

Montpelier Development Review Board
May 17, 2004
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair*; Alan Blakeman; David Keller; Roger Cranse; Guy Teschmacher;
Kenneth Matzner

Staff: Gail Lawson, Administrative Officer

* *Mr. Zalinger arrived at 7:10.*

Call to Order

The meeting was called to order by Mr. Blakeman who noted that Mr. Zalinger was expected to arrive shortly.

I. Consent Agenda

A. Sign Permit

Applicants: Emma Winthrop and Sarah Merritt for *damsels*
Property Address: 108 Main Street
Zone: CB-I/DCD
Purpose: Sign Permit

- Wall sign - 25.4 square feet
- DRC recommends approval with adjustments

Interested Parties: Emma Winthrop and Sarah Merritt

Ms. Winthrop said that she accepted the DRC's comments. Mr. Cranse expressed concern about the potentially slippery surface of the proposed tile at the entranceway. Ms. Winthrop said that there will be a gritty coating on the tile to reduce slipperiness. She said that a non-slip mat would also be placed at the entrance. Ms. Winthrop also said that the optional use of pink paint on the door trim will not be completed before the store's opening. She also indicated that the gooseneck lamps suggested by the DRC will not be installed before the opening.

Mr. Keller moved to approve the application. Mr. Cranse seconded the motion. The motion was approved 5-0 (Mr. Zalinger had not yet arrived).

B. Design Review

Applicant: Kris Hammer and Nancy Chickering
Property Address: 20 Corse Street
Zone: LDR/DCD
Purpose: Design Review

- Installation of solar panels on roof
- DRC recommends approval with adjustments

Interested Parties: Kris Hammer

Mr. Hammer said that he accepts the DRC's recommendation. He said that the trim on the frame of the panels will be painted the same color as the roof.

Mr. Blakeman made a motion to approve the application with the DRC comments. Mr. Keller seconded the motion, which was approved unanimously, 6-0. (*Mr. Zalinger having arrived and voting*).

II. Continuation of Design Review and Site Plan Review

Applicant: Union Mutual Fire Insurance Company
Property Address: 139 State Street
Zone: CIV/DCD
Purpose: emergency generator unit and related site improvements

Ms. Lawson advised the Board members that the applicant has requested that this application be continued to the next regular DRB meeting. Staff will add it to the June 7, 2004 agenda, which commences at 7:00 p.m.

III. Design Review and Site Plan Review

Applicant: David McGraw for Montpelier High School
Property Address: 5 High School Drive
Property Owner: Montpelier High School
Zone: GB/DCD

- Construction of a 24' by 48' solar greenhouse
- DRC recommends approval with adjustments

Interested Parties: David McGraw, Peter Evans, Todd Szabo, Dave Burley, Reuben Levine

The interested parties were sworn in by Mr. Zalinger. Mr. McGraw described the proposal to construct a greenhouse at the back of the high school. He said that the greenhouse would be used to grow food for the high school. He said that the greenhouse will use a durable triple glazed polycarbonate material instead of glass. Mr. McGraw said that no exterior lighting is proposed. He also said the DRC recommendations are acceptable and he has tried to incorporate them into the design. Mr. Keller asked whether the adjustment of the recreational field would impact the bike path. Mr. McGraw said that there will be no impact because the backstop location will not change and the field will not be moved closer to the bike path. In response to a question from Mr. Zalinger, Mr. McGraw confirmed that a walkway will be used to provide circulation to and from the greenhouse. Mr. Zalinger noted that there does not appear to be any traffic or circulation issues.

Mr. Keller asked about potential leaks from the proposed underground storage tank. Mr. Zalinger noted that the tank will store propane gas. Mr. Cranse asked whether any measures were proposed to protect the tank from accidental damage from snow plowing or similar activities. Mr. McGraw said that the tank is on the opposite side of the building from the plowed area.

Mr. Blakeman made a motion to grant site plan and design review approval incorporating the DRC recommendations and staff comments. Mr. Keller seconded the motion. Mr. Cranse proposed a friendly amendment to the motion to require clear, above ground marking and protection of the underground storage tank port so that it is not inadvertently injured by snow-plows, lawnmowers and other vehicles. Mr. Keller said that he would second that motion if the requirement was within the Board's purview. Mr. Zalinger said that the performance standards address fire and safety, but noted that the industry standards for storage tanks address installation safety. He said that his opinion was that the project involves a routine installation which would not be a safety hazard that is under the Development Review Board's purview for site plan review. Mr. Keller asked Ms. Lawson whether the Fire Chief would want to comment. Ms. Lawson said that the Fire Chief is on the technical review committee that reviews applications and, to her knowledge, did not raise any issues.

