

Montpelier Development Review Board
July 19, 2004
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Alan Blakeman; Guy Teschmacher; Jack Lindley; Roger Cranse; Ken Matzner

Staff: Gail Lawson, Administrative Officer

Call to Order

The meeting was called to order by Mr. Zalinger at 7:08 p.m.

Minutes

Mr. Lindley made a motion to approve the minutes of the **July 6, 2004** Development Review Board meeting as written. Mr. Blakeman seconded the motion. The motion was approved 5-0 with Mr. Cranse abstaining.

I. Consent Agenda

Design Review

Applicant: Andrew Boutin and Elizabeth Wagner Boutin
Property Owner: Andrew Boutin and Elizabeth Wagner Boutin
Property Address: 104 East State Street
Zone: HDR/DCD
Purpose: Design Review

- Replacement of gutter system and storm windows
- Change paint colors and exterior details on house and garage
- Cover vertical siding on garage
- DRC recommended approval with optional changes

Mr. Zalinger noted that the design review committee (DRC) has recommended approval of the application with optional changes. He said that he would recuse himself from consideration of this application.

Mr. Lindley made a motion to approve the application with the recommendations of the (DRC). Mr. Cranse seconded the motion. The motion to grant design review approval was approved 5-0 with Mr. Zalinger recused.

II. Public Hearings

A. Public Hearing on Variance Request (continued from July 6, 2004)

Applicant: Richard Sheir and Cindra Conison
Application #: 2004-0082
Property Owner: Richard Sheir and Cindra Conison
Property Address: 39 Loomis Street
Zone: MDR
Purpose: Variance to Front Yard Setbacks and Lot Coverage

- Extension of noncomplying structure to add 4' x 10' one-story addition on north side
- Front and back dormers on Harrison Street side
- Required front yard setback from Harrison Street: 41'; Variance Requested 35'
- Increase in total lot coverage from 36% to 37% (4% above maximum allowed)

Interested Parties: Cindra Conison

Mr. Blakeman recused himself from participation in this matter.

Ms. Conison was sworn in by Mr. Zalinger. Mr. Zalinger noted that the DRB had received a letter from the applicants' neighbors, Charles Phillips and Elizabeth Strobell, stating that they had met with applicants and reviewed the plans. As a result, they have concluded that the proposed addition will not have an adverse impact on the amount of sunlight available to their house and do not oppose the addition.

Ms. Lawson said that the lot size noted in the original staff report was incorrectly given as 1.1 acres. The corrected acreage is 0.11 acres based upon the tax assessor's records; the applicants agreed. The determination of the percentage of lot coverage has been recalculated based upon the correct lot size. Ms. Lawson stated the addition will increase lot coverage from 36% to 37%. She said that this increase in lot coverage will require a variance since the existing lot coverage exceeds the maximum allowable coverage of 33%. The proposal also requires a front yard setback variance of 35 feet. Mr. Lindley asked whether a variance was ever issued for the lot. Ms. Lawson said that she could not find any record of such a variance and commented perhaps the applicant has information about when the last addition was constructed. Ms. Conison said that the garage was built sometime in the 1960s. Ms. Conison showed the Board members a representation of the proposed dormer addition.

The Board decided to review 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 dormer and the 4' x 10' mudroom expansion will be added to the existing noncomplying structure, which is already located within the front yard setback. Both the building and the lot existed prior to the adoption of the zoning ordinance. Adoption of the ordinance created a non-conforming situation that requires both a dimensional and lot coverage variance for any building addition. The applicant is just extending a wall between two existing building lines. It appears that the location of the building on the pre-existing nonconforming size lot is the unique physical circumstance creating the hardship.**
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 location of the building on the lot, which was created before the zoning ordinance, has burdened the reasonable use of the property.**
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 applicant has clearly not created any conditions on the site that give rise to the need for a variance.**
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 use will continue to be a single**

family dwelling. The neighbors have withdrawn their objections to this project. The modest expansion of a single family dwelling in the MDR zone will not be detrimental to the neighborhood.

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 building addition and height increase represent modest changes to the structure. The building height will be similar to the adjacent dwelling.**
6. The variance will not result in the initiation of a nonconforming use of land. **The house will continue to be used as a residence.**

Mr. Lindley made a motion to approve the 35-foot front yard and 37% lot coverage variances, as requested. Mr. Matzner seconded the motion. The motion was approved 5-0 with Mr. Blakeman recused.

