

Tax Map/Block/Parcel  
No. 73-22-250

Building Permit/Zoning  
Certificate No. 91-0317

Case 3523

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

**APPLICANTS:** Jon R. Buck and Connie L. Buck  
6930 Sykesville Road  
Sykesville, Maryland 21784

**ATTORNEY:** Charles O. Fisher, Esquire  
179 East Main Street  
Westminster, Maryland 21157

**REQUEST:** Substantiation and enlargement of a  
nonconforming use, to extend commercial use to  
offices in the dwelling

**LOCATION:** 6930 Sykesville Road (Md. Rt. 32) in Election  
District 5

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

**HEARING HELD:** April 24, 1991

On April 24, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the request for substantiation and enlargement of a nonconforming use, to extend commercial use to offices in the dwelling at 6930 Sykesville Road (Md. Rt. 32).

The Board visited the site on April 23, 1991, prior to the public hearing.

The application, 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**

The 16 acre property is located on the westerly side of Sykesville Road (Md. Rt. 32) about one-half mile south of Freedom Avenue intersection. It is improved with a dwelling, barn, and a large mill building. All buildings predate adoption of the Zoning Ordinance on August 17, 1965. An office was established in the dwelling sometime after 1961 by the owner, Mr. DeVries Hering, in conjunction with operation of his insurance business.

The applicants, Mr. and Mrs. Buck, purchased the property in 1983. Prior to the purchase, he was aware that the zoning was "C" Conservation District. However, Mr. Buck stated that one of the reasons that he purchased the property was its potential for commercial use, and that he anticipated its use as now proposed.

Mr. and Mrs. Buck, their son and daughter-in-law own and operate Buck Industries, Inc., an engineering research firm using the office in the dwelling. Their son and daughter-in-law reside elsewhere.

The firm has used the mill building for storage and assembly of prototype mechanical and electrical products that the firm was contracted to develop.

The mill was operated to about 1937. From testimony presented on behalf of the request, Mr. Hering used it for storage of large farming tractors and equipment, lawn garden equipment, and major appliances from 1961 to 1978 in conjunction with operation of his business in the town of Sykesville. Some assembly and repair of equipment and appliances was conducted in the mill building. In 1978, he ceased using the building personally and leased it immediately to Liberty Discount Appliance, Inc. for storage of major appliances and lawn mowers. Testimony presented on behalf of the request indicated that appliances and lawn mowers were repaired there. The testimony pertaining to repair work is contradicted by the lease agreement.

The property was sold to Mr. and Mrs. Buck on June 29, 1983. Mr. Buck continued to lease the mill building to Liberty Discount Appliance, Inc. The Lease Agreement, Applicant's Exhibit 3, describes the premises as "Warehousing Mill." The agreement limits use of the building solely to storage.

In 1987, Mr. Buck established a business office for the firm in the dwelling, using the office established by Mr. Hering. In November of 1988, Mr. Buck applied for a zoning certificate for an engineering office, as a home occupation, for Buck Industries, Inc. No uses, other than the office, were listed on the application. The zoning certificate was subsequently issued with a copy of the definition of a home occupation as specified in the zoning ordinance.

Mr. Buck terminated the lease with Liberty Discount Appliance, Inc. January 1990, in order to use the space in the mill building for his own business. Although Mr. Buck stated that the building is used for storage, no evidence was presented regarding such use. Since then assembly areas have been established, including assembly benches and desks. Work, including welding, would involve assembly of products, which may be prototype models.

In October of 1990, Zoning Enforcement received a complaint regarding large compressed gas storage tanks on the property.

Following an inspection, a Notice of Violation, dated November 1, 1990, was issued for exceeding a home occupation. Mr. Buck filed an appeal of the Notice, but later withdrew the appeal and filed this application.

The substance of this application is that Mr. Buck wishes to operate his research engineering firm from the premises.

#### APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The property is zoned "C" Conservation District as depicted on zoning map 73B. The land use provisions for the district are expressed in Article 5. For the most part, business and industrial uses are not permitted in the district.

