

Planning Commission Issue Paper

Auto Impoundment Area Definition

December 10, 2014

Issue:

As part of the 2014 Comprehensive Rezoning, staff proposed a change in the zoning definition for an Auto Impoundment area as follows (as highlighted in yellow):

Section 2.03 – Definitions

(15) Auto Impoundment Area: A site approved and properly protected **(COMPLETELY ENCLOSED BY SEVEN (7) FOOT HIGH SECURITY FENCING WITH A LOCKED GATE)** for the temporary storage **(NOT MORE THAN ONE HUNDRED [100] CONSECUTIVE DAYS AFTER WHICH THEY SHALL BE REMOVED)** of vehicles involved in a wreck, or otherwise damaged, awaiting insurance clearance or as deemed necessary by the governing agencies.

The primary purpose of this wording change was to clarify what specific measures constitutes “properly protected” and to place a firm limitation on how long an impounded vehicle may remain in an Auto Impoundment Lot before the use transitions into a prohibited Junk or Salvage Yard. This latter wording change is proposed to address citizen complaints about Auto Impoundment Areas where damaged and inoperable vehicle are being stored for excessive periods of time that no longer constitute “temporary” storage. The proposed “100-day” time limit for storage was based on staff conversations with Auto Insurance Company Adjusters and Cumberland Police Department officers to ensure that the proposed time frame would allow a reasonable time for the disposition of impounded vehicles to be determined—recognizing that the time frame may not be able to account for very lengthy court battles over insurance claims.

During the December 8, 2014 Planning Commission initial public hearing on the proposed change, a number of Towing Company and Auto Impoundment Lot operators attended raising a number of concerns regarding the proposed language and—in particular—the adequacy of the proposed 100-day temporary storage limitation. Staff has evaluated the primary concerns raised at the hearing and has the following recommendations to give the Planning Commission for its consideration in determining what to recommend to the Mayor and Council on the matter.

Concerns Raised and Staff Recommendations:

1. **Bill Davy’s Written Testimony, dated December 8, 2014** – During the public hearing, Auto Impoundment Lot owner, Bill Davy, submitted a written and oral testimony regarding the proposed Auto Impoundment Lot definition. A copy of the written testimony is attached to this Issue Paper. His first concern was that the proposed 100-day impoundment storage limit could potentially interfere with other separate business activities conducted on a property where an auto impoundment lot is operated.

Staff Evaluation & Recommendation – The definition, as written and proposed to be revised, is intended to define and regulate only the areas of a lot of record that have been dedicated to an auto impoundment use. The definition refers specifically to a “site approved...for the temporary storage...of

vehicles involved in a wreck...” etc. No proposal has been made to revise this existing language—only to clarify the meaning of specific terms used within the definition for clarity and consistency of enforcement. Since the definition only defines the activity as an “approved site,” it applies adequately to *portions* of a lot of record (as established in the city’s records) and does not affect any other business activities that may be legally conducted on other portions of a recorded lot. With regard to the city’s enforcement of the proposed revisions, the area of any lot containing an approved auto impoundment site would not expand and no additional burden to other legal uses on the lot of record containing the site would be imposed. The clarifications would only apply to that portion of a lot that has already been designated by the lot owner and approved for auto impoundment storage. ***Therefore, staff recommends no additional changes, since the concern is moot.***

- 2. Bill Davy’s Written Testimony, dated December 8, 2014** – The second concern in the attached written and oral testimony by Bill Davy is that the definition of “impound area” should not limit the possibilities of present and future businesses—only the impound locations. During the follow-up public testimony period, other testimonies were made suggesting that the city has allowed new auto impoundment lots to be established on properties (specifically on Queen Street) where a previous non-conforming operation has legally expired.

Staff Evaluation & Recommendation – As noted in staff’s evaluation of the initial concern raised by Bill Davy, the proposed revisions to the Auto Impoundment Area definition does not regulate any other business activities on the lot or the ownership/leasing arrangements made by the owner for the Auto Impoundment Area. The proposed definition only clarifies how long impounded vehicles may remain in the impoundment area before the city may determine that the lot is transitioning into a non-permitted junk or salvage yard and what protective fencing must be provided to secure the lot. These administrative clarifications do not affect any business relationships between the lot owner and the auto impoundment area operator and they do not in any way limit where new lots or operations may be created, if allowed within that zoning district. Staff also investigated the allegations made at the hearing that staff had recently approved the re-establishment of an auto impoundment operation where the original grandfathered operation had expired. The only new occupancy permit that has been issued in recent years for an auto impoundment operation was to allow the owner of an existing “infrequently used” lot on Queen Street in South Cumberland to lease a portion of the approved lot to another towing company, which eliminated an illegally established (non-permitted) operation on the property to relocate to another area of the lot where the use was allowed. In this case, the infrequent use did not rise to the level of abandonment as defined by the Zoning Ordinance (not actively used for a period of two or more consecutive years). Since this was a new leasing arrangement--not a change in established use--the city could not deny the occupancy permit. The approval of the occupancy permit also eliminated an illegal (non-approved) operation on the lot. This situation actually illustrates the city’s enforcement focus on the land use activity, not the ability of any business or land owner to operate an impoundment area. ***Therefore, staff recommends no additional changes, since the concerns are moot.***

- 3. The proposed new wording should not be placed in the Definitions section of the Zoning Ordinance** – A brief oral testimony was made at the hearing suggesting that the proposed wording revisions should not be placed in the Definitions section of the Zoning Ordinance.

