

Montpelier Development Review Board
January 3, 2005
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Kevin O’Connell, Vice Chair; Jack Lindley; Alan Blakeman; Douglas Bresette; Roger Cranse; Guy Teschmacher; Kenneth Matzner
Staff: Stephanie Smith, Administrative Officer

Call to Order

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

Minutes

Mr. Blakeman made a motion that the minutes of the December 20, 2004 meeting be approved. Mr. Cranse seconded the motion. The motion was approved 4-0 with Mr. Lindley and Mr. Bresette abstaining.

I. Continuation of. Site Plan Amendment

Applicant: Damartin Quadros
Property Address: 51 Berlin Street
Zone: GB

- Installation of a retaining wall
- Change in previously approved parking layout
- Installation of granite curb, relocation of dumpster, landscaping changes and other alterations

Interested Parties: Damartin Quadros, Rob Halpert, Mike Carriveau

Mr. Zalinger recused himself from this matter. Mr. Lindley acted as Chair. Mr. Matzner participated in the deliberations. Mr. Lindley reminded the interested parties that they remained under oath.

Ms. Smith gave an overview of the application. She said that the application for changes to the previously approved site plan was tabled at the December 6, 2004 meeting. Mr. Lindley said that the Development Review Board had received letters from Knight Engineering, a landscaping plan and a lighting plan. He asked if there were any other items outstanding. Mr. Quadros said that he did not believe so. Ms. Smith said that the staff was not able to copy the full 24" x 36" landscaping plan. She said that she excerpted parts of the plan and provided a narrative summary in the staff report.

Mr. Lindley asked the applicant if he had reviewed the staff’s comments. Mr. Quadros said that he had. He said he questions whether the planting of three ash trees at the back of the building would be beneficial. He said that the planting of the trees might disturb the slope that has been covered with jute matting by the City. Mr. Halpert said that he would like to respond to item 4c in the staff report. He said that any compromised ledge is off-site on the Carriveau property. Mr. Bresette asked whether the compromised ledge was created by the excavation of the applicant’s property. Mr. Quadros said that is not clear from the Knight letter. Ms. Smith read from the Knight letter dated June 7, 2004. She read that the exposed ledge leans 20 degrees toward the abutting property to the southeast. The letter said that the cracks evident on the exposed southeasterly face of the lower portion are predominantly due to weathering versus the recent construction activity. The letter went on to say that the cracks evident on both exposed faces of the upper portion are as much the result of the recent construction activity as weathering. The letter stated that, “based upon the frequency and depth of cracking in the upper portion of this ledge, our firm would concur that the recent construction activity has increased the likelihood of rock fragments becoming dislodged from the upper portion in the future. For this reason, our firm recommends removing the upper portion of the ledge . . .” Ms. Smith

said that she had not received any confirmation concerning whether the ledge is now safe. Mr. Lindley said that picture #10 provided by Mr. Carriveau shows the ledge. Mr. Carriveau added that it is shown in photographs #3 and #4.

Mr. Cranse asked which of the proposed site changes shown on sheet C2 have already been done. Mr. Quadros said that all of them have been done. Mr. Blakeman asked if that included the landscaping. Mr. Quadros said that it did. Ms. Smith asked for confirmation that all of the landscaping except for the three ash trees had been installed. Mr. Quadros said that was correct. Mr. O'Connell said that the DRB has 60 days from the submission of the complete plan. He said that it seems that the application is still not complete because the landscaping is still changing. Ms. Smith said that she was assuming that the landscaping plan submitted was the final plan except for the three ash trees and the grass seeding to be planted in the spring. Mr. Quadros said that was the case. Mr. Bresette asked if the applicant was saying that everything on the plan was accurate except for the three ash trees and the seeding with the jute matting.

