

Montpelier Development Review Board
August 2, 2004
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Guy Teschmacher; Jack Lindley; Roger Cranse; Ken Matzner; Douglas Bresette
Staff: Gail Lawson, Administrative Officer

Call to Order

The meeting was called to order by Mr. Zalinger at 7:08 p.m.

Minutes

Mr. Lindley moved to approve the minutes of the July 19, 2004 meeting. Mr. Cranse seconded the motion. The motion was approved 5-0 with Mr. Bresette abstaining.

Comments from the Chair

There were no comments.

I. Consent Agenda

Applicant: Central Vermont Solid Waste District
Property Owner: Central Vermont Solid Waste District
Property Address: 137 Barre Street
Zone: CBII/DCD
Purpose: Design Review

- Handicapped access ramp and sidewalk
- DRC recommends approval as submitted

Donna Barlow Casey was present to represent the application and stated she agreed with the DRC's recommendations. Mr. Matzner made a motion to grant design review approval to the application. Mr. Cranse seconded the motion. The motion was approved 6-0.

II. Public Hearing-Variance, Design and Site Plan Review

Applicant: Union Mutual Fire Insurance Company
Property Owner: State of Vermont
Property Address: 133 and 139 State Street
Zone: CIV/DCD
Purpose: Variance, Design Review, Site Plan Review

- Installation of emergency generator and fuel tank

Interested Parties: Josh Fitzhugh

This is the third time this applicant has been before the DRB for review. Mr. Zalinger reminded Mr.

Fitzhugh that he was still under oath. Mr. Fitzhugh said that the applicant proposes to install a generator and fuel tank over a concrete pad. The fuel storage tank will not be buried. He said that the proposed location (133 State Street) was the third and final location considered for the generator. The location is on land owned by the State of Vermont, directly adjacent to the Union Mutual property at 139 State Street. Mr. Fitzhugh said that the State prefers the generator be located as close as possible to the property line. He said the proposed location is 4 feet from the western property line and will require an 11-foot variance from the required side yard setback of 15 feet. He said the DRC has reviewed the proposal and has suggested some plantings of Hosta or similar plants. The applicant does not object. Mr. Fitzhugh said that the generator will be a gray color.

Mr. Teschmacher asked for an update on the status of the noise issue. Mr. Fitzhugh said the project requires a noise variance from the City Council. He said the variance has been requested and he believes the hearing will be held on August 11th. He added he understood the staff was recommending any DRB approval for the project be contingent upon obtaining a variance to the city's noise ordinance.

The Board next reviewed the variance criteria:

1. *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 variance is required because the owner of the land on which the generator would be located wants the unit to be as close as possible to the applicant's property line. The improvement does not belong to the landowner, but will serve the adjoining property owner who does not object to the location within the setback.
2. *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.* The State is specifying the location in order to have the least impact on the State's operations. The generator will be near an existing parking lot that is closer to the property line than the proposed unit will be.
3. *That the unnecessary hardship has not been created by the appellant, and the hardship relates to the applicant's land, rather than personal circumstances.* Union Mutual does not have control over State land. The applicant has worked with the State to identify a site that is mutually acceptable. The proposed improvement will serve the property that is protected by the setback.
4. *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 State of Vermont has agreed to the location. The development will benefit the adjoining property owner. The proposed generator represents an institutional infrastructure improvement and is consistent with other improvements that serve fairly sophisticated buildings in the Capitol Complex. The development will not substantially or permanently impair use of adjacent property. Renewable energy is not applicable. The proposed generator will not be detrimental to the neighborhood.

5. *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 unit will be 4 feet from the property line. The area between the unit and the property line will remain grassed. The adjacent parking lot extends to the property line. This represents the least deviation from the setback regulations.
6. *The variance will not result in the initiation of a nonconforming use of land.* The use of the land will not change.

