

PC 3/12/09
#9 - Applicant's
response

8 March, 2009

RECEIVED
PLANNING DEPARTMENT

TO: El Dorado County Planning Commission

Subject: Special Use Permit Application S07-0020/Pacific House Auto Repair APN:
009-140-19

Executive Summary: At the February 27, 2007 meeting of the Board of Supervisors the legal non-conforming use of the auto repair facility was denied and I was requested to file for a no cost Special Use Permit (SUP). In a follow up discussion with Supervisors Helen Bauman and Jack Sweeny, I was informed the SUP was the proper, non-arguable way to continue the usage of the auto repair facility as it has been used since my family acquired the property. I agreed to pursue the no-cost SUP process and in good faith have tried to follow the evolving process. I agree with the overall recommendation, but disagree with some of the approval conditions. It was my original understanding the SUP was to allow the "as is" usage of the related auto repair items as originally approved by the planning commission under the non-conformal use process; that is why the plan was submitted not to include any expansions. I have spent well over \$6,000 for vehicle removal and cleanup over the past two years to clean up the prior tenant's mess. In addition I have spent about the same amount to date on the SUP process for studies and Fire department requirements.

Following is a summary of changes requested: 1) Minor corrections need to be made to the project description and site description to assure full flexible usage of the buildings and site features, which are not associated with the auto repair/part sales, are accurate and allow their continued commercial zoning usage, including any other possible legal non-conforming areas; and the continued usage of the portable storage structures i.e. cargo containers ; 2) any still unresolved Code Enforcement conditional issues should be limited to those that apply to the Auto facility usage and not include any code issues related to the potential historical former auto service station; 3) the Fire Safe Plan should not be required as it was not August 1, 2007 Fire Marshall letter nor discussed in the TAC; 4) the parking requirements should be limited to the auto repair and the current "as is" parking should be allowed to continue ; and the Landscape plan should not be required as agreed to in the original application packet; 5) only the front lift pad is visible and should be allowed "as is" since it is of minor visibility and is deliberately not enclosed for fire department welding issues; and 6) any unresolved Vehicle Abatement issues should be addressed by the vehicle abatement process and not be a conditional part of this SUP.

A detailed discussion of each of the preceding change requests follows in Attachment 1, Conditions of Approval discussion. Also refer to Attachment 2, prior Board of Supervisors Appeal Letter dated 28 December 2006, for a discussion of the prior Code and Abatement issues and their correction status.

Background:

During our ownership the county planning department and business license department have approved and granted several auto repair licenses to our tenants and myself. We have submitted documentation several times which supported the yearly non-conforming uses as an auto repair facility/garage.

At the February 27, 2007 meeting of the Board of Supervisors the legal non-conforming use of the auto repair facility was denied and I was requested to file for a no cost Special Use Permit (SUP). At issue was the usage of the facilities prior to the mid 1980's by the prior owner. I have letters supporting the use of the facility for auto repair under the prior owner, but several of the neighbors disagree. I do believe in a court of law that no one can prove the garage did not repair at least one car a year. The inventory and tools I purchased from the estate included: fan belts, radiator hoses, tire repair items, tune up items, tire chains and repair parts, hoists, jacks, lifts, an old tire changer, air compressor and old toolboxes with auto repair tools. In fact, at the supervisors meeting Mr. George admitted the prior owner's brother had given him the shop portable car lift. To install any of these items today is call auto repair and requires a BAR license. I agree that this was an incidental business activity compared to the current usage, but I believe some amount of repair activity occurred yearly. A neighbor who still lives across the street since the mid 1970's can testify minor repairs were performed; Nina Poole said she believed Dee Keuseff's (prior owner) nephew worked during the summer and could have performed some of the repairs. During my ownership many times during the summer cars overheated going up the hill, while returning from Lake Tahoe, and Pops fixed them. It is hard to believe Dee did not also have this occur and did not helped at least one person a year. I know for a fact in 1965 I broke down in front of Pacific house and he had someone fix my radiator hose.

