

**Montpelier Development Review Board**

**April 4, 2011**

**City Council Chambers, City Hall**

*Approved*

**Present:** Philip Zalinger, Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, Roger Cranse, Sabina Haskell and Ali Sarafzadeh.  
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 March 7, 2011 Minutes:**

Upon a motion made by Alan Blakeman and Jack Lindley the Minutes of March 7, 2011 were approved and adopted on a vote of 4 to 0.

**I. 107 State Street (CB-I/DCD)**

Owner: John Russell

Applicant: Caroline Earle

Design Review for a Sign.

The Design Review Committee approved the application for the sign at its March 29<sup>th</sup> meeting and recommended approval as proposed. Mr. Cranse moved approval for the sign at 107 State Street, with Alan Blakeman seconding the motion. The application was approved on a unanimous vote of 6 to 0.

**II. 55 Barre Street (CB-II/DCD)**

Owner: City of Montpelier Recreation Department

Applicant: Arne McMullen, Montpelier Recreation Department

Design Review for Roof Replacement

Mr. Zalinger recused himself from voting on the application but chaired the proceeding to facilitate the hearing.

The Design Review Committee reviewed and approved the application at its March 29<sup>th</sup> meeting.

Mr. Richardson asked if it was accurate to say that anyone from the street level is going to be able to see the increase of the depth of the roof.

Mr. McMullen replied it is going to be the same trim coming down and overlap on the current trim that is there but will add only 6 inches of insulation to the top of the roof. Most people wouldn't even notice that. It will have no affect on the brick work.

Upon a motion by Mr. Richardson and Mr. Blakeman design review approval for 55 Barre Street, the application was approved on a vote of 6-0-1 with Mr. Zalinger recusing himself.

**III. 1 Granite Street – RIV/DCD)**

Owner: Peter Merrill

Applicant: Dan Clar

Design Review and Variance for Sign.

Mr. Zalinger administered the oath to Mr. Clar.

Mr. DeSmet said Mr. Clar would like to place a sign on the National Clothespin Factory building. There are two reasons for the variance. The maximum allowable area in the Riverfront District is 6 square feet and the sign is 10 square feet. Another requirement of projecting signs in the Riverfront is that they do not be placed above the first floor. This is a request for placement above the first floor and an increase in area. The Design Review Committee recommended approval with two adjustments. The first adjustment would be that the sign be placed back far enough from the corner so the light fixture will not project beyond the corner of the building and they requested a 60 watt maximum light bulb.

Mr. Zalinger asked Clancy to further articulate what the distinction is between the design review aspects of the application and where the variance is. The variance is for the protrusion on the side of the building.

Mr. DeSmet replied that Article 5 of the Ordinance has individual requirements for sign placement and projecting signs under §504(d) in the Riverfront District says that the maximum allowable area is 6 square feet per side. This is 10 square feet per side. They aren't permitted above the first floor.

Mr. Cranse said he can't see where the sign is going to be.

Mr. DeSmet showed the picture where the sign would be placed.

Mr. Clar said the elevation of the drawing is borrowed from another project which is not at all on the table. There are some windows on the drawing that aren't in reality.

Mr. Zalinger asked if the design would be parallel with Granite Street.

Mr. Clar replied the design will be parallel with Stone Cutters Way.

Mr. Sarafzadeh asked if there was a reason why the 6 square foot sign wouldn't fit his needs.

Mr. Clar replied it seemed too small for the size of the building. It seemed disproportionately small.

Mr. Richardson said there are different standards for signs that are on the buildings as opposed to projecting signs so you could have a larger sign if you put it on the building.

Mr. Clar said he thought a projecting sign would be much nicer to look at.

Mr. Richardson asked why the second floor for the sign.

Mr. Clar replied it was the second floor because the space in between the building he rents space in and Allen Lumber there is an alley to get back there, and in order to get trucks into that alley he needs the clearance from the ground to the sign. That would be for taller delivery trucks.