Mr. Zalinger confirmed that the plan received on July 14, 2004 was the plan for which approval was requested. Mr. Fitzhugh said that was correct. Mr. Zalinger noted that staff recommends the landscape modifications suggested by the DRC be required as a condition of approval. Mr. Fitzhugh said the applicant does not object to the plantings, but noted the plantings were a recommendation of the DRC, rather than a requirement.

Mr. Lindley made a motion to grant the 11-foot variance request, design review and site plan approval for the construction of the generator, fuel storage tank and concrete pad on 133 for use by 139 State Street, with the following conditions:

1. Low shrubbery shall be planted on the South side of the generator; and,
2. The color of the generator shall be gray.

Mr. Cranse seconded the motion. Mr. Zalinger said staff also recommended the applicant file a letter from an architect or engineer confirming that the design conforms to the standards for development in the flood hazard area. Furthermore, staff recommended the applicant be required to file a copy of the City Council decision on the noise variance. Ms. Lawson said a letter from the applicant's architect confirming that the project conforms to the design requirements for flood hazard areas was recently submitted.

The Board voted to approve the motion 6-0.

III. Public Hearing - Appeal

Appeal of Zoning Permit #2004-0070

Property Address: 68 Main Street

Appellant: Jeffrey Jacobs

Permittees: William Shouldice and Duane Wells (Wells Construction)

Owner: William and Carole Shouldice

Zone: CB-I/DCD
Interested Parties: David Bookchin, Esq., representing the Appellant, William Shouldice, Gail Lawson, Montpelier Administrative Officer

Mr. Shouldice and Ms. Lawson were sworn in by Mr. Zalinger. Mr. Bookchin, representing Jeffrey Jacobs, said there are three issues raised by the zoning permit issued for the former Country Store building. He described those issues as:

1. The windows on the southerly wall abutting the Jacobs property;
2. The information submitted in the permit application is inadequate;
3. The location of the wall that is proposed to be constructed next to Mr. Jacobs property.

Mr. Bookchin said Mr. Jacobs intends some day to have a building or structure constructed on the vacant lot next to the project site; the property is now for sale. He added Mr. Jacobs is interested in avoiding a situation where issues are raised relating to blocking sunlight from the windows, interference with ventilation or obstruction of views at 68 Main Street when a building is proposed on his lot (66 Main Street) in the future. Mr. Bookchin said the first issue could be addressed if the permit included a condition stating the windows are temporary and provides a mechanism for the removal of the windows. Mr. Bookchin said the issue would also be addressed if the design of the wall was modified to provide for a solid wall without windows.

Ms. Lawson advised the Board that, in addition to appealing the zoning permit issued by her, Mr. Jacobs has also filed an appeal of the DRB approval with the Environmental Court. Mr. Zalinger reminded the Board the DRB's design review of the application was done under the consent agenda. He clarified the matter before the Board presently is limited to the appeal of the permit issued by the Administrative Officer.

Mr. Cranse said the regulations require that appeals must be filed within 15 days. He said the permit was signed on June 10, 2004, but the appeal was received on June 25, 2004. He said the appeal seems to have occurred 16 days after the decision, exceeding the appeal period. Ms. Lawson said she believed under general statutory law the day on which the act is taken, meaning the date the permit was issued, should not be included in the 15-day appeal period. Mr. Cranse disagreed, saying the ordinance states that the appeal must be submitted within 15 days of the decision. Mr. Zalinger said the Board's hearing of evidence would not render it unable to dismiss the appeal if it was not made in a timely fashion.

Mr. Cranse asked Mr. Bookchin what section of the zoning regulations he was referring to when he raised the issue regarding the windows. Mr. Bookchin said he was referring to the design review criteria in section 505(f) 2, 3 and 5, which call for consideration of other properties in the district. He said that item 2 in that section provided for harmony of the exterior design with other properties, item 3 required compatibility of the exterior materials with other properties and item 5 addresses the prevention of designs that are incompatible with other buildings. Mr. Cranse asked how those items relate to the concern that there might be an objection to a building on Mr. Jacobs property based upon blocked sunlight. Mr. Bookchin said if all three criteria are considered, they support Mr.

