

Montpelier Development Review Board
April 18, 2005
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Alan Blakeman; Roger Cranse; Douglas Bresette; Jack Lindley; Guy Teschmacher; Ylian Snyder
Staff: Stephanie Smith, Administrative Officer

Call to Order

The meeting was called to order by Mr. Zalinger.

Minutes of March 21, 2005 and April 4, 2005 Meetings

Mr. Blakeman said that the minutes of the March 21, 2005 meeting should be corrected to identify which board member seconded the motion to grant design review approval for the sign at 68 Main Street. Ms. Smith said that she would check her notes and make that correction. *[It was subsequently determined that Mr. Lindley had seconded the motion.]* Mr. Teschmacher said that the property address for the site plan application listed as item III should be corrected to 134 Barre Street. Mr. Blakeman made a motion that the minutes of the March 21, 2005 meeting be approved with those changes. Mr. Bresette seconded the motion. The motion was approved by a vote of 7-0. Mr. Lindley made a motion that minutes of the April 4, 2005 meeting be approved as submitted. Mr. Cranse seconded the motion. The Board voted 7-0 to approve the motion.

I. Consent Agenda

- a) Design Review - Sign Permit
Property Address: 100 State Street
Applicant: Alan Lendway, Montpelier Day Spa
Property Owner: Fred Bashara
Zone: CB-I/DCD
- Installation of one 19 s.f. wall sign on facade and one 16.5 s.f. wall sign on rear elevation

Ms. Smith advised the Board that this application had been withdrawn.

- b) Design Review - Sign Permit
Property Address: 89 Main Street
Applicant: Eric Sokolowski for Knowledge Wave
Property Owner: City Center Associates, Alan Lendway
Zone: CB-I/DCD
- Installation of two 10 s.f. wall signs on tow different elevations
 - DRC recommends approval as submitted
- Interested Parties: Eric Sokolowski

Mr. Zalinger explained the consent agenda process and noted that the DRC recommended approval of the application as submitted. Mr. Blakeman made a motion that the DRB grant design review approval for the sign. Mr. Bresette seconded the motion. The motion was approved by a vote of 7-0.

II. Design Review

Property Address: 41-45 Court Street
Applicant: James Blouin
Property Owner: James Blouin
Zone: CB-II/DCD

- Installation of roof over previously approved deck at the rear of an existing office building.
- DRC tabled application pending submission of clarifying materials, tentatively rescheduled for review by the DRC on May 3, 2005.

Ms. Smith said that action on this application would be delayed to allow the applicant to return to the DRC.

III. CONTINUED - Public Hearing - Conditional Use and Design Review

Property Address: 623 Stone Cutters way
Applicant: Hunger Mountain Co-op.
Property Owner: Hunger Mountain Co-op.
Zone: RIV/DCD

- Temporary 28' x9' refrigerated trailer

Ms. Smith said that the applicant requested a continuance in order to gather additional information regarding sound.

IV. Site Plan Review

Property Address: 11 Loomis Street
Applicant: Vermont Humanities Council
Property Owner: Vermont Humanities Council
Zone: HDR

- Construction of an accessibility ramp on the south side of an existing building

Interested parties: Peter Gilbert, Executive Director of the Vermont Humanities Council, and Eric Esselstyn

Mr. Gilbert and Mr. Esselstyn were sworn in. Ms. Smith described the application for the construction of an accessibility ramp on the rear (south side) of an existing building. She said that ramp will be 25 feet long and 8 feet wide and noted that the existing stairs will be relocated. She said that the project will meet all setback requirements. There was no response when Mr. Zalinger asked whether any members of the public wished to comment on the application.

Mr. Lindley made a motion that the Board grant site plan approval for the project. Mr. Blakeman seconded the motion. The motion was approved by a vote of 7-0.

V. Public Hearing - Variance Request

Property Address: 16 Foster Street
Applicant: Ellin Perry
Property Owner: Ellin Perry
Zone: HDR

- Variance of 7.5' requested from the west side yard setback requirement
- Variance of 3.25' requested from the east side yard setback requirement

- Variance of 6' requested from the rear yard setback requirement

Interested Parties: Ellin Perry

Ms. Perry was sworn in. Ms. Snyder said that she would recuse herself from this application because the applicant is her neighbor. Mr. Zalinger explained that the fact that a board member knows an applicant does not automatically create a need for recusal by the board member. He said that the standard is whether a reasonable person could fail to be objective or whether there appears to be a conflict or a lack of objectivity. Ms. Perry said that she had no problem with Ms. Snyder's participation. Ms. Snyder decided to withdraw her recusal.

