



Legislation Text

File #: RES 14-1492, **Version:** 1

Memorializing City Council action granting the appeal of the Payne-Phalen District 5 Planning Council of a Planning Commission decision permitting the expansion of a nonconforming outdoor auto sales lot at 1265 Arcade Street.

WHEREAS, Internacional Auto Sales, LLC, ("IAS") in PED Zoning File No. 14-197-427, applied under the provisions of Leg. Code § 62.109(d) for a permit to expand its nonconforming use of property commonly known as 1265 Arcade St [Parcel Identification Number 202922440068] and legally described as Oak Ville Park Lots 17 And Lot 18 Blk 6 by adding 12 additional "for sale" parking stalls to IAS's existing 14 "for sale" parking stalls; and

WHEREAS, on May 22, 2014, the Zoning Committee of the Planning Commission, in accordance with the requirements of Leg. Code § 61.303, duly conducted a public hearing on IAS's permit application at which all persons present were given an opportunity to be heard and, at the conclusion of the public hearing, the Zoning Committee moved to recommend approval of IAS's application subject to certain specified conditions; and

WHEREAS, the Planning Commission, based upon the evidence presented to its Zoning Committee at its public hearing, as substantially reflected in the staff report, testimony and meeting minutes, approved IAS's permit to expand its existing nonconforming use based upon the following findings of fact as set forth in Planning Commission Resolution No. 14-40 which is incorporated herein by reference:

1. The site is located at the northwest corner of Orange and Arcade Streets. It is currently used for automobile sales. The lot is enclosed by an approximately 6'-high fence with two gates-one along each street frontage.
2. The existing CUP, approved in 1994, allows no more than 14 "for sale" cars on the lot at any one time, and requires a minimum of 8 off-street parking spaces for customers/employees. The 1994 CUP also forbids parking "for sale" vehicles in the public street or alley.
3. The application requests expansion of a nonconforming use (outdoor auto sales) to allow 29 parking stalls to be used for auto sales.
4. According to staff calculations, the site cannot accommodate more than 28 parking stalls - the application site plan shows more stalls along Arcade Street than can actually fit on the site, meeting Zoning Code off-street parking facility standards. Additionally, the Zoning Code standards, if applied strictly, would leave room for only two (2) parallel parking spaces in front of the building after accounting for the drive aisle, rather than the six (6) angled spaces shown in that area - however, the 1994 CUP included a site plan with that same inadequately sized drive aisle. Regardless of the maximum number of vehicles approved through the subject application, a site plan review is necessary to ensure proper compliance with Zoning Code standards.
5. The applicant has conveyed that a reason for the application is to allow more vehicles to be kept on-site where they can be better protected from vandalism.
6. Leg. Code § 62.109(d) Expansion or relocation of nonconforming use states that the planning commission may permit the expansion or relocation of a legal nonconforming use if the commission makes the following

findings:

- "1. In residential districts, the expansion or relocation will not result in an increase in the number of dwelling units. This finding is met. This is a non-residential property with no dwelling units proposed.
2. For expansion of a structure, the expansion will meet the yard, height and percentage of lot coverage requirements of the district. This finding is met. No expansion of a structure is requested.
3. The appearance of the expansion or relocation will be compatible with the adjacent property and neighborhood. This finding is can be met. The business expansion can be compatible with the adjacent property and neighborhood if the site is maintained properly, including no outside storage of materials other than automobiles, and if no vehicles are parked on public streets or alleys nearby.
4. Off-street parking is provided for the expansion or relocation that meets the requirements of article 63.200 for new uses. This finding can be met. Sec. 63.200 requires 1 parking space per 400 sq. ft. GFA plus 1 space per 5,000 sq. ft. of outdoor sales, which equals 5 (4 plus 1) parking spaces for the subject site. A site plan review is necessary to verify that the minimum parking space and drive aisle dimensions are provided.
5. Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use. This finding is met. The first zoning district that conditionally permits the use is B3. However, the site cannot meet the B3 condition that requires a minimum lot size of 15,000 sq. ft. The second zoning district that conditionally permits the use is IT. However, the site cannot meet the IT condition that it be located within ¼ mile of University Avenue. Therefore, the first zoning district that would permit the use is I1. Rezoning the site to I1 would result in spot zoning inappropriate to the area, which contains no industrial zoning.
6. 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. The business expansion will not be detrimental to the immediate neighborhood's existing character nor endanger the public health, safety, or general welfare if the site is maintained properly, including no outside storage of materials other than automobiles, and if no vehicles are parked on public streets or alleys nearby. No increase in noise, vibration, glare, dust, or smoke is anticipated from the use expansion.
7. The use is consistent with the comprehensive plan. This finding is met. The Comprehensive Plan designates the site as part of a Mixed Use Corridor, which allows for commercial uses such as proposed. The District 5 Plan contains no provisions specific to the proposal. The Arcade Street Small Area Plan does not address business expansions such as proposed, though it does encourage community-oriented commercial to locate at the Maryland and Phalen intersections rather than other locations along Arcade Street.
8. 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 is met. The petition was found sufficient on April 23, 2014: 14 parcels eligible; 10 parcels required; 10 parcels signed." and

