



MINUTES
City of Davenport
Zoning Board of Adjustment
May 14, 2020



By this reference all reports, documents, presentations, videos and the hearing's video recording are incorporated into the minutes.

Call to Order

Chairman Reistroffer called the Zoning Board of Adjustment meeting to order in the Community Planning Room at the Davenport Police Station, Davenport, Iowa at 4:02 p.m.

Board Members present: Loebach, Strayhall, Quinn, and Reistroffer.

Board Members excused: Cochran (due to a planning staff error).

Staff present: Hoyt, Koops, Oswald, and Haut

I. Secretary's Report:

Minutes were approved for the for 2-27-20 and 3-5-20 meetings.

II. Old Business:

None.

III. New Business:

- A) Request SU20-02 of the City of Davenport to consider a revocation or major modification of the existing Minor Vehicle Repair Special Use (SU19-02) at 707 N. Division Street due to nonconformance with required codes and/or Special Use conditions per Sections 17.14.050, 17.14.050.D.2, 17.14.050.F.2 , 17.08.020 and 17.08.030.CC. Falcon Auto, Anthony Pintozzi (All-In-One Builders) and Lester Monkus are the Special Use holders as granted by the Board on November 14, 2019 for request SU19-02. [Ward 3]**

Koops presented the case to the Board as follows:

On November 14, 2019, Lester Monkus dba Falcon Auto and Anthony Pintozzi dba All-In-One Building and Remodeling (or Construction as specified on the Special Use application) received a Special Use at this location (707 N. Division) to operate minor vehicle repair. Please see Exhibit "A" Previous Special Use" for all details related to that case.

Vehicle Repair – Minor, requires the following to operate in conformance with zoning code:

17.08.030.CC. Vehicle Repair/Service – Major or Minor

1. Vehicle repair/service establishments may not store the same vehicles outdoors on the site for longer than 15 days once repair is complete. Only vehicles that have been or are being serviced may be stored outdoors.

2. Repair of vehicles is prohibited in the front or side yards. Storage of all merchandise, auto parts, and supplies must be within an enclosed structure.
3. Vehicle repair/service establishments that abut a residential district must be screened along interior side and rear lot lines with a solid wall or fence, a minimum of six feet and a maximum of seven feet in height.
4. Outdoor repairs are only allowed in the rear yard and must be screened by a solid fence or masonry wall no less than six feet and no more than eight feet in height.
5. No partially dismantled, wrecked, junked, or discarded vehicles may be stored outdoors on the premises. This standard does not apply to vehicles under repair.
6. The sale of new or used vehicles is prohibited.
7. No motor vehicles may be stored and no repair work may be conducted in the public right-of-way.

Additionally, the Special Use holder must meet the conditions of the approved Special Use SU19-02, which are:

1. The special use shall be in conformance with Section 17.08.030.CC. for the duration of the operation of the use;
2. Should complaints arise from adjacent owners and neighborhood residents due to noncompliance of these conditions, or if staff is aware of repeated infractions to these conditions and/or code violations, a rehearing of the special use shall be scheduled per Davenport Municipal Code specifications for Zoning Board of Adjustment Special Use public hearings at which the Special Use may be modified, approved or revoked/denied.

Minor vehicle repair is defined as:

Vehicle Repair – Minor. A business that provides services in minor repairs to motor vehicles, motorcycles, and all-terrain vehicles (ATV) vehicles, including, but not limited to, repair or replacement of cooling, electrical, fuel and exhaust systems, brake adjustments, relining, and repairs, wheel servicing, alignment, and balancing, repair and replacement of shock absorbers, engine rebuilding, and replacement or adjustment of mufflers and tail pipes, hoses, belts, light bulbs, fuses, windshield wipers/wiper blades, grease retainers, wheel bearings, and the like. Any type of vehicle repair services for recreational vehicles is a major vehicle repair business and does not qualify as minor repair under this Ordinance regardless of the level of repair service.

A letter and email was sent the SU-19-02 applicants stating the code and Special Use requirements for Special Use 19-02 and are attached in Exhibit “A”.

The Special Use holder has violated the code requirements for Vehicle Repair – Minor as set forth in 17.08.030.CC., and as required by condition #1 of the Special Use. Violations of the code, (see Exhibit “B”) have led to noncompliance of Special Use condition #1 and has triggered Special Use condition #2, which is the revocation hearing for this item which is the topic of this report.

