

Department of Community Planning and Economic Development – Planning Division
Expansion of a Nonconforming Use and Conditional Use Permit
BZZ-4914

Date: September 20, 2010

Applicant: Assad A. Awaijane

Address of Property: 1700 Lake Street East

Project Name: Stop-N-Shop

Contact Person and Phone: Luis Caire, (612) 250-1701

Planning Staff and Phone: Janelle Widmeier, (612) 673-3156

Date Application Deemed Complete: August 19, 2010

End of 60-Day Decision Period: October 18, 2010

Ward: 9

Neighborhood Organization: East Phillips Improvement Coalition (adjacent to Powderhorn Park Neighborhood Association)

Existing Zoning: C2 Neighborhood Corridor Commercial District and PO Pedestrian Oriented Overlay District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 26

Legal Description: Not applicable for this application

Proposed Use: Automobile convenience facility with a car wash

Concurrent Review:

Expansion of a nonconforming use to extend the allowed hours open to the public of an automobile convenience facility and carwash from 11:00 p.m. Sunday through Thursday and from 12:00 a.m. Friday and Saturday to 24 hours a day, seven days a week.

Conditional use permit to extend the allowed hours open to the public of an automobile convenience facility and carwash from 11:00 p.m. Sunday through Thursday and from 12:00 a.m. Friday and Saturday to 24 hours a day, seven days a week.

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Applicable zoning code provisions: Chapter 531, Nonconforming Uses and Structures, Section 531.50(b); and Chapter 525, Article VII Conditional Use Permits.

Background: An automobile convenience facility with a car wash exists at the property of 1700 East Lake Street. The building was constructed in 1997. The Planning Commission approved a site plan review application in June of 1997. In 2007, the City Council approved a proposal for a car wash expansion on appeal. The addition was not constructed and those approvals have since expired.

The applicant is proposing to remain open to the public for 24 hours a day, seven days a week. In the C2 district, businesses are allowed to be open to the public from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and from 6:00 a.m. to 11:00 p.m. Saturday and Sunday. The existing use was established when the zoning code allowed uses to stay open until 11:00 p.m. Sunday through Thursday and until 12:00 a.m. on Friday and Saturday. It has nonconforming rights to remain open to the public to the hours previously allowed.

The site is located in the C2 district and the PO overlay district. Although automobile convenience facilities and car washes are conditional uses in the C2 district, they are prohibited in the PO overlay district. The PO overlay was adopted by the City Council in January of 2005 as part of a rezoning study for the *Hiawatha/Lake Station Area Master Plan*. Because the uses were established before the overlay district was placed on the site, the uses are legally nonconforming. Any expansion of a nonconforming use requires authorization from the planning commission.

A conditional use permit is required to extend the hours. Upon approval of a conditional use permit, the action must be recorded with Hennepin County as required by state law.

As of the writing of this report, staff has not received any correspondence from the neighborhood group. Staff will forward comments, if any are received, at the City Planning Commission meeting.

EXPANSION OF A NONCONFORMING USE: To extend the allowed hours open to the public of an automobile convenience facility and carwash from 11:00 p.m. Sunday through Thursday and from 12:00 a.m. Friday and Saturday to 24 hours a day, seven days a week.

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*. Lake Street is designated as a commercial corridor. The site is zoned C2 with a PO Overlay. The overlay district was adopted by the City Council on January 14, 2005 through a rezoning study done as an implementation step of the *Hiawatha/Lake Station Area Master Plan* adopted in 2001. Although this site is not located within the mapped boundaries of the Lake Street/Midtown Transit Station Area in *The Minneapolis Plan for Sustainable Growth*, the small area plan supports transit oriented development within ½ mile radius of the LRT station. The plan states,

“It is anticipated that new development regulations will be applied in the form of a TOD overlay district designed specifically to promote mixed-use development, neighborhood redevelopment and rehabilitation, and pedestrian-oriented design. The Lake Street overlay district boundaries should correspond to the ½ mile radius prescribing the station area plan limits.”

The plan also anticipates transit oriented development would occur over a twenty-year time period. Part of the subject site is within ½ mile of the LRT station, which is why the overlay district was added. Because of the long term land use goals for this site, a rezoning of the property would not be appropriate.

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

The uses directly to the south, east and west are nonresidential; however, they are separated from the subject site by streets. The other uses on the block are primarily low density residential, including the adjacent properties.

