

# Montpelier Development Review Board

April 5, 2010

City Council Chambers, City Hall

*Subject to Review and Approval*

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

## **Call to Order:**

Philip Zalinger, Chair, called the April 5, 2010 meeting of the Montpelier Development Review Board to order at 7:00 P.M.

## **Review and Approval of March 1, 2010 Minutes:**

Upon motion by Mr. Blakeman and Mr. Hoff the minutes of the March 1, 2010 Montpelier Development Review Board were approved and adopted on a vote of 6 to 0.

### **I. 10 State Street (CB-I/DCD)**

Design Review for a Sign.

Owner: Candice Moot

Applicant: Kelly Sullivan/Aethena’s

Mr. Zalinger explained that since she had already appeared before the Design Review Committee, which acts in an advisory capacity to the DRB, they generally review what the Design Review Committee did and determine whether there are any further questions from the Board. The DRC recommended approval on March 23<sup>rd</sup> with an optional change she might pursue in her discretion. The optional change is to extend any neutral color compatible with the sign lettering to the recessed wooden panels of the sidewalk on either side of the entry and façade. Mr. Zalinger asked the applicant if she was in agreement with that option. Ms. Sullivan replied she was.

Mr. Cranse said the application says the wall sign will be within the sign band. The picture, however, shows it partly above the sign band.

Ms. Sullivan said that was temporarily put on as they were having their grand opening so people could identify the shop, but since then it has been taken down. It will be within the sign band.

Mr. Lindley moved approval for the application at 10 State Street as recommended by the Design Review Committee, with Mr. Richardson seconding the motion. The application was approved on a vote of 6 to 0.

### **II. Downtown Montpelier (CB-I/DCD)**

Design Review for Flower Planters throughout the Downtown.

Owner: City of Montpelier

Applicant: Montpelier Alive/Paul Carnahan

Paul Carnahan said he is chairing the Design Committee of Montpelier Alive.

The Design Review Committee recommended approval on March 23<sup>rd</sup> without conditions. There is one advisory comment that Montpelier Alive should consult with the Department of Public Works to insure that placement does not obstruct access within the city's right-of-way or on the sidewalks.

Mr. Zalinger said he would entertain a motion that would require the applicant to consult with the Department of Public Works to insure the placement of all of the planters not obstruct access on the city's rights-of-way.

Mr. Richardson moved for design review approval of the Montpelier Alive's city plantings by making the consultation with the Public Works Department as an adjustment to the scope rather than an option as a condition of the motion. Mr. Blakeman seconded the motion. The motion passed on a vote of 6 to 0.

### **III. 101 Northfield Street (CB-II/DCD)**

Design Review for Signage and Exterior Changes

Owner/Applicant: COPS, Inc.

Mr. Richardson recused himself from this application because he owns property abutting.

Mr. Zalinger recused himself, but because it is on the Consent Agenda he is going to chair it just to facilitate the undertaking, but he won't participate in any act by the Board. That leaves five members.

This application came before the Design Review Committee on March 23<sup>rd</sup>. The Design Review Committee concluded its deliberations and consideration on March 23<sup>rd</sup> and recommended approval with several adjustments.

1. There be two side panels with trim matching the entry doors and windows and be placed on either side of the entry doors to provide a stronger entrance appearance.
2. The awning color will match the color of the wall sign which is the corporate logo for Econolodge.
3. Two light fixtures proposed for the vertical trim of the office façade will have bulbs of a wattage and color to match the remaining façade lighting on the building.

Mr. Zalinger asked if the applicant was in agreement with the recommendations.

Tom Leytham replied yes, totally.

Mr. Lindley moved acceptance of the proposed signage and exterior changes at 101 Northfield Street with the recommendations of the Design Review Committee. Mr. Cranse seconded the motion. The vote on the application was favorable on a vote of 5-0-2 with Mr. Richardson and Mr. Zalinger abstaining.

#### **IV. Sketch Plan Review – 57 College Street (HDR)**

Two lot subdivision

Owner/Applicant: David Grayck

Interested Party: Rick DeWolfe, DeWolfe Engineering & Associates

Before the DRB is a sketch plan review at 57 College Street. The applicant is present as well as his consultant.

