

Montpelier Development Review Board
March 15, 2004
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Alan Blakeman; David Keller; Roger Cranse; Jack Lindley; Kevin O'Connell*; Guy Teschmacher*; Kenneth Matzner Staff: Gail Lawson, Administrative Officer
* *Mr. O'Connell was not present at the start of the meeting. Mr. Teschmacher participated in the approval of the minutes, leaving when Mr. O'Connell arrived.*

Call to Order

The meeting was called to order by Chairman Zalinger at 7:07 p.m.

Approval of Minutes

The minutes of the January 20, 2004 meeting were unanimously approved by the members who were present at that meeting, Alan Blakeman, Jack Lindley, Kenneth Matzner and Philip Zalinger.

The minutes of the February 17, 2004 meeting were unanimously approved by a majority of the members who were present at that meeting, Alan Blakeman, Jack Lindley, Dave Keller, Kenneth Matzner and Guy Teschmacher.

Design Review

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| Applicant: | Margot George and John Russell |
| Property Owner: | Margot George and John Russell |
| Address: | 107 State Street |
| Zone: | CBI/DCD |
| Purpose: | Design Review |
- Replacement of 20 double-hung windows of the Thrush Tavern building.
 - The DRC recommends approval of the application with the recommendation that additional windows in the building may be replaced at the applicant's discretion with the same 6 over 6, simulated divided light, double-hung window sashes with jamb liners within the five-year tax credit period from the time of the DRB approval.

Participating Members: Philip Zalinger, Alan Blakeman, David Keller, Roger Cranse, Jack Lindley, Kevin O'Connell, Kenneth Matzner

Interested Parties: Margot George, applicant

Mr. Zalinger swore in Ms. George. Mr. Blakeman asked whether all of the work would have to be completed within two years of the Board's approval. Ms. Lawson explained that any zoning permit issued is effective for a two-year period and work must be completed within that time frame unless otherwise stipulated by the DRB or the permit is extended. Ms. George said that she intends to replace all of the windows in the building over a maximum period of ten years. She further stated that she will try to complete all of the replacements within the five-year tax credit period. She is presently seeking DRB approval to replace 20 windows now with the option of replacing all windows over a five-year period. After that, additional approvals will be required for any work. Ms. George clarified that the requested approval is for the replacement of 20 windows within a two-year period and replacement of the balance of the windows within five years of the approval. Ms. Lawson noted that the DRC recommends approval of the application with

the condition that additional windows in the building may be replaced at the applicant's discretion within the five-year tax credit period from time of approval. Any zoning permit issued for the work would contain such wording if that is how the DRB approves the application. The zoning permit and any conditions imposed would run with the property.

Mr. Matzner made a motion to approve the application as presented, incorporating the recommendation of the Design Review Committee. Mr. O'Connell seconded the motion. The motion was approved 7-0.

Public Hearing - Conditional Use and Site Plan Review

- Applicant: Scottie Harrison - The Knitting Studio
- Property Owner: Pomerleau Real Estate
- Property Address: 7 Main Street
- Zone: RIV/DCD
- Purpose: Conditional Use and Site Plan Review
 - Change in use of 650 ft² on the second floor from office use to retail use.

Participating Members: Philip Zalinger, Alan Blakeman, David Keller, Roger Cranse, Jack Lindley, Kevin O'Connell, Kenneth Matzner

Interested Parties: Scottie Harrison, applicant

Mr. Zalinger swore in Ms. Harrison. Ms. Lawson described the application as a change of use from office to retail, which is a conditional use in the RIV district. The retail use will occupy 650 square feet on the second floor of the building. No parking or loading changes or changes to the building are proposed. Ms. Harrison explained that the change has already occurred and the business is in operation. She said that she previously met with the planning staff and thought that the change could go ahead because the space was previously occupied by a business. Ms. Lawson stated that the prior use of the space was as an office and that the proposed retail use requires a conditional use permit. Ms. Lawson said that she had inspected the parking around the building. One space is assigned to Ms. Harrison as a tenant. There are 41 other spaces around in the vicinity of the building. In addition, the building faces Main Street and is near the bike path, making it likely that the business will have walk-in customers. Mr. Zalinger said that the staff report indicates that changes in use do not require additional parking. Ms. Harrison said that the business is retail, with some knitting lessons provided in the evening; classes are taught from 6:30 - 8:30 p.m. The Board considered the conditional use criteria, including the applicable site plan standards.

