

Montpelier Development Review Board
July 5, 2006
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Kevin O'Connell, Vice Chair; Alan Blakeman; Roger Cranse; Jack Lindley; Guy Teschmacher; Ylian Snyder; and Kenneth Matzner.
Staff: Kathy Swigon.

Call to Order:

The meeting was called to order by Mr. Zalinger.

Minutes:

Mr. Blake man made a motion that the minutes of the June 19, 2006 meeting be acted as drafted. Guy Teschmacher seconded the motion. The motion was approved 7-0.

I. Consent Agenda

a. Design & Site Plan Review – CB-I/DCD

Property Address: 87 Barre Street

Applicant: Claire Fitts

- o Addition of two windows and replacement of door
- o DRC recommends approval with adjustments and optional changes

Claire Fitts told the Development Review Board that she had owned Butterfly Bakery for two and a half years. She said she had rented kitchens in the past, including the Coffee Corner and a kitchen outside of town. She now wants to own her own bakery. She sells wholesale to mostly independent and natural food stores in Vermont, including the Hunger Mt. Coop. She hopes to have a small retail space of about 24 square feet, which will include a counter and cash register.

Mr. Zalinger asked if there were any questions from Board members. If not, they will go through the criteria. Mr. Zalinger said the Design Review Committee recommended approval of her application with some adjustments, which included siting of the propane tank and a railing on the entrance to the porch. Claire said she was in agreement with the adjustments the DRC had suggested. Mr. Zalinger said the Site Plan Review Criteria requires the DRB to review certain criteria about the site plan and operations as it impacts the zoning ordinance.

Relevant Site Plan Review Criteria

1. *Pedestrian Access and Circulation [803]:* Mr. Zalinger said the photograph he sees shows the rear of the building. There is an existing sidewalk on Barre Street. The applicant has indicated that pedestrians will access the site through the pave driveway and parking area.

2. *Parking [805 and 807]: Section 805.H provides that changes of use involving any amount of existing floor space in the CB-I zone shall not be subject to the off-street parking requirements.* Claire Fitts said the Ribolini's had allotted her two parking spaces, but off-street parking is not required because of the location. The two parking spaces meet the zoning requirements. She said she is the only employee at the baker who would be using a parking space. Mr. Zalinger inquired if the space would accommodate a tractor trailer. Claire said she receives deliveries from a tractor trailer, but Barre Street Beverage accommodates a tractor trailer.
3. *Landscaping and Screening [808]:* No landscaping is proposed.
4. *Lighting [810]:* Claire said she didn't propose any outdoor lighting because there is adequate lighting already there. Mr. Zalinger said if she proposed any in the future that the DRC had recommended using cut-off fixtures.

Mr. Blakeman moved the approval of the site plan for Butterfly Bakery at 87 Barre Street with the design review adjustments. Guy Teschmacher seconded the motion. The motion was approved 7-0.

b. Design Review & Site Plan Review – CB-I/DCD

Property Address: 4 Main Street

Applicant: Green Mountain Transit Agency

- Removal of existing shelter and pad to be replaced with larger pad and timber framed shelter;
- DRC recommends approval with adjustments and optional changes.

Interested Parties: Bill Jordan, Montpelier Tree Board
Tom Peterson, Consultant for Green Mountain Transit
Jean Vissering, Montpelier Tree Board

Mr. Zalinger swore in Bill Jordan and Tom Peterson before they presented testimony to the Development Review Board. He asked Kathy Swigon to give a brief background of the application to the DRB.

Ms. Swigon said this is an application for Design Review and Site Plan review for the replacement of the existing bus shelter at 4 Main Street. The shelter is located partly in the right of way of Main Street and partly on the Pomerleau property, the owners of 4 Main Street. The application has been submitted in conjunction with a proposal from the Montpelier Tree Board. Some of the plantings that are there are going to be impacted by the replacement. The plantings presently there are in pretty bad shape, and the Tree Board has developed a proposal which is included in this application. The Design Review Committee did review it and recommended an adjustment.