Mr. Lindley proposed moving on to hear from Tom McArdle. He asked for Mr. McArdle's input regarding the appropriateness of the proposed changes and whether the City's storm drain was adequately protected. Mr. McArdle said that the City's storm drain was in an easement across the property. He said that the contractor was working around the existing storm drain and extended the retaining wall beyond and over top of the pipe using a timber crib. He said that he and Steve Gray had reviewed a plan showing what was done. He said that they do not feel that the work has compromised the City's system. Mr. McArdle said that it appears that the timber crib was constructed in a way that would allow for its removal to access the pipe without compromising the retaining wall. He said that he has not received the final plan, but when he has it he will issue a letter saying that it is accepted and will be considered for approval.

Mr. Matzner asked Mr. McArdle if he would rather have a different design. Mr. McArdle said that he would prefer that there not be retaining walls around drainage pipes in order to ensure quick access in case of a pipe failure. He said that the structure that was constructed would not overly impede access. He noted that the pipe is relatively new, but said that he would not have approved the design if the plan was presented prior to the construction. Mr. O'Connell asked if there was a concern about setting a precedent. Mr. McArdle said that he did not think that the situation sets a precedent. He said that the applicant encroached upon the City's easement and the situation is viewed as a trespass. Mr. Bresette asked if the City has any excess liability due to the construction. Mr. McArdle said that it may take longer to get to the pipe in case of a pipe failure, but that was not likely to be the most significant problem if the pipe were to fail. He said that he did not believe that there was a general risk to the taxpayers and the public.

Mr. Lindley asked when the traffic study required by the original permit was due. Ms. Smith said that the Planning Commission recommended that the study be done one year from occupancy. She said that she recommends that the study be done one year from the issuance of the Certificate of Compliance. Mr. Lindley said that there was a lot of discussion about tractor trailers. He said that he recalled that only smaller trucks and vans were to be used for delivery. He asked where the court stood on that issue. Mr. Halpert said that they altered the delivery times so that deliveries could not occur between 7 a.m. and 9 a.m. Mr. Bresette noted that proposed finding #9 provides for deliveries by tractor trailer between 4:30 a.m. and 5:30 a.m. Ms. Smith said that she asked the Police Chief to let her know of any problems with the deliveries. She said that he has not notified her of any problems. Mr. McArdle asked how the trucks maneuver. Mr. Quadros said that he believed that the trucks drive past the property and back in. Mr. McArdle said that would mean that the truck is backing into the exit. He said that, at any other time of day, that situation would be problematic. He asked what would happen if the truck is late. Mr. Quadros said that they would have to make the delivery the next morning or deliver to another of his locations. Mr. McArdle said that the maneuver on the State highway would be illegal and the Board might be condoning illegal maneuvers. Ms. Smith said that the original recommendation was that the Board consider going back to the van deliveries, but, having heard no

complaints about the tractor trailer, the staff thought that the Board could consider waiting for the traffic study. She said that she would defer to Mr. McArdle. Mr. McArdle said that the reason for the traffic study is usually to verify the original traffic projections and assumptions. He said that he did not know that the analysis would add anything on the delivery truck issue. Mr. O'Connell said that the fact that there are no reported incidents could be pure luck. Mr. McArdle said that he would not typically approve a plan that proposes a truck backing in a State highway which violates State law. Mr. O'Connell asked how the Board cannot approve something that is not legal. Mr. McArdle said that the maneuver is probably something that other trucks do on the highway, but it is a different situation when it becomes a matter of record. Mr. O'Connell said that there are a number of issues with this application that skirt along the line of legality. He asked Mr. McArdle if the issue regarding the sidewalk had been addressed. Mr. McArdle said that the applicant was issued a permit for work in the right of way. He said that there were some deficiencies. He said that the City's road crew addressed some of the deficiencies on their own when they were doing repair work in the area. He said that the City expects to be tearing the sidewalk up in the future for a water main project and that the applicant was to do the best job that could be done to improve the conditions in the mean time. Mr. McArdle said that, at this point, the best thing would be to do an overlay. He said that the applicant has agreed to that. Mr. McArdle said that some of the curb has to be reset and repaired. He said that the applicant has replaced the pea stone and that the overlay cannot be done until the spring. Ms. Smith summarized that the outstanding work was the resetting of the curb and the asphalt overlay. Mr. McArdle agreed and added that signs need to be installed at the entrance. He said that the MUTCD signs must be installed and the "do not enter" signs need to be properly located at the exit. Ms. Smith added that confirmation of the light metering will be needed before the Certificate of Compliance is issued. Mr. Bresette asked Mr. McArdle whether he was comfortable with the work to be done on the curbs and sidewalk when the water main project is considered. Mr. McArdle said that proposed work was fine for now and that he would monitor it in the spring.

