

Montpelier Development Review Board
October 15, 2007
City Council Chambers, City Hall

Approved

Present: Jack Lindley, Acting Chair; Alan Blakeman, Daniel Richardson, Jeremy Hoff, and Roger Cranse. Philip Zalinger and Kevin O'Connell arrived late.
Staff: Clancy DeSmet, Planning and Zoning Administrator.

Call to Order:

The Montpelier Development Review Board was called to order by Jack Lindley, Acting Chair.

Comments from the Chair:

Mr. Lindley said the DRB would give applicants the right to withdraw their applications this evening given the fact there are only five members present and it would require a vote of 4 to 1 for approval.

I. Design Review – MDR/DCD

24 Cliff Street

Applicant: Rick DeAngelis

Entry porch and stairs on exterior of existing garage associated with the creation of an accessory apartment.

Mr. Lindley administered the oath to Mr. DeAngelis.

Mr. DeAngelis said he has a garage/carriage house on his property at 24 Cliff Street. A few years ago they made the second floor of the carriage house into a bedroom, and now they are hoping to take advantage of the new city ordinance on accessory apartments and make it into an accessory apartment. In order to meet the building and safety standards, they need to add a porch and an entryway on the side of the building. That will enter into the already established bedroom and interior staircase up to the second floor. He enclosed a photo of the carriage house. They are going to use an existing opening for a window to put the door entry in. There will be an entry way porch coming off the side of the garage. It is going to match in style and materials the porch they already have on the house, and just the scale will be different.

Mr. DeAngelis said he met with the Design Review Committee two weeks ago and they had no major concerns, but were helpful and gave him options to make the porch larger if he wanted, and also to add some lighting.

Mr. Lindley said the options that Design Review gave him to enlarge the proposed porch to a maximum of 4' x 8' and a railing that can be mounted on the building, and the installation of a recessed mounted light fixture is all right with the applicant. Mr. DeAngelis said he agreed with their recommendations and found them very helpful.

Mr. Blakeman asked if two parking spaces would be enough.

Mr. DeSmet said that wasn't an issue. He has adequate parking. Mr. DeAngelis said he has two parking spaces in the garage, plus the driveway.

Mr. Blakeman moved approval for design review at 24 Cliff Street with the Design Review Committee and staff advisory comments. Mr. Cranse seconded the motion. The application was approved 5-0.

II. Site Plan Amendment & Design Review – GB/DCD

5 Green Mountain Drive
Applicant: Vincent Blaisdell
Owner: State of Vermont
Construction of an accessory structure.

Mr. Lindley administered the oath to Mr. Blaisdell.

Mr. Lindley said the Development Review Board has had this application under design review and are now reviewing it under site plan.

Mr. DeSmet said Mr. Blaisdell came into the Department of Planning and said he would like to build an 6' x 10' x 8' smoking shelter in the rear portion of the Department of Labor building on Green Mountain Drive. Originally, he went to Design Review Committee because it is in the General Business District, but it turns out he needed site plan approval. Nothing has changed from the previous application. Mr. DeSmet said he added the relevant site plan review criteria.

Mr. Lindley asked Mr. Blaisdell if this was a structure which had been approved by the Legislature. He asked if this was a legislative appropriation.

Mr. Blaisdell said it isn't. This is for the Department of Labor, which is a federal program. The federal government is paying for it.

Mr. Lindley asked him if he was aware under §714(a)(5) that the DRB has a potential issue with emitting noxious gasses which endanger the health, comfort and safety or welfare of any person, or have a tendency to cause injury or damage to property, business or vegetation in the city's general performance standards for structures. He asked how he would remediate the noxious gasses from this structure. This would be the cigarette smoke.

Mr. Blaisdell said it is not a totally enclosed structure. It is open on the bottom and it has two openings in front. It has a center panel in the front and there are two doorways. That makes it handicapped accessible. It is open a foot or more around the bottom.

