

TO: Keith P. Muehlfeld, Law Director  
FROM: Richard G. Hayman, Building Commissioner  
SUBJECT: Non-conforming uses  
DATE: March 26, 1982

Mrs. Judy Demmel wants to put an 8 ft. X 12 ft. storage shed on her property at 203 Brownell. The property is in an "A" Residential District. There is a house on the property facing Brownell and a cement block garage that faces Third Street. The garage is 24 X 36 ft. in size and houses a business called the Aquanetic Center. A permit was issued for the garage on May 10, 1972 to Victor Faber. The way it looks, Mr. Faber put his trophy business in the garage. The Demmell's purchased the property later in 1972 and established their business in the garage. The business consists of selling scuba diving equipment. Customers come to the garage to purchase. There is nothing in my files to show that permission was ever given by the City of Napoleon to have either the trophy business or the scuba diving business.

These are the questions I have:

1. Businesses are not allowed in "A" Residential Districts, except as a Home Occupation 151.33A4
2. 151.33B under A Residence reads: Except when permitted by a Special Use, not more than one principle detached building or structure shall be located on a zoning lot. (Is the garage considered a principle building since it looks like it was built for the Faber Trophy Business?)
3. Since the garage was built in 1972, is the business considered a legal non-conforming use?
4. If it is considered a legal non-conforming use, then Section 151.31D. No building erected on non-conforming use premises. No building shall be erected upon any premises which is used for non-conforming purposes.

My dictionary defines "premises" as

- a. A tract of land with the buildings thereon.
  - b. A building or part of a building with its appurtenances (as ground).
5. The business could not be considered a home occupation because under the definition of "Home Occupation" it states that there is no commodity sold upon the premises. He sells scuba gear out of the garage.

I have always been told, by other Law Directors or Building Commissioners that I have worked under, that the reason nothing could be built on a non-conforming premises or a non-conforming use could not be expanded under most codes was to try to get the property or use into conformance. I still feel this is the intent of Zoning Codes.

Three things are involved here:

1. No permission was given to have the businesses. (This does not mean that I want to force them out of business. They have been there for ten years and should have been stopped at the time they started).
2. There are two main uses and buildings on the property (residence and business, house and business building). This is not permitted by Section 151.33B except by Special Use Permit.
3. A business in a residential district, which is not a permitted use under Section 151.33A