

Montpelier Development Review Board
November 1, 2010
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, Roger Cranse, and Sabina Haskell.
Staff: Clancy DeSmet, Planning and Zoning Administrator.

Call to Order:

The meeting was called to order by Philip Zalinger, Chair at 7:00 P.M.

Comments by the Chair:

Mr. Zalinger asked that members stay after the last agenda item to discuss the Environmental Court decision they received.

Consent Agenda:

Mr. Zalinger explained how the DRB proceeds with Consent Agenda items. If the applicant has been before the Design Review Committee prior to coming to the DRB and the Design Review Committee reviewed the application and recommended approval as proposed they usually don’t take additional testimony.

I. 89 State Street – CB-I/DCD

Owner/Applicant: Vermont Mutual Insurance Co.
Design Review
Greg Lord, E.F. Wall & Associates

Mr. Lindley moved approval for the application for 89 State Street as presented. Mr. Cranse seconded the motion. The motion was approved on a vote of 7 to 0.

II. 107 State Street – CB-I/DCD

Owner/Applicant: John Russell
Design Review for multiple renovations
Interested Party: Jay White, Architect

The Design Review Committee reviewed this application at its October 26th meeting and recommended approval with an adjustment and optional changes. The adjustment was that all large windows may be replaced with 6 over 6 profiles with wooden and true divided light. The optional changes are that the snow guards may be rails or “angel wings” as needed to protect from snow falling off the rear rood and the dormer windows on the north side of the building may be enlarged in case of egress requirements. Is the applicant in agreement with the adjustment suggested by the Design Review Committee?

Mr. White replied he is.

Mr. Zalinger said he doesn’t understand that the large windows may be replaced with 6 over 6 profiles.

Mr. White said initially the proposal that John wants to do is to focus on the north elevation because there are so many windows that have been blocked he has been replacing them over time. Those were both blocked when it was the Thrush Tavern and he wants to open those up. There may or may not be sash underneath there. What he has been doing over the last several years he has been replacing windows with a true divided light wood window. The adjustment was to allow him to continue to do that on the rest of the

building. The adjustment was just to allow him to replace the windows with 6 over 6 without getting another permit as he upgraded the windows. It doesn't compel him to do it. It is a fairly expensive project for the amount of rent he receives from the tenant there so he is doing it over time and expects to complete all of the work within a three year period.

Mr. O'Connell inquired what kind of business is located there.

Mr. White said it is a school. It is U-32/Montpelier apartment program and they live clients to live on their own and learn what it is like to go to shopping, live in an apartment, etc. It is a transition from a program they have in the high schools, both U-32 and Montpelier, and when the students graduate that program at the school is no longer available so this is an interim step for them.

Mr. Richardson said he doesn't understand why he would want this as an optional adjustment as opposed to simply a shall replace it. Why does the DRC want to have this as an optional change of may replace with 6 over 6 as opposed to something with a bit more substance because it sounds like John is replacing them with 6 over 6 every time he opens them up? This wouldn't obligate him not to replace the 6 over 6 if he isn't replacing windows, right?

Mr. White said the focus was on the rear of the building and they didn't want to be obligated to replace them within two years and if they didn't someone would say the occupancy isn't valid. If he has the funds to replace all of the windows they would like the ability to do that.

Mr. Zalinger said then the applicant is free to replace windows at the site at any time he wishes provided he replaces them with 6 over 6.

Mr. White replied and with the same details that are there now. When Margot George was alive she focused more on the building than John did and she was adamant that the windows have the skinny muntins as they did originally. None of the windows are original. They have all been replaced at one point. She made an effort to make sure that the new windows matched the skinny muntins of the federal style and they want to continue with that. The windows on the south side and the front of the building have been replaced with that kind of window.

Mr. Zalinger asked Mr. White to explain the optional changes for the snow guards and the dormer windows.

Mr. White said he had proposed the bars across. They want to keep the snow from sliding off on the north side because it will become a more prominent entrance. During the Design Review meeting Steve Everett thought the angel wing snow guards might work better. He doesn't know that. Because it is on the north side you don't get the sun melt you get on the south side.

