



# PLANNING COMMISSION STAFF REPORT

**PC MEETING DATE: MAY 24, 2010**

ITEM FOR PLANNING COMMISSION CONSIDERATION:  
Public hearing regarding a request for an interim use permit to allow the continued use of 6529 Penn Avenue for used case sales.

I. RECOMMENDED ACTION:  
**Conduct and close a public hearing and by motion: Recommend approval of a two-year interim use permit for used car sales at 6529 Penn Avenue.**

II. BACKGROUND

The property at 6529 Penn Avenue was first approved for use as a used car sales lot in 1990. The use was not consistent with the Comprehensive Plan then, and remains at odds with the current Comprehensive Plan. This use has always been considered temporarily acceptable while waiting for the Penn Avenue Corridor to redevelop. The existing permit for this use expires in June and the applicant is applying for a new five-year interim use permit.

In 2007 the City Council adopted a revised Zoning Ordinance that made used automobile sales permissible only as an integral part of a new automobile sales business (Section 534.07, Subd. 7e). The business at 6529 Penn Avenue has been operating as a legally nonconforming use since the adoption of the new Ordinance.

III. BASIS OF RECOMMENDATION

A. POLICY

The purpose of an interim use permit is to allow a use that may not be compatible with the Comprehensive Plan to operate for a limited period of time. Interim use permits are designed to meet the problem that arises when a City designates an area for redevelopment or revitalization, but the market has yet to react to those changes.

The findings necessary to issue an Interim Use Permit (IUP) are as follows:

- a) *The period of time for which the interim use permit is to be granted will terminate before any adverse impacts are felt upon adjacent properties.* Staff recommends that the permit expire in two years. At that time, if conditions continue to warrant, the Council may issue a new Interim Use Permit to the applicant.

- b) *The use will terminate upon a date or event that can be identified with certainty. Interim use permits may not be granted for a period of greater than five (5) years. Staff recommends termination on June 8, 2012.*
- c) *The use will not adversely impact the health, safety and welfare of the community during the period of the interim use. It is not anticipated that used auto sales will adversely impact the community or this area within the next two years.*
- d) *The use is similar to uses defined in the zoning district in which the property is located. Auto-related businesses of any kind are no longer permitted within the Penn Avenue Corridor Overlay District; however see below.*
- e) *An interim use shall conform to zoning regulations except the City Council may waive ordinance provisions upon a finding that the temporary nature of the interim use will eliminate the adverse effects the provisions were intended to prevent. The rezoning and preparation of design guidelines for the Penn Avenue Corridor is intended to create a cohesive, inviting and pedestrian-friendly environment. Auto-oriented businesses were not thought to be consistent with this vision and are not permitted under the Penn Avenue Corridor Overlay District. However, market conditions at this time do not make it imperative that nonconforming uses be ushered out as quickly as possible. As pedestrian improvements in particular have yet to happen along the Corridor, the continuation of an auto-related business for a limited period of time is not detrimental to this vision. The proposed interim use of this property will allow the property to be used productively for the short-term and avoid a potentially vacant storefront at a time when the commercial market is depressed. Expiration of the interim use permit in two years will assure that this use, which is not compatible with the overall revitalization plan for the area, will not impede future efforts to that end. Further, the property will be required to meet landscaping, performance standard and Design Guideline requirements to somewhat mitigate and screen the impact of this auto-oriented use.*
- f) *There is adequate assurance that the property will be left in suitable condition after the use is terminated. N/A.*
- g) *By agreement, the use will not impose additional costs on the public if it is necessary for the public to take the property in the future. The property owner has signed a consent agreement agreeing to this condition.*
- h) *The property owner, by agreement, agrees to any conditions that the City Council has deemed appropriate for permission of the use, including a condition that the owner will provide an appropriate financial surety to cover the cost of removing the interim use and interim structures upon the expiration of the interim use permit. The applicant must comply with landscape, sign and Penn Avenue Design Guideline requirements. Interim structures have not been approved.*
- i) *The property owner agrees to abide by any additional conditions that the Council deems appropriate for permission of the use.*

