

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF ST. PAUL

In the Matter of the Auto Repair  
Garage License and Second Hand  
Dealer-Motor Vehicle License  
Applications of Chan Lam and  
Ha Tran, d/b/a Ha Auto Repair, for the  
Premises located at 1103 Arcade  
Street in St. Paul.

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on May 26, 2005, at the City Hall/Courthouse, Room 220, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102. The OAH record closed on May 27, 2005, upon receipt of a post-hearing memorandum.

Virginia Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102, appeared on behalf of the St. Paul Office of License, Inspections and Environmental Protection (LIEP).

Mark Gehan, Esq., Collins Buckley Sauntry & Haugh, West 1100 First National Bank Building, 332 Minnesota St, St. Paul, Minnesota 55101-1379, appeared on behalf of Chan Lam and Ha Tran (Applicants).

Brian Alton, Esq., McClay Alton, PLLP, 951 Grand Ave., St. Paul, Minnesota 55105, appeared on behalf of the Payne Phalen District 5 Planning Council (District 5 Planning Council).

**NOTICE**

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record and this Report. The Council shall not consider any factual testimony not previously submitted to and considered by the Administrative Law Judge. After receipt of this Report, the Council shall provide the applicant an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or interpretation of the facts, and to present argument related to the recommended adverse action. Upon conclusion of that hearing, and after consideration of the record, this Report, and such additional arguments presented at the hearing, the Council shall determine what, if any, adverse

action shall be taken, which action shall be by resolution. The Council may accept, reject or modify the Findings of Fact, Conclusions, and Recommendations contained in this Report.<sup>[1]</sup>

## ISSUE

Should the City grant the auto repair garage and second hand dealer-motor vehicle license applications of Chan Lam and Ha Tran, doing business as Ha Auto Repair?

The Administrative Law Judge concludes the license applications should be granted.

Based upon the record herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Background Facts

1. This matter involves property at 1103 Arcade Street in St. Paul. The property was formerly zoned B-3, which allowed automobile sales with a conditional use permit (CUP). The property was used for auto sales and repair since the early 1960s.<sup>[2]</sup> In 1962, a CUP was approved for use of the property as a used car lot. In 1992, the property owner stopped selling used cars, and the property was subleased to a landscaping business.<sup>[3]</sup>

2. In 1994 the property was sold, and the new owner applied for and obtained a CUP from the St. Paul Planning Commission to allow the use of the property for sales of used automobiles, with auto repair as accessory to that use.<sup>[4]</sup> The Planning Commission resolution approved this use, subject (in relevant part) to the following condition, which had to be met before licenses could be issued and uses established:

The applicant obtains and maintains a dealership repair garage license for the business, not a general repair garage license.<sup>[5]</sup>

3. The conditional use permit issued on April 25, 1994, contains the same condition and further provides that the permit would expire one year from the date of approval "if the use herein permitted is not established." The CUP further provides that violation of the conditions of the permit may result in its revocation.<sup>[6]</sup>

4. The property was used for the sale of used automobiles, with auto repair accessory to that use, during the one-year period provided in the permit to establish the permitted use.<sup>[7]</sup> The CUP did not expire within this period.

5. On October 18, 1999, R & B Automotive applied for and obtained a license to operate an automobile repair service at this location.<sup>[8]</sup> This is the last time R & B Automotive applied for a license to operate any business on the property, although it

kept operating the business at that location through March 2005. R & B Automotive continued to sell automobiles through the last half of 2001; however, it did not obtain the required licenses from the city.<sup>[9]</sup>

6. From July 30, 2001, to November 20, 2003, there was a zoning moratorium in place that prohibited the issuance of zoning permits in the Arcade Street area.<sup>[10]</sup>

7. Sometime during the last half of 2001, a LIEP inspector did a physical inspection of the property and discovered the business was not operating in compliance with the CUP because second-hand automobile sales had been discontinued. The inspector informed the former licensee that he was not in compliance with the CUP; that he would need to apply for a license and sell used vehicles, or obtain a new CUP allowing only auto repair; or that he would have to cease performing auto repair.<sup>[11]</sup> The inspector took no enforcement action based on this noncompliance, however, because of the zoning moratorium, which prevented the business owner from seeking rezoning or obtaining a nonconforming use permit from the Planning Commission. The Office of LIEP did not require the business owner to comply with the CUP during the moratorium.<sup>[12]</sup>

8. The zoning moratorium lasted until November 20, 2003, when the City Council rezoned the property to an interim zoning classification of OS-2 while new zoning classifications were considered. Auto sales and auto repair are not permitted in an OS-2 district.<sup>[13]</sup>