In the hearing process, it is almost impossible to prove anything. A neighbor, based on personal bias and misunderstandings, can make unsubstantiated accusations, does not have to prove anything, and can get away with it at the hearing. I do not have the ability to confront my accusers; have them testify under oath under penalty of perjury; have no supena power; can not cross examine; and am not allowed the time to do so. Several letters from neighbors who have personal issues with my family provided letters at the last moment to the Board of Supervisor meeting. I had never heard of many of the issues they claimed, and was not provided the letter they submitted until after the meeting. I, nor any of my tenants have ever disposed of cars over the back of my property. Some of the statements are misunderstandings and unfounded personal charges/accusations against my family members. I am not responsible for my moms and sisters actions; and to my knowledge, no formal legal charges have ever been filed against them or me. I do know my wife had words with Mike Butterfield over his treatment of his mother and father; and Tommy George and his family was not happy over the post office removal and not signing as a personal reference for his loan; and none of us was happy because the post office chose to install remote mail boxes and close the post office for their own financial benefit.

In a follow up discussion with supervisors Helen Bauman and Jack Sweeny, I was informed the SUP was the proper, non-arguable way to continue the usage of the auto repair facility as it has been used since my family acquired the property. I agreed to pursue the no-cost SUP process and in good faith have tried to follow the process. It was my original understanding the SUP was to allow the "as is" usage of the related auto repair items as originally approved by the planning commission under the non-conformal use process, that is why the plan was submitted not to include any expansions. This is not the way the Planning Department has prepared the conditions of Approval.

The original appeal of the Planning Commissions approval of a legal non-conforming use, with conditions, was filed by me to question whether the code and abatement conditions were relevant to the non-conforming land use issue. I believe in the meeting discussion, it was agreed the code and abatement conditions have their own path of resolution and should have not been part of the land usage issue. This was not documented in the findings, but a review of the tape could substantiate what I think I heard.

History:

My family purchased the Pacific House (8231 Peavine Ridge Road) property in 1984/1985. My mom was a schoolteacher and I was an Engineer Working for McClelland AFB. We used our jobs to pay Stanford University (The prior owners estate heir) for the property. The property consisted of an old gas station, garage, restaurant, bar, small store/post office , several rental cabins and inventory/personal assets. We were told the property has a history as an old stage stop from the 1850's. It was also on the pony express route and part of the old Lincoln Highway. In the 1930's the gas station was built and the old blacksmith shop was used as a garage. During this period the building used for the Post Office/store/restaurant/bar was also built. The older building adjacent was an old hotel and it burned in the 1960's. We were told by one of the adjacent property owners, Mrs. Duncan, the garage/gas station was in yearly operation and part time used to repair automobiles . She had lived in the area since the 1950's. We were also told by Mr. Butterfield , Mrs. Poole and several other residents the same thing, along with the above history about the hotel, restaurant, garage, gas station, stage stop and pony express stop.

Since we purchased the property, I have personally used the garage facilities to repair my cars or customer cars on a yearly part time basis. I have reported the profits to the IRS and maintained a business license when the repairs were for others. I have continuously rented part of the facilities for use as an automobile repair facility. I have also rented the facility many times a year for others to repair their own cars, or have their own mechanic work on their car. The latter is legal under the BAR rules. When I found out Pops BAR license elapsed, I was granted my own BAR license. The BAR told me to use his license and not have duplicate licenses in the same shop for customer protection problems.

Income from the repair of customer income against my business was reported to the IRS on a yearly basis. Copies were supplied to the planning department as requested. The garage rental income from tenants and customers was also reported to the IRS on a yearly basis.

