

**OFFICIAL PROCEEDINGS OF THE  
BOARD OF ADJUSTMENT AND APPEALS**

**REGULAR SESSION**

**SHAKOPEE, MINNESOTA**

**JANUARY 6, 2011**

**MEMBERS PRESENT:** Mangan, McQuillan, Klemm, Magin and Gorton.

**MEMBERS ABSENT:** Seidensticker.

**STAFF PRESENT:** Mark Noble, Planner II  
Kyle Sobota, Planner I

**1. ROLL CALL:**

Chair Mangan called the meeting to order. Roll call was taken as noted above.

**2. APPROVAL OF THE AGENDA:**

**Motion:** Magin/Klemm moved to approve the agenda as written.

**Vote:** Motion carried 5-0.

**3. RECOGNITION BY BOARD OF ADJUSTMENT AND APPEALS OF INTERESTED CITIZENS:**

Chair Mangan recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

**4. PUBLIC HEARING – CASELOG #10027: AN APPLICATION FOR CONDITIONAL USE PERMIT TO ALLOW FOR MANUFACTURING, FABRICATION, PROCESSING AND ASSEMBLY OPERATIONS WITHIN A BUILDING AND EXTERIOR STORAGE IN THE LIGHT INDUSTRIAL (I-1) ZONE. SUBJECT PROPERTY IS LOCATED AT 7800 COUNTY ROAD 101 EAST.**

Chair Mangan stepped down from his seat due to a conflict of interest. Vice-Chair Magin took over conducting this item.

Mr. Noble presented. Mr. Noble offered that Liberty Brush Manufacturing, LLC has made application for a Conditional Use Permit to allow manufacturing, fabrication, processing and assembly operations conducted entirely within a closed building, and exterior storage in the Light Industry (I-1) Zone. He noted that the subject property is located at 7800 Hwy. 101 East, is approximately 5.6 acres in size, consists of two parcels, with several large buildings occupying the majority of the site. Mr. Noble presented a location map and site plan showing the exact location of the site. He added that the site was formally occupied by Peterson Seed Company and most recently an automobile sales operation. He pointed out that the existing buildings are presently vacant.

Mr. Noble expressed that Liberty Brush is a business currently located on Maras Street in Shakopee, but due to its continual growth, is looking to relocate to this site which offers substantially more area for expansion of their business. He stated that as described in the applicant narrative, the business primarily manufactures and assembles brushes for sweepers and scrubbers. He noted that they also desire the ability to fabricate and process these materials as well, with the main clients being either street sweeping operations or industrial cleaning businesses. Mr. Noble offered that Liberty Brush will not initially be occupying all the space in the buildings; therefore, they are proposing to lease space to other tenants as well as provide for vehicle storage inside the buildings, with additional exterior storage occurring south of the buildings. He noted that all other tenants shall contact the city prior to occupancy to ensure compliance as a permitted use; those that are conditional uses in the I-1 Zone shall submit the appropriate application(s) for review and approval prior to occupancy.

Mr. Noble offered that the applicant is proposing to have an egress window and smoke detector installed in 1 of the offices so it could have the potential to be used for 24 hour security personnel. He added that the applicant wants to have their security personnel to have the ability to take up occupancy in this office in the evenings and leave the site during the day for employment. Mr. Noble stated that this is against staff's recommendation, but if the Board is comfortable with it the Board would need to amend condition #3, since condition #3 states that "the structures shall not include residential housing units". He added that the subject site is zoned Light Industrial and residential use is not a use permitted by city code in this zone.

Mr. Noble pointed out that the Planning Commission had reviewed a rezoning and comprehensive plan request for this property earlier this summer, which was eventually approved by the City Council and the Metropolitan Council.

### **CONSIDERATIONS – CONDITIONAL USE PERMIT**

City Code Section 11.44 (Light Industry Zone), Subd. 3. A. lists the proposed use as a conditional use (the proposed use is not a project that fits within one of the Mandatory EIS Categories under Minnesota Rules 4410.4400), with seven (7) standards that the Board should consider in their determination. Those standards are as follows:

1. Shall meet all federal, state and City health code requirements;
2. Shall meet all federal, state, and City environmental code requirements;
3. Shall not begin operation until any applicable environmental review is completed and all mitigation measures incorporated into the use;
4. Shall provide the City with information regarding the nature and location of all explosive materials, and keep such information current;
5. Shall not require isolation from residential or business uses;
6. Shall be buffered, if necessary, to protect adjacent uses; and
7. Shall not cause a public nuisance such as noise, odor, smoke, dust, dirt, vibration, or heat, or attract insects.