Jacobs' position. He said there is no need to break each criterion out because it simply does not make sense to have windows on one of two abutting walls. Mr. Cranser responded that Mr. Bookchin was really making an argument based on common sense rather than specific ordinance language. Mr. Bookchin said that was not what he said and explained he did not believe the arguments he made were restricted to common sense, but rather, are supported by common sense.

Mr. Matzner asked whether Mr. Bookchin was maintaining the proposed windows are not consistent with other buildings in the area. Mr. Bookchin said he was maintaining the windows are not consistent with the development of another building on the vacant lot next door. Mr. Matzner said the argument does not address the ordinance sections Mr. Bookchin had cited. Mr. Bookchin said the Jacob's lot is being actively marketed. He said the building that was located on the lot was destroyed by fire. He stated the fact a structure does not presently exist on the lot should not prevent the owner from considering a future structure as a factor of the review of development proposed on the adjoining lot. Mr. Matzner asked specifically how the ordinance criteria address the issue there should not be windows on an adjoining building. Mr. Bookchin said the criterion say the materials and design must be compatible with other properties. Mr. Lindley asked whether Mr. Bookchin's client has a building in mind so the DRB could compare materials. Mr. Bookchin said the lot owner has no particular building in mind. He said the zoning process is in place for all of the community so there will be 'smart planning.' Mr. Matzner said the Board is constrained by the bylaws. He said he was trying to find how the bylaws can support the objection and he was not finding such support. Mr. Bookchin said he could not articulate the issue beyond the description he had already provided.

Ms. Lawson said she agreed with the Board that when a development proposal is submitted, the review is based upon the existing conditions on the adjacent properties, rather than possible future unspecified development. She said the subject application was submitted for the reconstruction of a wall destroyed by fire. She said the proposal required design review approval and the review of the project would only extend to issues related to design review, not site plan, since no site changes were proposed.

Mr. Shouldice said he is in a quandary because he feels he may be negotiating against himself, given an appeal of the DRB's approval is pending in the Environmental Court. He said the Board reviewed the proposed work on the side of the building. He said there is evidence of previously installed windows on the south side of the building, but they were blocked up. He stated he was only trying to fix up a building he found embarrassing.

Mr. Matzner asked Mr. Bookchin whether the windows were the only aspect of the exterior design that was objectionable. Mr. Bookchin said that was correct. He shared photographs of the building exterior with the Board members. He said the photographs showed the exterior of the wall in question and that they show the wall had only one window, which was located near the roof. He also said that the wall was three feet back from the property line, not on the property line. Mr. Lindley noted the pictures were taken when plywood was against the building which might have blocked the view of the windows. Mr. Brette asked whether the building framing was configured

for windows on the side in question. Mr. Shouldice said there was evidence of previous windows in the framing on that side of the building.

Mr. Zalinger asked Mr. Bookchin whether he was relying on section 505(F) 2, 3 and 5 to support the assertion the ordinance does not support the issuance of the zoning permit. Mr. Bookchin said that was correct with respect to the windows. Mr. Zalinger asked whether it was fair to say the appellant is concerned Mr. Shouldice could object to a future building on Mr. Jacobs' property based on interference with light and windows. Mr. Zalinger asked whether that was not really a 'vested rights' argument. Mr. Bookchin said he tried to explain that Mr. Jacobs does not want to be prohibited from future development due to the presence of windows on the adjoining building. Mr. Zalinger said there is nothing in the ordinance saying the future building would be prohibited. He said it sounds like the appellant is trying to forestall or silence any objection to future development due to interference with windows. Mr. Bookchin said he was trying to avoid problems down the road. Mr. Zalinger said it follows there are vested rights that prohibit the development of this lot at the present time. Mr. Bookchin said he was not seeking to prevent development, but was trying to see that the plans are altered. Mr. Zalinger said Mr. Bookchin was trying to have a permit revoked because he did not want windows on the south side of the building so Mr. Jacobs would not have to entertain objections at a future time when development is proposed for his lot. Mr. Bookchin said that was correct.