9. Effective May 29, 2004, the City Council rezoned the property to TN-2 zoning, which does not permit auto repair garage licenses or auto sales.<sup>[14]</sup>

10. On November 17, 2004, another LIEP inspector informed R & B Automotive and the property owner that the use of the property for auto repair was not permitted. The business operator had the following options: (1) discontinue the auto repair station; (2) apply for rezoning; or (3) apply for a legal nonconforming use permit from the Planning Commission. The letter provides that an application for options two or three had to be filed by November 30, 2004 or the auto repair business discontinued.<sup>[15]</sup>

11. Neither the owner nor R & B Automotive filed the suggested applications or appealed the enforcement letter to the Board of Zoning Appeals.<sup>[16]</sup>

12. The Office of LEIP took no enforcement action with regard to the property after that date.<sup>[17]</sup>

### **The License Application**

13. In January 2005, Ha Tran and Chan Lam contacted a LIEP inspector for information about the feasibility of purchasing the property and operating an auto repair business there. The inspector informed them that LIEP could approve a license to use

the property for second hand motor vehicle sales, with auto repair as accessory to the auto sales business, as provided in the CUP. To use the property solely for auto repair, the applicants would have to apply for a legal nonconforming use permit from the Planning Commission.<sup>[18]</sup>

14. On February 2, 2005, Ha Tran and Chan Lam applied for an Auto Repair Garage License and Second Hand Dealer Motor Vehicle License for the premises located at 1103 Arcade Street in St. Paul.<sup>[19]</sup>

15. In March 2005, the applicants completed the purchase of the property at 1103 Arcade Street with the intention of operating the business in compliance with the CUP.<sup>[20]</sup>

16. LIEP recommended approval of the required licenses based upon the inspector's opinion that at the time of rezoning, the uses permitted by the CUP became legal non-conforming uses.<sup>[21]</sup>

17. The application was reviewed and approved by all the appropriate divisions and departments of the City.<sup>[22]</sup>

18. LIEP sent notice to residents within 300 feet of the proposed business, and to the community organization for the area, District 5 Planning Council, as required by the St. Paul Legislative Code.<sup>[23]</sup>

19. Twenty-three people signed a petition objecting to the issuance of the licenses. The petition stated as the basis for the objection "denial of the license would be a very clear message of support for a cleaner and more liveable Eastside community."<sup>[24]</sup>

20. The Payne Phalen District 5 Planning Council, an affected neighborhood organization, objected to the issuance of the licenses. In a letter dated March 24, 2005, to the Legislative Hearing Officer, the Planning Council stated its objection based upon the licensing history and the "intent of the approved Arcade Small Area Plan regarding future auto related businesses on Arcade."<sup>[25]</sup> The Planning Council did not object based on the previous licensee's failure to comply with the CUP.

21. At the hearing before the Legislative Hearing Officer held pursuant to St. Paul Legislative Code §310.05, the LIEP inspector recommended issuance of the license with 16 conditions, all of which the applicants agreed to implement.<sup>[26]</sup>

22. The Legislative Hearing Officer sent the matter to the Council with a recommendation that the license be issued with the conditions. At the Council hearing, the resolution approving the issuance of the license was passed on the consent agenda. The matter was then recalled at the public hearing portion of the Agenda, at which time it was referred to an Administrative Law Judge without specific explanation of the grounds for objection.<sup>[27]</sup>

23. The basis for the objection listed in the Notice of Hearing dated May 10, 2005, was that the property was originally zoned B-3, and a Conditional Use Permit was issued for the address which permitted Motor Vehicle Sales with accessory auto repair.<sup>[28]</sup>

## **Procedural Findings**

24. On May 10, 2005, the Office of LIEP issued a Notice of Administrative Hearing, setting the hearing date in this matter for May 16, 2005.

25. On May 13, 2005, the hearing was rescheduled for May 26, 2005, at the request of the District 5 Planning Council.

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction in this case.<sup>[29]</sup>

2. The Applicant received timely and proper notice of the hearing, and the City has complied with all relevant procedural requirements of statute and rule.<sup>[30]</sup>

3. The City has authority to grant a license and to impose certain conditions on that license.<sup>[31]</sup>

4. The sale of used automobiles requires a license from LIEP.<sup>[32]</sup> The applicants have met all the requirements for this license.

5. The operation of an auto repair garage requires a license from LIEP.<sup>[33]</sup> The applicants have met all the requirements for this license.