Mr. Blakeman asked how the number of delivery trips for a van would compare to the number of tractor trailer deliveries. Mr. Quadros said that the tractor trailer delivers twice per week and that a van would have to make more deliveries. Mr. O'Connell said he believed that the applicant said that his portion of the tractor trailer load is small. The applicant said that was the case. Mr. Halpert said that he would want to get clarification of the legality of a truck backing into a private driveway. He said that his understanding is that it is perfectly legal and he just wants to make sure. He said that it happens at every other business on that street. Mr. McArdle said that, when it is represented in an application before the DRB that one driveway is an entrance and one is an exit, it is at least a misrepresentation if the truck enters the site by backing in an exit. Mr. O'Connell said that he felt that the Board should seek its own attorney's opinion. Mr. McArdle said that the small size of the site limits access by tractor trailers. He said that one basis of the original approval of the application was the representation by Mr. Quadros that deliveries would be by a van bringing material from one of his other sites rather than by tractor trailer. Mr. McArdle said that the site plan represented a particular design, but that is not what is happening on the site. Mr. Lindley asked if anyone recalled what was approved for the Cumberland Farms. Mr. Halpert said that he did not know what was approved, but he could tell the Board that a tractor trailer could not get through that site.

Mr. Cranse asked the applicant if he was asking the Board to modify the parking configuration that was ordered by the court. Mr. Halpert said that the only alterations were the positions of parking spaces. He said that there will still be 18 spaces. Mr. Cranse said that the court order had a plan attached to it. Ms. Smith said that she discussed a related concern with the City Attorney. She said that her understanding was that this is a new application to the DRB and that the Board can rely on its standards and regulations. She said that, if the Board's action alters the court decision, there is a process for an appeal. She said that there is an ongoing civil dispute that results in only 16 spaces being available, but that number exceeds the required # of spaces as indicated in the parking standards as found in the zoning regulations. Mr. Bresette asked for clarification that the plan shows 18 spaces, of which two spaces are for employees and those are the spaces that are shared with the adjacent landowner. The applicant said that was the present situation. Mr. Bresette asked how many of the spaces were in the disputed right of way. Mr. Halpert said that

he was not sure because he would have to see a plan that shows the easement and the parking. Ms. Smith said that easements should be shown on the plan and that she recommended that a condition be imposed requiring a plan showing the easement. Mr. Halpert said that the easement is shown on the actual site plan, but he did not have that plan before him.

Mr. Lindley told Mr. Carriveau that the Board would hear him if he had new information that was not given at the last meeting. Mr. Lindley said that the Board had copies of Mr. Carriveau's memo of January 3, 2005. Mr. Halpert asked for a copy of the memo as he had not seen it. Mr. Lindley gave him a copy.

Mr. Carriveau said that pages 7 and 8 of his memo show the problems caused by the cars parking in front of his spaces. Mr. Carriveau suggested that a smaller vehicle could meet the tractor trailers off-site and unload the deliveries to solve the problem of the trucks backing into the site. He read his memo of January 3, 2005 which raises issues about the application including the stability of the ledge and slope, the lack of complete fencing at the top of the ledge cut, failure to take steps to preserve damaged vegetation and the use of a common right of way for parking. The memo said that the development does not satisfy public safety and asks the Board to deny the permit and impose penalties.

Mr. Matzner said that he wanted to clarify that Mr. Carriveau was saying that the fence was not installed although the applicant said that it was installed. Mr. Carriveau said that photo #9 shows that the fence only goes partly across the back of the property. Ms. Smith said that the site plan also shows the fence. Mr. Quadros said that the neighbor above is satisfied with the fence. Mr. Quadros said that the neighbor has placed another type of fence on the property and discussed his interest in the planting of shrubbery to screen the fence. Mr. Carriveau said that does not resolve the safety issue.

