CITY OF ALAMEDA PLANNING BOARD
RESOLUTION NO. 1010

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF ALAMEDA APPROVING USE PERMIT NO. 79-3 at 1200 PARK STREET, SUBJECT TO CERTAIN CONDITIONS

WHEREAS, the Planning Board of the City of Alameda has considered Use Permit 79-3 for the sale and installation of auto tires at 1200 Park Street; and

WHEREAS, said Board has held a public hearing on this application and has examined pertinent maps, drawings and documents; and

WHEREAS, said Board has made the following findings:

1. The proposed use is consistent with the prior use of the site as a gas station and auto repair facility.

2. Adequate off-street parking is available.

3. Removal of the gasoline pumps will reduce traffic associated with the site.

THEREFORE, BE IT RESOLVED that the Planning Board of the City of Alameda hereby grants said Use Permit, subject to the following conditions:

1. The building at 1200 Park Street be refurbished and landscaped. The site plan, landscaping and signage be reviewed by the DRB.

2. That parking be restricted to the approved site plan and those spaces marked.

3. That cars not be permitted to be parked for extended periods of time or advertised for sale.

4. That all work will be conducted within enclosed structures.

5. Outdoor displays will be permitted only during business hours of operation and restricted to mounted racks with no more than 4 tires each.

6. Signs in each window for promotion and/or advertisement will be limited to 20 percent of the total window area.

7. Overnight parking will not be permitted on the premises. Driveway entrances will be chained to bar parking by itinerant drivers during the periods when the business is closed.

8. Refuse and storage of used tires will be enclosed and screened from public view. No tires will be visible above the fenced area.

9. Display of banners and/or moving identification symbols will be limited to 4 times annually for periods not to exceed 7 days.

10. This use permit is granted for a time period of one year.

* * * * * *

PASSED AND ADOPTED by the Planning Board of the City of Alameda on the 19th day of March, 1979, by the following vote:

AYES: Fenstermacher, Gorman, McPherson, Simmons, Stone, Wood, Narahara

NOES: None

ABSENT: None

ATTEST: _____
Don E. Patterson,
Secretary
City Planning Board

CITY OF ALAMEDA • CALIFORNIA
CITY HALL • SANTA CLARA AT OAK STREET 94501 • (415) 522-4100

PLANNING DEPARTMENT

January 28, 1982

Henry C. Cohen
4789 Belfast Avenue
Oakland, CA

Dear Mr. Cohen:

Thank you for responding to my request to clarify your operation and what your firm proposes to do on property located at 2407 San Jose and 1200 Park Street, Alameda. The following summarizes our discussion Tuesday, January 26, 1982.

1. Your firm specializes in four areas of auto service and repair. They are tires, brakes, shocks and front end alignment. These are the same services, among others which are now carried on at the above addresses.

2. You will have a single office to be located in the "Wrenchouse".

3. You will use the Park Street premises primarily to sell and to install tires.

4. You have a copy of UP-79-8 applicable to the tire sales and installation use at 1200 Park Street and are aware that it expires five (5) years after June 18, 1979. At that time you will seek a renewal of the permit.

5. You are aware of the conditions of approval of the use permit which are as follows:

   a. The building at 1200 Park Street be refurbished and landscaping added. The site plan, landscaping and signage be reviewed by the Design Review Board.

   b. The parking be restricted to the approved site plan and those spaces marked.

   c. Cars not be permitted to be parked for extended periods of time or advertised for sale or sold.

   d. All work to be conducted within enclosed structures.

   e. No recapping or retreading of tires on the premises.

f. No testing of vehicles in residential areas.

g. No nite-time or weekend outdoor displays or storage.

h. Promotions and advertisements in windows limited to 20% of each window.

i. Lot entranceways will be chained during non-operational hours.

j. No banners to be displayed.

k. Garbage area to be enclosed.

l. The area for old or used tires to be shielded from view from the traveled way.

m. The number and placement of tires displayed during business hours to be presented to the Planning Director for prior approval.

n. Zoning Administrator to review permit after one year if complaints are received.

o. This Use Permit is granted for a period of five (5) years.

6. You will meet with our Design Review Staff for a sign permit and for review of all exterior improvements to the buildings and grounds.

7. You are aware of the community's concern and will see that the building and grounds are well maintained.

8. You will direct cars exiting to San Jose Avenue from the site to make right turns so as to reduce any traffic burden on residences on Park Avenue.

Attached you will find your application and check for $150 filing fee for a use permit for 1200 Park Street and 2407 San Jose.

We have reviewed your application with the City Attorney. It is his opinion that UP-79-8 for 1200 Park Street is valid to June 18, 1984. He further states that 2407 San Jose does not require a use permit if the character of the use is not changed and continues in the same or a more restrictive operation.

Since you have stated to our Staff that if you move in, you will continue the same operation, we find you will not need a use permit.

Unless we hear from you to the contrary, we expect that you find these terms acceptable for the operation you contemplate.

If you have any further questions, please do not hesitate to call me.

Sincerely yours,

Minnie S. Ruth

Minnie S. Ruth
Zoning Administrator

cc: John Barni, Jr.

CITY OF ALAMEDA • CALIFORNIA
CITY HALL • SANTA CLARA AT OAK STREET 94501 • (415) 522-4100

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   a. The building at 1200 Park Street be refurbished and landscaping added. The site plan, landscaping and signage be reviewed by the Design Review Board.

   b. The parking be restricted to the approved site plan and those spaces marked.

   c. Cars <u>not</u> be permitted to be parked for extended periods of time or advertised for sale or sold.

   d. All work to be conducted within enclosed structures.

   e. No recapping or retreading of tires on the premises.

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Minnie S. Ruth

Minnie S. Ruth
Zoning Administrator

cc: John Barni, Jr.

CITY OF ALAMEDA • CALIFORNIA

CITY HALL • SANTA CLARA AT OAK STREET 94501 • (415) 522-4100

PLANNING DEPARTMENT

February 3, 1989

Henry C. Cohen
4 Chatham Pointe
Alameda, CA 94501

Re: 1200 Park Street/2407 San Jose Avenue; Big-O Tires

Dear Mr. Cohen:

Enclosed please find a copy of Resolution No. 1926 approving the Use Permit for the above captioned address. Please note that Condition No. 4 requires that you submit materials for Design Review of proposed and existing landscaping, treatment of gargage area and area for old and used tires, the number and placement of tire displays during business hours, and signage, no later than February 17, 1989. Approval of a Minor Design Review Application, and Sign Permit are required and applications are enclosed. Further, Condition No. 2 requires that leasing arrangements for long-term overflow parking must be found within sixty (60) days of approval, and is to be reviewed and approved by the Planning Director. Please submit a copy of the lease or other arrangement to the Planning Department by March 30, 1989.

During the Planning Board meeting, there was some discussion regarding expansion of the existing buildings at the Big-O Tire site. Section 11-153 of the Zoning Ordinance prohibits the enlarging, extension, reconstruction or structural alteration of any non-conforming building or use. As your use is non-conforming with respect to the C-2, General Business District in which your business is located, no expansion of the existing buildings is possible.

If you have any further questions, please do no hesitate to call me at 748-4554.

Sincerely,

Judith Altschuler
Assistant Planner

JA/eec

enclosures

CITY OF ALAMEDA PLANNING BOARD
RESOLUTION NO. 1926

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF ALAMEDA APPROVING USE PERMIT, UP-88-36, AT 1200 PARK STREET/2407 SAN JOSE AVENUE.

WHEREAS, the Planning Board of the City of Alameda has considered UP-88-36 to allow the continuation of a non-conforming use pursuant to Zoning Ordinance Section 11-152.

WHEREAS, the Board has held a public hearing on this application and has examined pertinent maps, drawings, and documents; and

WHEREAS, the Board has made the following findings:

1. The proposed use, as conditioned below, is compatible with other land uses in the general neighborhood area.

2. The site for which the use is proposed is served by adequate public transit lines, and as conditioned below will have adequate parking provided in the vicinity.

3. The use will not adversely affect other property in the vicinity upon compliance with imposed conditions.

THEREFORE BE IT RESOLVED that the Planning Board of the City of Alameda hereby grants UP-88-36 subject to the following conditions:

1. All work to be conducted within enclosed structures.

2. Within 60 days of the date of approval of this Use Permit, applicant shall find an alternative long-term parking site for customer cars, as well as for employees. Leasing arrangements made by the applicant shall be reviewed and approved by the Planning Director.

3. Applicant's business vehicle(s) shall be stored on the site, not on adjacent residential streets.

4. The site plan, indicating proposed and existing landscaping, treatment of garbage area and area for old and used tires, the number and placement of tire displays during business hours, and signage shall be subject to Design Review, except no additional public notice to adjacent property is necessary. Applicant shall submit pertinent materials no later than February 17, 1989.

5. Applicant shall install a sign directing customers to turn right toward Park Street from the San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.

6. No recapping or retreading of tires on the premises.

7. No testing of vehicles in residential areas.

8. The Use Permit shall be reviewed by Planning Staff one year from the date of final approval, and their determination of compliance with conditions of approval shall be reported back to the Planning Board.

COPY

Dec 13, 1988

Mr. Arnold Jonas
Planning Director
City of Alameda
Santa Clara at Oak St.
Alameda, CA 94501

Dear Mr. Jonas:

1. This letter is in response to the Notice of Hearing dated Nov 30, 1988 for a hearing on Dec 14, 1988 concerning Use Permit UP-88-36. As I am unable to attend the hearing on that date, I am submitting these written comments and a 5 minute video tape in support of my position. My interest in this matter is that my property at 1201 Park Avenue adjoins the property at 1200 Park Street where Big "O" Tires, the applicant, is located.

2. I strongly object to the granting of this use permit and request its denial for the reasons outlined below.

a. The original use permit for this property (UP-79-8) was vigorously opposed by the neighborhood residents but granted by the City of Alameda Planning Board Resolution No. 1021. An important point of this resolution, and an item of great concern to the residents is number "4. All work to be conducted within enclosed structures."

The neighborhood residents also vigorously opposed the rezoning of this property from C-1 to C-2 use when Big "O" Tires took over the property. This opposition was also disregarded by the Planning Commission and the City Council.

b. A subsequent use permit application (UP-82-1) by Henry C. Cohen for Big "O" Tires requested permission for "Same as present use permit granted to 1200 Park St." This permit was denied by Planning Department letter of Jun 28, 1988 since the previous use permit had 2 years remaining on it. The letter notifying Mr. Cohen of this however reiterated the constraints of the use permit including "5.d. All work to be conducted within enclosed structures."

c. At no time since 1982 has Big "O" Tires abided by the requirements of their use permit according to the Manager's statement to me on Dec 12, 1988 while I was video taping work being performed on cars in the outside parking lot areas.

d. Big "O" Tires has operated without a valid use permit since 1984 due to their failure to comply with the Planning Department letter of Jan 28, 1982 notifying them of the requirement to file a new permit application by Jun 18, 1984.

e. A request by the Planning Department in its letter of Jul, 1988 to Mr. Cohen for a new use permit application was ignored. A follow up letter by the Planning Department on Oct 13, 1988 to Mr. John Barni Jr. confirms this ignorance and notified Mr. Barni of the requirement to submit an application by Oct 21, 1988 or be issued a citation. An application was finally filed by Mr. Cohen on Nov 16, 1988 and, to my knowledge and from a review of the Planning Department files, no citation was issued.

f. Contrary to the application for a use permit filed by Mr. Cohen on Nov 16, 1988 for "Same as present use permit granted to 1200 Park St. and 2407 San Jose Ave," the Nov 30, 1988 Notice of Hearing states "That an application has been filed for consideration of a Use Permit UP-88-36 to allow automobile servicing including conducting business in an unenclosed area..." I find this inaccuracy in the Planning Department's work deplorable and very misleading.

g. I am also highly indignant that the City of Alameda Planning Department does not have their own stationary and found it necessary to send me my Notice of Hearing in a Shaw & Lunt Realtors envelope. Who works for who in this City?

h. I filed a complaint with the City against Big "O" Tires for continually discharging unknown liquid contaminants outside their premises at this location into a storm drain. This practice makes a continual, unhealthful, dirty, sticky, gooey mess in the gutter along San Jose adjoining my property. The complaint was never answered by the City to me and the practice by Big "O" Tires continues despite my repeated requests to stop.

i. I have also had numerous complaints from my tenants at 1201 Park Avenue concerning this discharge of liquid, Big "O" Tires vehicles parking in the tenants driveway and also working on automobiles and playing loud music from their cars along San Jose Avenue.

j. The Planning Department refused to allow me copies of complaints made against the property in question or Big "O" Tires.

2. In summary, I am requesting denial of this use permit application and the right to bring up any subject in the original use permit (UP-79-8) and,

a. that a new and separate public hearing be held to review the continued operation of Big "O" Tires at this site.

b. the Notice of Public Hearing be corrected to reflect the Use Permit application request of Nov 16, 1988.

c. public comments be solicited on the business operation of Big "O" Tires and complaints generated at this site prior to any future hearings.

d. Big "O" Tires be formally restrained from operating outside the requirements of the original Use Permit (UP-79-8) for this location until a new hearing is completed.

e. that all restrictions of the original Use Permit (UP-79-8) be enforced in wording and in deed in any approved use permit for this property.

Sincerely

Gerald M Mulenburg

Gerald M. Mulenburg
854 Solana Drive 283-8355 (Home)
Lafayette, CA 94549 869-3096 (Work)

5236 Lind
Chicago, Il 60630
December 9, 1988

RECEIVED
DEC 14 1988
PLANNING DEPARTMENT
CITY OF ALAMEDA

Zoning Administrator
City of Alameda Planning Department
City Hall
Santa Clara at Oak Street
Alameda, CA 94501

RE: Application No. UP-88-36

I am opposed to allowing Big O Tires to service automobiles in an unenclosed area at their 1200 Park St./2407 San Jose Ave. location.

(It was my understanding that the property was zoned C-1, not C-2, and that they are operating under a Use Permit.)

The current zoning aside, I am opposed to the current application on two grounds.

First, working within enclosed areas does not contain the noise their work generates at the present time. If they were to work in the open, there would be more noise, and it would be heard on residential Park Avenue.

Secondly, Big O already uses Park Ave. for overflow parking of vehicles. If they were to be allowed to work in their open area as well, they would not be able to use that space for parking. If they were to be allowed to work in the open, they would be expanding their capacity, meaning more cars than they currently have, combined with less space in which to park the cars waiting for service.

Parking is in short supply on the west side of the 1200 block of Park Ave., due to the number of apartments and little off-street parking. We do not need more competition for the parking spaces. Furthermore, it is extremely detrimental to the residential character of the street (in a Heritage Area, no less) to see cars parked on the street with their little numbered service hats lined up waiting their turn. The Big O tow trucks occasionally parked there also detract from the street's bucolic atmosphere.

For the above reasons, I urge that the referenced application be denied.

Sincerely,

Naomi L. Hatkin
Owner
1217 Park Ave.

CITY OF ALAMEDA • CALIFORNIA

CITY HALL • SANTA CLARA AT OAK STREET 94501 • (415) 522-4100

PLANNING DEPARTMENT

February 3, 1989

Henry C. Cohen
4 Chatham Pointe
Alameda, CA 94501

Re: 1200 Park Street/2407 San Jose Avenue; Big-O Tires

Dear Mr. Cohen:

Enclosed please find a copy of Resolution No. 1926 approving the Use Permit for the above captioned address. Please note that Condition No. 4 requires that you submit materials for Design Review of proposed and existing landscaping, treatment of gargage area and area for old and used tires, the number and placement of tire displays during business hours, and signage, no later than February 17, 1989. Approval of a Minor Design Review Application, and Sign Permit are required and applications are enclosed. Further, Condition No. 2 requires that leasing arrangements for long-term overflow parking must be found within sixty (60) days of approval, and is to be reviewed and approved by the Planning Director. Please submit a copy of the lease or other arrangement to the Planning Department by March 30, 1989.