Article 4, General Provisions, Section 4.1, Ordinance deemed minimum regulations; uniformity, and Section 4.2, Compliance with ordinance, state respectively:

The regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land except as hereinafter provided.

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) reads 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<sup>1</sup>

(b) If no structural alterations are made, a nonconforming use of a building, structure or premises may, with approval of the Board, be changed to another nonconforming use which in appropriate use or classification.

(d) No building, structure or premises where a nonconforming use has ceased for six (6) months or more shall thereafter be used except in conformance with this Zoning Ordinance.

Article 20, Section 20.19, defines a home occupation as:

Any use of a dwelling, conducted solely by a member or members of the family residing therein, or use of any accessory building which is incidental or subordinate to the main use of the principal building for dwelling purposes; which utilized space equal to not more than twenty five (25) percent of the floor space of the dwelling; which does not generate vehicular parking or nonresidential traffic to a greater extent than would normally result from residential occupancy; in connection with which the sale of goods in the same form as purchased shall be prohibited; and with no other evidence other than a sign not exceeding 1 foot by 2 foot, from the outside of the dwelling to indicate it is being used for anything other than residential purposes.

(Amended 4/17/79)

Article 20, Section 20.27 defines a nonconforming use as:

A use of a building or of land lawfully existing at the time of this ordinance becomes effective and which does not conform with the use regulations of the zone in which it is located.

<sup>1</sup>With amendment of Article 17, Section 17.7 is now applicable.

### REASONING

By definition, nonconforming uses do not conform with the land use regulations of the particular zoning district in which they are located. Such uses are inherently incompatible with uses allowed in the district.

The provisions of Sections 4.1 and 4.2 are fundamental to the purpose of the zoning ordinance, specifying that the regulations of the particular zoning districts are minimum, to be applied uniformly, and that new uses or changes of existing uses must comply with the regulations of the particular zoning district unless subsequent provisions of Article 4 apply.

Section 4.3 (a)(1) provides that lawfully existing nonconforming uses may continue to be used, and structurally altered or enlarged with Board approval. However, Section 4.3 (b) requires Board authorization if the nonconforming use is to be changed to another nonconforming use. To be authorized by the Board, a change from one nonconforming use to another nonconforming use must be found to be the same or a more appropriate use or classification.

The goals of Section 4.3(c) and (d) are to prevent the reestablishment of nonconforming uses that have either been changed to "...a more appropriate use...", or that have "...ceased for six (6) months or more..."

In considering the provisions collectively, it is clear that nonconforming uses are viewed with wariness.

Currently, Mr. Buck wishes to use the mill building to store supplies that would be used elsewhere in performing contractual work over a lengthy period of time. Thus, it is evident that use of the mill building would not be limited to assembly of prototype products, and that Mr. Buck's present efforts are simply to fulfill his long range plan of using the mill building and dwelling to operate the engineering research business.

Mr. Buck contends that operation of his business from the premises, using the office in the dwelling and the mill building, is comparable to the use of the mill building by Mr. Hering and then Liberty Discount Appliance, Inc., that the business would not be detrimental to adjacent properties, and that the request is in keeping with the purpose and intent of the zoning ordinance. The Board disagrees.

The principle locations of Mr. Hering's business and that of Liberty Discount Appliance, Inc. were elsewhere. The mill building was used for storage purposes by each business; not as the sole business site. Assembly or repair work performed in the mill building would have been casual for both Mr. Hering and

Liberty Discount Appliance, Inc. for reason that their primary business interests were sales--not repairs.

Use of the mill building for storage purposes is not comparable to operating the engineering research business from the premises.

Accordingly, the Board is convinced that authorization of this request to allow the commercial use of the property would be contrary to the purpose and intent of the provisions of the zoning ordinance.

CONCLUSION

Therefore, the request for substantiation and enlargement of the nonconforming use to extend commercial use to offices in the dwelling is hereby denied.

May 23, 1991  
Date

JDN/bmh/c3523dec  
May 23, 1991

John Totura  
John Totura, Chairman