

Montpelier Development Review Board
March 1, 2010
City Council Chambers

Subject to Review and Approval

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

Call to Order:

Philip Zalinger, Chair, called the March 1, 2010 meeting of the Montpelier Development Review Board to order at 7:00 P.M.

Review of February 16, 2010 Minutes:

Those in attendance at the February 16, 2010 meeting were Jack Lindley, Alan Blakeman, Daniel Richardson, Jeremy Hoff and Roger Cranse. Upon motion by Jack Lindley and Alan Blakeman the February 16, 2010 minutes were approved and adopted on a vote of 5 to 0.

I. 59 Elm Street – CB-II/DCD

Applicant: Central Vermont Adult Basic Education
Owner: Peter Hood, et al
Projecting Sign.

Mr. Zalinger said in design review matters the Board doesn't ask the applicant to go back through the scrutiny they have been through with the Design Review Committee. The DRC recommended approval of the project as originally proposed.

Upon motion by Jeremy Hoff and Kevin O'Connell to approve the application for design review for 59 Elm Street as proposed, the project was adopted on a vote of 7 to 0.

II. Site Plan Review and Variance Request for Demolition and Reconstruction of Building

10 Harrison Avenue – LDR
Applicant/Owner: Beth Jacob Synagogue
Interested Parties: Eve Jacobs, Paul Carnahan and Barney Bloom

Eve Jacobs Carnahan, President of Beth Jacob Synagogue; Paul Carnahan who put together the application and Barney Bloom who is a member of the Board and has been working through some of the issues, were present to talk about the application.

Mr. Zalinger asked if the Synagogue was a corporation.

Eve Jacobs Carnahan replied they were a nonprofit corporation.

Mr. Zalinger administered the oath to the interested parties.

Mr. DeSmet said the members of the Synagogue contacted him about a demolition and renovation project. He noted the structure on the property was nonconforming in the rear and side yard and front yard setbacks. Upon further review of the ordinance he wasn't allowed to make an administrative decision based on the fact that demolishing a significant portion of the building is more than ordinary maintenance. The policy of nonconformity is to come into conformity once you have made a change so he thought it prudent they come before the DRB for a variance to maintain those incursions into the side yard and front yard setbacks. On the northern boundary it is less than 5 feet; the southern about 8.5 feet; the eastern boundary is anywhere from no separation from the setback to approximately 1.5 feet. They are going to demolish a large portion of the sanctuary and rebuild it so it is sound and safe for their members.

Mr. Zalinger inquired if they were working with an accurate survey.

Eve Jacobs Carnahan replied yes. They didn't do a recent survey but they have the most accurate they can. What they are proposing to do is to build exactly where they are so nothing would change. The footprint is going to be exactly the same.

Mr. Zalinger asked with the site plan review what other changes there were besides reconstruction.

Mr. DeSmet replied that was all. Anything that is not a single or two-family dwelling falls into that category.

Mr. Zalinger said the site plan review is ancillary to the commercial nature of the development for nonresidential. They really don't need a variance to demolish the building, do they?

Mr. DeSmet said they need a variance to reconstruct the building. Demolition requires a zoning permit.

Mr. Zalinger said he wonders about the logic that forces the applicant to come before the Board for a variance from side and front yard setback requirements that have criteria which are very difficult to meet. He wonders if there is an alternate view of this situation.

Mr. DeSmet said he didn't think there is. He looked at reconstruction of a nonconforming structure and it basically requires that under § 804.B it requires a fire, flood, explosion or other casualty and it didn't advocate that route. There is another portion of the ordinance that allows him to do it administratively provided it is no closer than 5 feet. There weren't a lot of tools in the ordinance for him to do this. He consulted the League of Cities and Towns and they recommended a variance based on the city's ordinance. He looked for an administrative route to follow and he didn't have one.

Mr. Zalinger asked if the applicants were persuaded that demolition and reconstruction is the only viable solution.

Ms. Eve Jacobs Carnahan replied it is.

Mr. Zalinger said with the variance criteria under the zoning ordinance they are a challenge to meet for most applicants and they would like to avoid going to the variance section of the ordinance if they can.

Paul Carnahan said the only other alternative they would have is if they said the general decline of the building is similar to a fire, flood or hurricane. They didn't actually experience this. It is more of a long slow process rather than a catastrophic event.

Mr. Zalinger asked what the dimensions of the lot were.

Mr. Hoff said the lot size is 7,000 square feet.

Barney Bloom said the frontage is 83 feet x 88 feet for the depth of the lot.

Mr. Zalinger said they can demolish the existing structure, but what is to prevent them from building a new structure in a place on the parcel that conforms to the setbacks.

Mr. Carnahan said there are two things that would prevent that. First of all, they want to demolish just the front part of the structure so they need the front part to line up with the back part. Secondly, they wouldn't have parking on the site if they put a structure in the middle of the lot.

