

Montpelier Development Review Board
June 15, 2009
City Council Chambers, City Hall

Subject to Review and Approval

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

Call to Order:

The Montpelier Development Review Board was called to order on June 15, 2009 at 7:00 P.M. by Philip Zalinger, Chair.

Approval of June 1, 2009 Minutes:

Upon motion of Mr. Blakeman and Mr. Richardson, the minutes of the June 1, 2009 were adopted by the Development Review Board on a vote of 6 to 0.

I. 13 Main Street – CB-I/DCD

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

Mr. Zalinger said the Design Review Committee recommended approval as proposed. He asked if he had any objections from the recommendations of the DRC.

Mr. Hoff moved approval of design review at 13 Main Street as proposed, with Mr. Cranse seconding the motion. The application was adopted on a vote of 6 to 0.

II. 660 Elm Street – MDR/DCD

Applicant: Community College of Vermont (CCV)
Owner: Community College of Vermont (CCV)
Sign.

Mr. Cranse recused himself from consideration of this application.

Mr. Zalinger said the Design Review Committee reviewed the proposal at its June 9, 2009 meeting and recommended approval as proposed.

Upon motion by Mr. Richardson and Mr. Lindley, the application for 660 Elm Street was approved on a vote of 6 to 0.

III. 176 Main Street – HDR/DCD

Applicant: Steven Burkholder
Owner: Steven Burkholder
Entry roof and privacy walls on existing slab at west entrance and two windows in rear of building.

Mr. Zalinger said the Design Review Committee reviewed the proposal on June 9th and recommended the following options and adjustments to the proposal:

Options:

- a. Material used for horizontal screening may be painted wooden bead material.
- b. Roof of proposed canopy may be constructed on top of existing shed roof over basement entrance to simplify the design.
- c. Applicant may install turned support posts to match columns on front porch.

Adjustments: Second floor rear of building has two wood frames one over one double hung windows which may be replaced with double hung windows of slightly larger size to meet code requirements.

Mr. Zalinger asked Mr. Burkholder if he was in agreement with the suggestions by the DRC. He replied that he was.

Mr. Hoff said that the adjustment is also optional. It adjusts the scope of the proposal, but it is not a requirement.

Upon motion by Mr. Hoff, seconded by Mr. Richardson, design review at 176 Main Street with the optional changes and adjustment to the proposal by the Design Review Committee, the Montpelier Development Review Board approved the application on a vote of 6 to 0.

IV. Site Plan and Design Review – CB-I/DCD/FP

66 Main Street – Charlie-O's

Applicant: Jennifer Rollins/Kevin Casey

Owner: Jeffrey Jacobs

Outdoor seating.

Mr. Zalinger administered the oath to Jennifer Rollins and Kevin Casey.

Mr. DeSmet said the applicant proposes to create an outdoor seating area directly related to Charlie-O's. It includes seating, fencing, lighting, and no utilities.

Mr. Zalinger inquired if the applicant owned 68 Main Street.

Mr. Casey replied no, the building is owned by Bill Shouldice.

Mr. Zalinger said 70 Main Street is the facility with the liquor license, and it is 66 Main Street is the location for the new enterprise. He asked if there was a lease.

Mr. Casey said it is not currently set up like that. The Department of Liquor Control has suggested that. It will be through an outdoor consumption permit because Mr. Jacobs owns both properties. He is sure Mr. Jacobs will have it as a separate corporation.

Mr. Zalinger said the owner of 66 Main Street is not the licensee. Who is the licensee at 70 Main Street?

Jennifer Rollins said that is Jeff Jacobs' property enterprise and he would be the licensee of Charlie-O's.

Mr. Casey said he is the President of Great American Enterprises.

Ms. Rollins said if Charlie-O's needed to lease 66 Main Street to continue as an extension of Charlie-O's they could do that.

