

Montpelier Planning Commission
October 24, 2011
City Council Chambers, City Hall

Subject to Review and Approval

Present: Jon Anderson, Vice Chair; Tina Ruth, Eileen Simpson, Kim Cheney, John Bloch; Youth Member Emma Campbell.
Staff: Gwen Hallsmith, Director of Planning and Development and Clancy DeSmet, Planning and Zoning Administrator

Call to Order:

Jon Anderson, Vice Chair, called the meeting to order at 7:00 P.M. He said the goal of tonight's meeting is to talk mostly about historic preservation issues. Mr. Anderson introduced Anthony Otis, Chair of Montpelier Historic Preservation Commission, and Tim Senter and James Duggan both members of the Historic Preservation Commission and the Design Review Committee appeared before the Planning Commission.

Review and Approval of October 3, 2011 Minutes:

Upon a motion duly made by Mr. Bloch and Ms. Ruth the Minutes of October 3, 2011 were tabled.

Zoning Project Discussion:

Mr. Bloch said he thinks there are too many districts and he thinks they are going to be up against a brick wall with the Council. He sees it as a total balkanization of the city.

Planning Director Hallsmith said to respond to this by saying that the number of districts they are proposing right now is a lot fewer than the city currently has in its existing zoning. When they redid the boundaries as part of the effort working with the Regional Planning Commission they combined a lot of the neighborhoods into larger districts. Right now there are fewer districts in this current proposed bylaw than there are in our zoning. One of the discussions they had at a recent meeting was that some of them may be too big, and it doesn't make sense to lump them together as much as they have.

Mr. Bloch said what the Council is seeing from their work is not a clear bright line of opening up more housing.

Mr. Anderson said he thinks it is important to have that discussion. There are probably four or five issues that Gwen would like guidance on.

Ms. Hallsmith said they should all have a copy of the map. Changing course on this at this point would require an amendment to the Master Plan. The Historic Design District should be contiguous with the National Register District. It should have the same boundaries so that all of the Historic Design Control Districts. This comes from being sensible to do that way and also from case law they have been struggling with in the Planning Department because currently our Historic Design Control boundaries do not cover the entire National Register District which creates a legally compromised district when they are challenged in court.

Mr. Bloch said what is portrayed here is far greater than the Historic Preservation District.

Ms. Hallsmith replied currently their design control regulations apply to both more and less than the National Register District. The parts on the map that are plain blue are areas that would be covered by

historic design that are not covered currently. The orange striped area is the area that is currently covered by historic design control that is not in the National Register District.

Mr. Bloch said he has no problem in design control areas but when you say historic design control then you are expanding the Historical District by two.

Mr. Anderson said there are two kinds of design control districts in the city. One is Design Control and one is Historic Design Control. You can have that because there are different guidelines that you regulate to in each of the design districts.

Ms. Hallsmith replied not currently. Currently there is one big Design Control District.

Mr. DeSmet added there are different districts within the Design Control District. The Design Control District is an overlay district on top of existing districts. There are residential districts, office districts, river districts, etc. If you look at the largest part of the map that is currently National Life property. It hasn't been changing hands a lot.

Ms. Hallsmith said what the Master Plan calls for is for the Historic Design District so the district over which historic design principles would apply to be coterminous and coexist with the National Register District which is the district in blue on the map. That would mean that historic design standards would not necessarily continue to apply to all of the areas although other types of design standards could. The Historic Design Control would be the same as our National Register District. It doesn't mean there can't be design control elsewhere but that is what the Master Plan calls for.

Mr. Anderson said they should begin with an assumption that there will be a Historic Design Control District. The question is, will the areas of that district be coterminous to the National Register District?

Ms. Hallsmith replied that is clearly articulated in the Master Plan, that it shall be.

Mr. Anderson said a second question is there would be a Historic Design Control District and another Design Control District because most of National Life's land has nothing on it.

A third question would be they have had discussion of form based zoning and there is a recommendation from the intern in Planning there would be a historically based district predominantly where stuff is existing, where stuff is no longer existing so you are looking at infill, then would there be historic controls on that so that whatever is built has to look historic or do we go to form based so as long as there is the bulking and massing then the architect would have the freedom and discretion to design something else. Another question is how they are going to get the content to what should be in the Design Control District.

