

Montpelier Development Review Board
October 5, 2009
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Kevin O'Connell, Vice Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, and Jeremy Hoff.
Staff: Clancy DeSmet, Planning and Zoning Administrator.

Call to Order:

The October 5, 2009 meeting of the Montpelier Development Review Board was called to order by Philip Zalinger, Chair, at 7:00 P.M.

Review of September 21, 2009 Minutes:

Mr. O'Connell said Phil Zalinger joined the board right after the Baldwin Street project. Kevin actually called the meeting to order. Mr. Zalinger chaired the last item on the agenda relating to 566 Cityside Drive. Upon motion by Mr. Blakeman and Mr. O'Connell, the minutes of the September 21, 2009 Development Review Board was approved with minor changes on a vote of 6 to 0.

I. Preliminary Plan Review for Two Lot Subdivision
304 Berlin Street – MDR

Applicant: McKee, Giuliani & Cleveland
Owner: Norman and Virginia Kelley
Interested Party: Elizabeth MaGill

Elizabeth MaGill from McKee, Giuliani & Cleveland requested the application be treated as both preliminary and final review.

Mr. Zalinger said that normally any requests for the joining of preliminary and final review are addressed in advance because the public hasn't been notified that it could potentially be preliminary and final nor have the Board Members. They haven't prepared for a final plan review. The ordinance itself may say that preliminary and final review can be joined if it is requested in advance. Ms. McGill said she did request that in her letter of September 14th. Mr. Zalinger asked what the pleasure of the board was.

Mr. Lindley said the zoning permit has been placed on the property for a period of time now.

Mr. Kelley said it was three weeks before the first application.

Mr. Zalinger asked if there were any members of the audience who were interested in Mr. Kelley's application.

Keith Jones said he would be interested in the fact that they are perspective purchasers of one of the parcels. They have no objection to it being consolidated.

Mr. Lindley said a month ago they had sketch plan review. Mr. Hoff said he doesn't remember that it was requested at that meeting to combine preliminary and final review.

Mr. Zalinger said Mr. Kelley appeared before the DRB in August. Was there actually a subdivision plan before the Board the last time? The sketch plan they reviewed is different than the preliminary plan that

is now before them because the configuration of the lot has changed. His inclination would be to decline to combine preliminary and final review for that reason. They had a sketch plan that differed from the preliminary plan here. If they were to join preliminary and final review, it wasn't noticed as preliminary and final so this plan would only have one review. The first plan was slightly different from the final proposal that is before the Board

now. It would be better to have preliminary and final distinct and they have to make that decision before they hear the evidence and not after the evidence.

Mr. O'Connell and Mr. Hoff said they were in agreement with the Chair's statement.

Mr. Zalinger said it is clear the Board would like to proceed with preliminary review this evening and then final review at another time.

Sketch plan is informal. This time they will need to take evidence under oath. Mr. Zalinger administered the oath to people connected with the application.

Mr. DeSmet said the applicant requests a two lot subdivision preliminary plan approval. There is an existing home on a 4 ½ acre parcel. Lot 1 will be 1.94 acres and Lot 2 will be approximately 2.48 acres. There is no proposed development at this time. Both lots meet the minimum lot size and meet the setbacks. The only problem is that it lacks frontage according to § 607. It currently has frontage, but the subdivision would not have the required frontage. There is a 60 foot right-of-way on Sherwood Drive that is proposed to access the rear lot.

Mr. Blakeman asked if the neighbors had been notified.

Mr. DeSmet said all of the abutting landowners have been notified. 484 Sherwood Drive is actually Mr. Kelley's primary residence. He just owns the parcel in question.

Mr. Lindley inquired if this was going to have a Berlin Street address. What is the 911 address for this piece of property?

Mr. Kelley replied that it is 304 Berlin Street.

Mr. O'Connell asked what the new lot address was.

Mr. Kelley said it is 414 Sherwood Drive. He said he secured a 911 address from the Police Department.