Mr. Cranse said §714(a)(5) says not use shall emit noxious gasses which endanger the health of any person. Cigarette smoke contains the gasses carbon monoxide and carbon dioxide as well as carcinogens. This general performance standard uses the verb "shall." No use shall emit noxious gasses. In Article 13 of the City's ordinance "shall" is mandatory; it's not discretionary. To him it is obvious that this structure would emit noxious gasses which endanger the health of people. Therefore, he doesn't see how he can vote for it.

Mr. Blaisdell said the structure is located over 50 feet from the entrance and exit of the building. It is all by itself with nothing there.

Mr. Cranse said it will emit noxious gasses regardless of its location.

Mr. Blakeman said he walked by the site and couldn't see where the structure was to be located.

Mr. Blaisdell said where the rear entrance canopy it is 50 feet towards Green Mountain Power along the walk between two apple trees. It is in the picnic area. Right now employees smoke at the rear entrance canopy.

John McCann said he is not a smoker, and the one thing that irritates him the most is to walk into a building where there are people smoking. A building that is off from the public access is better for his health. Whether people inside the building want to smoke and kill themselves is one thing; it is away from the public. He would agree to put something farther away from any public access. If he could he would have all smoking banned.

Mr. Cranse asked what distance people had to be from a building to smoke.

Mr. Blaisdell said it was 50 feet.

Mr. Cranse said the ordinance is clear. It says no use “shall” emit noxious gasses which endangers the health of the people.

Mr. Blaisdell said they are now.

Mr. Cranse said but they are smoking out in the open and it is not a structure. This is a structure they intend to build and structures intended to be built have to meet the performance standards of the City of Montpelier.

Mr. Blaisdell said they shouldn’t be smoking at the canopy because that is a structure. The canopy is a structure added to the building.

Mr. Cranse said that is a matter of enforcement for the state and federal government.

Mr. Blaisdell said they are trying to abide by the rules of the state government, which is to put smoking people 50 feet away from the building.

Mr. Cranse said the city’s ordinance doesn’t permit it.

The Development Review Board reviewed the relevant site plan criteria:

§703 – *Pedestrian Access and Circulation*. Access to the structure will be via the existing sidewalk in the rear of the Department of Labor building.

It seems to be clear that it is an open area it is located.

§708 – *Landscaping and Screening*: No landscaping or screening is proposed.

§710 – *Lighting*: No lighting is proposed.

§714 – *Performance Standards*: No adverse effects expected. The DRB has a problem with the word “shall” in the performance standards.

Mr. Lindley asked Mr. Blaisdell if there was any other evidence he could give the DRB that smoke from cigarettes is not noxious gas or not endanger the health of anybody. Mr. Blaisdell said none.

§715 – *Site Protection and Design*: No adverse effects expected.

Mr. Lindley reminded members of the Development Review Board that motions have to be made in the affirmative. We wish to vote no. He told the applicant there were five members present. For successful approval there must be 4 voting in the affirmative. If he wishes to delay the application until the next meeting for a vote with a bigger number of members present, that can be arranged.

Mr. Blaisdell said he would prefer the Board acting on the application tonight.

Mr. Blakeman said he understood the 50 feet for the structure. Are people smoking on the sidewalk breaking the law?

Mr. Lindley said if the state chooses not to enforce the 50 feet then someone is breaking the regulation. The Vermont Legislature has been pretty clear about that in terms of where they want smokers to be in terms of state buildings.

Mr. Blaisdell said most of the time they smoke at the picnic tables which is in the vicinity of where they want to locate the smoking shelter. Sometimes if it is raining they are under the canopy.

Mr. Richardson asked what in this proposal will prevent people from continuing to smoke under the canopy.

Mr. Blaisdell said this shelter will provide shelter from rain and snow.

Mr. Richardson said to access the shelter you have to go 50 feet into the snow and rain.

Mr. Blaisdell said it is directly off a paved walk, and the walk is kept open the full length of the building.

Mr. Richardson said part of the problem of enforcing the 50 feet standard is that it is difficult to get people to walk away. Right now people are smoking at the picnic tables, but come winter or a rainy day they won't go out into the elements. What is in the proposal to prevent them from doing that?

