

Prepared by: Kevin Payne, Assistant Planning Director

ITEM V-A: **APPEAL OF PLANNING DIRECTOR'S DETERMINATION – 1100 ORLANDO AVENUE
– ROSEVILLE STATION AND ULTRA LOUNGE – FILE# ZI-000020**

REQUEST

The applicant is appealing the Planning Director's Determination that the use of the property at 1100 Orlando Avenue for a nightclub (The Roseville Station and Ultra Lounge) is no longer permitted as a legal non-conforming use. The Planning Director has determined that the on-site nightclub activities have been expanded without securing the appropriate entitlements or permits. By expanding the use without appropriate approvals, the property has lost the prior legal non-conforming status that allowed a nightclub which was ancillary to a restaurant, at this location.

SUMMARY RECOMMENDATION

The Planning Department recommends that the Planning Commission:

- A. Deny the Appeal, thereby upholding the Planning Director's determination that the property has lost its legal non-conforming status to operate a nightclub.

BACKGROUND

The subject property is located southeast of Riverside Avenue and Interstate 80, at 1100 Orlando Avenue. The original entitlements for the business at 1100 Orlando Avenue were approved in 1987. A building permit was issued for a restaurant, with a bar and a limited area for dancing. At this time, the City did not have a nightclub ordinance.

In 1996 the Nightclub Ordinance was approved establishing separation criteria from sensitive receptors (primarily residential uses) and establishing the zone districts where this type of use would be permitted. The Nightclub Ordinance was adopted in response to numerous complaints generated from the operation of Big Shot Billiards on Cirby Way. Big Shot Billiards operated as a nightclub and resulted in numerous noise, vandalism, and disturbance complaints from both adjacent businesses and residents.



Nightclubs are defined as, “establishments or places of entertainment within a building, open primarily at night, usually but not necessarily serving alcohol, and providing a stage or floor show or amplified live or recorded music, and space for spectators either standing or sitting, and/or dancing.”

Pursuant to the Nightclub Ordinance, nightclubs are prohibited within 500 feet of residential uses. A limited number of zone districts list nightclubs as a conditionally permitted use. Per the Nightclub Ordinance, this type of use is not allowed within a Neighborhood Commercial (NC) zone district. The property at 1100 Orlando Avenue is zoned Neighborhood Commercial and is within 500 feet of residential uses.
(Attachment 1)

When the Nightclub Ordinance was adopted, 1100 Orlando was granted a legal non-conforming status due to the pre-existing dance floor. This non-conforming status has consistently been restricted and conditioned

to the original dance floor area. This restriction is intended to limit the primary business to a restaurant use. This condition also restricted the level of nightclub activity and promoted the restaurant activities as the primary use at this location.

Per section 19.24.020.B(3) of the Zoning Ordinance, a legal non-conforming use cannot be expanded or modified, unless a conditional use permit is secured. If an expansion occurs without obtaining this approval then the non-conforming status is lost. In April of this year, after receiving numerous complaints, the Planning Director determined that the nightclub use had been expanded without the appropriate approvals, and therefore lost the non-conforming nightclub status. The appellant is contesting this determination based on the following:

1. Station Partners has not modified or increased the dance floor. The dance floor occupies the same square footage as in the past;
2. There is not an increased intensity of the nightclub use and it operates as a restaurant and nightclub; and,
3. The occupancy issues do not demonstrate an enlarged or increased nightclub use.

The full content of the appeal is contained within **Attachment 2**.

Current Issues: Based on the current intensity of the nightclub use at this site multiple violations have been identified. These include; Zoning, Building Code, Fire Code and Dance Permit violations. A full discussion of the content of these violations and the actions performed, to date, is provided below:

- **Zoning Violation:** In January, 2008 The Roseville Station Nightclub and Ultra Lounge ('The Station') began advertising the grand opening of Roseville's newest nightclub and ultra lounge. Due to the content of their advertising and complaints that were registered from the surrounding neighborhood, a letter was provided to the property owner as to the restrictions of the property's non-conforming status (**Attachment 3**). In this correspondence, it was expressly stated that the dance floor could not be expanded without the approval of a conditional use permit.

