

Temple Smith Atty 212 Wash Ave
ref. Staines & Wheeler Violators

ra.3-6200

* → Walter R. Tabler - Atty ref.
Complainant

Sac. 7-1135
noticed of appeal
filed 3/24/55

Citt: W. Lee Harrison - Staines & Wheeler

* → Mrs. Sue - (Call from Mr. Arley - Sept 2, 53 - property
located in A Res. Zone)
Mrs. Sue - same information -

Mrs. J. V. Smith - lived here since 1938 - see property
her noise - noise starts about 8 o'clock PM
since 1945 when Bldg. was built. - Schuller
Iron Works left summer 1954. Building up
over 5 years and not 10 years.
Robert E. Hoet - moved in Sept. 1954 - next door
neighbor to violators.

Mrs. Dan. W. Wheeler - (bought in 1946 Sept) old barn used for
slaughter house - blacksmith shop - junk cars etc
on property when he acquired it
* But building up in 1948 - Schuller Iron Works
and building.

Sold ground where barn was located in 1950
1/2 acre tract.

John H. Burnett - Delight Road

Mr. C. Lobb - 1 bay there - 2 hot rods outside Building
2 inside and also 1 jeep.

James Staines - 1703 W. Jopka Rd.

Quilty - This property no longer has the right to operate
under the non-conforming law. The original use applied
prior to Jan. 1945 was discontinued for a period of four years
and then started in operation again.

Charles L. Stipule & Co

IN THE MATTER OF THE PROPERTY
OF DANIEL W. WHEELER,
West Side Nicodemus Road
2001 South of Cherry Hill Road
Fourth Election District of
Baltimore County

BEFORE THE BOARD OF
ZONING APPEALS FOR
BALTIMORE COUNTY

OPINION

This is an appeal from a decision of the Zoning Commissioner of Baltimore County dated May 16, 1955, holding that the operation and use of the subject property for an automobile repair shop was a violation of the Zoning Regulations and Restrictions for Baltimore County. The property owner and the tenant produced testimony before this Board which indicated that the property in question had been used, for some time prior to January 2, 1945, for an automobile repair shop, storage of old automobiles not in running order, pieces and parts of automobiles, transmissions, seats and other automobile parts which were stored and used in connection with the repair shop. There was also testimony that the very spot on which the present building is located was formerly a ravine which was used for the dumping of old automobile seats and refuse from the dismantled cars. Conflicting with this testimony was the testimony of two of the complainants, Mrs. Smith & Mrs. Huckleberry, both of whom testified that they did not know of any business activity on the property in question prior to 1945 but also admitted that they had made no investigation of the fact nor had they ever gone into the old building while it existed. We do not believe that we can deprive a property owner of the use of his property which has been substantially improved by a valuable building on such flimsy testimony. We cannot escape the fact that the property owner's testimony was verified by two entirely disinterested witnesses, one of whom was a former road supervisor for Baltimore County, Mr. Brunette, who had been familiar with this particular property and its uses for over thirty years. Additional evidence in the case indicates that the property continued to be used for this purpose until Mr. Wheeler began construction of the new building at which time he tore down the old building and cleaned up the junk and wrecked automobiles

from the balance of the property. It is undisputed that when the new building was completed in 1949, it was occupied by Schulte's Ironworks, a manufacturer of iron railings. It is further undisputed that this occupancy and use continued until August of 1954. Thereafter, property was rented to Mr. Staines, the present tenant, in December of 1954, who thereafter conducted an automobile repair shop until the date of the Order of the Zoning Commissioner which directed him to cease his operation.

After very careful consideration of the evidence presented in this case, we conclude that, as of January 2, 1945, a valid non-conforming use of a light industrial nature existed on the very property wherein the present building now stands. The evidence indicates that this property was used for automobile dismantling or storage of motor vehicles not in running order in connection with an automobile repair shop which was operated in the old building on another portion of this property. This use continued until the new building was constructed in 1949 and occupied by Schulte's Ironworks, said occupancy also being of a light industrial nature. The property continued to be used for this purpose until August of 1954 and was next occupied by the present tenant in December of 1954. Mr. Staines then used the property for an automobile repair shop and, as we find a valid non-conforming use existed up to that point, we must then turn to the question as to whether or not the use could be altered to that which would fall into a different classification without destroying the existing non-conforming use. Before discussing this point, it is to be noted that the evidence shows that the new building was approximately the same size as the old building and the property owner has paid a commercial or industrial tax rate on this property for a number of years. In addition, the regulations which were in existence at the time of this complaint provide that any lawful non-conforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original non-conforming use. No provision is to be found anywhere in those regulations which require such new construction to be connected to the old building.

In regard to the change from an ironworks to an automobile repair shop, it is the opinion of the Board that the change was from a use which would fall in a light industrial category to a use which would fall in a commercial category and such a change to a higher use is permissible under the then existing regulations.

