

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

**Date:** April 9, 2010

**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

**End of 120-Day Decision Period:** On March 19, 2012, staff sent a letter to the applicant extending the decision period to no later than June 6, 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:** The applicant originally requested approval 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 initial application was heard at the March 26, 2012, City Planning Commission public

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hearing. At this meeting the City Planning Commission continued the application one cycle and directed the applicant to revise their request and illustrate proposed improvements to the façade along Hennepin Avenue and 4<sup>th</sup> Street North that includes bringing the building into compliance with fenestration requirements outlined in Chapter 530, Site Plan Review, of the zoning code, and to reduce the total amount of signage requested.

The subject site is a nightclub with adult entertainment that is nonconforming to the distance and spacing requirements for sexually oriented uses and is nonconforming to the sign 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 two additional dynamic signs and adding three additional projecting signs.

The applicant submitted a revised plan that includes reducing the requested sign area from 376.6 square feet to 294.6 square feet and has proposed installing faux windows along the first floor of the Hennepin Avenue façade. The applicant did not propose any windows or changes to the 4<sup>th</sup> Street North façade. Staff advised the applicant that the proposal for faux windows does not meet the window requirements of the zoning code and suggested that the application be continued one additional cycle so that the applicant could consider installing windows that meet the requirements and prepare plans that better illustrate what the new façade will look like. The applicant believes that what they have proposed does meet the intent of the Planning Commission's direction and asked that the proposal be presented as submitted.

The applicant also submitted documentation from the previous owner of the Gay 90's business regarding work that was done with the City's licensing and environmental staff to address noise complaints from residents of the property located at 314 Hennepin Avenue. In response to those complaints the property owner removed or boarded the windows along the 4<sup>th</sup> Street North façade. Planning staff consulted with License and Consumer Services staff and they support installing new windows that are soundproofed along 4<sup>th</sup> Street North.

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Planning division staff believes that the revisions in terms of the window requirement do not meet the direction provided by the Planning Commission and that windows should be required along Hennepin Avenue and 4<sup>th</sup> Street North that meet the following requirements of Section 530.120 of the zoning code governing windows for nonresidential uses.

Chapter 530, §530.120

Nonresidential uses. Principal entrances shall be clearly defined and emphasized through the use of architectural features such as roofs, or other details that express the importance of the entrance. Multiple entrances shall be encouraged. Thirty (30) percent of the walls on the first floor and ten (10) percent of the walls on each floor above the first that face a public street, public sidewalk, public pathway, or on-site parking lot, shall be windows as follows:

- a. Windows shall be vertical in proportion.
- b. Windows shall be distributed in a more or less even manner.
- c. The bottom of any window used to satisfy the ground floor window requirement may not be more than four (4) feet above the adjacent grade.
- d. First floor or ground floor windows shall have clear or lightly tinted glass with a visible light transmittance ratio of six-tenths (0.6) or higher.
- e. First floor or ground floor windows shall allow views into and out of the building at eye level. Shelving, mechanical equipment or other similar fixtures shall not block views into and out of the building in the area between four (4) and seven (7) feet above the adjacent grade. However, window area in excess of the minimum required area shall not be required to allow views into and out of the building.

The existing and proposed sign types and the original and revised proposal are outlined in the tables below:

<b><u>Existing signs</u></b>				
<b><u>Sign Type</u></b>	<b><u>Sign copy</u></b>	<b><u>Size</u></b>	<b><u>Sq Ft</u></b>	
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>
<b>Total sign area:</b>			<b>230</b>	<b>sq ft</b>

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<b><u>Proposed Signs</u></b>					
<b><u>Sign</u></b>	<b><u>Sign Copy</u></b>	<b><u>Original Proposal</u></b>		<b><u>Revised Proposal</u></b>	
		<b><u>Size</u></b>	<b><u>Sq Ft</u></b>	<b><u>Size</u></b>	<b><u>Sq Ft</u></b>
Roof sign	Happy Hour	4' x 10'	40	<i>no change</i>	40
Wall sign	Happy Hour	3' x 5'	15	<i>no change</i>	15
Projecting sign	Gay 90's	10' x 16'	160	6'6" x 12'	78
Projecting sign	Gay 90's	21' x 5'	105	<i>no change</i>	105
Projecting sign	Dynamic sign	2'10" x 10'	28.3	<i>no change</i>	28.3
Projecting sign	Dynamic sign	2'10" x 10'	28.3	<i>no change</i>	28.3
<b>Total sign area:</b>			<b>376.6</b>	<b>sq ft</b>	<b>294.6</b>

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 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 294.6 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 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.**

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

The applicant has reduced the original request to increase the total sign area from 230 square feet to 376.6 square feet to 295.6 square feet. The subject site has 104 feet of street frontage along Hennepin Avenue; the total sign area permitted at this location is 104 square feet. The subject site also has approximately 156 feet of street frontage along 4<sup>th</sup> Street N; the total sign area permitted on this wall is 156 square feet. There are no existing or proposed signs on the fourth street elevation. Planning staff believes that increasing the total sign area from 230 square feet to 294.6 square feet on the Hennepin Avenue façade, with no signs installed on the 4<sup>th</sup> Street N façade and no new dynamics signs will be compatible with adjacent property.

- (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 on the property would be detrimental to or endanger the public health, safety, comfort or general welfare. 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 4<sup>th</sup> 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. Increasing the total sign area from 230 square feet to 294.6 square feet on the Hennepin Avenue façade, with no signs installed on the 4<sup>th</sup> Street N façade, and no new dynamics signs, will not result in signification increases of adverse, off-site impacts.

- (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

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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 will create sign clutter and will not improve the appearance of the property. When a dynamic sign is permitted as-of-right or as a conditional use, the number of dynamic signs is limited to not more than one (1) per zoning lot. If the Planning Commissioners elect not to uphold the staff recommendation regarding the additional dynamic signs, staff recommends that supplementary conditions be placed on any approvals. Staff would further recommend that only a changeable copy sign, dynamic, be considered rather than a full dynamic sign. A memo defining the differences between a changeable copy sign, dynamic, and a full dynamic sign, as well as suggested conditions of approval, is included in the attachments.

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 proposed 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 is an opportunity to consider adding additional windows, along both the Hennepin Avenue and 4<sup>th</sup> 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 4<sup>th</sup> 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 78 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 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 294.6square feet.
2. New or replacement 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 4<sup>th</sup> Street North shall be painted uniformly and maintenance on the other exterior materials completed.
6. Windows shall be installed along Hennepin Avenue and 4<sup>th</sup> Street North to meet the requirements of Section 530.120 of the zoning code.
7. The windows on the second level shall be free of clutter visible from the street.
8. 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.

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**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
9. Revised rendering illustrating proposed façade improvements along Hennepin Avenue
10. Revised sign renderings
11. Email from License & Consumer Services staff regarding windows
12. Historic correspondence regarding noise issues
13. Memo from staff regarding dynamic signs.