

Montpelier Development Review Board
September 8, 2009
City Council Chambers, City Hall

Subject to Review and Approval

Present: Kevin O’Connell, Vice Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, Jeremy Hoff, and Roger Cranse. Philip Zalinger, Chair, showed up later in the meeting.
Staff: Clancy DeSmet, Planning and Zoning Administrator.

Call to Order:

Kevin O’Connell, Acting Chair, called the September 8, 2009 meeting of the Development Review Board to order at 7:00 P.M.

Approval of August 17, 2009 Minutes:

Upon motion by Mr. Blakeman and Mr. Richardson the minutes of August 17, 2009 were adopted on a vote of 6 to 0. Present at that meeting were Kevin O’Connell, Alan Blakeman, Daniel Richardson, Jack Lindley, Jeremy Hoff and Roger Cranse.

I. 149 State Street – CBII/DCD/FP

Applicant/Owner: Maxham Ferrari Investment Partnership
Design Review for Replacing Roof.
Owner: Joseph Ferrari

The application is for the removal of a 30-year old metal roof and replacement of an architectural asphalt shingle roof. The project was approved as proposed by the Design Review Committee.

Mr. Richardson said in the applicant’s application he states he is replacing the roof with slate colored shingles.

Mr. Ferrari said it is an asphalt shingle similar to slate from a distance. He showed the Board a sample of what the roofing would look like. It is grays and browns. He showed the sample to the DRC also.

Mr. Richardson moved approval for design review approval for the project at 149 State Street with the brown slate like asphalt shingles. Mr. Blakeman seconded the motion. The application was approved on a vote of 6 to 0.

II. Sketch Plan Review for a 3 Lot Subdivision

133 Towne Hill Road – CBI/DCD

Applicant: James Nagle
Owner: James Nagle and Na An

James Nagle, applicant and owner of the property at 133 Towne Hill Road, appeared before the DRB. He appeared before the DRB about two years ago with a sketch plan review and final review for a 3 lot subdivision for this property. He let the approval lapse because he wanted to change the configuration of the lot.

For the record, this is an application for a 3 lot subdivision on a 26.4 acre lot. Sketch plan review is an informal review for the applicant to receive advice from the DRB on how to proceed.

Mr. O'Connell asked what are the differences between the current proposal and the previous proposal as well as what are the reasons for wanting to change.

Mr. Nagle replied the difference is that the large lot B, which is 8.5 acres, was originally cut into two pieces and left the two proposed lots up near the road. They were one acre and two acres respectively. That was changed because they have had people who were interested in the property wanting to develop the property so they could also provide a guest house for their parents when their parents retire.

Mr. O'Connell asked if that was what the two acre lot was intended to be.

Mr. Nagle replied no, that is not a lot right now. It's literally part of the property, and that is where a guest house is being constructed right now. That is another guest house. If you look at Lot B right now, there are two structures proposed. One is a house and another guest house. The people who are interested in that property want to build two structures on the house. One is a guest house for their parents and one a house or themselves. Mr. Nagle said in Lot A there is a guest house which is in the midst of construction, and that is for the same purpose but for the owners of the property.

Mr. O'Connell said currently the only construction other than the one being built is on Lot C. Is that correct?

Mr. Nagle replied yes. On Lot C there is a house and two barns.

Mr. O'Connell said in one of the staff advisory comments that with the way the structures are spread out the roadways and circulation is going to be an issue. Road maintenance may be an issue with this proposed subdivision.

Mr. Nagle said among all three of the lot owners there would be an agreement that would be included in the actual deed about maintenance of the road and it would be prorated based on the length of the use. For instance, the homeowner who owns Lot C, him in this case, would be paying most of the prorated cost of maintaining the house and the person who owns Lot B and Lot A.

Mr. O'Connell inquired if the right-of-way was off Towne Hill.

Mr. Nagle replied yes.

Mr. O'Connell asked what his proposed utilities were.

Mr. Nagle said for both the guest house and the house they are going to be underground from Towne Hill Road.

Mr. O'Connell asked if there was city water and sewer for all.

Mr. Nagle said there is a cost issue around the Lot B house. There are estimates of \$37,000 and \$42,000 to pump the sewage up to the Towne Hill Road sewer main. That is an issue; it is pretty prohibitive. The property is 8.5 acres. There is plenty of land there to put either a mound system or if the lot perks a gravity septic system for the house. For the guest house he imagines that it would be pumped to the road.

Mr. O'Connell said he just noticed that one of the advisory comments is that he comes back with a more developed plan and it would be a good idea to have the utilities very firmly set within an engineered plan.

Mr. Nagle said he can propose what they would be, but it is up to the person who buys the property and then decides to request a building permit to have all of those approvals done.