Therefore, we conclude that the property owner had and still has a valid, legal non-conforming use for the operation of an automobile repair shop on the subject property and attach hereto our Order reversing the decision of the Zoning Commissioner of Baltimore County.

Charles H. DeWing
Board of Zoning Appeals

ORDER

For the reasons set forth in the foregoing Opinion, it is this day of January, 1956, by the Board of Zoning Appeals of Baltimore County,

ORDERED that a valid non-conforming use exists with respect to the property which is the subject of this proceeding which permits its use for the purposes of an automobile repair shop.

BOARD OF ZONING APPEALS OF BALTIMORE COUNTY
Charles H. DeWing
Carl T. DeWing

-3-

MAY 23 1955

ordinances therein involved show the statutory phraseology is quite different from that herein involved.

Charles H. DeWing, Chairman

Date: Jan. 30, 1956

Wilek H. Adams, Esq.
Zoning Commissioner
Bosman 4, Maryland

Re: In the matter of complaint
re property of Daniel W. Wheeler,
West Side of Nicodemus Road
2001 South of Cherry Hill Road
Fourth Election District

Please enter an appeal to the Board of Zoning Appeals of Baltimore County from the order of the Zoning Commissioner dated May 16th, 1955 in the matter of the above complaint and forward transcript of record to the Board of Zoning Appeals of Baltimore County.

Dated May 23, 1955

D. Temple Smith
Attorney for Daniel W. Wheeler

IN THE MATTER OF THE PROPERTY
OF DANIEL W. WHEELER,
West Side of Nicodemus Road
Fourth Election District of
Baltimore County

BEFORE THE BOARD OF ZONING APPEALS
FOR BALTIMORE COUNTY

Case No. 3565

DISSENTING OPINION OF
Charles H. DeWing, Chairman

On May 16, 1955, after due notice and public hearing, the Deputy Zoning Commissioner of Baltimore County passed his Order in the instant cause denying the existence of a nonconforming use on the property herein involved for the conduct of a commercial business thereon. An appeal from this Order was filed on May 23, 1955 and a hearing held thereon by this Board on June 16, 1955.

The present Zoning Regulations for Baltimore County were adopted on March 30, 1955 by Resolution of the County Commissioners of Baltimore County and Section 10.1 thereof provides:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue..."

Therefore, the sole issue before this Board is the application of the facts established in testimony to the above statutory provision.

In 1946 Daniel W. Wheeler acquired a tract of land located on the Southwest corner of Nicodemus Road and Cherry Hill Road in the Fourth Election District of Baltimore County. At that time the property was improved by an ancient structure fronting on Cherry Hill Road near the intersection. Subsequently, in 1946 or 1949 a new building was constructed by Mr. Wheeler approximately 250 feet South of the intersection and fronting on Nicodemus Road. The old building was razed and the site on which it formerly stood has been sold and a residence erected thereon. After erection the new building was rented to a Mr. Schulte who used it in the conduct of an ornamental iron works business. In August, 1954, the premises became vacant and remained so until December, 1954 when a Mr. Staines leased same and operated an automobile repair shop. This use was discontinued as per the Order of the Deputy Zoning Commissioner.

The use of the original structure on January 2, 1945 was disputed in the testimony as well as the use of the remaining land. I find as a fact

that the original building was used as an automobile repair shop. I further find as a fact that the remaining property, and particularly that part of same on which the new building is erected, was not used for anything except occasional casual storage and discard of automobile parts. This "casual use of the unimproved land is not sufficient under the standards established in *Daniels et al. v. Board of Zoning Appeals of Baltimore County*, 106 A.2d 57, to establish an "existing" use of the type necessary to legally create a non-conforming use. See *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623. The testimony offered by the appellee was overwhelmingly persuasive on this point. This being true the subsequent erection and use of the new building for manufacturing purposes and most recently as an automobile repair shop was illegal and no lawful nonconforming use was ever established. Also, I cannot overlook the building permit issued on June 6, 1949 for the new building states it was to be used for a "Garage and Farm Implements". Under such circumstances certain testimony by the appellant as to his intention in 1948 I view with considerable skepticism.

Even if it is assumed a nonconforming use was in existence on January 2, 1945 as to the part of the property on which the new building is situated it does not aid the appellant's cause. The argument of counsel for appellant to establish that such use was industrial and not commercial and, therefore, the new industrial use in 1948 (for ornamental iron works) does not effect a termination of the existing nonconforming use (Section 12, then Zoning Regulations) while ingenious is not persuasive. A junk yard is defined in Section 1 page 20 of the then Zoning Regulations as "... any land used in whole or part for storage of automobiles not in running condition or for the dismantling of automobiles...". Such use was permitted under the Zoning Regulations only by Special Permit and only in a "Heavy Industrial" zone. Every zone in the regulations refers to various uses permitted or denied therein. This property was zoned residential and no such use was permitted therein. Changing from a junk yard to an ornamental iron works is a change in use which if continued for one year caused an automatic termination by ordinance of the nonconforming use. The change in use involved herein began in 1948 or 1949 and continued until 1954. Counsel for appellant cited various authorities in his brief suggesting a contrary construction but reference to these cases and the

RE: PROPERTY OF Daniel W. Wheeler - West side
Nicomachus Road 200 feet South of Cherry
Hill Road - 4th District of Baltimore County

A hearing was held on May 13, 1955 to determine whether or
not a violation of the Zoning Regulations and Restrictions for Baltimore
County was taking place on the above property.

