

Tax Map/Block/Parcel
No. 72-19-288
Case 5868

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Joseph G. Jones
1924 Gillis Falls Road
Woodbine, MD 21797

ATTORNEY: N/A

**ATTORNEY:
OPPOSITION** David Bowersox
Hoffman, Comfort, Offutt, Scott Halstad
24 North Court Street
Westminster, Maryland 21157

REQUEST: An appeal of the Zoning Administrator's decision of May 18, 2015 in Case #ZA-1568, requesting a modification to an existing home occupation to allow computerized tuning services and mail order/internet sales, including on-site service to vehicles, and a variance of 695 square feet from the 500 square feet allowed.

LOCATION: The site is located at 1924 Gillis Falls Road, Woodbine, MD, on property zoned "C" Conservation District in Election District 14.

BASIS: Code of Public Local Laws and Ordinances, Section 158.071(E) and 158.130.

HEARING HELD: October 27, 2015

FINDINGS AND CONCLUSION

On October 27, 2015, the Board of Zoning Appeals (the Board) convened to hear an appeal of the Zoning Administrator's decision of May 18, 2015 in Case #ZA-1568, requesting a modification to an existing home occupation to allow computerized tuning services and mail order/internet sales, including on-site service to vehicles, and a variance of 695 square feet from the 500 square feet allowed. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

At the beginning of the hearing there was a motion to dismiss the appeal based on an earlier decision made by the Board in case 5793 in January 2015, which involved similar issues. The motion referred to the two year time frame that should transpire if the application is

disapproved by the BZA for substantially the same proposal on the same premises. The Board voted to not dismiss the case and to proceed with the hearing. However, it was recognized by the Board that much if not all of the evidence in case 5793 with regard to the notice of violation hearing would be relevant to the expansion of the existing home occupation, the subject matter of the instant hearing. Indeed, the decision and file, including all of the exhibits of case 5793, was entered into evidence as evidence in chief in this hearing. Mr. Jones asked during this hearing that the expansion of his home occupation allow him to keep performing as he had since the Board found that he was in violation and as he had been doing for years.

Jay Voight—Zoning Administrator

Jay Voight testified about his May 6, 2015 hearing with Mr. Jones. His written decision following the hearing is in evidence as Admin. Exhibit 1. Mr. Voight wrote that “there was ample evidence thru videos and information posted to his webpage that he is doing more than what he says; such as, installing exhaust systems, cooling systems, and other aftermarket parts onto the cars.” Mr. Voight wrote in his decision that “Mr. Jones currently has approval for a home occupation for an office for computer tuning and internet/mail order sales.” Mr. Voight considered that the Board had recently upheld a violation of the zoning laws for Woodbine Motor Sports. The activities that were occurring at the violation hearing earlier this year continue to be in place today. The same things that amounted to a violation of the home occupation certificate before the Board, are also indications that Mr. Jones is operating an automobile service station and not just a home occupation. There was no evidence that Mr. Jones was operating any differently than he was before the Board heard that [5793] case.”

The building that Mr. Jones was using for his home occupation was approved in a certificate of use and occupancy in Admin. Exhibit 4. A condition of that certificate was that it was “not for commercial” use. Mr. Voight found that Mr. Jones was carrying on an automobile service station out of that building in violation of the certificate that included as a special condition “not for commercial” use. Mr. Voight considered Mr. Jones’ credibility in the decision. The prior investigations by zoning staff, and Mr. Jones’ responses to inspectors were considered. Mr. Jones extensive internet presence was a factor. The fact that Mr. Jones stated that he needed at least five cars a month come to the property was a factor. The invoice and receipt in Admin Exhibit 10 showed that cars were tuned at the location. Mr. Jones said that he had four lifts for personal use and to work on his friends cars. Mr. Voight found it hard to believe that someone would have four car lifts for merely personal use. In the tour on the video (Woodbine Dyno Shop tour) he stated that the four lifts were available for use in the business. Mr. Voight’s May 6, 2015 decision went through the factors in Code Section 158.133(G). He found that Mr. Jones’ use did not meet eight of eleven listed considerations. Mr. Voight found that it was not customary to have an automobile service center with a residence. He further found that the use was not an incidental and subordinate use of the residence.

