

**Excerpt from the  
CITY PLANNING COMMISSION MINUTES  
Minneapolis Community Planning & Economic Development (CPED)  
Planning Division**

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**MEMORANDUM**

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DATE: December 4, 2012

TO: Steve Poor, Planning Manager – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Hilary Dvorak, Interim Planning Manager, Community Planning & Economic Development - Planning Division, Development Services

CC: Jason Wittenberg, Interim Planning Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of October 29, 2012

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The following actions were taken by the Planning Commission on October 29, 2012. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners present: President Motzenbecker, Cohen, Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski – 8

Not present: Huynh (excused)

Committee Clerk: Lisa Baldwin (612) 673-3710

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**7. Auto Repair Roof Sign (BZZ-5733, Ward: 1), 331 Ulysses St NE (Brad Ellis).**

**A. Nonconforming Use:** Application by Eric Galatz, on behalf of Metro Star LLC, for a certificate of nonconforming use for a roof sign for the property located at 331 Ulysses St NE in the I1 Light Industrial District.

**Action:** The City Planning Commission adopted the findings and **denied** the certificate of nonconforming use to reestablish two nonconforming roof signs on one structure located at 331 Ulysses St NE in the I1 Light Industrial District and the UA University Area Overlay District.

**Aye:** Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski.

**Nay:** Cohen

**Absent:** Huynh

**Motion passed.**

**B. Conditional Use Permit:** Application by Eric Galatz, on behalf of Metro Star LLC, to amend the existing conditional use permit for major automobile repair to remove a condition relating to the removal of the roof sign for the property located at 331 Ulysses St NE in the I1 Light Industrial District.

**Action:** The City Planning Commission adopted the findings and **denied** the removal of condition 3, removal of abandoned roof signs, from the existing conditional use permit for Major Automobile Repair on the property located at 331 Ulysses St NE in the I1 Light Industrial District and the UA University Area Overlay District.

**Aye:** Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski.

**Nay:** Cohen

**Absent:** Huynh

**Motion passed.**

Staff Ellis presented the staff report.

**Commissioner Kronzer:** I just want to be clear about the definition of an abandoned sign. This sign appears to be made out of plywood or some surface that was painted over to be white or blank as you described it. Other signs that are abandoned, can you describe so I can understand what an abandoned sign is? An internally illuminated sign, how would that type of sign be abandoned?

**Staff Ellis:** You can read the strict definition in the report, but an abandoned sign is generally one with advertising a product or service no longer available on the site. If a sign is empty or blank it can be deemed abandoned in addition if it has been over one year not used as such as a sign. If it is a nonconforming sign it would be required to be removed as well.

**Commissioner Kronzer:** So there's a year time trigger in that as well?

**Staff Ellis:** Yes.

**Commissioner Wielinski:** If this was to get approval to become a sign again, would it then have the option to become a different kind of sign like an electronic billboard?

**Staff Ellis:** If this were approved, it would have the ability to come back for a conditional use permit. It'd require a nonconforming use because you'd be changing the sign type. As a roof sign it is nonconforming. Roof signs are a prohibited sign type. They would still come before the planning commission again should they choose to do any sort of change in illumination such as making it a dynamic or dynamic changeable copy sign.

**Commissioner Luepke-Pier:** In February 2008 when they went for a CUP and the staff recommendation was that the abandoned signs are removed...is it the same owner now that it was then that didn't object to it or has it changed hands since that time?

**Staff Ellis:** It is the same owner.

**Commissioner Luepke-Pier:** So back in 2008 there was a condition of approval for that conditional use permit that those signs be removed already and since that time...ok, I just wanted to verify it was the same owner.

President Motzenbecker opened the public hearing.