Mr. Blakeman asked if the door should be a metal door.

Mr. White replied it is a wood fir door.

Mr. Blakeman asked if it passed the fire codes.

Mr. White said the exterior door is not a fire rated door. It is a replacement of the door that is there which is a beat up door. They want to have a light in the door itself to let light in and to be able to see if someone is coming or going. There is no fire requirement for a fire rated door on an exterior entrance or exit.

Mr. Richardson moved for design review approval at 107 State Street as proposed with the following adjustment, that if the windows are replaced they shall be replaced with 6 over 6 historic profile windows in

a similar fashion to the windows that have been replaced on the front of the building. The optional change is that the snow guard may be either rails or angel wings and that the dormer windows on the north side of the building may be enlarged to meet egress requirements. Mr. Lindley seconded the motion. The motion was approved by the DRB on a vote of 7 to 0.

III. 16-18 State Street – CB-I/DCD

Owner/Applicant: Scott Fitzgerald

Design Review to replace three windows.

This application went before the Design Review Committee three times, twice in September and also on October 26th. It was recommended for approval with some modifications. He asked Scott to tell the Board what happened at the Design Review Committee.

Mr. Fitzgerald said he attended on several occasions and at the last meeting he brought in an actual window he was going to do a replacement with. The big stickler was the material the window was made out of. It is made out of vinyl so there was a lot of discussion as to differences between vinyl and fiberglass. A couple of the committee members didn't approve the vinyl but everybody else did. It was approved with two of the committee members saying they didn't like vinyl.

Mr. Zalinger said he modified the proposal and it was the modified proposal that was approved by a 3 to 2 vote. Is that correct?

Mr. Fitzgerald replied that is correct.

Mr. DeSmet said the two top windows were replaced previous to obtaining approval. The original windows are the other five.

Mr. Fitzgerald said he didn't have any idea about what was going on. He didn't know about the Design Review Committee and there was some work being done. They installed the windows. The windows came in incorrectly because they were supposed to be just like the downstairs windows with 3 over 3's. They have since come back and corrected that. The third window which has not been installed he brought the sash to the meeting with him.

Mr. O'Connell asked if the two windows he originally replaced are now 3 over 3's with a patterned lattice or just 3 over 3's.

Mr. Fitzgerald said it is a mullet thing. It is an exterior design and it emulates the light.

Mr. Zalinger said the Design Review Committee did approve the windows he is now proposing by a 3 to 2 vote at the October 26th meeting.

Mr. O'Connell said the dissenters were in favor of the fiberglass. Is that correct?

Mr. Fitzgerald said they would have preferred fiberglass over vinyl. They thought they might last longer.

Mr. Richardson asked Clancy how often do notices go out to property owners as far as the design review requirements.

Mr. DeSmet replied all the time. Every time there is an abutting property they send notices out.

Mr. Richardson said they have had this issue before.

Mr. DeSmet asked if this was about education and outreach.

Mr. Richardson said a lot of property owners come in and say they had no idea they had to go through design.

Mr. Fitzgerald replied he is a new owner. He has only owned the building for a little over a year now.

Mr. DeSmet said he thinks they do a lot of outreach but some people don't. There was a whole preservation week last year. We do a lot of outreach.

Mr. Zalinger said there is a front page article in today's Burlington Free Press on this exact issue.

Mr. Blakeman moved approval for the new windows for 16-18 State Street including the modifications made by the Design Review Committee.

Mr. Zalinger said Alan's motion is essentially to approve the project as approved by the DRC. Mr. Cranse seconded the motion. The motion passed on a vote of 6 to 1. Mr. O'Connell voted no.

IV. 6 North College Street – MDR

Owner/Applicant: Heather Kralik

Variance Request for a residential addition.

Mr. Zalinger administered the oath to Heather Kralik.

Mr. DeSmet said the applicant seeks approval of a variance from the side yard setback requirement for a residential addition on the south side of the main structure at 6 North College Street. The proposed addition will be approximately 11 feet by 17 feet and is proposed to be approximately 8 feet from the side yard property line. The minimum setbacks in the Medium Density Residential District are 10 feet in the front, 10 feet in the side and 30 feet in the rear. The applicant therefore seeks a 2 feet incursion into the setback.

