

Montpelier Development Review Board
November 1, 2004
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Kevin O'Connell, Vice Chair; Roger Cranse; Jack Lindley; Alan Blakeman; Douglas Bresette; Guy Teschmacher
Staff: Stephanie Smith, Administrative Officer

Call to Order

The meeting was called to order by Mr. Zalinger.

I. Design and Site Plan Review

Applicant: Lucy Ferrada
Property Address: 22-28 Elm Street
Zone: CB-I/DCD

- Design review for landscape alterations including lighting and installation of a brick walkway.
- DRC recommended approval with adjustments.

Ms. Ferrada was sworn in. She said that she is moving her business into the first floor of an existing carriage house on the referenced property. Ms. Smith said that the Board will be conducting the design review of the project, but the site plan review can be approved administratively. She said that the applicant is proposing to install a brick walk and lighting along the walk. Ms. Smith said that the Design Review Committee recommended approval of those improvements with the option to allow for up to 10 mushroom-style lights. Mr. Zalinger asked whether the applicant had any issues with the mushroom lights. Ms. Ferrada said that she did not have any issues, but asked how much flexibility she would have to change the particular lights that were specified. Ms. Smith said that changes that are determined to be non-substantial by the Administrative Officer in writing would not require further design review approval.

Mr. Blakeman made a motion to grant design review approval with the option for up to ten mushroom lights. Mr. O'Connell seconded the motion. Mr. Lindley asked whether the site is an office building condominium. Ms. Ferrada said that each building is a separate condominium. Mr. Lindley asked whether the condominium association had approved of the proposal. Ms. Ferrada said that it had and noted that the staff has a copy of the sales agreement. The motion was approved unanimously.

II. Design Review for Sign Permit Application

Applicant: Lucy Ferrada
Property Address: 22-28 Elm Street
Zone: CB-I/DCD

- Two wall signs: one 2' x3' and one 3' x 4'
- Two 29" x 32" ground signs within an existing two-sided structure
- DRC recommended approval with adjustments. Applicant is requesting review of original application, not adjusted application.

Interested Parties: Lucy Ferrada, Margot George

Ms. Ferrada said that the DRC had approved two of the proposed signs and said that there was some discussion regarding the adjacent landowner's concern about the effect of the third sign on parking. Ms.

Ferrada said that she had agreed to change the sign, but, after further consideration, felt that the modification was unfair. She said that the sign is important to advertise the business which is in an obscure location. She provided a copy of a letter from David Bookchin. She said that the letter provides information about the history of the building and states that previous businesses on the first floor have had access from the side of the building.

Ms. Smith said that the application proposes three signs: two wall signs and a two-sided ground sign. She said that the sign over the first floor window had been adjusted in the design review process. She said that the DRC had requested that the sign be minimized and that Ms. Ferrada had agreed to the change, but is now requesting that the Board approve the application as originally proposed with a slightly smaller sign.

Mr. Zalinger asked how the DRC takes jurisdiction and authority to project that the sign is suspect because it is directed to property over which the sign owner does not have legal right of access. He read from a portion of the DRC meeting minutes regarding the potential for the sign to attract traffic over the adjacent property. He asked whether that discussion seemed to be beyond the scope of the DRC authority. Mr. Cranse said that article 8, table 811(d) contains the standards for signs. He asked whether the sign met the standards. Ms. Smith said that the sign is smaller than the maximum allowable dimensions. She said that the DRC does have purview over signs that obscure architectural details on buildings. She said that they can also review a sign in relation to the Cityscape standards and noted that applicable portions of those standards were included in the meeting packages.

Mr. Zalinger asked whether the DRC had seen the revised proposal for the third sign. Ms. Smith said that it had not. Mr. Zalinger observed that the revised sign was coming to the Board without any DRC recommendation. Mr. Bresette said that the DRC recommended approval of a 21" x 36" sign. He said that the current proposal for a 24" x 29" sign was within the general size that the DRC accepted. He said that it seems that the only conflict is with the use of the logo on the sign. Ms. Smith noted that the City does not review sign content.

Margot George said that she is the owner of the property abutting the subject property. She said that the property that was purchased by the applicant did not include the right to walk or drive down the driveway in front of the building. She referred to the site plan, saying that the property line is 2' to 3' to the left of the cottage and runs up the drive. She said that, of the four signs that are proposed, three could be approved tonight. She said that the application is for two ground signs, the wall sign on the building porch and a wall sign on the side of the building. Ms. George said that the sign proposed on the side of the building will create huge liability for her. She said that the sign will invite people to drive down the driveway and park and walk on her property. She said that the clientele will believe that the sign is directing them to the location. She noted that the store will sell clothing for children. Ms. George said that three signs are adequate to serve this building. She asked the Board whether it wants to be part of a law suit if someone backs out of a parking space and runs over a child. She said that the sign invites others onto her property.

