

ZONING COMMITTEE STAFF REPORT

FILE NAME: 1346 Arcade St. LLC

FILE # 20-096-344

APPLICANT: Arcade Auto Body (Charles Belcher)

HEARING DATE: December 31, 2020

TYPE OF APPLICATION: Nonconforming Use Permit (Change & Expansion), Variance

LOCATION: 1334-346 Arcade Street, SE corner of Clear Avenue and Arcade Street

PINS & LEGAL DESCRIPTION: 21.29.22.32.0165-0166, Lots 12-14, Block 7, Lane's Phalen Grove

PLANNING DISTRICT: 5

PRESENT ZONING: T2

ZONING CODE REFERENCE: §§ 62.109(c) & (d), 61.202(b), 61.601, 65.705, 65.706, 63.309, 63.312, 63.314

STAFF REPORT DATE: December 23, 2020

BY: Bill Dermody

DATE RECEIVED: December 2, 2020

60-DAY DEADLINE FOR ACTION: January 31, 2021

- A. **PURPOSE:** Change and expansion of nonconforming use to add auto repair and outdoor auto sales to existing auto body shop and dwelling. Variances for parking (24 spaces required for customers, employees, residents and vehicles on the lot for repair, 8 spaces proposed), distance between vehicular access and the Arcade-Clear intersection (60 ft. required, 13 ft. proposed), and landscaping (4 ft. wide landscaping and screening wall or fence along public sidewalk required, no setback or landscaping proposed).
- B. **PARCEL SIZE:** 16,625 sq. ft.
- C. **EXISTING LAND USE:** Mixed use commercial/residential (auto body shop, auto storage, and single-family residence)
- D. **SURROUNDING LAND USE:**
Johnson High School to the west and southwest (R4), commercial to the northwest (T2), office to the north across Clear Avenue (R4), and single-family residential to the east (R4) and south (T2).
- E. **ZONING CODE CITATION:** § 62.109(c) authorizes the planning commission to allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location upon making certain findings. § 62.109(d) authorizes the planning commission to permit the expansion of a nonconforming use upon making certain findings. § 65.705 provides a definition and standards for an auto repair station. § 65.706 provides a definition and standards for outdoor auto sales. § 63.309 requires space for on-site maneuvering of vehicles for stacked parking. § 63.312 requires parking spaces to be set back a minimum of 4 ft. from any lot line. § 63.314(a) requires parking facilities to have a landscaped yard at least 4 ft. wide along the public street or sidewalk. § 63.314(b) requires parking areas along public streets and sidewalks to have screening landscaping including a masonry wall or decorative fence supplemented with landscape material. § 61.202(b) authorizes the planning commission to grant variances when related to permits considered by the planning commission at the same public hearing. § 61.601 provides required findings for granting variances.
- F. **PARKING:** Zoning Code § 63.207 requires a minimum of 24 off-street parking spaces for the proposed uses, including 1.5 spaces for the single-family home, 7 spaces for the auto repair bays (1 space per bay), 15.19 spaces for the gross floor are of the building used for the auto body shop, auto repair, and auto sales (1 per 400 sq. ft. for the 6,077 sq. ft. building), and 0.30 spaces for outdoor auto sales space (1 space per 5,000 sq. feet). An updated site plan submitted after the initial application shows 8 parking spaces: 7 for employees and customers, and now also 1 for the 1334 Arcade residence. The 1334 Arcade parking space must be 8' x 21', rather than the 8' x 16' as currently shown – there is sufficient space to make it the right size.
- G. **HISTORY/DISCUSSION:**
1941 A gas station was approved on the 1346 Arcade Street site. It was converted to an auto

body shop at some point in the following decades.