Mr. Hoff recused himself from participating in the application because Attorney Grayck are opposing counsel on active litigation at the moment.

Sketch plan review is just a preliminary review and the Board doesn't take sworn testimony. The Board just discusses the proposal before them.

Rick DeWolfe from DeWolfe Engineering representing the Graycks in this subdivision application. What they have before them is a sketch plan for 55-57 College Street which is currently a single lot that has two single family houses on it. the desire of the Graycks at this moment is to subdivide the lot so the residences could be sold separately. In creating the subdivision of this lot we have some zoning criteria they can meet and they can't meet to make it a conforming lot and they have put before the Board three options that all create two lots but ask for variances on different criteria within the zoning regulations. Those are outlined in the cover letter dated March 15<sup>th</sup>. They have provided the Board with three plans that show the configuration of the lot lines for each.

Option 1 says they will divide the lot based on its current use. He put a dividing line through the middle of the parking area so that there are two parking spaces provided for 57 and two parking spaces provided for 55. This is currently the way the lot is used today. It creates an issue in Lot 1 because it would have less than the required minimum lot area for the district, but there would be no easements required for parking. There would be a rear setback of 25 feet instead of the required 30 feet in the district for 57. 55 College Street would be a conforming lot with the exception that it has no frontage on a public road.

Mr. Zalinger said he said under Option 1 there would be no easement, but wouldn't 55 College Street require an easement over 57?

Mr. DeWolfe replied there would be no new easements. There currently is a driveway easement that exists for that property over 57. 55 has a current easement for access over Lots 57 and 59 for access.

Mr. Grayck said the existing single lot has four feet of driveway width on his lot, and it has a four foot wide easement on 59. If 55 were on its own lot its access would continue to be the existing driveway which if it were conveyed would be to have express rights to use the driveway as it is currently being used.

Mr. Zalinger said the fee interest that is represented by 57 College Street would be burdened by the easement interest of 55 College Street. Option 1 would involve an easement over the front parcel.

Mr. DeWolfe said all of the options require an easement over the front parcel.

Mr. Grayck said all of those options would not result in any new use.

Option 2 they do the same thing but create the required rear setback for 57 College Street, and then within that increased rear yard they put in for 57 we create a parking easement for Lot 2. Effectively, it just puts the property line in a different place so that the rear yard setback is made for 57.

Option 3 increases the sides of the lot for 57, but then creates a larger easement for the parking area for 55. In that option all of the parking for 55 is on 57.

Mr. Lindley asked how this problem arise. Was it part of the old college? What's the history of this problem at this point in time?

Mr. Grayck said Bob Wheeler bought it from someone before that person. It has to be a pre-existing lot to zoning in Montpelier. He doesn't know exactly who owned it when, and he doesn't think Bob and Mary Wheeler were the ones who created the carriage house. At the time they owned Hollis House, his place and fixed this one up in back. For being in the real estate business Bob Wheeler never tried to put it in separate lots.

Mr. Lindley asked if they had a permit on all of this activity during the course of history.

Mr. Grayck said with the creation of the carriage house as a residential unit, which was permitted in 1984. At the time of his purchase he insisted that the permit be produced to him.

Mr. O'Connell asked if currently 55 College Street was a rental unit.

Mr. Grayck replied yes, and it has been that way since 1984. They bought it in 1999 and Bob and Mary had been renting it out for the many years they had it.

Mr. Cranse asked if 57 College Street owns 55 and rents it.

Mr. Grayck replied yes. There is one lot with two houses on it. He and his wife own the lot. There is the front house where they live at 57 College Street, and there is 55 College Street. There are two houses on one lot which causes the bank consternation when they go to do their financing because they don't know how to characterize it. The back house is a rental and it always has been, and they live in the front house. He is trying to get each house on its own lot with no additional change in any use. There is no change in use. There is no construction. It is drawing lines on maps so there are two lots instead of one; that's it.

Mr. Zalinger asked Mr. DeSmet what does the zoning file indicate what occurred in 1984.

Mr. DeSmet said he hasn't looked at that.