Mr. Zalinger said he is analyzing this from the perspective that if there were an arm's length relationship between the owners of 66 Main Street who didn't happen also to be a principal in the corporate licensee at 70 Main Street, then these formalities would be addressed.

Ms. Rollins said it is the same owner of the two properties. The owner of 70 Main Street and the business that is run out of 70 Main Street would ask for an extension to do the same business out of 66 Main Street as the same owner of both properties. The licensee for 66 Main Street would be 70 Main Street as well. It would be the same liquor license. She would be the same manager of both businesses.

Mr. Casey said Great American Enterprises would be the licensee on this property.

Mr. Zalinger asked if Great American was the operator of Charlie-O's.

Ms. Rollins replied that was correct.

Mr. Zalinger asked if Great American Enterprises, LLC was an entity that exists separate and apart from the individual who owns the real estate.

Ms. Rollins said that was correct.

Mr. Zalinger said the individual who owns the real estate at 70 and 66 Main Street is going to lease the premises to Great American Enterprise. It is not totally an arm's length transaction because that individual owns the real estate is a principal in the tenant. He may be the sole owner and the tenant, but he is doing business under a separate name and he is insured under a separate name. It is their testimony that there will be either a separate or an addendum to the lease between the owner of the real estate and the licensee.

Mr. Casey replied that was correct.

Mr. Zalinger said he thinks the Liquor Control Board would be appeased if there were a formal relationship because the licensee is Great American Enterprises, LLC. If he owned 66 Main Street and that licensee wanted to hop scotch over 68 Main Street and do business at 66 Main Street there would be a lease. That is why he is suggesting they mirror this as if there were an arm's length relationship between the principal.

Ms. Rollins said that was the only part she didn't understand.

Mr. Zalinger asked them to describe the application's design.

Mr. Casey said they have explored a bunch of different avenues around this vacant lot for a number of years. Last year they floated an idea for an old 1940's trailer diner, and it sunk. Right now the economic feasibility of putting up a new building isn't really there in Montpelier. Mr. Jacobs and his feelings are that cleaning up that lot while at the same time having some value out of it. As you look around town now with the number of bars and restaurants that have some access to outdoor seating it is becoming more of an economic reality, whether it is the Black Door, the Royal Orchid, Julio's, Restaurant Phoebe, etc. This would give downtown, particularly that block, a reestablished look. It is going to be planted and with fencing so it will be secure. There will be umbrellas and tables. It will give a little bit of life to that lot which has traditionally been used by vagrants and dogs. It will provide a stable base.

Ms. Rollins said she was thinking there would be a continuity to that whole side of the street where you see shops all along Main Street and there won't be this break right in the middle downtown of cinder blocks and trash and dirt. There actually will be something there that will be part of the downtown again and used and taken care of and appreciated. She wants to see flowers, plants, and when people drive into town she wants them to be able to see this whole long line on Main Street of Main Street being used rather than as empty eyesore. Personally, this coming July will be her tenth year anniversary at Charlie-O's as an employee. The type of Charlie-O's she has been involved with over the last ten years if they were to extend it outside she wants it to be a positive part of the community, an asset to the community and it to look nice and look like Montpelier is vibrant and alive downtown. If that weren't possible she wouldn't want to be involved in it. That is why she is applying to have this done and she would be overseeing the outdoor seating establishment.

Mr. Lindley said he had a question about getting from 66 Main to 70 Main Street. Do they go through the back lot of 68 Main Street? Is there an entrance? Do you go out on to the sidewalk and around to the outdoor area?

Mr. Casey said the area in the back is a right-of-way used by all of those businesses.

Mr. Lindley said they will walk from the 70 Main Street over the crushed gravel to 66 Main.

Ms. Rollins said they wouldn't be walking across anybody else's property. They would be walking on their shared property which means they have the right to use that property. The way they would be servicing that area is it would be only employees of Charlie-O's at 70 Main Street as service lanes. Nothing could go off that area. No one else could transport any kind of product through that area. It would only be employees of Charlie-O are allowed to do that certified by the Department of Liquor Control.

