

Montpelier Development Review Board
July 7, 2008
City Council Chambers, City Hall

Approved

Present: Philip Zalinger, Chair; Kevin O'Connell, Vice Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, and Jeremy Hoff.
Staff: Gwen Hallsmith, Director, Planning and Community Development

Call to Order:

The meeting of the Development Review Board was called to order by Chair Philip Zalinger at 7:00 P.M.

Review of June 16, 2008 Minutes:

Mr. Lindley moved approval of the June 16th Minutes as printed, with Mr. O'Connell seconding the motion. The Minutes of the June 16, 2008 DRB were adopted on a 5 to 0 vote.

I. 64 Main Street – CB-I/DCD

Applicant: Leslie Rabins/One More Time

Owner: Stephen Lewinstein

Install two windows in existing openings at rear of building, plus rear door with full glass.

Interested Party: Soren Pfeffer

Mr. Richardson said he wouldn't have any problem voting on the Lewinstein application without further evidence because the adjustments to the scope seem to be rather minor and the applicant didn't appear to raise any concerns about that in the record.

Mr. Zalinger told Mr. Richardson he was hesitant to do that because they have to infer from their lack of objection at the Design Review Committee that there is no objection to that. He doesn't want to make that inference based on the DRC Minutes. Mr. Zalinger said he also remembers asking the owner of the property if they were going to remove all of the window dressing from the windows. The DRB was assured they would, and they just never got around to it.

Mr. Zalinger explained to Leslie Rabins that the DRB asks if the applicant is in agreement with the recommendations of the Design Review Committee that provided them with some options and alternatives. Ms. Rabins said she was in agreement.

Mr. Richardson inquired what the purpose of the back door. Is it intended to be another entrance?

Ms. Rabins said they planned it for a back entrance. Mr. Pfeffer said it is primarily for people who are dropping off clothing to bring their clothing in the back way so they can park closer.

Mr. Blakeman moved approval of the application for 64 Main Street incorporating the DRC's recommendations, with Mr. O'Connell seconding the motion. The motion passed favorably on a 6-0 vote.

II. 137 Barre Street – CB-II/DCD

Applicant: Central Vermont Solid Waste Management District

Design Review for construction of an ADA access ramp and landscaping

Interested Party: Leesa Stewart, Administrative Manager

Mr. Zalinger explained that the DRB tries to avoid taking additional evidence. The Design Review Committee recommended approval with an optional change that she may replace the wrought iron front step railing with a wooden railing to match the newer/old rail and baluster system. The DRC recommended approval with the following adjustments to the scope of the proposal:

- a. Ceiling light fixture is to be a simple porch fixture.
- b. Square or round windows in garage door openings will be in a recessed area approximately 2-4" to show original door opening.
- c. Decking for the ADA ramp will be tongue and groove rather than synthetic material.

Ms. Stewart said they are in agreement with the recommendations.

Mr. Blakeman said he was curious why the third floor fire escape is being taken off.

Ms. Stewart said it is very rickety, and in the wintertime it becomes quite treacherous. Ice cakes on it very thick. There is a residential apartment on the third floor.

Mr. Blakeman asked if the Fire Marshall had any comments.

Ms. Stewart replied the Fire Marshall has looked at it and agreed that since they are fully sprinkling the building they don't need the additional means of egress.

Mr. Lindley moved approval of the application for 137 Barre Street with the recommendations as outlined by the Design Review Committee, with Mr. Richardson seconding the motion. The motion was approved on a 6-0 vote.

Zoning History by Gwen Hallsmith:

When the School site plan was reviewed by the DRC, which the DRB will be considering later, there was a bit of difference of opinion between the Planning Staff and the DRC about the application materials that were needed. The Planning Office was reading what the current ordinance said, and they were asking for additional materials based on past experience with other demolition projects. She said today she looked up the old zoning ordinance to see if anything substantial had changed in the review of demolitions between the old ordinance and the new ordinance. She discovered that they had, that there was an entire section of the old ordinance that related to the DRC review of demolition which required them to have a finding on the building's historical significance that had been deleted from the ordinance when it was revised. There is a new section on demolition that primarily rested responsibility for demolitions and the oversight of that with the DRB which was inserted in its place. Partly because Clancy and she have both only been here since the new ordinance was adopted so it is all they know, and yet the memories of the DRC are long, there was a bit of difficulty about this because she couldn't understand why they were dissatisfied with the materials that had been submitted. It turns out there was something that used to be submitted as part of a demolition that is no longer submitted.

Mr. Zalinger said it is the new ordinance that is applicable to the application.

III. Design Review – 139 State Street –CIV/DCD

Applicant: Union Mutual of Vermont
Replace existing metal exhaust stack with masonry.

Interested Parties: Gary Ouellette, Director of Operations
Greg Lord, EF Wall & Associates

Mr. Zalinger administered the oath to Gary Ouellette and Greg Lord.

Mr. Zalinger said for the record he had to mention that EF Wall had just completed a project on a building that he is one of the owners and he also represents EF Wall regularly as an attorney. He doesn't believe it impacts his ability to be impartial in this application because they happen to be the contractor for Union Mutual.

Mr. Wall said there is a chimney that protrudes from the original 1950's era building, which is a two-story structure, and it is made out of metal. There have been problems over time with leaking. This time of year you don't see it because of the vegetation unless you are right in front of the building on State Street looking directly at it. There is a maintenance issue and a necessity to have what is there as a chimney replaced. There is a desire

to have something that is certainly more maintenance friendly and less prone to abrasion, hence the desire to go with masonry. The idea of putting on a stone fascia that matches the four-story tower building was one that recognized the fact that there is now another built element on the site, which is the four-story tower. The chimney as it exists as black metal blends in when you are looking at the glass, but it sticks out like a sore thumb against the stone. In their view the benefit is that they are making it more practical from a maintenance standpoint but also choosing to blend it with the stone rather than the glass, and they feel that is their vote. He said he wanted to mention that the DRC voted 2 to 3 to let it go as it is and denied the permit as it is. There are those who eloquently argued both ways about what we are trying to do. It is maintenance and structural issue and they want to replace what is there with masonry. It is certainly his client's preference to go with stone because it is their opinion it will look better. It is a more expensive application.

