

Montpelier Development Review Board
September 2, 2008
City Council Chambers, City Hall

Subject to Review and Approval

Present: Jack Lindley, Acting Chair; Alan Blakeman, Daniel Richardson, Jeremy Hoff, and Roger Cranse. Philip Zalinger, Chair, arrived for the third item on the agenda and resumed Chair.
Staff: Clancy DeSmet, Planning and Zoning Administrator

Call to Order:

Jack Lindley, Acting Chair, called the September 2, 2008 Development Review Board to order at 7:00 P.M.

I. 11 Berlin Street – GB/DCD

Applicant: William Parker
Owner: William Parker
Repaint building.

Mr. Lindley asked if Mr. Parker had any objections to the proposed findings by the Design Review Committee. Mr. Parker replied he was okay with the DRC findings.

Mr. Blakeman moved approval of 11 Berlin Street for the proposed paint job with the DRC options. Mr. Cranse seconded the motion, and it was approved unanimously on a 5 to 0 vote.

II. 31 Barre Street – CB-I/DCD

Applicant: Sign Design, John Miller
Owner: Jeffrey Jacobs
Sign.

Mr. Blakeman said under staff and advisory comments the applicant may pursue at his discretion the placement of additional shrubbery/plantings around the base of the sign. Does that mean the applicant has to have shrubbery?

Mr. Richardson said he reads that as an option. It is his experience from the DRC that such optional changes are simply given to the applicant so they don't have to come back before the DRC if they choose to expand the scope slightly to add such features.

Mr. DeSmet said there is shrubbery in front of the porch and the DRC wanted them to do shrubs but didn't require them to. They thought it would look nice if they extended the shrubs to where the sign is so it wouldn't be so bare.

Mr. Lindley said if the applicant was in concurrence with the proposed findings and recommendations by the Design Review Committee they would like to know.

Mr. Richardson moved approval of the application for a street sign at 31 Barre Street for the building and installation of a sign. Mr. Hoff seconded the motion. The motion was approved on a unanimous vote of 5 to 0.

Philip Zalinger, Chair arrived and assumed chair duties of the meeting.

III. Variance Request – MDR – 12 George Street

Applicant: Thomas Longfellow
Construction of a second story deck within rear yard setback.

Mr. Zalinger administered the oath to Mr. Longfellow.

Mr. DeSmet said the applicant purchased the property in 2007, built a single family home with the intent of building a deck on the rear of the building and never did. Now they are here to ask for a variance to the setback to build the deck.

Mr. Cranse asked if the variance was 5 feet. Mr. DeSmet replied yes.

Mr. Hoff asked the applicant that when he bought the piece of property was it vacant. Mr. Longfellow said it was undeveloped. There hasn't been a structure there in recent history.

Mr. Zalinger asked if the deck would only be on the second floor. Mr. Longfellow said yes.

Mr. Zalinger asked if the design for the house included a deck. Mr. Longfellow said the original design did not.

Mr. Zalinger asked if the deck was going to be constructed with posts. Mr. Longfellow said yes.

Mr. Blakeman said there are neighbors just over the hill from him. Were there any objections from them?

Mr. Longfellow said he had a letter from their neighbors to the rear to submit for the record. It states in the letter that they have no objections to the rear deck.

Mr. Zalinger asked what the width of the deck was. Mr. Longfellow replied 20 feet wide and the depth is 15 feet.

Mr. Zalinger said the granting of a variance is not as simple as getting an affirmative vote from all of the neighbors. There is criterion in the ordinance they have to determine the application meets.