Mr. Zalinger said this is the DRB's jurisdiction because it is a variance. There are specific criteria so they go through the criteria and hear the evidence by reviewing the criteria themselves.

Ms. Kralik said she gave an unsigned copy of the neighbors' agreement and she has a scaled drawing by the contractor.

Mr. Zalinger said she will submit an executed copy of the letter agreement between the neighbors at 5 Towne Street. They are granting her permission to cut the branch from their pine tree. The photo from North College shows the house at the top facing the street. The addition is going to go to the left.

The variance criteria is old language that has been in Vermont statutes for probably 50 years.

Variance Criteria: §1006.B(1)(a)-(f)

- a) *That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lots size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.*

Mr. Zalinger asked the applicant if she knew when the parcel was created. Ms. Kralik

said she did not know when the parcel was created. The house was built in 1954. Mr. Zalinger asked Clancy if he had any idea when the parcel might have been created.

Mr. DeSmet replied he didn't.

Mr. Zalinger said the fact the house was built in 1954 says it was built some 16 years before the zoning ordinance was adopted.

Mr. Zalinger asked Clancy what was the minimum lot size for that district.

Mr. DeSmet replied it is 10,000 square feet.

Mr. Zalinger asked if he knew what the frontage of the lot is on North College.

Mr. DeSmet said he wasn't give that information. The minimum in that district is 7,500 feet. By the scale on the drawing it looks to be over 50 feet. It's a nonconforming structure.

Mr. Zalinger said that is apparent from the lot line, but it helps to have that information developed in the course of receiving the application and preparing it for the DRB's review. How far is the building right now from the south property line?

Ms. Kralik said it isn't on the scaled drawing but it is 19 feet.

Mr. Zalinger said it is readily apparent that the north side of the property is already within the side yard setback. He asked Clancy if he had a device by which he can tell them what the width of the property is.

Mr. O'Connell said he would recommend if they do act on this application they base it contingent upon accurate measurements for the lot and for the setbacks.

Mr. Zalinger said they are suggesting the lot size has 70 feet of frontage and the minimum now in MDR is 75 feet. There is some evidence in the record that it is a preexisting nonconforming lot that doesn't conform with the zoning ordinance. When the zoning ordinance came into effect this was already an under sized lot. The

house was built on the lot in 1954 well before there was a zoning ordinance. The point is that this narrow lot was created before the zoning ordinance so making improvements on the lot is handicapped or there is a hardship for making improvements on that piece of property because the lot already existed when the zoning ordinance was adopted.

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

The applicant could build a 9 foot wide addition and be in compliance but it is a very narrow and small addition to a building. He asked the applicant what she was going to use the addition for.

Ms. Kralik said it is off the front of the house where the kitchen and living room is. The room is going to be a dining room and office. It would be difficult to do it in the back of the house just because of the shape of the land and also you would have to walk through the bedrooms.

Mr. Zalinger said it is also southern exposure, right?

Ms. Kralik replied yes or as much as you can get with the tall pines.

- c) *That the unnecessary hardship has not been created by the appellant, and the hardship relates to the applicant's land, rather than personal circumstances.*

It is abundantly clear this has to do with the location of the house on the preexisting undersized lot.

- d) *That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.*

It is the applicant's testimony that this is going to continue to be a single family residence. All of the adjacent property owners received notice and the most immediate neighbor is in agreement that the project can take place and they have an understanding about the branches.

- e) *That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the Montpelier Municipal Plan.*

11 feet is the total width of the addition. He has no difficulty concluding this would be a minimum variance. It is just 2 feet into the setback.

- f) *The variance will not result in the initiation of a nonconforming use of land.*

The use to which the land is dedicated will continue to be residential in the MDR District.

Mr. Richardson moved to grant a variance at 6 North College Street as proposed. Mr. Blakeman seconded the motion.

Mr. O'Connell said he would like to add that prior to the permit being issued that a site plan with the lot size dimensions and the appropriate setbacks be submitted.

Mr. Zalinger said the record should have that information.

The motion passed on a vote of 7 to 0.

