

DECISION OF THE NORTH OGDEN CITY COUNCIL
ACTING AS A LAND USE APPEAL AUTHORITY
CITY OF NORTH OGDEN, STATE OF UTAH

Thomas Baguley Conditional Use Permit
3590 N. 575 East, North Ogden

This appeal was brought by Charles Crippen, et al., (Appellants) from the decision by the North Ogden Planning Commission allowing the Conditional Use Permit (“CUP”) for a home occupation on property owned by Tom Baguley (Appellee) at 3590 N. 575 E., North Ogden to continue after its annual review. Appellants appealed the acknowledgment that the annual review had occurred, asking the North Ogden City Council to revoke the CUP and terminate the home occupation.

The North Ogden City Council, acting as the Appeal Authority described in Utah Code Ann. 10-9a-701 et seq, has sustained the decision of the Planning Commission and thus approves the renewal of the CUP.

Background

On May 1, 2013 the North Ogden Planning Commission held a public hearing regarding the CUP granted to Tom Baguley, 3590 N. 575 E., to operate an auto repair business in a residential neighborhood. The Planning Commission’s official determination was to allow the CUP to continue, finding that an annual review is required by the original CUP and that the terms and conditions imposed on the use by the CUP have been met. The decision of the Planning Commission was appealed by Chuck Crippen by May 15, 2013. The Appeal Authority for CUPs in North Ogden City is the North Ogden City Council. Additional individuals joined Mr. Crippen’s appeal, including Dale Swenson, Paul Clarke, Jolyon Walker, Mark Pontius, and Michael Dufrene. On June 11, 2013 the North Ogden City Council, acting as the Appeal Authority for the May 1, 2013 Planning Commission decision, held a hearing on this matter at which the Appellants were allowed the chance to be heard. The Council made a determination in a meeting on May 28, 2013 that no public hearing would be held in accordance with North Ogden Code 11-14-3(H) given the opportunity for the public to be heard at the May 28, 2013 meeting.

Proceedings

Two individuals spoke on behalf of the Appellants. Mr. Pontius mentioned the only detrimental he has personally witnessed was an increase in the vehicular traffic associated with the use at the Baguley home. Mr. Crippen discussed smells of solvents which was noticeable in his back yard on more than one occasion. Neither of the individuals speaking for the Appellants provided any documentation, expert witness opinions, or other evidence of the occurrence of violations of the CUP beyond their own testimony. At the hearing, members of the Appeal Authority asked questions about the violations of the conditions associated with the CUP.

Mr. Tom Baguley, Appellee, also spoke. During his presentation Mr. Baguley responded to questions from the Appeal Authority about the alleged violations of the CUP conditions. Mr. Baguley provided testimony about his compliance with the conditions of the CUP and did not provide any documentation or expert witness testimony as evidence of his compliance with the CUP.

Findings of Fact and Conclusions of Law:

The Appeal Authority finds as follows:

1. This matter is properly before the Appeal Authority. The Appellants have standing to bring their appeals. The appeals were timely filed.
2. According to Utah Code Ann., Section 10-9a-801, the Appeal Authority must presume that the decision made by a Planning Commission is correct. The Appeal Authority is only to overturn that decision if it is found to be arbitrary, capricious, or illegal.
3. The Appellants have the burden of proving that the Planning Commission erred in this matter.
4. A Conditional Use Permit, once issued, is a protected property interest, and can only be revoked or denied after affording the holder of a CUP due process of law. Absent substantial evidence of a violation of the CUP, the City must allow the CUP to continue.
5. Some evidence and testimony provided to the Appeal Authority on behalf of Appellants did not specifically relate to the conditions imposed on the CUP.
6. Evidence and testimony provided to the Appeal Authority on behalf of Appellee was specific to each individual condition imposed by the conditions in the original CUP, and demonstrated compliance with the conditions. Specifically, the Appellee testified:
 - a. That the main garage door was not open when cars were being worked on. Any times the garage door was open there was either no car being worked on, or vehicles were being moved in and out of the garage.
 - b. That a proper HVAC system was installed and inspected by City officials.
 - c. That insulation was installed on the garage door.
 - d. That no more than two cars to be repaired have been present on the property at any given time
 - e. That no cars have been parked across the sidewalk.
 - f. That the annual reviews have occurred as required by the CUP.
7. Appellants did not provide any testimony or other evidence to contradict these specific claims by Appellee that he was in compliance with the specific conditions of the CUP.

The Appeal Authority finds that the Appellants did not provide substantial evidence of error in the Planning Commission's decision that the Appellee has substantially complied with the conditions of the CUP and is entitled to continue the conditional use. Appellee provided substantial evidence during the course of the hearing to counter any alleged violations of the CUP conditions. In reaching this determination the Appeal Authority relied on testimony at the hearing, documents provided prior to the hearing by Appellants and Appellees, and the record of the decision by the Planning Commission.

Therefore, the Appeal Authority upholds the ruling by the Planning Commission on May 1, 2013, finding no error in its decision.

Entered this _____ day of June, 2013 by the North Ogden City Appeal Authority

Acting Chair

Member

Member

Member

Member

Member