Mr. O'Connell said as they indicated at the outset, sketch plan review is an informal discussion. The Board is giving him ideas. With the next phase a much more developed plan would be necessary.

Mr. Lindley asked if they had dropped the driveway length from the subdivision regulations. It is under §704. At one point they were working on the lengths of a driveway.

Mr. DeSmet said he thought that was a prohibition for municipal services for fire trucks.

Mr. Lindley said he would want to see an engineering report on the existing septic system for the existing house and guest house and its capabilities.

Mr. Nagle said that is already on file with the state.

Mr. O'Connell said it isn't part of the application process.

Mr. Lindley said he doesn't want to dump sewage on that hill when we have the opportunity to drive it up the hill to the city system. If you have failure of a septic system in that neighborhood it affects all of College Street.

Mr. Nagle said actually it wouldn't affect any of College Street because there is Blanchard Brook that crosses there.

Mr. Lindley said then it would affect the river downtown so we can smell it downtown. When you have a city system, that's what it is built for. He isn't a great advocate of sewage systems in Montpelier when we have the capability of a municipal system for water and sewer. He understands his concern about the cost, but he thinks the original plan two years ago we were going to pump it.

Mr. DeSmet said he didn't think there is any question that there is no choice for Lot B but it has to hook up to sewage. The ordinance is quite clear on that. The water is not mandatory, but the sewage is on Lot B. Lots A and C have already been permitted through the state so the Public Works Department is not going to require a hookup for water or sewer on Lots A or C. For Lot B there is no question that the sewage has to hook up to the city.

Mr. Nagle said he believes he has to go through the Town Council if he wants to receive a waiver to pump the sewage from the house on Lot B.

Mr. O'Connell said the plan is really a sketch. It doesn't have detail where you can make any informed general conclusions as to what is being proposed. Utilities are a big deal. It sounds like he has the road under control. The topography is missing; there is none. The purpose of this review is for the applicant to hear what the perception is.

Mr. Nagle said he would like to get a clarification because his understanding of the ordinances and regulations there is a conflict. The conflict basically comes down to since this is a low density residential area in the ordinance it allows you to build a septic system on a lot that is greater than two acres. Then, there is also a regulation that says if the lot is actually abutting a sewer line you have to pump to the sewer line. If he wanted to appeal that he actually has to go in front of a sewer commission, which is actually the Town Council.

Mr. Richardson said they are getting beyond the zoning ordinances.

Mr. O'Connell said they are also getting into a much more detailed analysis.

Mr. Lindley said if there is an engineer who is familiar with what we are working with here he is sure his plan will be in compliance. The sketch plan doesn't appear to be in compliance.

Mr. Richardson said this project will have to go before the Technical Review Committee at some point. At that point Tom McArdle and the Public Works Department would most likely be the ones looking to review its compliance with the city ordinances concerning sewage disposal.

Mr. DeSmet said he spoke to Tom McArdle on Friday and he said it had to hook up.

Mr. Richardson said that is ultimately something to work out as far as the city ordinances are concerned because it is beyond the DRB's scope. It does appear to put compliance with the sewage disposal standards into the hands of the city code. If there is a waiver provision, he is not familiar with those ordinances but it would have to be worked out in advance of the Board being able to review this subdivision plan.

Mr. Nagle asked if he has to go up to that committee and have them make that determination before he comes back here for a preliminary or final review.

Mr. Richardson said if he is seeking some kind of waiver, and if the ordinances allow for it, he would have to because when he comes back before the DRB they want to make sure this parcel can be used and they don't create a parcel that somehow is unable to have either sewer or septic either by function of topography, or perking, or ordinances as adopted. That is an issue that simply needs to be resolved before the Board can issue a final permit on all three of the lots. To that extent, if he has permits and capabilities on the other lots, he doesn't have to come in with a designed septic system but some kind of showing that it can be used and there is that capability. What he is looking at when he reviews these things is whether he is meeting the basic functionality by creating subdivisions they will be usable lots and they won't have to come back in a couple of years because there is a missing permit.

Mr. Richardson said as far as the right-of-way is concerned he would recommend to the extent there is any community property that there be some kind of formal association drawn up. It sounds like he has the basics of it already in place, but to the extent there is land and expenses to be shared the more formal that can be made the more binding it will be and the more clarity the Board will have in reviewing that.

Mr. O'Connell said that is also included in the staff advisory comments.

Mr. O'Connell said the Board doesn't vote on sketch plan.

Mr. Nagle said the only real question he has is the issue around where he goes to get the appropriate approval for a septic system.

Mr. O'Connell replied the Department of Public Works would be the first stop.

