

**Montpelier Development Review Board**  
**June 6, 2005**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** Philip Zalinger, Chair; Mr. O'Connell; Alan Blakeman; Roger Cranse; Douglas Bresette; Jack Lindley (participated in items II through adjournment); Guy Teschmacher; Ylian Snyder (participated in item I)  
Staff: Stephanie Smith, Administrative Officer

**Call to Order**

The meeting was called to order by Mr. Zalinger.

**Minutes of May 16, 2005, Meeting**

Mr. O'Connell made a motion that the minutes of the May 16, 2005 meeting be approved. Mr. Blakeman seconded the motion. The Board discussed the following changes to the minutes:

- It should be noted that Mr. O'Connell was present for the meeting
- The vote for item #II was omitted. It should be noted that the motion was approved by a vote of 7-0 (with Ms. Snyder voting as Mr. Zalinger had not yet arrived).

The Board voted 7-0 to approve the minutes with the changes.

**I. Continuation of Public Hearing - Variance Request**

Property Address: 12 Redstone Avenue  
Applicant: William and Emily Boedecker  
Property Owner: William and Emily Boedecker  
Zone: MDR

- Construction of a garage
- Variance of 13' requested from the west side yard setback requirement
- Variance of 13' requested from the north side yard setback requirement

Interested Parties: William and Emily Boedecker, Priscilla Paige, William Rockford

Mr. Zalinger reminded Mr. and Ms. Boedecker that they were still under oath. Mr. Boedecker described the proposed change to the plan for the garage. He said that the corner of the garage would now be attached to the house and the garage would now be 28' x 24'. Ms. Smith explained that the staff report and agenda incorrectly referred to 16' variances. She said that the actual variance requests were for 13'.

Mr. Boedecker said that his neighbors approved of the changes. Mr. Rockford said that he had no problem with the proposal. Mr. Zalinger asked Ms. Paige whether her lack of comment could be interpreted to be her agreement with the application. Ms. Paige said that it could.

The Board members considered the variance criteria and their findings are summarized below:

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 unique physical circumstances include the location of the house on the lot. The imposition of the 20' side yard setbacks would make it

- impossible to locate the garage anywhere but in the front yard.
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 house was constructed in 1932-1933 and it is believed that the lot was created in 1926, before the adoption of the zoning ordinance.
  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 related to the location of the existing house and the size and shape of the lot, which was created before the zoning regulations.
  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 use of the house and garage will continue to be a single family residential use. There have been expressions of support from the two adjacent neighbors. The proposal will not 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 testimony indicates that the applicant has made every effort to minimize the size of the variance requested.
  6. *The variance will not result in the initiation of a nonconforming use of land.* The use of the land will remain single family residential.

Mr. Blakeman made a motion that the Board approve a 13' variance for the west side yard and a 13' variance for the north side yard. Mr. Bresette seconded the motion. The motion was approved unanimously.

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

- Property Address: 40 Wheelock Street  
Applicant: Bert Klavens and Barbara Asen  
Property Owner: Bert Klavens and Barbara Asen  
Zone: MDR
- Variance of 14' from the north side yard setback for a 36' x 24' second story addition
  - Variance of 3' from the south side yard setback for the construction of a 15' x 10 covered porch accessible entryway

Ms. Smith said that the applicant has requested a continuance to the next meeting on June 20, 2005. Mr. Lindley made a motion to grant the continuance to the June 20, 2005 meeting. Mr. Bresette seconded the motion. The motion was approved unanimously.

## **III. Public Hearing - Variance**

- Property Address: 24 Valerie Avenue  
Applicant: Salih Numanovic  
Property Owner: Salih Numanovic  
Zone: MDR
- Variance of 17' from the southeastern side yard setback requirement for the construction of a 27' x 23' garage

Interested Parties: Salih Numanovic, Erna Numanovic

Ms. Smith described the request for a 17 foot variance from the side yard setback requirement for the construction of a 27' x 23' garage that would be 12' tall. She said that the proposed setback would be 3' at the eastern property line. Erna Numanovic explained that roots have grown under the garage and cracked the floor and foundation. She said that her father is proposing to repair and enlarge the garage to accommodate two cars. She said that the house and garage were built in 1971. Ms. Smith said that the subdivision of the lot probably occurred a little before that time. She said that she did not find any evidence of the subdivision being granted under the zoning ordinances. Mr. Zalinger asked whether 1973 was the date that the zoning was adopted. Ms. Smith said that was correct.

