

**Montpelier Development Review Board**  
**March 6, 2006**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** Philip Zalinger, Chair; Alan Blakeman; Douglas Bresette; Roger Cranse; Jack Lindley; Guy Teschmacher  
Staff: Valerie Capels

**Call to Order**

The meeting was called to order by Mr. Zalinger.

**Minutes**

Mr. Lindley made a motion that the minutes of the February 21, 2006 meeting be approved. Mr. Blakeman seconded the motion. Mr. Teschmacher said that the minutes should reflect that he was present for items #1 and #2. The board voted unanimously to adopt the minutes with that change.

**I. Consent Agenda**

**a) Design Review - Design Review**

Property Address: 27 State Street

Applicant: Stephen Everett

Property Owner: Stephen and Bonnie Everett

Zone: CB-I/DCD

- Installation of windows on the first floor of the west elevation of the existing building
- DRC recommended approval with options

Interested Parties: Stephen Everett, David Bookchin

Mr. Zalinger said that he would be recusing himself from voting on this application because he had a business relationship with the applicant. Mr. Zalinger offered to continue to serve as chair to facilitate the matter if there were no objections. Mr. Bookchin said that arrangement was acceptable.

Mr. Zalinger noted that the DRC had recommended approval of the application with options. He said the Board did not typically take testimony on these types of applications. Mr. Bookchin said he represented Mr. Jacobs, the owner of 45 State Street which adjoins the subject property. He said Mr. Jacobs' deed includes rights to fix piers into 27 State Street for the construction of a building over the river. Mr. Jacobs is opposed to the proposed windows because they will interfere with his right to construct over the river. The design review criteria at issue were criteria # 3 and #4 regarding compatibility of the proposed exterior materials with other properties and prevention of the use of incompatible exterior materials. Mr. Jacobs' rights were comparable to a situation where there was a deeded right of way. He said the DRB would not ordinarily grant a permit for construction within the right of way. Mr. Bookchin said Mr. Jacobs has the right to build over the river and affix a foundation to the applicant's building. Mr. Jacobs intends to begin the permit process for that construction. Mr. Bresette asked whether Mr. Bookchin was saying that Mr. Jacobs had the right to attach to 27 State Street at the foundation or at any point on that building. Mr. Bookchin said he believed that the right was to attach at the foundation level, but he would have to check on the specific deed language. Mr.

Blakeman questioned whether the construction was to go across the river. Mr. Bookchin said the building could be constructed over the river in a manner similar to the Rialto block across the street. Mr. Blakeman asked whether the plans for construction had any approvals. Mr. Bookchin said the proposal was not yet approved, but stated that Mr. Jacobs has deeded rights to building at that location and to affix foundations and piers into Mr. Everett's building. Mr. Lindley asked which part of Montpelier's code would prevent the DRB from approving development in a right of way. Mr. Bookchin referred to the design review criteria at 505.F.3 and 5. Mr. Zalinger read those sections of the ordinance which referred to compatibility of the proposed exterior material with other properties in the district. He said this discussion sounded similar to Mr. Jacobs' argument for the Main Street property. Mr. Bookchin said he believed that the arguments were similar. The point was that permitting windows to be installed at this first floor level was incompatible with Mr. Jacobs' deeded rights. Mr. Lindley said all that existed was air space and he did not see how the proposal could be incompatible with that.

Mr. Bresette said that Mr. Bookchin was asserting that Mr. Jacobs has the right to affix to the foundation of 27 State Street, but was not prepared to say that there were rights to attach to the building levels above the foundation. Mr. Bresette said he did not see how the property in question was an issue once the application is for work on the walls of the building. Mr. Bookchin said he believed that Mr. Jacobs' has the right to affix to the westerly side of the building. Mr. Bresette said that was not consistent with Mr. Bookchin's earlier statements. Mr. Bookchin clarified that he believed the right is to affix piers and a foundation to the westerly side of 27 State Street. Mr. Teschmacher said the reference to piers and foundations seemed to refer to parts of the building below the first floor. Mr. Bresette said it sounded as though Mr. Jacobs could not nail his building to 27 State Street above the foundation level. Mr. Bookchin said that he did not agree with that conclusion. Mr. Teschmacher said that he would like to see the deed containing the language.