- 2/85 Zoning code amendments made auto body shops no longer permitted in the B3 general business zoning district, and the body shop at 1346 became legally nonconforming.
- 4/85 A spray booth addition was illegally constructed without building permits on the north side of the building (there was already another spray booth inside the main building). The City ordered Lindbeck Auto Body to remove the spray booth addition.
- 5/85 Lindbeck Auto Body applied for site plan review for the spray booth addition.
- 6/85 Site plan for the spray booth denied because it had inadequate maneuvering space on the site and required illegal maneuvering in the public right-of-way.
- 8/85 Board of Zoning Appeals denied Lindbeck's appeal of Zoning Administrator's order to remove the spray booth.
- 11/85 City Council denied appeal of the order to remove the spray booth.
- 1992 Planning Commission approved an expansion of nonconforming use permit to allow two accessory additions: the spray booth to the north along Clear Avenue and a garage addition to the south behind the house at 1334 Arcade (owned by the business proprietors) for storage of antique and classic cars, subject to a number of conditions:
- No auto body or auto repair work in the garage addition
 - Vehicles being serviced shall not be parked in the street.
 - Off-street parking requirements must be met on the site.
 - The Arcade Street driveway closest to Clear Avenue must be removed and replaced with curbing. (There were two driveways from Arcade at that time.)
 - Landscaping improvements as part of site plan review.
 - Variances from the BZA for the spray booth (parking and maneuvering) or "rearrange the placement of the booth... so the variances are not needed, if that is possible, ... or it shall be removed...."
- 2007 The site was rezoned to T2 as part of a zoning study addressing Arcade Street.
- 4/20 A very similar application to the subject application was submitted by the same applicant and approved by the Planning Commission (ZF# 20-015-283) with the following conditions (the first four of which were/are objectionable to the applicant):
1. The garage addition behind the house at 1334 Arcade shall not be used for auto body or auto repair shop work, and must include at least one parking space to meet the parking requirement for the house. [Note: Only the first part of this condition is objectionable to the applicant.]
 2. The spray booth addition on the north side of the building shall be removed.
 3. The Clear Avenue curb cuts within 60 feet of the Arcade-Clear intersection shall be removed and replaced with curbing.
 4. Off-street parking on the site shall meet dimensional and design standards in the Zoning Code to the greatest extent possible, including the screening landscape requirements in Zoning Code § 63.314(b) for parking facilities and outdoor auto sales adjoining public streets or sidewalks.
 5. The 7 parking spaces that are required for vehicles on the lot for auto repair/body shop work plus customer and employee parking shall not be used for display of vehicles for sale.
 6. Employee vehicles, for-sale vehicles, repair vehicles, and any other vehicles

associated with the business must be parked on-site, and shall not be parked on streets or alleys.

7. All auto repair work shall be done within an enclosed building. Paint fumes from the auto body shop shall be controlled so that they are not noticeable on adjacent lots.
8. There shall be no outside storage.

H. **DISTRICT COUNCIL RECOMMENDATION:** The Payne-Phalen District 5 Council's Executive Committee recommends approval, conditional on: (1) the application's information about the change in use is accurate; (2) all auto repairs are conducted inside the building; (3) the parking lot is not used for auto repair; and (4) the business does not use the surrounding streets for vehicle storage. (They asked that their April 2020 letter be applied to this application, finding it to still be an accurate representation of their recommendation.)

I. **FINDINGS:**

1. The application requests a change and expansion of nonconforming use of property at 1334 and 1346 Arcade Street to add auto repair and outdoor auto sales to an existing auto body shop and dwelling on the property. The application also requests variances of the required distance between vehicular access and the Arcade-Clear intersection (60 feet required, 13 feet proposed), required parking (24 spaces required for customers, employees, residents, and vehicles on the lot for repair, 8 spaces proposed), and required landscaping (4 ft. wide landscaping and screening wall of fence along public sidewalk required, no setback or landscaping proposed). The proposed site plan submitted shows 18 total parking spaces, including 4 for customers, 3 for employees, 3 for for-sale vehicles (along Arcade Street), 1 for the residence at 1334 Arcade, and 7 flexible spaces for either for-sale vehicles or vehicles in for service. It manages to show this many parking spaces, however, by showing new stacked parking spaces along the Clear Avenue sidewalk that do not meet the on-site maneuvering requirement for stacked parking in Zoning Code § 63.309, and new parking spaces that do not meet the dimensional standards in § 63.305, the minimum 4 foot setback from lot lines requirement in § 63.312 and the landscaping and screening requirements in § 63.314.
2. Section 62.109(c) states: *The planning commission may allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location if the commission makes the following findings:*
 - a. *The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use.* This finding is met. Auto repair and outdoor auto sales are first allowed in the B3 zoning district, which is more restrictive than the zoning district that first allows auto body shops (T4).
 - b. *The traffic generated by the proposed use is similar to that generated by the existing nonconforming use.* This finding can be met subject to limiting the overall size of the proposed combination of uses including new outdoor auto sales and repair uses in addition to the previous auto body shop use so that the new combination of uses would not have a significant impact on traffic generation.
 - c. *The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.* This finding can be met subject to limiting the overall size of the proposed new combination of nonconforming uses, including new outdoor auto sales and repair uses in addition to the previous auto body shop use, so that the off-street parking requirements for the mix of uses are met, and subject to off-street parking on the site meeting the dimensional and

design standards in the Zoning Code to the greatest extent possible. If the new uses reduce the auto body shop use of the site, a reduction in paint fumes (which has caused numerous neighbor complaints) is likely to improve public health.