Staff Evaluation & Recommendation – Staff does not agree with this position, since the proposed wording changes are supplemental clarifications of terms that already exist in the Auto Impoundment Area definition, and they are intended to further distinguish between the definitions of an Auto Impoundment Area and a Junk or Salvage Yard. Incorporating those clarifications into the Definitions section places the language in a section of the Zoning Ordinance where it can be found quickly (without having to search the rest of the ordinance to find them) and where they logically fit with the specific terms being clarified. Placing these clarifications in another part of the Zoning Ordinance would only increase the possibility that they might be overlooked. ***Therefore, staff recommends no additional changes because the proposed clarifications belong in the definition.***

- 4. The proposed 100-day vehicle storage limit does not allow enough time to determine the disposition of impounded vehicles** – Oral testimony was also provided during the public hearing that the 100-day limit was not long enough for the processing and disposal determination of vehicles impounded by the Police Department. The Police Department only begins processing impounded vehicles after they have been stored on the lot for a specific period of time. Operators may submit the paperwork for processing only once per quarter during the year. A recommendation was made to change the time limit from 100 days to 180 days to account for the additional processing time.

Staff Evaluation & Recommendation – Staff consulted with the Cumberland Police Department (Officer Fickes) regarding this concern. The Police Department confirmed that the process of determining the disposition of an impounded vehicle may, under specific circumstances, require more than 100 days. ***Based on this additional information, staff concurs with the recommended change offered during the Public Hearing and recommends that the Planning Commission recommend approval of the proposed Auto Impoundment Area definition to the Mayor and Council with a change in the wording of “One Hundred [100] consecutive days” language to read “One Hundred Eighty (180) consecutive days.”***

Zoning comments

8th - dec-2014

Hello! My name is Bill Davy 730 Dale Ave Cumberland Md. 21502

I want to thank you for all the hard work and dedication you've given to our city.

There are a couple of concerns' about the changes in relationship to "industrial general or IG zone."

Page 6 # 15 of proposed changes amended, definitions; Auto impound area: is this a DEFINITION or regulation.

As written from current ordinance: Auto Impoundment area: A site approved and properly protected for the temporary storage of vehicles involved in a wreck, or otherwise damaged, awaiting insurance clearance or as deemed necessary by governing bodies.

Proposed definition, Auto impound area: A site approved and properly protected (completely enclosed by a seven (7) foot high security fencing with a locked gate for the temporary storage of (not more than one hundred [100] consecutive days after which they shall be removed) of vehicles involved in a wreck, or otherwise damaged, awaiting insurance clearance or deemed necessary by governing agencies.

The concern #1: Auto impound area is not a business it is an area part of a business! So putting a RESTRICTION of 100days could interfere with several types of businesses. For example; the former Wayne's Gulf, his auto repair business he had a towing service. If an individual called for him to pick up and take responsibility of their vehicle to be worked on and completed in an undetermined length time, he might not be required to have it located in a impounded area even if involved in a accident. Different example; the city has a vehicle that has been on street with flat tires unable to contact owner, city takes responsibility to call a towing company that has an approved (impoundment area) as Wayne's had. The vehicle basically was under the control of the city. The city then could set in its regulations on how long they wanted responsibility, suggested no longer than hundred days. The city would then pass the responsibility to the owner of the business by giving all appropriate release papers at which time it would be the responsibility of the impound operator do what he could to recoup his impound and towing expenses. This could take additional time. If a business has an approved area that holds 20 cars that all it holds regardless of time. The impound area could be at any

location as long as it fits into the foresight of the Comprehensive plan and requirements of the zoning ordinance.

Conclusion: Any business now that desires to store vehicles awaiting approval of release must be located in the IG zoning. Wayne for example closed his repair business or sold the business. The new tenant or owner if no longer was on a list of approved agents within the city would have to find a suitable option for that specific part of his business. Chances are the new owner would not choose to open a site, but to transport it to a impound facility that meets the scope and purpose of the new comprehensive plan. In other words any one can have a towing business within city. Not all would elect to have or could have and impound area at the business site. It would be up to the different tow companies or businesses to make arrangements for vehicles to be stored at an approved site.

Second concern #2: "City's tow list" and "nonconforming" Business. The call list to my understanding is a 'rotating list of towing companies that have approved impound areas within the city, for the temporary storage required by the city.' (boats, trailers motor homes, 4 wheelers, etc). The definition of 'impound area' shouldn't limit the possibilities of present and future businesses, but only the impounds location. This might prevent possible confusion and animosity between conforming businesses, nonconforming businesses, the zoning administration and law enforcement; this would give a means to make the non conforming business, conforming and not hinder the needs of business, if used as a guideline.

Hopefully this opinion might help us all to realize everything within the boundaries of Cumberland is a "community "and it takes all of us.