During the Planning Board meeting, there was some discussion regarding expansion of the existing buildings at the Big-O Tire site. Section 11-153 of the Zoning Ordinance prohibits the enlarging, extension, reconstruction or structural alteration of any non-conforming building or use. As your use is non-conforming with respect to the C-2, General Business District in which your business is located, no expansion of the existing buildings is possible.

If you have any further questions, please do no hesitate to call me at 748-4554.

Sincerely,

Judith Altschuler
Assistant Planner

UP820001 → 4

JA/eec

X UP790003 →
UP810003

enclosures

1979.

Henry 510 747 6871

KATHLEEN LIVERMORE
510-747-6885
PLANNER WORKING ON REVISION

12/14/88 Wed. Big Ti
Co. Truck parked
on Park Av. & San Jos
Ave. - 3 days straigh
10:15 AM

12/14/88 Wed.
Cars parked along
San Jose Ave.
bordering Big O Tire
at 10:15 AM

12/14/88 - Wed.
Cars parked
on Park Av. from
San Jose Ave. towa
Encinal Ave.
10:15 AM

RECEIVED
DEC 15 1988
PLANNING DEPARTMENT
CITY OF ALAMEDA

/14/88
Big O Tire lot
at 10:15 AM
Wed.

Wed. 12/14/88
at 10:15 AM
Big O Tire
lot

ALAMEDA PLANNING DEPARTMENT

STAFF REPORT

PLANNING BOARD MEETING OF JANUARY 30, 1989

ITEM NO:	2
APPLICATION NO:	UP-88-36
APPLICATION FOR:	Request for a Use Permit to allow a tire installation business to continue at the site, including business in an unenclosed area.
APPLICANT:	Henry Cohen for Big-O Tires.
LOCATION:	1200 Park Street/ 2407 San Jose Avenue
ZONING:	C-2, Central Business District
GENERAL PLAN:	Neighborhood Commercial
ENVIRONMENTAL DETERMINATION:	Catagorically Exempt under Section 15303, Conversion of Existing Structure

BACKGROUND:

A Use Permit, UP-79-8, was granted for the property in 1979, pursuant to Zoning Ordinance Section 11-152 allowing the change from one non-conforming use, a service station, to another, a tire installation business. The Use Permit was granted for a period of (5) five years. In 1982, the site was taken over by the present business owner. A determination was made at that time by the City Attorney that a new Use Permit was not required with the change in ownership as the functions of the business remained essentially the same. However, the new business business owner would still be required to comply with all the conditions attached to the Use Permit approval. The Use Permit expired in June, 1984. On July 26, 1988, the Community Services Officer reminded the applicant of the condition, and a complete application for a new Use Permit was submitted in November, 1988. The application was heard by the Zoning Administrator on December 14, 1988, and approved with conditions. The Planning Board appealed the decision on December 19, 1988.

PROPOSAL SUMMARY:

The applicant wishes to continue the operation of the Big-O-Tire Store and additionally, wishes to secure approval to allow some automobile repair to be conducted in an unenclosed area. This appears to staff to be an expansion of the original non-conforming use, which is disallowed under Section 11-153 of the Zoning Ordinance.

ANALYSIS:

While the applicant was required to return for a new Use Permit, as UP-79-8 had expired, it does not appear that the new Use Permit could be granted to include allowing some repairing to be done in an unenclosed area. Section 11-153 of the Zoning Ordinance disallows the expansion of a non-conforming use. Further, Condition No. 4 of UP-79-8 states that: "(a)ll work to be conducted within enclosed structure." Applicant will need to abate all unenclosed repairing of cars.

During the Zoning Administrator's hearing, several concerns regarding traffic and parking congestion were voiced by neighbors. Apparently, the company truck parked on adjacent streets for extended periods of time ranging from several hours to three or four days and nights. The applicant verbally promised to park the company vehicle on his lot in the future. There was discussion on the inadequacy of the 14 parking spaces existing on the parcel for both the customer's and employee's cars. Apparently, the overflow is routinely parked on San Jose Avenue and Park Avenue, thereby reducing the on-street parking opportunities of the residents. This was an especially great concern of the neighbors, in light of the applicant's statement that there had been an increase in business activity from 20 customers per day in 1982 to the current 30 customers per day. The applicant has been required to find an alternative parking site for employee's and customer's vehicles which have been serviced, in order to alleviate this problem.

The applicant was also made aware of the lack of compliance with a number of conditions of the original Use Permit. These included the existing signage and the outdoor storage of tires. The applicant has been asked to apply for Design Review for landscaping, treatment of garbage area, and areas set aside for old and used tires, placement and number of tires displayed during business hours and signage.

RECOMMENDATION:

Planning Staff recommends that the Planning Board uphold the Zoning Administrator's decision to approve Use Permit, UP-88-36, based on the following findings and subject to the following conditions:

Findings:

1. The proposed use, as conditioned below, is compatible with other land uses in the general neighborhood area.

2. The site for which the use is proposed is served by adequate public transit lines, and as conditioned below will have adequate parking provided in the vicinity.

3. The use will not adversely affect other property in the vicinity upon compliance with imposed conditions.

Conditions:

1. All work to be conducted within enclosed structures.

2. Within 60 days of the date of approval of this Use Permit, applicant shall find an alternative long-term parking site for customer cars, as well as for employees. Leasing arrangements made by the applicant shall be reviewed and approved by the Planning Director.

3. Applicant's business vehicle(s) shall be stored on the site, not on adjacent residential streets.

4. The site plan, indicating proposed and existing landscaping, treatment of garbage area and area for old and used tires, the number and placement of tire displays during business hours, and signage shall be subject to Design Review, except no additional public notice to adjacent property is necessary. Applicant shall submit pertinent materials no later than February 17, 1989.

5. Applicant shall install a sign directing customers to turn right toward Park Street from the San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.

6. No recapping or retreading of tires on the premises.

7. No testing of vehicles in residential areas.

8. The Use Permit shall be reviewed by Planning Staff one year from the date of final approval to determine compliance to conditions of approval.

Attachments:

1. Zoning/Location Map
2. Site Plan Submitted by Applicant (1 sheet)
3. Resolution No. 1021 Approving UP-79-8

JA/eec
01/26/89

RECEIVED
JAN 30 1989
PLANNING DEPARTMENT
CITY OF ALAMEDA

1117 Park Street
Alameda, CA 94501
January 26, 1989

Planning Department
City of Alameda
City Hall, Santa Clara at Oak Street
Alameda, CA 94501

Dear Personnel:

Concerning Application UP-88-36 which would change the zoning to allow automobile servicing including conducting business in an unenclosed area, we wish to express our desire is in the negative. There was a similar business just across the street in the early 80's and before. What parking there is was constantly being used to shuffle cars around that needed servicing. There were many times motors are started and restarted as tests on the motors were made. This also constitutes more fumes in the air as we have enough from necessary traffic. From the standpoint of someone living on Park Street to the viewpoint of business establishments in need of parking spaces, we believe that an approval of the application UP-88-36 would <u>not</u> be in the interests of those living and working here on Park Street near to Big-O-Tires.

In due respect,

Hector Villasenor Cathryn Villasenor
Rosemary Tawse

Copy

Dec 13, 1988

Mr. Arnold Jonas
Planning Director
City of Alameda
Santa Clara at Oak St.
Alameda, CA 94501

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c. At no time since 1982 has Big "O" Tires abided by the requirements of their use permit according to the Manager's statement to me on Dec 12, 1988 while I was video taping work being performed on cars in the outside parking lot areas.

d. Big "O" Tires has operated without a valid use permit since 1984 due to their failure to comply with the Planning Department letter of Jan 28, 1982 notifying them of the requirement to file a new permit application by Jun 18, 1984.

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h. I filed a complaint with the City against Big "O" Tires for continually discharging unknown liquid contaminants outside their premises at this location into a storm drain. This practice makes a continual, unhealthful, dirty, sticky, gooey mess in the gutter along San Jose adjoining my property. The complaint was never answered by the City to me and the practice by Big "O" Tires continues despite my repeated requests to stop.

i. I have also had numerous complaints from my tenants at 1201 Park Avenue concerning this discharge of liquid, Big "O" Tires vehicles parking in the tenants driveway and also working on automobiles and playing loud music from their cars along San Jose Avenue.

j. The Planning Department refused to allow me copies of complaints made against the property in question or Big "O" Tires.

2. In summary, I am requesting denial of this use permit application and the right to bring up any subject in the original use permit (UP-79-8) and,

a. that a new and separate public hearing be held to review the continued operation of Big "O" Tires at this site.

b. the Notice of Public Hearing be corrected to reflect the Use Permit application request of Nov 16, 1988.

c. public comments be solicited on the business operation of Big "O" Tires and complaints generated at this site prior to any future hearings.

d. Big "O" Tires be formally restrained from operating outside the requirements of the original Use Permit (UP-79-8) for this location until a new hearing is completed.

e. that all restrictions of the original Use Permit (UP-79-8) be enforced in wording and in deed in any approved use permit for this property.

Sincerely

Gerald M Mulenburg

Gerald M. Mulenburg
854 Solana Drive
Lafayette, CA 94549

283-8355 (Home)
869-3096 (Work)

City of Alameda California

10 May 1990

Henry C. Cohen
4 Chatham Pointe
Alameda, CA 94501

RE: 1200 Park Street - Use Permit, UP-88-36

Dear Mr. Cohen:

In January 1989, the Planning Board approved Use Permit, UP-88-36, with eight conditions. As required, Planning Staff has made a determination of whether you have complied with all conditions. (Please see attached Resolution No. 1926).

As site inspection showed that all work is being conducted within enclosed structures, that there was no recapping or retreading of tires on the premises, that the area is adequately landscaped, and that the tire displays materially complies with the approved plan. There also have been no complaints to the Planning Department relative to the testing of vehicles in the adjacent residential areas.

However, the Planning Department has no record of the leasing of additional parking for customer cars as required by Condition No. 2. Please submit lease arrangements to the Acting Planning Director as soon as possible.

Staff has noted that your business vehicle was parked on adjacent residential streets several times a week. This is contrary to Condition No. 3. Please make sure that your employees are aware that this vehicle must be stored on your premises.

Condition No. 5 requires that a sign directing customers to turn right towards Park Street on the San Jose exist be installed. Staff could see no evidence of such a sign.

Planning Department, Room 102

City Hall
Santa Clara Avenue at Oak Street · 94501
415.748 4554

Non-compliance with Conditions of Approval for a Use Permit may result in a revocation hearing before the Planning Board. Staff will conduct an additional site inspection within one month to determine whether you are in compliance.

If you have any questions regarding this matter please do not hesitate to contact me.

Sincerely,

Judith Altschuler

encl.

Michael Notaro, Esq.

Notaro Law Group
2219 Santa Clara Avenue
Alameda, Ca. 94501

(510) 522-2666 Tel
(510) 522-2602 Fax
www.notarolaw.com

RECEIVED
JAN 24 2013
PERMIT CENTER
ALAMEDA, CA 94501

January 22, 2013

Mr Andrew Thomas
Planning Services Manager
City of Alameda Planning Department
2263 Santa Clara Avenue, Room 190
Alameda, Ca. 94501

Via First Class Mail and E-Mail to athomas@ci.alameda.ca.us and egarcia@ci.alameda.ca.us

RE: Request for Hearing to Revoke Conditional Use Permit pursuant to AMC § 5-16.7
Big O Tires Store; 1200 Park Street, Alameda, California, California

Dear Mr. Thomas:

My law firm has been engaged by Mr. Arthur Thoms, owner of the Washboard Laundromat at 1198 Park Street, Alameda, California. Mr. Thoms - and others Park Street businesses - have been harmed by the ongoing use condition violations by the Big-O Tires Store ("Big O") located at 1200 Park Street in Alameda, Ca.

The City of Alameda ("City") reviewed the Big O conditional use application in 1989. Numerous neighbors and local businesses opposed the Big O usage at 1200 Park Street due to inadequate street parking in the area. The intent of the community commercial (CC) zoning district is to provide general retail and service uses with an emphasis on pedestrian friendly establishments. If shoppers have no place to park, it defeats the purpose of the business district.

These parking concerns were considered and incorporated into the final conditional use permit approval for Big O. The Big O use permit at 1200 Park Street, Alameda, Ca. was approved in 1989 with eight (8) express conditions outlined below:

1. All work to be conducted in enclosed structures.

2. Within 60 days of the date of approval of the Use Permit, applicant shall find an alternative long-term parking site for customer cars, as well as for employees. Leasing arrangements made by the applicant shall be reviewed and approved by the Planning Director.

3. Applicant's business vehicle(s) shall be stored on the site, not on adjacent residential streets.

4. The site plan, indicating proposed and existing landscaping, treatment of garbage area and area for old and used tires, the number and placement of tire displays during business hours, and signage shall be subject to Design Review, except no additional public notice to adjacent property is necessary. Applicant shall submit pertinent materials no later than February 17, 1989.

5. Applicant shall install a sign directing customers to turn right toward Park Street from San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.

6. No recapping or retreading of tires on the premises.

7. No testing of vehicles in residential areas.

8. The Use Permit shall be reviewed by Planning Staff one year from the date of final approval to determine compliance to conditions of approval.

We have documented at least three violations of the Big O conditional use permit:

- **Failure to Secure Offsite Parking Site(s).** Big O has not secured offsite parking for employees, staff and customers. Overflow parking at peak periods saturates metered parking on Park Street and San Jose Avenue, leaving a lack of metered parking for other businesses on Park Street.

- **Work Not Performed within Enclosed Structures.** Big O employees regularly elevate customer vehicles and perform tire repair, replacement and brake work in the parking lot which is hazardous, unsightly and in violation of their use permit.

- **Failure to Install Directional Sign.** Big O has even failed to comply with the most rudimentary requirements – to install a directional sign directing customers to turn right toward Park Street from the San Jose Avenue lot exit. As a result, exiting customers needlessly aggravate traffic impacts within the surrounding residential areas.

Attached to the 1989 Big O use permit application was a property diagram which delineated 14 outside parking spaces on their paved lot. However, Big O has reconfigured their lot to allow parking with up to 20 cars at peak periods. There is now double parking (5 spots +5 spots) for a total of 10 spaces on the western side of the lot. Vehicles are parallel parked along the north building and often parked to block the Park street entrance to the lot; vehicles which encroach on the sidewalk force pedestrians to walk on the street. At any given time, there are up to 8 additional vehicles being worked on inside the buildings which are shuffled outside after work is complete. The threat of collision is imminent. Inadequate onsite parking poses a serious fire

access and safety threat to employees, customers and unknowing pedestrians traversing the sidewalks.

The Big O use permit was improperly granted based on false representations of the applicant. Big O severely underestimated their own parking requirements; however, the planning board approved the Big O usage (despite vigorous community opposition) by acknowledging inadequate onsite parking and believing the assurances that Big O would locate suitable offsite parking lot in the short term. It is now clear that Big O had **both inadequate onsite parking and inadequate offsite parking** and no intention of securing offsite parking in the short term or anytime.

Big O employees, staff and customer vehicles continue to regularly park in metered areas on Park Street and San Jose Avenue to the detriment of adjacent businesses. The parking problem has accelerated as the Big O business has grown and is greatest during peak periods on Saturday and Thursday and Friday (when street parking is ticketed on Park Avenue).

