

Tax Map/Block/Parcel
No. 40-6-428
Case 5912

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: James W. Brathuhn, Jr.
1225 Brodbeck Road
Hampstead, MD 21074

ATTORNEY: Clark Shaffer, Esq.
73 East Main Street, Suite 1
Westminster, MD 21157

REQUEST: A request for a Conditional Use for a Blacksmith Welding Shop and a variance.

LOCATION: The site is located at 1300 Brodbeck Road, Hampstead, Maryland on property zoned "C" Conservation in Election District 8.

BASIS: Code of Public Local Laws and Ordinances, Sections 158.071(D)(10) and 158.040

HEARING HELD: March 2, 2016

FINDINGS AND CONCLUSION

On March 2, 2016, the Board of Zoning Appeals (the Board) convened to hear the request for a Conditional Use for a Blacksmith Welding Shop and a variance. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

James W. Brathuhn, Jr. testified as the applicant in the case. He lives across the street from the proposed site, where he has resided for approximately ten years. He has worked in the farming business all of his life. His father was a farmer. When his father passed away, he and his brothers took over the farming business. He stopped farming for health reasons in the 1990s. At that time he became an auctioneer. He performs auctioneering for agricultural related businesses. The existing building for the proposed site has been used for farming since at least 2006. He stated that he performed farming operations on the 8.36 acres where the welding shop was located. His farming work on the land where the 8.36 acres is located involves hay and straw.

Mr. Brathuhn started doing welding on farm equipment in the 1980s. He would use his welding abilities to fix and maintain his farming equipment. Sometimes he would use his welding skills to help or assist other farmers. Sometimes this welding work was performed for a

monetary sum. Since he has been an auctioneer he sometimes purchases farm equipment to work on it for resale to others.

Since his main job is one as an auctioneer, he can only devote time for welding on a limited basis. Typically he could spend one day a week on welding equipment or maybe three half days a week. His welding is primarily for his own farm. The welding was actually performed in the barn or in front of the barn. He would not perform a welding job that would require some form of certification. He stated that the welding work he performed would be typical of any farm in the County. Mr. Brathuhn stated that almost every farm in the County has a welder. He estimated that he would sell about one piece of equipment a month. Working on cars was not part of his welding business.

The house closest to the proposed site belongs to Robert Pawliske.

Due to a complaint to the County Zoning Office, the zoning inspectors came to the barn where the welding is done. The complaint had to do with welding in front of the barn. As a result of a complaint, the zoning officials told him that he needed to clean up or better organize his property. Mr. Brathuhn also obtained a license plate for a vehicle at the suggestion of the zoning officials.

Randy Bachtel testified for the applicant. Randy Bachtel works for BPR Inc. He completed drawings and documents for the Board in this case. The Board accepted Mr. Bechtel as an expert witness in land use, land planning and engineering. No other neighbor lives within 400 feet of the barn where the welding takes place. He stated that Mr. Brathuhn lived on lot 2 in Exhibit 8. Mr. Pawliske lives on lot 1 in Exhibit 8. He stated that this would be a permitted use in the Agricultural District. He stated that there were a pair of streams running through the property. He said there were also issues with the floodplain and a wetland area on or near the property in question. He stated that a plat of the property was sent to the Health Department. In response to that submission, the Health Department found that there were "no water or wastewater facilities" needed on the property. (Exhibit 9.)

Jay Voight testified as the Zoning Administrator for the County. He was satisfied with the document sent by the Health Department in Exhibit 9. He stated that this type of conditional use needed to satisfy twice the distance requirements. The required distance would be 400 feet. He explained that he considers the curtilage area to be 100 feet. In this case, Mr. Pawliske's house is approximately fifteen feet from the property line. Mr. Voight was asked to define what would be considered a junk yard. He read the definition to the Board. The last part of the definition includes the phrase "but not including a scrap pile kept on a farm for the purpose of providing spare parts and repair material." He then opined that the site did not constitute a junk yard.

There is a To Whom It May Concern letter in the file which is dated December, 2015. The letter was signed by Mr. Brathuhn. The letter lists several pages of individuals that know him. The individuals had no problem with him having the welding shop near his home.