Mr. Zalinger said the DRC recommended approval that the shelter may include a small sign showing bus routes by the side of the shelter. He asked Tom Peterson if that was

consistent with their practices and he said yes. They also recommended a trash container for refuse and cigarettes. Mr. Zalinger inquired about the city trash containers. Ms. Swigon said there is a city trash barrel at the site. Apparently, some of the shelters around Vermont have these receptacles for cigarettes, and the idea was that better inside the shelter than on the pavement.

Mr. Zalinger asked if the Tree Board wanted to be heard on the application. Jean Vissering was sworn in by Mr. Zalinger to present her testimony before the DRB. Ms. Vissering said this is one of the gateway areas to Montpelier, and we focused on this area because it needed some improvements. She said they had some recommendations from the landscape architect with whom they had contracted. She said they tried to focus on the Shaw's area for a number of reasons. She said one of the reasons they partnered with Green Mountain Transit Agency was because of their willingness to work with them. This is a very high profile area. This bus stop is functional but certainly not the most attractive, and the plantings are in bad condition right now.

Mr. Zalinger asked if the Tree Board agreed with the Green Mountain Transit Authority's proposal, and they said yes. He reminded folks the DRB only considers the design review components of the application, and as long as the applicant is in agreement with the suggestions made by the Design Review Committee we customarily just adopt the DRC's view of the matter. We like to minimize redundancy in the review process. Mr. Zalinger said the DRB had identified two relevant site plan criteria.

Relevant Site Plan Criteria

1. *Pedestrian Access and Circulation [803]*: It is clear that there will be adequate pedestrian access and circulation. Obviously, it abuts a very well used sidewalk in the downtown area and Shaw's parking lot.
2. *Landscaping and Screening [808]*: This is a criteria I think the Board would like to hear some testimony on the landscaping. Mr. Zalinger said he appreciated the Tree Board's interest in a commercial area.

Jack Lindley said he was concerned about the lighting of the area. It seems like a dark area for patrons to have to wait for the bus. Tom Peterson said none of their shelters have lighting. Whatever lighting is available is ambient lighting from street lights or store signage. Nationwide in the industry it is very rare for shelters to be lit because of utility issues and wiring and metering them. Some companies use solar options and we are hoping something practical will come up in the future. Jean Vissering said there is an existing light near the railroad crossing. I understand from Tom McArdle that this section of Main Street is scheduled for some additional lighting.

Roger Cranse said the landscaping plan seems to be a pleasant improvement. He inquired if there were going to be any obstacles, or sight lines, for people coming out of the Shaw's parking lot. Kathy Swigon said this had been reviewed and neither the landscaping nor shelter appeared to be an obstacle to the sight line.

Alan Blakeman wanted to know if the shelter was going to be wheelchair friendly. Mr. Peterson said a wheelchair would fit fully under the shelter. Between the benches there is at least six feet, and ADA requirements require a 5 foot circle for a wheelchair to be able to turn. A wheelchair can get fully under the shelter and benefit from the same cover as an able-bodied person.

Kenneth Matzner moved approval of the application with suggestions made by the Design Review Committee. Jack Lindley seconded the motion. The motion was approved unanimously 7 to 0.

Mr. Zalinger said the next item on the agenda is the application for a variance and design and site plan review for the Vermont State Employees' Association.

c. Public Hearing – Variance – Design & Site Plan Review – CB-II/DCD

155 State Street

Applicant: Vermont State Employees' Association

- Construction of roof over existing accessibility ramp
- DRC recommends approval with optional changes.

Interested Party: Katie Boyd

Ms. Swigon presented a brief outline of the application to the DRB. This is an application for design review, a dimensional variance, and also site plan review for the construction of a roof over an existing handicapped ramp at 155 State Street. The required rear yard setback is 20', The proposed roof will be located 18' from the rear lot line. Therefore, a 2' dimensional variance from the rear setback requirement would be required. The Design Review Committee did review this application and did recommend optional changes.

Mr. Zalinger inquired if the VSEA had reviewed the requested changes from the Design Review Committee and if they were agreement in them. Katie Boyd said yes. Mr. Zalinger asked if there were questions or comments from the Board on the design review elements. Being none, they moved onto the request for a dimensional variance in the application.

Ms. Swigon said this handicapped ramp was approved approximately two years ago, and it was missed that the roof would require a variance. Ms. Boyd said the handicapped ramp was originally designed to go straight out to the parking lot and during the construction the architect and contractor changed the plan. When they planned the ramp they did not plan for the roof.

