

BOARD OF APPEALS

OCTOBER 2, 2019

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 7:00 p.m.

AGENDA

DOCKET NO. AP2019-020: An appeal made by Charles L. Milburn for a change of a nonconforming use on property owned by the Appellant and located at 17821 Broadfording Road, Hagerstown, zoned Residential Transition- **GRANTED**

Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD no later than September 23, 2019. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Paul Fulk, Chairman
Board of Zoning Appeals

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

CHARLES L. MILBURN

Appeal No. AP2019-020

Appellant

OPINION

Charles L. Milburn (hereinafter "Appellant") requests approval to change a non-conforming use from a construction business to a trucking business with service and maintenance of vehicles at the subject property. The subject property is a parcel of land improved by a residence and large commercial building, and located at 17821 Broadfording Road, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Residential Transition (RT). The Board held a public hearing on the matter on October 2, 2019.

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Applicant is the owner of a parcel of improved land located at 17821 Broadfording Road, Hagerstown, Maryland. The property is zoned Residential Transition (RT).

2. In 1977, the Board of Appeals (Case No. AP-531) granted a special exception for a contractor's storage yard, service garage and office for the subject property. At that

time the subject property was zoned Agriculture (A).

3. In 1983, the Board of Appeals (Case No. AP-1391) granted a special exception to extend the previous use to an addition to the existing structures at the subject property. At that time, the subject property was zoned Agriculture (A).

4. In 2012, the subject property was rezoned (Case No. RZ-10-005) as part of the Comprehensive Rezoning of the Urban Growth Area. As a result of the rezoning, the subject property was zoned Residential Transition (RT).

5. Appellant has maintained the Trader's License for his construction business, C.L. Milburn since 1999, when he ceased regular operation of the business.

6. Since 1999, Appellant has either used the existing commercial building and area or leased same to tenants, for storage and service of trucks and equipment.

7. Appellant's current tenant is Paul O'Brien, who also happens to reside in the residence located at the subject property. Mr. O'Brien is an independent service provider, providing trucks for FedEx. The trucks are temporarily stored at the subject property for the express purpose of maintenance and repair but are otherwise housed at the distribution facility.

8. Mr. O'Brien wishes to purchase the subject property and continue his operation of a trucking business with service and maintenance.

9. There was no opposition presented to this request.

Rationale

A nonconforming use is "a use of a building or land lawfully existing at the time this Ordinance becomes effective and which does not conform with the use regulations of the district in which it is located." See Article 28A of the Zoning Ordinance. The Board has the authority to approve alteration or expansion of non-conforming uses, so long as

there is not a cessation of the nonconforming use for six (6) months or more preceding the request. As in all cases before the Board, care and attention should be given to the orderly and appropriate use of land to ensure that such use is consistent with the spirit and intent of the Ordinance.

When Appellant first brought this request to the attention of staff, there was a question and some hesitation, based on the cessation of Appellant's business since 1999. Pursuant to the Ordinance, such a cessation in operation would more than likely prohibit the continued or alteration of the nonconforming use, thus defeating Appellant's request in the instant case. However, Appellant testified that at all times from 1999 to the present, someone was using the commercial portion of the subject property to store and service trucks and equipment. More to the point, Appellant's neighbors testified that he has operated there without issue and been a good neighbor for many years. There is no evidence of any adverse impacts or characteristics of the proposed change of use that would be detrimental to the surrounding neighborhood.

While it is clear that C.L. Milburn as a business, halted operation in 1999, the property was still being utilized for equipment storage and as a service garage, both of which were nonconforming uses approved by this Board's predecessors. Accordingly, the request for a change in non-conforming use to a trucking business with service and/or maintenance of vehicles at the subject property is hereby GRANTED, by a vote of 4-1. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 31, 2019