

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 30R
Amend No. _____

Date prepared: March 9, 2009

Council Meeting Date: April 7, 2009

TO: Carl Swenson, City Manager

FROM: Susan J. Daluddung, AICP, Deputy City Manager *SD*

THROUGH: Glen Van Nimwegen, AICP, Community Development Director *GVN*

THROUGH: Chris Jacques, AICP, Planning Manager *CJ*

PREPARED BY: Monique Spivey, Associate Planner *MS*

SUBJECT: CU08-33 Meineke Automotive - APPEAL

An appeal of the Planning and Zoning Commission's decision to approve a Conditional Use Permit to allow an automotive repair facility within an Intermediate Commercial (C-2) zoned property. The site is located on the northwest corner of 95th Avenue and Olive Avenue.

REQUEST:

The Mayor and Council make a final determination to reverse or affirm the Planning and Zoning Commission's decision made on February 5, 2009 to approve a Conditional Use Permit to allow an automotive repair facility within an Intermediate Commercial (C-2) zoned property.

Pursuant to Section 14-39-10.H any member of the public, including the applicant, may appeal a decision of the Planning and Zoning Commission to the City Council. Such appeal must be filed within 10 calendar days of the date of the hearing with the Community Development Department. On February 8, 2009, staff received an appeal of the Planning and Zoning Commission's decision to approve this request.

AUTHORITY AND PROCEDURE:

Pursuant to Section 14-39-10.H-2, the City Council shall hold the hearing and shall reverse, affirm, or modify the decision of the Commission. The Council shall base its decision on the written findings previously issued by the Commission, applicable law, the review criteria stipulated in this Section, and guidelines promulgated by the Department.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

If the City Council reverses or modifies the decision of the Commission, the Council shall direct the City Attorney to prepare written findings setting forth the basis for reversal or modification.

CONDITIONAL USE PERMIT DECISION CRITERIA:

Pursuant to Section 14-39-10.E, Conditional Use Permits must be reviewed against the following decision criteria:

1. Whether the use is designated as a permitted Conditional Use within the zoning district in which the property is located.
2. Whether the use meets the locational and development standards provisions, as applicable for the Conditional or Special Use Permit, for the zoning district in which the property is located.
3. Whether the use is consistent with the goals, policies, and future land use map of the General Plan and specific elements of the General Plan and any adopted Specific Plan applicable to the site where the proposed use is located.
4. Whether the use is consistent with documentation and recommendations provided by reviewing City Departments.
5. Whether the use complies with all applicable city codes, standards, and guidelines governing such use.
- 6a. Compliance with specific standards established by the Planning Manager that are designed to mitigate any identified impacts that arise out of the proposed use for which the Conditional Use Permit is sought upon the surrounding area, including residential neighborhoods adjacent to the proposed site as determined by the Planning Manager; and
- 6b. Compliance with specific standards established by the Planning Manager that are designed to ensure compatibility with existing principal permitted uses and conditional uses by addressing the factors set forth in the *Intent* provision of Section 14-39-10.
- 6c. The Planning Manager shall not approve or recommend approval of any Conditional Use Permit unless the Planning Manager has received a Waiver of Proposition 207 from the Owner or Owners of the property that is the subject of the Conditional Use Permit or has determined that the absence of such Waiver of Proposition 207 is consistent with the City's General Plan and Zoning goals and regulations.

SUMMARY:

Planning & Zoning Commission Public Hearing (February 5, 2009)

The morning of the public hearing, staff received written notification of concerns raised by nearby residents of the New River Ranch subdivision to the north. These concerns included noise, odor, and pollution caused by the proposed use, as well as non-receipt of notification by the City.

The Planning and Zoning Commission examined staff analysis and gave consideration to public testimony regarding this proposal. In the staff report to the Planning and Zoning Commission, staff indicated that the proposed use is consistent with the uses permitted in the Intermediate Commercial (C-2) zoning district, and that the use met criteria as stated in the recommended findings.

Section 14-39-10 of the Zoning Ordinance requires a Notice of Hearing to be provided to each owner of real property within three hundred (300) feet of the subject site along with publication in the Peoria Times and on-site posting. The New River Ranch subdivision is beyond the 300 foot radius.

Staff presented a visual illustration to the Commission and public which demonstrated the residences to the north would not be directly impacted due to the fact the distance between the proposed use and nearest residential property would be approximately 350' feet. It was also noted that the residences and the automotive facility would be physically and visually separated by a new church facility (Maranantha Church) to the north, thereby minimizing potential impacts to residences. The church is under construction.

One speaker on behalf of the New River Ranch Homeowner's Association was present at the public hearing to address concerns regarding the project. The overriding concern was potential noise associated with the automotive use, as well as potential view of the facility from second story residences to the north. The speaker present acknowledged staff's presentation and indicated that the timing of the church's construction would be key.

Based on the findings presented, the Planning and Zoning Commission voted unanimously to approve the requested Conditional Use Permit subject to Conditions 1-4 as contained in the staff report, as well as an additional condition listed in the staff memorandum dated February 5, 2009.

Appeal of Planning & Zoning Commission Action

On February 8, 2009, staff received an appeal of the Planning and Zoning Commission's decision to approve this request in accordance with Section 14-39-10.H. Concerns raised included noise and pollution, as well as lack of notification. The letter indicated that the community was unable to respond to the proposal in time due to being uninformed of the proposal. Twenty six (26) opposing signatures from the New River Ranch community were attached to the appeal letter. An additional letter by the appellant was received on February 16, 2009. There were concerns that the power equipment would create considerable noise. The letter also expressed concern for the types of uses that would be permitted at this retail center in the future. The appellant's contact information and concern were forwarded to the applicant by staff. The applicant has responded to the concerns in writing. This response is attached to the Council Communication.

Applicant/Owner Response

On March 9, 2009 staff received a letter responding to the concerns raised by the appellant. Response indicated that the issues of noise and pollution are always looked at before a decision is made to move forward with this type of use for the building. The

building is an insulated block construction building, which reduces noise. All shop doors will remain closed while vehicles are being serviced. In addition to the Maranatha Church, an 8' foot wall along the north perimeter will screen the business and act as a noise buffer. The applicant also noted that this line of work does not create pollution for the environment as operations includes oil changes, muffler service, and brake repair. The applicant contends that the muffler service would not exceed the pollution of the existing traffic volumes on Olive Avenue.

Staff Note

Staff has provided an illustrative context plan for reference which identifies the approximate development design of the Marantha Church in relation to the approved commercial development proposing to house the automotive facility.

In considering the appeal, the City Council is authorized to reverse, affirm, or modify the decision of the Commission *based upon* written findings previously issued by the Commission, applicable law, the review criteria stipulated in the Zoning Ordinance, and guidelines promulgated by the Community Development Department.

Should the Council consider upholding the decision of the Planning & Zoning Commission to approve the Conditional Use Permit, *and if deemed appropriate*, an additional stipulation could require that all shop doors be closed during the service of vehicles.

ATTACHMENT:

- Planning and Zoning Commission Staff Report (Dated February 5, 2009)
- Overall Context Plan
- Letter of Appeal (Dated February 8, 2009)
- Additional Letter of Opposition (Dated February 16, 2009)
- Applicant's Response Letter (Dated March 9, 2009)
- Minutes of the Planning and Zoning Commission (Dated February 5, 2009)
- Proposition 207 Waiver

SUPPORTING DOCUMENTATION
PERTAINING TO THIS
AGENDA ITEM IS ON FILE IN THE
OFFICE OF THE CITY CLERK