Additionally, Section 11.44 (Light Industry Zone), Subd. 3. K. lists exterior storage as conditional use, with four (4) standards that the Board shall consider in their determination, as follows:

1. Shall be screened from all public right-of-way and residentially zoned land, with an opaque fence, wall, or berm not to exceed eight (8) feet in height, constructed of new materials, and maintained in good condition;
2. Shall have a maximum area equal to the combined footprint of the principal and accessory buildings;
3. Shall not be located closer than 300 feet to any residential zone; and
4. Shall be surfaced entirely with asphalt, concrete, or class five (5) aggregate.

Mr. Noble expressed that staff has reviewed these standards, and have determined that the proposed use appears to meet the standards, provided the conditions of approval in the draft resolution are complied with. He noted that additionally, City staff and outside agencies (City Engineering, City Fire, Shakopee Public Utilities, and Scott County Environmental Health) have provided memorandums that include conditions should this proposal be approved. He added that those conditions have been incorporated into the draft resolution.

Mr. Noble offered that staff is recommending approval of this request, subject to the following conditions:

1. Development of the site shall be generally consistent with the submitted site plans, and consistent with the descriptions noted in the September 16, 2010 narrative letter, except as specifically noted in the conditions below.
2. Any proposed uses shall be reviewed for compliance with the city's building code, design and performance standards, and permitted uses of the Shakopee City Code at time of any building permit submittal or occupancy.
3. The structures shall not include residential housing units.
4. Parking shall be provided for proposed uses consistent with the City Code requirements.
5. Any proposed signage shall comply with the City Code requirements. Sign permits will be required for any proposed sign(s).
6. Shall meet all federal, state and City health code requirements;
7. Shall meet all federal, state, and City environmental code requirements;
8. Shall provide the City with information regarding the nature and location of all explosive materials, and keep such information current;
9. Shall not cause a public nuisance such as noise, odor, smoke, dust, dirt, vibration, or heat, or attract insects.
10. The exterior storage area shall be screened from all public right-of-way and residentially zoned land, with an opaque fence, wall, or berm not to exceed eight (8) feet in height, constructed of new materials, and maintained in good condition;

11. The exterior storage area shall be surfaced entirely with asphalt, concrete, or class five (5) aggregate.
12. There shall not be any exterior storage of inoperable and unlicensed vehicles.
13. The applicant shall dedicate drainage and utility easements as required by the City Engineering Department.
14. The applicant shall provide a detailed site survey clearly showing pervious and impervious areas, and the site shall be compliant with Section 11.44, Subd. 5 of the City Code.
15. Approval of the CUP does not constitute approval of the submitted drawings.
16. Additional uses shall conform with the Light Industry section of the City Code.
17. Any expansion of use(s) shall first be required to contact Shakopee Public Utilities Planning and Engineering Department for review and conditions.
18. The applicant shall contact the Shakopee Fire Department to determine whether the proposed use and other future tenants may require compliance with Minnesota State Building Code Chapter 1306 requiring the addition of a fire sprinkler system to the building.
19. The applicant shall contact the Shakopee Building and Fire Departments prior to any changes to existing walls and doors.
20. The proposed uses shall comply with all applicable Minnesota State Building Codes, Minnesota State Fire Codes, Shakopee City Ordinances and Fire Department Policies.
21. The property owner shall contact the Scott County Environmental Health Department prior to any submittal of building permit or occupancy, to include but not limited to the following:
  - a. Determination whether a Hazardous Waste License is required for each business operation on the property.
  - b. Conduct a compliance inspection on all septic systems on the property as per Scott County Subsurface Sewage Treatment System (SSTS) Ordinance Section 7.03 G. Should the system fail, and alternate septic site must be located.
  - c. Determination of the average and maximum volume of wastewater that is expected to be sewerred in one day (daily flow).
  - d. Determination if any wastewater not meeting the definition of sewage will be generated, and if so, the applicant shall provide to Scott County information regarding the general chemistry of the wastewater, the processes that generate the wastewater and to where the wastewater will be plumbed.

**FINDINGS – CONDITIONAL USE PERMIT:**

**The criteria required for the granting of conditional use permits (per City Code Section 11.85, Subd. 1) are listed below.**

**Criteria #1 The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor**

**substantially diminish and impair property values within the immediate vicinity;**

Finding #1 The Board finds that the use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity, provided the conditions identified in the resolution are met.

**Criteria #2 The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area;**

Finding #2 The Board finds that the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses allowed in the area, provided the conditions identified in the resolution are met.

**Criteria #3 Adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided;**

Finding #3 The Board finds that adequate utilities, access roads, drainage, and other necessary facilities exist to serve the proposed use, provided the conditions identified in the resolution are met.

