

Montpelier Development Review Board

September 6, 2011

City Council Chambers, City Hall

Approved

Present: Philip Zalinger, Chair; Kevin O'Connell, Vice Chair; Daniel Richardson, Jack Lindley, Roger Cranse, Elizabeth Koenig, and Brian Lane-Karnas.
Staff: Clancy DeSmet, Planning & Zoning Administrator

Call to Order:

Philip Zalinger, Chair, called the meeting to order at 7:00 P.M.

Review and Approval of August 15, 2011 Minutes:

Upon a motion duly made by Mr. Lindley, seconded by Mr. Richardson, the Minutes of August 15, 2011 were approved with a minor change on a vote of 6 to 0.

I. 150 Main Street – CB-II/DCD

Owner/Applicant: Carol Vassar
Design Review for Replacing Railing

This application was before the Design Review Committee on August 23rd and the DRC recommended approval with an adjustment to the scope of the proposal. Mr. Zalinger asked if she would be satisfied to have a condition of any approval that might be granted that the railing be painted white.

Ms. Vassar replied the railing will be painted white.

Mr. O'Connell moved to approve the application with the adjustment. Mr. Cranse seconded the motion. The application was approved unanimously on a vote of 7 to 0.

II. 153 Elm Street – CB-II/DCD

Owner/Applicant: Win Turner & Laura Bozarth
Design Review for Extending Dormer and Windows

Mr. Richardson recused himself from voting on the application.

This application was before the Design Review Committee also on August 23rd and approval was recommended with two adjustments to the scope of the proposal. One was that the proposed four windows be reduced to three windows and that they be equally spaced stand-alone units. Secondly, the ADA access ramp will be replaced either in wood similar to the proposed design but to meet ADA code requirements in metal. The applicant said she was in agreement with the recommendations.

Ms. Diaz Smith, architect, said they were exploring having a window facing the south.

Upon a motion duly made by Brian Lane-Karnas and Kevin O'Connell to approve the application with the adjustments in scope as proposed by the DRC the application was approved on a vote of 6-0-1, with Daniel Richardson not voting on the application.

III. 100 State Street – CB-I/DCD:

Owner: Capital Plaza Corp.
Applicant: Sammel Sign Co., Roger Sammel

Mr. Zalinger administered the oath to Roger Sammel.

Mr. Zalinger explained this is also a Consent Agenda item but in contrast to the other matters preceding this one he believes they are going to have to build a record here because the recommendation of the DRC was not accepted by the applicant. As a consequence the DRB is going to have to make the decision. There is nothing for them to adopt from the DRC.

Mr. DeSmet said he received an e-mail from Mr. Sammel that they weren't pleased with the recommendation but he didn't understand why they submitted additional sign plans that showed the reduced size.

Mr. Sammel said he showed the original sign, the 96 inch wide signs. The other information he submitted was to clarify the fact that the original proposal of the 96 inch wide sign is in fact in compliance with the current zoning regulations.

Mr. DeSmet said he is talking about the additional evidence he provided with a 72 inch wide and 8 foot high sign.

Mr. Sammel explained that was what the Board wanted them to do. He submitted that back to the clients and they said no and wanted to go ahead with the original proposal.

The DRB discussed the size dimensions of the sign.

Mr. Sammel said they wanted to make it 6 feet wide by no more than 8 feet high for the combined two signs. They are proposing an 8 foot wide by 48 inch on the Northfield Savings and 8 foot by 32 inch on the Capital Plaza sign.

Mr. Zalinger said the upper portion of the NSB logo, is that included in the 4 feet?

Mr. Sammel replied the space is not included. He said they could scale it down to fit within the 75 feet all services.

Mr. DeSmet said it is his understanding they didn't base it on the requirement in the ordinance but based it on the design which was too large.

Mr. Zalinger said he thinks the applicant has to go back and redesign the sign. If the logo is going to expand beyond the area that you use for the rectangular design better figure out a way to compute that area. There is no free area in the zoning ordinance. Number two, he would recommend that the applicant take a look across the street where the competition has a sign into its parking area and its drive-in window, the Peoples United Bank. They could also drive by the Vermont State Employees Credit Union or ask Clancy to see the newly designed sign that the Credit Union received approval after several meetings with the Board. They were advised that the Board really was not appreciative of a sign that was overly large and represented something close to a billboard within the city limits. He would be disinclined to make an exception for the NSB and the Capital Plaza. As the application suggests, Capital Plaza has a whole lot of signage already. There may be a mutual self-interest for the parties to join in on the same sign. It would probably be better if the applicants use some sensitivity to the context and placement of the sign.