Variance Criteria: §1006.B(1)(a)-(c)

- a. *That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lots size or shape, or exceptional topographical or other physical conditions peculiar to the property, and that unnecessary hardship is due to such conditions, and not the circumstances of conditions generally created by the provisions of the zoning regulation in the neighborhood in which the property is located.*
- b. *That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property*
- c. *That the unnecessary hardship has not been created by the appellant, and the hardship relates to the appellant's land, rather than personal circumstances.*

Mr. Zalinger said very often the Board is faced with buildings that have been developed long before the zoning ordinance was adopted in the city so people have houses already in the setback. He said he has been on the Development Review Board for more than 22 years and he doesn't believe they have ever had a variance sought by an applicant who actually had built the house themselves. As a consequence, because he built the house so recently, the need for a variance could actually be said to have been caused by him building the house. For him that creates an obstacle because the hardship was created by the appellant.

If the Board granted a variance for a minimum lot size of 10,000 square feet, and they granted a variance to create a lot of 8,000 square feet, then the applicant would need a variance under some circumstances to build anywhere around the house because the house would be so small they would be in the setbacks immediately. The criteria say the hardship has not been created by the appellant.

Mr. Zalinger asked if there was another way he could configure the design of the stairs. It looks like he is going to lose a considerable amount of the usable deck area from having the stairs centered. What is the depth of the stairs?

Mr. Longfellow said it was about 3 ½ feet.

Mr. Zalinger said he would lose 3 ½ times 7, or about 25 square feet of deck area there. All of that is going to be in the rear yard setback. If he could make the deck a little narrower and minimize the variance, and relocated the steps they wouldn't be losing as many square feet as they might otherwise.

Mr. Longfellow said they are trying to have a 15 foot wide deck on the back.

Mr. Zalinger said that portion of the deck that is 15 feet deep is only two sections of it 6.5 feet wide. If you take it back to 10 feet he wouldn't need a variance at all.

Mr. Hoff said it is good he has 10 feet and a lot of width to work with and a lot of potential to reconfigure the deck, but he doesn't find that any of the first three criteria are met. He doesn't see how he can vote to support the application.

Mr. Zalinger said usually the premise behind a variance is that there is some circumstance around the lot, and it could be the way the house is placed on the lot and if the lot was created before zoning was adopted, or the house was constructed before zoning was adopted, then the hardship hasn't been created by the appellant. In this instance he just constructed the house so it is a weak premise for the Board to begin their analysis. If he came back and wanted to build a deck that was 12 feet deep, and use all of that square footage, he could probably support a 2 foot variance because it would all be usable space. There is going to be a lot of lumber wasted with a 15 foot deck. 10 feet is not very deep for a deck.

Mr. Cranse said he would also note that the lot is a conforming lot and therefore the unique physical circumstances, i.e., narrowness, shallowness, etc. are not applicable.

Mr. Longfellow said if his application doesn't meet the criteria he will withdraw the application.

Mr. Zalinger said the Board considers it withdrawn.

IV. Variance Request – LDR/MDR – 8 Sunset Avenue

Applicant: Mark & Dorothy Redmond

Placement of a storage shed within front yard setback.

Mr. Zalinger administered the oath to Mark Redmond.

Mr. DeSmet said Mr. Redmond would like to build a 10 x 14 square foot shed within the front yard setback at 8 Sunset Avenue. The lot doesn't have the frontage of MDR so he considered the setbacks based on LDR. The lot has both MDR and LDR, which is what the ordinance requires. The setbacks would be 20', 30' and 75'. He wants to build a shed within the setback. A 9 foot variance has been requested.

Mr. Redmond said at one time on that lot there was a mobile home. That is where he wants to put the shed.

Mr. Hoff asked if he had a garage on the property. Mr. Redmond replied no. Mr. Hoff asked where he was storing the snow blower currently. Mr. Redmond said he is storing it underneath the deck. They also have a riding lawnmower and there is no place to store it. That is why they want to build a shed. If he had the shed in the back part of the lawn he would have about 104 feet he would have to snow blow just to get to the driveway.

Mr. Hoff asked if there was any reason why he couldn't continue storing the snow blower under the deck now.

Mr. Redmond said he supposed not, except when he digs it out every time it snows. The riding lawn mower was not cheap and he would like to store that, and that would go into the shed.

Mr. Hoff said he could certainly understand why he wanted the shed, but he is wondering why the shed has to be located in a 25 foot setback.

