



July 22, 2022

CITY OF LYNDEN TECHNICAL REVIEW COMMITTEE

STAFF REPORT

Re: The revocation of Conditional Use Permit for Lynden Automotive Specialists LLC, for a Conditional Use Permit Application, Gerardo Morado (applicant).

Revocation of CUP #21-04 Lynden Automotive FINDINGS, CONCLUSIONS, AND RECOMMENDATION

I. APPLICATION SUMMARY AND RECOMMENDATIONS

Proposal: City action to revoke Conditional Use Permit 21-04 which allowed an automobile repair shop in an existing commercial building within the CSL zone under specific conditions.

Recommendation: As conditions of approval have not been met, staff recommends the revocation of the Conditional Use Permit.

II. PRELIMINARY INFORMATION

Applicant: Gerardo Morado

Property Owner: Mac's Stores Inc

Property Location: 8894 Bender Road, Lynden

Parcel Number: 4003160185540000

Legal Description: LOT A BENDER PLAZA SHORT PLAT, RECORDED UNDER AUDITOR'S FILE NO. 2060801211, RECORDS OF WHATCOM COUNTY, WASHINGTON.

<u>Notice Information:</u>	Application Submitted:	September 7, 2021
	Notice of Application:	November 3, 2021
	Notice of SEPA determination:	N/A
	Notice of Hearing:	November 3, 2021
	Comment Period Ending:	November 17, 2021
	Revocation Letter to Applicant	July 6, 2022
	Notice of Revocation Hearing	July 13, 2022

Authorizing Codes, Policies, and Plans:

- LMC Chapter 17 Land Development
 - LMC Chapter 17.01.030 Definitions
 - LMC Chapter 17.09, Review and Approval Process
 - LMC Chapter 17.09.040, Planning Commission Review and Recommendation
- LMC Chapter 19 Zoning Code
 - LMC Chapter 19.23.020(11) Permitted Commercial Uses
 - LMC Chapter 19.35 Nonconforming Uses
 - LMC Chapter 19.49, Conditional Use Permits
 - LMC Chapter 19.49.020, Standards and Criteria for Granting a Conditional Use Permit
 - LMC Chapter 19.51 Off-street Parking
- International Building Code
- City of Lynden Manual for Engineering Design and Development Standards

III. PROJECT DESCRIPTION

The subject property is located at 8894 Bender Road, on the north parcel of Bender Plaza. The building being used as an auto repair shop was originally designed as a quick lube oil change shop. This type of business is not explicitly listed in the City's commercial code (LMC 19.23.020), but the use is considered permitted similarly to a fuel station where vehicles are in and out and the customer moves on. The business changed ownership since it was built and the current business is a full-service auto repair. As such, vehicles in various stages of repair are on the premise for considerable periods of time. A full-service auto repair shop requires a Conditional Use Permit in the CSL zone.

In early 2021 the City initiated a zoning violation process with the business. This was in response to complaints about the number of inoperable vehicles being parked around the property, miscellaneous debris being stored outside of the building, and concerns about what is being poured down the storm drainage system. A compliance option listed for the owner was to submit a Conditional Use Permit application for the business. The owner has not addressed the impacts that originally warranted the violation but submitted a CUP application prior to their scheduled court appearance. For reference, the memo to the City Prosecutor that explains the violation is attached.

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The business owner requested a Conditional Use Permit (CUP) to allow the continued use of the site for motor vehicle services (full service automotive repair). The property use was non-compliant as there was no CUP associated with the property.

The Planning Commission and the Council reviewed the CUP application at the end of 2021. The request was approved on December 6, 2021, with specific conditions including, but not limited to, the requirement to screen the site within 30 days, and submit an updated stormwater report, which demonstrated how illicit discharge would be prevented, within 90 days.

IV. PUBLIC NOTICE AND COMMENT

Notice of Public Hearing: Formal legal notice for this application was published in the Lynden Tribune on July 13, 2021.

Public Comment Received:

The applicant emailed Planning staff regarding the CUP revocation. This correspondence is attached. No written public comments were submitted in response to the notice for the revocation of the Conditional Use Permit.

V. ANALYSIS AND CONSISTENCY WITH REGULATIONS

The application is reviewed in accordance with the LMC 19.49.020 and the criteria listed for land use application review in LMC 17.09.040(C) “Planning Commission Review and Recommendation; Required Findings”.

A. A CUP which authorizes specific uses can be revoked by the City Council, after receiving a recommendation of the Planning Commission. The Planning Commission shall issue its recommendation after a public hearing on the action to revoke the CUP. In the application and during the hearing process, it shall be clearly shown by the applicant that the proposed use is not detrimental to the surrounding area or a liability to adjacent uses. For the purpose of this review, the surrounding area, or neighborhood, means those parcels that are in close proximity to the subject parcel.