**Eric Galatz (150 S 5<sup>th</sup> St):** I represent the owner Metro Star and Bob Mack who is here to speak too. I have a couple of quick corrects to what the staff just reported. Section 109.80 does not address blank signs at all. It only prohibits maintenance of a sign that advertises a use that is no longer in place. We've never violated that condition; the sign has been blank whenever the space has been vacant because this law says we can't advertise a business that's not there. There's no place in the ordinance that says a blank sign is an abandoned sign. This sign has been well maintained, it has been advertised for use for as long as Metro Star has owned the building which is since 1996. This sign affects 331 and 335, they're two adjoining properties and what we're asking for is permission to maintain two sign faces, one for each building, which was the historic use of that sign. When Star Iron owned and used the property, they worked out of both buildings and had their advertising sign just at 331 Ulysses on the sign that's the subject of this application. We acquired the building in 1996, used it for about two years as the headquarters for Crown Cocoa Oil and Easy Stop Gas and during that period of time, we advertised our business on that sign. In 1998, we leased the property out to True Green; prior to that it was Showcase Landscape. The property was vacant from about 2004-2008 when we leased it to the current tenant. Medina made its application for approvals in 2008, with our consent as landlord to make the approvals, we weren't present at the hearing and didn't consent to the condition of removal of that sign and would not have had we been here. We didn't receive any direct notice of having lost that right in 2008, but when we discovered it, we did object to Planning staff. There is record in front of you, in our submittals, a couple of letters from us to the City. As staff said, between 2008-2011, Metro Star did not pursue any further action to have the City remove the condition about removing the sign, but the City hadn't taken any enforcement action at that point. You have this citizen on his own behalf who came to the City and ask what you had done by asking why you gave away his sign and that you didn't have the right to do that. There's a little bit back and forth with staff and then staff doesn't come back and order him to take his sign down; I think he rightly assumed he won his argument and was just moving along. In 2011 this came back to everyone's attention in the course of an inspection of the property which there was some objections to the way the tenant was maintaining the surface area, the parking lot and the fence around the parking lot. In the course of that enforcement, staff had also noticed that the sign had never been removed. In 2012 it's the first time we received notice that the sign needs to be removed. We've had some discussions at that point. Metro Star engaged council for some advice on how to address this issue. At that point, we met with staff and were advised that the simplest way of addressing this would be to come in here and get a certificate of nonconforming use for the existing sign and to ask for an amendment to the conditional use permit. We agree with staff that it's much simpler to address this as an amendment to the conditional use permit than to try to address this as a challenging condition that was wrongly imposed four years ago and not enforced for the last four years. We're here to apply for a nonconforming use permit. The sign has been well maintained over the course of the 18 years Metro Star has owned the building. It has been used intermittently by tenants. It has been used by Metro Star to advertise space for lease. It has never been used to advertise a business that is not in business at the site. The current tenant is using the sign to advertise its business. We'd appreciate a finding that the use is a lawful nonconforming use and to support that finding and allow the continued use of the property to remove the condition of approval from the conditional use permit. Bob Mack is here to speak for himself.

**Commissioner Luepke-Pier:** The packet indicates that the CUP was approved in February 2008 and then it just says that shortly afterward, the building owner contacted staff regarding that condition of approval. Do you know when that was?

**Eric Galatz:** May 19, 2008. He showed a picture of signs that had been in use for several years and noting that he's just learned that the planning commission has asked him to impose a

condition. Again, nobody has asked him until late 2011 or early 2012; nobody actually asked him to remove those signs.

**Commissioner Luepke-Pier:** The condition of approval said to take them down and then in May your client wrote a letter to Brad saying “do I really have to take them down” basically.

**Eric Galatz:** Basically, yes.

**Commissioner Luepke-Pier:** Did he receive a response?

**Eric Galatz:** I will let him speak for himself, but yes, there was some discussion. I think he spoke to Brad and Steve Poor. As far as Bob Mack is concerned, he left it at Brad telling him to ask Steve if it makes sense. He didn’t hear from anyone again until 2011 or 2012 when he got an order to remove the signs.

