

**Montpelier Development Review Board**  
**January 17, 2006**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** Philip Zalinger, Chair; Kevin O’Connell, Vice-Chair; Alan Blakeman; Douglas Bresette; Roger Cranse; Jack Lindley; Guy Teschmacher;

**Call to Order**

The meeting was called to order by Mr. Zalinger.

**Minutes**

Mr. Lindley made a motion that the minutes of the January 3, 2006 meeting be approved. Mr. Bresette seconded the motion. The motion was approved by a vote of 6-0 (Mr. Blakeman arrived after the vote).

**I. Design Review**

- Property Address: 5 School Street  
Applicant: NW Sign Industries  
Property Owner: Banknorth Group Incorporated  
Zone: CB-I/DCD
- Retention of a 5.57 square foot wall sign
  - DRC recommended approval with adjustments

Mr. Zalinger asked whether the Board wanted to consider this application without any representative of the applicant present. Mr. Bresette said that he thought that the application was small enough that the Board could go ahead with the review. The other Board members agreed.

Ms. Smith explained that the existing 5.57 square foot “24 Hour ATM” sign that was proposed to be removed as part of a previous application (permit # 20050-140) had not been removed. She said that the property owner now wished to keep the sign in place. Ms. Smith said that the DRC had recommended that the application be adjusted to remove the “24 Hour” part of the sign since they felt that portion of the sign was redundant. Mr. Blakeman noted that some ATMs are not operated on a 24-hour basis. Mr. Cranse said that he did not understand why the DRC proposed the adjustment. Mr. Zalinger said that the DRC was trying to reduce the amount of signage on the small building. Mr. Teschmacher said that the sign might actually be more confusing to people since vehicles cannot drive in at that location. Mr. Cranse said that he could accept the DRC recommendations. Ms. Smith said that she described the adjustments to both the applicant and the property owner in a letter. She said that the applicant had indicated by telephone that the adjustments were acceptable.

Mr. O’Connell made a motion that the Board grant design review approval with the adjustments recommended by the DRC. Mr. Blakeman seconded the motion. The motion was approved unanimously.

**II. Public Hearing-Request for Ratification of a Previously Approved Subdivision**

- Property Address: 356 River Street  
Applicant: Robin Cody Nicholson  
Property Owner: Cody Chevrolet  
Zone: GB
- Request to ratify a two-lot subdivision previously approved by the Montpelier Planning Commission on 9/17/99 with conditions. The plat was never recorded after the Commission’s approval as required.

Interested Parties: Robin Cody Nicholson, Mark Nicholson

Ms. Smith explained that a two-lot subdivision of the subject property was previously approved by the Planning Commission on September 17, 1999. She said that the approval was conditioned upon the subsequent filing of a plat, but that condition was not met. Ms. Smith noted that a plat was recorded in the Land Records on May 20, 1999, prior to the Planning Commission's approval. She said that plan was the same as the plan that was reviewed by the Planning Commission, except for meeting the Planning Commission's conditions, which included the filing of the plat.

Mr. Zalinger said that he thought that the DRB should review this application as a new subdivision because the prior plat was not signed and did not meet the conditions of the Planning Commission's approval. Mr. Nicholson said that the property owner has been receiving two tax bills for the property. He said that this issue surfaced during a title search. Mr. Zalinger said that the review process for the minor subdivision could be condensed. Ms. Smith said that the conditional and final reviews could be combined, but the sketch plan review could not be combined. Mr. Zalinger said that he thought that the Board should proceed with the sketch plan review and that the conditional and final review could occur as soon as the next meeting on February 6. Ms. Smith said that she would have to call the newspaper to see if it was possible to add the application to the warning for the next meeting. Mr. Zalinger said that he thought that this would be a more conclusive process for the applicant. He said that the Board's feedback on the sketch plan review was to suggest that the applicant return for the conditional and final review as soon as possible.

