

Department of Community Planning and Economic Development – Planning Division**Variance Request
BZZ-2662****Date:** November 3, 2005**Applicant:** Thomas Zappia, on behalf of Mohsen Dessouki**Address of Property:** 700 Lowry Avenue Northeast**Contact Person and Phone:** Thomas Zappia, (763) 502-7108**Planning Staff and Phone:** Shanna Sether, (612) 673-2307**Date Application Deemed Complete:** October 3, 2005**End of 60 Day Decision Period:** December 2, 2005**Appeal Period Expiration:** November 14, 2005**Ward: 3 Neighborhood Organization:** Holland Neighborhood Improvement Association**Existing Zoning:** C1 Neighborhood Commercial District**Proposed Request:** To establish legal nonconforming rights to 24-hour operation to the public for an automobile convenience facility located at 700 Lowry Avenue Northeast in the C1 District.**Zoning code section authorizing the request:** 525.110 (3); 531

Background: The applicant is seeking to establish nonconforming rights for 24-hour operation of an automobile convenience facility in the C1 District. The subject property is approximately 128 ft. x 109 ft. (14,054 sq. ft.). The current Zoning Ordinance allows hours of operation open to the public between 6am through 10pm, Sunday through Thursday and 6am to 11pm, Friday and Saturday in the C1 District. The ordinance 83-Or-137 indicates that hours of operation for convenience facilities were first limited by a zoning code amendment approved June 16, 1983. Therefore, established uses existing prior to June 16, 1983 were not subject to limited hours of operation open to the public. In 1987, the limitation of hours of operation to the public was amended to the zoning code in Chapter 530. Since the adoption of the zoning ordinance in 1999, restrictions of hours open to the public for all uses are based on the zoning district in which the use is located. Therefore, the applicant is applying for a nonconforming use certificate to establish rights to 24-hour per day operation to the public in the C1 District.

A 70 ft. by 30 ft., 1-story concrete block garage and service station was constructed on the lot in 1948. According to city records, a special council permit was issued February 16, 1982, for minor site

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alterations for a convenience facility. Following the special council permit, a building permit was issued to make alterations to an existing service station to include a retail food facility.

The service station was remodeled under the 1963 Zoning Code, which did not have an ordinance limiting hours of operation open to the public. At this time the lot was zoned B2S-2 Neighborhood Service District. Then, on May 27, 1983, the City of Minneapolis enacted 83-Or-137 which limited the operating hours for a combination retail facility and self-service automobile service station to hours not before 6:30 a.m. or later than 11:00 p.m., per 540.1060 (16). Therefore, the operation of 24-hour per day service would have been nonconforming in 1983. On October 23, 1987, the limitation of hours was “moved” from Chapter 540 Business Districts to Chapter 530 Site Plan Review Standards. This change from Chapter 540 to Chapter 530 included an amendment that stated all uses subject to site plan review need to comply with the limitation of hours based on the zoning district in which the use was located.

The automobile convenience facility, named Stop-N-Shop, was remodeled in 1982 and remained in business until August of 1993. In August of 1993, the owner of the Stop-N-Shop sold the property and business to the current owner, Mohsen Dessouki. Mohsen Dessouki renamed the existing business Handy Stop Superette. The applicant must submit evidence to show that the property has continuously been operated on a 24-hour per day basis, open to the public, in order to establish legal nonconforming rights for a mixed-use building.

Analysis: The applicant is requesting a nonconforming use certificate that would allow for 24-hour operation to the public for an automobile convenience facility in the C1 District. Staff found evidence of the construction of the automobile convenience facility in 1948. Further, Staff has received several affidavits from parties having had associations with the use located on this lot. Staff has received affidavits from the previous owner indicating that the automobile convenience facility operated on a 24-hour per day basis from the time it was opened in April of 1982 through August of 1993. Staff has received an affidavit from the current owner indicating that the business operated on a 24-hour per day basis since he acquired ownership of the building in August of 1993 through September 15, 2005, the date of the affidavit. Staff has also received an affidavit from the former City Council Member, Joe Biernat, indicating that during his tenure through 2002, the Handy Stop gas station and convenience store continuously operated on a 24-hour per day basis. Further, the applicant has submitted several letters from police officers and neighbors that live and work in the neighborhood that testify to the operation of 24-hour per day basis of the automobile convenience store since it opened for operation in 1982. Staff believes that the legal nonconforming rights for 24-hour operation open to the public were not lost on this property. The Nonconforming Use Chapter of the Zoning Code recognizes that nonconforming uses exist in the city. This chapter provides policies and regulations to allow those uses to be maintained.

531.40 Loss of nonconforming rights (a) Discontinuance. (1) In general. If a nonconforming use or structure is discontinued for a continuous period of more than one (1) year, it shall be deemed to be abandoned and may not thereafter be reestablished or resumed. Any subsequent use of the land or structure shall conform to the requirements of the district in which it is located.

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Findings:

1. The property was established when a building permit was issued to construct a service station and garage on the lot in 1948.
2. In 1963, the subject site was zoned B2S-2, Neighborhood Service District.
3. On February 16, 1982, a special council permit was issued to make site alterations to a combination retail facility and self-service automobile service station.
4. In 1982, a building permit was issued to make alterations from a service station to a combination retail facility and service station.
5. In April of 1982, James Sarna was the owner of the property and opened a convenience store named Shop-N-Stop for business.
6. From April of 1982 through August of 1993, James Sarna operated the business on a 24-hour per day basis.
7. In August of 1993, Stop-N-Shop sold the property and business to Mohsen Dessouki and/or Rans Inc. d/b/a Handy Stop Superette.
8. Since August of 1993, Mohsen Dessouki has operated the Handy Stop Superette on a 24-hour per day basis.
9. Chapter 531.40 Loss of nonconforming rights (a) Discontinuance. States that when a nonconforming use or structure is discontinued for a continuous period of more than one (1) year, it shall be deemed to be abandoned and may not thereafter be reestablished or resumed. Any subsequent use of the land or structure shall conform to the requirements of the district in which it is located.

Recommendation of the CPED Department Planning Division:

The City Planning Department recommends that the Board of Adjustment adopt the above findings and **approve** the nonconforming use certificate to establish legal nonconforming rights to 24-hour operation, per day, open to the public for an automobile convenience facility located at 700 Lowry Avenue Northeast in the C1 District.