



CITY OF RACINE DEPARTMENT OF CITY DEVELOPMENT SUMMARY AND RECOMMENDATION

Meeting Date: 5/22/2019

To: Mayor and Plan Commission Members

From: City Development Department, Division of Planning and Redevelopment

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Case Manager: Jeff Hintz

Location: 1800 Clark St., located a block west of Racine Street on the North Side of De Koven Ave.

Applicant: Fury III LLC

Property Owner: Fury III LLC

Request: On April 15, 2019 the Common Council referred this item to the Plan Commission to make a formal recommendation to the Common Council on whether or not to implement the property owners request to rescind the Conditional Use Permit, which was approved by the Common Council on January 15, 2019.

BACKGROUND AND SUMMARY – the basics

- 1. What was the purpose of the conditional use permit Mr. Nelson received approval for in January 2019?**

The conditional use permit will be used to allow a mixed use development. Under the City's zoning ordinance, a mixed use development is a building or grounds intended to accommodate more than one use, either by right or by conditional use permits within a zoning district ([114-1\(b\)](#)).

For industrial buildings over 10,000 square feet in size such as Mr. Nelson's building, under the City's zoning ordinance, a conditional use permit is employed to put in place mitigation techniques to help lessen negative impacts that often arise when a collection of different (mixed) uses occupy the same property ([114-568 \(36\)](#)) & ([114-588\(1\)](#)). Mitigation techniques may include joint parking facilities, outdoor storage restrictions and screening and landscaping requirements, materials handling protocol, restrictions on the hours of operations, or building

modifications and repairs. Some examples of other mixed use developments in the City are: a) the commercial mixed use facilities of Regency Mall and 141 Main Street, b) the industrial mixed use facilities at the Mound Avenue Business Center or the Racine Business Center, c) residential mixed use properties of the Mitchell Wagon Loft apartments or the River Bend Loft Apartments.

2. Why did Mr. Nelson originally apply for a conditional use permit?

The City received a request for an occupancy permit for one of Mr. Nelson's auto repair tenants (auto repair activities require a conditional use permit in-and-of themselves). Learning that Mr. Nelson had additional tenants that did not have conditional use permits or even occupancy permits, the approach we recommended to Mr. Nelson was that, to regularize these tenants, he obtain a mixed use development conditional use permit. In doing so he can include all his current conditional use tenants under one umbrella permit, and include those who do not need a conditional use permit, but by default are housed in a mixed use development. Some specific conditional uses being authorized for Mr. Nelson through this current permit are three auto repair operations and a construction contractor's shop and yard. Uses that will remain are a metal working shop, contractor warehousing, and a T-shirt company.

The conditional use/mixed use designation will allow Mr. Nelson to continue to lease space for multiple users on one property. It will allow the continuance of the three current auto repair facilities through their own conditional uses, and allow any successor to those auto repair uses as long as there is no expansion of the auto repair use, or an additional auto repair facility. It will allow a construction shop and yard in addition to the permitted contractor storage facility.

In addition to the need for the mixed use conditional use permit, there are outstanding code issues on the site which have resulted in orders to correct. The orders include building and fire code issues. The conditional use permit will give Mr. Nelson time to comply with those orders while keeping all his lease paying tenants. Without the protection of the conditional use permit, the alternative is that Mr. Nelson has to immediately address outstanding code issues and make repairs, or evict his tenants that don't have valid occupancy permits or conditional uses. He will then need to be processed through the code enforcement order route to address the code concerns, which could result in shorter times to comply or even municipal court. The conditional use route is intended to be more business-friendly by provide the most flexibility to the owner while affording time to comply with outstanding code orders.

The following table is intended to point out code compliance issues, observed on a visit to the 1800 Clark/1825 Holborn site on April 23, 2019, that absent the protection of the conditional use permit, will require immediate correction:

Violation or Issue	Category	Code Section
Unscreened parking of heavy commercial vehicle(s) and equipment on a property within 300 feet of a residence or commercial district.	Zoning Ordinance	Sec. 114-587 (a)(2)
Unscreened and outside storage on a property within 300 feet of a residence district.	Zoning Ordinance	Sec. 114-587 (a)(3)
Uses which do not have a Conditional Use Permit on the property. Specifically, Garages for storage, repair, and servicing of motor vehicles AND Contractor or construction offices, shops and yards.	Zoning Ordinance	Sec. 114-588
Gravel parking areas have grass and other vegetation growing through.	Zoning Ordinance	Sec. 114-1167(b)
Required parking spaces on the site are not demarcated.	Zoning Ordinance	Sec. 114-1150(a)
Nuisance and/or inoperable vehicles are on presently on the site.	Property Maintenance Code	Sec. 42-181
Paint on the building has deteriorated to a condition whereby chipping, cracking, or other evidence of deterioration is present.	Building Code	Sec. 18-312 (1) (2) (3) & (5)
The windows of this building are damaged. Windows must be repaired to their required condition by replacing all broken glass or deteriorated frames.	Building Code	Sec. 18-312(6)

Any new tenants will require their own occupancy certificates before being allowed to occupy space(s) within the building. Some tenants may even require a conditional use permit based on use.

3. Mr. Nelson expresses great concern over the cost of complying with the conditions of approval.

It is true that compliance with the conditions of approval contained in the Common Council's resolution Res.0996-18 will require a financial outlay by Mr. Nelson.

It always is the City's intent to require properties to achieve compliance with current codes and ordinances. The mechanisms the City has to see that compliance is attained are: 1) through the punitive side as represented by the issuance of violation notices and orders, the resolution of which is through the City's municipal court. 2) through the entitlement process as represented by administrative approvals at a staff level or through executive actions of the City's Council, committees, commissions or boards. Either mechanism will often result in added costs to a property owner or tenant.

The punitive approach can result not only in the costs of making to a property any necessary improvements and obtaining proper permits, but it can also result in the levying of considerable fines.

The entitlement process works to avoid court costs and the levying of fines. The entitlement process results in a solution that helps the property owner utilize a property to their desired intent while setting goals and timelines to reach compliance with City codes and ordinances.

The construction of resolution Res. 0996-18, in staff's experience, will help Mr. Nelson reach his goals of having a vibrant and varied community of tenants to help him meet his bottom line: a property with positive cash flow to meet his varied obligations. Res.0096-18, as constructed, could afford Mr. Nelson at least two years to reach compliance, and if compliance cannot be achieved in the first two years, he can obtain an extension by posting a surety with the City as is a common outlet provided for conditional use permits. There even has the option of, after the first two year period, requesting a time extension through the Plan Commission or Common Council.

STAFF RECOMMENDATION

While it is contrary to Staff's original course of assistance to Mr. Nelson and not seen to be in his best interest in the perspective of the City, it is in compliance with Mr. Nelson's strongly stated wishes, and as such Staff therefore recommends that Res.0996-18 be rescinded.

ATTACHMENTS

- 1) Resolution 0996-18, approved conditional use permit;
- 2) Building Notice BG18-104, noting violations on the property from September of 2018;
- 3) Staff report from January 9, 2019 City Plan Commission meeting.
- 4) Staff report from May 8, 2019 City Plan Commission meeting.