Conditional Use Criteria:

1. Capacity of existing or planned community facilities. **The proposed retail use is consistent with uses in the downtown business area. The proposed use is compatible with existing uses. The size of the use is too small to create adverse impacts.**
2. Character of the area affected.
 - a. Performance standards in 814
 - b. Site plan review standards in 506.C.
 - c. Hours of operation
 - d. Cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood.
 - e. Compatibility with existing and proposed development for the area.
 - f. Traffic generated per unit.

- g. The cumulative impact of the proposal's failure, if applicable to fully satisfy each of the conditional use standards in 504.D and 812.
- h. Noise generated per unit.
- i. Any other factors judged to have an adverse impact on the area.

The proposed use will not have adverse effects on the character of the area. It is located in the downtown commercial district where retail is directed and focused.

- 3. Traffic on roads and highways in the vicinity. **The use is located in the downtown area on Main Street. Any classes will occur in the evening, past the peak traffic hours. There will be no incremental increase in traffic over the prior use.**
- 4. Zoning and subdivision regulation in effect. **The proposed use complies with bylaws.**
- 5. Utilization of renewable energy resources. **Not applicable.**

Mr. O'Connell made a motion to grant Conditional Use and Site Plan Review approval. Mr. Keller seconded the motion the motion was approved 7-0.

Public Hearing - Variance Request

Applicant: Jeremy Beddie
Owner: Jeremy Beddie
Property Address: 7 River Street
Zone: GB3
Purpose: Variance Request

- Enclosure of an existing 5' x 10' porch including installation of a door and two windows.
- Required FY Setback 30'
- Proposed FY Setback 4.5'
- Variance required from FY Setback 25.5'*

* Note: Existing dwelling & open porch occupy 25.5' of 30' FY setback.

Participating Members: Philip Zalinger, Alan Blakeman, David Keller, Roger Cranse, Jack Lindley, Kevin O'Connell, Kenneth Matzner

Interested Parties: Jeremy Beddie, applicant

Mr. Zalinger swore in Mr. Beddie. Ms. Lawson said that the work on the porch has all ready been completed. The variance is required because the existing house and porch roof encroach 25.5 feet in to the 30-foot setback. She noted that the enclosure of the porch did not create any additional encroachment of the footprint of the building into the setback. Mr. Beddie said that he was not aware that permits were required and that he just wanted to improve the property. The Board reviewed the variance criteria:

- 1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lots size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located. **There are unique physical circumstances. The existing building and lot were created prior to the adoption of the zoning ordinance. The existing porch is located within the setback. The roadway traffic has increased and it is likely that the roadway has been widened to be closer to the house.**
- 2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation

and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property. **The porch already encroaches into the setback. Enclosing the porch is a reasonable use.**

3. That the unnecessary hardship has not been created by the appellant, and the hardship relates to the applicant's land, rather than personal circumstances. **The hardship relates to the location of the existing house and porch in the setback.**
4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare. **The application is for a proposed improvement to an existing residential building. It will not impair the use of adjacent properties. Renewable energy is not applicable.**
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the Montpelier Municipal Plan. **The applicant is not expanding the existing foot print of the building.**
6. The variance will not result in the initiation of a nonconforming use of land. **The building will continue as a nonconforming structure.**

Mr. O'Connell made a motion to approve the requested variance. Mr. Cranse seconded the motion. The motion was approved 7-0.

Public Hearing - Variance Request

Applicant: Michelle Lesnak and Ron Sarquiz
Owners: Andrew and Beth Boutin
Property Address: 89 East State Street
Zone: HDR
Purpose: Variance Request

- Construction of exterior stairway for access to second story enclosed porch.
- Required SY Setback 10'
- Proposed SY Setback 0'
- Variance required from SY Setback 6'*

* Note: Existing dwelling occupies 4' of required 10' SY setback.

