

*NOTICE OF FINAL DECISION  
OF BOARD OF APPEALS*

RE: Case No. V-8-11 Premier Realty Holdings LLC/Beltsville Wholesale/Retail, 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: June 1, 2011.

**CERTIFICATE OF SERVICE**

This is to certify that on August 2, 2011, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed) \_\_\_\_\_  
Anne F. Carter  
Administrator

cc: Petitioners  
Adjoining Property Owners  
Acting Deputy Director, DER  
DER/Property Standards Group  
Office of Law

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

Petitioners: Premier Realty Holdings, LLC & Beltsville Wholesale/Retail, Inc.

Appeal No.: V-8-11

Subject Property: Lot 25, Block 23, Beltsville Subdivision, being 4944 Harford Avenue, Beltsville,  
Prince George's County, Maryland

Counsel for Petitioners: Howard J. Schulman, Esq.

Counsel for Prince George's County Department of Environmental Resources: Anne C. Wagner, Esq.

Witness: Richard Reinoehl, Property Standards Inspector, Department of Environmental Resources

Heard: May 4, 2011; Decided: June 1, 2011

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-920-1-11 (the "Violation Notice"), dated February 4, 2011, citing Petitioner with violation of County Code Sections 27-253(a)(1) and 4-118(c) for use of a building, structure and land without a Use & Occupancy permit ("U&O permit") and requiring Petitioner to cease use of the premises and remove all vehicles, equipment, material and items related to the use until a valid U&O permit, including final approval of the permit, is granted by the Department of Environmental Resources, on C-S-C (Commercial Shopping Center) zoned property located at Lot 25, Block 23, Beltsville Subdivision, being 4944 Harford Avenue, Beltsville, Prince George's County, Maryland.

**Evidence Presented**

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

1. The subject property contains 6,534 square feet, is zoned C-S-C (Commercial Shopping Center) and is improved with an existing building and parking area. See Exhibits ("Exhs.") 3-4, 5.
2. On February 4, 2011, DER issued the Violation Notice to Premier Realty Holdings, LLC and Beltsville Wholesale/Retail, Inc. for use of a building, structure and land without a valid U&O permit, in violation of Sections 27-253(a)(1) and 4-118(c) of the County Code. See Exh. 2. On February 11, 2011, Premier Realty Holdings, LLC and Beltsville Wholesale/Retail, Inc. appealed the Violation Notice to the Board.
3. Ownership of the subject property was transferred to Petitioner Premier Realty Holdings, LLC on April 23, 1998, from sellers Donald and Gary D. Degourse. See Exhs. 3-4, 13.
4. The County contends that the transfer of ownership required a new U&O permit.
5. Section 4-118(c) states, in pertinent part, that no change in use group, owner, 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.
6. Section 27-253(a)(1) states, in pertinent part, that use of a building, structure or land shall not take place unless a use and occupancy permit certifying compliance has been issued for the activity by the Building Inspector.

7. Richard Reinoehl, the Property Standards Inspector who issued the Violation Notice, testified that the property was in use by Petitioners and provided photographs showing business use. See Exh. 14. He testified that County records revealed that neither the current owner of the property, Premier Realty Holdings, LLC, nor the current occupant of the property, Beltsville Wholesale/Retail, Inc., has a new U&O permit for the subject property.

8. Counsel for Petitioners does not disagree that a new U&O permit does not exist for the Petitioners or that the subject property was not in some kind of use by the Petitioners at the time of the Violation Notice.

9. Counsel for Petitioners argued that the County unconstitutionally terminated someone's U&O permit in January 2011<sup>1</sup> and the issuance of the Violation Notice against Petitioners constituted selective enforcement.

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

1. The subject appeal was filed by Petitioners from the determination of DER in Violation Notice 920-1-11 that Petitioners, Premier Realty Holdings, LLC (owner) and Beltsville Wholesale/Retail, Inc. (occupant), were in violation for use of a building, structure and land without a U&O permit pursuant to County Code Sections 27-253(a)(1) and 4-118(c). See Exhs 1-2. The Violation Notice indicated the premises in violation to be the subject property. See Exh. 2.

2. Evidence in the record indicates that ownership of the subject property transferred to Premier Realty Holdings, LLC on April 23, 1998. See Exhs. 3-4, 13.

3. Pursuant to County Code Section 4-118(c), a change in owner or tenant of a building, structure, or land requires that a new U&O permit be issued. See Exh. 15.

4. The County contends that a new U&O permit was never issued pursuant to the transfer of ownership. No evidence was submitted to rebut this contention.

5. The County also contends that the subject property was in use at the time of issuance of the Violation Notice by Petitioners and produced evidence, including photographs, to support that position. Pursuant to Section 27-253(a)(1), a valid U&O permit is required prior to the use of a property. Because the subject property was in some use by Petitioners without a new U&O permit, the Board finds that DER's determination as stated in the Violation Notice is justified.

6. The Board cannot conclude, based on the evidence before it, that selective enforcement was conducted by the County in its pursuit of securing a new U&O permit in this matter.

BE IT THEREFORE RESOLVED, unanimously, that the determination of the Property Standards Inspector, Department of Environmental Resources, to issue Zoning Violation Notice Z-920-1-11, dated February 4, 2011, for the cited violation at the subject property, be and is hereby AFFIRMED.

BOARD OF ZONING APPEALS

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

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<sup>1</sup> Counsel seems to argue that the Violation Notice is unconstitutional based on, *inter alia*, Sections 27-902 and 903 and centers his post-hearing focus on a letter issued by DER on or about January 4, 2011, revoking a U&O permit issued to Wholesale Lingerie Center, Inc. See Exh. 19. The Board believes, however, that the sole issue before it is the governmental action related to the issuance of the Violation Notice for failure of Petitioners to have an existing U&O permit, not the particular use of the subject property, which counsel proffers raises constitutional concerns.

**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.