

**Montpelier Development Review Board**  
**July 5, 2005**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** Philip Zalinger, Chair (recused on item VII); Kevin O'Connell, Vice Chair; Roger Cranse; Douglas Bresette; Jack Lindley; Ken Matzner; Guy Teschmacher; Ylian Snyder (participated in item VII)  
Staff: Stephanie Smith, Administrative Officer

**Call to Order**

The meeting was called to order by Mr. Zalinger.

**Minutes of June 6, 2005 Meeting**

Mr. O'Connell made a motion to approve the minutes of the June 6, 2005 meeting. Mr. Cranse seconded the motion.

The Board voted 7-0 to approve the minutes.

**I. Consent Agenda**

**a. Design Review**

Property Address: 22 State Street  
Applicant: Carlo Rovetto  
Property Owner: James Blouin  
Zone: CB-I/DCD

- 24 s.f. wall sign with lighting
- 10.6 s.f. awning sign
- DRC recommended approval with adjustments

Interested Party: Thomas Quinlan

Thomas Quinlan said he was representing the applicant. Mr. Zalinger noted that the DRC had an adjustment. He asked Ms. Smith to explain what they meant by the recommendation that the lights be minimal. Ms. Smith said that a gooseneck fixture was originally proposed. She said that the DRC felt that something with less of a profile and less visibility would be more appropriate considering the nature of the proposed sign. She said that an alternate light fixture was agreed upon at the DRC meeting.

Mr. O'Connell made a motion that the Board grant design review approval for the application with the DRC's adjustment. Mr. Lindley seconded the motion. The motion was approved unanimously.

**b. Design Review**

Property Address: 8 & 20 Langdon Street  
Applicant: Andrew Brewer for The Shoe Horn and Onion River Sports  
Property Owner: Warren Kitzmiller  
Zone: CB-I/DCD

- Installation of two awnings

- DRC recommends approval with adjustments

Ms. Smith said that it did not appear that the applicant was present. Ms. Smith described the application for the installation of two awnings: one over the Shoe Horn storefront window and one over the rear entrance to Onion River Sports. She said that the addition of the awning over the Shoe Horn storefront requires that the existing projecting sign be relocated as described in the materials presented to the Board.

Mr. Lindley made a motion to grant design review approval with the DRC recommendations. Mr. Bresette seconded the motion. The motion was approved by a vote of 6-0. Mr. Zalinger abstained because he felt that it is appropriate for the applicant to appear and be heard on matters before the Board.

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

Property Address: 1 Park Avenue  
Applicant: Union Elementary School, Susan Boyer  
Property Owner: Montpelier School District  
Zone: HDR

- Variance of 3.95 square feet for a sign for a nonresidential use in a residential district

Interested Parties: Susan Boyer, Principal, Thomas Weiss

Ms. Smith described the application for a variance of 3.95 square feet from the 10 square foot maximum for a sign for a non-residential use in a residential district for the installation of a 13.95 square foot ground sign at 1 Park Avenue. Mr. Zalinger asked whether the 10 square foot maximum is for one side of a sign or for both sides. Ms. Smith said that the ordinance allows 10 square feet per side. She said that the applicant is requesting a one-sided sign of 13.95 square feet. She added that Mr. Weiss had submitted a letter which had been copied for the Board members.

Ms. Boyer said that the school does not have a sign identifying the building as a school. She said that the building is used on weekends and after school hours by nonprofit groups and people frequently stop by the school office to ask which school it is. Ms. Boyer said that the school's sign committee wanted to erect a sign similar to the one at the Kellogg-Hubbard Library because the buildings are near to each other and the similar signs would provide continuity. Mr. Bresette asked whether there was ever a sign on the property and whether the committee knew of the size limitations before the design was prepared. Ms. Boyer said that no sign was previously located on the property. She said that the sign committee did not know about the limitations and asked the sign designer to create a design identical to the sign at the library. She said that she thought that the DRB would see the logic of keeping the signs the same. Ms. Boyer said that she also worried that the stately building would dwarf a smaller sign.

Mr. Zalinger asked Mr. Weiss whether he lived in the neighborhood. Mr. Weiss said that he lived in the neighborhood, on Liberty Street. He said that he walks by the school several times a day. Ms. Boyer said that she and the Vice Principal spoke to the neighbors on Park Avenue and Loomis Street about the proposed sign. She said that those neighbors viewed the proposal favorably.

