

## STAFF REPORT

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**Application:** Conditional use permit for the operation of a light repair (small engine repair) business with retail sales and outdoor storage in a fenced area.

**Applicant:** Matthew L Rezac

**Property Owner:** Pogreba Family 2005 Rev Trust

**Agenda Item:** 3(a)

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### Background Information:

- Proposal:** The applicant is proposing to operate a small engine repair business that would also involve retail sales and outdoor storage of small engine items. The outdoor storage area would be located on the east side of the property and be fenced with a privacy fence.

The proposed site is located within the Downtown Mixed Use (DMU) zoning district and has a building on it that has been used for other commercial purposes in the recent past.

A conditional use permit is required for "light repair shops" in the DMU zoning district. "Automobile repair shops and garages" is listed as a prohibited use. "Outside storage" is listed as prohibited in the DMU district, while "Temporary vehicle storage facilities" is listed as a conditional use.

- Location:**
  - Property address: 49 Ash Street E
  - Parcel number(s): 41.0106.000
  - Partial Legal Description: Lots 7 & 8 Blk 15 Less E 10 ft to City.
- Zoning:** Downtown Mixed Use (DMU)
- Lot size** (from submitted survey): About 100' x 140' (14,000 sq ft).
  - Existing Impervious Coverage (based on aerial photo):
    - About 2,300-4,200 sq ft (16-30 percent) depending on how much parking areas is considered impervious.
  - Proposed Impervious Coverage (estimated):
    - About 50-75 percent depending on how much is added in the outdoor storage area (max allowed where storm sewer exists is 90 percent).
- Natural Features:**
  - Floodplain: The property is not within an identified floodplain.
  - Bluff/Steep Slopes: The property does not contain any bluffs or steep slopes. It is very flat.
  - Wetlands: There property does not contain any wetlands.

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**Applicable Statutes/Ordinances:**

SECTION III - RULES AND DEFINITIONS

3.2 DEFINITIONS

The following words shall be defined as follows for the purpose of this Ordinance:

**90. Exterior Storage.** Storage of goods, materials, equipment, manufactured products outside a fully enclosed building.

**157.Open Storage:** Storage of material outside of a building.

**237. Temporary.** A use or structure that lasts longer than three days and is discontinued within 14 days. Any use or structure existing longer than 14 days, except for signs, shall be considered permanent unless a specific date of discontinuation, agreeable to the Planning and Zoning Administrator to be reviewed by the Planning Commission, has been submitted, in writing, to the City.

SECTION V - ZONING DISTRICTS AND DISTRICT PROVISIONS

**5.10 Downtown Mixed Use (DMU)<sup>1</sup>**

1. Purpose and Intent: To provide a zoning classification for a mix of high-density residential and commercial uses. Development in this zone relies less on automobile traffic and more on walking, biking and other similar modes of transportation. Infrastructure must be in place to provide on-street parking and walkways as well as connection to municipal water and sanitary sewer utilities. Downtown Mixed-Use zones should be clustered to provide the maximum amount of interaction and accessibility between the different establishments.
2. Compatibility: The Downtown Mixed-Use zone is most compatible with and should be established next to the Residential, High Density zone, but it also may be adjacent to the Urban Commercial, Commercial and Public Use Zones.
3. Lot and Use Requirements. (DMU)

Lot width- feet, minimum	25
Buildable lot area - square feet, minimum	2,250
Maximum Density (units per acre)	20
Setback, right of way, City road- feet, minimum	1
Setback, right of way, County or State road, feet, minimum	10
Setback, side yard - feet, minimum	0

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<sup>1</sup> Ordinance 2009-3, 4/28/2009

Setback, rear - feet, minimum	10
Setback, sign - feet, minimum	1
Setback, parking from building or lot line - feet, minimum	0
Setback, wetland - feet, minimum	50
Impervious Coverage with storm sewer available	90%
Impervious Coverage without storm sewer available	50%
Building height - feet, maximum	25
Building above highest groundwater level - feet, minimum	3

4. Performance Standards. (DMU)

A. Parking. Developments shall minimize the appearance of parking areas.

(1) Location. Parking and vehicle drives shall be located away from building entrances and street corners, and not between a building entrance and the street. Surface parking shall be oriented behind or to the side of a building when possible.

(2) Landscape Buffering. Suitable trees and shrubs shall be planted between parking lots and all adjacent sidewalks and buildings.

B. Pedestrian Amenities. Proposed developments shall provide for safe and comfortable sidewalks, paths, and resting areas for pedestrians. Sidewalks and paths shall connect the development to adjacent land uses and provide connections through the development to the public street right-of-way.