Participating Members: Alan Blakeman, David Keller, Roger Cranse, Jack Lindley, Kevin O'Connell, Kenneth Matzner, Philip Zalinger recused himself from voting

Interested Parties: Michelle Lesnak and Ron Sarquiz, applicants

Mr. Zalinger swore in Ms. Lesnak. Ms. Lawson said that the variance is requested for the construction of an exterior stairway to a second story porch. The dwelling encroaches into the setback. The proposed stairway would encroach further, resulting in a setback of 0 feet. Ms. Lesnak said that she spoke to the neighbors about the proposed stairs and that they do not object to the proposed location. The applicant clarified that the closing on the sale of the property occurred subsequent to the filing of this application. The prior owners (Boutin) had obtained permits to enclose the porch and put in a door as part of the work. Mr. Zalinger stated that he represented the prior owners, the Boutins. He said that even though the property transfer has been completed, he would recuse himself from the voting on the application. Mr. Zalinger said that he did not see a problem with his participating in the discussions. The Board considered the variance

criteria:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lots size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located. **There are unique physical circumstances. The existing building and lot were created prior to the adoption of the zoning ordinance. The existing building is located in the side yard setback.**
2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property. **The applicant could not access the second floor porch without the construction of the stairway in the setback.**
3. That the unnecessary hardship has not been created by the appellant, and the hardship relates to the applicant's land, rather than personal circumstances. **The hardship relates to the location of the existing house and porch.**
4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare. **The neighborhood is residential. The proposed stairway will not change the use of the property. The stairway will primarily be used as an emergency exit. It will not impair the use of adjacent properties.**
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the Montpelier Municipal Plan. **The stairs cannot be built with any other dimension and be functional because of the steepness of the property.**
6. The variance will not result in the initiation of a nonconforming use of land. **The building will continue as a nonconforming structure.**

Mr. Cranse said that he was not convinced of the need for the additional encroachment into the setback. The existence of a door does not create the need for the outside stairway in the setback. Mr. Keller said that he, also was unconvinced that the door created a need for the stair. Mr. Blakeman said that it is a safety issue and that there is no other way to construct a stairway with less encroachment because the rear yard is extremely steep. Mr. Matzner asked whether a permit was issued for the door. Ms. Lawson responded that the prior permit, issued in 2001, was vague. It referred to a "back porch upgrade." Mr. Lindley said that the issue is safety. Mr. Keller noted that the application form also identified cost and the blocking of the view from the downstairs apartment as reasons that the stairs cannot be constructed with less encroachment into the setback. He said that cost and view are not justifications. Ms. Lesnak responded that the grade of the yard is so steep (about 45%) that there is no other safe design for the stairs. Mr. O'Connell said that the stairs are proposed in the logical location based upon the grade and that they will not be detrimental. Mr. Zalinger noted that the house is located in the HDR (high density) zone.

Mr. Lindley made a motion that the requested variance be approved. Mr. O'Connell seconded the motion. The motion was approved 6-0. Mr. Zalinger recused himself from voting.

Public Hearing - Conditional Use and Site Plan Review

- Applicant:** City of Montpelier
Owner: City of Montpelier
Property Address: Granite Street, Barre Street, Old Country Club Road, East Montpelier Road and Gallison Hill Road
Zone: GB, LDR, MDR & IND
Purpose: Conditional Use and Site Plan Review
- Construction of a 2.2 mile transportation path, also known as the Berlin-Montpelier Regional Bike Path, from Granite Street to the Berlin town line. The project includes a 0.5 mile spur segment to Gallison Hill Road.

Participating Members: Philip Zalinger, Alan Blakeman, David Keller, Roger Cranse, Jack Lindley, Kevin O'Connell, Kenneth Matzner

Interested Parties: Tom McArdle, Montpelier Department of Public Works, Bob Merchant, Municipal Project Manager, Ron Lyon, DuBois & King, Inc., Stephan Syz.