**Bob Mack:** I’m the owner of Metro Star and the signs in question. To give you some background, I’ve been in the oil business for over 40 years as an independent. I’m the one that really brought the low gas prices to the cities here for those 40 years. When I talked to Brad, I told him to talk to Steve Poor. I’ve known Steve for over 25 years. Steve was a sign inspector at one time so I’ve known him. Steve knows that I would never abandon a sign. If anything, I was always asking for more signs. I had several gas stations around the twin cities and throughout the state and I was always looking for more signs. The fact is, I need the income from the leases because I sold my business to the employees under a government regulated ESOP plan. I really need the income now from them. Both of these tenants have in their leases that they can use these signs. What happened was it was originally Medina Auto Repair and then it went to East Hennepin Auto, I didn’t know that they hired a fella by the name of Jeff McElmury to take them through the procedure of getting the conditional use permit. He never did contact me. I never knew what was going on. I never had any idea that there was anything in that conditional use permit about abandoned signs. The minute I saw it, which was after the fact, I came down to see Brad Ellis and I saw him two or three times and then I told him to talk to Steve Poor and let me know. Brad never got back to me at all. Brad got transferred into another department or started doing something else so he was no longer my representative. I talked to someone else in the office and he didn’t know anything about what was going on. I wrote another letter to Stuart Roberson. I told him at the time that the signs had not been abandoned. I wrote to him in May 2008. On September 17, I called Brad and asked him to talk to Steve Poor about the sign issue and get back to me. When I never heard back from Brad, I just assumed he had talked to Steve Poor who knew about signs and that everything was alright. I would never abandon a sign.

**President Motzenbecker:** I think the question that was raised that we should get some answer on is a blank sign equal to an abandoned sign, which doesn’t seem clear to me, why was there no advertising on these signs for three years?

**Bob Mack:** There was. I had some canvas signs up there, but when we would have a bad wind storm, the wind would tear them lose and then I’d have to hire a contractor to go back out and put them back up. That happened about three times during that period. It just happened at the times that they looked at the building, otherwise the signs were up. I needed to lease the buildings for my income. I was trying to lease them.

**President Motzenbecker:** Do you have images of signs up there during those times?

**Bob Mack:** I never took any pictures. I wouldn't have a reason to take any pictures of for lease signs.

**President Motzenbecker:** I was just trying to get clarification of why they were blank and being perceived as not being used if what you say as they're needed for your income and you want to put them on them is true, how come we're not seeing that on there? There has to be an instigation of someone looking at it and saying it's abandoned. It must have been unused for some time and that's where I'm a little unclear. If you could shed some light on that it'd be helpful for us.

**Bob Mack:** The signs were up and be up for a while and the wind would blow them down. I'd have to get a contractor to go out and put them up again. They tie the canvas signs on with ropes and as time goes on, when the wind blows, it wears the ropes and when you have a bad storm it tears them loose.

**Commissioner Kronzer:** I have a question for staff. The staff report said that no sign permits have been issued since 1974; are permits needed for "for lease" signage?

**President Motzenbecker:** Every time someone puts up a billboard they have to do a sign permit.

**Staff Ellis:** The difference between on premise and off premise advertising; this is on premise advertising. On premise advertising, if they change out the sign copy or face they are required to get a sign permit. A billboard for off premise advertising, one you receive that large one, there are very few and they're very restricted, those sign faces can come and go without any additional...

**Commissioner Kronzer:** So there's always been some tenant changeover since 1974 that would have required a sign permit.

**Staff Ellis:** That is correct. Staff did not find any permits in the record.

**Bob Mack:** When I talked to Brad and Brad got transferred...when I talked to this other fella in there, he told me that I needed to get a licensed sign hanger to take out permits and I'd be ok. I hired a sign company and they did take out permits and then they denied the permits.

