

Department of Community Planning and Economic Development - Planning Division
Expansion of Non-conforming use, Conditional Use Permit
BZZ-5061

Date: January 10, 2011

Applicant: Clay Lambert

Address of Property: 2700 University Avenue SE

Project Name: Metro Petro

Contact Person and Phone: Clay Lambert (612) 298-8983

Planning Staff and Phone: Kimberly Holien (612) 673-2402

Date Application Deemed Complete: December 15, 2010

End of 60 Day Decision Period: February 13, 2011

Ward: 2 Neighborhood Organization: Prospect Park/East River Road

Existing Zoning: C1 Neighborhood Commercial District, PO Pedestrian Oriented Overlay District

Zoning Plate Number: 22

Legal Descriptions: Not applicable

Existing Use: Automobile convenience facility

Concurrent Review:

Conditional use permit: to extend the hours of operation of an existing automobile convenience facility to 5:00 a.m. to 1:00 a.m. Sunday through Wednesday and 5:00 a.m. to 3:00 a.m. Thursday through Saturday. The permitted hours of operation in the C1 District are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday.

Expansion of a non-conforming use: to allow extended hours of operation for an existing automobile convenience facility.

Applicable zoning code provisions: Chapter 525, Article VII Conditional Use Permits; Chapter 531, Non-conforming uses and structures; Chapter 548 Commercial Districts

Background: Clay Lambert has submitted two applications to allow extended hours of operation for an existing, non-conforming automobile convenience facility with a car wash. Automobile convenience facilities are not allowed in the C1 district or in the Pedestrian Oriented overlay district. The existing car wash is also prohibited in the C1 district. Both of these uses are legally non-conforming as they were established prior to the property being rezoned.

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The permitted hours of operation in the C1 Neighborhood Commercial District are from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and from 6:00 a.m. to 11:00 p.m. Friday and Saturday. The requested hours are 5:00 a.m. to 1:00 a.m. Sunday through Wednesday and 5:00 a.m. to 3:00 a.m. Thursday through Saturday. A conditional use permit is required to allow extended hours of operation. Due to the non-conforming status of the uses, an application for an expansion of non-conforming use is also required to allow additional hours of operation. The applicant is only requesting extended hours of operation for the automobile convenience facility, not the car wash.

A number of land use applications were approved by the Zoning and Planning Committee of the City Council on February 15, 2007 to allow the existing use to be constructed. A condition of approval from that land use application specified that canopy lighting shall not be operated after 11:00 p.m. The request for extended hours at this time would amend that condition of approval, which was not tied to any one specific application. The site is generally in compliance with the previously approved site plan from 2007. However, the applicant is currently working with Zoning Enforcement staff on two issues. The screen for the living wall on the south side of the building has been installed, but the associated landscaping was not planted in time to start with the last growing season. Also, the concrete parking surface around the fuel pumps is chipping and must be repaired or replaced. Staff is recommending that each of these items be addressed as a condition of approval.

Automobile convenience facilities are subject to specific development standards, as outlined below:

- (1) The sale or repair of vehicles shall be prohibited.
- (2) The use shall employ best management practices regarding the venting of odors, gas and fumes. Such vents shall be located a minimum of ten (10) feet above grade and shall be directed away from residential uses. All storage tanks shall be equipped with vaportight fittings to preclude the escape of gas vapors from the fill pipes.
- (3) Service area canopy light fixtures shall be completely recessed within the canopy so that the lenses shall not extend beyond the surface of the canopy.
- (4) The total light output used for illuminating service area canopies shall not exceed forty (40) initial bare-lamp lumens per square foot of canopy.
- (5) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.
- (6) Unattended, automated dispensing of gasoline or other engine fuel shall be prohibited.

