

Department of Permitting and Inspections

Zoning Division

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: June 21, 2022
RE: ZP-22-62, 187 Pearl Street

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.

File: ZPW-22-62

Location: 187 Pearl Street

Zone: FD6 **Ward:** 3C

Parking District: Multi Modal Mixed Use

Date application accepted: April 28, 2022

Applicant/ Owner: Chris Mason

Request: Request for Alternative Compliance under the Form Code: Restore historic masonry openings with installation of windows at (3) locations abutting alleyway.

Background:

- **Zoning Permit 22-298;** Exterior masonry repairs. Replacement of (4) windows with new wood clad units. Change (3) existing doors to windows. Removal of fire escape, defunct kitchen exhaust hood, awning. June 2022.
- **Zoning Permit 20-0608CA;** window replacements. January 2020.
- **Zoning Permit 11-0540CA;** intake and exhaust vents for new interior boilers. January 2011.
- **Zoning Permit 05-100SN;** sign change, only name change using same sign, FU DA Chinese Restaurant. October 2004.
- **Zoning Permit 04-580;** change of use from cosmetology school to restaurant. May, 2004.



Overview: 187 Pearl Street has a commercial space on the first floor, and 8 apartments on the upper floors. The owner wishes to re-open some closed window penetrations on the south (rear)

of the building to enhance the apartments under renovation. With the adoption of the Form Code, there is a provision that prevents introducing building openings on a side or rear property line *to prevent unnecessary limitations on the development of adjacent property*. This parcel fronts a privately owned access alley, of which the owner is included by title in rights-of-way. The Form Code does not provide a measurement of setback that would allow building openings, and does not specifically define procedures if the alley is privately owned and applicant has limited use. The applicant is seeking *Alternative Compliance* in an effort to secure approval for the installation of three new windows in previous window openings.

The **Design Advisory Board** reviewed the application at their May 24, 2022 meeting, and by unanimous decision approved the following motion:

I move that common sense prevail, and we recommend consideration of Alternative Compliance and approve installation of 3 windows in former window openings of 187 Pearl Street.

Recommended motion: Consent Approval, per the following Findings and Conditions:

I. Findings:

Article 5: Citywide General Regulations

Section 5.2.5 Setbacks

(b) Exceptions to Setbacks

4. Historic Building Features. Features of a historic building such as porches, additions, entries, bays and porticos that have been removed may be replaced and may project into required yard setbacks subject to the following:
 - A. The structure is listed or eligible for listing on the State or National Register of Historic Places;
 - B. The building feature being replaced was a character defining feature of the primary structure, can be documented to have previously existed, and is being replaced within the original footprint; and,
 - C. The building feature replacement is completed in accordance with the standards for historic buildings contained in Sec. 5.4.8.

187 Pearl Street is listed on the National Register of Historic Places within the Pearl Street Historic District. Here is the narrative:

63. Vermont College of Cosmetology (187 Pearl Street); 1916

This four-story, brick building, originally the home of the American Phonograph Company Store, is a handsome example of early twentieth century Classical-style commercial architecture in Burlington. Its symmetrical facade is divided into two bays by brick piers. Each bay contains paired windows with modern, one over one sash and granite sills. The second and third story windows are topped by segmental arches, with keystones picked out in granite. The fourth story openings are more elaborate, with semi-circular arches rising from granite imposts. A corbeled, brick cornice rises to a flat roof. The building is ten bays deep, with irregular fenestration on the side walls.

A long, rounded vertical sign, reading "Vermont College of Cosmetology" extends from the facade. At street level, central, double glass doors are flanked by large display windows. The walls are covered with pinkish permastone, a 1959 modernization. A small doorway to the left (east) leads to the upper floors.

The window openings can be clearly documented to have existed, as the masonry outlines and rough openings are visible evident. The owner wishes to install appropriate window replacements, consistent with the replacement sash more recently installed in the building. See review under Section 5.4.8, as required under Section 5.2.5. (b) 4. C, below.

Affirmative finding, with DRB concurrence.

Sec. 5.4.8 Historic Buildings and Sites

The City seeks to preserve, maintain, and enhance those aspects of the city having historical, architectural, archaeological, and cultural merit. Specifically, these regulations seek to achieve the following goals:

To preserve, maintain and enhance Burlington's historic character, scale, architectural integrity, and cultural resources;

To foster the preservation of Burlington's historic and cultural resources as part of an attractive, vibrant, and livable community in which to live, work and visit;

To promote a sense of community based on understanding the city's historic growth and development, and maintaining the city's sense of place by protecting its historic and cultural resources; and,

To promote the adaptive re-use of historic buildings and sites.