Mr. Blaisdell said it gives them a shelter. They don't have any shelter right now but only open picnic tables between the trees. They do walk down there to smoke. He believes they would walk to this because it is sheltered. He doesn't believe the Department of Labor would spend the money if they didn't believe people wouldn't use it. There is a smoking committee that meets and they agreed they would use the shelter.

Mr. Richardson said his concern is whether he should vote for this because in theory he can certainly see why having a separate shelter that is 50 feet further away from the high school and further away from the public entrance is an extremely good thing. At the same time he has a concern that apart from the applicant's promise that they will use it there is nothing in the proposal that says they will. There isn't even signage promised to say "No Smoking," There is nothing to cause him to believe that it would be something that would be used in the summer or when it is convenient. The fact is if you are dry and inside an office, and you come out and want to smoke it is easier to stand under a canopy than it is to go over 50 feet in whatever elements out there.

Mr. Blaisdell said he didn't believe they would allow this after the smoking shelter is set up. They are spending money to put the structure up and he believes they will enforce it.

Mr. Richardson asked the applicant if he would be willing to submit to a condition that would require some kind of signage be put out.

Mr. Blaisdell said he would. The Department of Labor is his client for the project and he can't speak for them as to what they would do for enforcement.

Mr. Richardson said he thinks he is representing a view of human nature that may be at odds with the view of human nature the applicant is representing, but it is still one that is valid and holds a concern for him. He understands Mr. Blaisdell's limitations as well.

Mr. Hoff said he wanted to make sure the Board is not interpreting use. The performance standard says that no use shall emit. Obviously, the use of a smoking shelter is to smoke, but he isn't sure they should be looking at the use of smoking as opposed to the use of the building and facility more generally. If you look at what a permitted use is in this district, You are not going to find smoking on the list.

Mr. Richardson said there is an argument to be made because the actual structure isn't going to be emitting the gasses. It's not like a factory with a non-regulated smoke stack. However, he thinks Roger's point is valid that it is the use of the building to gather smokers together so they can breathe in and exhale.

Mr. Blaisdell said there is a bus shelter on site presently where people wait for the shuttle to pick them up. He is sure there are people who smoke waiting for the bus on a rainy day or snowy day and they smoke in that shelter, too.

Mr. Richardson said that goes back to his point. Why aren't the people from the Department of Labor going down to the bus shelter now? The rule is in effect. You are not allowed to smoke within 50 feet of a state building. Why isn't the smoking committee sending them down to the existing shelter?

Mr. Blaisdell said that is probably three times the distance. It is a long ways down there. There isn't a walkway to it.

Mr. Richardson said he didn't want smokers going down there because it is closer to the bike path and closer to the high school. It's strictly a policy.

Mr. Blaisdell said then they are exposing them to the public people who are taking the transit and not just the employees.

Mr. Richardson said at that time that goes to his argument and issue that there is no guarantee in this proposal to lend him to believe that somehow they are now going to start using this shelter simply because the Department of Labor built it. If there is someone who doesn't want to go out in the weather, they are not going to go simply because you built a structure.

Mr. Blaisdell said he believed they would make them do it.

Mr. Richardson said he would like to see that inside the proposal before he felt comfortable about it.

Mr. Blaisdell said he is only involved in the proposal strictly from a building standpoint. He works for State Buildings. He doesn't know the programs. He isn't a smoker himself. He doesn't know what the smoking committee discussed exactly. There may have been an agreement with the Department of

Labor and its employees over a smoking issue that they will have in fact to use that shelter once it is provided. He is just before the committee to obtain approval to build the smoking shelter on their land in a proper manner. He is just trying to help his client build something that is properly built. He is just taking care of the site work, the grading, concrete and lot. His only interest is in protecting state property and building things properly.

Mr. Lindley told the applicant he had heard concerns. He is confused whether this is a State of Vermont permit or smoker committee's permit, but the DRB will let him put as much information on the record to overcome the problem with noxious gasses.

Mr. Blaisdell said it is a State of Vermont permit because they oversee what takes place on all of their property and buildings. The Department of Labor is not strictly federal but partially. They are a federal program, but they are state employees.

