

Montpelier Development Review Board
October 19, 2009
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Alan Blakeman, Jack Lindley, Jeremy Hoff, Roger Cranse, and Kenneth Matzner.
Staff: Clancy DeSmet, Planning and Zoning Administrator

Call to Order:

The meeting of the October 19, 2009 Montpelier Development Review Board was called to order by Phil Zalinger, Chair.

Review and Approval of October 5, 2009 Minutes:

Upon motion by Mr. Blakeman and Mr. Lindley, the minutes of the October 5, 2009 were approved on a vote of 4 to 0.

Comments from the Chair:

Mr. Zalinger pointed out to Ken Matzner and Roger Cranse that if they are going to sit on matters they continued from October 5th, since they weren't in attendance they will assume they reviewed the minutes and application and materials provided to the DRB.

Mr. Zalinger asked Mr. DeSmet to review the zoning ordinance because there is a specific provision that relates to participation by members who have not been in attendance when testimony was introduced and under what conditions they can participate later.

I. Site Plan, Design and Conditional Use Review

34 Barre Street – CB-II/DCD

Applicant: Dance G.E.M., LLC – Reid and Carla Asaro (Bagel Store)

Owner: James Blouin

Change of use from retail to and eating and drinking establishment.

Mr. Zalinger administered the oath to Reid and Carla Asaro.

Mr. DeSmet said Dance G.E.M., LLC requests conditional use and design review approval for the change of use at 34 Barre Street to an eating and drinking establishment. They attended a Design Review Committee meeting last week and the DRC recommended approval of the application with conditions. Eating and drinking establishments are conditional use in Central Business II.

Mr. Zalinger said the Design Review Committee approved it with conditions. Mr. DeSmet said there were some exterior changes under adjustments and options. On page 2 of his report it discusses the options, adjustments and recommended approval.

Mr. Zalinger asked if the applicants if they were familiar with the options and adjustments that the Design Review Committee suggested. The applicants agreed they were. They relate to a variety of things, such as mounting hardware has to be within the mortar joints only and not into the brick fascia itself, rust resistant or rust free hardware, etc. Mr. Zalinger asked if they were in agreement with complying with all of the conditions. Ms. Asaro said yes, and she believes some were optional.

Mr. Zalinger said the DRB has three areas of jurisdiction. One is site plan; another is conditional use; and a third is design review. Design review is a two-step process. You went to the Design Review Committee. The Design Review Committee is advisory to the Development Review Board. Generally speaking, if the Design Review Committee is satisfied with an application and it makes recommendations or suggestions or offers an applicant options, unless Board members have particular questions or the public shows up with objections or questions the applicant doesn't need to go through another level of scrutiny on the issues that pertain to design review.

Mr. Lindley moved acceptance of the Design Review Committee's recommendations. Mr. Cranse seconded the motion.

Mr. Zalinger said the site plan jurisdiction deals with a variety of specific issues that arise under the ordinance.

Mr. DeSmet said there aren't many changes to the site. In the spring they are going to resurface and regrade and delineate the parking spaces. There are approximately 16 parking spaces currently at this location. An eating and drinking establishing needs one parking space for every three seats. They would only need about seven spaces and they have 16. There is no landscaping or screening. There is no excavation or storm drainage. There is pretty minimal site disturbance.

Mr. Zalinger said he notes that parking in front of the building doesn't require anyone to back into the traveled way.

Mr. DeSmet said it doesn't. They could get out.

Mr. Zalinger inquired about the sides.

Mr. DeSmet said there could be conflicts.

Mr. Asaro said it is a dead end street. Everything above the building is all private parking for the residents, and there is another 12 or 14 spots. There are three apartment buildings above them.

A member of the audience said there is an office across the way.

Mr. Zalinger asked if it was their plan to delineate all 16 of the spaces.

Mr. Asaro replied that was correct plus one handicapped space with proper spacing.

Mr. Zalinger said he didn't see that depicted on the plan. It's on the Downing Street side.

Mr. Asaro said it will be adjacent to the actual handicapped entrance to make it as accessible as possible.

Mr. Hoff said he noticed significant signage along the sides and in front of the building that says no parking. It seems to be right in front of the parking spaces. Is that customer parking only?

Mr. Asaro replied that is correct.

Ms. Asaro said they are proposing to have two signs on the front and two signs on the side that will be customer parking.

Mr. Lindley said where it says no parking on the board's diagram it will say customer parking.

Mr. DeSmet replied that was correct.