- d. *The use is consistent with the comprehensive plan.* This finding is met. The 2040 Comprehensive Plan designates the site as Mixed Use, which allows consideration of commercial uses such as proposed.
3. Zoning Code § 62.109(d) states: *The planning commission may permit the expansion or relocation of a legal nonconforming use if the commission makes the following findings relevant to this application:*
- a. *The appearance of the expansion or relocation will be compatible with the adjacent property and neighborhood.* This finding can be met subject to off-street parking on the site meeting the dimensional and design standards in the Zoning Code to the greatest extent possible. The property will need to abide by the City's property maintenance standards. There is no building expansion proposed.
 - b. *Off-street parking is provided for the expansion or relocation that meets the requirements of article 63.200 for new uses.* This finding is not met. This is part of the accompanying variance application, which is addressed below.
 - c. *Rezoning the property would result in a "spot" zoning or a zoning inappropriate to the surrounding land use.* This finding is met. Rezoning the site to B3 general business, where auto repair and outdoor auto sales are first allowed, would be spot zoning. The site is surrounded by T2 traditional neighborhood and R4 residential zoning. There is no B3 zoning nearby. The site was specifically rezoned away from B3 to T2 in 2007 as part of a larger zoning study, indicating that B3 was deemed inappropriate for this location. Nothing has happened in recent years to prompt reconsideration of that decision.
 - d. *After the expansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare.* This finding can be met subject to limiting the overall size of the proposed new combination of nonconforming uses, including new outdoor auto sales and repair uses in addition to the previous auto body shop use, so that the off-street parking requirements for the mix of uses are met; subject to not allowing outside storage and not allowing vehicles related to the business to be parked in adjacent streets or alleys; subject to control of paint fumes from the auto body shop, and auto body and auto repair work being contained within the building; and subject to off-street parking on the site meeting the dimensional and design standards in the Zoning Code to the greatest extent possible. If the new uses reduce the auto body shop use of the site, a reduction in paint fumes (which has caused numerous neighbor complaints) is likely to improve public health.
 - e. *The use is consistent with the comprehensive plan.* This finding can be met if landscaping is provided. The 2040 Comprehensive Plan, in Policy LU-9, calls for promoting high-quality urban design that supports pedestrian-friendliness and a healthy environment, and enhances the public realm – street-adjacent landscaping is key to achieving that policy. The Comp Plan also designates the site as Mixed Use, which allows consideration of commercial uses such as proposed.
 - f. *A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the expansion or relocation.* This finding has been superseded by a Mayor's Executive Order that eliminates certain petition requirements during the pandemic.

4. Zoning Code § 65.705 provides the following relevant standards for an auto repair station:
 - a. *The minimum lot area shall be fifteen thousand (15,000) square feet.* This standard is met. The two subject lots, which are both proposed to be used for the business, together are 16,625 square feet.
 - b. *A ten-foot landscaped buffer with screen planting and an obscuring fence shall be required along any property line adjoining an existing residence or adjoining land zoned residential.* This standard, which also applies to the previous legal nonconforming auto body shop on the site, is not currently met and is a legal nonconforming condition.
 - c. *All repair work shall be done within an enclosed building.* This standard can be met. A condition requiring this should be attached to any approval.
 - d. *There shall be no outside storage.* This standard can be met. A condition requiring this should be attached to any approval.
5. Zoning Code § 65.706 provides the following standards for outdoor auto sales:
 - a. *A site plan shall be submitted showing the layout of the vehicles for sale or rent, employee parking, and customer parking. The lot or area shall be provided with a permanent, durable and dustless surface, and shall be graded and drained so as to dispose of all surface water accumulated within the area.* This standard is met. A site plan showing the vehicle layout is among the application materials. The lot is graded and paved. The proposed site plan needs to be revised in order to meet the off-street parking requirements for the proposed new mix of nonconforming uses on the lot, so that vehicles related to the business will not be parked in adjacent streets or alleys, and to meet the dimensional and design standards for off-street parking in the Zoning Code to the greatest extent possible.
 - b. *Vehicular access to the outdoor sales area shall be at least sixty (60) feet from the intersection of any two (2) streets.* This standard is not met. It is the subject of a variance request addressed below.
 - c. *No repair or refinishing shall be done on the lot unless conducted within a completely enclosed building.* This standard can be met. A condition requiring this should be attached to any approval.
 - d. *Except in the IT transitional industrial district, the minimum lot area shall be fifteen thousand (15,000) square feet.* This standard is met. The two subject lots, which are both proposed to be used for the business, together are 16,625 square feet.
6. The application requests variances of the required distance between vehicular access and the Arcade-Clear intersection (60 feet required, 13 feet proposed), required parking (24 spaces required for customers, employees, residents, and vehicles on the lot for repair, 8 spaces proposed), and required landscaping (4 ft. wide landscaping and screening wall or decorative fence along public sidewalk required, no setback or landscaping proposed). Zoning Code § 61.601 states that the Planning Commission shall have the power to grant variances from the strict enforcement of the provisions of this code upon making the following required findings.
 - a. *The variance is in harmony with the general purposes and intent of the zoning code.*