V. 112 State Street – CIV/DCD

Request for reconsideration and rehearing of Design Review approval for signage

Owner: People's United Bank

Applicant: John Kerin, Kerin Signs

The applicant is under oath from the previous hearing.

Mr. DeSmet said People's United Bank submitted four additional drawings with a different design but they weren't color copied.

Mr. Kerin said this is their latest proposal with a white background.

Ms. Haskell asked if the People's United sign that is going to go over the Chittenden was trying to match the brick color.

Mr. Kerin replied the background panel will be matched as closed as they can get to the background sign band color and the lettering will be a gold leaf.

Ms. Haskell said she was in Rutland on Saturday night and happened to go by the big huge brick Chittenden Bank with the nice curved front where they have put the People's United sign over the whole front and it is all in gold and nicely set over and looks great. That would look great on State Street.

Mr. Kerin said the thing on State Street is covering the Chittenden lettering so you wouldn't be able to put individual letters. That wasn't one of their locations.

Mr. Richardson asked if in the sign band area is People's United going to be white or gold color.

Mr. Kerin replied it would be a gold color. They are going to try to match the background of the building.

Mr. Richardson said on the sign that is going to appear on State Street is that just a white background with the blue People's United. Is that going to be on metal?

Mr. Kerin said it will be an aluminum panel that will cover the existing sign. The existing sign is actually foam. It is not carved wood but a piece of foam. Personally, he doesn't really care for the white background. Going to the flat grey background looks nicer than the white will. It is another option the bank sent him. Phil's question about the red orbit he noticed the other day that Heney's has an arched thing over the letters and Verizon up the street has a swish on theirs too. He wondered if they had the same approach and questions to them when they presented their sign. It is a design element of the logo. He thinks the white panel will stick out worse than the grey or flat silver. He doesn't see a reason to deny them their red orbit on the ground signs. Even though a lot of people are upset by it the clock tower he has looked at it and sees absolutely no reflection or glare and that is a gloss finish silver background which was originally proposed.

Mr. Richardson said in the pictures that were passed around he didn't see either the bank customer parking signs that were silver with the People's United logo. He asked if they were still included. There are three sets – the bank parking signs, the ATM in front of the building sign and the exit only. They would all be with the white background with the People's United on them.

Mr. Kerin replied that was correct.

Mr. Zalinger said they should take each sign in order because there are different aspects to each of them.

Mr. Lindley said he could understand his desire to do that but the original question is whether the Board grants a secondary review of the work that was done on the original date of August 17th in which the application was rejected. The original desire was whether the DRB would reconsider that. The original application failed because it didn't have four votes. They have asked for an appeal of that and the question is whether the Board grants that appeal or whether it stands as corrected and then they can come back with another session with the DRC. He thinks they need to decide if they are going to grant a rehearing.

Mr. O'Connell said he sees the current application as being another couple of new ideas and for the DRB to figure it out. He will not vote for reconsideration.

Mr. Zalinger said they are reconsidering it already.

Mr. Richardson said they are past the initial hurdle and they are taking it up.

Mr. Zalinger said the last time the applicant was here was for rehearing reconsideration and the DRB continued it.

Mr. DeSmet said it is his understanding that John Kerin didn't have complete authority to make changes to the project so he assumed they were reconsidering further.

Mr. O'Connell asked if it was their job to design this for the applicant. That is the position they are being put in. Regardless of what the procedural issue is there is the very fundamental issue as to the Board being put in a compromising position of designing the project for the applicant.

Mr. Kerin said they aren't designing anything. Every time he has come here with designs people had different aspects they didn't like so they altered the design to try and meet what each individual person is telling them they want. They aren't asking the Board to design anything.

Mr. Cranse said he concurs with Kevin O'Connell. He is rather befuddled by the application. It was turned down by the DRC on the basis of harmony of exterior design with other properties in the district and incompatible design. Both of those were found unacceptable. We made a fine distinction based on an argument presented by Daniel Richardson that the original proposal was incompatible because it was too shiny. Now they have a sign that is white and he doesn't know how to determine whether that is compatible with other signs or not in our eclectic downtown. He doesn't feel competent on that issue. Mr. Kerin says he doesn't like white and would prefer another color. He is arguing that the arch that was there is not incompatible. He is in agreement with Kevin that the application should go back to the DRC for their expert review.