After the first day of the hearing, Mr. Voight provided additional testimony. He stated that the Mr. Evans in BZA case 5723 had a complaint lodged against him. As a result of the complaint, he opened a zoning investigation. At that time, Mr. Evans applied for a home occupation with the Zoning Administration. The Zoning Administrator denied Mr. Evans a

home occupation. However, the Board approved a home occupation for Mr. Evans. He had not received any complaints since Mr. Evans was granted a home occupation.

Mr. Voight told the Van Dittas that the zoning inspectors could not monitor Mr. Jones' property twenty-four hours a day and that any evidence they could provide to the Zoning Administration could assist with the prosecution of zoning violations.

At his May 6, 2015 hearing he stated that there was substantial evidence that Mr. Jones did more than just work on computer modules or internet sales. There was evidence that he had an employee. Customers were regularly coming onto the property. Mr. Jones was selling parts and he installed the parts in vehicles. There was a difference between a family with eight to ten cars coming and going from a residential property and a commercial business having cars coming and going from the property. At the hearing Mr. Voight did not see any evidence that Mr. Jones was operating differently. Woodbine Motor Sports was still offering services to individuals in Maryland, Washington, D.C., and Virginia. Customers in the tristate region came to the business located in Woodbine, Maryland for automotive services and not just for internet sales.

Jay Voight stated that he received his first complaint on the property in 2006. In 2006 Gale Fritz approved the zoning certificate for the business. The zoning certificate states that Mr. Jones can only have an office on his property. Mr. Voight received a complaint in August 2014 that the applicant was violating his home occupation certificate. The Zoning Certificate (2014 Investigation Report and Neighbor Exhibit 7 and Admin Exhibit 3) It has a line which has the following written on it: "Descr.: HOME OCCUPATION – OFFICE ONLY -- COMPUTER MODULES." The home occupation was approved because he described his business as "programming and sales of computer tuning modules." Protestant Exhibit 1. He was supposedly using more than 500 square feet of space for the business and having customers come to the property. When he originally applied for the business it was understood by county officials that he would receive computer parts and send materials back to the vehicle owners.

Joseph "JJ" Jones' home occupation was approved as long as the following four conditions were met (2014 Investigation Report and Neighbor Exhibit 7 and Admin Exhibit 3):

- 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 the sale of goods in the same form as purchased;
- D. Involves no evidence from the outside of the dwelling to indicate it is being used for anything other than residential purposes, other than a sign not exceeding one foot by two feet.

Since 2006 there have been three complaints opened in the Zoning Administration Office with regard to this business. The first one was made in 2006 by an anonymous source. It is IN-06-0469. Neighbor Exhibit 3 and Admin Exhibit 5. The second complaint was also anonymous and made in 2008. It is ZI-08-0073. Neighbor Exhibit 4 and Admin Exhibit 6. In 2008 Mr. Jones stated to zoning officials that he was not operating an auto repair business. Mr. Jones was

told that he would not be permitted to work on anyone's vehicles except his own. The third complaint was made in 2014. It is ZI-14-0210. The report file was accepted into evidence by the Board. All of the complaint reports noted that the applicant was running a car repair business out of his property.

Mr. Voight considered the applicants business like an automobile service station (center). He explained how Mr. Jones' business fit the definition of automotive service center. County Code §158.002.

Numerous photos and videos were sent to the Zoning Administration Office. In those videos Mr. Jones is seen working on automobiles. In one video Mr. Jones provides a tour of his facility.

Mr. Jones has a waste oil container outside of his building. A company picks up the waste oil on his property every six months.

WMS HAS EXTENSIVE INTERNET PRESENCE

The evidence was clear that Woodbine Motor Sports had an extensive presence on the internet. Numerous documents demonstrate that Woodbine Motor Sports has a presence on the internet and on the web. There are obvious and numerous efforts made to promote and market Woodbine Motor Sports. There are entries on Yelp, Facebook, YouTube, and forum posts. The sites include reviews of the work performed by the business. There is a slogan that the business is "your source for all your high performance needs." Neighbor Exhibit 8. Some of these items mention that the business is "serving Maryland, Virginia, and surrounding areas." Neighbor Exhibits 14, 15, 16 and 18.