Mr. Blakeman asked how the construction would help the situation with the tree roots. Ms. Numanovic said that her father just wants to repair the garage. She said that he could not fix the cracks now, but would be constructing around them. Mr. Numanovic said that he wants to make repairs because the building is not safe. He said that he also wanted to make more room for parking. Ms. Smith said that the side yard setback is 20' and the existing garage is 8' from the property line. She said that, with the proposed changes, the garage would be 5' closer to the property line resulting in a setback of 3'.

The Board members considered the variance criteria and their findings are summarized below:

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 applicant is enlarging a garage that is already located in the setback area. The garage was constructed prior to the adoption of the zoning ordinance.
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 existing garage is in the setback. Any modification of the size of the garage would require 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 hardship relates to the pre-existing location of the building.
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 will continue to be used as a residential garage. There is no evidence of objections from the neighbors. Renewable energy is not applicable. There will be no effect on 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 garage will be 23' wide and 27' deep.
6. *The variance will not result in the initiation of a nonconforming use of land.* The use of the land will remain a single family residential.

Mr. O'Connell made a motion that the Board approve the application for a variance for a side yard setback of 3'. Mr. Cranse seconded. Mr. Blakeman asked whether the Board needed to add the one foot overhang into the variance. Mr. Bresette said that the variance distance should be measured to the building footprint rather than the roof overhang. Ms. Smith said that the Board's action on the motion would recognize that the building wall would be 3' from the

property line and there is a one foot roof overhang. Mr. Zalinger said that he thought that it made sense to use the footprint of the building since the various buildings considered by the Board have many different types of roof overhangs. The motion was approved unanimously.

#### **IV. Public Hearing - Variance**

Property Address: 3 Isabel Circle  
Applicant: Debbie Button  
Property Owner: Debbie Button  
Zone: MDR

- Variance of 4' from the side yard setback requirement for the construction of a 24' x 32' garage

Interested Parties: Debbie Fiske, David Fiske

Ms. Fiske explained that her name had been changed from Button to Fiske. Ms. Smith described the application for a 4 foot variance from the side yard setback requirement for the construction of an attached garage that would be 24' x 32' and 19' tall. She said that the proposed setback is 16 feet from the side yard property line. Mr. Fiske said that the garage would be used to store and work on motorcycles and other vehicles. Mr. Cranse noted that the photographs provided with the application showed a storage shed. Mr. Fiske said that the shed will remain. Mr. Zalinger asked whether a variance was issued for the shed. Ms. Fiske said that she did not think that a variance was needed for a movable shed. Mr. Zalinger said that he did not believe that was the standard for making such a determination. Ms. Smith noted that the review of the existing shed was not part of the application before the Board.

Mr. Lindley asked if the applicants had spoken to their neighbors about the application. Mr. Fiske said that he had and the neighbors were in favor of the application. Mr. Lindley said that he was not sure that a repair shop fits into a residential neighborhood. Mr. Fiske clarified that he would only be working on his own vehicles. He said that the use would not be commercial.

Mr. Zalinger noted that the house was constructed in 1983. Ms. Smith said that she believed that the subdivision occurred around 1981. Mr. Zalinger asked what the existing setback was. Ms. Smith said that the setback to the house was 40'. Mr. Fiske clarified that the plan shows an incorrect dimension. He said that the house is 48' long. He said that the dimensions on the plan did not correspond to the as-built location of the house.

Mr. O'Connell asked whether the applicant had considered alternatives that would not require a variance. Mr. Fiske said that alternatives had been considered. He said that the proposed width is the narrowest that the garage can be made to support the studs needed for the snow load. He said that, as it is, a steel beam would have to be used for a header.

