

Department of Permitting and Inspections

Zoning Division

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: November 16, 2021
RE: ZPS 21-5 (Appeal ZAP 21-13)

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: ZPS 21-5

Zone: RM **Ward:** 2C

Date original application (ZPS 21-5) uploaded: June 5, 2021

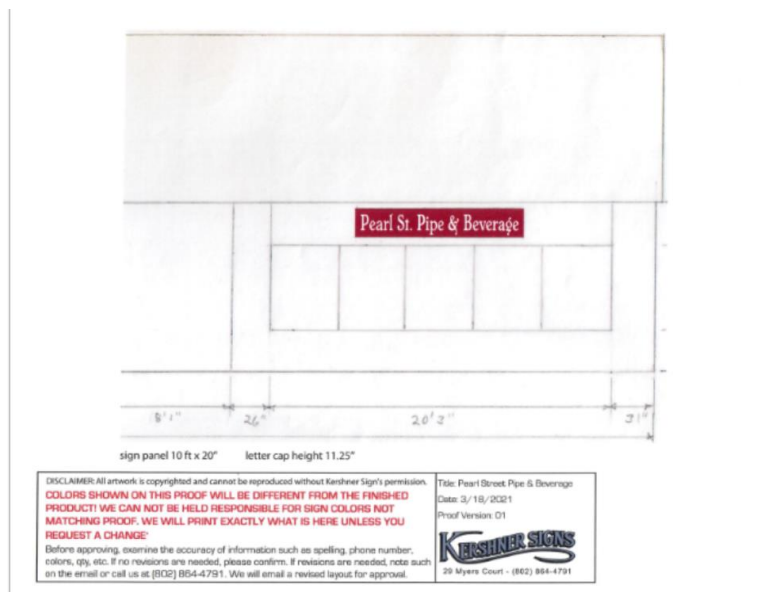
Date application fee paid: July 29, 2021

Date of decision (denial): August 23, 2021

Date application to appeal uploaded: August 24, 2021

Date of Appeal decision: September 27, 2021

Applicant/ Owner: John Dubie



Request: Replacement of a non-conforming sign.

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 ZPS21-5**, sign replacement after fire; administrative denial August 23, 2021. Appealed to DRB; date of hearing September 21, 2021. DRB moves to allow review of application as if it had been timely. Decision September 27, 2021.
- **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.

On appeal, the DRB remanded the sign application back to staff to review as if it had been timely. (Decision September 27, 2021.)

Replacement of a non-conforming sign is subject to Section 7.1.6 requiring DRB review.

Recommended motion: Certificate of appropriateness Denial, per the following Findings:

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. See attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**



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

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. Per the September 27, 2021 decision by the DRB, the application has been remanded back to staff to review as if it were timely.

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.

The Zoning Permit application fee was paid July 29, 2021, the date the zoning application was deemed complete. The DRB has remanded the application back to staff to review as if timely.

Affirmative 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. It is not known which sign the applicant proposes to replace, which relates to the level of non-conformity and the requirement for a new sign to **bring the Sign into complete or substantially greater compliance with this Article**. See Section 7.1.6, below.

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.

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.

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 DRB remanded this review after a decision on appeal to consider the application filed in a timely manner.

The request is to replace a non-conforming sign, which requires DRB review.

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

Two parallel signs were approved for the front of this building in 1980:

1'6" x 12' (18 sf.) and

2' x 16' (32 sf.)

It is not clear which non-conforming sign is proposed for replacement: to permit examination of the level of non-conformity as it relates to the requested sign.

The applicant proposes 20" x 10' (16.66 sf.)

The standard for review is *substantially greater compliance than the existing nonconforming Sign*. The proposed sign is of greater height and area but lesser length than the 1'6" x 12' sign (18 sf) approved in 1980; but smaller than the 2' x 16' (32 sf) parallel sign approved in 1980.

The proposed replacement sign (16.66 sf) does not meet the standard of "*bring the Sign into complete...compliance*" of 6 sf. That leaves an analysis of *substantially greater compliance*. Without understanding which pre-existing parallel sign was destroyed in the fire and proposed for replacement, a determination of whether the replacement meets the "*substantially greater compliance*" requirement is unanswered. **No Finding Possible.**

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. See Section 7.1.6 for replacement of a non-conforming sign.

Adverse finding for proposed size of sign.

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.)

If considered for approval:

II. Conditions of approval

1. Standard Permit Conditions 1-15.

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