Ms. Smith described the application for a dimensional variance of 7.5 feet from the side yard setback (west side), a variance of 3.25 feet from the other side yard setback (east side) and a variance of 6 feet from the rear yard setback to all for the construction of a 190 s.f. covered porch addition. She said that the porch will be located on the front of the house, but a rear yard setback variance is needed because the entire existing house is in the rear yard setback. Ms. Smith said that the house is also located in the side yard setbacks and the proposed porch will not further increase the existing setback encroachments. She said that the project complies with the front yard setbacks.

Ms. Perry said that the house is an old carriage house. She said that the stoop needs to be replaced and the proposed porch will add some space to the house which has no usable basement or attic space. Ms. Perry said that she spoke about the project to her neighbors and they all think it is fine. Mr. Zalinger noted that the application materials indicate that the building was constructed in 1870 and asked when it was converted to a residential use. Ms. Perry said that she understood that the conversion occurred sometime in the 1930's.

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.* There are unique physical circumstances including the narrow width (27.5') of the lot and the location of the house in the side and rear setbacks. 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 size of the lot and the location of the house on the lot create a situation in which there is no way to build a front porch on the house without requiring a variance.
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 building was constructed about 130 years ago. The hardship relates to the applicant's land rather than personal circumstances.
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 building will continue to be a

principal residence. Foster Street has a variety of other buildings that were constructed within setback areas.

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 variances are less than the existing encroachment of the house.
6. *The variance will not result in the initiation of a nonconforming use of land.* The use of the land will remain residential.

Mr. Cranse made a motion to approve the 7.5' variance from the west side yard setback; the 3.25' variance from the east side yard setback; and the 6' variance from the rear yard setback for construction of a 190 square foot front porch at 16 Foster Street. Mr. Bressette seconded the motion. The variance request was approved 7/0.

RECESS

Mr. Lindley made a motion, seconded by Mr. Blakeman, that the Board take a brief recess to allow time for the remaining applications to arrive.

VI. Public Hearing - Variance Request and Design Review

Property Address: 3 Corse Street
Applicant: Paul Donovan and Jody Peterson
Property Owner: Paul Donovan and Jody Peterson
Zone: HDR/DCD

- Variance of 8' from the south side yard setback requirement
- Variance of 3' from the north side yard setback requirement for the construction of a 280 s.f. addition
- Variance of 7' from the south side yard setback requirement for the construction of a 20 s.f. deck
- DRC recommends approval with adjustments

Interested Parties: Paul Donovan and Jody Peterson

The applicants were sworn in. Ms. Smith described the application for dimensional variances of 8 feet from the side yard setback (south) and 3 feet from the other side yard setback for the construction of a three story residential addition. She said that another variance of 7 feet is requested for the construction of a deck on the south side of the existing house as an entry for a proposed door on the first level of the house. Ms. Smith said that the DRC recommended approval of the project with adjustments. Mr. Donovan said that the recommended adjustment was acceptable. He said that he and Ms. Peterson were still looking into the suggested optional changes.

Mr. Donovan said that the footprint of the existing house is 15' x 32' and that they have outgrown the house. He said that the extension was actually two floors on one story high piers. Ms. Smith said that the required front and side setbacks are 10 feet and the house is already located in the side yard setbacks. She said that one corner of the proposed wood deck would be located closer to one of the property lines.

Ms. Peterson said that a geologic study is being performed for the piers. She said that the piers will be anchored into bedrock.

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 unusually shaped parcel was created at least 100 years ago. The house was constructed between 1900 and 1910. The existing house is within the sideyard setbacks. The house is placed adjacent to the road on a steep slope.
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.* No addition to the house could be constructed on the lot without a variance.
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 lot was created and the house was constructed prior to the enactment of the zoning ordinance.
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 house will continue to be a single family dwelling. No adverse comments were received from owners of adjacent property. Renewable energy is not applicable. No evidence has been submitted that would be detrimental to the public welfare.
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 proposed 14' x 20' addition 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. Lindley made a motion that the Board approve, with the DRC recommendations, the variances of 8 feet from the side yard setback (south) and 3 feet from the other side yard setback for the construction of the residential addition and another variance of 7 feet for the construction of a deck. The motion was seconded by Mr. Cranse. The variance request was approved 7/0.

