

JAMES COX
VS
BOARD OF ZONING APPEALS
OF BALTIMORE COUNTY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
MISC. NO. 1736

The petitioner claims a non-conforming use covering his North Point Road property. After a hearing before the Deputy Zoning Commissioner, who held there was no lawful non-conforming use, an appeal was taken to the County Board of Appeals who, after a hearing, affirmed the decision of the Deputy Zoning Commissioner, whereupon an appeal was filed to this Court.

On the present state of the record this Court would have no hesitancy in holding there was no sufficient evidence to justify a finding that a lawful non-conforming use existed. On the state of the present record there is some testimony showing that fifteen or twenty junked cars had been abandoned by trespassers and that these cars were still on the property in June 1945 when the present owner purchased the same. There is some evidence that on two or three instances some one did sell a part from a junked car but the testimony was extremely vague and the use of the property was too casual to justify holding that a non-conforming use existed.

However, counsel for the applicant has requested that the case be remanded so that he can produce additional testimony before the Board of Appeals. Under Section 532 of Title 30, sub-section 4, the Court has the power to remand any case for further proceedings. If the applicant can secure and present additional evidence he may be able to prove that he does enjoy a lawful non-conforming use and, there being no objection made to the request for a remand, the Court will ORDER the same.

John E. Raine, Jr.
Deputy Zoning Commissioner
October 31, 1957

JAMES COX
VS
BOARD OF ZONING APPEALS
OF BALTIMORE COUNTY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
MISC. NO. 1736

ORDER OF COURT

Pursuant to the memorandum of the Court dated October 21, 1957, as amended, IT IS ORDERED that the above entitled case be referred to Spiro T. Agnew who is hereby designated by the Court as a Referee to hear any additional testimony submitted by the petitioner.

True Copy Sent
JOHN E. RAINES, JR.
Deputy Clerk

November 8, 1957

PROPERTY OF JAMES COX,
2719 NORTH POINT ROAD
TWELFTH DISTRICT OF BALTIMORE COUNTY : ZONING COMMISSIONER OF BALTIMORE COUNTY

Mr. Commissioner:

Please enter an appeal to the Board of Zoning Appeals from the Order of the Deputy Zoning Commissioner dated April 17, 1956, in the above entitled matter.

John E. Raine, Jr.
John E. Raine, Jr.
Attorney for James Cox

JOHNNIE BOWIE
ATTORNEY AT LAW
TOWSON 4, MD.

Filed
APR 24 1958

RE: PROPERTY OF JAMES COX
2719 North Point Road
Twelfth District of
Baltimore County

BEFORE
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
No. 3814

OPINION

The matter of the zoning violation on the above property was decided by the Board on March 19, 1957 at which time the Defendant's contention that he had a nonconforming use was rejected. The matter was then appealed to the Circuit Court for Baltimore County, which, after additional proceedings, passed an Order on January 6, 1959 affirming the Board's findings of the violation.

The Defendant came before the Board with a request to reclassify the subject property on December 4, 1958, at which time certain testimony was introduced which had probative force on the matter of the nonconforming use, not then before the Board. Upon petition by the Defendant, the Circuit Court passed an Order remanding the instant violation case to the Board so that it could consider the new evidence produced in the reclassification case and redetermine the matter of violation. Of even date herewith the Board has passed an Order in case No. 3814 denying the reclassification and referring to this Order.

Upon consideration of the new evidence in conjunction with the evidence produced at the former hearing on this zoning violation,

RE: PROPERTY OF JAMES COX
2719 North Point Road
12th District of
Baltimore County -
VIOLATION

DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY

On April 17, 1956, the Deputy Zoning Commissioner of Baltimore County determined that a lawful non-conforming use for the operation of a junking operation did not exist at 2719 North Point Road, as then conducted and operated by James Cox.

On March 19th, 1957, the County Board of Appeals for Baltimore County, affirmed the decision of the Deputy Zoning Commissioner and directed the Deputy Zoning Commissioner to Order the unlawful use terminated and provide a period of not less than ninety (90) days for such termination.

On January 6th, 1958, Circuit Court Judge John E. Raine, Jr. affirmed the Decision of the County Board of Appeals.

It is this 17th day of February, 1958, ORDERED by the Deputy Zoning Commissioner of Baltimore County that the above violation shall be ceased ninety (90) days from the date of this ORDER.