Mr. Zalinger asked Mr. Bookchin to discuss the issue related to the contents of the application. Mr. Bookchin said the project narrative describes a proposed wall to replace an old shared wall between the Country Store and Play It Again Sam. He said there was no common wall. He said there was the wall of Mr. Jacobs' building on the property line and there was the Country Store three feet from the property line. Mr. Bookchin provided photographs to the Board members. Mr. Zalinger asked Mr. Shouldice whether he agreed the photographs were of the correct buildings. Mr. Shouldice said he agreed. Mr. Zalinger asked whether Mr. Bookchin's point was that the application was incorrect. Mr. Bookchin said that was his point.

Mr. Bookchin said the site plan and description raise questions as to the new wall location. He said that if it is to be on the property line, the location will affect the windows. He said he wanted to make sure the wall is constructed properly. He said there is a building foundation along the property line that will be removed when a future structure is built. He wanted to be sure the removal can occur without undermining or causing problems with the new wall. Mr. Bookchin said that Article 8 (8.15a and 8.15g) relate to this issue. He said section 8.15g requires buildings be designed in harmony with adjacent development. He said the appellant wants the Board to ensure the new wall will not be designed in a way that could result in its being undermined.

Mr. Bresette asked whether a plot plan was submitted. Ms. Lawson said a site plan was not required, since no site changes were being proposed; only building alterations. She said when applicants sign the zoning permit, they are attesting the information presented is accurate to the best of their knowledge. Mr. Bresette said the question was whether the old foundation or the new foundation would extend over the property line. Mr. Bookchin said Article 8 requires the DRB to consider the

unique conditions of properties and protect them both. He said the appellant just wants the adjacent development to be done with sound engineering. Mr. Bookchin said he believes the DRB has the power to impose conditions requiring sound engineering practices to be used. He said he wants to make sure good planning is used to avoid future problems. Mr. Zalinger said for the Board to have jurisdiction, it must be shown the Administrative Officer has erred. He asked Mr. Bookchin to state why the Administrative Officer erred in issuing the permit. Mr. Bookchin said the application requirements under section 502 require a plan to scale showing lot dimensions and various aspects of existing and proposed development. He said this requirement can be waived by the Zoning Administrator only if the project does not involve physical changes to the lot or structure. He said that a wall is to be relocated and, therefore, the Zoning Administrator erred in not requiring the plan. He said if appropriate plans had been submitted, then the Zoning Administrator erred under Article 8 by not considering appropriate issues associated with engineering practices for the wall.

Mr. Lindley asked Mr. Bookchin if he was suggesting the plan submitted with the application does not meet the criteria, even though it is to scale. Mr. Bookchin said the plan does not give enough information. He said when the plan is considered in conjunction with the narrative, it is not entirely accurate. He said it misidentifies the wall and is unclear as to the location of the new wall in relation to the property line. Mr. Lindley said property lines are not within the purview of the Board. Mr. Bookchin said the issue is there was insufficient information submitted with the application to allow for an understanding of how the wall would be developed. He stated the Administrator should have required any information needed to understand the application.

Ms. Lawson said she relies on the applicant to provide accurate information and if accurate information is not provided, the permit is null and void. Property surveys are not required under the zoning permit procedures. She said she trusted the notes on the floor plan were correct and the replacement wall was being proposed at the same location as the one which was destroyed by fire, as noted on the drawing submitted with the application. Ms. Lawson stated, as far as she knew, the sketch plan is accurate. She said she is not an engineer and the zoning ordinance does not require the Administrative Officer to conduct a structural or engineering review. The city does have building codes and a building inspector who might consider such features.

Mr. Teschmacher asked whether the applicant could explain whether the wall that was torn down was part of his building. Mr. Shouldice said the surveyor told him the property line runs down the middle of the old brick wall that was torn down. The surveyor has set pins on the property lines. The foundation may have been shared, but there was no way to tell until excavation is started.