Mr. Zalinger said the variance criteria require the DRB to make affirmative findings on a variety of criteria.

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. We know that the lot was created and the main structure was constructed well in accord with the zoning ordinance, so the sighting of the property on the lot was done well within 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 property. It is clear that a safe and appropriate handicapped entrance constitutes a reasonable use of the property. The variance is for the ramp as well as the roof. Ms. Swigon said the ramp exists but didn't have a variance. She said she didn't see any reason why we couldn't include the ramp with the roof in this variance to make everything clear.*
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. It is the siting of the structure on the parcel and there was no other decision made by the VSEA.*
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 Board has heard testimony that there will be change in the use of the property. This ramp with a roof over it will not be detrimental to the public welfare. In fact, it will enhance the public welfare. There have been no comments from neighbors.*
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. Mr. Zalinger asked Ms. Boyd if she knew if the design and dimensions of the ramp are in conformance with the federal regulations. Ms. Boyd said she knew the ramp was. Mr. Zalinger told her the DRB needed to find that every effort had been made to minimize the requirements. Then, if the ramp had been built to ADA specifications, then it would be the minimum variance needed.*
6. *That the variance will not result in the initiation of a nonconforming use of land. The testimony shows that this will continue to be the headquarters of the Vermont State Employees Association.*

Jack Lindley moved that a variance be granted for 155 State Street for the setback requirements for the ramp and roof, which will be handicapped accessible, and approval for the design and site plan review with staff and Design Review Committee comments. Alan Blakeman seconded the motion. The application was approved unanimously 7-0.

Mr. Zalinger said the next item on the agenda is the Design Review, Site Plan Review and Conditional Use Review of 1 Granite Street, the National Clothes Pin Company.

**d. Public Hearing – Conditional Use Approval – Design & Site Plan Review
– RIV/DED**

1 Granite Street

Applicant: National Clothes Pin Co.

- Construction of handicap ramp to new entrance
- DRC recommends approval with adjustments and optional changes

Interested Parties:

Peter Merrill

Mark Riege

Ms. Swigon said this application is for design review, site plan review and conditional use review for the conversion of 1,149 square feet of existing manufacturing space in the clothes pin factory building on Granite Street. It will be converted to a martial arts studio. The existing building contains 13,610 square feet of manufacturing space and an artisan studio of 513 square feet. The exterior changes would consist of the addition of a handicapped ramp and a new entry door. The DRC reviewed this application and recommended some adjustments and an optional change. The conditional use is required because martial arts studios are not specifically listed in the table of uses in the ordinance. Ms. Swigon said as part of the application she made a determination that we would review this as being similar to an indoor recreational use, which is the use in the RIV district.

Kathy Swigon said there was one thing that probably Mr. Merrill would want to point out when we got to the site plan criteria. The staff's report on parking mentions that one parking spot may be lost due to the handicapped ramp location. Mr. Merrill said he thought the parking would be adequate and no parking would be lost.

Mr. Zalinger asked Mr. Merrill if he was familiar with the recommendations made by the Design Review Committee. Peter Merrill said he was. Mr. Zalinger then asked if he was in agreement with those suggestions, and he replied yes. To avoid redundant review of those elements, we will approve those changes and move on to the conditional use criteria. We have to make affirmative findings that the project does not adversely affect the following criteria.

