

**CITY OF SAINT PETER, MINNESOTA
OFFICIAL PROCEEDINGS
MINUTES OF THE BOARD OF APPEAL AND ADJUSTMENT MEETING
April 23, 2020**

Pursuant to due call and notice thereof, a meeting of the Board of Appeal and Adjustment of the City of Saint Peter was conducted Virtually via the GoToMeeting platform on April 23, 2020.

A quorum present, Community Development Director Russ Wille called the meeting to order at 5:30 pm. The following members were present: Andy Davis, Larry Potts, City Councilmember Keri Johnson, and City Councilmember Shanon Nowell. Mayor Chuck Zieman joined the meeting at 5:38 pm. City staff present Russ Wille, Public Works Director Pete Moulton, and Administrative Secretary Cindy Moulton. Visitors present were Blake Dirks, Paul Tanis, and Christopher Schmitz.

Approval of Agenda – A motion was made by Davis, seconded by Nowell to approve the agenda as presented. With all in favor, the agenda was approved.

Election of Officers

A motion was made by Potts, seconded by Nowell to elect Andy Davis as Chairperson. With no additional nominations, nominations ceased. All members voting aye, the motion carried.

A motion by Nowell, second by Johnson to nominate Potts as Vice Chairperson. With no additional nominations, nominations ceased. All members voting aye, the motion carried.

Approval of Minutes – Motion made by Davis, second by Potts to approve the minutes of the May 16, 2019 meeting. With all in favor, the motion carried and the minutes were approved as presented.

Public Hearing – Conditional Use Permit (922 N Swift Street) – Automotive Sales

Wille stated that B.J. Swift, LLC has applied for a Conditional Use Permit to allow for an Automotive Sales operation at 922 North Swift Street.

He stated that vehicle storage and equipment repair are permitted uses and are not subject to the conditional use. He stated that conditional uses can only apply to automotive sales.

Wille indicated that the Planning and Zoning Commission considered the permit application at their March 5, 2020 meeting. The Commission has recommended five conditions based the conditions on 17 standards included in the zoning ordinance related to conditional uses.

Attorney Paul Tanis, representing property owner Dr. Blake Dirks and occupant Chris Schmidt, stated that the conditions placed upon the Conditional Use permit by the Planning and Zoning Commission are acceptable.

Dirks felt that most of the conditions are reasonable and should be adhered to.

Schmidt said that he is willing to comply with the requests made by the City and work with the neighbors.

Dirks reported that he wrote and distributed a letter to residents in the neighborhood that were concerned with the issuance of the permit. He included his phone number in the correspondence to allow those that had questions to contact him.

Dirks stated that his intent is to keep the site peaceful and not have snowmobiles and atv's driving around.

Wille opened the public hearing at 5:39 pm.

Sarah Ruble, 811 North Fifth Street, expressed her concern allowing automobile sales so close to a residential neighborhood. She said that when residents purchased their homes, automotive vehicle sales was not allowed.

Ruble requested that the public R-O-W be clear and also the Sumner parking lot kept empty.

Ruble addressed the issue of test driving vehicles in the neighborhood and asked that all test driving be done in the industrial park area. She did not want the auto's driving down the alley or on 5th Street for safety reasons. She informed the Board that there are not sidewalks in the neighborhood which leads to pedestrians in the street.

In regards to advertising, Ruble was against using paraphernalia, loud speakers, and signage to draw in customers. She stated that one of the things that separates storage and repair from sales is that typically with storage and repair, people are coming to the business because they have a known issue. When sales occur, there is more of an incentive to pull people into the area. She wants to enjoy her home and property as she has in the past.

Lorraine Edwards, 1114 North 5th, indicated that she is unable to see to the left at the intersection, with autos in the right-of-way.

She stated that noise and air pollution will increase with the increase of traffic and asked how it will be controlled

Edwards agreed with Ruble with the increased traffic on North 5th Street if test driving should occur. She said that it would be dangerous because of the lack of sidewalks.

She also inquired if there was a weight restriction on the roads and if the operator of the business was going to furnish a bond to have the road brought up to standards. She did not want the tax payers to have to pay.

In regards to the operation of the business, she asked what days and times the business would be open.

She also asked if there would be off street parking and if the water and sewer system could handle the increase in these utilities.

Katie Keller, 814 North Swift Street, indicated she was speaking against the Conditional Use permit.

In her opinion, automotive sales should not be allowed on the lot and no test driving or operating of recreation vehicles should be allowed in residential neighborhoods.

She indicated that she does not want people turning right onto Swift Street because of the lack of sidewalks.