Mr. Hoff said it looks like the property line is a third of the way back from the building into the parking spot. Are these parking spaces in the street?

Mr. DeSmet said they are in the city's right-of-way according to their plans.

Mr. Asaro said that is a copy of an approval the Board did in 1989 for Blouin Paints. David Blosser took the same approval and used it. In actuality those lines are too far down. From the sidewalk up are the actual spaces that were allotted in 1989 for that building. That application had been approved in 1989 when it went before the DRB. When you pull in the stairs in front of the building actually come out 6 feet 2 inches so any type of seating they would do would be on that part which wouldn't interfere with the actual parking spots. The parking spots weren't directly up to the building. They started from the stairs back in the drawing they received.

Mr. Hoff said he was referring to the Downing Street side.

Mr. Asaro added there is no sidewalk on that side of Downing Street.

Mr. Lindley asked why they didn't have angled parking along the Downing Street side rather than pulling in direct. Is that for turn around purposes? He doesn't ever remember a parking issue for anyone visiting that store. That is for overflow parking, correct?

Mr. Zalinger asked Clancy if he had taken off the distance for the number of spaces in the front. All of the spaces should be 9' x 18'. Is there sufficient area there? The width of the lot shows it to be 60 feet. That would give seven spaces across the front. He said he didn't think the DRB has the authority to permit the use of a city street for private parking. If habit or course of conduct over time matures to that it is irrelevant for their purposes. He feels more comfortable reviewing or approving an application that had seven parking spaces across the front, met the minimum requirement and whatever plans the applicant has and the property owner has with the city the DRB doesn't have jurisdiction over city streets for parking. What that means, though, is that their handicapped space has to be one of the seven in front of the building which are all on the parcel that is either going to be owned or leased.

Ms. Asaro replied they couldn't do that simply because of the grade from where the front entrance is. The grade goes down. In order to have a ramp that meets code it would have to wrap around.

Mr. Asaro said the problem is that now you have somebody who has to enter the building by going up the city street, puts them out into the street where there is no sidewalk to get in the ramp that is on the side of the building and the back. They are trying to make it as user friendly for the handicapped by putting it right by the handicapped parking and designating it directly for them. If you are not looking at the side parking but yet people will end up parking there, if somebody is in a wheelchair the only way for them to access would have to be from behind the cars all the way up to the back and then come in. That is why they were putting it in that spot to make it as user friendly as possible.

Mr. Zalinger said more than half of that parking space isn't on the parcel that is owned.

Mr. Zalinger administered the oath to James Blouin.

Mr. Blouin said he would like to give a little history. First, he doesn't think that half of the space is the right-of-way, but the whole reason it has been paved is you will note that the retaining wall further up is in the same right-of-way which was approved as is the number of spaces by this board at another point in time. It was when they were paving it because there was a tremendous water problem from Downing Street. That side of the building was not paved but crushed stone. Tom McArdle was getting tired of having the crushed material running into the storm drains. What he is concerned about is the fact is that for years prior to this have received approval to park on that street with the same drawings. It is a little confusing to him. He appreciates what he is hearing and it makes sense to him, but it seems like there is some type of a grandfathered situation here where those are designated and approved parking spaces from the past.

Mr. Zalinger said unfortunately the only statement the DRB has is the words in the box that say "existing information from site plan dated 8/31/95 by Blackriver Design and approved by the Montpelier Planning Commission 12/7/98." They don't have the old file documentation. He is trying to avoid the issue.

Mr. Blouin said he appreciates they don't have the authorization. Who does? The parties he worked with in the past to do what they have been doing are still here.

Mr. Zalinger said the Technical Review Committee, which is Tom McArdle at the city level as opposed to the permitting level, generally speaking resolve these issues either favorably or unfavorably and find a common ground. He suspects that was the common ground that was found 20 years ago. He wasn't on the Planning Commission but the Zoning Board, but for site plan review they would have just gone to the Planning Commission.

Mr. Blouin said the biggest issue he has been dealing with is Downing Street snow. There is no place to put it except in his yard so he takes care of it. Do they need to talk to Tom McArdle about this for approval?

Mr. Zalinger added there are a couple of ways to resolve this. One is to get some comfort from the Technical Review Committee and get some input from the city departments about their view of the Board approving plans that show parking spaces in the public right-of-way. He doesn't want to send these folks off with a stamp of approval from the DRB and create precedent, especially creating precedent without input from the city.

