

Montpelier Development Review Board
June 7, 2010
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Jack Lindley, Roger Cranse and Daniel Richardson
Staff: Clancy DeSmet, Planning and Zoning Administrator.

Call to Order:

The meeting of the Montpelier Development Review Board of June 7, 2010 was called to order by Chair, Philip Zalinger. Four members is a quorum. Mr. Zalinger put the applicants on notice that if there is a quorum of four it means they can open and hold a legal hearing. However, because an affirmative vote requires a quorum of the full board, which is seven members, that is four affirmative votes. That essentially means you have to have a unanimous vote of all members present and voting. They expect one other member who is going to be late.

Review of Minutes of May 17, 2010:

All four present attended the meeting. Mr. Richardson moved approval of the Minutes for May 17, 2010 and Mr. Cranse seconded the motion. The May 17, 2010 Minutes were adopted unanimously on a vote of 4 to 0.

Mr. Richardson said they discussed at the last meeting that the May 3, 2010 Minutes were incomplete. He doesn't know if they approved the May 3, 2010 Minutes were approved. Mr. DeSmet said he would bring them to the next meeting.

Comments by Chair:

None.

I. 39 Main Street (CB-I/DCD)

Design Review for Hand Rails at the front of City Hall
Owner/Applicant: City of Montpelier
Todd Law, Director of Public Works

Todd Law, Director of Public Works for the City of Montpelier, appeared on behalf of the applicant.

Mr. Zalinger said this application came before the Design Review Committee on May 25th and approval was recommended with a slight adjustment to the scope of the proposal. Is the City in agreement with adjustments suggested by the Design Review Committee? Mr. Law said they were. They have accepted the permit that included the condition.

A motion was made for approval by Mr. Lindley and Mr. Richardson for the application for 39 Main Street with the recommendations of the Design Review Committee.

Mr. Cranse said he doesn't understand the need for the adjustment. The adjustment says that the circular overhang in the sketch is going to be eliminated.

Mr. Law replied that is correct. One of the member's recommendations was to eliminate that. The way the rail comes up on itself they wanted it to be dead end and capped at the top and bottom of the rail rather than extend beyond. They will be doing the same thing with the existing railing. They will be dead ending that at the same time. The contractor has already said they would do that for us.

The vote on the motion was favorable on a vote of 4 to 0.

II. 9-11 West Street (HDR/DCD)
Design Review for Exterior Painting
Owner: RKG, LLC.
Applicant: Marcel Rocheleau
Interested Party: Susan Kimmerly

Susan Kimmerly appeared on behalf of the Applicant Marcel Rocheleau.

Mr. Zalinger said the Design Review Committee reviewed the application on May 25th and recommended approval with an optional change that the applicant may pursue at its discretion. The applicant has the option to include a fourth color for accents and deep colors. The Design Review Committee recommends that the historic dark red to be compatible with the proposed color scheme.

Ms. Kimmerly said they have no problems with those recommendations.

Mr. Richardson said he didn't see included in his packet the actual color scheme.

Ms. Kimmerly said Clancy has that.

Mr. Lindley asked where they would put the dark red.

Ms. Kimmerly replied there is a semi circular window on one side of the building. There are some little details they would paint with the red.

Mr. Cranse said when those buildings belonged to Vermont College he had offices in both of them.

Mr. Richardson moved for Design Review approval with the optional staff recommendation for 9-11 West Street, with Mr. Cranse seconding the motion. The motion was approved on a vote of 4 to 0.

III. 161 Barre Street

Design Review and Variance Request for Rear Decks

Owner/Applicant: Lescha Carpenter

Mr. Zalinger said the DRB is going to proceed the same with the Design Review component of the application the same as they did with the two prior applications. The variance requires the board to take independent evidence. Mr. Zalinger administered the oath to the applicant and her contractor Mark Goslant.

The Design Review Committee reviewed the proposal at two meetings on May 3rd and May 11th and recommended approval with adjustments to the scope of the proposal and several optional changes which she might pursue at her discretion. He asked if they had any objections with the Design Review Committee's recommendations. Ms. Carpenter replied she had no objections. It is her understanding this application just covers the section of the project they agreed on at that meeting.

Mr. Lindley moved approval of design review for 161 Barre Street with options suggested by the Design Review Committee. Mr. Richardson seconded the motion. He understands that the first three adjustments to the scope of the application are optional. The vote on the design review portion of the application was favorable on a vote of 4 to 0.

Mr. Zalinger said there are separate criteria for granting a variance and very jurisdictional. The variance criteria are set forth in both the state statute and the zoning ordinance itself.

Variance Criteria: §1006.B (1) (a-f)

- a. *There are unique physical circumstances or conditions, including the irregularity, narrowness or the shallowness of a lot's size or shape, or the exceptional topographical or other physical conditions peculiar to this property and that unnecessary hardship results as a reason of those conditions and not the circumstances or conditions generally created by the provisions by the zoning regulation in this neighborhood or the district in which the property is located.*

What he sees in their application is that the existing house is four feet from the side yard boundary and there is no way they can put any kind of improvement on that side of the property without being within the setback. They have always suggested that the structure was constructed in the era of 1890 so it predates the adoption of the zoning ordinance by 80 years.

Mr. Richardson said on the application it shows the house itself to be only four feet from the side yard and the proposed porch doesn't go beyond the existing building. Is that correct?

Ms. Carpenter said it is just extending on the same plane of the existing structure for structural reasons and bringing the building further back.

Mr. DeSmet said there are no rear yard setback issues, just the side yard.

Mr. Zalinger inquired what was the length of the building that is already in the side yard setback.

Ms. Carpenter said she thinks it is about 30 feet.

