you'll never get out, the Town has had multiple properties been in the same situation with public nuisance fines and repeated public nuisance fines that have rectified the issues and have not had any other citations since.

Board Member Boyd mentioned that the Code Office has been a little lenient and could have given you even more citations and created even more fines that you should be thankful for.

Mr. Nazir stated he has rectified every issue and you cannot expect me to fix an issue from 10:45 am this morning.

Code Enforcement Officer Allen stated that you have not rectified every issue. Please refer to Exhibit 20-09 BR – BT. This is what is known as an Abatement form, which is an example the citation was not rectified, and the Town had to request the Town of Elsmere's Public Works department rectify it for you.

Mr. Nazir stated did I not fix it and Code Enforcement Officer Allen said no you did not it was fixed by the Town.

Chairman Personti stated this is why council has made this ordinance because there was the same properties getting the same violations repeatedly, and maybe the fines would convince the property owners to rectify the issues.

Mr. Nizar feels the cost of the \$4,000.00 in fines and not doing anything to or for his property is abuse of the system.

Code Enforcement Officer Nicole Facciolo stated it is not the Town's job do anything to your property. Mr. Nazir responded then why are you charging me the \$4,000.00 in fines?

Board Member Boyd stated when Mr. Nazir first presented his case she was under the impression that the Appellant is leaving the clean up to his various properties to the different municipalities where it is located. You mentioned New Castle County fixes things and the City of Wilmington fixes things. How would you know that unless you have already been down that road with them? So, it appears you may be presuming the Town of Elsmere is going to fix your property. Maybe it was a misunderstanding how you were presenting the information but it appeared that is what you were saying.

Mr. Nazir stated that yes he is a landlord and has other properties throughout New Castle County and the City of Wilmington. He has had violations but with them they gave warnings and gave time to correct it.

Board Member Boyd stated you get the same warning here at the Town of Elsmere. You don't seem to treat it the same as the other municipalities.

Mr. Nazir's response was yes, I did correct the citation and I even received a check back because the citation was already corrected but now I am still being fined \$4,000.00.

Chairman Personti asked what is it that you are requesting of this board, to reduce your \$4,000.00 fine? Mr. Nazir response was yes. Chairman Personti asked and what happens if you get another citation in the next month or two, are you going to want that waived as well? Mr. Nazir responded no there is not going to be another citation. I am going to have a strong talk with my tenant. I cannot guarantee that no other violations will occur but I am giving you my word that I am going to try my best for them not to.

Chairman Personti asked if there were any questions from the Code Office.

Code Enforcement Officer Nicole Facciolo made note that the Rental License for the property was paid late. It was due no later than October 31, 2022, but not received by the Town until December 12, 2022, which included a \$100.00 penalty charge. The License cannot be processed due to a tax balance on the property per Town Code. Also the Town sign that was placed in the yard that has dog feces on it, there is a \$50.00 sign fee unless it is cleaned before it is removed from the property.

Board Member Boyd had several questions about the timing of the Rental License and when do the renewal notices go out in the mail. She stated then basically the rental property was being rented without the proper license. Also, it's not processed because of his tax balance, correct?

Mr. Nazir stated I paid the Rental License and yes it was late therefor I paid the \$100.00 penalty. He said that it is not a tax balance, his taxes are paid it's the fines that have been issued and moved over to my taxes that is being referred to as a tax balance.

Chairman Personti asked if there were any questions from the Board Members.

There was multiple conversations amongst the Board Members about the proposed motion and reduction of the fine. The proposed motion stated decreasing the repeated public nuisance fine from December 2022 in half. Reducing it to a public nuisance cost \$1,000.00 and all other taxes would need to be paid as well.

Mr. Nazir inquired about why only reducing it by \$1,000.00? He wanted a reduction of the \$4,000.00 fine. He does not agree to the motion.

Code Enforcement Officer Nicole Facciolo stated that you can only appeal the \$2,000.00 citation V2300301 dated December 1, 2022. The other \$2,000.00 citation dated August 1, 2022, cannot be appealed as it is past the 20-day appeal period.

Board Member Boyd stated the Town will explain the procedure and if he is not happy with it he can appeal to the Delaware Supreme Court.

ACTION: Chairman Personti made a motion to approve Petition 22-09 and reduce the \$2,000.00 repeated public nuisance fine to \$1,000.00, a public nuisance fine with a stipulation if another citation happens within the 6-month period the fines will be assessed at \$2,000.00 with no leniency. Also, the total tax lien owed will need to be paid so the Rental license can process as well. Board Member Acton seconded the motion.

VOTE: 4 in favor and 1 opposed Motion carried

Boyd – Yes, Russo – Yes, Acton – Yes, Smith – No, Personti – Yes

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS: None

PUBLIC COMMENT: None

ADJOURNMENT:

ACTION: Board Member Smith made a motion to adjourn. Board Member Boyd seconded the motion.

VOTE: All in favor Motion carried

These minutes summarize the agenda items and other issues discussed at the January 24, 2023, Board of Adjustment meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.



JAMES PERSONTI, CHAIRMAN



PATTY BOYD, SECRETARY