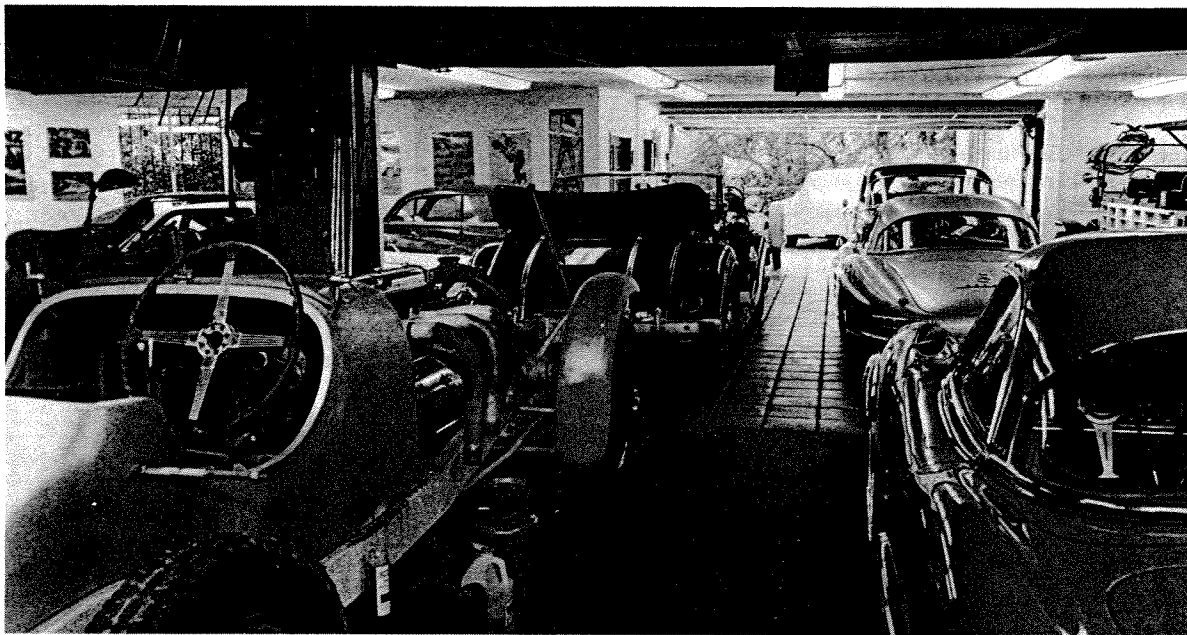


NOT IN YOUR BACKYARD



**If your home's garage looks more like a repair or restoration shop...
be kind to your neighbors.**

We are often reminded of the phrase, "love thy neighbor." Unfortunately, not everyone heeds that advice. Sometimes neighbors do not get along. Sometimes they even sue each other.

Many neighbor versus neighbor lawsuits concern (purportedly) the use to which a homeowner puts his or her property. A neighbor who disapproves of activities being conducted on the other side of the hedge may attempt to invoke local zoning ordinances limiting or prohibiting those activities. Some cases have involved a homeowner's restoration of collector cars on residential property.

Thomas Jaros lived in the city of Parma Heights, Ohio. His residence was located in an area zoned for single-family dwellings. At his home, Jaros worked on, repaired and painted racing cars and other automobiles. He also stored several "classic vehicles" in his backyard under a canvas. He had previously done such work at a business location which had been destroyed by fire. He thereafter had moved such equipment and machinery to his residence.

Some of Jaros' neighbors complained to the City that offensive noises and fumes came from his residence when he worked on the vehicles. The noises allegedly consisted of his starting a dragster engine and using various tools and equipment in his garage. They claimed that the noises occurred between

8am and 11pm.

The city charged Jaros with violating a local zoning ordinance. The ordinance stated that "no building, structure or premises shall be used or arranged or designed to be used, except for one or more of the following uses: (a) A single family dwelling, (b) Accessory uses customarily incident to the foregoing permitted use."

At trial, the complaining neighbors testified that they had seen various motor vehicle parts delivered to and located around Jaros' residence. The evidence also indicated that Jaros stored barrels of chemicals along the side of the garage; Jaros admitted that some of these materials were flammable.