Mr. McArdle described the project and project route. He said that the bike path will primarily follow inactive railroad beds and will cross the Winooski River, using existing railroad abutments. He said that the owners of adjacent properties have been notified. Mr. Cranse asked about the time frame for the project. Mr. Merchant responded that the time line is not firm. The permits for the project must be acquired and the negotiations must be completed with about twelve property owners. The permits and negotiations could be wrapped up a year from now. Mr. Merchant said that the big question is whether funding will be available for the construction of the project. The project is not yet on the Transportation Agency's construction plan. Mr. McArdle added that the construction cost for the project is \$2.4 million which is equal to the Agency's entire annual funding for bike paths. Mr. Merchant said that construction will take at least a full construction season to complete. Mr. McArdle said that the project will probably require two seasons because of the bridge construction and other complications.

Mr. McArdle pointed out some changes to the plans at Barre and Granite Streets where the path and the corner of the New England Culinary Institute parking lot will be reconfigured. He also described a change to the section of the path along Barre Street to the Ibey property where the path will be placed along the roadway because the grade does not allow for a greater separation. Mr. O'Connell asked how the path will be separated from the road in this section. Mr. Merchant said that curbing will separate them. Mr. Cranse asked for a description of the crossing of the bike path with Barre Street. Mr. McArdle said that the path will cross the street at the Ibey property and Sabin's Pasture. There will be warning signs and stop signs on the path and warning signs on the roadway. The bike path will not be a crosswalk and will be marked with two white lines. This is different from the existing bike path crossing at the High School which is marked as a crosswalk. The Barre Street crossing will require that the bikes and pedestrians stop at the crossing. Mr. Keller said that he appreciates the efforts of those involved in the project because it will be a great addition to that part of the City. He asked for more detail on the drainage system near the Ibey garage and whether there was any potential for contamination from the vehicles on the property. Mr. McArdle said that soil testing has been done and that the storm drainage system will help to correct an existing drainage problem at that location. The Barre Street drainage will be improved. Mr. Lyon added that the bike path will add runoff to the Ibey property so the drainage must be addressed as part of the project. He said that soil sampling showed some indications of contamination related to vehicle storage and maintenance. The City will address any contaminated soils within the project area. Stormwater will be treated prior to discharge.

Mr. Keller asked whether there will be any clearing or cutting of trees near the house at the end of Country Club Drive. Mr. McArdle said that the railroad right of way crosses the front of the property. An agreement has been developed for the relocation of the residential driveway, as shown on sheet 24 of the plans. A septic leach field and pump station will also be relocated. A landscaped berm will separate the bike path from the house and yard. Trees will be cut to allow for the driveway location. Mr. Keller said that there are existing drainage courses in near Country Club Drive that carry a great deal of runoff and may provide habitat for wildlife. He asked whether they will be protected. Mr. McArdle said that there will be no significant changes to the drainage. Mr. Lyon added that the project is designed to use existing drainage patterns as much as possible.

Mr. Cranse asked whether the conditional use permit applies to the portion of the project that is in the Industrial District zone. Ms. Lawson said that was correct. She said that the staff report indicates that the portion of the path in the IND zone extends from station 1 + 980 (on plan sheet 26) through the end of the mainline route.

The Board made the following findings with regard to the conditional use criterion:

1. Capacity of existing or planned community facilities. **The proposed bike path is intended to increase the capacity of pedestrian and bicycle services in the community and reduce vehicle/pedestrian conflicts on the road network.**
2. Character of the area affected.
 - a. Performance standards in 814.
 - b. Site plan review standards in 506.C.
 - c. Hours of operation
 - d. Cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood.**The proposed use will represent an improvement to the character of the area.**
3. Traffic on roads and highways in the vicinity. **The use will improve traffic by removing conflicts between vehicles and bikes and pedestrians.**
4. Zoning and subdivision regulation in effect. **The proposed use is a permitted use along most of its length.**
5. Utilization of renewable energy resources. **Not applicable.**

Mr. Lindley moved to grant conditional use approval of the portion of the path within the Industrial District. Mr. O'Connell seconded the motion. The motion was approved 7-0.

The Board next discussed other site plan features.

Mr. Cranse noted that the project will require the relocation of utility guy wires and asked whether the utility companies are willing to relocate utility poles, if necessary. Mr. Lyon said that the utility companies have been notified and they are reviewing the plans. Mr. McArdle said that the designers of the alignment went out of their way to avoid utility poles.

