

Department of Planning and Zoning

149 Church Street

Burlington, VT 05401

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

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

David E. White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, Senior GIS/IT Programmer/Analyst
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, CFM, Associate Planner
Layne Darfler, Planning Technician
Anita Wade, Zoning Clerk



MEMORANDUM

To: Development Review Board
From: Ryan Morrison, CFM, Associate Planner
Date: June 20, 2017
RE: ZP17-1085CA/CU 77-87 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: ZP17-1085CA/CU

Location: 77-87 Pearl Street

Zone: D **Ward:** 3C

Date application accepted: May 5, 2017

Applicant/ Owner: Megan O'Hara / 77-87 Pearl Street LLC

Request: Change of use from a diner to a dog training facility.

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 3 (Applications, Permits, & Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

Background:

- **Zoning Permit 01-228;** refurbish existing corner grocery store with a deli component exterior façade. Proposal includes uncovering currently blocked windows and paneling to restore original design and openings. No change in use or massing. Proposal does not include signs or installation of any exterior light fixtures. Approved November 6, 2000.
- **Zoning Permit 01-294;** two non-illuminated parallel signs of painted/enamelled metal. One on Pearl Street frontage and one on Pine Street, 2' x 20' and 6' x 2', respectively. Includes gooseneck down lighting fixtures with incandescent bulbs. Approved January 10, 2001.
- **Zoning Permit 09-541CA;** remove existing mixed asphalt and slate roof shingles and replace with asphalt shingles on house at 6 Pine St. Carriage barn is not included within this permit approval. Approved February 6, 2009.
- **Zoning Permit 09-955CA;** Remove 2 roof additions; strip and re-sheath existing rooftop structure and enclose stairway with cementitious clapboard; install rubber roofing system to flat roofs, asphalt shingle roof on penthouse. Remove and reconstruct existing decorative cornice to match existing. Build 10' x 10' and 10' x 15' roof decks with railing. Approved June 29, 2009.
- **Non-Applicability of Zoning Permit 12-0880NA;** painting of temporary art mural on west side of building. Approved March 29, 2012.

- **Non-Applicability of Zoning Permit 15-0792NA**; replace and repair damaged trim and window sills/openings on first floor exterior store fronts, in-kind. Approved February 12, 2015.
- **Non-Applicability of Zoning Permit 15-0949NA**; repair and replace fascia on east and south sides of building. Approved April 6, 2015.
- **Zoning Permit 17-1014CA**; Install transom window in original location. Approved May 11, 2017.
- **Zoning Permit 17-1118CA**; change of use from deli/take out restaurant (former Radio Deli) to restaurant with seating. Approved May 18, 2017.

Overview: The applicant proposes to change the use of what used to be the Pearl Street Diner into a dog training facility. The structure is one of four at 77-87 Pearl Street. The three other structures include the historic Cosgriff's Market building, which currently contains Leonardo's Pizza, a dumpling restaurant and five apartments in the upper floors, a historic brick house fronting Pine Street used as a duplex, and a storage barn.

With the exception of a future sign, the project will only see internal renovations to accommodate the new use. An 'Animal Boarding/Kennel/Shelter' is a conditional use in the Downtown zoning district.

Recommendation: Consent approval as per, and subject to, the following findings and conditions.

I. Findings

Article 2: Administrative Mechanisms

Part 7: Enforcement

Sec. 2.7.8, Withhold Permit

A small number of zoning permits have been approved for the subject property. All but one have final certificates of occupancy. Per this section, prior to issuance of a final certificate of occupancy for this project, any zoning permit not yet closed out with a final certificate of occupancy must be addressed. **Affirmative finding as conditioned.**

Article 3: Applications, Permits and Project Reviews

Part 5: Conditional Use Review

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities, or services are capable of supporting the proposed use in addition to the existing uses in the area.*

The proposed change of use is expected to have less of an impact on existing or planned public utilities, facilities or services than the previous diner use. A state wastewater

permit for the change of use may be required, and if so, it will be the applicant's responsibility to obtain. **Affirmative finding as conditioned.**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development Plan;*

The Downtown zoning district is described as the primary urban center of Burlington. A multitude of mixed uses exist within this district. The proposed use will not have a negative effect on the character of the area.

From the Municipal Development Plan:

- *Target new and higher density development into the Downtown, Downtown Waterfront, Enterprise District, Institutional Core Campuses, and the Neighborhood Activity Centers. (MDP, Land Use Plan, Page I-2)*
- *Retain its moderate scale and urban form in its most densely developed areas, while creating opportunities for increased densities. (MDP, Built Environment, Page III-1)*
- *Promote and support locally owned and controlled small businesses... (MDP, Economic Development Plan, Page VI-2.)* **Affirmative finding.**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

The proposed dog training facility will be within an existing, fully enclosed building. There will be no outdoor activities associated with the use.

Affirmative finding.

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation, safety for all modes; and adequate transportation demand management strategies;*

The applicant anticipates that while classes are in session (evenings and possibly weekends), around 50% of the customers will walk to the facility and 50% will drive. The maximum number of students per class will be 5-6 dogs, which could result in 5-6 cars needing to park at the busiest times, however there is the likelihood that some of those students will walk to the facility. For private clients during the day, there may be 1-2 cars needing to park. In comparison with the previous diner use, this would result in little, if any, additional demand on utilities, facilities and services. **Affirmative finding.**

5. *The utilization of renewable energy resources;*

No part of the application prohibits the use of wind, water, solar, geothermal, or other renewable energy resource. **Affirmative finding.**
and

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.* None identified. It is the applicant's obligation to secure any additional permits (from state or federal offices) as required. **Affirmative finding as conditioned.**

(c) Conditions of Approval

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area;*
All operations of the facility will occur indoors. No further mitigation measures are identified. **Affirmative finding.**
2. *Time limits for construction.*
No construction timeline or phasing are included in the project plans. The standard 2-year timeframe for zoning permits will apply. **Affirmative finding.**
3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*
The applicant proposes to have private rentals of the training center and associated retail sales to be open to the public daily from 11:00 am to 9:00 pm. All training services and private behavioral consultations will take place on weekdays within that time-frame.

