

Tax Map/Block/Parcel
No. 071/15/85

Building Permit/Zoning
Certificate No. 90-1230

Case 3368

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

APPELLANT: Robert Bruce Witte
6419 Davis Road
Mt. Airy, Maryland 21771

ATTORNEY: MacKenzie A. Kantruss, Esquire
1603 Ridgeside Drive, Suite 4
P.O. Box 619
Mt. Airy, Maryland 21771

REQUEST: A request to enlarge or expand nonconforming uses including farm tractor and equipment sales and repair, commercial truck repair and sales, commercial truck equipment sales and repair, and holding auctions; and, construction of two buildings, 50 feet by 50 feet

LOCATION: 6419 Davis Road in Election District 13

BASIS: Article 4, Section 4.3(a)(1); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: May 30, 1990

On May 30, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning the request to enlarge or expand nonconforming uses including farm tractor and equipment sales and repair, and holding auctions; commercial truck repair and sales, commercial truck equipment sales and repair, and, construction of two buildings, 50 feet by 50 feet at 4619 Davis Road.

The Board visited the site on May 24, 1990, prior to the public hearing.

The appeal, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board must deny the request.

The pertinent findings determining the Board's decision include the following facts.

FINDINGS OF FACT

This case originated from the issuance of a Notice of Violation, dated March 12, 1990 to Witte's Truck and Tractor, and to Cyril and Helen Witte--the appellant's parents. The notices indicate

the violation involves enlargement of a nonconforming use, and direct application be made to the Board of Zoning Appeals for expansion of a nonconforming use. Mr. Witte filed the Notice of Appeal in response to the Notice of Violation.

The 13.1 acre property is identified as P.85 on Applicant's Exhibit 1. The appellant, Mr. Robert Bruce Witte, testified that he had operated the truck and tractor shop from the property since approximately December of 1977. Prior to that time, he had operated from his parents' property, Cyril M. and Helen Witte, which adjoins parcel 85 to the east and is identified as P.34 on Applicant's Exhibit 1.

No documentation of the lawful establishment and operation of a truck and tractor shop on Cyril and Helen Witte's property from prior to August 17, 1965 and thereafter was introduced in this case.

Mr. Witte's home is located on an adjoining lot, identified as P. 235 on Applicant's Exhibit 1. Mr. Witte's parents transferred ownership of the home site to him in 1977.

Mr. Witte's parents' farm, as depicted on Applicant's Exhibit 1, consists of a number of parcels amounting to over 114 acres. The principal land use of the property is agriculture. During his adolescence years, Mr. Witte was active in the Future Farmers of America. His interests included working on and repairing farm machinery. In 1965 Mr. Witte entered high school and graduated in 1970. While he was attending high school, he also worked on the farm.

On January 25, 1977, a Permit Application and Zoning Certificate 77-94 was approved by the Zoning Administrator for construction of a farm storage building, 40 feet by 60 feet. (Zoning Enforcement's Exhibit 1a and 1b.) Evidently, it is this building that is depicted on the plot plan submitted with the application and identified as Applicant's Exhibit 2. The two proposed buildings, 50 feet by 50 feet, each, are depicted as enlargements of the existing building.

No testimony or evidence was introduced to substantiate lawful establishment and operation of the truck and tractor shop in this building.

Ownership of the property on which the shop is located, P.85, was not transferred from Mr. Witte's parents to him until this year.

Eleven of the 50 photographs identified as Applicant's Exhibit 4 (collective) portray various types of vehicles that are parked adjacent to the existing shop.

Although several tractors are pictured, most of the vehicles appear to be various types of commercial trucks. The vehicles

are representative of those that are repaired, or upon which work is performed, and possibly sold at auctions held three to four times a year. The earliest auction was apparently held in 1982. Vehicles offered for sale are usually on consignment.

No testimony or evidence was introduced to substantiate authorization by the Zoning Administrator to conduct the auctions.

APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

Article 4, General Provisions; Section 4.2, Compliance with ordinance, reads:

Except as hereinafter specified, no land, building, structure, or premises shall hereafter be used, and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered except in conformity with the regulations herein specified for the district in which it is located.

Article 4, General Provisions; Section 4.3, Nonconforming Uses (Amended 3/17/81) states in relevant part:

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time this ordinance is amended, may continue to be used even though such building, structure or premises does not conform to use or dimensional regulations of the zoning district in which it is located; subject, however, to the following provisions:

- (a) Structural alterations or enlargement of any building, structure or premises which does not comply with the use or dimensional requirements of this ordinance shall be allowed only as follows:
 - (1) Upon application, the Board may approve structural alterations or enlargement of a nonconforming use, subject to the provision of Article 17, Section 17.6 (now 17.7)....

- (e) The owner or operator of any existing non-conforming use involving used car lots, service garages or junk yards shall, not later than April 17, 1966, certify in writing, on a prescribed form, to the office of the Zoning Administrator, that such nonconforming use did exist on the adoption date of this ordinance. In order that the exact nature and extent of such nonconforming use may be determined, a survey plat prepared by a professional engineer or registered surveyor shall accompany any prescribed form. The survey shall include the following:

1. North arrow.
2. Scale - One inch equal to one hundred feet.
3. Election district.
4. Outline of parcel or parcels upon which the nonconforming use is located.
5. Bearing, distances and acreage of that portion of the parcel or parcels expressly used for the nonconforming use on the effective date of this ordinance.
6. Use, dimensions and location of all existing buildings.
7. Certification and seal of professional engineer or registered surveyor.