Mr. Blakeman asked Mr. Bookchin whether the lintels around the windows would have to be taken down because Mr. Jacobs might be constructing. Mr. Bookchin said he believed the deed would require that they be removed when Mr. Jacobs constructs. Mr. Jacobs has expressed his plans to move ahead with the project. Mr. Zalinger said he thought it would be fair to draw parameters around Mr. Bookchin's testimony since he was present as Mr. Jacobs' representative and there was not foundation for the representation of his client's intentions. Mr. Bookchin said an application had not yet been submitted. Mr. Cranse said the design review criteria refer specifically to compatibility with other buildings rather than with deeded rights. He did not think Mr. Bookchin's argument held up.

Mr. Lindley asked whether the applicant had any problems with the DRC's options. Mr. Everett said he was proposing the option of installing two sets of doubled windows and one single window. Mr. Everett referred to a photograph that he said showed a window existed on the first floor in 1850. He was trying to install a window at that general location and to add some others. He was trying to keep the look of the original windows, but would not be using the arched trim. Mr. Teschmacher asked whether the deed language went back to 1850. Mr. Everett said the river rights were passed to the bank in the 1930's.

Mr. Zalinger said the DRB's charge is to review the application with the DRC recommendations. He read the pertinent section of the ordinance. Mr. Zalinger noted that the DRC evaluation form for the

application included Mr. Everett as a participating member of the DRC. Mr. Everett said he was present at the DRC meeting, but did not participate in the review of his application.

Mr. Blakeman asked whether the DRC criteria regarding respect for view corridors related to the vista of the river at this location. Mr. Everett said he was before the board as an applicant. Mr. Bresette noted that the DRC evaluation indicated that the windows would not detract from the view.

MOTION: Mr. Lindley made a motion that the board grant design review approval for option one of the application for 27 State Street. Mr. Cranse seconded the motion. The board voted 5-0 to approve the motion with Mr. Zalinger recusing from the vote.

**b) Design Review - Design Review**

Property Address: 11 West Street  
Applicant: Willey Construction, Inc.  
Property Owner: RKG, LLC  
Zone: HDR/DCD

- Construction of a five space parking lot at the rear of Howland Hall for use by occupants of 9 and 11 West Street
- DRC will continue its review on March 7, 2006

Ms. Capels said that the DRC had continued its review of this application.

**II. Public Hearing: Site Plan Review for a Minor Amendment to a Planned residential Development**

Property Address: 61 College Street  
Applicant: Robert Falker  
Property Owner: Robert Falker  
Zone: MDR/HDR

- The Administrative Officer, upon further review of the submitted application materials, has determined that site plan review in accordance with Section 506 and conditional use review as required under Section 302.B of the Montpelier Zoning and Subdivision Regulations, is not required. The application was warned in error as a public hearing.

Ms. Capels said that this item was on the agenda because it was warned in error. The permit had been issued by the administrative officer that day and advised the public that the 15-day appeal period had begun.

**III. Continuation of 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 and two units within #58 College Street.

Ms. Capels said this application was tabled in January pending the outcome of appeal of the Administrative Officer's approval of the parking plan for the site. That issue has since been resolved. Ms. Capels directed the board's attention to the fact that the Building Inspector is concerned that documentation has not been provided to demonstrate that the building is habitable. She said the staff report included recommendations for possible actions to address this.

Mr. DeMasi said that special engineers, Dufresne and Henry, inspected the building in the week preceding the meeting. He said the engineer told him that the building had suffered no damage due to the landslide. The engineer had some recommendations that were unrelated to the slide. Mr. DeMasi said he expects to receive a written report this week and will provide a copy to Chief Lewis and the City. Chief Lewis said Mr. DeMasi sent him an email request to contact his engineer. Chief Lewis said he did not do that and had no information beyond that which Mr. DeMasi had just provided.