My client, Art Thoms, has contacted police dispatch on numerous occasions regarding Big O customer cars parked at metered spots on Park Street and San Jose Avenue. He has met with Sargent Simmons as well as the owner of Big O Tires operator, Gary Voss, on numerous occasions. He has written over 20 notes to Voss and police officials to try and address the problem. I have reviewed an exhaustive file documenting scores of specific instances of parking violations by Big O employees and staff.

The City has a fiduciary duty to enforce use permit conditions, penalize safety/code infractions and insure fair access to metered parking on Park Street. The City was required to annually follow up on the Big O use permit conditions (pursuant to item #8). A conditional use permit is a privilege, not a right. Deviant behavior which violates use conditions and endangers public safety justifies revocation of the use permit.

Businesses on Park Street continue to suffer as their customers cannot find parking and they go elsewhere. My client has observed selective enforcement of meter maids who choose to "warn" Big O employee and customer cars before ticketing. Regretfully, the failure of City officials to address ongoing use permit violations combined with lax meter enforcement have emboldened lawless behavior from Big O employees. Art Thoms has been confronted and threatened on several occasions by Big O employees where the police have been called.

City negligence has exacerbated problems that should have been dealt with long ago. We now respectfully ask that the planning department calendar a long overdue public hearing to revoke the Big O use permit for failure to abide by stated conditions. AMC § 30-21.3 provides that in the event of violation of the terms of a conditional use permit, the City Planning Board may, after notice and hearing, revoke any use permit. We request that you notice and schedule a hearing for revocation of the Big-O Tires/Garfinkle use permit within 30 days of this letter. We believe a suspension or reprimand is inadequate due to the pervasive scope of the violations and the longstanding refusal to comply with use condition requirements.

<u>This letter provides a formal demand for a noticed hearing pursuant to Alameda Municipal Code § 5-16.7 within thirty (30) days of this letter.</u>

Please feel free to call my law office at 510-522-2666 with any questions or concerns.

Sincerely,

Michael R. Notaro

Cc:
Arthur and Darlene Thoms

10/28/13

CITY OF ALAMEDA
ANDREW THOMAS
ALLEN LAI

WOULD LIKE TO DOCUMENT THE CONTINUEING VIOLATIONS OF USE PERMIT OF BIG O TIRES 1200 PARK ST.

EMPLOYEES PARKED AT METERS

THURSDAY 10/24/13 WHITE MAXIM
WHITE BUICK CASVER 995
8AM - 1pm SAN JOSE AVE.

FRIDAY 10/25/13 OWNER GARY VOSS
CHEVY PILK-UP CA 7513143
8 AM - 2pm PARK ST METER.

(PHOTO'S ARE AVAILABLE IF SEND ME YOUR EMAIL ADDRESS)

COMING OUT OF BIG O TIRES PARKING LOT ONTO SAN JOSE AVE CONTINUED "RIGHT TURN ONLY" VIOLATION BY OWNER GARY VOSS AND EMPLOYEES DRIVING CUSTOMER CARS. SEVERAL NEAR ACCIDENTS.

ART THOMS
925-285-8954

CC- WENDEL/ ROSEN
MICHAEL NOTARO
GARY VOSS

9/23/13

GARY VOSS OWNER BIG-O TIRE
1200 PARK ST
ALAMEDA, CA 94501

NOT ACCEPTABLE:

2 EMPLOYEE CARS PARKED AT METERS FRI 9/20/13 7:30 AM - 1 pm +
SAN JOSE AVE

WHITE PICK-UP
WHITE MAXIM

SAT 9/21/13 8 AM - 2 pm +
YOUR TRUCK SAN JOSE AVE METER

WOULD ALSO BE NICE IF YOU AND YOUR EMPLOYEES OBEYED THE RIGHT TURN ONLY SIGN THAT TOOK OVER A DECADE TO REPLACE. HAVE OBSERVED SEVERAL TIMES → NEAR ACCIDENTS.

OWNER
WASHBOARD LAUNDRIMAT
ART THOMS
1198 PARK ST
ALAMEDA

STILL DOCUMENTATING w/ PHOTO'S & LETTERS.

CC WENDEL/ROSEN
MICHAEL NOTARO
KATHLEEN LIVERMORE CITY OF ALAMEDA

WENDEL ROSEN
BLACK & DEAN LLP

1111 Broadway, 24th Floor
Oakland, CA 94607-4036

T: 510-834-6600
F: 510-808-4721

www.wendel.com
adclifford@wendel.com

November 26, 2013

VIA E-MAIL

Mr. Andrew Thomas, AICP
Planning Services Manager
Planning and Development Department
City of Alameda
2263 Santa Clara Avenue, Room 190
Alameda, CA 94501

Re: Big O Tires, 1200 Park Street Conditional Use Permit

Dear Andrew:

This letter responds to a complaint sent via facsimile on October 28, 2013, by Mr. Art Thoms, the owner of the Washboard Laundromat, a neighboring business on Park Street. The complaint articulates two violations of the conditional use permit: (1) parking at the meters on the street in front of the tire store by Big O employees, and (2) violations of the "right turn only" sign by Big O employees.

On or around April 29, 2013, we provided Mr. Thoms with a memorandum articulating the process in which the Big O Tire Store would preserve and improve its compliance with the articulated requirements of the 1989 Conditional Use Permit ("CUP") on 1200 Park Street (the "Property"). Since then, Big O has replaced the "right turn only" sign on the Property. Also, it has increased its Saturday valet service to a daily service as an alternative to the off-street parking requirement. The service is a good marketing tool for the business and the customers but it is very costly, as it requires two employees to pick-up or drop-off a customer's vehicle. Separately, many employees have begun riding their bikes to work to minimize employee parking. The October 28, 2013 occurrences are exceptions and not the rule. Big O will take every precaution to prevent their reoccurrence.

For a robust, thriving and longstanding Alameda business, Big O does its best to operate in accordance with the CUP requirements; however, parking is an ongoing issue both on Park Street and in Alameda generally. While Big O continues to seek creative solutions to its off-street parking requirement, it must also review all of its options which now must also include relocation, as the confines of the CUP may prove too onerous.

We, as always, are open and willing to work with the City on this. Please let me know if you have any questions.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

Anagha Dandekar Clifford

ADC/smr
cc: Kathleen Livermore
Art Thoms
Michael Notaro
Gary Voss

Michael Notaro, Esq.

Notaro Law Group
2219 Santa Clara Avenue
Alameda, Ca. 94501

(510) 522-2666 Tel
(510) 522-2602 Fax
www.notarolaw.com

December 5, 2013

Ms. Anagha Dandekar Clifford, Esq.
Wendel, Rosen, Black and Dean, LLP
1111 Broadway, 24th Floor
Oakland, Ca. 94607

Via E-Mail to **ADClifford@wendel.com**

RE: Big O Tires Conditional Use Permit Compliance
1200 Park Street, Alameda, California

Dear Ms. Clifford:

I am in receipt of your letter dated November 26, 2013, which addresses recent complaints against Big O Tires for failure to comply with their conditional use permit. We acknowledge that Big O has made improvements in their compliance behavior during the last six months, resulting in fewer instances of employees parking personal and customer vehicles in publicly metered spots. In addition, the valet service has helped reduce overflow metered parking on Saturdays.

However, additional changes are necessary for Big O to come into compliance with their 1989 Conditional Use Permit ("CUP") requirements. Mr. Thoms has documented regular instances of both Gary Voss and his employees continuing to park personal and customer vehicles in publically metered parking spots on Park Street and San Jose Avenue. Contrary to your letter, this is more than an isolated one-off exception; the violations continue on a regular basis, with the worst days being Thursday, Friday and Saturday. We hope that with additional effort Big O compliance can be improved.

You are correct that Big O has replaced the "right turn only sign" sign. However, Gary Voss and his employees regularly ignore the sign and turn left out of his parking lot onto San Jose Avenue which is a safety hazard. While we realize the inconvenience of obeying the sign, we hope your client will consider the danger to pedestrians and vehicles. Again, this is a matter that can be improved with additional compliance effort.

All communications regarding this matter constitute privileged settlement communications that are protected by California Evidence Code § 1152 and similar federal laws. My client expressly reserves all rights, whether in law or equity.

Thank you for your prompt attention to these matters. Please feel free to call my law office at 510-522-2666 with any questions or concerns.

Sincerely,

Michael R. Notaro

Cc:
Andrew Thomas
Kathleen Livermore
Arthur and Darlene Thoms
John Russo, City Manager

From: "Michael Notaro" <michael@notarolaw.com>
To: <athomas@ci.alameda.ca.us>
CC: <klivermore@ci.alameda.ca.us>, "'Anagha Dandekar Clifford'" <adclifford@wendel.com>
Date: 12/5/2013 10:57 AM
Subject: RE: BIG O TIRES, 1200 PARK STREET CONDITIONAL USE PERMIT
Attachments: Big O Tires CUP Dec 5 2013 Letter.pdf

Michael R. Notaro, Esq.

Notaro Law Group

2219 Santa Clara Avenue

Alameda, Ca. 94501

E-Mail: Michael@notarolaw.com

Website: <http://www.notarolaw.com/> www.notarolaw.com

Phone: (510)522-2666

Fax: (510)522-2602

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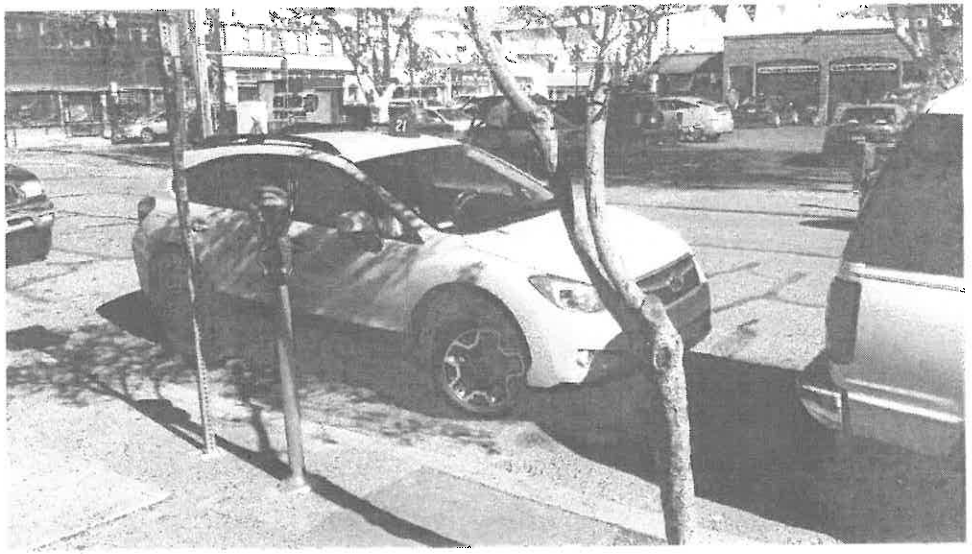
From: Art Thoms <artthoms@ymail.com>
To: Michael Notaro <michael@notarolaw.com>
CC: Farimah Faiz <FFaiz@ci.alameda.ca.us>, Anagha Dandekar Clifford <adclifford@wendel.com>, Andrew THOMAS <athomas@ci.alameda.ca.us>, Kathleen Livermore <KLivermore@ci.alameda.ca.us>, Lori Taylor <LTaylor@ci.alameda.ca.us>
Date: 12/18/2013 11:26 AM
Subject: Big O tire use permit violation
Attachments: IMG_1360.MOV; Part.002

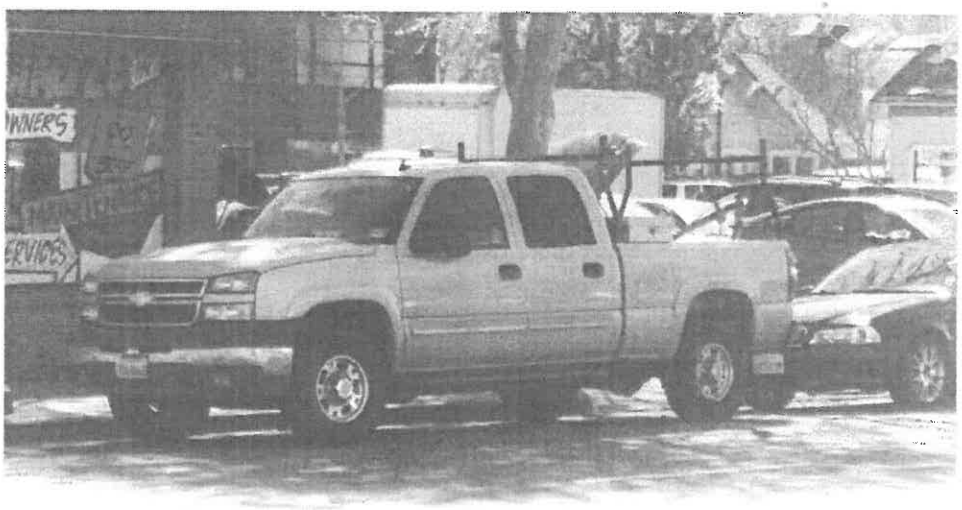
12/12/13 example of a big O tire employee not obeying right hand turn sign on San Jose Ave., Happens regularly. Use permit Violation. safety hazard

WE BEAT
WAREHOUSE CLUB
TIRE PRICES
BIG O TIRES
MICHELIN
Best prices
guaranteed.
(You're Welcome)
BIG O
TIRES
TIRES·WHEELS·ALIGNMENT

WE BEAT
WAREHOUSE CLUB
TIRE PRICES
BIG O
TIRES

BIG O
TIRES

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SERVICES
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WINERS

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TIRE PRI

FREE AIR STATI
BRAKE CHEC
TIRE ROTATI
MOST CARS
FREE SHUTTLE

ANAGHA DANDEKAR CLIFFORD.
ANDREW THOMAS
KATHLEEN LIVERMORE
FARIMAH FAIZ
LORI TAYLOR
GARY VOSS
LAURA AJELLO
JAY GARFINKLE,
NATARO LAW GROUP.

PG 1 OF 2

FROM ART THOMS
OWNER WASHBOARD
LAUNDROMAT
1198 PARK ST
ALAMEDA, CA
94501

I RECENTLY SENT A LETTER THAT THINGS AT BIG O TIRE CONCERNING USE PERMIT VIOLATIONS HAD GOTTEN BETTER. WELL LAST THURSDAY & FRIDAY WAS A STEP BACKWARD

FRIDAY 1/24/14 5 EMPLOYEES WERE PARKED AT METERS 7:30 AM - NOON +

GREY 4X4 PICK UP CA 1372IA1
BLACK LEXUS CA 5KYD693
BLACK GRAND PRIX CA 2A2898
} PARK ST BIG O TIRE SIDE OF STREET

WHITE BUICK CA 5VER995
RED CONVERTABLE
} SAN JOSE AVE

THURSDAY 1/23/14 7:30 AM - NOON +

WHITE BUICK CA 5VER995 SAN JOSE AVE METER
GOLD LEXUS CA 4YWC088
BLACK GRAND PRIX CA 5ZA2898
} PARK ST METER.

THIS WAS JUST LAST THURS AND FRIDAY.

GARY VOSS OWNER OF BIG O TIRE CHOOSES TO IGNORE THE VIOLATIONS OF HIS EMPLOYEES. IF HE WAS REALLY SERIOUS ABOUT COMPLYING WITH USE PERMIT CONDITIONS. WOULD HIS EMPLOYEES CONTINUE TO PARK AT THE METERS? NO. HE PARKS AT THE METERS HIMSELF!

