

**Department of Community Planning and Economic Development – Planning Division**  
Appeal of the Decision of the Zoning Administrator  
BZZ-5495

**Date:** April 5, 2012

**Applicant:** Speedway LLC, c/o William Griffith, Larkin Hoffman Attorneys

**Address of Property:** 2618 Lowry Avenue North

**Project Name:** Appeal of the Zoning Administrator determination

**Contact Person and Phone:** William Griffith, (952) 889-3290

**Planning Staff and Phone:** Jacob Steen, (612) 673-2264/Steve Poor (612) 673-5837

**Date Application Deemed Complete:** February 27, 2012

**End of 60-Day Decision Period:** April 26, 2012

**Ward:** 4      **Neighborhood Organization:** Cleveland Neighborhood Association, adjacent to Jordan Area Community Council

**Existing Zoning:** R4 Multiple Family District

**Zoning Plate Number:** 7

**Legal Description:** Not applicable for this application

**Proposed Use:** Automobile Convenience Facility

**Appeal of the decision of the Zoning Administrator:** Determination that the property located at 2618 Lowry Avenue North has no legal rights to operate as an automobile convenience facility.

**525.170. - Appeals of decisions of the zoning administrator.**

All findings and decisions of the zoning administrator, director of regulatory services, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public

hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180

**Background and Analysis:** In 1974, a permit was issued for the construction of a 7-Eleven automobile convenience facility at the subject property. In 1989, the property changed ownership from 7-Eleven to SuperAmerica. The appellant, Speedway LLC, took over operation of the business in 1998 and continued to operate as an automobile convenience facility until 2008. After an effort to sell the business in 2008 fell through, the appellant removed the underground storage tanks pursuant to state law.

During its operation as a gas station, the Zoning Code use classification for this property was an “automobile convenience facility.” Under Minneapolis Code of Ordinances (MCO) § 520.160, an “automobile convenience facility” is defined as follows: “An establishment where the *principal use is the sale of gasoline or any other automobile engine fuel* (stored only in underground tanks), kerosene, motor oil, lubricants, grease or minor accessories, directly to the public on the premises. In addition, household and convenience items, food or other miscellaneous retail goods commonly associated with the same also may be sold.” (Emphasis added).

In conjunction with the adoption of the 1999 Zoning Code, the property was rezoned from B2S-1 Neighborhood Service District to C1 Neighborhood Commercial District. In the C1 District, an “Automobile convenience facility existing on the effective date of this ordinance” is a conditional use, and the subject property was deemed to have a conditional use permit (CUP). MCO § 548.30; Table 548-1. The property was not a nonconforming use. It was a legally established use with a conditional use permit for an automobile convenience facility.

On January 15, 2008, the underground gasoline tanks located on the subject property were removed (BETP 1000596). At that time, the principal use ceased to involve the sale of gasoline or any other automobile engine fuel. Pursuant to MCO § 525.370, where a conditional use “is discontinued for any reason for a period of one (1) year or longer . . . the conditional use permit shall become null and void.”

Thus, on January 16, 2009, following one year of discontinued use as an automobile convenience facility, the CUP for an automobile convenience facility became null and void. Minneapolis Code of Ordinances § 548.240(7) states that automobile convenience facilities in the C1 District “may not be reestablished if changed to another use.”

On October 7, 2011, the property was rezoned from the C1 Neighborhood Commercial District to the R4 Multiple Family Residential District. At that time, the property had ceased to operate as an automobile convenience facility for over three years.

The property has been vacant since 2008 and remains vacant today.

**Appeal:** The appellant filed an appeal of the decision of the zoning administrator on February, 27, 2012, regarding the determination that the property located at 2618 Lowry Avenue North has no legal rights to operate as an automobile convenience facility.

*Site Control/Storage Tanks:* The appellant contends that the property has been consistently marketed and maintained since its closure, the occurrence of which was beyond their control. Furthermore, the appellant asserts that the underground storage tanks were removed to comply with state law and that removal of the tanks does not negate the right to operate the facility.

*Tobacco License:* In the letter referenced for the appeal, the appellant also makes reference to nonconforming rights with respect to the tobacco license held by the appellant prior to the closure of the store. Tobacco licenses are regulated by Business Licensing under chapter 281 of the Minneapolis Code of Ordinances

### **Findings:**

1. The appellant actively operated an automobile convenience facility at 2618 Lowry Ave North until January 2008 with a conditional use permit, at which time the underground storage tanks were removed. When the tanks were removed, the principal use of the premises ceased to involve the sale of gasoline.
2. Prior to the closure of the store in 2008, the use of the property was classified as “an automobile convenience facility existing on the effective date of the ordinance,” a land use which requires a conditional use permit (CUP) in the C1 District.
3. On January 16, 2009, following one year of discontinued use as an automobile convenience facility, the CUP for an automobile convenience facility became null and void pursuant to MCO § 525.370.
4. On October 7, 2011, the property was rezoned from the C1 Neighborhood Commercial District to the R4 Multiple Family Residential District. In the R4 Multiple Family Residential District, an automobile convenience facility is not a permitted use.

### **RECOMMENDATIONS**

#### **Recommendation of the Department of Community Planning and Economic Development – Planning Division for the appeal of the decision of the zoning administrator:**

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the decision of the zoning administrator’s determination that the property located at 2618 Lowry Avenue North has no legal rights to operate as an automobile convenience facility.

**Attachments:**

- 1) Determination of the Zoning Administrator (Feb. 16, 2012)
- 2) Statement of reason for the appeal submitted by the applicant
- 3) Zoning map
- 4) Correspondence