Ms. George provided photographs of the site. She said that the photos were taken that day and show illegally parked vans that she believed were associated with work being done on the applicant's building. She said that demonstrated that the problem has already begun. She said that parking in the downtown is at a premium and that people will use any spaces that they think they can. She stated that the sign invites opportunity for people to misunderstand. Ms. George said that she maintains the parking lot and would have liability if someone slipped and fell. She said that the other three signs are adequate and the fourth sign is "over the top."

Ms. George noted that the Cityscape guidelines also say that signs need to be placed above a storefront, but this sign is proposed on the side of the building rather than the storefront. She said that we have many opportunities in design review around the city to allow people to have signs on two or three sides of the buildings, but we do not allow that. She said that she is willing to accept a sign with a street address on that side of the building to help with UPS deliveries.

Mr. Bresette asked whether the parking showed in the photographs is parking that goes with units #1 and #2. Ms. Ferrada said that the parking is part of the condominium and goes with the building. Ms. George said that the applicant does not have rights to park there because the spaces are for the other condominium building. She added that there is not room to walk behind the parking because the spaces fill the entire area owned by the condominium. Mr. Bresette asked for confirmation that there is designated parking along the back wall of building #1. Ms. Ferrada confirmed that there is. Mr. Zalinger asked whether people visiting condominium building #2 could walk over the spaces if they are not occupied. Ms. Ferrada said that they could and noted that she has a letter from Mr. Jacobs reiterating that. Mr. Zalinger asked whether Mr. Jacobs owns building #1. Ms. Ferrada said that he did and added that people can also walk between parked cars.

Mr. Zalinger summarized Ms. George's position to be that the sign proposed for the northerly wall would have the potential for inviting people to access that premise and possibly to use her property to do so. Ms. George said that was correct. She added that the applicant has three other well placed signs to direct people to the business. She said that this fourth sign is really meant to let people know where the business is.

Mr. Blakeman asked Ms. Ferrada why she needs the sign at the proposed location. Ms. Ferrada said that it is important to have the sign at that location because it is the only side of the building that is visible from the street. She said that it seems like an obvious place to have a sign and other signs have been placed on the building at that location. Mr. O'Connell asked who the parking along the building wall is for. Ms. Ferrada said that it is for the KDP tenants. Mr. O'Connell asked whether there is any parking for the applicant's business. Ms. Ferrada said that there was not.

Ms. Smith pointed out that there is a light fixture on that side of building that might be evidence of a previous sign. Ms. George said that when Mr. Atkin bought the property, he owned the driveway and had a sign at that location. She said that the only other signs since then have been temporary real estate signs.

Mr. Zalinger noted that the staff comments suggest that the DRB make a determination as to whether the sign complies with the design review criteria. Ms. Smith said that those criteria are attached to the application package. Mr. Zalinger suggested that the Board go through the criteria while keeping Ms. George's concerns in mind. He read through the criteria and said that only number #3 ("Compatibility with subject property and adjacent properties") seems to relate to Ms. George's concern about inviting persons on her property. Mr. O'Connell said that he could see where the sign with a full logo could draw traffic across adjacent property and be incompatible with that property. Mr. Bresette asked whether an arrow with the word "entrance" could be used to direct people to the front of the building. Ms. George said that the building has been vacant for a number of years. She said that, in the past, other businesses did not have a need for signage other than at the entrance. She said that an arrow was discussed at the DRC meeting. She said that the problem is that it makes it seem that you will get to the front if you go between the buildings.

Mr. Bresette said that vehicles need to drive on Ms. George's property to access the parking spaces and asked whether the driveway is shared. Ms. George said that there is an adverse use of her property and that she sends a letter each year stating this. She said that nothing in the deed gives access or permission and there

is no easement. She said that she is not interested in inviting more people through the parking lot. Ms. Ferrada said that it appears that there is plenty of room to walk on the side of the building. She said that she is not inviting people, but does not want them to feel that they cannot walk there. She said the drive was used as an alternate access by KDP, Jeff Jacobs and Lee Unger. She said that she thinks it should remain as an alternate access. Mr. O'Connell said that the DRB cannot address the legal issue. He said that the DRB authority would address a situation that intensifies the conflict and makes the sign incompatible. He said that he has a concern with a full logo sign.

Mr. Zalinger said that one could argue that putting a retail use in the building will exacerbate the tension. He said that there are properties on School Street that have free flowing parking lots that people can walk through. Ms. George said that the building will not only be a retail use. She said that there will be offices on the second floor that will also want signs. She said that there is a sign structure that was created for this group of buildings. She said that Design Review's goal and the City's goal is to have all tenants use the sign structure in multiple tenant situations. Mr. Zalinger said that, in this case, there are two buildings which is a somewhat extraordinary situation.

Mr. Zalinger said that the Board can make its own determination or send the application back to the DRC. Ms. Smith added that the Board could also approve the application as the DRC recommended. Mr. Zalinger said that he had a hard time with that option because the applicant has not requested approval of the application with the adjustments recommended by the DRC.