(a) Applicability:

These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.

187 Pearl Street is listed within the Pearl Street Historic District on the National Register of Historic Places.

(b) Standards and Guidelines:

The following development standards, following the Secretary of the Interior's Standards for the Treatment of Historic Properties, shall be used in the review of all applications involving historic

buildings and sites subject to the provisions of this section and the requirements for Design Review in Art 3, Part 4. The Secretary of the Interior's Standards are basic principles created to help preserve the distinctive character of a historic building and its site. They are a series of concepts about maintaining, repairing and replacing historic features, as well as designing new additions or making alterations. These Standards are intended to be applied in a reasonable manner, taking into consideration economic and technical feasibility.

1. *A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.*

The property was constructed as a mixed-use building; a use that continues.

2. *The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.*

The effort is to replace original features (windows) that previously existed.

3. *Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.*

No conjectural changes are proposed. The window openings were original to the building's construction.

4. *Changes to a property that have acquired historic significance in their own right will be retained and preserved.*

No other features are proposed for alteration under this application.

5. *Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.*

The application intends to replace/re-install original features of the building.

6. *Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials recognizing that new technologies may provide an appropriate alternative in order to adapt to ever changing conditions and provide for an efficient contemporary use. Replacement of missing features will be substantiated by documentary and physical evidence.*

The application is not to replace original features, but to re-install features that originally existed, in the same location.

7. *Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.*

Not applicable.

8. *Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.*

9. *New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.*

Not applicable.

10. *New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

Not applicable.

Affirmative finding.



South elevation, photo taken from parking lot south of the alley. Note three windows infilled on the right.

Article 14 (Form Code)

Section 14.3.4 FD6

14.3.4-C- Lot Occupation & Building Placement

Rear Setback:

- Principal Buildings 0-ft min. or 15-ft from a rear public Alley centerline

In the Form Code, 187 Pearl Street has a 0 Rear setback. The access alley behind the building is not a *public alley*, but a private access drive. The 15' setback therefore does not apply.

See Section 14.4.13 (e), below on specific requirements for improvements to buildings with 0 setback.

Section 14.4.13 (e) Walls

v. New buildings, additions, or significant improvements to existing Buildings placed on a side or rear property line where no setback is required shall contain neither doors nor windows along such elevation in order to prevent unnecessary limitations on the development of adjacent property.

The Form District 6 has no rear setback requirement.

The existing building is set back approximately 2'9" from the rear property line. There are

existing windows in the south elevation, but three window openings that have been masonry infilled which the applicant wishes to reopen.

Immediately behind the 187 Pearl Street parcel is a 12' private right-of-way that acts as a delivery access drive for 181 Pearl (Three Needs). The 187 Pearl Street parcel shares in the access agreement with 191 Pearl.

There is included in this conveyance the use of the twelve (12) foot right of way for pedestrians and vehicular traffic but not for parking, which is south of the brick building herein conveyed and said right of way runs from the west line of South Winooski Avenue south of the Shell Station and south of the brick building here conveyed. The use of the right of way herein granted to be used in common with such other parties as have record title to said right of way.