A WMS representative wrote the following about the business: "I was the guy that fixed what other shops couldn't or wouldn't and I still do that to this day." This was written in a site to explain and describe WMS.

These are things that WMS does. "It is an authorized A1 transmission installation facility." It is a Shell Racing fuel dealer." It offers custom tuning. It has a "brand new in house dynojet dyno available for tuning or for just power pulls." "I am on the dyno with a customer." "We offer high quality installation of most any performance product." I will put together "built motor combination for a customer."

It has a "brand new in house dynojet dyno available for tuning or for just power pulls." "I am on the dyno with a customer." "We offer high quality installation of most any performance product." Neighbor Exhibit 5.

"Automotive performance tuning and installation of performance parts. Custom dyno tuning available via SCT Custom tuning software. We also provide custom fabrication as well as general repair and maintenance of vehicles. Ford, Chrysler and Chevrolet are our specialties but we can pretty much fix anything."

“When you deal with WMS you are dealing directly with the tuner/calibrator and the guys that are wrenching on the cars, no middle man salesperson involved, so you can trust you’re talking to the people that have hands on the very same car that you own.”

WMS has “set records and won races with Ford Lightnings and Mustangs.”

NO MORE THAN 500 SQUARE FEET

The home office certificate granted to Mr. Jones required that it be conducted in space not more than 500 square feet. Mr. Jones was clearly well over this 500 square feet requirement. He had a planned office area. He had four lifts. He had the dynojet. There was a drive-on lift for the dynojet. He had cabinets, computer, and keyboard for the dynojet. He had automobile parts. In his tour captured on video, Mr. Jones stated that the business had four lifts available to it. The pole building used by WMS had dimensions of 52’ by 32’. Neighbor Exhibit 20 and Admin Exhibit 8. The Certificate of Use and Occupancy included special conditions. Neighbor Exhibit 19 and Admin Exhibit 4. The special conditions were: “NOT FOR COMMERCIAL, LIVING QUARTERS, OR ANIMALS.” Through Mr. Jones’ testimony, the tour he provided of the facility, and all of the evidence, Mr. Jones was clearly using the pole building for the commercial purposes of operating Woodbine Motor Sports. Finally, the original notice for this hearing included the following language: “a variance from the 500 sq. foot minimum size requirement to allow a 695 sq. foot area.” Mr. Jones also stated that he knew that there was a 500 square foot limitation to his home office. All of these reasons clearly show that the business was using more than 500 square feet of space.

Mr. Jones interactions with the Zoning Office

The following statements were made by Mr. Jones during the 2014 zoning investigation (2014 Investigation Report and Neighbor Exhibit 9 and Admin Exhibit 7):

Mr. Jones informed me that he has approval to work on computers, etc. from his home. He said that the car parts he works on are the computers on vehicles (drive train calibration). In order to work on the calibrations on vehicles, Mr. Jones said people mail or email him the information and he works on them from his garage. He stated that he has a few race cars and dirt cars that he works on in his garage.

The majority of his work is done over the phone and on the computer. Occasionally manufacturers will send cars on a flat-bed truck to the property for Mr. Jones to install a tune on (approximately 10 cars per year). Mr. Jones said that he has the garage and the dyno mostly for his personal use as he has a race truck, cars, and go-karts.

The following statements were made by Mr. Jones during the 2008 zoning investigation: “Mr. Jones is still doing internet sales of tuning modules. He does not run repair business here...” Neighbor Exhibit 4 and Admin Exhibit 6.

The following statements were made by Mr. Jones during the 2006 zoning investigation: I do not “RUN REPAIR BUS RECEIVES NO MONEY FOR HOBBY ...” Neighbor Exhibit 3 and Admin Exhibit 5.