VII. Public Hearing - Final Review of Planned Residential Development

Property Address: 96-98 Barre Street
Applicant: David Bookchin for Jeffrey Jacobs
Property Owner: Jeffrey Jacobs
Zone: HDR

- Development of seven residential units within existing structures and installation of a propane tank.

Interested Parties: David Bookchin, Brian Ruderman

Mr. Bookchin and Mr. Ruderman were sworn in. Ms. Smith said that this was an application for final review of the PRD consisting of a seven unit multi-family development. She said that the applicant has revised the application to reduce the number of units to seven. She said that the application now involves a request for

approval of one dwelling unit in the existing one-story building and approval of a recently installed underground storage tank. Ms. Smith said that the plans had been revised to eliminate the following aspects of the previously submitted proposal:

- removal of rock ledge
- construction of an addition to unit #7
- construction of a free standing dwelling unit (#8)
- proposed parking space #6
- removal of existing trees and proposed excavation

Mr. Bookchin said that the revisions were consistent with the November 15, 2004 conditional review decision by the DRB. Ms. Smith said that the staff recommended the following:

1. With regard to the underground fuel tank, the Board consider ordinance provision 813.a.6 which allows the Board to waive the setback requirements in a PRD.
2. A park impact fee for the seventh unit should be due prior to issuance of the zoning permit.
3. The easement for access to both #96-98 Barre Street and # 104 Barre Street should be recorded in the City Land Records.
4. The Board waive the requirement under Section 607 of the Zoning and Subdivision Regulations that a property survey plat prepared by a licensed surveyor be submitted for recording.
5. The applicant is required to submit two paper copies and a recordable mylar of the final approved site plan, for signing by the Chair of the Development Review Board, and for recording in the City land records within 90 days of the date of approval of the subdivision (PRD) by the Development Review Board, or the approval becomes null and void.

Mr. Blakeman noted that the plan did not look different from the conditions that the DRB observed during their site visit. Mr. Teschmacher said that the plan would result in the approval of the garage unit that had not been previously approved. He noted that there were actually only 8 parking spaces since space #6 was removed.

Mr. Lindley made a motion that the PRD be approved with the waiver of setbacks for the propane tank and with the staff recommendations. Mr. Cranse seconded the motion. The motion was approved by a vote of 7-0.

VIII. Site Plan Review

Property Address: 37 Berlin Street
Applicant: Jon Anderson for Cumberland Farms
Property Owner: Patricia Woodward
Zone: GB

- Addition of six fueling positions
- Addition to gas island canopy
- Parking lot layout and ingress alterations
- Other associated site improvements

Interested Parties: Jon Anderson, John McCann, Kerri Hall, John Kerin, Troy Osborne, and Mary Osborne

Mr. Anderson, Mr. McCann and Ms. Hall were sworn in. Ms. Smith described the request for site plan review to enlarge the gas sales portion of an existing convenience gas station. She said that the proposal

would add three fuel pumps, increasing the number of pumping locations from six to twelve. She said that the plan also proposes an extension of the existing canopy to 28' x 69' and other site improvements including alterations to access drives, landscaping parking and relocation of an underground storage tank.

Mr. Anderson said that the site is in the GB district. He said that the applicant is proposing to purchase the Utton's Muffler property, demolish the building and use that land to allow for additional gas pumps and the expansion of the canopy on the Cumberland Farms site. Mr. Anderson said that the Utton's property will be used for access and some parking, but the applicant is trying to keep as much of the development as possible on the existing Cumberland Farms site. He said that the applicant has worked with the neighbors and the plans include fencing and landscaping that they had requested. The existing curb cut at Cumberland Farms would be replaced by a new entrance curb cut on the Utton's property. Mr. Anderson said that the applicant has worked with the City staff to make the entrance and circulation as good as it can be. He said that all of the staff recommendations are acceptable and that he had the flood plain certificate and the landscaping schedule.

