

**Montpelier Development Review Board
March 21, 2005
City Council Chambers, City Hall**

Subject to Review and Approval

Present: Philip Zalinger, Chair; Alan Blakeman; Roger Cranse; Douglas Bresette; Jack Lindley; Guy Teschmacher; Ylian Snyder
Staff: Stephanie Smith, Administrative Officer

Call to Order

The meeting was called to order by Mr. Zalinger

Approval of March 7, 2005 Minutes

Mr. Blakeman made a motion, seconded by Mr. Bresette, to approve the minutes of the March 7, 2005 meeting of the Development Review Board. Mr. Zalinger noted that Ms. Snyder and Mr. Teschmacher had selective participation in the items at that meeting. The Board voted 7-0 to approve the minutes.

I. Design Review for Sign Permit

Property Address: 68 Main Street
Applicant: Kelly Sullivan
Property Owner: William Shouldice
Zone: CB-I/DCD
Installation of two (2' x 6') elliptical signs within the sign band
DRC recommended approval as submitted

Interested Parties: Martin Kemple

Ms. Smith noted that the staff recommended that the wattage for the gooseneck lights above the signs not exceed 60 watts.

Mr. Blakeman made a motion that the Board grant design review approval for the application with the condition that the wattage for the lamps shall not exceed 60 watts.

II. Continued Public Hearing - Conditional Use and Design Review

Property Address: 623 Stone Cutters way
Applicant: Hunger Mountain Co-op.
Property Owner: Hunger Mountain Co-op.
Zone: RIV/DCD
• Temporary 28' x 9' refrigerated trailer

Participating DRB members: Philip Zalinger, Alan Blakeman, Roger Cranse, Douglas Bresette, Jack Lindley, Guy Teschmacher; Ylian Snyder

Interested Parties: Kari Bradley, Hunger Mountain Coop

Mr. Bradley was sworn in by the Chair. The Board had continued the conditional use hearing from the 3/7/05 meeting awaiting additional information concerning noise and fuel emissions. The Board had copies of the requested information on their desks. Mr. Bradley noted that the alternative engine that was mentioned in his memo of 3/15/05 was not available. Mr. Bradley stated that the proposed diesel engine air compressor unit emits 80 decibels at seven (7) meters from the unit. The sound level decreases 6 dBA for every doubling in distance it travels. Mr. Bradley did the calculation and determined that the noise level at the homes across the river, 85 meters away, is approximately

60 dBA. He also stated that the compressor is compliant with emission requirements, per the manufacturers information.

The Board commented that the air compressor, on its own, does not meet section 204.B.4.a of the regulations, which is for 55 decibels during the day and 50 decibels at night. Mr. Zalinger commented that the Board might consider the temporary trailer, even though it exceeds the noise limits in the regulations, if a permanent solution for the offending existing air compressors on the roof of the store were installed.

Ms. Buley thought the temporary trailer was all right from her point of view if a permanent solution to the existing problem was included. Mr. Brown, 117 Berlin Street, is concerned about the temporary trailer because it exceeds the requirement of 204.B.4.a, but agreed with Ms. Buley, that if a permanent solution could be achieved, he would not object to the proposal. He was, however, concerned that a request to extend the placement of the temporary trailer could be made, and in fact already occurred. The applicant requested an extension from 6 to 8 months, thereby prolonging a non-compliant situation.

Mr. Bresette was concerned with allowing a temporary refrigeration solution that exceeded set limits becoming more permanent solution to the Coops refrigeration capacity problems. He asked whether the Coop thought about baffling the engine. Mr. Bradley answered no. Mr. Bradley stated that this was a temporary solution for 8 months and that the Coop is in the planning stages for a permanent refrigerator addition, which may include the buffering of the existing compressors.

Ms. Smith commented that the Board could permit the temporary trailer for a shorter period of time, and request the applicant to come back before the Board if further mitigation of the noise was necessary.

Mr. Zalinger said that he would entertain a temporary variance from the noise criteria if it was tied to a commitment to affect a permanent solution of the noise from the existing HVAC units on the roof. He said that the Board did not have jurisdiction over those existing units, which probably exceed the existing noise limits, as they were permitted and built prior to the existing regulations.

Mr. Teschmacher was concerned with allowing the temporary trailer to remain onsite for 8 months. Mr. Zalinger felt that the Board may consider permitting the temporary trailer for the requested period of time, and requiring the applicant to mitigate to the extent possible the existing noise situation. He also suggested that the Board could table the application to allow the applicant to explore more options. Mr. Bradley said that the issue is one that the Coop would want to address if there is a reasonable solution as it wants to be a good neighbor. He offered a commitment that the Coop would work on the issue and do its best to mitigate the noise problem from the existing compressors.

Mr. Bresette noted that the proposed unit would not run constantly and the average may be less when the down time is factored in. Mr. Zalinger said that the ordinance states that "noise levels shall not exceed 55 dBA . . ." which appears to refer to the aggregate noise from the site. Mr. Lindley said that he had a hand in drafting the noise ordinance and that the intent was to look at the maximum level at any point in time rather than an average noise level.

Mr. Cranse asked whether this matter would be eligible for consideration under the variance criteria. Ms. Smith said that variances requests are typically from dimensional standards. Mr. Zalinger noted that it is a measurable standard. Ms. Smith said that any variance request would have to be warned and that action on the application would have to be delayed for about a month.