B. Public Hearing on Variance Request

Applicant: Eric Silvers and Josette McIlwaine
Application #: 2004-0089
Property Owner: Eric Silvers and Josette McIlwaine
Property Address: 3 Towne Street and North College Street
Zone: MDR
Purpose: Front and Side Yard Variances

- 17' x 28' open rear deck
- 10' W x 15' L x 10' H front room addition on 28' high house
- Required FY setback from No. College Street: 30'; Variance requested 22'
- Required SY setback 20'; Variance requested 5'

Interested Parties: Eric Silvers

Mr. Silvers was sworn in by Mr. Zalinger. Ms. Lawson said that the subject lot is a corner lot in the MDR zone. She said that the existing structure is non-complying on one side and that the lot is irregular in shape. She said that two separate setback variances are required - a front and a side yard.

Mr. Matzner stated he has observed that the deck has all ready been constructed. Mr. Silvers confirmed he has constructed the deck but stated he was not aware of the need for a permit until the deck was 90% completed. Ms. Lawson said the applicant's sketch shows dimensions from the center line of the finished roadway, not the edge of the legal ROW. She said that the right-of-way width has to be subtracted from the dimensions shown to determine the setbacks. Mr. Matzner asked what the setback of the adjoining house was. Mr. Silver said that the setback is similar to his setback. Mr. Matzner asked whether both the neighboring house and Mr. Silver's house were located in the side yard setback. Mr. Silver said that they were.

Mr. Cranse said that there is a problem because the ordinance does not permit the increase of an encroachment in a front yard setback. Ms. Lawson affirmed that a variance is needed in this case, and noted that under statutory law, the DRB has the authority to grant one if the proposal meets the variance criteria. She commented that Section 303 A.(3) of the Montpelier regulations appears to conflict with state law. Mr. Zalinger said that in the past, the Board has said that it will not consider the increase of an encroachment into the front yard setback. Mr. Cranse said that the ordinance states the encroachment may not extend beyond the existing building line. Mr. Zalinger said that the application complies with that provision given the angle of the property line, and therefore, is different from the previous situations considered by the DRB.

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. **The house was built and the lot was created in 1957, prior to the adoption of the zoning ordinance. The addition does not increase the encroachment into the side yard setback, as the house is currently noncomplying. The rear deck continues the existing line of the house, but the property line along North College Street is angled so that the incursion into the setback is increased. This is due to the irregularity of the lot, which is a unique physical circumstance.**
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 Board has ruled in the past that it is reasonable to continue existing building lines on structures that are already in setbacks, especially when the building predates the ordinance.**
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 results from the location of the existing building in the setbacks.**
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 neighbors have provided letters in support of the project. There is no evidence of opposition. It can be inferred from the support of the neighbors that the project will not negatively impact the neighborhood. The use will continue to be a single family dwelling. The project will not be detrimental to the public welfare. 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 continuing the existing building line. This represents a minimal change to the building.**
6. The variance will not result in the initiation of a nonconforming use of land. **The house will continue to be used as a residence.**

Mr. Lindley made a motion to approve a variance of 22' for the front yard setback and a variance of 5' for the sideyard setback. Mr. Cranse seconded the motion. The motion was approved 6-0.

C. Final Site Plan Review

Applicant:	Margaret Baird, Turtle Island Children's Center
Application #:	2004-0098
Property Owner:	Margaret Baird
Property Address:	659 and 661 Elm Street
Zone:	MDR
Purpose:	Final Site Plan Approval

- 661 Elm Street - Change of use from single family residential building to graded school
Demolition of existing breezeway and garage
- Installation of parking area and associated site work and partial reconfiguration of adjacent Turtle Island Children's Center parking lot, access drives and aisles.

Interested Parties: Richard DeWolfe, Guy Teschmacher, Meg Baird

Mr. Teschmacher and Mr. Zalinger both said that they would recuse themselves from participating as Board members in the site plan review for this application.

Mr. DeWolfe, project engineer, and Mr. Teschmacher, project architect, were sworn in by Mr. Lindley. Ms. Lawson stated this application involves two distinctly separate but adjacent properties. She explained that the existing Turtle Island Children's Center is on the 659 Elm Street property. The single family dwelling to be converted to the River Rock School is on the 661 Elm Street property.