SIMPLE SOLUTION IF EMPLOYEES CAN'T FIND A PARKING SPOT BECAUSE OF STREET CLEANING ON PARK AVE: WHEN EMPLOYEE ARRIVE AT 7:-7:30 AM THERE ARE NO CARS IN THE LOT. PARK IN THE LOT UNTIL THE STREET CLEANING RESTRICTIONS END, THEN MOVE THE CARS. GARY HAS DONE THAT ON OCCASION WITH HIS PICK UP TRUCK.

I HONESTLY DON'T THINK HE WOULD DO THAT BECAUSE IT MIGHT DISRUPT OR AFFECT HIS BUSINESS. THAT IS HIS FOCUS. NOT CONSIDERATION OF THE NEIGHBORING BUSINESSES OR COMPLYING WITH USE PERMIT CONDITIONS.

I HAVE SPENT 5 YEARS, $5,000 ON ATTORNEY FEES AND COUNTLESS HOURS ON THIS AS ONE SMALL BUSINESS OWNER. WOULD APPRECIATE YOUR HELP

From: "Michael Notaro" <michael@notarolaw.com>
To: "'Anagha Dandekar Clifford'" <adclifford@wendel.com>
CC: "'Andrew THOMAS'" <athomas@ci.alameda.ca.us>, "'Kathleen Livermore'" <KLivermore@ci.alameda.ca.us>, "'Farimah Faiz'" <FFaiz@ci.alameda.ca.us>, "'Lori Taylor'" <LTaylor@ci.alameda.ca.us>, <karabo@igc.org>, "'Patricia E. Curtin'" <PCurtin@wendel.com>
Date: 1/2/2014 12:48 PM
Subject: RE: Additional Big-O Tire CUP Parking Violations
Attachments: photo.jpg

Michael R. Notaro, Esq.

Notaro Law Group

2219 Santa Clara Avenue

Alameda, Ca. 94501

E-Mail: Michael@notarolaw.com

Website: <http://www.notarolaw.com/> www.notarolaw.com

Phone: (510)522-2666

Fax: (510)522-2602

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From: Anagha Dandekar Clifford [mailto:adclifford@wendel.com]
Sent: Sunday, December 29, 2013 3:18 PM
To: 'Michael Notaro'
Cc: 'Andrew THOMAS'; 'Kathleen Livermore'; 'Farimah Faiz'; 'Lori Taylor'; karabo@igc.org; Patricia E. Curtin
Subject: RE: Additional Big-O Tire CUP Parking Violations

Mr. Notaro:

In response to the below email and that of Dec. 5th, we appreciate your acknowledgement and awareness of the improvements made by Big-O towards its compliance with the CUP. While challenging, Big O makes every effort to comply with and maintain the spirit and purpose behind the CUP. As you have documented there may be times in which cars are parked at the meters. In the past weeks this may have been exacerbated by extra demand and crowds during the holidays. For any inconvenience this has caused your client, we do apologize. We are making every effort to be good neighbors. Thank you. Please do contact me if you have any questions.

Anagha

From: Michael Notaro [mailto:michael@notarolaw.com]
Sent: Thursday, December 26, 2013 2:45 PM
To: Anagha Dandekar Clifford
Cc: 'Andrew THOMAS'; 'Kathleen Livermore'; 'Farimah Faiz'; 'Lori Taylor';

karabo@igc.org; Patricia E. Curtin
Subject: RE: Additional Big-O Tire CUP Parking Violations

Michael R. Notaro, Esq.

Notaro Law Group

2219 Santa Clara Avenue

Alameda, Ca. 94501

E-Mail: Michael@notarolaw.com

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IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.

Thank you for considering the environment before printing this e-mail.

From: "Michael Notaro" <michael@notarolaw.com>
To: "'Anagha Dandekar Clifford'" <adclifford@wendel.com>
CC: "'Andrew THOMAS'" <athomas@ci.alameda.ca.us>, "'Kathleen Livermore'" <KLivermore@ci.alameda.ca.us>, "'Farimah Faiz'" <FFaiz@ci.alameda.ca.us>, "'Lori Taylor'" <LTaylor@ci.alameda.ca.us>, <karabo@igc.org>, "'Patricia E. Curtin'" <PCurtin@wendel.com>
Date: 1/21/2014 9:19 AM
Subject: RE: Additional Pictures of Big-O Tire CUP Parking Violations
Attachments: Photo 1.JPG; photo.JPG

Michael R. Notaro, Esq.

Notaro Law Group

2219 Santa Clara Avenue

Alameda, Ca. 94501

E-Mail: Michael@notarolaw.com

Website: <http://www.notarolaw.com/> www.notarolaw.com

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Sent: Sunday, December 29, 2013 3:18 PM
To: 'Michael Notaro'
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Subject: RE: Additional Big-O Tire CUP Parking Violations

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Anagha

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Sent: Thursday, December 26, 2013 2:45 PM

To: Anagha Dandekar Clifford
Cc: 'Andrew THOMAS'; 'Kathleen Livermore'; 'Farimah Faiz'; 'Lori Taylor'; karabo@igc.org; Patricia E. Curtin
Subject: RE: Additional Big-O Tire CUP Parking Violations

Michael R. Notaro, Esq.

Notaro Law Group

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City of Alameda • California

Art Thoms
Washboard Laundromat
1198 Park Street
Alameda, CA 94501

January 29, 2014

RE: Big-O Conditional Use Permit

Dear Mr. Thoms:

Thank you for your continued correspondence regarding the activities of Big-O Tires at 1200 Park Street. As you know, we have been monitoring this situation since the first letter we received from Mr. Michael Notaro on January 22, 2013. At that time, we reviewed the Conditional Use Permit, talked with Mr. Notaro, talked with Mr. Gary Voss and then continued conversations with Big-O's counsel, Wendel Rosen. We felt that much progress had been accomplished with the various actions that Big-O had taken to address your concerns.

Since December 5, 2013, we have received your e-mails and faxes about the parking activities of Big-O Tires' employees and clients. As of today, we understand that Big-O Tires, with the permission of the property owner, intends to make a formal application for a Conditional Use Permit Amendment. They intend to submit this application no later than February 18, 2014. We will review the application for completeness and subsequently schedule the matter for a Planning Board hearing.

In the meantime; the applicant has communicated to us that they will continue to address the concerns that you have about on-street parking and left turns from the Big-O parking lot. I want to reiterate that we have been monitoring the e-mails and letters between Mr. Notaro and Big-O throughout 2013. At this point, a hearing before the Planning Board is the most appropriate way to address the issues at hand.

Thank you for your interest in this matter and your desire for mutual respect and cooperation of merchants on Park Street.

Sincerely,

Andrew Thomas
City Planner

cc: Michael Notaro
Gary Voss
Anagha Clifford
Farimah Faiz
Debbie Potter
Kathleen Livermore

Community Development Department
2263 Santa Clara Avenue, Room 190
Alameda, California 94501-4477
510.747.6800 • Fax 510.865.4053 • TTY 510.522.7538

Exhibit 5
Item 7-C, 7/13/2015
Planning Board Meeting

Printed on Recycled Paper

Michael Notaro, Esq.

Notaro Law Group
2219 Santa Clara Avenue
Alameda, Ca. 94501

(510) 522-2666 Tel
(510) 522-2602 Fax
www.notarolaw.com

March 25, 2015

Mr Andrew Thomas
Planning Services Manager
City of Alameda Planning Department
2263 Santa Clara Avenue, Room 190
Alameda, Ca. 94501

Via First Class Mail and E-Mail to athomas@ci.alameda.ca.us and egarcia@ci.alameda.ca.us

RE: Big-O Tires Conditional Use Permit Violations
1200 Park Street, Alameda, California

Dear Mr. Thomas:

In 2013, I contacted your office regarding continuing use permit violations by Big –O Tires, located at 1200 Park Street in Alameda, Ca. We were lead to believe that Big-O was acting proactively to minimize vehicle congestion by securing off- site parking.

Regretfully, the situation has recently gone from bad to worse. My client, Mr. Arthur Thoms of the Washboard Laundromat at 1198 Park Street, Alameda, has recently observed Big-O service vehicles parked in metered spots (See attached pictures), dangerous vehicle congestion in the Big-O lot, threatening public safety and fire access capacity, and Big-O employees continuing to turn left out of their lot onto San Jose Ave.

These important safety risks have never been addressed or rectified. We believe Big-O Tires must either operate safely within their CUP or find another place to do business. Will it require a serious injury or worse for the City of Alameda to take notice?

The original Big O use permit was improperly granted based on false representations of the applicant. Big O severely underestimated their own parking requirements; however, the planning board approved the Big O usage (despite vigorous community opposition) by acknowledging inadequate onsite parking and believing the assurances that Big O would locate suitable offsite parking lot. Big O has both inadequate onsite parking and inadequate offsite parking, and it is clear by their actions that they have no intent to follow-through on the securing of offsite parking.

The City has a fiduciary duty to insure public safety, yet there has not even been a minimal effort to enforce use permit conditions, penalize safety/code infractions and insure fair access to metered parking on Park Street. A conditional use permit is a privilege, not a right. The City was required to annually follow up on the Big O use permit conditions which they never did. City negligence has exacerbated problems that should have been dealt with years ago.

Please provide a response within 30 days of this letter and inform me of what the City of Alameda will do to insure Big-O Tires comes into compliance with their use permit conditions. Thank you for your prompt attention to this matter.

Please feel free to call my law office at 510-522-2666 with any questions or concerns.

Sincerely,

Michael R. Notaro

Cc:
Arthur and Darlene Thoms
Alameda City Manager

Attachment(s):
Digital Photographs

RECEIVED
JUL 09 2015
PERMIT CENTER
ALAMEDA, CA 94501

To the Board:

Nineteen eighty-eight. The Naval Air Station wouldn't close for eight-plus-more years. Ronald Reagan held onto the White House -- seven presidential elections ago. About half the current A's players, two-thirds of the Warriors, and three-quarters of the Raiders hadn't been born yet.

Some of those in school age in 1988 now have grandchildren in school.

More than nine thousand, six hundred and seventy days have passed. That's how long Big O Tires has had to comply with the conditions that it willingly accepted in order to open shop.

Big O's profits over the intervening decades have been padded by a fat, hidden public subsidy: street parking that it uses like some private perk. This abuse affects multiple blocks each of Park Street, Park Avenue, San Jose Avenue, and well beyond. A steady flow of Big O employees comes and goes all day to and from cars parked at least as far as Regent Street, three blocks from the shop counting the park. The practice of course has a ripple effect on the area's cramped parking even further out, especially during the crunches on street-cleaning days.

Big O claims that since 2013 to meet the obligation it agreed to as a condition of the privilege of doing business. What about the previous 25 years?! Everything would have been a lot easier for everyone if Big O had simply found parking way back when it promised to, instead of thumbing its nose at its obligations, its neighbors, and the city. Its position now is like some joke about a 90-year-old getting to heaven and telling Saint Peter they haven't gotten around to doing any good deeds in their lives because their dog died two days ago.

Big O persuaded customers to sign a statement of support. How much did each of those customers know about the shop's track record of broken promises and impositions on fellow merchants and others? How did Big O employees spin the shop's tale of woe to them? How many of those signatures came from neighbors who couldn't find a parking space because this business was hogging them? How smart would it be to choose a restaurant for a special occasion just because hundreds of unanimous five-star reviews have materialized on Yelp somehow....

Big O didn't seek an amendment to its permit until *after* it had been caught out breaking its promises for a quarter century. What a nerve. This application should receive no further consideration until the business proves full compliance with all its original obligations -- and pays the penalty earned for its admitted violations, in an amount sufficient to compensate the city and deter further infractions. Any other course of action would simply reward Big O for being a flagrant scofflaw and shred the credibility of current and future license conditions.

Sincerely,
Your neighbors

ITEM 7-C

CITY OF ALAMEDA
Memorandum

To: Honorable President and
Members of the Planning Board

From: Andrew Thomas
City Planner

Date: July 13, 2015

Re: **PLN14-0134 – 1200 Park Street – Applicant: Gary Voss for Big-O Tires.** The applicant requests an amendment to an existing Use Permit (UP88-36) for 1200 Park Street. This project is determined to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15301, Existing Facilities.

BACKGROUND

On January 22, 2013, attorney Michael Notaro, on behalf of his client Art Thoms (owner of Washboard V Laundromat at 1198 Park Street), sent a letter of complaint regarding the operations at Big O Tires at 1200 Park Street. The alleged violations were related to three of the 1988 Use Permit (UP88-36) conditions governing the use of the property by Big O Tires. Specifically, Mr. Thoms raised concerns about the lack of a required sign prohibiting left turns from Big O onto San Jose (condition #5), work being performed on cars in the Big O parking lot (condition #1) and Big O's failure to secure an off-site parking lot (condition #2).

City of Alameda staff contacted Big O to discuss these alleged violations of Use Permit 88-36. On April 29, 2013, Anagha Dandekar Clifford, Wendel Rosen attorney for Big O, sent a letter to Michael Notaro addressing these issues. The "No Left Turn" sign was reinstalled, a description of work performed within the structure versus occasional, quick, minor repair in the parking lot was provided, and a two-month survey of availability of off-site parking lots was detailed. Because the off-site parking lot survey did not yield any results, Ms. Clifford described the new trial valet service Big-O instituted every Saturday to minimize Big-O's impact on street parking within the business district. Big O implemented the valet service in May of 2013.

In the fall of 2013, City staff received several faxes from Art Thoms and a letter from Mr. Notaro detailing continued violations described in the January 22, 2013 letter. On November 26, 2013, Ms. Clifford stated the October 28, 2013 violations were the exception and not the rule. She stated the Saturday valet service had been extended to a daily service as an alternative to the off-street parking requirement. On December 5, 2013, Mr. Notaro copied city staff on a letter to Ms. Clifford acknowledging certain

improved Big O behavior as well as lapses in ideal behavior. Mr. Notaro encouraged continued and more thorough compliance,

On March 12, 2014, Big O submitted an application to amend its 1988 use permit, specifically to remove condition #2 related to an off-street parking lot, and to revise condition #1 related to work outside the structure. This application was suspended in the summer when the nearby Party Warehouse property was put on the market. Big O explained it wanted to pursue the purchase of the Party Warehouse property to gain compliance with the off-street parking lot condition. Over the course of the summer and fall, these negotiations to purchase the property were not completed.

Meanwhile, after the December 5, 2013 letter from Mr. Notaro, several faxes from Mr. Thoms were received in January of 2014. Following those faxes, there were no further complaints until March 25, 2015. In the March 2015 correspondence, Mr. Notaro noted the continued violation of no left turns onto San Jose Avenue and Big O client and employee parking in metered spaces.

In March of 2015, City staff contacted Ms. Clifford again to discuss the renewed complaints. Ms. Clifford explained the negotiations to purchase the Party Warehouse site had indeed failed, and she indicated Big O's desire to continue with the Use Permit amendment.

The purpose of the July 13, 2015 Planning Board meeting is to review compliance with the existing use permit, and consider potential amendments the use permit.

ANALYSIS

The Park Street commercial district is one of the City of Alameda's most successful and oldest commercial districts. The Park Street District provides a wide range of products, services, and goods for Alameda residents and visitors. The success of the Park Street District may be attributed to many factors, but part of its success, may be attributed to its historic commercial buildings that provide an attractive, pedestrian-oriented environment that is not interrupted by individual off-street parking lots for each business.

Given the historic, pedestrian-oriented pattern of development on Park Street, most customers who drive to Park Street must rely on public parking provided by the City of Alameda on the public streets or in City parking lots. The supply of public parking is provided by the City of Alameda as a resource to be shared by all businesses on Park Street for the convenience of their customers. If the supply of public on-street parking becomes compromised, then all businesses on Park Street may be harmed, which in turn will have a detrimental impact on the vitality of the Park Street commercial district and the Alameda community as a whole.