Mr. Zalinger said the question for the DRB is whether structural integrity issues are relevant to its authority under the PUD review procedures. He noted that the staff provided two recommended alternatives for the board. Mr. Lindley asked whether the engineer's recommendations would result in any change to the design of the PUD. Mr. DeMasi said they would not. Mr. Lindley said that this seemed to be an administrative matter outside of the DRB's purview. Mr. Zalinger said it sounded as though Mr. Lindley was recommending the board go ahead with its review and request the submission of documentation subsequent to its action. Mr. Lindley said that was correct. Mr. Zalinger said the documentation would be a condition of approval and that the approval would not take effect until the documentation was received. Chief Lewis said he had no problem with an approval conditioned on the provision of the engineer's documentation that the remaining property is safe to re-occupy and to undergo further modifications. He would not issue a building permit until the issue is resolved.

Mr. Teschmacher asked which parking plan was now proposed. Mr. DeMasi said he was proposing the plan shown as drawing "A." Mr. Zalinger said the parking plan was previously adjudicated as an appeal of the Administrative Officer's approval.

MOTION: Mr. Lindley made a motion that the board grant conditional and final review of the planned residential development with the staff's recommendations #1 through #6 and including the certification required by the fire chief and the \$250 park impact fee. Mr. Bresette seconded the motion. Mr. Zalinger proposed a friendly amendment to specify that the approval is conditioned upon staff recommendation #1b. Mr. Lindley and Mr. Bresette accepted the amendment. Mr. Blakeman said he was still concerned about the potential for additional landslides. Mr. DeMasi said the engineer determined that the slide put the soil in equilibrium for at least the next two to three years. The Board voted 6-0 to approve the motion.

### **III. Continuation of Site Plan and Design Review**

Property Address: 22 Court Street

Applicant: Vermont Mutual Insurance Company

Property Owner: Vermont Mutual Insurance Company

Zone: CB-II/DCD

- Demolition of an existing two-family structure
- Review of Parker Restoration report and economic analysis
- Expansion of Parking Lot

Participating Parties: Rick DeWolfe, Jon Anderson, Charles Martin, Margot George

Mr. Teschmacher recused himself. Mr. Zalinger noted that Mr. Teschmacher's recusal meant that there would only be five members of the board reviewing the application and four affirmative votes were needed for an approval.

Mr. Martin said the board previously asked him for his opinion of the quality of the apartments in the 22 Court Street building. He asked a former resident, Robin Griggs, to provide information regarding that question. Ms. Griggs said she lived at 22 Court Street for 10 to 12 years until Vermont Mutual evicted her. She said it was one of the best places she has lived. The space was roomy and the L-shaped bathroom was unique, but was no problem to use.

Ms. George said she was speaking as the owner of the Thrush Tavern (107 State Street) in the neighborhood of the property in question. She provided written comments to the board. She said that, at the last meeting, it was not clear to her who had party-status and whether there could be speakers in addition to those who were designated as parties. Ms. George said she reviewed the costs of major renovations she has done to the Thrush building. She determined that the best use of 22 Court Street would be an office building because the renovations would not have to meet all of the residential fire code requirements like fire doors and a sprinkler system. The economics would work if heated office space was created on the first and second floors of the building to rent at \$15 per square foot. Her letter describes additional concerns about the previously presented estimates and costs of renovations. She noted that Mr. Anderson did not refute the numbers because they were so high. She had a quote of \$23,000 for the exterior painting and that similar discrepancies in the numbers might seem small but would add up to enough savings to make the project work economically. She said the renovation project could be done for \$70 per square foot and she believed the location would be excellent for an office use. There is enough room for office parking in the rear of the building.

MOTION: Mr. Lindley made a motion to close the hearing on the demolition request. Mr. Cranse seconded the motion. Mr. Zalinger explained that the board had decided not to close the record at the end of its last meeting because it wanted to consider the evidence and facts that had been presented. He said Mr. Lindley's motion would close the record. Mr. Zalinger asked if anyone else had evidence to offer. There was no response. The board approved the motion to close the hearing on the demolition request by a vote of 5-0 with Mr. Teschmacher recusing.