## **II. Public Hearing-Appeal**

Property Address: 58-60 College Street  
Appellant: David A. Tesini  
Permittee/Owner: Peter DeMasi  
Zone: HDR/MDR

- Appeal of the Administrative Officer's issuance of zoning permit # 20050-183

Interested Parties: Peter DeMasi, Erin Gilmore, Dan Tesini, and Andrea McManus

Ms. Smith stepped down from the Board's table as the Board was considering an appeal of the Administrative Officer's issuance of zoning permit 20050-183.

The Board asked Ms. Smith to explain the situation. Ms. Smith said that the basis of the appeal is outlined in a letter from Dr. Tesini's attorney that was provided to the Board members. Ms. Smith summarized the issues from that letter as follows:

- a. The issuance of the zoning permit does not comply with the standards of Article 5. The application, as submitted, is incomplete and involves inaccuracies and misrepresentations;
- b. The zoning permit does not comply with Section 804, Article 8, including but not limited to access and circulation for fire and emergency vehicles and dimensional requirements;
- c. The zoning permit does not comply with Section 805, including but not limited to design, setbacks, topographical information, drainage, dimensional requirements and/or safety; and
- d. On 6/16/04 zoning permit #20040-094 was issued to Peter DeMasi. The permit contained numerous requirements which have not been complied with.

Ms. Smith said that her decision to issue the permit was based on the plan dated November 8, 2005, prepared by Thomas Leytham and a letter from Knight Engineering. Ms. Smith said that it was her opinion that the materials met the requirements for the issuance of a permit. The TRC agreed that the plan as proposed "generally" met the standards outlined in section 804 and 805. Ms. Smith agreed that the property is in violation with the permit issued in 2004 because the parking is not constructed; however the applicant did apply for a zoning permit to reconfigure

the parking layout, which is the permit under appeal. Mr. Cranse asked if the parking scheme under appeal was shown in drawing "A." Ms. Smith said that was correct. She added that there was also a letter on the Board members' desks from the architect, Thomas Leytham.

Erin Gilmore said that she was an attorney representing Mr. Tesini. Mr. Zalinger asked her to provide a synopsis of her January 17, 2006 letter. He asked whether there were any factual disputes. Ms. Gilmore said that it does not appear that the proposed parking will allow the site to be accessible by emergency vehicles. She said that Dr. Tesini measured the width of the driveway from the bumper of a parked car to the building and found the width to be 9'6". Mr. Zalinger said that the Board relies on the submitted plans for its determinations. He said that the Board does not go out to measure parking dimensions with snow buildup. Ms. Gilmore said that section 504 of the ordinance requires a plan showing dimensions, but the plan does not show dimensions. She said that section 804.A.4 requires a 12-foot wide driveway, but the driveway does not appear to be that wide. She said that approval of the permit would constitute the issuance of a variance, but the application would have to comply with the variance procedures. Ms. Gilmore said that the plan does not comply with 804.C.2 because the parking spaces are not separated adequately from the access lanes. She said that the plan shows two access lanes, but it is apparently the practice of the residents of 60 College Street to park in the access lane near that property.

Ms. Gilmore said that 805.A.1 requires that off-street parking be designed for all weather conditions. She said that the parking lot is ice covered and the parking slopes into the driveway, creating an unsafe condition. She said that 805.C allows angle parking in accordance with ITE guidelines. She said that, if those guidelines require an aisle width of more than 9 feet, they have not been met on the site. Ms. Gilmore said that Dr. Tesini is most concerned with the slope at the rear of the property where a landslide occurred. Ms. Gilmore said that the October 4, 2005 letter from Knight Engineering recommended stabilization of the bank within the next two to three years. She said that the stabilization is needed to protect adjacent structures, but the slope has not yet been stabilized. Mr. Zalinger asked how that issue was within the Development Review Board's jurisdiction. Ms. Gilmore said that the zoning regulations provide for safety concerns. She noted that two cars will be parked at the edge of the slope.