Mr. Blakeman said the State of Vermont has tobacco taxes. In fact, they proudly have tobacco taxes to help with the new health care. Hopefully, when the war is over the federal government will do something similar. Tobacco apparently is legal. In fact, kids watch it on TV with ads.

Mr. Lindley reminded Mr. Blakeman that the question revolves around the performance standards. Both Dan and Jeremy have pointed out their concerns on how that standard should be applied, as has Roger. The Chair has expressed some concern over that issue. Those performance standards are pretty clear.

Mr. Hoff said in the General Business District if you look in the table of permitted uses under Article 6, smoking is not on the list. If we are reading the ordinance too narrowly, maybe this is a non-permitted use anyway.

Mr. Lindley said there are two issues involved. It has nothing to do with taxation.

Mr. O'Connell, who arrived late, said he had no questions and got an understanding of what the issue is.

Mr. Cranse moved approval of the site plan and design review at 5 Green Mountain Drive. Mr. Blakeman seconded the motion. The motion failed on a 6-0 vote.

Mr. Zalinger assumed duties of Chair for the remainder of the meeting.

III. Site Plan Amendment – MDR

82 Trillium Hill

Applicant: John McCann

Minor Amendment to approved PUD for removal and replacement of trees.

Mr. Zalinger administered the oath to Mr. McCann.

Mr. DeSmet said the applicant wants to remove some trees on a previously planned residential development, which he was approved for a four-bedroom house in 1994. Earlier this year he came in for a home occupation permit so he can run a winery out of the basement. He would like to clear approximately two acres of Pine and replant with Maple, Apple, Blue Spruce and grape vines.

Mr. Richardson asked the applicant if some of the replanting become the basis for the winery.

Mr. McCann said from discussions he has had with the neighbors they have eliminated putting the grape vines because that introduces some herbicides and pesticides, and they would like to stay away from those because of the family residences. There are plenty of hardwood trees that pre-exist on the same two acres. The only trees they are looking to eliminate at this point are the Pine trees and Blue Spruce trees. They plan on leaving the hardwoods. They are hoping that most of the re-growth comes from seedlings that are already pre-existing in the soil with maybe some additional apple trees for aesthetic reasons to give it some flowering atmosphere. Basically, they just plan to remove some unsightly Pine trees and let some nice hardwood deciduous growth come in.

Mr. Zalinger asked if he planned to remove the stumps as well.

Mr. McCann said no. Part of the soil erosion plan that he has come up with the Act 250 folks is to leave the stumps remaining in the soil and that will help bind the earth so it won't slide down. As the new growth comes in, if the stumps haven't rotted away, some will be pulled out at a later time. There will be enough root growth from the new seedlings that soil erosion wouldn't be a concern.

Mr. Zalinger said his experience is that stumps just won't rot away.

Mr. McCann said no, not in 85 percent clay.

Mr. Zalinger asked if the project was subject to Act 250 jurisdiction.

Mr. McCann said it is, and he has been approved by Act 250.

Mr. Zalinger asked him to enter the letter of approval into the record because that will allow the DRB to make affirmative findings.

Mr. Lindley asked if the original 18" culverts and catch basin were built and in place at this time.

Mr. McCann said they were built when the house was built and are in place at this time.

Mr. Zalinger said it appears to him that the site plan criteria that are most affected by the project are Site Protection and Design [715]. It appears from the erosion control measures as well as the amendments to the Act 250 permit the issues raised by that criteria have been satisfactorily addressed. The DRB has jurisdiction over light and air reaching his home.

Mr. McCann said one of the pictures in the proposal is from a satellite photo taken during the winter months. You can see the house is 90 percent covered with shade from the trees. He spent \$4,200 in heating fuel last year. That is another benefit to him for removing the pine trees and adding the deciduous trees.

Mr. Blakeman moved approval of the site plan review for 82 Trillium Hill, with Mr. Hoff seconding the motion. Site plan approval was granted by the Development Review Board on a vote of 7-0.

IV. Site Plan Review – (LDR/MDR)

303 Berlin Street

Applicant: Bill Doelger

Site Plan Review for construction of a new two unit dwelling.