Mr. Zalinger recommended that the board go into a deliberative session on the demolition request. The board agreed to go into a deliberative session and announce the results when the session was complete. The board recessed to go into deliberative session. Upon the board's return from deliberations, Mr. Zalinger read the following statement:

"The DRB has voted 5-0 to grant a permit for the demolition of the building at 22 Court Street. This vote should not, however, be interpreted as unqualified support for this outcome. To the contrary, the DRB finds itself uncomfortably positioned between the troubling facts of this case and an ordinance provision with laudable goals, but thin substance. The independent evidence presented does enable the DRB to conclude that preservation and renovation of this building is not economically viable. Restoration for use either as a multi-unit residential dwelling or as an office building is not practical from

a commercial perspective as even the most wildly optimistic outlines fail to recognize the potential difficulty in locating and obtaining capital and financing for a project such as this. The DRB reluctantly finds neither alternative is feasible. Our reluctance in reaching this conclusion derives from the existing condition of the structure which represents a significant obstacle to renovation and preservation in an economically viable fashion. Unfortunately, under the ordinance, our determination must be made on the economic evidence and does not authorize consideration of the reasons why or how the existing condition came to be. Benign neglect such as that practiced in the instant case cannot justify the DRB expanding the scope and breadth of section 505.G beyond its plain language. However, we are free to express our disappointment that the goal of the ordinance may be frustrated and the outcome predetermined by an owner's intentional conduct. Certainly, the economic viability of renovating the structure in 2006 was not determined on a level playing field as it might have been if the structure had not been abandoned, unoccupied and neglected for several years. In the view of the DRB, section 505.G merits review, reconsideration and amendment by the Planning Commission and the City Council if it is expected to play a significant role in the retention and preservation of historic structures in the face of determined opposition from the owner of the property."

Mr. Zalinger said the board would make findings and draw conclusions in its final determination on this matter. The next step would be the review of the site plan. Mr. DeWolfe described the site plan. He said that 31 new parking spaces would replace 22 existing spaces for a net increase of 11 spaces. The parking lot will be sloped and a ready-rock (or equivalent material) retaining wall will be installed. The maximum height of the wall will be just under 6 feet. A six-foot high cedar fence was proposed between 22 Court Street and 20 Court Street and eight new maple trees will be planted on the site. Mr. Bresette said there appeared to be quite a drop-off at the triangular areas and asked whether there would be retaining structures there. Mr. DeWolfe said that there will be grassed slopes at those locations.

Mr. Cranse asked whether the plans were the same as those provided for the June 20, 2005 meeting. Mr. DeWolfe said they were and that the last revision date should be June 1, 2005. He provided an extra copy to Ms. Capels for the file. Mr. Zalinger said he was not comfortable making a final decision on the site plan at that time. He said the board member's previous visits to the site had been focused on the demolition issue. He would like the opportunity to digest the site plan and take another look at the site. Mr. Cranse agreed and said he would like a new staff report with an analysis of the site plan standards. Mr. Lindley said he would like to continue the hearing to the next meeting to allow the board time to focus on the plan. Mr. DeWolfe said he could not be available on March 20 and asked that the application be placed on the April 3 agenda before the other application that is scheduled for that date.

Mr. Martin said that the buffer requirements of 807.C of the zoning regulations were not met because the parking area is right up to the property line. He added that there was also supposed to be a ten-foot buffer zone. Mr. Zalinger said that it would be better if the objections were documented for the DRB to review. Mr. Martin said he did not have a site plan. Mr. DeWolfe said he could provide a copy. Ms. Capels said that Mr. Martin could also come by the office to review the file and the staff could make copies. Mr. Zalinger said that, as a party, Mr. Martin is entitled to the information. Ms. George asked whether the DRB was reviewing the whole site or just the corner of the site where the work was occurring. She said the illustration of the existing parking lot does not comport to the actual sizes and locations of parking spaces. Mr. Martin asked whether the granting of the 505.G demolition permit was a final determination. Mr. Zalinger said there

is not final determination until it is issued in writing. The demolition permit will not be issued until the written decision is issued.

The board agreed to continue the application to April 3, 2006. They discussed the possibility of a full agenda at the April 3 meeting and whether there would be enough time to take up the application. Mr. Zalinger said that the application would be continued to April 3, 2006 and that the agenda of that meeting might have to be adjusted at the meeting.

**Other**

Ms. Capels advised the board members that copies of the draft zoning regulations had been placed on their desks. She went over the schedule for action on the draft proposal.

**Adjournment**

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

Respectfully submitted,

Valerie Capels  
Planning and Community Development Director

*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.*