Mr. Blakeman made a motion that to approve the two signs on the sign kiosk and the one wall sign at the entrance. Mr. O'Connell said that he seconded the motion for discussion purposes. Mr. O'Connell said that it seemed that the DRC was looking for a compromise, but that it does not seem that the recommended sign would change the behavior of the patrons. Mr. Bresette said that he had a similar question. He said that the applicant is asking for a smaller sign. He questioned whether the inclusion of a logo on the sign would invite more people onto the adjacent property. Mr. O'Connell said that he could see how it could become a focus.

Mr. Zalinger said that he will vote against the motion because it is not up to the DRB to adjudicate private property rights disagreements although it sometimes must do so because the dispute relates to an item that the Board has jurisdiction over. He said that, in this case, there is only one design review criterion that tangentially relates. He said that is the item related to compatibility. Mr. Zalinger said that he believed that the sign ordinance is directly related to the size content and appearance of the sign than to the land use conduct or behavior that the sign might elicit. He added that the distinction between text and the logo is immaterial.

Mr. Blakeman said that he wanted to be sure that the applicant gets approval for at least the three signs. Mr. Teschmacher asked whether it is within the DRB's jurisdiction to address the conflict. He said that he thinks that the sign may increase the problem. Mr. O'Connell said that he thought that the sign is incompatible with the adjacent use and he would vote for the motion. Mr. Teschmacher said that he would vote for the motion if the issue is within the Board's jurisdiction.

Mr. Zalinger said that he had difficulty in where to draw a line. He said that the DRB has jurisdiction over the content, location and physical appearance of signs. He said that he was not sure that the DRB has jurisdiction over the response that signs create in those that can read them. He added that the subject site is not the only property in the city with challenging ingress and egress issues. Mr. Teschmacher asked where

the customers will park. Ms. Ferrada said that they will park at locations throughout the city.

The Board voted to disapprove the motion by a vote of 4-3, with Mr. Zalinger, Mr. Lindley, Mr. Cranse, and Mr. Bresette voting against the motion.

Mr. Lindley made a motion that the sign application be approved as recommended by the DRC with the exception that the sign be 24" x 29" as requested by the applicant. Mr. Cranse seconded the motion. Mr. Zalinger asked whether the motion was intended to allow only text and not the logo. Mr. Lindley said that the wall sign would include all of the content proposed by the applicant including the logo, as provided in the information distributed to the Board that evening. Mr. Cranse said that he was agreeable to that clarification.

Mr. Teschmacher asked whether the condominium association has any recourse if there is a problem created by the sign. Mr. Zalinger said that the owners of property have many options to address problems. Mr. Teschmacher said that he did not want the DRB action to restrict what can be done. Mr. Zalinger said that there are other properties where the pavement runs together and they seem to work out problems.

The Board voted 4-3 to approve the motion, with Mr. O'Connell, Mr. Teschmaker, and Mr. Blakeman voting against the motion.

III. Public Hearing - Variance Request

Applicant: Edward and Sarah Miller
Property Address: 147 Spring Hollow Lane
Zone: LDR

- Construction of an 8' x 13' deck addition
- Required SY setback: 100' total, no side less than 40'
- **Variations requested: 8' and 9'**

Interested Parties: Edward and Sarah Miller

The applicants were sworn in. Ms. Smith described the application for side yard variances for the construction of a deck. She said that the ordinances require a total side yard setback of 100' with no side less than 40'. She said that the deck will be 32' from one side property line and 51' from the other.

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 in 1970, prior to the current zoning regulations. The existing building does not meet setbacks. The topography is steep to the rear of the house.
2. *That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable*

use of the property. It has been long established by the Zoning Board of Adjustment and the Development Review Board that construction of a deck is a reasonable use of a residential property. There is no suitable location for the deck that would meet the side yard setbacks.

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 house was constructed in 1970 or 1971. The lot was probably created prior to that time.
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.* Most houses in the area have decks. The deck will be used for residential activities. The owners of adjoining properties were notified of the application. No aspect of the project will 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.* The existing house and garage are much closer to the lot lines than the deck. The deck will be a modest nonconformity.
6. *The variance will not result in the initiation of a nonconforming use of land.* The use will remain a single family residence.

Mr. O'Connell made a motion that the Board approve the application for a variance. Mr. Blakeman seconded the motion. The motion was approved unanimously.

Minutes

Mr. Blakeman made a motion to approve the minutes of the October 18, 2004 meeting. Mr. O'Connell seconded the motion. The motion was approved 6-0. Mr. Zalinger abstained because he had not attended that meeting.

Other

Mr. Blakeman said that he would like the Board to express thanks to David Keller for his service on the Development Review Board. Mr. Zalinger said that the Board will miss Mr. Keller's thoughtful, productive and insightful input. The other members agreed.

Adjournment

Mr. Lindley made a motion to adjourn the meeting. Mr. Cranse seconded the motion. The Board unanimously approved the motion.

Respectfully submitted,

Stephanie A. Smith
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.