Mr. O'Connell said that there is a problem in establishing a hardship in this case. He said that he understood

the aesthetic link, but that would not address the variance criteria for exceptional circumstances. Mr. Matzner asked whether the library is in a different zoning district. Ms. Smith said that it is in the CB-II district, which is different, but she added that she believed that the sign restrictions were similar. Mr. Zalinger said that he had to agree with Mr. O'Connell that the variance requires a unique circumstance related to the land. Mr. Zalinger said that, in this case, the need for the variance is based on the fact that the Kellogg-Hubbard Library put up its sign at this size. Ms. Boyer said that a unique aspect of the proposal is that the sign should identify the building as one that the City is proud of and a sign like the one at the library is, therefore, warranted.

Mr. Zalinger suggested reviewing 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.*

Mr. Zalinger said that he was unable to identify any irregular or unique circumstances to prevent the sign from complying with the 10 square foot size. Mr. Matzner said that he might be persuaded that the scale of the building creates the necessity for a larger sign to label the building. Mr. Bresette said that he had considered that same point, but the high school, which is larger than the Union School, only has a small sign. He added that the Main Street School only has a sign over the door. Ms. Boyer said that the high school also has a sign over the door. Mr. Cranse said that he agreed that there is no unique circumstance that would meet criterion #1. He said that he did not believe that the building size is unique condition of the lot. Mr. O'Connell said that he believed that the appropriate way to proceed would be to reduce the size of the sign. Mr. Bresette said that he found it difficult to make a positive finding on any of the first few criteria.

Mr. O'Connell made a motion to approve the requested variance. Mr. Cranse seconded the motion. Mr. Zalinger said that he wanted to clarify that the Board customarily makes motions in the positive so that the vote is clear. The motion failed to pass by a vote of 0-7. Mr. Zalinger said that the Board had declined to approve the variance.

### **III. 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

Mr. Klavens said that the proposed design of the project was changed when it was determined that the second story could not be built over the existing concrete slab. He said that he had new photos and materials to share with the Board. Mr. Zalinger said that he was uncomfortable with reviewing the project without having the materials in advance. Mr. Klavens said that he could get the materials together and come back in two weeks. He said that he would request a continuance to allow for that.

Mr. Matzner made a motion to approve a continuance to the next DRB meeting. Mr. Bresette seconded the motion. The motion was approved unanimously.

#### **IV. Public Hearing - Variance and Conditional Use Approval**

Property Address: 5 River Street  
Applicant: William Currier  
Property Owner: Irving Saffran  
Zone: GB

- A variance of 26' from the front yard setback to enclose an existing porch
- Property is a pre-existing, non-conforming/non-complying property and requires conditional use review under section 302 of the zoning regulations

Ms. Smith said that the applicant is requesting a 26-foot variance from the front yard setback requirement to allow for the enclosure of an existing 5' x 12.5' roofed front porch by adding three walls, a door and a window. Ms. Smith said that the Board granted a variance to enclose a front porch on an identical building next door. She added that work on the porch on the subject property was completed without the submission of an application.

Ms. Smith said that she wanted to explain that she had been advised that the existing Montpelier Zoning and Subdivision Regulations and the clarification on non-conformities under new Chapter 117 provides that a non-complying structure is considered to be a non-conforming use. This means that properties that are existing non-complying properties will require a conditional use review under section 302 of the zoning regulations for any enlargement or expansion of a structure on such a property.

Mr. Currier said that the subject building is a one family dwelling with a 12' x 5' enclosed porch. He said that the original porch was a concrete slab with a roof over it. He said that it was closed in over the existing footprint with the original roof retained. Mr. Currier said that the vinyl siding matches the existing clapboard siding. He said that a new door was installed and the existing step was used. Mr. Bresette asked what caused the porch to be considered to be a structure requiring a variance. Ms. Smith said that enclosing an outdoor area increases the size of the building.