The heaviest use of the facility (maximum of 12 dogs total if 2 classes are running simultaneously) will be for group obedience classes, which will run on weekday evenings between 5:00 pm and 9:00 pm. The only outdoor construction anticipated is the installation of a future sign, which should have little to no impact on surrounding properties. **Affirmative finding.**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.*
Any alteration to the use will be reviewed under the regulations in effect at the time of application. **Affirmative finding as conditioned.**

and

5. *Such additional reasonable performance standards, conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*
None identified. It is the applicant's obligation to secure any additional permits (from state or federal offices) as required. **Affirmative finding as conditioned.**

Article 4: Zoning Maps and Districts

Section 4.4.1 Downtown Mixed Use Districts

(a) Purpose

The Downtown Mixed Use districts are intended to provide for a diverse and vibrant mixture of commercial and residential development within Burlington's most highly

developed and dynamic urban core. A broad range of uses that support a balance between residential and non-residential uses are encouraged reflecting Burlington's role as a regional urban center for commerce, culture, and government. Residential uses are encouraged on upper floors, but are intended to be secondary to non-residential uses and shall not be allowed to define or dominate the overall development objectives and standards for the district. Residential development must be cognizant of nearby non-residential uses in their design and construction, so as to minimize disturbance to residents from non-residential uses. Active uses are to be provided at street-level in order to create an active and interesting streetscape for pedestrians and enhance the vitality of the downtown area.

Development is intended to be intense with high lot coverage and large tall buildings placed close together. Development should complement the historic development pattern, and sensitive transitions should be provided where there is great difference in scale between the old and new. Development should be pedestrian-oriented with buildings oriented to the sidewalk with a strong emphasis on creating a safe and inviting streetscape. Buildings shall be designed with a high level of architectural detailing to help maintain a sense of scale so that they provide visual interest and create enjoyable, human-scale spaces. Parking is intended to be hidden within, behind, or underneath structures, and parked vehicles should not be visible from the street.

The **Downtown (D) district** is the primary urban center of Burlington;

While 'dog training' is not a specific use listed in the CDO, the most closely related use, 'Animal Boarding/Kennel/Shelter', is listed as a conditional use within the Downtown Zoning District. Unlike an animal boarding/kennel/shelter, dogs coming to the proposed facility will not stay onsite beyond hours of operation. The conditional use allowance is predicated on a fully enclosed facility. **Affirmative finding as conditioned.**

(b) Dimensional Standards and Density

No changes to the building or property are proposed. **Not applicable.**

(c) Permitted and Conditional Uses:

The principal land uses that may be permitted, or conditionally permitted pursuant to the requirements of Article 3, within the Downtown Mixed Use districts shall be as defined in Appendix A – Use Table.

See Section 4.4.1 (A) above. **Affirmative finding.**

(d) District Specific Regulations

(1) Use Restrictions

Not applicable.

(2) Public Trust Restrictions

Not applicable

(3) Facades and Setbacks on Side and Rear Property Lines

Not applicable.

(4) *Building Height Setbacks*

Not applicable.

(5) *Lake Champlain Waterfront Setback*

Not applicable.

(6) *Residential District Setback*

Not applicable.

(7) *Development Bonuses/Additional Allowances*

Not applicable.

Article 5: Citywide General Standards

Part 1: Uses and Structures

Section 5.1.1 Uses

(a) Conditional Uses

The most similar use to a dog training facility, an *Animal Boarding/Kennel/Shelter*, is a Conditional Use in the Downtown Zoning District. See Section 3.5.6 above.

Part 5: Performance Standards

Section 5.5.2 Outdoor Lighting

There are no proposed changes to existing exterior lighting. Three ‘goose-neck’ light fixtures exist on the western half of the front building façade, used to illuminate previous signage. The applicant will likely utilize these fixtures to illuminate a future sign. A separate sign permit will be required for new signage, and if the lighting will change, the applicant can address that through the sign permit process. **Affirmative finding as conditioned.**

Article 8: Parking

Sec. 8.1.6 Existing Structures: Exemption in Downtown District

Any nonresidential use within a structure lawfully in existence prior to January 1, 2007 in any Downtown Parking District shall be exempt from the requirements of this Article when applying for a change to any other nonresidential use.

Various nonresidential uses occupied the subject building – well before January 1, 2007. The proposed change of use to a dog training facility within the existing building is exempt from the minimum parking requirements of Article 8. **Affirmative finding**

II. Conditions of Approval

1. **Prior to release of the zoning permit**, the applicant shall receive written verification of adequate wastewater capacity from the Department of Public Works.

2. **Prior to issuance of a final certificate of occupancy**, all outstanding zoning permits for the subject property shall be closed out.
3. All activities associated with the facility shall occur within the fully enclosed building. This prohibits dogs eliminating outdoors.
4. Any signage will require a separate sign permit.
5. Any future enlargement or alteration of the use shall return for review to the DRB to permit the specifying new conditions.
6. It is the applicant's responsibility to comply with all applicable building, life safety, and ADA requirements.
7. The applicant shall be responsible for obtaining a state wastewater permit, if required.
8. The applicant shall secure any associated trades permits for the interior work.
9. The applicant/property owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes of the city and state as required.
10. Standard Permit Conditions 1-15.