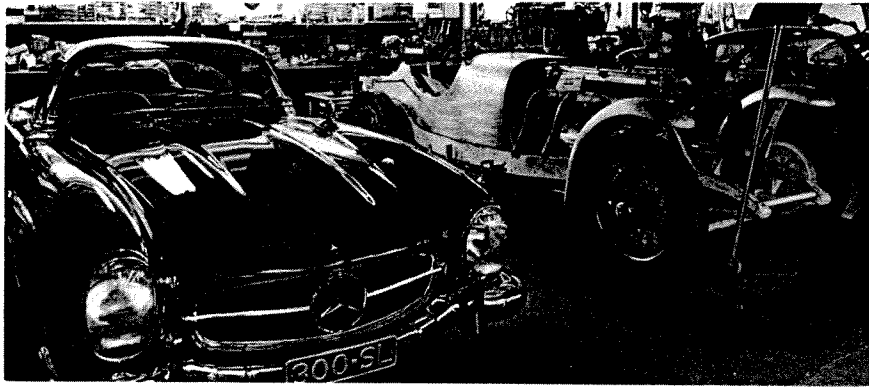
Jaros testified that working on cars was his hobby. He reported that he had even insulated his garage in an attempt to minimize the noise such work created. Other neighbors testifying on his behalf denied the allegations of noise; one claimed that everybody in the neighborhood worked on motor vehicles at their residences.

The jury found Jaros guilty of violating the zoning ordinance by conducting activities not customarily incident to single-family dwellings. Jaros appealed.

On September 20, 1990, the Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County, affirmed the trial court's conviction of Jaros.

The court rejected Jaros' argument that the


LAWRENCE SAVELL



ordinance was unconstitutionally vague. This was an attempt by him to invoke the principle that, to be permissible under the United States Constitution, a law must fairly inform a person of what it commands or prohibits. The court stated that the language "accessory uses customarily incident to the foregoing permitted use" was sufficiently definite to give a person of ordinary intelligence fair warning that his contemplated conduct was forbidden. The court concluded that Jaros "clearly... was on notice that his operation of what was essentially an automobile repair shop in his backyard was prohibited in his residential district which was zoned only for single-family dwellings and accessory uses customarily incident to single-family dwellings."

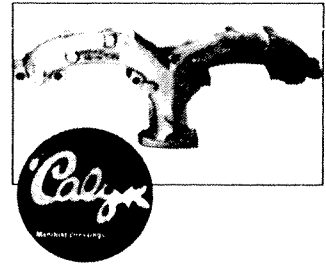
The court also rejected Jaros' argument that working on cars was his "hobby" and, therefore, such acts were "accessory uses customarily incident to single-family dwellings." The court followed a prior decision by the Tennessee Supreme Court, which stated that "We of course can think of all kinds of hobbies, many of which would customarily and ordinarily be considered as a proper use for a one family dwelling, but when a hobby reaches the proportion of the destruction

of the neighborhood by the use of assembling and tearing down of numerous automobiles, in this case nine, this goes far beyond any common sense idea of what a one-family dwelling might be used for."

The *Jaros* case dealt with activities which clearly went beyond the normal use of small-scale residential property. Nevertheless, it illustrates the point that, before undertaking significant automotive restoration work on residential property, a homeowner should make sure that what he or she wants to do does not exceed the uses permitted under local zoning ordinances. One should review such ordinances, keeping in mind the anticipated work's noise level, materials, fumes, hours of operation, and other considerations. Otherwise, you may find yourself in deep trouble, particularly if you live near others whose preferred version of the hallowed motto is "sue thy neighbor." 

Lawrence Savell is a graduate of Cornell University and the University of Michigan Law School and practices with Chadbourne & Parke in New York City. This column provides general information and is not intended as a substitute for consulting an attorney.

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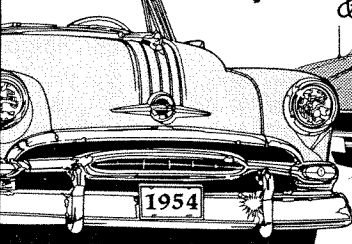




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