

June 8, 2015

**NEIL B. DIETERICH, P.A.**

Attorney At Law  
1st National Bldg.  
Suite E-1436  
332 Minnesota Street  
St. Paul, Minnesota 55101

Hand Delivered

Honorable Russ Stark,  
President, St Paul City Council  
And Members of the St Paul City Council  
City Hall  
St Paul, Minn. 55102  
Attention: Mr Geoffrey Karls  
Assistant City Attorney  
Civil Division  
400 City Hall  
15 West Kellogg Blvd  
St Paul, MN 55102

RECEIVED  
JUN 08 2015  
CITY ATTORNEY

TELEPHONE  
(651) 291-0713  
FAX  
(651) 291-2588

Dear Mr President and Members of the Council:

I am the attorney for Ward Jefferson. The following information is submitted in regard to the Violation Hearing of Mr Jefferson scheduled for June 17, 2015.

Mr. Jefferson is charged with 5 violations of his Conditional Use Restrictions.

They are the following:

- a) Storing tires outside of his shop.
- b) Car parked in driveway with flat tire. This allegedly violated requirement that "all vehicles parked on the lot shall be completely assembled with no parts missing" and "vehicles awaiting repair may not be parked on the street or within the public right-of-way."
- c) Car parked on the street allegedly violated the ruler that "Vehicles awaiting repair or pickup by their owners may not be parked on the street or within the public right-of-way."
- d) 15 vehicles parked on the lot shall not exceed 14.

It is Mr Jefferson's position that he violated only the provision regarding the storing tires. He has corrected that provision and no longer sells used tires. The pictures do not show more than one violation.

The relief Mr. Jefferson is seeking today is that his penalty be a non-matrix penalty under the exemption in Section 310.05(m) of the ordinance.

## HISTORY

The prior history of zoning enforcement as to this property provided that an inspector would go to a property owner, point out violations, give the owner a certain amount of time to correct the violation and check back to verify the correction. If the violation was corrected, there was no violation and no penalty. The new procedure does not apparently allow for that and secondly there a steep slope of violations that leads to revocation.

Mr Jefferson had no notice of this change which is fairly recent in that it appears that the matrix system was adopted in 2013.

## REQUEST FOR RELIEF

This new procedure is unfair to Mr. Jefferson in that the CUP rules here are either so strict or so ambiguous as to make difficult if not impractical for Mr Jefferson to operate his business. For example the rule which says that “All vehicles on the lot shall be completely assembled with no parts missing makes” makes it impossible to operate a repair shop, because Mr. Jeffererson repairs vehicles by removing parts and replacing them with new parts. The rule on 15 cars can be violated if family member drives to his shop and parks on the lot or people drop off cars during the night or on weekends without his knowledge. It is not uncommon for repair shops to have outside racks for tires. Do these provisions forbid tire racks or an equipment shed?

The conditions on this conditional use should be revised to make them clearer and more practical.

The foregoing circumstances constitute an appropriate circumstance under § 310.05(m) which provides as follows:

“These penalties are presumed to be appropriate in every case; however the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.”

**The “substantial and compelling reason” is that ambiguity of the CUP restrictions in this case create a substantial risk that Mr. Jefferson could unfairly be exposed to risk of revocation under the new system. The restrictions are also ambiguous because read literally they could make it impossible to operate the business.**

The language of the new ordinance gives the council discretion to depart from the presumptive penalties. As a result such a departure does not impair the enforceability of the ordinance.

The matrix is part of the “penalty” because it creates a formula which prescribes penalties and leads to a penalty, revocation.

The language of the resolution could provide as follows:

**“The council finds that the ambiguity of the CUP restrictions in this case create a substantial risk that Mr. Jefferson could unfairly be exposed to risk of revocation under the matrix system. This circumstance the council finds is a substantial and compelling reason that Ward Jefferson’s penalty not be considered a penalty, violation or appearance under §310.05 for purposes of calculating future penalties under the matrix provided in that section.”**

Ward Jefferson is a low priced repair shop in a neighborhood of people of moderate means. He is not, like the overwhelming number of other repair shops, a franchise. There are very few owner operated shops that are not franchises. Franchises are expensive and the Franchise companies charge high fees. It is difficult for a franchise to offer low cost repair service. Mr Jefferson is under less pressure to charge high fees and fix things that really do not need to be fixed. You should do everything in your power to keep low cost shops in business. Mr. Jefferson has been in business for many years and has invested his life’s savings in his shop which is his sole means of support. Accordingly Mr. Jefferson’s shop is a benefit to the community and loss of his business would be a substantial hardship to him and to the community.

So Mr Jefferson is merely asking that his violation be determined to not be a matrix violation.

RESPECTFULLY SUBMITTED,

NEIL B. DIETERICH PA

A handwritten signature in black ink, appearing to read "Neil B. Dieterich", written in a cursive style.

Neil B. Dieterich

Licensee: JEFFERSON ENTERPRISES INC

DBA: JEFFERSON AUTO REPAIR

License #: 19990003069

Subject to the following conditions, per nonconforming use permit #95-081:

1. All repair work must be conducted inside the building.
2. There shall be no outside storage of equipment or material.
3. All vehicles on the lot shall be completely assembled with no parts missing.
4. Vehicles awaiting repair or pick-up by their owners may not be parked on the street or within the public right-of-way.
5. The number of vehicle on the lot shall not exceed (14)fourteen.
6. The applicant shall install and maintain at least 5 feet of landscaping along the Minnehaha Ave and Chatsworth Street frontages.
7. A fence shall be installed along the Minnehaha Avenue and Chatsworth Street properties, by September 15, 2000.

# 2

15 Cows on lot

# 3

# 4