C. Lighting. All building entrances, pathways and other pedestrian areas shall be lit to two-foot candles with pedestrian-scale lighting including wall mounted, sidewalk lamps, bollards, or landscape up-lighting.

D. Fences. Fences not exceeding 72 inches in height may be constructed. Fencing shall only be constructed closer than 10 feet from the surface of a public road with the permission of the Planning Commission and in all cases not within the public right-of-way. Materials shall consist of usual fencing materials with posts and fence of metal, wood, concrete, brick or smooth wire. Barbed or electrified wire is allowed only with the permission of the Planning Commission

**5.11 Land Use Matrix<sup>2</sup>**

**Table 1. City of Motley Land Use Matrix**

A - Denotes Allowed without a Permit					AC - Denotes <i>Accessory use</i>				
P - Denotes <i>Permitted use</i>					E - Denotes Excluded Use				
C - Denotes <i>Conditional use</i>									
Use	NR	R1	R2	R3	DMU	PU	C2	C1	I
<i>Automobile Repair Shops and Garages</i>					E		C	E	
<i>Light Repair Shops</i>					C				P
<i>Outside Storage</i>		E			E		C	E	
<i>Temporary Vehicle Storage Facilities</i>					C		C	E	
<i>Warehousing</i>		E			E		C	E	C

SECTION IX - ADMINISTRATION

**9.5 Conditional Use Permits.**

3. In permitting a new Conditional Use or alteration of an existing Conditional Use, the Planning Commission may impose, in addition to the standards and requirements expressly specified by this Ordinance, additional conditions that the Planning Commission considers necessary to protect the best interest of the surrounding area or the City as a whole. These conditions may include, but are not limited to the following<sup>3</sup>:
  - a. Increasing the required lot size or yard dimension.
  - b. Limiting the height, size or location of buildings.
  - c. Controlling the location and number of vehicle access points.
  - d. Increasing the street width.
  - e. Increasing or decreasing the number of required off-street parking spaces.
  - f. Limiting the number, size, location or lighting of signs.
  - g. Requiring berming, fencing screening, landscaping or other facilities to

<sup>2</sup> Ordinance 2009-3, 4/28/2009

<sup>3</sup> Amended by Ordinance 153.05, 3/9/2010

- protect adjacent or nearby property.
- h. Designating sites for open space.
  - i. Stormwater runoff management.
  - j. Reducing impervious surfaces.
  - k. Increasing setbacks.
  - l. Restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.
4. The Planning and Zoning Commission shall decide the issue with consideration to the following:
- a. The following must be met:
    - i. The use or development is an appropriate conditional use in the land use zone.
    - ii. The use or development, with conditions, conforms to the comprehensive land use plan.
    - iii. The use with condition is compatible with the existing neighborhood.
    - iv. The use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the City.
  - b. The following must be considered:
    - i. The conditional use should not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted on that property, nor substantially diminishes or impairs values in the immediate vicinity.
    - ii. The conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
    - iii. The conditional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
    - iv. The conditional use will have vehicular approaches to the property which are so designed as not to create traffic congestion or indifference with traffic on surrounding public thoroughfares.
    - v. Adequate measures have been taken to provide sufficient off-street parking and loading space to serve the proposed use.
    - vi. Adequate measures have been taken or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so none of these will constitute a nuisance and to control lights and

signs in such a manner, that no disturbance to neighboring properties will result.

- vii. The conditional use will not result in the destruction, loss or damage of a natural, scenic or historical feature of major significance.
- viii. The conditional use will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients.

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**Staff Findings:** The following findings of fact are presented by Staff for consideration by the Planning Commission:

**1. The use or development is an appropriate conditional use in the land use zone.**

“Light repair shops” are listed as a conditional use in the DMU zoning district. “Light repair” is not defined in the ordinance and could include everything from computer repair, arguably, to repair of lawn mowers or motorcycles. As such, a small engine repair shop could be considered consistent with the list of allowed conditional uses. On the other hand, “Automobile repair shops and garages” are listed as a prohibited use in the DMU district – presumably because of the significant outdoor storage that often accompanies them. The primary question for the Planning Commission is whether small engine repair is more consistent with “light repair” or with “automobile repair”.

The outdoor storage request also presents similar issues in terms of consistency with the ordinance. “Outdoor storage” (not defined by the ordinance – “open storage” and “exterior storage” are) is listed as prohibited in the DMU district, although it is not uncommon for businesses in the DMU district to be allowed to display items for sale outdoors. The distinction may come down to whether the outdoor storage is “temporary” (defined as less than 14 days by ordinance). “Temporary vehicle storage facilities,” for instance, are listed as a conditional use.