Ms. Smith noted that Tom McArdle, the Assistant Director of Public Works for Montpelier, was present if the Board had questions for him. Ms. Smith said that 804 states that the applications shall "generally" comply with the AOT's B.71 standard for Residential Drives. She said that allows the Technical Review Committee to review and approve proposals that generally comply with standards. Ms. Smith said that the guidelines for angle parking that she used in her review required an aisle width of 10 feet for 30 degree angle parking. She said that, based on the graphic scale, the aisle width shown on the plan is about 10 feet. She added that the guidelines for 30 degree angle parking provide for 9' x 17' parking spaces. Ms. Smith said that the residents of 60 College Street should not be parking in the drive aisle. She noted that the parking improvements have not been completed due to the appeal. She said that she would not expect to have parking in the drive aisle once the parking improvements are completed. Mr. Zalinger asked Ms. Smith for her response to the issue about the plan showing dimensions. Ms. Smith said that the plan shows dimensions on the property lines, frontage and setbacks. She said that the travel aisle and parking spaces are shown as being drawn to scale, but the exact dimensions are not noted.

Mr. Bresette asked what the minimum requirement for emergency access was. Tom McArdle said that emergency vehicles are slightly wider than the typical car. He said that the Fire Chief would be the person to determine how the fire company would access the building. Mr. Bresette said that it seemed that it would be difficult for emergency vehicles to pull through the aisles to reach the back of the building if four full-sized cars were parked in the angle spaces. Mr. Lindley asked whether the Fire Chief was involved in the Technical Review Committee's review of the plan. Mr. McArdle said that he was. Mr. Bresette said that he was also concerned with how close to the property line the railroad ties would be. Mr. McArdle said that the plan includes a cross-section showing the location of the railroad ties. He said that railroad ties are often placed within the parking spaces to recognize that the car bumpers

will overhang the ties by about 18 inches. He said that, in this case, the ties were used to make up for a grade difference between the two properties and were backed off from the property line. Ms. Gilmore said that there was a letter from NECI, the adjacent property, noting that there should be five feet from the building overhang to the parking spaces to address falling ice from the roof. Mr. McArdle said that the Technical Review Committee took that to mean that the parking could be up to the property since the building was about five feet from the property line. He said that the representation from the plan was that the building and the property line is based on a survey, and represented on the plans within +/- 1' accuracy.

Mr. Lindley said that it appeared that there were two driveways to the rear of the building. Mr. McArdle said that it could also be described as one U-shaped drive. Mr. Bresette asked how many parking spaces were required. Ms. Smith said that a combined total of six spaces were required for the two existing buildings that were currently two-family homes.

Mr. DeMasi said that Tom Leytham took measurements on the site. Mr. DeMasi said that Eric Seidel, of NECI, also left him a phone message saying that there is actually an additional foot on the 58 College Street side of the line. Mr. DeMasi said that he believed that the plan is as accurate as possible.

Mr. Zalinger noted that part of the DRB packet included an agreement between Mr. DeMasi and Mr. Tesini. Mr. Zalinger said that he was loath to put the Board in the middle of a civil dispute. He said that he also did not want to get into disputes about the strict literal interpretation of application requirements when the City of Montpelier tends to apply the requirements less formally. Ms. Gilmore said that issue is that there is not enough information to allow for a full review of the zoning permit. Mr. Zalinger asked whether there was any other forum pending. Ms. Gilmore said that she was not aware of any.

Tom McArdle said that there is a municipal standard for parking spaces. He said that ITE is a guideline, not a standard. Dan Tesini said that, when parking on the site, he has had to pull his car all the way up to the NECI property line to allow for the aisle to be clear. Mr. McArdle said that part of the problem is that people are not that familiar with 30 degree angle parking as it is not that common in Montpelier. He said that it will be difficult to ensure that cars are parked at that angle on the gravel lot. Andrea McManus said that she owns the upstairs unit at 58 College Street. She said that she gets along with both property owners and would like to see the situation resolved.