Mr. O'Connell said he would echo the Chair's comments. They as a Board have to be disinclined to alter the sense of the proportion that the Capital District has, and the signage has been a significant issue. With the current proposal he thinks they will run into the same issues as they did with the other two examples.

Mr. Zalinger said there was a good deal of discussion in the DRC minutes about an arrow and the arrow was rejected or deemed unnecessary. Is that correct?

Mr. Sammel replied that was an option.

Mr. Lindley said another important aspect is this is a view shed all the way from the beginning of Taylor Street on Route 2 and it is a view towards the Capital Complex and there needs to be some sensitivity of proportion.

Mr. Sammel asked if it would be possible to accept the Design Review Committee's recommendation to make the sign narrower to a 72 inch width but also make it an 11 foot height because the Northfield sign wouldn't be able to be seen as cars are parked in front of it. They would be asking to increase the height by about a foot just to have a little better visibility.

Mr. O'Connell said he thinks they have run into exactly the same issues they have been discussing. With 11 feet you just aren't going to find a sign like that in the district.

Mr. Zalinger said if the landlord makes use of that portion of the property for parking, then it makes it an ill-advised location for a sign. It doesn't mean that the sign should grow bigger. Of course, this would all be solved if they made a stand-alone sign for the NSB.

Mr. Sammel replied they proposed that first.

Mr. Zalinger said a lot of signage issues occur because business folks just want an easy as possible solution so they go to sign manufacturers who come up with what they think is complying with the zoning ordinance, and then you run into a buzz saw when you get to the local community that says we don't want golden arches because we are sensitive to things. When you delve a little bit deeper you get creative and find an alternative that may fit the needs of the landlord as well as the NSB. The NSB has been there for a long time and must have a little leverage with the landlord when it comes to signs and directions. If you were a little creative you probably could find a mutually agreeable resolution that also would be approved by the Board. They aren't going to accept the larger sign so it can be seen over a van because someone might park a van there.

Mr. Cranse said if they are familiar with Capital Plaza and the Northfield Savings Bank you know where they are and if you aren't familiar with them and looking for them this sign doesn't help without an arrow. It isn't an informative sign in terms of where is the bank and Capital Plaza. From a design point it's confusing rather than directional or clarifying.

Mr. Sammel asked if it was acceptable to accept the Design Review Committee's decision and recommendation to go with a smaller sign.

Mr. Zalinger replied that he doesn't believe the Design Review Committee's size sign complies.

Mr. DeSmet replied it doesn't.

Mr. Zalinger said he recommends they ask the DRB to continue the application until their next regularly scheduled meeting which is September 19th so they won't have to re-warn it. That will give the applicant an

opportunity to review both the technical terms of the ordinance and the other issues that were raised, and also to consult with the other parties who designed it.

Mr. O’Connell moved they continue the application for 100 State Street with Mr. Richardson seconding it. The vote was unanimous on a vote of 7 to 0.

IV. 149 Barre Street – CB-II/DCD

Owner/Applicant: 143 Barre Street Associates, LLP
Design Review for Complete Window Replacement

This application was before the Design Review Committee on August 23rd and the DRC recommended approval with a minor adjustment to the scope of the proposal, and that was that if necessary any rotted trim and casing will be repaired in wood and paint to match the existing exterior. He asked if the applicant was in agreement with the recommendation.

The applicant replied they are.

Upon a motion for design review approval at 149 Barre Street with the adjustment to the scope as a condition recommended by the DRC made by Mr. Richardson and Mr. Cranse the DRB granted approval on a vote of 7 to 0.

V. 23 Cliff Street – LDR/DCD

Owner/Applicant: Edward Oravec & Jeanne Kern
Variance Request from Side Yard Setback and Design Review for a Porch

Mr. Zalinger administered the oath to Jeanne Kern, Applicant.

Mr. DeSmet said the applicant requests design review and variance approval for the construction of a side porch and roof in the side yard setback of 23 foot. The setbacks on that portion of Cliff Street are in the Low Density Residential and they are 20, 30 and 75 respectively. The parcel is nonconforming and only has 60 feet of frontage. The requirement is 200 feet. The residential structure is already within the side yard setback to the east, also nonconforming. The minimum lot size requirements are one acre and they are not met here either. The DRC reviewed the proposal at its August 23rd meeting and recommended approval as proposed.

Mr. Zalinger said it seems to him the building is 28.5 feet so the variance will be 6.5 feet.

Jeanne Kern said there is an existing cement stoop at the side and they want to replace that with a side porch with a roof and railing around it. They want to get rid of the concrete and have a wooden step and porch. The design of the proposed porch would mirror the design of the front porch which exists. It would also protect her wooden exterior door. Without protection they are hesitant to take the window out of the storm door during the summer because the door would get wet, and in the winter time without protection sometimes it ices up and you can’t get the door open.

