

November 3, 1967

MEMORANDUM

TO: PLANNING DIRECTOR

FROM: CITY ATTORNEY

RE: ZONING CODE REQUIREMENTS IN RELATION TO STORAGE
YARD FOR DAMAGED AUTOMOBILES

On October 25, 1967, you requested an opinion from this office concerning the applicability of certain provisions of Ordinance No. 2550, Fourth Series, to a factual situation set forth in your memorandum. These facts are as follows:

Mr. Joseph Pettinato is currently operating a body and fender repair business at 1409 R Street in the City of Sacramento. Mr. Pettinato is also the owner of a vacant lot on E Street in the Block D and E, 15th and 16th Streets, which is not contiguous to the property on which the repair shop is located. Mr. Pettinato has requested that he be permitted to use the vacant lot on E Street for the storage of damaged automobiles prior to their repair at his R Street body shop. The E Street lot is located in a C-4 Heavy Commercial Zone.

Your staff was of the opinion that Ordinance No. 2550, Fourth Series, does not precisely allow or prohibit such an activity in a C-4 Zone. Therefore Mr. Pettinato's request was referred to the Planning Commission for their decision in accordance with Section 2-A-4 of the Zoning Ordinance.

At the November 14th meeting of the Planning Commission this matter was referred to this office for an opinion.

concerning the following questions:

1. Would Mr. Pettinato's use of the E Street lot as a storage area constitute a valid accessory use of this property in conjunction with the body shop which he operates on a noncontiguous parcel of property?
2. If the use of this area for storage purposes is not a valid accessory use, is it prohibited by reason of the fact that it constitutes a junkyard located in other than an M-1 or M-2 Industrial Zone?
3. If the proposed use does not constitute a junkyard, can such use be maintained in a C-4 Heavy Commercial Zone?

We are of the opinion:

1. That use of the E Street property as a storage area would not constitute a valid accessory use,
2. that it would not appear to constitute a junkyard, and
3. that the Planning Commission has the authority to determine the appropriate zone for the location of this use.

ACCESSORY USE

The Comprehensive Zoning Ordinance of the City of Sacramento contains no provisions relating to accessory uses. Under such circumstances, as a matter of generally accepted zoning law, the question as to the propriety of an accessory use is the extent to which the principal use, as a matter of custom, carries with it an incidental use so that as a matter of law, in the absence of the complete prohibition of the claimed incidental use, it will be deemed that the legislative intent was to include it. Rathkopt, The Law of Zoning and Planning, p.23-4.

As a matter of general local custom, it would appear that accessory uses of this nature are normally maintained on the same or contiguous parcels of property as the principal uses. Although older American zoning cases held that an accessory use need not be maintained on the same property as the principal use, more recent American decisions seem to indicate that an accessory use must be located on the same lot as the principal use or on contiguous property. (Adley vs. Paier, 167, A.2d 499; Gada vs. Zoning Board of Appeals of Town of East Lyme, 193 A.2d 502; and San Filipino vs. Board of Review of Town of Middletown, 188 A.2d 464).

In view of these more recent decisions we feel that Mr. Pettinato's proposed use of the E Street lot for storage of vehicles prior to their repair at his R Street body shop would not constitute a valid accessory use.

CLASSIFICATION AS JUNKYARD

If Mr. Pettinato's use of the E Street property for storage of cars does not constitute a valid accessory use, it then becomes necessary to determine whether the proposed use is expressly prohibited by any provision of the Zoning Ordinance. We have been advised that some members of the Commission were of the opinion that the proposed use might constitute a "junkyard," a use prohibited in a C-4 Heavy Commercial Zone property.

Neither the Comprehensive Zoning Ordinance nor amendments thereto define the term "junkyard." On June 23, 1964, the Sacramento City Planning Commission adopted Resolution No. 50, in which the term "junkyard" was defined as follows:

"A commercial dump, auto wrecking yard, scrap metal yard, used lumber yard, used building materials, and other salvage materials or equipment."

This definition was adopted by the Commission in exercise of the legislative authority granted to it by Section 2-A-4 of the Zoning Ordinance. This section states:

"The Planning Commission shall interpret the appropriate zone for any land use not specifically mentioned in this chart."

The chart in Section 2 of the ordinance does not mention commercial dump, auto wrecking yard, scrap metal yard, used lumber yard, used building material storage area, or a storage area for salvage materials or equipment. Thus, having determined that these land uses were not provided for by the Chart, the Commission exercised its authority under Section 2-A-4 and designated the appropriate zone for each of these uses. In that respect, the uses were categorized as being the same as a "junkyard" and were restricted to those zones in which the location of a junkyard would be appropriate.

You will note that the definition of junkyard, as contained in the resolution, does not seemingly apply to the use proposed by Mr. Pettinato in his letter of October 10, 1967. However, this is a matter for the determination of the Planning Commission after consideration of all relevant evidence.

LOCATION OF USE IN C-4 ZONE

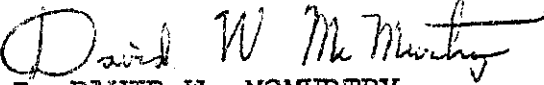
If the Planning Commission determines that Mr. Pettinato's proposed use does not constitute a junkyard, it becomes necessary to determine whether the proposed use, as determined by the Planning Commission, is proper within a C-4 Heavy Commercial Zone.

The Chart contained in Section 2 of the Ordinance does not contain any specific category of land use relating to the storage of wrecked automobiles prior to repair in a body shop. Although a land use is designated for "Auto Sales, Service, Storage and Rental," it would appear that the commonly used definitions of such activities would not include the storage of wrecked vehicles on a parcel of property not contiguous to a repair shop. However, it should be noted that this is a matter for the determination of the Planning Commission. If the Commission should determine that this category is inclusive of activities of the nature which Mr. Pettinato proposes, their location in

a C-4 Heavy Commercial Zone would be permitted under the Ordinance. However, if the Commission determines that the specific land use proposed by Mr. Pettinato does not fall within this classification, nor falls within any other land use classification found in Section 2, or Resolution No. 50, then the Planning Commission is authorized by Section 2-A-4 to interpret the appropriate zone for this proposed land use.

If we can be of any further assistance to you or the Planning Commission in this matter, please do not hesitate to contact us.

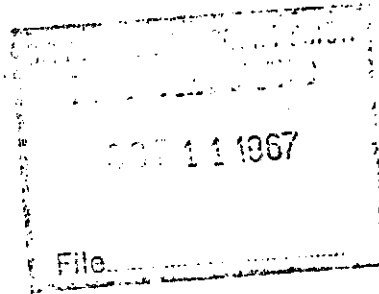
JOSEPH E. COOMES, JR.
CITY ATTORNEY


By DAVID W. MCMURTRY
DEPUTY CITY ATTORNEY

JEC:DWM:gd

October 10, 1967

Sacramento Planning Commission
827 = 7th Street
Sacramento, California



Gentlemen:

I am presently operating Pettinato's Body Shop located at 1409 R Street, Sacramento, California.

In an effort to expand I am at this time contemplating the use of my vacant lot on G Street for the storage of automobiles prior to their repair.

I understand the lot must be fenced with cyclone fencing and redwood stakes, the ground black topped and the driveway grated according to City specifications.

The lot would be used for the sole purpose of storage and no dismantling would be done.

I would appreciate your reviewing my intentions as set forth above and replying at your earliest convenience.

Sincerely,

Joe Pettinato

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Property description:
Parcel # 2-131-16
Portion of lot 6 blocks between
15th and 16th Streets, D and E Streets

ITEM 2