

## Department of Permitting and Inspections

Zoning Division

645 Pine Street

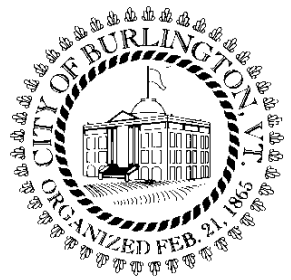
Burlington, VT 05401

<http://www.burlingtonvt.gov/PZ/>

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

William Ward, Director  
Theodore Miles, Code Compliance Officer  
Charlene Orton, Permitting and Inspections Administrator  
Scott Gustin, AICP, CFM, Principal Planner  
Mary O'Neil, AICP, Principal Planner  
Ryan Morrison, Associate Planner  
Layne Darfler, Planning Technician  
Alison Davis, Zoning Clerk



### MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: September 21, 2021  
RE: ZAP21-13; 240-242 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 Number:** ZAP21-13 (Appeal)

**Original Permit Number:** ZP21-4.

**Zone:** RM **Ward:** 2C

**Date original application (ZPS21-5) uploaded:** June 5, 2021

**Date application fee paid:** July 29, 2021

**Date of decision (denial):** August 23, 2021

**Date application to appeal uploaded:** August 24, 2021

**Applicant/ Owner:** John Dubie

**Request:** Appeal of administrative denial for a replacement sign in the Medium Density (RM) zoning district.

#### Background:

[Note: Building constructed in 1941 as a First National supermarket and originally numbered 238 Pearl; Address changed to 240 Pearl (Interior Design/Liquor Store/Beverage) and 242 (Copy Center/Lakeside Pharmacy) addition on the east.]

- **Zoning Permit 21-0615CA;** install overhead door on north elevation, egress door on Union Street elevation. January 2021.
- **Zoning Permit 19-0482SN;** remove DLC/Liquor store signage; install parallel sign. Originally permitted December 2018. Revised sign approved June 12, 2019. **New Sign ordinance adopted October 28, 2019.**
- **Zoning Permit 05-306FC;** erect 140' of 6' high chain link fence along northern property line. November 2004.



- **Zoning Permit 95-451 CU95-046 / COA95-091**; operation of a deli in existing Pearl Street Beverage/State Liquor Store. May 1995.
- **Zoning Permit 93-324 / COA093-073A**; installation of two parallel noninternally illuminated sign, each measuring 2' x 5' for existing pharmacy. Goose-neck lighting will be used for illumination. January 1993.
- **Zoning Permit 93-302**; change of use from copy center to pharmacy with curb cut and green belt improvements. January 1993.
- **Zoning Permit CU-93-035**; conversion of a former print shop to retail pharmacy. December 1992.
- **Zoning Permit 83-401 / COA83-053**; convert existing liquor store to both a liquor store and a beverage store. Replace existing façade with a brick veneer. No additional lot coverage. November 1983.
- **Zoning Permit 83-340**; renovate the interior of the existing liquor store. No exterior modifications and no additional lot coverage. **July 1983.**
- **Zoning Permit 80-857**; erect two rigid frame flat to building signs 1'6" x 12', and 2' x 16'; smaller than existing. April 1980.
- **Zoning Permit 79-614**; erect three (3) signs where existing signs are located on building. October 1979.
- **Zoning Permit (n.n.)**; Olson's Fabrics Limited to use the premises as an existing retail sales and service establishment as an accessory use to occupy no greater than 20% of the ground floor and to erect a 2 ½" x 12' sign flat against the building on the east side and a 2' x 10' rooftop sign. December 1973.
- **Zoning Board of Adjustment decision (n.n.)**; change a non-conforming use (Robert Thomas Interiors) to allow the existing building to be used for a state liquor store. Sign not to exceed the size of the present one. March 1970.
- **Zoning Board of Adjustment decision (n.n.)**; enlarge a non-conforming use by erecting a 28.6' x 110.6' addition to the east side of the existing building. Conditioned upon the Robert Thomas sign be in accordance with plan submitted. February 1970.
- **Zoning Board of Adjustment decision**; change in a non-conforming use to use the premises to sell carpet, furniture, draperies, decorative accessories, general home furnishings and appliances. July 1968.
- **Zoning Board of Adjustment application**: enlarge the existing super market at 238 Pearl Street by 40' in width and an additional 25' in depth, and demolish two houses now numbered 256 and 258 Pearl Street to accommodate parking. September 1948.

**Overview:** The Pearl Street beverage was consumed by fire July 1, 2020.

240-242 Pearl Street is within the RM (Medium Density) zoning district. The signs on the building before the fire were pre-existing/non-conforming to the current ordinance.

The application requested a wall sign 20" x 10'. (16.66 sf.)

