



CITY OF RACINE DEPARTMENT OF CITY DEVELOPMENT STAFF REPORT

Meeting Date: 5/8/2019

To: Mayor and Plan Commission Members

From: City Development Department, Division of Planning and Redevelopment

Division Manager: Matt Sadowski – (262) 636-9152 matthew.sadowski@cityofracine.org

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 rescind the Conditional Use Permit, which was approved by the Common Council on January 15, 2019.

BACKGROUND AND SUMMARY

Approved Conditional Use Permit

The conditional use permit as approved on January 15, 2019 was for the following:

- Mixed use development in a building of over 10,000 square feet in an I-2 General Industrial Zone district.

The following conditions as approved in Res. 0996-18 were applied to the use:

- Site improvements for the site related to fencing, parking lot striping and the yard area.

- Allowed uses were those permitted in the I2 zone district, doing general automobile repair or storage, and contractor yards/shops
- Outdoor storage and placement of vehicles and equipment was limited to areas which comply with development standards.
- Standards for the parking of vehicles being operated on or stored.
- Hours of operation for the site.
- Occupancies for existing tenants to be obtained.
- Parking for future tenants was required to be paved.

The following deadlines to comply with development standards applied:

- March 7, 2019 – occupancies for all existing tenants in the building.
- May 1, 2019 – striping of parking spaces and loading zones on the lot.
- Within 12 months of the warehouse space being occupied – compliance with the following development standards:
 - Chain link fence removed and a privacy fence installed along DeKoven Avenue and northern 40 feet along Clark Street.
 - Landscaping of the gravel parking area OR repair/improvement through paving methods allowed by ordinance.

Timeline

September 5, 2018 – application for Conditional Use received by the Department of City Development.

September 7, 2018 – Planning Division staff visit site in preparation of upcoming meeting to assess existing conditions of the property.

September 17, 2018 – Building Division issues a notice of violation (BG18-104) for various issues on the property. The order includes:

- Requirement to fix existing fencing on the property.
- Requirement to paint the building to remedy chipping, cracking and other deterioration.
- Requirement to fix damaged windows by replacing broken glass or deteriorated frames.
- Requirement to remove nuisance vehicles from the property.

September 26, 2018 – City Plan Commission defers action on the application for 90 days to allow the applicant additional time to work on a plan for compliance with development requirements. Staff met with the applicant on December 6th and discussed a variety of options related to the recommended conditions which would comply with development requirements.

December 6, 2018 - The owner of the property, Mr. Nelson, met with Department of City Development staff to discuss his priorities for the development and strategies/solutions to comply with development requirements.

January 9, 2019 – City Plan Commission recommends approval of the Conditional Use permit, subject to conditions.

January 15, 2019 – Common Council approves the Conditional Use Permit, subject to the conditions recommended by the Plan commission and included in Resolution 0996-18. This resolution is included as an attachment on this agenda.

March 26 – Letter sent to the property owner indicating conditional use permit may be revoked as conditions from it have not been met.

April 15, 2019 – Common Council refers a communication from Alderman Jones to rescind the Conditional Use Permit to the Plan Commission for a recommendation and report.

April 23, 2019 – Department of City Development staff from the Planning and Building Division visit the property to conduct an inspection for compliance with zoning and building codes, determine who is presently occupying the building(s) and to observe progress on order BG18-104 from September 17, 2018.

Request of Mr. Nelson of Fury III LLC

The applicant no longer wishes to have a mixed use development on the property and due to the approval of the application, would be required to comply with all the conditions of approval. Rescinding the conditional use permit does not mean the building and site will be allowed to remain out of compliance with building, zoning and other applicable development standards