On one hand Mr. Jones suggested that the zoning office was helpful to him. He was under the impression that his home office operation was OK with zoning officials. He stated that zoning officials directed him in what actions to take in order to be in compliance with his home office certificate. The zoning officials only concern was that he not have customers come to the property. The 2006 zoning office investigation report states that “he cannot have anyone come to his property. He will have to go to where they are with computer.” Neighbor Exhibit 3 and Admin Exhibit 5. The 2008 zoning office investigation report stated on April 18, 2008 that “Mr. Jones is still doing internet sales of tuning modules. He does not run repair business here... He will discontinue bringing any vehicles here at all. He will have all vehicles taken to dynamometer location in the future.” Neighbor Exhibit 4 and Admin Exhibit 6. He went from taking work to another dynamometer location in 2008 to renting or leasing his own dynamometer. So as of the time he had his own dynojet, he no longer had to go elsewhere for his customers. His customers could come to his location. This action was contrary to the information that he was consistently provided by the zoning administration officials. Jay Voight testified that the occasional customer would be acceptable. However, regular and continuing customers would be a violation of the home occupation. Mr. Jones stated that four to six customers came to his house per month.

In a September 20, 2006 entry Mr. Jones stated that I do not “RUN REPAIR BUS RECEIVES NO MONEY FOR HOBBY ...” Neighbor Exhibit 3 and Admin Exhibit 5. He went from having a hobby in 2006 to a business thereafter. He clearly received money at the time he started his business. He testified that his business grew from 2006 to 2008 due to the internet and word of mouth. He testified at the hearing that Woodbine Motor Sports was his sole employment. As of the time he applied for a home occupation in 2006, his hobby turned into full time employment. It could be interpreted that the County bent over backwards to support Mr. Jones to the extent it could.

Mr. Jones testimony in case 5868

Mr. Jones stated that he appealed Mr. Voight’s decision about expanding his home occupation because he felt he could fit into the definition of a home occupation without any problem. He said that there was no evidence that he used the garage for anything other than a residential use. He stated that he did quite a bit of mail order and internet work. He said that occasionally a customer would come onto his property. He stated that he allowed customers to come to his property by appointment only. Since the property is gated, customers can only enter the property with permission. He heavily relied on the BZA case 5723 involving Mr. Evans. He stated that the traffic to Woodbine Motor Sports is normal for the residential traffic in the area. His garage was hidden by evergreens and a privacy fence. He stated that his livelihood was at stake in this matter.

On cross examination he admitted that he still had the \$250,000 commercial insurance policy on the garage. He still had an extensive internet presence. He still used phrases like “your source

for all your high performance needs” as part of his internet presence. Van Ditta Exhibit 4 and 6. He noted that he had sold the dynojet. He stated that he only had two lifts in the garage because two of the lifts were not in working condition. He also stated that he wanted to perform work similar to the work he was doing at the earlier Board hearing. He stated that Mr. Evans lived nearby. In fact, he added that Mr. Evans lived about fifty yards behind him. He wanted the County to treat him the same way the County treated Mr. Evans. He was now asking for occasional customers to be able to come to his property and asking for the same allowance that Mr. Evans was given. The occasional customer would be from four to six customers per month.

He admitted that he understood that the Evans case did not set a precedent for him. On the other hand, he believed that his treatment with regard to the zoning violation was unfair and discriminatory. He commented that the video that showed burnouts was in the year 2009 and occurred at a cookout. He mentioned that he tried to put bundles of things together in order to create sales for his business.

Cynthia Van Ditta’s testimony

Mrs. Van Ditta incorporated her prior testimony at the Zoning Administrator’s hearing in May 2015. She stated that the activities of Woodbine Motor Sports diminished after that hearing. In July 2015 up to four cars would come to the location in a day. Although cars did not come to Woodbine Motor Sports every day, she described the cars coming there as regular and routine. Some vehicles arrive by a tow truck and others arrive by a flatbed truck. She stated that road testing of cars still occurred on Gillis Falls Road. She heard several burnouts near Mr. Jones’ gate. Two such burnouts were identified in Van Ditta Exhibits 1 and 2. She stated that she had not heard the dynojet since May 2015. She constantly heard noises at Mr. Jones’ garage like the type of noise one would hear at an automotive center. Mrs. Van Ditta stated that she and her husband did not have quiet enjoyment of their home with the automotive center operating next door. Her driveway is used as a turnaround spot for some of Mr. Jones’ customers. She observed infrequent traffic going to Mr. Evans’ property. There is no evidence on the internet that Mr. Evans has a shop. Mr. Jones’ garage is ten feet from the property line and fifty to sixty feet away from her home. She estimated that Mr. Evans’ shop was one seventh of a mile away from the road.