Mr. Zalinger administered the oath to Mr. Doelger.

Mr. DeSmet said Mr. Doelger came in previously for an additional two unit dwelling at 303 Berlin Street. There is access with a private drive called Stretch's Way. The issues were mainly storm water and landscaping. Mr. Doelger worked with a new engineer and after numerous discussions with the Department of Public Works they received an okay. They are back before the DRB to obtain site plan approval.

Mr. Zalinger asked Mr. Doelger to outline the project for the Board. Although he had appeared previously before the DRB the Board needs to start with a fresh record.

Mr. Doelger said he and his wife moved to Montpelier about four years ago. Their property is approximately 2.85 acres and the lower lot on Berlin Street was empty and they thought it would be a good opportunity to build a two-unit dwelling to allow them to receive income from the property. They want to make it as unobtrusive as possible.

Mr. Zalinger said the Department of Public Works has apparently signed off on the project, but he see the letter from September 27th which outlines other issues that DPW wanted to see in the plan. Have these matters been addressed in the plans?

Mr. DeSmet said after the letter went out to Brad Washburn he brought it to Kurt Moyka in the Department of Public Works and he carefully checked over the new set of plans to make sure everything was included. The only thing he wanted was during construction was some silt fencing on the Berlin Street side. Everything else was addressed. The only difference is that there is 1 percent increase in flow from the current existing structure. It's not a significant amount of runoff the city would be concerned with.

Mr. Zalinger said there are permits that DPW required before construction and occupancy is permitted.

Mr. DeSmet said yes.

Mr. Lindley said he remembered a berm in the original plan. Is the berm gone?

Mr. Doelger said what he called the berm is the area between the curb and the property, which they currently mow. There is a slight embankment which is probably what he referred to in previous conversations. That is going to stay right where it is.

Mr. O'Connell asked what has happened since the letter from DPW.

Mr. DeSmet said originally Mr. Doelger came in with an 8,100 gallon storage and treatment tank based on the premise that the City of Montpelier had an interest in water quality. The city's interest is quantity. He worked with a new engineer to redesign a catch basin on the property, which was signed off by the Department of Public Works. All of the DPW concerns have been met.

Mr. Zalinger told Mr. Doelger that one issue they sometimes run into with landscaping plans that are proposed at the outset of a project are usually well intentioned. The Board likes to make sure that the landscape intentions are fulfilled over time. He asked him if he would object to a permit condition that required the landscaping to be maintained throughout the life of the project. If there were fatalities or casualties amongst the landscaping he would endeavor to replace them.

Mr. Doelger said he had no problem with that.

Mr. Zalinger asked if he would object to placing a silt fence on the Berlin Street side of the proposed catch basin during construction.

Mr. Doelger said that is what they had been asked to do and would have no problem with that.

Mr. O'Connell moved approval for site plan review at 303 Berlin Street with the condition that the landscaping be maintained at the level proposed throughout the life of the project, and that all DPW permits be obtained prior to the start of the project. Mr. Cranse seconded the motion. Approval for site plan at 303 Berlin Street was voted favorably on a 7-0 vote.

Mr. O'Connell told Mr. Doelger that the details on his plan with the new engineer are excellent.

V. Site Plan Amendment – LDR/MDR)

66, 76 and 90 Cityside Drive

Applicant: Ken Senecal

Minor Amendment to approved PUD for construction of decks
and minor adjustment to location of buildings.

Interested Parties: Michael Chernick, President of Murray Hill Area 2
Gene Petrorier

Mr. Zalinger recused himself from participating in the application. Mr. O'Connell chaired the meeting for this application.

Mr. O'Connell said the application is an amendment to an existing approved PUD for construction of decks and minor adjustment to location of building. Mr. O'Connell asked Clancy DeSmet to give a summary of what the applicant proposes to do.

Mr. DeSmet said the applicant seeks to amend Lot 2 of a previously approved subdivision in 2006. Lot 2 is approximately 6 acres and contains 3 condominiums. It is located in Low Density Residential and Medium Density Residential Districts. He is basically going to move them from the approved 30 feet apart to the 25 feet apart with the addition of a wrap around deck.

