

**Montpelier Development Review Board  
December 6, 2004  
City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** Philip Zalinger, Chair; Jack Lindley; Alan Blakeman; Douglas Bresette; Roger Cranse; Guy Teschmacher, and Ken Matzner  
Staff: Stephanie Smith, Administrative Officer

**Call to Order**

The meeting was called to order by Mr. Zalinger.

**Minutes**

Mr. Lindley made a motion that the minutes of the November 15, 2004 be approved. Mr. Blakeman seconded the motion. The motion was approved 4-0 with Mr. Cranse and Mr. Matzner abstaining.

**Chair's Comments**

Mr. Zalinger said that he will have to recuse himself on the last application on the agenda. He noted that Mr. O'Connell was not present so the Board will need a temporary Chair for that application. Mr. Blakeman nominated Mr. Lindley to serve as temporary Chair. Several Board members seconded the motion. The motion was approved unanimously.

**I. Consent Agenda**

**A. Sign Permits**

- Applicant: Langdon Street Café and Black Sheep Books  
Property Address: 4 Langdon Street  
Zone: CB-I/DCD
- Three projecting signs: one 2' x 2'-5", one 2' x3', one 1'-9" x 2'-9"
  - DRC recommends approval with adjustments.

Mr. Zalinger explained the process for consent agenda items. He asked Ms. Smith to give an overview of the application. Ms. Smith said that the DRC recommended approval of the application with the following adjustments:

- a. Mounting brackets for the signs are to be located above and below with the proposed three signs located between the two brackets; and
- b. Reasonable adjustments in the sign spacing may be made to achieve separation of the signs and maintain minimal required height above sidewalk.

Ms. Smith said that the DRC also recommended that the applicant may pursue the optional change, at their discretion, to use metal materials for the stars on the café sign to reduce the sign's depth and weight. The applicants indicated that they were in agreement with the recommended adjustments.

Mr. Blakeman made a motion that the sign permit be approved with the DRC adjustments and optional change.

**B. Design and Site Plan Review**

- Applicant: William Shouldice  
Property Address: 68 Main Street  
Zone: CB-I/DCD

- Re-siding south and west walls and installation of a door
- DRC recommends approval with options

Interested Parties: William Shouldice, David Bookchin

Mr. Shouldice was sworn in by Mr. Zalinger. Mr. Zalinger asked Mr. Shouldice how he felt about the DRC options. Ms. Smith said that the DRC recommended approval with the options that the applicant may pursue at their own discretion, installation of an appropriate light fixture over or next to the rear entrance, and the installation of two 12-over-12 wood windows on the second floor of the west elevation (the proposed windows should match the existing second floor windows located on the front of the building).

Mr. Bookchin asked for clarification on whether the current application supercedes the old application and zoning permit that included windows on the south wall. Mr. Zalinger said that, since the original application is on appeal, he assumed that the applicant could re-side the building and install windows at a later time if a permit is issued for the original proposal. Mr. Bookchin said that the current application is for siding a wall that is three feet from the property line whereas the original application was for a wall at another location. He said that he would like to have the applicant clarify his intention. Mr. Zalinger said that the Board did not usually question applicants regarding their intentions beyond the application under consideration. Mr. Bookchin said that he was not concerned with this particular application, but would like to see one complete application rather than a piece meal approach with separate applications on each wall.

Mr. Zalinger asked what the procedure would be if the applicant did exercise the options offered by the DRC. Mr. Shouldice said that he had accepted the options and would include them in the application. Mr. Zalinger said that the plan before the Board then includes the two suggestions.

Mr. Lindley made a motion that the Board grant design and site plan approval with the DRC recommended options. Mr. Cranse seconded the motion. The Board approved the motion unanimously.

## **II. Public Hearing - Variance Request**

Applicant: Matt and Megan McLane  
Property Address: 21 Pleasantview Street  
Zone: MDR

- Construction of a 17' x 5' wood storage shed
- Required FY setback: 30'
- Variance requested: 29'

Mr. Bresette stated that Ms. McLane is treating his son at the Central Vermont Hospital Physical Therapy. Mr. Zalinger asked whether the situation interferes with Mr. Bresette's ability to be objective. Mr. Bresette said that it did not.

