

Montpelier Development Review Board
June 7, 2004
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Alan Blakeman; Roger Cranse; Guy Teschmacher; Jack Lindley; Kevin O'Connell

Staff: Gail Lawson, Administrative Officer

Call to Order

The meeting was called to order by Mr. Zalinger at 7:06 p.m.

Minutes

- A. Mr. Cranse made a motion to approve the minutes of the April 7, 2004 Development Review Board meeting. Mr. Lindley seconded the motion. The motion was approved 6-0.
- B. Mr. Blakeman made a motion to approve the minutes of the May 17, 2004 meeting. Mr. Cranse noted that he had recused himself from one of the applications heard at that meeting, the public hearing for a sign variance requested by Green Mountain Community Baseball. Other board members concurred recusal did not disqualify him from voting on accepting the minutes of the meeting. Mr. Teschmacher seconded the motion. The motion was approved 4-0 by the members who attended that meeting, Mr. Zalinger, Mr. Blakeman, Mr. Cranse and Mr. Teschmacher.

I. Consent Agenda

A. Sign Permit

Applicant: Patrick Mullikin
Property Owner: Jeffrey Jacobs
Property Address: 30 State Street
Zone: CB-I/DCD
Purpose: Sign Permit

- Wall sign
- The DRC recommended approval as submitted.

Mr. O'Connell made a motion to approve the sign permit application as presented to the DRC. Mr. Cranse seconded the motion. The motion was approved unanimously.

B. Design Review

Applicant: William Shouldice and Duane Wells (Wells Construction)
Property Owner: William and Carol Shouldice
Property Address: 68 Main Street
Zone: CB-I/DCD
Purpose: Design Review Approval

- Reconstruction and replacement of fire-damaged shared wall and installation of windows.
- DRC recommended approval with adjustments.

Mr. Duane Wells was present to represent the applicants. Mr. Zalinger recused himself from consideration of this application. When asked if the applicants agreed with the recommendations made by the DRC, Mr. Wells replied that they did.

Mr. Blakeman made a motion to grant design review approval with the recommendations of the DRC. The motion was seconded by Mr. O'Connell. The motion was approved 5-0 with Mr. Zalinger recusing himself.

II. Continuation of Design Review and Site Plan Review

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

Mr. Zalinger said that the applicant has requested that this application be continued to the June 21, 2004 DRB meeting. Ms. Lawson said that the Board members had received copies of the staff notes on this application. She said that the applicant has been delayed in finalizing the plans for the project because of unanticipated issues related to the retaining wall. She said that the applicant has agreed to waive the 60-day time period for DRB action on the application. Ms. Lawson said that the Board needs to determine whether it wishes to enter into that agreement. Mr. Lindley asked whether it is possible that the generator will be placed on State property and thereby avoid requirements for local approval. Ms. Lawson said that the applicant's attorney is looking into the questions of jurisdiction and the impact of statutes, including the recent changes to Chapter 117. She said that there have been previously been conflicting legal opinions written on the question of municipal zoning jurisdiction in the Capitol City Complex. Mr. Lindley expressed concern that the applicant seems to have found a way around the DRB's issue regarding noise levels at the property limits. Ms. Lawson said that the Capitol Complex rules say that properties will be subject to any other ordinances that the City may adopt. She said that the City's noise ordinance is independent of the zoning rules and said that the staff believes that the ordinance would apply.

Mr. Lindley made a motion that the Board agree to extend the jurisdiction of the DRB to August 7, 2004, and to recess the public hearing to the DRB's July 6, 2004 meeting. Mr. Blakeman seconded the motion. The motion was approved unanimously.

III. Continuation of Public Hearing - Conditional Use Approval

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| Applicant: | Twin City Harvest Christian Church |
| Property Owner: | Stephen and Andrew Ribolini |
| Property Address: | 407 Barre Street |
| Zone: | GB |
| Purpose: | Conditional use and site plan review |

- Change of use from retail and service to church facility
- Applicant requests continuation to June 21, 2004

No one was present at the meeting to represent the application. Mr. Zalinger said that the applicant has requested a continuation to the June 21, 2004 meeting. Ms. Lawson said that since this application involves conditional use approval, which incorporates by reference site plan review, it is an open question whether the 60-day time period is applicable. She said that to be safe, the applicant and property owner have signed an agreement to extend the 60-day period to a date agreeable to the DRB. She said that the property owner has indicated that he believes that he will have the necessary information together in time for the June 21

meeting. Ms. Lawson said that the Board may grant the request for a continuation, deny the application without prejudice or approve the application as submitted. She said that the staff generally supports a recess in situations where the applicant is proceeding in good faith to produce the needed information, as opposed to situations in which the staff has to contact the applicant at the last minute to ask for the information. Ms. Lawson said that, in this case, the owner believes that the site plan will be available next week. Ms. Lawson noted that the agenda for the June 21 meeting is fairly full, but could accommodate a site plan review.