**2. The use, with conditions, is compatible with the existing neighborhood.**

The primary issue here is likely to be whether the repair work will be done in a way that creates incompatible nuisance characteristics – noise, odor, management of waste materials and whether the outdoor storage will create visual nuisances. Small engine repair work itself generally does not create a lot of noise or odor, although testing the engines may. The applicant is proposing a privacy fence to enclose the outdoor storage area.

**3. The use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the City.**

See #2 above.

**4. The conditional use should not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted on that property, nor substantially diminishes or impairs values in the immediate vicinity.**

See # 2 above.

- 5. The conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.**

The proposed use would not appear to present any hindrance to the normal and orderly development of surrounding land, as the surrounding land is already developed. If it creates significant nuisances, it could inhibit the redevelopment or use of surrounding land.

- 6. The conditional [use will not increase] public cost for public facilities and services and will not be detrimental to the economic welfare of the community.**

All necessary public facilities and services are already available to the property.

- 7. The conditional use will have vehicular approaches to the property which are so designed as not to create traffic congestion or indifference with traffic on surrounding public thoroughfares.**

The property currently has one vehicular access point - from Ash Street on the south. Traffic levels would likely be low for a small engine repair business, although it would not be uncommon for customers to deliver and pick up their items with trailers, which could create some congestion as vehicles enter into the property from Highway 10 and Ash Street.

- 8. Adequate measures have been taken to provide sufficient off-street parking and loading space to serve the proposed use.**

The proposal includes space for some limited off-street parking. The ordinance does not specify a certain number of parking spaces that need to be available - just that it be adequate. A small engine repair shop would not be expected to create a significant need for off-street parking, as customers would likely only be dropping off or picking up equipment.

- 9. Adequate measures have been taken or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so none of these will constitute a nuisance and to control lights and signs in such a manner, that no disturbance to neighboring properties will result.**

See #2 above.

- 10. The conditional use will not result in the destruction, loss or damage of a natural, scenic or historical feature of major significance.**

The proposed additions would not appear to have any impact on any natural, scenic or historical features as the property is flat and already developed with a commercial building. There do not appear to be any such features on the property.

- 11. The conditional use will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients.**

The proposed use should not create much potential for sedimentation or pollution as limited area will be disturbed. Any spills of handling of wastes will need to be properly managed given that various pollutants would be present on the property (engine cleaners, oils, etc.).

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**Planning Commission / Board of Adjustment Direction:** The Planning Commission / Board of Adjustment may approve the conditional use request(s), deny the request(s), or table the request(s) if the PC/BOA should need additional information from the applicant. If the PC/BOA should approve or deny the request, they should state the findings which support either of these actions.

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**Staff Comments:** Staff comments related to the request are noted below:

1. The primary questions in this application are whether the proposed uses are consistent with the ordinance. Depending on how this is viewed, the application should either be denied outright, or approved with specific conditions that mitigate the potential nuisances and traffic issues.

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**Staff Recommendation:** Based on the findings of fact and discussion listed above, Staff recommends approval of the proposed conditional use only if the City finds that the proposed use is more similar to “light repair” than to “automobile repair” and if it finds that a fully screened outdoor storage area is consistent with the ordinance in that the storage is either for items being sold retail or temporary in nature relating to repaired equipment.

If the Commission finds that the use is incompatible with the ordinance and/or that traffic issues cannot be addressed adequately, it should deny the application.

If the application is approved, Staff would recommend consideration of the following conditions:

1. That all repair activities be conducted inside of the building with the doors closed to prevent noise, odor and visual nuisances for surrounding properties.
2. That all outdoor storage be within a fully screened area such that items stored outdoors cannot be seen from surrounding properties at ground level. The fence shall not have openings greater than ¼ inch (except for gate areas when they are temporarily opened) and must be to a height of 6 feet (max height allowed in the DMU district).
3. That all waste materials be handled properly to prevent pollution and in accordance with local, state and federal regulations.
4. That the applicant provide a parking and traffic circulation plan sufficient to prevent congestion or safety issues on the road. Such plan shall accommodate at least three off-street parking spaces and sufficient space for accommodating vehicles with small trailers.
5. That the property and buildings shall be maintained in a neat and orderly appearance such that excessive weed growth does not occur, that structures are maintained in a safe and attractive manner and that outside storage of materials does not become a detriment to surrounding properties. All equipment stored outdoors must be temporary in nature and the site shall not be allowed for parts, vehicles or scrap material on a permanent basis.

6. That any required building permits, as well as any other state or federal permits that may be required shall be obtained.
7. The applicant shall provide access to all areas of the property, during reasonable times, to the City for inspections to ensure compliance with the above conditions.