Conditional Use Criteria

1. *The capacity of existing or planned community facilities [504].* Mr. Zalinger said it was fair to conclude the exchange in use will not adversely impact the ability of the City of Montpelier to provide services.
2. *The character of the area affected [504]:* This is an application for a change of use within an existing manufacturing building. The other uses within the area include manufacturing and commercial uses. No adverse impacts are expected to the area. None of the performance standards are affected as well.
 - a. *The performance standards in Section 814 of the ordinance [504]:*
 - 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]:* No adverse impact is expected.
 - ii. *Emit odor which is offensive at property line [814]:* None.
 - iii. *Emit dust or dirt at the property line [814]:* None.
 - iv. *Emit smoke in excess of Ringmann Chart no. 2 [814]:* None.
 - v. *Emit noxious gasses which endanger the health, comfort, safety, or welfare of any person, or which have a tendency to injury or damage property, business, or vegetation [814]:* None.
 - 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]:* None.
 - vii. *Cause fire, explosion, of safety hazard, or create electrical interference [814]:* None.
 - b. *The site plan review standards and approval conditions in Section 506.C, excluding uses exempt from site plan review [504]:*
 - c. *Compatibility with existing and proposed development for the area [504]:*
 - d. *The cumulative impact of the proposal's failure, if applicable, to fully satisfy each of the conditional use standards in Section 504.D and 812 [504]:*
 - e. *The traffic generated per unit [504]:*
 - f. *The noise generated per unit [504]:*
 - g. *Any factors judged to have an adverse impact on the area [504]:*
 - h. *The cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood [504]:*
3. *Traffic on roads and highways in the vicinity [504]:* There are some parking issues, but we'll deal with those under the site plan review.
4. *The Zoning Regulations in effect [504]:* In other words, they are in compliance with the zoning ordinance.
5. *The utilization of renewable energy resources [504]:* This is not applicable.

Mr. Zalinger said the Site Plan Review criteria that are applicable are as follows:

Relevant Site Plan Review Criteria

1. *Pedestrian Access and Circulation [803]:* This application proposes the addition of a handicapped accessible ramp. It is adjacent to an existing paved parking area. No sidewalks are proposed. Mr. Zalinger inquired whether the subdivision of the first floor and the location of the handicapped ramp restrict the use of the handicapped ramp elsewhere for first floor access. Is it adaptable for other first floor uses in the future? Can the handicapped ramp be used by multiple tenants on the first floor? Mr. Merrill said yes, it could.
2. *Lighting [810]:* The DRC recommended approval of an adjustment to the application to include a downcast light over the proposed entry door and an option for the addition of a downcast light above the handicapped ramp, if needed. Peter Merrill said he had no problem with the recommendations.
3. *Parking [805]:* Mr. Merrill said he didn't think there would be any loss of parking. He said there was 23 feet between buildings, and he has 6 inches to spare. Ms. Swigon said that pursuant to 805.H, changes of use involving any amount of existing floor space in the Riverfront District shall not be subject to the off-street parking requirements.

Alan Blakeman moved that the application for Conditional Use Approval, Design & Site Plan Review for 1 Granite Street, the National Clothes Pin Company, along with recommendations from staff and the Design Review Committee, be accepted. Jack Lindley seconded the motion. The application was approved unanimously 7-0.

Mr. Zalinger said the next item on the agenda is the application for design review for 19, 39 & 73 Main Street, the City of Montpelier.

e. Design Review – CB-I/DCD

29, 39 & 73 Main Street

Applicant: City of Montpelier

- Pedestrian lighting improvement
- DRC recommends approval as submitted

Interested Parties: Tom McArdle

Mr. Zalinger informed Tom that what the Development Review Board usually does in a case like this is ask the applicant if they are in agreement with recommendations from the Design Review Committee. He said he accepted their recommendations. He told Tom McArdle they don't review all of the criteria again because of the redundancy of review. Mr. Zalinger asked if there were questions from the Board.

Jack Lindley inquired whether this application would dovetail with the study for the overall lighting improvements of downtown. Tom said only the lighting improvements for 29, 39 & 73 Main Street required approval.

Jack Lindley moved the proposed design review approval of the application of 29, 39 & 73 Main Street; the motion was seconded by Alana Blakeman. The motion was approved unanimously 7-0.

Mr. Zalinger said the next item is the continuation of a public hearing for the planned development and conditional review for a subdivision of Capital Heights – Hebert Road/River Street.

f. Continuation of Public Hearing: Planned Development – Conditional Review for Subdivision – GB/MDR

Capital Heights – Hebert Road/River Street

Applicant: Fecteau Residential, Inc.

- Development on two lots totaling 77.8 acres
- Phase 1 – one commercial lot, 24 condo units, 5 single family units
- Phase 2 – 24 single family and 4 (four) condo units
- Phase 3 – 40 condo and 16 single family units
- Phase 4 – 46 condo units

Interested Parties:

Victor Fecteau; Dave Frothingham; Rick Dew; Bob Alexander;
Sarah Field; and Tom McArdle.