Mr. Richardson asked if the right-of-way controlled by the landlord or shared by Allen Lumber.

Mr. Clar replied there is some long standing cooperation there but the property belongs to his landlord and Allen Lumber doesn't use that except for a rare occasion.

Mr. Lindley asked why he didn't choose to put the sign on the building over the open door.

Mr. Clar said his landlord discouraged that from his own aesthetic perspective. He agreed with him and he didn't want to attract people into the garage door area which he parks in. The entrance to his shop is around the corner through the alley and he didn't want people to be misled about the entrance.

Mr. Lindley asked if there was going to be a light hanging down over the sign.

Mr. Clar replied that was correct. The Design Review Committee specified no more than a 60 watt bulb for the lighting. The light fixture is 24 inches in diameter and they asked that the front of the light fixture not project beyond the face of the building. He said he was okay with the adjustments recommended by the DRC.

The DRB reviewed the design elements of the application. The Design Review Committee reviewed the application on February 15<sup>th</sup> and recommended it be reset 12 to 18 inches so the light fixture remains behind the corner of the building and that the maximum wattage of the bulb be 60 watts. Mr. Clar said he is in agreement with their recommendations. He said unlike most projecting signs he isn't looking for foot traffic to be attracted. His business isn't foot traffic. His objective is visibility and capturing traffic to the other surrounding businesses and maintaining a presence and logo.

Mr. Richardson asked how much of the building he occupied.

Mr. Clar responded by saying he occupies 1,500 square feet on the back end of the first floor which is about a third of the floor. The front two thirds are occupied by his landlord's business. The main entrance is through the alley.

Mr. Richardson moved for design review approval for 1 Granite Street with the two adjustments to the proposal passed by the Design Review Committee that the sign be pushed back so the light fixture doesn't go past the edge of the building, and that the fixture be limited to 60 watts. Mr. Blakeman seconded the motion. The vote on the motion was 6 to 0 with Mr. Zalinger abstaining.

The DRB proceeded with the variance criteria. Before they can grant a variance for the location of the sign above the first floor of this design and a sign of this size there are 6 zoning criteria they have to meet:

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

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

Perhaps this is a very unusually shaped building with unusually shaped access and very distinctly configured. He suspects the building predates the zoning ordinance in 1973. It is unusually shaped and configured and the way the property is subdivided for use by both the owner and other tenants is such that it doesn't lend itself to the standard signage provisions of the zoning ordinance.

- 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 the property.*

Because of the location of the sign removed from the corner and configured as it is in a way that doesn't protrude over the traveled way but rather protrudes out over an internal roadway, whether those justify the expansion and size.

Mr. Cranse said he isn't convinced that there is no possibility that the property can be developed in conformity with the provisions to enable reasonable use. He thinks the vision of the landlord is not something that concerns them for prohibition of a sign on the side of the building.

Mr. Zalinger said that would speak to a projecting sign.

Mr. Cranse said it would actually apply to both, but more particularly to the location of the protruding sign.

Mr. Zalinger said it would be hard to put a projecting sign at the first floor level because of traffic.

Mr. Cranse said they could put a sign right up flat on the building. The landlord has said he doesn't want that kind of sign but that isn't the Board's concern. It is the concern of the applicant.

Mr. Richardson said part of what seems to be driving the applicant towards a projecting sign as opposed to a sign on the wall is both landlord's insistence but also it seems as if the projecting sign because of the awkwardness of the lot and access simply a sign on the shed itself could be misleading. A projecting sign communicates that better. That is not something that is under the control of the landlord or the applicant. It is a bit redundant of the earlier point that the Chair made, but at the same time he thinks it is indicative of why they are talking about a projecting sign. If you are talking about a projecting sign in this space it would have to be on the second floor because of the traffic otherwise you render the right-of-way useless. Since the sign isn't really indicating that this building is his but that his business is back there it seems like a reasonable necessity.