Article 7 of the Comprehensive Development Ordinance limits replacement of non-conforming signs destroyed or damaged to one year from the date of damage. Although the applicant applied for a sign permit June 5, 2021, the zoning application fee was not paid until July 29, 2021. The ordinance states that an application is not complete until all fees are paid. Therefore, the application was not complete until July 29, 2021, after the close of the one year window in which replacement of the non-conforming sign could be approved.



Burlington firefighters battle a blaze at Pearl Street Beverages that was reported shortly after 2 a.m. on July 1. BFD photo

**Recommended motion: Denial of the appeal, and uphold the administrative decision per the following Findings:**

**I. Findings**

**Article 3: Applications, Permits and Project Reviews**

**Section 3.1.2 Zoning Permit Required**

*15. Signs*

A zoning permit is required for a replacement sign. An application was uploaded May 27, 2021, but incomplete until payment was made July 29, 2021.

**Affirmative finding for filing an application for a zoning permit.**

**Section 3.2.4 Application Forms and Fees**

**(a) Fees**

*Any application shall be deemed incomplete until such time as all applicable application fees are paid.*

Zoning Permit application fees were paid July 29, 2021, the date the zoning application was deemed complete. The application was complete after the expiration of the one-year deadline to replace a non-conforming sign. **Adverse finding.**

**Section 3.2.5 Completeness of Submission, Administrator's Action**

*An application for a zoning permit shall not be complete until all submission requirements have been provided to the satisfaction of the administrative officer. The administrative officer shall take action with regard to a complete application within 30 days.*

The pre-fire existing wall sign was non-conforming to the zoning district (RM). The non-conformity was related to the size of the sign. The last approved signs for this location on the building were 1'6" x 12' and 2' x 16', issued in 1980. Subsequent sign permits were issued for the Pharmacy (ZPC-93-035) and the Vermont Liquor Store (ZP19-0482SN).

**A new sign ordinance was adopted October 28, 2019, under which this review was conducted.**

The applicant filed a zoning permit application for a wall sign 20" x 10' (a different size from sign sizes approved in 1980) June 5, 2021, but application fees were not paid until July 29, 2021, rendering the application incomplete until that time. As more than one year had elapsed from the date of the fire (July 1, 2020), the one year allowance for continuance of a non-conformity had elapsed. The non-conformity therefore may not be continued. **Adverse finding.**

## **Article 7: Signs**

### **Section 7.1.6 Non-Conforming Signs**

*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 permit application was not complete until payment was received; July 29, 2021. That is more than one year since the fire (July 1, 2020) and therefore outside the one year allowance for replacement of the non-conforming sign.

A conforming wall sign in a residential district is limited to 6 sf. See Section 7.2.13.

**Adverse finding for timeliness in replacing a non-conforming sign.**

### **Section 7.2.13 Wall Sign**

*A wall sign in any residential district shall not exceed 6 sf in area.*

240-242 Pearl Street is within the Medium Density (RM) residential district. The application proposed a replacement sign 20" x 10' (16.66 sf), exceeding the allowable area for the wall sign.

**Adverse finding for proposed size of sign.**

## **Article 12: Variances and Appeals**

### **Section 12.2.2 Appeals of Administrative Officer Decisions**

#### **(a) Notice of Appeal**

*An appeal must be taken within fifteen (15) days after the date of decision or act appealed from, and is taken by filing a written notice of appeal with the administrative officer and the DRB.*

The date of decision was August 23, 2021. The appeal was filed (uploaded to Open Gov) August 24, 2021; within the required 15 day appeal period. **Affirmative finding.**