Given the importance of public, shared parking to the vitality of the Park Street District, it is important that:

- Each business do its part to maintain the availability of the public parking supply for customers. Specifically, local businesses should be preserving public on-street parking for customers. They should not be taking up that parking for their employees or for the operation of their businesses.

- Each business operate its business within the confines of the private property on which the business is located. Businesses that need more land to operate their businesses should not be expanding their business operations onto public land that the City of Alameda provides for shared public parking for the benefit of every business in the District.

Since January 2013, staff has been working with Big O and Washboard V Laundromat to seek compliance with Use Permit 88-36. The 1988 Use Permit contains 8 conditions. There are three conditions that are in dispute:

Condition #1: All work to be conducted within enclosed structures.

Big O notes that in order to expedite cars off the lot, there are some customers that merely require a quick repair or a discrete task such as a flat tire change or repaired tire installation. These tasks typically take approximately 10-20 minutes. Therefore, Big O has requested that this condition be modified to allow for minor repair outside the structure provided that all safety precautions are taken and that the work is done in an expeditious manner.

Staff has made periodic site visits to independently confirm complaints against Big O. During these visits, staff has been unable to confirm the various activities periodically described by Mr. Thoms. Staff acknowledges the instances that Mr. Thoms has taken pictures of work performed in the parking lot, yet is unable to determine the frequency or total duration of the work.

Although Big O has not been conducting all of its work within enclosed structures, staff believes that the minor repairs conducted by Big O on its own property is not a significant impact to the public health, safety or welfare. For that reason staff does not believe that such a restriction is necessary.

The applicant has suggested that the condition could be modified as follows:

Condition #1: All work to be conducted within enclosed structures. <u>An exception to this condition is allowed if it entails minor repair work provided that all safety precautions are taken and work on such cars shall not exceed 30 minutes.</u>

Staff is concerned that the proposed amendment is almost impossible for the City to monitor or enforce. Given the difficult history between the two adjacent businesses, staff does not recommend that the Planning Board create a new condition that will

become the focus of future complaints and disputes over whether a particular job on a particular car took less or more than 30 minutes.

Staff would recommend that the condition be deleted in its entirety. Alternatively, if the Planning Board believes that working on cars in the parking lot outside is negative impact on the public welfare, then staff would recommend that the Planning Board retain the condition in its existing form without adding the additional text about 30 minute jobs.

Condition #2. Within 60 days of the date of approval of this Use Permit, applicant shall find an alternative long-term parking site for customer cars, as well as for employees. Leasing arrangements made by the applicant shall be reviewed and approved by the Planning Director.

Immediately after the initial January 22, 2013 complaint was filed by Mr. Notaro, planning staff began discussing the off-site parking problem with Big O with the purpose of solving the issue.

On April 29, 2013, Big O's attorney, Ms. Clifford, submitted a report detailing the search for an off-street parking lot. The search did not yield a parking lot to purchase. Big O instead put forward a plan for Saturday valet service. This service was later extended to include peak times during weekdays along with Saturday service.

Big O indicates that problems occur at peak periods, especially with special promotions. They state that they periodically have the need for approximately 5 extra parking spaces. They are requesting permission to legally park cars in metered spaces on the Park Street frontage of their site, north of San Jose Street.

At that time and throughout the last couple of years, staff has made it very clear to Big O that use of the public parking supply for the parking of cars with the "service number hats" waiting for service, or for customer pick up, was unacceptable. Staff believes that Big O must confine its business operations to its private property. Staff cannot support Big O's use of the public parking spaces as an overflow parking lot so that it can service more cars at the expense of the other businesses on Park Street.

For the reasons described above, staff cannot support any proposal that essentially allows a business to take over public parking for the expansion of their business to the detriment of the other businesses or the residents on San Jose Street.

Staff recommends a replacement condition to address the off-street parking lot:

Condition #2. ~~Within 60 days of the date of approval of this Use Permit, applicant shall find an alternative long-term parking site for customer cars, as well as for employees. Leasing arrangements made by the applicant shall be reviewed and approved by the Planning Director.~~ The use of public parking spaces for the storage of cars waiting for

service or for customer pick up is a violation of this use permit. Receipt of three verifiable violations of this condition shall be grounds for City Staff to schedule a public hearing before the Planning Board to consider revocation or modification of this use permit.

Condition #5. Applicant shall install a sign directing customers to turn right toward Park Street from the San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.

Staff verified that the "No Left Turn" sign was reinstalled on the driveway exiting onto San Jose Avenue. At a recent interdepartmental meeting, Public Works traffic engineering staff stated there was no public safety requirement for this condition, but that it was probably imposed in 1988 as a courtesy to the adjacent residential neighborhood to the southeast.

Neither the City nor Big O can effectively require that customers obey the sign.

The Planning Board may retain the condition, provided it is understood that providing the sign is deemed compliance, and that the condition does not mean or imply that the City will be monitoring Big O customers and employees to ensure that they are obeying the sign.

Conclusion

To maintain the success of the Park Street commercial district, it is essential the City and the businesses on Park Street work together to ensure that all businesses are able to be successful. When one business takes advantage of the shared parking supply to its financial benefit at the expense of the other businesses, the vitality of the entire District is threatened. The Use Permit process is a tool to ensure that each business is operated in a manner that protects and preserves the public health, safety and general welfare. When one business operates in a manner that compromises the opportunities for other businesses to be successful, that business is compromising the general welfare of the entire community.

PUBLIC NOTICE AND COMMENTS

Property owners and residents within 300 feet of the project's boundaries were notified of the public hearing and given the opportunity to review and comment on the proposal. As of the writing of this report, staff has received approximately 500 copies of a form letter in support of Big O's request. (One of the 500 letters is attached as Exhibit 6)

ENVIRONMENTAL REVIEW

This project is determined to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15301, Existing Facilities.

RECOMMENDATION

Approve the recommended resolution amending Use Permit 88-36.

Respectfully Submitted,

Andrew Thomas
City Planner

Exhibits:

1. Resolution Amending Use Permit 88-36.
2. Applicant's supporting Statement dated June 17, 2015
3. Material from Art Thoms and Michael Notaro
4. Additional material from Applicant's attorney, Ahagha Dandekar Clifford of Wendell Rosen
5. Letter from Andrew Thomas to Art Thoms, dated January 29, 2014
6. Letters of Support (approximately 500 received and on-file)

Thanks, Andrew.

An executive from TBC would like to arrange a short meeting with you to discuss the site and future operations. Do you have any time available over the next couple of weeks for us to meet at your offices?

David H. Blackwell Esq.
Land Use Practice Group Leader
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
(415) 837-1515 (main)
(415) 273-7463 (direct)
dblackwell@allenmatkins.com

Allen Matkins

From: ANDREW THOMAS [mailto:ATHOMAS@alamedaca.gov]
Sent: Monday, March 7, 2016 4:57 PM
To: Blackwell, David <dblackwell@allenmatkins.com>
Cc: Farimah Brown <fbrown@alamedacityattorney.org>
Subject: Re: UP-88-36, 1200 Park Street

David: this use permit is in effect but it can be modified and or revoked at any time by the planning board upon making certain required findings at a public hearing.

The planning board recently revised it to address the long term and constant off site parking issues that are associated with this land use at this location.

The amendment was with the understanding that the use was moving to a more appropriate location in the city.

I would not recommend this site to someone looking for a long term location for a successful tire sales and repair business.

Andrew Thomas
774-5361

On Mar 7, 2016, at 4:00 PM, "Blackwell, David" <dblackwell@allenmatkins.com> wrote:

Andrew,

As mentioned in my prior voicemail messages, I represent TBC Corp, the franchisor for Big O Tires. TBC asked me to look at the entitlement status of the Big O store located at 1200 Park Street. If it is easier for you to respond by email, I'd like to confirm the following:

1. Resolution No. PB-15-23 amended the effective Use Permit (UP-88-36) for the property, and that Condition of Approval Nos. 1-10 identified in that Resolution are in full force and effect.

2. That the current occupant/use of the property is not in violation of UP-88-36.
3. That UP-88-36 runs with the land and will continue to govern the use of the property upon a change of ownership.

I look forward to hearing from you. Thanks.

David H. Blackwell Esq.
Land Use Practice Group Leader
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
(415) 837-1515 (main)
(415) 273-7463 (direct)
dblackwell@allenmatkins.com

<image001.png>

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August 2, 2016

Mr. Andrew Thomas
Assistant Community Development Director
Community Development
City of Alameda, City Hall
2263 Santa Clara Avenue, Room 190
Alameda, CA 94501

RECEIVED
AUG 04 2016
PERMIT CENTER
ALAMEDA, CA 94501

Reference: 1200 Park Street
Subject: Existing Use Permit

Dear Mr. Thomas,

We, the undersigned, respectfully request a public hearing to review the existing use permit for 1200 Park Street with the intention of considering an expiration date on the permit when the current tenant vacates the property within the next year.

Some of the reasons for considering a termination of the current use permit are:

- The property is too small for this type of business and overflow parking needs would impact the surrounding neighborhood.
- Because of the nature of this type of business (auto), and the soils produced by it, 1200 Park Street is not an appropriate or acceptable location for this use permit to remain as it currently is.
- With a long-term tenant (over 30 years) vacating the property within the next year, now is the perfect time to think about the future of the Park Street/San Jose Avenue area in terms of planning, and how this corner can fit in with the rest of the business district.

We thank you in advance for your attention to this request.

NAME	ADDRESS	SIGNATURE	PHONE
Bobbie V. Centurion	1201 Park Ave	Bobbie V. Centurion	510-865-9945

NAME	ADDRESS	SIGNATURE	PHONE
LISA KLOFKORN	1193 Park Ave.		510·331·3762
JAMES D. LEACH	1201 PARK AVE, ALAMEDA		(510) 865-9955
Kaye Fitzsimons	1258 Park Ave. Alameda		510-522-6720
RAY FITZSIMONS	1258 PARK AVE ALAMEDA		510 522 6720
Joanne Grace	1222 Park Ave. Alameda		(510) 499-4706
Phoenix Grace	1222 Park Ave. Alameda		510 499 4706
MARY ANN CATES	1250 Park Ave Alameda		510-521-7848
Scott Mathiesen	1185 Park Ave Alameda		510-523-5852
Grace Rubenstein	1224 Park Ave, Apt C Alameda		510-217-8985
Jason Tsiptsis	2446 San Jose Ave Alameda		650-455-0661
Yasmeen Al-farouk	1179 Park Ave Apt. H Alameda		415-656-5259
Denise Nowicki	1217 Park Ave. Alameda,		510·708·7858
WALTER KNIGHT	1207 PARK AVE. APT A ALAMEDA		(510) 814-7813
ALANDA OROZCO	1207 PARK AVE ALAMEDA		510 521 2475
Caroline Horton	1227 PARK AVE ALAMEDA CA 94501		
Judith Bishop	1224 Park Ave Apt B		
MONICA & JASON TSIPTSIS	2446 SAN JOSE AVE.		
Claudia Jayne	1161 Park Ave, Alameda, Ca. 94501		
Erika Jimenez	1300 Park Ave, Alameda CA 94501		
KAREN LARSEN	1206 PARK AVE ALAMEDA CA 94501		

From: hayward teacher
To: NANCY McPeak
Subject: Re : Big O coming in?
Date: Wednesday, November 23, 2016 11:34:29 AM

For them to begin their approach with a lie, that the business doesn't impact parking in the area, tells you all you need to know about their intentions.

1. Both operators hired/hire 'runners' to bag cars in the neighborhood. This is their only job. I know because one of them was a well known local. The entire area from Park St to Pearl is impacted by the car business and SF commuters who take the bus or casual car pool. I have had to park a block and a half away from my house often. (We are off Broadway with no garage.)

2. They have (under big o mgmt) done repairs other than tire in the lot. I mean, look at the sidewalk through the bay driveway. It's black.

3. This business obviously can afford to buy or rent offsite parking but will not.

4. Doing work in the neighborhood? Really? The neighborhood is full of children.

5. The employees under both managements hang out on the sidewalk smoking. Although technically one inch from the commercial area, the effect is the same. I've also seen them smoking walking through the park to go bag cars.

This neighborhood, commercial and residential, has changed tremendously inn the last 35 years. Just because something has existed or been done for one or one thousand years does not make it right or appropriate.

When Big O was here before the turnover, they consistently and flagrantly violated the terms of their use permit. This alone should tell the city that it's time to move on.

How about a nice mixed use development on that corner AND the same owner's property at the former party store location?

I am adamantly opposed to Big O or any other car business at this site. Let's update this area while we have the chance.

Debra j Sarver

Sent from my iPad

ITEM 7-C

CITY OF ALAMEDA
Memorandum

To: Honorable President and
Members of the Planning Board

From: Andrew Thomas
Assistant Community Development Director

Date: November 9, 2015

Re: **PLN14-0134 – 1200 Park Street – Applicant: Gary Voss for Big O Tires.** The applicant requests an amendment to an existing Use Permit (UP88-36) for 1200 Park Street. This project is determined to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15301, Existing Facilities. (Continued from July 13, 2015 meeting)

BACKGROUND

On July 13, 2015, the Planning Board held a public hearing on Big O's request to amend an existing Use Permit. There were 22 speakers on the item. Following the public testimony, the Planning Board continued the item and requested that the applicant and staff continue to consider alternative solutions to the proposed use permit amendments.

Since the hearing, Big O has continued to examine means to minimize impacts on the neighborhood parking supply. As a result of these efforts, the owners have identified a potential off-site location to park cars at 1835 Oak Street in the M-2 General Industry Zoning District. The site provides a large off-street parking area and a large building that may ultimately serve as a replacement location for the entire operation. If Big O is successful in acquiring the site, it would immediately begin using the site for overflow parking, and within two years, would relocate all operations to the new location.

Although Big O has not completed its efforts to acquire an additional site, staff is recommending that the Planning Board complete its review of the use permit which began on July 13, 2015.

ANALYSIS

As discussed in the July 13, 2015 staff report, a neighboring business owner, Art Thoms and his lawyer, Michael Notaro, submitted complaints about Big O violating several of the 1988 Use Permit conditions. The 1988 Use Permit contains eight conditions. There are three conditions that are in dispute. The three conditions relate to: work being performed on cars in the Big O parking lot (condition #1), Big O's lack of success in

securing an off-site parking lot (condition #2), and the lack of a required sign prohibiting left turns from the Big O site onto San Jose (condition #5).

Condition #1: All work to be conducted within enclosed structures.

Big O notes that there are some customers that merely require a quick repair or a discrete task such as a flat tire change or repaired tire installation. These tasks typically take approximately 10-20 minutes. Therefore, Big O has requested that this condition be modified to allow for minor repair outside the structure provided that all safety precautions are taken and that the work is done in an expeditious manner.

Staff believes that the minor repairs conducted by Big O on its own property do not represent a significant impact to the public health, safety or welfare.

The Planning Board identified a safety issue regarding cars placed on stationary or stabilizer jacks over night or over the weekend. Staff is recommending that Condition #1 be modified as follows:

Condition #1: ~~All work to be conducted within enclosed structures.~~ All outdoor parking areas shall be cleared of all cars on stationary or stabilizer jacks during evening hours and weekend hours when the business is closed.

Condition #2: Within 60 days of the date of approval of this Use Permit, applicant shall find an alternative long-term parking site for customer cars, as well as for employees. Leasing arrangements made by the applicant shall be reviewed and approved by the Planning Director.