As part of their operations, The Station has significantly expanded the original dance floor without securing approval of a conditional use permit. This is verified through the past building department records. These records show the original dance floor area at 773 square feet and a recently submitted floor plan that shows the dance floor area to be 3,100 square feet. A full permit history is provided for in **Attachment 4**.

Although the on-site sign indicates that The Station is a restaurant, and menus are made available, all advertisement for this facility through its website and radio commercials is solely for a nightclub. Complaints have also been filed with the City due to the content of the advertisements. The City responded to this concern as part of the letter issued on January 10, 2008. Copies of the advertisement and web-page information have been included as **Attachment 5**.

In addition to the expansion of the dance floor, the nightclub operation has, on three separate documented occasions, exceeded the allowed occupancy of the building. The posted maximum occupancy is 205 persons. On one occasion there were 525 to 550 people within the building. By exceeding the occupancy and expanding the dance floor, the use is no longer operating under the prior conditions, and has therefore lost its non-conforming status.

On April 10, 2008, a letter was issued by the Planning Director informing the property owner and nightclub operator that the use of this property for a nightclub is not permitted (**Attachment 6**). The property is required to return to its original use as a restaurant or other uses permitted in the Neighborhood Commercial zone.

- **Building and Fire Code Violations:** The increased intensity of the use also creates Building and Fire Code violations that are directly related to health and safety impacts. This in turn, has required that the Building Department review the entire site for building code compliance. A Building Department inspection of the property has revealed that the owner has made a number of improvements to the building. These improvements were made without securing the appropriate building permits. These improvements and associated code violations include;
 1. Installation of booths that do not meet American Disabilities Act (ADA standards),
 2. Construction of a second bar,
 3. There are not adequate bathroom facilities based on increased occupancy,
 4. Construction of a deck with seating, further expanding the occupancy, and
 5. Removal of fixed seating which effects the exiting requirements.

Based on these violations the Building Department issued a notice and order to obtain the appropriate permits for these facilities (**Attachment 7**). Per the notice and order, a restaurant use is permitted, but a nightclub is a change in use creating a violation.

- **Dance Permit Violation:** Roseville Police Department originally issued a dance permit on February 1, 2008 for The Station. This permit was issued based on a building occupancy of 205 persons, and that this business was primarily a restaurant use with an ancillary nightclub.

On April 5, 2008 the Fire Department issued a citation for exceeding the building occupancy. This was following the Fire Department's warning and clearing of the building on two separate occasions in March. This issue has continued as Roseville Police Department was on-site on May 5, 2008 and the building was observed to contain 320 people. In addition to the occupancy citation the Police Department has responded to 28 service calls since February that are directly related to The Station. These calls involved medical aide, assault and battery reports and noise disturbances.

On April 17, 2008 the Police Chief held a revocation hearing for the dance permit. On April 25, 2008 a letter was issued to the business operator revoking the dance permit based on the intensity of the use exceeding the occupancy level and the number of calls for service to this location. This revocation is being contested and has been appealed. An appeal date has yet to be established.

