



CITY OF WAUWATOSA  
7725 WEST NORTH AVENUE  
WAUWATOSA, WI 53213  
Telephone: (414) 479-8917  
Fax: (414) 479-8989  
www.wauwatosa.net

**MEETING OF THE BOARD OF ZONING APPEALS**  
**Thursday, September 26, 2013**

PRESENT: Mr. Randal, Mr. Bittner, Mr. Kern, Ms. Kristoff (alt), Mr. McGuan, Mr. Subotich,  
EXCUSED: Ms. Stokke-Ceci (alt)  
ALSO PRESENT: J. Ferguson, Planner

Mr. Randall as Chair called the meeting to order at 7:02 p.m.

**7762 Harwood Avenue**

**Appeal**

**Appeal by Michael Post regarding the administrative decision denying his temporary use request to operate an auto repair establishment at 7762 Harwood Avenue in the C1 District.**

The applicant is appealing staff's denial of his temporary use request to operate an auto repair establishment in the C1 District at 7762 Harwood Avenue. The City was notified that the applicant was operating such an establishment at this location as a result of a filed complaint. Auto repair is not a permitted use in C1 the zoning district; as a result, the City sent the applicant a Notice of Non-compliance.

Subsequently, Mr. Post requested consideration as a temporary use to provide time to explore alternatives, including vacating the premises. Staff determined that his use does not fit the criteria in Section 24.10.080 – Temporary Uses of the Code and denied his request. Temporary uses should be occasional and limited in term, such as the examples listed in the authorized uses of the code section – 24.10.080 Temporary Uses, Part D.

The applicant has supplied letters and information explaining the conditions and nature of his business at the location. However, keep in mind that the decision at hand is whether the staff determination that the use is not temporary is valid.

When considering the appeal, the Board has all the powers of the administrative official and may reverse the current decision only if they find that the administrative official erred in their decision. If the Board reverses the decision, staff recommends establishing a time limit for the business to continue to occupy the space, as well as hours of operation.

Present in favor: Michael Post, 1171 N. 46<sup>th</sup> Street, Wauwatosa, WI  
Dennis Mesoloras, N61 W16165 Hawthorne Dr. Menomonee Falls, WI  
David Rinka, Winters Design Group LLC, 7772 Harwood Avenue  
Terrence Bender, 11111 W. Appleton Avenue, Milwaukee, WI  
Jared Summers, 1154 N. 46<sup>th</sup> Street, Milwaukee, WI

Mr. Post explained that his repair shop is strictly for high-end vehicles and he typically will go to the site of the vehicle to make repairs but does occasionally need to bring them to the shop. He was previously located at 124<sup>th</sup> Street and North Avenue for nine years and before that was on Lily Road and Capital Drive. His business

is a mobile business and many of his customers are located at the Medical College, Miller Brewery or Harley Davidson. Mr. Post was told that his current location was previously an auto dealership. Mr. Post thought he could rent this facility to keep equipment and waste products and have an occasional repairing of a vehicle. He is not open to the public and did not think he needed an occupancy permit therefore did not look into this with the City when he moved in this past July. He receives vehicle part deliveries and has deliveries from UPS. He has begun to do car washes for people prior to returning their vehicles. Mr. Post understands that the property is not zoned for auto repair, but would like to remain until at least July of 2014 when his lease is up. This will provide him some time to be able to locate another facility. He would like to be at this location long term since he has invested most of his money in the equipment.

When Mr. Post attempted to meet with neighbors, they all stated that they did not know that he was even there. He provided the Board members with a petition signed by his neighbors in favor of his business remaining.

Mr. Mesoloras is the owner of the building where Mr. Post has his business. Ms. Kristof asked if he was aware that this property was not zoned for this use. Mr. Mesoloras stated that the previous use was a furniture store and then it was used for storage. The building was never really open for a regular business. Harwood Engineering used it for storage. The location of this building is very out of the way being located under the Harmony Bridge and 100 feet from Harwood Avenue, you cannot see the business. He looked for a tenant that would have very low impact on the neighborhood. There are four buildings in this area. This property dates back to the 1800's and this particular garage was built in 1942.