Mr. O'Connell asked how Mr. Lord would summarize the DRC's three members who voted against objections to the design.

Mr. Lord said they were fair. There is a certain architectural significance to the original building. It is a totalitarian structure and the chimney was to match or blend with the existing structure. It sticks up above. You don't want eyes to be drawn to it, and back then black was probably the least obtrusive color in regards to its surroundings. Now visually you have to do something that is very prominent that is a backdrop, which is the tower structure. This is a practical element and functional element. What they are trying to do is to make it blend in with its current background.

Mr. O'Connell said what they are proposing is exactly the opposite of what now exists.

Mr. Lord said in color, but not in practicality. There will need to be a chimney there.

Mr. O'Connell said that is an international style building and one of the factors in that style is that things should fit together. What they are proposing is a rock facing that just kind of sits on top of that unit. They are proposing a complete change in the integrity of the design by putting that rock facing on it. Say what they want about the DRC meeting, but there was a recommendation where they suggested you do a masonry chimney but one of the current style. What did they think about that?

Mr. Lord said they believe they are trying to make it as unobtrusive as possible, and the way they are proposing to do that is to put something that recognizes the fact that there is a prominent background that is part of that facility. The Design Review Committee pays deference to the entire built environment, and he doesn't think they can argue with the architectural elements and practical matter of its original design in the context of just that building. He doesn't know that this is a degradation of that by essentially recognizing the fact that you do have another architectural element that was built subsequent to the original building.

Mr. O'Connell said the cost is not the factor here. Why not consider the alternatives?

Mr. Ouellette said one thing that is somewhat troubling to him is that it seems there is a desire to consider those two architectural elements as separate entities when in fact they view that building site as one unified building. The tower which is different in obviously certain ways is an approved element of the site plan. It is in fact one building now; they are no longer two separate buildings. They love the architecture, and it really does stand out in Montpelier, and they are aware of that. Part of what they are trying to do is lessen some of that lack of unity between the international style of the original 1950's building and the actual tower and brings those together as much as they can. It was obvious from their meeting with the Design Review Committee that having known the history of the site in the process they very much knew that six-story tower that sits behind. It is really only a four-story tower that has divisions that make it look different. From Union Mutual's standpoint what they would like to see is recognition of the entire building as one entity rather than two separate entities. That was their idea with the brick fascia, which was to bring the design a little more together rather than continuing the division. The tower has been there since 1990. It's been there 18 years now. They are looking for some recognition of this being one building well maintained and adds value to the city of Montpelier in numerous ways.

Mr. Zalinger asked what the precise masonry stock they intended to use was.

Mr. Lord said it would be the same stock that is in place in the towers, and that is available.

Mr. Zalinger said the appearance would be as close as you could make it to the towers. Mr. Zalinger asked if they could identify what the foundation of the building is. He sees on the right hand side from State Street it is covered with moss or lichen. It looks like the entire foundation is masonry and stone.

Mr. Ouellette said the foundation is a stone foundation, and the retaining walls around the perimeter also are.

Mr. Zalinger said if you are standing on State Street and looking at the building from the ground up you see a masonry foundation. Couldn't one argue that the masonry is consistent with the foundation as well as the towers. Mr. Ouellette replied yes.

Mr. O'Connell said if they are looking at design integrity for different type styles, what you don't want to do with that style is having something kind of hanging there. That is what this chimney looks like it would do. The current form flows kind of naturally from the fact that it is a machinery item.

Mr. Zalinger said there is criteria that allows the DRB members who aren't familiar with architectural styles to struggle their way through the evidence.

Mr. Richardson said this seems to be the DRC's main point, that this is a utilitarian item in which stone would be inappropriate within the international style. He thinks there is a divergence of opinions. He is trying to synthesize the two. It is his understanding that in historic preservation there is desire to keep styles separate, so if had a Federal style house and stuck on an addition that was very modern you wouldn't try to alter a Federal style house to look like a modern house. You want to preserve that particular style. He believes the DRC's concern was that this was a step in the wrong direction. He sees that sort of grounded in the fact that within the international style a function that would not have received an additional stone. If they have evidence or testimony of international buildings that were treated in a similar manner or used stone chimneys as an incorporating feature, then that is valid to bring in. He has yet to hear a counter argument to the DRC's main point which is to keep this as an international style and to keep the integrity of the building, which is a standout feature in the town. It is one of the first major things you see when you come onto State Street from the Interstate. It's a beautiful building and they didn't want to muddy the integrity of that building by mixing styles. If there have been international houses in which the chimneys have been altered he would love to hear testimony about it. Have they consulted with any architects who are familiar with this style building?

Mr. Lord said not really. They are thinking it does pay deference to the broader property, and they are just trying to do the right thing. The right thing people have differing views on what that is.

Mr. Richardson said he didn't see the DRC finding anything other than a differing of opinion on how to best handle the situation. They saw this building that should be kept in its current format, whether that be stainless steel that would keep the black façade.

Mr. Zalinger said they have criteria they can use tonight for the DRB to make its own determination with respect to this application. The criteria are as follows:

The Development Review Board shall evaluate design review plans based on the following considerations:

1. Preservation or reconstruction of the appropriate historic style if the proposed project is in the historic district or involves an historic structure. This is a design control district, but it is not a historic district and it is not a historic structure. Ms. Hallsmith said she believes it is in a historic district. Whether it constitutes a contributing structure or not is questionable. It is over 50 years old. It's just not in the same era as the district generally. Mr. Richardson said it is his understanding there is an international style building in Burlington which was the subject of an environmental court appeal that discussed this, and it was considered a historic structure built around the Chittenden Bank on Bank Street. Mr. Zalinger said they do have a historic structure. Mr. Lindley said there is still a question about whether it is in a historic

district. Ms. Hallsmith said she believes it is. It is whether it has been considered a contributing structure to the district.

