

Department of Community Planning and Economic Development – Planning Division
Expansion of a Nonconforming Use
BZZ-5376

Date: March 26, 2012

Applicant: Dan Kaufman, on behalf of PJH Properties LLC

Address of Property: 400 Hennepin Avenue

Project Name: Gay 90's Storefront

Contact Person and Phone: Dan Kaufman, Kaufman Signs, (612) 788-6828

Planning Staff and Phone: Aly Pennucci (612) 673-5342

Date Application Deemed Complete: February 9, 2012

End of 60-Day Decision Period: April 8, 2012

Ward: 7 **Neighborhood Organization:** Downtown Minneapolis Neighborhood Association

Existing Zoning: B4S-2 Downtown Service District and the DP Downtown Parking Overlay District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 19

Legal Description: Not applicable for this application

Proposed Use: Nightclub with adult entertainment

Concurrent Review: Expansion of a nonconforming use to replace the existing 160 square foot dynamic projecting sign with a 160 square foot dynamic projecting sign with LED lighting and to add a 30 foot by 12 foot canopy with a 105 square foot sign and two (2) 28.3 square foot dynamic signs

Applicable zoning code provisions: Chapter 531, Nonconforming Uses and Structures

Background: Dan Kaufman, with Kaufman Signs, on behalf of PJH Properties LLC, has submitted an application for an Expansion/Alteration of a Nonconforming Use to replace the existing 160 square foot dynamic projecting sign with a 160 square foot dynamic projecting sign with LED lighting; and to add a 30 foot by 12 foot canopy with a 105 square foot sign and two (2) 28.3 square foot dynamic signs on the property located at 400 Hennepin Avenue.

The subject site is a nightclub with adult entertainment that is nonconforming to the distance requirements and spacing requirements for sexually oriented uses and is nonconforming to the sign

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requirements for a sexually oriented use. An establishment that includes adult entertainment is subject to the following sign requirements outlined in Chapter 549, Downtown Districts, Article IV Sexually Oriented Uses:

- 549.370. Sign requirements. All sexually oriented uses shall comply with the following sign requirements, notwithstanding any other provision of this ordinance:
- (1) All signs shall be flat wall signs or window signs.
 - (2) Signs may be illuminated, except that flashing signs, including signs containing changing written messages, and signs with moving or swinging parts or elements shall be prohibited.
 - (3) The amount of allowable sign area shall be one (1) square foot of sign area per foot of lot frontage on a street. Window signs shall be included in the calculation of total allowed sign area.
 - (4) Window sign area shall be limited by the amount of total allowable sign area for the use, except that no merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from outside the building.

The existing signs at the subject site are nonconforming to the size, sign type and illumination requirements outlined above. The applicant has proposed to expand the nonconformity by increasing the total sign area, adding dynamic signs and adding additional projecting signs. The existing and proposed sign types and sign area are outlined in the tables below:

<u>Existing signs</u>				
<u>Sign Type</u>	<u>Sign copy</u>	<u>Size</u>	<u>Sq Ft</u>	
Roof sign	Happy Hour	4' x 10'	40	<i>no changes</i>
Wall sign	Happy Hour	3' x 5'	15	<i>no changes</i>
Wall sign	Bacardi	3' x 5'	15	<i>to be removed</i>
Projecting-dynamic sign	Gay 90's	10' x 16'	160	<i>will be replaced</i>
Total sign area:			230	sq ft

<u>Proposed Signs</u>				
<u>Sign</u>	<u>Sign</u>	<u>Size</u>	<u>Sq Ft</u>	
Roof sign	Happy Hour	4' x 10'	40	<i>no changes</i>
Wall sign	Happy Hour	3' x 5'	15	<i>no changes</i>
Projecting-dynamic sign	Gay 90's	10' x 16'	160	<i>replace existing, same size</i>
Projecting sign	Gay 90's	21' x 5'	105	<i>canopy/marquee</i>
Projecting sign	Dynamic sign	2'10" x 10'	28.3	<i>canopy/marquee</i>
Projecting sign	Dynamic sign	2'10" x 10'	28.3	<i>canopy/marquee</i>
Total sign area:			376.6	sq ft

Signs for an adult use are limited to one (1) square foot of signage per one (1) linear foot of street frontage. The subject site has 104 feet of street frontage along Hennepin Avenue; the total sign area

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permitted at this location is 104 square feet. The total sign area for the existing signs on the Hennepin Avenue elevation is 230 square feet; the applicant has requested to increase the total sign area to 376.6 square feet. Signs for an adult use are also limited to flat wall signs only. The existing building includes a nonconforming dynamic projecting sign (the sign includes flashing (chasing) lights) and a nonconforming roof sign. The applicant proposes to replace the existing dynamic projecting sign with a similar dynamic projecting sign. In addition, the applicant is proposing to add a canopy that includes a sign along the front of the canopy and two (2) dynamic signs along the sides. Each sign on the proposed canopy is considered a projecting sign. Projecting signs and signs containing changing written messages (dynamic signs) are prohibited for any establishment that includes adult entertainment. The existing dynamic projecting sign that will be replaced is attached to the roof of the building and the support structure is visible from the street. The zoning code regulations governing projecting signs (§543.410) prohibits attaching any part of a projecting sign to the roof of the building. The existing nonconforming happy hour roof sign and existing happy hour wall sign will not be altered. The existing Bacardi wall sign will be removed.

As of the writing of this report, staff has not received any correspondence from the neighborhood group. Staff has received one letter of support from a property owner in the area. Staff will forward additional comments, if any are received, at the City Planning Commission meeting.

EXPANSION OF A NONCONFORMING USE:

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.