I have worked and resided part time in the small community of Pacific House since 1984/1985. When we first acquired the property, Frank and Glen Johnson operated the garage and George Steele operated the restaurant. In 1985/1986 Gene Chittenton worked for G&O towing and used the garage storage yard and after that "Touch of Class Towing" used the facility for towing and storage. The garage rear portion was also used to repair some of the towed vehicles. The towing stopped in 1987. Ralph Shifflett Sr. rented the garage and started Pops Shop auto repair and engine building business in late 1986 or 1987 and resided in the cabin above the garage. He made a living in the front part of the garage doing auto repair and engine rebuilding until he got to ill to run it in 2004. After than the still hired others to repair some of the final customer vehicles and repair return problems until he moved in mid 2005. The front part of the garage building was used for major auto repair and building engines and transmissions yearly during that period.

Over the period of 1985/1986 until now the rear part of the garage/facility has also been used by several other tenants for auto repair and engine building. Frank Johnson was using the front and rear facility for engine building before Ralph Sr. started. When Pops first moved in he worked with Frank for about a year until he started Pops Shop as a full service auto shop on his own. Frank moved to the rear part of the shop and continued operation for about three/four years. After Frank moved the rear of the shop was rented to Pop's son who used the facility to build and sell racing cars and engines. Ralph Shifflett, Jr left in the mid 1990's and Pops other brother Chuck Shifflett moved from southern California to help in the front shop. He stayed until the early 2000's. After Ralph Jr. moved, several others and I used the rear shop for auto repair and also it was rented part time to various customers and their own mechanics for auto repair. In the late 1990's I started my own auto repair business part time and also continued renting garage space time for others to use for their own auto repair.

In mid 2005 my mom passed and I have had to deal with her estate. In addition over the last year I have also lost two brothers, several close friends, and a close uncle. As a result the business has been operated part time over the year when time was available. I have a commitment to rent the front garage/equipment to my future grand nephew as soon as he finishes his current auto schooling.

A handwritten signature in cursive script that reads "Gene Long". The signature is written in black ink and is positioned in the lower right quadrant of the page.

Attachment 1: Conditions of Approval Discussion

Project Description: I do not know if the garage facility and restaurant /bar building living quarters and associated storage yard should be mentioned. There are more than six storage buildings shown on the plot plan. There are five propane tanks, not two. The water is provided by an existing small water system. The last sentence refers to Landscape and Tree Protection plans and they were not required per the original Plan Submittal requirements agreed to by me and the planning department as coordinated by Mike Barron of the planning department. These corrections should also be made to the Project Description and Site Description in the body.

Item 3. There is no way the entire SUP approval items can be accomplished within 60 days if they are required as currently stipulated. This is still winter!! And access is limited. Additional spring snows are still coming!! I hope because of the drought conditions.

Item 4. The parking should be approved "as is" as there is no addition usage above the prior approved legal non-conforming usage. This was to be a no cost SUP, and not impose new building requirements. This is a major issue to me, as I do not have the financial resources to improve the parking as requested. The parking was adequate to handle the customer operation of the garage and the bar/restaurant when both was operational. Parking requirements should be limited to the repair activity only. The Rest/Bar parking should certainly still be allowed "as is". The back shop operated by me performs 3-4 car restorations per year. The front shop works on 2-3 cars per week. The standard guideline for 12 spaces for the garage is way overkill. I can understand labeling 1 handicapped stall. If required, the parking should remain unmarked without stops, except for the handicapped. A formal parking lot detracts from the rural and historical nature of Pacific House. I only desire to be treated as other local auto repair facilities in Pollock Pines and along HY50. I have enclosed several pictures showing other commercial businesses along Pony Express and HY 50 have not been required to conform to formal parking marking and stop requirements (i.e. Pony Express Muffler Shop, A-Z Auto (started 2 years ago), the shop in Cedar grove, the shop along 8Mile road near the Moose Club).