Mr. Lindley said they could mount that sign on the face of the building with an arrow pointing down the alley on the right hand side of the sign. It certainly would be an indication that it is not the building but an arrow pointing down the alley.

Mr. Clar said he agrees with things he is hearing. He would like to add that there is a degree of elegance that a projecting sign offers that a service mounted sign does not, and that is an important piece of the application for him.

- 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.*

Applying the variance criteria to a sign is impenetrable. He thinks a good argument could be made that the hardship that has been created by the building itself and by the strange configuration of it with being perpendicular to the traveled way but then being serviced by an access that is also perpendicular, and the projecting sign is over the access rather than over the public right-of-way.

Mr. Richardson said he thinks this is a sign standard that is for a different type of area than this and this building makes it sort of silly in some way because it doesn't conform to what they are seeking to enforce in this bylaw which is a public right-of-way where you are walking and the sign is above the pedestrian access perpendicular to the main road.

Mr. Zalinger added it projects over the public thoroughfare.

- 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's the Riverfront District but it is fair to say that both the Allen Lumber location and Clothespin Factory use predated if not the zoning ordinance then certainly the establishment of the Riverfront District. They have predated the zoning ordinances for years and years. The essential character of that end of the neighborhood of the Riverfront District is well established to be commercial and industrial rather than anything else. He suspects the adjacent property is Allen Lumber and not the rest of the Clothespin manufacturing facility. It doesn't appear it would impair the appropriate use of the balance of the clothespin facility or Allen Lumber. It is hard to see the public welfare is at issue with respect to this sign.

- 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.*

Mr. Lindley said they are moving to a 10 foot sign versus a 6 foot sign. The zoning allows for 6 foot signs. They are being asked to expand the variance beyond what is on the books.

Mr. Zalinger said it is a variance of 66 2/3rds percent.

Mr. Lindley said that isn't the minimum variance, and you don't need a variance on square footage if you allow the 6 foot.

Mr. Zalinger pointed out that the location of the sign has been withdrawn down the side of the building. It's not a 10 square foot sign that is projecting over Stone Cutters Way; it's over the alley.

Mr. Richardson said it is a sign that could be put on the side of the building. He is just moving it but rather than the normal projecting out on to the public right-of-way. It mimics the sign that would be on the building and he can't put it on the building because his business isn't located there but for a garage where he stores a trailer. His business is located around a corner so he has no frontage on public right-of-way that he could use a projecting sign to show his shop. He is using the projecting sign as a substitute. Also it has less impact at the second floor than it would at the first floor.

Mr. Blakeman said is he to assume that most of the traffic that would be headed down the alley for him who are people who serve him regularly as vendors or suppliers.

Mr. Clar replied yes, and customers do come to his shop.

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

It is certainly inapplicable in this situation. The use isn't going to change and it is permitted in this area.

Mr. Zalinger said he is going to abstain from voting on this application.

Mr. Richardson moved for a variance for both height and size for the sign at 1 Granite Street. Mr. Blakeman seconded the motion. The vote on the motion was 3 to 3 and the variance was not granted.

They would need 4 affirmative votes for the variance to be granted. It is either because of the size or the location above the first floor.

Mr. Clar asked if they could provide him with some clarification why so the next time he can address that.

Mr. Zalinger said there were 3 negative votes and the Board can't redesign the project for him. It is very difficult to tell from these facts what the determining factor was. Variances are tough issues and as you see from the criteria they aren't easy. It's a tough application for a sign in this context so it may have been the size of it or it may have been the location. He thanked Mr. Clar for participating.

**IV. 63 Wheelock Street (MDR)**

Owner/Applicant: Mark and Marsha Lang

Variance Request from the rear and side lot setbacks for an addition.

Mr. Zalinger administered the oath to Mark Lang.

