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OPINION NO. 99-06

TO: Debra Stark, Community Development Director
FROM: Stephen M. Kemp, City Attorney
DATE: April 2, 1999
SUBJECT: City's C-4 Zoning District

QUESTION:

You have inquired as to whether the City's C-4 Zoning District requires all auto body repair activities be carried on inside an enclosed structure.

OPINION:

For purposes of this Opinion, the following factual background is provided. A proposed use including enclosed automobile body repair and painting, as well as outside storage of vehicles has proposed to locate on a parcel of property having C-4, General Commercial Zoning. A copy of the zoning code article is attached for your reference to this opinion.

The Peoria Zoning Code, Article 14-15-2D provides as a principal permitted use¹:

- D. Tool sharpening, enclosed auto body repair and painting.

The subject of this opinion is whether this provision requires accessory components to this use, such as the storage of vehicles awaiting repair and pick up also to be enclosed. There are three underlying principles that address this issue. First, with the exception of non-conforming uses, zoning ordinances are to be construed in favor of the property owner and against the governmental entity. Sprecht v. City of Page, 128 Ariz. 593, 627 P.2d 1091 (App. 1981). Second, accessory uses to a principal use are generally permitted. Peoria Zoning Code, Sec. 14-3-3.C. Third, the City need not specify every conceivable use of property that is permitted or prohibited under the zoning ordinance, within the text of the ordinance. State v. Trachtman, 190 Ariz. 331, 947 P.2d 905 (App. 1997)

1. A principal permitted use under the Peoria Zoning Code is a use that exists as a matter of right within the zoning district. No further legislative authorization is required to commence using the property with a principal permitted use.

City Attorney Opinion

April 2, 1999

Page 2 of 2

The Peoria Zoning Code allows as accessory uses, those uses normally accessory and incidental to principal permitted or conditional uses. Clearly, the nature of Automobile Body Work, which involves multiple paintings, sandings, buffings and related work on vehicles, requires that vehicles be located on site for days, if not weeks. There is no requirement that such accessory uses must be enclosed unless specified.

Much of the work requires extensive drying of vehicles between services. This outside storage and parking of vehicles is directly related to the Auto Body repair and painting use, unlike the situation in State v. Trachtman, which involved repair of vehicles in a residential zoning district.

Conversely, to find that the storage and parking of vehicles is not accessory to an automobile body shop would require that we find storage and parking not incidental to repair. Such a finding is unsupported by the facts and would require an interpretation of the zoning code contrary to law. If outside storage and parking of vehicles is not to be incidental to automobile repair facilities, then the city needs to legislate it as such.

Therefore, it is the opinion of this office that outside storage and parking of vehicles is accessory to the principal permitted use of automobile painting and body repair in a C-4 Zoning District and shall be permitted as a matter of right.

If you should have any further questions, please contact this office.

cc: Honorable Mayor and Council
Meredith R. Flinn, Deputy City Manager (DS)