Mr. Zalinger asked them to bring the Board up to date on any changes there have been to the project since the DRB's last meeting.

Dave Frothingham said they had received a report back from Stantec regarding sewer and water conditions, and some comments back from Resource Systems Group and Graphics. He said their feeling was that for tonight they would give some information on the report from Stantec and the facts in it. There seems to be serious issues there. Mr. Zalinger asked Tom McArdle to address some of the issues for the Board.

Tom McArdle said Stantec is the engineering consultant that is providing a review service for the City of Montpelier reviewing water supply and wastewater disposal. He explained the report to the DRB. Tom said that the emergency storage volume for pump station #4 is below the minimum. That is in the report and will have to be resolved in order to accommodate the development. He said the wastewater treatment plant has adequate capacity and reserve capacity for future development. Tom said they had just received the report, and they need to study it some more and report back to the Development Review Board later.

Tom said the water flow for the average day demand is sufficient. There is adequate water flow for fire demand, but not at the pressure identified by the developer. Berlin Pond and our treatment plant is not that much higher in elevation than their high point of development. The City of Montpelier relies on a gravity system to provide pressure. Tom said they also have to supply pressure reduction because of the amount of pressure

we have. They have some options there. There are booster systems available to increase the pressure they need. The City of Montpelier has adequate capacity to serve this development, and to serve future growth. Tom pointed out that executive summary of the Santen report outlines the recommendations that need to be made to accommodate the development.

Mr. Zalinger asked Tom if it was unusual for a major project like this to list and identify areas for upgrades. Tom said this is quite common. Montpelier is generally well suited to accommodate additional growth. Much of our infrastructure has the reserve capacity to accommodate growth. It depends upon where you build. Some areas have not seen the upgrades that other areas have. In our Capital Plan we have identified this. It is not unusual at all for a project of this size to require upgrades. They are totally reliant upon municipal facilities to support the development.

Mr. Zalinger asked Tom what the process would be for the Technical Review Committee to undertake with the applicant. How does the discussion proceed? Tom said it would be the engineers and staff working on the issues. Ultimately, it would have to go to the City Manager because some of this will rely on municipal commitment of city funds, and there will be some portions of our systems which will require upgrades. Those system upgrades are constructed over a period of time. Much of our funding for wastewater comes from state and federal grants and are not funded solely with public taxpayer dollars. These things take awhile to work through the pipeline. We have already gone through eight years of sewer upgrades and water systems improvements. Although you may agree on the improvement and what needs to be done and how soon, funding sources for those improvements may not meet the applicant's schedule. It's difficult for City Council to commit any dollars. We budget on a one-year basis, and anything beyond that is capital funded.

Mr. Zalinger said this is really a parallel process. The Development Review Board has to make a decision on the project that is before us. We can include conditions that require reaching agreement with the City of Montpelier with respect to infrastructure improvements. Tom said conditions that would be tied to phasing. They have made a request to us for allocation of reserves, and that allocation has not yet been issued. Our responsibility is not to allow additional demands on our systems that are detrimental to our systems' usage. It would have to be a condition that approval is subject to resolving a sewer capacity issue.

Vic Fecteau inquired if he could use his 25,000 gallons he has in reserve for the project. Tom McArdle said part of the problem is an air locked situation and pipe flow restriction. What was granted to Berlin was based on the capacity of the wastewater treatment plant. The transmission main brings that effluent to the wastewater treatment plant. As I explained to you at our Technical Review Committee meeting, I don't know the answer to that nor would I be responsible for that aspect our department. Vic Fecteau says the town of Berlin pays for a non-user fee and now they don't have the capacity for the flow.

Mr. Zalinger reminded Mr. Fecteau that the Development Review Board has jurisdiction over the projects. When an element of the project involves a technical issue, such as this, the board members are now water and sewer commissioners or engineers of the City of Montpelier. I think your own engineers would confirm that our jurisdiction over the sum and substance of engineering inclusions and solutions really are not appropriately a matter for the DRB. In the final analysis before we approve anything, a resolution of your ability to deliver potable water and hooked up to the city system is in place is in place. We are not in charge of how that hookup occurs. That happens technically between yourself and other representatives of the City of Montpelier.