Since the beginning of 2002, seven businesses on Lake Street between Hiawatha Avenue and Chicago Avenue (the east boundary of the East Phillips and Corcoran and the west boundary of the Midtown Phillips and Powderhorn Park neighborhoods, respectively) have been approved to extend their hours open to the public. The uses that were allowed to extend their hours were restaurants and reception halls. None were allowed 24 hours, except one for delivery only. Extending the hours for this business has the potential to affect the surrounding neighborhood.

The use is primarily automobile-oriented. The gas pumps and parking area are located to the east of the building. Vacuum facilities are located on the north side of the site across the alley from a residential structure. The applicant has indicated that the vacuum would be turned off at 10:00 p.m., but that it may be used after that time at the discretion of the employees. Car wash traffic exists onto 17th Avenue, a primarily residential street. If approved, traffic would increase because the hours open to the public would be extended. Noise impacts associated with vehicles can include the following: doors closing, engines, stereos, no mufflers or mufflers that let sound through. Human voices can also have adverse impacts. On-site lighting includes the following: lights under the gas canopy, three pole mounted lights around the parking lot and gas pumps, and eight lighted signs.

Automobile related uses are not typically compatible with residential uses because they produce more traffic, noise, and odors than other nonresidential uses. An existing six foot high wood fence and a hedge provide screening between the alley and the parking area and vacuum. Although screening is provided as a buffer, it does not likely block all noise, light and odors from the nearby residences. The extension of hours would likely increase the adverse effects on nearby residences.

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.

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The expansion of the non-conforming use would result in an increase of adverse off-site impacts. The applicant would not likely extend the hours open to the public without an expectation that the business would attract additional customers and vehicular traffic. The site has vehicle access from 18th Avenue and Lake Street. Vehicles exiting the car wash must exit to 17th Avenue. Seventeenth and 18th Avenues are primarily residential streets. Additional commercial traffic could increase conflicts with residential and pedestrian traffic. Noise impacts associated with vehicles can include the following: doors closing, engines, stereos, no mufflers or mufflers that let sound through. The applicant has indicated that the vacuum would be turned off at 10:00 p.m., but that it may be used after that time at the discretion of the employees. Human voices can also have adverse impacts. On-site lighting includes the following: lights under the gas canopy, three pole mounted lights around the parking lot and gas pumps, and eight lighted signs.

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

Extending the hours would not improve the appearance of the neighborhood nor would it likely improve the stability of the neighborhood. The Police Department expressed concerns about extending the hours of operation. They noted that there are a lot of service calls near the subject site. Service call records for the last year were provided for the intersection of 17th Avenue and Lake Street. Of the 106 calls received, 29 were received after the business closes. The police are concerned that nefarious activity would increase in the area if the business were open 24 hours.

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 allowed hours open to the public of an automobile convenience facility and carwash from 11:00 p.m. Sunday through Thursday and from 12:00 a.m. Friday and Saturday to 24 hours a day, seven days a week.

Findings as required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Planning Division 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.

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The Business Licensing Division of the Regulatory Services Department did not cite any history of problems related to this use. However, they did express concern about operating 24 hours in close proximity to residential uses. The specific concern pertained to loitering and human voices, which are not subject to noise ordinances. The Police Department also expressed concerns about extending the hours of operation. They noted that there are a lot of service calls near the subject site. Service call records for the last year were provided for the intersection of 17th Avenue and Lake Street. Of the 106 calls received, 29 were received after the business closes. The police are concerned that nefarious activity would increase in the area if the business were open 24 hours. They also provided service call records of the subject site for the last year. Because of the on-going challenges in the immediate area of the subject site, the extension of hours would likely be detrimental to public health, safety, comfort or general welfare.

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.

Residential uses are located immediately north of the site. The block where the subject site is located and on surrounding blocks, properties with Lake Street frontage are primarily commercial. Once off of Lake Street, the use of properties transitions into primarily low density residential. The use is primarily automobile-oriented. The gas pumps and parking area are located to the east of the building. Vacuum facilities are located on the north side of the site across the alley from a residential structure. Car wash traffic exists onto 17th Avenue, a primarily residential street. Noise impacts associated with vehicles can include the following: doors closing, engines, stereos, no mufflers or mufflers that let sound through. The applicant has indicated that the vacuum would be turned off at 10:00 p.m., but that it may be used after that time at the discretion of the employees. If approved, traffic would increase because the hours open to the public would be extended. On-site lighting includes the following: lights under the gas canopy, three pole mounted lights around the parking lot and gas pumps, and eight lighted signs. A six foot high solid wood fence and shrubs are located along the north lot line; however, this buffer would not block all sounds, odors, and lighting from the use when most residents would be sleeping. An existing six foot high wood fence and a hedge provide screening between the alley and the parking area and vacuum. Although screening is provided as a buffer, it does not likely block all noise, light and odors from the nearby residences. The extension of hours would likely increase the adverse effects on nearby residences.