Mr. Zalinger asked what the outcome of the discussion was with respect to the rear line of the existing Kelley parcel.

Ms. MaGill said that line was changed so the lot no longer has an unusual configuration. The Kelley primary residence will no longer connect to Lot 2.

Mr. Zalinger commented that involved in this subdivision the rear lot line of the Kelley residence is going to be changed.

Mr. Kelley said the rear lot where he lives now is the dark line. When he built his house the city would not let him build a house because the lot did not have enough land so they extended over into the other parcel of land, which he owns.

Mr. DeSmet said he did some research in the land records and they were approved for a lot line adjustment between 484 and 304. It wasn't in the data base. That was actually approved in 2004, administratively approved and recorded in the land records.

Mr. Zalinger asked if provision had been made for the delivery of utilities to Lot 2.

Mr. Kelley replied the water is already in with the permission of the City of Montpelier.

Mr. Zalinger asked how it arrives. Where does the water line run?

Mr. Kelley replied it comes down Berlin Street and then through the right-of-way. The main runs down Sherwood Drive, and there are three taps off the Sherwood Drive area in one nest of curb stops; one goes to Hickory, one to Lot 1 and one goes to Lot 2.

Mr. Zalinger asked if Lot 1's water service was by an easement over Lot 2.

Mr. Kelley replied yes.

Mr. Zalinger said when the Board approves subdivision plans they like to know that all of these issues were addressed and resolved. Water comes in from Sherwood Drive. The existing usage right now has a line that runs across Lot 2 and when you subdivide them he will be sure to make provision for that. He inquired about electricity.

Mr. Kelley said they have a right-of-way across his existing land and across Lot 1 from Sherwood Drive.

Mr. Zalinger inquired if it was underground.

Mr. Kelley said the electrical line is already in for Lot 1 and Lot 2 as one line. They are going to have to split them.

Mr. Zalinger asked if there was underground power to what Mr. Kelley plans to be Lot 2.

Mr. Kelley replied yes. They will add an additional line through the existing right-of-way from a pole that is on Sherwood Drive across his existing land Lot 1 to Lot 2. It will all be underground.

Mr. Zalinger inquired about telephone and cable service.

Mr. Kelley said they would be provided with it.

Mr. Zalinger also inquired about the sewer line.

Mr. Kelley said it had been engineered and has been approved. Lot 1 is already served. Lot 2 will go off the right-of-way to a manhole at the end of the driveway on Sherwood Drive.

Mr. Richardson asked if that was the right-of-way across the land of Hickory's.

Mr. Kelley replied yes.

Mr. Zalinger asked if he had talked to the city about that.

Mr. Kelley said yes and they approved it. This was forced because the city used to have a main that came up and served all of the houses. That was before Sherwood Drive was put in. After Sherwood Drive was put in the city put a main down Sherwood Drive and changed all of the services.

Mr. O'Connell asked Mr. DeSmet if the Technical Review Committee had reviewed any of this yet or do they need to wait for a project.

Mr. DeSmet said he usually only convenes the Technical Review Committee when there is a proposed development on a lot. He talked to Todd Law, the Director of Public Works, about this. There is a letter from 2002 which is a little different from what is proposed now. There was development proposed in 2002, but they are still going to have to communicate with the Public Works Department.

Mr. Zalinger said the overhead photograph of the map which is part of the application shows where the property is now. He can identify the house. His plan shows a garage on Lot 2.

Mr. Hoff asked if the driveway accessing the garage over Lot 1 would be discontinued once the subdivision is complete.

Mr. Kelley said the driveway is in already.

Mr. Hoff said there is an existing driveway across Lot 1 to the garage from Berlin Street.

Ms. MaGill said at one time there was a second driveway. That is no longer in use.

Mr. Zalinger said Lot 2 will not be benefitted by any rights-of-way over Lot 1.