The car wash use is also subject to the following specific development standards:

- (1) Water from the car wash shall not drain across any sidewalk or into a public right-of-way.
- (2) Vacuum facilities shall be located in an enclosed structure or located away from any residential use to avoid the impacts of noise.
- (3) All indoor and outdoor activities shall be subject to the regulations governing hours open to the public, as specified in the zoning district in which the car wash is located.
- (4) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

Staff received a letter from the Prospect Park and East River Road Improvement Associated dated December 14, 2010 in support of the requested hours. Said letter has been attached for reference.

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EXPANSION OF NON-CONFORMING USE: (To extend the hours of operation for a non-conforming automobile convenience facility and car wash to 5:00 a.m. to 1:00 a.m. Sunday through Wednesday and 5:00 a.m. to 3:00 a.m. Thursday through Saturday)

Findings as Required by the Minneapolis Zoning Code for the Expansion of a Legal Nonconforming Use:

1. A rezoning of the property would be inappropriate.

The future land use of the site is designated as mixed use by *The Minneapolis Plan for Sustainable Growth*. University Avenue is a commercial corridor in this location and the site is across the street from the boundary of an Activity Center. The property was placed in the current zoning districts on January 1, 2008. There has not been a change to the trend of development in area since that time. The Central Corridor line will be constructed north of the site, within the Transitway, and the site is approximately two blocks west of a future transit station, as shown on the future land use map. Transit Stations Areas include parcels within a one-half mile radius of transit stations. The Comprehensive Plan calls for pedestrian-oriented services and retail uses as part of higher density development near transit stations. Furthermore, the Comprehensive Plan discourages uses that diminish the transit and pedestrian character of areas around transit stations, such as automobile services, surface parking lots, and drive-through facilities. Rezoning the site to remove the Pedestrian Oriented Overlay district would not be appropriate and would not be consistent with *The Minneapolis Plan for Sustainable Growth*.

2. The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

The surrounding area contains a mix of uses and zoning districts. The parcel to the north is zoned OR2 and contains a large office building. The parcel to the west, across 27th Avenue, is zoned C2 and contains a restaurant use. The parcel at the opposite corner of the intersection is zoned I1 and contains an industrial use. The parcel to the west is zoned OR2 and also contains an industrial use. There are residential uses to the south. These residential parcels are zoned R4.

Automobile related uses are not typically compatible with residential uses because they produce more traffic, noise, and odors than other nonresidential uses. The use is primarily automobile-oriented. The gas pumps and parking area, however, are located on the north side of the building, away from the residential uses. The car wash is located on the south side of the building with cars entering from University Avenue and exiting onto 27th Avenue. An existing six foot high wood fence provides screening between the residential uses and car wash. Allowing limited extended hours of operation for the automobile convenience facility may not have an adverse impact on the adjacent residential uses due to the layout of the site. However, in consideration of the adjacent residential uses, extended hours of a lesser degree may be more appropriate for this location. Allowing extended hours of 5:00 a.m. to 12:00 midnight Sunday through Thursday and 5:00 a.m. to 1:00 a.m. on Friday and Saturday may be more appropriate for the site. The applicant is not requesting extended hours of operation for the car wash, which will reduce any impact on neighboring residential uses. To further mitigate any impact on the adjacent

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residential uses, staff recommends the use of any outdoor speakers be limited to the hours permitted in the C1 District.

3. **The enlargement, expansion, relocation, structural alteration or intensification will not result in significant increases of adverse, off-site impacts such as traffic, noise, dust, odors, and parking congestion.**

Allowing extended hours of operation for this use is not expected to contribute to traffic congestion in the adjacent public streets. The site has adequate off-street parking and stacking room available adjacent to the pump islands. A variance was approved in 2007 to reduce the stacking requirements for the pump islands and car wash. The parking requirement for the automobile convenience facility is 9 spaces and the car wash requires 2 spaces, for a total of 11 parking stalls. There are 15 parking stalls provided on-site. The additional hours of operation are not expected to generate odors or dust. The use is primarily automobile-oriented. Noise impacts associated with vehicles can include doors closing, engine and stereo noise and general traffic noise. The applicant is not requesting extended hours of operation for the car wash, which will limit the impact of the additional hours on the residential uses to the south.