Eve Jacobs Carnahan said alternatively they would have parking and it would be a much smaller building and then it wouldn't be able to continue the nearly hundred years of synagogue which is what it has been doing. The reasonable use would be the continuation of the use that it has been in that neighborhood in that spot for that length of time and the hardship is caused by the size and shape of the lot. It prevents them from continuing that same size, shape and continual use of the building for the same purpose.

Mr. Zalinger asked what the entire square footage of the entire building was.

Mr. Carnahan replied it is 2,076 square feet. The part that is going to be demolished is less than half of that. It is 920 square feet.

Mr. Zalinger said it really isn't the demolition of an entire structure.

Mr. DeSmet said it is the sanctuary.

Mr. Zalinger said if a party was going to demolish a porch, or an attached garage to a house, would that require a variance? It is less than 50 percent of the size of the structure.

Mr. Cranse said in § 804.B where it says any nonconforming structure damaged by fire, flood, explosion or other casualty. The damage that was done to this structure would seem to be either a flood or more probably another casualty. They say first water flowing off the hill behind the synagogue has caused deterioration of the foundation. That could be defined as a casualty, arguably.

Barney Bloom said that could be pursued, that because of time and the wearing down of the building and the water coming down off the hill from Main Street's clay getting under the foundation that there has been clearly deterioration and maintenance is not defined. They have to fix that part of the building. This would be radical maintenance. They are fixing a part of the building that has disintegrated and degraded in such a way they need to do something about it. What they are doing is essentially grandfathering what's there now; it's the same footprint, same size, same building, and same appearance. In that sense if they were inside doing maintenance and doing a paint job and changing the windows it would amount to the same thing.

Mr. Richardson said he doesn't buy it as maintenance necessarily. This is a radical change in the sense that they are tearing down a section of the building. He presumes that none of the four walls of the sanctuary are being preserved and they are starting from scratch with new foundation, new walls, etc.

Mr. Carnahan said they want to put a much stronger foundation under it. It is a very modest structure. The foundation is nothing you would construct a building on. The result will be a building that is much stronger than what is there now, much safer because they are planning to sprinkler the whole building. The net benefit for the entire community is a building that is a much stronger and safer building than what is there right now.

Eve Jacobs Carnahan said it's not radical in terms of the end result. The end result will be the same size, shape and footprint as what it is. In that sense they are maintaining what is there.

Mr. Cranse asked what they would say about his point on the casualty, which is a pretty broad category.

Mr. O'Connell said what is telling to him here is they are obviously putting up exactly the same footprint, and he has hard time thinking about this as a variance that is any kind of change; it's not. It is going to be used in exactly the same way with the same footprint.

Mr. Cranse said the thing with the casualty clause in § 804.B it says other casualty, flood, fire, etc. may be rebuilt and used as before. It is reasonable to say that these 100 years of water damage is another casualty and it can be rebuilt as before.

Mr. Hoff said he would tend to define casualty as some specific event at one point in time rather than constant erosion of the structure. He agrees that it has the potential to lead to a somewhat absurd result to be able to jack the structure up and put a new foundation in, set it back down, fix the walls, take the siding off. It would be somewhat ridiculous to have to proceed that way rather than doing all of the work at once.

Mr. Richardson said he thinks the ordinance is written so it avoids continuation of nonconforming uses. He agrees with Jeremy that the idea of this being a casualty is sort of stretching the sense of that word to the breaking point. In

Article 8 we talk about stopping expansions or changes to nonconforming uses. What they are trying to do is they have a nonconforming use structure and just want to rebuild it like the same building.

Eve Jacobs Carnahan asked if this had been considered maintenance is it correct that would be something the administrative staff could approve on its own and then the DRB wouldn't have to make a decision.

Mr. Zalinger said the DRB isn't afraid to make a decision. He would recommend they try to avoid having to review this project through the prism of the criteria for a variance.

Mr. Bloom said right now after this discussion if they withdrew the application would it go back to staff.

Mr. Zalinger said they aren't through the discussion yet. If you look at Article 8, continuation and maintenance of nonconformance. Any nonconforming use of structure may be continued unchanged indefinitely. Maintenance may be made to a nonconforming structure provided the structure is not made more nonconforming. The administrative officer shall determine what constitutes ordinary repairs and maintenance. Appeals of this determination may be made. § 803 deals with changes of nonconforming uses; it doesn't say nonconforming structures. § 804 deals with structures. Enlargements within the existing footprint deals with residential structures.

Mr. Cranse said he is looking up casualty. Casualty is a strange word to use here anyway. When you say casualty you think of human injury or death in an unfortunate or violent manner.

Mr. Lindley said its sudden and not over a long period of time for a casualty to occur in the insurance industry.

Mr. Cranse said because of the vagueness of this and because it is not in the glossary long term damage would be included there.