Vic Fecteau said he had been led to believe that they had capacity. Tom said he had told Vic about it as soon as he knew about it. He said the problem goes back to the Town of Berlin when they eliminated their own treatment plant and connected to the city.

Mr. Zalinger said this is an issue that he is sure will be debated and discussed between the applicant, their officials, and the responsible city officials who do this as a matter of their job description. Rick DeWolfe requested they be able to talk directly with Stantec about the study. Mr. Zalinger said as long as any correspondence was copied to the City of Montpelier he thought it would be all right. The City of Montpelier commissioned the study, but the applicants paid for the study, so he thought they were entitled to have an opportunity to discuss the report and some of the assumptions based upon. Tom McArdle said as long as the City was copied on this, and it is a matter of record that it is permissible, it is acceptable to us. Mr. Zalinger requested that they present their questions to Stantec in a written memo so there would be a paper trail for the record.

Mr. DeWolfe said after a review with Stantec, we have to have a meeting with public works, the City Manager, and developers to review what is necessary.

Mr. DeWolfe said there were also some traffic issues they would like to address. Mr. Zalinger said the City of Montpelier asked and the Development Review Board required the applicant to contribute funds for the city to conduct its own traffic study. RSG conducted the analysis. Tom McArdle said RSG has a contract with the City of Montpelier to perform a Level I and Level II data analysis, with the Level II crunching the numbers dealing with background information. RSG found a number of deficiencies in the Summit report. They issued a letter as a matter of record. Summit then produced a revised report. RSG said there was still some questions, and one of them is a commercial lot and whether it is included in the traffic count. That omission or discrepancy rendered all of the numbers Tom felt were questionable. Tom said he wasn't prepared to talk about traffic. He has read the report and knows there are questions about the commercial lot. The figure Bob references in his plan and the note indicates that there is no connection between the commercial lot and the access road. The figure shows the connection to the access road and to River Street. The site plan does not show a connection to River Street, but only a connection to the access road. Tom said the commercial lot was of concern to him because surface levels between the access road and River Street were going to be fairly poor. How far back will the cars back up? There

was also a question as to whether or not the commercial lot was a part of the proposal. It isn't a part of the application.

Bob Alexander was sworn in by Chair Zalinger. Mr. Alexander said the intention of the commercial lot was to be directly connected to River Street with an opening onto the new road. He said he doesn't agree with Tom about the confusion and will work that out with the city.

Mr. Zalinger said he wasn't sure how far the Board advances the traffic question by taking bits and pieces of Mr. Alexander's testimony. If there are discussions that will take place between RSG and Summit Engineering that will distill down the analysis and address all of the issues that RSG addresses, then he isn't sure how far we advance the traffic issue tonight. Mr. Zalinger said there needs to be a dialogue between the experts so the Board and more efficiently resolve the issues and report back to us.

Mr. DeWolfe said they were now switching the topic to water supply. They said at the last meeting they proposed a plan where they connected the Phase I water line through to the end of Hebert Drive, instead of running the Phase I water line the end of the road connection to the end of Isabelle. Tonight they have Sarah Field with them who has provided the staff with a legal opinion about the right of the developer to construct that water main through the Stonewall Meadows Condominium lands. He said it is their intention at this time, and what Stantec based their review.

A neighbor from Stonewall Meadows said she wasn't aware there was a legal analysis and their attorney hadn't read it. Mr. Zalinger said he was aware of their concerns, but in all due consideration to the applicant it is sometimes unfair for an application to be faced with protestations from other interested persons that place the burden of proof upon the applicant when the applicant has come forward and have ostensibly met their burden of proof. It doesn't matter if the DRB issues a permit to do something if the property that is burdened by another's right to use or employ an easement on that property. You always have your civil remedies.

The neighbor said you asked if we had read it, and she is replying that they were unaware there was a legal opinion and, no they haven't read it.

(Changed tape)

Mr. Zalinger told the neighbor to please facilitate the exchange of the information to the Stonewall Meadows Homeowners' Association and make Ms. Fields aware of whom your counsel is. If there is a continuing question, then the Board will hear evidence on whether there is a legal question or not.