4. **The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.**

The applicant has recently redeveloped the site and made a number of improvements to the property that has improved its appearance. However, extending the hours would not improve the appearance of the neighborhood nor would it likely have an affect on the stability of the neighborhood. As stated above, staff is recommending limited extended hours of operation to reduce the impact on the neighboring residential properties.

5. **In districts in which residential uses are allowed, the enlargement, expansion, relocation, structural alteration or intensification will not result in the creation or presence of more dwelling units on the subject property than is allowed by the regulations of the district in which the property is located.**

No dwelling units are proposed or existing.

6. **The enlargement, expansion, relocation, structural alteration or intensification will not be located in the Floodway District.**

The property is not located in the Floodway District.

CONDITIONAL USE PERMIT (To extend the hours of operation for an automobile convenience facility to 5:00 a.m. to 1:00 a.m. Sunday through Wednesday and 5:00 a.m. to 3:00 a.m. Thursday through Saturday)

Findings as Required by the Minneapolis Zoning Code:

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The Minneapolis City Planning Department has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.

The permitted hours of operation in the C1 District are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday. The applicant proposes to be open until 3:00 a.m. on Thursday, Friday and Saturday, and until 1:00 a.m. Sunday through Wednesday. The site is on a commercial corridor and one parcel outside the boundaries of an Activity Center. Commercial corridors are identified as locations where automobile oriented uses are appropriate. The surrounding area contains a mix of uses and zoning districts. The parcel to the north contains a large office building. The parcel to the west, across 27th Avenue, contains a restaurant/reception hall use and the parcel to the west contains an industrial use. There are residential uses to the south.

Allowing hours of operation until 1:00 a.m. Sunday through Wednesday and 3:00 a.m. Thursday through Saturday may have a detrimental impact on the comfort and general welfare of neighboring residential uses. In consideration of the adjacent residential uses, extended hours of a lesser degree may be more appropriate for this location. Allowing extended hours to 12:00 midnight Sunday through Thursday and 1:00 a.m. on Friday and Saturday may be more appropriate for the site. These less intense hours should not prove detrimental to public health, safety, comfort or general welfare, provided the use complies with all applicable licensing and life safety ordinances. Similarly, allowing the use to open at 5:00 a.m. daily should not prove detrimental to adjacent uses.

2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

Staff uses the following criteria to determine compatibility of extended hours with the surrounding area:

- a) Proximity to permitted or conditional residential uses. As stated above, there are residential uses to the south. Of the residential parcels that the site borders, two are multi-family and one is a single-family home. Late night hours until 1:00 a.m. during the week and 3:00 a.m. on weekends may be detrimental to the surrounding residential uses in terms of noise, traffic and other nuisances. However, as recommended above, allowing hours of operation of 5:00 a.m. to 1:00 a.m. on Fridays and Saturdays and 5:00 a.m. to 12:00 midnight Sunday through Thursday would be more consistent with the character of the surrounding area and have a lesser impact on adjacent residential uses.
- b) Nature of the business and its impacts of noise, light and traffic. The use is primarily automobile-oriented. Noise impacts associated with vehicles can include doors closing, engine and stereo noise and general traffic noise. The applicant is not requesting extended hours of operation for the car wash, which will limit the impact of the additional hours on the

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residential uses to the south. Additional traffic would likely be generated after 10:00 p.m. Sunday through Thursday and after 11:00 Friday and Saturday with the extension of hours. The site has an approved lighting plan that limits any glare on neighboring properties or uses.

- c) Conformance with applicable zoning regulations, including but not limited to use, yards, gross floor area and specific development standards. The site is generally in compliance with the previously approved site plan, with the exception of the two issues noted above. The issues with the pavement and living wall must be addressed as a condition of approval. With the approval of the requested conditional use permit and accompanying expansion of non-conforming use application, the use would be in compliance with all applicable regulations.
- d) History of complaints related to the use. The applicant has submitted a report obtained from the Police Department that outlines all calls for service to the site or surrounding area. There were 23 calls for service to the site or surrounding area in 2010. Of these, at least two were traffic incidents and two were calls due a business alarm. The applicant noted that several of these complaints were not related to the automobile convenience facility. As of the writing of this staff report, staff had not received any feedback from the Commander of the 2nd Precinct.

