



STAFF REPORT

Planning Commission

CASE #CU-96-12

PC Date: June 05, 2012 **Case Planner:** Brian Garner
CC Date: June 18, 2012
Location: 7360 Hwy. 2, Derby Downtown District, Commerce City 80022
Applicant: Mr. Naim Kargar **Owner:** Mr. Naim Kargar
Address: 13456 Glen Circle, Broomfield, CO 80020

Case Summary

Request: This is a request for a Conditional Use Permit to operate a windshield repair business/light auto repair at this location as required by the Derby Planned Unit Development (PUD) zoning.

Issues/Concerns:

- Allowing additional automotive uses in the Derby Downtown District
- Conformance with Derby Master Plan

Key Approval Criteria: Derby Master Plan, Derby PUD zone document, Land Development Code, Comprehensive Plan

Staff Recommendation: Approval with conditions

Current Zone District: PUD (Planned Unit Development) District

Comp Plan Designation: Commercial/Mixed-Use

Attachments for Review: *Checked if applicable to case.*

- | | |
|--|---|
| <input checked="" type="checkbox"/> Applicant's Narrative Summary | <input checked="" type="checkbox"/> Vicinity Map |
| <input checked="" type="checkbox"/> Development Review Team Recommendation | <input type="checkbox"/> Neighborhood Meeting Notes |
| <input checked="" type="checkbox"/> Site Plan | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

Background Information

Site Information

Site Size:	0.12 acres
Current Conditions:	Developed with automotive repair type facility
Existing Right-of-Way:	Hwy. 2
Existing Roads:	Hwy. 2
Existing Buildings:	Yes
Buildings to Remain?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Site in Floodplain	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Surrounding Properties

	<u>Existing Land Use</u>	<u>Occupant</u>	<u>Zoning</u>
North	ROW	Hwy. 2	ROW
South	Commercial	Automotive Tire Sales & Service Facility	PUD
East	Commercial	U.S. Post Office	PUD
West	ROW	Hwy. 2	ROW

Case History

City Council approved PUD zoning for the Derby area in September 2007. The zoning supports the Derby Master Plan by designating the district as a mixed-use commercial district. The PUD boundaries are E. 72nd Avenue to the south, Hwy 2 to the west, and Magnolia to the east. Building improvements, demolition and construction within this geographic area are subject to review by the Derby Review Board, a separate, Council-appointed body. Conditional Use Permit (CUP) requests are reviewed by Planning Commission for a recommendation of approval or denial to the City Council.

Because the case history for this request is recent and relevant, the following is excerpted from the Record of Proceedings from Case #Z-867-07-09 as presented to the Planning Commission December 2, 2008:

“As background, City staff was approached by Mr. Naim Kargar, who owns the property at 7360 Hwy. 2 in Derby. Previously, the property contained a number of automotive repair uses. Overall, the general direction of the Derby Masterplan and zoning indicated that many of these automotive based uses were incompatible with the long range plan for the area. However, during the original Derby PUD process, a few existing automotive uses were allowed to remain due to their participation in the process. Derby Tire is an example of an existing automotive use that was allowed on the Derby PUD.”

“A number of years ago, the business at this location (7360 Hwy. 2) ceased operations and continues to remain vacant. In the Derby PUD, automotive repair uses were not allowed on the subject parcel, which would mean that if the original business were to remain, it would be considered a non-conforming use. However, according to the zoning ordinance, if a non-conforming property remains vacant for at least six months, the previous use is no longer allowed. Over time, Mr. Kargar has attempted to sell the property to potential automotive users, but each time, the City has informed potential buyers that the automotive uses would not be allowed per the Derby PUD. Mr. Kargar reports that the existing structure is not suitable for any other use other than automotive repairs and therefore would like the City Council to consider changing the PUD to allow for this use in conjunction with the historical nature of the property.”

“Ms. Stevens confirmed for the Planning Commission that per ordinance, the City had no authority to reinstate the legal non-conforming use of the property. She noted that the PUD would need to be amended if the City decided to allow automotive repair on the site. She noted that there were two options for amending the PUD. The first option would be to declare automotive repair as a use-by-right and the second option would require the applicant to apply for a Conditional Use Permit (CUP). Ms. Stevens explained that the CUP would be granted to the applicant only and that conditions could also be added to the CUP for efficient monitoring of the site.”