If my recommendations are not accepted, I do not have the funds to improve all the parking you requested and I need to modify the SUP to only use the front third of the garage and have a single lift pad/bay. The rest of the building will be used for my personal electronics and engineering use. The Rest/Bar facility will probably be modified to another form of Approved Commercial zoning usage, such as real estate office, antique store, something that does not require ADA public restrooms and as such the parking requirement for that building should be reduced. If required, a realistic time limit should be provided for the weather/permit/paving/marketing process, certainly not 60 days. I thought in my last meeting with the planning department they were going to defer the parking requirements for the Rest/Bar building until it's future usage is determined and reopened.

Item 5. This requirement should be waived per the original SUP requirement agreement. The original agreed upon SUP submittal requirements did not show a Parking Lot Landscaping and Buffering Standards plan; nor a Landscape plan submittal was required. The agreement marked these as NA. I am in the middle of the national forest. The park out front is covered in trees and flowers and owned by the state. There are trees all around and on the property. There are roses and bushes in front of the shop along with a historical pony express monument. I have a park area with picnic tables under the large redwood trees adjacent to the Old hotel site (Refer to the attached pictures). I maintain my grass and water the flowers/bushes. The state does not even water, and seldom even does weed abatement. Granted this year is a drought year and I might not have the water flow for irrigation.

Item 8. (Modified) The lifts should be approved "as is" as there is no addition usage above the prior approved legal non-conforming usage. This was to be a no cost SUP, and not impose new building requirements. The front lift is necessary for winter work. The front lift originally was deliberately not enclosed because of the prior fire departments request. This was because the lift is used for welding. Looks are nice but functionality is a requirement. The functionality is required to compete with the other shops in the area and perform the auto repair jobs. Since the rear lift is not visible, why must it be enclosed. The front lift could be disguised, painted or decorated to cover the looks requirements.

I asked for written requirements concerning enclosing the lifts fully within a building and have not gotten them. The building department interprets equipment enclosures different from the planning department and could not find reference to putting service hoists in a building. Again, I only desire to be treated as other local auto repair facilities in Pollock Pines. I have enclosed several pictures showing other local area commercial businesses along Pony Express which do not conform to the full enclosure of the hoists i.e. Crystal View, Pony Express Muffler Shop. One is partially covered and the other is fully open and is like my front hoist. If the requirement is because of what is allowed in the commercial vs. industrial zoning what is the SUP usage variance for? If it is for looks why can it not be disguised? If it must be fully enclosed the 60 day requirement should be modified to be realistic.

Item 9. This is a code issue not a planning SUP issue.

A) The old service station is not part of the auto repair facility usage. Further, removal of the former service station was not required in the referenced Mar 17, 2006 code correction letter. The safety issues in the code letter were addressed. The front of the building where trim boards were loose was fenced until weather allows them to be re-nailed this spring. The building is still structurally sound and standing under the recent heavy snow loads.

When I asked the planning department why the building should be removed, I was told it was the non attractive appearance of the building. The plan is to correct the trim and reseal/paint the exterior, remove the window covers, and replace the slatted fencing with attractive wood fencing and security bars to improve the appearance from the freeway. The old service station is a potential historical building per the Cultural Resource Survey, even though it is not in the current federal or state registry. Numerous

people have stopped and commented to me about their admiration of the historical pony express monument and the old service station. Peavine Ridge Road is part of the old Historical Lincoln Highway and Pacific House was a formal stopping point. "The property illustrates an example of themed filling station stops initiated by petroleum companies to attract motorists to "their" stations. The station is the only existing example of such commercial buildings in the vicinity." , per the cultural report. The station architecture and construction techniques are unique. Part of history would be destroyed if it were removed. Many of the neighbors, including Nina Poole whose father built the station, would be upset if I destroyed the station. It would be as upsetting as the removal of the Post Office, which started this mess.

As I understand, the old station is covered by the UBC in effect at the time the building was constructed (sometime in the early 1930's). I am allowed under the UBC to: reinforce the structure by adding additional members; perform an exact replacement of members with like members; or replace members with members that are equivalent or better in design specifications. I have consulted with a licensed mechanical engineer who is willing to stamp and certify any non exact replacement structural members are equivalent or exceed the original member design specifications.