Mr. Zalinger asked Ms. Lawson whether she commonly relies on plans and supporting information similar to those submitted with this application to make her decisions. Ms. Lawson answered she did. Mr. Zalinger asked whether she sometimes receives more information. Ms. Lawson confirmed she did. Mr. Zalinger asked whether she sometimes receives less information. Ms. Lawson replied she did. Mr. Zalinger asked whether it was fair to say that it depends on the application. Ms. Lawson said that was correct and, if additional information is needed, she will request it.

Mr. Zalinger asked Mr. Bookchin if the Administrative Officer issues a permit for an application

showing construction on a property line and the adjoining land owner discovers that construction is occurring over the property line, is not the adjoiner's recourse Superior Court. Mr. Bookchin said that he disagreed. Mr. Zalinger asked if Mr. Bookchin meant that when permitted development interferes with a neighbor's property, he would recommend appeal of the permit. Mr. Bookchin said the purpose of zoning is to achieve proper planning. He said the appropriate course of action is to get appropriate conditions included in the permit rather than going to Superior Court. Mr. Zalinger said the submitted plans always show development is located on the applicant's property. He said the Board does not condition each approval on staying within one's property lines and if the developer errs, it is not poor planning. Mr. Bookchin said the issue is not concern the construction will take place of the Jacobs property. He said the issue is whether the wall and foundation are constructed in a smart manner. He said the DRB has the ability to require that. He added, at present, there is nothing in the application file addressing this issue.

Mr. Matzner said nothing in the code permits the Board to check on the engineering aspects of design. Mr. Bookchin responded Article 8 is broad enough to allow the Board to require all types of information to make sure a project is designed properly. Mr. Zalinger warned there is a line between testimony and giving the Board legal arguments. Mr. Bookchin said he was trying to answer the Board's questions on how it has the authority to require the conditions Mr. Jacobs has requested. Mr. Zalinger said he did not see any conditions in the appeal. Mr. Bookchin said he had articulated the conditions at the start of the hearing. He said the first relates to the windows and the second is to require the submission of a plan showing what the foundation of the wall will be so it can be seen if it makes sense when considering that the adjoining foundation will be removed.

Mr. Bresette said building codes will require appropriate construction techniques. Mr. Zalinger asked whether a building permit has been issued. Ms. Lawson stated, to her knowledge, no building permit application has been submitted. Mr. Zalinger asked if the building permit articulates design and construction requirements and standards. Ms. Lawson said she believes it may, although she is not certain.

Mr. Lindley made a motion to close the hearing and move to a deliberative session to take up the matter. Mr. Bresette seconded the motion. Mr. Zalinger explained if the motion was approved, the Board would close the record, conduct a deliberative session and issue a written decision within the time frame required by statute (45 days). Mr. Bookchin gave copies of the photographs to Ms. Lawson for the record. The motion to close the hearing was approved 6-0.

IV. Public Hearing - Variance

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| Applicant: | Christopher Smith |
| Property Owner: | Christopher and Suzanne Smith |
| Property Address: | 106 Spring Hollow Lane |
| Zone: | LDR |
| Purpose: | Variance |
- 20' x 24' open deck
 - Required SY setback 40'; Variance requested 9'
 - Interested Parties: Christopher Smith, Claude Stone

Mr. Smith was sworn in by Mr. Zalinger. Ms. Lawson said the project involves a single family dwelling in the LDR zone. She said a variance of 9' is requested for an open deck on the side of the house. She said that the LDR zone requires a 100' total setback for all side yards and a minimum side yard setback of 40' for any side. With the proposed deck, the property will comply with the 100' total setback, but will require a 9' variance as the deck would be 31' from the property line on one side. Ms. Lawson said a letter had been received from the affected adjoining property owner, Claude Stone, saying he had no objections to the project. Mr. Stone was in attendance.