The vote on the amended motion failed with two members voting for the amendment and four members voting against. The Board then voted unanimously (6-0) to approve the original motion to grant site plan and design review approval with the DRC recommendations and staff comments as noted in the 5/17/04 staff report.

IV. Public Hearing - Conditional Use Approval

Applicant: Robert Hitzig
Property Owner: Robert Hitzig
Property Address: 154 Main Street
Zone: CB-II/DCD
Purpose: Conditional Use/Site Plan

- Change of use from residential garage to 396 sq. ft. artisan studio

Interested Parties: Robert Hitzig

Mr. Hitzig was sworn in by Mr. Zalinger. Mr. Hitzig described his proposal to change his garage into an artisan studio for woodworking. He said that he would be the only person employed at the studio. Ms. Lawson noted that the residential garage is an accessory structure to an historic building. Mr. Hitzig advised that the garage is also an historic structure. Ms. Lawson advised that artisan studios are allowed in the CB-II district as conditional uses if the studio is less than 1,000 square feet in size. Ms. Lawson said that the proposed studio is smaller than 1,000 square feet. The zoning regulations establish a limit of six employees and, as noted by Mr. Hitzig, he is the sole employee. Ms. Lawson said that outdoor lighting added to the building requires design review approval. She has advised the applicant that the lighting may not be used until that approval has been obtained.

The Board then reviewed the conditional use criteria:

1. Capacity of existing or planned community facilities. **The proposed use will have no impact on community facilities such as schools, roads, fire protection and public safety.**
2. Character of the area affected.
 - a. Performance standards in 814
 - b. Site plan review standards in 506.C.
 - c. Hours of operation **The applicant proposes to use the studio from 8 a.m. to 6 p.m. seven days per week. He states that this will allow him flexibility in his schedule and the actual use of the studio will probably be for about 20 hours per week. Mr. Hitzig stated that the studio is so small he would have to relocate if he needed more than one employee. He noted that equipment will occupy most of the floor space in the studio.**
 - d. Cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood. **The studio is the only conditional use proposed for this property. Another conditional use exists on a nearby property**
 - e. Compatibility with existing and proposed development for the area. **The proposed use of the existing garage is compatible with uses in the area.**
 - f. Traffic generated per unit. **Traffic generated by the use will be negligible. Mr. Hitzig will use his own truck to pick up materials.**
 - 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. **Negligible.**
 - h. Noise generated per unit. **Mr. Cranse asked whether the applicant had any**

quantitative measures of the noise from the woodworking equipment. Mr. Hitzig said that the tools would generate about 90 decibels within the building. He said that the doors will be closed during operation of the power tools. The doors and walls of the garage are insulated. He said that the windows will also be closed while the power tools are used. Mr. Hitzig estimated that the noise levels outside of the building would be no greater than the noise presently generated by roadway traffic. He noted that the tools would typically be operated only 10 to 20 percent of the time. He said that the nearest residences are the apartments on his property. He said that he expected no noise impacts to the apartments, but if needed, he would take steps, such as adding storm windows to the studio, to reduce the noise. Mr. Keller asked what action would be taken if noise from the studio were to exceed allowable levels. Ms. Lawson said that the police would enforce the noise limitations established in the city's noise ordinance. Mr. Hitzig said that he is confident that the studio will comply with the noise limitations and added that there are steps that he can take if noise proved to be a problem.

- I. Any other factors judged to have an adverse impact on the area. **None.**
3. Traffic on roads and highways in the vicinity. **Traffic impacts will be negligible.**
4. Zoning and subdivision regulation in effect. **Proposal is consistent with bylaws.**
5. Utilization of renewable energy resources. **Not applicable.**

Mr. Zalinger reminded the applicant that the outdoor lighting must be reviewed by the Design Review Committee and Development Review Board under separate application.

Mr. Keller made a motion to approve the conditional use application. Mr. Matzner seconded the motion. Mr. Keller noted that a condition regarding the outdoor lighting recommended in the staff report does not need to be included in the approval. Mr. Zalinger said that the applicant is aware of the need for design review approval of the lights. The motion was approved unanimously (6-0).

V. Public Hearing - Variance

Applicant: Christopher and Julie Smart
Property Address: 10 Liberty Street
Owner: Christopher and Julie Smart
Zone: HDR

- Replacement of a flat roof with a pitched roof on a portion of a multifamily dwelling
- Required side yard setbacks: 24'; variances requested: 12' and 5'.

Interested Parties: Christopher Smart

Mr. Matzner said that he knows the applicant, but that his impartiality was not affected. Mr. Smart was sworn in by Mr. Zalinger.