Mr. Redmond said it is hidden and the neighbors aren't going to see it, which he took into consideration in the plans. It is handy right there and not very visible.

Mr. Zalinger said if he moved it straight back 11 feet he wouldn't need a variance.

Mr. Redmond asked if they were talking about 11 feet straight back from the street. Mr. Zalinger replied yes. Mr. Redmond said it was 11 feet already where he proposed to have it. Another 11 feet back will put it on a side hill.

Mr. Zalinger said they had just reviewed the criteria and what the Board is trying to signal to him is that this is a large lot with a lot of area and based upon the site plan he sees the driveway is right next to the house and the shed would be set back 11 feet from Sunset Avenue. If the applicant just moved the shed back 11 feet from where he proposed it there would be ample room on the lot to put a shed without a variance. He could put the shed closer to the driveway to make it easier to snow blow.

Mr. Redmond said he could put the shed closer but it won't be level. He would have to put fill in to meet that accommodation, and that starts to get expensive.

Mr. Blakeman said one of the things in Mr. Redmond's favor here is that he is against some pretty tall trees.

Mr. Redmond said Murray Hill can't see it and his two neighbors across the street have no problem with it.

Mr. Hoff asked where the deck was located on the house. Mr. Redmond said it is on the back of the house.

Mr. Hoff asked if you could walk underneath the deck. Mr. Redmond said if you duck your head, probably 6 feet. It is enclosed with lattice work around it.

Mr. Zalinger said if you review the criteria, the first one states that there are unique physical circumstances or conditions with irregularity of narrowness or shallowness of lot size or shape, or other

exceptional topographical or physical conditions peculiar to this particular property and that unnecessary hardship results from those conditions and not the circumstances or conditions generally created by the zoning regulation that is the setback in this particular neighborhood.

Mr. Cranse said he did not believe that this property meets those conditions or circumstances.

Mr. Zalinger said this is a fairly sizeable lot and there is an ample area to place a shed almost anywhere. The testimony that there is a slight incline in the area where you want to put the shed doesn't strike him as being an exceptional topographical condition.

When you go on to the second criterion, that because such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the zoning regulation and that a variance is necessary to enable the reasonable use of the property.

Mr. Richardson said he believes the lot is developed to being used reasonably, and above that there is a multitude of options for accomplishing their objective without needing a variance.

Mr. Zalinger said the third criterion is that the unnecessary hardship is not being created by the appellant and the hardship relates to the land rather than personal circumstances. Frankly, he thinks Mr. Redmond has chosen to place the shed here and set out to obtain a variance. It is not as if his options were limited elsewhere on the site. While they recognize that one of his objectives is to keep the shed shielded from the neighbors and elsewhere, that is only partially one of the criteria that the Board has to abide by.

Later, there is another criterion that says the variance will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property. Under that criterion the DRB can take into account its visibility from elsewhere. Certainly, it is laudable, but by itself doesn't appear that the applicant meets the variance criteria to build it that close to Sunset Avenue.

Mr. Blakeman asked if he was going by the LDR designation. Mr. Zalinger replied that was correct. If the house were built in 1934 there would be no sense in having the shed way back. It seems he is caught between the MDR and LDR zoning line. It seems that Mr. Redmond would have to be penalized on this. Because everything is closer to Sunset Avenue itself, why have his utensils way back?

Mr. Zalinger said he agreed with Mr. Blakeman. If he were to build a deck or new front step or porch on his house, then he would be happy to grant a variance because the house is already in the setback and you can't build a deck or front porch on a house if it is in the setback without granting a variance. But this is an independent separately constructed shed and it doesn't appear there is any rational topographical or physical reason why it has to be 11 feet closer to Sunset Avenue than it could be to conform to the zoning ordinance. He has a hard time meeting the criteria with this application.

Mr. Richardson asked how far the public right-of-way extends in front of his house.

Mr. DeSmet said it is approximately 33 feet from the center.

