

Montpelier Development Review Board
July 17, 2006
City Council Chambers, City Hall

Subject to Review and Approval

Present: Philip Zalinger, Chair; Alan Blakeman; Roger Cranse; Ylian Snyder; Jack Lindley; Guy Teschmacher
Staff: Kathy Swigon

Call to Order:

The meeting was called to order by Mr. Zalinger.

Minutes:

It was pointed out that Kevin O'Connell was absent at the July 5, 2006 meeting and the minutes should be corrected to reflect that. Jack Lindley made a motion that the minutes of the July 5, 2006 meeting be approved with the correction. Alan Blakeman seconded the motion. The motion was approved 6-0 unanimously.

I. Design Review – CB-I/DCD

79-83 Main Street

Applicant: Heney Family Limited Partnership

- o Installation of fire escape stairs from second to third floor roofs
- o DRC recommends approval with optional changes

Guy Teschmacher RECUSED himself from this agenda item.

Mr. Zalinger noted that the applicant was not present. Jack Lindley said he felt the application was rather routine and the review should proceed. Alan Blakeman MOVED the approval with the Design Review Committee's recommendations, with Jack Lindley SECONDING the motion. The MOTION was approved unanimously 6-0.

II. Public Hearing – Conditional Use Approval – MDR

250 Main Street

Applicant: Nick & Morrissey Development, LLC

- o Change of use from office to dormitory use
- o Interested Parties: Jeff Nick, Jean Hughes, Edsel Hughes, David Abbott, David Putter, Joan Van Cour, Rod Sherman, Thomas McCormick, Pat Powell

Guy Teschmacher RECUSED himself from this agenda item.

Jeff Nick said that he acquired the subject property in May, 2006. He described the application. Mr. Zalinger said that he recalled that this property was part of the AI-PUD designation for Vermont College and other properties. He said that he would not be comfortable taking final action until that was clarified. Ms. Swigon said that she would research the question.

Roger Cranse asked how many students would occupy each room. Mr. Nick said that they would be single occupancy rooms. Jean Hughes asked what the total number of residents would be. Mr. Nick said that the total number of residents would be 47. Edsel Hughes asked whether the offices could be turned into additional dormitory rooms. Mr.

Nick said that the offices could not be used as dormitory rooms because they do not have showers.

David Putter said he is also an adjoining property owner. He wanted to know if he correctly understood that there are 13 students staying the building where there are currently only 10 bedrooms. Mr. Nick said that, moving forward it is the intention of having single occupancy in every bedroom. Mr. Putter asked if they were adding five bedrooms to the back building, and Mr. Nick said yes. Mr. Putter said plus the 10 that are there now.

Mr. Putter told the DRB that he is hearing tonight that there are 47 bedrooms. He was sent an application for 36 bedrooms, and the last time he received a set of documents from the staff there was included a letter from Mr. Nick that talked about bedrooms being on the 2nd and 3rd floor of the front building. He said after talking with Ms. Swigon today, he understood that she had asked for some clarifying information and Mr. Nick submitted a document titled Green Mt. Building Dormitory Conversion to the Planning & Development Department, dated July 12, 2006, being three days ago. He said that, if one reads this document, you see they are asking for a total of 47 bedrooms, which is different from what their application states. He asked what the process is for making sure that people who live next door have adequate notice so we can prepare when a significant change occurs in the application. He said he didn't feel that a document titled Dormitory Conversion is an amendment to an application.

Ms. Swigon said she could speak to the process as it occurred. The document that Mr. Putter is referring was submitted on July 12th, is referenced in the staff report that was issued, and is included in the packet of information that was copied both for the Board and those parties who gave written requests. She said that 17 copies of the packet of information for the application were produced and the document in question was included in all of the packets.

Mr. Nick said they initially thought they could accommodate 38. As they looked at the floor plans and made some changes they realized they could accommodate additional bedrooms; therefore, they submitted the information for 47 bedrooms. Mr. Zalinger asked Nick if this had changed between the time the application was submitted and July 12th. Nick said they realized they could accommodate more.

Mr. Zalinger asked when everything is complete, how many rooms there would be. Mr. Nick said 47. Mr. Zalinger said 15 in the annex and 32 in the Green Mt. Building, and Mr. Nick said that was correct.

Mr. Zalinger told Mr. Putter that the record continues to develop throughout the proceeding, and when the record is concluded, the Board closes the evidence, and that is the application that has been pending before them. Under the zoning ordinance, the applicant needs only to submit an application. The Administrative Officer deems it complete, and it doesn't have to be the final picture. Mr. Putter said that neighbors are entitled to notice and an opportunity to prepare, and 3 days' notice for something like this isn't adequate. Phil Zalinger said if they were asking for a continuance so they could prepare their presentation to accommodate a change which goes from 38 to 47, they could do so. Mr. Putter said he appreciated that, but he is also saying that if a request is being made to amend an application, it should say Request to Amend Application and not Green Mt. Building/Dormitory Conversion. Notice should be given. Mr. Zalinger said

they understood that. He said he would defer to the rest of the Board, but his sense is that while this is an appreciable increase in the number of beds, there are still many facts they can take as evidence tonight, and then the Board could determine whether a continuance is in order for other interested persons an opportunity to further investigate what ramifications may result in the additional number of beds.