The Board members considered the variance criteria and their findings are summarized below:

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.* Mr. Zalinger said that this was the criterion that was causing him the biggest problem. He said that the difficulty was that the design for the garage was mandating the need for the variance. He said the house was constructed after the zoning regulations were adopted and the topography was not challenging. Mr. O'Connell said that he was having the same problem and that he did not feel that this application passed the test for a

variance. Mr. Cranse observed that the garage would not require a variance if it were built behind the house. Mr. Fiske said that would mean that the garage would have to be completely behind the house. Mr. Zalinger said that he was concerned about the precedent for other applications in the neighborhood. Mr. Fiske said that he thought that actions by boards did not set precedent. Mr. Zalinger said that the issue was one of fairness rather than legal precedent.

Mr. Fiske asked what would be required if the garage width was reduced to 20'. Mr. Zalinger said that the proposal would then comply with the requirements so all that would be required was an application and fee. Mr. Fiske said that he would withdraw the request for a variance.

#### **V. Public Hearing - Design and Site Plan Review within an AI-PUD - HDR/DCD**

Property Address: 1 Bingham Street  
Applicant: Stephen Yardley and Jane Dwinell  
Property Owner: Stephen Yardley and Jane Dwinell  
Zone: HDR/DCD/AI-PUD

- Construction of a single family dwelling

Interested Parties: Stephen Yardley and Jane Dwinell

Ms. Smith described the application for site plan and design review approval for the construction of a single family dwelling within an approved Academic Institution Planned Unit development. She said that the lot is currently undeveloped.

Mr. Zalinger read from a letter that the Board received from Thomas Weiss which stated that the project requires a variance since the parking turn around would be located in the front yard setback. Ms. Smith said that the turn around was recommended by the Technical Review Committee. Mr. Yardley said that the site plan could be revised to relocate the turn around outside of the setback. Ms. Dwinell questioned whether the turn around was in the front yard since the lot is a corner lot. Ms. Smith read the applicable regulations and explained that the corner lot has two front yards. Mr. Zalinger said that section 807.b.3 states that a turn around may not be developed in front yard setbacks. Mr. Lindley asked whether those requirements were applicable since the lot is located in an AI-PUD. Mr. Zalinger said that the Board was entitled to waive any of the dimensional requirements in an AI-PUD. Ms. Smith said that she was not so sure about that. She said that it may not be necessary to address the issue if the plan were modified. She said that the front yard setback is 10'. Mr. Zalinger asked the applicants were testifying that the site plan has changed so that the turn around is not within 10' of the property line. Mr. Yardley said that was the case.

Ms. Dwinell oriented the Board on the location of the proposed house. Mr. O'Connell asked what issue the DRC had raised about the roof. Ms. Dwinell said that the DRC was worried that the green roof would fade over time. Mr. Yardley said that there was no problem with changing to a color more acceptable to the DRC.

The Board reviewed the site plan criteria. Their findings are summarized below:

1. *Vehicle access and circulation.* Ms. Dwinell said that the turn around would be relocated further back on the lot, near the shed shown on the plan. Ms. Smith suggested that the Board make any approval contingent on the submission of a revised plan to the staff. Mr. Zalinger said that was a good suggestion because the revised plan would precisely depict the turn around location. He noted that the TRC requested the turn around and that the testimony was that it will be located near the shed.

2. *Parking.* Parking will be in the driveway, but not in the turn around.
3. *Landscaping.* The remaining trees on the site will be retained.
4. *Outdoor lighting.* Lighting will be as depicted on the plan.
5. *Site protection and design.* The site will be minimally graded so that surface water will drain away from Bingham Street and the building site to a natural ravine at the back of the site. The applicant is working with a soil engineer to ensure the stability of the site.
6. *Utilities.* The proposed dwelling will utilize the public water and sewer system.

Mr. Lindley noted that, with the proposed revision to the plan, item #7 of the staff report should be revised to state that "A gravel drive is proposed with a turnaround area which is not located in the front yard setback."

Mr. O'Connell made a motion to approve the application for site plan and design review with the conditions that a final site plan be submitted before any permit is issued and that the DRC recommendations shall be incorporated into any permit. Mr. Blakeman seconded the motion. The motion was approved unanimously.