She felt that the number of vehicles for sale should be limited.

Keller mentioned that there are currently auto's for sale on the lot. It was her understanding that the City had given Schmidt permission to sell vehicles with the understanding that the Conditional Use would be approved. She expressed her frustration with having the Public Hearing and all of the residents having the understanding that the Conditional Use will be granted.

She asked the Board to think about what this means to the residents, to know that their voices are invited but that what they say doesn't have an impact on the decision. Recommendations can be given and she hopes that they will be followed. She did not feel the residents have the power to change the Boards mind.

Wille closed the public Hearing at 6:01 pm.

Davis said that he would like to add conditions to address the resident's concerns.

Wille said that the conditions can be added as it relates to the sale of vehicles rather than the storage or repair. The conditions are to be considered the minimum necessary to alleviate conflicts between the land uses. He stated that the conditions should be tied to the 17 standards that are considered to be as to the issuance of a Condition Use permit.

Wille addressed the issue that water and sewer has sufficient water and sewer capacity.

Potts suggested that a condition be added relating the test driving south of the intersection of Ramsey and Swift Streets. He felt it was important to add the condition to ensure the safety of the children because of the lack of sidewalks in the neighborhood.

He also suggested that the lighting be addressed to prevent it from going into the residential properties.

Noise level was also a concern. He hoped that the owner would do his best to help minimize the noise.

Potts asked if there were plans for customer parking. He indicated that there was not much space for customers to park and wasn't sure if parking on the street would be a good idea near a neighborhood.

He stated that he was ok with an 8' fence as long as there is one entrance into it. The lot should be well controlled to help prevent break-ins.

Zieman explained that he has not been influenced by anything to this point and that his decision will be based on the suggested conditions placed on the sales of autos. He said he hopes that the occupant has not been given permission to operate before the Conditional Use is approved. He referred to the five conditions placed on the Conditional Use permit and stated there was nothing in the conditions that allows sales prior to the permit being issued.

Wille stated that the direction he received was to accommodate the use through the Public Hearing process. He indicated that he had spoken to Keller and informed her that to deny the request is a very high threshold. He said that it has to be determined that there are no condition that could be placed to elevate the conflict with neighboring uses.

He asked if the operator was made aware of the Planning and Zoning Commissions conditions placed on the Conditional Use permit.

Wille said he left that up to the applicant to convey those conditions to his tenant. Zieman said that he has driven by the site and there were five vehicles for sale and parked on the grassy area on the east side of the building.

He questioned why the occupant wouldn't have taken care of the issues prior to the Public Hearing when the City is putting trust in him. He asked what recourse the City has should the tenant not abide by the stipulations before the Conditional Use is passed. He felt that the occupant needs to remedy the situations before they occur.

Prior to moving his business to the Swift Street location Schmidt ran his business on Old Minnesota Avenue. Zieman wondered if the salvage looking yard on Old Minnesota Avenue, would change into an organized and well-groomed lot on Swift Street. He expressed his concern with the same issues already happening on the Swift Street location, prior to the Conditional Use permit being approved.

Zieman expressed his concern with boat storage on the parking lot at the corner of Sumner and North Fifth Streets. He felt it would be an enticing area for kids to play and recommended that a fence be installed with the appropriate setbacks. The fence would prevent kids from entering the area, provide a screening to the residential areas and prevent boat storage encroaching on the R-O-W.

Wille pointed out that the City does not have a recorded Conditional Use permit to enforce. Should the Permit be granted, it would be recorded at the courthouse and at that time be enforceable. He added that the permit will go along with the property.

Wille said that a survey will be conducted to find the property lines at the cost of the City. At that point the R-O-W will be determined and the City will be able to regulate encroachment issues.

In regards to the fencing, he stated that was not one of the conditions recommended by the Planning and Zoning Board. He indicated that should a fence be required, it cannot exceed 7' in height without an engineered plan.

Nowell shared her concerns with light pollution at night and test driving in neighborhoods. She felt that the vehicles should travel to the north on Swift Street.

Nowell stated that her biggest concern is the R-O-W on Sumner and Swift Streets. She said it is a safety hazard and an eye sore for the residents. She preferred to see no parking on the lot except for employees.

Johnson asked if the conditions placed on this permit would apply to future permits of auto sales.

Wille said that each conditional use would be considered on its own merits and characteristics.

Johnson expressed her concerns with the pedestrians using the street with the increase in traffic and also the kids playing on the stored boats in the parking lot abutting Sumner and Swift Streets.