**Criteria #4 The use is consistent with the purposes of the zone in which the applicant intends to locate the proposed use;**

Finding #4 The Board finds that the use is consistent with the purposes of the Light Industry (I-1) Zone, provided the conditions identified in the resolution are met.

**Criteria #5 The use is not in conflict with the Comprehensive Plan.**

Finding #5 The Board finds that the proposed use is consistent with the purposes of the Comprehensive Plan, which guides the subject property for industrial related uses.

The Board asked questions and provided feedback regarding this CUP request.

Melanie Hansen, representing Liberty Brush Mfg., LLC, applicant, approached the podium to answer the Board's questions. Ms. Hansen offered that Liberty Brush is requesting a residential security area, but it is understood that this may not be realistic. She noted that if the Board is not ok with the site having the residential area they would at least like to have a room where there could be a bed so someone could sleep at the site in the evening. She added that the bed would be for a security person that may be on call or need to rest between making rounds. Ms. Hansen expressed that Liberty Brush is really trying to plan for the future and therefore trying to figure in whatever may be needed. She pointed out that Liberty Brush currently operates 5 days a week, but has the potential for becoming a 24 hour a day/ 7 day a week operation. She offered that Liberty

Brush would also be looking to have a security person on site over the weekends as well.

Vice-Chair Magin recognized anyone else in the audience wanting to address this item. There was no response.

**Motion:** McQuillan/Gorton moved to close the public hearing.

**Vote:** Motion carried 4-0.

**Motion:** McQuillan/Klemm moved to approve Resolution No. PC10-027, a resolution approving a Conditional Use Permit to allow manufacturing, fabrication, processing and assembly operations conducted entirely within a closed building, and exterior storage in the Light Industry (I-1) Zone, with conditions as presented, and move its adoption.

Discussion took place regarding condition #1 and whether any additional language needs to be added and whether having the narrative letter from September 16, 2010 as an attachment to this condition is sufficient enough.

Discussion took place regarding the percentage of impervious and pervious surfaces on the site and whether it meets City Code.

The Board discussed their thoughts on whether or not an area for a permanent residence would be allowed at the site. It was the consensus of the Board that they would be fine with a cot or something on site for security purposes, but opposed to it actually being a permanent residence for someone.

It was the consensus of the Board to change the wording of condition #2 to read: *Any proposed uses shall be reviewed for compliance with the city's building code and design and performance standard and permitted uses of the Shakopee City Code at time of any building permit submittal or occupancy.* It was also the consensus of the Board to change the wording of condition #14 to read: *The applicant shall provide a detailed site survey clearly showing pervious and impervious areas and the site must be compliant with Section 11.44 Subd. 5 of the City Ordinance.* Mr. McQuillan and Mr. Klemm agreed that the motion on the table be amended to include these changes.

**Vote:** Motion carried 4-0.

Chair Mangan rejoined the Board at 7:50 p.m. and took over conducting the meeting.

5. **BOARD REVIEW OF THE CONDITIONAL USE PERMIT FOR VEHICLE SALES FOR CAMAUTA'S IMPORT AUTO WORLD LOCATED AT 804 FIRST AVENUE EAST, IN THE HIGHWAY BUSINESS (B1) ZONE. (TABLED FROM 12-9-10 MEETING)**

Mr. Sobota presented. It was noted that on November 4, 2010, the Board conducted a review of the Conditional Use Permit (CUP) that pertained to the property noted above. It was added that at that meeting, the Board requested that staff prepare the necessary documents to consider the revocation of the CUP for their consideration at the December 9, 2010 meeting. Mr. Sobota stated that at the December 9<sup>th</sup> meeting the Board requested that Mr. Camauta provide a plan of action by December 28<sup>th</sup> for the access closure on Minnesota Street, fuel storage tank removal, impervious surface removal, and tree planting. He noted that the plan was to include a financial commitment to Pump and Meter Service for tank removal sometime in spring 2011. He offered that the applicant has not yet provided the financial commitment that had been requested. He pointed out that on December 28<sup>th</sup> city staff received materials from the applicant. Mr. Sobota expressed that the plan does not give specific dates for completion of any of the items, other than Mr. Camauta's desire to handle removal of the tanks and access to Minnesota Street using his own contractor during the CSAH 101 project during the 3<sup>rd</sup> quarter of 2011. He offered that city staff would recommend that inspections be performed on this work and that this work be done by a licensed contractor. Mr. Sobota offered that Mr. Camauta stated that he intends to remove 800 square feet of impervious surfaces for a playground area and to plant 5 trees on 400 square feet of the pervious area, a date of completion was not provided. He expressed that staff would recommend that the trees that the applicant is proposing to plant be more dispersed throughout the subject site, rather than in one small area that is just 400 square feet. He noted that staff has prepared a resolution for the Board's consideration; if they determine that the business is in violation of the conditions of the approved CUP.

