

Tax Map/Block/Parcel  
No. 61-24-461

Building Permit/Zoning  
Certificate No. 06-2349

Case 5248

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

**APPELLANT:** Richard and Beverly Stevens  
1834 West Liberty Road  
Westminster, MD 21157

**ATTORNEY:** G. Macy Nelson  
R. Chuck McLean (Attorney for Acting Zoning Administrator)

**REQUEST:** An appeal of the Acting Zoning Administrator's determination concerning a property's compliance with all applicable zoning regulations.

**LOCATION:** The site is located at 1828 West Liberty Road, Westminster, on property zoned "A" Agricultural District in Election District 9.

**BASIS:** Code of Public Local Laws and Ordinances, Section 223-186 A (1)

**HEARING HELD:** November 28, 2006

**FINDINGS AND CONCLUSION**

On November 28, 2006, the Board of Zoning Appeals (the Board) convened to hear an appeal of the Acting Zoning Administrator's determination concerning a property's compliance with all applicable zoning regulations. The Board made the following findings and conclusion:

Charles T. Coon, Sr., owns 10.86 acres of land at 1828 West Liberty Road, Westminster, MD 21157. The land is zoned "A" Agricultural. The Appellants are Richard and Beverly Stevens, whose property adjoins the Coon property and whose house is approximately 500 feet from the Coon property. The Appellants share a use in common driveway with Mr. Coon and Ms. Stevens' father.

The matters at issue originated in BZA Case No. 4053 of 1995. In that case, the Board granted Charles T. Coon, Sr. conditional use approval to park commercial vehicles and to maintain storage containers in connection with his waste hauling business on his property. In that case, the Board found that Mr. Coon owned 49 containers, most of which were kept at customers' sites. The containers were described in that case as having dimensions of 12-16 feet in length x 3-4 feet in height. There was discussion in the decision regarding the fact that "tarpaulins are used to cover wastes in containers during transportation and storage." In addition, temporary storage of waste on the property, including the storage of horse manure in the containers was allowed. The specific condition regarding the storage containers at issue reads as follows:

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- “1. Not more than four dumpster trucks and ten containers shall be kept or stored on the premises. The trucks and containers shall be parked or stored in the shop or parking area adjacent to the shop”

In August of 2003, the Zoning Administrator issued a series of Notices of Violation to Charles T. Coon. One of the Notices concerned Mr. Coon's having in excess of 10 storage containers on the property, in apparent contravention of the Board's condition in Case No. 4053. Mr. Coon filed an appeal of the Notice of Violation to the Board. In Case No. 4873, of 2003 the Board upheld the Zoning Administrator's action, and noted that at least 25 storage containers were on Mr. Coon's property. Mr. Coon appealed the Board's decision to the Circuit Court for Carroll County. The Court in Case No. C-04-40127 affirmed the Board in a decision dated February 18, 2005.

Subsequent to these judicial setbacks, Mr. Coon undertook efforts to bring the property into compliance with the Zoning Ordinance and the Board's prior decisions. In addition to submitting a site plan to the County and removing a gargantuan mulch manufacturing operation from the property, Mr. Coon reduced the number of storage containers kept on the property down to 10. The Acting Zoning Administrator, apparently satisfied with Mr. Coon's compliance, requested and received a dismissal of a case which she had filed in District Court (Case No. 06-C-2005-043317) on June 22, 2006, requesting judicial enforcement of, among other things, the container condition of BZA Case No. 4053.

The Appellants disagree with the Acting Zoning Administrator's conclusion that their neighbor, Mr. Coon, is now in compliance with the Zoning Ordinance. They forwarded a letter to the Zoning Administrator dated June 1, 2006, delineating activities on the Coon property which they believed to be in violation of the Board's decision in Case No. 4053. The Acting Zoning Administrator, in a letter dated July 5, 2006, reaffirmed her conclusion that the Coon property is in compliance with the Zoning Ordinance and the Board's decision in Case 4053. The Appellants noted an appeal of the Acting Zoning Administrator's determination of July 5, 2006.

Section 223-188 (B) of the Carroll County Public Local Laws and Ordinances and Article 66B § 4.07 (d) authorizes the Board to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of Article 66B or the Zoning Ordinance. In the instant matter, the question for the Board is, did the Acting Zoning Administrator err in her determination that no zoning violation existed at the Coon property as of July 5, 2006? Specifically, the question as framed by the Appellants is whether Mr. Coon's storage containers are of the "type" and "size" previously permitted by the Board in Case No. 4053.

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Under Carroll County Public Local Laws and Ordinances § 223-183, the Zoning Administrator is charged with enforcing the provisions of the Zoning Ordinance. Testimony and evidence presented at the hearing revealed that the Office of the Zoning Administration has been involved in a protracted zoning enforcement proceeding against Charles Coon, initially stemming from Mr. Coon's mulch manufacturing operation on his property. While investigating the illegal mulch manufacturing business, the Zoning Administrator discovered two other violations. Specifically, the Zoning Administrator charged Mr. Coon with violating the Board's conditions imposed in Case No. 4053 of 1995 by keeping more than 10 storage containers on the site and failing to submit a site plan to the County for uses approved in that case. It is undisputed that a site plan was received and approved by the County, and, more importantly, that the huge mulch manufacturing operation at the Coon property has been abated. Thus, the remaining issue is whether the containers at the Coon property comply with the conditions set forth in Case No. 4053.

It is significant that in BZA Case No. 4873 of 2003, the Board upheld a Notice of Violation issued by the Zoning Administrator because Mr. Coon was keeping at least 25 storage containers on the property in violation of the conditions set forth in Case No. 4053 of 1995. The type (open or closed) appears to have been of no importance to the Board in its decision in that case. Rather, the number of containers was what led to the Board's upholding of the Notice of Violation.

It appears that after the long struggle of the Office of Zoning Administrator to gain Mr. Coon's compliance with the Zoning Ordinance and the Board's decisions, she has exercised her discretion and concluded that a maximum of 10 storage containers – whether open or closed – satisfies the law and conditions. In fact, the Zoning Administrator concluded that open containers of waste (including manure) would likely be more deleterious to the neighboring properties than closed containers. There was no evidence presented by the Appellants that the closed containers would generate more dust, noise, traffic fumes or any other adverse effect than open containers. The Board finds no error in the Zoning Administrator's conclusion. It would appear from the testimony of the Appellant that her differences with Mr. Coon stem largely from Mr. Coon's use of the shared driveway, rather than the open or closed nature of Mr. Coon's containers.

Trying another tack, the Appellants presented evidence that, subsequent to the issuance of the Acting Zoning Administrator's determination of July 5, 2006, Mr. Coon was storing in excess of 10 containers on his property. While this certainly warrants further investigation by the Office of Zoning Administration, it does not change the fact that on the date of her determination, the Acting Zoning Administrator did not err in her finding that the 10 container requirement had been met. If there are new violations at the Coon property, they should be pursued in due course by the Office of Zoning Administration.

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Finally, the Board is not persuaded that our consideration of the issue of the type of container allowed on the Coon property is barred under the legal principles of *res judicata* or collateral estoppel. As stated earlier, the issue of the type of containers has never been the focus of any Board decision or court case. Furthermore, it is clear that the circumstances on the ground have changed since the commencement of litigation regarding these matters. Mr. Coon has filed a site plan, removed his mulch pile, and reduced the number of containers to 10. The Board is not barred by *res judicata* or collateral estoppel and we uphold the determination of the Zoning Administrator in this case.

12/29/06  
Date

Jacob M. Yingling  
Jacob M. Yingling, Chairman