A nightclub with adult entertainment is permitted in the B4S-2 Downtown Service District and the DP Downtown Parking Overlay District. No other zoning district exists that would allow for the signs as proposed for a nightclub with adult entertainment.

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

The site is located across the street from a multi-story residential building and is kitty-corner from an existing library. The site is located just outside of the downtown entertainment area. If not for the adult entertainment, the subject site would be subject to the sign regulations governing signs in the downtown zoning districts. Under these regulations the subject site would be allowed 2.5 square feet of signage per one (1) linear foot of building wall or 260 square feet, and up to one (1) dynamic sign. The maximum size for a projecting sign would be 48 square feet. What is proposed for this application would require multiple variances if held to the sign requirements governing downtown districts and far exceeds what is allowed for an adult use. Staff believes that some alterations and expansion to the existing signs, coupled with additional façade improvements, will help to improve the appearance of the property and will be compatible with adjacent properties and the neighborhood. However, adding additional dynamic

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signs is not compatible with the adjacent residential and institutional uses, and the total sign area is out of character with the standards governing all properties in the downtown districts.

- (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.**

Planning Staff believes that the proposal to install two (2) additional dynamic signs and to increase the total sign area from 230 square feet to 376.6 square feet, an approximately 63 percent increase, on the property would be detrimental to or endanger the public health, safety, comfort or general welfare. The amount of signage in addition to two (2) additional dynamic signs would be a distraction for passing motorists. The existing projecting sign includes flashing (chasing) lights and this feature will be replaced on the new projecting sign. Further, there is a residential use located across 4th Street North. Planning Staff would recommend that the applicant design the canopy without dynamic signs and instead add additional architectural elements to enhance the existing building. In addition, staff recommends that the total sign area be limited to what would be permitted in a downtown district if not for the adult entertainment component of the business (260 square feet). The applicant could alter the size of the existing or proposed signs provided that the total area would not exceed 260 square feet.

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

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 property, and to protect the public health, safety and welfare. In addition, in terms of the adult entertainment, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, thereby having a harmful effect upon the use and enjoyment of adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. As mentioned previously, the proposal is not in compliance with the sign requirements governing uses with adult entertainment and exceeds what would be permitted if not for the presence of adult entertainment. While the subject property is located in a downtown district, it is not located within the downtown entertainment area. The addition of two (2) dynamic signs when there is an existing dynamic sign, and a 63 percent increase in the total sign area, will create sign clutter and will not improve the appearance of the property.

If the applicant improves the façade, in addition to replacing the existing dynamic projecting sign and installing a new canopy, staff believes that limited expansion to the existing nonconformity will improve the property and be a positive change for the neighborhood. The existing dynamic projecting sign is attached to the roof of the building and the support structure is visible from the street; installing the new sign in a manner that is in compliance with existing regulations for projecting signs would improve the appearance of the building. The proposed

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canopy would be located above the existing outdoor seating area. Planning staff believes that the proposed canopy should be located above a public entryway to create more visual interest and to express the importance of the entrance. This could be accomplished by locating the canopy above the existing public entryway, or preferably, relocating or adding a public entrance below the proposed location for the canopy. In addition, staff believes that the addition of the canopy should be coupled with additional façade improvements to improve the overall appearance of the entire building.

The applicant has indicated that the property owners intend to install horizontal lap siding along both the Hennepin Avenue and 4th Street North elevations. The siding would be located between the white columns and would be painted a dark maroon. Currently there are no window openings on the main level. There may be an opportunity to consider adding additional windows, potentially transom windows, along both the Hennepin Avenue and 4th Street North façades. The existing Bacardi wall sign that will be removed is masking an original window that could be restored. The second story windows along the Hennepin Avenue and the 4th Street North elevations are cluttered with broken or intermittent window treatments and other materials that could be cleaned up. In addition the masonry is in need of general maintenance. With some needed repairs and new architectural detail through the canopy enhanced entryway, the visual appearance of the corner would be significantly improved.

- (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 exist on the subject site.

- (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.

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 **approve** the expansion of nonconforming use to replace the existing 160 square foot projecting sign with a 160 square foot projecting sign with LED lighting and **deny** the expansion of nonconforming use application to add a 30 foot by 12 foot canopy with a 105 square foot sign and two (2) 28.3 square foot dynamic signs and in lieu thereof **approve** an expansion of nonconforming use to allow a 30 foot by 12 foot canopy with signs on each plane on the

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property located at 400 Hennepin Avenue in the B4S2 Downtown Service District and the DP Downtown Parking Overlay District, subject to the following conditions:

1. The total sign area on the property shall not exceed 260 square feet.
2. Signs shall not be attached to the roof of the building.
3. No additional dynamic signs shall be installed. The existing dynamic projecting sign (with flashing lights) may be replaced.
4. The canopy shall be installed above an existing or new public entryway.
5. The façade shall be improved so that the siding materials on the main level along Hennepin Avenue and 4th Street North shall be painted uniformly and maintenance on the other exterior materials completed, the window behind the existing Bacardi wall sign shall be restored, the windows on the 2nd level shall be free of clutter visible from the street and the property owner shall work with staff to identify opportunities to reinstall first floor windows on the elevations fronting a public street.
6. Approval of the final sign and elevation plans by the Department of Community Planning and Economic Development – Planning Division. No signs shall be installed without first obtaining a sign permit.

Attachments:

1. Statement and findings from applicant
2. Correspondence to neighborhood organization and Council Member
3. Correspondence
4. Zoning map
5. Site plan
6. Sign plans and rendering
7. Photos of existing building
8. Rendering of proposed siding replacement