Mr. O'Connell administered the oath to the applicants and witnesses to the application.

Mr. Senecal said this is the third time he is asking the DRB to approve this plan. The last time he was before them he asked to switch from a duplex and single house to three single houses and he wanted them 30 feet apart. Because he needs the DRB approval match with the Act 250 permit and Mr. Petrorier wanted to add a wrap around deck. He proposes to extend a deck, change a window to a sliding glass door so the people from the dining room would have access to a reasonably sized deck. That seemed pretty simple to him until he went over the plan with his engineer and he pointed out there was a wetland below the edge of the house. They had maintained a 20 feet setback from the wetland,

but by extending deck they encroached on the 20 foot setback. To eliminate that problem they went back from the 30 feet between the buildings the Board previously approved to 25 feet between the buildings so there would be no conflict with the wetland. The Act 250 Commission approved all of that.

Mr. O'Connell asked if it was moved closer simply to meet the wetland concern.

Mr. Senecal said it was to keep the same separation from the wetland. Now he is back asking the DRB's permission to meet the Act 250 Commission. It is 25 feet versus 30 feet and a wrap around deck on each of the buildings.

Michael Chernick, President of Murray Hill Area 2 Condominium Association, which is immediately adjacent to the proposed condominiums, and also the agent for the land below which is Lot 1 which was subdivided last year. They are supportive of the project and have been working with Mr. Senecal throughout the process. They see this as a minor aesthetic change and have no objection to the project whatsoever.

Mr. Richardson said they are proposing to extend the deck on all three structures.

Mr. Senecal replied yes, all three structures would have a deck.

Mr. Richardson asked which structure required the setback.

Mr. Senecal replied it was 66 Cityside, the one farthest to the south. By having them 30 feet apart he was encroaching on the setback. He is shifting all three structures back 5 feet.

Mr. Blakeman asked if the driveways would be closer to each other.

Mr. Senecal said they would. It would change the entrance to the garage by 5 feet.

Mr. Richardson moved approval of the site plan amendment to the PUD for 66, 76 and 90 Cityside Drive. Mr. Blakeman seconded the motion. Approval was granted by a 6-0 favorable vote.

Mr. Senecal said the Montpelier Police Department assigned the name to the street and driveways for the three houses. They call it Cityside Drive Extension. They also assigned the building numbers and called them 66, 76 and 90. There already is a Cityside Drive with a unit 66 and 76.

Mr. O'Connell said that is all part of the 911 program and that would have to be taken up with City Council. Mr. Senecal said he believed it would lead to a lot of confusion.

- V. **Design Review Approval – CB-I/DCD)**
10-12 State Street
Applicant: Chuck Nichols and Candi Moot
Design Review for the replacement of 18 rear windows.

Mr. Zalinger recused himself from participating in this proposal. Mr. Richardson recused himself from this application because he voted on the proposal while he was a member of the Design Review Committee. It is a conflict simply because he has heard the testimony and it gives him a bias before hand to hear the review.

Mr. DeSmet said Chuck Nichols and Candi Moot came in for design review approval for 32 windows, front and back. It was discovered that the front windows were of an architectural feature so they amended their application to just replace the windows in the rear portion, which was subsequently denied by the Design Review Committee based on the fact they were two-thirds/one-third versus 50/50. It was subsequently discovered that 7 of the windows were replaced in the fall of 2006. Mr. DeSmet called Mr. Nichols who was very forthcoming and said they did install some windows in prior to receiving approval.

Mr. DeSmet said he issued a notice of violation prior to that. The applicants came in to the office and wanted to reach compliance and are here before the DRB to seek approval of a total of 18 windows on the rear side of the building.

Mr. O'Connell asked if this was the same project and application that the DRC rejected on a vote of 0-5.

Mr. DeSmet said it was.

The applicants are coming before the Development Review Board with the same project and no changes. Mr. Nichols said that was correct.

Mr. O'Connell administered the oath to the applicants and witnesses to the application before them.

Mr. Lindley said he wasn't sure why if there is a 0 to 5 vote in the Design Review Committee it should still come to the DRB.

