CARROLL COUNTY GOVERNMENT
225 N. Center Street
Westminster, Maryland 21157
410-386-2980 888-302-8978
FAX 410-876-9252
T.D.D. 410-848-5355

Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-935
Permit # 05-2237

Request: For the transfer of a non-conforming use from an automobile repair and restoration business to a marine repair shop at 6043 Middleburg Road, Keymar, MD in Election District 10 by Allan Hess.

Basis for Variance: § 223-9 D, § 223-9 E and § 223-9 H of the Carroll County Code of Public Local Laws and Ordinances.

Decision: Denied

Basis for Decision: The Certification of this property as a non-conforming auto repair and restoration business on July 17, 2003 was issued in error. § 223-9 D states that, "No building or premises where a non-conforming use has ceased for twelve (12) months or more, unless otherwise extended as herein provided, shall thereafter be used except in conformance with this chapter." This provision refers to the adoption of a Carroll County Zoning Code in August of 1965; hence any business use which could be substantiated as operating prior to August 1965 and continuously since that date are considered legally non-conforming. In the case of service garages, the owners of these legally operating non-conforming businesses were required to certify their existence by presenting documents to the County not later than April 17,1966 (§223-9E).

In July of 2003, Mr. Hess requested certification of a non-conforming auto repair and restoration facility from the Zoning Administrator. Mr. Hess' application for the certification was accompanied by notarized statements attesting to the continuous use of the property as a repair shop since 1961 by Ms. Shirley Morningstar and Ms. Lois Bostain. It is perhaps that neither Ms. Morningstar nor Ms. Bostian nor Mr. Hess understood the requirement in the County Code that the shop be in continuous operation since its inception for their affidavits; however, the Zoning Administrator accepted them at face value and issued the Certification as there is no requirement for a public hearing and very little information required for non-conforming use certification.

The testimony given at the most recent hearing clearly indicates that the auto repair/restoration activities at this property were more of a personal hobby than a trade, at least so much so in recent years. It also became evident through testimony that there has been a hiatus of far more than twelve months during which no income was derived from the restoration of cars/trucks; in fact testimony indicated that no income had been derived from the repair and restoration of cars/trucks for most of the years 2000 through 2005. There was no evidence provided by the applicant of any business use of the site for any period revenue by receipts, parts or utility bills.

Unrefuted testimony of Mr. Hess indicated that his Father was the previous operator of the auto repair business as well as several others to include a lawn service and a television repair company at this site until his death in 1991. His Mother operated a Post Office from the home until she retired to Florida. Through the questioning of Mr. Hess by the opponent's attorney, Steven Silberman, it was also ascertained that Mr. Hess' Father did not certify the business as a

non-conforming use in 1965; that his Father started the auto repair business in 1970; and that absolutely no income was derived from auto repairs at the property in the years 2002, 2003, and 2004. Mr. Hess was out of the Maryland area during much of 2004 and 2005 because of marine engine repair training he received in Florida.

As a result of the testimony provided by the applicant at this hearing concerning the dates of the shop's operation, the certification of this property as a legally non-conforming auto/truck repair shop on 17 July, 2003 is hereby revoked and invalidated. Accordingly, because the non-conforming use has been invalidated, the request to transfer it is moot.

9 September 2005

Neil M. Ridgely
Zoning Administrator

Per Section 223-182 or the Carroll County Code of Public Local Laws and Ordinances, appeals of this decision must be made within 30 days of the date of the decision to the Board of Zoning Appeals pursuant to Section 223-188 of the Carroll County Code. Unless timely appealed, parties may not thereafter contest the Zoning Administrator's decision.