Mr. Smith said that there was a stone patio at the location of the proposed deck. He said that there is ledge under the patio location and there is a rock wall behind the house limiting the possibility of building to the back of the property. He said that a utility closet containing a furnace also affects the proposed location of the deck. He said that his daughter has been tripping on the stone patio and that he pulled up the stone and created a wall along the property line before he was aware that permits would be required. He said that he is proposing the deck at ground level over the same area that was occupied by the patio.

The Board reviewed the variance criteria.

1. *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 presence of extensive ledge in the area of the proposed deck represents an exceptional topographic condition.
2. *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.* The deck is sized to match the existing stone patio. The furnace vent location makes a portion of the deck unuseable. The addition of a deck represents a reasonable use of the property.
3. *That the unnecessary hardship has not been created by the appellant, and the hardship relates to the applicant's land, rather than personal circumstances.* The presence of ledge on the property has required multiple reconfigurations of the improvements including the location of the furnace on the same level as the living area. The hardship results from the location of the existing improvements and the presence of ledge.
4. *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 deck will be used for residential purposes. The adjoining property owner does not object to the project. The project will not be detrimental to the public

welfare. Renewable energy is not applicable.

5. *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 applicant has testified that the furnace vent renders a portion of the deck unusable, so it is reasonable to add some width to the deck. This represents a minimal deviation.
6. *The variance will not result in the initiation of a nonconforming use of land.* The house will continue to be used as a residence.

Mr. Lindley made a motion to approve the 9-foot side yard setback variance. Mr. Matzner seconded the motion. Ms. Lawson said that the stone wall only requires administrative review and does not need a variance. The motion was approved 6-0.

V. Public Hearing-Conditional and Final Subdivision for a Planned Residential Development

Applicant: Robert Hitzig
Property Owner: Robert Hitzig and Mary Jo Krolewski
Property Address: 188 Elm Street
Zone: HDR
Purpose: Conditional and Final Subdivision Review

- 5-unit PRD consisting of an existing 4-plex multi-family dwelling and conversion of a barn to a fifth dwelling unit

Interested Parties: Robert Hitzig and Mary Jo Krolewski

Mr. Zalinger asked which of the other Board members had been present at the review of the preliminary sketch plan for this application. Mr. Lindley, Mr. Cranse, Mr. Teschmacher said they were present. Mr. Zalinger asked where there was any precedent regarding the participation of Board members in this phase of the review if they were not present at the preliminary review. Ms. Lawson said that the sketch plan review is informal and that no voting was required. Mr. Zalinger added that the record was not closed on evidence and there was no obstacle to prevent members who were not present for the sketch plan review from sitting on this review. He reminded Mr. Hitzig that he was still under oath.

Mr. Hitzig confirmed there are four apartment units on the property and he is proposing a fifth dwelling unit in an attached barn. He said he is proposing a two-bedroom apartment. Ms. Lawson said the proposal is essentially the same as was previously presented to the Board. The applicant's site plan now shows parking and a turnaround. The applicant is requesting the requirement for a property survey be waived by the DRB. A mylar of the site plan, if approved, would still have to be recorded in the city's land records within 90 days, given this application is being reviewed under the subdivision regulations. However, the recorded mylar does not have to be a survey if the Board determines that a survey is not needed. Ms. Lawson said since no new development is proposed that would affect property lines, staff supports the request.

Mr. Zalinger asked whether the applicant had any plans to turn the units into condominiums. Mr.

Hitzig said that he did not have any such plans and that the ownership would remain the same. Mr. Matzner asked whether the applicant was familiar with the staff comments including the condition requiring a sprinkler system. Mr. Hitzig said that he was. He asked what the basis was for the required park impact fee. Ms. Lawson said that the City has enacted an impact fee ordinance that applies to new residential development. She said that the addition of the apartment will require a park impact fee of \$250 for the one new unit.

Mr. Cranse asked what the shaded area on the plan represented. Mr. Hitzig said that it is a grassed area at the end of the driveway that connects to the carport bays. Mr. Cranse said that the comments that the Board made in its preliminary review had been addressed.