Mr. Blouin asked if it would be possible to having approval contingent on that approval as opposed to having to wait for the next time the DRB convenes. He asks that only because they have been doing this for over 20 years.

Mr. Asaro said since this was approved in 1989 by the Zoning Board with this parking why does it not carry over to him going into that building. Why do they have to start fresh again?

Mr. Zalinger said they weren't starting fresh again. They don't have any records that tell us right here and now that this is the site plan that was approved.

Mr. Asaro said he received it from Clancy's office.

Mr. Clancy said he gave him a copy of it and asked them to ground truth it. He gave him a copy to be a baseline. He can't use an old plan to get a new approval.

Mr. Zalinger said the Board needs to have real factual basis and evidence that this is in fact the plan that was approved. He would want to see the approval itself.

Mr. Asaro said a copy of that was in the zoning office and had a stamp on it that said approved with the date. The only thing they did was cover the date up and copied it. They used the same site plan.

Mr. Blouin said if they would agree to approve this contingent on Mr. McArdle's input as to whether or not this is a situation that is acceptable and that the Technical Review Committee was okay with it, would that cure his concern about setting precedent? Tom was part of the process that long ago.

Mr. Zalinger said he has been part of the process every week since.

Mr. Blouin said he appreciates what their position is, but he doesn't think it is an issue. If they can just go to the place they need that signed off on they will be fine.

Mr. Zalinger said he understands why he is confident, but there is a leap between them acting as a Board and there being confident applicants.

Mr. Blouin added he just thinks he is resting his faith on what he knows to be.

Ms. Asaro asked if this was something the DRB would now submit in front of the Technical Review Committee or do the applicants.

Mr. Zalinger said they would refer this down to them. The Planning Commission granted site plan approval in 1998. Mr. DeSmet said he didn't know the details of it.

Mr. Zalinger said it is hard for the DRB to learn and study the old file on the fly with one copy for six of them. Legally, it would be called a condition subsequent. If the Board were to act on this application tonight with a condition that had to be complied with after the fact, if they granted site plan approval on the condition that the Technical Review Committee approved of the creation of 7 or 8 parking spaces on the Downing Street side, including the handicapped space, as depicted on this plan. If there were to be any change at all based on input from the Technical Review Committee it would have to come back to the Board anyway. The Technical Review Committee doesn't grant permits. They approve of plans and come to agreements with land owners and property owners to find a workable solution. Usually, that happens before it comes to us and the Technical Review Committee says they approve this plan based upon an understanding they have with a landowner and these are the conditions to be included in the permit. If they change that process and review it before the Technical Review Committee does, then the cart is before the horse and it is hard for the board to draft a condition. For example, the Vermont Department of Health and the City Building Inspector are going to have to approve an eating and drinking establishment so those are clearly defined identifiable permits they need to obtain in order to open for business. They could issue a zoning permit that said it's conditional upon the applicant receiving those identifiable specific permits. The Technical Review Committee doesn't issue an identifiable specific permit. They come up with an approval. They have been doing this for a long time and sitting on the board for a long time so they try to be user friendly. They also can identify when some of their users are unhappy or unfriendly. They don't like to postpone or hold people up. What is the time frame here? If they were to continue with conditional use, clear up all of the other items, is a two week wait until their next regularly scheduled meeting to let them talk with the Technical Review Committee to work out the Downing Street parking issue a fatal obstacle?

Ms. Asaro said she is confused where they went wrong. Who is supposed to tell them they are supposed to go to Technical Review Committee prior to coming here?

Mr. Zalinger said it isn't a matter of wrong.

Mr. Blouin said the answer to that question is that everyone has been moving forward under the premise that the parking that was approved was okay. Clancy said there is not a whole lot of change to the exterior of the structure. Again, himself included, just assumed they had permission to use those spaces since it was mud until now. Two weeks won't kill anything, but we regarding Carla's point they didn't think this was an issue to which they would have to address tonight.

Mr. Asaro added that two weeks is fine.

Mr. Hoff said he thinks it is a good project. Without all of the background it is hard for him to make an informed decision. It is just a matter of getting all of the information they need together in one place to make a decision.

Mr. Blouin asked what piece of information don't they have specific to the parking.

Mr. Hoff said he would like to see any prior approvals.

Mr. Blouin said they could go to the zoning files and get that permit. Is that right?

Mr. Hoff replied absolutely. He thinks there are two issues going on side by side. It may very well have been approved in the past as part of the zoning permit. That would be useful information. If the Technical Review Committee has anything to add he always appreciates what they have to bring to the discussion. He doesn't think it is a fatal aspect to their plan. It's a good plan. It's just a matter of having it all in front of the DRB to make a decision.