George Johnson inquired about ridge lines. He said he believed at the last meeting he had asked for an interpretation from the Board what they considered a ridgeline in the project. He said he thought he had made it clear that in his review of the rules and regulations that they were not on the ridgeline. There is a residential development above

us on Hebert Road, Berlin Street, project surrounding the development on the Sherwood Road side. Ms. Swigon said she had a little information for the Board. The rule proposal that the Council has proposed – not adopted – and are having hearings on includes a definition for “ridgeline.” The prior rules do not have a definition of ridgeline. She said she wanted to correct herself. That definition is in Article 13 and was adopted two weeks ago. It’s a new definition and she will share it with her. She said the plan shows a ridgeline as mapped in the Master Plan. The Master Plan also doesn’t have a specific definition of ridgeline. It simply has a reference.

Mr. Zalinger asked if they could agree that if there is any affect on ridgelines that it was in Phase III. Actually, it is Phase II. George Johnson said the highest point in the development is under that first unit of condos right off the recreation land. That is certainly the highest point on Mr. Fecteau’s land. Mr. Zalinger said that certainly for the Board’s purpose the discussions about the elevations is germane. It will help the Board make the determination. Mr. DeWolfe said he didn’t think there was a ridgeline issue here. He said there may be an aesthetics issue, but not a ridgeline issue. Mr. DeWolfe said they didn’t disagree that was the highest point on the property.

George Johnson said he thought Mr. DeWolfe was right when he said we have an aesthetics problem. He said he thought there was a policy problem because we need to decide what to do about ridgelines. The policy problem affects everyone in Montpelier. The aesthetics problem affects 8 or 10 homeowners who are going to have condos in their backyards. If the Board remembers the walk down that trail and down to where we parked, if you look to the left you are looking at the roof tops of the houses down there. Whatever the elevations are doesn’t matter much to me. You are standing in the woods up there and looking out at the peaks of the roofs of the houses on Isabelle Circle, and that is the aesthetics problem. We’re already looking up there, and now we are going to be looking up at a building on top of the hill. It’s going to be clearly visible. It seems this could be solved by just pushing those back off the ridgeline.

Mr. Johnson said he thought the new definition of a ridgeline is relevant – the upper most point. As Mr. DeWolfe said, it comes down over Berlin, crosses Judson, crosses Isabelle and runs parallel to Isabelle, and then ends up dropping down into that meadow. That is all part of the ridgeline according to the Montpelier Master Plan. The upper most point in that ridgeline is the point we are talking about. He said he doesn’t see the definition of a ridgeline as being a straight, continuous ridge. Ridgelines, and all sorts of topographical features, go up and down.

Roger Cranse inquired what regulation the Board is working with. Ms. Swigon said it is 815.E, hillside developments. Kathy said the section seems to be referring to a visual view of a forested hillside, and siting development that might be at the top of that hillside so it doesn’t stick up above the tree tops.

Mr. Zalinger said the question of aesthetics is a thorny issue. I can certainly understand being a resident on Isabelle Circle and having development occur in your backyard. The City Council has not drafted language into our zoning ordinance that gives the DRB the

authority to determine what is aesthetically pleasing or unpleasing. We are given authority to measure dimensions, etc. You'll find that the District 5 Environmental Commission has authority and a good deal of case law under criterion 8 to determine what the aesthetic impact of development is. We are not charged with the same substance and methodology of interpreting that. Certainly, we understand that some residents on Isabelle Circle that this is a very intrusive prospect for you. But, the flip side of the aesthetics coin is the nimbi coin, and we are charged with trying to walk a fine line between those issues and be as fair as we can.

Mr. Zalinger said he certainly was interested in learning where you could see this site from elsewhere. In other words, I suspect you could see it from the England Farm on the Towne Hill Road. Tom, perhaps you could have us some insight as to where this site is visible from in other parts of the city. Kevin Matzner said the Planning Department could do some analysis on this using some software they might have. Mr. DeWolfe said they would go through an analysis in Act 250 as to whether there is an adverse impact.

