

Tax Map/Block/Parcel
No. 61-4-515
Case 5693

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Paul Tyler Morgan, III
2713 Sams Creek Road
New Windsor, Maryland 21776

ATTORNEY: N/A

REQUEST: An application for an expansion of an existing conditional use (Prior Case 5071) for parking of commercial vehicles (currently permitted 6 tractor/trailers) and would like to have 8 tractor/trailers with 2-3 additional trailers; expansion of the existing 40 ft. x 44 ft. shop to 40 ft. to 60 ft.

LOCATION: The site is located at 2713 Sams Creek Road, New Windsor, MD 21776, on property zoned "A" Agricultural District in Election District 9.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-71 (23)

HEARING HELD: April 24, 2013

FINDINGS AND CONCLUSION

On April 24, 2013, the Board of Zoning Appeals (the Board) convened to hear the request for an expansion of an existing conditional use (Prior Case 5071) for parking of commercial vehicles (currently permitted 6 tractor/trailers) and would like to have 8 tractor/trailers with 2-3 additional trailers; expansion of the existing 40 ft. x 44 ft. shop to 40 ft. to 60 ft. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

On June 23, 2005 the Board approved a conditional use for the parking of commercial vehicles to include six (6) tractor/trailers (Case 5071). The applicant operated a trucking business from the property where he resided. The Board noted in that decision that the applicant "has in fact been operating at this location without benefit of Board approval for 17 years."

Paul Morgan testified on behalf of his requested existing conditional use from 6 tractor/trailers to 8 tractor/trailers. Although he is approved for 6 tractor/trailers, he currently owns seven. He did not believe that his request had a substantial impact on anyone. He wanted to expand the size of the building so that he could get a trailer inside of it and be able to close the door. He has nine total employees: seven drivers, a mechanic in the shop, and someone to handle the paperwork.

He acknowledged that he had knowingly exceeded the number of trailers that the Board had previously approved for him to have. He also admitted to the zoning technician, Robin Zile, that he had exceeded his approval limit in the number of trucks he could keep on the property. He also recognized that in response to his excesses that the only thing the Board could do was to keep checking on him. He admitted that two trailers were parked in the wrong location at the time of the site visit by the Board.

He testified that a common driveway was to be maintained by three property owners: himself, James Morgan (his brother) and Larry Cosh.

He testified that he was not doing repair business out of this location. A condition of the Board approval in 2005 was that no repairs other than routine maintenance shall be conducted on site. He acknowledged that he had a business card and an internet site that mentioned repair services. He claimed that he discontinued the repair services because he was not generating enough money from this portion of the business.

He believed that he had been unjustly accused. He also believed that his brother James' motivation in restricting his business and making complaints was a retaliatory action.

Larry Cosh testified for the applicant. He is a neighbor that shares the common driveway. He lives between Paul and James. He states that Paul was a good neighbor and that he has not been a problem for him or his wife.

Charles Coon was in the excavating business and used to install driveways for twenty years. He stated that the faster vehicles travelled would cause more potholes. Tractor trailers did not travel as fast as cars. However, because of the excessive weight, the trucks would cause more damage to the gravel driveway. He stated that Larry Cosh purchased his property from a third Morgan brother, Jeffrey Morgan.

Robin Zile testified at the request of the Board. She testified about her three visits to the property in April 2012, January 2013 and February 2013. She testified about zoning violations that occurred on the property including junk yard conditions, unlicensed vehicles, and more than the allotted number of 6 tractor/trailers. The violations she found in January 2013 were abated in February 2013 with the exception of some of the media communications with regard to repair services. She testified that Paul Morgan told her that the repair business was not successful. Another zoning inspector went to the site in 2005, and that was the reason that the applicant went to the Board for approval of the 6 tractor/trailers.

Louise Warner testified as a protestant. She is a retired police officer. She noted that the noise coming from the trucking business was excessive. The traffic was terrible. She also stated that the loud noises started as early as 4am.

Jane Thayer testified as a protestant. She also testified that the machine shop was loud. If more tractor trailers were approved by the Board it would be much worse. She mentioned a safety concerned with children playing nearby and her horses were offended by the loud noises. She does not believe that the business should be in a residential area.

James B. Morgan has lived in his house since 1986. He stated that Paul owned eight trucks and had eleven employees. His brother conducted the business at all hours, in violation of the conditions set forth by the Board in 2005. He stated that Paul is operating a repair business in violation of the conditions set forth by the Board in 2005. He has witnessed tow trucks bring

other vehicles there from four to six times over the last few years. The trucks towed in were not vehicles owned by Paul according to James. He claimed that if the Board approved for Paul to have ten to twelve tractor/trailers that his brother would have fifteen.

Gretchen A. Woodward testified as a protestant. She stated that one of Paul Morgan's trucks was involved in an accident with a school bus on Sams Creek Road. She stated that people knock on her door and look for his business. She also stated that the trucks leave at 4:00am. She believes that Mr. Morgan should move his business.

Charles Warner testified as a protestant. He believed that Paul Morgan was operating a repair shop. The noise in the past year has been much worse. He was concerned about the traffic, entering and exiting Maryland Routes 26 and 27, and school bus safety. The traffic has increased lately. He believes that Mr. Morgan should move his business.

Based on an April 11, 2013 letter from Philip R. Hager, Secretary, Planning & Zoning Commission and an April 11, 2013 memorandum from Scott E. Graf, Comprehensive Planner, Bureau of Comprehensive Planning, the property was consistent with the policies and recommendations contained in the Carroll County Master Plan, the Carroll County Master Plan for Water & Sewerage, and other functional plans.

The Board found that the traffic and noise complaints generated adverse effects. Board members also believed that credibility was an issue and did not find Paul Morgan to be a credible witness. He operated the business for seventeen years before getting Board approval in 2005. He admitted that he had violated Board conditions. He admitted that he was attempting to run a repair business but was unsuccessful in the attempt. He knew that such a business had not been approved by the Board. He was requesting an increase in the number of vehicles after complaints had been lodged recently. He owns seven tractor/trailers but only has Board approval for six. He also admitted that all the Board could do to monitor his compliance was to keep checking on him. He did not say that he would comply with the Board's decision.

The Board was convinced that authorization of the request with regard to a conditional use was inconsistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered regarding conditional uses of the zoning ordinance, and would unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the findings of fact made by the Board above, the Board found that the proposed project would generate adverse effects (i.e. noise, traffic, dust, water issues, lighting issues, property depreciation, etc.) greater here than elsewhere in the zone.

4-29-2013
Date


Harvey Tegeler, 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 Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

Pursuant to Section 223-192C 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.