#### **VI. Site Plan Amendment and Design Review**

Property Address: 493- 535 Stone Cutters way  
Applicant: River Station Properties II  
Property Owner: River Station Properties II  
Zone: RIV/DCD

- Exterior alterations on the east side enclosure of HVAC units
- Parking Lot Layout
- Landscaping

Interested Parties: Steve Ribolini

Ms. Smith described the application for site plan approval for the modification of a parking lot between 493 and 535 Stone Cutters Way, for screening of HVAC units on the east side and for minor landscaping revisions. She said that there will be an increase of three parking spaces over the number originally approved in 2002. Ms. Smith said that there was a violation on the site because the parking lot was not constructed according to the approved plan and the HVAC units were enclosed without a permit. She said that the original plan called for angled parking spaces with islands planted with trees while the proposed plan re-oriented some spaces to be perpendicular and reduced the island size. She said that this application had been before the DRC for three meetings to iron out the issues.

Mr. Lindley said that he did not understand how 7 more parking spaces could be accommodated on the site. Ms. Smith said that some of the information in the applicants' memo had been subsequently modified, resulting in 3 additional spaces rather than 7. Mr. O'Connell asked whether the site plan shows what currently exists on the site. Ms. Smith said that the plan shows what is proposed. Mr. O'Connell said that he would like to understand what was approved, what exists and what is proposed. Ms. Smith said that she did not copy the previous plan for the meeting, but she would get a copy from the office.

Mr. Lindley said that, in the approved plan, greenspace and trees were used to break up the visual impact of development. Mr. O'Connell said that it is important that the Board understand what is happening on the site. Mr. Zalinger said that he was struck by how easy it would appear to be to build what you like and then have it approved three years later. Mr. O'Connell said that he had similar concerns. He said that it does not cast a very good light on

the process if something built without approvals was subsequently rubber-stamped. Mr. Zalinger said that he was not inclined to rubber-stamp an approval.

Ms. Smith and the Board reviewed the originally approved plan and the proposed plan.

Mr. O'Connell asked what type of trees were proposed. Ms. Smith said that the trees would be serviceberry or crab apple with a caliper of 1 ½" to 2". Mr. Lindley asked whether the City's tree board was still active. Ms. Smith said that it was. She said that she believed that the City arborist suggested that Mr. Osgood use serviceberry or crab apple because those species would have more compact root structures more suitable to the small spaces available. Ms. Smith said that the DRC was concerned that smaller tree species be used to fit the scale of the space and so that the lower canopy would better screen the site.

Mr. O'Connell said that he felt that the Board needed more information. He said that a more thorough presentation would be appropriate instead of the memo and lightly sketched plans that only provide a general idea of the proposal. He said that the original proposal received a tremendous amount of review to ensure that it would be acceptable and the modification should be addressed in a similar manner. Mr. Zalinger said that it sounded like the DRC had extensive negotiation with the applicant to gain some design enhancements. He said that he felt that the applicant had ignored the permit and the original design. Mr. Zalinger said that he was familiar with the other projects along Stone Cutters Way and that a lot of Federal State and private funds were expended to achieve some sort of consistent design scheme. He said that he was concerned with the situation in which one applicant could construct a 28,000 square foot office building, ignore the original site plan and then return to the Board to negotiate minimal changes to accommodate their goals.

Ms. Smith asked what information the Board wanted in order to proceed. Mr. Lindley said that it looked like the trees proposed in the original plan had not been planted. Mr. Ribolini said that the plan for which the applicant is presently requesting approval seems to be closer to the originally approved plan than the existing condition was. He said that there are trees on the site that have not done well. He said that the applicant wants to replace those trees. Ms. Smith noted that the current proposal would include the installation of granite curb to protect the greenspace and trees from damage by snow plows. She said the curb was not part of the original proposal. Mr. O'Connell said that is the level of detail that the Board should have in a presentation including the rationale for what has happened over the last three years. Mr. Zalinger said that no rationale has been given for the changes to the site plan. Mr. O'Connell said that it did not seem appropriate for the Board to act based on the scant presentation in a situation where some of the construction was built in violation. Ms. Smith said that she had only copied those materials that she thought would clearly show what was proposed. She said that there were many iterations of the plans that were not copied for the Board.