Mr. Hoff said one of the things he would like to see with more clarity is the right-of-way coming off of Towne Hill but it isn't shown how it actually gets to each of the structures. His concern is access for fire turnarounds, etc. There just isn't enough detail to draw conclusions about those things on the plan that is provided. He doesn't feel quite as strong as some of the other Board members about the need to go and get all of his permits for septic. The testimony he provided is that there is a connection to the municipal system some distance away and it is expensive to get there. To the extent the city is willing to connect him would satisfy his requirement. He might be creating a lot that it will cost \$40,000 to get on to the town system and he doesn't think the ordinance prohibits us from creating that lot.

Mr. Nagle said he would like that cleaned up so when he does sell the lot the person who buys it knows that they are buying. He doesn't want them to have to come back to the sewer committee.

Mr. O'Connell said Technical Review Committee will provide clarity there.

Mr. Lindley said the other issue is the driveway and how the Fire Department feels about moving its equipment down there and getting back up the hill.

Mr. Nagle said they have been going down it since he has owned the property and have had no problems with it.

Mr. Richardson said he thinks Jeremy's comment is taken into account giving that Lot B the house looks like it is on the far side of the water course.

Mr. Nagle said there is a culvert on the original driveway that crosses the water course and that house would be coming up after that. There wouldn't be need for another culvert.

Mr. Lindley inquired if there were any wetlands on any of this acreage.

Mr. Nagle said there is down in the woodlands where both water courses connect; it's pretty wet down there. That would still be retained by Lot C as part of the 16 acres. That is not part of any of the development other than being retained by Lot C.

Mr. Hoff said the setbacks aren't shown.

Mr. Nagle said they will be shown the next review.

Mr. Lindley asked if it was his intent to have underground utilities.

Mr. Nagle replied yes, for aesthetics and he believes it is mandatory.

Mr. O'Connell said Phil Zalinger, Chair, joined for the last agenda item.

III. Variance Request from Side Yard Setback for a Garage

302 Sherwood Drive

Applicant/Owner: Mark Smith

Interested Party: Joan Van Cour

Mr. Zalinger administered the oath to Mark Smith and Joan Van Cour.

Mr. DeSmet said the applicant requests a variance from the side yard setback to add a 24' x 26' garage to an existing structure at 302 Sherwood Drive which is located in a medium density residential. Minimum setbacks in MDR are 10' on the front, 10' on the side and 30' in the rear. The incursion of the proposed addition will be approximately 5 feet into the side yard setback. There is no other infringement. The applicant purchased the property in 1986 and the main structure was also built that year.

Mr. Zalinger asked Mr. Smith if he knew when the lot was created.

Mr. Smith said he didn't know the exact time the lot was created. His house was the first house that was built of those series of houses that were built on the lots. There are houses built on either side of him after his house was built.

Mr. Zalinger said Lot No. 4 is shown entitled Land in Montpelier, Vermont, surveyed for Marvin by Gordon Ainsworth and Associates, dated December 19, 1974 and to be recorded in the City of Montpelier Land Records. The subdivision would have had to been approved if it was created in 1974.

The variance criteria under some circumstances can be difficult to meet.

Article 10 Section 1006B – Variance Criteria:

A variance from the provisions of a zoning regulation may be granted by the Development Review Board only when each of the following criteria is met:

- 1) 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 condition creates a hardship which makes it impossible to build within the setbacks.

Are there any elements or issues about his lot that makes it difficult to build within the setback?

Mr. Smith said where he would like to put the garage is the obvious place for it because it is directly in front of the driveway. The only other place that would be accessible would be directly in front of the house which wouldn't be very aesthetic and there is a fairly steep hill between the road and the house that would block direct access. He would have to come down his driveway and turn off. It doesn't seem like directly in front of the house would be the best spot for a garage.

Mr. O'Connell asked if in front of the house now is a temporary structure.

Mr. Smith replied yes.

Mr. O'Connell asked if that was being used as a shelter or garage.

Mr. Smith said yes. There is not enough room on the west side, or uphill side, of the house to take the garage all the way beyond the house and put it essentially on the other side of the house. There would be the same problem with the property line setbacks.

Mr. O'Connell inquired how many vehicles would fit in a 24' width.

Mr. Smith said two.

Mr. O'Connell asked if there would be two separate doors or one big door.

Mr. Smith said he hasn't gotten into the exact design because he knew he had to ask for a variance. Most likely there will be two doors.

Joan Van Cour said she lives on the adjoining property at 286 Sherwood Drive. She said she will probably be the only person who is going to be affected by this. He asked her opinion of having this structure 5 feet from her property line. She has some concerns. She would have concerns with any structure being 5 feet from her property line because she is on a hill. Any structure that goes in is going to be higher than she is so it is adding an extra half story above her. Having something much higher than her house she would miss the sunlight come in her bedroom windows. She is also a bit concerned about having something so close because it is a garage if there is any kind of accident it is that much closer to her property. She wants to make sure there are trees planted between them to stay as a buffer between their properties. Her bedroom window is right level with his driveway. She is one house downhill. She is wondering if it is necessary to have it that wide.

