

Montpelier Development Review Board
June 21, 2004
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Alan Blakeman; Roger Cranse; Guy Teschmacher; Jack Lindley; Dave Keller
Staff: Gail Lawson, Administrative Officer

Call to Order

The meeting was called to order by Mr. Zalinger.

Minutes

Mr. Lindley made a motion to approve the minutes of the June 21, 2004 Development Review Board meeting. Mr. Blakeman seconded the motion. The motion was approved 5-0 with Mr. Keller abstaining.

I. Consent Agenda

A. Sign Permit Application & Design Review

Applicant: The Vermont Institutes
Property Owner: Union Institute and University
Property Address: 45 College Street
Zone: HDR/DCD
Purpose: Sign Permit and Design Review

- Two sided ground sign
- The DRC recommended approval with adjustments.

Interested Parties: Patricia Rennau, The Vermont Institutes

Mr. Zalinger asked Ms. Rennau whether the applicant agrees to the changes recommended by the DRC. Ms. Rennau said that the changes were acceptable to the applicant. She said that she had photographs that had been requested. Ms. Lawson explained that the photographs were requested to address the DRC's concern about the size of the support posts, which will be 4" x 4" in size to match the existing CCV sign post. She said that the photographs could be submitted to her for the file.

Mr. Blakeman made a motion that the application be approved incorporating the DRC recommendations. Mr. Keller seconded the motion. The motion was approved by a vote of 6-0.

B. Design Review

Applicant: River Station Properties II, LLC
Property Owner: River Station Properties II, LLC
Property Address: 535 Stone Cutters Way
Zone: RIV/DCD
Purpose: Design Review Approval

- Two satellite dishes
- DRC recommended approval as submitted

Mr. Zalinger noted that the DRC recommended approval of the project as submitted. Mr. Lindley said that he understood that the satellite dishes were already installed on the building. Ms. Lawson confirmed that the dishes were put up without the necessary permit. Mr. Keller asked for confirmation that the "535" numerals on the building were not the subject of the current application. Ms. Lawson confirmed that was the case. She said that the issue regarding the numerals initiated before she was hired. She said that acting administrative officer, Stephanie Smith, initially sent the property owner a letter stating that the mounting of the numerals on the building required DRC review. Ms. Lawson said that after she was hired as administrative officer, she determined that, although the numerals were a substantial exterior building alteration under the zoning regulations, they also represent the street address for this building. Generally, street numbers are regulated under a municipal addressing ordinance separate from zoning. She said that street addresses fall under Public Works jurisdiction, but are administered by the police department. Ms. Lawson said that she sent an enforcement letter to the property owner stating that the approval of the Police Department or the City Council is needed or the property owner must apply for a sign permit for a smaller directory sign.

Mr. Lindley made a motion to grant design review approval. Mr. Cranse seconded the motion. The motion was approved by a vote of 6-0.

II. Public Hearing - Variance and Design Review

Applicant: Richard DeAngelis
Property Owner: Richard DeAngelis
Property Address: 24 Cliff Street
Zone: LDR/DCD
Purpose: Variance and Design Review

- Replacement/Expansion of covered porch
- DRC recommends approval as submitted with adjustments
- Required front yard setback: 40'; Variance requested 17'

Interested Parties: Richard DeAngelis

Mr. DeAngelis was sworn in by Mr. Zalinger. Ms. Lawson said that the applicant is proposing to replace an existing porch with a slightly larger porch. She said that the existing building is a non-conforming structure to the front yard setback standard.. She said that the replacement and enlargement of the porch will require a variance from the front yard setback requirement as it increases the degree of non-conformity because of the width increase. Mr. DeAngelis explained that the proposed porch will be 1½ feet wider than the existing porch. The porch is located on the side of the house and will be in line with the front of the existing house. Mr. DeAngelis said that the building was constructed some time around 1920.

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 building was built sometime around 1920, prior to the adoption of the zoning ordinance. The entire front of the existing porch is within the front yard setback. The existing stoop is as close to Cliff Street as the proposed porch will be. The existing stoop has to be replaced for safety reasons. The property owner is seeking**

- a safe and functional means of ingress and egress.**
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 entire front of the structure is within the front yard setback. The proposed porch will not increase the encroachment, but will extend 18 inches further. There is no way that the porch could be modified in any way 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 building and lot predate the zoning ordinance. It is clear that the need for the variance is not created by the appellant.**
 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 residential use will continue. The proposed use will not change the character of the neighborhood. No activities are proposed that would be detrimental to the public welfare. The owners of adjacent properties have been notified and have not objected to the project.**
 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. **Expansion of the porch by 18 inches represents a minimal expansion.**
 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 asked whether the applicant had any issues with the DRC comments. Mr. DeAngelis said that he was in agreement with the comments.