Mr. Zalinger said the Board will review the variance criteria to develop a record. The Development Review Board is authorized to grant a variance if they can make affirmative findings on the criteria.

Variance Criteria: §1006.B (1) (a)-(f)

- a) *That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot 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.

One of the unique physical circumstances that might be present in this situation is the fact that the frontage of the lot is beneath that required in this district. Ms. Kern showed a picture of her house along with a rock in her back yard which was introduced into the record.

- 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.*

Obviously since the western side of the house itself is already within the setback to even to replicate the concrete stoop would require a variance so there is no way the applicant could improve the entranceway without a variance.

- 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.*

Mr. Zalinger asked when the lot was created. Ms. Kern replied the house was built in the late 1890's. Mr. Zalinger said it is obvious it predates the zoning ordinance.

- 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 personally impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.*

The applicant will continue to use the property as a single family residence. It is clear there won't be any impact on the public welfare.

- 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.*

It is fair to say that ingress and egress through an exterior door 5.5 foot wide is about the minimum size you could effectively use.

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

The applicant testified she is going to continue to use this as a residential structure.

Mr. Zalinger said a motion should be to approve a porch up to 5 feet 9 inches with a roof of up to 7 feet 9 inches for design review purposes. It won't change the setback.

Mr. Richardson moved approval for design review approval for 23 Cliff Street with the adjustment to the scope being that the length of the porch may be up to 5 feet 9 inches and the roof 7 feet 9 inches. Mr. Lane-Karnas seconded the motion. The motion to approval design review was granted on a vote of 7 to 0.

Mr. Lane-Karnas moved to approve a variance of the side yard setback of 6 feet 6 inches making the side yard setback 23.5 feet. Mr. Cranse seconded the motion. The variance was granted on a vote of 7 to 0.

VI. 13 Cross Street – HDR

Owner: Kevin Wilkinson

Applicant: The Mountain Shop – c/o Jean LaCroix

Mr. Zalinger administered the oath to Jean LaCroix.

Mr. DeSmet said the applicant requests a variance from the rear yard setback to construct a 16' x 20' garden shed in the rear of the property at 13 Cross Street. 13 Cross Street is located in a High Density Residential area. There are no existing dimensional nonconformities at this location. The minimum setbacks in this area 10 feet in the front yard and 5 feet on the side yards and 30 feet in the rear. The applicant seeks an incursion of 25 feet into the 30 foot back yard setback. The garden shed will be placed approximately 5 feet from the rear property line.

Mr. Zalinger said the Board just reviewed the variance criteria. He asked him if he could identify the reasons why he feels it necessary to build a shed so close to the rear yard setback.

Mr. LaCroix said the landscape of the lot is stepping down about 25 feet from the rear of the property line and the step is about 4 or 5 feet high between the upper lots to the lower lot. In order to make enough space to move in between these two levels the proposal from the owner would be to try to push it back to the rear of the property.

Mr. Richardson inquired if he had any pictures of the site.

Mr. LaCroix replied he did not.

Mr. Zalinger said on the site plan it shows a nice flat lot. As a consequence if there are any topographical challenges on the site the Board can't discern them from here and all they can rely upon is his oral testimony. Whether the individual at 32 North Street objects or not is irrelevant because the setback is for 30 feet. If folks all started asking for variances simply because they didn't want to use their back yards for improvements but put it back into their neighbor's back yards then the purposes of the zoning ordinance wouldn't be met. He said he is going to recommend that he consider continuing this until a later date and come back with evidence about topography of the site and what other challenges there may be in the rear of the lot to constructing the garden shed anywhere else but at this location. The size of the shed is also substantial; it is 16' x 20' but there is no indication of the construction materials or its appearance. 16' x 20' is large enough to be a garage which is more garden equipment than he cares to own. The application isn't supported by sufficient information to allow the Board to make the findings they must make for a variance.

Mr. O'Connell told the Chair he is accurately reflecting his views on this. His initial reaction was why because here seems to be plenty of room in the back. Again, the size is concerning for a simple garden shed. It could easily be used for other purposes and that would be a concern being that close to the property line.

Mr. Richardson said it would be helpful to see a picture of exactly what this looks like as well as photographs of the site. If he is claiming various topographical features certainly anything that illuminates that for them will help the Board to make any findings.

Mr. Lane-Karnas said he would be interested in hearing a little about the history of what was built on the lot because the variance is really aimed at more things that were usually created before the adoption of the zoning on lots that were too small.