**President Motzenbecker:** So before that, no licensed sign hanger? Just contractors.

**Bob Mack:** When I talked to Brad and told him to talk to Steve, I thought the issue was resolved.

**Eric Galatz:** On the question of abandonment, code section 531.483, the property owner can rebut the presumption of abandonment by presenting clear and convincing evidence by a period of time was due to circumstances beyond the property owner's control and then case law says that circumstances beyond the property owner's control includes inability to find a tenant. As I said earlier, the fact that the sign was being well maintained, the fact that it was painted as opposed to carrying on some tattered old sign advertising a business that wasn't there anymore. I think it's evidence of the fact that Mr. Mack did not intend to abandon that sign. He was advertising the sign as part of the benefit that tenants would have under the lease. The lease itself refers to the sign as part of the premises. If I could, I would like to show you some photos of the surrounding area. This dynamic billboard is not our sign. Part of the character of our neighborhood is billboards. Directly across the freeway from us is a billboard. This is the dynamic sign a few minutes after the other photo was taken. This is around the corner from us and a lawful

nonconforming sign. This is 531 Ulysses. This is a view from across the street from 531 Ulysses. I'm sorry, 351. We don't have an opportunity to put a sign on the face of this building. If we did, it would be shining into the face of a single family home across the street from us. In terms of impact on the neighborhood, I think it's a better thing for the neighborhood to have a small unlit paper sign on the building next door than it would be to have a moderate commercial sign on the face of this existing building. Without a sign, it really cannot be found.

**Commissioner Cohen:** I'd like to address the attorney for a moment here. I think this is going to turn on what the definition of an abandonment is. From what I've heard, in my opinion, the strongest evidence that it wasn't abandoned is not the surface of the sign itself, but the fact that leases for the property included usage of the sign. Had there been an abandonment, that wouldn't have been in the lease. I would like you to refer, if you can, to some case law here and tell us what Minnesota courts have done on this issue. I'm sure there must be some cases and I'd like to know how they defined the word abandonment for these purposes.

**Eric Galatz:** I don't have the cases themselves with me. The citation is County of Isanti vs. Peterson, it's a 1991 Court of Appeals case. There's a newer one with the City of Eden Prairie and it's a 2000 Court of Appeals case. In both instances, the facts in those cases did not relate to signs, they related to use of premises. For a period of more than a year, properties did not have a tenant and cities were asserting that the landowners had abandoned their rights to continue the nonconforming use because the building wasn't being put to that use during that year plus period.

**Commissioner Cohen:** If they were actually making an attempt, state of mind was that they had not abandoned it from their perspective. I think that is similar to what I heard Mr. Mack saying here. State of mind always was that it had not been abandoned, that he was attempting to find people to lease the property and that would always be a condition of the lease. I think it's analogous here.

**Eric Galatz:** When he knew that the City had tried to remove that right from him, he did try to answer that and preserve the right.

**Commissioner Luepke-Pier:** Could you show the relationship between the structure and the accessory structure and how they relate to the location of the signs?

**Eric Galatz:** The dark spot here is actually shadow so you're looking at a space between the two buildings. There's 331 and you can see the shadow of the sign in the corner right here. There's 351, which is a parking lot, and then 357 is the building. They're connected by a parking lot.

**Commissioner Luepke-Pier:** The two signs are on one of the buildings and they indicate that one sign is for one building and another sign is for the other?

**Eric Galatz:** That's right. The two buildings have historically been used together. Just the current tenants are not related to each other. We'd like to continue the use because it's an opportunity to advertise the smaller building that faces a couple single family homes.

**Bob Mack:** Both of the buildings are leased to immigrants. I have one here, but he's too shy to talk. They need those signs to operate their business.

President Motzenbecker closed the public hearing.

**Commissioner Cohen:** I'd like to move approval despite the staff recommendation. I want the finding to reflect that...