Mr. Zalinger said that additional testimony would be needed to enable the Board to determine whether there are additional steps to take in buffering the noise from the proposed unit. He said that he would be willing to consider

a temporary variance if it was tied to measures to mitigate the noise from the existing HVAC units. He asked Mr. Bradley whether he wanted the Board to table the application. Mr. Bradley said that he would like to have the application tabled so that the Coop could explore more options.

Mr. Lindley made a motion to table the application to the next regularly scheduled meeting, 4/4/05. Mr. Teschmacher seconded the motion. The motion carried 7/0.

III. Site Plan

Property Address: 68 Main Street
Applicant: Nina Thompson and Jennifer Dole
Property Owner: Nina Thompson and Jennifer Dole
Zone: GB District
Change of use from a two-family residence to a three-family residence

Interested Parties: Nina Thompson and Jennifer Dole

The applicants were sworn in by Mr. Zalinger. Ms. Smith described the application for site plan review for the change of use of a two-family residence to a three-family residence. She said that all of the changes would occur within the existing building footprint. She noted that the parking on the site is tight and the staff had recommended that one proposed space (space P-1) be eliminated so that a total of three spaces would be provided. She said that change would allow for a turnaround area so that cars are not backing into the street. The applicant said that the recommended change was acceptable, but noted that four cars currently park in the driveway and back out.

Mr. Cranse said that the site is tight regardless of any decrease in parking spaces and he was reluctant to make an approval contingent on the removal of parking space P-1. Mr. Lindley said that it is likely that the space would be used anyway and he did not want to create an enforcement situation. He said that he supported Mr. Cranse's view.

Mr. Lindley made a motion to grant site plan approval to the proposed change of use to a three-family residence with four parking spaces as proposed. Mr. Cranse seconded the motion. The motion was approved by a vote of 7-0.

IV. Public Hearing - Variance Request

Property Address: 35 Spring Hollow Lane
Applicant: Raymond McNulty and Ellen Harris
Property Owner: Raymond McNulty and Ellen Harris
Zone: LDR
Variance of 18' from the front yard setback requirement
Variance of 19.5' from the north side yard setback requirement
Variance of 5' from the south side yard setback requirement

Interested Parties: Ellen Harris and John Sayers (builder)

Ms. Harris and Mr. Sayers were sworn in. Ms. Smith described the application for a dimensional variance of 4 feet from the front yard setback requirement, a variance of 19.5 feet from the north side yard setback requirement and a variance of 5 feet from the south side yard setback requirement. She said that the project is in the LDR district where the required minimum setbacks are 40 feet for the front yard, 100 feet total setback for all side yards with one side yard not less than 40 feet and 75 feet for the rear yard. Ms. Smith noted that the lot, which was subdivided in 1959,

is only 99.5 feet wide.

Ms. Harris said that the changes to the existing single family dwelling are proposed in order to create a mudroom and enlarge a bedroom. She said that she checked with all of her neighbors and they are fine with the proposal. She said that she did not want to increase the height of the building because that might obstruct the neighbors' views. She said that many other houses in the area also encroach into the front yard setbacks.

Mr. Lindley said that he had some recollection of a previous application where the ordinance did not allow the Board to authorize an expansion into the front yard setback. Ms. Smith said that the regulations say something to that effect, but, in fact, an applicant may request a variance of any of the dimensional standards under State statutes.

The Board discussed the existing encroachments into the setbacks and clarified the actual variances requested. Mr. Teschmacher and Mr. Bresette noted that the proposal would actually only increase the encroachment into the front yard setback by 4 feet. Mr. Zalinger said that it was important that the Board members agree on the actual scope of the requested variances. He said that a front yard variance of 18 feet was requested, a north side variance of 19.5 feet was requested and a south side variance of 5 feet was requested.

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 lot was created in 1959. The house was constructed in the early 1960's, before the zoning ordinance was adopted. The land records indicate that the lot width itself does not meet the minimum aggregate side yard requirement. The septic tank and leach field are in the slope behind the house. Wetlands abut the slope.**
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 locations of the septic system and the slope at the rear of the lot limit the possibility of expansion to the rear of the house. The sideyards are already noncompliant.**
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. **It is apparent from the testimony that the hardship relates to land.**
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 application is for a proposed addition to an existing residential building. It will not adversely impact the character of the neighborhood. There has been no evidence from the adjacent property owners that the proposed addition would impair the use of adjacent properties. 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.

6. The variance will not result in the initiation of a nonconforming use of land. **The existing residential use will continue.**

Mr. Cranse made a motion that the Board approve the application for a front yard variance of 18 feet, a north side variance of 19.5 feet and a south side variance of 5 feet was requested. Mr. Bresette seconded the motion. The motion was approved by a vote of 7-0.

Other

Ms. Smith noted that she had provided the Board members with a set of plans for a previously approved project in Murray Hill. Ms. Snyder said that she would recuse herself from any discussions regarding that matter. Ms. Smith said that no action was required and that the plans were simply provided to inform the Board of improvements in the design that did not change the character of the development.

Adjournment

Mr. Blakeman made a motion to adjourn the meeting. Mr. Bresette seconded the motion. The Board unanimously approved the motion to adjourn.

Respectfully submitted,

Stephanie 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.