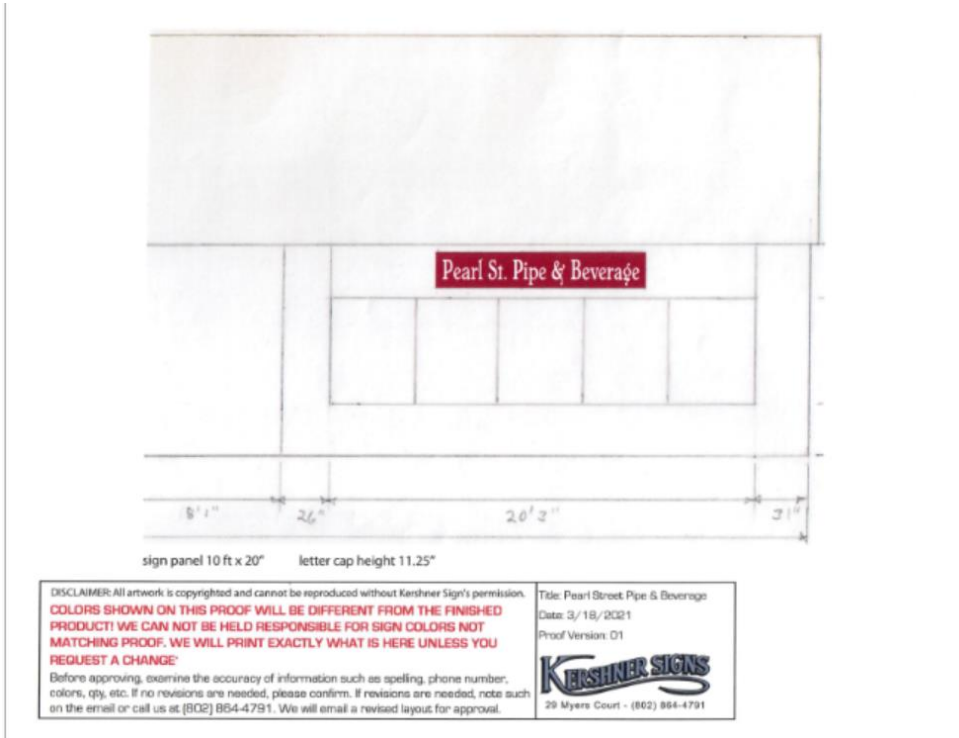
*Such a notice of appeal shall include:*

1. *The name and address of the appellant*
2. *A brief description of the property with respect to which the appeal is taken*
3. *A reference to the regulatory provisions applicable to that appeal*
4. *The relief requested by the appellant; and*
5. *The alleged grounds why such requested relief is believed proper under the circumstances.*

The appellant's name and address are included within the Open Gov application to appeal. The relief requested and reasons for such relief are as follows:

On July 1, 2020 my business was destroyed by fire. In the process our sign was damaged. In May of 2021 we contacted a sign company, and they informed us we would need a Burlington Building Permit. We went to the office on Pine Street, spoke to a young woman named Allison; she told us that because of COVID the City had just launched a new portal and we could do all of this online. We filed online on May 27<sup>th</sup>, and paid an application fee of \$37.04 which we assumed started the process. The City sent a comment back through the portal, asking for pictures of our new fence, and where it was going to be located. We responded back saying that we were applying for a new sign, not erecting a new fence; they sent a message back apologizing, saying that they had the wrong application, and that they needed a picture of the building where the sign was going to go, and we submitted that. They then gave us a cardboard Permit sign and we were told we needed to hang this in the window for three weeks, which we did. The Building Inspector came in early July, looked at the sign, looked at our new doors (separate permit), told us to move a fire extinguisher then we'd be good to go, and we did that. We assumed we were all set. We were notified at the end of July that we still owed a fee, which we paid immediately. We were then notified by Zoning that we had to pay an additional fee, to start the process. We paid it. We were pretty much immediately told that our sign permit application was denied because we missed a July 1<sup>st</sup> deadline, that we only had one year from the time of the fire to replace our sign, at the same size it was before. First point, this is an unreasonable deadline. There is no way that the average person in these circumstances would know of that deadline. It was only by pure coincidence that we had started the process before this deadline. Also the confusion we had with your website, we were unable to figure out how to print any of the materials and responses that we sent through the portal, nor did we get any confirmations other than your messages back to us. We acted in good faith, and tried to do everything asked of us, as soon as it was asked. We tried to do everything online because of COVID; we feel that the back and forth of doing this online caused additional delays, and that if we were told when we first filed the application in May that you needed additional fees, we would have paid them. We have been a Burlington business and employer for 38 years; the last time we would have had any contact with Zoning would have been 1983. Again, I am not a developer and would have had no way of knowing we had one year from the date of the fire to get this permit. The sign is the same size as it was before, located in the same spot on the

building. We respectfully request some consideration in this matter; I am not the best with technology, and did the best I could navigating your portal, but obviously had some confusion. Due to that confusion, COVID restrictions, and trying to come back from a catastrophic fire, we did the best we could with what we knew at the time. I don't know if doing this in person would have eliminated the confusion. Thank you for your consideration.



Plan uploaded to Open Gov platform May 27, 2021.

The appellant is accurate that they applied for a building permit (submitted May 27, 2021; partial fee paid for building permit May 27, 2021. Complete building permit application fee paid August 2, 2021.) The building inspector does not commence project review until the zoning permit is issued. As the zoning application remained incomplete until July 29, the building official did not act on the building permit application. As the zoning application remained incomplete until July 29, 2021, more than a year had expired since the fire, and the non-conformity could not be continued.

**Adverse finding.**

**Note relative to activities undertaken prior to issuance of any permit:**

The Open Gov platform notes that the building inspector recorded that the work had been both started and completed without required permits (notation dated August 2, 2021.)

**NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.**