

Department of Permitting & Inspections

Zoning Division
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MEMORANDUM

TO: Development Review Board
FROM: Scott Gustin
DATE: February 7, 2023
RE: ZPS-22-52; 328 North Avenue

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 7N

Owner/Applicant: Nova Enterprises LC, Joe Realty LC / David Simendinger

Request: Replace existing nonconforming freestanding sign with new nonconforming freestanding sign.

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 7 (Signs)

Overview:

328 North Avenue is within the RL (Low Density) zoning district. The freestanding sign on the property proposed for replacement is noncompliant with regard to sign type in a residential zoning district (RL), setbacks (front and side yard), size, and its location in a clear sight triangle. The applicant proposes to replace the existing sign with a smaller sign that occupies the same location. The new sign will also be internally illuminated and will have a changeable electronic message display. The smaller replacement sign will lessen the degree of the existing nonconformity. Replacement of a nonconforming sign is subject to Section 7.1.6 CDO, requiring DRB review.

This application was scheduled for DRB review December 6, 2022. The applicant did not appear, and the review was deferred.

Background:

Previous zoning permits:

- **Zoning Permit**; construct a gas filling station. Approved October 1956.
- **Zoning Permit**; exterior building alterations, install stockade and rail fencing, sign enhancements, repave the lot, and install underground gas storage tanks. Approved January 1975.
- **Zoning Permit 84-389**; install three underground gasoline storage tanks, replacing three existing tanks. Approved August 1984.
- **Zoning Permit 87-624**; construct a 1'/10' pitch roof over existing flat roof. Approved December 1987.

- **Zoning Permit 99-154**; replace four-pump island with a two-pump island in same location. Approved September 1998.
- **Zoning Permit 99-333**; install new face on freestanding sign. Approved February 1999.
- **Zoning Permit 99-502**; façade improvements to the gas station, add canopy over existing pump island. Denied May 1999.
- **Zoning Permit 00-160**; reface existing gas station with brick. Approved September 1999.
- **Zoning Permit 00-236**; replace existing noncomplying freestanding sign. Denied October 1999.
- **Zoning Permit 01-031**; reface the freestanding sign. Approved August 2000.
- **Zoning Permit 02-096**; replacement freestanding sign. Approved September 2001.
- **Zoning Permit 06-088CA/CU**; demolish service/gasoline station and replace with new convenience store/gasoline station. Approved May 2006.
- **Zoning Permit 07-813CA**; addition of fourth dormer, converts outdoor lighting to LED fixtures, install clapboard on dormers, and install a hood vent. Approved July 2007.
- **Zoning Permit 08-086SN**; install parallel sign. Approved August 2007.
- **Zoning Permit 08-358CA**; raise gasoline pump canopy. Approved February 2008.

Recommendation: Consent approval as per the following findings and conditions:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. The following zoning permits remain open: 99-154, 06-088CA/CU, and 08-358CA. **Affirmative finding as conditioned.**

Article 7: Signs

Sec. 7.1.6 Non-Conforming Signs

Any legally pre-existing Sign or other advertising device which does not conform to the current provisions of this Article shall be deemed a non-conforming Sign. Non-conforming Signs may remain in use at the same location, and ordinary maintenance and repair of such Signs shall be permitted.

A non-conforming Sign shall not be relocated, enlarged, replaced, redesigned, or altered in any way (except for repainting, refacing, repair or a change of lettering, logo, or colors using the same materials within the existing Sign frame) except to bring the Sign into complete or substantially greater compliance with this Article. In such cases, the DRB may allow a new Sign to be in substantially greater compliance than the existing nonconforming Sign subject to the applicable requirements of this Article. Nonconforming signs that are destroyed or damaged by 50% or more of their value shall not be rebuilt or repaired after one (1) year except in full conformance with this Article.

The existing freestanding sign is noncompliant with regard to setbacks, area, location within a clear sight triangle, and sign type. The applicant proposes to replace this sign with one that will be closer to, but not complete, compliance. The replacement sign will maintain the same location and height by using the existing sign poles. What differs between the new and the old sign is the reduced size and addition of a changeable electronic message display. Under Sec. 7.2.6 CDO

below, *Freestanding signs associated with a Fuel Service Station may include an electronic changeable message only for the display of numerals.*

Table 7.2.1-B – Sign Types Permitted by Form/Zoning District

This table lists *Freestanding Sign* as ‘not permitted’ in the RL zoning district. Evidence of a freestanding sign in this location dates back to the zoning permit issued in 1975 (see list above). The most recent iteration of this sign was approved under ZP 02-096 to ‘*Replace existing freestanding sign with new freestanding sign*’. This sign totals 14 ft in height, with an area of 45 sf, and sits within a foot of the front and side yard property lines. Additionally, the sign has both internal and external illumination. The current proposal replaces the existing sign with one that is smaller, has internal illumination, and a changeable electronic message display. The height and location will remain the same. **Affirmative finding.**

Sec. 7.2.6 Freestanding Sign

While this type of sign is not permitted in the RL zoning district, the following applies to freestanding signs:

Specifications

<i>Quantity (max)</i>	<i>1 per primary street frontage</i>
<i>Width (max)</i>	<i>8-ft (not including supports)</i>
<i>Height</i>	<i>10-ft (not including supports)</i>
<i>Depth (face-to-face) (max)</i>	<i>1-ft</i>
<i>Sign Area (max)</i>	<i>60 sf. (not including supports) or 0.5 sf per linear foot of street facing building frontage whichever is less.</i>
<i>Setback (min)</i>	<i>The lesser of 3-ft from the front property line or in-line with the building façade, and 5-ft from any side property line</i>
<i>Height, Overall (max)</i>	<i>14-ft above the finished grade (including supports).</i>

Miscellaneous

No part of a Freestanding Sign may encroach or overhang upon a public right-of-way, clear sight triangle, driveway, parking area, or walkway.

Freestanding Signs associated with a Fuel Service Station may include an electronic changeable message only for the display of numerals.

Freestanding Signs may only be internally or externally illuminated or backlit.

Street facing building frontage totals 30, which results in a maximum sign area allowance of 15 sf. The current sign has an area of 45 sf. The proposed replacement sign will be reduced in size to 35.86 sf. As noted above, the nonconforming front and side yard setback will remain as is. Its location is also within a clear sight triangle, but the reduced sign area should improve sight lines with the slight increase of height at the bottom of the sign.

The proposed replacement sign does not “*bring the Sign into complete... compliance*”. That leaves an analysis of *substantially greater compliance*.

There is one aspect of the replacement freestanding sign which is clearly more conforming than existing – the size, and others that maintain the same level of nonconformity (type & location). The reduction in size is substantially more compliant than the existing size. **Affirmative finding.**

II. Conditions of Approval

1. Per **Section 2.7.8, Withhold Permit**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. The following zoning permits remain open: 99-154, 06-088CA/CU, and 08-358CA and require certificates of occupancy.
2. Standard Permit Conditions 1-15.