Mr. O'Connell asked her how far back her house from the property line is.

Ms. Van Cour said she thinks about 15 feet.

Mr. O'Connell asked her what her drainage is when it rains.

Ms. Van Cour said it tends to drain back.

Mr. O'Connell asked Mr. Smith if he had given that some thought because he is potentially changing the dynamics of the water runoff by having a structure.

Mr. Smith said the roof would be draining off to the back which would not affect her property. There is an existing retaining wall at the end of his driveway now, both on the back side and on the side towards Ms. Van Cour's property. The edge of that retaining wall is within 10 feet of the property line already so he isn't changing by more than 2 feet. The retaining wall is part of the reason he is doing this. The retaining wall is 23 years old and has developed a lean to it that needs to get fixed. He has to dig up that property area anyway to fix the retaining wall so he is essentially replacing the retaining wall with the foundation for the garage.

Mr. Lindley said if he understands the mathematics he wouldn't have to be before us if he was only going to build it 19 feet wide.

Mr. DeSmet said it would be administratively approved.

Mr. Lindley said looking at the pictures of his neighbors it looks like they all have one car garages.

Mr. Smith said his preference would certainly be to have something wide enough where he could have both cars accessible at the same time. When the property was built there were no trees between us. There was a roughly 4 foot cedar hedge. He has let the trees grow up for screening so there wouldn't be any screening at all if the trees had been trimmed down and kept at hedge level.

Mr. Zalinger said Jeremy Hoff pointed out to him that one of the provisions of the deed of which he took title to the property states that the grantee by acceptance of the deed covenant and agree that they will not violate any of the conditions hereinafter set forth and that the delivery of this deed is accepted by the grantees upon the following conditions. That means these conditions were placed on the property by the folks who conveyed it to him, the immediate predecessors. This is the first condition.

1. No building or part thereof shall be erected on said lot, the outside walls of which shall be less than 30 feet from the street line or 10 feet from the lot line.

Mr. Smith asked if that was what the zoning specified.

Mr. Zalinger replied that was correct. Even if the Board were to give him a variance from the zoning ordinance his deed has a condition upon it that prohibits him from building within 10 feet of the lot line.

Mr. O'Connell said even if the Board granted a variance it can't still be built.

Mr. Zalinger said his view of this is that it appears this is a common scheme that the development adopted at the time of the subdivision. When these lots were created and sold in the 1980's the same conditions were imposed upon all of the lots and that all of the purchasers and owners were both burdened by these limitations but also benefitted by them because his neighbor knew he couldn't build within 10 feet, and he also knew his neighbor couldn't build within 10 feet. It was a common scheme that both burdened and benefitted all of the lots in the subdivision. His view of it would be that it creates legal rights in your neighbors who could object to and interfere with his developing within 10 feet of the lot line because they are entitled to rely upon this.

Mr. Smith said he had not had the line surveyed so he doesn't know the exact location. He does have the retaining wall.

Mr. Zalinger said there is a survey of record in the land records so somewhere there are very specific metes and bounds descriptions. He would expect there is a point in the edge of the town right-of-way where there is an iron pin and there are specific metes and bounds descriptions that a surveyor could find to tell you where your real lot line is. It is the same for all of the other parcels in the development. There are a couple of alternatives here. He should get legal advice of his own and not rely upon the DRB to give him legal advice because they aren't representing him. They can just point out that this condition is in the deed and may well impact upon the success of going forward with this project because he certainly wouldn't want to receive a variance from the Board, start the excavation and then find out that his neighbors have a legal right to ask him to discontinue the project.

Mr. Zalinger said it would be in Mr. Smith's best interest to ask the Board to table the application and independently determine through his own lawyer whether this is an enforceable condition, because if it is obtaining a variance might be an empty gesture on his part. The best thing would be to continue this until a date certain, and to give him an opportunity to investigate this he would suggest they continue this until October 5th. If he finds out this condition is in place and does burden his property he may just withdraw the application.

Mr. DeSmet said if he finds out it is enforceable and he can't do anything about it they can work on something that will be permissible administratively. It would be on a smaller scale.

Mr. Smith said he would like to continue the application until October 5th.

Mr. Zalinger asked Clancy to note there is a deed in Book 195 pages 497-498 where the grantor to Smith acquired the property. Julie and Jay Richard acquired the property in the deed.

The Smith variance application is continued until October 5, 2009.

Adjournment:

Upon motion by Jack Lindley and Jeremy Hoff the Development Review Board adjourned on a vote of 7 to 0.

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator