



MINUTES
Zoning Board of Adjustment
March 10, 2022



NOTE: AA22-01 WAS MOVED FOR RECONSIDERATION AT THE 03-24-2022 MEETING

By this reference all reports, documents, presentations, videos and the hearing's video recording are incorporated into the minutes.
See the following link: <https://www.youtube.com/user/DavenportToday/videos> or <https://youtu.be/n4CtNsLZh4k>

I. Call to Order:

Board member Reistroffer called the Zoning Board of Adjustment meeting to order in City Hall Council Chambers, Davenport, Iowa at approximately 4:01 p.m.

Board Members present: Loebach, Boyd-Carlson, Darland, Quinn and Reistroffer

Excused: None.

Staff present: Koops, Werderitch, Zoning Administrator Berkley, Attorney Heyer.

II. Secretary's Report:

Minutes were approved for the 2-10-22 ZBA Hearing by voice-vote (5-0).

III. Old Business:

None.

IV. New Business:

Request AA22-01 of Mike Meloy on behalf of John Davis/AlleyKats LLC for an appeal of an administrative interpretation, appealing the Zoning Administrator's interpretation letter dated December 9, 2021 regarding the sale of vehicles at 1707 West River Drive in the City of Davenport, Iowa. Property is zoned I-2 Heavy Industrial District. [Ward 3]

Koops presented to the Board a PowerPoint presentation and the staff report, findings, and recommendation as follows:

Statement of Facts/ Zoning Administrator's Evidence from the Presentation (slides):

1. Zoning Administrator's interpretation: vehicle dealership is not an allowed use under current code or as a vested right
2. A vehicle dealership was never legally established on the site prior to the 1-20-2019 zoning code re-write; accordingly transition rule F. & nonconforming code sections do not apply
3. Occupancy Permit was never issued for any uses after the gas station use ceased
4. M&S Motorsports never opened and was never legally established
5. Building Permit, Floodplain Development Permit and the Elevation certificate were never approved or finalized
6. No sign permit was issued for a dealership or any other use after the gas station use ceased
7. Polk City Directories have no listed uses for the site from 2017 to the present
8. Photographic evidence from 15 data points over 5 years show the site as vacant
9. The site had no electric or water/sewer services for 20 months from Oct. 2019 to May 2021
10. M&S Motorsports' State of Iowa DOT dealership license #D5074 expired July 29, 2019 with the change of ownership of 1707 W River from John Cernovich to Carter Auto Salvage LLC
11. State of Iowa Dealerships are not transferable to new property ownership and require a new application and a new dealership license
12. No State of Iowa DOT dealership licenses were issued after July 29, 2019
13. Dealerships are required to be licensed by both the State and the City
14. The Matt Flynn letter & the subsequent issuance of a City dealership license is a moot point, as the use was never established & never had State of Iowa licensing

Presentation Timeline:

Timeline	Year 2017												2018												2019												2020												2021																																		
	month J F M A M J J A S O N D												J F M A M J J A S O N D												J F M A M J J A S O N D												J F M A M J J A S O N D												J F M A M J J A S O N D																																		
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Land Uses																																																																																			
	M & S Motor Sports																																																																																		
	Carter Auto Sales																																																																																		
	Polk City Directories (2001 last use 'Knox gas service station')																																																																																		
	Vacant (from 2001)																																																																																		
Utilities																																																																																			
	Electric No information												Electric Service																								Electric Service																																														
Water/Sewer												Water/Sewer Service																								W/S Service																																															
Licenses/Permits																																																																																			
	State Dealership License												M&S Motorsports D5074; EXP, ownership change^																																																																						
	Business License, other (City)																																																																																		
	Dealership License (City)												M&S Motorsports#; unpaid renewal												Carter Auto Sales; Issued in Error@; EXP ^																																																										
	Elevation Certificate												Never Issued; work incomplete																																																																						
	Floodplain Permit												Started, not completed; Expired																																																																						
	Building Permit												Interior rehab & door; Expired *																																																																						
	Occupancy Permit previous 1969																																																																																		
	Sign Permit previous 1977																																																																																		
Ownership																																																																																			
	Names John Cernovich																								Carter Auto Salvage LLC												Veric LLC (Contract: AllyKats CLLC)																																														
	2017												2018												2019												2020												2021																																		
																																				* Inactive												# not renewed, fee not paid Lic#: 50014002												^ License expired upon change of ownership @ Lic#: 50015490												^ License expired upon change of ownership											