Mr. Lindley asked if the Department of Liquor Control was the overriding enforcer of that issue.

Ms. Rollins said it is a strange issue because it doesn't come up very often. That was their recommendation and would almost have to be the case because they would be connecting their liquor license. She would be responsible as manager for the liquor license for 70 Main Street to 66 Main Street, and that whole time for whatever happens there would affect her liquor license and she doesn't want anything to jeopardize that.

Mr. Casey said it would be unlike the way that Church Street in Burlington would be with outdoor seating where only the staff of the restaurant is allowed to carry a drink. If you go into one of the bars and grab a drink someone has to transport it for you from the interior space to the outdoor seating. There won't be random people walking around with drinks in their hands.

Ms. Rollins said they have done a really good job keeping people from leaving the premises of 70 Main Street with any kind of drink to the point where if they do that they are not allowed to come back in because that would jeopardize their liquor license. They even considered whether they wanted to serve outside. Personally, she would just like to have staff treat that as this being a corridor, can't walk on to Mr. Shouldice's property, can't walk back by the dumpsters and can't stop and chat. It's business from Point A to Point B. This would be by someone who is on the clock, employed and certified by Charlie-O's.

Mr. Lindley asked what they would have for entertainment going on between the buildings.

Mr. Casey said there is no plan at this point. It is more to provide outdoor seating. It is not meant to be a music venue. It's really a place where you can sit down and have a beer in the sun and smoke.

Mr. Lindley said there wouldn't be just fumes coming from that location but smoke from cigarettes.

Ms. Rollins said she would like to address that. She wants to have a buffer zone between where the seating would start and the sidewalk so as not to have anyone directly sitting on the sidewalk. There would be a lot of space with plants. She also doesn't want to have too many people out there. They are going to limit their capacity.

Mr. Lindley asked what the seating capacity would be.

Mr. Casey said Glenn Moore from the city staff said based on its size seating capacity would be 140 but they have no interest in having that many. Mr. Moore said he could permit them for 140 people.

Ms. Rollins said she doesn't want that to happen. She doesn't want them to be subjected to obnoxious cigarette smoke.

Chuck Nichols said he would like to read something from David Kelley who wants to be a party. He is in Montana but wants him to read something into the record.

Mr. Zalinger asked if there were any other questions about the application.

Mr. Cranse said he isn't totally clear about the fence. The rear retaining fence will be 6 feet high. That is the fence that borders the Shouldice's property. There will also be fence on the other side. The fence beside the right-of-way doesn't have...

Ms. Rollins said that wouldn't be the fence. That would be along Mr. Shouldice's property. It would be a solid fence.

Mr. Casey said the fence on the driveway side, after a discussion with Tom McArdle, said there would be two heights. Fifteen feet back from the corner it would go from 4 feet up to 6 feet. The original plan was to have it all the way along, but Tom's feeling was he didn't want any distractions for drivers in the right-of-way, so by having the higher fence in the middle it would keep drivers moving along.

Mr. Zalinger said they should start at the corner with 68 Main Street and tell the Board what the fencing will be and follow it clockwise around the perimeter.

Mr. Casey said along the Main Street front it will be a 4 foot fence so people on Main Street and the Police can see in, and that will continue along until 15 feet from the corner at which point it will transition to a 6 foot fence above the driver's vision. That will continue down until the last 15 feet. Then, it will go to 6 feet on the remainder of that wall and then along Bill Shouldice's property. The rear will be higher with a 6 foot fence, except for the small portion that will allow a driver to see in.

Mr. Cranse asked what is the customer entrance and exit.

Mr. Casey said they are from Main Street right in the middle. This lot is 28 feet 9 inches. Right in the middle there will be a lockable swinging gate, and in the back it will be in the northwest corner.

Mr. Zalinger asked if there was going to be any sign at the rear entrance that limits ingress and egress to employees.

