

**Excerpt from the  
ZONING BOARD OF ADJUSTMENT MEETING  
Community Planning & Economic Development (CPED)**  
250 South Fourth Street, Room 300  
Minneapolis, MN 55415-1385  
(612) 673-3153 Phone  
(612) 673-2526 Fax

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The following actions were taken by the Zoning Board of Adjustment on April 19, 2016.

Board Members: Sean Cahill, Anja Drescher, John Finlayson, Eric Johannessen, Dan Ogiba, Matt Perry, Dick Sandberg, Jacob Saufley, Ami Thompson

Board members absent: Eric Johannessen and Anja Drescher

Committee Clerk: Fatimat Porter 612.673.3153

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#### **ITEM SUMMARY**

##### **Item # 5**

**2636-2638 West Broadway, Ward 4**

**Staff report by [Janelle Widmeier](#), BZZ-7516**

The Department of Community Planning and Economic Development recommends that the Zoning Board of Adjustment adopt staff findings for the application by State Autos Corp. for the properties located at 2636-2638 West Broadway:

##### **A. Certificate of nonconforming use.**

Action: The Zoning Board of Adjustment **denied** the application for a certificate of nonconforming use to establish legal nonconforming rights for the sale of used vehicles located in the OR2 High Density Office Residence District.

**Absent:** Johannessen and Drescher

**Aye:** Cahill, Finlayson, Ogiba, Sandberg, Saufley, Thompson

**Motion passed**

#### **TRANSCRIPTION**

**Staff Widmeier presented the report.**

**Chair Perry:** Thanks for the presentation. Any questions of staff? Mr. Sandberg.

**Board Member Sandberg:** Thanks Mr. Chair. Ms. Widmeier, were the notifications of the absence of the license given to the property owner or the operator of the business?

**Staff Widmeier:** Both. So, there's been more than one dealer operating here. So back in 2013 a different dealer than the applicant here today. But first a notice was sent to the dealer and then a notice was sent to the property owner when no action had been taken. So it's been both.

**Chair Perry:** Other questions of staff? I have a question. I just want to make sure I have all the dates right here. I think you said, and the staff report said, that there were citations issued in 2013, 2014 and 2016, this year.

**Staff Widmeier:** That's correct.

**Chair Perry:** Do you know why there was not a citation issued in 2015?

**Staff Widmeier:** I do not. I didn't find any records for that time period.

**Chair Perry:** Ok, alright. And just to be clear...maybe I'll ask it a different way. The staff report on page three, it says per section 53120 of the zoning code, legal nonconforming uses and structures shall be allowed to continue so long as they remain otherwise lawful. Is there any way for this business to have been operating lawful without a big dealer's license?

**Staff Widmeier:** No. That's the determination that was made. IN order for them to remain lawful, they would have had to have that license at the time that they were operating.

**Chair Perry:** Ok, thanks. Mr. Sandberg.

**Board Member Sandberg:** Thank you again. Again just to clarify, staff is not contending that the property was not used as an automobile dealership; it's just contending that that operation was not lawful because of lack of a license.

**Staff Widmeier:** That's correct.

**Board Member Sandberg:** Thank you.

**Chair Perry:** Alright, thank you very much. Is the applicant present? So, the way this works is, I'll give the applicant 15 minutes to talk. And then anybody else that would like to speak in favor of the application, I'll give a couple of minutes. Anybody that would like to speak against it gets a couple of minutes as well. So if the applicant would like to step forward and give testimony, or the applicant's representative.

Public comment off microphone.

**Chair Perry:** If you want to speak on behalf of the applicant, you may very well do so sir; if you could give your name and address for the record.

**Dale Ebel (27295 Fremont Dr):** I have a little bit of memory lapse. I was there for like 25 years and I do believe that they did have, people had a license at the state gave them a license that was signed for. But they didn't pay the city license. I didn't know that they didn't have the city license. So they did have a license to sell from the state.

**Chair Perry:** So, just to be clear. Your contention is they had a state license.

**Dale Ebel:** Had a state dealer's license.

**Chair Perry:** But not a city dealer license.

**Dale Ebel:** Correct. And the one in 2016, I just had a few cars there. I just tried to make it, I'd been paying \$5,000 a year taxes in the times it was closed. In (20)09 when I got it closed, that's when I had a fire. (20)09 or (20)10 I don't know the exact, but you guys would be able to look it up. I should have looked it up and brought the paper I guess. But that was, I didn't think there'd be in resistance on anything so I didn't prepare as well. But I had a fire and it took me over a year to fix it because the City keeps some money, a certain amount of the money on fixing it. And I didn't have enough money to get it. I just didn't have the credit line to borrow more money. So it took me a while to get it so that I could get the money that the City was holding for me. Had I do it another way, I would have asked and I probably could have borrowed on that money. Anyway, that's what took me so long to fix it after the fire.