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

The site is served by existing infrastructure. The site has curb cuts on Lake Street, 17th Avenue and 18th Avenue.

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

The minimum parking requirement for the existing use is four spaces. Fifteen parking spaces exist. The extension of hours should have little effect on traffic congestion.

5. Is consistent with the applicable policies of the comprehensive plan.

In addition to the principles and policies discussed in the expansion of a nonconforming use section of this report, the following apply:

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

Applicable Implementation Step

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.

Applicable Implementation Step

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.

Staff comment: Residential uses are located directly north of the site. The Police Department is concerned that extending the hours of operation of this business will increase the existing crime problems in the immediate area in the a.m. hours. As previously discussed, noise, odors, and lighting are typical adverse effects of automobile oriented uses. The extended hours would not be consistent with these policies.

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 use is legally nonconforming because it was established before the PO overlay district was applied on the site. Before these applications were deemed complete, bringing the site into compliance with the previously approved site and landscaping plans and addressing several other zoning violations was required. The compliance issues have since been remedied.

Additional Findings Required to Extend Hours Open to the Public:

In addition to the conditional use standards, the city planning commission shall consider, but not be limited to, the following factors when determining the hours open to the public:

1. Proximity to permitted or conditional residential uses.

Residential uses are located immediately north of the site in the R2B zoning district. The block where the subject site is located and on surrounding blocks, properties with Lake Street frontage are primarily commercial. Once off of Lake Street, the use of properties transitions into primarily low density residential with R2B zoning. The gas pumps and parking area are located to the east of the building. Vacuum facilities are located on the north side of the site across the alley from a residential structure. A six foot high solid wood fence and shrubs are located along the north lot

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line. Car wash traffic exists onto 17th Avenue, a primarily residential street. An existing six foot high wood fence and a hedge provide screening between the alley and the parking area and vacuum. Although screening is provided as a buffer, it does not likely block all noise, light and odors from the nearby residences. The close proximity to residential uses will likely result in adverse impacts to the residences.

2. 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 the following: doors closing, engines, stereos, no mufflers or mufflers that let sound through. The applicant has indicated that the vacuum would be turned off at 10:00 p.m., but that it may be used after that time at the discretion of the employees. If approved, traffic would increase because the hours open to the public would be extended. On-site lighting includes the following: lights under the gas canopy, three pole mounted lights around the parking lot and gas pumps, and eight lighted signs. The extension of hours would likely increase the adverse effects on nearby residences.

3. Conformance with applicable zoning regulations, including but not limited to use, yards, gross floor area and specific development standards.

The use is legally nonconforming because it was established before the PO overlay district was applied on the site. Before the application was deemed complete, bringing the site into compliance with the previously approved site and landscaping plans and addressing several other zoning violations was required. The compliance issues have since been remedied.

4. History of complaints related to the use.

The Business Licensing Division of the Regulatory Services Department did not cite any history of problems related to this use. However, they did express concern about operating 24 hours in close proximity to residential uses. The specific concern pertained to loitering and human voices, which are not subject to noise ordinances. The Police Department also expressed concerns about extending the hours of operation. They noted that there are a lot of service calls near the subject site. Service call records for the last year were provided for the intersection of 17th Avenue and Lake Street. Of the 106 calls received, 29 were received after the business closes. The police are concerned that nefarious activity would increase in the area if the business were open 24 hours. They also provided service call records of the subject site for the last year.

RECOMMENDATIONS

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

The Community Planning and Economic Development - Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the expansion of nonconforming use application to extend the allowed hours open to the public from 11:00 p.m. Sunday through Thursday and from 12:00 a.m. Friday and Saturday to 24 hours a day, seven days a week for an automobile convenience facility and carwash located at the property of 1700 East Lake Street.

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the Conditional Use Permit:

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the conditional use permit to extend the allowed hours open to the public from 11:00 p.m. Sunday through Thursday and from 12:00 a.m. Friday and Saturday to 24 hours a day, seven days a week for an automobile convenience facility and carwash located at the property of 1700 East Lake Street.

Attachments:

1. Applicant statement of use
2. Applicant Findings
3. Service call reports
4. Zoning map
5. Plans (Please note: The landscape plan was from the previous car wash expansion proposal, which has since expired. A car wash expansion and reduction of landscaping for additional parking in the southeast corner of the site are not proposed.)
6. Photos (Please note: These photos were taken by the applicant before the site was brought into compliance with the previously approved landscaping plan.)