David Straitman’s testimony

The Board accepted Mr. Straitman as an expert in the field of real estate appraisals. He determined that Woodbine Motor Sports created externalities that could impact the property values of adjoining residential properties. Noise, hazards/odors, nuisance behavior, and traffic were some of the externalities that impacted property values. He found that Woodbine Motor Sports will have a likely negative influence on values of adjoining properties. He regards the typical negative externalities of noise, hazards, odors, nuisance behavior, and traffic as ongoing issues for the neighbors of Woodbine Motor Sports. The use of an auto service center in the Conservation District is not a permitted use.

Where's the Beef vs. Catch Me if you can

The applicant had a theme in the case of "Where's the Beef." The zoning inspectors never caught Mr. Jones with any customers coming to his business. There was a suggestion that the zoning inspectors never told Mr. Jones that he had violated the 500 square foot requirement of his home occupation. Based on his dealings with the zoning officials Mr. Jones stated that he thought his business was in compliance with zoning. However, the zoning officials made it clear that he was not to have customers coming to the property. As far as the 500 square foot space requirement, zoning officials had relied on Mr. Jones' statement that he was complying with the terms of his home occupation certificate. The claim is that the County officials allowed Mr. Jones to violate his home occupation without doing anything about it.

Counsel for the Van Ditta's theme of the case was "Catch Me if you can." Mr. Jones had erected a fence after the complaint was lodged in 2014. Customers and zoning inspectors could visit the business by appointment. According to Mrs. Van Ditta, Mr. Jones told her that he put up the fence to hinder her efforts of complaining and assisting the county zoning officials. Mrs. Van Ditta also claimed that four to five cars were entering Mr. Jones' facility per day. Mr. Jones went from a hobby with his home occupation to a full time business. There were three separate complaints in 2006, 2008, and 2014 about Mr. Jones running an automotive repair center. These complaints were made by at least two different people. His home occupation certificate was for office only computer modules. The home occupation was approved because he described his business as "programming and sales of computer tuning modules." Protestant Exhibit 1. Now he has a full time job and customers coming to his home for Woodbine Motor Sports. The investigation was abated in 2008 because the inspector "saw no evidence of an auto repair shop on Mr. Jones' property and the complainant did not provide the inspector with any evidence. Neighbor Exhibit 4 and Admin Exhibit 6. The allegations of Mr. Jones' operating an auto repair center have existed since he obtained the original home office certificate. However, until the allegations arose in the 2014 case, there was no proof of the violation. Mr. Jones stated that you can't swing a dead cat without hitting someone's auto repair shop. He stated that what he meant by this expression is that there were many unauthorized or undocumented auto repair shops in the County. This was mentioned to demonstrate that there were other auto service centers in the County that were not being challenged by the zoning office. In his case he had obtained a home office certificate for part of his business. He had a preexisting home occupation since 2006. However, fixing cars in your garage and having customers come to your house was not the same as "programming and sales of computer tuning modules." Protestant Exhibit 1.

In case 5868 the Board was holding a de novo hearing. The Evans decision had no bearing on this case. The only relevance that the Evans case had was that it was around the same neighborhood. Mr. Jones harped on the physical evidence against him. He believed that the violations had to be seen and heard. The zoning inspectors did not have any personal physical evidence against Woodbine Motor Sports. A home occupation is an accessory use, which is customarily incidental and secondary to the principal use of the property. The operation of an automotive garage in the Conservation District was not customarily incidental to the primary use of a residence. The garage in Woodbine, Maryland is the primary location for Woodbine Motor Sports. The history of Mr. Jones' statements to zoning inspectors and his actions thereafter should also be considered in reviewing his credibility.

It is reasonable to take the position that Mr. Jones was in compliance with his home occupation unless there was a complaint. There was both direct and circumstantial evidence against Mr. Jones that proved the violation of his home occupation. Mr. Jones' claim is that the County officials allowed Mr. Jones to violate his home occupation without doing anything about it. However, County officials could not charge Mr. Jones with a violation unless there was sufficient evidence to prove it.