Since the July public hearing, Big O has been pursuing a new location for its operations and/or for parking. At this time, staff is recommending that the condition be maintained with some slight modifications. The revised condition would remain in effect as long as Big O maintains operations at 1200 Park Street. If at such future time, Big O vacates 1200 Park Street, then the use permit would become null and void.

Condition #2. ~~Within 60 days of the date of approval of this Use Permit,~~ The applicant shall continue to work to locate and secure a ~~shall find an alternative~~ long-term parking site for customer cars, as well as for employees. Once a site is secured, the applicant shall notify the Community Development Department that this condition has been fulfilled. ~~Leasing arrangements made by the applicant shall be reviewed and approved by the Planning Director.~~

Condition #5. Applicant shall install a sign directing customers to turn right toward Park Street from the San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.

Staff verified that the "No Left Turn" sign was reinstalled on the driveway exiting onto San Jose Avenue. At a recent interdepartmental meeting, Public Works traffic engineering staff stated there was no public safety requirement for this condition, but that it was probably imposed in 1988, as a courtesy to the adjacent residential neighborhood to the southeast.

Neither the City nor Big O can effectively require that customers obey the sign. The Planning Board may retain the condition, provided it is understood that providing the sign is deemed compliance, and that the condition does not mean, or imply, that the City will be monitoring Big O customers and employees to ensure that they are obeying the sign.

PUBLIC NOTICE AND COMMENTS

Property owners and residents within 300 feet of the project's boundaries were notified of the public hearing and given the opportunity to review and comment on the proposal. As of the writing of this report, staff has received several calls but no written correspondence.

ENVIRONMENTAL REVIEW

This project is determined to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15301, Existing Facilities.

RECOMMENDATION

Approve a Resolution Amending Use Permit 88-36.

Respectfully Submitted,

Andrew Thomas
Assistant Community Development Director

Exhibits:

1. Resolution Amending Use Permit 88-36.
2. July 13, 2015 Planning Board Staff Report, without attachments

CITY OF ALAMEDA PLANNING BOARD
DRAFT RESOLUTION NO.

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF ALAMEDA AMMENDING USE PERMIT, UP-88-36, AT 1200 PARK STREET/2407 SAN JOSE AVENUE

WHEREAS, Big O Tires requested that the Planning Board consider an amendment to UP-88-36 for Big O Tires; and

WHEREAS, an adjacent business requested that the Planning Board review Big O Tires' compliance with the existing Use Permit; and

WHEREAS, the Planning Board held a public hearing on this application on July 13, 2015, and November 9, 2015, to consider amendments to, and compliance with, the use permit and has examined pertinent maps, drawings, and documents; and

NOW THEREFORE BE IT RESOLVED THAT, the Board has made the following findings:

1. The proposed use, as conditioned below, is compatible with other land uses in the general neighborhood area.
2. The site for which the use is proposed is served by adequate public transit lines, and as conditioned below will have adequate parking provided in the vicinity.
3. The use will not adversely affect other property in the vicinity upon compliance with imposed conditions.

THEREFORE BE IT FURTHER RESOLVED that the Planning Board of the City of Alameda hereby approves amended UP-88-36, subject to the following conditions:

1. All outdoor parking areas shall be cleared of all cars on stationary or stabilizer jacks during evening hours and weekend hours when the business is closed.

2. The applicant shall continue to work to locate and secure a long-term parking site for customer cars, as well as for employees. Once a site is secured, the applicant shall notify the Community Development Department that this condition has been fulfilled.

3. Applicant's business vehicles(s) shall be stored on the site, not on adjacent residential streets.

4. The site plan, indicating proposed and existing landscaping, treatment of garbage area and area for old and used tires, the number and placement of tire displays during business hours, and signage shall be subject to Design Review, except no additional public notice to adjacent property is necessary. Applicant shall submit pertinent materials no later than February 17, 1989.

5. Applicant shall retain the sign directing customers to turn right toward Park Street from the San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.

6. No recapping or retreading of tires on the premises.

7. No testing of vehicles in residential areas.

8. The Use Permit shall be reviewed by Planning Staff one year from the date of final approval, and their determination of compliance with conditions of approval shall be reported back to the Planning Board.

9. Hold Harmless and Indemnification Agreement The developer/applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Alameda, the Alameda City Planning Board and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Alameda, Alameda City Planning Board and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Alameda, the Community Development Department, Alameda City Planning Board, or City Council relating to this project. The City shall promptly notify the developer/applicant of any claim, action or proceeding and the City shall cooperate in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

ITEM 7-A

CITY OF ALAMEDA
Memorandum

To: Honorable President and
Members of the Planning Board

From: Andrew Thomas
Assistant Community Development Director

Date: November 28, 2016

Re: **PLN14-0134 – 1200 Park Street – Hearing to Consider Modification to An Existing Use Permit for Automotive Repair at 1200 Park Street (Big O Tires site)**. A petition from the neighborhood is requesting review and termination of the existing Use Permit UP88-36, as amended by PLN14-0134, for 1200 Park Street.

BACKGROUND

The property at 1200 Park Street is occupied by a long time local business called "Big Discount Tire Pros", an automobile repair business, formally called "Big O Tires". The property is owned by Mr. Jay Garfinkle.

On August 4, 2016, the City of Alameda received a petition signed by 21 residents within the vicinity of the 1200 Park Street site. The petition requests a public hearing to review the existing use permit for 1200 Park Street and proposes that the Planning Board amend the existing use permit for automobile repair to expire when the current tenant vacates the property in mid-2017. The petition is attached as Exhibit 1.

The existing automobile tire business use is a non-conforming use in the C-C Community Commercial Zoning District. Alameda Municipal Code (AMC) section 30-4.9A C-C Community Commercial Zone, sub section a. states:

> *Automobile related uses are regulated by use permit and prohibited on Park Street and Webster Street frontages."*

ANALYSIS

The first Use Permit for automobile tire repair services on the property was approved by the Planning Board on March 19, 1979. At that time, the Planning Board was concerned about the potential impacts of the use on the neighborhood and approved a use permit for a period of one year. (Exhibit 2: Use permit U-79-3). The 1979 use permit includes conditions that require that all automobile parking necessary to support the business be confined to the property (condition #2), that parked cars be limited in duration (condition #3), that all work on cars will occur within the building (condition #4), and no cars will be parked overnight on the premises (condition #7). In a letter dated January 28, 1982 from the City to the property owner, (Exhibit 3), it is apparent that the

one year limitation imposed in 1979 had been amended to five years to expire on June 18, 1984 and that the conditions of approval governing the use of the property had been expanded. (Exhibit 3.) Staff was unable to locate the documentation to confirm when the Planning Board or City Council amended the conditions extended the term from one year to five years.

On January 30, 1989, the Planning Board approved a new Use Permit (U-88-36) for the site for Big O Tires. (Exhibit 4) The 1989 use permit describes the use as a continuation of a non-conforming use for automotive repair. The 1989 permit does not include a termination date, but adds a new condition requiring that the applicant *"find an alternative long term parking site for customer cars, as well as for employees"* within 60 days. The addition of the new condition in 1989 indicates that the use of the property for the 10 years between 1979 and 1989 for automobile and tire repair and replacement had begun to create off-site parking impacts in the neighborhood.

On May 10, 1990, the City sent a letter to Henry C. Cohen indicating that the use was not in compliance with at least two of the conditions regarding parking and the requirement to acquire an "alternative long term parking site."

In 1999, the City changed the zoning of the Park Street Commercial District including the subject property from C-2 Central Business District to CC-Community Commercial Zone. As stated above, the CC-Zoning District specifically prohibits this type of use on this site. Therefore the use has been considered a "legal non-conforming use" of the property since at least 1999.

On January 22, 2013, attorney Michael Notaro, on behalf of his client Art Thoms (owner of Washboard V Laundromat at 1198 Park Street), sent a letter of complaint regarding the operations of Big O Tires at 1200 Park Street. The alleged violations were related to three of the 1988/89 Use Permit (UP88-36) conditions governing the use of the property by Big O Tires, including Big O's failure to secure an off-site parking lot.

On April 29, 2013, Anagha Dandekar Clifford, attorney for Big O, sent a letter to Michael Notaro addressing the issues raised. A two-month survey of availability of off-site parking lots was provided. The off-site parking lot survey did not yield any results, and Ms. Clifford described the new trial valet service Big-O instituted every Saturday to minimize Big-O's impact on street parking within the business district. Big O implemented the valet service in May of 2013.

In the fall of 2013, City staff received several faxes from Art Thoms and a letter from Mr. Notaro detailing continued violations described in the January 22, 2013 letter. On November 26, 2013, Ms. Clifford stated the October 28, 2013 violations were the exception and not the rule. She stated the Saturday valet service had been extended to a daily service as an alternative to the off-street parking requirement. On December 5, 2013, Mr. Notaro copied city staff on a letter to Ms. Clifford acknowledging certain

improved Big O behavior as well as lapses in ideal behavior. Mr. Notaro encouraged continued and more thorough compliance.

On March 12, 2014, Big O submitted an application to amend its 1988 use permit, specifically to remove condition #2 related to an off-street parking lot, and to revise condition #1 related to work outside the structure. This application was suspended in the summer when the nearby Party Warehouse property was put on the market. Big O explained it wanted to pursue the purchase of the Party Warehouse property to gain compliance with the off-street parking lot condition. Over the course of the summer and fall, these negotiations to purchase the property were not completed.

In March 2015 correspondence, Mr. Notaro noted the continued violation of no left turns onto San Jose Avenue and Big O client and employee parking in metered spaces.

On July 13, 2015, the Planning Board held a public hearing to consider Big O's request to amend its existing Use Permit. The Planning Board reviewed the material, held a public hearing, discussed various options, and continued the matter to the November 9, 2015 meeting. On November 9, 2015, the Planning Board amended several of the Use Permit Conditions. The current use permit conditions, as revised on November 9, 2015, read as follows:

> *1. All outdoor parking areas shall be cleared of all cars on stationary or stabilizer jacks during evening hours and weekend hours when the business is closed.*
>
> *2. The applicant shall continue to work to locate and secure a long-term parking site for customer cars, as well as for employees. Once a site is secured, the applicant shall notify the Community Development Department that this condition has been fulfilled.*
>
> *3. Applicant's business vehicles(s) shall be stored on the site, not on adjacent residential streets.*
>
> *4. The site plan, indicating proposed and existing landscaping, treatment of garbage area and area for old and used tires, the number and placement of tire displays during business hours, and signage shall be subject to Design Review, except no additional public notice to adjacent property is necessary. Applicant shall submit pertinent materials no later than February 17, 1989.*
>
> *5. Applicant shall retain the sign directing customers to turn right toward Park Street from the San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.*
>
> *6. No recapping or retreading of tires on the premises.*
>
> *7. No testing of vehicles in residential areas.*
>
> *8. The Use Permit shall be reviewed by Planning Staff one year from the date of final approval, and their determination of compliance with conditions of approval shall be reported back to the Planning Board.*

Shortly after the Planning Board's November 9, 2015 meeting, the owners of the Big O franchise at 1200 Park Street purchased the property at 1835 Oak Street in the M-2 General Industry Zoning District. The site provides a large off-street parking area and a

large building that is in the process of being remodeled to relocate the entire operation. Big O operators at 1200 Park Street subsequently changed their name to Big Discount Tire Pros.

Based upon separate conversations with Big Discount Tire Pros and the property owner, Mr. Jay Garfinkle, Big Discount Tire Pros will be vacating the site upon termination of their current lease in July, 2017.

It is staff's understanding, that Mr. Garfinkle would like to sell the property to Big O Tires, which wishes to establish a new tire repair operation on the property at 1200 Park Street upon the departure of the current business.

After staff's meeting with Mr. Garfinkle to discuss the ongoing issues at the property, Mr. Garfinkle submitted a letter and photographs for the Planning Board's consideration. Mr. Garfinkle makes the argument that the business has existed successfully at the site for 35 years, that the parking conditions in the neighborhood are no longer apparent, and that the use should be allowed to continue indefinitely without the limitations set by the Planning Board in 2015. (Exhibit 5).

Planning Board Options

Conditional use permits govern the use of land. They "travel" with the land, not the business. So when a business like "Big Discount Tire Pros" vacates the property, the use permit remains with the property and a new, similar business may occupy the property, provided that they comply with all of the conditions of the use permit.

For these reasons, the neighborhood petition is asking the City to modify the use permit to clearly state that the rights conferred by the use permit to operate the non-conforming use will terminate in July 2017. By amending the Use Permit to add a condition of approval to terminate in July 2017, the City would be accomplishing three objectives:

1. Provide enough time for the existing long term local business to relocate to their new site on Oak Street, where they would be a legal conforming use.

2. Ensure that any potential future users of the property know that automobile repair will not be permissible on the property before those users invest significant resources into either purchasing the property or establishing an auto repair use on the property.

3. Bring the property into conformance with the existing zoning requirements, which all other properties in the district are all required to respect.

The Planning Board has four options to consider:

1. Hold a public hearing and amend the Use Permit to add a new condition that reads as follows: *"This use permit and the use of the land for automobile repair shall terminate on July 30, 2017."* This option would ensure that all future use of the property conform to the requirements of the CC zoning district.

2. Hold a public hearing and decide to maintain the Use Permit without any amendments. This option would allow the existing legal non-conforming use of the property to continue indefinitely, provided that all future users comply with the eight (8) conditions approved in 2015 and listed above.

3. Hold a public hearing and amend the use permit to eliminate existing condition #2 requiring that existing and future users of the site acquire a second property for the parking of cars. Attachment 5 includes an email from the property owner making the argument for this option.

4. Hold a public hearing and continue the matter to a future date to consider any new information or suggestions provided at the public hearing.

PUBLIC NOTICE AND COMMENTS

Property owners and residents within 300 feet of the project's boundaries were notified of the public hearing and given the opportunity to review and comment on the recommended action. Also, the petition signers received a copy of the notice.

ENVIRONMENTAL REVIEW

This project is determined to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15301, Existing Facilities.

RECOMMENDATION

Hold a public hearing and amend the existing use permit to include a new condition to read: *"This use permit and the non-conforming use of the land for automobile repair shall terminate on July 30, 2017."*

Respectfully Submitted,

Andrew Thomas
Assistant Community Development Director

Exhibits:

1. Petition from the Neighborhood
2. Use Permit 79-3
3. Zoning Administrator Letter from January 28, 1982
4. Use Permit 88-36
5. Letter and photographs from Mr. Jay Garfinkle
6. Draft Resolution

Allen Matkins

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Direct Dial: 415.273.7463 File Number: 375539-00001/SF1024294.02

Via Electronic Mail

November 28, 2016

City of Alameda Planning Board
2263 Santa Clara Avenue
Alameda, CA 94501

Re: November 28, 2016 Planning Board meeting
Agenda Item 7: 1200 Park Street (PLN14-0134)

Dear Members of the Planning Board:

On behalf of Big O Development, LLC, we submit the following comments with regard to the above-referenced Agenda Item. Big O is in negotiations with the current owner to purchase the real property located at 1200 Park Street from the current owner. Once the site is purchased, Big O will continue the automotive repair use on the site and will comply with the terms of the existing conditional use permit (UP88-36).

Staff's recommended action – to revoke the existing use permit by imposing an automatic termination date in July – is unlawful. There is no legal basis to terminate/revoke the use permit, either under the terms of the use permit or under the applicable law. Of the four options presented by Staff for this Board to consider, only option numbers 2-4 are legally defensible. Staff's recommended option is not.