The Board considered the variance criteria:

1. *That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lots size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the*

- provisions of the zoning regulation in the neighborhood or district in which the property is located.* The house was built around 1900, predating the adoption of the zoning ordinance. Some roadway widening has occurred since that time, reducing 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.* Enclosing a front porch to protect the occupants from the elements and traffic noise is a reasonable use.
  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 applicant did not cause the building to be built in the setback. The hardship relates to the location of the building on the property.
  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 will continue to be a single family dwelling. A variance was previously granted for the enclosure of the porch on the adjacent property. There is no evidence that the variance 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.* There will be no expansion over the original footprint.
  6. *The variance will not result in the initiation of a nonconforming use of land.* The property will continue to be used as a single family dwelling.

Mr. O'Connell made a motion that the Board grant the variance of 26' from the front yard setback for the enclosure of the porch. Mr. Matzner seconded the motion. The motion was approved unanimously.

The Board considered the conditional use criteria.

1. *Capacity of existing or planned community facilities.* The use will remain a single family dwelling.
2. *Character of the area affected.*
  - 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.*
- d. *Cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood.*
- e. *The noise generated per unit [504]*
- f. *Any factors judged to have an adverse impact on the area [504]*
- g. *The cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood [504].*
- The enclosure of the front porch will not affect the character of the neighborhood. There will be no change in use and no impact to the performance standards.
3. *Traffic on roads and highways in the vicinity.* There will be no change.
4. *The zoning and Subdivision Regulations in effect [504].* There will be no change in use. No adverse impacts are expected.
5. *Provisions to protect the utilization of renewable energy resources [504].* Not applicable.

Mr. Matzner made a motion that the Board grant conditional use approval. Mr. Bresette seconded the motion. The motion was approved unanimously.

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

Property Address: 184 Berlin Street  
Applicant: Pamela Milosevich  
Property Owner: Pamela Milosevich and Anne Charbonneau  
Zone: MDR

- Variance of 8' from the front yard setback for a construction of a dormer
- Variance of 6' from the front yard setback for a construction of another dormer and for the reconstruction of a sunroom
- Property is a pre-existing, non-conforming/non-complying property and requires conditional use review under section 302 of the zoning regulations.

Ms. Smith described the proposed extensive renovations to the existing two family residential dwelling. She said that the proposal includes the addition of two dormers, reconstruction of a 15' x 5' sunroom, a second floor 6' x 11' covered porch, a 10' x 15' storage shed, a 24' x 18'-6" living room addition, a 16'-6" x 10'-11" second story deck, a 6' x 33' walkway and a 10' x 14' deck. She said that variances are needed for the two dormers and for the sunroom. Mr. Matzner said that it appeared that the front yard setback will not change. Ms. Smith agreed and said that the dormers and the sunroom will not further encroach into the setbacks. She said that the sunroom is to be rebuilt. Mr. Cranse asked whether the sunroom will increase the existing building footprint. Ms. Milosevich said that it will not.

The Board considered 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 property was constructed in the late 1800s. The structure predates the zoning ordinance. The street was widened in 1948, reducing the setback.
2. *That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property.* The dormers are proposed to add living space and light on the second floor. The sunroom reconstruction is intended to address existing water damage.
  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.* No change in the configuration of the property is proposed. The hardship relates to the location of the building on the in the setback.
  4. *That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.* The use will continue to be a two-family dwelling. There is no record of objections by adjoining property owners. There is no evidence that the variance 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 sunroom will be reconstructed over the existing building footprint. The dormers will be a standard size and will be located over the existing building.
  6. *The variance will not result in the initiation of a nonconforming use of land.* The property will continue to be used as a two-family dwelling.

Mr. Lindley made a motion that the Boards approve the requested variances. Mr. O'Connell seconded the motion. The motion was approved unanimously.

The Board considered the conditional use criteria.

1. *Capacity of existing or planned community facilities.* The use will remain a two-family dwelling. The size of the existing structure is 1728 s.f. The proposed construction will add 444 square feet. The increase in usable square footage would not be expected to adversely affect the capacity of the existing or planned community facilities.
2. *Character of the area affected.*
  - 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 undue 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]*
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- b. *Site plan review standards in 506.C.*
  - c. *Hours of operation.*
  - d. *Cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood.*
  - e. *The noise generated per unit [504]*
  - f. *Any factors judged to have an adverse impact on the area [504]*
  - g. *The cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood [504].*

- The construction is proposed to complement the existing design and is not out of character with residential type construction; and therefore will not affect the character of the neighborhood. The use of the property will not change. Therefore, there will be no impacts related to the performance standards.
- 3. *Traffic on roads and highways in the vicinity.* There will be no change to ingress and egress. There will be no impact on traffic.
  - 4. *The zoning and Subdivision Regulations in effect [504].* There will be no change in use. No adverse impacts are expected.
  - 5. *Provisions to protect the utilization of renewable energy resources [504].* Not applicable.