Mr. Lindley made a motion that the Board take the matter up in a deliberative session. Mr. Bresette seconded the motion. The Board agreed. Mr. Zalinger closed the hearing.

## **II. Public Hearing-Conditional and Final Review of a Planned Residential Development**

Property Address: 58-60 College Street  
Applicant: Peter DeMasi  
Property/Owner: Peter DeMasi  
Zone: HDR/MDR

- Request for a Planned Residential Development consisting of a five unit multi-family development in two buildings on a single lot. Three units are proposed to be within #60 College Street and two units are proposed within #58 College Street.

Interested Persons: Peter DeMasi

Ms. Smith described the application for combined conditional and final review for a Planned Residential Development. She said that five residential units were proposed in the two existing buildings on the single lot. Mr. O'Connell asked whether the Board could take up a new application on the property while the prior application was under appeal. Mr. Zalinger said that it appeared to be a coincidence that both applications were on the agenda. Ms.

Smith said that the Board could take testimony on the application, but could delay the final decision until the appeal is resolved. Mr. O'Connell said that it would make sense to take testimony, but he would like to resolve the issue on the parking before finalizing any action on this application. The Board decided to hear testimony on the application.

Mr. Teschmacher asked how many parking spaces were required for the five unit PRD. Ms. Smith said that six spaces would be required. She said that the amount of parking would be the same for the two existing two-family dwellings and for the proposed combination of one multi-family dwelling and one two-family dwelling.

Mr. Bresette asked about the description of access to the third unit as an interior stairway within a second floor bedroom. Ms. Smith said that was an error in the staff report. She said that the proposed access is from a common hallway. Mr. DeMasi said that the stairway to the attic from the second floor bedroom will be closed off.

Ms. Smith said that Norm Lewis indicated that 58 College Street received a Certificate of Occupancy (CO) after it was moved, but 60 College Street has not received a CO. She said that the Building Inspector is waiting for information showing that there is no structural damage to the building due to the landslide and it is safe to occupy.

Mr. Zalinger said that he was not comfortable proceeding to final review while parking configuration remains unresolved. He said that he thought that the Board should adjourn the hearing on the PRD until there is a final determination of the appeal. He said that the Board could then re-open the hearing on the PRD and take additional testimony.

Mr. Teschmacher asked why the original parking of six cars in the rear of the buildings had been abandoned. Mr. DeMasi said that the study that was done showed that it made more sense to put some of the parking along the side yard. Mr. Lindley noted that the current application did not address what type of remediation will be done for the area of the landslide. He said that he hoped that the Board will hear more about that. Mr. O'Connell asked Tom McArdle what the current thinking on the slope was. Mr. McArdle said that there is a recommendation by Knight Consulting that suggested to Mr. DeMasi that some work, including drainage techniques and terracing, is needed to ensure the long term stability of the slope. Mr. McArdle said that Knight is saying that the slope has reached equilibrium now and that, if vehicle loads are reduced, it should remain in equilibrium.

Mr. O'Connell made a motion that the Board adjourn the hearing on the PRD until there is a final determination of the appeal of the parking. Mr. Blakeman seconded the motion. The Board approved the motion unanimously.

### **Other Business**

Ms. Smith reminded the Board that it needed to elect a Chair and Vice-Chair.

Mr. Cranse made a motion nominating Mr. Zalinger as Chair. Mr. O'Connell seconded the motion. The motion was approved by a vote of 6-0 with Mr. Zalinger abstaining.

Mr. Teschmacher made a motion nominating Mr. O'Connell as Vice-Chair. Mr. Cranse seconded the motion. The motion was approved by a vote of 6-0 with Mr. O'Connell abstaining.

**Adjournment**

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

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.*