From the testimony it was disclosed that the property had
been used for a commercial automobile repair shop prior to January 2,
1945 and that, that operation was discontinued for a period of four
years. Since this use had been discontinued for a period of four
years, it is the opinion of the Deputy Zoning Commissioner that a
nonconforming use no longer exists for the operation of an automobile
repair garage on the subject property.

The Zoning Regulations and Restrictions for Baltimore
County specifically state, under Section 104.1, page 7, as follows:

"A lawful nonconforming use existing on the effective
date of the adoption of these regulations may continue;
provided that upon any change from such nonconforming
use to any other use whatsoever or any abandonment,
or discontinuance of such nonconforming use for a
period of one year or more, the right to continue or
resume such nonconforming use shall terminate."
It is the opinion of the Deputy Zoning Commissioner that
a nonconforming use no longer exists and that the present operation must
be discontinued.

It is, therefore, this 16 day of May, 1955, the opinion
by the Deputy Zoning Commissioner that a nonconforming use does not exist
on the above property for the conduct of a commercial business and the
operation must cease immediately.

Charles R. Hoffmann
Deputy Zoning Commissioner
of Baltimore County

ORDER

Upon the foregoing Petition and affidavit it is, this
24th day of February, 1956, by the Circuit Court for
Baltimore County:

ORDERED that a Writ of Certiorari be issued to Charles
W. Doig, Carl F. Holden and Daniel W. Hubers, constituting
the Board of Zoning Appeals of Baltimore County, to review the
decision and order of said Board of Zoning Appeals of January 30,
1956, and requiring said Board to return to this Court, all
papers, records and proceedings, in said matter and transcript
of all testimony presented before the Board in connection with
said proceedings and a copy of any and all rules and regulations
pursuant to which said Order was entered and said Board acted,
to enable this Court to review said Order and decision of the
Board acted, to enable this Court to review said Order and
decision of the Board and that a return to this Petition shall
be made and served upon the Defendant's attorney within ten days
from the date of this Order; and

It is further ORDERED that said Board of Zoning
Appeals of Baltimore County shall return to this Court all the
original papers, or certified or sworn copies thereof and the
return shall concisely set forth such other facts as may be
pertinent to show the grounds of the decision and the Order
appealed from, together with a transcript of all testimony taken
at the hearing and copies of the exhibits filed therewith.

Michael Paul Smith
JUDGE

True Copy Test
GEORGE L. BYERLY, Clerk
George L. Byerly
County Clerk

Form N-400, 1954

COMPLAINT REPORT

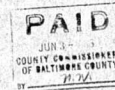
Name *James Saines*
Address *1405 West Popo Rd - Redwood Md*
Complainant *MR. & Mrs. Mary W. L. Saine*
Address *Cherry Hill and Nicomachus Rd*
Rec'd By *C. Hoffmann* Letter _____
In Person _____ Telephone *at home to call for*
Details of Complaint (Be definite)
*A. This garage used as a property for
repair commercial operation - property was
formerly used for the repair of cars.
Mr. & Mrs. Saines - suspects - this is a property for cars
Mr. Saines - this is a property for cars - this is a property for cars*
Inspector's Report
*Large building about 1000 sq. ft. located
on the corner of Cherry Hill and Nicomachus Rd.
Building is a single story building with a
garage door on the side. The building is in
poor condition. The building is used for
the repair of cars. The building is used for
the repair of cars. The building is used for
the repair of cars.*
Date *5-16-55* Signature of Inspector _____
(Over)

June 1, 1955

\$30.00

RECEIVED of J. Temple Smith, Attorney for Daniel W.
Wheeler, the sum of Thirty (\$30.00) Dollars, being cost of
appeal to the Board of Zoning Appeals of Baltimore County from
the decision of the Zoning Commissioner in the matter of a
nonconforming use existing on property on the west side of
Nicomachus Road 200 feet south of Cherry Hill Road, 4th District.

Zoning Commissioner



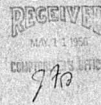
May 10, 1956

\$9.00

RECEIVED of Walter R. Tabler, Attorney, the sum of
Nine (\$9.00) Dollars being cost of certified copies of papers
filed in the matter of use of property on west side of
Nicomachus Road, 200 feet south of Cherry Hill Road, 4th
District, Daniel W. Wheeler, owner.

Zoning Commissioner

CL-623 - Zoning Service charges



NO PLAT
IN
THIS FOLDER