Approved Conditions from Conditional Use Permit

- a) That the plans presented to the Plan Commission on January 9, 2019 be approved subject to the conditions contained herein.
- b) That the following development standards be complied within 12 months of warehouse space being occupied otherwise noted:
 - 1. Site be landscaped and maintained as required by Sec. 114-743. Removal of gravel parking area, planting beds and installation of organic materials around plantings and vegetation. Plans and specifications of new plantings and organic materials for beds to be submitted to the Department of City Development and approved prior to installation. Alternatively, gravel area be paved for parking and maneuvering areas as required by Sec. 114-1167; and
 - 2. Parking lot spaces and loading zone be striped in accordance with the sizing requirements of Sec. 114-Article XI; this shall be accomplished by May 1, 2019 and
 - 3. Fencing on the site be compliant with requirements of Sec. 114 Article VII, Division 7 and the requirements of Sec. 114-567 for any outside storage. All existing chain link fence along DeKoven Avenue and southern 40 feet of Clark Street shall be removed. Privacy fencing shall be installed across the DeKoven Avenue frontage and southern 40 feet of

Clark Street frontage. Prior to installation, selected privacy fencing shall be reviewed and approved by the Department of City Development.

- c) That by March 7, 2019 all existing tenants in the development shall have occupancy permits issued by the City of Racine Building and Inspection Division of the City Development Department.
- d) That if, 12 months after warehouse occupancy, required development standards listed in “b” above have not been or cannot be completed, a financial surety shall be provided to the City. The surety shall be in a format as approved by the City Attorney’s office, and subject to all stipulations as identified for financial sureties in the City of Racine. The dollar amount shall be determined at the time of application based upon estimates provided by the applicants for any incomplete work, and shall be valid for no less than one (1) year from the date of issuance. The surety format and content is subject to review and approval by the City Attorney.
- e) That new uses be reviewed by the City of Racine prior to occupancy of tenant spaces to determine use classification and occupancy requirements. New uses authorized in this mixed use development shall be as follows:
 - 1. Uses already permitted in the district;
 - 2. Garages for storage, repair, and servicing of motor vehicles. This shall not include body repair, painting, and engine rebuilding; these uses shall require a separate conditional use permit application per tenant.
 - 3. Contractor or construction offices, shops and yards so long as all permitted outdoor storage is completely screened.
- f) That the following site performance standards are applicable to all tenants on the site:
 - 1. Outdoor storage shall occur within 25 feet of a building and be completely screened as required by Sec. 114-567; at no time shall automobile parts, accessories, tires, or chemicals be kept outside, even if screened.
 - 2. Junked or inoperable vehicles, boats, trailers and other equipment shall not be stored on the site. All vehicles which are not operational shall be kept inside until such a time they are functional or removed from the site.
 - 3. Dumpsters and trash shall be completely enclosed at all times as required by Sec. 114-740.
 - 4. Additional parking which meets all requirements of Sec. 114-Article XI shall be provided for tenants as vacant space is occupied or as currently occupied space changes occupancy and requires more parking.
 - 5. Outdoor component(s) to operations from any tenant on the site commence no earlier than 7:00 AM and finish no later than 10:00 PM.
 - 6. At no time shall storage or parking of any vehicle or equipment associated with a tenant operation occur in the space between the building line and right-of-way for DeKoven Avenue.
- g) That all codes and ordinances are complied with and required permits acquired.
- h) That no minor changes be made from the conditions of this permit without approval of the Plan Commission, and no major changes be made from the conditions of this permit without the approval of the Common Council.
- i) That this conditional use permit is subject to Plan Commission review for compliance with the listed conditions.

FINDINGS FROM APRIL 23, 2019 SITE INSPECTION AT 1800 CLARK STREET AND 1825 HOLBORN STREET

Current Occupancy Status and Zoning Classification:

On the afternoon of April 23, 2019 Department of City Development Staff visited the site to observe the existing conditions and occupancies within the building. The following is a listing of tenants who were still occupying the property and their current occupancy status.