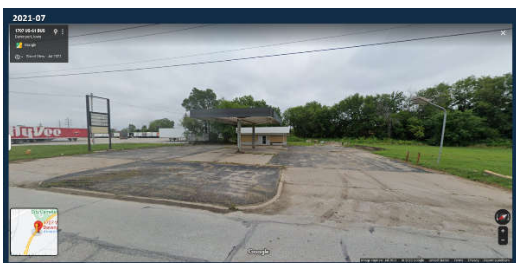
* Inactive # not renewed, fee not paid License expired upon change of ownership License expired upon change of ownership
Lic#: 50014002 @ Lic#: 50015490

Staff explained the timeline above during the presentation. Staff noted that there was no evidence of any use on this property since 2001, which was the last time the "Polk City Directory's" had any indication of a use for the property at 1707 W. River Dr. Staff also made note of the absence of any City of Davenport Occupancy Permit from the City Building Department. The floodplain development permit was initiated however there is no evidence the permit was completed, which would be shown on the elevation certificate. Staff also noted the lack of any sign permits. Staff stated that the reason this information is useful is that it helps to establish that there was no legally established use on the 1707 W. River Dr. property and that the last known use vacated the premises in 2001. Staff also pointed out that there was no electric and sewer/water service on the property for 20 months from October 2019 to May of 2021.

Staff also stated that the State Dealership Programs indicated to city staff that the only known license issued by the State for vehicle sales was the license issued to John Cernovich for "M & S Motorsports", as shown in Handout H3. showing email correspondence with Erika Eckstein of the State in which she informed city staff that the Cernovich license ended once the property was sold to Carter Auto Sales on July 29, 2019. There was never an extension lot license issued to Carter Auto Sales, or any other party, by the State since the one license issued to John Cernovich.

Staff presented to the board the following photos (and referred to other photos in the staff report packet) which show the absence of any cars for sale or display at the site 1707 W. river Dr.:

2021-07:



2020-11-19:

2019-08



2018-12



Staff also presented additional handout materials that were not in the packet. There were the following documents: H1. IDOT Dealership License for M&S Motorsports, H2. State Licensing requirements which require a new license with a change in ownership, from the IDOT website (item #6 in Buying & Selling a Vehicle), H3. Emails with State of Iowa Dealership Programs/IDOT Dealership Licensing (emails from Erika Eckstein and Desiree Burrows), H4. State Code Chapter 322 (Motor Vehicle Dealers) and H5. Photographic Record (including both street-view photos and overhead aerial photos).

Findings:

- Since the change in ownership to Derric Carter on 7-29-19, there has not been a State IDOT dealership license for 1707 W. River Dr.
- A vehicles dealership Occupancy Permit was never issued for the site by the City Building Department
- No evidence has been submitted demonstrating actual operation of the site as a car sales lot
- No evidence has been submitted demonstrating the site is a non-conforming site with vested rights to operate a vehicle sales dealership
- No significant amount of investment in the property has occurred for the conversion of the property to a vehicle sales operation

Recommendation:

Staff recommends the Board "Move to confirm the interpretation of the Zoning Administrator in the letter addressed to Veric LLC/AlleyKats LLC dated December 9, 2021 (also identified as **Exhibit A. Zoning Administrator's Interpretation**).

Loebach asked if 1707 W. River Dr. was zoned for auto sales. Staff responded that in January of 2021 the property was zoned I-2 which does not allow for auto sales (the previous M-2 District which was replaced on January 20, 2019, did allow for auto sales if properly permitted and licensed).

Several persons spoke on behalf of the applicant, including Mr. Mike Meloy.

Mr. Meloy stated that City zoning approved the auto sales in a February 4th, 2020 letter from Matt Flynn to Derric Carter. Mr. Meloy also handed out Exhibit 1, M&S Motorsports city dealership license and City Dealership license Exhibit #2 (2020 for Carter Auto Sales) and Exhibits #3 and #4 and claimed that Staff have shown you no ground pictures. Mr. Meloy handed out a picture taken March 10, 2022, which was to have shown cars on the lot. Mr. Meloy has stated that the aerial photos submitted by City staff do not show the cars parked under the old gas island canopy. Mr. Meloy stated the rezoning of the property to I-2 does not affect the use. Mr. Meloy stated

that it is the Zoning Administrator's Interpretation letter that is erroneous, not the Matt Flynn letter.

Questions of the Applicant by the Board

Board Member Loebach asked Mr. Meloy about Exhibit 2, which shows a different address, at 2637 Rockingham Road, not the 1707 W. River Dr. Mr. Meloy claimed that the City required a subplot for this property.

Board Member Quinn asked Mr. Meloy who is selling cars now at the site, as Veric LLC is not licensed at that location on any licenses. Mr. Meloy stated he would explain that later.