Mr. Zalinger said he has been on the Zoning Board since 1987 and the way the city administers the zoning ordinance and the way the city addresses land uses is a lot more sophisticated in 2009 than it was in 1987. We cross the t's and dot the i's. He drove through town at 12:00 o'clock today and saw the first bus parked in front of City Hall. Guess what? It didn't work the way it was designed. The bus' rear end was sticking out into the cross walk in front of the exit from the city parking lot. All those plans that people come up with the bus didn't drive all the way in. The Board is just charged with making these things work right. If an element of their plan is to have all of these parking spaces here and rely upon the city street for the rear ends of 7 or 8 vehicles, including the handicapped access, he thinks the Technical Review Committee should sign off on that in 2009. If there is precedent in the zoning file, then the Board is happy to see it and he is sure the Zoning Administrator will have copies for all of them so they can look back and see what the Planning Commission did. If they put everything through the same fair lens then the city ordinances more evenly apply than it is if they just rubber stamp something that might have happened a long time ago on a much more informal basis. The DRB would like the Technical Review Committee to review this and make a recommendation.

Mr. Blouin asked who takes it to Technical Review.

Mr. DeSmet said he would take it in tomorrow.

Mr. Zalinger said for the record the Board would want some feedback and a sense from the Technical Review Committee and they always send it to us by e-mail memo. It's not a formal process. They will sit down and hammer out the details. They will give a recommendation to the DRB. The second part they would like to see any prior Planning Commission or Zoning Board of Adjustment approvals with respect to this parcel and that parking configuration. That's the site plan piece of the pie

Mr. Zalinger said the one outstanding issue they have under site plan is input from the Technical Review Committee. They will move on to conditional use review. This relates to the use that is going to be placed at the property rather than the physical configurations of it. Conditional use may be approved if the DRB determines that the proposed use does not adversely affect the following:

1. The capacity of the existing or planned community facilities. That is the ability to deliver water and sewer services, provide fire and police protection, snow plowing, etc. It is fair to assume that this is an existing commercial location and it already enjoys those facilities as provided by the city. He can't believe that this restaurant facility would adversely tax the ability of the city to provide these services.
2. The conditional use does not adversely affect the character of the area. The character of the area which the project is located and standards in the Montpelier Municipal Plan. This is CB-II. This is a commercial restaurant facility in an existing commercial retail operation and is consistent with CB-II District designation.
3. The conditional use will not adversely affect the traffic on roads and highways in the vicinity. Once again, this is an existing commercial facility. There is ample area for on-site vehicle movement so that folks aren't backing into Barre Street. In his view this will not adversely affect traffic on roads and highways in the vicinity. Mr. Hoff said it is in proximity to downtown to lend itself to pedestrian traffic with sidewalks. Mr. Asaro said what he noticed that was nice about this location is that right next to the church there is a church that leads into the city parking lot.
4. The proposed use does not adversely affect the zoning and subdivision regulations. As they can tell from tonight's activity before any application is issued it is going to be in compliance with the zoning regulations.
5. The utilization of renewable energy resources. He would suspect that is not applicable considering it is a renovation of an existing building.

Mr. DeSmet said the ordinance dances back and forth between CB-I and CB-II in this area. This might be the most appropriate building for a restaurant in that area. Most buildings in CB-II are historic homes and this is actually a commercial building that used to be a meat locker and a paint store.

Mr. Lindley moved approval for conditional use at 34 Barre Street, with Mr. Matzner seconding the motion.

Mr. Zalinger said the DRB has two motions that are pending before them. One is for conditional use approval and the other is for design review. There is a motion and a second to grant conditional use approval of this project. The vote was approved on a vote of 6 to 0. The other motion is to grant design review approval. The vote to grant design approval passed on a vote of 6 to 0.

Regarding site plan review Mr. Lindley moved they continue that until their next meeting on November 2nd at which time they will receive reports from the Technical Review Committee and the staff. Mr. Hoff seconded the motion. The motion passed on a vote of 6 to 0. They will complete site plan review at that time.

II. Site Plan Amendment and Variance Request

320 State Street – GB/FP

Owner/Applicant: Clifton Dodge

Storage unit and fence.

Mr. Zalinger asked Mr. DeSmet when site plan approval was granted.

Mr. DeSmet said it looks like 1996.

