

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

901 Occidental Avenue South

**DPD Interpretation No. 15-002B
(DPD Project No. 3023369)**

Background

This interpretation was requested by attorney Courtney A. Kaylor on behalf of her client Total Outdoor Corporation and involves a on-premises sign permit issued to OnTheField.com for an on-premises wall sign at 901 Occidental Avenue South. The on-premises wall sign is non-conforming as to maximum area allowed under current regulations. The question for interpretation is whether the nonconforming area of the existing on-premises wall sign may be maintained even if a new on-premises wall sign permit for the sign is obtained by a different entity. The current content of the sign is not at issue in this interpretation.

Findings of Fact

1. The subject property is addressed in Department of Planning and Development (DPD) records as 901 Occidental Avenue South. According to the Geocortex land use map maintained by DPD, the property is described as Lots 4, 5, and a portion of 6, Block 324, Seattle Tide Lands Addition.
2. The property is zoned PSM 85-120: Pioneer Square Mixed, with a structure height limit of 85 feet except as provided in Seattle Municipal Code (SMC) Sections 23.49.178.E.2 and 23.49.178.E.3. The property is also within the Pioneer Square Preservation District and subject to the regulations for Special Review Districts in SMC Chapter 23.66.
3. The subject on-premises wall sign is located on the north facing wall of an existing warehouse building on the property, which is identified as the Roebing Building. The structure is owned by Squire Properties and houses the retail store OnTheField.com, a tenant of Squire Properties. OnTheField.com submitted plans to DPD to obtain a wall sign permit that would allow them to advertise Verizon cellular service. Those plans were approved under Permit No. 6287695, issued on July 8, 2011, with dimensions of 151 feet by 31 feet for an area of 4,681 square feet. The permit, applied for on June 29, 2011, described installation of a new non-illuminated sign on existing framework marketing Verizon, on the north facing wall, for "OnTheField.com." Permit 6287695 was issued to OnTheField.com as the business establishment using the sign and a tenant of the building. There is nothing in the record to indicate that the business establishment or tenant status has changed since Permit No. 6287695 was issued; nor is there evidence in the record

that the size of the on-premises sign has been expanded or extended since Permit No. 6287695 was issued.

4. DPD records show that several permits for on-premises wall signs were issued for the same location on the north wall of the Roebling Building, prior to the issuance of the most recent permit, No. 6287695. Permit No. 6035149, issued May 13, 2004, was for a 4,800-square-foot sign. Permit No. 6082954, issued December 22, 2005, was for a 4,800-square-foot sign. Permit No. 6208026, issued March 6, 2009, was for a 3,750 square-foot sign on a 4,681 square feet sized frame.
5. In Chelan County v. Nykriem, 146 Wn.2d 904, 52 P.3d 1 (2002), the Washington State Supreme Court held that judicial review of land use decisions is barred under the Land Use Petition Act (LUPA) unless a petition for judicial review is timely filed within 21 days of issuance of the land use decision. If the filing date for a LUPA petition has passed, then a land use decision, including issued permits for construction, cannot be withdrawn or reconsidered by the agency that issued the permit, even if that permit was issued in error.
6. SMC Section 23.55.034 regulates on-premises signs in the Downtown zones. Section 23.55.034.A, states that signs in the PSM zones are regulated by the provisions of SMC Chapter 23.66.
7. Section 23.66.030.A provides in part as follows:

no one shall remove or substantially alter any existing sign or erect or place any new sign . . . and no permit for such activity shall be issued unless a certificate of approval has been issued by the Department of Neighborhoods Director.
8. Section 23.66.160 specifically regulates on-premises signs in the Pioneer Square Preservation District and provides in part as follows:
 - A. Signs.
 1. On-premises signs that comply with the provisions of this Section 23.66.160 are allowed.

* * *

3. The Preservation Board and the Director of Neighborhoods may delegate to the Director the determination whether a proposed sign is a sign prohibited under subsection 23.66.160.A. If the Director determines a proposed sign is a sign prohibited under subsection 23.66.160.A, the Director of Neighborhoods shall not send the application to the Board and shall deny the application.

* * *

C. In determining the appropriateness of signs, including flags and banners used as signs as defined in Section 23.84A.036, the Preservation Board shall consider the following:

* * *

2. Wall signs painted on or affixed to a building shall not exceed ten percent of the total area of the façade or 240 square feet, whichever is less. Area of original building finish visible within the exterior dimensions of the sign (e.g., unpainted brick) shall not be considered when computing the sign's area.

9. Section 23.84A.036 defines “sign, on-premises” as follows:

“sign, on-premises” means a sign or sign device used solely by a business establishment on the lot where the sign is located that displays either: (1) commercial messages that are strictly applicable only to a use of the premises on which it is located, including signs or sign devices indicating the business transacted, principal services rendered, goods sold or produced on the premises, name of the business, and name of the person, firm or corporation occupying the premises; or (2) noncommercial messages. For the purposes of this definition, “business transacted, principal services rendered, goods sold or produced on the premises” does not include: (a) the sale or donation of a gift card, gift certificate, coupon or other document that can be exchanged in part or whole for an item or good that is not directly sold or produced or a service rendered where the gift card, gift certificate, coupon or other document is sold or donated; or (b) access by phone, computer or any other device to allow a person to obtain an item or good that is not directly sold or produced or a service rendered where the access by phone, computer or other device is offered. This definition does not include signs located within a structure except those signs oriented so as to be visible through a window.