Mr. Casey said a customer will be allowed to walk in but not holding a drink. They can escort them through. The back door at Charlie-O's at 70 Main Street won't be specifically for pedestrians.

Mr. Zalinger said one of the site plan criteria is pedestrian access and circulation. It is within the DRB's scope of jurisdiction to ask question about what the plan and scheme is. He is wondering about the wisdom of providing ingress and egress and entry in the rear of the property.

Mr. Casey said the larger reason was that it kept it at the back of the property so it is not something not going down Main Street. It seemed to work better from a visual perspective so people don't have to see somebody carrying a tray. There is more traffic.

Mr. Zalinger said he is talking about customers.

Ms. Rollins said unless she could think of a really good reason to only ask people through the front she doesn't see any reason why she would want to restrict people from coming in through either door. There would be two reasons for that. One, they wouldn't be transporting their own drinks, and, secondly, they would have the outdoor space continually staffed to make sure people weren't coming into that space that didn't need to be there. There would always be someone out there so if there was concern about people coming in through the back there would be staff.

Mr. Zalinger asked if they could access Charlie-O's now through the back door.

Mr. Casey replied yes, customers can.

Mr. Blakeman asked how much staff there would be on a typical Saturday night in the summer for the outside seating area.

Ms. Rollins replied there would have to be two extra people for the outside area with one person out there continuously. This is based on what the Department of Liquor Control is telling her and what Police Chief Facos told her. She also doesn't want to jeopardize Charlie-O's liquor license.

Mr. Richardson asked if there was any signage being proposed about the transport of alcohol.

Mr. Casey replied yes. There is signage inside the bar now.

Ms. Rollins said it has been a few years since the smoking ban went into effect and it is state law every where that you can't take drinks outside so most people have just become accustomed to this.

Mr. Casey said it becomes a part of the culture.

Ms. Rollins replied there actually very few states any longer that allow this so people have just become accustomed to this.

Mr. Richardson said from his perspective there are two concerns. One, this is a new portion of the enterprise. Secondly, they are traveling across a right-of-way, and a much bigger right-of-way than Church Street. On Church Street they are talking about a sidewalk. This is the width of the building.

This is a bar, after all, and they are serving drinks as opposed to a restaurant. Will the two staff members be essentially wait staff or be posted like a bouncer?

Mr. Casey replied they will be there for security.

Ms. Rollins said working closely with the inspectors from the Department of Liquor Control and Chief Facos she would do whatever she needed to do to make sure that was more secure. She envisions one personnel out there continuously who is a door person. They don't use bouncers at Charlie-O's. It works better when they have door people, someone who is constantly watching and constantly in charge of what is going on in the bar. That is what she wants to see happen outside, someone who is always out there watching who is coming in and making sure the area is secured. The other person serving drinks wouldn't be in a cocktail position or a wait staff position, but a bartender and someone who is held at the same standards that every other bartender in Charlie-O's is held to. It would be someone she would make sure is certified through the Department of Liquor Control as far as they could be as anybody else in Charlie-O's. It wouldn't be just someone running drinks but someone who has a certification to be a bartender.

Mr. Richardson said they wouldn't actually be serving the drinks out there.

Ms. Rollins said they would be delivering the drinks outside from inside.

Mr. Richardson said even though the person is a bartender they essentially are running the drinks.

Ms. Rollins said they are running the drinks out there, but when she talks about certification if they were to card someone at that table they would know.

Mr. Richardson said from his own understanding he needed to know that one person is going to be out there as security door person and the other person is a certified drink runner. Is that accurate?

Ms. Rollins replied yes.

Mr. Zalinger said he had a question about when they would initiate this use. When would they plan to open?

Ms. Rollins said she would like to see it happen this summer.

Mr. Casey said barring any major problems they could have the outdoor area ready to go by mid July or August 1st. They plan to do it this year.

Mr. Zalinger asked if the outdoor seating would be weather dependent.