Mr. Cranse made a motion that the DRB grant approval of the variance as proposed. Mr. Keller seconded the motion. The motion was approved 6-0.

Mr. Blakeman made a motion that the Board grant design review approval incorporating the recommendations of the DRC. Mr. Cranse seconded the motion. The motion was approved 6-0.

III. Sketch Plan - Subdivision

Applicant: Douglas C. McArthur
Property Owner: Douglas C. McArthur
Property Address: 123 Robinhood Circle
Zone: MDR

Purpose:

- Two lot subdivision of a 2.3-acre parcel to create:
 - a 0.41-acre parcel currently developed with the applicant's single family residence and accessory structure (gazebo);
 - a 1.89-acre parcel with existing shed/barn
- No new development is proposed for the 1.89-acre parcel

Interested Parties: Douglas McArthur

Mr. McArthur was sworn in by Mr. Zalinger. Mr. McArthur said that he purchased his original lot in 1970 and built a house on it. He said that he acquired additional property adjacent to the lot and created a three-lot subdivision. Mr. McArthur retained the lot with his house. Houses were subsequently built on the other two lots. Mr. McArthur said that he now wishes to create a two-lot subdivision. He said that this will enable him to convey land to the abutting property owners at some time in the future. He said that he might also sell the newly created 1.89-acre lot or the 0.41-acre lot which contains his house to a new buyer. Ms. Lawson said that there is a correction to the staff notes regarding this application. She said that item #4 mistakenly states that a variance is required. Actually, the proposed lot lines were drawn in a manner that will allow the barn and the gazebo to meet side yard setback standards. Mr. Zalinger asked whether the storage shed/barn located on the proposed 1.89-acre lot would be an appurtenance to that lot. Mr. McArthur said that it would be. He explained that the Keenes, the owners of the adjoining lot are members of his family and they will not be acquiring the property with the shed on it until he no longer needs it.

Ms. Lawson said that the subject 2.3-acre lot was part of a previously approved subdivision. She said that the City has a turnaround easement at the end of Robinhood Circle on the property. She said the sketch plan does not show whether proposed Lot B will have access directly off from the street or from the extended 50-foot wide ROW easement owned by the applicant. Mr. McArthur said that proposed Lot A (his residence) has access to a city-maintained street. He said that Lot B has access to the private 50-foot right of way. These details must be shown on the conditional and final subdivision plat.

Mr. Zalinger advised Mr. McArthur that, if the DRB granted subdivision approval allowing a lot to be created in order to annex it to adjoining parcels, it could not be used for other alternatives without a new approval. Mr. McArthur asked whether he would be able to return to the Board to seek approval of a buildable lot in the future. Mr. Zalinger responded that such an application could be submitted. He said that the current proposal is only before the Board for sketch plan review. The Board will respond to the applicant's request, which is presently for creation of the lot for annexation to the properties of the adjoiners, Keene and Montgomery. He advised Mr. McArthur that he has time to consider how he wishes to propose to create the lot. Mr. Cranse said that if the applicant envisions a subsequent use that will require further approvals, it might be appropriate for the Board to wait until the final use is clear before acting. Mr. Zalinger said that was one alternative. He said conditions might also be attached to any approval of the current proposal so that the Administrative Officer could conduct an administrative review of any further action by Mr. McArthur relative to annexation of all or part of Lot B to those other two lots (e.g. a lot line adjustment).

Mr. Zalinger said that, if the land is to be annexed to other parcels, Lot B could be split by Mr. McArthur without a subdivision. Ms. Lawson noted that Lot B is being created without any proposed development. She said that there should be conditions addressing that fact. Mr. McArthur said that he would like for the proposed lot to be approved as a freestanding lot because the situation may change in the future. He said that he wants to be in a position to sell the lot if he wishes to. Ms. Lawson asked whether the DRB could approve the creation of the lot with the stipulation that the applicant be required to submit confirmation of water and sewer allocation or subsurface disposal permits prior to any development of the lot. Mr. Zalinger said that all development in Montpelier must connect to utilities where they are available. Ms. Lawson said that the utilities are available at this location, but that utility allocations must be obtained from the City. Mr. Cranse said that he does not see why the subdivision must occur now in order to annex the land to the adjoiners. Mr. McArthur said that he wants to be able to convey Lot A, his house site, separate from Lot B; in order to do so, subdivision approval is required.