Margot George, Chair of the Design Review Committee, said she would like to enlighten the DRB on a couple of items that came under question while she was driving on.

Mr. Zalinger said they had gone around with the Design Review Committee before about whether you have two members here or is she here to participate as a citizen, or is she here to participate as the DRC to plead their case on the criteria before the DRB.

Margot George said she was appearing for the Montpelier Heritage Group as a citizen. It will not be for the DRC.

Mr. Zalinger asked the Board how they felt about hearing from the community at large on this subject.

Mr. O'Connell said he felt they should take testimony if testimony is being offered.

Mr. Zalinger said they asked earlier if there were folks here to be heard on this matter and no one raised their hands.

Mr. Zalinger administered the oath to Margot George and Soren Pfeffer.

Margot George said the Union Mutual building was built in 1957 by Freeman, French & Freeman so it is over 50 years old and eligible for every district that could be out there. When Freeman, French & Freeman built this building they did not choose at that time, knowing the international style, that they would clad that chimney in stone. The international style says you are going to have stone that is going to relate to the ground on the bottom and then extend its way up. But there was never any intent at the time they built it – and they were a very prominent architectural firm – to clad that in stone at that time. Their choice was to do it in metal. She talked with the architect of the rear addition as to his thoughts about that particular element being clad. He said nowhere would Freeman, French & Freeman have that become a fancy element. That is why she brought that information to the DRB tonight, that the international style would not adorn and make something as utilitarian as that be clad and become an element that relates to the stone which is always meant to be close to the ground. She hopes that little bit of information will help the DRB to understand the international style. That is how the original architect designed it. It's been that way for 57 years.

Mr. Zalinger told Margot that it was her testimony that the architect she spoke to said Freeman, French & Freeman never would have designed it like that. Ms. George replied absolutely. Mr. Zalinger inquired who the architect was. Ms. George said it was Mr. McKnight in Barre. He was the architect who designed the rear addition. He said it is a utilitarian item and would never have been adorned or meant to be fancy. The international style would have made it be what it is.

Mr. Zalinger said the DRC makes a determination on the application.

Mr. Blakeman asked if there was some question about painting the masonry black.

Mr. Lord said they came to the DRB because they didn't want it black. They discussed that option and leave it out of the jurisdiction and make it look like it does now but have it be masonry. Yes, that was a consideration of just having masonry in place without the stone, but that was not finalized.

Mr. Blakeman asked if the idea of using black paint was discussed.

Mr. Lord said there were a lot of options discussed, such as using granite, metal and painting it similar to what is there, and using masonry and painting it. There were a lot of different things that were brought forth through the discussions and proceedings with the DRC, and everybody had an opinion. That just points to the fact that it is a very subjective thing.

Mr. Zalinger said he would like to move ahead with the criteria.

2. Harmony of the exterior design with other properties in the district. Mr. Richardson said he thought the DRC was right on this, that it is not applicable. It is a building unto itself. Mr. Zalinger asked couldn't they argue that the harmony of this exterior design element with other elements of the exterior of the same building. It's not the introduction of an entirely new material to the building.

Mr. Richardson said he didn't read that criteria that way. He sees it as harmony of the design with other properties and it applies when there are similar structures in an area.

3. Compatibility of the proposed exterior materials with other properties in the district. That is also non-applicable. Mr. Richardson said he thinks there is an argument to be made with that one. To the extent that there is comparison to be made it doesn't seem to be incompatible as far as the materials themselves are concerned. Mr. Zalinger said the comparison is with other properties in the district, and the same phrase is used under 2 and 3.
4. Compatibility of the proposed landscaping with the district. That is also non-applicable.
5. Prevention of the use of incompatible designs, buildings, color schemes or exterior materials. Mr. Richardson said he would argue on the point of design that they are back to the incompatibility point with the design of the international style.
6. Location and appearance of all utilities. This is also non-applicable.
7. Recognition of and respect for view corridors and significant vistas, including gateway views of the city and the State House. It's a stretch to call that applicable.

The other criteria under §305.F isn't applicable.

Mr. O'Connell said he would summarize by saying it may seem like an insignificant issue with something as relatively minor as this addition, but it is important that we maintain the integrity of those design elements where we have a chance to do so. From the applicant's standpoint we are not talking about any more costs involved, but making sure we get it right on the design. He is going to vote against the application because he doesn't think they have.

Mr. Blakeman asked if using the stone would conceivably hold up better. Mr. Ouellette said absolutely, that was their reason for going with masonry. They have a smaller diameter opening coming up through the main chimney into a larger opening, which is now metal. As he understands the physics of it, the speed of the exhaust gas slows down and basically the particulate matter that ends up becoming sulphuric acid when mixed with moisture basically eats the metal in almost no time at all. Their plan is to keep the opening consistent by using masonry fire tube, which they have had in place. Their intent is to have a much longer lasting structure.

Mr. Blakeman said if they use stone is it feasible to paint it black and hold up?

Mr. Ouellette said he didn't believe so. The painting isn't the right answer because their maintenance people will spend all of their time on the roof area painting the structure, which they are trying to avoid because they do have a rubber membrane roof.

Mr. Pfeffer said as an option they can get bricks in black and it is much cheaper than stone. The idea of painting doesn't make practical sense, but the DRC suggested possibly black brick or black stone.

Mr. Richardson said he would add that he didn't see this as different from the first two items they reviewed on the consent agenda. This is a design review issue that they have a recommendation from the DRC on and they usually afford a great bit of deference to the DRC on their determination. Actually, the testimony from Margot has been helpful. He will be voting against the application.