Mr. Sobota offered that he spoke with Pump and Meter Service and they stated that their bid was for removal of the tanks on the subject site and filling up the area where the tanks were and finishing with a class five. He offered that the Board may want to consider requiring the site to be paved. He noted that Pump and Meter does not perform pavement work. He added that pavement would be required in order to comply with City Code.

Mr. Sobota pointed out that the applicant did not provide an additional site plan, the only thing provided this time was a letter. He added that the square footage areas were not provided on the previous site plan because those areas were not known at that time.

Enrique Vinas, representing Camauta's Import Auto Inc., approached the podium to answer the Board's questions.

It was the consensus of the Board that there needs to be more clarity regarding the removal of the tanks. It was noted that the applicant needs to provide more information regarding the amount of impervious and pervious surface on the site. It was added that the Board feels that the amount of impervious surface that the city is requiring at this site isn't really reasonable given the size of the site. It was added that there also needs to be clarity regarding the planting of trees on the site.

Mr. Vinas noted that Mr. Camauta wants to minimize the impact on his business; therefore he doesn't want to close for construction of the tanks now when eventually things will be slowing down during the construction of Hwy 101. He added that the removing the tanks, filling the holes back in and paving the area on the subject site will take anywhere from two to three weeks, depending on the condition of the tanks. He offered that he hopes that Pump and Meter Service will find a buyer for the tanks, which will help pay for half of what it will cost for the tanks to be removed, but if not Mr. Camauta is prepared to pay the entire \$14,000 removal cost. Mr. Vinas pointed out that when the tanks on the site are removed depends on when the County begins to demolish the area in front of the subject site as part of the Highway 101 reconstruction project.

Mr. Sobota noted that it is anticipated that the Highway 101 project would take place in front of the subject site sometime during the third quarter of 2011.

**Motion:** Magin/McQuillan moved to table this item until the Board's next meeting and direct the applicant provide; 1) concrete dates as well as a final end date when everything will be done, 2) a detailed lot map showing the impervious and pervious surface space, 3) what type of trees he is going to be planting and where they are going to be planted on the site, and 4) a final timeframe of when the final surface will be installed on the subject lot.

The Board discussed their thoughts and provided feedback regarding the information they want the applicant to provide.

Mr. Sobota noted that he would recommend that this item be tabled to a later meeting then next month's meeting, because it is uncertain when Mr. Camauta will be back in the country. Mr. Magin and Mr. McQuillan agreed to amend the motion on the table to table this meeting until the Board's March meeting.

The Board noted that they would like for staff to make it very clear to the applicant that very specific dates need to be provided for the completion of the required conditions for this CUP. It was agreed that if the applicant doesn't come back with specific dates for the March meeting, this Board will provide those specific dates for the applicant.

Mr. Sobota expressed that staff needs the required information from the applicant by February 14<sup>th</sup>, to allow enough time for staff to review it.

Mr. Vinas noted that Mr. Camauta will be back in the country by the end of the third week in January.

**Vote:** Motion carried 5-0.

6. **OTHER BUSINESS:**

There was no other business.

7. **ADJOURN:**

**Motion:** McQuillan/Gorton moved to adjourn the meeting.

**Vote:** Motion carried 5-0. Meeting adjourned at 8:29 p.m.

**OFFICIAL PROCEEDINGS OF THE PLANNING COMMISSION**

**REGULAR SESSION**

**SHAKOPEE, MINNESOTA**

**JANUARY 6, 2011**

**MEMBERS PRESENT:** Mangan, McQuillan, Klemm, Magin and Gorton.

**MEMBERS ABSENT:** Seidensticker.

**STAFF PRESENT:** Mark Noble, Planner II  
Kyle Sobota, Planner I

**1. ROLL CALL:**

Chair Magin called the meeting to order. Roll call was taken as noted above.

**2. APPROVAL OF THE AGENDA:**

**Motion:** Gorton/Mangan moved to approve the Agenda.

**Vote:** Motion carried 5-0. The Agenda was approved as written.

**3. RECOGNITION BY PLANNING COMMISSION OF INTERESTED CITIZENS:**

Chair Magin recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

**4. OTHER BUSINESS:**

There was no other business.

**5. ADJOURN:**

**Motion:** Mangan/McQuillan moved to adjourn the meeting.

**Vote:** Motion carried 5-0. Meeting adjourned at 8:29 p.m.