Specifically, the Special Use holder has violated condition #1 of 17.08.030.CC., which states:

Vehicle repair/service establishments may not store the same vehicles outdoors on the site for longer than 15 days once repair is complete. Only vehicles that have been or are being serviced may be stored outdoors.

Exhibit "B" Violations provides evidence of cars being stored on the lot that are in nonconformance with this requirements. Cars in Exhibit "B" are parked on the lot for the purposes of resale, and not customer cars that wait pickup. Dated 2-28-20.

Second, the Special Use holder has violated condition #2 of 17.08.030.CC., which states:

Repair of vehicles is prohibited in the front or side yards. Storage of all merchandise, auto parts, and supplies must be within an enclosed structure.

On February 28th the Special Use holder was cited for a debris violation due the outdoor storage of a car part. Exhibit "B" has the Debris letter which was sent to the Special Use holder. (see Exhibit "B" for details)

Lastly, the Special Use holder violated condition #6 of 17.08.030.CC., which states:

The sale of new or used vehicles is prohibited.

Additionally the business owns cars which are marked for sale at adjacent property located on the west side of Division Street at 1802 West 7th Street. (see Exhibit "B" for details)

In addition to the violations of Section 17.08.030.CC, the Special Use holder is also in violation of other code sections outside of Section 17.08.030.CC., as shown by Exhibit "B" Violations, the Special Use holder is storing vehicles on a residential lot adjacent to the north and across an alley at 1729 West 8th Street on property owned by Jose Caster Juarez. Section 17.10. "Off-Street Parking" of the Davenport Municipal code prohibits commercial businesses from parking or storing vehicles on residential lots. The silver car, red car, and white commercial van (with business signage) are all vehicles owned by Falcon Auto or All-In-One Construction of 707 N. Division. (see Exhibit "B" for details)

Staff has also pulled up Community Services Division (CSD) records for Mr. Monkus' personal property at 1102 Minnie Street in Davenport.

In a violation letter sent January 19, 2020 the letter cites the property for four (4) vehicle violations. These violation may indicate that the 'repair' business at 707 N Division Street has expanded beyond that site, beyond 1802 West 7th Street, and beyond 1729 West 8th Street. (see Exhibit "B" for details)

Approval Standards

1. The establishment, maintenance, and operation of the proposed special use will not endanger the public health, safety, or welfare.

The Special Use is in operating in noncompliance of the conditions of the Special use and in violations of the Davenport Municipal Code. The welfare of the surrounding public has been negatively impact and is in noncompliance with this approval standard.

2. The proposed special use is compatible with the general land use of adjacent properties and other property within the immediate vicinity.

The Special Use is in operating in noncompliance of the conditions of the Special use and in violations of the Davenport Municipal Code. The welfare of the surrounding public has been negatively impact and is in noncompliance with this approval standard.

3. The special use in the specific location proposed is consistent with the spirit and intent of this Ordinance and adopted land use policies.

As operated, the Special Use and businesses on this site are not consistent with the spirit and intent of this ordinance as is evidenced by the numerous violations to Municipal Code and conditions of Special Use SU19-02.

Recommendation

Findings:

- 1) The business(s) at 707 North Division Street have violated multiple code sections of the Davenport Municipal Code, including but not limited to the illegal storage of vehicles on and off the site, storage of parts and/or debris outside, and the selling of vehicles in the wrong zoning district and in contradiction to the Special Use granted on November 14th, 2019.
- 2) The business(s) is in violation of 17.10. Off-Street parking requirements which prohibit commercial parking in residential districts.
- 3) The Special Use holder was notified via certified letter and via email on November 15, 2019, of the specific requirements of the Special Use, in which it specifically stated that the sale of new or use vehicles was prohibited.
- 4) The Special Use holder has violated condition #1 of the Special Use which required the holder to adhere to the regulations of Section 17.08.030.CC. of the Davenport Municipal Code.
- 5) The Special Use holder does not have any business licenses which allows for the sale of vehicles at this site (the holder has a valid public garage license which does NOT allow for the sale of vehicles)

Recommendation:

Staff recommends Special Use SU19-02, as granted by this Board on November 14, 2019, shall be revoked for a pattern of violations of the conditions of the Special Use and for Davenport Municipal Code violations.