WHEREAS, in approving the said application, the Planning Commission imposed the following conditions on the application:

- "1. There shall be no more than 28 vehicles on the lot at any one time, including "for sale" vehicles and those of customers and employees.
2. A minimum of 5 off-street parking spaces shall be provided for customers/employees. All customer/employee parking spaces shall be specifically indicated on the approved site plan. Each such space

shall be designated by a permanent sign (and paint stripes) which shall specify that the spaces are for customer/employee parking only. Any space so designated shall not be used at any time for any other purpose.

3. Site Plan approval through the Department of Safety and Inspections.
4. No outside storage of anything other than passenger automobiles, as defined under Minn. Stat. 168.002, Subd. 24, shall be permitted on the site.
5. "For sale" vehicles shall be parked only on the lot at all times and shall not be parked in the public street or alley at any time.
6. No barbed wire fencing shall be present on the site.
7. A violation of any license condition imposed by the City, County, or State for this use shall constitute a basis upon which to revoke this zoning permit.

WHEREAS, the Payne-Phalen District 5 Planning Council, under PED Zoning File No. 14-297062 and pursuant to Leg. Code § 61.702(a), duly filed an appeal from the Commission's determination and requested a hearing before the City Council for the purpose of considering the Commission's decision; and

WHEREAS, August 6, 2014, the City Council, pursuant to Leg. Code § 61.702(b) duly conducted a public hearing on the Planning Council's appeal where all interested parties were given an opportunity to be heard and upon the close of the public hearing, Council, having heard all the statements made and having considered the application, the staff report and the the record, minutes and recommendation of the Zoning Committee and the Planning Commission does hereby

RESOLVE, That the Council, pursuant to Leg. Code § 61.704, hereby reverses the decision of the Planning Commission in this matter based upon the following findings of the Council:

The Council finds that the Planning Commission erred in its finding No. 3. The conditional use permit granted in 1994 limited the number of "for sale" vehicles to 14. Expanding the number of for sale cars to the maximum capacity of the lot will be detrimental to the single-family home neighborhood immediately adjacent to this nonconforming use. Leaving the number of "for sale" vehicles at 14 maintains the existing character of development in the neighborhood and furthers the intent of this neighborhood's T2 zoning classification.

The Council further finds that the Planning Commission erred in its finding No. 6. The character of the properties most impacted by this non-conforming use is residential. Expanding the number of vehicles on the lot will increase the impact of this nonconforming use on these residential neighbors because of the nature of this type of business. This brings the impact of this expanded nonconforming use directly into the adjacent residential neighborhood which will be detrimental to the existing character of the neighborhood. Leaving the total number of cars at the numbers set in the 1994 CUP is consistent with the existing character of this neighborhood.

AND, BE IT FURTHER RESOLVED, based upon the findings of error noted above, that the appeal of the Payne Phalen District 5 Planning Council is hereby granted; and, be it

FINALLY RESOLVED, That the City Clerk shall immediately mail a copy of this resolution to Internacional Auto Sales, LLC, the Payne Phalen District 5 Planning Council, the Zoning and Planning Administrators and the Planning Commission.