Mr. Anderson described the proposed extension of the canopy, saying that it will maintain the same distance from the street as the existing canopy. He said that this can be permitted in the GB district if the DRB waives the setback requirements and finds that there is an overall improvement of the situation. Mr. Anderson stated that the situation is better under the proposal because traffic flow improves and the Utton's building is removed. He said that the canopy will not shade any other property except a portion of the street. He added that the a 5.5 foot wide sidewalk and curb would be constructed at the Utton's property to match the sidewalk and curb constructed at 37 Berlin Street, Cumberland Farms, allowing the City to continue to widen the sidewalk at no cost. Mr. Anderson said that it was not clear what the landscaping requirements would be for the bank at the rear of the site. He referred to photographs that were provide and said that the applicant would leave the existing deciduous trees if the Board was agreeable, but some plantings of evergreen trees were proposed. He said that some of the existing vegetation, including a large tree would be removed in the excavation of a portion of the ledge/ bank.

John Kerin said that he was speaking for his aunt, Barbara Kerin who owned the house adjoining the Utton's property. He noted that some of the aspects of the plan that he had questioned were revised on the plan submitted to the DRB. Mr. Anderson confirmed that the sign and air vacuum had been left at their existing locations because it was not clear that they were acceptable to the Kerins. Mr. Kerin said that he remained concerned that the addition of gas pumps will increase traffic on an already congested road. He said that it presently can take 15 to 20 minutes to get out of his aunt's driveway because of the existing traffic. He said that he is also concerned about the lighting since Cumberland Farms is open 24 hours per day. He said that the existing Utton's building blocks some of the light and noise, but it is to be torn down and there will be nothing to interrupt the light and noise. He said that he wanted to see screening installed to prevent headlights from shining into the windows of his aunt's house. Mr. Kerin was also concerned about the potential for groundwater contamination and leakage of contamination into the dirt-floored basement of the house. He said that his uncle remembers that there were underground waste oil tanks below the Utton's building years ago and said the tanks might still exist.

Mr. Anderson responded that Cumberland Farms has experience in dealing with contaminated properties and that there are specific regulations addressing such investigations and any cleanups. He said that all but two parking spaces were moved away from the Kerin property. He described those two spaces as employee spaces and said that the vehicles in those spaces will not be moved as frequently. Mr. Anderson said that the proposed lights are state-of-art units that are designed to minimize leakage of light. He said that the light level at the Kerin property line will be less than 0.4 foot candles. Mr. Anderson said that the proposal will

improve the traffic situation. He noted that there is joint driveway along the Kerin/Utton's property line, but the Kerins will be the sole users of that driveway because the Cumberland Farms development has been moved back from that driveway.

Troy Osborne said that his property on 26 Prospect Street abuts the rear of the Utton's property. He said that the removal of the Utton's building and the large oak tree and other vegetation on the bank will eliminate any buffering of noise from the Cumberland Farms business. He said that noise from the site is presently a problem with the intercoms at the gas pumps running all night. He added that he is also disturbed by light pollution from the lighting on the site and that the headlights from the new entrance will shine directly onto his property. He said that he did not think that the proposed tree plantings will provide adequate screening. Mr. Osborne expressed concern that the proposed changes to the bank will cause the steep bank below his house to become unstable.

Mr. Anderson responded that Cumberland Farms does not use the intercom system between 9 p.m. and 6 a.m. He said that the applicant would accept a condition to that effect and would be willing to adjust the times by an hour or two either way. He said that the air handling system was muffled as part of the original store construction. He added that the Osborne's house is at a significantly higher elevation than the parking lot, so headlights would not shine on the 36 Prospect Street. Mr. Osborne said that vehicles enter the site on a sloped driveway and headlights do briefly shine up. Mr. Anderson stated that the slope would have to be 25% or more in order for lights to shine on the house. Mr. Osborne expressed concern that the proposal will have a great effect on his residence. He said that the noises from the gas pumps and the sound of people talking are channeled up the bank to his house. He noted that people living one street further from the Cumberland Farms say that they can hear the intercom.

Mr. Bresette asked whether it was possible to solve some of the headlight problems by retaining some of the scrub vegetation and planting evergreens. Mr. Anderson said that the plans included the planting of ten evergreen trees. He said that he was not sure if additional plantings would be the best approach since the planting of additional trees would result in the removal of more vegetation. Mr. Osborne said that he was more concerned about the ambient lighting levels in the parking area and the sound issue than with the headlights.

Mr. Bresette asked when deliveries are received at the site. Ms. Hall said that depends on the day of the week. She described the various deliveries for the store which all occurred between 6:30 a.m. and 9 a.m. She said that the fuel truck may deliver gas at any time, depending on the route schedule. Mr. Bresette said that he was concerned about traffic circulation and noted that it looked as though it will be difficult for large trucks to squeeze past the canopy extension. Ms. Hall said that the delivery trucks presently back in the exit driveway. She said that the only truck that goes on the other side of the canopy was the fuel truck, which presently also backs into the exit drive. She said that, even with the site changes, the fuel truck driver may continue to back in the exit. Mr. Anderson said that the proposed plan gives enough circulation room for the trucks to drive in the entrance instead of backing in the exit. He said that he did not know if the drivers would change their established patterns.