Ms. Hallsmith replied with the content issue they have made a lot of progress. Cityscape gives guidelines for major elements and the decorative cornice detail which is very detailed, however, there is a flaw in our system insofar as Cityscape isn't mentioned in our current zoning. The Master Plan calls for Cityscape to be updated.

Mr. Anderson asked should the Historic Design Control District be expanded to cover all of the blue area on the map as well as the gray.

Ms. Hallsmith said they are at a place where they can decide what Historic Design Control will mean and it doesn't have to mean what it has meant in the past. There have been some things that have been difficult about implementing our current Design Control District and she would like to see where there are some opportunities for improvement and the rearrangement of design issues.

Mr. Duggan from the Design Review Committee said there should be a certain short term goal because there are cases they have reviewed projects where people are in the Historic District but not part of design review and there is a disparity between adjacent properties. Making them equally coexistent would help in that realm. Long term there is even the potential for that to expand. He would not characterize what they do as regulating what color people can paint their houses. What they are doing is more insuring that the proposal they are applying in their application is in character with the district. Another issue is that any new construction to historic structures does not need to mimic or continue what is there. In fact, the Secretary of the Interior standards suggests that any new construction to an existing historic building should be clearly different but yet compatible with the historic character. Those are very subjective words but that is where it stands.

Mr. Cheney inquired if the Library would be a good example.

Mr. Duggan replied yes. The design control is more in that spirit to insure they aren't getting inappropriate designs or proposals.

Mr. Cheney asked if he could give an example of anything that has been turned down or rejected.

Mr. DeSmet said the most glaring example is an 1870's house that the owner installed 1 inch insulation on top of the existing clapboards and then added vinyl siding on top without a permit and then asked for an as built approval and it clearly didn't meet the Section 305 criteria and they went to court and lost. He said he would circulate the holes so they can see the holes they currently have in our criteria. If you look at that neighborhood, approximately 75 percent of that neighborhood had artificial siding. If you look at the whole district overall, which is almost 700 properties, only 14 percent of it is noncontributing or has artificial siding. There are areas where Jon lives or on Liberty Street or Elm Street that have remained historic without the hand of regulation. They ended up winning in court because the language in the regulation is too vague. What does preservation mean? What does harmony mean? What does compatibility mean?

Mr. Duggan said Cityscape is a great document and has been in place for a long time. Because of it he believes it is why we have such a vibrant historic district that has a lot of character. They have retained with 86 percent of contributing structures within the district over the period since this has been updated since 30 years. That's a very strong retention of historic character in buildings, but it is antiquated in some ways. Having these documents would greatly aid the Design Review Committee because a good part of what they have to do is education of property owners, whether they are commercial or residential, as to how their project needs to fit into the criteria. There could be some further updates to this document that is very clear in how we address restoration materials with compatibility and harmony. In the case of the vinyl siding in which all preservation, federal and state information, it typically is not considered a suitable replacement material for historic fabric. Yet they lost on the grounds that it doesn't specifically say in Cityscape that we do not allow any of the use at all.

Mr. Cheney asked if the inappropriate actions have the force of law.

Mr. DeSmet replied it would have force of law if it was incorporated as guidance.

Mr. Cheney said they are trying to write a rule that will get you by in court that has objective standards. Are they inappropriate things that are mentioned in the guideline the type of thing you want in the regulations?

Ms. Hallsmith replied they are the sort of things you want in the regulations because they are a lot more specific in terms of what we mean by harmonious and consistent with the historic standards.

Mr. DeSmet said they could say projects approved shall conform to the extent possible by the design guidelines illustrated in Montpelier Cityscape.

Mr. Cheney said he can understand without reading the case why the Environmental Court said they aren't going to fine these people because it is too vague to enforce.

Mr. Duggan said they did support the fact that the project was not allowed to go forward with free rein. They struck the middle ground because of the vagueness of the wording.

Mr. Anderson said he is hearing they got away from the workbook and started using compatibility and harmony. If we could guide where future grants might go if we were to support the Historic District he thinks it would be useful to update Cityscape and say these are the standards.

Ms. Simpson said if this is going to provide needed guidance and it isn't currently adopted in a way that lets it do that function her question is whether the content can be discussed in a forum where people can talk about what is and what is not burdensome. If it is going to become enforceable it should be discussed in a more formal setting.

