

Tax Map/Block/Parcel
No. 59-23-196
Case 5957

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Thomas H. Sisk and Jackson S. Haden, Jr.
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REQUEST: A remand from the Circuit Court of Carroll County to the Board of Zoning Appeals regarding the decision in Case #5957, for the Board to determine if the proposed use as a trash hauling company is the same or a more appropriate use of the proposed location than the existing non-conforming use as a contractor's equipment storage yard pursuant to the requirements in Section 158.033 of the Carroll County Code of Public Local Laws and Ordinances.

LOCATION: The site is located at 3233 Murray Road, Finksburg, Maryland, on property zoned "C" Conservation District, in Election District 4.

BASIS: Code of Public Local Laws and Ordinances, Sections 158.033(C) and 158.033(G).

HEARING HELD: May 31, 2017

FINDINGS AND CONCLUSION

On May 31, 2017, the Board of Zoning Appeals (the Board) convened to hear the remand from the Circuit Court of Carroll County to the Board of Zoning Appeals regarding the decision

in Case #5957, for the Board to determine if the proposed use as a trash hauling company is the same or a more appropriate use of the proposed location than the existing non-conforming use as a contractor's equipment storage yard pursuant to the requirements in Section 158.033 of the Carroll County Code of Public Local Laws and Ordinances. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

The Board Chair sent out a May 19, 2017 letter to the parties setting forth how the case would proceed on May 31, 2017. The letter stated in pertinent part the following:

On May 31, 2017, the Board will hear arguments as to whether additional evidence should be heard in this matter. If the Board decides that additional evidence should be heard, then that evidence will be heard on June 28, 2017 at 10:30 a.m. However, if the Board decides no additional evidence is necessary or warranted to determine the issue remanded by the Circuit Court, then the oral arguments will occur on May 31, 2017 following the denial of the introduction of additional evidence.

At the beginning of the remand hearing, the Board heard arguments from counsel as to whether to hear new evidence in the case. The Board determined that no new evidence would be heard and that it would rely on the existing record to decide the issues set forth in the judge's remand order. There were a number of reasons for the Board determination. The Circuit Court judge did not require that new evidence needed to be taken. Nor did the Circuit Court order on remand require further fact-finding on any issues. There is no evidence that there was an appeal of the remand order. The Board believed that the judge wanted it to review the case under the correct legal standard. The judge did not reverse or vacate the Board's decision. The judge did not change the ultimate decision to allow the substitution of the nonconforming use. New evidence would only show the difference in the site before the first hearing and the second, remand hearing. The Board's decision was to allow the substitution of nonconforming use. Upon appeal to the Circuit Court, there was no Order to stay the Board's decision. Therefore, in the remand hearing that took place one year later it could be expected that a trash hauling business would still be present on the site. The Court found that there was substantial evidence in the record to support the Board's decision as to whether there was a cessation of the nonconforming use. However, the Court was silent about the evidence of the same or a more appropriate use.

After deciding that no new evidence would be taken, the Board heard oral arguments as to the necessary review in the Court's remand order. The April 18, 2017 Order clearly ordered, adjudged and decreed that the Board did not err as a matter of law when it determined that there was no cessation of the nonconforming use. Therefore, the Board took no action on this portion of the case. However, the remand order set forth two requirements for the Board to consider:

ORDERED, ADJUDGED AND DECREED, that the case shall be remanded to the BZA in order for it to apply the correct standard of review in evaluating the Respondent's request for the substitution of a nonconforming use; and it is further **ORDERED, ADJUDGED AND DECREED**, that the case shall be remanded to the BZA in order for it to include sufficient findings of fact and conclusions of law in its Official Decision that address both the Respondent's specific request for the substitution

of a nonconforming use and regarding the BZA's application of the correct standard of review when evaluating the Respondent's request.

Section 158.033 of the zoning code states the following in pertinent part:

(C) If no structural alterations are made, a nonconforming use of a building, structure, or premises may, with approval of the BZA, subject to § 158.133 (G), be changed to another nonconforming use which in the opinion of the BZA is of the same or a more appropriate use or classification unless the use is specifically prohibited in the district.