Ms. Lawson said that the proposed replacement of a flat roof with a pitched roof requires a variance for both side yard setbacks. She said that the existing structure does not currently comply with the setbacks. She explained that the ordinance requires a standard 10' side yard setback. In addition, the ordinance requires that the setback be increased by one foot for each additional foot of building height over 20'.

Mr. Smart said that he has explained the project to his neighbors and they have no objections. He said that

he is changing the portion of the flat roof that is over the building foundation. The flat roof over the attached barn, where there is no foundation, will not be changed.

The Board members next 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. **The existing building was built prior to the adoption of the zoning ordinance. The existing porch is located in the setback. The main structure is a non-complying building that already encroaches into the setbacks. The lot is irregular in shape.**
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. **It is clear that the applicant could not change the roof from flat to pitched without a variance.**
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 narrow width of the lot and to the location of the existing house 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 residential use will remain after the roof is replaced. No additional useable floor area is being created at this time, although the applicant stated future plans include laying a floor and expanding the area of the existing apartment. The adjacent property owners have not expressed any objections to the project. 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 pitch of the proposed new roof will match the pitch of the existing roof to maintain the architectural symmetry.**
6. The variance will not result in the initiation of a nonconforming use of land. **The building will continue as a residential structure.**

Mr. Keller made a motion to grant the variance as proposed. Mr. Blakeman seconded the motion. The motion was approved unanimously (6-0).

VI. Public Hearing - Conditional Use, Variance Request and Site Plan Review

Applicant: RCC Atlantic, Inc.
Property Address: 101 Hill Street
Owner: Virginia C. Nuissl
Zone: LDR

- Modifications to existing cell tower facility and compound
- Variance to increase height from 70' to 80' and installation of a 12' x 20' equipment shelter

Interested Parties: Will Dodge, Esq., Mike Luce, Ben Campbell, Ted Teffner

Mr. Zalinger swore in Mr. Luce, Mr. Campbell, Mr. Teffner. Ms. Lawson said that the parcel on which the tower is located consists of 198.2 acres, of which 85 acres are located in Montpelier. The balance of the site is located in Berlin. She said that the applicant proposes to increase the height of the existing tower and to construct improvements within the equipment compound. Ms. Lawson said she had accompanied members of the Act 250 board on a site visit and that the tower compound is surrounded by evergreen trees that screen the tower very well. Photographs of the site were reviewed by the Board.

Ms. Lawson reminded the Board that administrative approval had been granted in March 2004 for a temporary "cellular-on-wheels" (COW) on this site, which will be removed upon completion of the final improvements. This application is for the permanent improvements to the tower and compound. Mr. Dodge said that the existing height of the tower and antennas is 70' overall. He said that WCAX has two micro wave antennas and one whip antenna on the tower. There are four other whip antennas on the structure. Mr. Dodge said that the applicant has applied for an Act 250 permit and that a draft notice of minor amendment has been issued. He indicated that the purposes of the improvements are to maintain existing service and to accommodate future growth. He also said that the increase in height will allow an additional carrier to co-locate on the tower in the future. Mr. Cranse asked whether the variance request was for the difference between the permitted height of 45' and the proposed height of 80'. Ms. Lawson explained that a 50' tower was originally approved. Additional actions brought the height to 70'. The current variance application is now to increase the height from 70' to 80'. Mr. Cranse asked how the applicant accesses the tower in the winter. Mr. Luce said that the inspectors use snowshoes to reach the tower. He said that they typically need to check on computer equipment on a once a month basis.

Chairman Zalinger next inquired whether there was anyone else in attendance who wished to speak on this application; there was no response.

The Board next reviewed the conditional use criteria with consideration of the site plan standards.

1. Capacity of existing or planned community facilities. **Mr. Dodge stated that there are no known adverse impacts to community facilities. He said that the intention of the improvements is to make the facility viable for co-location. Mr. Dodge said that the draft Act 250 permit contains a condition to ensure that co-location is not restricted. He said that leases with carriers using the tower will reflect the co-location agreements.**
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.

Mr. Dodge said that the tower is very difficult to see because it is screened by the existing trees. He noted that there is another tower on the site. He stated that noise will be reduced when the new equipment shed is constructed. He said that the current

- noise level is equivalent to the noise from a hair dryer. Mr. Dodge said that the height increase is needed in order to make the equipment work properly and to allow for an additional user. He said that the incremental increase in height will not affect the character of the area because the tower is well screened by vegetation.**
3. Traffic on roads and highways in the vicinity. **Traffic will increase during construction, but then will return to a negligible level for the monthly inspections.**
 4. Zoning and subdivision regulation in effect. **No known adverse effect. Telecommunications towers, facilities and antennae may be permitted as a conditional use in the LDR district.**
 5. Utilization of renewable energy resources. **Not applicable.**

The Board continued to consider site plan requirements. A question was raised regarding whether an emergency generator is on the site. Mr. Dodge stated there is all ready electric power to the tower compound so there is no backup generator on the site. The applicant has agreed with leaseholders to bring a temporary emergency generator to the site if it is ever needed.

