

**Department of Community Planning and Economic Development – Planning Division**  
**Nonconforming Use Certificate**  
**BZZ-5816**

**Date:** December 13, 2012

**Applicant:** Alcohol Compliance Services

**Address of Property:** 1319 Marshall Street NE

**Project Name:** Dusty's Bar Nonconforming Use Certificate

**Contact Person and Phone:** Laura Boyd, (763) 413-8887

**Planning Staff and Phone:** Shanna Sether, (612) 673-2307

**Date Application Deemed Complete:** October 9, 2012

**End of 60-Day Decision Period:** December 8, 2012

**End of 120-Day Decision Period:** February 6, 2013 (*Staff sent an extension letter on 11/16/2012*)

**Ward:** 3      **Neighborhood Organization:** Sheridan Neighborhood Organization

**Existing Zoning:** C1 Neighborhood Commercial District

**Zoning Plate Number:** 9

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

**Proposed Use:** Nightclub

**Nonconforming Use Certificate:** to establish legal nonconforming rights to a nightclub

**Applicable Zoning Code Provision:** Chapter 531 Nonconforming Uses and Structures; Specifically Section 531.30 and Chapter 548 Commercial Districts

**Background and Analysis:** This application was continued from the November 29, 2012, Board of Adjustment public hearing upon request by the applicant.

The subject property is Dusty's Bar located at 1319 Marshall Street NE (5,320 sq. ft.) with contiguous property at 1321 and 1327 Marshall Street NE and 108 and 114 14<sup>th</sup> Avenue NE that includes existing off-street parking areas. The principal structure on the subject property was constructed prior to 1890. The City of Minneapolis does not have records of the original construction. The first plumbing permit issued on the property was for a saloon in 1893.

From 1924, the first year the City of Minneapolis had a codified zoning ordinance, to 1963, the property was zoned Commercial. A tavern/bar was a permitted use from 1924 to 1963. The property was zoned B3C-2 from 1963 to 1999. A tavern/bar was a permitted use in the B3C-2 District and allowed live entertainment and dancing. The property is located in the old Liquor Patrol Limits which authorizes the sale of alcoholic beverages with food sales to be less than 60% of the annual gross sales. Per today's zoning code a food or beverage use that sells alcoholic beverages with food sales totaling less than 60% of the annual gross sales is defined as a nightclub. The subject property has been zoned C1 Neighborhood Commercial District since 1999. A nightclub is a prohibited use in the C1 District. The following relevant definitions are found in section 525.180 of the zoning code:

*Entertainment, general.* Entertainment that does not meet one (1) or more of the definition requirements of limited entertainment.

*Entertainment, limited.* Entertainment limited to literary readings, story telling or live music by not more than three (3) persons, using nonamplified musical instruments, with no patron dancing.

*Nightclub.* A use engaged in the sale of alcoholic beverages for consumption on the premises, including taverns, bars, cocktail lounges and similar uses, or a use other than a sit down restaurant which provides general entertainment.

*Restaurant, sit down.* An establishment engaged in the preparation and retail sale of food and beverages, which is characterized by table service to customers and that is not a delicatessen restaurant, fast food restaurant or nightclub.

The existing business has operated with an on-sale liquor license since at least 1959. The business currently holds a Class E On-Sale Liquor License with Sunday Sales. This license type does not allow for general entertainment. According to City records, the property has not been issued a license or temporary license to allow for general entertainment on the premises.

A business licensing inspection of the property was conducted on January 6, 2012, and licensing staff observed general entertainment on the premise, including live, amplified music. The applicant applied for a Class E License to allow for on-sale liquor and general entertainment; however, according to City records, general entertainment has not been legally established on the property. Therefore, the applicant has applied for a certificate of nonconforming use to legally establish nonconforming rights to allow for a nightclub at the subject property.

City records indicate that the legal use of the property is a sit-down restaurant where the food sales are allowed to be less than 60% of the annual gross sales, consistent with the established land use in an area that dates back to the Liquor Patrol District limits. The applicant is applying for a certificate of nonconforming use to legally establish a nightclub, in order to allow for general entertainment, per 531.30 of the zoning code:

**531.30. Establishment of nonconforming rights; certificate of nonconforming use.** Any person having a legal or equitable interest in a nonconforming property may apply for a certificate of nonconforming use by complying with the procedure set forth in this section. Upon issuance, a certificate of nonconforming use shall be evidence that the use or structure designated therein is a legal nonconforming use or structure at that time.