Mr. Zalinger asked whether it was correct that the deliveries are presently made by vehicles stopping on Berlin Street and backing up into the site exit. Ms. Hall said that was correct. She said that the drivers have a hard time using the entrance with the current layout. She said that there are many gas customers in the mornings and the delivery trucks would have to wait on the street to get into the site entrance, but it is quicker to use the exit. Mr. Anderson stated that the proposal will improve the situation.

Mr. Osborne said that gas deliveries are loud and currently occur at any time during the night. He said that the noise issue would be helped if the deliveries could be made during the day. Mr. Kerin noted that the tanks are to be moved to a location that is closer to his aunt's house. He said that his aunt should not have to listen all night to the diesel engines that are frequently left running throughout the deliveries. Ms. Hall said that she has asked the drivers to turn the engines off during the daytime deliveries and could ask for the same accommodation at night. Mr. Kerin said that he would like to see the deliveries limited to the daytime. Mr. McCann said that the trucks travel a specific delivery route and arrive at the Cumberland Farms at either 11 a.m. or 10 p.m., depending on whether the site is at the beginning or end of the route. He said that schedule does not vary by more than 45 minutes unless there are weather delays. Mr. Kerin said that the Board could require that the deliveries be made before 10 p.m. He said that his aunt's house was built around 1850 and she should not be forced out of her home by commercial development.

Mr. Osborne said that the survey distances shown at his property lines have a low level of accuracy and are given as "plus or minus" 3 or 4 rods. Mr. Anderson explained that the survey distances are exact because they are given to the hundredth of a foot with the approximate equivalent in rods shown as plus or minus distances.

Mr. Zalinger said that it seemed that Cumberland Farms would not be adding six filling locations without the expectation that the volume of gasoline sold would increase. Mr. Anderson said that it would be fair to say that the amount sold would increase, but it would not be fair to say that the amount would double. He said that the intent is to serve the customers who currently queue for gas during the busy periods of the day. Mr. Zalinger questioned whether the queuing problem was actually a circulation problem. Mr. Anderson said that the queues are formed by people waiting for gas and he did not believe that the queues are caused by circulation problems. Mr. Zalinger said that he recalled that the DRB previously granted variances in 2003 and there were concerns about the number of islands and the size of the canopy at that time. He said that the Board was assured that the site was not being over-constructed and that the circulation plans would more than accommodate the proposed development. Mr. Zalinger expressed concern that the Board is now being told that the circulation plan did not work and that the business needs to buy the adjoining property to eliminate queuing and better serve the public. He asked whether the queuing problem actually derived from the over-building of the site. Mr. Anderson said that he did not recall any representation in the prior application that Cumberland Farms would not expand in the future. He said that the size of the store was decreased and the number of pumps was increased by one at that time and the best judgement of the company was that the design was adequate for what was proposed. He stated that business at this and other Vermont sites has exceeded the company's expectations. Mr. Anderson said that the applicant is trying to expand to meet demand by proposing the expansion in a zoning district where the use is allowed. Mr. Kerin said that Cumberland Farms is consistently two to three cents cheaper than other stations in the area. He said that the proposed doubling of the pumps will triple the number of customers because the business is squeezing out the competing independent gas stations.

Mr. Lindley asked how the traffic patterns will change under the proposed plans. Mr. Anderson said that a traffic study has not been undertaken because the applicant believes that there will be little impact, if any. He said that conclusion is based on the amount of traffic that is already on the road and the fact that traffic to a convenience store is "pass through" traffic by cars that are already on the road. He said that the prior use, Utton's Mufflers, generated destination traffic, but that will be eliminated by the proposal. Mr. Anderson stated that the applicant believes that traffic will stay even or may even be reduced under the proposal. He said that those conclusions were submitted to the City and the staff did not ask for more than that.

Mr. Lindley said that the plan shows a fence between some proposed greenery and the Kerin property line.