“After considerable discussion and clarification of both a use-by-permit and Conditional Use Permit, Mr. Kargar decided that a CUP would better address his concern and therefore requested approval to amend the land use table in the Derby PUD (for his property) to allow automotive repair via a Conditional Use Permit.”

“On December 2, 2008, the Planning Commission held a public hearing, took testimony, and voted (5-0) to forward a favorable recommendation to change the land use table in the Derby PUD, for property located at 7360 Highway 2, to allow automotive repair uses with a Conditional Use Permit.”

At the subsequent January 5, 2009 City Council hearing, Council voted to approve the Derby PUD amendment to allow automotive repair at the subject property (7360 Hwy. 2) with an approved Conditional Use Permit.

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
Z-867-07	2007	Approval of PUD Zoning for Derby	Approval with Conditions
Z-867-07-09	2/2009	Amend the Derby PUD Zone Document to allow automotive repair with approval of a CUP at the subject property	Approval with Conditions

Applicant’s Request

The following is narration by the applicant as part of the Conditional Use Permit application:

A. This business is for the purpose of auto glass instalation minor auto repair/maintenance, including oil change, tune-ups and brakes in compact cars, small trucks mid size trucks and mid size cars and full size cars and trucks.there will be no work done on any vehicles larger then a full size truck or semi will not be done at this location. any auto glass work required on these vehicles will be done with our mobile service.

B. The area is commercial with a tire store to the south and no businesses directly to the north.

C. Being an automotive business, this is compatible with other businesses in the area there is a tire and automotive shop just to the south of our business. Therefore if any of their costumers are in need of any auto glass work on their vehicles we can take care of there auto glass needs.

D. This is a convenient location for public access to quality auto glass installation and repair as well as minor auto needs, we are a small auto glass and repair shop the community would benefit because we are a small business and the quality of our work will be superior to the larger similar businesses in the area, our goal is quality not quantity.

E. This business will enhance other businesses in the area as customers come to us and find other needs near by. as time goes by we will find out through word of mouth what businesses do quality work and we can refer our customers to the finer businesses in the area including restaurants and other non automotive businesses.

F. This business will have little or no effect on any public improvements and will not hinder any city services except road paving. In this case we can do our auto glass with our mobile service. as for our auto repairs we can reschedule our customers for a later date if this is not acceptable we can refer our customers to some of the finer businesses in the area.

G. Enclosed is an aerial picture of the property, This is to show the lot configuration with length of property lines, location and all near by streets, the location (with setbacks) arrangements and size of all existing and proposed buildings on site, show any existing features on site (i.e. utility poles, fences, signs) and whether or not they will remain. identify where the parking will be located, what the total number of parking spaces is on site, what the number or required parking spaces is and where the handicap parking will be located with the proper identification, and identify parking spaces.

H. This property now consists a building, and concrete and asphalt driveway and parking area. there is no green landscaping at this time if green landscaping is required potted landscaping will be provided.

I. There will be no noise, dust, vibration, odor or nuisances beyond interior buffer line as all work will be done in the car bays.

Additional information about the operation, according to the applicant:

1. Days and hours of operation are Monday through Saturday, 8:30am to 6:00pm except for major holidays when the business will be closed.
2. There will be two employees and one mobile auto glass employee in the future.
3. The Derby PUD zoning does not have a minimum parking requirement; the property does have adequate space for four parking stalls.
4. Auto glass deliveries will occur approximately twice daily, morning and late afternoon.
5. No hazardous materials will be used or kept at this location.
6. The fire department regularly inspects this type of operation.

Development Review Team Analysis

SITE CHARACTERISTICS:

The site is a small triangular-shaped lot containing 0.12 acres of land developed with a service station constructed in 1968, according to Adams County records. The service station building is immediately adjacent to the former Big 'O' Tire store to the south and also immediately adjacent to the U.S. Post Office building to the east. The service station building is constructed of cinderblock and contains two overhead garage doors and an office. The facility is in fair condition, overall but does need some improvements and maintenance to improve the appearance.