APPEAL EVALUATION

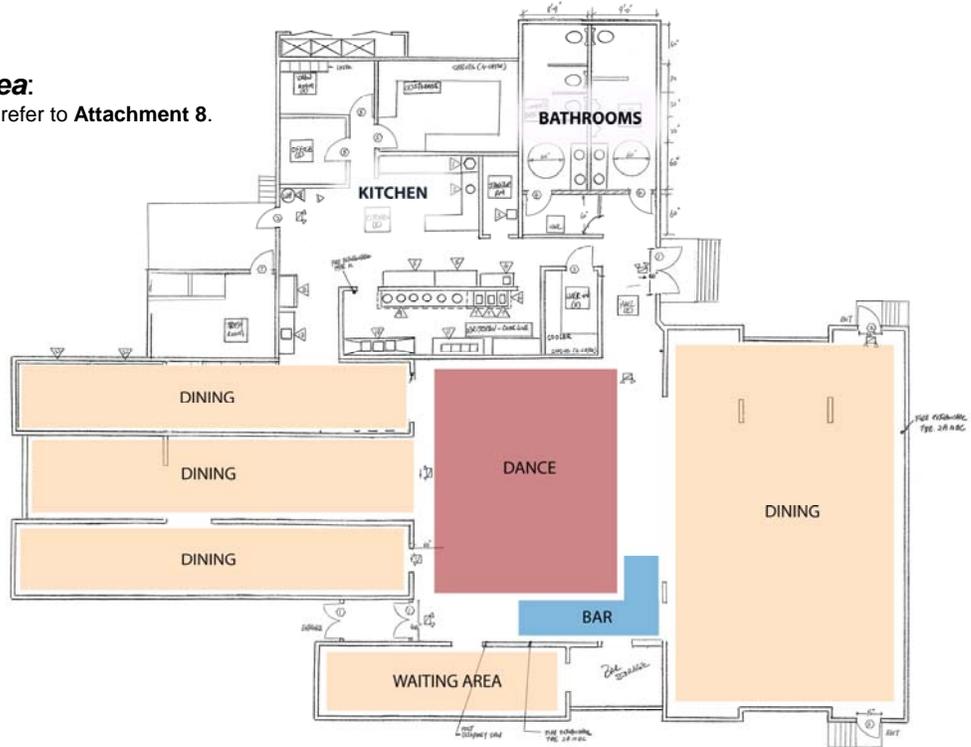
The appeal letter from Abbott & Kindermann, LLP on behalf of the Station Partners, LP, dated April 11, 2008 , identifies grounds for the appeal of the Planning Director's determination. Each of the grounds is paraphrased below, followed by an evaluation of the item.

1. **Station Partners has not modified or increased the dance floor. The dance floor occupies the same square footage as in the past.**

The first component of the appeal is focused on the size and history of the dance floor area within the building. This dance floor has been the past justification for qualifying this use as a legal non-conforming nightclub that was ancillary to a restaurant use. The following provides both a narrative description of the history of this improvement and visual examples of the modifications that have taken place over the past 21 years. The actual building plans that were on record have been included as attachments and were the basis for this visual representation.

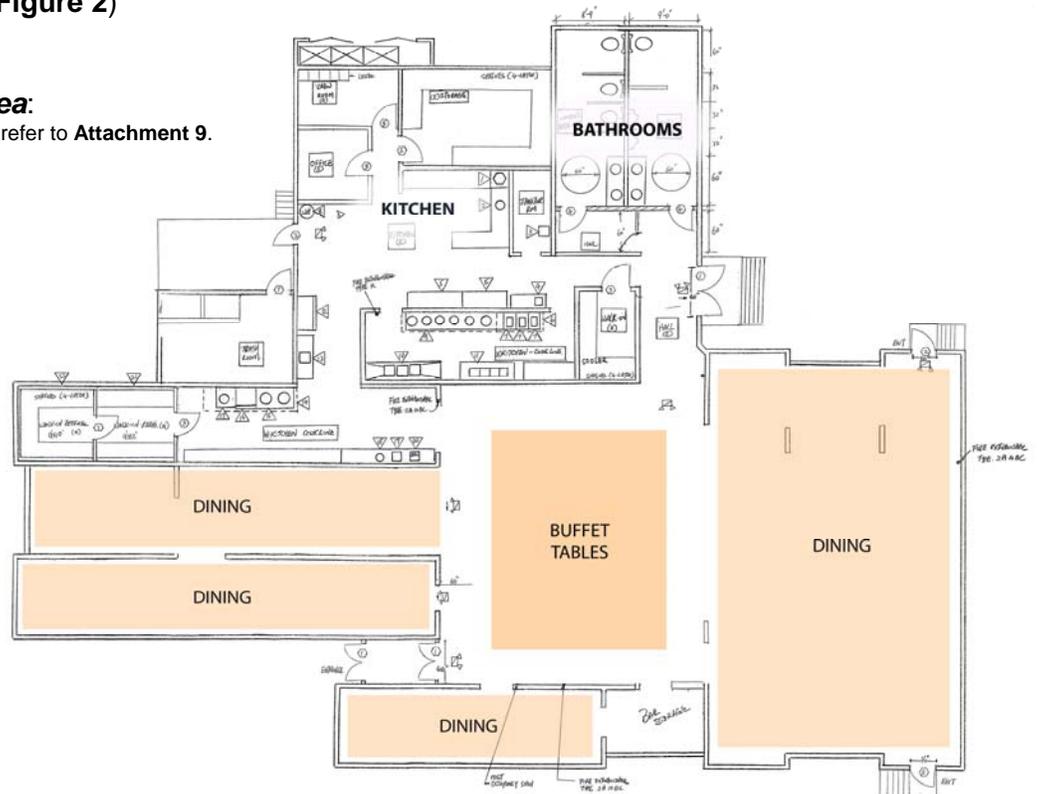
1987 Dance Floor Area: The original entitlements issued in 1987 to Jerry Lee were for a restaurant with maximum occupancy of 236 persons. The plans show the bar location and that the open area in front of bar was available for dancing. The dance floor area was approximately 773 square feet (see **Figure 1**).

