

Tax Map/Block/Parcel
No. 71-24-251
Case 5723

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

APPELLANT: Charles Kevin Evans
1932 Gillis Falls Road
Woodbine, MD 2

ATTORNEY: Isaac Menasche

REQUEST: An appeal of the Zoning Administrator's decision regarding a home occupation (diesel repair shop).

LOCATION: The site is located at 1932 Gillis Falls Road, Woodbine, MD 2, on property zoned "C" Conservation District in Election District 14.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-35 (1), 223-188

HEARING HELD: September 25, 2013

FINDINGS AND CONCLUSION

On September 25, 2013, the Board of Zoning Appeals (the Board) convened to hear an appeal of the Zoning Administrator's decision regarding a home occupation (diesel repair shop). Based on the testimony and evidence presented, the Board made the following findings and conclusions.

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

Charles Kevin Evans requested a diesel repair shop as a home occupation. He lives on a 5.3 acre lot at 1932 Gillis Falls Road, which is located in the Conservation District. The property has a single family dwelling on it and a four car garage. The house was built in approximately 1986. It was testified that the garage had four separate bays in it. He used one of the bays for his home occupation business. One bay contained his service truck. The other two bays were used to store and work on personal vehicles of Mr. Evans. He obtained a use and occupancy permit for the garage. The garage is screened from the rest of the property and adjoining neighbors by evergreen trees. His garage is not visible from the roadway or from neighbors' property. In order to protect his valuable property, including race cars and tools, he has obtained security

cameras, gates, and dogs. He had spoken to all of his neighbors about his business and they did not have a problem with it or objection to it.

Mr. Evans stated the following about his home occupation business. He conducted all of the work for the home occupation inside one bay of the garage. The space in that bay was approximately 650 square feet. At times there are deliveries to the garage. As a diesel engine mechanic he travelled to customers to repair engines. He also brought trucks and other types of diesel engines back to the one bay in his garage to work on them. He never worked on the diesel engines outside of the designated bay in the garage. He had been operating his business in this fashion since the garage was built in the mid 1990s. He obtained a use and occupancy permit for the garage in about 1996. Since he only uses one bay in the garage for the diesel repair work, he can only work on one engine and one vehicle at a time. For some vehicles he needs all of the 650 square feet of space in the bay and for others he uses less space. He does not advertise for his business. His customers are gained by word of mouth. Customers must make appointments to visit his property in order for the gates to be opened. The gates are usually kept locked. Sometimes Mr. Evans must purchase parts to conduct the repairs to the diesel engines. For this reason he has a sales and use license. Most of his repairs do not involve the removal of an engine. Some vehicles are towed into his garage for repair and others are driven in for the repairs.

Scott and Christine Trieschman testified that they had been Mr. Evans neighbors for seven years. They had no objection to him using one bay in the garage for the repair of diesel engines. They could not see the garage from their property. Mr. Evans keeps his garage clean and he does not have vehicles parked outside of it.

Gerald and Maryanne Distel testified that they were neighbors of Mr. Evans. They did not object to the home occupation.

Jay Voight, Zoning Administrator, testified as a witness in the case. He stated that the original permit for the garage stated that it was not for living quarters, commercial uses or animals. He also testified that Code Section 223-108 A states that a vehicle repair shop is a principal permitted use in the General Business District, the Restricted Industrial District and the General Industrial District.

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).

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...

It was emphasized by the appellant that the definition of a home occupation applied to “any use.” Any use would and should include a diesel repair shop. The Board did not find the occasional delivery of parts as a major traffic concern for the business. The Board did not find the occasional customer stopping by a traffic concern either. Neither of these two uses would be greater than would normally result from residential occupancy. In fact when Mr. Evans would work on a diesel engine repair at home there would be less traffic. All of the evidence was that the garage could not be seen by neighbors. In any case, all of his neighbors were not opposed to his request for a home occupation.

All but one member of the Board found that Mr. Evans did not conduct retail sales from his property. The majority of his work was in the labor and the cost of parts was not as great. He did not sell items off of a shelf in the garage for customers. Nor did he store items on the site for the sale to customers.

The Board found that the bay used for the repair work of 650 feet was acceptable. It found that all of the work was performed inside of the building and could not be seen by outsiders. It found that the grant of a variance from 500 square feet to 650 square feet would resolve any issue that remained.

In spite of the fact that vehicle repair shops were not specifically included in the Conservation District, the Board found that the “any use” language in the definition of a “home occupation” would include a diesel engine repair shop.

CONCLUSION

The Board was convinced that request for a “home occupation” of a diesel engine repair shop was consistent 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 constitute a “home occupation” and did meet all of the elements in the definition of a “home occupation.” The Board also granted the requested variance of 650 square feet of space to be used in the “home occupation.”

9-30-13

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.