Mr. Lindley said that he believed that the requirement for a survey could be waived since no real changes to the building footprints on the site were occurring. Mr. Zalinger asked whether the applicant would be agreeable to a condition that would require a survey to be filed if any subdivision or conveyance of any portion of the property occurred in the future. Mr. Hitzig said that he would accept such a condition if that was what the Board wished. Mr. Zalinger said that the Board appeared to be willing to waive the survey at this time, but would want to have a survey if, in the future, portions of the property were conveyed. He said that such a requirement would be consistent with past precedent to require surveys for subdivisions.

Mr. Cranse made a motion that the Board grant Conditional and Final subdivision approval incorporating the staff comments and recommendations as well as a condition requiring that a survey be submitted to the Board if the property is converted to condominium ownership or further subdivided in the future. Mr. Zalinger asked for the Board members consent to clarification of the actual language of the condition in the drafting of the findings. The Board members agreed.

The motion was approved 6-0.

VI. AI-PUD Amendment Determination and Sketch Plan Review

Applicant: Union Institute & University and The New England Culinary Institute
Property Owner: Union Institute & University
Property Address: 56 College Street
Zone: HDR/DCD
Purpose: Preapplication conference preliminary to Conditional Use and Site Plan Review and AI-PUD Master Plan Amendment

- Addition and building alteration to accommodate new NECI office use.

Mr. Zalinger, Mr. Cranse and Mr. Teschmacher said that they would each have to recuse themselves from participation in this matter. Mr. Zalinger said that left only three members able to hear the application. He said that the Board is not constituted with only three members and that he did not see how the review could go forward.

Ms. Lawson advised the Board the bylaws provide that the DRB must make a determination as to whether a change to an AI-PUD master plan is 'substantial.' Section 508(C)2(a & b) of the

regulations provides if the DRB determines that a plan constitutes a significant amendment to an approved PUD, then this plan must be reviewed starting at the initial stage. She said that the DRB must make the determination at a public meeting and the meeting could not occur with less than four members participating and voting in the same manner.

Mr. Lindley made a motion to reschedule this application to the August 16, 2004 DRB meeting. Mr. Matzner seconded the motion. The motion died for lack of a quorum of members to vote on it.

Ms. Lawson said this application could be rescheduled to August 16, but that agenda is all ready full. She said the Board could add this application to the agenda, but the other applications could not be removed from the agenda as the notices had already been published. Mr. Zalinger said that if it is necessary to continue this application to the next meeting, it should be the first substantive matter on the agenda.

Mr. Bresette asked whether there was a time constraint. A representative of the applicants responded that they wanted to start the project in September. Mr. Zalinger posed the question of whether the applicant could simply acknowledge that the proposal is a significant amendment. The plan could then be reviewed and approved starting at the initial stage. Mr. Bresette said that process should work. He said that in a situation like this he was willing to spend an hour or so more at the August 16 meeting. Mr. Zalinger said that under section 508(C)2b, if the applicant acknowledges that the amendment is significant, the review should start at the initial step. Ms. Lawson said if the applicant acknowledges that the amendment is significant, and wants to proceed from there, the next step would be sketch plan review. The applicants' representative said that everything could be done at the next meeting. Ms. Lawson said that sketch plan review cannot be combined with final review as public notice is required for the final hearing.

Mr. Zalinger said that he will not be present at the August 16 meeting. Mr. Matzner said that he would also be unable to attend. Ms. Lawson said staff would call the members to make sure there would be enough members to hear the application. Mr. Zalinger apologized for the delay and said that the application will be first on the next agenda.

Adjournment

Mr. Lindley made a motion to adjourn the meeting and move into a deliberative session. Mr. Cranse seconded the motion. The motion was approved 6-0.

Respectfully submitted,

Gail M. Lawson
Administrative Officer

Transcribed by Kathleen Swigon

These minutes are subject to approval by the Development Review Board. Changes, if any, will be recorded in the minutes of the meeting at which they are acted upon.