Mr. DeWolfe said the proposed grade school will initially provide classrooms for kindergarten through third grade. He said that a porch and handicapped ramp will be added. Mr. DeWolfe said that the Turtle Island parking lot will be modified and connected to the existing driveway at the single family dwelling. He said that this will allow for a one-way entrance and a one way exit between the Turtle Island Children's Center and the proposed River Rock School. There will be combined parking for both schools. Mr. DeWolfe said the applicant has agreed with the Fire Chief's request for sprinklers in the proposed school. He added that the applicant will propose a different type of hardwood landscaping tree in response to the staff comments.

Mr. Matzner asked whether the owners of adjoining property had been notified and whether there were any comments. Ms. Lawson said that the adjoining had been notified and no comments had been received.

Mr. Blakeman asked whether the number of parking spaces would increase. Mr. DeWolfe responded that the number of spaces would increase from 41 spaces to 44 spaces. Mr. Cranse asked how the children will be dropped off. Mr. DeWolfe said that vehicles will enter at the Turtle Island driveway and circulate around to River Rock School. He said this layout will allow for the passenger side of the vehicles to be next to the buildings.

Mr. Lindley asked whether the lights will have timers. Mr. DeWolfe said that the lights will go off when the building is no longer in use. Mr. Blakeman said that if both buildings will have the same owner, the Turtle Island building will have to be equipped with sprinklers since the project represents more than a 50% addition. Mr. DeWolfe said that the buildings are owned by different entities. He said that the Turtle Island Corporation owns the River Rock School building and Meg Baird owns the Turtle Island Children's Center. Mr. DeWolfe added that the two buildings are separate structures. Mr. Lindley asked whether this project represents a change to an existing site plan that was previously approved by the DRB. Mr. DeWolfe said that it did. Mr. Lindley said that the only changes at the Turtle Island Children's Center would be to the parking and circulation and not to the building. He said that the proposed project deals with a separate building. Mr. DeWolfe said that the Fire Chief has reviewed the project and that his memos are attached.

Mr. Blakeman asked whether the lights at the Turtle Island Children's Center remain on when the lot is used for parking for Mountaineers' baseball games. Ms. Baird responded that the lights are on a timer. In the winter, they stay on until 9:00 p.m. for the janitor. She added that one light remains on at the request of the Police Department.

Mr. Cranse made a motion to grant final site plan approval incorporating the staff recommendations and noting that the applicant is agreeing to the Fire Chief's recommendations to sprinkler the River Rock School. The motion was seconded by Mr. Matzner. The motion was approved 4-0 with Mr. Teschmacher and Mr. Zalinger recusing themselves.

D. Public Hearing - Conditional Use/Site Plan Review

Applicant: St. Michael's School and City of Montpelier
Application #: 2004-0081
Property Owner: City of Montpelier
Property Address: 46-58 Barre Street
Zone: CB-II/HDR/DCD
Purpose: Conditional Use/Site Plan Review

Interested Parties: Christine Canavan, Richard DeWolfe

Mr. Zalinger said that the DRB members should have a discussion before opening the hearing. Mr. Zalinger said that Ms. Lawson had provided a memo addressing two questions--the need for site plan review and the need for conditional use approval. Mr. Zalinger said there is no question that the DRB has jurisdiction for site plan review, but that the jurisdiction for conditional use review was not as clear. The Board reviewed the administrative officer's memo regarding the permit review procedures.

Mr. Lindley said the application proposes changes to an existing playground. He said that there is no change in the use and that the project should not need conditional use approval. Ms. Lawson said that she agreed that the regulations are awkward, but they are written to require conditional use review. She said that the only way to bring the application before the Board was as a conditional use amendment. She stated the applicants did not appeal her initial determination and is now requesting that the Board grant conditional use approval. Ms. Canavan stated she was requesting approval of the project in whatever form is necessary.

Mr. Zalinger said that he agreed that this determination flies in the face of common sense, but the applicant has acquiesced to the Zoning Administrator's analysis. He said that he did not want to stand in the way of progress on an application. Mr. Lindley said that Mr. Blakeman and he helped develop the ordinance language. He does not believe that the intent of the applicable regulation was to subject site plan amendments to conditional use review if the conditional use itself was not changing. He said that he hoped that the staff keeps that in mind and that this can be brought to the City Council for clarification. Mr. Lindley said that he agrees with the Chair that the Board should move ahead on this application.