Mr. Lindley said he remembers dealing with this on the Planning Commission.

Mr. DeSmet said basically there was a variance and flood plan approval granted in 1996 for the placement of the storage container they are talking about today. The city obtained an easement for drainage through Mr. Dodge's property which goes directly underneath the current storage container. Mr. Dodge granted the easement to the city and he needed to move his storage container to another location on the property. The property is very narrow so pretty anywhere you put it will need a variance. He is going to put a new container closer to the eastern property line out of the way of the drainage easement required by the city.

Mr. Zalinger administered the oath to Mr. Dodge. He asked if Mr. Dodge agreed with Clancy's outline. Mr. Dodge said he did.

Mr. Zalinger said he does remember granting the variance now for placement of the storage unit in 1996.

Mr. Hoff inquired what the storage unit was used for.

Mr. Dodge said it is used for what he sells at the creamy stand. He opens late in the day. Deliveries are generally done before he gets there in the morning so he needs a place for drivers to be able to unlock and put deliveries in there and lock it back up again while he isn't there.

Mr. Zalinger asked if it was going to be the same storage unit.

Mr. Dodge replied no. The storage unit that is there now is 8 x 40. He wants to make one smaller. It will be 8 x 20 instead. What is there now was a used tractor trailer. It was there when he bought the business. There are two reasons why he wants to move it from the existing lot now. One is in case of an emergency if the drainage system does have to be dug up he don't have to clean everything out of the storage units so somebody can dig it out. The other part is he wants to gain parking stalls where the existing trailer is now, which in the plan they are going to remove that trailer and pave where it was. It was paved in the day. There is still pavement under the trailer but it isn't usable.

Mr. Lindley asked what color the new container was going to be.

Mr. Dodge said it comes in four different colors. He also plans to put up a fence. He wants the fence tall enough so that the neighbors would see a fence rather than actually seeing the container itself. It should be sufficiently big enough to put anything in behind the fence so it can't be seen by the neighbors.

Mr. Zalinger said there is a site plan that is hard to read. The location of the new storage facility is closer to Interstate 89.

Mr. Lindley said the variance the board needs to grant is 4 feet on one side and 10 feet?

Mr. DeSmet said it is 20 feet all around in GB.

Mr. Zalinger asked what kind of fence it is going to be.

Mr. Dodge replied he wanted to use vinyl fencing. He just wants a low maintenance fence.

Mr. Zalinger asked if it would cover the height of the storage facility.

Mr. Dodge replied yes. The storage unit is 8 feet tall. It is on 2 feet blocks, which is 10 feet. He wants to have the top of the fence 11 feet.

Mr. Zalinger asked if he had looked into an 11 foot fence.

Mr. Dodge replied no. He might have to build this.

Mr. Zalinger said the Board will deal with the site plan review first. The area where he is going to place this is now grassed. What is he going to do to the surface? Mr. Dodge said he would just level it and gravel it.

Mr. Zalinger said the parking configurations he has now won't change except the area that now has the 10 x 40 storage unit will be free for additional parking. Mr. Dodge said that is right. Has he depicted that anywhere?

Mr. DeSmet said he didn't know about that.

Mr. Zalinger said Mr. Dodge said when the old storage comes out he is going to make additional parking. In the site plan jurisdiction the Board is charged with reviewing what changes the traffic pattern is going to have on a lot when the configuration changes. They like to see that before they grant approval. A dairy crème is an unusual use because it has an uninterrupted access from on site to off site. They always make zoning boards nervous. We like to funnel the traffic so it enters and exits the public right-of-way at one or two locations.

Mr. Dodge said there are no barriers there but there are lines in the pavement for people to enter and exit in four spots.

Mr. Zalinger said they are going to have to configure their parking area in some fashion to show the new spots.

Mr. Dodge said right next to the river between the old storage unit and the building itself there are six stalls there and now there will be three more. There will just be 9 parking spaces. They will be marked diagonal.

Mr. Matzner said it seems that is part of the design the city proposes.

Mr. Zalinger replied yes.

Mr. Dodge said there were parking stalls there before the trailer was put there.

Mr. Lindley said he would gain three parking spaces.

Mr. Zalinger asked the Board if they wanted to see a parking plan for the entire facility that shows what use is going to be made of the newly liberated area.

Mr. Dodge said the only changes there will be will be more plans.

Mr. Cranse said this application is for a site plan amendment and the materials say that the relevant site plan criteria are fences and walls and accessory structures. It doesn't mention parking since this is an amendment.