The lot is paved with asphalt and is generally in good condition. The Derby PUD zoning does not have a minimum parking requirement, but the site does have adequate space for 4 parking stalls. Recent improvements to Hwy. 2 include a new sidewalk along the property frontage and utilities at this location are underground. During the construction of those improvements, a large piece of concrete was removed and left sitting on the pavement. At this time, it is not clear who is responsible for the concrete but City staff will work with the applicant to see that it is removed. An outdoor grease pit exists on the property on the north side of the service station building. The Commerce City Land

Development Code (LDC) prohibits outdoor automotive repair and services and the applicant has been informed that the grease pit cannot be used for repair/services or outdoor storage. There is currently no landscaping on the property and due to constraints including property size, configuration and pavement, the applicant is not being required to install landscaping at this time. As a landscape alternative, the applicant will be required to provide at least 6 large planting pots on the site for trees, shrubs and/or flowers and the operator is responsible for ensuring the plants are adequately watered and remain in a healthy condition.

The Conditional Use Permit application was presented to the Derby Review Board at the May 15, 2012 meeting for feedback. In general, the Board concurs with the Development Review Team analysis and recommendation and offered support of the application. The Board expressed a desire to work with the applicant to make improvements to the site including paint and lighting in concert with the Derby Design Guidelines. Staff will continue to work with the applicant toward this goal and offer assistance through the Derby Catalyst Program to incentivize building and site improvements.

DEVELOPMENT REVIEW TEAM ANALYSIS:

Prior to the PUD zoning approved by Council in 2007, land uses in the Derby Downtown District (District) were primarily commercial in nature and zoned C-1, C-3, Public and R-3. A few businesses operating with automotive-related uses were then legal, non-conforming and continued to be legal, non-conforming with the PUD zoning.

The Derby Master Plan, PUD zoning and accompanying Design Guidelines were created with the intent of promoting commercial/mixed-use land uses in the District while discouraging automotive repair and service type facilities. The original PUD excluded vehicle sales, service and repair while continuing to allow those considered legal, non-conforming; the amended Derby PUD (Z-867-07-09) in effect today continues to exclude these uses, but contains a special provision for the subject property as eligible to apply for a Conditional Use Permit for vehicle sales, service and repair.

The Development Review Team (DRT) is considerate of the Derby Master Plan, PUD zoning, Design Guidelines and redevelopment effort and generally supports the exclusion of automotive related uses in the District. However, the subject property in this case is particularly constrained due to circumstances beyond the applicant's control. In essence, the property was originally constructed and developed specifically as an automotive repair facility with the property configured as a small triangle, bordered by Hwy. 2 on the west, and buildings on the remaining two sides surrounding the site (former Big 'O' Tire store and the U.S. Post Office). With extremely limited access and no connectivity to the rest of the Derby Downtown District, the potential for uses other than an automotive-oriented facility are few. The following aerial photo clearly illustrates how the subject site is cut-off from the remainder of Derby:



Former automotive repair facilities and service stations can be successfully transformed into exciting new uses such as retail, coffee shops and restaurants, provided the location is visible and accessibility is good to support a business. When the Derby Downtown District Master Plan and PUD zoning were conceptualized, this type of conversion was envisioned to repurpose buildings in the District. The photos below show an existing service station in Denver that is currently being remodeled as a new brewpub and is a good example of this type of conversion:



If the context for the subject property was different, and it was more connected and accessible to the remainder of the District, the Development Review Team would likely have an unfavorable recommendation of the CUP for the Planning Commission. The reality for the subject property is that there is little potential for this type of redevelopment at this time due to the fact that the property is effectively blocked and isolated. With this in mind, the DRT feels it is more beneficial to Derby and the City to allow a business to operate at this location, rather than see it remain vacant and derelict. As a result, the Development Review Team is recommending approval of the requested Conditional Use Permit with a few conditions to ensure the site is not used too intensely and improvements are made to make it an attractive addition to the Derby Downtown District.