Figure 1-
1987 Dance Floor Area:
For Building Permit Document refer to **Attachment 8**.



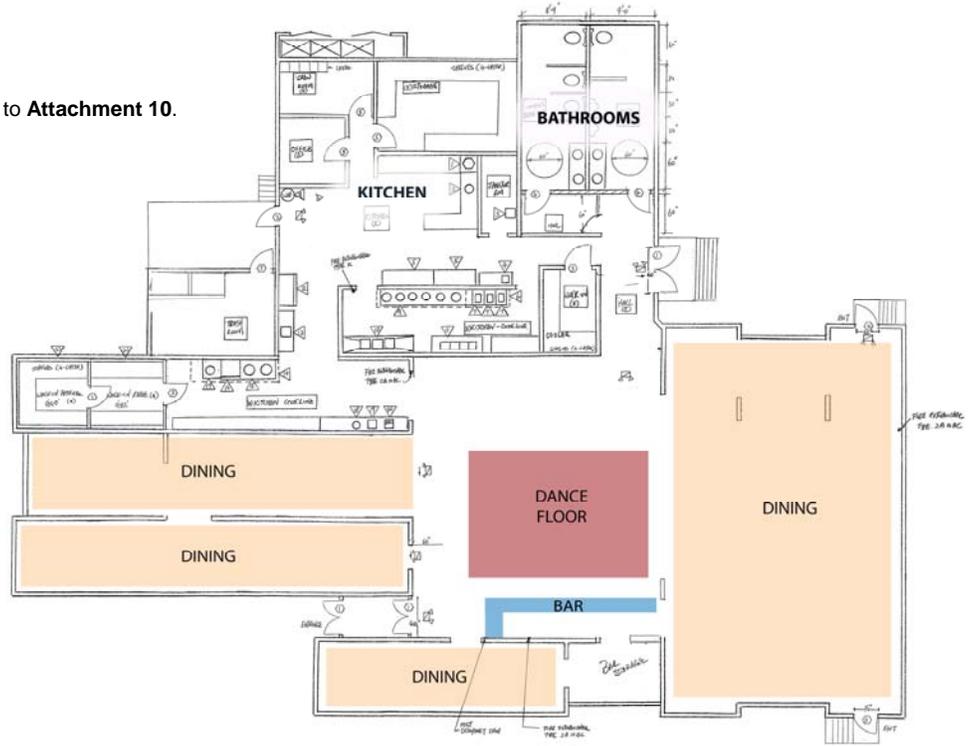
2003 Dance Floor Area: In 2003 the dance floor area was replaced with buffet tables as part of the “New China Buffet”. The restaurant improvements included the removal of the bar. The occupancy was then revised to the current 205 persons based on the plans submitted and approved by the Building Department (**Figure 2**)

Figure 2 –
2003 Dance Floor Area:
For Building Permit Document refer to **Attachment 9**.