Ms. Smith described the application for an existing wood storage shed. She said that the shed is on foot from the public right of way. Mr. McLane said he was unaware of the permit requirements for the construction of the woodshed. He said that the shed is in the driveway and that he felt that it was reasonable to store firewood in the driveway. He said that there is no access for a truck to deliver wood on the west or east side of the property. He said that wood is brought into the house through the basement door near the driveway.

Mr. Blakeman asked whether the shed is fastened to a concrete base or foundation. Mr. McLane said that the shed is tacked with fasteners to the 2x4 posts. He said that it is not meant to be a permanent structure and that he just wanted a better cover over the wood than the tarps that he used last year. He said that Tom McArdle looked at the

property and determined that the shed did not pose problems regarding the utilities or snow plowing. Mr. Matzner asked how the shed affects visibility when someone backs out of the driveway. Mr. McLane said that it is not a problem. He said that there is already a retaining wall at the location of the shed and the shed does not impede vision. He said that there is enough space between the end of the shed and the road.

Mr. Bresette asked if the structure extended all the way back to the stairs pictured in the photographs distributed. Mr. McLane said that it extended to within one foot of the stairs. Mr. Bresette asked if the shed will be taken down in the spring. Mr. McLane said that it will not be taken down, but can be easily dismantled when it is no longer wanted. Mr. Zalinger said that it appeared that the porch is well within the setback. Mr. McLane agreed and said that it would be difficult to find a location for the shed that did not require a variance. Mr. Zalinger noted that the testimony is that the house and all improvements in front of the house are located in the setback. He asked Mr. McLane if he had given any thought to decreasing the amount of variance needed by raising the height of the shed. Mr. McLane said that he was trying to make the shed as temporary as possible. He said that he bought the house a year ago and, last winter, stacked wood under tarps at the location of the shed. He said that bringing snow-covered wood into the house created a mold problem which affected his asthma and his child.

Mr. Cranse noted that the structure would be outside of the setback if it were placed at the side of the house. He asked what prevents that location. Mr. McLane said that the location does not seem reasonable given the topography of the lot. Mr. Bresette asked if there is a location near one of the doors that would be outside of the setbacks. Mr. McLane said that there was not such a location. Mr. Blakeman said that the property is too steep on the left hand side to be practical.

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 house was built in 1954. The house and lot predate the current zoning regulations.
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 woodshed is a reasonable use of the residential property. The property is steep. There is a retaining wall on the side of the property where the shed is located. The wood is stored in order to allow for delivery and access to the house.
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 wood shed is located within the driveway which is the only level land on the lot accessible from the road for wood deliveries.
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 structure is small. Storage structures are prevalent in the residential neighborhood. The structure supports the use of a renewable energy resource.
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 requested variance is minimal.
6. *The variance will not result in the initiation of a nonconforming use of land.* The use of the land will

remain residential.

Mr. Blakeman made a motion that the 29' variance for the woodshed be approved. Mr. Teschmacher seconded the motion. Mr. Zalinger said that he would vote against the motion. Hhe is concerned about granting a variance so close to the edge of the road and that the variance could create a precedent for other applications with similar circumstances. He said that he believed that there are alternatives to granting a variance for a wood shed so close to the road. Mr. Teschmacher said that he believed that this situation is unique because of an existing substantial stone retaining wall extends along the length of the structure. He said that he felt that made the situation unique. Mr. Bressette said that the structure does not alter the character of the neighborhood because the topography and the stone wall prevent its visibility.

The Board voted 5-2 to approve the variance, with Mr. Zalinger and Mr. Cranse voting against the application as presented.

### III. Public Hearing - Variance

Applicant: Louise Morris  
Property Address: 375 Elm Street  
Zone: MDR

- Construction of 16' x 9' residential addition
- Required sideyard setback: 20'
- Requested variance northern sideyard: 14'
- Requested variance southern sideyard: 3'

Interested parties Norris Knosher, Carl Beauregard

Mr. Knosher said that he and Mr. Beauregard were representing the applicant. Mr. Knosher said that the existing two story house is located within both of the sideyard setbacks. He said that the applicant is proposing the addition in order to install a bathroom on the first floor. He said that the addition will be located between the house and the garage and will be not be closer to the property lines than the existing buildings.