I. BACKGROUND

On August 2, 2016, some residents submitted a request to Staff to set a public hearing "to review the existing use permit for 1200 Park Street with the intention of considering an expiration date on the permit when the current tenant vacates the property within the next year." (Staff Report, Exh. 1.) This submission did not identify any violations of the existing use permit or the City's zoning regulations as the basis for this request. Instead, the neighbors offered that "the reasons for considering a termination of the current use permit" include: (1) the property is too small; (2) auto uses are not appropriate for this location; and (3) with the current tenant vacating next year, "now is the perfect time to think about the future of the Park Street/San Jose Avenue area in terms of planning, and how this corner can fit in with the rest of the business district."

In response to this request, Staff determined that by "amending the Use Permit to add a condition of approval to terminate in July 2017, the City would be accomplishing three objectives:

> 1. Provide enough time for the existing long term local business to relocate to their new site on Oak Street, where they would be a legal conforming use.
>
> 2. Ensure that any potential future users of the property know that automobile repair will not be permissible on the property before those users invest significant resources into either purchasing the property or establishing an auto repair use on the property.
>
> 3. Bring the property into conformance with the existing zoning requirements, which all other properties in the district are all required to respect."

To support these stated objectives, Staff recommends that this Board "amend the existing use permit to include a new condition to read: 'This use permit and the non-conforming use of the land for automobile repair shall terminate on July 30, 2017.'" Clearly, imposition of this condition would vitiate Big O's property rights upon close of escrow, as its proposed tire store would no longer be conditionally authorized. .

For the reasons set forth below, following Staff's recommendation is unlawful.

II. THE CITY CANNOT REVOKE OR IMPOSE NEW CONDITIONS ON THE EXISTING USE PERMIT

A. Use Permits Cannot be Conditioned to Terminate Upon a Change of User

Terminating the use permit in July when the current permittee is expected to move would be unlawful. In California, "it is widely held that a conditional use permit creates a right which runs with the land; it does not attach to the permittee." (*Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal. App. 3d 855, 858.) The Staff Report similarly recognizes that use permits:

> "travel" with the land, not the business. So when businesses like "Big Discount Tire Pros" vacates the property, the use permit remains with the property and a new, similar business may occupy the property, provided that they comply with all of the conditions of the use permit.

In fact, imposing a condition that prevents the permittee from transferring the rights under a use permit sale of the land is unlawful. (*Anza Parking,* 195 Cal. App. 3d at 858.) "Such a condition, if imposed, is beyond the power of the zoning authority, and void." (*Id.*)

Despite this clear prohibition against terminating a use permit upon transfer of the property, Staff proposes to summarily eliminate the use next July when the current permittee moves to new site. In fact, the Staff Report's purported "objectives" supporting the use permit termination are based on the change in tenants.

B. The Requirements for Termination of the Use Permit Cannot be Met

1. Applicable Standards for Termination/Revocation

a. Case Law

It is well established that an existing, lawful business operating under a use permit must be treated differently than an applicant for a new use permit. "Under California law, the continued operation of an established, lawful business is subject to heightened protections." (*County of Santa Clara v. Superior Court* (2010) 50 Cal. 4th 35, 53.) "Interference with the right to continue an established business is far more serious than the interference a property owner experiences when denied a conditional use permit in the first instance. Certainly, this right is sufficiently personal, vested and important to preclude its extinction by a nonjudicial body." (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal. App. 4th 1519, 1529.)

Termination of an existing permit by a date certain, as recommended by Staff, is subject to due process limitations that cannot be met here. "A CUP creates a property right which may not be revoked without constitutional rights of due process." (*Malibu Mts. Rec. v. County of L.A.* (1998) 67 Cal. App. 4th 359, 367.) "A municipality's power to revoke a permit is limited. A conditional use permit may not be revoked arbitrarily without cause." (*Cmty. Dev. Com v. City of Fort Bragg* (1988) 204 Cal. App. 3d 1124, 1131-1132.)

"In determining that a permit, validly issued, should be revoked, the governing body of a municipality acts in a quasi-judicial capacity." (*Bauer v. City of San Diego* (1999) 75 Cal. App. 4th 1281, 1294.) "In revoking a permit lawfully granted, due process requires that it act only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation." (*Id.*)

"Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled." (*Goat Hill Tavern,* 6 Cal. App. 4th at 1530.) "When a permittee has acquired such a vested right it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted or if there is a compelling public necessity." (*Id.*) "A compelling public necessity warranting the revocation of a use permit for a lawful business may exist where the conduct of that business constitutes a nuisance." (*Id.*)

b. City's Use Permit Revocation Standards

In conformance with the common law standards discussed above, the City Code provides that a use permit may be revoked *only* in "the event of a violation of any of the provisions of the zoning regulations, or in the event of a failure to comply with any prescribed condition of approval…." (City Code, § 30-21.3(d).)

There is no evidence in the record that the current user is failing to comply with the City's zoning regulations or the terms of the use permit, or that the conducts of the business constitutes a nuisance. Therefore, there is no legal justification to terminate the use permit in July.

2. There is No Evidence Supporting Revocation

The Staff Report cites no evidence justifying the termination of the use permit. Even the neighbors' reasons for a "termination of the current use permit" fail to cite any use permit condition or zoning regulation that is currently being violated. (Staff Report, Exh. 1, p. 1.) Even the neighbors' generalized concerns about the size of the property and the nature of the use are addressed in correspondence dated November 15, 2016, from the property owner. (Staff Report, Exh. 5.)

The neighbor's third reason for terminating the use permit (future planning) is aligned with the three objectives identified in the Staff Report: revocation makes sense because the new tenant should have to comply with the area's existing zoning requirements. As stated above, this reasoning does not comply with longstanding rules regarding use permits applying to successor users. In addition, a change to the underlying zoning is not a ground to terminate a use or to revoke an existing use permit. (*Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal.2d 121, 127 [businesses generally cannot be immediately terminated due to nonconformance with rezoning ordinances, because of the "hardship and doubtful constitutionality" of such discontinuance].)

Conversely, if there were evidence in the record supporting revocation, then the City *must* revoke the use permit immediately following tonight's Planning Board hearing. (City Code, § 30-24.2.) It cannot, as proposed by Staff, simply defer enforcement of the use permit for eight months until July 30, 2017. The City cannot have it both ways: either the use permit must stay in place unless and until the use violates the permit or the law, or the use permit must be revoked immediately if such violations currently exist.

C. Permit Conditions Must be Reasonable

Not only is the termination provision unlawful for the reasons above, it is important to remember that *any* condition of approval is subject to certain rules. It has long been the rule in California that conditions of approval imposed on a project be related to the impacts that the project will create. (*Ehrlich v. City of Culver City* (1996) 12 Cal. 4th 854; Gov. Code § 65909.) In this case, a lawfully operating business is subject only to new conditions relating to a finding that justifies the

new condition – a change in the use of the property that creates impacts not addressed by the existing use permit conditions. (*Id.*) There is no stated legal or factual basis upon which this Board could impose a July 2017 termination provision upon the existing use permit that would withstand judicial scrutiny.

For the reasons set forth herein, the Planning Board cannot adopt Staff's recommendation to add a new condition to the existing use permit that mandates its termination on July 30, 2017. The City must respect the law regarding use permits and the rights of the permit holders and their successors in interest.

Very truly yours,

David H. Blackwell

DHB:kem

Honorable President and Members of the Planning Board:

My name is Bobbie Centurión, and I live at 1201 Park Avenue. Tonight I am asking you to expire the current use permit for 1200 Park Street at the end of the current tenant's lease.

A tire business is not an appropriate type of business to have on the main street of our city as part of its commercial business district. Planning, is seriously considering what is best for the future progress of the community and at this time, when the current tenant is leaving, I ask you to thoughtfully consider if allowing this type of business at this site would be in the best interests of the community. Auto related businesses have been at this site for many years, but that does not mean this practice should continue indefinitely.

I want to address the soils issue from this type of business. It is with good reason that workers in auto related businesses are often called grease monkeys since it is a dirty, greasy, oily kind of business. I for one am grateful that there are workers willing to take these dirty jobs in order to keep my car in good working condition, but it is unreasonable to have this type of business on the main street of a city's commercial district.

Tire Pros, who currently leases this property, is diligent in trying to keep things clean, including regular power washing of their sidewalks and regular pickup of hazardous materials, but workers have grease on their shoes and it does get carried to surrounding sidewalks as they go to get cars parked on the street, or walk back from cars that they have parked on the street, or go to their own cars for lunch.

There is also an air quality issue that needs to be considered. An average of 60 cars per day, go in and out of the Tire Pros parking lot. The cars parked on their lot are moved from parking spaces to work bays, then back again to parking either on the lot or on the street. There are regular and numerous truck deliveries and pick ups. Sometimes there is space for the smaller trucks on the site, but often they park on San Jose Ave, occasionally with motors left running.

Brake dust is constantly released into the environment as tires are removed and cars worked on. Again, it is the nature of that kind of business, a very dirty business.

Then there is the noise factor involved in the form of loud (metal on metal) pounding as workers attempt with hammers to remove brake discs from cars, frequent high pitched sounds of air guns as workers remove and put on lug nuts, additional noises from other machinery, and tow trucks delivering vehicles, sometimes in the middle of the night.

All the above adds a less than desirable component to the neighborhood.

Please vote to expire the current Use permit as of July 31st, 2017. I see no purpose in delaying this vote, since the nature of this business is not going to change.

Thank you for the opportunity to present my views.

Respectfully submitted,

Bobbie V. Centurión
1201 Park Avenue
Alameda, CA 94501

510-865-9945

November 28, 2016

RECEIVED
DEC 19 2016
PERMIT CENTER
ALAMEDA, CA 94501

December 15, 2016

City of Alameda Planning Board
City Hall
2263 Santa Clara Avenue
Alameda, CA 94501

Subject: PLN14-0134 - 1200 Park Street, Alameda
Big O Tires site

Ladies and Gentlemen:

We respectfully request that the City of Alameda Planning Board revoke the conditional use permit for an automotive business at 1200 Park Street due to years of non-compliance with conditions of the permit. As documented in the meeting materials for the November 28, 2016, public hearing, over the years your board has imposed the following conditions on use permits for the legal non-conforming automotive use at the site:

- 1979 (Use Permit No. 79-3): "That Parking be restricted to the approved site plan and those spaces marked."
    - In 1982 (Letter from City Zoning Administrator), this condition was reiterated to Henry C. Cohen before he opened his tire sales and installation business at the site.
- 1989 (Use Permit UP-88-36 issued for Big O Tires and sent to Henry C. Cohen): "Within 60 days... applicant shall find an alternative long-term parking site for customer cars, as well as for employees."
    - In 1990 (Letter from Planning Department), the Planning Department warned Mr. Cohen that the Department had "no record of the leasing of additional parking for customer cars as required..." and the business was out of compliance with the conditions of the use permit.

According to the draft resolution prepared for the November 28, 2016, public hearing:

- In 2013 Big O tires reported that it was unable to find an off-site parking lot and had implemented a valet service to minimize street parking.
- In 2014, Big O submitted an application to amend the use permit by removing the condition related to an off-street parking lot. The application was subsequently suspended.

In 2015 two public hearings were held, with neighboring residents and at least one business owner asking that the use permit be revoked for non-compliance with conditions including provision of adequate off-street parking. At the hearing, representatives of Big O Tires asked the neighbors to be patient because they were negotiating to move to a new location, at which time the impacts on the neighborhood would end.

In late 2015 or early 2016 the business at 1200 Park Street ceased to be a Big O Tires franchise, changed its name to Big Discount Tire Pros, and prepared to move to 1835 Oak Street. We and our neighbors breathed signs of relief in anticipation of the departure of the tire business.

Now, after decades of non-compliance with the conditions of its use permit, Big O Tires plans to buy the property at 1200 Park Street and open a new tire business. A November 14, 2016, letter from Jay Garfinkle, representing the owners (prospective sellers) of 1200 Park Street, stated, "the business in question has been operating successfully at this location for nearly thirty five years. The site is clearly not too small for 'this type of business.'" The letter continued, "our tenant has.. acquired an additional property where vehicles can be parked if and when needed and is, therefore, in compliance with the element of the CUP..."

At the November 28, 2016, public hearing, a representative of Big O Tires described how tremendously successful the 1200 Park Street location has been over the years and implored your board not to force Big O Tires "to leave Alameda."

Clearly the business owes its profitability in no small part to its lack of compliance with its use permit. As neighbors we witness daily the tire store employees arriving to work and parking along Jackson Park, returning time after time throughout the day to park and retrieve and repark and retrieve customers' cars, and returning to their own cars at the end of the work day. The idea of using valet parking "if and when needed" acknowledges that valet parking won't be used until all on-street parking spots are full, shutting out residents, customers of other businesses, and users of Jackson Park who arrive by car.

Big O Tires has *already* left Alameda, after decades of non-compliance with its use permit. If Big O Tires returns to Alameda it will be in direct competition with the relocated Big Discount Tire Pros on Oak Street. With two large tire businesses in the Park Street area, Big O Tires would find it even more difficult to be profitable without continuing to violate the conditions of the use permit and without continuing to impact the surrounding neighborhood.

We encourage you to revoke the 1200 Park Street conditional use permit due to non-compliance. Thank you for your consideration.

Sincerely,

Elizabeth and Scott Mathieson
1185 Park Avenue
Alameda, CA 94501
(510) 523-5852

From:	Jay
To:	ANDREW THOMAS; Kathleen Livermore
Subject:	Owner"s response to August 2, 2016 petition re 1200 Park Street
Date:	Tuesday, November 15, 2016 12:06:52 PM
Attachments:	Photos - Parking 10-19-16 2pm lores r.pdf Photos - Parking 10-24-16 9-30am lores r.pdf Photos - Parking 10-28-16 1pm lores r.pdf

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Planning Board,

City of Alameda

November 14, 2016

Ladies and Gentleman,

We were recently informed that a petition had been submitted by residents of Alameda on August 2, 2016 regarding the business activities at 1200 Park Street/2407 San Jose Avenue. We're writing now to respond to the concerns raised in that petition.

The petition suggests that the property is too small for "this type of business ". That would imply that such a business could not be successful in the long run. In response, we would simply remind everyone that the business in question has been operating successfully at this location for nearly thirty five years. The site is clearly not too small for "this type of business".

As the City undoubtedly recalls, this, and related issues, were addressed by the planning board in hearings held in 2015 in response to a similar petition, and a grace period of sorts was granted by the City to provide an opportunity for the business to address any perceived problems related to the offsite parking of vehicles and other elements of the Conditional Use Permit that has been in effect since 1989. No previous complaints have been presented to the City nor have been aired before the Planning Board. We would remind interested parties, including City staff and members of the Planning Board, that our tenant has availed himself of the grace period and acquired an additional property where vehicles can be parked if and when needed and is, therefore, in compliance with the element of the CUP currently under discussion.

The petitioners, again this year, suggest that "...overflow parking needs would impact the surrounding neighborhood". We interpret this to mean that they are concerned that while there quite clearly isn't an impact now there may be one in the future. We, however, do not see any reason to expect that there will be an impact, either positive or negative, on the neighborhood resulting from the business activities at 1200 Park Street as neither the petitioners nor we have been able to demonstrate any evidence that there is currently any impact on the neighborhood beyond what would normally be expected in a residential area that abuts on a commercial district, such as those adjacent to the businesses on Encinal Avenue, Lincoln Avenue, Webster Street, and elsewhere in the City. Furthermore, given that the business in question has been operating on the site for some thirty five years without any ongoing or currently demonstrable negative impact on the neighboring residential area, we do not have any reason to believe that there is likely to be any such impact in the future. It is also noteworthy that there have been automotive related activities at this site now for some ninety years.