Jay Voight, the Zoning Administrator for Carroll County, testified at the original hearing about a comparison of the present use of the contractor's equipment storage yard versus the proposed use of the contractor's equipment storage yard. Mr. Voight stated at least twice that the proposed use as a garbage hauling business was less intensive than the current use as a general contractor's equipment storage yard. He also said that the uses were very similar in that both businesses utilized commercial vehicles travelling on public roads to conduct the business. He stated that the general contractor business required heavier equipment and heavier vehicles than the waste haulers. Some of the vehicles used by general contractors were not permitted to be driven on the public roads. Therefore, these heavy vehicles had to be hauled by other vehicles that could be driven on the public roads.

FINDINGS OF FACT

1. Mr. Meekins' construction company has operated a contractor's equipment storage facility on the subject property since 1981.
2. During the time Mr. Meekins owned his construction company, as many as sixty employees were employed by the company.
3. Mr. Meekins stored trucks, construction equipment, building materials, aggregates, dirt, shoring boxes, traffic barriers, air compressors, air hammers, and tampers on the property.
4. Mr. Meekins stored on the property the following items: pickup trucks, water trucks, low boy trailers, tractors, hydro seeders, roll off trucks, fuel oil tankers, front loading garbage trucks, gradalls, dump trucks, asphalt trucks, crew trucks, a mechanic's truck with a crane on it, straw blowers, excavators, and graders.
5. Mr. Meekins stored as many as 40 vehicles or pieces of equipment on the property.
6. Some of Mr. Meekins' vehicles were registered at 80,000 pounds. Some of the vehicles would pull attached trailers with heavy equipment that could not travel on public roads.
7. Jackson Haden, Jr. owns a residential trash hauling business.
8. That Mr. Haden's employees would arrive early in the morning at the subject property in their personal vehicles and depart with a company vehicle.

9. That some of Mr. Haden's employees would return at the end of the day with the company truck and leave for their homes in their own personal vehicle.
10. Mr. Haden owns the following vehicles in his business: ten rear loaders; two front loaders; two roll off trucks; a flat bed crane truck; and a pal truck.
11. Most of the trucks owned by the Hayden company are 55,000 pounds. He has two trucks weighing 26,000 pounds and one truck weighing 70,000 pounds.
12. Mr. Haden has up to thirty employees working in his business at a time.
13. A minimum of fourteen of Mr. Haden's employees come to the site in a day to work.
14. The use at the contractor's equipment storage yard with Mr. Hayden would be less intensive than the use Mr. Meekins had at the peak of his business.
15. The use as a contractor's equipment storage yard with Mr. Meekins involved heavier vehicles being on the public road than the trash trucks being used by Mr. Hayden's trash hauling operation.
16. Both of the businesses operated out of the contractor's equipment storage yard usage involved the use of many commercial vehicles utilizing the public roads to conduct business operations.
17. Mr. Haden's trucks are generally smaller than the vehicles that were used by Mr. Meekins in his operation as a general contractor. The vehicles use less gasoline to operate, create less pollution, and are less noisy than the heavier vehicles.
18. The Board accepted Jay Voight's testimony about the lesser intensity of the trash hauling business of Mr. Hayden versus the general contractor operation of Mr. Meekins.

The Board considered the eleven factors set forth in CCPLLO Sec. 158.133(G):

- (1) The number of people residing or working in the immediate area concerned;
- (2) The orderly growth of a community;
- (3) Traffic conditions and facilities;
- (4) The effect of the proposed use upon the peaceful enjoyment of people in their homes;
- (5) The conservation of property values;
- (6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon the use of surrounding property values;
- (7) The most appropriate use of land and structures;
- (8) Public convenience and necessity;
- (9) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, religious establishments, etc.;
- (10) Compatibility; and

(11) The purpose of this chapter as set forth herein.