This required finding is not met for any of the variances.

The Zoning Code's purpose includes lessening congestion of the public streets by providing for off-street parking of vehicles related to the need for parking created by the use on the site. At the time of the previous nonconforming use permit for this site in 1992, the auto body shop was required to have 2 off-street parking spaces per auto service stall: 14 spaces for the 7 service bays in the main building, which the Planning Commission

resolution noted appeared to be the most that could possibly fit on the site. It also noted that the spray booth addition on the north side of the building would require an additional 2 parking spaces. The parking requirement for the house was met in the garage addition behind the house.

The current parking requirement for the previous nonconforming auto body shop is 1 space per 400 sq. feet of gross floor area (GFA) plus 1 space per auto service stall. This would be 18 spaces: 8 spaces for the 8 auto service stalls plus 10 spaces for the GFA of the portion of the building used for the auto body shop (not including the garage addition behind the house that the 1992 nonconforming use permit prohibited from being used for auto body or auto repair work).

The current application proposes to add auto repair to the site and expand the business into the garage addition behind the house that was previously approved for storage of antique and classic cars, thus increasing the parking requirement. The application also proposes to add auto sales to the site and to use 10 parking spaces on the site for cars for sale, thus reducing the number of off-street parking spaces on the site available to meet the parking requirement for the auto body shop and auto repair business. These proposals by the applicant are the reasons for the parking variance request. Without enough spaces on the site for parking vehicles there for repair or for customer and employee parking, parking of vehicles associated with the business would tend to end up on nearby streets and alleys, not in harmony with the purpose and intent of the zoning code.

The purpose of the required 60-foot distance between vehicular access and the intersection of any two streets is to provide for the safety of pedestrians, bicyclists, and vehicular traffic at intersections where they most often interact. This is especially important at this intersection at the main entrance to Johnson High School and a block from Farnsworth Elementary School where there is a high volume of pedestrian, bicycle, and vehicular traffic and turning movements. Variance of the 60 foot distance requirement at this intersection would not be in harmony with the intent and purpose of the zoning code.

The purpose of landscaping and dimensional standards for surface parking, including setback, landscaping and screening along public sidewalks and on-site maneuvering space for stacked parking, are to provide for public safety by keeping sidewalks from being used for parking and vehicular maneuvering, buffering parking from public right-of-way, reducing visual glare and heat, and providing for stormwater retention and absorption. Variances to allow the proposed new parking spaces along the Clear Avenue sidewalk, without required setback, landscaping and screening and without adequate on-site maneuvering space for the stacked parking spaces, would not be in harmony with these purposes.

- b. *The variance is consistent with the comprehensive plan.* This finding is met for the parking variance but is not met for the curb cut variance or for the proposed landscaping and screening variances. The 2040 Comprehensive Plan, in Policy LU-14, calls for reducing the amount of land dedicated to off-street parking. The Comp Plan also, in Policy T-12, calls for minimizing and consolidating curb cuts as redevelopment opportunities arise for sites that have reasonable access alternatives. Although this is not a redevelopment, it is an intensification of development on a site with reasonable access alternatives. The landscaping and screening variances are inconsistent with comprehensive plan policies for quality urban design that supports pedestrian-friendliness and a healthy environment, and enhances the public realm.
- c. *The applicant has established that there are practical difficulties in complying with the provision; that the property owner proposes to use the property in a reasonable manner not*

permitted by the provision. Economic considerations alone do not constitute practical difficulties. This required finding is not met for any of the variances.

The garage addition behind the house at 1334 Arcade was designed and used for parking up to 7 antique and classic cars plus a parking space for the house. It would be reasonable to permit expansion of the nonconforming business into the garage subject to the condition that it only be used for parking up to 7 vehicles associated with the business plus a parking space for the house. If it is only used for parking it would be excluded from the gross floor area measurement and thus reduce the off-street parking requirement.