Mr. Keller noted that the ordinance limits the creation of irregularly shaped lots except in certain circumstances. He said it is difficult to see if the lot complies without knowing what will be proposed on

the lot. Ms. Lawson responded that existing building development on the property dictated where the proposed lot lines could be placed in order to maintain compliance with setback requirements. She said that the lot will be roughly rectangular and is not significantly irregular in shape. Mr. Zalinger agreed that the lot would not be that irregular. Mr. Teschmacher asked whether the Board could simply approve the creation of the two lots without conditions. Mr. Zalinger responded that the Board would want to determine whether utility service was available and the locations of the water and sewer connections if the applicant seeks approval for a building lot. Mr. McArthur said that his intent was not to create a developable lot, but to separate the lot from Lot A.

Mr. Zalinger said that the DRB acknowledged the sketch plan based upon the understanding that the intention is not to create Lot B for future development. Mr. McArthur said that he understood a new approval will have to be requested if Lot B is to be developed. Mr. Zalinger asked Mr. McArthur to bear in mind that the proposal will require conditional and final subdivision approval. The applicant may request to combine those two reviews. It was explained that sketch plan review is an informal process and no motion of approval is needed in order for the applicant to finalize plans and submit an application to proceed to the next level of permit review.

IV. Preapplication Conference for Site Plan Review

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| Applicant: | St. Michael's School and City of Montpelier |
| Owner: | City of Montpelier |
| Property Address: | 52-58 Barre Street |
| Zone: | CB-II/HDR/DCD |
- Preapplication conference preliminary to conditional use public hearing

Interested Parties: Chris Canavan, Rick DeWolfe, Don Larinovich

Ms. Canavan said that she is a volunteer with a collaboration of residents, the City and St. Michael's Elementary school. She said that the proposed improvements to the existing playground are intended to create a safe, updated play area. She said the project will involve three phases: the installation of a barrier to separate vehicles from the play space, the installation of new play equipment and play surfaces, and consideration of modifying traffic flow on Monsignor Crosby Avenue. Ms. Canavan provided the Board members with updated materials and described the changes. She said that a walkway was shown on a previous site plan, but a public right-of-way may not exist at that location. The size of the proposed improved playground had been reduced to allow for teacher parking spaces. Ms. Canavan also said that the new materials reflect the proposal to relocate an approximately 4' high retaining wall behind the school. Some grading is proposed for that area as well as improved drainage. New and replacement fencing is also planned.

Ms. Canavan asked for guidance from the Board on how to proceed. Ms. Lawson said that the property is owned by the City and is located in four zones. She said that there is some confusion about street numbering in the materials provided. She said that the City and St. Michael's share a driveway between buildings and share some parking. Ms. Canavan said that St. Michael's has a lease agreement to use the space. Mr. Zalinger said that the playground is preexisting and that he is not sure that the Board would have jurisdiction over a continuation of an existing appurtenance to an existing school. Ms. Lawson said that the playground is an existing conditional use. She said that the applicant is proposing site changes to that conditional use and proposing to open the use to the general public as a public park. Ms. Canavan clarified that the playground is presently open to the public.

Mr. Zalinger said that he felt that this is a continuation of an existing conditional use. Ms. Lawson said that under the zoning regulations, this proposal represents a change/expansion to an existing conditional use, triggering review by the DRB. Mr. Keller asked whether the footprint of the playground was increasing. Ms. Canavan said that the proposal is actually decreasing the space where play will occur. She said that aerial photographs going back to the 1980's show the play area and a baseball diamond over a much larger area. Mr. Lindley said that there has been the precedence of the City's improvements to its elementary school playground without a DRB approval. He said that this is an existing playground that needs to be fixed. He said that he is concerned about setting a precedent of requiring conditional use approval of improvements to existing playgrounds. Mr. Lindley said that he is perplexed as to why this proposal is before the Board at all.

Ms. Lawson advised the Board that her determination had been based upon the ordinance classification of public and/or private playgrounds, parks and schools as conditional uses. Under the regulations, any designated conditional use for which site plan changes are proposed must be reviewed by the DRB under conditional use authority; they cannot be reviewed under either the site plan procedures or approved administratively. Further, although the deeds do allow St. Michael's to use the rear of the property as a playground, a portion of that area is now being used regularly as a parking lot.

Mr. Zalinger said that he understood the City has relinquished use of the rear of the property to St. Michael's to use as an appurtenance to a school. Mr. Larinovich said that the lease allows the playground to be used as long as the school is used for educational purposes. Mr. Zalinger said that the conduct and operation of a playground in the CB-II or HDR zones require conditional use review, but he was satisfied that this is a continuation of a use that has historically been behind 58 Barre Street. He noted that the playground predates the lease agreement.

Mr. Zalinger said that the lease document is 32 years old and the playground existed before then. He said that this proposal is the continuation of an existing use. Mr. Larinovich said that the area has always been used as a playground. He said that there are new safety standards for playgrounds and that this upgrade is intended to meet current safety standards.

