

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit
BZZ-5733

Date: October 29, 2012

Applicant: Metro Star, LLC

Addresses of Property: 331 Ulysses Street Northeast

Project Name: Auto Repair Roof Sign

Contact Person and Phone: Eric Galatz, 612-335-1509

Planning Staff and Phone: Brad Ellis 612-673-3239

Date Application Deemed Complete: September 27, 2012

End of 60-Day Decision Period: November 26, 2012

Ward: 1 **Neighborhood Organization:** Southeast Como Improvement Association

Existing Zoning: I1 Light Industrial District and UA University Area Overlay District

Zoning Plate Number: 15

Legal Description: Lots 4,5,6,7 and the North 35.5' of Lot 8, Block 001 of Williston Addition to Minneapolis

Proposed Use: Two nonconforming roof signs on one structure accessory to an existing major automobile repair facility

Concurrent Review:

Certificate of nonconforming use: to reestablish two nonconforming roof signs on one structure

Conditional use permit: to amend an existing conditional use permit for major auto repair to remove a condition relating to the removal of nonconforming abandoned roof signs

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permit, Chapter 531, Nonconforming Uses and Structures, and Chapter 543, On-Premise Signs

Background: The subject property is a 24,411 square foot lot containing an existing major automobile repair use. The use received approval from the City Planning Commission on February 25, 2008, for a conditional use permit and a site plan review to establish the major automobile repair facility (BZZ-3925). One of the conditions of approval for the conditional use permit was the removal of two abandoned roof signs. The applicant is proposing to reestablish the nonconforming roof signs on the building and eliminate the condition of approval relating to the removal of the abandoned roof signs that

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had been added to the list of conditions of approval for the conditional use permit (see attached actions from 2008).

As of the writing of this report staff has not received comments, although Southeast Como Improvement Association has made inquiries and will likely be issuing a formal comment. Any comments, if received, will be forwarded to the Planning Commission.

CERTIFICATE OF NONCONFORMING USE: to reestablish two nonconforming roof signs on one structure

History and Analysis: City building permit records indicate that the roof signs were originally constructed under permits B448261, H048110, and H048323 which were issued in 1974. At the time of construction a roof sign was a permitted accessory use in the M1-3 Light Manufacturing District. The use remained conforming until the zoning code was revised on November 12, 1999, at which time roof signs became a prohibited use and these specific signs became legally nonconforming.

In January of 2008, Madina Automotive Service applied for a conditional use permit and a site plan review to establish a major automobile repair use on the property (BZZ-3925). During the application process, staff noticed the two blank roof signs on the building. Photos from the application show the signs to be in place with no advertising in April of 2006 and January of 2008. Abandoned signs were required to be removed in accordance with Section 109.80 of the building code:

109.80 Abandoned signs. Any sign which advertises a commodity, service or entertainment no longer in existence and any sign which directs attention to a business, profession, commodity, service or entertainment no longer existence at the premises on which such sign is located, shall be deemed abandoned and shall be removed by the owner of the premises on which such sign is located within thirty (30) days of notice so to do from the director of inspections or shall have shown reasonable cause for failure so to do. The removal required by this section shall include all supporting brackets, frames or other structural elements of the abandoned sign. The obtaining of an annual sign maintenance permit shall in no way be construed to modify, alter or extinguish the enforcement of this section.

In accordance with this section, staff recommended a condition of approval to the conditional use permit that the abandoned signs be removed. This condition was not objected to during the application process and was included as condition number 3 when the conditional use permit was approved by the City Planning Commission on February 25, 2008.

Shortly after the applications for Madina Automotive Service were approved, the building owner contacted staff regarding the condition of approval related to the removal of the abandoned signs. Staff relayed that the only way to remove the condition would be to go back to the City Planning Commission. After some back-and-forth, staff no longer heard from the applicant, and assumed enforcement would force the issue. Enforcement related to the sign began in December of 2011, eventually triggering this application.

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The applicant is rebutting the presumption of abandonment in accordance with Section 531.40:

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.

(2) *Rebuttal of abandonment.* A property owner may rebut the presumption of abandonment only by presenting clear and convincing evidence that discontinuance of the nonconforming use or structure for the specified period was due to circumstances beyond the property owner's control. The property owner shall bear the burden of proof.

The applicant has provided a statement describing the relevant facts and reason for the request, excerpts of zoning code, copies of leases, photos, an affidavit of non-abandonment, and other relevant information.

The applicant is asserting that the signs were lawfully established and have not been discontinued as evidenced by leases and other supplemental materials. Staff agrees that the sign was lawfully established and as an on-premise sign became nonconforming as of November 12, 1999. Staff noticed the signs were empty of advertising in April of 2006 and January of 2008, and in accordance with Section 109.80 recommended the removal of the abandoned signs as a condition of approval. The signs were still blank a year later based on a Google street view photo from October of 2009. Sign permits are required for any work beyond normal maintenance and repair, and no sign permits have been issued related to the roof signs since the original permits in 1974. The current sign advertising the tenant does not have a sign permit and is therefore unlawful.

The applicant is also asserting that the lower of the two signs has been used for off-premise advertising for 357 Ulysses Street Northeast, which is under common ownership, and has been used continuously since the sign became nonconforming in regard to off-premise advertising on December 17, 1993. While staff notes it is likely that the two properties, 331 and 357 Ulysses Street Northeast, were treated as a single zoning lot allowing the sign to be treated as on-premise advertising, at no point has off-premise advertising or a billboard been approved on this property.