As to (1), the Board considered that the twenty acre site at issue included an airstrip, a mobile home park, and a contractor's equipment storage yard. The property was also adjacent to a large parcel owned by David B. Bosley or his successors. He noted that he became the trustee of the farm in 1975 when his father passed away. Mr. Bosley testified in the original hearing that he owned a farm of sixty-six acres. There were more than twenty trailers in the mobile home park. Some of the lots were vacant. There was also testimony that Ryan Homes was creating a new development in the area with \$400,000 to \$500,000 homes. Farming still took place near the site of the contractor's equipment storage yard. The Murray Road neighborhood consists of farm land and residences. Murray Road ends at the Liberty Reservoir property. The Bureau of Comprehensive Planning stated that the subject property has a surrounding area comprised primarily of large lot and medium lot residential and agricultural lands.

As to (2), the Board considered the orderly growth of the community. The Meekins property and the Bosley farm parcel had been established for many years. Mr. Meekins owned his property since the 1980s. The Bosleys owned their farm since before the 1970s. The Ryan Homes subdivision property would be a new development in the area.

As to (3), traffic conditions and facilities was considered by the Board. It was clear to the Board that the traffic conditions changed as a result of the success of Mr. Stewart Meekins contracting business. In the heyday of his business, there was much more traffic than there was in 2016. There was also residential traffic for the residents at the mobile home park. Mr. Meekins testified that he had fifty to sixty employees at the height of his business. He also had thirty to forty kinds of vehicles. Jackson Haden, Jr. testified that he had only ten rear end loaders, two front end loaders, two roll off trucks, a flat bed crane truck, and a pal truck. He does not have thirty to forty vehicles as Mr. Meekins had in his heyday. Therefore, the traffic would be less than the traffic conditions in the peak of Mr. Meekins' business.

As to (4), the Board considered the peaceful enjoyment of nearby property owners. The traffic conditions as they related to Mr. Meekins business varied. There was much more traffic when he had more vehicles on the road, more equipment, and more employees.

As to (5), the Board considered the property values of neighbors. The Board was aware that a contractor's equipment storage yard had existed at the site since before the zoning laws were created in the 1960s. The business of a contractor's equipment storage yard was not new to the area. The business was well established in the area. The biggest change to the area was the development of the Ryan Homes housing development. The mobile home residents had already been living on the property. The area farms were also well established.

As to (6), the Board considered those factors. The biggest factor they considered is odor since the new nonconforming business would be a trash hauling company. The Board had evidence that the trucks went out empty and came back to the site empty. There would certainly be odors associated with trucks that transported trash. However, the garbage business is a legal business under County law. Those businesses are entitled to utilize County roads. The extent of the other factors varied depending on the rise and fall of Mr. Meekins' business.

As to (7), the Board considered the most appropriate use of the land and structures. The Board found that the proposed use for the purpose of this chapter would be less extensive and intensive than the use was during the heyday of Mr. Meekins' business.

As to (8), the Board considered the public convenience and necessity. The new garbage hauling business for the site would not bring a direct benefit to the neighbors. However, there

was no evidence that Mr. Meekins' business performed all of its work in the area or served the convenience of the neighborhood. The routes for the trash trucks would be closer for the Baltimore County clients than they were at the Hampstead, Maryland location. There would be less pollution as a result of the fewer miles driven in the County. Trash haulers are a necessary business in this county and its neighboring counties. Nationwide the trash is either picked up by the government or private companies.

As to (9), there was evidence that there were other types and kinds of structures in the vicinity where public gatherings may be held.

As to (10), compatibility of the site involved the changing of one nonconforming use for another nonconforming use. The Board found that the intensity of the trash hauling business was less than the intensity of Meekins' business during its most busy period.

As to (11), the Board considered the purpose of the zoning chapter. The purpose of the chapter was to allow uses where they were permitted. Nonconforming uses were permitted in the zoning code. The use as a contractor's equipment storage yard was well established since before the zoning code was adopted. As long as the substitution of the use was appropriate, the continued use as a contractor's equipment storage yard was permissible. The Board found the new use to be less intensive than the former use had been in the past.