There was inconsistent evidence from Mr. Jones as to whether he ran an automotive repair business. On the one hand Mr. Jones claimed that the majority of his business involved internet sales. On the other hand he stated that one out of every four vehicles need parts installed. He had four lifts available for the business. He was renting or leasing an expensive piece of equipment in the dyno. He wrote that people could have their "A1 transmission installed here" at Woodbine Motor Sports in Neighbor Exhibit 15. "We are a three person operation here and wouldn't have it any other way." Neighbor Exhibit 11. "We are a three person operation here with two of us in the shop and Debbie in the office." Neighbor Exhibit 10. He was always very specific in stating that four to six customers came to him with their vehicles per month for work inside of his garage. The four to six number a month was mentioned several times throughout his testimony. He stated that he had a garage liability policy of \$250,000. Since Mr. Jones stated that one could not swing a dead cat without hitting an auto repair shop in the area, it is reasonable for him to operate one of those shops. As opposed to those other unlawful and illegal operators, he has made some attempts to comply with the law.

In this case there was both direct and circumstantial evidence to prove the violation. Mr. Jones' extensive internet presence was direct evidence of his business and the space used in his business. Photos and videos showed him at work on his full time job. None of the photographic or video evidence showed him performing work related to internet sales. At one point Mr. Jones testified that he was not in compliance with his home office certificate. On page four of Neighbor Exhibit 7 and Admin Exhibit 3, Mr. Jones completed the space that stated he agreed "to comply with the definition of Home Occupation." We also provide custom fabrication as well as general repair and maintenance of vehicles. General repair and maintenance of vehicles as attributed to WMS on the world wide web sounds like an auto repair center. Mr. Jones stated that after his work was performed in the garage that he road tested vehicles. Mr. Jones suggested that there were many auto repair shops in his area and he was just one of many. He was better than most because he tried to comply with zoning laws. Mrs. Van Ditta testified that Mr. Jones was operating an automotive repair center at his home. Mrs. Van Ditta testified that when she talked on the phone people thought she was in an automotive repair center. He has operated the business since 2006 knowing that the county representatives did not expect customers to be coming to his property. The evidence of customers not coming to his property was ignored. Indeed, there is no evidence that Mr. Jones went to do work where the customers resided since he rented or leased the dynojet. Mr. Jones admitted that it would be a significant impact to his business if customers were not allowed to come to his property.

NEIGHBORS

Several neighbors testified that they did not have a problem with Mr. Jones working on cars on his property. Jeanie Edmonds stated that Mr. Jones was a responsible neighbor. Other people had cars that they worked on in the area. Mr. Jones' operation did not cause her any problems.

Lisa Morgan was a former neighbor to Mr. Jones. When she was a neighbor she worked from home. She also said that other people work on cars in the area. With regard to noise, she stated that there were sounds from farm machinery and noise from a nearby airport.

Scott Trieshman stated that he lived behind Mr. Jones. He was not disturbed by any noise that Mr. Jones made from his business. He stated that he made much more noise.

Linda Schulte stated that Mr. Jones was her godson. She stated that he changes the oil to her vehicles every 3000 miles. She claimed that zoning laws did not keep up with the marketplace.

John Boglitsch testified that he was on Mr. Jones' side. He was under the impression that Mr. Jones was being picked on.

Mrs. Van Ditta testified that Mr. Jones' auto repair operation disturbed her peace and enjoyment in her home. She stated that the garage was ten feet from the property line and less than one hundred feet from her home. She stated that she worked from home. She claimed that Mr. Jones automotive operation was daily. She observed five to six cars a day being worked on at the facility. The sheer volume of cars going to and coming from the property was indicative of an auto service center. She saw vehicles being towed to the garage. She objected to the noise, odor and traffic of Mr. Jones automotive repair business. She also stated that she provided the zoning administration with photos, videos, and documents of the type of business that Mr. Jones was running.

There were complaints in 2006 and 2008 by one or two individuals that Mr. Jones was operating an auto repair shop.