Findings:

- 1) Photographic evidence indicates the signs were blank in April 2006, January 2008, and October 2009.
- 2) No permits have been issued for the roof signs since the initial permits issued in 1974. Changes to signs beyond normal maintenance and repair require a sign permit per 543.100
- 3) The two abandoned signs were to be removed in accordance with Section 109.80. Section 109.80 has since been reworded and moved to Section 543.170 but is still in effect.

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- 4) On February 25, 2008, the City Planning Commission approved a conditional use permit and site plan review for Madina Automotive Service located at 331 Ulysses Street Northeast. As a condition of approval the abandoned signs were to be removed.
- 5) In addition to requirements of Sections 109.80 and 543.170, the use of the signs has been discontinued for a continuous period of more than one (1) year and as such has lost nonconforming rights.

Staff believes that the information submitted by the applicant does not meet the standards of Minneapolis Zoning Code Section 531.40, under which the applicant must bear the burden of proof to present clear and convincing evidence that discontinuance of the nonconforming use or structure for the specified period was due to circumstances beyond the property owner's control.

CONDITIONAL USE PERMIT: to amend an existing conditional use permit for major automobile repair to remove a condition relating to the removal of an abandoned roof sign

Findings as Required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Department – Planning Division has analyzed the application and from the findings above concludes that:

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

The proposed roof sign would not be detrimental to public health, safety, comfort or general welfare. The applicant is proposing to reestablish two nonconforming roof signs on the top of a building. While it is visible from Interstate 35W, it would not present a distraction to drivers.

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.

The adjacent area is mostly developed and surrounded by industrial and commercial uses. The reestablishment of the proposed signs would impede the normal or orderly development and improvement of surrounding property for uses permitted in the district. On-premise sign regulations are established to allow effective signage appropriate to the planned character of each zoning district, to promote an attractive environment by minimizing visual clutter and confusion, to minimize adverse effects on nearby properties, and to protect the public health, safety and welfare. Roof signs are prohibited in the City of Minneapolis because they add to visual clutter and they do not promote an attractive environment.

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

The utilities, access, drainage, and other facilities are existing and adequate and will not be impacted by

the proposed signs.

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

The reestablishment of two roof signs would not have an impact on traffic congestion in the public streets.

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

The Minneapolis Plan for Sustainable Growth states the following about signs. “Sign design needs to balance the desire to convey information with a need to maintain visual aesthetics so signage is not intrusive. The scale of signage should be geared toward the pedestrian and less to the automobile. Unique signage that incorporates unusual materials or designs is encouraged.”

The Minneapolis Plan for Sustainable Growth has the following policies for signs:

Urban Design Policy 10.20: Promote an attractive environment by minimizing visual clutter and confusion caused by a proliferation of signage.

10.20.1 Location, size, height and spacing of off-premise advertising signs and billboards shall be regulated to minimize their visual blighting effects.

10.20.2 Master sign plans shall be submitted for multi-tenant buildings to ensure a complementary relationship between signage and the architecture of a building.

10.20.3 Develop incentives for exceptional sign design and style, including a special review process to ensure appropriate location, size, height and compatible design to the architecture of the building and other signage.

10.20.4 Develop a consistent, city-wide wayfinding signage design and maintenance plan for neighborhoods, trails, etc.

Urban Design Policy 10.21: Unique areas and neighborhoods within the city should have a special set of sign standards to allow for effective signage appropriate to the planned character of each area/neighborhood.

10.21.1 Supporting the regional draw of Downtown entertainment areas, larger scale signage shall be allowed in appropriate places (such as the Hennepin Avenue Downtown Entertainment Area and Nicollet Mall Overlay District).

10.21.2 To promote street life and activity, signs should be located and sized to be viewed by people on foot (not vehicles) in order to preserve and encourage the pedestrian character of commercial areas that have traditional urban form.

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10.21.3 Encourage effective signage that is appropriate to the character of the city’s historic districts and landmarks, and preserves the integrity of historic structures.

Roof signs are a prohibited sign type in the City of Minneapolis; roof signs are only allowed in the DH Downtown Height Overlay District, and then only on a multiple story building of at least 100,000 square feet of gross floor area. Policymakers consider roof signs to be akin to off-premise advertising signs and billboards. Roof signs contribute to visual blight. The reestablishment of these roof signs would continue to contribute to existing visual blight on the property, and would not be consistent with the applicable policies of the comprehensive plan.

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

When staff addressed this finding in 2008 for the major automobile repair (BZZ-3925), two items were noted as not conforming to the applicable regulations of the I1 Light Industrial District: the existing chain link fence contained slats, which are not permitted as a fencing material, and the abandoned roof signs. Neither of these issues has been addressed. The site is not in compliance with the original approvals of 2008. Staff is recommending the original conditions of approval remain in order to bring the site into conformance with the applicable regulations of the I1 Light Industrial District.

RECOMMENDATION:

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the Certificate 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 certificate of nonconforming use to reestablish two nonconforming roof signs on one structure located at 331 Ulysses Street Northeast in the I1 Light Industrial District and the UA University Area Overlay District.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the removal of condition 3, removal of abandoned roof signs, from the existing conditional use permit for Major Automobile Repair on the property located at 331 Ulysses Street Northeast in the I1 Light Industrial District and the UA University Area Overlay District.

Attachments:

1. Statement of proposed use and description of project provided by the applicant
2. Photos provided by the applicant (Exhibit A)

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3. Hennepin County map indicate nearby signs provided by the applicant (Exhibit B)
4. Proposed sign change by the applicant (Exhibit B)
5. Written statement and findings including attachments as submitted by the applicant
6. Zoning map
7. Building Permit Index Card for 331 Ulysses Street Northeast (1970-1990)
8. Google street view from October 2009
9. January 25, 2008 actions of the City Planning Commission