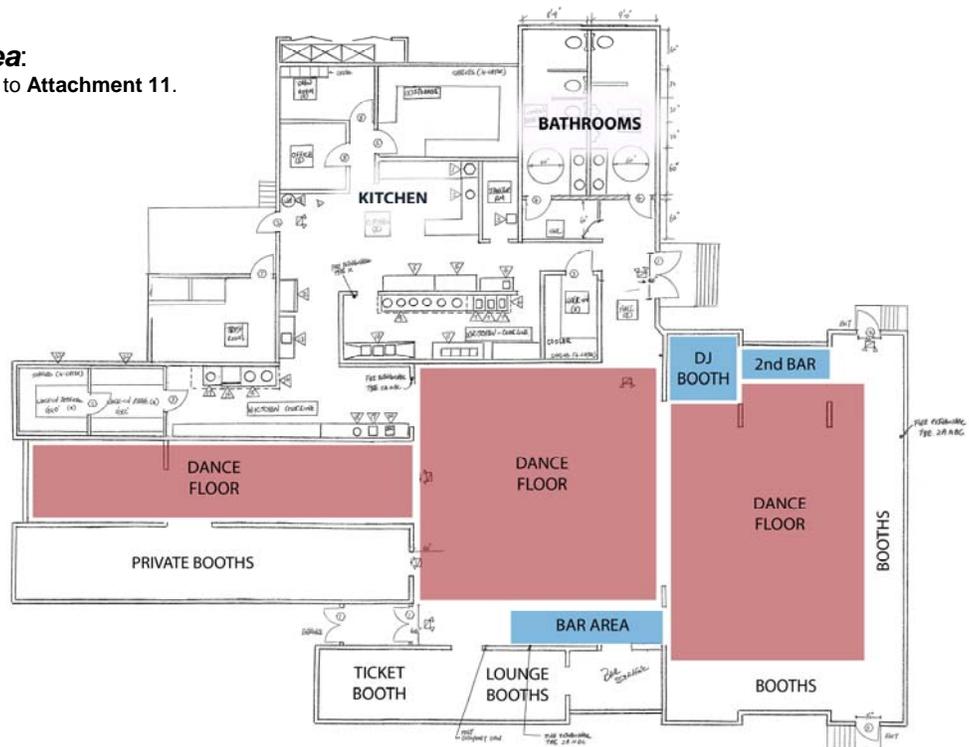
2007 Dance Floor Area: The buffet tables were removed, and the dance floor was reactivated. As part of the Paradise Junction restaurant/nightclub improvements, a request to reconstruct the bar was submitted in July of 2007. The floor plan identifies the location and size of the “existing laminate floor” that was the past dance floor. Measured from the plans that are on record with the Building Department, the area of the dance floor was approximately 360 square feet.

**Figure 3 –
2007 Dance Floor Area:**
For Building Permit Document refer to **Attachment 10.**



2007/2008 Dance Floor Area: An expansion of the dance floor and other work was completed without building permits during 2007 and leading up to the opening of The Station in January of 2008. As noted in **Figure 4**, the total dance floor area is now approximately 3,100 square feet.

**Figure 4 -
Current Dance Floor Area:**
For Building Permit Document refer to **Attachment 11.**



Based on the plans of record and on file with the Building Department the dance floor has been expanded from both the original building permit and more recently, the previously identified area on the plans submitted in 2007. The overall increase in the dance floor from 1987 to today is 2,327 square feet. This is a substantial expansion of the prior square footage allocated to the dance floor, which is a direct correlation to the nightclub activities on-site.

2. There is not an increased intensity of the nightclub use, and it operates as a restaurant and nightclub.

Restaurant Use: The primary use of this site has been a restaurant with the nightclub activities being an ancillary use. This is reinforced, and has been expressed to the leasing agent and the various different tenants through a variety of past City actions. It is also reinforced by the provisions of the sites liquor license.

The past City actions that reinforce this are as follows:

1. **June 2004** – A zoning affidavit in conjunction with an application for a liquor license was submitted to the Planning Department for approval. As noted on this application, the type of business that was approved was a restaurant. Nightclub was listed but scratched out on the application. (**Attachment 12**) This action indicates that the intended primary use at this location is a restaurant.

This is further reinforced by the type of liquor license that has been issued for the use by the Department of Alcoholic Beverage Control (ABC). ABC has issued a “47” license for this site. This type of license is for an “Eating Place or Restaurant” as defined by the ABC enforcement manual (**Attachment 13**). The definition of a 47 license requires that the business, “Must make actual and substantial sales of meals...”.