Mr. DeSmet said the applicant seeks demolition and variance approval to demolish and replace a 12' x 24' carport with a 24' x 34' carport with a deck on top. The existing carport is approximately 12' from the rear property line and approximately 16' from the side yard line. The existing carport is already nonconforming because it encroaches on the rear property line where the minimum setbacks would be 30'. The carport as proposed would be approximately 1' and 12' from the rear and side yard lines. The applicant purchased the property in 1977. The main structure and use were established around 1974.

As you can see by the survey the applicant initially thought that his fence was on his own property, but it's not.

Mr. Lang said when they bought the house in 1977 there was a fence along there and it was assumed that was the property line with 1' on the other side of the fence until they had the survey.

Mr. Zalinger asked how long had the Youngs been his neighbors.

Mr. Lang replied approximately five years.

Mr. Lang said they would like to replace the existing carport and the driveway. When it was built there was a lot of clay underneath the carport and the driveway. They want to take that up and put in some good drainage and put a slab under the carport. The carport would be built on the solid slab for the deck above it. The deck itself they would like to put in is 34' deep and 24' wide. The bottom of the deck itself would be 8' high with a 42" rail. It would be a white vinyl rail.

Mr. Zalinger said the new configuration of the driveway isn't shown on this map is it.

Mr. Lang said it was explained in the write-up about the new driveway. It would be about 10 to 12 feet in and then it would curve out to where the addition was. It would not be in the front. It would be about 12 to 14 feet in from the road where it would start and swing over to the extension.

Mr. Zalinger said the width of the proposed carport is 24 feet so the driveway would be 24 feet wide at least 15 to 20 feet across out from the front of the proposed carport.

Mr. Lang replied that is correct.

Mr. Cranse said the drawing shows the proposed deck, but he doesn't believe it shows the proposed carport. It shows the existing carport.

Mr. Lang said the grayed in area there is a carport that is white and the grayed in area is the addition.

Mr. DeSmet said it is just encompassing the existing area.

Mr. Zalinger said all of the area below the proposed deck will be carport. Is that a fair statement?

Mr. Cranse said he sees that now. It shows the old carport.

Ms. Haskell said it is going to be a two-car carport rather than one-car.

Mr. Zalinger said the depth of the existing carport is really the depth now of the house. He understands the plan to expand it so that it can accommodate two vehicles.

Mr. Lang replied correct.

Mr. Zalinger asked what about the area in the rear of the residence, the additional 10 feet. He understands why he wants a deck. What is going to take place in the carport area beneath the 10 foot extension?

Mr. Lang said what they are looking at is if they could have it extended so it would give them the support they needed for the deck. In the past they have had such a problem with frost. In order to make sure they have a solid foundation he wanted to make sure there was a solid slab in place. Also, it would allow if they wanted to and needed to use it for a get together, and it was rainy day they could go underneath there.

Mr. Zalinger asked if it was going to be concrete slab.

Mr. Lang replied that was in the write-up for under the carport.

Mr. Zalinger said the size of the concrete slab is going to be 24' x 34'. Is it going to be enclosed in any fashion?

Mr. Lang replied no. The only thing that would be around it is over time they put shrubbery around it.

Mr. Zalinger said technically they could fit four cars or more of different sizes.

The Development Review Board 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.*

The side yard is 10 and the rear is 30. It certainly is a strangely configured lot. The house was constructed in 1973. Mr. Zalinger asked Clancy if the lot's size meets the minimum requirements in MDR.

Mr. DeSmet replied no.

Mr. Zalinger asked what the frontage of the lot in MDR is. This is 94 feet. He thinks frontage requirements are 100 feet.

Mr. DeSmet replied 75 feet. It used to be 100 feet.

Mr. Zalinger asked Mr. Lang what the acreage of his lot was.

Mr. Lang replied it is .19 acres, 10,000 square feet.

Mr. Richardson asked if he said the stockyard fence had been there since he moved in.

Mr. Lang replied that is correct. There has been a stockade fence. They have replaced it a few years ago but it is still in the same location. They have always used the area up to the stockade fence.