John E. Raine, Jr.
Deputy Zoning Commissioner
of Baltimore County

RE: PROPERTY OF JAMES COX,
2719 North Point Road,
Twelfth District of
Baltimore County

After hearing the testimony and having given every consideration to Mr. Cox and his alleged violation of the Zoning Regulations I can find but one answer, that he is guilty.

By his own admission (Mr. Cox) told Mr. McClelland, the Zoning Inspector, that he moved to the 2719 North Point Road address in May of 1946 or 1945. This fact would seem to be closer to the truth and exact date because Mr. Cox was issued his building permit, number 2335, on February 6, 1946 to erect a building 40' x 30' x 16'. The only other building permits issued near Mr. Cox were the two permits for Mr. Heinicke's Repair Shop, number 12132 on November 14, 1951 and for his Welding Shop, permit number 20719, April 8, 1953.

As far as it can be determined by this office Mr. Cox does not have a nonconforming use, he failed to produce any records to indicate he was in the junk business prior to January 2, 1946, or that anyone else was in business at this location prior to January 2, 1946. From the testimony of the witness it can hardly be concluded that there was a nonconforming use when the witnesses were vague and one of whom didn't even know his home address. The witnesses also failed to produce any records that they might have had showing or proving they bought and sold junked cars at this location.

For the above reasons it is this 17th day of April, 1958, determined that a lawful nonconforming use does not exist on the above property for the operation of a junk yard and said use must cease immediately.

Robert L. Spier
Deputy Zoning Commissioner
of Baltimore County

May 1, 1957

\$5.00

RECEIVED OF Gilbert G. Hirschbach, Attorney for James M. Cox the sum of Six (\$6.00) Dollars, being cost of certified copies of papers filed in the Circuit Court for Baltimore County - property 2719 North Point Road, 12th District.

Zoning Commissioner

RECEIVED
MAY 1 1957
COMMUNITY AFFAIRS OFFICE

the Board is of the opinion that the Defendant has now proven the existence of a nonconforming use on the subject property and, therefore, finds that the use of the subject property for a junk yard and gasoline service station is not in violation of the Zoning Regulations.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 19th day of February 1959, by the County Board of Appeals, ORDERED that the use of the subject property for a Junk Yard and Service Station is not in violation of the Zoning Regulations.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John E. Raine, Jr.
Charles H. Hirschbach
Robert L. Spier

Any appeal from this decision must be in accordance with Rule No. 1101 of the Rules of Practice and Procedure of the Court of Appeals of Maryland.

RE: PROPERTY OF JAMES COX
2719 North Point Road
Twelfth District of
Baltimore County

BEFORE
COUNTY BOARD OF APPEALS

OPINION

This is an appeal from an Order of the Deputy Zoning Commissioner of Baltimore County dated April 17, 1956 directing the cessation of a junking operation carried on at 2719 North Point Road by James Cox. Mr. Cox also operates a gasoline service station on the premises, which are presently zoned "D-1".

The appellant admits that the use is not in conformance with the Zoning Regulations but contends, as his defense, that it constitutes a valid nonconforming use as defined in Section 101 of the Regulations. He further contends that such use has continued uninterruptedly from several years prior to his purchase of his property in June of 1945 until the present time. The facts as developed by several witnesses produced on behalf of the appellant indicate in February of 1946, about eight months after he acquired the land, Mr. Cox built a gasoline service station on the property and that he is also operating a small scale junk yard business adjacent to and in the rear of the station since that time.

A large junk car operation known as "Impounded" is located immediately to the east of Cox's property and has been in operation for many years prior to January of 1945.

The testimony indicates that Mr. Cox found on the property at the time he purchased it about fifteen junked automobiles; that no one claimed ownership of these cars, and that he sold them to colored men (who he could not identify) and kept the proceeds of such sales. He stated that between June 1945 and February of 1946 he purchased one car which he can remember and sold only those cars found on the property as mentioned above. He kept no records and did no advertising.

Several witnesses produced on behalf of Mr. Cox remember seeing junked cars on the property prior to 1945, but none recalled he operated a junk yard there. Another witness purchased parts from "Impounded" and stated that there were junked cars on the Cox property as early as 1939. However, none of the witnesses can shed any light on who, if anyone, operated a junk yard on the subject property prior to January of 1945. Further, no witnesses' testimony identified any individual who sold junk or parts on the area prior to January of 1945 except one Vernon Carr, who is and was associated with "Impounded".