Mr. Zalinger said since his time on the Board they have had occasion from time to time to permit the construction of a second dwelling, or at least consider the construction of a second dwelling on a lot. They went to great pains to permit one at the intersection of Towne Hill Road and Main Street on the far side. It was characterized as a "mother-in-law edifice." It wasn't an apartment, but an addition and attached by an enclosed walkway. He remember referring to provisions of the zoning ordinance which discouraged or in fact may have prohibited the construction of a second dwelling on one parcel because the natural result of that activity is the kind of conundrum they have before us now. The economic motivation of separating the two units on separate parcels is only a matter of time before that becomes apparent to the owners.

Mr. DeSmet said there is a provision that talks about no more than three single family residential structures on one lot. Any more than that, or any deviation from that, would have to be under a planned development so it has to meet the dimensional requirements in existence. Since then they have created accessory apartment rules about 40 percent of the dwelling.

Mr. Zalinger said he just brought that up by way of comparison because he wonders what transpired in 1984 when the second dwelling was permitted for construction.

Mr. Grayck said the structure was always there as the carriage house. Bob and Mary Wheeler called it the carriage house. He thinks the structure belonged with the main house that they live in which has been there as long as the structure has been there. To turn it into the residential dwelling that it is no exterior construction was required. The building's footprint didn't change because he has a picture of it prior to its conversion into a dwelling. The footprint and the exterior of the building hasn't changed one bit since its original

construction pre-zoning. He thinks what they got a permit for was simply for its conversion of use.

Mr. O'Connell asked when the main structure was built.

Mr. Grayck said as far as they know it has been there for at least 100 years. The reason he said 1984 was because Mary Wheeler gave them a picture of the carriage house before it was converted from a place for the carriage and the barn into the residential structure that it is. When they bought the property from Bob and Mary Wheeler the main house actually had two apartment units in it, and they just opened up the fire doors and said it was a house. There was once a fire at the house, and it has since been rebuilt and brought up to code as a single family residence. The number of units on the lot since they bought it has shrunk from three to two.

Mr. Zalinger said conversion of the rear building to residential use would have required a zoning permit in 1984 so he is interested to know what disposition the Zoning Board of Adjustment took with respect to it.

Mr. DeSmet said it could have been administratively grouped.

Mr. Blakeman said it looks like there is a swimming pool in the back. Is that correct?

Mr. Grayck replied no. There is no swimming pool in the back.

Mr. Blakeman said he went to take a look today, and stayed on the College property, and there is this huge blue thing.

Mr. Grayck replied it is a tarp drying out.

Mr. Blakeman asked if the lot went back into the woods.

Mr. Grayck said the lot goes back to meet the college's property.

Mr. DeWolfe said it doesn't go into the woods. It's at the edge of the woods.

Mr. Lindley asked which option they preferred.

Mr. Grayck said he thinks the most sense is to divide it the way it is being used, which is Option 1. The property is being used with two residences. Mary and Bob rented it out. They have had wonderful tenants and there is parking for four cars, and there will always be parking for four cars. To him it makes the most sense to divide it down the middle the way the buildings are used right now, which is Option 1. Option 3 looks like a leggo set. It looks like you are putting some building blocks together, and that might be the most legal of

the three but that is the most bizarre option to choose. He thinks Option 1 makes sense and that a variance is justified.

Mr. DeWolfe said they would consider Option 3 to be slightly creative to meet the letter of the intent of the zoning ordinance.

Mr. Lindley said in Option 1 the rear setback why can't they get 30 feet out of that?

Mr. DeWolfe said if they do 30 on the back he ends up taking a parking space for 55 College Street. They would prefer to divide the lots as they are used presently.

Mr. Zalinger said once they are subdivided there is no telling that some perspective purchaser of 55 College Street doesn't want to park there but rather want to build their own garage. He is hemming himself into a limited way they see the future. Just as 1984, 26 years later, they see the future as subdividing the parcel.

Mr. Grayck said he would be willing to stipulate and have as a permit condition there can be no future construction of any kind. That is the existing footprint.

Mr. Zalinger asked if they had worked through the dimensional issues for the lots.

Mr. DeWolfe replied yes. If you look at pages 2-4 of the cover letter they will see all of the different scenarios.

Mr. Zalinger said there are some impediments here that he doesn't know how they address them. There is no frontage for 55 and the DRB is authorized to grant the creation of a lot if there is access to the road by a permanent easement or right-of-way at least 20 feet in width. He doesn't see they have the authority to waive that dimension. Number 2, all of these options have dimensional issues. Wouldn't he need a variance for any of them?