Tenant Name	Actual Property Usage	Zoning Use Classification	Occupancy Status	Zoning Status
Acme Construction Metals	Metal reduction and refinement	Metal reduction and refinement	Occupancy Permit dated 02/28/18	Permitted by right
GI Concrete	Warehousing and storage -and- Contractor shop and yard	Warehousing and storage	Occupancy Permit dated 05/17/16 for Warehousing and storage. No occupancy for contractor shop and yard	Permitted by right Contractor shop and yard requires a Conditional Use
We Make T-Shirts	Wearing apparel manufacture	Wearing apparel manufacture	Occupancy Permit dated 02/01/2018	Permitted by right
Lucio Auto	Garage for the storage and repair of automobiles	Garage for the storage and repair of automobiles	No Occupancy	Conditional Use required
Jarstead Auto	Garage for the storage and repair of automobiles	Garage for the storage and repair of automobiles	No Occupancy	Conditional Use required
Cartwright Auto	Garage for the storage and repair of automobiles	Garage for the storage and repair of automobiles	No Occupancy	Conditional Use required

Issue One: Certain Occupancies Are Invalid Without A Conditional Use

Condition c) in the approved Conditional Use permit required all existing tenants to obtain occupancy permits by March 7, 2019.

Without the Conditional Use permit authorizing a mixed use development, three of the building tenants would be forced to vacate immediately. Condition e) 1-3 of the conditional use authorized the uses permitted in the district (found in Section 114-587 of the Municipal Code) and in addition, garages for the repair and storage of automobiles AND contractor offices/shops and yards, which are normally required to obtain separate, conditional use permits, were authorized with this conditional use. The process would be to apply for an occupancy for any of those uses and if the building and other life safety codes were met, the use would be allowed.

Issue Two: Outstanding Compliance With Development Standards Required In Zoning Ordinance



1. Sec. 114-587(a)2: *Requires that all business, servicing or processing conducted within 300 feet of a residence or commercial district shall be conducted within completely enclosed buildings.* Observed the property is within 300 feet of a business district and there are heavy commercial vehicles and aggregate materials visible on the outside of the building.
2. Sec. 114-587(a)3: *Requires that all storage within 300 feet of a residence district, except of motor vehicles in operable condition, shall be within completely enclosed buildings or effectively screened by a solid wall or fence (including solid entrance and exit gates) not less than six feet nor more than eight feet in height.* Observed the property is within 300 feet of a residence district and aggregate materials are visible on the outside of the building as there is no privacy fence installed.
3. Sec. 114-1150(a): *Requires that parking spaces be at least 9 feet in width and 19 feet in length. Presently there is no demarcation on the site of where the required parking spaces and loading spaces are.* Observed the demarcation which existed previously has become so worn, it is no longer visible. The property easily has the room to provide the spaces, but currently there is nothing demarcating the required spaces on the lot to designate where these activities are to occur.
4. Sec. 114-1167(b): *Requires that all open off-street parking areas and driveways shall, at a minimum, be surfaced with two inches of asphalt pavement over a crushed stone base. Parking areas and driveways not in compliance as of the effective date of the ordinance adopting the requirement may remain in noncompliance, excepting if eroding of soils, tracking of sediment and debris, or airborne dust resulting from the noncomplying parking area or driveway creates a nuisance to the general public as determined by the chief building inspector, then the surfacing requirement shall apply. Appeal of such determination shall be to the zoning board of appeals.* Observed the condition of the surfacing was such that when this request was originally submitted in September of 2018, there were un-level areas and several pockets where grass and other vegetation had grown through. This has been remedied in many areas, but there are a couple of spots which need some attention.



5. Sec. 114-743(a): *Requires that any fence, wall, hedge, yard, space or landscaped area required by this chapter shall be kept free of any accumulation of refuse or debris. Plant materials must be well kept in a healthy, growing condition; and structures, such as walls and fences, shall be maintained in sound condition, good repair and appearance at all times.* Observed the area in the southeast corner of the property could be a gravel parking area as allowed by Sec. 114-1167 or it could be a yard (as allowed by this section), but it cannot be both at the same time.

Issue Three: Outstanding Compliance With Property Maintenance And Building Code Requirements

Regardless of the action by the Plan Commission and Common Council, the requirements of the order and the building code are required to be met. The weather has not been readily convenient for construction and exterior improvements as of late, but there is still some time which compliance can be achieved.

BG18-104, items to be completed by May 31, 2019

1. Dilapidated Fencing – fence has been repaired and upon site visit was observed to be in good repair.
2. Chipping, cracking or deteriorating paint on the building – it was observed at the visit to the site that there is wall deterioration and deficiencies with the paint. The images on the following page are from the east exterior of the building.



