

Tax Map/Block/Parcel
No. 40-14-372

Case 5422R

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPELLANT: Paul E. Forst
735 N. Gorsuch Road
Westminster, Maryland 21157

ATTORNEY: John Maguire, For Appellant
Jonathan Scruggs, For the Carroll County Zoning Administrator

REQUEST: *Remanded from Circuit Court* – a de novo appeal of the Zoning Administrator’s decision concerning an existing non-conforming use on the north side of Gorsuch Road.

LOCATION: The site is located at 735 N. Gorsuch Road, Westminster, MD 21157, on property zoned “A” Agricultural District in Election District 8.

BASIS: Code of Public Local Laws and Ordinances, Section 223-186 A

HEARING HELD: June 23 and 24, 2009

FINDINGS AND CONCLUSION

On June 23 and 24, 2009, the Board of Zoning Appeals (the Board) convened to hear a de novo appeal of the Zoning Administrator’s decision concerning the question of an alleged non-conforming use on the north side of Gorsuch Road.

This case returned to the Board by way of a remand from the Circuit Court for Carroll County in Case No. 06-6-08-052122. The Honorable Thomas Stansfield returned the case to the Board in an Order dated March 17, 2009 for a full de novo evidentiary hearing to enable the Board to make reviewable findings of fact and reach a legal conclusion. The Board’s prior decision in this case was a 2-2 deadlock, which was a technical denial of the appeal but also rendered it impossible to reach a Board consensus as to factual findings and a conclusion. After two days of additional de novo hearings, the Board made the following findings of fact and reached this decision.

The subject property is a 4.175 acre (+/-) lot at 735 N. Gorsuch Road which was legally subdivided from the adjoining farm property in 1979. The property is bisected by Gorsuch Road, with 1.67 acres (+/-) on the south side and 2.5 acres (+/-) on the north side. The north

OFFICIAL DECISION

Case 5422R

Page 2

side is improved with several buildings comprising Leister's Body Shop. The south side includes a 20 ft. x 20 ft. garage building and open space along the front of Gorsuch Road.

Testimony from Charles Mahanna, who has long resided within a mile of the subject property and was a long time employee of the body shop, and David Richards, a relative of the Leisters who spent summers and weekends at the garage during his teen years, established that the body shop was originally located in the 20 ft. x 20 ft. garage building on the north side. It contained an iron forge and was used for shoeing horses, fabricating and fixing wagons. In the 1930's, the existing body shop building was constructed on the south side. Since that time, the body shop has been used to build new truck bodies, weld steel, build and repair farm wagons and farm machinery, and truck chassis, steel sign construction, and for the refurbishment of truck bodies by the Leisters or their employees. According to these and other witnesses, the garage and open area fronting Gorsuch Road on the north side continued to be a part of the body shop and was used to store steel, supplies, signs, truck parts, and items waiting to be recovered by their owners. The extent of the outdoor periodic storage of materials and equipment is depicted on Appellant's Exhibit "6", and included approximately 150 feet of space fronting Gorsuch Road. The garage on the north side was also used to park personal vehicles belonging to the Leister family. Charles Mahanna, recalled that the north side of the property was used for employee parking during the 1950's and other times during his 20 years of employment.

In 1979, the body shop was purchased by Earl and Robert Utz. Earl Utz had worked for Leister's Body Shop since 1964. Significantly, the lot that was created for the sale of the shop was 4.175 acres (+/-) which includes both the north and south sides of the property. Earl Utz testified that the body shop always utilized both the north and south sides of the property, with periodic storage of refurbished trucks, equipment, steel, parts, and other materials associated with the body shop occurring on the north side in and around the garage and approximately 150 feet along Gorsuch Road. Robert Utz, who worked at the shop since 1962 corroborated his brother Earl's testimony in this regard. In addition, both witnesses agreed that there were occasional retail sales of parts, materials and truck bodies and equipment that had been refurbished at the shop. The shop had a Maryland retail sales license for this purpose.