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 lot was created and the house was built in 1905. The house and lot predate the current zoning regulations. The house is already located in both side yard setbacks. The lot, which is about 38' wide, is particularly narrow and does not meet the minimum frontage requirements.
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 objective is to have a ground floor bathroom. There is no room outside of the setbacks to allow for this.
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 hardship is caused by the size and shape of the lot.

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 existing garage is located to the rear of the property. All of the houses in the area are very close to the lot lines. The required notifications were provided. The Board has received no objections to the application.
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 variance requested is the minimum variance to afford relief.
6. *The variance will not result in the initiation of a nonconforming use of land.* The use of the land will remain residential.

Mr. Lindley made a motion that the Board approve the requested variances of 3' for the southern side yard and 14' for the northern side yard. Mr. Matzner seconded the motion. Mr. Blakeman asked whether the construction would be located in the flood plain. Ms. Smith said that the work will be outside of the flood plain. The Board approved the motion unanimously.

#### **IV. Public Hearing - Subdivision**

Applicant: David Adams  
Property Location: 37 Hubbard Street  
Zone: MDR/HDR

- Two lot subdivision of a 1.529 acre parcel

Interested Parties: David Adams, Sandy Vitzthum, Rick DeWolfe, Pamela Root, Stanley Grandfield, Don Marsh

Mr. Zalinger said that he believed that he represented the person who sold the property to the applicant, but he did not recall his name. He said that he did not believe that the past representation would interfere with his ability to be objective and he would participate in the hearing unless someone objected.

Ms. Vitzthum described the proposed two-lot subdivision. She said that the property meets all requirements for a subdivision and that no variances are needed. She said that the existing house will be located on one of the lots that will be created. She said that the property owner, Mr. Adams requests conditional and final subdivision approval..

Ms. Vitzthum noted that the applicant is simultaneously seeking the approval of the City Council to have a boundary line adjusted. She said that the subdivision stands on its own and the boundary line adjustment is not necessary to make the project feasible. Ms. Smith said that the project meets the frontage and lot size requirements. She said that the building envelopes shown on the plan demonstrate that the existing and proposed houses can meet setback requirements.

Mr. DeWolfe said that access to one lot will be from Grand Terrace. He said that the vacant lots will have access from Marvin Street. He said that the proposed lot has 157 feet of frontage on Marvin Street without the land swap. He said that he looked at soil conditions, stormwater and erosion control. The proposed house location, garage location and grading have been designed to ensure that the development would meet code. Mr. Blakeman said that there were two letters from neighbors regarding liability for soil movement. He asked if there was such a thing. Mr. DeWolfe said that he was not a lawyer, but assumed that there could be liability if work on the site damaged another property. Mr. Blakeman asked how the owner will get access to the lot. Mr. DeWolfe said that he had designed a driveway sloping down to the garage site. He said that the garage floor would be about 10 feet below the elevation of Marvin Street. Mr. Matzner asked if that would require fill. Mr. DeWolfe said that it would require filling the northwest portion,

and a stone lined swale will be installed in that area. He said that there will be not change in the rate of runoff and the development should not change surface runoff. He added that the first floor of the proposed house will be about three feet lower than the garage floor. Mr. Blakeman asked how high the sewer and water would have to be pumped. Mr. DeWolfe said that a sewage pump station is proposed to pump the sewage up about 23 feet. He said that the water pressure will be about 5 psi less than the pressure at the existing house. He said that a booster pump will not be needed and that the hydraulic grade is similar to that on College Street.

Mr. Bressette asked if the driveway location shown on the plan depended on the land swap. Mr. DeWolfe said that the driveway is shown at a location that does not depend on the land swap. Mr. Bressette asked who owns the area where the neighbor has been parking. Ms. Vitzthum said that area is part of the Marvin Street right of way.