Mr. Zalinger said the request for reconsideration was based upon the matter having been at the DRB earlier in the summer. The applicant had revised the application based upon feedback he had received at a prior hearing and then the evening of August 17th there were only five DRB members present which was a quorum. There was a negative vote and he asked the Board to reconsider the vote. They were asked to reconsider the vote and at the same time reconsider designs. Are they suggesting that the applicant isn't entitled to receive a vote from the Board on the basis of the signs he has them to reconsider?

Mr. O'Connell said he is suggesting that they are being asked to consider designs they really don't have a good perspective on whether they are compatible with that Historic Capitol District which was the main issue all along. They are being given new designs to make a determination on. He would not feel comfortable doing that. He would think that the Design Review Committee is in a much better position to take that kind of action. He doesn't want to be put in a position of having to make incremental decisions on three to five different design proposals.

Mr. Zalinger said there are four different signs in the proposal. That complicates things. There is one on State Street, one on the face of the building and at least two on Taylor Street. Do they need to approve the signs inside the parking area?

Mr. DeSmet said they go against area calculation and the previous ones were placed without permits.

Mr. Zalinger said as far as he can determine there are signs here that were designed and submitted for the Board's approval.

Mr. Kerin replied that is correct and the progression of the designs have been based on what has been discussed in this room and what people thought. The thought about the white background is his opinion that in that area is too shiny. The darker flat grey background would blend better in the area.

Mr. Zalinger said it sounds to him like the applicant is suggesting that he would be amenable to a modification of this design by returning to the flat grey background. He hears Kevin saying he doesn't want a design. They are at some juncture here where they have to vote one way or another on the application. If there are modifications they can make to the design to satisfy people's observations of what is going to happen he suggests they make the modifications and move on. He thinks the band around the building is adequate now as it is presented. He thinks the ground sign on State Street he agrees with John that the flat grey background would be much improved over the stark white. He doesn't know why the posts have changed color.

Mr. Kerin said that is how they did it when they made the design but the posts can be any color. Originally all of the posts at all of the branches were silver to match the background of the sign and they have since sent a crew around to repaint them all and paint them all flat grey. The posts can be black or any color.

Mr. Zalinger said posts are like shingles. If they are black or grey you don't see them. His view of the State Street sign would be that black posts with a flat grey background and the blue letters would be agreeable to him. The Taylor Street signs he doesn't have much in the way of interest although he thinks if they had the flat grey background as well it would be better. The ground signs should be consistent with each other. Mr. Zalinger told Mr. Kerin when he was here on October 4th he has that application the Taylor Street signs show essentially the same posts as the Chittenden sign only they are a light grey.

Mr. Kerin replied the existing posts would stay in place.

Mr. Richardson moved for Design Review Approval with the modifications as submitted by the applicant and with the adjustments that the board has made. Specifically; the sign on the sign band area shall have a background that matches the brick with gold lettering. The State Street sign (M1) itself shall be dark grey with the lettering as proposed and the legs of the sign shall be black. The D1 sign shall keep the same architectural style as it exists now with the black legs, grey sign as proposed with the lettering. All other signs shall have that grey color, flat grey as proposed and the lettering as proposed in this most recent modification.

Second by Mr. Blakeman.

Mr. O'Connell will vote against the project because he is disturbed by the process by which the board has come to this, starting with what he thinks is an application which he believes is truly in bad taste for that part of the Capital District and he believes that maybe it has been made fair to poor. He states that we do have a Design Review Committee which is tasked with reviewing these projects and making the recommendations to the DRB and in his view that process has been skipped. He states that the outcome is not comfortable for him.

No further discussion.

Motion approved by a 4/2 vote.

Other business discussed; Cliff Street appeal. Mr. Zalinger states that the court found some holes in our ordinance. Conversation ensued regarding a potential increase in applications for synthetic siding and the need improved criteria.

Adjournment:

Upon motion by Mr. Blakeman and Mr. Richardson the Development Review Board adjourned.