Lauren Fanning testified in favor of the application. She stated that Mr. Brathuhn has been a gracious and a fantastic neighbor. She stated that he would work on one piece of equipment per month. Traffic was low in the area and the welding shop would not add any additional traffic to the area.

Robert Pawliske testified in opposition to the application. He lives on Brodbeck Road. He has lived at his property for approximately sixteen years. He had a concern that Mr. Brathuhn would be performing truck repairs. He did not believe that the welding shop was appropriate in a Conservation District. He further believed that the welding shop would lower

his property value. He stated that he could hear Mr. Brathuhn pounding inside of his house with the windows closed when it was a metal on metal situation. He also raised a safety concern with welding flashes. In his opinion there was no safe distance from a welding flash. He wanted all of the welding to be done inside the building. He went around to neighbors and brought a copy of the application with him. He submitted Opposition Exhibit 18, which is a two page document of neighbors who object to the conditional use requested. He called in some complaints to the Zoning Office with regard to the site in question. He stated that equipment was constantly being brought to and then taken away from the property.

Connie Brathuhn testified in favor of the application. She is married to the applicant. She took the photos represented in Exhibits 1-5 the day before the hearing. She said that the welding shop work would be for her husband's retirement. She stated that a new building would be constructed that would contain equipment now setting out in the open. She stated that more things would be leaving the property and it would look nicer. However, equipment would always be coming and going from the property.

George Renfro testified in favor of the application. He stated that some people made it seem as though Mr. Brathuhn would be running a large business. He stated that four days out of the week Mr. Brathuhn would not be around due to the auctioneering business. He added that Mr. Brathuhn just wanted to continue doing what he has been doing. He noted that Mr. Brathuhn wanted to comply with zoning laws.

Donna Stem testified in favor of the application. She works with Mr. Brathuhn. She stated that farmers weld because they need to maintain and repair equipment. She suggested that many things on the property had a useful value to a farmer. She believed that people needed to know the difference between junk and useful equipment on a farm.

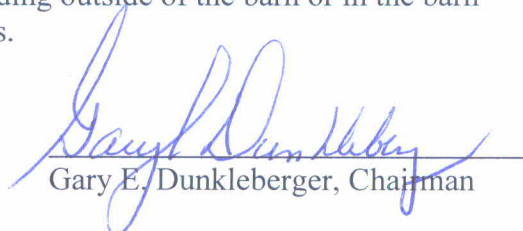
Jennifer Beeker testified in opposition to the application. She grew up on a farm. She owns a little more than three acres. She understands how some things can be perceived as junk when it may be useful to keep on a farm. She stated that there was a spring on the property. She mentioned that Mr. Brathuhn had been working hard to clean up the property. She objected to the effect on the environment. She also objected to equipment on the property that was not farm equipment. The property was not in its present condition before Mr. Brathuhn purchased it. She was also concerned about the decrease in the value of her property due to a welding shop approval.

On December 10, 2015, Nokomis Ford, Planning Technician, and Lynda Eisenberg, Chief, Bureau of Comprehensive Planning, sent a memorandum to the Board. The memo stated that the request is compatible with the vision and goals for the area as expressed in the Carroll County Master Plan. The staff finding was that the request is consistent with the 2014 Carroll County Master Plan and would not have an adverse effect on the current use of the property or its environs.

The Board was convinced that authorization of the request with regard to a conditional use was consistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered regarding conditional uses of the zoning ordinance, and would not unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the findings of fact made by the Board above, the Board found that the proposed project would not generate adverse effects (i.e. noise, traffic, dust, water issues, lighting issues, property depreciation, etc.) greater here than elsewhere in the zone. The Board approved the conditional use requested by the applicant. The Board also approved the variance requested by the applicant as a totality of the evidence presented supported the variance. A condition of the approval was

that the applicant must use a welding screen if he is welding outside of the barn or in the barn doorway so that the flash would not be harmful to others.

7 March 2016
Date


Gary E. Dunkleberger, 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 Land Use Article, Section 4-401 of the Annotated Code of Maryland.

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.