Mr. Kelley replied there will be a right-of-way for a spring that exists for Lot 1 which he is going to maintain for his own use.

Mr. Zalinger told Ms. MaGill that if there is ingress and egress to Lot 2 from Berlin Street over Lot 1.

Ms. MaGill said there will not be.

Mr. Kelley replied it has already been cut off.

Mr. Zalinger asked Mr. Kelley if is familiar with the setback requirements.

Mr. Kelley replied yes.

Mr. Zalinger asked if he didn't envision there being any difficulty siting a new house there in compliance with the setback requirements.

Mr. Kelley replied no.

Mr. Zalinger said they don't want to create a situation where a lot is created and he can't build on it without a variance because if he came back to the DRB for a variance they would have to decline it because the obstacle to development was created by the applicant and not by the property itself.

Mr. Kelley said he understood.

Mr. Zalinger asked if Mr. Kelley had a preliminary plan for where the house is going to be located.

Mr. Kelley said there were some, but they have discarded them. The whole plan was presented several years ago in 2004, the plumbing, sewage, house, etc. There is plenty of room.

Mr. O'Connell moved to approve the preliminary plan for 304 Berlin Street as proposed, with Mr. Lindley seconding the motion.

Mr. Zalinger said he would like to see on the final plan when it is submitted what provisions or notes there are for the delivery of the utilities we discussed because now the only representation they have is testimony that the water and sewage will be coming from Sherwood Drive. That really should be part of the final subdivision plan. Those are the kinds of questions that come up in a preliminary review. He asked Mr. O'Connell to add that as an amendment to his motion, that we grant preliminary plan review on the condition that the final plan depicts all of the utilities and any easements and rights-of-way that will be retained or granted in connection with the subdivision. That would include Mr. Kelley's retention of an easement or right-of-way to a spring on Lot 1.

The vote on the motion with the amendment was favorable on a vote of 6 to 0.

**II. Appeal Zoning Administrator's Determination Regarding Lighting
190 River Street – GB**

Applicant: Reuben Sherman

Owner: James Barrett

Mr. Zalinger administered the oath to Reuben Sherman, Mr. Barrett and Mr. DeSmet.

Mr. Sherman said his concerns with the lights on the property across River Street from him date back to an appeal in 1986, and it seems like every three or four years he is back again with some other concern. So far findings have been in his favor that the lights are unreasonable in a residential neighborhood. At this point on that property, not counting the car wash or the former Honda building, there are 25 lights not all of them on all of the time. He is basically appealing a decision on one light that is on the west end of what used to be the Restore building. He apparently doesn't understand what a cutoff fixture is. He thought a cutoff fixture was to keep the light shining off the property.

Mr. Zalinger said he would like him to introduce the facts to the Board in a way that they grasp as much as he knows now. The west end would be the Pioneer Street end of the building.

Mr. Sherman said it would be pointed toward Pioneer Street.

Mr. Zalinger said chronologically one day the sun went down and the lights came up.

Mr. Sherman replied yes, and it had not been there before. The next morning he e-mailed Mr. Smith and ended up filing a formal complaint and received a denial.

Mr. Zalinger asked if the light was in fact recently affixed to the building.

Mr. Sherman said there was a light put on both ends of the building. One end of the building is not directly visible from his house; that is the east end.

Mr. Zalinger asked if that had to do with any construction at the Restore building.

Mr. Sherman said it was after the Restore building had been reconstructed. There was some accent lighting put on the building. It had been there for months before these two lights were affixed.

Mr. O'Connell asked when this one first show did up.

Mr. Sherman said he doesn't remember the date of his first e-mail. He is talking about late July or early August. The particular light in question is angled upwards at about a 45 degree angle. An electric pole about 20 feet away from the building and twice the height of the light is illuminated all the way to the top. When it is foggy out there you can really see that angle going up. His house on the other side of River Street is at a higher elevation and this light is visible from his bedroom windows.