Mr. O'Connell made a motion that the Board grant conditional use approval for the enclosure of the porch. Mr. Cranse seconded the motion. The motion was approved unanimously.

#### **V. Public Hearing - Variance**

- Property Address: 105 Woodcrest Road  
Applicant: Dale and Nancy Trombley  
Property Owner: Dale and Nancy Trombley  
Zone: LDR
- 2. Reconstruction and expansion of an existing deck
  - 3. Variance of 18' from the side yard setback requirement
  - 4. Variance of 3' from the rear yard setback requirement

Ms. Smith described the application for a three-foot variance from the rear yard setback and an 18-foot variance from the side yard setback for the reconstruction and expansion of an existing deck located on the south side of residential structure. She said that the zoning checklist was completed for this application before she was aware of the interpretation related to conditional uses.

Mr. Trombley said that the deck will be rebuilt and stairs will be added to allow access to the deck from the ground. Ms. Trombley said that the extension of the deck into the rear yard is proposed in order to wrap the deck around the building at the same width as the existing deck. She said that the wrap around will provide an area with some privacy. Ms. Smith said that the existing house is 30' from the side property line. She said that the building and deck were constructed in 1988. She said that the subdivision occurred in 1960. Ms. Smith said that she could not find a record of a variance for the construction of the house and deck in 1988, and could not speak to the reason why a zoning permit was issued without the need of a variance.

The Board decided to review the variance criteria:

1. *That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lots size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.* The house is only 30' from the side property line. The lot does not meet the minimum frontage requirements or the lot area requirements.
2. *That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property.* Expansion of an existing deck is a reasonable use in the LDR district.
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 existing deck is already located in the setbacks.
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 will continue to be a single family dwelling. There is no evidence that the variance 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 continuation of the 8' width of the deck will maintain a consistent width and represents the minimal expansion.
6. *The variance will not result in the initiation of a nonconforming use of land.* The property will continue to be used as a single family dwelling.

Mr. O'Connell made a motion that the Board approve the requested variances. Mr. Cranse seconded the motion. The motion was approved unanimously.

## **VI. Site Plan Review**

Property Address: 120 River Street  
Applicant: David Spooner

Owner: David Spooner  
Zone: GB

Interested Parties: David Spooner, David Frothingham

Ms. Smith described the proposed demolition of a one story 25' x 16' portion of an existing retail structure and the construction of a two-story 28' x 62' addition to the remainder of the existing building. She said that the project also includes the relocation of a portable storage container, alterations to the eastern site access, grading and landscaping. Mr. Frothingham said that the existing building is "T-shaped". He said that part of it will be demolished and an addition will be constructed. He said that the addition will be one story in the front and two story in the rear. He said that the driveway will be improved and parking will be added. Ms. Smith said that Tom McArdle recommended that the drive be 20' wide with one foot shoulders for a total width of 22'. She said that Mr. McArdle also recommended that the drive be paved from station 0+00 to station 1+00 because it is on a 12% grade. She added that it was also recommended that three existing arborvitae trees be removed to improve visibility between the lower lot and the driveway.

Mr. Frothingham said that one portable storage container will be relocated. He said that relocation will require the extension of a culvert and a stone pad is proposed at the end of the culvert. He said that the drainage from several lots flows across the subject lot. The drainage then flows over a gravel lot offsite and eventually is discharged into the river. Mr. Frothingham said that the stormwater flow off of the site will not increase as a result of the proposed development.