Mr. O'Connell moved the approval of the renovation proposed by Union Mutual as submitted, with Mr. Hoff seconding the motion. The application was denied on a 2 to 4 vote.

IV. Preliminary/Final Subdivision Approval – MDR/LDR

20 Hubbard Park Drive

Applicant: Mary M. Heney Family Trust

Two Lot Subdivision

Interested Party: Tim Heney

Mr. Zalinger administered the oath to Tim Heney.

Mr. Heney said his mother has had 56 acres and wishes to subdivide 5.3 from the 56 acres on Hubbard Park Drive with her home. The piece was designed in such way that it goes with the contours of the land and will make a nice parcel around the house. It connects to the park. There is one access point which is off Clarendon Avenue, which is his driveway, Windham Drive. There are no plans for that property at this point except a simple 5.3 acre subdivision.

Mr. Zalinger asked if the other lots that were created from this property, how they would fit in. There was another subdivision that occurred several years ago.

Mr. Heney said there have been two in the last decade or so, but the property goes way back to the Walker Farm of years ago with Deerfield Drive and Parkside Drive.

Mr. Zalinger said he wants to be aware of whether there is a serial of subdivisions, none of which are related to the others as they appear here. Was it the 51 acres adjacent to other lots that have been created in the last five years?

Mr. Heney replied yes, which is off Dunpatrick Circle at the far end of the property. After his dad died the determination was made to sell land and using assets his mother didn't need to carry. They created a driveway off Dunpatrick Circle. They created three lots – a 54 acre lot, a 28 acre lot and a 10 acre lot, which are served by that common driveway known as Essex Way.

Mr. Zalinger inquired if this was the fourth lot. Mr. Heney said correct. That leaves the 51 acres. There is no Act 250 jurisdiction, so the only jurisdiction over the subdivision is with the DRB.

Mr. Richardson asked if in the prior subdivisions if there were any rights-of-ways reserved that would benefit the 50 acre parcel. Mr. Heney replied no.

Mr. Richardson asked if there were any plans for the 5.3 acre parcel to preserve a right-of-way. Mr. Heney said no.

Mr. Blakeman asked Mr. Heney if he was in agreement with the staff and advisory comments, and he replied he was fine with them.

The Development Review Board reviewed the relevant site plan criteria and found it met all of them.

Mr. Richardson moved approval of the preliminary and final plan for the subdivision at 20 Hubbard Park Drive, with Mr. Blakeman seconding the motion.

Mr. Lindley moved approval for the combination of preliminary and final approval for 20 Hubbard Park Drive, with Mr. O'Connell seconding the motion. The motion was approved on a 6-0 vote.

V. Site Plan and Conditional Use Review – HDR

223 Elm Street

Applicant: Mark and Vivienne Adair

Conversion of a dwelling unit to office space.

Mr. Zalinger administered the oath to Vivienne Adair.

Ms. Adair said her husband wants to move his office to the house.

Mr. O'Connell asked Ms. Adair what was her husband's business. She said he is a psycho analyst. It is a very quiet business and he is only there three days a week.

The DRB reviewed the site plan criteria first. Mr. Zalinger said the Board needs to ask questions about pedestrian access and circulation, vehicular access, parking, etc. Perhaps Ms. Adair could tell the Board how she plans to accommodate this on the site.

Ms. Adair said they would be driving all the way to the back and the pedestrian access would simply be from the car to the house.

Mr. O'Connell asked if 223 and 225 on the same lot. Ms. Adair said they are.

Mr. Zalinger said from the observations of staff that there are a sufficient number of parking spaces. Ms. Hallsmith said it is listed here there are 7 spaces, which exceeds the number of required spaces at this time.

Mr. Zalinger said there are only two spaces designated for 223 Elm Street.

Mr. Zalinger said moving on to the conditional use criteria, the DRB is required to find that the proposed use does not adversely affect the following:

- a. The capacity of existing or planned community facilities; Mr. Zalinger said it doesn't appear that a professional office use at this location would adversely impact the ability of the city to deliver community facilities.
- b. The character of the area affected, as defined by the purposes(s) of the zoning district within which the project is located, and specifically stated policies and standards of the Montpelier Municipal Plan. Mr. O'Connell said he would point out that there are several professional offices in the neighborhood. Mr. Zalinger inquired if the office business hours would be regular business hours. Ms. Adair said pretty much, and only three days a week. It is usually 7:00 A.M. to 5:00 or 6:00 P.M.
- c. Traffic on roads and highways in the vicinity. Mr. Zalinger said from the plot plan that no one has to back onto Elm Street, that there is sufficient area for everyone to turn around on the site.
- d. The Zoning and Subdivision Regulations in effect. There is no new construction planned so there are no dimensional issues.

Mr. O'Connell moved approval for site plan approval at 223 Elm Street as proposed, with Mr. Richardson seconding the motion. Site plan approval was granted on a vote of 6-0.

Mr. O'Connell moved approval for conditional use as a professional office approval at 223 Elm Street as proposed by the applicant, with Mr. Hoff seconding the motion. Conditional use approval was granted on a vote of 6-0.

VI. Variance Request – MDR

47 Liberty Street

Applicant: Irene Facciolo and Soren Pfeffer

Construction of a playhouse within the setback.

Interested Parties: Irene Facciolo, 47 Liberty St.

Soren Pfeffer, 47 Liberty St.

Siena Facciolo, 47 Liberty St.

Maya Facciolo, 47 Liberty St.

Thomas Weiss, 49 Liberty St.

Mr. Zalinger administered the oath to interested parties.

Mr. Pfeffer said the variance is for a playhouse they built for a previous property, and they weren't sure they were going to leave it there or move it but at much urging by his children they decided to move it. The reason they are requesting a variance is because there is no place the structure would work without the variance. You can see the garage is less than the 30 foot setback from the rear of the property. It's not a permanent structure. It doesn't have a foundation but just up on cinder blocks.