Mr. Cranse moved to grant conditional use and site plan approval, incorporating the proposed conditions as recommended by staff in Section E of the 5/17/04 staff report. Mr. Blakeman seconded the motion, which was unanimously approved (6-0).

The Board then 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. **Mr. Dodge said that the presence of tall Norway Spruce trees on the property and the location of the tower at an elevation below the ridge line (minimizing impacts on the view of the ridge) cause the need for the variance. He said that the average height of the trees in about 50', and with the owners' consent, occasionally trees that exceed that height are cut and snaked out. He also stated that the Act 250 permit will require that an undisturbed buffer of 50' be maintained around the tower. Mr. Zalinger noted that the elevation of the site and the screening trees make the site particularly suitable for the tower.**
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 incremental increase in the height will promote co-location and will allow provision of service described to be achieved.**
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. **Mr. Dodge said that the hardship relates to the co-location policy and the need to provide for vertical separation between antennas.**
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 testimony regarding the lack of effect on the character of the neighborhood was previously addressed in the**

conditional use criteria. The 10' increase in the height and the 12' x 20' equipment shed will not be detrimental to public welfare.

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 10' increase in height is the minimum necessary to improve coverage to provide for existing needs and allow future co-location.**
6. The variance will not result in the initiation of a nonconforming use of land.

Mr. Matzner made a motion to approve the application for a **10' height variance**. Mr. Cranse seconded the motion. The motion was approved unanimously (6-0).

VII. Public Hearing - Sign Variance

- Applicant: Green Mountain Community Baseball (GMCB)
Property Address: Ballfield Road
Property Owner: City of Montpelier
Zone: MDR
- Variance requested for 748 square feet of additional temporary signage.

Interested Parties: Mr. DeWolfe, Eddie Walbridge

Mr. Cranse recused himself from participating in this hearing, stating his employer is a GMCB sponsor, and then left the room. Ms. Lawson said that the applicant is seeking 748 square feet of temporary signage in addition to the previously approved permanent and temporary signs at the ballfield. She said that a variance is necessary because the maximum allowable size sign in the MDR district is 10 square feet. This standard is all ready greatly exceeded under previously granted sign variances totaling 5,924.08 square feet. Mr. DeWolfe said that the requested incremental increase is less than 15% of the area of signage that has already been approved. He said that the temporary signage will be viewed from within the stadium and parking area. He said that the temporary signs will be used for two months and then removed. He noted that the applicant all ready has approval for some permanent signage that will not be installed this year, but that he doesn't wish to give up the right to install them. Ms. Lawson said that the original variance application was approved in April 2003. The applicant requested re-approval for signage in its variance request in March 2004. Messrs. DeWolfe and Walbridge indicated on the site plan where the temporary signs would be placed.

The Board next 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. **The property was a baseball field prior to adoption of the zoning ordinance. The use was not a permitted use in the MDR district at the time of the bylaw adoption.**
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 temporary signage is consistent with the temporary use of the facility.**
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 location of the baseball**

- field in the MDR zone creates the hardship.**
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 incremental change in the area of signage represents a small percentage of the area of the existing approved ballfield signage. The increase will not change the character of the neighborhood more than the existing ballfield has done.**
 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. **According to the applicant, there will be no further proposals for significant increases in temporary signage.**
 6. The variance will not result in the initiation of a nonconforming use of land. **The ballfield use is a pre-existing use in the MDR district.**

Mr. Keller made a motion to approve the variance request, incorporating the staff recommendations enumerated in Section D. of the 5/17/04 staff report. Mr. Blakeman seconded the motion. The motion was approved 5-0 with Mr. Cranse having recused himself.

VIII. Approval of Minutes

A. Mr. Keller made a motion to approve the minutes of the May 3, 2004 meeting. Mr. Cranse seconded the motion. The motion was approved 4-0 with Mr. Blakeman and Mr. Matzner abstaining.

B. Mr. Keller made a motion to approve the minutes of the April 19, 2004 meeting. Mr. Teschmacher seconded the motion. The motion was approved 4-0 with Mr. Blakeman and Mr. Matzner abstaining.

Adjournment

At 9:25 p.m., a motion to adjourn was made by Mr. Keller, seconded by Mr. Blakeman and unanimously approved.

Respectfully submitted,

Gail M. Lawson, Administrative Officer

Transcribed by 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.