Mr. O'Connell said it does come to the Development Review Board. The DRC denied the application. They are an advisory board. Now the applicant has come before the Development Review Board despite the fact that the Design Review Committee rejected their application.

Mr. DeSmet said they chose not to come immediately after their Design Review meeting.

Mr. Nichols said he would like to address installing the windows in during November 2006 first.

Mr. O'Connell said a 0 to 5 vote is a pretty strong message. Why should the DRB override what the DRC has so strongly spoken to?

Mr. Nichols said, if he is correct, the DRB will review this application under specific criteria. The criteria for the Design Review Committee and the Development Review Board shall evaluate design review plans on the following, one of which is preservation or reconstruction of the appropriate historic style. One is harmony of exterior design with other properties in the district. Mr. Nichols said he thinks they can show they are in harmony with the exterior design of other properties in the district and shouldn't have been turned down.

Ms. Moot said it is her understanding that the Design Review Committee's charge is "mono faceted." They are now allowed to balance economic issues with historic preservation issues.

Mr. O'Connell said he feels it should be stated specifically that the Development Review Board takes the Design Review Committee's recommendations as a major component, and there may be other components they also review.

Ms. Moot said what she understood is that the DRC is now allowed by their statutory charge.

Mr. O'Connell said the DRC is advisory to the Development Review Board.

Ms. Moot said this is obviously an old building, it is in the historic district, and the tenants pay for their own heat. They had no reason and no benefit from changing these windows. They see that as a very important component of the project. There is one apartment where they have changed all of the windows except one. They did this before they knew they needed a permit. That is why they did it a year ago.

Mr. O'Connell asked if the windows were all there now.

Mr. Nichols said there are 7 there. Ms. Moot said some are new and some are old. Before the windows were changed, according to Green Mountain Power the average electric usage in the winter was in the vicinity of \$250 per month. Since the windows have been changed now, the average electric usage had dropped to \$62 per month. The savings to their tenants and the environment is pretty significant. Not the least because they didn't know they needed a permit for the windows, but because they bought them all and they are custom made. They can't return them.

Mr. O'Connell said they need a permit for any work you do on any building.

Ms. Moot asked if they needed one to change windows.

Mr. Nichols said in a historic district they now understand they do need a permit, but if you are outside the historic district you don't.

Mr. O'Connell said if he changed the windows on his house on Prospect Street, or his other house on Main Street, he needs a permit.

Mr. Lindley said it is required in a design district or historic district.

Mr. O'Connell said you need a building permit for anything.

Ms. Moot said they thought this was maintenance.

Mr. Nichols said they did replace 7 windows in 2006. They understand now that was a mistake and apologize for that. They are going to replace the rest of the windows because they did purchase them. They thought they might need a permit to close the sidewalk on the front of the building when they were putting the windows in. They are installed from the inside out, and that is when they came to the Planning Office to learn about that and discovered they should have had a permit.

Mr. Nichols said they had an initial meeting with the Design Review Committee. They pointed out to them that they believed the front of the windows had an arch to them in the glass. They walked over with the committee to look at that, and there was an arch to the windows. The rear windows do not have an arch. The rear windows are squared off even though there is an arch to the brick. There was a difference, and that is why they separated them in the application and are asking to replace the rear windows only. They do want to see what they can do in the front with the arched windows at a later time.

Mr. Nichols said when they were at the Design Review Committee, at some point the Chair pointed out to the rest of the committee and to them that there was an issue with trying to communicate all of the requirements in the historic district. There was some understanding that this was an issue that getting out the requirements to people who owned the buildings a best job hadn't been done. They didn't realize they needed a permit. They thought they were performing maintenance on their building and could proceed.

Mr. O'Connell said if they had obtained their building permit it would have stopped the problem before it began.

Toni Warman, a tenant in apartment 7 of the building, said it is really nice to be able to afford her apartment at the moment. She can now because of the windows that have been replaced. She was also told the last window was going to be replaced when she moved in. As a tenant she really appreciates the consideration that has been given by the landlords by replacing the windows. It is really expensive to rent in Montpelier and it's nice to have a landlord that thinks about her pocketbook. While it's unfortunate that the permits had not been issued that it would be even more unfortunate for lower income renters of Montpelier to be penalized because of that. Thank you.