Ms. Rollins said it would be weather dependent.

Mr. Zalinger asked if they had a plan for storage of the site over the winter months when it is not in use. He finds it ironic that the applicant is here seeking a permit to improve the eyesore that he has permitted to exist there for six years. It is an eyesore only because the present owner allowed it to become an eyesore. They are using their own boot straps as rationale for improving the site. The site didn't have to be an eyesore. He has been on the DRB long enough to know history. It is not very persuasive to him that he should vote in favor of this project because it is an eyesore when it didn't have to be an eyesore. That leads him to wonder about his plans for the site once Halloween is past and it is cold and nasty.

There are a lot of materials, fences, etc. He is wondering if they have thought through how they are going to store this.

Mr. Casey said the fences won't be moved. They are basically looking at the lawn furniture. He can attest to the fact that Mr. Jacobs has no space to store it so that will be an issue.

Mr. Zalinger said everything the Board sees here outlined there are five round tables that have umbrellas. Is there going to be signage on the umbrellas?

Mr. Casey replied there is no plan for it. They will be identical to the umbrellas used at the Black Door. There are no current plans for advertising.

Mr. Zalinger said he counts five large tables, five small tables, and then an L-shaped table towards the front of Main Street.

Ms. Rollins replied the L-shaped table is just another little seating area for a conversation corner.

Mr. Cranse said he believes all of the tables are the same size and the little tables are underneath the umbrellas.

Mr. Casey said they basically come in two sizes. There are the 38 or 42 inch square tables that can sit six comfortably and the larger 5 foot round tables. The plan is to use 5 large and 5 small tables.

Mr. Zalinger asked if they could count the number of seats.

Ms. Rollins said she wanted seven tables with four seats at each table, which would be 28; five small tables with 2 or 3 seats at them, which is 15 for a total of 43. There would be a seating area that could seat five, which brings them to 48. She is thinking between 50 and 60 at the most. She doesn't want it to be bigger than that. She has been looking out for the liquor license for 10 years, and she doesn't want the outdoor seating to get big; she wants it to be nice.

Mr. Zalinger said the applicant is going to have to go out and buy chairs and install the chairs. The number of chairs you have is within the Board's jurisdiction to establish how many chairs there will be because that is how they determine seating. The number of seats you want to have the board needs to know where they are starting from.

Mr. Casey said Glenn Moore said he would permit them for 140 seats.

Mr. Zalinger said he thinks what he might have said more accurately was based upon the size of the location the maximum occupancy could be as great as 140. That is not the same thing as the Building Inspector representing to them that he could issue a permit to you for 140 people.

Ms. Rollins said if they have seating for 20 they might have 25 because there might be 5 standing. In any restaurant, any bar, or any building there will be people standing. Realistically to see a maximum capacity of 60 or 70 is fine with seating for 50.

Mr. Zalinger said the applicant has to tell the DRB what they are seeking.

Ms. Rollins replied they are looking for seating for 80.

Mr. Zalinger said that would be 8 seats around 10 tables, and then there would be the conversation nooks. Is there going to be a sign anywhere on the site?

Mr. Casey said there is no current plans for a sign.

Mr. Hoff said they will be admitting customers in the middle of the Main Street side of 66 Main Street but there won't be any signage.

Mr. Casey said none is currently planned.

Mr. Zalinger asked if there would be any music outside.

Ms. Rollins said they don't have any plans for any music right now. There isn't going to be any stereo or speakers out there.

Mr. Zalinger said because the application doesn't contain a provision for that, if they want to change that aspect of the project they will need to amend the site plan permit.

Ms. Rollins said if that were ever the case would it be different from applying for an outdoor music venue, such as when McGillicuddy's does the 4th of July event?

Mr. Zalinger said that is a special event permit. The Board doesn't have jurisdiction over that.

Ms. Rollins said they had no intention of changing the site plan to include music.

Mr. Zalinger inquired if they planned to have any devices by which they vanquish flying critters.