Article 16, Administration; Section 16.2, Zoning certificates, reads in relevant part:

- (a) It shall be unlawful for an owner to use or to permit the use of any building, structure or land or part thereof, hereafter created, erected, changed, converted, or enlarged, wholly or partly, until a zoning certificate shall have been issued by the Zoning Administrator. A zoning certificate shall be revocable, subject to continued compliance with all requirements and conditions.
- (b) All applications for zoning certificates shall be accompanied by plans drawn approximately to scale, showing the dimensions and shape of the lot to be built upon; the size and location of existing buildings,

if any; and the location and dimensions of the proposed building or alteration. Where no buildings are involved, the location of the present use and/or proposed use to be made of the lot shall be shown. The application and/or plans shall include such other information as reasonable may be required by the Zoning Administrator to determine conformance with and provide for the enforcement of this ordinance. The plans shall be retained in the office of the Zoning Administrator.

- (c)If a zoning certificate is issued, such approval and issuance thereof does not sanction variance from the terms of this ordinance.

Article 20, Definitions; Section 20.17, Garage, paragraph (b) defines a service garage as:

- (b) Garage, service. A garage, other than a residential garage, where motor vehicles, trailers, or other types of equipment are stored, equipped for operation, repaired, or kept for remuneration, hire or sale.

The property was originally zoned "A" Agricultural District on August 17, 1965 as shown on Official Zoning Map 38. On April 26, 1978, the property and surrounding area was rezoned to "C" Conservation District in comprehensive Rezoning Ordinance Number MA (Map Amendment)-79, as shown on zoning map 71A.

The land use provisions for the "C" Conservation District and the "A" Agricultural District are specified in Articles 5 and 6 respectively. The provisions of the "C" Conservation District, do not include truck or tractor repairs or sales, or auctions as either principal permitted or conditional uses. Truck or tractor repairs or sales were not permitted within the "A" Agricultural District from the adoption of Ordinance 1E on August 17, 1965, until amendment of Section 6.3(e) on June 26, 1980, to allow, as conditional uses which require Board of Appeals authorization:

...farm machine shops, farm welding shops, and farm machinery sales and service, all of which are specifically for the repair, maintenance and/or sale of farm machinery, and blacksmith shops; provided all such uses shall be subject to two (2) times the distance requirements specified in

Section 4.12 and a minimum of three (3) acres is provided. (Amended 6-26-80)

For informational purposes only, the provision, now Section 6.3(e) 2, was amended March 31, 1988 to read:

Shops for the service and repair of and sale of farm machinery and farm equipment, including welding, but which are limited exclusively to the sale, service and repair of farm machinery and farm equipment; and blacksmith shops. The uses authorized herein shall comply with at least twice the distance requirements of Section 4.12 (Amended 4/18/88)

No such uses have been authorized by the Board of Zoning Appeals at this site, or on the Appellant's parent's farm from June 26, 1980 when Section 6.3(e) was first amended to April 26, 1978 when the area was rezoned "C" Conservation District. Consequently, no such uses were lawfully existing on the site as of April 25, 1978 that would have become nonconforming uses on April 26, 1978 upon the rezoning to "C" Conservation District.

REASONING

It is evident that prior to the adoption of Ordinance 1E on August 17, 1965, neither Cyril and Helen Witte, or Robert Bruce Witte, operated a truck and tractor shop on the farm as now presently existing on the property identified as P.85.

Such work as the appellant may have performed on tractors or trucks prior to his enrollment in high school can only be considered to be casual and incidental to his interests and environment. As such, no truck and tractor shop existed.

In any event, the mandatory certification and surveyor's plat for a nonconforming service garage was not filed as required by the provisions of Article 4, Section 4.3(e) of Ordinance 1E.

Therefore, it is evident that as of August 17, 1965, a truck and tractor shop did not exist on the farm as a lawfully nonconforming use.

Application for, and construction of, the farm storage building under Permit 77-94 in 1977 can not now warrant the truck and tractor shop as a nonconforming use.

Establishment and operation of the truck and tractor shop, within the building, and the use of the land was done without proper authorization and is contrary to the provisions of Article 16, Section 16.2 of Ordinance 1E.

In addition, initiation and continuation of the periodic auctions in 1982 for the sale of trucks and tractors was done without authorization, and is not a permitted land use in the "C" Conservation District.

In order for the Board of Zoning Appeals to authorize the request, or any part thereof, the applicant, or appellant, must first prove the existence of the lawful nonconforming use. Mr. Witte has failed to do so.

CONCLUSION

The Board is governed by the provisions of the Carroll County Zoning Ordinance.

From the record of this case, it is evident that there was no such lawfully existing nonconforming use. Accordingly, the Board hereby denies the request.

June 28, 1990
Date

JDN/bmb/C3368DEC
June 28, 1990

John Totura
John Totura, Chairman