Mr. Lindley suggested closing the hearing and taking the matter to a deliberative session. Mr. O'Connell made a motion that the hearing be closed and the matter considered in a deliberative session. Mr. Bresette seconded the motion. The motion was approved 7-0 with Mr. Zalinger recusing.

II. Sketch Plan Review - Planned Unit Development

Applicant: Peter DeMasi
Property Address: 58-60 College Street
Zone: HDR
• Change of use from four to five dwelling units

Interested Parties: Peter DeMasi

Mr. DeMasi was sworn in by Mr. Zalinger. Ms. Smith said that the application was for sketch plan review for the addition of a third unit to the attic of an existing two unit structure. She said that there is another two unit building on the site. Mr. DeMasi said that the site suffered a slope failure last May. He said that his engineer advised him to split the four family house in two and to move the back barn to another location on the site. He said that those changes resulted in the two buildings, each containing two residential units. Mr. DeMasi said that he put so much money into those changes to the property that he felt it would be a good idea to put a fifth unit in the attic on one building. He said that the proposal is also consistent with Montpelier's goal for additional housing.

Mr. Lindley said that he would like the final application to include information on how the parking spaces behind the buildings are stable. Mr. O'Connell asked if a soil engineer has done an analysis of the site. Mr. DeMasi said that two different engineering firms have advised him on the site.

Mr. Bresette asked whether the 6 parking spaces would be adequate. Ms. Smith said that the regulations require one space per unit so the parking would be adequate. Mr. Cranse noted that the second access to the third floor was by stairs from a bedroom on the second floor. Mr. DeMasi said that he was unsure of whether it made sense to keep that stairway. He asked if a second means of egress would be required. Ms. Smith suggested that he speak to Labor and Industry and the Building Inspector.

Mr. Lindley asked if the sprinkler system was proposed only for the new unit. Mr. DeMasi said that was the case and that he spoke with the building inspector regarding that requirement. Mr. Blakeman asked if one of the buildings was part of the Civil War Hospital. He said that, if it was, it might be on the National Register. Mr. DeMasi said that he was not sure, but did not believe that it was. Ms. Smith said that the site is not within the City's Design Control District.

Mr. Zalinger said that he was not recommending that the Board make any motion on the project. He said that the Board's comments indicate that the proposal generally appears to be consistent with applicable standards. Mr. Lindley said that he was surprised that the proposal required an application at all. Ms. Smith said that the application was required because a fifth unit is being added.

III. Public Hearing - AI-PUD Site Plan and Conditional Use Review

Applicant: Susan Kimmerly
Property Owner: Union Institute and University
Project Location: 9-11 West Street
Zone: HDR/DCD

- Change of use from residential to school including shared parking with 9 West Street

Interested Parties: Susan Kimmerly, Steven Hingtgen

Mr. Cranse said that the building owner was his former employer and he would recuse himself. Mr. Matzner rejoined the Board. Ms. Kimmerly and Mr. Hingtgen were sworn in. Ms. Smith said that the project required site plan and conditional use approval for the conversion of the building to a school. She said that the building was previously used as classroom and office space.

The applicant said that the "Rug House" building (#9 West Street) will be used as an office. She said that #11 West Street will be used as a school for disabled children. She said that the school is presently located in Moretown. Mr. Zalinger said that he understood that the property will be purchased by a partnership or LLC and there will be two tenants with #9 used as an office and administrative space and #11 used for educational purposes. Mr. Lindley asked why the proposal required DRB review. Ms. Smith said that the approved AI-PUD is for academic and institutional use which is different from elementary and secondary education. She said that elementary and secondary educational uses are permitted in the HDR district as conditional uses. Mr. Blakeman asked how the proposal aligns with the college master plan. Ms. Smith said that the approved master plan says that the college may lease or sell properties.