Mr. Zalinger said he certainly can conclude that this is a uniquely shaped lot and the location of the house on the lot so it is parallel with the street but it bears no relationship at all to any of the other boundaries of the parcel. It certainly is unique.

- 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 regulations and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property.*

Mr. Zalinger said he can't draw the same conclusion about that criterion. He understands his interest in a deck and the DRB in his 20 years has been very liberal he thinks with granting variances for decks and exterior uses on residences most of which predated the zoning ordinance. The scale is dramatically different. This is a deck that is 24' x 34'. That is a lot of square footage. The deck would be the size of a good sized house. The duality of the deck and the carport it is easy to confuse the situation and say the carport is a use. Customarily, if he were seeking approval for a carport that didn't have the rear yard setback issue he would be inclined to grant it, but it appears the additional deck surface is what is driving the need for the variance for the rear yard.

Mr. Lang said he is saying that without the additional 10 feet in the back???

Mr. Zalinger said he personally may have a hard time with concluding that there is no reasonable use of the property without the setback in the rear yard variance. He can see the need for the side yard variance to expand it to give him a two-car face on the carport.

- 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 said once again he could draw that conclusion about the side yard variance, not necessarily about the rear yard variance.

- 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.*

Mr. Zalinger said he thinks the use is not inconsistent with other uses. Certainly, the coverage and the scale of that deck might, in his view, might adversely impact the character of the neighborhood by bringing the

mass of the uses of his house right to the rear property line. That is just his thinking. Certainly, he doesn't see any element of this project that is going to be detrimental to 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.*

Once, again, he can see how this is the minimum variance that would afford relief for expanding the carport to accommodate two vehicles in the side yard but not in the rear yard.

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

Obviously, this is going to continue to be a single family residence with large family parties.

Mr. Richardson said he would echo the Chair's sentiments. The side yard seems to be a reasonable expansion of use. There is even the question with the stockade fence there, but even with the property lines as delineated by the surveyor this is a reasonable expansion of that use and fits the variance criteria. The back starts to get beyond that. The house is already nonconforming but this would essentially limit it to 1.7 feet away.

Mr. Cranse moved approval of the application for a variance at 63 Wheelock Street as proposed. Mr. Lindley seconded the motion.

Mr. Zalinger said they always proceed with affirmative motions so they wouldn't move to deny a variance. They would move for a variance and if you were opposed to it vote against it. He doesn't find himself able to vote in the affirmative on this application. He tells them in advance for the reasons he already identified.

Mr. Lang asked what would happen if they took the additional 10 feet off the back and just go with 24' x 24'. He could revise his plan at this point.

Mr. Zalinger said as long as Mr. Lang is here and before the Board it isn't without precedent for the scope of the project to be changed.

Mr. DeSmet said they have had projects where the incursion was reduced by this body.

Mr. Lang said he would be willing to change the scope to a 24' wide by 24' deep.

Mr. Zalinger asked if that would end the carport before the rear of the house.

Mr. Lang replied it would bring it basically from the front to the back of the house. Part of the request also was that sometime over the next couple of years they do want to replace the roof and be able to put part of the extension up to 9 feet out over so it would be covering the new door. That's another part of the request.

Mr. DeSmet said the footprint is still the same.

Mr. Zalinger said they have it on the record that the application has been amended.

Mr. Blakeman said he was curious what the neighbors thought about the project.

Mr. Lang said everyone received notice and everyone signed the letter saying they had no problem with the variance.

Mr. Cranse withdrew his motion and Mr. Lindley withdrew his second.

Mr. Cranse moved approval of the application at 63 Wheelock Street for a 24' x 24' carport and deck for the resulting variances for both the side and rear yards. Mr. Lindley seconded the motion. The motion to approve the variance was granted on a vote of 7 to 0.

**Adjournment:**

Upon a motion by Dan Richardson and Jack Lindley the Development Review Board adjourned on a vote of 7 to 0.

Respectfully submitted,

Clancy DeSmet  
Planning & Zoning Administrator

Transcribed by: Joan Clack