Mr. Zalinger asked Mr. LaCroix if it was his request that the DRB continue this until September 19th.

Mr. Richardson moved they continue the request for a variance for 13 Cross Street until September 19th.

Mr. O'Connell seconded the motion. The vote on the motion to continue the application for a variance for 13 Cross Street until September 19th was approved on a vote of 7 to 0.

VII. 16 Redstone – MDR

Owner: Robert Henrick & Nancy Olivet

Applicant: Hubert O'Brien & Elizabeth Courtney

Variance Request from Rear Yard Setback to Construct a 12' x 10'
Addition and Deck.

Mr. Zalinger administered the oath to Hubert O'Brien and Elizabeth Courtney.

Mr. DeSmet said the applicant requests a variance from the rear setback to construct a 12' x 10' addition and deck to an existing residential structure at 16 Redstone. It is in the Medium Density Residential zoning district. The setbacks in that area are 10' in the front, 10' on the sides and 30' in the rear. The existing structure is already within the rear yard setback and is approximately 5' from the rear property line due to the irregular shape of the parcel. The lot was created in the 1930's and the main structure in the 1950's, and the applicant purchased the property last month.

Mr. O'Brien said they would like to construct a 10' x 12' addition. The addition itself would be further from the adjacent border than the already existing building but not meeting the 30' rear yard setbacks so they are requesting a variance.

Mr. Zalinger said it is the proposed deck as well as the addition. Both would be within the rear yard setback.

Ms. Koenig asked if the proposed deck was farther into the setback than what is currently there.

Mr. O'Brien replied it is actually less by a very miniscule amount. It parallels the border and moves slightly further away from it so you might get 6 inches or a foot. Actually, the purpose of the deck is safety. To go up a flight of stairs and open the door while you are on the stairs is winter is not safe so they wanted to have a landing enough to make it serviceable and safe.

Mr. Lane-Karnas asked what the dimensions of the deck were.

Mr. O'Brien replied 4' x 4'. Where the proposed deck is now actually stairs. They would simply move the stairs out.

Mr. Zalinger said because the location of the stairs is going to be changed the stairs require a variance as well. If you are going to move them they would be part of the variance and they are within the 30' setback from the rear as well.

Mr. Lindley asked if this was a home with an existing apartment in it.

Mr. O'Brien replied the apartment does not exist now. It's a single family three-bedroom home. They are taking two small rooms that are presently in the house and adding on this 10' x 12' addition and carving it out as a one-bedroom apartment in addition to the existing house.

Mr. Lindley asked if the neighborhood had two unit houses in it.

Mr. O'Brien replied it does. When they spoke to the Planning Department it sounds like they also need to get a change of use variance from a single family residence to what now will be 2 units. Is that part of what they are discussing here?

Mr. Lane-Karnas inquired if that required site plans approval.

Mr. DeSmet said that more than two requires site plan approval. A multi-family is permitted in a Medium Density Residential. It is administrative approval.

The DB reviewed the variance criteria:

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.*

It occurs to him as they look at this and if the steps are to be moved and attached to the western side of the proposed deck that is a side yard setback is also required. Mr. DeSmet reminded him that is 10 feet so it is okay. They can make the determination that the structure was constructed and lot created predating the zoning ordinance so the existing building is already within the rear yard setback of 30 feet. Even though they are not expanding upon the incursion into the setback they are modestly continuing it. The unique physical circumstances are making it hard to put an addition on a building that already is in the setback without acquiring a variance.

- 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*

It is clear that the landing is a safety feature and it is consistent with providing ingress and egress to a residential structure.

- 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 clear that the location of the building within the rear yard setback is the cause of the hardship.

- 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.*

The structure will continue to be used for residential purposes. That is consistent with the essential character of the MDR district.

- 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.*

It is clear that this does represent the minimum because it does not expand upon the existing incursion in the rear yard setback that the existing building is already guilty of.

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

Continuing use of this property in the MDR for residential purposes is consistent with this use.

Mr. Lindley said this was purchased to be a two rental income. He asked if they were living in one unit.

Mr. O'Brien replied no but they live next door to this house. It will be two rental units. They are abutting landowners.

Upon a motion duly made by Mr. Lane-Karnas to approve the application as presented with a variance of 25 feet in the rear yard setback and seconded by Mr. Richardson, the variance for 16 Redstone was granted on a vote of 7 to 0.

Adjournment:

Upon a motion duly made by Mr. O'Connell and Mr. Richardson the Development Review Board adjourned on a vote of 7 to 0.

Respectfully submitted,

Clancy DeSmet
Planning & Zoning Administrator

Transcribed by: Joan Clack