3. Damaged to windows involving broken glass and deteriorated frames – the applicant has applied for a permit to cover windows of the building which are broken and/or deteriorated. As of this site visit, the work had not yet been performed. Metal wall panels are proposed to cover these broken windows.



4. Storage of nuisance vehicles on the site – the vehicles which were observed in September appear to have been removed. There was one inoperable vehicle with a smashed left rear fender and wheel portion observed on the property.



ANALYSIS OF REQUEST

There are two potential actions that the Plan Commission and Common Council can take regarding the conditional use permit for this site.

1. Do nothing, and keep the conditional use permit and approved conditions, in place; or
2. Rescind the conditional use permit.

Option 1: Do Nothing and Keep the Conditional Use Permit and Approved Conditions In Place

The approved conditions in the conditional use permit help to mitigate and eventually remedy the existing zoning violations on the property. The existing conditional use is worded in such a way that it affords the applicant time to be able to financially meet the development standards. Without the conditional use permit, all development standards would need to be complied with immediately.

Staff would not recommend rescinding the permit because it will require the applicant to conform to development standards immediately, as there are existing zoning violations on the property which the conditional use permit helps to mitigate, and eventually improve, through the approved conditions.

Condition f)6 in the approved conditional use permit requiring the yard in the front of the property be kept free of vehicles and equipment with the tenant operations, ensures that this 300 foot separation as required in development standards is met. This is an area where it appears business is being conducted.

Conditions b)3, f)1 and f)6 in the approved conditional use permit ensures storage and parking of commercial vehicles and materials occurred within 25 feet of the building, to meet development standards. The wording of the condition b)3 was such that the privacy fence would be installed in the locations where it would be required for compliance with screening requirements in development standards. Aesthetically, the entire property being surrounded with a privacy fence of the same style would be ideal, but to comply with ordinance requirements, the DeKoven avenue frontage and northerly 40 feet along Clark Street was required. This fence was not required to be installed until 12 months after the warehouse space on the property was filled; the warehouse space currently has no tenant(s).

Condition b)1 in the approved conditional use permit required the creation of a yard or a parking area which meets the requirements of either 114-743 or 114-1167. The area cannot be a landscaped yard and gravel parking area at the same time. The use of it is a parking area, but upon initial site visit in September of 2018, the condition of the area was such that it appeared to be a yard. It is a parking area and needs to be maintained as such. Ideally, this would be a paved parking area, but the ordinance does allow gravel to remain, if it is maintained. Any new uses are required to provide parking as required in condition f)4 of the approved conditional use permit. At some point, additional paving on the lot would need to occur, but that would depend on how the existing asphalt is striped and the layout/occupancy of any new tenants.

Option 2: Rescind The Conditional Use Permit

Rescinding of the conditional use permit will result in a building which has fewer occupants for the current owner, as the three automobile oriented uses must vacate immediately. The required

development standards outlined in the conditional use permit have a timeline which allows for some flexibility in their implementation that through rescinding this permit, would go away. In conversations with the applicant, it was apparent some time to comply would be needed and given the cost, timing and condition of the property, the existing permit was worded in a manner in which afforded flexibility, but at the same time, achieved eventual compliance.

If removed, the applicant remains in violation of the sections of the building, zoning and other applicable development standards outlined in this report and will receive violation notices immediately for the issues outlined in this report.

STAFF RECOMMENDATION

That the Plan Commission and Common Council do nothing and keep the conditional use permit and approved conditions in place and that the time for all remaining tenants to obtain occupancy be extended to June 7, 2019. This extension can be granted administratively by the Director of City Development.

The approved conditional use permit affords flexibility for full compliance which is not likely to be achieved on the site without it. Rescinding the conditional use permit would result in immediate violations of the zoning code and potential for current tenants to obtain occupancy. The approved conditional use permit would allow for a total of up to 68 different land use classifications to occur within the development. Any mix of these 68 uses would have to comply with the development standards laid out within the approved conditional use permit and obtain an occupancy permit ensuring all building codes are being met. This flexibility for uses and timeline to meet development standards for the site does not exist without it.

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.