

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

RICHARD A. CLIPP  
12207 Brookfield Avenue  
Hagerstown, MD 21740

Appeal No. AP2007-042

Appellant

OPINION

This action is a request for an expansion of a non-conforming use to expand a contractor's storage yard and for variances from the minimum 400' setback to 15' for said storage yard and from the minimum 50' right side yard setback to 3' for placement of diesel fuel tank for said business. The subject property is located at 12209 Brookfield Avenue, Hagerstown, MD, is owned by the Appellant, and is zoned Agricultural (Rural).

A public hearing was held before a full Board on July 11, 2007. Fred Frederick of Frederick Seibert and Associates offered evidence and testimony in support of the appeal. Opponents offered evidence and testimony in opposition to the appeal.

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 purchased the property in 1999.
2. The original parcel is grandfathered for business use as it has been used for commercial purposes since 1964, prior to the adoption of zoning. The new parcel, purchased about 2004, is not.
3. Appellant operates a paving and snow removal business.
4. Energy costs have made it desirable for the Appellant to buy and store his own fuel for the business.
5. Appellant plans to install a tank for oil storage; the tank will be placed in a concrete block containment pit and will be covered with a roof.
6. The tank will be screened.

7. Appellant presented numerous exhibits in support of his appeal.

8. The Appellant's hours of operation will be 6:00 a.m. to 7:00 p.m. Monday through Friday, with some Saturday hours.

9. Appellant also engages in the snow removal business. Hours for that business vary as they depend upon the weather.

10. The Appellant has twelve vehicles, but they will not all be at the subject property at the same time. He does not plan to have more than 18 vehicles maximum.

11. Opponents to the appeal expressed concerns regarding noise generation from the property (particularly the garage thereon), use of the property for a commercial purpose in a residential neighborhood, and fuel leakage and potential groundwater contamination.

12. 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

Nonconforming uses are governed by Section 4.3 of the Zoning Ordinance for Washington County, Maryland. Section 25.6 of the Ordinance directs the Board to consider the following factors, as applicable, in rendering its decision: (a) The number of people residing or working in the immediate area concerned; (b) the orderly growth of a community; (c) traffic conditions and facilities; (d) the effect of such use upon the peaceful enjoyment of people in their homes; (e) the conservation of property values; (f) the effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values; (g) the most appropriate use of land and structure; (h) the decision of the courts; (i) the purpose of these regulations as set forth herein; (j) the type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

In the instant case, the subject property has been used for commercial purposes since 1964. Appellant is allowed, as a matter of right, to operate his business on the original parcel. Allowing an expansion of the use onto the adjacent parcel bought in 2004 appears reasonable and compatible with existing circumstances. The residential neighborhood is limited and has long been exposed to a commercial use on this property. The expansion will not materially increase traffic volume, odors, dust, fumes, vibrations, or noise, as it is already occurring on the "original" parcel. Also, given the pre-existing nonconforming

use, granting the requested variances seems appropriate. Strict compliance with the Ordinance's setback requirements is impracticable given the size and shape of the lots and the fact that the property is an existing nonconforming use. Failing to grant the variance is of little benefit given the existing allowed use. Furthermore, the 3' setback applies to Appellant's own property line, so by way of the doctrine of zoning merger, a variance is not really necessary.

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. For all of the foregoing reasons, the grant of the relief requested does not thwart the intent of the Ordinance. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED WITH CONDITIONS AS SET FORTH BELOW this 10<sup>th</sup> day of August, 2007.

#### *Conditions*

1. Appellant shall adhere to the hours as testified to and set forth herein, with Saturday's occasional hours not to exceed 6:00 a.m. to 7:00 p.m.
2. Appellant shall place a fence along the property line with the Mennonite School septic area.
3. Appellant shall continue and complete fencing now under construction along the left side of the property to the rear.
4. Tanks will be installed in accordance with Maryland Department of the Environment standards.
5. Appellant will, to the extent practicable, keep garage doors shut on the street side of the garage so as to reduce noise when working on vehicles.
6. Appellant shall not store materials or equipment behind the Mowen property.
7. Appellant will be allowed to temporarily store/park vehicles along the side property line with the understanding that the permanent storage area will be in the new rear yard.

BOARD OF APPEALS

By: Bert Iseminger, Chair