He said that he thought the greenery would have a better change of survival if it were between the property line and the fence. Mr. Anderson said that would be acceptable as long as there is room to plow the drive. Mr. Bresette asked whether the shrubs were a variety that would eventually screen the light and noise. Mr. Anderson said that the shrubs were the type that the Kerins had requested. Mr. Kerin said that he had actually asked for cedars on his aunt's side of the fence. Mr. Bresette said that he understood that the neighbors' concerns were light and noise. He said that the vegetation that is used should be the type that would best address those issues. Mr. Anderson said that he disagreed on the lighting issue because the lights were designed to direct light down rather than onto neighboring property. He said that he could put in a stockade fence along the Kerin line, but that was not what they requested.

Ms. Snyder noted that the proposed entrance driveway will be only about 32' from the Kerin driveway whereas the existing drive is about 100' from the Kerin driveway. Ms. Snyder asked whether the staff looked at any issue with cars queuing on the road and blocking the Kerin drive. Ms. Smith said that she was not sure if Tom McArdle looked at that specific issue. She said that the access to the Cumberland Farms/Utton parcel was reviewed extensively with attention on improving the throat length on the entrance. She said that the intention was to get cars off of the road rather than have them waiting on the road.

Ms. Snyder asked whether a retaining wall was proposed near the Madden property. Mr. Anderson said that doing the investigative work is sometimes as costly as doing the excavation and grading work. He said that the applicant is proposing to do what is needed with the ledge. If it is found to be stable, it will be left as ledge. If it is unstable, a wall will be constructed. He said that the plans show two different elevations to indicate what might be done. Mr. Anderson said that as the work proceeds and the situation is better understood, the applicant would expect to come back to the staff with a final proposal. Ms. Snyder indicated that she had looked into purchasing the property years ago and had a study done. She said that the report indicated that the bank was unstable.

Ms. Osborne said that the \$3000 that was budgeted for landscaping was not much. Mr. Anderson said that the budget could be greater. He said that the applicant wanted to do the landscaping that the neighbors desired, but would like the matter worked out that night.

Ms. Snyder said that the lighting under the canopy was in the high 30 foot candles. She recalled that the Board may have required reductions in lighting under canopies at other sites. Ms. Smith noted that the prior approval of the Cumberland Farms required that the lighting be no more than 45 foot candles under the canopy. She said that the current plan shows a lighting level of less than 45 foot candles. Mr. Lindley asked why the lighting levels were not the same across the existing and proposed canopy. Mr. Anderson said that he believed that had to do with avoiding changes to the bulb pattern under the existing canopy. Mr. Lindley said that if lower lighting levels are proposed under the proposed canopy, it would be difficult to say that the light level under the existing canopy could not be reduced. Mr. Teschmacher said that it appeared, based on the plan, that the existing lighting was being reduced. Ms. Snyder said that her question was based on the fact that two light poles would be added and the size of the canopy would be doubled resulting in an increase in the light on the site. She said that she would like to know if steps could be taken to reduce the lighting from under the enlarged canopy. Mr. Anderson said that while the size of the canopy would double, the number of lights under the canopy would not double. He said that the proposed lighting plan meets the ordinance limits, but that if there is a targeted number that the Board would prefer, the applicant could look into it. Ms. Snyder said that she recalled that the Mobile station reduced lighting to something like 20 foot candles. Mr. Anderson said that station is recognized as a failure, partly due to the store, and that the proposed lighting level at Cumberland Farms would have to be greater than that. Mr. Zalinger pointed out that the DRB does not have lighting expertise or the breadth of experience in the use of lighting at similar

uses. He said that the Board does not have all of the information, expertise, background or data available to help assess the sufficiency of the lighting plan. Mr. Anderson said that the Board has the ordinance that he assumed that people thought about at the time it was adopted. He said that the applicant has complied with the ordinance. He added that if it is the judgement of the DRB that the lighting should be reduced, that can be done. He said that more information can be provided if it is necessary. Mr. Cranse noted that Article 8 of the ordinance addresses light levels at the property line, not within the site. Ms. Smith said that there is also a performance standard requiring that the use shall not 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.

Mr. Bresette asked how the Board could address the landscaping plan when the applicant represents that changes will be made to satisfy the neighbors. Mr. Zalinger that would be a condition subsequent to the Board's action, but the condition would not carry much enforcement ability.

