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City of Dublin Board of Zoning Appeals

# Planning Report

Thursday, August 29, 2013

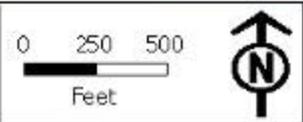
## Tesla-Vehicle Sales Determination-Administrative Appeal

### Case Summary

Agenda Number	1
Case Number	13-061AA
Proposal	An appeal to the staff decision that car sales are a Permitted Use under the Existing Use provision of Section 153.059(6) of the Zoning Code.
Zoning Code Section	Section 153.059(A)(6) Existing Uses.
Request	Administrative Appeal Review and approval of administrative appeal under the provisions of Code Section 153.231.
Applicants	Tim Doran, President of the Columbus Auto Dealers Association.
Planning Contact	Tammy Noble-Flading, Senior Planner.
Contact Information	(614) 410-4649, <a href="mailto:tflading@dublin.oh.us">tflading@dublin.oh.us</a>
Planning Recommendation	Planning recommends that the Board of Zoning Appeals <b>affirm</b> Planning's determination that vehicle sales is a Permitted Use under the Existing Use provisions of Section 153.059(A)(6).



13-061AA  
Administrative Appeal  
Vehicle Sales - Tesla Motors  
4140 Tuller Rd



<b>Facts</b>	
Site	4140 Tuller Road
Site Features	The site prompting the determination is a tenant space on the north side of Tuller Road, west of the intersection with Village Parkway.
<b>Details</b>	
<b>Administrative Appeal</b>	
Process	Zoning Code Section 153.231(C)(1) allows the Board of Zoning Appeals to review Administrative Appeals from any person or any governmental department affected or aggrieved, or to review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in the administration of the Code. The Board may affirm, deny or modify a decision or determination rendered by Planning.
Applicable Zoning Requirements	<p>Section 153.059(A)(6) Existing Uses.</p> <p>“The long range implementation of the Bridge Street Corridor Vision requires sensitive treatment of existing uses that represent significant investment in the city. While it is the intent of the BSC districts for development to ultimately meet the building and use requirements of this chapter, it is the intent of this section to permit existing uses to continue and to be considered conforming to this Code, even if the use or the building type is not otherwise permitted in the district, provided that the following requirements are met.</p> <p>(a) All uses that were permitted or conditional uses under the zoning of a property immediately prior to its rezoning into a BSC district shall continue to be allowed as permitted or conditional uses on the property, including any expansions of uses within existing structures as Permitted by Section 153.062(B)(2), in addition to the permitted and conditional uses under the applicable BSC district, provided that <i>at least one of the permitted or conditional uses under the prior zoning has been operated</i> continuously in an existing structure and/or associated use areas on the property within the 12 months prior to the rezoning of the property into the BSC district.” (Emphasis added.)</p>
Administrative Appeal	<p>The applicants filed for an administrative appeal on two issues related to use. The first is that vehicle repair was not an allowable use under the provisions of the Zoning Code. However, this portion of the appeal application was not filed within the required 20 days following the determination, expiring November 21, 2012, and is no longer applicable for appeal. Therefore, the Board may not consider this portion of the request.</p> <p>The second appeal is related to Planning’s decision that vehicle sales are a permitted use as provided in the Existing Use section of the Zoning Code. The applicant’s has indicated that the administrative error</p>

<b>Details</b>	<b>Administrative Appeal</b>
	<p>occurred because vehicle sales was not an established use for at least 12 months prior to the effective date of the rezoning.</p>
<p>History</p>	<p>April 9, 2012: City Council approved the area rezoning for the Bridge Street Corridor. Based on a referendum period of 30 days, the rezoning became effective on May 9, 2012.</p> <p>November 1, 2012: The Planning and Zoning Commission approved a Conditional Use for Tesla Motors for vehicle repair services.</p> <p>June 3, 2013: Tesla Motors filed a conditional use application for 4140 Tuller Road to expand the existing operations to include vehicle sales. The application was subsequently withdrawn by Planning because it was determined that a conditional use was not required.</p> <p>June 26, 2013: The applicant filed the present Administrative Appeal.</p>

