

**Tax Map/Block/Parcel**

**No. 75-23-331**

**Case 5712**

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

**APPELLANT:** Robert & Michelle Gladhill  
4044 Baltimore National Pike  
Mt. Airy, Maryland 21771

**ATTORNEY:** Daniel Murphy

**PROTESTANTS:** Richard Philps and Paul Drnec

**ATTORNEY:** Clark R. Shaffer

**REQUEST:** An appeal of the Zoning Administrator’s decision concerning a “home occupation.”

**LOCATION:** The site is located at 4044 Baltimore National Pike, Mt. Airy, MD 21771, on property zoned “C” Conservation District in Election District 13.

**BASIS:** Code of Public Local Laws and Ordinances, Chapter 223-188

**HEARING HELD:** July 31, 2013

On July 31, 2013, the Board of Zoning Appeals (the Board) convened to hear the appeal of the zoning administrator’s denial of a “home occupation” for small engine repair. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

The record in this case is hereby included by reference in this decision. The Board also voted to take judicial/administrative notice of a prior application for a conditional use by the same appellants on the same property in case 5635. A significant portion of the testimony pertained to the Gladhills removal of trees and the ramifications from those actions with governmental officials. The Board deemed that the testimony about the tree removal was not particularly germane to the issue of a “home occupation.”

**ISSUE**

The issue in this de novo hearing was whether the appellants request for a “home

occupation” was appropriate based on the zoning code.

### FINDINGS

The site at 4044 Baltimore National Pike, Mt. Airy, Maryland is zoned “C” Conservation District in Election District 13. The property is owned by Robert and Michelle Gladhill. The Gladhills have lived at their present address for approximately seven years. Mr. Gladhill has a full time job as a mechanic with Eastern Lift Truck Company, Inc. where he has been employed from two to two and one half years.

In this request for a “home occupation” Mr. Gladhill would work on the small engine repair business at night and on the weekends due to his full time job. He also currently has a part time job. He drives a truck provided by his full time employer to and from work, and the truck is parked on his property. He mentioned that he had a Dodge pickup, a Tahoe, an Eastern Lift truck, and a Gladhill Services truck on the property.

In the small engine repair business Mr. Gladhill testified that he would not bring back anything to work on bigger than a riding lawn mower. Most of his work would involve chain saws, weed eaters, small tractors, and things with small combustion engines. Other than his shed of 14 feet by 34 feet (476) he would have no other space for the repair of small engines. This shed is currently on the property. All of the tools needed for repairs would be housed in the shed. He stated that the business would amount to minimal extra traffic to his house. All work would be performed in the shed and he would not work outside in the business. Mr. Gladhill testified that he would use one of his trucks and a trailer to pick up a riding mower and larger equipment to be repaired. He or his wife would travel to the store to get parts needed for the small engine repair business. He would not have any deliveries for the business at the house. He testified that no customer would come to his property. He would go out to a customer’s home to work on a small engine repair. If the repair could not be completed at the customer’s home he would then bring the small engine back to his house to be repaired. When the repair work was completed he would then return the item to the client. Mr. Gladhill testified that the difference between his request for a small engine repair shop and his earlier request for a conditional use was that he would work on smaller things. However, most aspects of the business were essentially the same.

He also has several other items on the property including a couple tractors, a skid loader, a ditch witch, a rake, a gator, a scraper blade, a couple of seeders, a plow, an 18 feet X 6 feet trailer, three to four seed spreaders, a push mower, a tiller, a bobcat, augers, and a snowblade. There was also a sea container on the property for which a notice of violation had been issued by the county zoning office. Mr. Gladhill stated that all of the equipment on the property was for his personal use and were things that he had accumulated through the years.

At one point in his testimony Mr. Gladhill stated that he closed Gladhill Services, Inc. shortly after starting his job with Eastern Lift Truck Company, Inc. However, he still had a truck with the company name and phone number on it. He stated that the phone number on the truck had not been in use for a year or more. He had the company

Gladhill Services, Inc. for several years before starting to work for Eastern Lift Truck Company, Inc.

Diana Theologou testified on behalf of the appellant. She is a next door neighbor who shares a common driveway with the Gladhills. She is an attorney who specializes in real estate law. She has known the appellants for approximately seven years. Mr. Gladhill has brought over sand for the children's sandbox, helped to plant a garden, given her mulch and other things. She mentioned that the Gladhills have about five or six adult children who also visit the residence. Mrs. Theologou considered herself to be one of Mr. Gladhill's clients at times.