Mr. Zalinger said that is the staff's view.

Mr. Dodge said once it is paved people are going to park there.

Mr. Zalinger said if there is going to be a parking plan for this site the Board would like to have something that showed what the plan is. He doesn't know what the existing site plan looks like, and we are amending it.

Mr. Lindley said the current configuration is fairly new.

Mr. Hoff asked if there was concrete under the existing storage container now.

Mr. Dodge said it is just old pavement that has been broke up.

Mr. Zalinger asked Roger if he had every seen the April 1996 plan. Mr. Cranse replied no. He asked Mr. Dodge if it was the current parking configuration.

Mr. Dodge replied it was not. When he purchased the business there were no parking lines at all. Because there were no markings at all he put the current parking that is there now. It seems to be working.

Mr. Zalinger said this is why zoning is such a conundrum because you did it yourself and it worked. Five times out of ten property owners do it themselves and it works. It is the other five times they have to worry about because if you do it yourself and it doesn't work then difficulties arise. If the Board is going to amend the site plan he believes Mr. Dodge has already done that.

Mr. Dodge said he had no idea you can't just put in your own parking on your own property.

Mr. Zalinger said now that he is here seeking a site plan amendment it is only fair the DRB start with a plan and the applicant show us exactly how the finished plan he wants to adopt is going to look. He asked the applicant if that seemed fair.

Mr. Dodge replied yes.

Mr. Zalinger said he thinks it makes good sense for the applicant to do a site plan that shows the parking configuration he has now and that he wants to continue and where the new storage unit is going to be and what the resulting change in the parking plan will be. He asked if the DRB members were in agreement that this was a fair way to proceed.

Mr. Hoff and other members agreed.

Mr. Lindley said he would like him to think about the fence issue and whether just putting in a cedar hedge might do just as well as a fence.

Mr. Dodge said the reason he wanted fence instead of hedge was because of low maintenance. You can wash a fence. If it is vinyl it doesn't crack or peel or splinter.

Mr. Zalinger said he should investigate a little further because part of the site plan responsibility is to make sure that the materials are consistent with the neighborhood. Now that they are dealing with the last trailer they might as well improve the site if they can. They would like to know what he is going to use for a screen. Is there a motion to continue site plan review? He asked the applicant if he knew how long it would take for him to address a site plan.

Mr. Dodge said he could have a site plan to the Board by the end of next week.

Mr. Zalinger said the DRB could continue it until November 2nd. They have to continue it to a date certain to avoid having to publish public notice again. If for any reason there is a difficulty in putting the materials together we can always continue it on November 2nd until November 16th. They don't like to create artificial deadlines.

Mr. Matzner moved the DRB continue site plan review for 320 State Street until November 2nd, and Mr. Lindley seconded the motion. The motion was voted favorably on a vote of 6 to 0.

Mr. Zalinger said he is still requesting variances of the sizes in existence in this application. He would suggest that since it is so imprecise in the application now, variances deal not with use so much as they do with the dimensional requirements of the zoning ordinance. He would feel more comfortable if the board reviewed a plan that clearly identified where the property lines were and where the storage unit was going to be located so it is shown on the plan.

Mr. Dodge said the distance between the container and the river they need to tell him what they consider the river to be.

Mr. Zalinger said it is the top of the bank. It is the highest place on the bank and the same from the front yard and the back yard. It just doesn't show us here what the distance is from the back of the new storage facility to the top of the bank.

Mr. Hoff said it is relevant because it deals with how far the storage unit is from the side but also how far the storage unit will be from the pipe that they granted the city an easement to. He imagines it is a storm drain pipe.

Mr. Zalinger asked if everybody was in agreement they would be better able to consider the variance if there was a more precise site plan. Is there a motion to continue the variance review until November 2nd?

Mr. Hoff moved they continue the variance request at 320 State Street until November 2nd. Mr. Blakeman seconded the motion. The vote was favorable on a 6 to 0 vote.

III. Continuation of the Appeal of the Zoning Administrator's Determination at 190 River Street – GB

Applicant: Reuben Sherman

Owner: James Barrett

Mr. Zalinger reminded Mr. Sherman that he remains under oath. Mr. DeSmet stepped down as staff for the DRB. He remains under oath for this application as well.

Mr. Zalinger told Mr. Sherman the Board conducted a site visit tonight. They saw 191 and 193 River Street. Mr. Sherman said his house is 193 River, the corner of Blackwell and River Street; it's a brick house with a white porch.