Steve Hingtgen said that he is the owner of the property abutting the subject property. He said that he shares a driveway and parking area with the adjacent properties. He said that he was concerned about traffic and parking at the school.

1. *Capacity of existing or planned community facilities.* The applicant said that this was an approved, independent school. Mr. Zalinger asked the applicant to confirm that there would be no additional demand on fire or police protection. Ms. Kimmerly said that there would not be. She said that she has talked to the Fire and Police Chiefs about the project.
2. *Character of the area affected.* Mr. Lindley said that there will be no change to the character of the

- neighborhood. He said that educational facilities have been a long time use in the area.
- a. *Performance standards in 814*
 - i. *No use shall emit noise at the property line in excess of the standards set in the Montpelier code of Ordinances, Chapter 11, Article 10 [814].*
 - ii. *Emit odor which is offensive at property line [814]*
 - iii. *Emit dust or dirt at the property line [814]*
 - iv. *Emit smoke in excess of Ringmann Chart no.2 [814]*
 - v. *Emit noxious gasses which endanger the health, comfort, safety, or welfare of any person, or which have a tendency to injure or damage property, business or vegetation*
 - vi. *Emit lighting or signs which cause undo glare, which could impair the vision of a driver of any motor vehicle or are offensive to the neighborhood [814]*
 - vii. *Cause fire, explosion, or safety hazard, or create electrical interference[814]*
 - b. *Site plan review standards in 506.C.*
 - c. *Hours of operation.* The school hours are proposed to be 8-3:30.
 - d. *Cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood.*
3. *Traffic on roads and highways in the vicinity.* Ms. Kimmerly said that there will be drop-off and pick-up times. She said that the school currently has 16 students and the cars will come into the parking lot for the drop-offs. She said that the school has been approved by the State Board of Education and that Labor and Industry has visited the site. Mr. Hingtgen said that the license will allow up to 18 full time students and 4 part time students. He said that his concern is the dramatic increase in the use of the driveway. He said that his concerns would be resolved if the driveways were separated with individual curb cuts. Mr. Zalinger asked how many staff members would be at the site. Ms. Kimmerly said that there would be 16 to 18 full time teachers and up to seven additional teachers and administrators for the school and one to two additional employees at #9 West Street. She summarized that there would be up to 22 students, a total of 25 people at #11 and two additional people at #9. Ms. Kimmerly said that some of the staff will be bringing the students to the site. Mr. Zalinger said that the Board is interested in the total number of vehicle trips. He asked whether the cars will drop off the students and leave. Ms. Kimmerly said that some vehicles will drop off and leave, but the staff that brings the students will stay on the site. She said that she looked at the parking at the current school location and found that there is an hourly average of 12 cars in the parking lot. Mr. Hingtgen noted that the number of students could increase. Mr. Zalinger said that the conditional use criteria address traffic on public roads. Ms. Smith said that this application is for a change of use. She said that the application for three additional parking spaces will be before the Design Review Committee tomorrow and that application for site changes will then come before the DRB. Mr. Blakeman asked if any of the students would be driving. Ms. Kimmerly said that the students are developmentally disabled and that none of the students drive or have a learner's permit.

Mr. Zalinger said that he was still trying to get an approximation of the number of vehicle trips to the school. Ms. Kimmerly said that there would be 22 students, 22 staff and 7 administrative employees. She said that would generate a maximum of 51 drop offs, but that the arrival times might not be the same. She added that some of those trips and drop offs would be combined. She said that she was told that the College's combined use of the two buildings on the property and the adjacent building involved 60 employees. Mr. Hingtgen said that he did not know if it was realistic that the drop offs could occur in the parking lot. He said that there is no room for the vehicles to turn around. He said that part of the drive is on his property and that there are 10 spaces on the applicant's property. He said that off site parking will be needed to provide the balance of the 36 spaces that the

staff has indicated to be required. He said that the street parking on West Street tends to be full in the morning during the school year. Ms. Kimmerly said that she understood that the parking requirement was 1.5 spaces per staff member.