Mr. DeSmet said he isn't familiar with getting a variance in a subdivision.

Mr. Zalinger said if they could create a lot that doesn't comply it would require a variance. They all know what the first criteria is in a variance, which is the hardship has not been caused by the applicant. But if it is the applicant who is creating a subdivision that requires variances it is hard for the Board to draw that conclusion. It is the box they are faced with.

They have a box as to the width of the access to the rear parcel because the zoning ordinance says 20 feet, and then there is the variance box.

Mr. Grayck said the use was established pre-zoning and there is no new construction or new use being proposed so he doesn't think he has created the hardship. The hardship was created when zoning comes into effect and you have a lot that was created 50 or 100 years

prior to that. If he was coming to the Board to proposed construction of a second residence and subdivision he would agree that it should be denied. He would also agree that any future construction by either owner of either lot outside the existing footprint would face whatever requirements there are and would not be able to meet the variance criteria, but because the use predates zoning and the structure's footprint predates zoning and they are simply talking about creating a legal line down the middle of an existing lot he isn't increasing the variance and not trying to add any extra burden to the property.

Mr. Zalinger said he just said the use predated zoning, but they know that is not the case because the residential use of the rear building was permitted by zoning.

Mr. Grayck said he is talking about the main structure. The conversion of the carriage house to a residential dwelling received zoning approval.

Mr. O'Connell said the use in effect is really no different than if he had an attached mother-in-law apartment. What he has is that mother-in-law apartment but with distance between the main structure and this apartment. If you follow that same logic, creating a new lot for the so called mother-in-law apartment is what he is asking for in that context.

Mr. Grayck said he doesn't disagree. It is his goal to be able to convey these properties separately and he thinks doing it as separate lots makes sense. If he has to condonize it, if he has to go to a ground lease option, if he has to do a cooperative, then he'll do that. He thinks that is unwarranted and that any conundrum is unwarranted given that there is no new construction being proposed and now new use being proposed.

Mr. O'Connell asked Mr. DeSmet what were the dimensions of the other lots along the same area.

Mr. DeSmet said there are different lots. They all vary to a certain degree.

Mr. DeWolfe said there is no standard. You could calculate an average, but they vary.

Mr. O'Connell said they wouldn't see that rear lot line continue down the street. It's all over.

Mr. Grayck asked if it was flush with the Wheeler's.

Mr. DeWolfe said it comes and goes.

Mr. Lindley asked how far is the 14 foot easement from the house at 57 College Street. what is the distance between that and the building?

Mr. DeWolfe replied it would be about 13 feet between the edge of the easement and the edge of the house.

Mr. Lindley said if they had the requirement of 20 feet there would be dust in his front closet.

Mr. DeWolfe said there would be 7 feet instead of 13 feet. Right now the easement is centered on the common property line between 57 and 59 College Street.

Mr. Lindley asked Mr. DeSmet if they were forced to go with 20 feet.

Mr. DeSmet replied yes, it is a public safety issue.

Mr. Zalinger said David Grayck stated that 57 College Street has an easement 4 feet in width on 59 College.

Mr. DeWolfe replied that is correct and contributes 4 feet to the driveway itself.

Mr. Zalinger asked how they came up with 14 feet that is centered on the common boundaries.

Mr. DeWolfe said he remembers being 7 feet either side.

Mr. Grayck said the traveled path is 8 feet at most and the distance from there to the edge of the structures is no more than 6 or 8 feet.

Mr. Zalinger said by deed 57 and 59 College Streets each possess a 4 foot easement over the other's property.

Mr. Grayck replied yes.

Mr. DeWolfe replied he believes it is 7 feet either side.

Mr. Grayck said it is 4 and 4 in the deed.

Mr. Zalinger said if it is 4 and 4 in the deed the first 14 feet as represented there is only 4 feet on 59. If there is 14 feet, then the first 10 feet would have to be on 57 College Street in order to net 14 feet. In order to net 20 feet there would have to be 16 feet on 57 College. The intent of sketch plan review is to provide the applicant an opportunity to consult with and to obtain feedback from the DRB to save time and expense in the preparation of the plans and final review and expense of engineer bills. For larger complex subdivision projects it isn't applicable.