Mr. Richardson asked if it were fair to say he was relying upon the tax map presentation of the right-of-way. Mr. DeSmet replied yes.

Mr. Zalinger said continuing with the criteria, under section (c) that the unnecessary hardship is not being created by the appellant, and the hardship relates to the applicant's land rather than personal circumstances.

Section (d) states that the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare. (e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the Montpelier Municipal Plan; and (f) The variance will not result in the initiation of a nonconforming use of land.

Mr. Zalinger said he is satisfied that criteria (d), (e) and (f) are arguably satisfied. He can't support the application based upon criteria (a), (b) or (c).

Mr. Hoff said he would concur with the Chair remarks, and he doesn't think criterion (f) is met, either, since this is essentially a free standing structure within that setback.

Mr. Zalinger said it is a nonconforming use and not a structure.

Mr. Cranse said he also agreed with the Chair.

Mr. Blakeman said they are talking about a dead end street, and the fact that there is a line going through the LDR and MDR zoning areas creates a dilemma.

Mr. Zalinger inquired what the setback was for MDR. Mr. DeSmet said it is 10, 10 & 30.

Mr. Hoff said there is a specific ways that the zoning tells you how to deal with that exact situation, so we have to follow what the ordinance says. In order for the least restrictive zone to apply you need to have frontage in the least restrictive zone, and that's not the case.

Mr. DeSmet said since it doesn't have frontage in the less restrictive zone, which is MDR; he had to go by the setbacks required for LDR, so that line in this case is irrelevant.

Mr. Lindley inquired if an MDR was created for Murray Hill.

Mr. Zalinger said he believed the MDR is the PUD zoning designation.

Mr. Hoff moved approval of the variance at 8 Sunset Avenue, with Mr. Richardson seconding the motion. The motion was denied on a vote of 5 to 1.

V. Variance Request – MDR – 232 Berlin Street

Applicant: Garth Genge

Construction of a two car garage with an apartment above within the side yard setback.

Mr. Zalinger administered the oath to the applicant, Garth Genge.

Mr. DeSmet said Mr. Genge proposes to build an addition on an existing garage that will include a second story apartment. The main structure was built in 1950 and the lot was created prior to that. The current garage is already 4 feet from the property line. The setbacks in medium density zoning are 10 &

10 & 30, so he already has a nonconforming structure and he is only expanding it forward approximately 20 feet within the same line. There is an existing shed or garage on the property. He is expanding the current structure approximately 20 feet forward towards Berlin Street, and it is within the same nonconforming line of the existing structure. He would like to create an apartment on top.

Mr. Richardson asked if the width of the structure would be expanded, just inward.

Mr. Genge replied it would be expanded between the existing house and the space that is there to allow for the stairs going up to the second floor apartment.

Mr. DeSmet said there is enough parking.

Mr. Blakeman asked Clancy DeSmet if the apartment would be treated like an in-law apartment or accessory apartment.

Mr. DeSmet said that would be up to the applicant.

Mr. Genge said it doesn't really fit the criteria for an accessory apartment.

Mr. Blakeman said the reason he was asking is because everything else in the area seems to be a single family home.

Mr. Genge said there are other homes that have accessory apartments in them, though not immediately adjacent but in the area.

Mr. Blakeman asked if he was going to be using the garage for cars.

Mr. Genge said the new garage he would be.

Mr. Blakeman said he noticed there were a lot of trees around the property.

Mr. Genge said he and his neighbor have been talking about taking the trees out regardless of what happens because the trees are encroaching on both sides.

Mr. Blakeman said the apartment will actually be a separate unit from the house. Mr. Genge replied yes.

Mr. Cranse asked if he would be keeping the current structure of the shop. Mr. Genge said yes, the apartment will extend back over that also.

Mr. Zalinger inquired what the depth of the existing shop was. Mr. Genge replied 20 feet.

Mr. Zalinger asked when he adds the two car garage on the front, what will that be. Mr. Genge said he believed the full length is 40' 3"; not including the back shed area.