Mr. Zalinger said interestingly enough there are a lot of structures that appear across the city tucked into back corners of lots that don't come before the DRB for variances. He can't determine where the playhouse is going to be on the plan. Ms. Facciolo replied it was the shaded square in the back corner of the property. The driveway is shared so it looks out of proportion. Only half of the driveway is theirs. They share the driveway with the Turner's who live next door.

Mr. Zalinger asked what the variance was for. Ms. Facciolo said it was 10 feet from the side and 5 feet from the rear.

Mr. Hoff asked why the playhouse couldn't be situated couldn't be situated next to the garage that wouldn't be at odds with the setback. It would be behind the house and east of the garage.

Mr. Pfeffer said there is no way a truck could have gotten there. It is 8 feet x 8 feet with a little porch on it.

Mr. O'Connell asked what the playhouse was made out of. Mr. Pfeffer replied wood.

Thomas Weiss, a resident at 49 Liberty Street, said he lives on the other side of the property from where the playhouse is going to. He believes the playhouse does not rise to the issue of requiring a variance. The property has a reasonable use. It has been a single family house for 18 years. Most of the lots in the neighborhood do not have a 30 foot setback in their rear yards. The problem is not due to this specific lot but due to the zoning ordinance in general. The City Council and the Planning Commission has had a number of opportunities to revise the setbacks in this district, with the most revision made back in 2006 when they chose to leave the 30 foot setback when they chose to leave the 30 foot setback in rear yards of a medium density residential district. He doesn't think granting a variance would be appropriate for the playhouse.

Mr. O'Connell asked Mr. Weiss if he could tell him what his specific objection is to the placement of the playhouse.

Mr. Weiss said to his understanding it does not meet the criterion of a hardship because the property already is a single family residence.

Mr. O'Connell said Mr. Pfeffer said it was clad in wood, but what kind of wood? Mr. Pfeffer said it looks like a small house with clapboard siding. The bottom part is siding, and the top part is cedar shingles. It's painted a pale green.

Mr. O'Connell asked if the playhouse fits in with the neighborhood. Mr. Pfeffer said he believe it does. He has only received positive feedback from people who walk by. All of the neighbors were aware of it when they moved in. There is cedar hedge on the back boundary, maple trees on the side, and there is also cedar hedge between their property and Mr. Weiss' property which pretty much from his house would block any view.

Mr. Lindley asked if he didn't understand the setback provisions of the city's zoning when they started construction on the playhouse.

Ms. Facciolo and Mr. Pfeffer said it was built at a different location and moved here.

Mr. Lindley said he is puzzled by the lack of any knowledge of where the setbacks were when they placed it there in the beginning. Were they knowledgeable about the setback regulations within the MDR residential area they are in?

Mr. Pfeffer said they were. They weren't sure if they were going to bring the playhouse at all and they weren't sure if it was possible to move it. As soon as they moved it they applied for the variance. It's just a playhouse sitting on some cinder blocks.

Mr. Richardson asked if the building could be disassembled. Mr. Pfeffer said any building could be disassembled. There are a lot of people who have garden sheds and structures in their back yards around town and most don't even get permits.

Mr. Zalinger said there aren't different variance criteria for playhouses, though.

The DRB reviewed the variance criteria with discussion about each.

Variance Criteria: §1006.B(1)(a)-(f)

- ✓ The Board has to decide whether there are unique circumstances at this piece of property that cause a hardship so you can't build it far away from the property line. For example, if there were ledge or big rocks in the back yard and you couldn't build on the rocks, the fact that the rocks were in the back yard would be a hardship and that would allow the Board to give us a variance to put the playhouse where it is.
- ✓ Are there are unique physical circumstances or conditions at your house? Is the back yard flat? Are there a lot of older trees in the back yard? Can you tell the Board why the truck couldn't get into the back yard? Ms. Facciolo said the truck was really big. Mr. Pfeffer said the truck would have had to go all the way around the house. There is no other access without taking trees out.
- ✓ Because of the physical circumstances – and he's not sure they have physical circumstances – there is no possibility that the playhouse could be located on the lot in conformance with the zoning ordinance with the necessary setback. A setback is from the property line there is kind of a border around the interior of the property and it says you can't build in that border line. At the back of the border it is 30 feet. When the Board hears the application they have to judge it based upon what the zoning ordinance tells us them to do.

The first criteria was that there are unique physical circumstances or conditions and that you are unable to place the playhouse in a location because of the conditions that conforms to the setbacks. The second is that because of these circumstances you need a variance for the reasonable use of the property. The third criteria is that an unnecessary hardship wasn't created by the family but that it relates to the land rather than personal circumstances. This is not zoning's finest hour.

Mr. Pfeffer said they couldn't get it to any spot that would have allowed for the setbacks.

Mr. O'Connell said regretfully he is going to have to vote against this because it doesn't meet the criteria. This is not a hardship.

Ms. Facciolo says if a playhouse doesn't conform to the size, then it requires a variance based on the city's zoning laws. Whether a variance is defined as something that is hardship or not isn't something they can avoid. They have to apply for a variance whether they have one or not. Therefore, the playhouse being a playhouse is for children. This is not a variance issue, but by the zoning laws they are forced to apply.

Mr. Zalinger asked if there were any tools stored in the playhouse. Mr. Zalinger said he would say no if anybody wanted to store tools in there.

Mr. Zalinger said the next criteria is that the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property located or substantially or permanently impair the use or development of adjacent property. They can conclude that it is harmonious with the other essential residential characteristics of the neighborhood and it is not going to affect the use or development of adjacent properties, or at least by which the Turners testified by their letter.

Another criteria is that the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulations and from the Montpelier Municipal Plan.

Mr. Blakeman said the Board often has variances for porches, patios, swimming pools, decks and even sometimes a tool shed. When you think about hardship, do you have to have a swimming pool in Vermont? This playhouse means something to the family. What is wrong with having this playhouse in the yard at that particular location?

