

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BILL BRUCE AND BEATRICE COLLIER

FILE NO. S-81-001

from a determination of the Director,
Department of Construction and Land Use

The Decision of the Director of the Department
of Construction and Land Use is AFFIRMED.

Introduction

The Appellants exercised their right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: appellants by Jack Collier; and the Department of Construction and Land Use (CLU) by Judy Tallman.

This matter was heard before the Hearing Examiner on April 9, 1981.

After due consideration of the evidence elicited during, the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located in a Neighborhood Business (BN) Zone at 9701 Rainier Avenue S. Until 1957 when current designation was effected, the property was zoned BC.

2. There are three buildings on the property located on the west side of Rainier Avenue. Nearest to Rainier is a service station building constructed pursuant to Building Permit of October 1925. The rear of the structure is in use as a residence.

3. Slightly to the northwest is a building erected as a service station garage for, per the permit of August 1937, day-light service only. "No auto repair under this permit."

4. Northeast of the service garage is a garage for "private car storage only....no repair shop" per the Building permit of April 1950. This is an all block building.

5. October 16, 1979, the Seattle Department of Licenses and Consumer Affairs approved the Business License Application of William H. Bruce for light welding and repair of light machinery at 9701 Rainier Avenue S.

6. In May 1980, Bruce was issued a permit to increase the circuit potential at 9701 Rainier Avenue S.; that application showed legal occupancy as a machine shop. Bruce subsequently made improvements to the property consistent with his business plans. The nature of his work included such things as ironing board repair, small bench work, hinges and similar work. He pays a rent fee to the property owner, Beatrice Collier, for the building.

7. The service station use discontinued in 1963. By permit of June 11, 1963, the owner was allowed to "enclose doorway and occupy front portion of the existing building as a real estate sales office."

8. The Polk Directory indicates that the 9701 Rainier Avenue S. property was used solely for residential purposes since 1963 except for A&M Construction Company field office use in 1972. We find in accord with the testimony of Jack E. Collier, the property owner's son, that some welding and repair of unspecified degree was performed when the service station was in operation, and also by the construction company at 9701 Rainier Avenue S.

9. On March 10, 1981, CLU published an interpretation that a welding shop may not be permitted in a private garage building in a BN Zone. This was appealed to the Hearing Examiner.

10. Incorporating by reference a prior letter of appeal appellants contend that a service station existed on the property prior to the enactment of the present zoning Ordinance and that therefore the owner, Beatrice Collier, has an established right to continue operation of the service station. Appellants further contend that a welding shop which is accessory to a service station should be deemed a legal nonconforming use and acceptable under the current zoning ordinance.

11. The Department concluded per business license records that the service station use of the property was discontinued in 1963. The Department further concluded that a welding shop is not a permitted accessory use to a service station in a BN zone and would not be considered accessory to the service station because the welding operation is not related to automobile repair.

12. The use of the building in question is a private garage under the present zoning ordinance.

Conclusions

1. The service station use was discontinued in 1963 and the property became used as a real estate office. The service station thus was not in use in 1973 when the ordinance amendment began to generally require conditional use authorization except for preexisting service stations. Therefore no right attaches to reinstitute the service station use or its concomitant accessory service station uses, including automobile repair. Further, the work envisioned by appellant Bruce is not in the nature of automobile repair.

2. Welding or other metal working shops are not permitted as principal uses in the BN zone. The use of the garage for a welding shop is not one customarily incidental to the dwelling unit or real estate office use, and therefore does not qualify as a permitted accessory use.

3. The Examiner is troubled by the inherent suggestion that the light repair envisioned by appellants (and approved by Licenses and Consumer Affairs) is the type of welding allowed initially in the CG Zone, as reported by the Director. We are also concerned that the appellant Bruce may have altered his financial and other positions by relying on authorization from the City.

4. However, the Ordinance is designed to phase out nonconforming uses where possible. For example, Section 5.34(d) of the Zoning Ordinance provides that:

"A nonconforming building or part which has been unoccupied continuously for one (1) year or more shall not be reoccupied except by a conforming use."

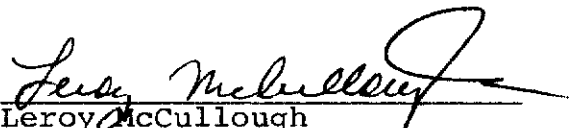
The building in question has not been occupied by the service station for over a year, and now can only be occupied by a use permitted in the BN zone.

5. Although it is for "light" welding, the appellant Bruce nevertheless intends to operate a welding shop, not permitted in the BN zone. The appellants have not met their burden of proof to overcome the weight accorded the Director's interpretation; no exception to the general zone restriction, by prior use or otherwise, has been proved.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 22nd day of April, 1981.


Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).