The DRB reviewed the Variance Criteria.

Variance Criteria: §1006.B(1)(a)-(f)

- a. *That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lots size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and*

not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The house was built in 1950 and the lot was created previous to that. All of the lots in the area were created about the same time. The lot was created previous to the zoning because there is not a house on the street that meets the setback requirements.

- b. *That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property.*

Mr. DeSmet said Mr. Genge did the calculations on the zoning permit application. He said he didn't double check them. Existing is 12 percent, and the proposed is 18 percent. Mr. Genge said he thought the math is pretty close.

- c. *That the unnecessary hardship has not been created by the appellant, and the hardship relates to the applicant's land, rather than personal circumstances.*
- d. *That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.*
- e. *That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the Montpelier Municipal Plan.*
- f. *The variance will not result in the initiation of a nonconforming use of land.*

Mr. Genge said in developing the plan he did talk to his neighbors.

Mr. Cranse said he noted that the lot itself is nonconforming and smaller than the minimum lot size resulting in narrowness, and the proposed new structure doesn't increase the encroachment in the setback from what the current situation.

Mr. Zalinger said he would point out that it doubles the mass of the encroachment.

Mr. Lindley said it still falls within the 33 percent coverage.

Mr. Zalinger said the length of the encroachment now is 20 feet, and the proposed length of the encroachment will be 40 feet. It will be two stories where the new construction will occur whereas it is one story now.

Mr. Blakeman asked how tall his addition would be. Mr. Genge said it would be 6 foot walls on the side, with a foot for the floor, so the peak will be 7 feet higher than the existing peak is now. His guess would be 20 feet 1 inch.

Mr. Zalinger asked Mr. Genge to tell the Board more about the topography in the rear of the house.

Mr. Genge said on Berlin Street every house steps up and they didn't step up the backyards. They just flattened out an area for the house and garage and let it fall off. Right behind his house there is 10 to 12 feet before you go to a steep drop off. It drops to between 6 and 8 feet depending whether you go to a slight slope or flat level, and that curves around the house and then goes around behind the garage. The lot next door is about 4 ½ to 5 feet higher off the garage from the elevation, so that is another reason it doesn't impact on them. It probably won't get much above their first floor when it is completed.

Mr. Zalinger said one of the photographs shows the house down hill.

Mr. Genge said that was to show what the front profile would look like. The driveway to the right of that house is the driveway to next door. Up and down that block everybody is one to two feet of their side setbacks with their garage or driveway.

Mr. Zalinger said he was looking at the topography of the garage to the west down hill you get a feel for how steep the land is from the rear. That garage is several feet below Mr. Genge's is.

Mr. Richardson asked if it would be fair to say it would be difficult to build what he is proposing behind his house within the 10 foot setback.

Mr. Genge said access would be extremely difficult.

Mr. Richardson moved approval of the variance at 232 Berlin Street, with Mr. Lindley seconding the motion. The motion to grant the variance at 232 Berlin Street was approved unanimously on a 6 to 0 vote.

Review of DRB Minutes of July 21 and August 18, 2008:

Present for the July 21, 2008 were Board Members Zalinger, Blakeman, Richardson, Lindley and Hoff. Mr. Blakeman moved approval of the minutes of the July 21, 2008 DRB meeting, seconded by Mr. Hoff. The Minutes of the July 21, 2008 Development Board Meeting were approved 5-0.

Present for the August 18, 2008 were Board Members Blakeman, Richardson, Lindley, Hoff and Cranse. Mr. Richardson moved approval of the August 18, 2008 minutes, with Mr. Hoff seconding the motion. The Minutes of the August 18, 2008 DRB meeting were approved on a 5-0 vote.

Adjournment:

Upon motion to adjourn by Board Members Dan Richardson and Alan Blakeman, the DRB adjourned on a vote of 6 to 0.

Respectfully submitted,

Clancy DeSmet
Planning & Zoning Administrator