(4) *Determination by board of adjustment.* Following the public hearing, the board of adjustment shall determine whether the use or structure is a legal nonconforming use or structure. The burden of proof shall be on the applicant to establish the lawful nonconforming status of the use or structure and the lack of abandonment, change of use or loss under section 531.40. If the applicant does not establish the required facts, no certificate shall be issued. If the board of adjustment determines that the use or structure is a legal nonconforming use or structure, it shall direct the zoning administrator to issue a certificate of nonconforming use. The certificate shall state with particularity the type and intensity of specific use which is found to be legal. The decision of the board of adjustment may be appealed by any affected person as specified in Chapter 525, Administration and Enforcement.

Staff believes that the information submitted by the applicant does not meet the standards of Minneapolis Zoning Code provision 531.30(4), under which the applicant must bear the burden of proof to illustrate clear and convincing evidence that the use of the property was legally established as a nightclub. The applicant has provided a statement describing the relevant facts and reason for the request, floor plans, historical permits, and affidavits from community members, band members and the family who has operated the business since 1959. An affidavit submitted by the business and property owner states that live entertainment has been offered numerous times each year and at least once annually since 1954.

Staff has received a letter supporting the music licensing request for Dusty's Bar from the Sheridan Neighborhood Organization. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

**Findings:**

- 1) The principal structure on the subject property was constructed prior to 1890. The City of Minneapolis does not have records of the original construction of the principal structure.
- 2) The first plumbing permit for the property was for a saloon in 1893.
- 3) Additional building, plumbing, electrical and sign permits were issued for a saloon, tavern and/or bar between 1907 and 2004.
- 4) The subject property was located in the Liquor Patrol Limits prior to 1975. Continuous use of the property in this district authorizes the annual gross food sales to be less than 60% in accordance with Minneapolis Licensing Ordinance 362.390 and Minnesota statutes.
- 5) The zoning classification from 1924 to 1963 was Commercial; a tavern/bar was a permitted use.
- 6) The property was purchased and operated by Adolph Stebe in 1952.

- 7) An on-sale liquor license was issued to the property on or before 1959. Additional licensing records may exist, but have been archived.
- 8) The subject property was rezoned in 1963 to B3C-2 Community Commercial District; a tavern/bar, including live entertainment and dancing, was a permitted use.
- 9) The business was purchased by the current operator and son of Adolph Stebe, Pasquale Stebe, in 1981.
- 10) The subject property was rezoned to C1 Neighborhood Commercial District in 1999. A nightclub is a prohibited use in this zoning district. A nightclub is defined as “[a] use engaged in the sale of alcoholic beverages for consumption on the premises, including taverns, bars, cocktail lounges and similar uses, or a use other than a sit down restaurant which provides general entertainment” in the zoning code.
- 11) Business licensing staff identified general entertainment on the premises on January 6, 2012. The business owner holds a Class E On-Sale Liquor License with Sunday Sales. This license type does not allow for general entertainment. According to City records, the property has not been issued a license or temporary license to allow for general entertainment on the premises.
- 12) The applicant has failed to present clear and convincing evidence that the use of the property is a nightclub, allowing both annual food sales of less than 60% and general entertainment.

## **RECOMMENDATION**

### **Recommendation of the Department of Community Planning and Economic Development – Planning Division for the nonconforming use certificate:**

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the nonconforming use certificate to establish legal nonconforming rights to a nightclub located at 1319 Marshall Street NE in the C1 Neighborhood Commercial District.

### **Attachments:**

- 1) Statement of proposed use and description of project provided by the applicant
- 2) Copy of e-mail sent to Sheridan Neighborhood Organization and Council Member Hofstede
- 3) Letter of support from Sheridan Neighborhood Organization
- 4) Correspondence
- 5) Documentation provided by the applicant
- 6) Zoning map
- 7) Building Permit Index Card (1890-1974)
- 8) Building Permit Index Card (1974-1992)
- 9) Licensing documentation from 1959 to present
- 10) Minneapolis Code of Ordinances 362.390
- 11) Site plan

- 12) Floor plans
- 13) Photographs