Mr. Lindley asked if there were any concerns about soil contamination from the previous use of the site. Mr. Spooner said that the bank had a site assessment performed before he bought the property. He said that the assessment came back clean. Mr. Lindley asked whether the culvert that was to be extended was built to current standards. Mr. Frothingham said that he did not do calculations, but the pipe will be the same size as the existing pipe. Ms. Smith asked whether the extension of the pipe will increase the runoff flow by eliminating an area of grass that the runoff would have passed over. Mr. Frothingham said that the existing condition of the area was actually a gravel surface. He said that the runoff will not increase.

Mr. Zalinger asked Mr. Frothingham whether he would say that sheet flow over a gravel lot with a discharge to the river is an optimal design for stormwater runoff. Mr. Frothingham said that condition was not optimal, but the applicant was just proposing to continue an existing condition. Mr. Zalinger said that he wondered whether it would be better to have a small detention basin on the site to improve the situation. Mr. Spooner said that there was not enough space for a pond. Mr. Lindley said that the pond does not have to be large. He said that the Board would like to see some means of improving the quality of the drainage. Mr. Spooner said that his idea was to clean up the back parking lot and to use the space more efficiently. Mr. O'Connell said that he agreed that this is an opportunity to address the stormwater runoff that has been addressed with practices that are less than optimal. He suggested that the applicant discuss options with his engineer. Mr. Spooner said that he would do so. Mr. Zalinger asked the Board whether it wanted to give the staff the authority to do a technical review and approve the change administratively. Mr. O'Connell said that he would like to see the resulting design. Ms. Smith said that she could make sure that the Board receives a copy of the plan.

Ms. Smith reviewed the staff advisory comments and recommendations from the staff report on the

application.

Mr. Lindley made a motion that the Board approve the site plan with the staff advisory comments and recommendations and with the requirement that an administrative review be conducted by the TRC regarding outflows from the back culvert and notify the DRB when a satisfactory resolution has been made. The motion was seconded by Mr. Cranse and was approved unanimously.

### **Other**

Conditional use reviews: Mr. O'Connell said that he would like to get an understanding of the impacts of Chapter 117 on the requirement for a conditional use review of projects that require variances. He said that he would also like the staff to consider a process to streamline those reviews, if they are necessary. Ms. Smith said that she would also provide copies of the guidance that she received on this question. She added that she will try to keep the DRB apprised of the Planning Commission's work on the Chapter 117 changes.

DRC Liaison: Ms. Smith reviewed the provision from the DRC procedures related to the establishment of liaison to the DRB. She said that the reference to the Planning Commission should actually be to the DRB. Mr. Zalinger said that he would like the DRC to designate a liaison for appearance before the Board. He noted that the Board cannot prevent individuals from testifying, but that it would be helpful to have a designated liaison. Ms. Smith said that she would advise the DRC.

### **VII. Public Hearing - Appeal**

Property Address: 51 Berlin Street  
Appellant: Michael Carriveau  
Permittee/Owner: Damartin Quadros, John and Maria Quadros  
Zone: GB

Interested Parties: Michael Carriveau, Damartin Quadros, Stephanie Smith, Administrator Officer

Mr. Zalinger said that he would recuse himself from participation in this matter. He noted that Ms. Smith would also be stepping down, since the appeal was of a permit that she had issued. Ms. Snyder joined the Board for this application.

Mr. O'Connell said that a letter had been received from Mr. Quadros' attorney, Rob Halpert. He said that Mr. Halpert was requesting a continuance since he was unable to attend the meeting. Ms. Smith said that she believed that Mr. Quadros was willing to begin the appeal that night without his attorney. Mr. O'Connell said that the hearing could then proceed, and if necessary be continued to a subsequent meeting.

Ms. Smith said that the property is located in the GB zoning district. She said that the DRB approved a site plan amendment for the site and a Notice of Decision was signed on January 21, 2005. She said that "Condition #1 of the Notice of Decision required the applicant to provide a reasonable estimate for the ledge removal as recommended by Eric Goddard, P.E. Knight Consulting Engineers, Inc., in a letter and illustration, dated 6/7/04 and 6/6/04 respectively. On 5/27/05 an estimate for ledge removal from Carroll Duranleau was provided to the city. The Administrative Officer determined the estimate to meet the requirements of Mr. Goddard's letter; and a check for the amount of the estimate was received and placed in escrow." Ms. Smith said that condition was the only one that had to be met in order for the

Administrative Officer to issue the zoning permit. Mr. Cranse asked when the Administrative Officer's decision was issued. Ms. Smith said that the zoning permit was issued on May 31, 2005 and the appeal was filed within 15 days.

