

TO: Mayor Angelo and Members of the Board of Trustees
FROM: Philip Strom, Interim Town Planner
DATE: June 16, 2021
ITEM: DISCUSSION / DIRECTION – ZONING VIOLATIONS AT 431 4TH AVENUE

ORDINANCE
 MOTION/RESOLUTION
 INFORMATION

I. REQUEST OR ISSUE:

Planning Issue

The current industrial use of property is not permitted within the Commercial Zone District, The property has been used by an excavation business which stockpiles materials, such as gravel and dirt, and operates industrial equipment, such as front loaders, dump trucks, and flatbed trailers, to move the materials to and from the site. This use is a hazard to the adjacent residential neighborhood and library. The proposed Safe Routes To School path will run along the property frontage with 4th Avenue and increases the risk of the industrial use at this location.

Potential Lyons Municipal Code Violations

While staff considers the non-permitted use the main concern, it is worth noting the property appears to be in violation of several Lyons Municipal Code requirements including:

- 7-2-140 Property Maintenance
- 7-2-30 Air Pollution
- 7-2-20 General nuisance
- 16-8-20 General Provisions, b. Surface

As well as several International Property Maintenance Code requirements including:

- 502.4 Employees' facilities
- 502.4.1 Drinking facilities
- 503.3 Location of employee toilet facilities

II. RECOMMENDED ACTION / NEXT STEPS:

Direction from the Board of Trustees to proceed with one of the recommended actions below:

1. Enforce Lyons Municipal Zoning Code and halt the non-permitted industrial use
2. Provide feedback to property owner regarding to potential to rezone the property General Industrial Zone District to accommodate current use
 - The property owner would need to initiate the rezoning
 - This would conflict with the goals and objectives of the Comprehensive Plan
 - There may be a risk of spot zoning as the use of the parcel differs from the surrounding properties
 - The property owner would need to address safety concerns

III. FISCAL IMPACTS: None.

IV. BACKGROUND INFORMATION:

Property Information

Owner: Steve McCain

Parcel Number: 120318416011

Property Address: 431 4th Avenue, Lyons, CO 80540

Legal Description: Lots 1-3, Block 32 (less southerly 26.5 feet more or less for right of way)

Zoning: Commercial Zone District

Historic Use

While the property has never been zoned industrial, it has historically been used as industrial. Prior to Mr. McCain, the property was used for a bulk oil storage tank and was lawful as a Nonconforming Use. A Nonconforming Use is the lawful use of land that existed prior to the effective date the zoning and may be continued even though such use does not conform to the requirements of the zoning. Per the Lyons Municipal Code the Nonconforming Use can continue until either:

1. The Nonconforming Use has been discontinued for a period of 6 months
2. The Nonconforming Use is expanded or changed

The Nonconforming Use, the bulk oil storage tank use, eventually ended and the tanks were removed just prior to Mr. McCain purchasing the property in 2003, see **Attachment 7**, and began the operation of his excavation business on the property. At this point, the change in use terminated the Nonconforming Use, reverting the property to the zoning in place, which was Medium Density Residential Zone District (R-2). This was noted in multiple letters to Mr. McCain from the Town, see **Attachments 8 and 13**.

Rezoning History

In September 2006 Ordinance 811 was adopted rezoning the property from Medium Density Residential Zone District (R-2) to Commercial Zone District (C) at the request of the McCain family and who intended to use the property for a storage building and an auto shop, see **Attachment 16 and 17**. The rezoning was approved with the understanding the industrial use would no longer operate on the property, this was confirmed by Mr. McCain at the September 18, 2006 Board of Trustees meeting, see **Attachment 17**.

At the time of rezoning, Town staff noted that the application was inconsistent with the goals and policies of the Comprehensive Plan and stated concerns that the Commercial District uses by-right could conflict with the character of the downtown and surrounding neighborhood. Strengthening the argument against rezoning the property, the PCDC voted to deny the change in zoning requested by the McCain family at their August 2006 meeting, see **Attachment 15**. Today staff remains in agreement with the prior staff's determination.

The rezoning was ultimately passed and adopted with the Board of Trustees noting that historically the property had never been used for residential, see **Attachment 17**.

V. LEGAL ISSUES: The current industrial use of property is not permitted within the Commercial Zone District.

VI. SUMMARY AND ALTERNATIVES:

The current industrial use of property is not permitted within the Commercial Zone District and the recommended actions include:

1. Enforce Lyons Municipal Zoning Code and halt the non-permitted industrial use
2. Provide feedback to property owner regarding rezoning to General Industrial Zone District to accommodate current use
 - The property owner would need initiate the rezoning
 - This would conflict with the goals and objectives of the Comprehensive Plan
 - There may be a risk of spot zoning as the use of the parcel differs from the surrounding properties
 - The property owner would need to address safety concerns

Table of Attachments:

Attachment	Date	Document	Notes
1	3/11/75	Sign Permit Application	n/a
2	12/29/00	Personal Representation Deed	Grantee The Glen J. Balenseifen Family Trust (Personal representative Eric Glen Balenseifen)
3	12/29/00	Personal Representation Deed	Grantee The Glen J. Balenseifen Family Trust (Personal representative Eric & Karen Balenseifen)
4	12/29/00	Warranty Deed	Grantee KB Skyline Properties, LLC
5	5/20/02	Encroachment License	Licensee Rex Oil Company for security fence (Resolution No. 2002-32)
6	1/10/03	Building Permit	Meter removal by applicant KB Skyline Prosperities
7	4/30/03	Warranty Deed	Grantee Steve Todd McCain and Crystal L. McCain
8	1/13/04	Letter from Town (unsigned) - Administrator Cinnamon	Indicates termination of Nonconforming Use (bulk oil tank storage) & reversion to R-2 Zone District
9	6/4/04	Order of Default Judgement and Declaration of Public Highway	n/a
10	6/29/04	Letter from Town (unsigned) - Mayor Kyer	Encouragement to rezone from R-2 Zone District to mixed use, not Commercial Zone District
11	2004	Letter from Town (unsigned) - Mayor Kyer	Addressing 4/12/2004 Boulder Daily Camera Article regarding Quiet Title Action of public roadway
12	1/12/05	Photo	Hatrock Excavating sign
13	2/16/05	Letter from Town - Administrator Cinnamon	Indicates termination of Nonconforming Use (bulk oil tank storage) & reversion to R-2 Zone District
14	7/7/06	Land Use Application	Rezoning
15	8/28/06	Staff Memo to PCDC	Indicates PCDC denial to change the Zoning to Commercial at their August 28, 2006 meeting
16	9/5/06	Business Plans Document to Board of Trustees from McCain's	n/a
17	9/18/06	Board of Trustees Meeting Minutes - Rezoning Public Hearing	Item VII. 2. Public Hearing Ordinance 811 rezoning from R-2 to C.
18	11/6/06	Board of Trustees Meeting Minutes - Complaint Report	Item VII. Trustee Reports - Complaint Mr. McCain was not complying with Commercial Zoning. Mayor & BOT consensus to move forward with investigation/issue citation if warranted.
19	12/3/06	Board of Trustees Meeting Minutes - Complain Report	Item VI. Audience Business - Discussion on summons issued for zoning violations
20	1/16/03	Email from Town Engineer (JLB Engineering Consultants)	Discussion on southern boundary of McCain property
21	1/18/03	Email from Town Engineer (JLB Engineering Consultants)	Discussion on southern boundary of McCain property
22	Unknown	Building Permit Application	Heating & electrical installation by Continental Oil Co.