

RESOLUTION NO. R-4450

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND, DENYING THE APPEAL BY GLENN ALLEN AND GRANTING IN PART THE APPEAL BY JEFF HASSON FROM THE HEARING EXAMINER DECISION IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. ZON04-00002.

WHEREAS, Van Tormohlen for the property owner Glenn Allen, filed with the Department of Planning and Community Development an application for a nonconforming change of use (Process IIA) to allow an office use on the property described in the application and located within a RSX 7.2 zone;

WHEREAS, the Hearing Examiner held an open record hearing on the application on May 6, 2004; and

WHEREAS, after considering all of the documents, testimony, and comments submitted at the hearing, the Hearing Examiner entered his Findings, Conclusions, and Decision denying the Process IIA permit; and

WHEREAS, Glenn Allen and Jeff Hasson filed timely appeals of the Hearing Examiner decision; and

WHEREAS, the City Council, at the July 20, 2004 and August 3, 2004 regular meetings, considered the record of the hearing before the Hearing Examiner, the Hearing Examiner decision, the appeal letters, the arguments of Mr. Allen and Mr. Hasson, and the staff report on the appeals;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland that the appeal filed by Glenn Allen is denied, the appeal filed by Jeff Hasson is granted in part, and the Findings, Conclusions and Decision of the Hearing Examiner entered on May 22, 2004 and filed in the Department of Planning and Community Development File No. ZON04-00002 is adopted, except that the two conclusions regarding "cessation of the previous nonconforming use" on page 4 of the Decision are reversed for the following reasons:

1. KZC 162.35.2.b.3 provides that "Any nonconforming use except for a detached dwelling unit must be brought into conformance or discontinued if: . . . (3) The nonconforming use is replaced by another use; the City may allow a change from one nonconforming use to another such use if, through Process IIA, the City determines that the proposed new use will not be more nonconforming and will have a less adverse effect on the neighborhood than does the existing use."
2. KZC 162.35.2.a. provides that "For the purpose of determining a nonconforming use, the word "use" refers to the specific activity being conducted and not the definition of use set forth in KZC 5.10.955."
3. KZC 5.10.955 defines "use" as "The nature of the activities taking place on private property or within structures thereon."

4. The building had a Craftech Incorporated (painting contractor) nonconforming use (activity) before a concept car company nonconforming use (activity) and a vintage car restoration company nonconforming use (activity) (*Advisory Report, Attachments 23 and 24; Hearing Examiner Decision, Exhibit D*). The concept car company nonconforming use (activity) was the displaying and occasional moving of a concept car, and the vintage car restoration company nonconforming use (activity) was the restoring of old cars (*Id.*).
5. Before replacing one nonconforming use (activity) with another nonconforming use (activity) pursuant to KMC 162.35.2.b.3, a property owner must obtain Process IIA approval of the new nonconforming use (activity). The property owner and the owner's predecessors in interest failed to obtain such Process IIA approval for the concept car company nonconforming use (activity) and the vintage car restoration company nonconforming use (activity).
6. Having failed to obtain Process IIA approval for the concept car company nonconforming use (activity) and the vintage car restoration company nonconforming use (activity), the property owner is barred from obtaining a Process IIA approval for the proposed AGS nonconforming use.

Passed by majority vote of the Kirkland City Council in regular open meeting this 7th day of September, 2004.


Mayor

ATTEST:


City Clerk