Mr. Bresette said that the proposal is closer to the original design than what was built. He said that the proposed granite curbs represent an improvement, but he would still like an explanation of why the site was not built as approved. Mr. O'Connell said that the Board deserves a walk-through to explain the situation.

Mr. Lindley made, and Mr. Bresette seconded, a motion to continue the application to the Board's meeting on June 20, 2005 in order to enable the applicant to prepare and submit additional supporting documentation and to bring someone who is more conversant with the history of the application. Mr. Lindley said that he would also like to hear from the tree board on the plantings. Mr. O'Connell said that he would like to understand the TRC's view of the situation. Mr. Teschmacher said that he would like to have input from the TRC on the change to perpendicular parking since the drives are one-way. Mr. Blakeman asked what the point of delaying action would be. Mr. O'Connell said that a significantly different design was approved, but the plans were not followed. Mr. Lindley said that information is needed to persuade him that this proposal is better than the originally approved plans. He said that

a great deal of hard work went into the original review to have trees to break up the visual impact of the parking lot. Ms. Smith asked whether the Board wanted to see as-built plans. There was general agreement that the as-built plans were needed. Mr. O'Connell added that the rationale for the changes would also be needed.

The motion was approved by a vote of 6-1 with Mr. Blakeman voting against the motion.

### **VII. Public Hearing - Variance**

Property Address: 39 Loomis Street  
Applicant: Richard Sheir and Cindra Conison  
Property Owner: Richard Sheir and Cindra Conison  
Zone: MDR

- Construction of a 26' x 26' third story addition with a height of 33'
- 4% variance from the coverage requirements
- 31' variance from the front yard (Harrison Street) setback requirements
- 17' variance from the front yard (Loomis Street) setback requirements
- 8' variance from the east side yard setback requirements
- 24' variance from the front yard (Loomis Street) setback requirements for the construction of a 7' x 20' porch addition.

Interested Parties: Richard Sheir and Cindra Conison

Ms. Smith described the application for a 4% variance from the coverage requirements, a variance of 31 feet from the Harrison Avenue front yard setback, a variance of 17' from the Loomis Street front yard setback, and a variance of 8' from the east side yard setback for the construction of a 26' x 26' third story addition that would be 33 feet tall. She said that the application was also for a 24' variance from the Loomis Street front yard setback for the construction of a 7' x 20' porch addition.

Mr. Sheir said that he would withdraw the proposal for the center section. He said that he would only be proposing the addition to the porch with the bathroom addition. He said that a variance was issued for the property last year and that he was no longer seeking to increase that variance. Ms. Smith said that a variance would still be needed for lot coverage.

The Board members considered the variance criteria for the modified proposal. Their findings are summarized below:

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 constructed in 1850 and the lot created around that time. The existing porch is already in the setback. The proposed addition will not extend further into the setback.
2. *That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property.* Since the porch is already in the front setback, it would be illogical to require the applicant to meet the front setback for an extension of the porch to the side of 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 hardship relates to the pre-existing

- locations of the building and porch. The applicant did not make those improvements.
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 will continue to be used as a single family dwelling. There are a number of Loomis Street properties with development in the front yard setbacks. The proposal does not expand the encroachment beyond the existing encroachments. The proposal will not 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.* It is apparent that the addition of a porch will not expand the incursion into the setback. The existing lot coverage already exceeds the maximum allowable.
  6. *The variance will not result in the initiation of a nonconforming use of land.* The proposed development will be used as an appurtenance to a single family residence.

Mr. Lindley made a motion to grant a 24' variance from the front yard setback requirement for a 7' x 20' porch and an 8' x 7' bathroom addition and to grant a variance from lot coverage to allow up to 37% coverage. Mr. Cranse seconded the motion. The motion was approved unanimously.

#### **Adjournment**

Mr. O'Connell made a motion that the meeting be adjourned. Mr. Blakeman seconded the motion. The motion was approved unanimously.

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.*

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