Mr. Zalinger asked Clancy if there was any additional evidence that has been submitted in the file from the last time. Mr. DeSmet said he had some new evidence but no new photos. He asked Mr. DeSmet if he had occasion to look further into this matter.

Mr. DeSmet said he actually bought a book that the ordinance was based on. He can't say that he completely understands the technical language of the IENSA.

Mr. Zalinger said anything that happened at their site visit really isn't part of the record until it is repeated into the record here. He would like to go back over some of the observations and things the DRB determined at the time. He asked Mr. Lindley to explain what his investigation of the light fixture determined.

Mr. Lindley said he visited and looked at both fixtures. They appear to be brand new, no cobwebs or anything that would indicate to him they were of any duration been on the building other than a very short period of time. They were brand new as far as he could tell. They observed lights on storage buildings that had significant cutoffs on them so that the light went directly to the ground. They looked like headlights to him out into the area around the building.

Mr. Zalinger said it certainly did fit his view of what he felt a cutoff light should be of just directing light downwards.

Mr. Matzner said according to the testimony last time Clancy said he was told that the same lights that were used on the original building would be used on this building. It is clear they have not been used based on the photograph.

Mr. Cranse said he didn't see it in the transcript of last meeting but § 710(a) under the general development standards says lighting fixtures shall be aimed and shielded in a manner that does not direct illumination on adjacent residential properties and shall be of a type adequately shielded to prevent glare from normal viewing angles. He thinks that would apply.

Mr. Zalinger said on page 8 of the minutes it references Mr. Barrett saying that the Restore building had the exact same lights on it that they have on there now. They tore half of the building down and saved the lights. Every light on that property has met the DRB specifications. It certainly doesn't appear to be accurate to him. In order not have required a permit the replacement of that building would have had to replace the original lighting.

Mr. DeSmet said not necessarily. The criteria under § 307 don't speak specifically to lighting. It is basically if there are other requirements greater than what can be administratively approved. Since they weren't increasing the footprint and didn't need more parking they didn't need to come back to the DRB. It doesn't mean that the lighting requirements don't still apply because they do.

Mr. Zalinger said by itself the introduction of new fixtures doesn't violate the ordinance.

Mr. DeSmet added that provided they comply.

Mr. Zalinger said just the addition of new fixtures would not require a permit in the General Business District. Whether they are the same fixtures as those that were there before isn't really that relevant except for just advancing our knowledge about the facility. The Board is still faced then with determining whether the light that emanates from those fixtures, or at least the one fixture that Mr. Sherman appealed, complies with the ordinance. The DRB still has to make that determination.

Mr. DeSmet said that is correct.

Mr. Lindley asked whether they would be concerned about § 710(f)(3) which is under security lighting.

Mr. Zalinger said regarding security lighting in order to direct light downward and minimize the amount of spill into the dark night sky all security lighting fixtures shall be full cutoff fixtures as defined in the IESNA and shielded and aimed so that illumination is directed to the designated areas.

Mr. Lindley said after viewing the lights he doesn't think it complies with that in any way. It doesn't shield that light downward in any fashion whatsoever. It is a straight out light.

Mr. Zalinger asked Clancy if he went back and visited the site.

Mr. DeSmet said he went there two times previous.

Mr. Zalinger asked if he knew if in fact this was the light fixture that is there.

Mr. DeSmet said to the best of his knowledge it is.

Mr. Zalinger asked if this in his view shielded or cut off.

Mr. DeSmet said he believed it is shielded and cut off. He doesn't know if it is necessarily to the letter of the definition of full cutoff. The lights spill pattern on that specification sheet meets the security lighting application of the foot candles at various distances.

Mr. Sherman said § 710(c) also specifies a 90 degree cutoff. He presumes a 90 degree cutoff would be horizontal.

Mr. Lindley said he believes they have a 90 degree cutoff for the lights along the storage facilities because it appears that those go directly down and light the building and the entrance.

Mr. Sherman said those lights are fine. They are not visible from above the level of the light. Also, on the Restore building there are five accent lights that don't usually come on until about 8:00 o'clock and go off in the A.M. The brightest light over there is the one that is in the parking lot for the restaurant which is on a fairly high pole. That one is a full cutoff fixture so it is directly down. He cannot see the surface of the light from anywhere on his property, and that is even higher than the one at the Restore.

Mr. Hoff asked if anyone was capable of distinguishing a luminary from a light.