Mr. Lindley said the window that is being proposed to be replaced in terms of the dimensions is being replaced by a replacement window with the same dimensions. He isn't concerned about the two-thirds over one-third, or half over half, but the area being replaced.

Mr. Nichols said the window is one inch shorter because that was the maximum size they could buy from the supplier, but the width is exactly the same. They filled the one inch with some wood. If you walk down State Street, many of the buildings have what they think are permanent aluminum storm windows on the outside of the windows. The big point the Design Review Committee made was that the windows had to be the same style as before, and the style from building to building changes, and that the muntins in their windows are between the glass. The DRC wasn't happy with that. The muntins had to be on outside of the glass. When you put a permanent aluminum storm window on the outside of the window you can't tell where the muntins are. As you work your way down the street you'll see many of the buildings have the permanent aluminum storm windows.

Mr. O'Connell said when they would come up for replacements you would see they would go back to much closer to what their historical prototype was.

Mr. Nichols said the harmony with the district issue, he went back of the Everett Insurance building to see what the windows were and the back of the building is sheet metal that has been formed and painted to look like brick. That doesn't seem like it would be historic.

Mr. O'Connell said it isn't, but if you were going to do the project today it would be. He asked Mr. Nichols what he was asking for today. Is he asking for approval for just the rear?

Mr. Nichols replied he was just seeking approval for the rear 18 windows. The Design Review Committee gave them some sources where they could get historically correct windows done and they intend to try to pursue that.

Mr. O'Connell asked how many windows had been replaced in the front.

Mr. Nichols said none. They have installed 7 out of 18. They want approval for the 7 installed windows to correct the violation and receive additional approval for the 11 windows in the back that are the same as the ones already there.

Mr. O'Connell said that before they get into replacing any windows on the front they know the process at this point.

Mr. Cranse said they are there, and to him they look okay. The windows are not exact, but they look pretty nice to him. They don't look jarringly different. It doesn't look like they are ruining a historic building. he doesn't want to go against the Design Review Committee, but in this instance there is a project already started.

Mr. Lindley agreed with Roger Cranse. They are only losing an inch of glass in terms of the height. They look better than the building next door that has the aluminum windows. This is also helping the tenants.

Mr. Hoff said he agreed with Jack and Roger. He certainly appreciates the energy efficiency. He wishes they had opted for the two over two pattern which was there originally.

Mr. Nichols said the two over two in this size was not available from Pella Windows. They say it is a safety concern.

Mr. Blakeman said he agreed with Jack. He went in the back of the building and looked at the windows.

Mr. O'Connell said he was in agreement with the rest of the Board. He believes it is an unfortunate situation that they are acting on the application retroactively, but occasionally those things do happen. He would be more concerned if they were dealing with the front of the building.

Mr. Lindley moved approval of the design review for replacement windows at the rear of 10-12 State Street as presented by the applicant. Mr. Blakeman seconded the motion.

Mr. Hoff said he wanted the DRB to review the evaluation criteria appropriately to make sure the record supports any decision they reach so they wouldn't be setting themselves up. He believes the applicant has substantiated that with the variety of windows in the district the design and materials surrounding this property that there really isn't much harmony or consistency. Given the fact that the gains of energy efficiency and the fact the Board is dealing with the project retroactively is sufficient to allow the Board to proceed as they are.

Design review approval for replacement of 18 rear windows at 10-12 State Street was approved by the Development Review Board on a 5-0 vote.

Review of October 1, 2007 Minutes:

Mr. Richardson moved to adopt the minutes of the October 1, 2007 Development Review Board with a minor change. Mr. Lindley seconded the motion. The minutes of the October 1, 2007 DRB meeting were approved 5-0.

Adjournment:

Mr. Lindley moved adjournment, with Mr. Hoff seconding the motion. The Development Review Board adjourned.

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator

Transcribed by:
Joan Clack, City Clerk's Office