



Department of Planning & Community & Economic Development
Building Inspection Division

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DATE: November 18, 2010
TO: Plan Commission
FROM: Matt Tucker, Zoning Administrator
SUBJECT: Continuing Jurisdiction Review for 3863 Clover Lane

On October 18, 2010, the Plan Commission found that there was reasonable probability that the approved conditional use for an automotive upholstery business at 3863 Clover Lane is operating in violation of the standards contained within Section 28.12(11)(g) of the Zoning Ordinance and referred this item for a public hearing before the Plan Commission. The conditional use was approved by the Plan Commission on July 1, 2002 subject to the conditions enumerated in a July 29, 2002 approval letter prepared by the Planning Division, which is attached. The owner and applicant, Mr. Phillip Iturbide, Jr. signed the approval letter on September 3, 2002 acknowledging the conditions of approval for his conditional use.

As noted in the official complaint that was provided to Secretary of the Plan Commission prior to the October 18 meeting, Zoning staff has received numerous complaints regarding the condition of the subject property since November 2008. Follow-up inspections to those complaints resulted in Zoning staff observing code violations and resulted in the preparation and mailing of official notices, the issuance of a municipal citation, and the referral of the case to the Office of the City Attorney for prosecution. Despite the citation and subsequent prosecutions, the property continues to operate out of compliance with zoning, site plan and conditional use requirements, and complaints continue to be received. Copies of the inspection reports and official notices, and a recent correspondence from the Zoning Inspector assigned to this case, are attached.

Section 28.12(11)(h)4 of the Zoning Ordinance states that (excerpted):

*The Plan Commission shall retain continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses... Upon reaching a positive initial determination, a hearing shall be held upon notice as provided in Subsection (f). Any person may appear at such hearing and testify in person or represented by an agent or attorney. **The Plan Commission may, in order to bring the subject conditional use into compliance with the standards set forth in Subdivision (g) or conditions previously imposed by the Plan Commission, modify existing conditions upon such use and impose additional reasonable conditions upon the subject conditional use. In the event that no reasonable modification of such conditional use can be made in order to assure that Standards 1 and 2 in Subdivision (g) will be met, the Plan Commission may revoke the subject conditional approval and direct the Zoning Administrator and the City Attorney to seek elimination of the subject use. Following any such hearing, the decision of the Plan Commission shall be furnished the current owner of the conditional use in writing***

stating the reasons therefore. An appeal from a decision of the Plan Commission under this paragraph may be taken to the Common Council as provided by Subdivision (i)...

Notices for this public hearing were completed as required by Section 28.12(11)(f) of the Zoning Ordinance in advance of this meeting.

Staff recommends that the Plan Commission give consideration to the materials provided by staff and the input provided at the public hearing, including from the applicant and property owner, and determine if the conditional use for the automotive upholstery business at 3863 Clover Lane can be brought into compliance with the conditional use standards. As noted in Section 28.12(11)(h)4, the Commission may modify the existing conditions on the conditional use and/ or impose additional conditions to bring it into compliance with the conditional use standards, or if no reasonable modification of the conditional use can be made to assure that conditional use standards 1 and 2 will be met, the Plan Commission may revoke the subject conditional approval.

Zoning staff believes there are both short-term and long-term remedies to the site that should be affirmed by the Plan Commission if they determine that the conditional use should remain. In the short term, staff recommends that the following restrictions be placed on the conditional use:

- strictly prohibit the parking or storage of inoperable vehicles on the site for any amount of time;
- strictly prohibit the parking of vehicles outside of designated parking stalls as shown on the approved conditional use site plan;
- affirm the prohibition in the Zoning Ordinance that prohibits the servicing or repair of vehicles outside enclosed buildings, and;
- remove and maintain the site free of all junk, trash and debris.

In the long term, the applicant will need to install landscaping and screening and provide permanent striping of the parking lot per the approved 2002 conditional use site plan by May 15, 2011.

Staff also recommends that it may be appropriate to refer a final decision on this matter for a period not to exceed 6 months to allow time for the applicant to work with Zoning staff on bringing the property into conformance with its 2002 approval and the above-recommended conditions. Zoning staff will monitor the site for compliance with the conditional use approval and will report its findings to the Commission by June 6, 2011 [the first scheduled Commission hearing in June].

If the Plan Commission allows the conditional use business to remain, Planning and Zoning staff will prepare a new conditional use letter for the applicant to sign acknowledging any existing, modified or new conditions of approval the Plan Commission may establish.

C: Ald. Larry Palm, 15th District
Mr. Phillip Iturbide, Ace Auto Upholstery

MT/tmp

Enc.