Mr. Lindley said that this application includes a parking lot which involves public safety issues. He said that he wants to give the technical review committee adequate time to review the project. Mr. Lindley recommended continuing the application to the July 6, 2004 meeting. Mr. Zalinger said that he is willing to stay as late as needed at meetings to hear applications, but that he senses that the administrative staff is concerned that they are being asked to nurse and nudge along incomplete applications. Repeated continuances of incomplete applications, such as this one, have a domino effect on the Board's schedule. He said that the DRB should protect the staff's time. He also noted that this application took up a slot on the meeting agenda that could have been used by another application that was complete. Mr. Zalinger suggested that the Board consider dismissing the application without prejudice. Mr. O'Connell said that he would support that suggestion. He said that the action would not jeopardize the viability of the application, but would send a message that the staff time is valuable. Mr. Lindley asked whether the applicant would have to resubmit fees. Ms. Lawson said that they would need to resubmit the fees and that the applicant originally paid a fee of \$57. She added that there are other applications that are ready to go, but they could not be scheduled for the June 21 meeting because of the potential consideration of this application. Mr. Cranse said that he agreed with Mr. Zalinger's suggestion. Mr. Lindley said that the message was appropriate, but that he hesitated to single out this application.

Mr. O'Connell made a motion to dismiss/deny this application without prejudice. Mr. Teschmacher seconded the motion. The motion was approved unanimously.

IV. Public Hearing - Variance

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| Applicant: | Robert and Patricia Mercier |
| Property Owner: | Robert and Patricia Mercier |
| Property Address: | 8 Foster Street |
| Zone: | HDR |
| Purpose: | Variance |
- Addition of a 10' x 8' covered open porch on the east side of the house
Required sideyard setback 10'
Variance setback requested 8'

Interested Parties: Robert and Patricia Mercier

Robert Mercier and Patricia Mercier were sworn in by Mr. Zalinger. Ms. Lawson said that the lot is located in the HDR zoning district. She said that the house is located behind two houses and has no road frontage. She said that the small addition will be 8' too close to the side yard where a 10' setback is required. Ms. Mercier said that the neighbors do not object to the project. Mr. Mercier said that the neighborhood is very tight. Ms. Mercier said that the need for the enclosed porch is, in part, to provide an emergency exit. She said that the proposed location is the only place where an addition could be placed because of the location of existing buildings.

The Board members 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 sometime around 1900 and the lot was created sometime before 1964, prior to the adoption of the zoning ordinance.***
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 second entrance is a reasonable use. There is no place to construct a covered entrance without interfering with other uses on the parcel.***
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 clearly relates to the lot size and shape.***
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 porch will be used as part of the existing residence. The owners of adjacent properties have not objected to the project. Renewable energy is not applicable. The project will not be detrimental to the 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. **This is the least deviation possible to allow the construction of the modest porch.***
6. *The variance will not result in the initiation of a nonconforming use of land. **The principal use of the building will continue to be residential.***

Mr. Blakeman made a motion that the DRB grant approval of the variance as proposed. Mr. O'Connell seconded the motion. The motion was approved unanimously.

V. Public Hearing - Conditional and Final Subdivision Approval

Applicant: City of Montpelier, Department of Public Works
Property Owner: O.M. Fisher Home, Inc.
Property Address: 171 Westview Meadows
Zone: MDR and LDR
Purpose: Conditional and Final Subdivision

- Two lot subdivision
- 20' easement off of Westview Drive to the City of Montpelier for utilities and access.

Ms. Lawson said that she would be representing the City in this hearing because Tom McArdle, could not be present due to unexpected circumstances. Mr. Zalinger asked Ms. Lawson to take a seat at the applicant's table for the hearing. Ms. Lawson did so and explained that the application was for a two-lot subdivision to create a parcel for a water tower. She said that details of the proposed water tower would be the subject

of a separate application to the DRB. She said that the subdivision will create a 2-acre lot for the water tower and a 23.1 acre remainder lot. The two-acre lot will be located in the LDR zoning district. Ms. Lawson said that Westview Meadows, a 52 unit residential community, is located on the parcel. She said that the development will comply with allowable density on the 23.1 acre remainder lot. She also noted that the staff has recommended that the final plat be revised to add the word "access" to the right of way easement.

Ms. Lawson said that the staff recommended a condition requiring that the approval of any use of the 2 acre parcel be deferred. Mr. Zalinger stated that the application currently before the Board was for the subdivision only. Mr. Lindley said that he did not think that the condition was appropriate.

Mr. Lindley made a motion to grant the conditional and final subdivision approval with recommendations in the June 7, 2004 staff report, with the exception of proposed condition #1.a.. Mr. Blakeman seconded the motion.

Norris Knosher said that he is the owner of a farm adjoining the subject lot. He said that he was concerned that this application might take some of his property because Westview Meadows has an easement over his property. After reviewing the site plan, Mr. Knosher said that it looked like the subdivision will not affect his property.

The Board voted to grant the conditional and final subdivision approval with staff recommendations as noted above.

Other

Mr. Zalinger said that Ms. Allen had resigned from the Board. Mr. Lindley said that the minutes should reflect the Board's grateful acknowledgment of her long, laborious hours in establishing the DRB and the Board's heartfelt thanks for hanging in there as long as she did. Mr. Zalinger agreed.

Mr. Zalinger noted that the Board has a number of vacancies and an immediate need to elect a Vice Chair. Mr. Blakeman made a motion that the Board elect Mr. O'Connell as Vice Chair. Mr. O'Connell said that he would prefer not to be the Vice Chair. Mr. Zalinger said that it would be good if Mr. O'Connell would consider serving at least until the new Board is constituted after the end of July. Mr. O'Connell said that he would accept the position for that period. Mr. Cranse seconded the motion. The motion was approved 5-0 by Mr. Zalinger, Mr. Blakeman, Mr. Cranse, Mr. Lindley and Mr. Teschmacher.

Adjournment

Motion to adjourn was made by Mr. O'Connell and seconded by Mr. Blakeman. The motion was 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.