Submission Requirements: Action by the DRB – following review of the materials submitted at the sketch plan review the DRB shall make recommendations to guide the applicant in the preparation of the plans for preliminary plan review. The Board's

recommendations shall be recorded in the minutes of the meeting and shall be provided the applicant. Actions by the Board on sketch plan review does not constitute approval of the subdivision plot but merely authorization to proceed to the next step of review.

This was drafted obviously anticipating that. It wasn't a menu of alternatives presented. He is unsure how the DRB wants to proceed because there are three options and he is unsure what option he wants the Board to give him feedback on.

Mr. Grayck replied all three, starting with the first one.

Mr. Cranse said he doesn't see how the Board can approve any of them because each of them would create a nonconforming lot.

Mr. O'Connell replied his thinking is along the same line.

Mr. Richardson said he is thinking along the same line. There are two critical issues with the waiver for frontage being a 20 foot right-of-way, which doesn't seem to give us much leeway in how we would grant a right-of-way less than 20 feet that would then create encroachment on the setback as well as the variance criteria. It just doesn't seem to be applicable here because we are creating the situation. He thinks by the applicant's own admission there are other ways in which to address the issue other than to divide the ownership of the lot.

Mr. Zalinger said he didn't disagree with those conclusions. He is troubled by the precedent of having the Zoning Board of Adjustment in 1984 permit the initiation of another residential building on an existing lot. There may well have been representations at the time that the owners had no plans to subdivide but just create another lot there. He has been on this Board since 1986 or 1987 and have heard a lot of lay people testify and say they had no plans to do this or that and those kinds of representations may have been made, and 26 years later they find themselves not illogically at a point where a subdivision is being pursued. We all understand the economic motivations for a subdivision in this kind of situation, but he is troubled by the fact that zoning authorities 26 years ago may have relied upon a different set of facts. It is hard for him to justify modifying our view of what the standards are now because there is logical motivation for it when in fact that is not what the zoning ordinance was intended to produce as a result.

Mr. Grayck said he had just admitted that it is illogical; it makes no sense. They are not proposing any new use or new structure. It makes no sense on a practical level.

Mr. Zalinger said he is free to draw his own conclusions about what act the DRB takes.

Mr. Lindley said they need to figure out how to bring into play 20 feet. He doesn't think he would have problems with another lot, but with the 20 feet it creates kind of a mess. It's there for fire safety and all the other issues to get back to the lot that exists. We really haven't addressed in Montpelier yet the carriage house issue. We had that on Towne Hill

recently when we granted that permit on a subdivision. We had the discussion about the town house that was going to be built in Lot 2 or 3. He doesn't know how many of these instances are around, but he has great sympathy for the fact that we have two separate structures are in need to sit on two separate lots. We aren't equipped to design much relief with the way the things are worded in the zoning ordinances they have to work with. Their hands are tied. They don't want to grant any more variances than they have to. He has great sympathy for this little maneuver.

Mr. Blakeman said going back to the 1980's the zoning was out of balance. Also looking at the need for housing here is one way to do it. In other words, it is conceivable that a third house could be built there.

Mr. Zalinger said they aren't charged with developing housing. That isn't the Board's role.

Mr. Lindley asked who owns the College parking lot now.

Mr. Grayck said it is shared. This board in approving that project also allowed substantial on-street parking which those of us who live up there and need to get out of their driveways and people whipping around and not obeying the speed limit and there is a site distance issue an accident that will happen. He thinks the Board has the discretion to allow this to go through because there is no new use and no new construction. The point of sketch plan is not to waste one's time and money.

Mr. Zalinger asked if there were further questions, comments or observations relative to the sketch plan. The DRB doesn't usually take action on a sketch plan. What they provide is feedback.

**Other Business:**

Jeremy Hoff reported he is moving out of Montpelier. He has three more meetings left and will inform the City Council. They are moving up to Richmond.

**Adjournment:**

Upon motion by Mr. Richardson and Mr. O'Connell the Development Review Board adjourned.

Respectfully submitted,

Clancy DeSmet  
Planning and Zoning Administrator

Transcribed by: Joan Clack