Mr. Subitoch stated that he was concerned that there is a picture showing lifts in the property but Mr. Post indicated that he did not have lifts for vehicles. Mr. Post clarified that there were no lifts when he moved in; however, he installed two which are bolted into the floor.

Ms. Ferguson responded to Mr. Kern's question that the current zoning code was adopted in March, 2013. The C1 district was titled the Village Trade in the previous code that dated back to 1972. Neither code allowed for a vehicle repair shop at this property.

Mr. Rinka stated that he has an office near the applicant. He is in favor of Mr. Post keeping his business at this location because there is need for activity in the area. Mr. Post is respectful of the church and school in the area and is an asset to this community. He does not see cars coming and going and does not see people frequenting the facility. Mr. Rinka believes that this is a good facility for what Mr. Post is doing with the building.

Mr. Bender has had his vehicle repaired by Mr. Post for years. Mr. Post does not have loud sounding vehicles coming to his business as with other vehicle repair shops. The loud noise of vehicle repair drills will not be heard at this location. Mr. Post's business will not be bad for the neighborhood.

Mr. Summers has been helping Mr. Post and is in support of his business.

Present in opposition:                      No one

Ms. Kristof asked on an average day, what is the earliest and the latest that Mr. Post is in his building and if he works weekends. Mr. Post stated that he arrives at approximately 8:15 a.m. and leaves between the hours of 11:00 a.m. and 3:00 p.m. This is the period of time that he is mobile repairing vehicles. When he returns, he is there until 6:00 p.m. however there may be nights that he will be there later in the evening entertaining his child.

Mr. Post responded to Mr. Subotich's question regarding the number of vehicles he repairs in a week. There are currently two vehicles that are at his shop for a long term as they are being restored. There is normally an

additional three vehicles per week that he will repair and return. All vehicles are stored inside, all barrels of oil are stored inside. Mr. Mesoloras stated that having everything stored inside was a condition of Mr. Post's lease.

Mr. Post stated that he is requesting a temporary use to stay until July, 2014 so he will be able to recoup his investment in order to afford to move to another location.

Mr. Randall asked for clarification of types of deliveries and frequency and to define in percentages the amount of repairs and storage as well as the hours of operation. Mr. Post said that it is expected on average to have three revolving vehicles per week. Deliveries are made by a small Chevy S-10 type vehicle and other deliveries are made by a UPS truck. There is a straight truck that picks up the two drums of waste and delivers two drums of fresh oil. The lifts that are bolted to the floor; Mr. Post estimated that it would cost \$1,200 to remove and another \$1,200 to reinstall at a new location. On the average 75% of the business is conducted off site at the customer's vehicle location, including collection of fees

Mr. Kern asked what this building was used for in the past. Mr. Mesoloras responded that one of the buildings is a multi-family. The garage was previously used by Harwood Engineering for storage of blueprints. Prior to this, there were two individuals that owned the tannery who stored their vehicles here. They brought in a German mechanic who did repairs on their private vehicles.

Mr. Kern asked if storage or warehouse use was in compliance with the C1 zoning. Ms. Ferguson responded that those are also not permitted uses.

Mr. McGuan commented that a temporary use may result in other levels of regulations that need to be addressed by the applicant. Ms. Ferguson stated that any business operating in Wauwatosa needs to have an occupancy permit. Mr. McGuan stated that this could result in further improvements and/or permit requirements. Mr. Randall stated that permit requirements should not be waived and there may be other items that Mr. Post will need to bring up to code.

Moved by Mr. Kern, seconded by Mr. Subotich to reverse the Zoning Administrator's decision on the grounds she erred and based on the fact that such a temporary use will not be detrimental to public safety, and will be generally compatible with the surrounding area. This will provide the applicant the opportunity to pursue a zoning variance or to vacate the premises. Business operating hours are from 8:00 a.m. to 6:00 p.m. Monday through Saturday. The temporary use will expire on July 31, 2014.

Roll call vote taken: Ayes: 4                      Nos:        1 (McGuan)

Meeting adjourned at 8:32 p.m.

---

Jennifer Ferguson

bg