

FINDINGS AND DECISION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RAY O'LEARY AND O'LEARY ELECTRIC, INC.

FILE NO. S-80-006

from a determination of the  
Superintendent of Buildings

The appeal is DENIED and the Findings and Decision  
of the Superintendent of Buildings are AFFIRMED.

Introduction

Appellant, Ray O'Leary, O'Leary Electric, Inc., appeals from an interpretation of the Superintendent of Buildings in connection with property located at 8436 Rainier Avenue South, Lots 8 and 9, King County fourth addition.

Parties to the proceeding were the City of Seattle, Superintendent of Buildings and O'Leary Electric, Ray O'Leary. The motions to intervene filed by Mrs. Alvin Stollenmayer and Mrs. Jean Veldyke were granted, and both became parties to the proceeding. The motions to intervene filed by Mrs. Bonnie Bosworth and Mr. Lloyd Reagan were denied, although both were present and testified at the hearing.

This matter was heard before the Hearing Examiner on March 11, 1980.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

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 consists of Lots 8 and 9, King County Fourth addition, and the street address thereof is 8436 Rainier Avenue South. The subject property is located in a Neighborhood Business (BN) zone.

2. In September, 1978, the prior user of the subject property, Mr. Louis Collins, filed a conditional use application to establish a minor automobile repair use as an accessory use to an existing service station on the subject property and for variances to allow outdoor storage of vehicles and waiving screening and setback requirements. The application was designated X-78-328. Following a hearing on the application, the Hearing Examiner denied the application by decision dated January 19, 1979. Mr. Collins appealed this decision to the Board of Adjustment which, on March 2, 1979, granted the conditional use application, conditionally granted the variance for storage of automobiles and denied the variance for screening and setback. The variance for storage of automobiles was granted on the following conditions:

- (a) the number of automobiles be limited to five,
- (b) the length of storage time be limited to one week, and
- (c) that a landscape and screening plan be submitted to the Department of Community Development for approval prior to issuance of a use permit, and that landscape and screening be provided as shown in that plan.

3. Since the decision by the Board of Adjustment, no application for a use permit has been filed and no landscape and screening plan has been submitted to the Department of Community Development.

4. Appellant is using or has used the subject property for the following purposes:

- (a) minor repair (e.g. tune-up, brake repair, etc.) body work, and steam cleaning for automobiles and trucks under and over 1.5 tons,
- (b) minor spray painting for vehicles under and over 1.5 tons,
- (c) exterior storage of backhoe buckets,
- (d) storage of electrical wire conductors on large spools, and
- (e) exterior storage of vehicles under and over 1.5 tons for periods in excess of one week.

5. Appellant states that the only future uses which it intends to make of the property are:

- (a) minor repair and steam cleaning of vehicles of less than 1.5 tons,
- (b) as a service station opened to the public and used for the fueling of appellant's vehicles,
- (c) exterior storage of backhoe buckets, and
- (d) exterior storage of vehicles under 1.5 tons for less than one week.

6. Appellant has over 40 vehicles under 1.5 tons. The subject property is the only site on which repair and maintenance is done on these vehicles. The vehicles are used in appellant's business which is conducted throughout the City of Seattle, the State of Washington and the State of Oregon.

7. According to the conditional use and variance application filed by Mr. Collins in 1978, the principal use of the subject property at the time was as a service station. The conditional use and variance application was to permit Mr. Collins, operator of the station, to continue in business.

8. The subject property is not now being used as a service station. It is being used only for the uses set forth in paragraphs 4 and 5 above. Appellant desires to reopen the service station to provide service to the general public and for fueling its vehicles.

9. There is a substantial difference between the use of the property as described by Mr. Collins in his conditional use and variance application and authorized by the Board of Adjustment and the uses of the property described in paragraphs 4 and 5 above. Clearly, the Board of Adjustment authorized the conditional use and variances believing that it was allowing the continuation of an existing service station business. There is no evidence in the record of the prior proceeding that a use not connected to a service station was to be permitted.