Based upon discussion, Wille reviewed the concerns that members addressed. Concerns addressed were; 1) the use shall not include driving off road or all terrain vehicles upon the site, 2) the utilization of an amplified sound system, public address system, and paging system shall not be permitted, 3) the hours of business will be limited to between 7 am and 9 pm, 4) the test driving of road worthy vehicles

be requested to exit and return to the site on North Swift Street and 5) a fence to greater than 7' be erected.

Wille said in regards to the lighting, that it was difficult to differentiate between lighting for storage and repair and the lighting for the sale function.

Wille stated that one sign is allowed per street frontage as a matter of right. He did add that the board can indicate the signage be unlit.

Davis suggested that lighting used for the purpose of advertising be prohibited.

Potts asked if a fence is going to be installed as per the original proposal.

Schmidt said that a fence would be installed to keep the items secluded from the visual eye.

Potts said he would like to require a fence.

Potts felt that there has been some bad faith on the part of the operator. He indicated that Schmidt has been operating in a manner that is not allowed in the I-2 District for several weeks.

Potts asked if the City Attorney was suing because it is a violation of the law.

He asked if it will make it easy for the Board to believe that there will be faithful efforts in the future. He indicated that his confidence is shaken.

Wille stated that if a Conditional Use permit is approved, it will be up to him to enforce in regards to the sale of autos.

Potts asked why this wasn't taken care of in the last six weeks since it is out of compliance with zoning.

Will stated that a Conditional Use permit has not been issued.

Wille said that he was encouraged to allow the request to go through the process and to allow the business to operate until the matter went through the Conditional Use process.

Potts expressed his disappointment that Keller's statement had some substance as it relates to the Conditional Use permit being decided before any action was taken by the Board. He voiced his disapproval.

Schmidt addressed the Board and said the business is not planning on being a car lot. He indicated that a few cars are stored at the premise throughout the winter. Some owners of the cars have decided that they no longer want their vehicle(s) and ask Schmidt to sell them. Schmidt said that he may sell his own cars.

Schmidt stated that in order to sell boats, he must obtain a dealer's license. This license is tied to potential car sales. He said his main focus is selling boats.

Zieman asked how some businesses sell boats and not cars. He didn't understand the State requirements.

Dirks felt there was a misconception of the business. He said it is not going to be a used car lot.

He said that sometimes owners of the stored vehicles decide they don't want to keep their vehicle anymore and ask Schmidt to sell it for them. The bigger issue is when Schmidt repairs a boat and the owner wants to sell it. Schmidt will sell it on consignment.

Dirks was surprised by some of the comments and wanted the Board to understand that everything that has been complained about has already been approved for the building. Most of the concerns are not related to the Conditional Use permit.

Tanis felt that the comment "bad faith" was unfair. Schmidt was told that he could continue his work at the site until the Conditional Use process was through and a decision was made. Tanis reminded the Board that this piece of property is zone R-2. He stated that there is nothing in the 17 standards that relates to light pollution.

Tanis stated that the permit was applied for in good faith and Dirks has done a great job in corresponding with the neighbors and he has expressed his willingness to work with them. Dirks assured the neighbors that he is going to be responsible for the property. He added that once the Conditional Use is put into place, Wille will have the ability to enforce it.

Tanis stated that the City should grant a Conditional Use permit to accommodate the concerns of the public.

Dirks agreed with the Board that test driving should be directed to the Industrial Park and not neighborhood streets.

Zieman commented that 5th Street is a thorough fair and a lot of people drive on it. He didn't feel there was a way to reduce traffic since any vehicle is allowed to drive on those streets.

Zieman mentioned that there are campers and vehicles impeding in the R-O-W off of Sumner. He suggested that the R-O-W be cleared and that the vehicles/campers be replaced with boats and reduced to 1 row.

Zieman felt that the property is currently being used as a car lot. It has been said that it is not going to be a used car lot but that is the situation now. He expressed his concern with the area being turned into a car sales lot should boat sales drop.

Zieman recommended limiting the number of vehicles for sale on the lot at any one time.

Dirks said that sometimes there are so many confinements that it becomes unreasonable.

Nowell agreed it was reasonable to limit the number of vehicles. She also agreed that a lot of concerns are not related to the Conditional Use permit.

The tidiness of the parking lot was one of Nowell' biggest concerns.

She also felt that the building is better off occupied than not and that it is good for the City and the neighborhood.

Despite what business occupied the building in the past, Johnson said the amount of traffic is increased.

Johnson asked how the conditions would be enforced.