B) The cargo containers requested to be removed were not part of the code letter nor were they part of the original complaint about Pacific House. They are portable storage structures under the old UBC definition. The ones I have are double walled and insulated. I paid \$12,000.00 for them not including the delivery. They are not rented to the public, but are used for storage of antiques from various buildings and equipment/parts associated with the auto repair. They are 20 ft long, not 40; and only the end of one of them is visible from the road. They are far superior to a wood structure for fire and security. They were acquired in the 1990s and before getting them I checked with the county and was told they were ok to have as long as they met setback requirements and were placed on gravel or railroad ties.

The planning department now says they are not allowed because they are not explicitly stated in the zoning ordinance for commercial. What is the SUP for if not to allow this type of usage? Again, I only desire to be treated as other local commercial zoned facilities in Pollock Pines. I have enclosed several pictures showing many other commercial businesses along Pony Express and HY 50 which have cargo containers. These pictures are from a simple 30 minute drive in my vicinity. I am certain there are hundreds, if not thousands of these throughout El Dorado county.

If the issue is looks, I am willing to paint them to blend into the trees adjacent to them or even add a peaked roof to the end of the one that is visible from the street. All are behind the storage yard fence. Worst case I should be allowed to keep them and modify them to be a structure under 120sq ft..

Item 12. The building code violations relevant to the auto repair should be addressed prior to the SUP approval.

Item 13. This should not be a condition of the SUP but an abatement issue via the normal abatement program process.

Item 16. The planning, coordination, design and installation of the NFPA 72 fire alarm system probably require more than 60 days.

Item 17. I have already purchased the tank, but the final location coordination, and the installation will probably require more than 60 days , given the weather and possible locations.

Item 22. The fire safe management plan should be waived. The current auto repair business "as is" has been operating by me since 1998. The SUP does not include expanding the usage and there are no new construction requirements. This was not requested in the original letter of 1 August 2007 from the fire department, nor specified at the TAC.

ATTACHMENT 2.

28 December, 2006

To: El Dorado Board of Supervisors

Subject: Appeal of conditions of approval for Nonconforming Pacific House Auto Repair Use Determination

Background: The Planning Commission hearing evolved from a phone based Vehicle Abatement Complaint and possibly a complaint on the 5th Wheel Trailer. The rest of the observations were derived from an inspection from Jim Wassner and Officer Cook. I know many of the observation were not in the phone complaint because they have no knowledge of the details of the business operations. In fact Officer Cook and Jim Wassner was not aware of my business license and my BAR status. They thought the bussiness in the front shop repair facility vacated by Pops Shop in late 2005 was the only license. Others, and I had licenses for the back shop repair facility.

The parking area along the frontage road in front of the property is frequently used by travels to park cars without my permission. I also used the parking area to park my operational cars that were on PNO, and some of Pop's part cars that were to be abated. In the past Officer Danielson and his successor (the prior abatement program officers) had informed to park cars to be abated in this area. I was not aware of the abatement program changes. It seem property owners are expected to know of all the county changed rules without written or phone calls notification. In addition tenant cars were parked in front of the rental cabins.

The Officer issued 33 citations just as a major snowstorm began. (3 were cars abandoned by unknown persons without my permission; 5 were currently licensed vehicles; 8 were PNO/operational personal/tenant vehicles; 1 was a personal licensed vehicle being repaired; 9 were customer vehicles; 1 was a prior renter vehicle; 3 were Pops part cars; 3 were commercial enterprise use and are not used on the road (Snow removal, tree pruning/maintenance, Generator). The unlicensed, unregistered 5th wheel and one tenant unregistered vehicle was not cited for some reason.

All of the cited vehicles were corrected to conform to the abatement rules at my expense or were moved by the customers, or tenants. One was removed by the abatement program at my expense, because I could not reach the customer and could not legally remove his vehicle.