Board Member Body-Carlson asked Mr. Meloy a question about the sale of autos that have occurred that references to 1707 W River Drive. Mr. Meloy stated that Carter would answer that in more detail but that is how transfers happen.

Board Member Darland asked Mr. Meloy about Exhibit 4, "Nonconforming Uses". Mr. Meloy responded that the use became nonconforming in January 20, of 2019, and evidence submitted proves the use was never discontinued, cars were parked under the canopy which does not show up on the City's photos, and that up to two cars were at times parked inside the building.

Board Member Darland asked Mr. Meloy if there ever was a State issued license for either Carter Auto Sales, or Veric LLC, or AllyKats LLC at the 1707 W. River Dr. address.

Mr. Meloy stated he is not sure exactly what Darland means by a State issued license. Mr. Meloy argued that the Board should focus on the zoning issue, not whether the use was legally allowed under State licensing. Darland responded that he is focusing on the zoning issue because if there is not a State issued license, then the site cannot be used to legally sell cars.

Board Member Darland then stated to Mr. Meloy that if the property did not have electricity from September of 2019 to May of 2021, then Carter's auto Sales was in fact doing business from the property without power. Darland went on to say his question of the zoning issue goes back to discontinuation, because a lack of a State dealership license shows a discontinuation; that is what he is trying to confirm, whether or not Carter's Auto Sales was issued a State dealership license.

City Attorney Heyer stated it is his ethical responsibility to inform Mr. Carter that this is a quasi-judicial body, and that if Mr. Carter intends to state he was selling cars from this location and if he did not have a State of Iowa Dealership License, he will be admitting to have committed a crime and Mr. Carter has a Fifth Amendment right not to have to do so. Board Member Reistroffer asked Mr. Carter if he understood City Attorney Heyer's statement. Mr. Carter stated he understood.

Mr. Derric Carter addressed the Board as a former owner of the property and as the owner of Carter Auto Sales and Carter's Auto Salvage. He stated he has two DOT licenses but that this location is not a primary dealership, it is a subplot location. According to Mr. Carter, Carter's Auto Sales is allowed to display vehicles at this location but they bring cars back to the main lot on Rockingham Road which is a primary dealership for the sale of cars. The property at 1707 W. River Dr. was used as 'overflow display of cars' according to Mr. Carter; he stated that he still has an active license to display motor vehicles for sale at that site today.

Board Member Reistroffer asked Mr. Carter if he told the State what he was doing at the 1707 W. River Dr. Mr. Carter said that yes he did and had Matt Dingbaum of the State DOT go down there to inspect that site for the use of vehicle sales, he determined that that location was able

to hold multiple vehicles inside it and he authorized two spaces inside the building which would allow for 20 cars to be displaced at the site should the license be approved.

Mr. Carter stated that when he sold the property to AllyKats LLC, he was verbally granted permission from AllyKats to continue to sell cars at this site because they knew it was going to be a legal issue. Mr. Carter stated that the site is not a great location because he had a number of issues there including flooding, vandalism, and catalytic converter theft; that is why he chose to sell it. There were also times when there was not enough inventory to supply the lot. He stated that when he started to sell cars on the site in November of 2019 they had issues with the catalytic converter theft. When he purchased the property from John Cernovich in July of 2019 M&S Motorsports had a dealership license, and when Mr. Carter purchased the property the city gave him a license in 2020 under the legal nonconforming use laws.

Board Member Loebach wanted to confirm that there are different licenses required from the City and the State to sell cars. Mr. Carter said yes. Attorney Heyer went on further to state that both require licensing, and that both require a primary lot as shown in Exhibit H3., page 19 where it indicates that the State does issue extension lots; the exhibit does not show Mr. Carter having an extension lot for 1707 W. River Dr. with the State.

Board Member Loebach asked Mr. Carter if he has a license for both the City and for the State of Iowa. Mr. Carter stated that he does not have a license for the extension lot with the state. He stated he that was not aware that he needed an extension lot license with the State; and that he thought he only needed the City license. He said an extension lot from the State for 1707 W. River Dr. never came up in his discussions about the site, he stated if he were to do paperwork, or have phones and have an employee on regularly site then the State would require him to have a license at 1707 W. River Dr. The State does not have sublots because they require sales to be conducted on the main lots. The other lots are just strictly used as display lots. The State requires the paper work to be taken back to the main property at 2637 Rockingham and the issue today is not the sale of vehicles, just the display of vehicles.

Board Member Darland wanted to clarify if the use of the property was to display vehicles and sell them at the Rockingham Property. Mr. Carter stated yes, the sale took place at their Rockingham property, and that is why utilities were not needed at the W. River Drive property.