2. **July 31, 2007** – As part of a tenant improvement to reconstruct the bar the provisions of the permit indicate that “restaurant use with ancillary use of the bar to service restaurant”. As part of the tenant improvement package, it also calls out the existing laminate floor as the non-conformity associated with the building (**Attachment 14**).
3. **January 10, 2008** – After receiving a number of complaints, the City notified the property owner that the restaurant use is a permitted use, and that an expansion of the dance floor requires a conditional use permit. (**Attachment 3**)

Based on these records of fact, the City has consistently informed the leasing agent, tenants and property owners that the primary use of the property is to be a restaurant.

Since the appeal was filed the Planning Department has been monitoring the parking area of The Station during the lunch hour (11a.m. -1 p.m.). The results of this monitoring are represented in **Attachment 15**. On average, there are 4 vehicles parked within the parking lot during peak restaurant hours. This represents a parking occupancy rate of less than 1%. These parking counts show that the overall traffic during peak restaurant operations is significantly lower than what would be required to park the nightclub use. As part of the complaints, and as documented by the Fire Department, parking for this use as a nightclub spills over into the parking areas of surrounding businesses (Back 40 BBQ, A&S Cycle, etc...). This would indicate that there is a 100% parking occupancy during the nightclub activities. The parking counts further support the City’s position that the operations are not focused on promoting a restaurant use, and the primary use of the property is for a nightclub.

Nightclub Intensity: The appellant has stated that the intensity of the nightclub of the nightclub has not increased, above the prior operations. A key factor in determining the intensity of the operations is the overall building occupancy.

The life safety occupant load of the building is currently set at 205 persons. This occupancy rating has been established by the primary use as a restaurant. Since The Station started their operations in January of 2008, there have been three documented cases where they have exceed their allowed occupancy. Additionally, there has been one written citation. The following table provides a brief summary of these violations:

Date	Permitted Occupant Load	Documented Occupant Load	# Persons exceeding permitted capacity
March 21, 2008	205	550 (estimated)	345
April 5, 2008	205	287	82
May 5, 2008	205	320	115

As represented in this table the allowed occupancy for this building has been exceeded, on average, by 88%. This has a direct correlation to the intensity of the use being increased and exceeding what would occur if this where a restaurant with ancillary nightclub/dancing activities. As promoted by The Station's web-site, the level of the intensity of the nightclub use is physically represented in the photos below:

Figure 5 – Website Excerpts



3. The occupancy issues do not demonstrate an enlarged or increased nightclub use.

A key indicator in the level of activity that is directly related to the increase in occupancy is the number of calls for service for Police and emergency service response. Even more concerning is the type of calls that are being received.

Prior to The Station, this building supported a restaurant/nightclub use called “Paradise Junction”. Paradise Junction occupied the site from May of 2005 to November of 2007. On average, the call rate for service from the Police Department was **1.5** calls per month. Since The Station began operations in January of 2008 the average call rate has gone to **8** calls per month. In addition to the increase in the number of calls, the type of calls and complaints are directly related to an expanded nightclub use.

In order to accommodate an increase in the nightclub crowd the appellant installed a second bar within the facility without permits (Figure 6). This bar was constructed to service the nightclub patrons and not to support a restaurant use. The ability to serve more drinks creates additional issues tied to the building occupancy.

As a restaurant use the building is required to provide a total of 6 water closets. The building currently meets this standard. As a nightclub use the minimum sanitary fixture load of the building is increased, since the open dance floor allows for more people. The sanitation occupant load for a nightclub within this building would be 320 persons.

This would require that the building provide 3 additional water closets (1 men and 2 women) to accommodate this intensification of use.