Mr. O'Connell said if the building had burned there would be no question and it would be approved administratively. Alternatively, if they waited another two or three years and the roof collapses, then it could be approved administratively. He has a hard time thinking that because they have proactively come before the DRB before the roof collapses that it should be treated differently. There is absolutely no change in the footprint. They need to think beyond what the insurance definition is. What's intended?

Mr. Hoff said he wouldn't necessarily agree that if a roof collapses on a structure that has been allowed to deteriorate would be a casualty, either. He finds more hope in the maintenance argument than he does the casualty argument. The provision that says that maintenance can't increase the size of the structure provided that the structure is not made more nonconforming. It is contemplating some amount of reconstruction as maintenance. If it is less than 50 percent, are we satisfied that is enough to be maintenance?

Mr. Zalinger said he calculates the net area to be in the aggregate 1,880 and 850 square feet of that is the area that is to be reconstructed. Is that accurate?

Mr. Carnahan said the 850 square feet is the interior. 920 square feet is the part that is going to be reconstructed.

Mr. Zalinger asked what percentage are 920 of 2,076 square feet.

Mr. Bloom said it seems to him it is maintenance within the spirit. The conclusion is they are doing maintenance towards maintaining the structure.

Mr. DeSmet said it is 44 percent.

Mr. Zalinger said if they look at Article 8 in its entirety and he thinks they are all in agreement that it is not a casualty, but it is something less than demolition of the entire building. It is demolition of a sizeable portion of the building but it is only 44 percent, and it is an appendage of the building.

Mr. Bloom said when they moved in 100 years ago it was a house.

Mr. Zalinger said the appendage that comes out towards Harrison Avenue, the sanctuary area, is an appendage to the building as a whole. This fits better as maintenance of a portion of the building that has fallen into disrepair by reconstruction of it. It's not being expanded. Rather than calling this demolition of the entire structure and then apply all of the variance criteria to the reconstruction of that 44 percent of the building that is going to be reconstructed. He asked if any of the members were in disagreement.

Mr. Lindley said this is an administrative issue. They aren't changing any lot lines or asking for any variances. It is a good project.

Mr. Hoff said he still thinks it is pushing the boundary of what maintenance is because it is substantial. It is getting into renovation. However, given the various options it does seem the better part of valor to interpret it this way given the fact that they really aren't changing the nonconforming use.

Mr. Zalinger said he doesn't think it conflicts with the scheme that Article 8 sets out. Sometimes we are charged with construing the zoning ordinance the way that meets the objective for the ordinance. If you read all of Article 8 the conclusion that a variance is going to have to be applied just seems inconsistent with the scheme. Procedurally, how do we proceed? Perhaps they could entertain a motion that views this as maintenance of the structure rather than demolition and reconstruction of the building, or the portion of the building. We can direct the Zoning Administrator to review it administratively. What do we do about site plan review? He isn't sure there is need for a site plan review if it is just maintenance.

Mr. Hoff asked if they needed to continue and if it is dealt with administratively before the next meeting.

Mr. Zalinger said the DRB opened the hearing. He doesn't know whether the Zoning Administrator can remove it from the DRB's jurisdiction by his unilateral action.

Mr. Hoff moved the DRB remand the application back to the Administrative Officer for further consideration and later conservation, discussion and analysis of § 802 by the DRB.

Mr. Zalinger said they couldn't remand a variance request.

Mr. Hoff said they could move for approval and all agree it doesn't need a variance. It doesn't need a site plan, either.

Mr. Zalinger said the best course of action is for the DRB to conclude that the project as they have now investigated it to be constitutes maintenance under § 802 and that the grant of a variance is really not appropriate. Once we conclude it is maintenance it comes under the jurisdiction of the Administrative Officer. What § 803 contemplates is the Administrative Officer making that as an initial determination. Now that it is before the DRB there is nothing that precludes the DRB from making that determination. If that is the case, then it is back to the Administrative Officer and he can make that decision. Then, the appeal rights by anybody who is aggrieved by it would come into play.

Mr. Hoff moved the Development Review Board make a determination that the development proposed and submitted after reviewed should be classified as maintenance and that the DRB direct the Zoning Administrator to act accordingly. Mr. Lindley seconded the motion.

Mr. Blakeman asked if this application was in the Design Review District.

Mr. DeSmet replied no.

Mr. Blakeman asked if they needed sprinklers.

Mr. Zalinger said they have already testified that sprinklers are incorporated into the design.

Mr. Bloom said they are going to sprinkle the entire building and not just the new portion.

Mr. Bloom told Mr. Zalinger when he mentioned appeals he has talked personally to the neighbors. They may decide to appeal, but they certainly were supportive and have been for a long time. They have support by the neighbors.

The motion was passed on a vote of 7 to 0.

Other Business:

None.

Adjournment:

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

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator

Transcribed by: Joan Clack