Koops finished the staff presentation of the case.

Board questions:

Loebach: when was it approved and what is the outcome should the Special use be revoked? Staff responded that it was approved on Nov. 14, 2019 and revocation of the Special Use would not allow the holders to conduct auto repair at this location.

Quinn: what was the response by the Special Use holders to the notification of violations, and did the city received complaints about this property? Staff stated that the Special Use holders would be able to address that and that Tony Haut would be better able to answer

those questions; and that yes, the City did receive complaints about the activity occurring at 707 N Division St and those were inputted into the City's Cartegraph system as is the normal procedure for receiving such complaints; and that the enforcement actions are located in Exhibit "B" of the staff report.

The Special Use holders Lester Monkus/Falcon Auto and Anthony Pintozzi/All-In-One Construction addressed the Board. The Special Use holders stated the following:

Pintozzi Stated:

1. he knew where the only complaint came from, Jeff West of Jeff's Car Corner;
2. he started to buy cars for Mr. Monkus to repair;
3. he didn't know to what extent he was violating the conditions of the Special Use;
4. that he took down all for sale signs once he was notified by Jeff West that car sales not allowed without a dealer's license;
5. that is was paying taxes and 'plating' all the cars he purchased;
6. AJ Auto Sales was created for the cars he purchased for accounting reasons;
7. he intends to buy a location zoned correctly to sell cars;
8. he was 'cited' for a multitude of things by the City;
9. once they were 'cited' for a violation, those violations have not happened since;
10. he has written permission from the residential property owners allowing him to park cars at those locations (no documentation was submitted; city code does not allow for this use even with written permission); he didn't think that was wrong;
11. all the cars are in Pintozzi's name as well as bill of sales for those cars;
12. the idea was to do something new and good for the community;
13. all violations are corrected;
14. Pintozzi stated he keeps his property cleaner, nicer, and neater than any other property;
15. debris was only outside one day as the dumpster was being used for another business that day and that he uses the dumpster for other job sites;
16. he did his best to comply with requirements for the auto repair;
17. he understands now that car sales is not allowed;
18. Pintozzi stated that he did talk to the Public Works director about the violation notices he received;
19. Pintozzi acknowledged that a customer car was being parked on a residential lot.

Monkus stated:

20. tow companies are parking the cars on the residential property;
21. that he usually doesn't want to work on cars that require towing;
22. that since he was notified, he has not parked cars on residential lots.

The Board discussed the requirements of the Special Use which was granted on November 14, 2019 with the Special Use holders, Lester Monkus/Falcon Auto and Anthony Pintozzi/All-In-One Construction.

Board Questions for Special Use holders:

Loebach: how many cars were sold on the property and was that the plan from the beginning? Pintozzi answered that yes he did buy cars with the intent to re-sell but he didn't think that would be considered part of the special use permit. Violations have been corrected. Pintozzi stated that he does not think the sale of vehicles is linked to the special use permit.

Strayhall: Of all the violations, have they all been resolved? Pintozzi said that once he knew he was not allowed to sell cars at this lot, even though it's his own business, cars are no longer being sold there.

Strayhall: I remember discussing this case with the petitioners in November and a lot of the conditions of the Special Use, and my recollection is that the petitioner understood what the conditions of the use are, and that the petitioners stated that these sort of violations were not going to happen; additionally it was stated that cars not able to run would not be worked on; Strayhall stated it is difficult to see that after the Special Use holders have stated they would not violate the conditions, when they are now before the Board and it's more like, what conditions have not been violated? Strayhall said compliance to the codes and conditions of the Special Use has been disappointing. Pintozzi apologized for the violations.

Loebach: What bothers me is that petitioner is blaming the complainant as opposed to the fact that you didn't know what the rules were. Pintozzi apologized if it sounds like he is blaming the complainant. Monkus apologized for having customer vehicles parked on residential property.

Reistroffer: staff, did you get a reply from the Special Use holders to the violation letters/notices that were sent out? Tony Haut answered that he has not talked to Mr. Pintozzi, but that in the last couple weeks they are in compliance with the code.

Loebach did the Special Use holder continue to violate conditions once they were notified? Tony Haut, Community Services Division Officer answered no, not in the last couple weeks. Pintozzi stated that he did not think a response was necessary other than correcting the violation.