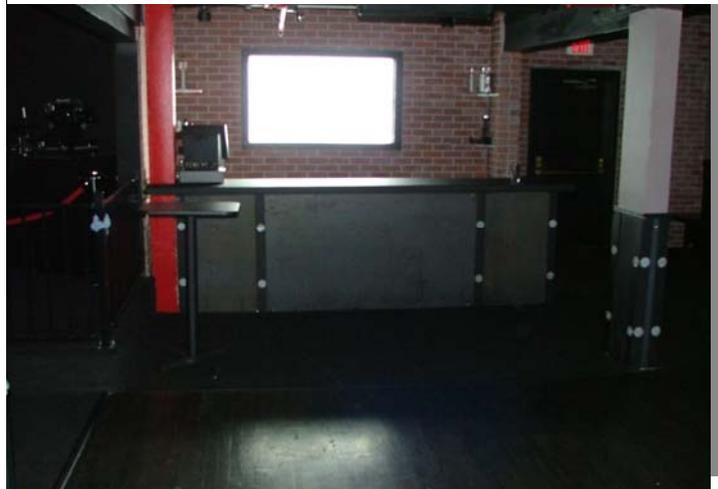
Complaints have been made by the surrounding neighbors and businesses that patrons are not able to use the restrooms within the building. This results in witnessed reports that the patrons are relieving themselves in the landscape areas and parking lots of the surrounding businesses and neighborhood. This is tied directly to the increased occupancy of the building and the lack of appropriate bathroom or water closets to support a nightclub.

Even more concerning is the exiting issues that result with too many people occupying the building. As reflected in the photo in **Figure 5** and the occupancy counts this building has been filled beyond capacity. This concern has been reinforced by a recent call for service to this location.

On May 5, 2008 the Roseville Police Department responded to a disturbance called in by a woman that was in the nightclub. As part of this call the woman reported that, ***“They are trying to leave, but can’t get out due to too many people”***.

The required number of exits for the nightclub use is 3. The building provides 4 exits to the dance floor area, but only 2 meet the Building Code requirements. The other two have been obstructed with improvements that were constructed without building permits. This creates a significant health and safety concern, and was the basis for the notice and order posted by the Building Department.

Figure 6 – Bar installed without permits



The increased calls for service are a direct correlation to the over occupancy of the building. The second bar, constructed without permits, was constructed to support an increase in the nightclub use on-site. The building is not constructed to support a nightclub use as the primary use of the building. Continued use of the building as a nightclub puts future patrons at serious risk.

APPEAL CONCLUSION

The appeal is unjustified because:

1. The dance floor has been modified and increased in size from the original condition that established the building's non-conforming status;
2. The dance floor occupies more square footage than what was allowed under the non-conforming status;
3. There is an increased intensity of the nightclub use, and the business operates primarily as a nightclub with the restaurant as a secondary function;
4. The occupancy issues demonstrate an enlarged or increased nightclub use creating significant health and safety concerns; and,
5. Per section 19.24.020.B of the Zoning Ordinance, "a nonconforming use may be continued, provided that no such use shall be enlarged or increased, nor extended to occupy a greater area than that which it lawfully occupied before becoming a nonconforming use...." This provision of the ordinance is reflective of the intended nature of designating a use as non-conforming, which is for the use to eventually be discontinued. It further supports this, by requiring that a non-conforming use not be expanded or modified, unless a conditional use permit is secured. If an expansion occurs without obtaining this approval then the non-conforming status is lost. A conditional use permit was not secured and therefore, the limited non-conforming nightclub status previously assigned to 1100 Orlando Avenue has been forfeited.

ENVIRONMENTAL DETERMINATION

The proposed project is categorically exempt from environmental review pursuant to Section 15321 of the California Environmental Quality Act (CEQA) Guidelines (Enforcement Actions by Regulatory Agencies), and pursuant to Section 305 of the City of Roseville CEQA Implementing Procedures.

RECOMMENDATION

The Planning Department recommends that the Planning Commission take the following actions:

- A. Deny the Appeal.

ATTACHMENTS:

1. Map indicating the site location and proximity to sensitive receptors
2. Letter of Appeal, dated April 21, 2008
3. Letter indicating nightclub restrictions, dated January 10, 2008
4. Permit and Business license history
5. Advertising posted on The Station website
6. Planning Director's Determination, dated April 10, 2008
7. Building Department, Notice and Order, issued March 27, 2008
8. 1987 floor plan, Building Department records (Building Permit related)
9. 2003 floor plan, Building Department records (Building Permit related)
10. 2007 floor plan, Building Department records (Building Permit related)
11. 2008 floor plan, Building Department records (Not a Building Permit)
12. Zoning affidavit, dated June 1, 2004
13. Excerpt from ABC enforcement manual
14. Excerpt from tenant improvement
15. Parking survey dated May 5, 2008 to May 15, 2008

Note to Applicant and/or Developer: Please contact the Planning Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.