Ms. Hallsmith replied they are planning on doing that on November 19th. In terms of the question of people objecting to being subject to design regulations just like almost any zoning they object when it is applied to them and yet if it is their neighbor they want it to be applied. If they are looking at both how we maintain the integrity of our downtown and how we maintain the property values in the community as a whole historic design does both of those things. Understanding that by making bad decisions and detracting from the historical characteristics and quality of your building you are actually shooting yourself in the foot is the educational task they have. She doesn't think most people would make decisions where they intentionally chose to reduce the value of their house or their business. Part of the challenge is the educational task.

Mr. Duggan said he isn't quite getting the point on how the design control of a historic building precludes housing opportunities.

Mr. Bloch said it has to do with all of the districts we are proposing. It isn't just the Historical District. Plus some of this historical district is a long way from being downtown. He hears the argument about downtown and he doesn't think they want to be a Woodstock.

Mr. Cheney suggested if there seems to be agreement this document should be updated. It is virtually impossible to define things anywhere. He didn't read this thing with the idea it was going to be a statute.

Mr. Anderson asked Anthony Otis if he thought the Historic Preservation Commission could take a lead on giving the Planning Commission a draft of what the revised standards should be.

Mr. Otis said he would ask the Commission if they wanted to take on that task.

Ms. Hallsmith said they are about to submit the next round for a municipal planning grant. It's on the City Council's agenda for this week. Clancy and she drafted it to be close to last year's to get some technical assistance with the zoning and they could focus on this. The type of person they would choose to revise the Cityscape book is going to be a different type of person than they would choose just for general assistance on the zoning. This is a bigger task than she would want to burden our volunteer Historic Commission with. If we ask them to do it we might want to.

Ms. Simpson said she wants to see what the amendments are she is voting on.

Ms. Hallsmith replied she didn't think Cityscape would ever be rewritten to be statutory language. This has always been intended to serve as the guidelines for the statute. Right now this isn't incorporated in the statute so it has a weak link.

Mr. DeSmet said it wasn't so much in the court case that because this wasn't codified in the zoning ordinance that it was meaningless but just had less weight. It was more persuasive guidance. There are some specific restoration techniques that are very strict.

Mr. Anderson summarized where they were on this issue. They are in general agreement that there should be a Historic Design Control District and they are in general agreement these standards should be updated and included either as an appendix to the ordinance or included in the ordinance itself. The next question is whether the Historic District should be coterminous. Also what other design guidelines would they like in other areas?

Ms. Hallsmith said one of the objections she has heard from citizens about being in the Design Control District is they point to these other neighborhoods where they have historic buildings, where they are part of the National Register District, and they are not. There is a sense of inequity there and unfairness. It's equitable, fair and logical from a legal point of view to have a basis for establishing your Historic Design District and she can't think of a better basis than our National Register District boundary. There could be different standards for commercial buildings and residential buildings. She thinks it is important if they are going to maintain a National Register District to maintain a level of design control over the buildings in that area. It's good for the city because it keeps property values higher, and it's good for the economy because a lot of research has shown now that young people and new businesses are attracted to historic areas and to historic downtowns. She has seen many places that have lost their historic character through that gradual erosion of one little bad decision after another, and before you know it you have lost what is a real treasure. One thing that brought Montpelier to this realization was the real loss of some substantial historic buildings – the old post office, the old train station, etc. That is what we risk by not having this type of design control in place. There is a certain inherent integrity to what they consider part of the National Register District. There is logic for laying it out and for including the properties that are included. There could be other properties included and she thinks the area on the back of College Hill is still kind of inconsistent because it isn't in the district.

Ms. Simpson said if she is a home owner and has a home which is in the National Register District and she wants to weatherize, how is that desire affected under the current situation with our existing situation and how would it be affected if we were to make the design review applied to all of the National Register District? She is specifically concerned about home owners who are looking at their heating bills and wanting to get control of that and perhaps facing an insurmountable cost to weatherize in a way that is compatible.

Mr. Anderson said he faces that problem. He has one building that is in the Design Control District and a few that are not. The one issue in weatherization he can see is windows. They were allowed to put up exactly the same window in the Design Control District that they were putting in replacement windows. Their windows are worn out after 100 years and in addition you get the energy value. They were allowed to do that with Witt Place with the blessing of the Design Review Committee and are continuing to do that on East State Street.