Mr. Bresette wondered whether the bank behind the building would be able to support trees since there may not be much soil over the ledge. Mr. Anderson said that there are large trees growing on that bank presently. Mr. Bresette said that he was thinking of the amount of soil needed to plant a decent sized root system. Ms. Smith advised the Board that it has th option of requesting technical assistance, at the expense of the applicant, regarding the ability of the ledge and soil to support landscaping and regarding the amount of landscaping needed to screen the light. Mr. Bresette said that he was also concerned about screening the light reaching the Kerin property.

Mr. Anderson said that if the Board could provide a list of concerns, the applicant could step back and see if the issues could be addressed. He said that he understood the concerns to be lighting and addressing landscaping on the two sides. Ms. Snyder added that sound is also an issue because it will travel up the bank. Mr. Anderson asked if that was seen as a concern with a landscaping solution. Ms. Snyder said that she thought it would be. Ms. Osborne said that the noise could also be addressed by turning the speakers down. Ms. Hall said that the speakers are turned down to level 2. Mr. Osborne said that the sound can be clearly heard within their house. Mr. Kerin said that the speakers are 10 feet up a pole and that they could be placed at the pump level. Mr. Lindley asked if all Cumberland Farms have speakers and whether they are necessary. Mr. Anderson said that they are at all Cumberland Farms locations. Mr. Cranse said that the business is within an area with residential uses and the complaint against the speakers is a legitimate one. Ms. Hall said that the use of speakers has reduced the "drive-offs". Mr. Blakeman said that the Board has recently heard other testimony that the sound carries significantly in the river valley, so steps should be taken to reduce noise.

Mr. Blakeman asked what steps could be taken to address the question of the potentially contaminated soil. Mr. Anderson said that, if the soil is contaminated, steps will be taken through a highly regulated process. Mr. Kerin asked if he could get copies of the testing that has been done. Patricia Woodward, the owner of the Utton's property, said that she had all the tanks dug up and installed monitoring wells. She said that she has the monitoring records and the State is still monitoring the wells. She added that the air ratchets and compressors used in the muffler business were noisy, but she never had complaints from the neighbors. She said that cars were dropped off from 6:30 a.m. and picked up as late as 7:30 p.m. Ms. Woodward said that she felt that she had improved the traffic situation by moving the muffler repair operation. Mr. Osborne said that noise during business hours is different that noise at night.

Mr. Blakeman said that he felt that a traffic study was needed to help the Board to make a proper decision.

Mr. Zalinger said that he thought that the application should be continued and he would recommend that

members get together and carefully consider what additional information it would need to have and then, with Ms. Smith's help, issue a memorandum. Mr. Anderson said that he would start pulling a response together right away. Mr. Zalinger suggested that the work should not go too far until the Board issues the memo. Mr. Anderson said that the applicant could hire a lighting expert to give a detailed report to the Board, but he was not sure whether that was what the Board was looking for. Mr. Zalinger said that is one of the topics that the Board needs to consider.

Mr. Osborne said that he did not believe that the application should move forward without a study of the ledge and a retaining wall design. He said that the bank is made up of rotten ledge and loose material. Mr. Anderson said that the cost of doing the borings for a study would approach the cost of actually doing the work. He said that the applicant is confident that the retaining wall can be designed as appropriate. Ms. Snyder noted that there are two possible options for retaining walls shown on the plans. She said that the plans just do not include the actual engineering details yet.

Mr. Lindley made a motion to continue the application until May 2, 2005. Mr. Bresette seconded the motion. The motion was approved 7-0.

Other

The Board discussed the Environmental Court order regarding the Jacobs appeal of the DRB actions regarding 68 Main Street. Mr. Zalinger said that Court had determined that the DRB's subsequent approval for the site rendered the prior decisions to be obsolete.

A neighbor to the property at 3 Corse Street said that she had arrived at the time listed on the agenda for that application, but had missed the hearing. Mr. Zalinger said that the notice that was sent to the owners of adjoining property indicated that all times were approximate and that changes in the agenda may occur. He said that he could not give her legal advice on her recourse. The neighbor said that her concern related to the fact that the only access for the construction at 3 Corse Street would be through her property. She asked how she can control the use of her property. Mr. Zalinger said that the granting of a variance did not generally authorize the applicant to do anything other than improvements on their own property. He said that the Board did not grant an easement or any access to neighboring properties. Ms. Smith said that she would be happy to discuss the application further at her office during business hours.

Adjournment

Mr. Lindley made a motion to adjourn the meeting. Mr. Cranse seconded the motion. The Board unanimously approved the motion to adjourn.

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.