The Board incorporated much of the testimony and evidence from the original hearing. The following facts in the underlined text are incorporated into the remand hearing decision:

Stewart Meekins testified on behalf of his company Meekins Associates, LLLP. His company performs contracting work. The company has been in business for sixty years. It has been at its current location since the 1980s. The twenty acre property at the site includes an airstrip, a mobile home park, and a contractor's equipment storage yard. These three uses of the property were present when Mr. Meekins purchased the property. The airstrip includes approximately twenty-eight lots. Some of the lots are presently vacant. Mr. Meekins could not state when the photographs in Petitioner exhibit number 2 were taken.

Petitioner exhibit number 3 shows that the Meekins Associates Partnership had a lease with the owners of the property in 1981. The Meekins business also had an option to purchase the leased premises.

In Petitioner exhibit number 2, Mr. Meekins presented photographs of vehicles and equipment that he had owned over his time in business as a contractor. He did not know with certainty when the photos in Petitioner exhibit number 2 were taken. Nor did he know with certainty when much of the equipment and vehicles were removed from the site. He could affirmatively state that he owned the vehicles and equipment in Petitioner exhibit number 2 at the time that the photos were taken. On cross examination, Mr. Meekins went through the time he was the owner of the equipment and vehicles in the photos.

The property used to be a junkyard as evidenced in Petitioner exhibit number 1. In 1981, Petitioner exhibit number 1 demonstrates three separate areas on the applicant's plat as "junk areas." (Board case No. 1718.) Although Meekins Associates, LLLP was operating its business from the site in the 1980s, the applicants in Board case 1718 were William J. Fabrick and Shirley T. Fabrick. Case 1718 was a request to the Board for a confirmation and continuation of a nonconforming use, which was a contractor's equipment storage yard.

Mr. Meekins testified that he had one full time worker and one part time employee for his company. He also has professional staff that come to the location to provide a service. In the

last few years his business slowed down due to the economy. He testified that he had three or four jobs last year. He mentioned that as recent as a month ago that the company had to work on a small grading job. Meekins Associates, LLLP purchased the property which is the subject matter of this application in 2006 as reflected in the deed in Respondent exhibit number 1.

Mr. Meekins entered into a contract of sale with the applicants for the property.

Mr. Meekins supports and is in favor of the instant application before the Board.

Jackson Hayden testified as one of the owners of J & J Trash Removal, Inc. The company entered into a contract with Meekins Associates, LLLP. He owns a garbage removal business that is located in Hampstead, Maryland. The company has been in business since 1979 and has been located in Hampstead since 1992. He believes that the site in question is a bigger and better location for his business.

The photographs taken in Petitioner exhibit number 4 show trucks and equipment at his current Hampstead location. He has two office workers that regularly come to the site. He also has a foreman that spends one half of his time at the site and the other half of his time on routes. A minimum of fourteen workers come to the site daily. These people include drivers of the vehicles. Some workers are picked up off of the site to perform their duties. Employees start coming to the site at between four and five am. Most people have left the site by five pm. Mr. Hayden stated that his trash removal operation would fit within the confines of Petitioner exhibit number 1. The new location would be closer to the contractual trash removal routes. In addition, his drivers would have access to more favorable roads than Maryland Route 30. He would not need to make changes to the property to fit his current operation into the new location.

Jay Voight, Zoning Administrator testified in the case. He stated that one of the existing uses on the property was for a contractor's equipment storage yard. He stated that the usage of a contractor's equipment storage yard would follow the property and not the owner of the property. He did not think that the use of the property as a contractor's equipment storage yard had ceased for one year. He agreed that the Board case 1718 granted a contractor's equipment storage yard on the property. He saw the use as a trash removal operation as less intense than a contractor's equipment storage yard. Contractors are required to use more heavy equipment and vehicles that cannot operate on roads, whereas the trash hauling business included all commercial vehicles that could be driven on Maryland roads.