Richard Philps is a neighbor who testified against the application for a "home occupation." He has lived at his house since 1998. Protestant Exhibit 2e shows the shed of 14 feet by 34 feet. He further stated that the shed was delivered approximately eight days after the Gladhills applied for the "home occupation." He provided testimony about the clearing of the trees.

Paul Drnec is a neighbor who shares a driveway with the Gladhills and others. He did not want to live next door to a business. He purchased his property, in part, because he wanted privacy. He provided testimony about the clearing of the trees.

Jay Voight testified as a Board witness. He brought in a list of approved "home occupations" in the county and stated that there were no small engine repair shops certified as "home occupations." He added that the majority of "home occupations" were businesses that were actually in the home. He provided a number of examples of "home occupations" that had been approved. He also stated that at his hearing on the approval of a "home occupation" for the Gladhills that Mr. Gladhill stated that he would have a few customers come to the house.

#### CASE 5635

In case 5635 the Gladhills requested a condition use of the Board in 2012 for the service and repair of farm machinery and equipment. The application for a conditional use was received by the Board on March 26, 2012. Mr. Gladhill included the following in his application for a conditional use in that case:

Some of my work I do on-site at their locations but at times I need to service things at my shop. (some of the farms I work for do not have a shop/garage therefore needing a garage to service their equipment. I, Rob Gladhill have been in this line of work my entire life and would like to continue servicing my customers I have had for years. Gladhill Services is a business I own, which repairs farm equipment and machinery (some light welding from time to time).

In the conditional use case before the Board Mr. Gladhill wanted to work on farm machinery and equipment on his property on a part time basis. He could work a few hours a week. Some of the part time work on his property would involve welding. He drove a truck provided by his employer to and from work, and the truck was parked on his property. He had on the property two storage containers (40 feet X 8 feet and 8 feet X 20 feet). He also has several other items on the property including a couple tractors, a skid loader, a gator, a scraper blade, a couple of seeders, a plow, an 18 feet X 6 feet

trailer, and a snowblade. Many of his tools and equipment are left outside and are subject to every type of weather condition. Mr. Gladhill wrote in his application that “there are not customers dropping off/picking-up equipment except for very rare occasions 2-6 x a year if that.”

Notice of the public hearing for this case was posted in the newspaper. A hearing was conducted by the Board on May 29, 2012. The witnesses who testified at the hearing for the applicants were Robert and Michelle Gladhill. The witnesses who testified at the hearing in opposition to the application were Colleen Colvin, Michael Mock, Donna Jesse, Richard Philps, Paul Drneck and Christine Philps. The Board voted to approve a conditional use for the Gladhills to be followed by a written decision. (The oral decision by the Board became a nullity when it was not followed by a written decision. Section 223-188 of the Carroll County Zoning Code states that the Board must issue a “written decision.” The Board’s Rules of Procedure state that “final decisions...shall be made by a written order in the form of a decision duly entered and signed by the Chairman...”) At the conclusion of the hearing the Board allowed the Gladhills to come back for another day of hearings because the issue of the numerous variances had not been addressed to the Board’s satisfaction. Although the Gladhills were given the opportunity to come back to the Board with the proper evidence to prove the necessary variances, the continuation of the original hearing never occurred.

The Zoning Administrator discussed with Mr. Murphy that a “home occupation” might be an option for the Gladhills on September 11, 2012.

Case 5635 was withdrawn by the Gladhills as a result of an October 25, 2012 letter from their attorney, Daniel Murphy, to the Office of Administrative Hearings.

### **DISCUSSION**

A “home occupation” in a Conservation District is considered one of many accessory uses in Section 223-35. In general, an accessory use is regarded as “a use which is dependent on or pertains to the principal or main use.” County Comm'rs of Carroll County v. Zent, 86 Md. App. 745, 758 (1991). There is an obvious issue as to whether a small engine repair business pertains to a residence. Since there was testimony from the Zoning Administrator that the county did not have any other small engine repair shops certified as “home occupations,” the Board could conclude that a small engine repair business did not pertain to a residence. Mr. Voight testified that most of the certified “home occupations” in the county involved work in the home. So most people would live in the same area where they worked. In this case the shed, which was visible from the outside as noted in Protestant Exhibit 2e, was located in the back yard. It is significant that in the Gladhills request for a “home occupation” that no part of the business was actually in the home.