Mr. DeSmet said a luminary is basically a full light package with ballast. There is no definition in the ordinance. He can read the definition of luminary. In parentheses it says light fixture. A complete lighting unit consisting of a lamp, or lamps and ballasts, together with the parts designed to distribute light, to position and protect lamps to connect lamps to the power supply. It is basically the complete lighting unit.

Mr. Zalinger said § 710(f), security lighting reads:

1. Security lighting is defined as lighting designed and used to discourage crime and undesirable activity.
2. Security lighting should use the lowest possible illumination to effectively allow surveillance.
3. In order to direct light downward and minimize the amount of spill into the dark night sky all security lighting fixtures shall be full cutoff fixtures as defined in the IESNA and shall be shielded and aimed so the illumination is directed to the designated areas.
4. Where security lighting is proposed the table below shall govern a range of permissible light levels for the list of applications. Where a proposed application is not identified the table should be used as a guide for establishing the range of permissible light levels.

The Board has not been given the kind of detailed engineering analysis so we can make a determination about the foot candles in the area for which the security is supposed to be provided. He feels as a member of this Board he has to use his own best judgment to determine whether illumination is directed to the designated areas as required in number 3 and whether the lowest possible illumination is being used to effectively allow surveillance, and whether crime and undesirable activity can be discouraged by reconfiguring the lighting that is there. In his view as just one member of the Board that does not strike him as a full cutoff fixture. If this is 180 degrees on the side of the building he would think that fixture is 150 or 140 degrees of illumination. There may be 30 or 40 degrees straight up from the top of the light where there is no illumination. It is by no means close to 90 degrees. That would be from his perspective what a full cutoff light fixture is. It doesn't appear to him that it was installed with any consideration of what the zoning ordinance requires, that it was installed and hooked up and turned on. It doesn't appear to him to be in compliance.

Mr. Cranse said he agreed. He also would reiterate that it does not meet the general requirements in § 710 (a).

Mr. Zalinger said this is denominated by the property owner to be security lighting.

Mr. DeSmet replied that is correct. He said he would also like them to take note that (4) applies to adjacent residential properties in General Business. Mr. Sherman is facing a southern direction and the light is on the western side. The only residential properties are those along River Street. Those on Pioneer Street are all General Business.

Mr. Sherman said the light is visible from his house.

Mr. Hoff said regardless of how they define “adjacent” he thinks § 710 seals the deal for him. He thinks it would be a stretch to conclude that is the lowest possible illumination to provide for adequate surveillance.

Mr. Zalinger asked Mr. Sherman if he had any more evidence or testimony to provide.

Mr. Sherman asked if there was a definition in the book as to what a full cutoff fixture is.

Mr. Zalinger said not that they know of.

Mr. Sherman said his common sense for a 90 degree full cutoff is it shouldn't be visible from above the light.

Mr. DeSmet said he actually obtained a definition from an engineer and he doesn't think everybody is going to understand what he reads.

Mr. Zalinger added that the Board isn't bound by it if it isn't in the ordinance.

Mr. DeSmet read the definition:

Luminary light distribution where zero candela intensity occurs at a 90 degree angle above Needier and all greater angles from needier. Additionally, the candela per 1,000 lamp lumous does not numerically exceed 110 percent at a vertical angle of 80 degrees above needier. This applies to all lateral angles around luminere. Needier is the lowest point.

Mr. Zalinger said in order for Ken and Roger to participate effectively it is necessary for them to review the application and the file materials, which they have not had an ability to do. The way the DRB should proceed is to conclude the testimony and the evidence and adjourn the hearing. The Board will deliberate and make a decision in the future at such time as all of the other members have had the opportunity to satisfactorily review the record because they weren't here for the first hearing. In the meantime he wants to make sure that everybody has a full opportunity to be heard. He asked if Clancy had anything further to add.

Mr. DeSmet said he wasn't able to find any information and he agrees they should review the record.

Mr. Sherman said there are at least 25 lights on this property. He doesn't know when the next ones will be installed. He has been coming before this Board since 1986 on one light issue or another, and he

thinks Mr. Barrett is not happy with it either. For future lights it would be nice if there was a hearing or plan or notification.

Mr. Zalinger added the Board can't control the future. If there is nothing further the DRB will close the testimony and the hearing. The DRB will take this matter under deliberation and consideration and will make a decision on the appeal in the near future.

Adjournment:

Upon motion by Mr. Lindley and Mr. Cranse the Development Review Board adjourned on a vote of 6 to 0.

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator

Transcribed by: Joan Clack