The result of the Penn Avenue Corridor Study on this property was to change the zoning designation from Industrial to Mixed Use – Community with the Penn Avenue Overlay. The Penn Avenue Overlay District prohibits auto sales of any kind – new or used. It also prohibits auto mechanical and/or body repair shops and auto detailing establishments. That said, these types of businesses currently remain in the Corridor as legally non-conforming uses. Staff believes that given current market conditions and the existence of similar auto-related businesses in the area, an interim use permit for continued use of the property for auto sales is warranted provided that the property is brought into compliance, or as close as possible to compliance, with landscaping requirements and the Penn Avenue Corridor Design Guidelines. Staff recommends a

two-year interim use permit so that the compatibility of this use with the Corridor can be re-evaluated in 2012.

By Ordinance, interim use permits terminate upon the occurrence of any of the following events; whichever first occurs:

- a) The date stated in the permit;
- b) Upon violation of conditions under which the permit was issued; or
- c) A change in the City's zoning regulations which render the use nonconforming. (Subsection 547.15, Subd. 5)

As mentioned above, the City Council may waive ordinance provisions upon a finding that the temporary nature of the interim use will eliminate the adverse effects the provisions were intended to prevent. The purpose of an interim use permit is to allow a use that may not be compatible with zoning and the Comprehensive Plan for a limited period of time. The Council must find that the temporary nature of this permit makes the nonconforming use permissible at this time.

In addition to termination at the end date of the permit or upon violation of the conditions under which the permit is issued, staff recommends that the permit terminate upon termination or sale of the current business (CarHop), or upon the sale of the property by the current owner (Penn Avenue Partners II LLC), whichever occurs first.

**B. CRITICAL ISSUES**

- The site has been used for auto sales and leasing for 20 years.
- In 2009, the City completed a visioning process for the Penn Avenue Corridor. The vision for this area does not include auto-oriented businesses.
- Current market conditions have stalled redevelopment/revitalization projects and no major changes have occurred within the Corridor since adoption of the Penn Avenue Plan.
- Approval of an Interim Use Permit would be conditioned upon compliance with the proposed landscape plan (dated April 2010), installation of a bicycle rack, screening mechanical equipment per Code, compliance with sign rules, and compliance with the Penn Avenue Design Guidelines.
- Staff recommends a two-year interim use permit so that conditions in the Corridor can be re-evaluated and the continued compatibility of this use considered again in 2012.
- In order to approve the Interim Use Permit, the Council must find that the temporary nature of the business warrants waiving certain provisions of the Zoning Code, specifically, the prohibition of auto-oriented businesses in this future pedestrian-friendly district and the allowance of nonconforming uses.

**C. FINANCIAL**

- N/A

**D. LEGAL**

Zoning:	MU-C with PAC Overlay (Mixed Use – Community with Penn Avenue Corridor Overlay)
Land Use:	<u>Current:</u> Used Auto Sales <u>Proposed:</u> Used Auto Sales
Comprehensive Plan:	Mixed Use
Notification:	Neighbors and property-owners within 350 feet
Other Actions:	
Council:	Scheduled for City Council review June 8, 2010
HRA:	N/A
Hearing Examiner:	N/A

**IV. ALTERNATIVE RECOMMENDATION(S)**

- Recommend approval of an Interim Use Permit with additional conditions.
- Recommend denial with a finding that the requirements necessary to issue an Interim Use Permit are not met.

