



Legislation Text

File #: 17-235, **Version:** 1

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Pass the ordinance approving a temporary use and Owner's Acknowledgement and Acceptance to allow operation of Paul Davis Restoration Services on property located at 433-435 Spring Avenue, PZC 17-01-013.

DEPARTMENT: Transportation, Engineering and Development

SUBMITTED BY: Kasey Evans, AICP

BOARD/COMMISSION REVIEW:

The Planning and Zoning Commission considered the requests for a temporary use on April 3, 2017 and voted to recommend approval of the case (Approved 5-2). Staff concurs.

BACKGROUND:

The petitioner, Paul Davis Restoration of DuPage, requests approval of a temporary use at 433-435 Spring Avenue to allow operation of an insurance contractor specializing in remediation and reparation of fire and water damage to residential and commercial structures. The subject property is located on the north side of Spring Avenue, west of Mill Street. It is approximately 1.5 acres and is improved with several industrial buildings.

The subject property is located within the Spring Avenue Corridor as defined by the Spring Avenue Study. The [Spring Avenue Study](#) <<http://www.naperville.il.us/contentassets/7fed1bf2ba19496fa9a037f019616748/cmp-esp-spring-avenue-plan.pdf>> was adopted as an amendment to the City's Comprehensive Plan in 2007 (Ordinance #07-146). The purpose of the Spring Avenue Study is to foster cohesive, considerate, future land use development that builds upon the existing residential character of the Spring Avenue corridor. The Study recommended the existing industrial properties within the study area be rezoned to R2, and goes on to state:

Upon rezoning to R2, the existing industrial land uses will become legal nonconforming and will be subject to Section 6-10 (Nonconforming Uses) of the Municipal Code. All existing nonconforming uses will be permitted to continue to operate at their current extent but may not expand or alter the nature of the nonconformity. All future changes in use must comply with the underlying R2 zoning regulations.

In 2008 the subject property was rezoned (Ordinance #08-005) from I (Industrial District) to R2 (Single-family and Low-density Multiple-family Residence District), in accordance with the recommendation of the Spring Avenue Study. The rezoning ordinance permitted the "product assembly facility" operating at that time to continue in accordance with the provisions of Municipal Code [Section 6-10 \(Nonconforming Uses\)](#)

https://www.municode.com/library/il/naperville/codes/code_of_ordinances?nodeId=TIT6ZORE_CH10NOUS. Reuse and redevelopment of the property is required to comply with the R2 zoning regulations and the Spring Avenue Plan.

DISCUSSION:

Municipal Code Section 6-10 (Nonconforming Uses) is intended to regulate nonconforming uses and to specify those circumstances and conditions under which they shall be permitted to continue. Any use which lawfully exists prior to becoming nonconforming is permitted to continue in accordance with Section 6-10. The nonconforming use must cease if it is discontinued for a continuous period of 6 months. Also, a nonconforming use may only be changed if it is of substantially the same character as the existing conforming use, or if it is a use permitted within the zoning district in which it is located.

Staff finds the existing nonconforming use, a product assembly facility, at 433-435 Spring Avenue, is not substantially similar to the proposed remediation and reparation contractor use; and therefore, may not operate on the subject property under the Nonconforming Uses provisions of the Naperville Municipal Code. Additionally, the proposed use would not be consistent with the recommendation of the Spring Avenue Study. However, for the reasons and subject to the conditions described below, staff suggests and the petitioner requests a temporary use to allow the petitioner to operate his restoration company at the subject property.

In accordance with [Section 6-10 \(Nonconforming Uses\)](https://www.municode.com/library/il/naperville/codes/code_of_ordinances?nodeId=TIT6ZORE_CH10NOUS) https://www.municode.com/library/il/naperville/codes/code_of_ordinances?nodeId=TIT6ZORE_CH10NOUS, the property located at 515 Spring Avenue continues to be operated as a concrete plant, currently by Ozinga Ready Mix Concrete. Due to the location and characteristics of the concrete plant, it is highly unlikely residential redevelopment of the properties north of Spring Avenue and west of Mill Street will occur until after the concrete plant closes. Under current regulations, the only other option is to continue operation of the same commercial/industrial purposes they have been used for since rezoning to R2; with the pending sale of the subject property, staff has concerns that a new industrial tenant purchasing the property would be seeking a long-term location, thereby making compliance with the residential goals of the Spring Avenue plan less likely. Taking into consideration the unique circumstances surrounding the subject property and adjacent properties, staff has worked with the petitioner on a proposed compromise solution.