Mr. Zalinger asked if it was on all night.

Mr. Sherman replied it is on all night. The illumination of the light extends beyond the frame of it so it is visible from all sides. In the general requirements for lighting it says that light fixtures should be aimed and shielded in a manner that does not direct illumination on adjacent residential properties. This one does. He doesn't have a light meter so he doesn't know how much it is. It is bright enough that if you are looking at it with your glasses you will get a star in your glasses. He doesn't know what a full cutoff fixture is. He would presume a full cutoff fixture would block the light from going off of the property. This one obviously directs light throughout the neighborhood.

Mr. O'Connell asked if to his knowledge had his other neighbors noticed this as well.

Mr. Sherman said his immediate next door neighbor on the other side of Blackwell Street, Patty Bessette, has. When she got the notice for this hearing she said I don't have to go do I?

Mr. O'Connell said he doesn't know how many Board members have visited this site at nighttime. He wants to see it and we could do that a couple of ways. We could each make our own trip down there and take this up at the next meeting or just pile into cars and go down there now.

Mr. Zalinger said he agrees that he wants to see it before he participates in taking any action. He doesn't think that all of them driving down there and recessing the hearing to do a site visit and then return isn't very smooth. It's very disruptive.

Mr. Sherman said the first time they ever took a field trip was for a light on that property and coming to his house in 1986.

Mr. O'Connell said he would recommend they continue this at the next meeting.

Mr. Sherman asked if there would be a separate notice of that sent.

Mr. Zalinger said they want to hear from the Zoning Administrator as well.

Clancy DeSmet, Planning and Zoning Administrator, said he would like the Board to take note that there is actually a street light right in front of Mr. Sherman's house and most of these provisions apply to residential areas. This light is facing a General Business area. To his knowledge the light in question is a cutoff fixture and has a filter in front of it which angles the light downward. If you see on the light meter readings it actually meets the standards.

Mr. Zalinger asked if this was a cutoff sheet from the precise fixture that is on the building.

Mr. DeSmet said it was one he was given from the landowner. To his knowledge it resembles the light he has seen on the site.

Mr. O'Connell asked Mr. DeSmet if he had someone do the light reading.

Mr. DeSmet said he did not.

Mr. Zalinger said when the Restore building was reconstructed was there any review of the plans.

Mr. DeSmet said there was a permit filed. It was a site plan amendment and administratively approved. There was no footprint change and the same proposed use. There was no required parking so it received administrative approval. It was posted for 15 days.

Mr. Zalinger asked if there was any lighting plan on the application.

Mr. DeSmet said no. He was told that they would be using the same lights that were approved for the previous projects.

Mr. Zalinger said apparently that is not the case.

Mr. DeSmet said in his opinion it is.

Mr. Zalinger asked if these were the same light fixtures that were on the old building.

Mr. DeSmet said they are similar in style to the previous lights on the building. They are similar in style to the storage units that were approved along the river.

Mr. Zalinger inquired if this was security lighting.

Mr. DeSmet said yes.

Mr. Zalinger said it comes on at dusk and goes off at dawn.

Mr. DeSmet said right, unless they see fit that it can stay on longer.

Mr. Zalinger said the plans for the new Restore building were to continue the security lighting that had already been appended to the old Restore building.

Mr. DeSmet said no. He wasn't around when they built the Restore building.

Mr. Zalinger said it appears the landowner may have replaced the building on the same footprint with all of the other same issues and then added lights sua sponte. That might in fact change the ambience of the entire neighborhood. If a building is replaced and the new replaced building appears with new lights and then they are defended because they don't have any impact to a residential area because they face General Business. It seems to him that the door was left ajar for a moment and someone got out.

Mr. Hoff said the question is not whether necessarily the lights comply with the regulations but whether they added lights without approval.

Mr. Zalinger said that would be a threshold question.