**V. ATTACHMENTS**

- Resolution
- Existing site plan
- Proposed landscape plan
- Consent Agreement
- Planning & Zoning maps

**VI. PRINCIPAL PARTIES EXPECTED AT MEETING**

- CarHop Representative

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING AN  
INTERIM USE PERMIT  
TO ALLOW USED AUTO SALES  
BY INTERSTATE AUTO GROUP DBA CARHOP  
AT 6529 PENN AVENUE**

**WHEREAS**, the City of Richfield (the “City) adopted a Comprehensive Plan in 2009 to guide the development of the community; and

**WHEREAS**, the City has adopted a Zoning Ordinance or other official controls to assist in implementing the Comprehensive Plan; and

**WHEREAS**, an application has been filed with the City of Richfield which requests an interim use permit to allow Interstate Auto Group dba CarHop (the “Applicant”) to conduct used automobile sales at 6529 Penn Avenue; and

**WHEREAS**, the Property is zoned Mixed Use – Community (MU-C) and within the Penn Avenue Corridor Overlay District (PAC); and

**WHEREAS**, the requested interim use of the property is not permitted in the PAC District; and

**WHEREAS**, the City Council finds that the temporary nature of the proposed interim use eliminates the adverse effects the prohibition was intended to prevent. Compliance with performance and landscape standards, Penn Avenue Design Guidelines and termination of the permit in two years time eliminates the detriment that auto-oriented businesses will have on the creation of a pedestrian-friendly corridor; and

**WHEREAS**, the Planning Commission held a public hearing on May 24, 2010 to review the application for an Interim Use Permit, following mailed and published notice as required by law; and

**WHEREAS**, the City Council has reviewed all materials submitted by the Applicant; considered the oral and written testimony offered by the applicant and all interested parties; and has now concluded that the application is in compliance with all applicable standards and can be considered for approval.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Richfield, Minnesota, as follows:

1. The proposed Interim Use Permit request meets all applicable conditions and restrictions stated in Subsection 547.15 of the 2007 Zoning Ordinance except as follows:
  - a. The proposed interim use is not a permitted use within the Penn Avenue Corridor Overlay District. In accordance with Subsection 547.15 Subd. 3e the City Council finds that the temporary nature of the interim use eliminates the detriment that an auto-oriented business will have on the pedestrian-friendly

vision of the Corridor given that pedestrian upgrades have yet to occur elsewhere in the area.

- b. The proposed interim use will be nonconforming from the outset. Subsection 547.15, Subd. 5c states that “a change in the City’s zoning regulations that render the [interim] use nonconforming” shall terminate the permit. In accordance with Subsection 547.15, Subd. 3e the City Council finds that the purpose of the Interim Use Permit in this instance is to allow productive use of a property that is not yet “ripe” for redevelopment given current market conditions. The temporary nature of the interim use will ensure that the nonconforming use not be allowed to continue so long as to become a detriment to the implementation of the Comprehensive Plan. Nonconforming status will not terminate the Interim Use Permit.
2. An Interim Use Permit for used auto sales by Interstate Auto Group dba CarHop at 6529 Penn Avenue, as described in City Council Staff Report No. \_\_\_\_\_ is approved with the following conditions:
    - a. The Interim Use Permit will expire two (2) years from its effective date, or upon termination or sale of the current business (Interstate Auto Group dba CarHop), or upon the sale of the subject property by the current owner (Penn Avenue Partners II LLC), or upon violation of the conditions under which the permit was issued, whichever occurs first.
    - b. That a 22-foot minimum drive aisle be maintained in the parking area.
    - c. That a maximum of 32 vehicles be on site, including inventory, customer and employee parking.
    - d. That all parking stalls be striped (9 ft. x 19 ft.) in accordance with requirements on file with the Public Works Department by July 8, 2010.
    - e. That no vehicles be parked or stored on grass buffer areas.
    - f. That landscaping be installed and maintained in accordance with approved plan dated April 2010 by July 8, 2010.
    - g. That a decorative fence, wall or hedges be installed in grass areas along Penn Avenue in accordance with Penn Avenue Design Guidelines by July 8, 2010.
    - h. That all roof-top mechanical equipment be screened from public right-of-way in accordance with City requirements by July 8, 2010.
    - i. That all trash containers be kept inside the building and not stored in the parking lot.
    - j. The Interim Use Permit shall be reviewed periodically by the City to ensure compliance with the conditions set forth in this resolution.

Adopted by the City Council of the City of Richfield, Minnesota this 8th day of June, 2010.

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Debbie Goettel, Mayor

ATTEST:

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Nancy Gibbs, City Clerk