BZA Case 5723 for a home occupation of a diesel repair shop

In BZA case 5723, Applicant Exhibit 1, the Board approved of a diesel engine repair shop as a home occupation. The applicant would like the Board to consider his business as similar to the diesel repair shop's home occupation. Both businesses are located in the same general area. Both businesses are in the Conservation District. The main difference to the applicant is that he works on high performance vehicles and not diesel vehicles. Mr. Jones' garage is located on a one acre parcel and the diesel repair shop was located on a 5.3 acre lot. Another key difference was that Mr. Jones advertised on the internet and the diesel repair shop business was advertised via word of mouth. In case 5723 the applicant applied for a home occupation certificate and was denied it. In the instant case, Mr. Jones already had a home occupation and was expected to remain in compliance with it. In case 5723 the shop used space

of 650 square feet. In the instant case Mr. Jones requested a variance of the 500 square feet to 695 square feet. The person in case 5723 had no objections to his business from his neighbors. Mr. Jones has had three separate complaints lodged with the zoning administration office about his business. In the most recent 2014 complaint, the complainant assisted the zoning office by providing evidence for the violation. In case 5723 the diesel repair shop was operated by the home owner. In the instant case Mr. Jones wrote that “We are a three person operation here and wouldn’t have it any other way.” Neighbor Exhibit 11. “We are a three person operation here with two of us in the shop and Debbie in the office.” Neighbor Exhibit 10. One of the three people did not live in the home.

CONCLUSIONS

The Board found that Mr. Jones has gone a long way in his automotive business since he put “programming and sales of computer tuning modules” in his initial application for a home occupation. Mr. Jones in case 5793 stated that after the first two days of evidence being entered at the hearing that the issue of whether his client was in violation looked overwhelming. One of the Board members agreed with that assessment. However, that overwhelming evidence was increased after Mr. Jones testified as a witness.

The question was asked “Where’s the Beef?” Some people questioned whether the County was picking on individuals. The Board found by overwhelming evidence that Mr. Jones’ hobby in 2006 was a full scale, full time business now. The business that started out for the “programming and sales of computer tuning modules” has become an auto service center for high performance vehicles with three people now running the operation. The fact that he has a \$250,000 policy limit for his garage liability insurance is another factor that indicates his garage is a business.

It is clear that Mr. Jones is utilizing more than 500 square feet of space in this operation. It is also clear that the business generates traffic. There is traffic by cars being dropped off and picked up. There is traffic when vehicles are towed in. There is the traffic generated when the third person to the operation is utilized. There is also the traffic of the UPS vehicles for shipping. There is traffic when vehicles are test driven by Mr. Jones.

The Board found that the Evans case was completely different than the present case. No two properties are the same and they should not necessarily be treated the same. The operations in the Evans case and the instant case were very different. The proximity of the Evans garage and the Jones garage were different. There was no evidence that neighbors complained about noise, traffic, fumes, or burnouts from the Evans garage. There was and continues to the present to be neighbors that claim that Woodbine Motor Sports is affecting the quiet enjoyment of their home. The Board found that the past behavior of Mr. Jones was the best indicator of how he would continue to operate Woodbine Motor Sports. A purpose of a home occupation is not to generate an impact on neighbors. Activities of residential living in a Conservation District are tolerated but not a business like an automotive center.

Zoning ordinances today that allow home occupations as accessory uses often impose specific restrictions. Carroll County's ordinance is no exception. These varied limitations upon

home occupations and the conditions under which they may be maintained have a common denominator in their purpose to minimize the impact of home occupations upon their immediate neighbors. They represent a political compromise between the purpose of zoning to remove incompatible commercial use from residential districts, and the social necessity of permitting some of the traditional home occupations to continue. *Levinson v. Montgomery County*, 95 Md. App. 307, 321 (1993). An automotive center in a Conservation District is not one of those traditional home occupations.

As for the variance request with regard to 500', there was no evidence that the garage was unique or that there was a practical difficulty for expanding on the 500' requirement. In addition, Mr. Jones admitted that he could comply with the 500' restriction. Convenience is not a legitimate ground to grant a variance, and the request for an expansion will not be granted.

The Board found that the applicant had and was violating his home occupation certificate and upheld the May, 2015 decision of the Zoning Administrator. The Board found that the Zoning Administrator made the correct decision with regard to sending Mr. Jones the notice of violation in this case. Based on all of the evidence, the Board found that the applicant was operating an automotive service center in violation of his home occupation certificate.

11/10/2015
Date

Richard Simmons
Richard Simmons, 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 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.