Pam Root, an owner of property adjacent to the subject property, said that she understood that there was not enough road frontage without a land swap. Ms. Smith said that the minimum frontage for a lot in the MDR zone with sewer and water service is 100 feet. Mr. DeWolfe said that the lot has 157 feet of frontage. Ms. Vitzthum explained that the boundary forms two sides of a triangle fronting on Marvin Street. She said that the paved road does not follow the right of way. Mr. Zalinger suggested that Ms. Root look at the applicant's map to see if it answers her questions. Ms. Root said that there just does not appear to be adequate frontage on the road. Mr. DeWolfe responded that the right of way of Marvin Street is not a set of parallel lines, but has varying boundaries. Ms. Vitzthum said that Bill Fraser, City Manager, has written a letter to the City Council saying that the lot has sufficient road frontage and meets the dimensional standards without the land transfer. Ms. Root said that there seems to be a dispute because those she has asked to look into the frontage question disagree with the applicant's representatives. Mr. Zalinger said that the Board can only take testimony from those who are present. Ms. Root asked what the setbacks are based upon. Mr. DeWolfe said that the setbacks are measured from the property boundaries and the edge of the right of way.

Don Marsh, a resident of Liberty Street, said that he is a civil engineer. He said that he looked at the site from the viewpoint of constructability and as a neighbor. He said that he does not object to the project as proposed. Stanley Grandfield said that he had a concern with how the drainage from the driveway will affect properties on Liberty Street. Mr. DeWolfe said that there will be no change in the runoff patterns and the amount of runoff on Marvin Street. He said that runoff to the north will be controlled in a swale and the total runoff from the site will not increase. Mr. Grandfield asked how long the driveway would be and whether it would be paved. Mr. DeWolfe said that the proposed driveway would be 85 feet long and would be paved. He said that it would drain toward Hubbard Street. Mr. Grandfield asked whether any type of drainage system will be constructed or whether it will just be surface and soil drainage. Mr. DeWolfe said that there will be no soil drainage, only surface drainage. He said that he proposes a catch basin, culvert and level spreader.

Mr. Zalinger asked whether the applicant would be requesting an administrative amendment to any permit if the land swap is approved. Ms. Vitzthum said that her understanding was that only a zoning permit would be needed if the subdivision is approved and the zoning permit was not dependent on the land swap. Mr. Teschmacher asked whether the lot would still have 100 feet of frontage after the land swap. Mr. DeWolfe said that it would have more than 100 feet of frontage. Mr. Lindley asked if the applicant had any objections to the staff recommendations and comments. Ms. Vitzthum said that there were no objections.

Mr. Lindley made a motion to grant conditional and final subdivision approval with the staff and advisory comments. Mr. Cranse seconded the motion. The motion was approved unanimously.

#### **V. Site Plan Amendment**

Applicant: Damartin Quadros  
Property Address: 51 Berlin Street

Zone: GB

Interested Parties: Damartin Quadros, Rob Halpert, Mike Carriveau, Dot Helling, and Jon Anderson

Mr. Zalinger recused himself from this matter. Mr. Lindley acted as Chair. All parties interested in speaking were sworn in. Ms. Smith gave an overview of the application. She said that the original approval was granted by the Planning Commission in 2002.

Mr. Halpert said that the application has been the subject of a long process. He said that a neighbor challenged the original site plan approval. The resolution of that appeal resulted an increase in the number of proposed parking spaces and a decrease in the number of seats. The applicant had to do more excavation than was originally planned in order to allow for the additional spaces. Mr. Halpert said that the applicant had Knight Engineering look at the slope and bank stability, and that the applicant has complied with the engineer's recommendations other than removal of a tree which was mistakenly thought to be dead. He said that the applicant wants the engineer to take another look at the tree since he would like to keep it if it is alive. Mr. Halpert described a dispute that the applicant has with another neighbor, Mr. Carriveau. The dispute is the subject of a court case, but, for the interim, Mr. Carriveau may park in two of the parking spaces on the site. Mr. Halpert said that the application may need to be brought back before the Board when the matter is resolved in court. He said that, if the applicant can clean up all of the remaining issues with the staff, he would like to do so through the administrative approval process.

Mr. Lindley said that the staff comments are critical to resolving the issues. He asked if the applicant was prepared to address all of the comments at the meeting. Mr. Halpert said that the applicant could not do so because he would like to have the engineer's report which is not yet ready. Mr. Lindley asked whether the City was in an enforcement action. Ms. Smith said that there is a violation, the applicant has been notified, but no fines have been assessed. Mr. Bresette noted that if the applicant agreed to all of the staff and advisory comments, the City's issues would be addressed. Ms. Smith said that was correct, but the City needs to make sure that all of the requirements are met. Mr. Halpert said that an engineer has been hired and that the applicant will report back to the staff to address the violation. He said that many of the issues arose out of efforts to satisfy the neighbor and comply with the environmental court permit. Mr. Bresette said that the curb and sidewalk issues have not been addressed since the spring. Mr. Quadros said that those issues had been addressed. Mr. Teschmacher asked what was happening regarding the tractor trailer deliveries. Mr. Quadros said that the delivery times have been set at 4:30 to 5:30 a.m. in order to have deliveries outside of rush hour.