When the spray booth addition was constructed on the north side of the building in 1985 there was already another spray booth inside the main building. With more of the business now to be auto repair and sales, with less auto body work, it might be reasonable to remove the spray booth addition on the north side of the building, making space for additional off-street parking there. At the April 9, 2020, Zoning Committee meeting, the applicant said he is now using the bay addition to the north for welding work, which could also be done inside the main building.

Without the additional spray booth on the north side of the building and with the garage addition used for parking, the parking requirement would be reduced to 18 spaces. With 8 parking spaces provided in the garage, the remaining 10 required parking spaces could be provided on the site north and west of the building, without a parking variance.

With about 34 feet at most between the existing building and public sidewalks along Arcade Street and Clear Avenue, there is only enough room for a one-way drive aisle and angled parking along the north and west sides of the building. The most efficient way to provide parking with this layout would likely be with a curb cut on Clear Avenue that meets the requirement for at least 60 feet of separation from the Arcade-Clear intersection, and the existing exit to Arcade. The existing curb cut close to the corner would just get in the way of having additional parking spaces there. It appears that 14-15 off-street parking spaces could be provided in this area without overhanging or maneuvering on the public sidewalks.

The application materials include photographs that appear to call into question the ability for a tow truck to maneuver through the site without using the curb cut on Clear closest to Arcade. However, any difficulty making this maneuver would be alleviated by elimination of the spray booth addition.

- d. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* The desire for parking and landscaping variances was created by the applicant's proposal to add auto repair to the site and expand the business into the garage addition behind the house that was previously approved for storage of antique and classic cars, thus increasing the parking requirement, and by the applicant's proposal to add auto sales to the site and to use 10 parking spaces on the site for cars for sale, thus reducing the number of off-street parking spaces on the site available to meet the parking requirement for the auto body shop and auto repair business and squeezing space otherwise available for landscaping. It is not created by circumstances unique to the property.

While the request for variance of the required 60 foot distance between vehicular access and the Arcade-Clear intersection is triggered by the existence of two curb cuts within that area, there do not appear to be circumstances unique to the property that would make it problematic to remove them. Any maneuvering difficulty caused by the illegally established spray booth addition is a problem created by the previous landowner that can be remedied by removing the addition. Replacing the too-close curb cuts with a curb cut that meets the separation requirement would provide for better, safer vehicular access, and be beneficial

for fitting more parking spaces on the site that meet dimensional standards to the greatest extent possible.

- e. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.* This finding is met. The request for change and expansion of nonconforming use of the site is addressed above.
- f. *The variance will not alter the essential character of the surrounding area.* It appears that the parking variance would result in inadequate parking spaces on the site for vehicles there for repair and for customer and employee parking, and that parking of vehicles associated with the business would tend to end up on nearby streets and alleys, altering the character of the surrounding area. Variances to allow the proposed new parking spaces along the Clear Avenue sidewalk, without required setback, landscaping and screening and without adequate on-site maneuvering space for the stacked parking, would also alter the character of the area. Variance of the required 60 foot distance between vehicular access and the Arcade-Clear intersection is unlikely to alter the character of the surrounding area.

- J. **STAFF RECOMMENDATION:** Based on the above findings, staff recommends denial of the variances of required parking, landscaping and minimum distance between vehicular access and the Arcade-Clear intersection, and recommends approval of the change and expansion of nonconforming use to add auto repair and outdoor auto sales to existing auto body shop and dwelling on the site at 1334-1346 Arcade Street subject to the following additional conditions:
1. The garage addition behind the house at 1334 Arcade shall not be used for auto body or auto repair shop work, and must include at least one parking space to meet the parking requirement for the house.
 2. The spray booth addition on the north side of the building shall be removed.
 3. The Clear Avenue curb cuts within 60 feet of the Arcade-Clear intersection shall be removed and replaced with curbing.
 4. Off-street parking on the site shall meet dimensional and design standards in the Zoning Code to the greatest extent possible, including the perimeter and screening landscape requirements in Zoning Code § 63.314 for parking facilities and outdoor auto sales adjoining public streets or sidewalks.
 5. The parking spaces that are required for customers, employees and vehicles on the lot for auto repair shall not be used for display of vehicles for sale.
 6. Employee vehicles, for-sale vehicles, repair vehicles, and any other vehicles associated with the business must be parked on-site, and shall not be parked on streets or alleys.
 7. All auto repair work shall be done within an enclosed building. Paint fumes from the auto body shop shall be controlled so that they are not noticeable on adjacent lots.
 8. There shall be no outside storage.