Maryland courts have determined that accessory uses were found in a number of cases: an asphalt plant was an incidental and customary accessory use to a large nonconforming rock quarry; the rental of cargo trailers where the income was minor compared to the service station’s other income was held to be an accessory use customarily incident to the primary service station use; boarding of dogs a continuation

of prior nonconforming use involving occasionally boarding of dogs in connection with breeding; and a restaurant was determined to be an “accessory use” of a bowling alley, where the evidence of bowling alleys customarily had restaurants. Id. at 767.

Maryland courts have found that accessory uses did not apply in other cases: storage of recreational vehicle in residential zone not incidental or accessory to residential use; sleeping quarters for restaurant employees not customarily incidental; a car wash not invariably an accessory use to a service station so as to justify the extension of the nonconforming use; and a dentist’s office not accessory use to nonconforming apartments in the same building. Id. at 767.

The definition of “home occupation” in Section 223-2 of the County Code is any use of a dwelling conducted solely by a resident, or use of any accessory building which is incidental or subordinate to the main use of the principal building for dwelling purposes, provided that the use:

- A. Utilizes, space equal to not more than 500 square feet.
- B. Does not generate vehicular parking or nonresidential traffic to a greater extent than would normally result from residential occupancy;
- C. Does not involve retail sales from the premises;
- D. Involves no evidence from the outside of the dwelling to indicate it is being used for anything other than residential purposes...

The definition of “home occupation” states that the use must be “incidental or subordinate to the main use of the principal building for dwelling purposes.” Section 223-2.

A Maryland court described the meaning of incidental in an accessory use case in County Comm'rs of Carroll County v. Zent, 86 Md. App. 745 at 768 as follows:

The word "incidental" as employed in a definition of "accessory use" incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance. Indeed, we find the word "subordinate" included in the definition in the ordinance under consideration. But "incidental," when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant . . . .

The Board finds that a small engine repair shop does not have a reasonable relationship with the primary use of a residence. One does not need a “home occupation” to do work on someone else’s property.

A “home occupation” must be something which is customarily incident to the use of the premises as a dwelling. Maurer v. Snyder, 199 Md. 551, 561 (1952). A small engine repair shop was determined by the Board to not be customarily incident to the use of the premises as a dwelling. The definition of a “home occupation” does not broaden but narrows the definition of “home occupation.” Id. at 563. “It does not include as a “home occupation” any commercial enterprise which can be conducted on a lot...without

usurping” the primary use of the dwelling.” The Board mentioned that it may be going down a “slippery slope” if it allowed every mechanic or mechanically oriented person in the county the ability to open a small engine repair shop at their house.

Whether or not the appellant was within the 500 square feet of space as required in the definition of a “home occupation” was an issue for the Board. The shed used by Mr. Gladhill was a total of 476 square feet. That number is certainly less than the Code requirement of 500 square feet. However, there were other items that might be used in the business that were not counted toward the 500 square feet. Mr. Gladhill testified that he may have to use the trailer for the business. The trailer dimensions were 18 feet by 6 feet. The Code also would permit Mr. Gladhill no more than 2 commercial vehicles as an accessory use to a residential use for more than one acre. Mr. Gladhill’s residence was on three plus acres. He testified to having four vehicles including the Eastern Truck lift vehicle and the truck with Gladhill Services, Inc. written on the side of it. He also testified that he may have needed to use the lift on a truck for the business.

A zoning inspector noted on February 15, 2012 that there were three commercial vehicles on the property: dump truck, trailer, and large truck with lift and logo. On November 2, 2012 a zoning inspector found four commercial vehicles on the property: one white utility crane truck with Gladhill Services-Equipment repair service on the side of it, one dump truck with yellow orange crew cab, and two trailers. There were three commercial vehicles on the property on December 17, 2012. There were three commercial vehicles on the property on January 22, 2013: a trailer, a dump truck and white crane truck with company logo.

The Board found that Mr. Gladhill did not comply with the 500 square feet requirement.

The Board also had a concern about the amount of traffic that would be generated by the business. That traffic would have included Mr. Gladhill going to pick up small engines and returning the repaired small engines. It would have included Mr. Gladhill going to customer homes to repair the small engines at that location. It also would have included trips for parts and tools. The traffic also would have included the customers that came to his house. Diana Theologou considered herself to be one of those clients at times. The added traffic would also have an impact on the common driveway.