David Bosley testified in opposition to the application. His family farm is connected to the twenty acre property in question. He has sixty-six acres on his farm. In fact the twenty acre property was originally a part of his farmland. He stated that the current level of traffic at the site was the people living in the trailer park and their passenger vehicles. The only large vehicles traveling along the road would be a trash truck and a fuel truck. He was not disputing that the Meekins had a full time office worker and a part time office worker.

Marvin Miller testified in opposition to the application. He had lived along Murray Road since 1992. He stated that Meekins had very little business at the present time. He noted that when the economy crashed in 2008 that the Meekins business really never recovered from it. There was not much construction related activity at the site for the last eight years. He stated that even when the Meekins construction business was at its busiest that equipment went from job site to job site and the same was also true for most employees. Mr. Miller took the photographs in evidence as Respondent Exhibits 2-8. The photographs demonstrate a number of sea containers and a few pieces of construction equipment. He stated that he would suffer a decrease in property values if a trash removal business was allowed to start at the proposed site. He also believed that his quality of life would suffer if such a business moved in. His number

one concern was trucks rumbling in and out of the site. He also did not want his children to experience trash trucks and the stink that would accompany them. His house was located about 1200 feet from the site in question.

Melanie Stranix testified in opposition to the application. She stated that she had lived on a quiet road for thirty years. She had not heard the rumble from trucks from the location in question for many years. She was recently retired. She was concerned about the value of her property decreasing if a trash hauling business was approved to be there. Even though the trucks would not directly pass her house, she would still hear the sounds of the trucks.

Karen Bosley Miller testified in opposition to the application. She is married to Marvin Miller and is the daughter of David Bosley. She stated that the neighborhood includes farmland and residences. She has lived at her home for more than twenty years. The property was zoned Conservation. Her peaceful enjoyment would be harmed if the application was approved. She believed that the contractor's equipment storage yard business had been dormant for more than one year. She believed that the existing equipment on the site had not been used for years. She further believed that the office staff ran the mobile home park and not the contractor's equipment storage yard business. Her position was that the change from a contractor's equipment storage yard to a trash removal business should not be considered a substitution. She noted the twenty plus trailers located on the property. Homes would be built nearby in the \$400,000 price range.

Nokomis Ford with the Bureau of Comprehensive Planning wrote in a June 14, 2016 memorandum that the "staff finding is that this request is consistent with the 2014 Carroll County Master Plan.

The Board determined that there was a change in the nonconforming uses between the general contractor business and the trash hauling business. The Board further found that the change to another nonconforming use was a lessor use of the contractor's equipment storage yard. The proposed use is the same or a more appropriate use in the characterization and categorization of the contractor's equipment storage yard.

The Board noted that there would be no greater impact to a trash removal business being at this site. They accepted the Zoning Administrator's testimony that the use would also be less intensive. Both a contractor and a trash hauler utilized trucks. The only difference in the operation was the things they were hauling. The vehicles and equipment of the trash removal company was comparable to the vehicles and equipment of the Meekins' company in its heyday. There is no requirement that the substitution of the nonconforming use be comparable to the present day use.

Trash hauling businesses are legal in Carroll County. If the odor created by trash trucks alone could prevent the business from operating in the County, then the County would have limited options for transporting and removing the trash. The further the trucks travelled, the higher the costs to the residents. Similarly, the further the trucks travelled the more the pollution that would be generated. Based on the Board's conclusions that it came to with regard to the eleven factors set forth in 158.133(G), the Board found that the trash hauling business was a less intensive use for the contractor's equipment storage yard. Mr Hayden's business had fewer total trucks and fewer employees than Mr. Meekins had when the general contractor business was at its peak.

The Board was convinced that authorization of the request for a change of a nonconforming use was consistent with the purpose of the zoning ordinance. The Board

reviewed zoning code sections 158.133(G) and 158.033 in its determination. The Board approved the change of a nonconforming use requested by the applicant.

June 7, 2017
Date

Melvin E. Baile, Jr.
Melvin E. Baile, Jr., Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Land Use Article, Section 4-401 of the Annotated Code of Maryland.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.

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