As owners of the property we can't directly control our tenant's activities. We can, however, monitor them. And what we've observed over the ensuing eleven months following the 2015 hearing was that there was, in fact, minimal, if any, impact related to the availability of parking in the

few blocks surrounding the business that could even remotely be attributed to the business activities in question. We would also point out that neither the previous petitioners nor the City staff have documented any adverse effect on parking availability. All parties who participated in the 2015 hearings, including the Planning Board itself, apparently relied on anecdotal complaints submitted without providing or requiring supporting documentation.

Because no documentation was presented at either the previous hearing or with the current petition, we have endeavored to investigate and document our observations which have been made randomly over the past months and more frequently over the three or so weeks since we received notice of the petition. As documentation of our observations we are now submitting copies of just a few of the numerous photos which clearly show the presence of ample empty parking spaces in the adjacent neighborhood. These were taken on different days of the week, but always during the business hours at 1200 Park Street. And what we've observed and documented is that there have been anywhere from fifteen to more than twenty-five available unmetered spaces on Park Avenue and on San Jose between Park Street and Regent Street during our recent surveys of the area. In addition to these there were empty metered and unmetered spaces on Park Street and across Park Street on San Jose. As noted, we concentrated our attention along the two sides of Jackson Park (Park Avenue) as well as on San Jose and on Park Street. We observed available marked, unmarked, and/or metered spaces on each of the streets.

We've focused our attention on this issue more closely during the past few weeks since the recent petition came to our attention in early to mid-October. And while we're sympathetic to our neighbors' concerns it appears to us that their suggestion that the availability of parking spaces is being negatively impacted by the adjacent business activities is without merit.

The City should recognize that the residents on Park Avenue across from Jackson Park have access to more than twice as many parking spaces as virtually any other resident of the City in that they have parking spaces available to them, not only on their own side of the street, but also across the street along the park which is further enhanced by the absence driveways which exist on their own side of the street. And we believe further that there are precious few Alameda residents who have the benefit of having a more than doubled availability of parking spaces in immediate proximity to their homes and apartments.

Addressing another point mentioned by the petitioners, we would point out that any potentially hazardous materials related to the business activities at 1200 Park Street are handled and removed according regulations. This is accomplished by contracting with appropriately licensed third parties as is the case with dry cleaners and other businesses that may use and/or produce similarly regulated substance as they engage in their normal business activities.

To summarize the above, we do not agree with the petitioners that there is, in fact, any documented significant negative impact on their neighborhood resulting from the business activities at 1200 Park Street.

We would next like to address the Conditional Use Permit that was put in place in the 1980s. It is our understanding that this was intended to permit the business activities to continue at 1200 Park Street after the City imposed a more restrictive zoning ordinance on the neighborhood. We believe that it was entirely reasonable for the City to grandfather these activities which had been in practice there since the mid-1920s. And we believe it is reasonable to continue to grant this exception to the changes in zoning that the City has made over the past many years.

We note, however that what may be the most significant element of the CUP that of the requirement to lease offsite parking, is unique, as far as we've been able to determine, to this one Alameda business site. We note further that as mentioned above, the tenant has acquired additional property, as required, for potential use if the need for offsite parking becomes apparent.

It appears that such burden has not been attached to any other business permits in the City, let alone those of other automotive related businesses operating immediately adjacent to residential neighborhoods. And while some, if not all, of these other businesses apparently park vehicles in the neighboring residential areas, none has been required to discontinue this practice and obtain offsite property for vehicle parking.

The same requirement to obtain offsite parking might just as reasonably be applied to all of the merchants along Park Street, Webster Street, and elsewhere in the City. Is the City not concerned about the welfare of the residents of these other neighborhoods that must certainly be impacted by the parking of employee's and customer's vehicles that can't be accommodated by using the metered spaces located in front of these business? And while many would consider this to be an extreme solution to the problem of limited parking in our commercial areas it does highlight the unique nature of the burden placed on one single business owner in the City, the owner of the business operating at 1200 Park Street. It would seem equitable and fair to give parity to this site, particularly when there is no demonstrable evidence of a negative impact related to parking.

Besides, it is our understanding that since the owners of the business currently operating at 1200 Park Street have acquired additional property where overflow parking is available if and when needed that they are in compliance with this major condition of the CUP. And thus, as we've documented in the discussion above there is, in fact, no negative effect on the neighborhood related to the parking of vehicles, we would ask the Planning Board to address this condition and we suggest that it's time to remove this unique burden from the permit. Not only do we think that it would be appropriate to remove it as it appears that there is not now, and probably never has been, a negative impact related to the parking of vehicles by our tenant at 1200 Park Street, but we submit that it shouldn't have been part of the CUP in the first place.

On a more general note, we'd like to point out that as long time residents of Alameda we, too, are concerned with the impact that business activities and increasingly dense housing have on surrounding neighborhoods. And on a personal level, we recall the time when several of us lived in the apartments across the street from the gas station that was formerly on this corner. And we remember climbing the trees in Jackson Park when we visited our grandparents who built their home on Park Avenue in the 1930s and lived there for the next fifty years.

We would also like to share our observation that not only did our grandparents contribute to the prosperity of Alameda by investing in it and raising their family here, they were vocal opponents to the proposed destruction of the texture of Park Street that was promulgated by a handful of local business people who sought to impose Federally funded redevelopment on Alameda in the 1960s. We believe this demonstrates our families long standing support for preserving the classic atmosphere of the City's business districts in general and Park Street in particular.

In summary, we believe we've shown that there is, in fact, no negative impact on the neighboring residential community related to parking availability or to the minimal presence of materials classified as hazardous. We believe that the requirement to lease offsite parking is not only unnecessary, but is unfairly applied as it is unique to our property. And finally, we note that the automotive related activities on the site haven't changed significantly over the past ninety years. In fact, there is less impact given that gasoline is no longer dispensed there. To the best of our knowledge there was never a question of compliance with the regulations on the part of the businesses operating there until someone changed the rules. And even after the rules were changed in the 1980s the City had not considered it necessary to evaluate the business's activities which had changed only minimally, if at all, until a petition was filed more than thirty years later. And now we believe we've demonstrated that the concerns voiced in the petition lack demonstrable, let alone significant, merit.

In view of these observations and the discussion of the facts presented above, we respectfully request that the Petition be denied and request further that the burdens imposed by the Conditional

Use Permit be rescinded by the City, including the imposition of requiring additional offsite parking. And we further request that should the City elect not to remove the burdensome elements of the CUP, that future tenants be granted the opportunity to comply with them as our current tenant has done.

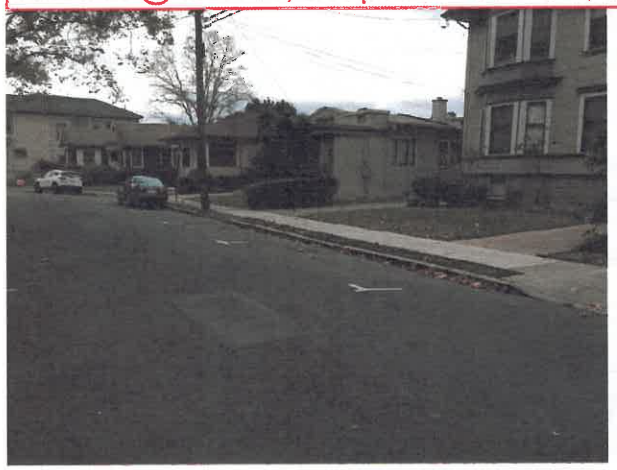
Respectfully,

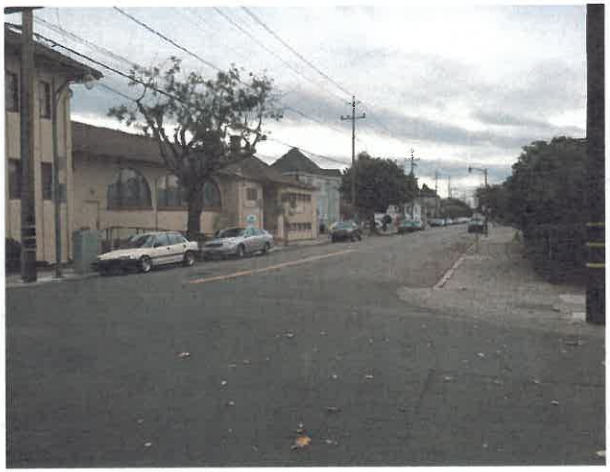
Jay Garfinkle,

Representing the owners of 1200 Park Street

10/19/16 @ 2PM, 27 spaces on Park Ave., 4 metered spaces on San Jose, 8 prox spaces on San Jose between Park Ave and Regent

10/24/16 @ 9:30AM, 24 spaces Park Ave., 0 metered spaces on San Jose, 11 prox spaces on San Jose between Park Ave & Regent





City of Alameda • California

January 19, 2017

X17-0005

Gary Voss and Guido Bertoli
Big Discount Tire Pros
1200 Park Street
Alameda, CA 94501

RE: NOTICE OF VIOLATION OF THE CITY OF ALAMEDA MUNICIPAL CODE AT 1200 PARK STREET (PLN14-0134, AS AMENDED)

Dear Mr. Voss and Mr. Bertoli:

As you know, the Planning Board has held three public hearings (July 13, 2015, November 9, 2015 and November 28, 2016) in the last two years in response to neighborhood concerns and complaints about the operation of your automobile tire business at 1200 Park Street. The specific complaints included violation of Use Permit Conditions of Approval prohibiting storage of vehicles on adjacent residential streets. The Conditional Use Permit states: *"Applicant's business vehicle(s) shall be stored on the site, not on adjacent residential streets."*

On December 27, 2016, and again on December 28, 2016, an Alameda city official conducted an inspection of your business at 1200 Park Street and witnessed and photographed violations of your use permit. The Alameda city official observed your staff retrieving customer cars on Park Avenue and driving them to 1200 Park Street, in violation of condition #3.

This notice is informing you that you are in violation of the conditions of your Use Permit and you are therefore in violation of the Alameda Municipal Code **AMC 30-21.3.c.7.** *Guarantees as to compliance with the terms of the approval.* Pursuant to AMC 30-21.3.d. *Revocation*, in the event of a violation of any of the provisions of the zoning regulations, or in the event of a failure to comply with any prescribed condition of approval, the City Planning Board may, after notice and hearing, revoke any use permit.

The City of Alameda hereby demands that you immediately comply with the conditions of your use permit (PLN14-0134), as amended on November 9, 2015. Please immediately stop using adjacent residential streets for storage of automobiles left at your business for repair. Failure to comply with this Notice of Violation will result in this office scheduling a revocation hearing before the Planning Board.

Should you have any questions regarding the issuance of this Notice, please contact me directly at (510) 747-6881.

Community Development Department
2263 Santa Clara Avenue, Room 190
Alameda, California 94501-4477
510.747.6800 • Fax 510.865.4053 • TTY 510.522.7538

Printed on Recycled Paper

Respectfully,

Andrew Thomas, Assistant Community Development Director

cc: Jay Garfinkle, property owner

City of Alameda • California

February 27, 2017 **X17-0005**

Gary Voss and Guido Bertoli
Big Discount Tire Pros
1200 Park Street
Alameda, CA 94501

RE: SECOND NOTICE OF VIOLATION OF THE CITY OF ALAMEDA MUNICIPAL CODE AT 1200 PARK STREET (PLN14-0134, AS AMENDED)

Dear Mr. Voss and Mr. Bertoli:

As you know, the Planning Board has held three public hearings (July 13, 2015, November 9, 2015 and November 28, 2016) in the last two years in response to neighborhood concerns and complaints about the operation of your automobile tire business at 1200 Park Street. The specific complaints included violation of Use Permit Conditions of Approval prohibiting storage of vehicles on adjacent residential streets. The Conditional Use Permit states: *"Applicant's business vehicle(s) shall be stored on the site, not on adjacent residential streets."*

On February 14, 2017, an Alameda city official conducted an inspection of your business at 1200 Park Street and witnessed and photographed violations of your use permit. The Alameda city official observed your staff retrieving customer cars on Park Avenue and driving them to 1200 Park Street, in violation of condition #3.

This is the second notice informing you that you are in violation of the conditions of your Use Permit and you are therefore in violation of the Alameda Municipal Code **AMC 30-21.3.c.7.** *Guarantees as to compliance with the terms of the approval.* Pursuant to AMC 30-21.3.d. *Revocation*, in the event of a violation of any of the provisions of the zoning regulations, or in the event of a failure to comply with any prescribed condition of approval, the City Planning Board may, after notice and hearing, revoke any use permit.

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Should you have any questions regarding the issuance of this Notice, please contact me directly at (510) 747-6881.

Respectfully,

Andrew Thomas

Andrew Thomas, Assistant Community Development Director

cc: Jay Garfinkle, property owner

Community Development Department
2263 Santa Clara Avenue, Room 190
Alameda, California 94501-4477
510.747.6800 • Fax 510.865.4053 • TTY510.522.7538

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BIG O TIRES®

THE TEAM YOU TRUST®

March 3, 2017

To: Ms. Sandy Sullivan
Planning Board Member
ssullivan@alamedaca.gov
City of Alameda Planning Board
2263 Santa Clara Avenue
Alameda, CA 94501

RE: 1200 Park Street Use Permit

Dear Board Member Sullivan:

As explained in my January 25 email correspondence to you, I am the Western Division Vice President of Big O Development, LLC (Big O), and I appeared at the November 28, 2016 Planning Board meeting regarding the 1200 Park Street Use Permit (CUP). Because you and I have not had the opportunity to discuss personally Big O's intentions regarding the 1200 Park Street property, I would like to set forth our plans in this correspondence so that you are fully informed prior to any Planning Board meetings on this matter.

As you know, Big O currently has no control over the property or its current use. We are under contract to purchase the property, however, and it is our intention to maintain an auto use on the property in a manner that addresses the concerns raised by some members of the public and this Board. In particular, Big O is committed to the following:

- Parking
  - We will secure a remote location to stage any vehicular overflow. Although not finalized, we are looking primarily at an appropriate site located at 2501 Santa Clara Ave.
- Noise
  - We will install a silent communication system. No loudspeakers.
  - We are committed to increased sound insulation and performing all work indoors.

In addition, Big O is open to discussing any other issues of concern that the Board may have. We understand that the current user may be violating the terms of the CUP, and that the City is taking enforcement action, which we support. After the current tenant vacates the property and Big O takes over, we are fully committed to complying with the CUP and all applicable City laws. Moreover, it is in our best interest to be a good neighbor and to run a first-class operation.

BIG O TIRES®

THE TEAM YOU TRUST®

We therefore respectfully urge the Board to not take any action with regard to the current tenant that may impair our ability to operate at 1200 Park Street later this year. If the Board revokes the CUP before we secure the site, then our ability to operate at this location will be severely jeopardized. Instead, it would be more efficient and equitable if this Board modified the CUP as set forth in this letter, which would allow Big O to operate its store in a manner that is compatible with the neighborhood and the City.

Very truly yours,
Big O Development, LLC

Rick O'Neil
Western Division Vice President

Cc: Nancy McPeak (nmcpeak@alamedaca.gov)

4280 Professional Center Drive, Suite 400 • Palm Beach Gardens, FL 33410 • 561.383.3000 • www.BIGOTIRES.com

ANDREW THOMAS

From: Kathleen Livermore
Sent: Wednesday, April 19, 2017 3:34 PM
To: ANDREW THOMAS
Subject: FW: Big discount tires
Attachments: IMG_3304.JPG; ATT00001.txt; IMG_3305.JPG; ATT00002.txt

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From: Art Thoms <artthoms@ymail.com>
Sent: Monday, April 10, 2017 5:45 PM
To: Kathleen Livermore
Subject: Big discount tires

fyi