Temporary Use

The proposed temporary use would allow reuse of the existing buildings at 433-435 Spring Avenue, for Paul Davis Restoration of DuPage, in accordance with the terms and conditions of the Owner's Acknowledgement and Acceptance Agreement (OAA) (the draft OAA is attached). The business' hours of operation are from 8am to 5pm Monday through Friday. The petitioner states there are approximately 12 fulltime employees and 10 work vehicles. The petitioner intends to make improvements to the buildings, including painting or staining the exterior walls, trim and doors, and replacing the landscaping in front of the buildings along Spring Avenue (building elevations and landscape plan are attached).

The terms of the temporary use and OAA limit the duration for which the petitioner is permitted to use the property for Paul Davis Restoration of DuPage. The temporary use would expire 8 years from the date the temporary use is granted by City Council (estimated to be approximately the Spring of 2025), or within 6 months of the expiration or termination of Ozinga's lease of the property at 515

Spring Avenue, whichever occurs first. In addition, the temporary use would expire if the petitioner ceases to operate the temporary use for a continuous period of 6 or more months. Upon either of these occurring, the subject property will be required to conform to the underlying R2 zoning district regulations.

A number of additional conditions on the temporary use are proposed in the OAA in order to minimize potential impacts on nearby residential properties. The following is a brief outline of the key provisions in the OAA:

- a. The petitioner must be the sole occupant of the subject property and the petitioner may not permit the subject property to be used by any other entity;
- b. All commercial vehicles used in conjunction with the temporary use must be parked in the rear of the property. No semi-trucks are permitted;
- c. Loading and unloading must occur between 7am and 7pm, and take place in the rear of the property;
- d. Noise generated by the proposed use must comply with the performance standards prescribed in the Municipal Code;
- e. Dumpsters must be located in the rear of the property, be covered at all times, and kept clean of debris; and
- f. No outdoor storage is permitted;
- g. Any proposed signage shall not be illuminated.

The OAA also obligates the petitioner to work with staff to appropriately address any unforeseen issues that may be of concern as a result of the business operating at the subject property. The provisions of the proposed temporary use are intended to minimize potential impacts on the residential neighbors, while allowing for some productive use of the subject property until such time that residential redevelopment becomes feasible.

Given that the potential for the subject property to be redeveloped in compliance with the R2 zoning district regulations is severely limited while the concrete plant continues operating next door, staff supports the proposed temporary use, subject to the terms and conditions included in the OAA. The temporary use is subject to review and consideration by the City Council.

Key Takeaways

- The petitioner requests approval of a temporary use to allow Paul Davis Restoration of DuPage to operate at the subject property.
- The conditions of the temporary use and OAA are intended to mitigate potential impacts the proposed use may have on adjacent residential properties.
- Staff supports the temporary use subject to the terms and conditions in the OAA.

Planning and Zoning Commission

The Planning and Zoning Commission considered this matter at their April 3, 2017 meeting. The petitioner gave an overview of the request. Several nearby residents made comments with respect exterior lighting, hours for loading/unloading, noise, traffic and parking, and the impact the concrete plant has on the redevelopment potential of the subject property. Many of the Planning and Zoning Commissioners agreed the proposed business was a suitable transitional use for the property and that the OAA addressed many of the residents' concerns. The Commission discussed the desire for additional conversations between the petitioner and neighbors to address any remaining comments. Two Commissioners did not find there was adequate time in one meeting to address all the concerns

about the proposal. The Planning and Zoning Commission closed the public hearing and voted to recommend approval of the case (approved 5-2). Staff concurs with the Planning and Zoning Commission's recommendation.

Following the public hearing, the petitioner held a meeting with concerned neighbors on April 10, 2017. In addition, staff worked with the petitioner to make adjustments to the OAA to further address the comments received. While a number of the comments made at the public hearing were already included in the OAA, revisions have been made to the OAA to address the remaining issues, including:

- Limited outside loading and unloading activities to Monday through Saturday (the OAA already limited these activities to the hours between 7am-7pm);
- Limited waste management services to the hours between 6am and 10pm Monday through Saturday;
- Reduced the noise performance standard from industrial (70 dBA) to commercial (62 dBA);
and

Added limitations with respect to exterior lighting on the subject property.

FISCAL IMPACT:

N/A