

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

UNION OIL COMPANY OF CALIFORNIA

FILE NO. S-79-038

from a determination of the
Superintendent of Buildings

The appeal is GRANTED in part and the Findings and Decision of the Superintendent of Buildings are reversed in part.

Introduction

Union Oil Company of California, appellant, filed an appeal from an interpretation of the Superintendent of Buildings regarding property at 3301-07 West McGraw Street.

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

Parties to the proceeding were: the appellant, represented by Lawrence Hard and Julie Wade, Le Sourd, Patten, Fleming, Hartung and Emory, attorneys at law, and the Superintendent of Buildings represented by Greg Borba, Program Coordinator.

This matter was heard before the Hearing Examiner on January 3, 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. A service station use was established circa 1940 on property located at 3301-07 West McGraw Street.

2. The subject property is within a Community Business (BC) zone. The BC designation of the area pre-existed the 1957 zoning ordinance. Until 1973 service stations were outright permitted uses. Ordinance 102817 in 1973 amended the ordinance to permit service stations as principal conditional uses.

3. The service station on the subject property operated continuously until May, 1978 when the dealer operating the station had given appellant notice of his intent to leave the station. Appellant attempted to solicit a new dealer but was unable to find a dealer to operate the station because the 20-year ground lease was to terminate on January 31, 1980. Appellant commenced negotiation of new lease. The negotiations were successfully completed August 11, 1979. The negotiation period was lengthy because of disagreement about the economics of service station operation.

4. The operation of the service station ceased on May 21, 1978. The gas dispensers were removed from the islands and placed inside the building for storage. The equipment within the building remained. The building was locked and

the windows boarded to protect the glass. Landscape service was continued to maintain the grounds. Utility services were continued and bills for utilities paid. The Union Oil sign remained in place and appellant paid the street use permit fee for the sign.

5. A new dealer was located and was prepared to resume operation in October, 1979. The dispensers had been reattached, the boards removed and the station was repainted. The Building Department notified the appellant that the operation could not be resumed without conditional use authorization.

6. Appellant requested a formal interpretation by the Superintendent of Buildings regarding the use of the subject property.

7. The Superintendent of Buildings determined, by interpretation dated December 11, 1979, that an use established as an outright permitted use in the past but now permitted only as a conditional use is to be treated as a nonconforming use; in effect that the station had been unoccupied continuously for one year and the intent of the closure was immaterial; and that either a variance from the one year limitation on period of no occupancy or conditional use authorization is required to resume operations.

8. Appellant filed an appeal of the interpretation December 19, 1979. Appellant contends that the service station is not a nonconforming use under the zoning ordinance and even if it were, it has not been unoccupied continuously for one year.

9. Section 3.22 defines "nonconforming use" as:

A lawful use of land or structure in existence on the effective date of this Ordinance or at the time of any amendments thereto and which does not conform to the use regulations of the zone in which such use is located.

10. Section 5.34(d) provides: "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."

Conclusions

1. The service station use on the subject property did not, after the 1973 amendment, conform to the use regulation of the zone (requirement of conditional use authorization for service stations), therefore it became a nonconforming use as the Superintendent of Buildings determined.

2. The appellant's right to use the property as a service station without variance or conditional use authorization depends upon whether it was "unoccupied" for one year or more. Although not stated directly in the interpretation, the Superintendent must have found that the station was unoccupied during the period from May, 1978, to date of the request for interpretation to conclude that variance or conditional use authorization is required to re-establish the use.

3. There is no disagreement between the parties that if the ordinance had contained the word "abandoned" or "discontinued", evidence of an intentional relinquishment of the right to that use would be required. Appellant contends that a similar intent is required by the word "unoccupied", the Superintendent argues that the definition of "unoccupied" does not include intent.

4. Since "unoccupied" is not defined in the ordinance, it is to be given its common, ordinary meaning. Webster's International Dictionary, Second Edition, Unabridged (1961) defines "unoccupied" as follows: "Not occupied; as (a) not occupied, as by tenants; empty. (b) Not busy; unemployed. Cf. Vacant." Funk and Wagnalls Standard Dictionary, International Edition (1958) defines "unoccupied" as "1. Empty; not dwelt in; uninhabited; an unoccupied house. 2. Idle; unemployed; not put to use: an unoccupied day."

5. No other jurisdiction using the term "unoccupied" in a provision for termination of a nonconforming use was mentioned in Annotation: Zoning - Abandonment of Nonconforming Use, 56 ALR3d 14 which exhaustively reviews the cases, and no opinions have been published in Washington interpreting that portion of Seattle's ordinance. The departure by Seattle from the terms "abandoned" or "discontinued" used by most jurisdictions is likely to have been intended to avoid the difficulty of ascertaining the concurrence of intention and act since whether a building is occupied or not, at least in the first sense of the definition, can be determined by physical inspection.

6. In the instant case, the building has not been empty. The record shows that the accoutrements of the service station use were present within the building during the period that the operation was suspended. The building has also been "employed", meeting the second sense of the definition of "unoccupied". It has been put to use, during the period appellant has not had an operator, to store and protect the equipment necessary and associated with the operation of this service station. This use is consistent with the continuing existence of the service station use and occupation of the building as a service station.

Decision

The appeal is GRANTED in part and the Findings and Decision of the Superintendent of Buildings are reversed in part.

Entered this 17th day of January 1980.

M. Margaret Klockars
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Deputy 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 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).