Mr. Zalinger said that he wanted to finish addressing traffic questions. Mr. Lindley said that it sounded like there was a decline in the site traffic from the previous use by 60 employees. Mr. Zalinger said that there were other previous uses. He said that the Rug House was once used as a day care center. Mr. Bresette asked how the traffic will travel to and from the site. He expressed concern about traffic circulation in the neighborhood. Ms. Kimmerly said that she could guide the staff to use East State Street. Mr. Zalinger said that there would not be an increase in the traffic from the prior uses.

Mr. Zalinger suggested discussing parking. He asked the applicant to describe how the pick up and drop off will occur. Ms. Kimmerly said that she expected that the handicapped space would be used for drop off and pick up. Mr. Zalinger said that space would then not be available for parking. Ms. Smith said that the parking requirement for an elementary school is 1.5 spaces per employee at the peak hour. She said that would result in a requirement of 36 spaces. Ms. Smith said that the requirement for secondary schools is one space per four students. Ms. Kimmerly said that neither requirement really matches the proposed use. Ms. Smith said that the Board has the discretion to increase or decrease parking. Mr. O'Connell said that he was more concerned with drop off circulation than with the number of spaces. Mr. Matzner asked if the students could be dropped off and allowed to enter the school alone while the driver looked for off site parking. Ms. Kimmerly said that would be possible since that school would have extra staff to meet the students. Mr. Hingtgen said that, if two cars could not pass in the driveway, vehicles would be backed up on West Street.

Mr. Zalinger said that the Board had no jurisdiction over the removal of unit #7 from the AI-PUD. He said that it was apparent that there would be tension between unit #7 and units #9 and #11. Mr. Hingtgen said that he was aware of that, but the prior use did not have the drop off issue. He said that he was not concerned about the school use, but is concerned about the details of the student drop off. Mr. Bresette said that with the number of proposed employees, the parking spaces are likely to be full during drop off and pick up. Mr. O'Connell noted that the applicant will be proposing three additional spaces, but more information is needed to resolve the circulation issue. Mr. Zalinger said that the Board could make a determination on the parking formula. Mr. O'Connell said that he would apply the elementary school designation. Mr. Matzner agreed. Mr. Zalinger asked Ms. Smith to go over the parking formulas again. Ms. Smith said that the elementary school requirement is 1.5 spaces per the staff member at the peak hour. She said that the requirement for a secondary school was 1 space per 4 students. Mr. Zalinger suggested that 5-6 of the students would be similar to secondary school students and the rest would be more like elementary school. He agreed that the proposed use was more like an elementary school. Mr. Hingtgen said that this use was different from either elementary or secondary school. He said that a different number could be settled upon.

Mr. Bresette asked whether there was a way to estimate the number of parking spaces that will be used each day. Ms. Kimmerly said that by checking the number of cars in the existing school she determined that the average number of spaces used is 12. She said that she would be happy to have 18 spaces including off site spaces. Ms. Smith said that the high estimate would be 24 spaces. Mr. Bresette said that there will not be enough parking without the use of off site spaces. Mr. Blakeman said that the property is part of the AI-PUD and there is excess parking within the Institute. The applicant said that she spoke to Union Institute and confirmed that the school will be able to use parking within the Institute. Mr. O'Connell said that he was more concerned about circulation. Mr. Bresette suggested that the Board table the application for additional information including a plan for drop off and pick up. Mr. Teschmacher said that the use of the curb cut on East State Street for drop off and pick up might resolve the problem. He said that he had a real concern about how the parking lot would function. Ms. Kimmerly said that she understood that drop off and

circulation was the biggest concern of the Board.

Mr. O'Connell made a motion to continue the application to January 18, 2005. Mr. Matzner seconded the motion. Mr. Zalinger advised the applicant that the Board needs a circulation plan and an overall parking scheme. The motion was approved unanimously.

Adjournment

Mr. Lindley made a motion to adjourn the meeting. Mr. Bresette seconded the motion. The Board unanimously approved the motion to adjourn at 9:30 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.