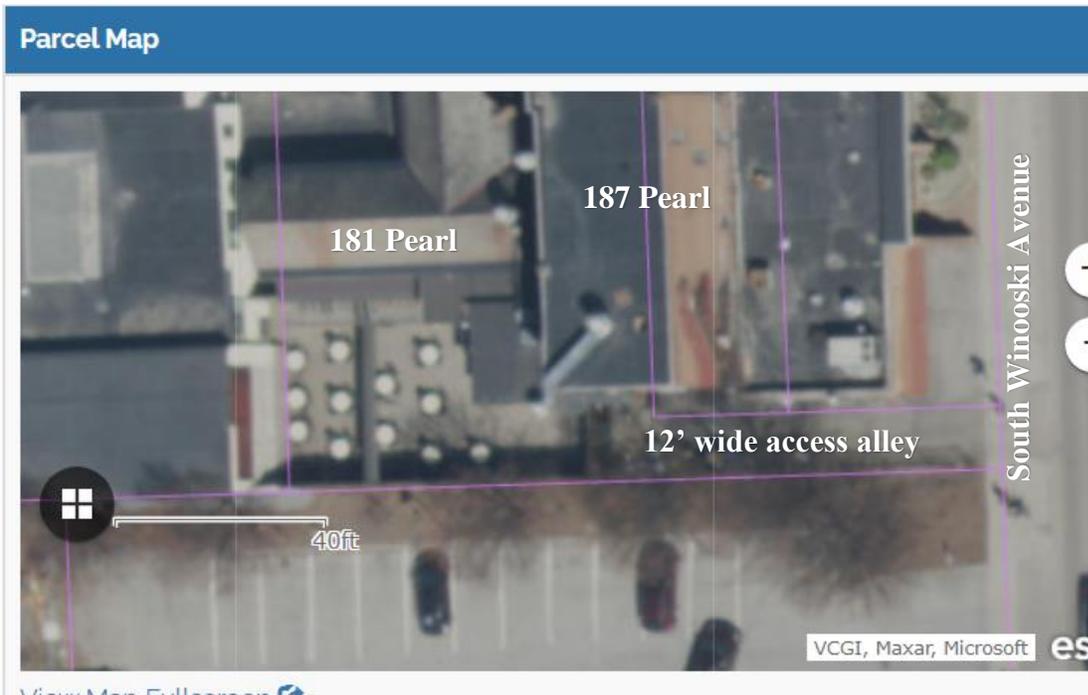
The Shared Right-of-Way, the narrow width, and the functional need for rear access and egress from parcels fronting on Pearl Street render the alley highly unlikely to be redeveloped. As the applicant holds a limited title to the ROW, the alley acts as access and egress for those with recorded title for use, and the windows are a historic feature of the listed historic building, the request to reopen the three windows is both reasonable and may be considered under Section 5.2.5 (b) 4. of the regulations, and under 14.7.3. (b) *Alternative Compliance* of the Form Code.

Upon consultation with the Building Inspector, he concurs that there is no building code prohibition to the request (email from Brad Biggie, 5.10.2022):

Mary,

There is no section in the code that would prevent them from installing window units in the existing opening on the rear (south side) of this existing building. If you need anything further regarding this let me know.

Affirmative finding with DRB concurrence.



South Winooski Avenue on the bottom. 187 Pearl Street identified, access drive annotated.

Article 14.7.3 (b) Alternative Compliance (Relief) Granted by the Development Review Board

Additional relief from the prescribed standards may be granted by the Development Review as provided below:

- i. DRB Alternative Compliance: **Relief from any non-numerical standard, and any numerical standard by no more than 20% of such requirement or an additional 10% beyond any Administrative Relief permitted above, may be granted by the Development Review Board after review and recommendation by the Design Advisory Board and a Public Hearing.***

The Form Code does not define on an allowable setback for building openings when abutting another property; nor does it contemplate the abutting feature to be a privately owned access alley.

The applicant therefore seeks consideration under Alternate Compliance of the Form Code to allow for re-opening the 3 windows.

Decisions by the DRB regarding any Alternative Compliance granted shall be made in writing and upon affirmative findings that:

A. the relief sought is necessary in order to accommodate unique site and/or Building circumstances or opportunities;

The applicant sees an opportunity to reopen the windows to enhance and add bedrooms to the 8 residential units currently being remodeled. The historic building originally had the windows, prior to installation of a fire escape.

B. the relief if granted is the minimum necessary to achieve the desired result;

The request is limited to insertion of three new windows in previous window openings; confirmed to have originally been present in the building. Such action will significantly enhance the residential units under rehabilitation.

C. the property will otherwise be developed consistent the purpose of this ordinance, the intent of the Form District, the intent and purpose of the section that the relief is being sought, and all other applicable standards;

The property is under renovation in concert with appropriate trades permits, and is seeking the allowance for re-insertion of windows subject to Alternative Compliance from the DRB.

D. the relief if granted will not impose an undue adverse burden on existing or future development of adjacent properties;

The applicant's property fronts a private access alley, which multiple property owners share limited title. At 12' in width, it is unlikely that this narrow connection to the rear of Pearl Street properties will be developed. With development unlikely, the insertion of windows will not introduce an adverse burden on the abutting property, to which the applicant holds partial title.

E. the relief if granted will yield a result equal to or better than strict compliance with the standard being relieved.

The Form Code defines a 0 rear setback within FD6. At present, there is approximately 2'9" setback between the existing building and the 12' alley. Upon DRB concurrence, the introduction of 3 new windows will allow the enhancement of residential units at 187 Pearl Street (consistent with the historic appearance of the building) with no negative impact to abutting properties.

Affirmative finding upon concurrence with the DRB.

II. Recommended Conditions of Approval

1. Standard Permit Conditions 1-15.

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