**Chair Perry:** Sir, it seems like in 2011, there was a city license issued to whoever was running the business at that time. Is that correct?

**Dale Ebel:** I don't know.

**Chair Perry:** That's what staff is saying.

**Staff Widmeier:** (off microphone) through July 2011.... (inaudible).

**Dale Ebel:** Ok, yeah. So that must have been after the fire. It was right about that time.

**Chair Perry:** Do you acknowledge receiving the citations in 2013, 2014 and 2016 from the City?

**Dale Ebel:** No, I did, I received the one just lately because I was there. Because I kind of been staying down there trying to figure out what's going on. Because I was there for like 25 years, so I got everybody stopping by saying hi. I sold quite a few cars out of there for like (19)97 when I went there and then I bought the place. Then that was there until about (20)11 something in there.

**Chair Perry:** You don't recall getting a citation in 2013 or 2014?

Talking off microphone.

**Dale Ebel:** They weren't sent to my address or anything. They must have sent it to the car lot or something, I don't know. I thought I had my home address in there but I don't know.

**Staff Widmeier:** It was sent to the 2636 West Broadway property.

**Chair Perry:** Ok, thanks.

**Dale Ebel:** I don't know what to say. I just thought I was going to sit here and get approved so I wasn't prepared for nothing to tell you the truth.

**Chair Perry:** Ok. Well, what we need to do, as you probably have heard now, is this board made up of residents, needs to look at the information that we have been presented. As well as testimony from you and others and make a determination whether there has been a lapse of use and the non-conforming rights have been lost. So that's what we're trying to determine right now.

**Dale Ebel:** <Inaudible> Yeah I went to one of the neighborhoods, the Jordan area, and they said it was acceptable to them. <Asking questions of someone in audience off microphone> it went to another one, but I don't know.

**Chair Perry:** So, neighborhood groups are, it's good to go and talk with neighborhood groups. This body is the one that determines whether the non-conforming use rights will be given to you or not.

**Dale Ebel:** Ok. Yep, I talked to the Jordan one. We were there; exactly it was on Veterans Day, the day we were there, on that meeting. And then, I used to be in the neighborhood ones there but now, I'm getting a little older and I'm trying to get out of it. That's my son there, that's trying to keep on, trying to rent it out. I did offer the City when we did have the fire, and said if you wanted to buy it out or something, I would sell it real reasonable before I started putting money in it, and then I would, you know. And everybody said you're crazy, and I'm going, I know everybody down there. They honk the horn; I've been down there for 25 years.

**Chair Perry:** So, the reason why I'm asking about the 2013, 2014 and 2016 citations, that's the point in which you did not have a motor vehicle dealers license, which would indicate you were not operating the business lawfully anymore. And why you would then be considered by the staff's contention that your non-conforming rights were lost.

**Dale Ebel:** Unhuh. But I've known other business that get their rights brought back. You know, that have, they did it and then they go before the board and then they say well I guess there isn't.....

**Chair Perry:** That's what we're trying to determine. We're guided by the city law as to whether we can grant non-conforming use rights. So that's what we're trying to determine by testimony from you and staff report. Do you have anything else you want to add?

**Dale Ebel:** No, that's fine. Thank you.

**Chair Perry:** Thank you very much. Does anyone else want to speak in favor of this application? I see no one. On last time, you want to add something sir?

**Dale Ebel:** Do I go before the neighborhood thing more? We went through the neighborhood, the council, is what we went to. I didn't go to all the neighbors or if it's not approved for some reason today, should I still go or.....

**Chair Perry:** If it's not approved then you can see Ms. Widmeier about what your options are going forward. This body is, makes the determination. Briefly you can appeal this body's decision if you don't agree with it, but, going back, the neighborhood groups do not make approvals of this nature. That's the responsibility of the Zoning Board of Adjustment. Alright, I understand no one else would like to give public testimony in support of this application. Does anybody want to speak against this application? I see no one. Let's close the public hearing; board comment? Ms. Thompson.