6. No new license shall be granted by LIEP without full compliance with the requirements of the St. Paul Zoning Code.<sup>[34]</sup>

7. Under the St. Paul Zoning Code, a conditional use is a use that is permitted in a particular zoning classification only after review and approval by the planning commission.<sup>[35]</sup> Upon approval by the planning commission or other zoning authority, an applicant shall be issued a conditional use permit. A certified copy of every conditional use permit shall be filed with the county recorder.<sup>[36]</sup>

8. Use of the property at 1103 Arcade Street for second-hand automobile sales and auto repair as an accessory use was established within the one-year period required by the CUP.

9. There are no provisions in the St. Paul Zoning Code under which a CUP would expire, lapse, or otherwise terminate automatically after the permitted use is established.<sup>[37]</sup>

10. The only provisions in the St. Paul Zoning Code for terminating a CUP are contained in § 61.108, which requires the zoning administrator to notify the Planning Commission when a business is not in compliance with the conditions of the permit. The Planning Commission may revoke a CUP for noncompliance with the conditions of the permit, after notice and a public hearing, and require that such use be discontinued. In lieu of revoking, the Commission may impose additional conditions, modify existing conditions, or delete conditions that are unnecessary, unreasonable, or impossible of compliance.

11. The CUP for the property at 1103 Arcade Street did not expire and was never revoked or modified by the planning commission.

12. A nonconforming use is a lawful use existing on the effective date of adoption or amendment of the zoning code, but which is not now permitted in the district in which it is located.<sup>[38]</sup>

13. R & B Automotive's operation of the business at 1103 Arcade Street was a lawful use at the time of the zoning code amendments in November 2003 and May 2004. After the effective date of the amendments, the business became a legal nonconforming use.

14. R & B Automotive continued to operate the business through March 2003. The legal nonconforming use continued through the time the applicants purchased the property and applied for the appropriate licenses.

15. Where the application for the grant of a Class N license meets all the requirements of law, and where there exists no ground for adverse action, the director shall issue such license in accordance with law.<sup>[39]</sup>

16. The Applicant has shown by a preponderance of the evidence that it has met the requirements for second-hand dealer motor vehicle and auto repair licenses and is in compliance with the zoning code.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## RECOMMENDATION

IT IS HEREBY RECOMMENDED that the applications of Chan Lam and Ha Tran, d/b/a Ha Auto Repair, for second hand dealer-motor vehicle and auto repair garage licenses be GRANTED subject to the various conditions recommended by LIEP.

June 13, 2005

s/Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Tape-recorded (two tapes, not transcribed)

## MEMORANDUM

Conditional uses require a zoning authority's consent even though zoning ordinances expressly authorize such uses.<sup>[40]</sup> It is a fundamental principle of the law of real property that uses lawfully existing at the time of an adverse zoning change may continue to exist until they are removed or otherwise discontinued.<sup>[41]</sup> Although new uses may be prohibited, existing nonconforming uses must either be permitted to remain or be eliminated by the use of eminent domain.<sup>[42]</sup>

The District 5 Planning Council has made several arguments against issuance of the licenses, all of which are based on zoning issues. The Planning Council agrees that the applicants meet all other licensing requirements and that the recommended conditions are appropriate.

At the hearing, the Planning Council's main argument was that the CUP lapsed sometime in 1999 because no license for auto sales was issued after that time. The prior owner's failure to comply with licensing ordinances, however, does not affect the zoning of the property or make the use of the property unlawful.<sup>[43]</sup>

The Planning Council alternatively argued that the CUP became ineffective in 2001, when the prior owner stopped using the property for auto sales. The record reflects that the city took no action to enforce compliance or to require a zoning change or nonconforming use permit at that time because of the zoning moratorium then in effect. Even after the moratorium was lifted and the area rezoned, the city took no action to require compliance until November 2004.

In November 2004, the Office of LIEP notified the previous owner that the auto repair business had to be discontinued or the property rezoned or other permits

obtained, but no action was ever taken to revoke or modify the CUP before the property was sold. As the Planning Council pointed out, pursuant to Minn. Stat. § 462.3595, subd. 3, a conditional use permit shall remain in effect “as long as the conditions agreed upon are observed.” The St. Paul Legislative Code has implemented this provision, however, by granting property owners the right to notice and a hearing before a CUP may be modified or revoked for noncompliance. The only notice given by the November 17, 2004, letter was that the auto repair business had to be discontinued, and if it were not, then the property had to be rezoned, or a legal nonconforming use permit obtained. The letter does not purport to provide notice that the CUP would be revoked or the owner prohibited from using the property in compliance with the CUP in the future.