Mr. Hoff said they may be conforming lights that were added without approval, or they may be nonconforming. Have we gotten past the point that they were not equivalent lights as the building was vigorously constructed? Are they putting equivalent lights in the same places?

Mr. O'Connell said the question would be if additional lights are added but they are in conformity do they need prior approval? Is that part of a permit process that is to be followed? That would be part of the original plan. It could be administratively approved. But if the lighting footprint has changed it would have need to have been part of the plan. If the lighting had changed, there probably needs to be an amendment to the permit at the very least.

Mr. Zalinger added or the lighting wasn't permitted.

Mr. Lindley asked if the original Restore building had lights on it.

Mr. Sherman said the Restore building originally had one light bulb by its door facing the railroad tracks. There was no security lighting as such, just a light by the door. The lights on the end are totally new.

Mr. Barrett said that is nonsense.

Mr. Zalinger told Mr. Barrett to wait his turn and don't speak out of turn. If you don't want to participate in that way, then he won't participate at all.

Mr. Sherman said the Restore building before had show windows and also a light by the door. There were no lights on the ends, so this is new. There are now 25 lights on that property; they just keep adding them.

Mr. Zalinger said they are dealing with one issue here. He asked Mr. Barrett if he wanted to address the old Restore building.

Mr. Barrett said the Restore building had the exact same lights on it that are on the building they have there now. They tore half of the building down and saved the lights. Every light on that property has met your specifications. They changed the lights many times just to satisfy Mr. Sherman. Green Mountain Power changed one four times up there. This is getting to be ridiculous! He complains about everything they do down there.

Mr. Zalinger said the old Restore building, the old clapboard building, had these light fixtures on the eastern end and the western end.

Mr. Barrett replied that was correct.

Mr. Zalinger asked if they were on each night.

Mr. Barrett replied yes.

Mr. Zalinger added from dusk to dawn, and Mr. Barrett said yes. Mr. Zalinger said there seems to be a disagreement.

Mr. Sherman said if those lights existed they were blocked from his house.

Mr. O'Connell said he believes they both laid out their positions on this and it is up to the Board to do a little field research.

Mr. Richardson asked if there were any photographs of the old Restore building.

Mr. Zalinger said the Board is just addressing the one specific issue about whether the lights had been on the previous building or not. If something else comes up, they would be happy to have Mr. Barrett address the DRB again. He asked Clancy if he could contact Restore and determine whether they have a photo of the building.

Mr. O'Connell said that would be most helpful.

Mr. Lindley said perhaps they could verify whether those lights were on the building.

Mr. Zalinger said they get over the threshold question of how the lights appeared on the newly developed building and get into the substance of the lighting issues. He asked Clancy what provisions address this issue.

Mr. DeSmet he actually addressed just what Mr. Sherman appealed.

Mr. Zalinger asked if there were other provisions in the zoning ordinance that support allowing the lights.

Mr. DeSmet said he was correct.

Mr. Sherman said there is one item under § 710(c) which states that the maximum height for a luminary with a 90 degree cutoff angle which is 15 feet. The maximum height for a luminary with a cutoff angle of less than 90 degrees is 20 feet. It does not address one for a luminary that is actually pointed upwards of 45 degrees.

Mr. DeSmet said he didn't believe it was pointing upwards.

Mr. Sherman said the light goes up. It doesn't go straight across but up. He is at a higher elevation. If it didn't go up he wouldn't be able to see it from his house. The light is mounted on a bracket at a 45 degree angle. There is an electrical pole about 20 feet away from the building and twice as high as the building. It is illuminated to the top of that pole, so this is going up.

Mr. DeSmet said he will admit it does shine in the western direction, but he doesn't think it shines towards his property. It is obscured with a street light that is right in front of Mr. Sherman's house.

Mr. Zalinger said the ordinance doesn't say the impact of any provisions is dependent upon whether there is another light source near the neighbor.

Mr. Hoff asked how long the current property owner has owned the building. How long has Mr. Barrett owned the property?