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Mr. Zalinger asked Ms. Lawson how the decision regarding jurisdiction could be reconsidered. Ms. Lawson said that the Board was simply conducting a pre-application conference and that no decision needs to be made tonight. She stated that when she first met with the applicant it was her understanding that the playground was being expanded, as well as upgraded, and changing from a private school playground to a public park. Mr. Zalinger asked Ms. Lawson whether her decision would change based upon the information presented tonight. Ms. Lawson said that she would want to speak to the applicant to get further clarifications.

Mr. Lindley gave an example of the creation of a pocket park at a location where none had existed as an example of a project that would require conditional use approval. He said that this is an upgrade to a playground that already exists and said that he did not understand how the Board would have jurisdiction. Ms. Lawson said that she had visited the site several times and observed the area identified as a playground on half of the site with a paved surface is being used for parking. She said that she had not been aware of the history of the paved area being used as a developed playground. Mr. Lindley said that the paved area was used for play historically and that the parking has encroached into the play area. He added that the area has always been open to the public. He said that he does not see how the project could require conditional use or site plan review.

Mr. Zalinger said that the Board was conducting a pre-application conference. He said that the

Administrative Officer could have further discussions to develop additional facts. He said that the Administrative Officer could consider how long the playground has existed and whether a designated play area without play equipment is a playground. If the Administrative Officer still determined that conditional use approval is required, the applicant will appear before the DRB. If the applicant disagrees with the Administrative Officer's determination, an appeal can be submitted to the Board. Mr. Blakeman said that parking is a nightmare at the Central Office and the Senior Center and asked whether they were aware of the plan. Mr. Larinovich said that those uses cannot use the on-site parking area during the school year.

Ms. Canavan asked whether she should contact Ms. Lawson for a meeting to discuss the project further. Ms. Lawson advised her to call her office to set up a meeting.

Other Business:

A. Green Mountain Community Baseball:

Ms. Lawson noted that she had provided a staff report to the DRB on Green Mountain Community Baseball's compliance with the conditions of the Board's recent approval of the Phase 1 improvements to the ballfield. She said that this item was noted on the agenda to acknowledge submission of the report, which was a condition of the approval. She said she had not specifically asked the applicant to attend the meeting because she did not anticipate discussion at the meeting and the applicant and the Battistonis also received a copy of the report.

Mr. Blakeman asked whether the noise issue had been resolved. Ms. Lawson said that it has been addressed by the applicant and there have not been noise complaints made to her office so far this season. Mr. Lindley said that it will take 20 years for the trees to provide a screen for the lights. Mr. DeWolfe, who was in the audience, disagreed. He said that the trees will provide a screen in less than five years. Mr. Zalinger asked Ms. Lawson whether she has a level of comfort that the Battistonis' concerns have been satisfied. Ms. Lawson said that she did not believe that they had been satisfied. She said that she advised everyone who attended the site visit at the Battistoni residence, prior to the issuance of her report, that the lighting issue has not been satisfied in accordance with the condition imposed by the Board. She further advised them that this issue will be revisited when the applicant next appears before the Board, if it has not been resolved prior to that time. Mr. Zalinger said that the evidence indicates the applicant has not satisfied the condition of the Board's approval. He said that the DRB will retain jurisdiction over the lighting issue and will consider this again when the applicant next appears before the Board.

Mr. Cranse said if the Board is going to deliberate on this application he would recuse himself. Mr. Zalinger said the Board would not deliberate tonight. He said the applicant was not present and was not aware there would be any discussions. He said that Mr. DeWolfe happened to be at the meeting, but was not giving testimony on behalf of the applicant. Mr. Zalinger reminded the Board the subject was only on the agenda to note that the Board has received Ms. Lawson's report.

Mr. Keller said it appears that the applicant is in violation of the approval conditions. Ms. Lawson said that she does not consider the situation to be a permit violation because of the wording of the condition. She said that the applicant was required to address the issue and the Administrative Officer was to report back to the Board on whether the solution was acceptable. If not, the issue would be considered in the Phase II application. She said that at the time, the applicant had indicated that they would be back before the Board in the pre-season time frame, but that did not occur.

B. Fourth of July Holiday: Ms. Lawson reminded the Board members that, because of the Fourth of July holiday, their next meeting would be on **Tuesday**, July 6, 2004, rather than Monday.

C. **Member Terms:** Mr. Zalinger noted that the terms have expired for four DRB members. He said Mr. Teschmacher has applied for reappointment as either a regular or alternate member, Mr. Matzner has applied for reappointment as an alternate member and Mr. Keller has applied for reappointment as a regular member. Mr. Zalinger stated he supports all three appointments and appreciates the interest of the members.

Adjournment

Motion to adjourn was made by Mr. Blakeman and seconded by Mr. Cranse. 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.