In its post-hearing submission, the Planning Council argues that if the property became a nonconforming use after the zoning amendments took effect in November 2003, then that nonconforming use was discontinued or ceased to exist based on the failure to conform to the terms of the CUP and can be reestablished only by the planning commission pursuant to § 62.109(e) of the St. Paul Zoning Code.<sup>[44]</sup> A nonconforming use is not simply a use that is not in compliance with current zoning; it is specifically defined as a use that was legal as of the date of amendment of the zoning code. The use of the property at 1103 Arcade was legal as of the date of amendment of the zoning code. The use was not discontinued or abandoned; the business operated continuously from the time of the zoning code amendments until the applicants purchased it in March 2005. Because there was no change in the use of the property from the effective date of the zoning code amendments, the applicants are not required to reestablish the permitted use.

K.D.S.

---

<sup>[1]</sup> St. Paul Legislative Code § 310.05 (c-1).

<sup>[2]</sup> Ex. A at 19.

<sup>[3]</sup> *Id.* at 2, 14-17.

<sup>[4]</sup> *Id.* at 2, 18-27. Because the use of the property had changed, a new CUP to operate an automobile sales/accessory auto repair business was required in 1994. St. Paul Legislative Code § 61.503(a).

<sup>[5]</sup> Ex. A at 24.

<sup>[6]</sup> Ex. A at 25.

<sup>[7]</sup> See Ex. A at 26 (zoning approval granted for second hand dealer motor vehicle license).

<sup>[8]</sup> Ex. A at 2, 28-32.

<sup>[9]</sup> Testimony of Jeffrey Hawkins.

<sup>[10]</sup> Ex. A at 2.

<sup>[11]</sup> Ex. B at 2.

<sup>[12]</sup> Testimony of Jeffrey Hawkins.

<sup>[13]</sup> Ex. A at 2.

<sup>[14]</sup> *Id.*

<sup>[15]</sup> Ex. A at 2, 32.

<sup>[16]</sup> *Id.*

<sup>[17]</sup> Testimony of Jeffrey Hawkins.

<sup>[18]</sup> Testimony of Jeffrey Hawkins.

<sup>[19]</sup> Ex. A at 1; Ex. 1. There is no longer a “dealership repair garage” license, as provided in the CUP; the required licenses are now second hand motor vehicle dealer and auto repair garage.

<sup>[20]</sup> Testimony of Jeffrey Hawkins.

<sup>[21]</sup> Ex. A at 2.

<sup>[22]</sup> Ex. 4.

<sup>[23]</sup> Ex. B at 1; Ex. 2.

<sup>[24]</sup> Ex. B at 1; Ex. 3.

<sup>[25]</sup> Ex. A at 1, 4.

<sup>[26]</sup> Ex. B at 1.

<sup>[27]</sup> *Id.*

<sup>[28]</sup> *Id.*

<sup>[29]</sup> St. Paul Legislative Code § 310.05.

<sup>[30]</sup> *Id.*

<sup>[31]</sup> *Id.* §§ 310.04 and 310.06.

<sup>[32]</sup> *Id.* § 401.01(a).

<sup>[33]</sup> *Id.* § 423.01.

<sup>[34]</sup> *Id.* § 310.03.

<sup>[35]</sup> *Id.* § 60.227.Z.

<sup>[36]</sup> *Id.* § 61.104.

<sup>[37]</sup> Ex. B at 2.

<sup>[38]</sup> St. Paul Legislative Code § 60.215.N.

<sup>[39]</sup> *Id.* § 310.04(d)(1).

<sup>[40]</sup> *SuperAmerica Group, Inc. v. City of Little Canada*, 539 N.W.2d 264 (Minn. App. 1995) (rev. denied).

<sup>[41]</sup> *Hooper v. City of Saint Paul*, 353 N.W. 2d 138 (Minn. 1984).

<sup>[42]</sup> *County of Freeborn v. Claussen*, 295 Minn. 96, 99, 203 N.W.2d 323, 325 (1972).

<sup>[43]</sup> *Cf. Hooper v. City of Saint Paul*, 353 N.W. 2d 138 (Minn. 1984) (where property owners were in possible violation of city's building code for failure to obtain building permits, the remedy was to enforce the building code, not to deprive the owner of the right to continue a nonconforming use after a zoning change).

<sup>[44]</sup> According to the St. Paul Legislative Code § 62.109(e) a nonconforming use of a structure, or structure and land in combination, which is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days, cannot be reestablished except through the Planning Commission