Mr. Hoff said he agreed with Alan to an extent. The Board has granted variances for porches, enlarging kitchens for growing families, living room space, etc. How do you grant one and not the other? Is the kids' use of the playhouse less important than the use of a deck for grownups? He doesn't think so.

Mr. O'Connell said he thought Alan's point is well taken.

Mr. Pfeffer said he has personally received variances as a builder for decks and porch steps.

Mr. Hoff said he thinks there has got to be a way to get the playhouse into the area behind the garage so you can have the playhouse and be in conformity, whether it is on a pallet jack or whatever, because it is 25 feet wide and the playhouse is 8 feet.

Mr. Pfeffer said it would fit, but the truck wouldn't go around the corner. This is the location where it makes the most sense. It is the furthest away from the Weiss property. It is in a spot that is invisible and would be utilized. It's not just their kids but the neighborhood kids who will be coming over to use the playhouse.

Mr. Hoff moved approval for a variance at 47 Liberty Street, with Mr. Blakeman seconding the motion. The variance request was denied by the DRB on a 5-1 vote. Mr. Blakeman voted in favor of the motion.

VII. Site Plan, Demolition and Design Review – HDR/DCD

170 Main Street/3 Scribner Place

Applicant: City of Montpelier

Demolition of the house at 3 Scribner Place and Montpelier Middle School Site Improvements.

Interested Parties: Don Lorinovich, Montpelier Public Schools

Ryan Ewell, Gossens Bachman Architects

Cynthia Knauf, Landscape Designs. Inc.

Mr. Zalinger administered the oath to witnesses regarding the application.

Mr. Richardson disclosed he is a neighbor across the street from the Main Street School and he didn't feel he could vote on the application. He recused himself from participating in the discussion.

Mr. Ewell said the whole plan rests on the demolition of 3 Scribner Place, or at least a significant portion of it. They have had discussion in the past about its qualifications for historic registers and the position seems to be that the house would be better demolished and make use for the public use of the playground.

If you begin at the front of the school, they are leaving the existing walkway to the main entry the same width as it is now but putting in pervious concrete pavers which will reduce icing and shoveling during the winter. This will give the students a place to actually congregate before and after school by widening off the sides of the existing walkway with some concrete and benches and plantings. Heading towards the gymnasium entry, right now the parking lot goes right up to the building itself. There is no designated pedestrian area and not even a marked entry into the gym, which is pretty well used. They are proposing a canopy with signage to mark the entry into the gym. They aren't eliminating any parking spaces but restructuring the parking lot and taking it away from the face of the gym. Instead of having the asphalt lead in they are having a marked pedestrian area, which also serves as a way for handicapped vehicles to exit safely. Another note about that area is that currently buses come in on the driveway back to the dumpster pad. The handicapped bus comes in and turns around to pick up and drop off students in wheelchairs, so that is something they are looking to maintain and facilitate.

They are proposing a dumpster screen wall just to screen the view of those dumpsters from the kids playing and from the neighbors. There will be vines growing up the screen and it will be sturdy enough to withstand incidental damage. The concrete pad is for the dumpsters and the recycling bins. There is not currently one there now,

They are proposing a basketball court and four square courts. The brown they see in the photos is all mulch, which will have log seating in it that can be moved around by the kids and new shade trees as well.

As they come around to the back where the main part of the playground is there is just a painted compass on the ground with some seating around it. There is a long arched wall, which is a seating wall, which will allow that to be used as an outdoor classroom. If you follow along the building the asphalt turns into a boardwalk in the gravel. What this is doing is creating a continuous handicapped accessible path or route all the way to the cafeteria entry. With the cafeteria entry they are proposing a new handicapped accessible entry into an existing interior ramped landing. That will serve as the primary entrance and exit for students using the playground.

There is no change to the parking lot to the west. There will be some experimental planting beds by the Peck Place gate. Those are at student request. It's a great idea, and hopefully it will work out. There has been discussion about who will maintain them in the summer, and there are some interested parties. There is some new equipment – a new swing set, tetherball and they are making an actual designated area for soccer. The soccer and basketball areas will have higher fences so they are consolidating the ball activities and allowing them to keep the fences low elsewhere where is really is no need for the 12 foot fences that exist now. Those are the primary features at this point.

Mr. O'Connell asked where the demolition was occurring. Scribner Place is the area directly next to the small parking lot in front of the gym, right? Mr. Lindley asked if it was the back building or the front building.

Mr. Ewell said it is the small back building, which is actually a small percentage of the original building. It has actually been relocated to that location. It is an abandoned building where people used to come up and rent on occasion, but it hasn't been inhabited for some time now and is falling down.

Mr. Lorinovich said the building was purchased in the 1980's by the school system and part of it was a life tenancy in the building for two gentlemen who lived in New York City. They grew up there. They came back for two weeks every two years and wanted to stay in their house. The tenancy went on for their life and a couple of years ago they both passed away. They were only there probably two weeks out of two years for the last 28 years.

Ms. Hallsmith said there are a few sets of minutes the DRB has been given regarding the property. One is from the City Council's meeting from last year and the others are from the DRC meetings. The City Council considered a number of different options to rehabilitate the property, and those are outlined both in their minutes of December 12th and January 9th and in a memoranda Gwen prepared with Bekah Mandell when she was the

interim community development specialist. One of the options that were explored was rehabilitating the house in its original location. Another was moving the house to the front. Another was using a nonprofit partner like Habitat for Humanity to relocate the house and rehabilitate it. Still another which was suggested to us at one of the meetings with the School Department by the Fire Department was to move it back to Cross Street when it seemed that moving it up to Main Street was objectionable. Moving it back to Cross Street would have the required the school to redesign the entire playground project, however, because currently the soccer field is based back there. It would still be on school property but towards the back.