The shed would be evident from the outside of the dwelling. It was clear that the Gladhill’s had a number of vehicles and pieces of equipment at the residence. The record was clear that the premise included the house, the shed, a sea container and all of the equipment previously mentioned. The shed alone would be an acceptable part of a residence. However, a shed, a sea container, (formerly two sea containers one of which 8 ft. by 40 ft. Protestant Exhibit 2c) and all of the other things may have tended to make the residence look atypical. The appellant stated that he had sold a dump truck and removed a sea container since the earlier case before the Board. In addition, a shed for the purpose of a small engine repair shop only five feet from a neighbor’s property line is certainly evident to others.

The Board is always in a position to consider the credibility of witnesses. Counsel for the Protestants raised instances where Mr. Gladhill's testimony could be seen as less than credible. Mr. Gladhill testified that he closed down Gladhill Services, Inc. shortly after he obtained his new job with Eastern Lift Truck Company, Inc. If he has been with Eastern for 2-2 ½ years then he started approximately January 2011. Part of his testimony would suggest that he discontinued Gladhill Services, Inc. around that time. However, in case 5635 he wrote that "Gladhill Services is a business I own." It appeared that at the time he made the application to the Board that he was still in business as of the date the application was received on March 26, 2012. It was relevant to the Board to consider whether Mr. Gladhill was in fact running a business when he previously stated that the business had been closed for years.

Mr. Gladhill also suggested that although Gladhill Services, Inc. may have been closed earlier that Gladhill Services may have continued thereafter. That means that the formal company may have ended but business continued.

Mr. Gladhill also testified that he would have no clients or customers coming to his residence for the small engine repair business. However, he wrote in the case 5635 application that "there are not customers dropping off/picking-up equipment except for very rare occasions 2-6 x a year if that." Mr. Voight testified that Mr. Gladhill told him at the Zoning Administrator's hearing that he might have a few clients come to the house. A few clients coming to the house is different than zero clients. Even his neighbor considered herself a client for some purposes.

The Gladhills made claims that they would follow all the laws that applied to them. However, it is interesting to note that they were told by the zoning administration on November 26, 2012 to remove the sea containers and yet as of the date of the hearing one sea container still remained. Sea containers have been on the property since at least January 2012. That means that one sea container has consistently been on the property for approximately one and a half years. Mr. Voight testified that you can only keep a sea container on your property for sixty days with the possibility of two sixty day extensions. The Gladhills were told what the law allowed with regard to the sea containers and as of the hearing date were not in compliance. The Board found it difficult to find that the Gladhills will suddenly follow all laws when they have been in violation of keeping at least one sea container on their property for so long.

The Gladhills were aware of the number of commercial vehicles they could have on the property as no more than two. Yet on three separate occasions a zoning inspector found three or more commercial vehicles on the property. Mr. Gladhill testified at the hearing that he had three commercial vehicles: the truck with Gladhill Services, Inc. on it, the Eastern Lift truck and an 18 feet X 6 feet trailer. This was another instance of noncompliance with laws and regulations.

At the hearing Mr. Gladhill stated that if he had his druthers that he would have preferred to have the conditional use that he applied for in case 5635. Presumably he would rather have had the conditional use because it would have given him greater latitude in his ability to conduct business.

After a lifetime of working on farm machinery and equipment he was now applying to work on small engine repairs. He would still go to clients homes to repair machines that he could at that location. He would still bring back machinery to his house that he could not repair at the customer's home.

Based on all of Mr. Gladhill's testimony the Board had to consider his credibility. With the request for a "home occupation," he would still be in a position to work on farm machinery at a customer's residence. That plays no role in a "home occupation." However, he would then have to tell his long term customers that he could not work on large engines at his home because he was only permitted to work on small combustion engines. He could not work on large engines belonging to customers outside of his house. He would be restricted to working on small engines in the shed. Mr. Phelps and/or Mr. Drneck testified that machinery would stay on the Gladhills property for a few days and then disappear. This occurred when no conditional use was approved by the Board. The Board did not accept Mr. Gladhill's version of events that all laws would be followed based on all of the other violations of the zoning code.

### CONCLUSION

The Board was convinced that request for a "home occupation" of a small engine repair shop was inconsistent with the purpose of the zoning ordinance. Based on the findings of fact made by the Board above, the Board found that the proposed project did not constitute a "home occupation" and even if it could qualify as a "home occupation" it did not meet all of the elements in the definition of a "home occupation."

8/8/2013  
Date

  
Howard Kramer, Acting 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.