Mr. Lindley asked Ms. Smith to make copies of the order from the environmental court for the Board members to have when this matter is next taken up.

A representative of one of the neighbors, Cumberland Farms said that his client appealed because they felt that there was not enough parking on the site. He said that they are satisfied as long as 18 spaces on the site are available to Dunkin' Donuts. He said that because of litigation with the other neighbor, there are presently only 16 spaces available. He said that his client will live with that situation until there is a problem.

Dot Helling said that she represents the Carriveau Service Center. She said that the applicant has been noncompliant since 2002. She said that enforcement action should be taken. She said that a complaint has been filed in Superior Court for the obstruction of a right of way and that some injunctive relief has been granted. She said that the Board should not rely on the fact that only two spaces will be used by her client as the court may determine that they have the right to more. She said that there has been no attempt to resolve the outstanding violation.

Mike Carriveau said that the Administrative Officer, Gail Lawson, sent an enforcement letter to Mr. Quadros on April

6, 2004 and a follow up letter was sent in August of 2004. He said that none of the issues have been addressed. He said that the ledge has been left in a precarious position. He said that Knight Engineering will not sign off on the safety issue. He added that the fencing is not adequate. Mr. Carriveau said that the right of way will remain a big issue because it is for the common use and benefit. He said that the area of the right of way would represent more than the two parking spaces that are available to him and would involve something closer to ten spaces. He asked when enforcement will take place and how much longer will it take. Ms. Smith advised that the DRB does not take enforcement action, but that is the role of the Administrative Officer.

Mr. Lindley asked the applicant what would be the time frame for complying with the staff comments. Mr. Quadros said that it should not take more than two weeks. Mr. Carriveau asked whether the Board could start enforcement action. Mr. Lindley said that is not within the Board's authority. He said that the staff's recommendations are lengthy and the applicant says that he does not have all of the information yet. Mr. Halpert said that the applicant's intention is to get the information to the Board within two weeks unless the engineer indicates that the schedule cannot be met. Ms. Smith said that she would need to have the information by noon on the Monday before the Board meeting that the application would be scheduled for.

Mr. Bresette said that there are other issues relating to the curb and sidewalk that cannot be completed due to the weather. Mr. Lindley said that he understood the applicant to say that those changes had been completed. Mr. Quadros said that another pavement coat is needed. Ms. Smith said that she would check with Tom McArdle. Mr. Lindley requested that Mr. McArdle be asked to attend the next meeting on this project. Mr. Carriveau said that the curb is too close to his property. Mr. Lindley said that the Board will discuss those issues when they see a final plan. He said that the Board is requesting that the information addressing the issues, including a time line for any work that is needed, be submitted in time for the January 3, 2005 meeting. Mr. Carriveau said that the safety of the ledge is an important issue. Mr. Lindley said that he recognized that. He said that the applicant has agreed to have all of the information and a time line for the January 3 meeting. Mr. Bresette told Mr. Carriveau that the Board shares his concerns regarding safety and has asked for the information addressing those issues by the January 3 meeting.

Mr. Matzner made a motion to continue the application until the Development Review Board meeting on January 3, 2005. Mr. Bresette seconded the motion. The motion was approved 6-0.

#### **Other**

Ms. Smith said that the meeting schedule for the coming year was available. Mr. Zalinger noted that a summary of Chapter 117 updates were included in the materials provided to the Board.

#### **Adjournment**

Mr. Lindley made a motion to adjourn the meeting. Mr. Blakeman seconded the motion. Mr. Cranse said that he would propose a deliberative session on the last application. Mr. Lindley said that should occur after the Board has taken all testimony. The Board unanimously approved the motion to adjourn at 9:40 p.m.

Respectfully submitted,

Stephanie Smith  
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.*