Mr. Zalinger asked Ms. Lawson to introduce the application. Ms. Lawson said that the project is located in the CB-II, the HDR and the DCD zoning districts. She said that most development will be located outside of the Design Control District and the application was not before the Board for design review approval. She said that the application was for conditional use review and the regulations incorporate by reference all of the site plan review standards. Ms. Lawson said that the site is paved. She said that only a portion is enclosed as a playground although play occurs on the paved areas outside of the enclosure. She said that the applicant proposes to expand the enclosed play space, remove the asphalt and install a new surface, change the parking configuration and better delineate vehicular circulation. An existing concrete wall will be removed and the area will be regraded.

Ms. Lawson stated the submitted plan is not an engineered plan. She said staff comments include a proposed condition of approval which allows the applicant to submit a revised site plan prior to the issuance of a

zoning permit. Ms. Lawson said that the site plan should show correct building numbering and that the proposed property boundaries need to be verified. Ms. Canavan said that the playground committee has legal counsel working on clarification of the boundaries and ownership. Mr. DeWolfe said he had agreed to help the applicant at the meeting, but is not yet under contract. He said that the applicant does not object to the staff comments and that the questions on building numbering, lot grading and drainage will be addressed.

Mr. Lindley asked when Phase III will be proposed. Ms. Canavan said that would depend on funding and that the closing of Monsignor Crosby Avenue will require action by the City Council. Mr. Lindley asked how snow removal is currently handled. Mr. Lorinovich said that the play area is plowed and the snow is packed down. Mr. Lindley said that the proposed fence and resurfacing will interrupt the current procedure. Mr. Lorinovich said that the applicant is proposing a poured rubber surface that will be more conducive to winter maintenance than other playground surfaces.

Mr. Zalinger asked the applicant to describe the project. Ms. Canavan said that the application is for Phases I and II. Phase I will include the installation of a one-way sign at the driveway, fixing the drainage, repaving the driveway, installing curbing and installing a barrier around the play area. Phase II will include the creation of a better play space, removing the retaining wall, excavating to regrade the area, installing a new retaining wall at the edge of the excavated area, installing new equipment, removing pavement in the play area, installing the new surface and replacing the fence in the northeast corner.

The Board reviewed the conditional use criteria:

1. Capacity of existing or planned community facilities. **The project will enhance the playground facility, which is available to the community.**
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.

Many of the criteria are not applicable because this is the continuation of an existing use. This project will enhance the safety of the playground and equipment. The project will also eliminate the potential of vehicle hazards to children using the playground. Since people will predominantly walk to the site, the project is not likely to affect traffic. Those who do drive to the playground probably do so in off-peak traffic hours, since St. Michael's School has exclusive use of the playground during school hours.
3. Traffic on roads and highways in the vicinity. **Addressed above.**
4. Zoning and subdivision regulations in effect. **This is the continuation of an existing use.**
5. Utilization of renewable energy resources. **Not applicable.**
6. Specific standards for accessory apartments. **Not applicable.**

Ms. Lawson advised the Board the parking and playground are not delineated now so it is difficult to count parking spaces. She said the applicant will be delineating parking as part of the project. Mr. Zalinger said that there are no parking space requirements for the playground. Mr. Blakeman asked whether the senior citizens using the adjoining building currently use the paved area for parking. Mr. Lorinovich said that they are not permitted to park behind the building during the school year. Mr. Lindley asked whether the playground entryway is wide enough to mistakenly drive a car through. Mr. DeWolfe said the project will probably include the installation of a removable post at the entrance to prevent vehicles from entering.

The Board reviewed the site plan standards. They noted no known adverse impacts due to the project and noted that traffic flow on the site would improve. The Board also reviewed the staff comments on the application.

Mr. Cranse made a motion to grant conditional use approval to the application. Mr. Matzner seconded the motion. The motion was approved 6-0.

Matzner made a motion to approve the application for site plan review, incorporating the staff's comments and conditions. Mr. Lindley seconded the motion. The motion was approved 6-0.

Other Business

Ms. Lawson asked whether there will be a quorum for the August 16, 2004 meeting. Mr. Zalinger said that the date is a State holiday and he would not be available for the meeting. Mr. Cranse said that the DRB should meet if there are projects that might be delayed if the meeting did not occur. Ms. Lawson concluded that there appeared to be a quorum available and would schedule new applications accordingly.

Adjournment

Mr. Blakeman made a motion to adjourn the meeting. Mr. Matzner seconded the motion. The motion was approved unanimously.

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.