Appeal Condition Issues: Conditions 4 and 5 should not be requirements for the use determination cited in 1. The continued use of the auto repair facility and its associated support resources (equipment/storage areas) on a yearly basis was the issue before the planning commission and that was approved in 1. I agreed to do an abbreviated site plan to document the existing facility, associated storage yard and other existing structures that has been in use since we acquired the property in 1985. I was issued a business license for auto repair in 1998, which was approved by the planning department, and fire department.

Condition 4 discussion: The items listed on the Notice to Correct dated March 17,2006 contain some items not related to the auto repair issue and are purported derived violations/observations resulting from a Vehicle Abatement Complaint. These

observations should have been limited to confirmations of items reported and documented at the time of the original phone complaint, or it violates my constitutional right of equal protection, but that is another issue. I have discussed the valid issues with Mr. Jim Wassner and they are corrected or are being corrected consistent with Code Enforcement requirements.

Reference Letter Building Code Violations: 1. The un-permitted stairs is portable (does not require a permit) and was an Aircraft Loading Stairs. The door to the stairs has been blocked from the inside; 2. The wood/log structure in front of the auto shop was the original gas station and the unsafe areas are fenced until repairs can be made in the summer; The 5th wheel trailer was parked on my property without my permission and has been removed (The person who parked it there was a guest of a tenant in Cabin 3. He was told by me to move it several times. It was not legally registered, had an expired license and was not cited by the officer during the original Vehicle Abatement complaint.); 4. The addition is a separate utility building less than 120 sq. ft. and because of the closeness to the duplex structure required sheet rock for a fire wall. (This is not associated with the auto repair zoning issue!); 5. The pickups full of garbage have been removed (They were left by the front garage tenant (POPS) when he moved in late 2005. They would have been moved quicker if I had legal title to remove his abandoned cars.); 6. The wiring in the auto shop building was extension cords left by Pops and the illegal ones have been removed. The site was inspected in 1998 and approved. The conditions are now what they were in 1998.

Reference Letter Environmental Health Violations: 1. The Septic system is not in the path of vehicle traffic and never has been to my knowledge. This was not an observation as stated in the letter, but here-say from Tony's Tow who was the county abatement provider. I told them not to remove any cars from my property unless I was there because they did not know where the septic system was! A tow vehicle can go anywhere to pull out cars! How it got into the letter I do not know.

Reference Letter Zoning Code Violations: 1. Tax returns and letters were provided to substantiate the Auto repair business and associated facilities; 2. The auto lifts are part of the non conforming use in the Planning Commission findings; 3. The auto parking yard must meet parking lot requirements in zoning code, if the business is allowed. The business usage of buildings, parking and vehicle storage facilities have not changed over the years. I do not understand what derived requirements come from this statement. The imposing of current code requirements is not consistent with grand father usage and the non-conforming use findings associated with the auto repair facility. What I am currently using is the same as when my 1998 Business License was issued, and prior licenses were issued. This was not an issue when county planning approved them before and should not be an issue now. It is the same as recommending all the buildings be updated to the current UBC code, which would not be cost effective.

Condition 5 discussion: The vehicles left by others without my permission, some of the customer cars, and the parts cars left by Pops were removed. Along with them I also removed my own cars, which were legally PNO'd with the state and which operated.

The intent of sentence 5 was probably to be consistent with the current county Vehicle Abatement laws and should be reworded to say just that. I intend to keep

customer and some private vehicles associated with the business and commercial enterprise.

I have some confusion with the vagueness of the County Vehicle Abatement Program. Some of the confusion arises from subtle differences in the meanings of the words in that program, and the meanings of similar words associated with state programs i.e. Bureau of Automotive Repair Regulations, State Vehicle Code of 2006, etc. I assume the state definitions and laws apply unless there is something in writing that changes it in the county regulations. I was told by the state BAR that auto repair includes restoration and I can invoice my own vehicles under repair. I have requested a letter restating that position. These seem to be issues relating to understanding the Abatement program, not the non-conforming use issue.