The Development Review Board then discussed the topic of open space. Mr. DeWolfe said that between the assisted living and the first single family lot, Phase I and Phase II, there will be a trail that will start from the road and go up and lead to the existing recreation area. There is an additional trail that will start in Phase III that starts beyond the condos and heads east towards U.S. Route 302, zig zagging along the hillside, following the property line over and back of Walker Ford, and then comes up through a storm water easement to the road on Phase III. It then follows the water line easement to the main road in the subdivision, at which point you can then access back through the proposed condominiums to the recreational area.

Mr. Zalinger asked if it was his position that Mr. Fecteau has the right to use the recreation area. Mr. DeWolfe said he has the right to transfer the use of that recreation area to a number of units. He said they had looked at an option of reconfiguring the recreation area. He said that at one of the meetings he attended with residents of Isabelle Circle that they weren't interested in reconfiguring the eight acres. He said that between all of the open space, plus the eight acres, they have exceeded any requirements the City of Montpelier has for open space and recreational use.

Mr. Zalinger tried to clarify this by saying that any options the applicant had for adjusting the location of those condominiums would probably best involve a reconfiguration of where the existing recreation area is. If there were some methodology the applicant could speak to folks who have the authority to make a decision, then some revisions to the site plan would probably be possible. He said speaking from experience that if you are an applicant and are faced with many other folks who have their own agendas and an inability to bring negotiating authority to the table, then the options an applicant has are limited. As neighbors none of you unilaterally have the authority to change the configuration of the recreation area. And, it may, in fact, be larger than eight acres if there were an exchange of land to change the location of the condominiums. That's another aspect of this. The DRB doesn't design projects, but can only rule on what has been presented to us. I hear Mr. DeWolfe having some very legitimate comments to

make about the other property owners – and the condominium association is different than the other landowners on Hebert Road. You have very different issues and different concerns. The applicant's hands are tied when it comes to making changes in the design. To the extent this has been opened up as a possibility, I would certainly suggest folks talk about this outside of the hearing.

Dave Keller brought up the question that the trails might be too steep for many people to use. Mr. DeWolfe said the trails are useable by people in reasonable shape. He said all of the places they are proposing to place trails now there are existing trails in the area. Dave Keller asked what plans they had for wetland crossings. Mr. DeWolfe said that all of the wetland crossings will add up to square footage that exceeds 3,000 square feet and will require an Army Corps of Engineers permit. It will not require a permit under the State of Vermont's wetland rules. They will have to go through all of the soil erosion cautions.

Mr. Johnson said the Stonewall Meadow Recreation Association met with Mr. DeWolfe and Mr. Fecteau three times. Last summer there actually was a land exchange proposed. Mr. Fecteau said he would have his surveyor stake out his property, and stake out the property we had proposed, but the stakes were never put in and we never heard from him again. We did not abandon the effort, and we want the record to reflect that.

Mr. Zalinger asked if the recreation trail was proposed for public use. Mr. Fecteau said yes but that they would not be the owners.

Chair Zalinger requested that the zoning administrator and the applicants to get together and discuss the areas which have been addressed, and submit all of the evidence you want to submit, and identify the areas completed. I think then it would help other interested persons get a feel as to where we are in the process. Then, you can update to the DRB.

Mr. Zalinger asked the Board if it made sense to continue this agenda item for a date if we don't know the progress. Let's continue this discussion on August 21st. Rick DeWolfe is going to meet with the zoning administrator and come up with a list of what needs to be addressed for evidentiary purposes. Ms. Swigon said she would be able to have a report ready for the Board in two weeks.

Mr. Zalinger said that since the next hearing is not until August 21st that the Board is going to make it incumbent upon people who are seeking other interested persons status to call the zoning office the week of July 24th to obtain copies of the updated zoning administrator's report is concluded, and hopefully it should provide you on the status of where we stand in the process. Chair Zalinger said if there was nothing further on the matter, he would like to hear a motion to continue this on August 21st.

Kenneth Matzner MOVED that the continuation of the public hearing for the Planned Development – Conditional Review for Subdivision of Capital Heights be continued on August 21, 2006. Alan Blakeman SECONDED the motion. The MOTION was approved unanimously 7-0, and will be continued on August 21st.

Other Business:

The Board members discussed vacation schedules.

Adjournment:

Jack Lindley MOVED to adjourn the meeting, with Roger Cranse SECONDING. The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Joan Clack
Planning Department & City Clerk's Office

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.