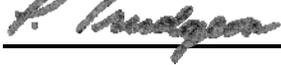


  
**REQUEST FOR COUNCIL DISCUSSION**

DATE: 3/22/2010  
ITEM NO: 12.e

Department Approval:



City Manager Approval:



Item Description: Request by Riaz Hussain for approval of an amendment to an existing CONDITIONAL USE PERMIT to allow the parking areas adjacent to Autumn Street to remain at 1901 Lexington Avenue (PF10-002)

**1.0 REQUESTED DISCUSSION**

1.1 At the recommendation of City Staff and the Planning Commission in 2008, the City Council passed a motion at that time to enforce a condition of a 1997 Conditional Use Permit (CUP) requiring the removal of certain paved areas. Community Development staff has continued since that time to gain compliance with that requirement and, as a result, Mr. Hussain currently seeks to amend the provisions of the existing CUP, pursuant to §1014.01 (Conditional Uses) of the City Code, to eliminate the condition requiring the removal of two paved parking areas on the south side of the property, accessing Autumn Street.

1.2 The City Council anticipated taking action on the proposed CONDITIONAL USE PERMIT AMENDMENT at its meeting of February 22, 2010, but action was deferred to address two legal concerns raised by the City Attorney; there was some question as to the adequacy of the findings for denying the proposed CONDITIONAL USE PERMIT AMENDMENT, and there was a question as to whether conditions of the 1997 CUP could be enforced if the approved conditional use (i.e., a veterinary clinic) is not present on the site.

**Project Review History**

- Application submitted and determined complete: December 2, 2009
- Review deadline (extended by applicant): March 30, 2010
- Planning Commission recommendation (5-0 to deny): February 3, 2010
- Project report prepared: March 9, 2010
- Anticipated City Council discussion: March 22, 2010
- Anticipated City Council action: March 29, 2010

**2.0 SUMMARY OF RECOMMENDATION**

Now that the above legal questions have been addressed, Planning Division staff is recommending that the City Council review the remainder of this staff report with the City Attorney and determine whether or not to continue pursuing the removal of the subject parking areas.

28 **3.0 STAFF COMMENTS**

29 3.1 As noted in Section 1.2 of this report, the City Attorney had concerns during the  
30 February 22<sup>nd</sup> City Council meeting about whether there were sufficient findings to deny  
31 the proposed CONDITIONAL USE PERMIT AMENDMENT. Attachment A of this staff report is  
32 a letter from the Attorney indicating that the recommended denial would be legally  
33 sound.

34 3.2 Attachment A also suggests that enforcement of the provisions of a CUP “may not be  
35 appropriate ... given that the property is not currently being used as a veterinary clinic  
36 [i.e., the land use authorized by the CUP].” If, in fact, Roseville is not allowed to enforce  
37 the conditions of the CUP when a veterinary clinic is not present, then the City is unable  
38 to require the removal of the paved areas and Mr. Hussain no longer needs to amend the  
39 requirements of the existing CUP to allow the paved areas to remain on the property. In  
40 this case, the City Council could direct staff to assist Mr. Hussain in withdrawing his  
41 application since its approval or denial would be irrelevant. Moreover, the City might  
42 have no means for effecting the removal of the hazardous parking areas without the  
43 return of a veterinary clinic or submission of a proposal to completely redevelop the  
44 property.

45 3.3 The City Council may alternatively decide that it wishes to enforce provisions of the  
46 CUP that are determined to apply *generally* to the property and not pertain *specifically* to  
47 the authorized veterinary clinic use. In this situation, the Council could direct Planning  
48 Division staff to reproduce draft resolutions denying the proposed CONDITIONAL USE  
49 PERMIT AMENDMENT and enforcing compliance with the conditions of the approved CUP  
50 (by ordering the removal of the subject paved areas or other, preferred measures).

51 3.4 If the City Council chooses to enforce general (i.e., not use-specific) conditions of the  
52 CUP note that, contrary to the indication in Attachment A, revocation of a CUP is not the  
53 only remedy to noncompliance with the conditions of an approval; Section 1014.01E  
54 (Penalties for Conditional Use Permit Violations) of the City Code says the following:

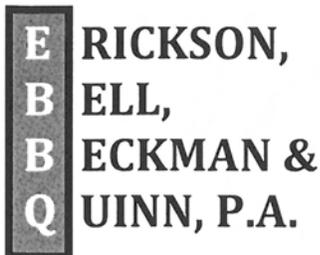
55 Failure to comply with the requirements of a conditional use permit *might* result in  
56 revocation of the conditional use permit. Further, any person violating the requirements of  
57 a conditional use permit shall be guilty of a misdemeanor and, upon conviction, shall be  
58 punished by a fine not to exceed seven hundred dollars (\$700.00) or by imprisonment not  
59 to exceed ninety (90) days, or both. [Emphasis added.]

60 **4.0 RECOMMENDATION**

61 4.1 Discuss the findings of the City Attorney and determine whether certain provisions of the  
62 existing CUP can be enforced in the absence of the specifically-authorized use.

63 4.2 Direct City staff accordingly either to work with the applicant to withdraw the  
64 CONDITIONAL USE PERMIT AMENDMENT application or to return to the March 29, 2010  
65 City Council meeting to continue taking action on the application.

**Prepared by:** Associate Planner Bryan Lloyd (651-792-7073)  
Attachments: A: Letter from City Attorney B: City Council Resolution 9414



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Robert C. Bell – *of counsel*

March 5, 2010

Mr. William J. Malinen  
City Manager  
City of Roseville  
2660 Civic Center Drive  
Roseville, MN 55113

RE: Riaz Hussain Conditional Use Permit (“CUP”) Application

Dear Mr. Malinen:

At the February 22, 2010 City Council meeting, I recommended that the Riaz Hussain CUP Amendment Application matter be continued so that I could research the law pertaining to CUP provisions when the property is no longer being used for the use stated in the CUP.