Board Member Loebach asked Mr. Carter to confirm he does not own the property. Mr. Carter stated that yes he sold it, and that he is at the hearing to help those guys out.

Mr. Carter went on to say that he did not ever have signage on the property and that it was not a requirement, just like utilities are not a requirement for a dealership license; the car lot he had there was very minimal; cars are stored under the canopy, that's where you put them, you go to any lot and that's where they put them, it doesn't do a lot for protection but it just looks good; there a no limits to the number of cars I can sell in the City; after detailing the car at 1707 W. River Dr. we moved most of them to the other main lots; my license allowed me to sell this property to the new owner, and they bought the property with the understanding that they could sell cars from that lot.

Board Member Reistroffer asked Mr. Carter when Carter Auto Sales sold the property. Mr. Carter stated it was sold on December 29, 2020; Reistroffer asked if the new owners received a dealership license in December of 2020. Carter stated that the new owners were not able to get licensing from the City because they did not write the letter to the State; that's where it stopped. Matt Higginbaum came down and said the site was ready to go, and it was reviewed.

Mr. Carter stated that he did not know why the City did not issue the determination letter for the new owner when Mr. Carter himself had a letter approving the use written by Matt Flynn; that's when it was noted that Mr. Flynn's letter and the license were issued in error.

Board Member Boyd-Carlson stated that Mr. Carter sold the property in 2020, yet there were there no sales on that property, no pictures of cars for sale on that property since 2020 and no proof of sale since that time, or pictures of cars for sale; and there is no licensing for these other companies, Veric LLC and AllyKats LLC. Body-Carlson stated what is coming into focus is this issue of discontinuation and abandonment. Mr. Carter stated that currently he has cars on display on that property; and that he has continued to be allowed by the present owner to display car on the lot. Mr. Carter stated that the deal was that as long as he had an active dealer's license he would continue to have cars there to maintain the nonconforming status.

Board Member Darland commented that Carter Auto Sales displayed vehicles and detailed them inside but the cars sales took place at the Rockingham property. Mr. Carter stated yes, the sales took place at their Rockingham property.

Reistroffer asked if the site was ever abandoned, because the new owners allowed Carter Auto sales to park cars there. Mr. Carter said there were times when he left the state for a couple of months and that it may have looked abandoned but we have always come back to display cars there.

For clarity City Attorney Heyer stated that selling is defined in State code as "*bartering, exchanging, delivering or otherwise dealing in*", and that "*a person other than a licensed dealer in new motor vehicles shall not engage in this state in the business of selling at retail used motor vehicles or represent or advertise that the person is engaged or intends to engage in such business in this state unless and until the department has licensed the person as a used motor vehicle dealer in the state and has issued to the person a license in writing*" as shown on page H-23 of Handout #4., Chapter 322 of the State Code of Iowa.

Attorney Heyer refuted Mr. Carter's statement that he did not need utilities to display cars. Health Code and plumbing code require that a business shall provide such facilities for the public or employees on site. No occupancy permit has been issued for this site since the 1970's.

Mr. John Davis, who is leasing 1707 W. River Dr. from AllyKats LLC, addressed the Board and stated why he was there and that he needed a letter for the State license written by the City authorizing auto sales at 1707 W. River Dr.

Also speaking was Mr. Tyler Snook who said he was with AllyKats LLC.

Board Member Darland ask Mr. Snook if he had a license from the state to sell vehicles at the site. Mr. Snook stated that he did not have a license form the State. Darland asked if Mr. Carter had a written lease with the owner of the property to sell vehicles. Mr. Carter stated he did not have a written lease with AlleyKats LLC.

Mr. Meloy repeated that Mr. Davis and Mr. Carter do not have to own a property to obtain a dealership license from the State. The State licensing issue is a separate issue. The use of the property for selling vehicles has been continuous.

Joe Van Hecke spoke concerning the request and stated that he purchased a vehicle from Carters Auto Sales in approximately November of 2020; the purchase of the vehicle was conducted at

2637 Rockingham Road auto sales, however the vehicle was parked at 1707 W River Drive when Mr. Van Hecke saw it the first time.

No one else spoke in favor of or against the appeal.

Chairman Reistroffer asked if there was any Board discussion.

Board Member Quinn stated that, just strictly from a zoning issue, it has been reasonably established that a car dealership has been existing there for a long time. There may or may not be a licensing issue, but that he did not believe it to be within the Board's purview, and would like to focus on the zoning issue not the state licensing issue.