The law does not favor nonconforming uses and places upon the person thereof by claiming immunity to the Regulations the burden of showing by clear convincing testimony that the use sought to be continued was existing on the effective date of the Regulations. Further, it is well established that the occasional use of property for certain purposes does not establish a nonconforming use. On January 2, 1945 when the Regulations went into effect, the property in question was owned by a Mr. Carvelles. Although the availability of Mr. Carvelles and his sons (who worked about the property) was

established in the testimony, they were not produced as witnesses. It is unfortunate that the only persons who could clearly indicate the use of the property at the crucial time did not testify.

The Board is, therefore, left with only the testimony above mentioned to consider in this file, in our opinion, short of the required proof. We find it important to consider Mr. Cox's testimony that he only sold one car which he can remember between June of 1945 and February of 1946; we find it difficult to believe that any person engaged in the junk business as the appellant contends that his predecessor was, would abandon approximately \$120.00 worth of junked cars on the property for Mr. Cox to appropriate as his own stock in trade. We, therefore, believe that no junking operation was in effect on the date the Regulations in violation was based and we must sustain the findings of the Deputy Zoning Commissioner. We thereby direct that he pass an appropriate Order terminating the unlawful use and providing a period of not less than ninety (90) days for such termination.

ORDER

For the reasons set forth in the foregoing Opinion it is this 19th day of March, 1957, by the Board of Appeals of Baltimore County, ORDERED that the decision of the Deputy Zoning Commissioner be and it is hereby affirmed, subject to the minimum terminal time set forth in the above Opinion.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles J. Smith
James J. Smith
William D. Carvelles

April 25, 1956

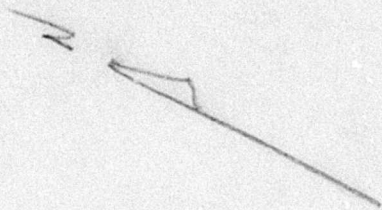
\$30.00

RECEIVED of Johnson Revis, Attorney for James Cox,
the sum of Thirty (\$30.00) Dollars, being cash returned to the
Board of Zoning Appeals of Baltimore County from the decision
of the Zoning Commissioner concerning use of property 2719
North Point Road, 12th District of Baltimore County.

Zoning Commissioner

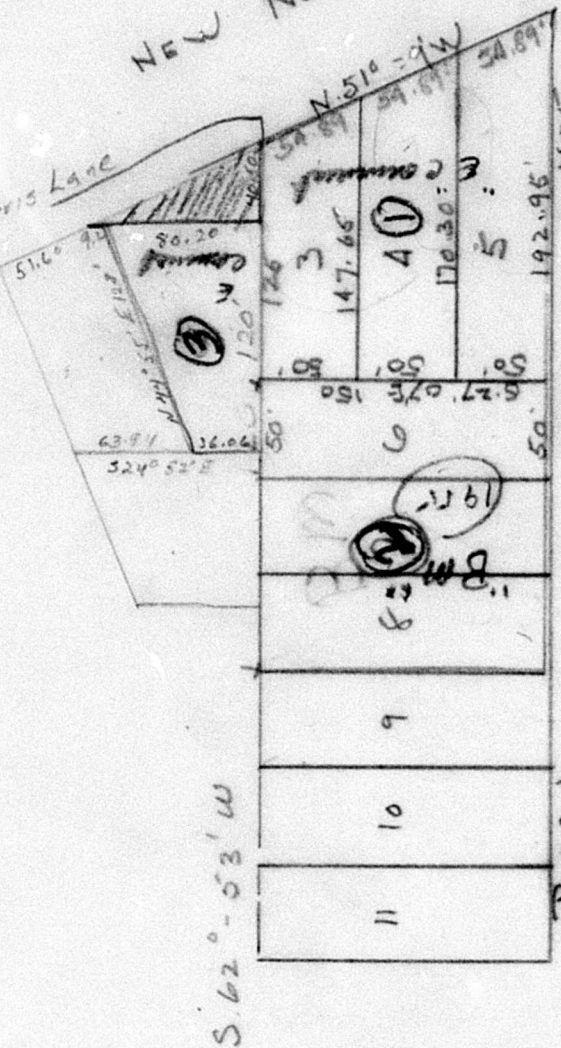
Zoning - OL-633 Zoning Service Charge

RECEIVED
APR 25 1956
COUNTY CLERK'S OFFICE
BALTIMORE, MARYLAND



NEW NORTH POINT ROAD

415' to Norris Lane



SCALE = 100 FEET TO ONE INCH

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