10. The subject property is part of a Neighborhood Business (BN) zone along Rainier Avenue. The zone is developed with a mixture of apartment buildings and business uses. The site abuts Multiple Residence (RM) zoned property with a City Light substation to the northeast, Duplex Residence High Density (RD 5000) property to the southeast and BN zone property to the south. Across Rainier Avenue is a church and a residence and narrow RM zone along Rainier Avenue.

11. This appeal has been the subject of much concern by residents in the area. Correspondence in connection with the appeal has been received from Newell P. Davis, 6615 South Bangor Street, Seattle, North West Cosmopolitan Travel, Inc., 8401 Rainier Avenue South, Seattle, the Brighton Community Council, the Rainier Beach Community Club, Ida Maxwell, 8413 Grattan Place South, Seattle, the Northwest Evangelistic Association, 7930 Rainier Avenue South, Seattle, General Iron Works, 12265 East Marginal Way South, Seattle, Comstock's Bindery and Bookshop, 7903 Rainier Avenue South, Ruth M. Comstock and Elmer F. Comstock, 9861 Arrowsmith Avenue South, Seattle, All Saints Episcopal Church, Mrs. Donald Tarbox, 8316 54th Avenue South, Seattle, the Dunlap Community Action Council. In addition, a petition was submitted by Mrs. Stollenmayer in connection with this proceeding.

### Conclusions

1. Appellant's use of the property as described in paragraph 4 of the Findings of Fact, are inconsistent with the 1979 decision of the Board of Adjustment (X-78-328).

2. Appellant's future use of the property as described in paragraph 5 of the Findings of Fact are inconsistent with the 1979 decision of the Board of Adjustment (X-78-328) in the following respects:

(a) The Board's authorization of an accessory minor automobile repair business was based on the representation that the principal use of the subject property was as a service station. Any repair and storage of vehicles authorized by the Board was to be accessory to the service station. Appellant's use of the property for minor repairs and storage of vehicles -- not in connection with a service station -- is entirely unjustified and unlawful under the circumstances.

(b) To be permitted under the Board of Adjustment's 1979 decision (X-78-328), minor automobile repairs and vehicle storage must be accessory to the use of the subject property as a service station, open and servicing the general public. The use of the property primarily to repair and store appellant's equipment is contrary to the Board's decision and the Zoning Ordinance.

(c) Even if the subject property were being used primarily as a service station, storage of vehicles is limited to five automobiles, none of which may be stored for more than one week. In addition, the limited storage right was conditioned upon the timely issuance of a use permit and the approval of a landscape and screening plan by the Department of Community Development prior to the issuance of such permit. Because no such plan has been submitted and no use permit has been issued, appellant's present and future uses of the subject property are contrary to the Board's decision and the Zoning Ordinance.

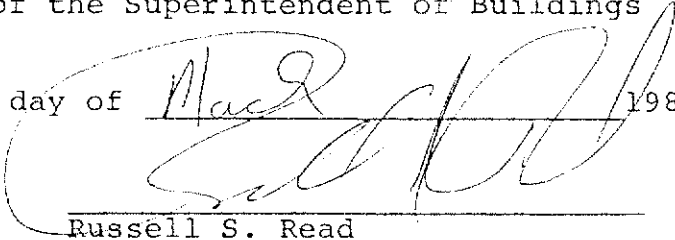
(d) Even if the subject property were used primarily as a service station pursuant to a property issued use permit, appellant's storage of backhoe buckets on the subject property would be contrary to the Zoning Ordinance.

3. Applicant's present and future uses of the subject property are unlawful. Businesses and services permitted in a BN zone under the Zoning Ordinance are limited to those serving primarily neighborhood residents (Reference: Section 14.31; 26.28.020). Automobile service stations are permitted as conditional uses in a BN zone (Reference: Section 14.32; 26.28.040). Furthermore, all business uses authorized in a BN zone must be within a wholly enclosed building (Reference: Section 14.1C; 26.28.010).

Decision

For each of the above reasons the appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are AFFIRMED.

Entered this 20th day of March 1980.

  
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Russell S. Read  
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).