Ms. Hallsmith said there are a number of issues with the alternatives, not the least of which is the cost. It is a fairly extensive rehabilitation project. The city would want to do it to maintain affordable housing and the level of subsidy that would be required would be substantially more than it would cost for the city to subsidize the construction of some new housing in the community. That was one of the factors that the City Council and the School Board took into consideration when they were considering all of the alternative possibilities last year.

Mr. Lindley said it seems the plans for the playground look like they are well in order and have been worked over pretty heavily. The only thing the Board is required to do is to have to come up with the criteria for the demolition of a building. He believes Board Members will agree that the design meets the required criteria.

Mr. O'Connell said he would agree with Mr. Lindley. There is a lot of material in the packet. The real issue before the DRB is the site plan and not the specific design element. He asked Gwen Hallsmith if all demolitions anywhere in the city are to come before the DRB.

Ms. Hallsmith said yes, that it is part of the new zoning ordinance. It is §310 of the zoning. There are a couple of cases laid out in the zoning. One is that pretty much any demolition that comes before the community as a private development. The other case is a demolition that comes before the community that has substantial municipal and/or community benefit. Demolitions that are merely for private purposes need to demonstrate if they are having an impact on historic properties that there is a hardship associated with the maintenance of the building and its condition. If you think variance hardships are hard to prove, hardships for demolition are even more difficult. It's a lengthy set of materials that have to be provided to prove hardship and a fairly high standard for how you will consider them. However, in this case, because it is a playground that will serve both municipal and community purposes the applicant does not need to prove hardship for the Board to approve the demolition. They would consider instead the plan that they have for the demolition, the renovation, the protection of any of the neighbors and area from the results of the demolition, and the redevelopment plan. It is in §310 (B)(1)(a).

Mr. Hoff asked if the applicant will have to prove clear and substantial benefit to the community that the project is.

Mr. Ewell said they are basically removing a potentially hazard right now, which is an abandoned house that is falling down, and replacing it with a place for kids to play which is significantly improved from the gravel lot they have now.

Mr. Zalinger said the first way to proceed is to consider the site plan elements because that sets the table for the entire project. Site plan elements the staff has run through some of them. It doesn't appear there are going to be any street, pedestrian access, circulation, vehicular access and circulation impacts. Regarding the parking and loading, the staff believes it is not entirely clear how many parking spaces currently exist and how many will be in this proposal. Could the applicant address parking and loading for the DRB?

Mr. Ewell said the main issues in terms of vehicles to address is for parking the same number of spots that were here, including handicapped spots, is being maintained and the same spots are being maintained on Franklin Street as well. In terms of loading and people who deliver food to the cafeteria, they are not allowed to back up because there could be kids back there. It's an insurance and liability issue. They actually have to drive all the way around the building, and they have allotted for them to be able to do that. They have also accounted for plowing and fire truck access.

Mr. Lorinovich said one other item is in front of the school, too. There are presently plans to do a couple of bulb outs in front of the school instead of just a straight place for people to pull in and unload more safely in front of the school. Mr. Ewell said that is part of the Safe Routes to School Program.

With regard to landscaping and screening, it appears that an extensive landscape plan has been incorporated. It says there is no lighting proposed, but Mr. Zalinger said it is his understanding that the DRC has suggested that there be lighting at the basketball court. Mr. Ewell said they planned on running wires for future lamp posts, although it is not part of this project. The DRC put it in as an option so they wouldn't have to come back for another permit.

Bruce Rowe, a resident at 4 Peck Place, said he sent in a letter. His concerns are with the fence line on the property which adjoins his property. The new site plan indicates that the new fence would follow the property line rather than the current fence line. The fence now is mostly on school property. The other issue he has is with the actual height of the fence and the amount of objects that have been tossed over in the past. The current fence next to his house is about 12 feet tall. The proposed fence is 8 feet tall for the entire length. The other concern is with the trees that are in the fence line right now. Some of them have grown into the fence.

Mr. Zalinger asked if that was an element of maintenance.

Ms. Hallsmith asked if he was thinking they need to be taken out as the fence gets taken out.

Mr. Rowe some of the trees will have to be removed. He would have no objection to that, and would prefer that.

Mr. Zalinger said this is a multi-dimensional site so it is hard to identify precisely where your property is. Is it fair to say from his perspective he believes the height of the fence should be increased?

Mr. Rowe said if it is a soccer field he doesn't know how many balls will come over the fence. In the past he has had quite a bit of trash and debris from the playground.

Mr. Hoff asked how far back did his house set back from the fence. Mr. Rowe said it is between 4 and 5 feet.

Mr. Zalinger asked if the applicant had a response to Mr. Rowe's two comments about the fence being decreased by 33 percent from 12 to 8 feet, and the fence line is now going to follow the property line rather than its former location.

Mr. Ewell said for kids playing any kind of sport an 8 foot fence is adequate to stop a large percentage of those stray balls. There is a small percentage that may go higher than that and they also have a significantly increased chance of also going higher than a 10 foot or 12 foot fence. Also, a 12 foot fence is visually detrimental to the entire area. It will be a black vinyl coated chain link fence. He would like to use high fences as sparingly as possible. Part of the main concept of this was isolating and grouping the sports areas so they could have higher fences in those locations, and those locations only. To address Mr. Rowe's house, he would entertain raising the fence if it were going to be beneficial. Even at 8 foot none of the windows on the first level could possibly be hit. Hitting the house might be possible, and getting over the fence is possible. In terms of the fence being on the property line they will certainly address that issue.

Mr. Rowe asked what he proposed about the removal of the trees.

Mr. Ewell said he agreed that the fence does go right through the middle of some of the trees, but he doesn't necessarily agree they have to come down. They could trim the fence and leave them there. All of those trees, the box elders and cedars are doing a wonderful job of keeping balls away from the house, and they would actually work in place of a ball fence. Removing the trees and enlarging the fence would be counterproductive.