Wille stated that the conditions will be enforced on personal observation and complaints received. The occupant and owner will be given an opportunity to correct the order. If the issues are not corrected, the matter will be turned over to the City Attorney.

Johnson said that she was in favor of conditions placed on the Conditional Use permit that pertained to reducing traffic in residential areas, especially test driving.

Potts felt it would be a good business practice to provide lighting in the lot area since the business includes storage of other people's property.

Potts was not impressed with the prospect of selling snowmobile and atv's.

Tanis stated that there are not snowmobiles or atv sales.

Potts stated that it is not part of the business now, but asked about the future.

Tanis commented that it is almost impossible to have a conditional use for everything that could possibly be put there.

Davis reminded the board that the Conditional Use permit is only for the sale of vehicles, it is not for the uses already permitted.

Nowell agreed.

Zieman said that he trusts Driks judgement but expressed his concern at what point would the owner have to rely on other people or other means.

It was suggested that the residents be able to comment on the discussion.

A motion was made by Davis, seconded by Zieman to allow residents to speak with a time limit of 2 minutes. All members voting aye, the motion carried.

Keller said that the building has been vacant for the past 7 years and felt it was better vacant. She wanted the Board to deny the permit based upon the comment that repair and storage is already happening.

She stated that a lot of conversation is based on trusting people. Since the Conditional Use is issued to the property itself, how do we know what type of business will occupy the building in the future.

Wille asked if the 5 conditions that the Planning & Zoning Commission placed on the Conditional Use permit are appropriate.

Davis felt that #4 should be altered to require a fence no higher than 7' tall. He didn't feel a fence should be placed on the south parking lot.

Zieman suggested that the fence be placed on the north and south parking lots to accommodate the site lines and safety of the children.

Davis disagreed and said that a fence would not be needed on the south lot since storage is not allowed.

Potts agreed with Davis as the lot should be available for employee and customer parking only.

Nowell and Johnson also agreed with Davis.

Zieman asked if the business could live without parking vehicles on the south lot. If so, he said that a fence is not needed on the south lot.

Wille said that the owner must abide by the conditions in order to move forward.

Wille provided an over view of the discussion regarding the south parking lot. The parking lot access abutting Sumner Street shall not be utilized for automotive sales and merchandise nor shall stored vehicles occupy the parking lot.

All members agreed with the statement.

Johnson inquired if the Board had a responsibility to ensure that there are not concerns present with the list of the 17 standards. She felt that a strong case has been made to a number of standards. She was reluctant to proceed with the conditions before understanding that no Conditional Use permit be granted by the Board unless it is found that each of the following to be present.

Wille suggested that the Board review the list of conditions as prepared by the Planning & Zoning Board. Should there be standards that are questionable, those standards will be discussed.

The Board discussed additional conditions to be placed on the Conditional Use permit. As each addition was discussed Wille asked each individual if they agreed/disagreed with their inclusion. The following conditions were reviewed as per the previous discussion; * The use shall not include the test driving of off-road or all-terrain vehicles. Members Johnson, Potts, Nowell and Davis agreed that it should be included as part of the conditions. Zieman disagreed and asked where the test driving would take place. * The utilization of an amplified sounds system, public address system or paging system should be prohibited. All members were in agreement. * The sales shall be limited between 7 am and 9 pm. Members Davis, Potts, and Zieman, and Johnson were opposed. Member Nowell was in favor. * The parking lot abutting Sumner Street shall not be utilized for the Automotive Sales use and no merchandise shall occupy the parking lot. Zieman asked if customers and employees would be able to park in the north lot.

* All signage established upon the site shall not be illuminated. Zieman asked if there is a size restriction within the conditions. Wille said that in an industrial zoned district, the maximum size of a sign is 75 square feet and indicated that it can be established on each street front (Swift, North 5th, and Sumner). Members Zieman, Nowell, Davis and Johnson agreed. Potts disagreed with the addition.

Johnson was concerned with standard #13 which addresses the increase of traffic and limiting traffic and congestion. With increased customer traffic and test driving, felt the standard requirement was met.

Davis suggested that test driving of vehicles turn to the north onto Sumner Street.

When receiving inventory, Nowell asked if it were possible to request that people enter north of Sumner Street as opposed to residential streets.

Wille indicated that it was a reasonable request. He stated that the condition was removed because it has little to do with the sale and that is why it was limited to driving.

Davis suggested adding entering and exiting the lot be done north of Sumner Street, and moving inventory from the south parking lot to the north lot, to the conditions.

Potts felt that the conditions are getting to the point of unenforceability.

Zieman agreed and asked how the owner can be held responsible for someone coming to the business for the first time.