In January 2004, the body shop with the 4.175 acres (+/-) was purchased by the Appellant Paul E. Forst. Prior to the sale, the Utz brothers approached the Carroll County Zoning Administrator seeking a certification of the nonconforming status of Leister's Body Shop in the Agricultural Zone. The Application for Certification stated that the shop had been used since 1935 for "welding" and "build(ing) truck bodies." The shop's state and federal retail sales licenses and tax identification numbers were also listed. The items listed as buildings associated with the business included: a 3,500 sq. ft. woodworking and lumber storage building, a 3,780 sq. ft. welding and metal fabrication shop, a 230 sq. ft. office, a 720 sq. ft. paint shop for truck bodies and a 1,370 sq. ft. storage building. The hand annotated plot plan attached to the application shows a 37 ft. x 37 ft. storage building on the north side of the

OFFICIAL DECISION

Case 5422R

Page 3

property, which, is apparently the 1,370 sq. ft. building listed earlier. Also attached to the application was an outline survey prepared in 1979 listing a total acreage of 4.75 acres (+/-) on the “north and south side Gorsuch Road”, and a portion of the Carroll County tax map which delineated that this was one 4.175 acre parcel, indicated by the letter “Z” on the property lines. On December 2, 2003, the Zoning Administrator granted the requested certification.

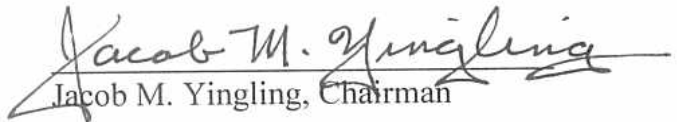
Testimony was presented by the current Zoning Administrator that the north side of the property (excluding the 1,370 sq. ft. building) had never been used by Leister’s Body Shop for the storage of vehicles, parts and equipment. Transcribed testimony from the late Leola Leister, whose late husband founded and co-owned the body shop, indicated that the north side was always used as a cow pasture, not for the body shop, and that the garage on the north side was for the Leisters’ personal vehicles. Rachel Leister, whose late husband was also a co-founder of the body shop, echoed Leola Leister’s recollections on these matters. Michael Boerner, who resided in the area until 1976, testified that he was a frequent visitor of his great aunt Rachel Leister and he never saw any body shop uses on the north side or in the garage. Other neighbors familiar with the area from the 1980’s to the late 1990’s, testified that they never saw any materials, parts or vehicles associated with the body shop stored on the north side. The Zoning Administrator also testified that her review of aerial photographs from 1964, 1974, 1976, 2006, 2007 of the property led her to conclude that the north side of the property (excluding the garage) was always used as a pasture, and not for the body shop, and that the use of the north side in such a manner was not a valid nonconforming use.

In reviewing this conflicting evidence, the Board found the Appellant’s witnesses to be the most credible and convincing. The aerial photos were of limited value, as they were not particularly clear as to the minutiae that may have been occurring on the ground. Furthermore, none of these aerial photos showed any cows in the disputed “pasture” area. Mr. Richards testified that when and if cows did enter this area, they ambled their way through the stored materials and equipment to eat the grass. The non-conforming certification relied upon by the Appellant in purchasing the property clearly encompassed 4.175 acres (+/-), and the storage building on the north side was clearly listed. The Appellant’s witnesses testified credibly as to the body shop’s use of the north side, which, although sporadic at times, never ceased. The fact that the sale of the property to the Utz brothers included the 2.5 acres (+/-) on the north side is also clear evidence that this area was always considered part and parcel of the body shop. Mr. Mahanna, an employee of the shop from the 1950’s to the 1970’s, testified credibly that he recalled that employees of the shop parked on the north side. A photo from this time period confirmed this practice. In addition, the topography of the south property and the small size of the south side would severely limit the ability to store vehicles around the actual body shop. It is logical to conclude that the rest of the property (the north side) which was well suited for such a purpose, was used in such a fashion. While the storage of vehicles and equipment connected with the non-conforming body shop on the north side ebbed and flowed, its past and current use as a storage area was a permissible intensification of the non-conforming body shop, rather than

OFFICIAL DECISION
Case 5422R
Page 4

an expansion of the body shop. As such, the Board concluded that the entire 4.175 acres at issue constituted the non-conforming body shop, and that the Appellant was entitled to store steel, truck bodies, tractors, refurbished vehicles and materials accessory to the body shop in and around the garage and the area fronting Gorsuch Road designated in Appellant's Ex. 6. However, Appellant may not use the north side for the display and sale of parts, materials or vehicles not refurbished or assembled at the body shop. The decision of the Zoning Administrator was therefore affirmed in part and reversed in part as set forth consistent with the Board's decision.

7/15/09
Date


Jacob M. Yingling, Chairman