Mr. Zalinger said the DRB isn't often the location for the negotiation of neighbor to neighbor issues. Can they consider the application is amended to show the new fence line along the existing fence line, that the neighbors

will discuss the trees amongst themselves? His inclination with regards to the height of the fence is to defer to the architects.

James Moore, a resident of 5 Peck Place, asked if the fence was going to be in the existing line or is it changing location to the other side of Peck Place. What will the entrance be between the playground and Peck Place? Right now there is a carved out hole in the fence and the big gate there isn't functional most of the year.

Mr. Ewell said that is something that wasn't resolved earlier. There is a little trellis arbor gateway with no gate, with the idea it would be used to transition the part of the fence which is a vehicle gate and the other part of the fence which would run off towards the nets. It's in the same location.

Mr. Moore said that is less ideal from their perspective because their place is literally sitting right there on the corner so it is below the one window they have in the bedroom and next to the two windows they have in the living room. There is a fair amount of traffic that goes through there in the evenings. The other question he raised for consideration is the fact that the snowplow comes from both directions to that spot during the winter and there are snow banks that are 12 feet high at times.

Mr. Zalinger said the DRB will move on to the design review issues. In the final analysis the DRC recommended approval with the conditions that the existing trees be caged. Mr. Ewell said he is in agreement with having the alternate for the cutoff fixture by the basketball court. He isn't convinced that cages around the trees are necessary.

Ms. Hallsmith said it says caged or protected.

Mr. Ewell said they are protected by the granite benches.

Mr. Zalinger said he didn't see how the conclusion that the DRC came up with that trunks of trees will be caged or protected. It doesn't appear to him that it arose in connection with any of the criteria.

Mr. O'Connell asked if the DRC's concern was primarily about plow damage.

Mr. Ewell said specifically for the six trees by the main entry. That is one of the reasons they widened the walk beyond the red to accommodate the seating. It was also because that accommodates the tire treads of the plow truck which right now plows the walk and the tires perfect fall onto each side of the walk and dig it up. They thought the granite benches would provide some discouragement for plowing into the trees. The flower beds are flush and can be plowed over if necessary. Historically, the photos showed there were shrubs there. Shrubs will be terribly damaged by dumping snow on them and the trees can resist that.

Mr. Hoff said he is inclined to agree with the Chair and doesn't see how that is a design review element. Mr. O'Connell said he doesn't see where they logically get to that point from the explanation. It's not even landscaping.

Mr. Zalinger said they were ready to move on to the demolition criteria.

Mr. Blakeman asked if the house had been advertised for free to take away, or will it be?

Mr. Lorinovich said at the present time they are talking to Recycle North about tearing it down.

Mr. Blakeman inquired how many rooms were in the house. Mr. Lorinovich said there were three bedrooms upstairs, living room, kitchen, dining area in the downstairs. Mr. Blakeman said it galls him that we have homeless people all over the place, and we are expecting more with the economy the way it is. Mr. Lorinovich said Gwen talked about the expense to make that livable.

Mr. Ewell said it has a lot of things unfortunately against it. There's an oil spill in the basement; there is a lot of asbestos; the chimney fell off the other day. The house is just really in rough shape. There is a fund for

remediation as part of the demolition. Mr. Lorinovich said it was done a year ago and now all they have to do is take the soil out. They have talked to the state and they have agreed to wait until the Superfund grant money kicks in.

Mr. Blakeman said he had a question about Peck Place. Can anyone go in and out of that entrance?

Mr. Ewell said yes, as it is now, and as it will be, and from Cross Street as well.

Mr. Zalinger said this is a historic structure because it is in excess of 50 years old. Demolition is prohibited unless the DRB approves the demolition and site restoration plan, and the Board finds that the demolition is part of a site development plan and design plan that would provide clear and substantial benefit to the community. As one member of the Board, he has no problem in drawing that conclusion and making that finding.

Mr. O'Connell said he would agree and the Zoning Administrator Clancy DeSmet also didn't malice the Board on that.

Mr. Zalinger said he believes they have to make separate findings because there is site plan, design review and demolition, so they should proceed separately in the order the Board heard the evidence.

Site Plan Review:

Mr. O'Connell moved to approve the site plan as amended by the evidence presented to the Board tonight, which is to modify the fence line to where it exists now. Mr. Blakeman seconded the motion. The motion to approve the site plan review for 64 Main Street was granted on a 5-0 vote, with Dan Richardson not voting.

Design Review:

Mr. Zalinger said to bear in mind they can't proceed with the recommendations advanced by the Design Review Committee in the consent mode because the applicant is unwilling to accept the proposals regarding caging or protecting the trees. Mr. Hoff moved design review for 170 Main Street with the DRC's optional change that a cutoff fixture may be installed in the basketball area, and without the adjustment to the scope of the proposal that the trees be caged. Mr. O'Connell seconded the motion. Design review approval was granted on a 5-0 vote, with Dan Richardson not voting.

Demolition of 3 Scribner Place:

Mr. Hoff moved approval for demolition of the structure located at 3 Scribner Place as proposed, with Mr. O'Connell seconding the motion. Mr. Zalinger said he would like to offer a friendly amendment to articulate the motion that we approved the demolition because the site development plan would provide clear and substantial benefit to the community. Mr. Lindley said he also thinks they have to make a finding that it is not cost effective to save the building. Mr. Zalinger said they only have to meet one section of the criteria.

Mr. Blakeman asked if the amendment allows Recycle North to tear the building down. Mr. Zalinger said it doesn't prohibit it.

The motion for demolition of 3 Scribner Place was approved on a 5-0 vote, with Dan Richardson not voting.

Adjournment:

Upon motion by Mr. Blakeman, seconded by Mr. O'Connell, the DRB adjourned.

Respectfully submitted,

Gwen Hallsmith, Director
Planning & Community Development