Mr. Zalinger said it helps to establish what she is proposing to do isn't substantial because if you already have 25 feet of building in the setback another 10 feet of building isn't an appreciable difference. But if they only had 10 feet of building in the setback and they were going to put 25 feet on that would be 300 percent.

Ms. Carpenter said one side of the building is deeper by about 6 feet so it just sort of fills in that square area. It only extends about 4 feet past the actual depth of the building at its deepest point.

- b. *Because of these physical conditions or circumstances there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.*

Certainly, adding a deck is a reasonable use of the property and if they were to strictly apply the zoning ordinance they would end up with a deck that isn't as deep as the building is simply to comply with the 10 foot setback. It is not reasonable to do that if you already have between 25 and 30 feet of the building within the setback.

- c. *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 clear that it is the location of the building and the house itself within the setback that has created the hardship.

- d. *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, not be detrimental to the public welfare.*

This is going to continue to be for residential use. The neighbors have been identified. Have they heard anything adverse from the neighbors?

Ms. Carpenter replied she hasn't heard anything.

Mr. Zalinger said this is consistent with other neighboring properties on Barre Street. In granting a variance here has there been any evidence that it would be detrimental to the public welfare? He thinks not.

- 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.*

He would take note that the applicant is continuing the line of the existing residence rather than encroaching any further which seems to be the minimum variance that would afford relief.

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

Certainly, residential use is permitted on Barre Street and it is continued to be a residence.

Mr. Richardson moved granting a variance for 161 Barre Street for the building of the proposed deck structures. Mr. Cranse seconded the motion.

Mr. Zalinger said if they grant the variance it is a variance to build the deck for which they have design review approval. The motion passed unanimously on a vote of 4 to 0 and a variance was granted.

IV. 150 Main Street

Design Review and Variance Request for a Rear Deck

Owner: Carol Vassar

Applicant: William Schebaum

Mr. Zalinger administered the oath to the applicant Mr. Schebaum.

Mr. DeSmet said Mr. Schebaum has come in for design review approval for a deck on the rear of 150 Main Street. It is also within the side yard setback so he is also requesting variance approval. The Design Review Committee met on May 25th and recommended approval with an optional adjustment to reduce the deck railing to 36 inches and to add an open area so when a person sits down they can see through the deck rather than having it up to 42 inches and Mr. Schebaum accepted that optional adjustment should they pursue it. There was some question of whether it was actually within the side yard setback, but we proceeded as if it was.

Mr. Zalinger said he takes it the applicant is in agreement with the recommendations of the Design Review Committee.

Mr. Schebaum replied he is.

Mr. Richardson said it says lowering the height of the railing to 36 inches. What it lower or higher?

Mr. Schebaum said the initial design was for 42 inches and it was dropped to 36 inches.

Mr. Richardson asked if this had been reviewed by the Building Inspector's Office.

Mr. Schebaum replied not yet. The finished height is going to be 42 inches whether it is balusters all the way up or not.

Mr. DeSmet said it was just to create an optical vision so you could see through the decking. It was an architect's suggestion.

Mr. Lindley asked what the picture represented, 36 inches or 42 inches?

Mr. DeSmet said it is 42 inches.

Mr. Zalinger said the baluster will end at 36 inches with an intermediate rail. There can only be one top rail.

Mr. Schebaum said there will still be the 42 inch top rail and then a space.

Mr. DeSmet said it is optional.

Mr. Richardson moved design review approval for the deck on 150 Main Street with the optional changes recommended by the Design Review Committee. Mr. Cranse seconded the motion. The motion for design review passed on a vote of 4 to 0.

Mr. DeSmet said they are requesting a 5 foot variance.

Mr. Zalinger said they just went through the variance criteria and he thinks there will be comparable responses to many of the criteria because very often when they are dealing with older neighborhoods in town.

Variance Criteria: §1006.B (1) (a-f)

- a. *There are unique physical circumstances or conditions, including the irregularity, narrowness or the shallowness of a lot's size or shape, or the exceptional topographical or other physical conditions*

peculiar to this property and that unnecessary hardship results as a reason of those conditions and not the circumstances or conditions generally created by the provisions by the zoning regulation in this neighborhood or the district in which the property is located.

In this instance the building was built in the 1870's and predates the adoption of the zoning ordinance. The building itself was built within the side yard setbacks throughout its entire length, and as a consequence it is very hard to put any kind of addition on the building because it is already in the side yard setback.

- b. *Because of these physical conditions or circumstances 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 the property.*

Are there residential units in the rear of the building?

Mr. Schebaum replied yes. The owner Carol Vassar is in the front of the building. This is for the residential use at the rear of the building.

Mr. Zalinger said they have always held that it is a reasonable additional for a residential structure in the city.

- c. *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 apparent that this lot and the construction of the improvements on it predated the zoning ordinance by many decades and thus the hardship has not been created by the appellant.

- d. *The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, not be detrimental to the public welfare.*

The use of the property won't change. Mr. Zalinger said he is a neighbor to the south and familiar with the character of this neighborhood, and it is not going to be changed at all by the addition of this residential deck in the rear of the building. He can't identify any detriment to the public welfare by the granting of a variance in this instance.

- 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.*

The variance he is requesting is not quite as great as that which exists with respect to the rest of the building.

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

It is the appellant's testimony that the use is going to continue as it presently exists.

Mr. Richardson said it seems to join a recent building of decks along Main Street within the variance. Mr. Richardson moved for granting of a variance for 150 Main Street. Mr. Cranse seconded the motion. The variance was granted on a vote of 4 to 0.

Adjournment:

Upon motion by Mr. Cranse and Mr. Lindley the Development Review Board adjourned on a vote of 4 to 0.

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator

Transcribed by: Joan Clack