B. An application for a CUP may be made only for those uses specified under the conditional use section of the appropriate zoning district.

C. The Planning Commission and Council shall enter findings to support any recommendation or decision on the revocation of a CUP. Conditions attached to CUP approvals are meant to mitigate any adverse impacts, protect surrounding properties

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and to promote the general welfare of the public. Staff has provided responses to the following criteria in support of the revocation.

1. The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district.

Mechanic services at this location have resulted in the unsightly, and highly visible, storage of vehicles which await repair which is detrimental to the surrounding properties and community as a whole.

Vehicles awaiting repair are using parking stalls intended for customers.

Vehicle servicing and engine cleaning have resulted in illicit discharge into the shared stormwater system which jeopardizes the City's Stormwater Permit with the Department of Ecology, is detrimental to the shared stormwater system, and polluting at the point of discharge. The business owner has failed to provide a stormwater report or update the shared system so as to protect the system or the environment from oil, grease, and chemical discharge.

2. The proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to the following:

- a. Traffic and pedestrian circulation;

Circulation is impeded in the loss of plaza parking and the congestion of vehicles specific to this use of the northwest corner of Bender Plaza. It does not affect the circulation within the remainder of the plaza.

- b. Noise, smoke, fumes, glare or odors generated by the proposed use;

While some noise and fumes are expected with the operation of an auto lube center, the scale of the full mechanic services, the outdoor work including engine cleaning, and the detailing of vehicles has resulted in additional noise that has gone unmitigated.

- c. Building and site design; and

The building and the site was not designed with adequate shop space or vehicle storage space to provide full mechanic services. The business owner has not limited vehicles to only 10 and has not screened the site as required.

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d. The physical characteristics of the subject property.

Physical characteristic of the subject property are significantly marred by the storage of vehicles – some of which are obviously damaged, missing parts, or have broken windows. The business owner has not limited the number of vehicles to 10 or screened the site as required.

As the building was designed only as a lube center the business owner does not appear to have adequate space to perform vehicle repair indoors and both work and storage of trash and other items are occurring outdoors.

3. The proposed use is supported by adequate public facilities and services unless conditions can be established to mitigate adverse impacts to those facilities or services.

Inadequate stormwater system for the proposed use. No oil / water separation has been demonstrated. Two reports of illicit discharge have been filed with the Department of Ecology and been relayed to the City of Lynden for investigation. Oil sheen was found within the shared system. The business owner has failed to provide a stormwater report or update the shared system so as to protect the system or the environment from oil, grease, and chemical discharge.

4. The traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service.

The use does not cause the adjacent street to fall below the adopted level of service.

5. The proposed use complies with the performance standards, parking requirements, height, setback and lot coverage requirements, landscaping standards and other provisions of the Lynden Municipal Code.

The business owner has not complied with screening requirements associated with the Conditional Use Permit. Parking stalls, intended for customers, have been utilized by vehicles awaiting repair.

6. There are adequate buffering devices, as specified in the landscape standards, or other topographic characteristics, to protect the adjacent properties from adverse impacts of the proposed use.

The business owner has failed to install the required buffer.

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7. The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance.

The operation is unsightly and damages the aesthetics of Bender Plaza and the streetscape but does not affect a feature of major importance.

8. The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan.

Without mitigation, screening, and the limiting of the size of the operation, the proposed use is NOT consistent with the City's comprehensive plan as it creates impacts which are incompatible with the surrounding uses.

VI. TECHNICAL REVIEW COMMITTEE COMMENTS

Planning and Development Department

- Applicant has failed to meet the conditions outlined in the City Council's decision for this Conditional Use Permit.

Public Works Department

- *Stormwater Infrastructure:* A full stormwater review and report was not submitted as required. The report was to include Best Management Practices (BMPs) for the site that meet Dept of Ecology Standards. Upgrades may be required in order to meet BMPs.
- *Environmental Incidents:* Two incidents have been reported to the Department of Ecology related to illicit discharge into the stormwater system. One was a citizen who reported that the business "was inappropriately dumping dirty mop water containing various automotive fluid / oils out their back door on to the ground, and are currently working on a vehicle in their front lot and are allowing coolant to drain from the vehicle down into a storm drain." (ERTS Incident #713065). Other witnesses have reported engines and cars being cleaned in the parking lot with wash water allowed to drain into the storm system. City investigation into these reports confirm an oil sheen in the shared storm system.

Fire Department

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- This comment was not addressed with the Fire Department - Two chapters (23 & 57) from the IFC apply to an auto repair shop. Additional attention regarding parts cleaning dip tanks and flammable liquid storage and disposal should be addressed. The proposal should also address mitigation and extinguishment capabilities for these operations.

VII. RECOMMENDATION

Based on the above findings, Staff recommends the revocation of the Conditional Use Permit 21-04. The business owner must cease to offer full mechanic services and empty the property of vehicles awaiting service.