Speaking opposed to the request was Jeff West. He stated the following:

1. He called in response to seeing cars without license plates.
2. Car/truck are blocking the alley constantly.
3. Cars were being sold at the location. Jeff West informed the SU holders that without a dealer's license, cars cannot be sold at this location.
4. Pintozzi is also selling cars at other lots on consignment.
5. The site is not conforming to ADA parking requirements.
6. The lot is full so there is not enough parking spaces to park customer cars as the lot is so small.
7. Three businesses are being run out of this location, a construction company, an auto repair and an auto sales business.
8. If the SU holders want to have auto sales, the Special Use holder should be required to have all the appropriate licenses and meet all the zoning requirements, including the appropriate number of auto repair bays.

Final comments by the Special Use holders: Pintozzi stated that half of the things Jeff West stated are not true. Everything I have done was legal, and done the right way. Since Jeff West called, everything has been corrected. Monkus stated proper inspections were done for the Special Use and the once City Staff told them that what they were doing was a violation, we have stop doing it.

Strayhall: Are there cars there for sale at 707 N. Division Street? Tony Haut confirmed that for the last week he has not seen a car for sale in the last week. There has been cars without plates recently.

City Attorney Hoyt asked staff to remind the Board the date of which the petitioner was informed of the City's Request to Reconsidered/Revoke SU19-02. Staff informed the Board that it was believed to be sent on March 5th. [Records indicate the letter was mailed on March 10th.]

The Board found that the Special Use holders failed to meet the requirement of the Davenport Municipal Code and the conditions of the Special Use, as laid out in the staff report for case SU20-02, dated May 14, 2020. Full discussion of the Board is located at the following links:

https://youtu.be/oSgR_cwTFqY

<https://www.cityofdavenportiowa.com/cms/one.aspx?portalId=6481456&pageId=10360443>

Quinn moved to approved staff's recommendation for revocation of the Special Use SU19-02 (granted on November 14, 2019), whereas a yes vote is a vote for revocation. The motion was seconded by Loebach and a roll-call vote was taken. The motion to revoke Special Use SU19-02 was approved unanimously (4-0).

Strayhall yes; Loebach, yes; Quinn yes; and Reistroffer yes.

B) Request SU20-04 of Shawn Agan at 3504 Hickory Grove Road for a special use to allow a reception hall. Section 17.08.030 W. of the Davenport Municipal Code allows for a reception hall at this location subject to the granting of a special use (general admission fees at the door are prohibited and have not been proposed with this application). [Ward 2]

Koops presented the staff report and the Findings/Recommendation to the Board.

The petitioner addressed the Board and explained the request.

No written comments were submitted for or against the request.

Cindy Agan spoke in favor of the request, and stated that this type of facility is needed in the area.

Findings & Staff Recommendation:

Findings:

The location/design/construction of the proposed use meets the requirements of a Special Use.

Recommendation:

Staff recommends approval of the request as it meets the approval standards for a Special Use.

Motion

Strayhall moved to approve the request, seconded by Loebach, and was approved unanimously.

Quinn yes; Strayhall yes; Loebach yes; and Reistroffer yes. (4-0)

- C) **Request SU19-04 of Michael Lawrence/Catalyst Investments at 902-904 W Locust Street for a special use to approve a pizza shop (without a drive-through) in the existing structure. Property is zoned R-4C residential.**

Section 17.08.030.U. of the Davenport Municipal Code allows for neighborhood commercial establishments within existing structures that are nonresidential in construction and/or use as of January 20, 2019 in all residential districts (excluding R-1), with the granting of a special use. [Ward 4]

Koops presented the staff report and the Findings/Recommendation to the Board.

The petitioner addressed the Board and explained the request.

No written or verbal comments were submitted (for or against).

Findings & Staff Recommendation:

Findings:

The location/design/construction of the proposed use meets the requirements of a Special Use.

Recommendation:

Staff recommends approval of the request as it meets the approval standards for a Special Use.

Motion

A motion to approve the request was made by Cochran, seconded by Loebach, and was approved unanimously.

Quinn yes; Loebach yes; Strayhall yes; and Reistroffer yes. (4-0)

IV. Other Business None.

V. Adjourn

The meeting adjourned unanimously by voice vote at approximately 5:27 pm.