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
<input checked="" type="checkbox"/>	The proposed use complies with the general purposes, goals, objectives, policies, and standards of all City plans, programs, and ordinances	The proposed use would comply with the Derby PUD zoning, the Land Development Code and the Comprehensive Plan.
<input checked="" type="checkbox"/>	Will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they are envisioned to exist in any adopted City plan, program or ordinance;	The proposed use has historically operated on the subject property and due to the physical characteristics of the site, would have little or no adverse effect on adjacent property. Traffic conditions, parking and public improvements are not anticipated to be impacted by the proposed use.
<input checked="" type="checkbox"/>	There is a community need for the use at the proposed location to provide or maintain a proper mix of uses both in the area	There is a community need for additional services in the area that help diversify the commercial base of the Derby Downtown District.
<input checked="" type="checkbox"/>	The characteristics of the site are suitable for the proposed use	The site is flat, paved and developed with a building specific to the use as an automotive repair facility.
<input checked="" type="checkbox"/>	Landscaping and screening will ensure harmony for adjoining uses	The subject site is effectively screened from adjoining uses due to the physical configuration of the property. In addition, the applicant will provide potted landscaping on the lot to help provide landscaping.
<input checked="" type="checkbox"/>	The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents or the applicant has committed to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use;	The proposed use will occur on a developed property with existing infrastructure that will not cause a burden to the facilities or services of the City.
<input checked="" type="checkbox"/>	The applicant has agreed to provide continuing maintenance	The applicant has indicated a desire to make site upgrades and participate in the Derby Redevelopment program.
<input checked="" type="checkbox"/>	No evidence suggests that the use violates any federal, state, or local requirements.	There is no evidence to suggest the use will violate any federal, state or local requirements.

Comprehensive Plan

The DRT recommendation for this case is supported by the following Comprehensive Plan Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Economic Development	ED 4.2	Enhance existing commercial developments
<u>Analysis:</u>	Allowing a business to operate in a vacant building enhances the business community and encourages improvements to the property.	
<u>Section</u>	<u>Goal</u>	<u>Description</u>
Redevelopment and Reinvestment	RR 2.2	Historic City Derby Revitalization
<u>Analysis:</u>	Allowing and encouraging new businesses helps the Derby revitalization effort and draws more people to Derby.	

The Conditional Use Permit application meets at least two goals established by the Comprehensive Plan. The Development Review Team considered these criteria in making its recommendation to the Planning Commission.

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application meets the criteria for a Conditional Use Permit set forth in the Land Development Code and recommends that the Planning Commission forward the Conditional Use Permit request to the City Council with a favorable recommendation subject to the following conditions:

CONDITIONS:

- A. The facility may only be used for glass/windshield repair and light-duty automotive repairs to operable, licensed vehicles no greater in gross vehicle weight (GVW) than a standard, full-size pickup truck.
- B. All repair work, installation of parts, hydraulic hoists, pits, and all lubrications, greasing, automobile detailing, or repairing equipment shall be performed entirely within the enclosed building.
- C. The existing outdoor grease pit shall not be used for any automotive services or outdoor storage and shall remain completely screened from view.
- D. Landscaping on the site shall be provided by utilizing a minimum of six (6) large pots with a diameter of at least 44-inches that shall be planted with live plants including trees, shrubs and flowers. The applicant is responsible for ensuring the plants are adequately watered and remain in a healthy condition.

ADVISORIES:

1. Any exterior improvements including signage shall be reviewed and approved by the Derby Review Board.

Recommended Motion

To recommend approval subject to conditions:

I move that the Planning Commission enter a finding that, subject to certain conditions, the requested Conditional Use Permit for the property located at **7360 Hwy. 2** contained in case **CU-96-12** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit subject to the following conditions:

- A. The facility may only be used for glass/windshield repair and light-duty automotive repairs to operable, licensed vehicles no greater in gross vehicle weight (GVW) than a standard, full-size pickup truck.
- B. All repair work, installation of parts, hydraulic hoists, pits, and all lubrications, greasing, automobile detailing, or repairing equipment shall be performed entirely within the enclosed building.
- C. The existing outdoor grease pit shall not be used for any automotive services and shall remain screened from view.
- D. Landscaping on the site shall be provided by utilizing a minimum of six (6) large pots with a diameter of at least 44-inches that may be planted with live plants including trees, shrubs and flowers. The applicant is responsible for ensuring the plants are adequately watered and remain in a healthy condition.

Alternative Motions

To recommend approval:

I move that the Planning Commission enter a finding that the requested Conditional Use Permit for the property located at **7360 Hwy. 2** contained in case **CU-96-12** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit.

To recommend denial:

I move that the Planning Commission enter a finding that the requested Conditional Use Permit for the property located at **7360 Hwy. 2** contained in case **CU-96-12** fails to meet the following criteria of the Land Development Code:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny the Conditional Use Permit.