

H&H REAL ESTATE HOLDINGS, INC.
17547 Virginia Avenue
Hagerstown, MD 21740

APPEAL NO. AP2006-107

Appellant

OPINION

This action is an appeal charging administrative error from a decision of the Zoning Administrator which denied Appellant's request to continue or re-establish a non-conforming used car sales lot on property located at 17547 Virginia Avenue, Hagerstown, MD 21740. The property is owned by the Appellant, and is zoned Residential, Urban.

A public hearing was held before a full Board on August 30, 2006. Appellant, through its counsel and agents, offered evidence and testimony in support of the appeal. Neither opposing testimony nor evidence was presented to the Board.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellant seeks to re-establish a used car sales facility on the subject property.
2. A used car sales operation on the subject property ceased operation in April 2005.
3. Appellant presented evidence that vehicle detailing and minor repairs continued on the subject property until March 28, 2006.
4. No opposition was presented to this appeal.
5. Received and filed with the Board was a memorandum from Kathy A. Kroboth, Washington County Zoning Coordinator, advising that the appeal is consistent with the Comprehensive Plan.

RATIONALE

Right to use a property for a non-conforming is extinguished when the non-conforming use is abandoned for a period of six months or more. Zoning Ordinance, § 4.3(d). In this case, the Zoning Administrator determined that the "subsequent uses of repair of vehicles and car detailing that operated after the used car lot [closed in April 2005] are not uses that the Board of Appeals granted as part of [its decision in AP2003-138.]" While we would generally agree that a use different in kind from an existing non-conforming use would not provide a basis for extension of the non-conforming use itself, this case is slightly different. Here, the evidence shows that vehicle repair and detailing continued on the subject property through March 2006. Such use may well be considered as equivalent to use of the property for used car sales, inasmuch as vehicle repair and detailing are necessary and incidental to a used car sales operation. As such, the non-conforming use of the property had not lapsed for a period six months or more, and Appellant's application was timely and appropriate.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. We determine that, based on these limited and unique set of circumstances, the Zoning Administrator erred in denying approval of Appellant's application. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 29th day of September, 2006.

BOARD OF APPEALS
By: Spence Perry, Chair