Mr. O'Connell asked whether there were any plans for lighting. Mr. McArdle said that there will be a flashing beacon on the bike path at the crossing of Route 2. Mr. O'Connell noted that there has been some trouble with vandalism of similar lights on the existing bike path.

Mr. Cranse asked about plans for garbage containers. Mr. McArdle said that there will be "Carry in, Carry out" signs. Mr. O'Connell urged that signs for control of dog waste also be put up.

Mr. Lindley made a motion to grant site plan approval to the project, as presented in plans entitled, City of Montpelier, Town of Berlin, County of Washington, Proposed Improvement, Montpelier-Berlin Bike Path, STP Bike (33) S, Sheets 1 - 170, prepared by Dubois & King, Inc., dated Dec. 2003. Mr. O'Connell seconded the motion. The motion was approved 7-0.

Other Business

Mr. Zalinger announced that the April 5, 2004 DRB has been rescheduled to April 7, 2004 due to Passover.

Discussion of request by RCC Atlantic, Inc. - waiver of height requirement (LDR) for Temporary Cellular Tower at 101 Hill Street Extension (Nuissl).

Ms. Lawson said that she has received a request for administrative approval for the temporary placement of a mobile telecommunications facility. The applicant, RCC, is proposing to place a "Cellular on Wheels" (COW) on property owned by Virginia Nuissl, upon which is all ready located a cellular tower. The COW would consist of an equipment trailer with a pole antenna support mounted on it. The pole would support four panel antennas. The applicant is seeking administrative approval for the temporary equipment in order to have it in place before the condition of the dirt/ gravel access road becomes too poor due to the spring thaw. The existing 70 foot tower exceeds the 45-foot height limitation. The temporary pole will be about 80 feet high. RCC will apply for the approval of the Board for permanent changes to the existing tower and will remove the COW when that application is acted upon. Ms. Lawson said that RCC says that they are proposing the COW in order to reduce call blockages in the area.

Several members of the Board expressed concern that it is clear that the Board is not giving up its rights to review the permanent structure by authorizing the additional COW antenna height and consenting to the administrative approval. Ms. Lawson said that the letter from the applicant is requesting administrative approval for minor site plan changes. Since the improvements on the site already exceed the height limitations, Ms. Lawson said that she is seeking the Board's authorization for the associated additional height pursuant to Section 207 G. of the regulations. Mr. Zalinger said that the ordinance provides that the Board does not need to make a formal determination. If the criteria are met, the Administrative Officer may issue the approval. Mr. Zalinger commented that it is disingenuous of RCC to say that the FCC is requiring the upgrade when this was part of the business plan that RCC submitted to the FCC for licensing. However, he added that colocation is preferable to new towers. Mr. Zalinger said that, other than access road conditions, no rationale had been provided for the immediate need for the COW. He said that RCC has not identified the need to have the COW now rather than waiting for formal approval. Mr. Lindley noted that the letter says that they have blockages that could affect 911 calls and said that is the reason to authorize the COW. Ms. Lawson said that the applicant has indicated that it will submit the formal application as soon as it receives the forms. Mr. Lindley said that the current proposal should be authorized for a three-month period to address the call blockages now. Mr. Zalinger raised the concern that if call blockage is accepted as the reason for the COW, it will be difficult to reach a different result in the formal application. Mr. O'Connell said that a two-week delay was not too great and the applicant should be given two weeks to submit a schedule. Mr. Keller said that call blockage should not be the reason for the Board's decision.

Mr. Zalinger recommended that the Administrative Officer approve the temporary placement of the COW until July 31, 2004. This would give the applicant the opportunity to submit the formal application, be placed on an agenda and provide evidence on need and colocation possibilities. Mr. Lindley said that he would like to see a plan of existing tower locations in the area and agreed that the July 31 date is acceptable.

Adjournment

Motion to adjourn was made by Mr. Blakeman and seconded by Mr. Keller. The motion was unanimously approved.

Respectfully submitted,

Kathleen Swigon

These minutes are subject to approval by the Development Review Board. Changes, if any, will be recorded in the minutes of the meeting at which they are acted upon.