Potts felt that test driving was different because it is under control of the business.

Zieman, Johnson, Davis and Nowell agreed.

In regards to standard 13, Wille stated that the traffic may increase but it would not be any different if an industry with a lot of employees occupied the site. The expected traffic volume would exceed the design capacity of North Swift Street.

Johnson wanted to make sure that standard 15, referring to the use not interfering with the enjoyment or of neighboring permitted uses, would be addressed.

Zieman stated that if an issue should come up in the future, it would be addressed with the operator and owner.

Potts said there is no way to make an I-2 zone into an R-2 zone. It is an unfortunate zoning conflict that causes a lot of potential friction.

Davis asked if the number of automobiles being sold at one time should be limited.

Once again Schmidt said he does not want to sell cars, but sell boats and trailers legally. He said if it were a stipulation of the Board that he does not sell cars, he would sign a document stating so.

Zieman asked if there was another way to obtain a dealer license other than having to be licensed to sell automotive's.

Schmidt said it is the State law.

Zieman asked how many people were employed at his business.

Schmidt indicated that he is the sole employee.

Nowell felt that car sales should not be allowed since Schmidt does not want to sell them.

Zieman said that there should be a limit set on the number of cars for sale at any one time because the conditions stay with the property. He suggested no more than 10 vehicles, with an enclosed compartment for passengers, be for sale at one time.

Davis agreed.

Russ suggested that a condition include; No more than 10 passenger vehicles shall be displayed for sale outside of the building at any one time. Such vehicles shall include autos, trucks, vans, or other vehicles with enclosed passenger compartments.

Schmidt asked if he would be allowed to use the inside of the building for sales. He again stated he did not want to sell cars.

David agreed with 10 vehicles.

Potts felt inside and outside sales is a different issue. Potts said that he is directing his decision on the exterior display.

Johnson asked if snowmobiles will be sold at this location.

Schmidt indicated that he did not want to sell snowmobiles. His business plan is storage and selling boats.

Zieman asked if Schmidt sold and consigned snowmobiles.

Schmidt stated that he may be asked to help sell a snowmobile and post them online. He indicated that most people buy a snowmobile on the trailer. He stated that he would not allow test driving on the lot. He also added that he has no interest in selling snowmobiles. He said that he would concur to the wishes of the Board.

Potts expressed his concern over micromanaging the business.

Potts agreed with Davis and said that the south lot should be used for employee and customer only.

A motion was made by Potts, seconded by Davis to introduce Resolution 2020-01 entitled, "Resolution Approving A Conditional Use Permit Application Submitted By B.J Swift, LLC For the Establishment of Automotive Sales At 922 North Swift Street Subject To Certain Conditions" as amended.

The conditions established were as follows:

- a. No storage or display of merchandise or vehicles shall be conducted within the public right-of-way.
- b. All storage and display of merchandise and vehicles shall be conducted on an impervious asphalt or concrete surface.
- c. The display and storage of merchandise and vehicles shall be provided in an orderly manner of rows and aisles.
- d. The appropriate fencing, at a minimum of 7 feet tall, shall be installed to provide security and screening of the north parking lot.
- e. All flammable or explosive materials shall be stored, mixed, utilized and disposed of as per the provision of Chapter 50 of the 2018 International Fire Code as adopted and amended from time-to-time.
- f. The use shall not include the test driving of off-road or all-terrain vehicles upon the site.

- g. The parking lot abutting Sumner Street shall not be utilized for the Automotive Sales use and no merchandise or stored vehicles may occupy the parking lot. The parking lot can only be used for employee or customer parking.
- h. Signage established upon the site shall not be illuminated.
- i. Roadworthy vehicles test driven off-site shall leave the site on Swift Street in a northerly direction towards St. Julien Street and shall return to the site from the same direction.
- j. No more than 10 passenger vehicles shall be displayed for sale outside of the building at any one time. Such vehicles shall include autos, trucks, vans, or other vehicles with enclosed passenger compartments.

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Nowell stated that she would like to eliminate the sale of automobiles since Schmidt only wants to sell boats. She felt it would be much more palatable for the neighbors.

A motion was made by Nowell to exclude auto sales from the conditions. With a lack of a second, the motion failed.

Zieman stated that his interpretation of auto sales is, sales on a consignment basis. By eliminating car sales, it would be restricting potential business.

All members voting aye, the Resolution was passed and adopted.

Adjourn

A motion was made by Davis, seconded by Potts to adjourn. With all members voting aye, the meeting adjourned at 8:00 pm.