Mr. Casey said no, they weren't going to have bug zappers.

Mr. Zalinger asked about burning substances to keep the mosquitoes away.

Ms. Rollins said they weren't planning on using citronella candles.

Mr. Zalinger said the criteria says emits noxious gases.

Mr. Richardson asked if they were proposing any outdoor heaters.

Mr. Casey replied no.

Chuck Nichols appeared before the DRB and said he had an e-mail from David Kelley he would like to read into the record. Mr. Kelley owns 4 State Street, the back of which faces on to that open lot.

My name is David Kelley. I'm sorry I can't be at the hearing tonight, but he is grateful to have Chuck Nichols read his comments into the record. I have three concerns about this proposal. My first concern is noise. I own the building on the corner of State and Main just above Charlie-O's. There are four residential apartments in this building. With no almost no parking in downtown Montpelier it is already difficult to rent apartments in the heart of downtown Montpelier. The noise levels only make it harder. Charlie-O's, of course, is already one of the major contributors to that noise level. From my point of view it is important mixed

use buildings in the downtown area. My building has retail, office and residential units. Without the residential units the character of downtown Montpelier would be seriously diminished. I'm all for revelry but not to the point where it becomes a major frustration and difficulty for those who might to choose to live and who might to try to sleep in an apartment on the corner of State and Main during normal hours. My tenants have to get up and go to work early the next morning. One is a house painter. Another works at Hunger Mountain Coop, and another works at First In Fitness. They can't stay up until all hours .

Two, my second concern is value. If I can't rent these apartments the third and fourth floors will be empty like the Dickey Block has been for years. My building will be worth less and Montpelier will get lower taxes as a result. Empty apartments most assuredly mean more empty third and fourth floor space with all of the accompanying negatives for the downtown area.

Three, my third concern is safety. The parking lot behind Charlie-O's already attracts a lot of people with matches lighting up cigarettes, joints and whatever else requires fire. One of those folks almost burned my building to the ground in 1998. More people mixing alcohol and matches late at night in the big parking lot simply multiplies the possibility of igniting one more building that is on the National Historic Register.

I guess I'm not sure how many more places to sit down and drink alcohol Montpelier really needs. I'm all for bars. I love a good shot of bourbon as much as the next guy, but I can find that in half dozen other places, including Charlie-O's already. Shouldn't we ask what the benefit versus what is the cost? Isn't there a higher better use for this empty lot?

Dave Kelley

Candace Moot, property owner of 8-14 State Street, most commonly called 12 State where Pinky's, River Walk Records and Uncle Mike's are located, said she has eight residential apartments in her building. She understands how tough it can be to do business in this town so this could be fun and exciting. It is really tough to rent residential apartments in downtown Montpelier, which affects the value of her building and affects the rents they can get. Parking is nonexistent. For her building truthfully Charlie-O's is already a big issue when she rents apartments. The clients come out of Charlie-O's which is right next to the back of her building where the second and third floors are all residential tenants. Even when it is just four or five Charlie-O's clients the noise can be horrific and they climb her fire escape and will sit on the fire escape and scare her tenants to death. When she starts hearing about numbers of 140, or even 80, it makes her blood run cold. She went into Clancy's office to look at this permit so she could be somewhat educated before she came to the meeting and really had no idea of what the numbers were. Noise is a huge concern for her. She doesn't care what color the umbrellas are or any other aesthetic stuff. Personally, she cares about the noise. She, also like David, worries about fire. As he said he has almost had his corner building burn almost to the ground. She worries about the enforcement of this. She isn't sure one security person is going to be able to police two entrances. That is a concern for her. Seating for 80, and standing room on top of that, is very disconcerting to her. When she first went into Clancy's office she thought if it is 20 people out there and they have a bouncer maybe that will be an improvement because it would be getting people a little further away from her building. But when you are talking about these kinds of numbers, which they need to make it viable.....