Mr. Carriveau referred to his June 13, 2005 letter appealing the zoning decision. He provided additional materials to the Board and read a letter aloud which stressed that a chain link fence should be installed along the full length of the bank above the ledge cut. Mr. Carriveau said that, following the approval of the zoning permit, he learned that Mr. Wild had accepted shrubs as a substitute for a fence along his property. Mr. Carriveau said that he believed that a chain link fence is the only safe option. He referred to photographs #1 through #3 and said that an orange storm fence had been installed along the length of the ledge cut, but the chain link fence covers less than half of that length. He said that, if the orange storm fence was needed for safety across the entire length, then the chain link fence should also be needed the same length. Mr. Carriveau said that he had reviewed Mr. Goddard's letter and found that it did not adequately address the conditions. Mr. Carriveau referred to photographs #6 through #9. He said that the fence and hedges do not extend across the entire ledge face and there is a distance of 10'-15' of unprotected ledge beyond the last shrub. He said that, if the DRB believes that these measures are adequate to protect adjacent property owners, then Mr. Quadros, Knight Engineering or the City should sign a letter of indemnity to remove the liability that has been placed on him.

Mr. Carriveau said that the root and vegetation preservation has extended only across the Wild's property. He said that the DRB decision said that all existing root systems in the soils uphill have been sealed to protect their health and the applicant shall seed the slope area with grass and protect the cut face with seed and jute matting. Mr. Carriveau said that this was only done on the Wild property. Mr. Carriveau said that he submitted a letter detailing the steps needed to protect his property.

Mr. O'Connell asked that the testimony be focused on the specific appeal of the Administrative Officer's determination. Mr. Carriveau said that the Administrative Officer approved granite curb along parking spaced 12 through 16 which obstructs a right of way that the deed says must remain open and unobstructed. He said that the court order dated December 6, 2004 states that he was to have exclusive use of spaces 1 and 2 or 15 and 16. He said that, if the Board allows the barrier, it will be party to a violation of the court order.

Mr. Carriveau said that, if the Board does not think that the fence and root protection issue relates to the zoning requirements, then the January 21, 2005 decision must be voided to allow for an appeal of the misleading set of stipulations. Mr. Carriveau said that he challenged the zoning permit with the fencing and root preservation situation as it is.

Mr. Quadros said that he did not believe that the DRB was the proper forum for many of Mr. Carriveau's issues. Mr. Quadros said that additional ledge removal must still occur. He said that it makes no sense to do additional landscaping or seeding until that is done. Mr. Matzner asked Mr. Quadros what he will do after the ledge is removed. Mr. Quadros said that will depend on the conditions after the ledge is removed. He said that it appears that all that there is now is ledge. Mr. Bresette said that item #1 of the DRB decision said that ledge was to be removed with a bid brought in. He said that this appeal seems to have placed that step on hold.

Ms. Smith said that page 7 of the Board's decision approves the plan including curbing in front of spaces

#15 though #8. She said that the right of way dispute is before another court and the only finding that was to be completed before the zoning permit was issued was condition #1.

Mr. Cranse said that the applicant had put money into an escrow account for the ledge removal. Ms. Smith said that was correct. She said that Mr. Carriveau was to arrange for that ledge removal. Mr. Carriveau said that work has not been done, but he intends to have the ledge removed. He added that the narrative describes the barrier between the two properties, but the site plan does not reflect that.

Mr. O'Connell asked if anyone had anything else to add. No one did.

Mr. Lindley made a motion that the hearing be closed and the matter be taken up in a deliberative session. Mr. Bresette seconded the motion. Mr. O'Connell asked what the time line for a decision was. Ms. Smith said that the Board has 45 days from the close of the hearing. The motion was approved unanimously.

### **Adjournment**

Mr. Lindley made a motion that the meeting be adjourned. Mr. Cranse seconded the motion. The motion was approved unanimously. The meeting concluded 9:30 p.m.

Respectfully submitted,

Stephanie Smith  
Administrative Officer

*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.*

*Transcribed by Kathleen Swigon*