Board Member Darland stated that without of License from the State it is his belief, that it has been shown that the use of the property as auto sales has been discontinued, therefore it is not established and it is no longer grandfathered in.

Board Member Loebach stated that they have been saying that there have been cars there, and that is why they can sell cars there, I believe. Loebach ask staff how do business owners know about health requirements that need to be met. City Attorney Heyer stated the people are presumed to know the businesses that they engage in and how to operate, which includes plumbing code, building code, electrical code, utilities, and whether a City and or State license is needed, it is a presumption of doing business that you know what you are doing or that you are advised by others that know.

Board Member Reistroffer asked Attorney Heyer if the city requires a business to ensure that basic services have been adequately installed, is that a requirements to get a business license. Heyer stated that there are various departments that review an application and approve once requirements have been met.

Board Member Darland asked Attorney Heyer to confirm that according to the State Department of Transportation, regardless of what Mr. Carter has been doing on that property, there has been no dealership license since July 29 of 2019.

City Attorney Heyer stated that both the City and the State require any property to have a license, whether it be a primary lot or a subplot/extension lot. Staff person Koops stated that according to the State dealership requirements, a license ends when there is a change in ownership of the property. The only State license ever issued to 1707 W. River Dr. was issued to John Cernovich operating as M&S Motorsports. That license became invalid when the property was sold to Mr. Carter on July 29, 2019.

Board Member Darland stated that is his point, he is not referring to what they would like the site to be, but there has been no state dealership license for that property since what July 29, 2019, which in his view means legally the use has been discontinued since July 29, 2019, and that is it no longer grandfathered in from the original zoning of the property to the current zoning of the property.

City Attorney Heyer stated, that is the decision of the Iowa Supreme Court in made 2013 (No. 3-308 / 12-1501) in Donald Moyer vs. Zoning Board of Adjustment, City of Des Moines, Iowa where they held that the intention to abandon may be inferred from a failure to apply for a license or a permit. From a staff perspective, this is why the issue of the state license matters.

Mr. Meloy interjected that he would like to speak since the City's attorney spoke. Mr. Meloy was instructed to speak into the microphone when recognized by the Chairman. Mr. Meloy claimed that Derric Carter has had a dealership license with the State since July 29, 2019 at his primary dealership. Mr. Meloy went on to say that as Mr. Carter explained the City required him to get this subplot business license and that this is a subplot of Mr. Carter's primary license, therefore it is incorrect for Mr. Darland to say that there has been no business license on the property since July 29, 2019. Derric Carter has had a license from then and still has one.

Board Member Darland asked legal what the State had on file for Derric Carter at this location as an extension/sub lot. City Attorney Heyer stated that the State of Iowa does not have any license record issued to Derric Carter/Cater Auto Sales at 1707 W. River Dr. as an extension lot.

Chairman Reistroffer asked if there were any more Board members who wished to speak.

Board Member Darland stated that as he understands the process you have to get the City license first for the subplot license, then go to the State to get the extension license so the fact that there is no extension means there is no legal dealership license from the State since July 29, 2019.

Board Member Darland, in support of his decision:

1. Since there was no extension lot license, in evidence, for the River Drive location associated with Mr. Carter's auto sales business on Rockingham issued by the state, and in fact the staff reported, in evidence, that no state dealer license (extension or otherwise) exist, that by definition no car sales could have taken place. The property had a City Business license (which is the first step), so a dealer license could have been obtained. Or,
2. If car sales (by the State definition as "*bartering, exchanging, delivering or otherwise dealing in*") did take place, as demonstrated by testimony, those sales would be illegal car sales due to lack of appropriate state licensing to do so as well as not having utilities as required by health code for public facilities.
3. If the Board concludes that although the display and bartering (which by definition is sales) took place on River Drive (as provided for in testimony) but the "sale" took place at the Rockingham property, then again, no car sale took place on River Drive.

Conclusion: In neither case is it justifiable to state the non-conforming use had been continued without a one-year brake, therefore the Board should no longer apply any grandfathering and should uphold the interpretation. Auto sales, without proper state licensing, took place on River Dr. The Board should not adopt the practice of recognizing illegal activity to define "use".

Motion

Quinn moved to confirm the Zoning Administrator's Interpretation dated December 9, 2021 (Submitted as Exhibit A.), seconded by Darland.

Roll call vote was taken as follows:

Loebach, no; Quinn, no; Boyd-Carlson, no; Darland, yes; Reistroffer, no.

The motion to confirm the Zoning Administrator's Interpretation confirm failed (1-4).

V. Other Business

None.

VI. Adjourn

The meeting adjourned unanimously by voice vote at approximately 5:54 p.m.