**Board Member Thompson:** Yes, thank you. I think there may be room to interpret the law around this differently. And I'd be curious to hear my fellow board members thoughts. I'm looking at it right now and it's talking about the discontinuance of non-conforming rights. And it only really speaks to the land not being used for that purpose anymore. It only really speaks to, was this not a place where they sold cars anymore. The lawful aspect seems like, to continue being legally non-conforming would need to be legal; but it may not be grounds for losing your non-conforming rights. So maybe somebody that has a lawyer background could chime in and tell me what they think. But I feel like there could be some grounds for reading the law in that way.

**Chair Perry:** Thank you for those comments. I'll just respond that in, we're looking at this case specifically but, often times when we have dealt with multiplexes, whether their use has been lawful, we look at rental licenses and whether there have been rental license issued or not. So I think there is, I am not an attorney, but I think there is precedent for using that, at least on this board as a guide to whether the properties are being used lawfully. Does anybody else want to respond to Ms. Thompson? Mr. Saufley.

**Board Member Saufley:** Thank you Mr. Chair. I'll just add that I find the staff report and point of view persuasive. Simply put, that while there may have been activities going on, those activities in addition to the non-conforming were also unlawful. Such that it negates any benefit to continuing the use; if that sort of makes sense. The fact that it's unlawful negates the fact that it existed in the context of a lawful non-conforming use. An unlawful

non-conforming use does not preserve the rights of a lawful non-conforming use is the argument staff presents and that's an argument that I am in favor of supporting.

**Board Member Thompson:** Yea, thank you I understand. I just haven't decided yet. That's very helpful though, thank you.

**Chair Perry:** Any other board comment on this item? Mr. Ogiba.

**Board Member Ogiba:** Thank you Chair Perry. In reading through staff's report and looking at some of these items, there are multiple references to times where, I believe the applicant was made aware of the requirements of the City of Minneapolis in order to receive proper licensing for this type of business. To the point when you look at the lease that was dated in July of 2014, in a handwritten portion of the lease that was in there between the property owner and the tenant, there's specific handwritten comment made to, must receive and must apply and receive proper licensing for this business. There's been multiple history here put together of opportunities for this to be remedied and for the applicant to received proper licensing. To the best of knowledge or any testimony or additional materials that have presented, I haven't seen that. So I support staff's position on this particular item and application.

**Chair Perry:** Thanks for those comments. Any other board comment? Mr. Sandberg.

**Board Member Sandberg:** I think one of the few arguments that the applicant may have is, since he was leasing the property to another operator and the notification of license requirements did not arrive at his home address and he was not a resident or necessarily expected to be at that property, he may not have received those notifications. If that were the case, I think he has an argument to say he was not responsible for the non-conforming use that was, or the unlawful use, that was occurring on his property; but I think it's a fairly shallow argument. I tend to support staff recommendation because the zoning of this area was changed to eventually cycle out of this use. And this is an opportunity to see that property used as the master plan of the City and the existing zoning represent.

**Chair Perry:** Thank you for those comments Mr. Sandberg. Any other comments? Mr. Cahill, do you have something to add?

**Board Member Cahill:** The Chair noted in asking staff very quickly about the contention as to whether or not, and I think the question does boil down to one question is, does for a non-conforming use to be continuous must be legal. In the sense, must it abide by all other regulations? I think that, based on staff findings, I do read that, if it's not explicitly showing within the code that is what is necessary to establish a legal non-conforming use. Is that, this is a grant, there are licenses, you are expected to abide by all of the conditions of the city code. Whether that is the fault of the tenant or the property owner, I don't think that, that's a matter of discussion between those two. But I do think that there has been,

essentially, illegal use of the property going on since that time; and based on that I support staff recommendation.

**Chair Perry:** Thank you Mr. Cahill. And just to be clear with regard to the licensing?

**Board Member Cahill:** An unlicensed business, yes.

**Chair Perry:** Ok. Thanks for that clarification. Any other comments? Not seeing any, I'd entertain a motion of some sort.

**Board Member Cahill:** Mr. Chair, I move staff recommendations.

**Chair Perry:** There's a motion to adopt staff recommendations and deny the application for a certificate of non-conforming use. Is there a second? I heard Mr. Saufley second that motion. Any further discussion? Seeing none, will the clerk please call the roll?

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**Motion passed**