Mr. Barrett replied about 40 years.

Mr. Hoff asked when the Restore building was initially constructed, during his ownership or previous.

Mr. Barrett said he built it in 1978 or 1980.

Mr. Zalinger asked Clancy if between now and when they revisit the site if he would investigate whether the fixture is being used complies with § 710(f)(3), which seems to be the designated specified type of fixture by the Illuminating Engineering Society of North America. Let's find out if it is a full cutoff fixture as defined.

Mr. O'Connell asked what exactly the definition of a cutoff fixture is.

Mr. DeSmet said it isn't specifically defined in the ordinance. There is an image under § 710, but the image refers to recessed can lighting.

Mr. Richardson said these lights are attached to the building and not sitting on a separate pole. There was mention of an electrical pole.

Mr. Sherman said there is an electrical pole about 20 feet west of the building.

Mr. Richardson asked Mr. Sherman if he was basing all of his testimony from the observations from his house.

Mr. Sherman replied yes. It is a cutoff fixture and he is at a higher elevation. If it is supposed to be a 90 degree cutoff he shouldn't be able to see the light.

Mr. O'Connell asked Mr. Sherman if it would be all right for Board Members to come up to his porch.

Mr. Sherman replied yes. It's hard to get on the porch these days. They can come to his property and see it from there.

Mr. O'Connell said he isn't sure they would get the same perspective at street level if they were on the site itself.

Mr. Richardson said for clarification Mr. Sherman is just appealing these two particular lights.

Mr. Sherman said actually he is appealing just the west light because the east one is not directly visible from his house. Whether it bothers any of his neighbors they haven't appealed.

Mr. Richardson inquired about the other lights on the property.

Mr. Sherman said the other lights are mostly accent lighting, or they are shielded. He isn't seeing the surface of the light directly. They aren't casting shadows in his bedroom.

Mr. Zalinger said their next DRB meeting is October 19th. What is the pleasure of the Board? He isn't sure any further testimony tonight is going to advance the cause. He suggested they continue this matter until October 19th and in the interim each member go independently to conduct a site visit.

Mr. Lindley said he is concerned if they do a site visit independently there may be five different views. If they all go at the same time they create a catchment for whatever they need to get, and he would feel more comfortable with that. Maybe after this meeting maybe they could get that accomplished so they would know what they are talking about.

Mr. Zalinger suggested they do it prior to the meeting on October 19th.

Mr. O'Connell said that might not be a bad idea. That way they could look at it independently and then do a follow-up on the 19th itself.

Mr. Zalinger said there would be at least six cars.

Mr. Sherman said there is no parking. It's Blackwell Street.

Mr. DeSmet said they could probably park on Mr. Barrett's property.

Mr. Zalinger said it isn't a public site visit or part of the record. It is just the Board itself conducting a site visit at 6:45 P.M. on the 19th. Is there a motion to continue this matter until October 19th?

Upon motion by Mr. Lindley and Mr. O'Connell, it was approved on a vote of 6 to 0 to continue the application on October 19th.

Mr. Barrett said if the light meets the requirements that are set forth by the ordinance and it is the one they have used on all of their buildings there, and the light recommended by two different architects for the building, let's assume it is the correct light, which he knows it is, the fact it may be in this instance shines up there. Is that any difference? We're using the correct light the city recommended. They have followed the book and they are saying now because it may shine in someone else's window that they may have to change it or take it down.

Mr. Zalinger said that was a hypothetical question and he doesn't think any of the Board can answer it at this point. The way he presented it the logical answer would be no because the statute doesn't say if someone can see it from your house it doesn't comply. That is not the way the statute measures the lighting, but that is the way he said it in his question.

Mr. Barrett said he was trying to use the fact that they have used what the city told them to use. There are probably 20 to 30 identical lights up there.

Mr. Zalinger said they would discuss the matter on October 19th.

Adjournment:

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

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator

Transcribed by: Joan Clack