Mr. Duggan said a property owner who would come to the committee asking to replace the windows for better efficiency the committee would ask if they had done an energy audit. He wants to know they understand where their energy loss is before he is going to approve replacement of windows. That goes back to the education component. By having that information available there is a lot of helpful information

that is very informative about the point of view the design guidelines form for these changes and whether it is an appropriate replacement material.

Mr. DeSmet said if someone is in the National Register District, not subject to design control, and they are making alterations to their property they are potentially losing tax rehabilitation credits they can apply to through the state and the federal government to offset some of their costs for maintaining their building according to the standards. It reduces the integrity of their current district.

Mr. Duggan said whether they are in the district or not, or subject to design control or not, everyone needs to maintain their buildings. The standards do not really go beyond asking people to maintain the status quo. There may be times when cost may be an issue but usually that is due to deferred maintenance and the lack of people being proactive. Even the newfangled windows aren't maintenance free.

Mr. Bloch said given the fact they have no statutory authority in this city to compel a landowner or building owner to maintain their building it's a huge problem. We don't have an incentive program or other program that if you don't do it your taxes will go up. We all know about the situation in downtown Montpelier. Some of those buildings are in really tough shape but the City Council has no mechanism to compel people to maintain their property.

Ms. Hallsmith said looking through the recommendations that were made to the Barriers to Housing Committee recently one of the recommendations they will be considering is a housing improvement district for some of the city which is like a TIF but directed at housing improvements.

Mr. Cheney said the biggest negative he has heard is that we are potentially improving people to have the ability to live in their own building. He hasn't heard a persuasive argument and it is a concern to him. That is what the homeowner is going to see. How are they going to maintain their building?

Mr. Anderson asked if people were ready to take a position.

Ms. Hallsmith said there are layers. They have taken a position already. The Master Plan does call for this. That was a Planning Commission decision.

Mr. DeSmet said they have encountered this problem; they have identified it; it's been codified in the Master Plan.

Mr. Cheney moved they follow the Master Plan. Ms. Simpson seconded the motion.

Mr. Anderson said it has been moved and seconded they make the Historic Design Control District coextensive with the National Register District. The Planning Commission approved the motion. Mr. Bloch voted no. There are two more issues remaining. They have decided to have a Historic Design Control District. They have decided on what the boundaries of that will be and have agreed there will be additional work that needs to be done to say what the standards are going to be. The two other questions he sees are they going to have form based zoning or is it just going to be historic zoning? What will the standards be for the remaining Design Control Districts? In November they are going to ask people what they think. Then they will make a proposal to the City Council. There will be public hearings before they make that proposal and then the City Council is required to have at least two hearings. What are the standards going to be for the other Design Control Districts? Another issue is we have historic districts. Bud Heney's house which could have 30 or 40 units of housing on it, would the design standards be that it be historic in nature or form based zoning?

Ms. Simpson said they have the Montpelier Cityscape material which isn't referenced in anything. It seems we should start modifying it before we start referencing it. She understood they were talking about pages 31 to 61. We would like to see a draft of what the final document they would be approving would look like. Since we now have homeowners within the Historic Design Control District. In the design guidelines item #6 in the handout and also in the ordinance appeals, any interested person can appeal a decision and if approval is granted you are issued a zoning permit. In the guidelines it says if approval is granted you will be issued a zoning permit and the public has 30 days to appeal the decision.

She is concerned about homeowners getting themselves caught in what could become an extremely costly bureaucratic process.

Ms. Hallsmith replied this would be state law and they don't have any leeway in changing the timelines.

Mr. Anderson said he believes staff has guidance in four areas.

Mr. Cheney said at the last meeting he was concerned about what kind of design review controls would be on a large developer. He chatted with Clancy and studied the ordinance and has a better idea.

Municipal Planning Grant:

Planning Commission Members agreed unanimously to adding language to the municipal planning grant for help with technical assistance.

Adjournment:

Upon a motion duly made by Mr. Cheney and Mr. Bloch the Planning Commission adjourned.

Respectfully submitted,

Gwen Hallsmith, Director
Planning and Community Development

Transcribed by: Joan Clack