Two proposed actions were before the City Council on the 22<sup>nd</sup>. First, there was a proposed Resolution to Deny the CUP Amendment Application. Second, there was a request to issue a Compliance Order requiring the removal of the parking areas.

The law on the ability of the City Council to deny the Amendment Application is clear. Protection of general health, safety and welfare is a valid basis to deny a CUP. Since there has been factual evidence presented that there are traffic issues relating to the parking lot and its use the City Council does have a legally sufficient basis to deny the application, irrespective of the current use of the site.

The removal of the parking areas based upon the issuance of a compliance order is less clear. The remedy in the event that there is a violation of a condition in a CUP is the revocation of the CUP. Since the property is not being currently used as a veterinary clinic this may be a meaningless remedy. Therefore, the pursuit of a compliance order based upon the CUP may not be appropriate at this time given that the property is not currently being used as a veterinary clinic.

I will be glad to discuss this matter further with the City Council when it next takes up the CUP Amendment Application to determine whether to proceed with the compliance order.

Sincerely yours,

ERICKSON, BELL, BECKMAN & QUINN, P.A.



Charles R. Bartholdi

CRB/amg

cc: Mr. Patrick Trudgeon

**EXTRACT OF MINUTES OF MEETING OF THE  
CITY COUNCIL OF THE CITY OF ROSEVILLE**

\* \* \* \* \*

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota, was duly called held at the City Hall on Tuesday, the 9th day of June, 1997 at 6:30 P.M.

The following members were present: Maschka, Goedeke, Wiski, Mastel and the following were absent: Wall

Council Member Wiski introduced the following resolution and moved its adoption:

**RESOLUTION NO. 9414**

**RESOLUTION APPROVING CONDITIONAL USE PERMIT  
FOR A VETERINARY CLINIC AT  
1901 LEXINGTON AVENUE**

WHEREAS, Section 1005.01D of the Roseville City Code identifies veterinary clinics as a conditional use in a B-1 Limited Business district; and

WHEREAS, Drs. Wendy Elert and William Graham have requested a conditional use permit to allow the reuse of property at 1901 Lexington Avenue for a veterinary clinic; and

WHEREAS, the Roseville Planning Commission conducted a public hearing on the request on Wednesday, May 14, 1997, and recommended approval of the requested conditional use permit subject to conditions; and

WHEREAS, the Roseville City Council received the Planning Commission's recommendation on Tuesday, May 27, 1997, and Tuesday, June 9, 1997; and

WHEREAS, the Roseville City Council made the following findings:

1. The proposed re-use of the property will have a minimum impact on traffic in the area. The building has historically been used for medical office/clinic uses. The use of the property as a veterinary clinic will not substantially change the outward appearance and/or operation of the facility.
2. The proposed re-use of the property will have a minimum impact on parks, streets and other public facilities.
3. The proposed re-use of the property will be compatible with contiguous properties. Adequate parking is being provided on site for the proposed use, based on both the square footage of the facility as well as the number of employees and clients. Hours will be limited to typical business hours and no clinic activities will take place outside of the building. Site improvements will be required to bring the property into compliance with existing site development standards.

4. The proposed re-use of the property will not have an adverse impact on the market value of contiguous properties.
5. The proposed re-use of the property will not have an adverse impact on the general public health, safety and welfare.
6. The proposed re-use is consistent with the City's Comprehensive Plan's Limited Business designation.

NOW THEREFORE BE IT RESOLVED by the City Council (the "Council") of the City of Roseville, Minnesota (the "City"), Ramsey County, Minnesota, that a conditional use permit for a veterinary clinic within a B-1 Limited Business district be approved subject to the following conditions:

1. Off-street parking must be provided in accordance with the provisions of Section 1005.01D, City Code of Ordinances. The parking area along Autumn Street must be removed if a determination is made by the City that said parking area creates a safety hazard or adversely affects the flow of traffic in this area. Prior to operation of the facility, the parking area along Autumn Street must be designated as employee parking only.
2. The hours of operation must be limited to the following: 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 noon on Saturday. Minor modifications to hours of operation may be approved administratively by the Director of Community Development. There shall be no overnight boarding of animals, exercising of animals outside of the building, or placement of kennels and/or cages outside of the building. The clinic practice shall be limited to small domestic animals.
3. A waste management plan for grounds must be submitted to the City for review and approval prior to occupation of the property.
4. The exterior dumpster must be removed from the property. Trash collection activities must be relocated to the interior of the building or an attached structure must be constructed on the north side of the building. Any attached structure must be of the same materials and design as the principal structure in accordance with Section 1010.11 of the City Code.
5. A screening fence or landscaping must be installed along the west side of the off-street parking area north of the building. Said fence and/or landscaping must create an all-season screen, eighty percent (80%) opaque, to a height of five feet, in accordance with Section 1010.09 of the City Code. A screening fence or landscaping must also be installed along the west side of the off-street parking area off Autumn Street in accordance with City requirements.
6. Landscaping must be installed around the ground sign in accordance with the provisions included with the variance granted for the sign in 1988.

The motion for the adoption of the foregoing resolution was duly seconded by Council Member Maschka and upon vote being taken thereon, the following voted in favor: Maschka, Goedeke, Wiski, Mastel and the following voted against the same: None

WHEREUPON said resolution was declared duly passed and adopted.

STATE OF MINNESOTA )  
 ) SS  
COUNTY OF RAMSEY )

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the 9th day of June, 1997, with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this 9th day of June, 1997.

  
\_\_\_\_\_  
Steven R. Sarkozy, City Manager

SEAL