<b>Analysis</b>	<b>Existing Use</b>
<p>Appeal Procedures</p>	<p>Under Section 153.231 (F), an appeal may be taken from any person or any governmental department affected or aggrieved, and review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by an administrative official or body charged with the enforcement and administration of this Code.</p> <p>In deciding the appeal, the Board is to determine whether or not the decision that was made was done so using the proper requirements and standards in this Code. The Board is limited to the information that was available to the administrative official or body who made the decision being appealed. Additional testimony is not appropriate.</p> <p>After a determination that the administrative official or body making the decision did so improperly, the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from, and may make an order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal was taken.</p>

Analysis	Existing Use
Basis of Decision	<p>Section 153.059(A)(6)(a) provides that uses operating continuously for 12 months prior to the effective date of the rezoning from Community Commercial to BSC Office Residential zoning. During the discussion of the Bridge Street related regulations, City Council was clear that uses existing as of the effective date of the Bridge Street rezonings would be protected and not considered as nonconforming uses.</p> <p>Further discussion related to this provision addressed multi-tenant buildings. It was determined that the application of the “Existing Use” provision for multi-tenant building would apply to all of the uses collectively, and not consider individual uses. Accordingly, only after an entire building had changed from the uses allowed in the previous zoning to the new Bridge Street classification would the subsequent Bridge Street zoning classification apply. This is stated in Section 153.059(A)(6)(b):</p> <p>“For multi-tenant buildings in Existing Structures, no non-BSC use permitted in the prior zoning district may be re-established once the <i>entire</i> multi-tenant building is abandoned, or <i>all tenant spaces</i> have established uses under the applicable BSC district.”</p> <p>Accordingly, Planning considered the following findings that vehicle sales are a permitted use under the Existing Use provisions of the Zoning Code.</p> <ul style="list-style-type: none"><li>• The uses that were established in the existing building located at 4140 Tuller Road included ALPS, Inc. which was approved by the City of Dublin on May 22, 2000 based on a Certificate of Zoning Compliance which has been included in the attached documents. This multi-tenant building and its uses were first established in 2000 and has been continually operating since that time.</li><li>• The zoning district prior to the BSC rezoning was CC, Community Commercial District.</li><li>• The Community Commercial District permitted “motor vehicle dealers (new and used cars) as a permitted use.</li><li>• This caused the uses permitted through the CC District to be established as of the date of its initial operation and zoning under the multi-tenant provisions of the Existing Use provisions of the Zoning Code regulations related to the Bridge Street District.</li></ul> <p>Based on the language of the Code, and the intent of City Council, new permitted and conditional uses under the CC District can be established if at least one of the uses in the existing building has been continuously in operation at least 12 months prior to the rezoning to BSC.</p>

<b>Recommendation</b>	<b>Administrative Appeal</b>
Affirm Planning's Decision	Planning recommends that the Board of Zoning Appeals <b>affirm</b> Planning's determination that vehicle sales is a Permitted Use under the Existing Use provisions of Section 153.059(A)(6).

## ADMINISTRATIVE APPEALS

The City of Dublin Zoning Ordinance stipulates that the Board of Zoning Appeals may hear appeals to any administrative decision rendered by the City in the review, interpretation and enforcement of the Zoning Code. The authority of the Board and the appeal process are outlined in Sections 153.231(C)(1) and 153.235(F).

### **153.235 (F) Administrative Appeal to the Board of Zoning Appeals**

#### (F) Administrative Appeal to the Board of Zoning Appeals

- (1) An appeal may be taken from any person or any governmental department affected or aggrieved, and review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by an administrative official or body charged with the enforcement and administration of this Code.
- (2) Appeals shall be taken within 20 days after the decision by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals, a notice of appeal, specifying the grounds. The officer from whom the appeal is taken shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action was taken.
- (3) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Director of Land Use and Long Range Planning certifies to the Board, after notice of appeal has been filed, that, due to the facts stated in the certificate, a stay would cause imminent peril to life or property. In this case, the proceedings shall not be stayed other than by a restraining order, which may be granted by a court of record.
- (4) In deciding the appeal, the Board shall determine whether or not the decision that was made was done so using the proper requirements and standards in this Code. The decision of the Board is limited to the information that was available to the administrative official or body who made the decision being appealed. Additional testimony is not appropriate.
- (5) After a determination that the administrative official or body making the decision did so improperly, the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from, and may make an order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal was taken.