The applicant submitted a copy of their security plan which includes security initiatives, employee training policies and security infrastructure that is currently implemented on the site. Said plan has been attached for reference.

3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.

Roads and utilities are existing and adequate. No physical modifications are proposed to the site as part of this application.

4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.

Allowing extended hours of operation for this use is not expected to contribute to traffic congestion in the adjacent public streets. The site has adequate off-street parking and stacking room available adjacent to the pump islands. A variance was approved in 2007 to reduce the stacking requirements for the pump islands and car wash. The parking requirement for an automobile convenience facility is one space per 500 square feet of gross floor area. The parking requirement is reduced by 25 percent because the site is located in the Pedestrian Oriented Overlay District. The existing building is 6,140 square feet, for a requirement of 9 spaces. The car wash requires one space per 40 feet of washing line or bay. The length of the washing line is 88 feet, requiring 2 parking stalls. The total parking requirement is 11 spaces and 15 spaces are located on the site. The parking spaces provided for the pump islands are not counted toward the minimum requirement.

5. The conditional use is consistent with the applicable policies of the comprehensive plan.

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The subject site is located on University Avenue, which is a commercial corridor in this location. Commercial corridors historically have been prominent destinations containing a mix of uses, with commercial uses dominating. The site is one parcel outside the boundaries of an activity center and near a future transit station. The site is designated as mixed use on the future land use map. The following policies of *The Minneapolis Plan for Sustainable Growth* apply to the site:

Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.

Policy 1.2: Ensure appropriate transitions between uses with different size, scale, and intensity.

1.2.3 Lessen the negative impacts of non-residential uses on residential areas through controls on noise, odors, and hours open to the public.

Policy 1.4: Develop and maintain strong and successful commercial and mixed use areas with a wide range of character and functions to serve the needs of current and future users.

1.4.3 Continue to implement land use controls applicable to all uses and structures located in commercial districts and corridors, including but not limited to maximum occupancy standards, hours open to the public, truck parking, provisions for increasing the maximum height of structures, lot dimension requirements, density bonuses, yard requirements, and enclosed building requirements.

Policy 1.7: Limit new and expanded auto-oriented uses in the city so impacts on the form and character of commercial areas and neighborhoods can be minimized.

1.7.2 Direct auto-oriented uses to locations on Commercial Corridors that are not at the intersection of two designated corridors, where more traditional urban form would be appropriate.

1.7.3 Auto-oriented uses should be designed with aspects of traditional urban form, to minimize the impact on the pedestrian realm.

Policy 1.10: Support development along Commercial Corridors that enhances the street's character, fosters pedestrian movement, expands the range of goods and services available, and improves the ability to accommodate automobile traffic.

1.10.1 Support a mix of uses – such as retail sales, office, institutional, high-density residential and clean low impact light industrial – where compatible with the existing and desired character.

1.10.2 Encourage commercial development, including active uses on the ground floor, where Commercial Corridors intersect with other designated corridors.

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1.10.3 Discourage uses that diminish the transit and pedestrian character of Commercial Corridors, such as some automobile services and drive-through facilities, where Commercial Corridors intersect other designated corridors.

Policy 1.12: Support Activity Centers by preserving the mix and intensity of and uses and by enhancing the design features that give each center its unique urban character.

1.12.1 Encourage a variety of commercial and residential uses that generate activity all day long and into the evening.

1.12.2 Encourage mixed use buildings, with commercial uses located on the ground floor and secure entrances for residential uses.

1.12.3 Encourage active uses on the ground floor of buildings in Activity Centers.

Policy 1.13: Support high density development near transit stations in ways that encourage transit use and contribute to interesting and vibrant places.