**President Motzenbecker:** Let's see if we have a second first. Is there a second? No. Would you like to try again?

**Commissioner Cohen:** No, I think I'm out of luck.

**Commissioner Schiff:** I will move staff recommendation (Tucker seconded). Mr. Galatz is a very good lawyer and a very good lawyer can articulate issues, but the issue that's not in front of us today is whether or not this sign was abandoned. That was a determination made by the Zoning Administrator and if Mr. Galatz and his client disagree with that determination, then the proper application is an appeal of the determination of the Zoning Administrator. That specific issue would be heard before the Zoning Board of Adjustment and they'd be able to dive into it and consider the precedent setting ramifications of challenging the Zoning Administrator on the issue of abandonment. That is not the road we should walk down today, that's not what this public hearing was noticed for. What's just before us is the facts that they were established. Being that the ordinance that takes away the right of businesses to have rooftop signs was passed in 1999, the intention of that ordinance was to see that these signs come down as they are not used and staff clearly demonstrated evidence to us today in photographs that this sign was not used continuously. I don't see this as really being an issue of abandonment, just whether or not we're going to treat this business and this property like we treat all others in the zoning code and rooftop signs are not allowed.

**Commissioner Cohen:** There is strong evidence that it was not abandoned regardless of the fact that it was actually used. The strong evidence being that the leases for a prospective tenant always refer to being able to have access to these signs and being able to use these signs. I think that overcomes the problem of actual usage during any given period of time. I'm not going to vote in favor of this denial.

**Commissioner Luepke-Pier:** I'm leaning towards agreeing with Commissioner Schiff only because I think that that on one hand your lawyer made a very convincing case about an abandoned sign and I think that'd be to overturn the ruling of the Zoning Administrator so it's not something we can necessarily deal with here. I find myself intrigued by that notion.

**Eric Galatz:** I know the public hearing is closed, but it's not true that the Zoning Administrator made a determination. The only place on record that says this sign was abandoned is in the staff report. There was no previous determination [tape ended]...

**Commissioner Schiff:** ...that determination, you just have to request it in writing from the Zoning Administrator.

**Eric Galatz:** The process in the zoning ordinance, if nobody has told us in advance that it's nonconforming, is for us to apply to the city. That's what a certificate of nonconforming use is about. If I have property or use that I know is nonconforming, I don't have to go ask the Zoning Administrator if they agree with me, I'm coming in and admitting to you that it's nonconforming and I'm asking for a certificate of nonconforming use that says it's lawfully nonconforming.

**Commissioner Schiff:** You're going to talk over me so I will stop giving you advice on how to pursue this on behalf of your client.

**Staff Ellis:** The zoning code has a little bit of a nuance in it and it is somewhat difficult. When we've had these rebuttals of abandonment go before the Board of Adjustment, they haven't been taken through as appeals of the determination of the Zoning Administrator, they've been taken through as certificates of nonconforming use. In a sense, this is that same application. It's before the planning commission because of the condition of approval for the conditional use permit otherwise this application would have just gone before the board.

**Commissioner Schiff:** So does this applicant have the right to appeal the determination of the Zoning Administrator and to challenge to the abutment in which case it's not a nonconforming sign it would be then the abandonment would be determined to be a conforming sign?

**Staff Ellis:** It would not be determined to be conforming. It would be a lawful nonconforming. That is a good question. I don't know if that would be a second separate path and that's one of the difficulties with the way the code is written in terms of the nonconforming uses on that. Whether there is that separate challenge path or whether this is the only challenge path.

**Commissioner Luepke-Pier:** In regard to the first part about it being nonconforming, I think it all hinges on whether it's an abandoned sign or not and I do think that's contingent on the definition and how that's interpreted. As far as a conditional use permit, I'm not fully convinced because one of the things that strikes me is as much as one building was covered in shrubbery and plantings, I think it's interesting that you'd have two rooftop signs for two businesses, one of which can only be viewed really from up close then because it's obstructed by single family homes. I don't know why you wouldn't want a sign on the building face itself to tell people what it is since it's separated by a vast parking lot from the other building. I'm not sure that it warrants having a rooftop sign for that building. I can see the argument in the one but I'm not buying it for the other.

**President Motzenbecker:** We have before us the staff recommendation of item A to deny the reestablishment of two nonconforming roof signs.

**Aye:** Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski

**Nay:** Cohen

**Motion passed.**

**Commissioner Schiff:** I will move staff recommendation for item B (Tucker seconded).

**Aye:** Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski

**Nay:** Cohen

**Motion passed.**