10. Section 23.84A.036 also defines “sign, wall” as follows:

“sign, wall” means any sign attached to and supported by a wall of a structure, or projected on or onto a wall of a building or structure, or suspended from the roof of a building or structure, with the exposed face of the sign on a plane approximately parallel to the plane of the wall, or any sign painted directly on a building facade.

11. The current maximum area standard in Section 23.66.160.C.2 for on-premises wall signs in the PSM 85-120 zone and within the Pioneer Square Preservation District was established by Seattle City Ordinance No. 123589, effective May 2, 2011, which provides, in part:

AN ORDINANCE relating to land use and zoning . . . amending Seattle Municipal Code Sections . . . 23.66.160

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

* * *

C. In determining the appropriateness of signs, including flags and banners used as signs as defined in Section 23.84A.036, the Preservation Board shall consider the following:

1. Signs Attached or Applied to Structures.

2. Wall signs painted on or affixed to a building shall not exceed ten ~~((10%))~~ percent of the total area of the facade or ~~((two hundred forty (240)))~~ 240 square feet, whichever is less. Area of original building finish visible within the exterior dimensions of the sign (e.g., unpainted brick) shall not be considered when computing the sign's area.

3. Signs not attached to structures shall be compatible with adjacent structures and with the District generally.

* * *

12. Section 23.84A.026 defines "Nonconforming to development standards" in part as follows:

a structure, site or development that met applicable development standards at the time it was built or established, but that does not now conform to one or more of the applicable development standards.

13. Section SMC 23.42.102 provides in part as follows:

Any use or development for which a permit was obtained is considered to be established.

14. Section 23.42.112.A provides in part as follows:

A structure nonconforming to development standards may be maintained, renovated, repaired or structurally altered but may not be expanded or extended in any manner that increases the extent of nonconformity or creates additional nonconformity

Conclusions

1. Prior to the May 2, 2011 amendment to the Seattle Land Use Code, which limited the area of on-premises wall signs to 10 percent of the total area of the façade or 240 square feet, whichever is less (Finding of Fact No. 11), the Code did not provide any specific area limits for the size of on-premises wall signs in the PSM 85-120 zone, which is the zone where the subject sign is located.
2. Permits Nos. 6035149, 6082954, and 6208026 were all issued for on-premises signs on the north facing wall of the building at 901 Occidental Avenue South (Finding of Fact No. 4) prior to May 2, 2011. Permit No. 6035149, was issued May 13, 2004 for a 4,800 square foot on-premises wall sign. Permit No. 6082954 was issued on December 22, 2005 for a 4,800 square foot on-premises wall sign. Permit No. 6208026 was issued on February 11, 2009, for a 3,750 square foot on-premises wall sign on a 4,681 square feet size frame.

3. On July 8, 2011, Permit No. 6287695 was issued to OnTheField.com for a 4,681 square foot on-premises sign at the same location as the sign permitted in Permit No. 6208026. OnTheField.com was identified as the business establishment using the on-premises sign and as a tenant of the building. The available record suggests that OnTheField.com remains the business establishment using the on-premises sign and is the tenant of the building to which the sign is attached. Permit No. 6287695 is still in effect, subject to the clarification discussed in Conclusion 5, below.
4. As described in conclusions 2 and 3, several permits were issued for on-premises wall signs on the north facing wall of 901 Occidental. These permits contain varying information about approved sign face area, and the most recent permit, Permit 6287695, cites a larger sign face area than the last permit issued prior to the change in Code, Permit No. 6208026. Even though the later Permit No. 6287695 authorized a larger sign face than the previous permit, the 4,681 square feet sign face area was established and the time period for withdrawal or reconsideration of this permit has passed (Finding of Fact No. 5). Therefore, DPD continues to recognize a sign face of 4,681 square feet as noted on the face of the most recent permit, Permit No. 6287695.
5. The Code does not prohibit or prevent the continuance of existing development standard nonconformities where the nonconformity is not expanded or extended (Finding of Fact No. 14). For example, a house nonconforming to development standards with respect to side yard setback requirements is allowed to remain, even if a new owner purchases the house. The Code contemplates the continuance of nonconformity to development standards where the nonconformity has been maintained and has not been expanded or extended. Otherwise, Section 23.42.112.A would not be needed to ensure that such nonconformities were properly regulated. If the sign is reduced in size, any future permit will be limited to the reduced area size. If the sign is removed entirely, any future permit will be limited to the area maximum in the Code that is in effect at the time of the new permit application.
6. The on-premises sign on the north wall of the Roebling Building is nonconforming to development standards because it exceeds the current maximum area requirement of 10 percent of the total area of the façade or 240 square feet, whichever is less, for on-premises wall signs in the PSM zone. A new business establishment may obtain a permit for the on-premises sign and maintain the wall sign as provided in Permit No. 6287695 as long as the sign has not been removed from its location or reduced in size before the new business has submitted its on-premises wall sign application and the new business establishment is a business located on the lot where the sign is located.

Decision

The on-premises sign on the north facing wall of the Roebling Building located at 901 Occidental Avenue South was established as a nonconforming on-premises sign with an area of 4,681 square feet by Permit No. 6287695. The on-premises sign is nonconforming to the area standard for the PSM zone as provided in Seattle City Ordinance No. 123589 (10 percent of the total area of the façade or 240 square feet, whichever is less). The on-premises sign may be maintained at its

current size by a new business establishment as long as the sign has not been removed or reduced in size prior to the submission of the application by the business and the new business establishment is located on the lot where the sign is located.

Entered this 1st day of February, 2016.

Signature on File

David G. Graves, Senior Land Use Planner
Department of Planning and Development