1.13.1 Encourage pedestrian-oriented services and retail uses as part of higher density development near transit stations.

1.13.3 Discourage uses that diminish the transit and pedestrian character of areas around transit stations, such as automobile services, surface parking lots, and drive-through facilities.

The automobile convenience facility is located across the street from an Activity Center. The Comprehensive Plan calls for uses that generate activity are various hours of the day in these locations. The existing automobile convenience facility, while non-conforming, is two stories in height and designed in a manner that is consistent with the adjacent urban form. Allowing some additional hours of operation for this use would be consistent with the above policies of the Comprehensive Plan. However, hours of operation until 1:00 a.m. during the week and 3:00 a.m. on weekends may be a nuisance for nearby residential properties. Staff recommends that, in lieu of the hours requested, the City Planning Commission approve extended hours of 5:00 a.m. to 1:00 a.m. on Friday and Saturday and 5:00 a.m. to 12:00 midnight on Sunday through Thursday.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.

The automobile convenience facility use is legally nonconforming because it was established before the PO overlay district was applied on the site. The car wash use is also legally non-conforming. There are currently two vending machines on the west side of the building, facing 27th Avenue SE. Vending machines are not allowed per the enclosed building requirement in Section 535.40 of the zoning code. These vending machines must be removed as a condition of approval, prior to commencing any extended hours on the site.

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RECOMMENDATIONS:

Recommendation of the Community Planning and Economic Development Department - Planning Division for the Expansion of Nonconforming Use:

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the expansion of non-conforming use to allow extended hours of operation of 5:00 a.m. to 1:00 a.m. Sunday through Wednesday and 5:00 a.m. to 3:00 a.m. Thursday through Saturday and in lieu thereof **approve** an expansion of non-conforming use to allow extend hours of operation of 5:00 a.m. to 12:00 midnight Sunday through Thursday and 5:00 a.m. to 1:00 a.m. Friday and Saturday for the property of 2700 University Avenue SE, subject to the following conditions:

- 1) The car wash shall comply with the permitted hours of operation in the C1 District. Those permitted hours are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday.
- 2) Except for emergency use, the use of outdoor speakers shall comply with the permitted hours of operation in the C1 District. Those permitted hours are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday.
- 3) The applicant shall remove all outdoor vending machines in compliance with Section 535.40 of the zoning code.
- 4) The concrete parking surface around the fuel pumps shall be repaired or replaced in accordance with Section 541.300 of the zoning code.
- 5) The living wall on the south side of the building shall be installed in accordance with the approved site plan per Section 530.120 of the zoning code.

Recommendation of the Community Planning and Economic Development Department - Planning Division for the conditional use permit for extended hours:

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the conditional use permit to allow extended hours of operation of 5:00 a.m. to 1:00 a.m. Sunday through Wednesday and 5:00 a.m. to 3:00 a.m. Thursday through Saturday and in lieu thereof **approve** a conditional use permit to allow extend hours of operation of 5:00 a.m. to 12:00 midnight Sunday through Thursday and 5:00 a.m. to 1:00 a.m. Friday and Saturday for the property of 2700 University Avenue SE, subject to the following conditions:

- 1) The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a

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conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.

- 2) The car wash shall comply with the permitted hours of operation in the C1 District. Those permitted hours are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday.
- 3) Except for emergency use, the use of outdoor speakers shall comply with the permitted hours of operation in the C1 District. Those permitted hours are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday.
- 4) The applicant shall remove all outdoor vending machines in compliance with Section 535.40 of the zoning code.
- 5) The concrete parking surface around the fuel pumps shall be repaired or replaced in accordance with Section 541.300 of the zoning code.
- 6) The living wall on the south side of the building shall be installed in accordance with the approved site plan per Section 530.120 of the zoning code.

Attachments:

1. Statements from applicant.
2. Letter from the Prospect Park and East River Road Improvement Associated dated December 14, 2010.
3. Correspondence.
4. Zoning maps.
5. Site plans and floor plans.
6. Photos.