Pat Powell, who resides at 2 Towne Street, asked if there was a manager currently living in the Green Mt. Building and the ages of the young adults who are going to be residing in the dorm. Mr. Nick said he knew the ages are slightly older than a typical college student. Ms. Powell asked if they were over 21. Mr. Nick said they weren't all over 21, but many are. He said that he did not know if there was a resident manager there now, but there would be one as part of this application. Pat Powell said one manager for that many students is not adequate.

Rod Sherman, a resident of 1 Towne Street, lives across the tarmac. He asked for a point of clarification. He heard discussion about the number of dormitory rooms and somehow that transferred into the number of pillows. He wondered if these dormitory rooms could be used for more than one student at some time if NECI wished to put more than 47 students at that site. Are we talking about rooms that can only accommodate one, or more than one, and might be used for more than one? Jeff Nick said most of the rooms are rather small, something like 100 square feet. Some are larger. If they received approval for 47, if they added any more they would be in violation of the permit. Their lease would be pretty strict as to what NECI could do. Mr. Zalinger said the permit would be 47 rooms or residents.

Thomas McCormick, a resident of 244 Main Street, said this is an interim plan for dormitory use. What is the ultimate plan? Jeff Nick said they were still devising the ultimate plan. Instead of the Green Mt. Building remaining a residential building, they want to convert that to condominiums and to add additional housing around it subject to the density allowed in the zoning ordinance. Mr. McCormick inquired what the timeframe was. Mr. Nick said he believed they would be submitting plans for that this fall or early winter.

Pat Powell asked if they were currently leasing the dormitory to NECI, and Mr. Nick said yes. Ms. Powell said that Mr. Nick did not know anything about the occupants you are leasing to, their ages, whether they are all over 21, or whether there is a manager in the building. Mr. Nick said they just took ownership of the property and could only talk about their intent for the building.

Mr. McCormick said there is some undeveloped property to the west of the Hillcrest Building. Mr. Nick said there is a wooded area. Mr. McCormick asked if there were plans to cut down the woods and build there, and Mr. Nick said not at the present time. It's not part of the condominium development. Mr. Zalinger said there is no condominium project before the Development Review Board, so the answer is not now.

Mr. Putter asked the applicant what he meant when he said future plans and density. What does he contemplate in the future in terms of density? Do you want to build there? Jeff Nick said the zoning ordinance allows for a certain number of units.

Mr. Zalinger said if there were no further comments the Board would start reviewing the conditional use criteria. The zoning ordinance requires the Development Review Board,

in assessing any application for a conditional use, to determine that the application will not adversely affect the following:

Conditional Use Criteria:

1. *Capacity of existing or planned community facilities.*

Mr. Zalinger asked Mr. Nick if he could tell the Board whether the expansion of dormitory use brings in more students to the city, or is it a realignment of the existing student body. Mr. Nick said it is a realignment of the existing student population in the city. Rod Sherman said he didn't understand how Mr. Nick could answer whether this was a realignment or expansion of the student population. He would prefer to hear directly from NECI. Jeff Nick said Eric Seidel is on vacation and unable to attend the hearing tonight. He told him they are currently housed elsewhere in the city and they would be moved here. Mr. Sherman said he would still prefer to hear directly from NECI about whether or not this is an expansion or just a realignment of existing students.

Jean Hughes said she had a question regarding parking. Will the existing parking be adequate with 47 residents? Mr. Nick said that NECI's experience is that about 75 percent of their students have vehicles and not every one of them take their individual cars when they go downtown to class. They carpool or walk.

Mrs. Hughes inquired if there were any plans to expand the lot for parking. Mr. Nick said there were no plans to expand this property for parking with this application.

Mr. Zalinger asked Ms. Swigon if the Fire Department had reviewed the application to determine whether it has the capacity to address fire fighting and a 3 story wooden structure. Ms. Swigon said the application had been reviewed by the Technical Review Committee, including a member of the Fire Department, and no issues were identified. Mr. Lindley asked if Public Works had reviewed the application regarding water and sewer capacity. Kathy Swigon said that Public Works was also represented at the TRC meeting and did not find any issues. Mr. Zalinger explained that the TRC is the Technical Review Committee and it is composed of hard working folks who make the City of Montpelier run downstairs, the Fire Department, Public Works and the Police Department. Jack Lindley inquired if this was a fully-sprinkler equipped building, and Mr. Nick said yes.

2. *Character of the area affected.* This is to determine whether the project will adversely affect the character of the area in which it is located. Mr. Nick said he doesn't believe it will. The entire property has been used for dormitories in the past. With an on-site manager they believe it will be well managed. Mr. Zalinger asked that the last time the entire property was used for dormitories was over two decades ago, and Mr. Nick said yes. Mr. Zalinger asked if it was occupied by culinary student at the time. Yes, since 1984, Mr. Nick said, and there were 38 at the time.

Pat Powell said the character of the neighborhood develops over time. Twenty years is a long time. It is a very quiet and reclusive type of neighborhood. People who choose that site to live because they want quiet and Mrs. Powell said she has observed first hand what the students have done. She said they have lived there for four years. Students don't stay very long; they come and go. You never know who is going to be there because of the way NECI runs their program. Each batch of new students have their own character. The police have been called in the past. The noise

factor is terrible. The way it is built, it is like the Hollywood Bowl. She can hear every single word that is uttered in the parking lot. The place is not air conditioned. This time of year the only place where those kids can get relief is in the parking lot, which is between our house and theirs. Because of the acoustics we can hear every single word they say. Generally when the evening comes, they get out of work, they come home, they fire up the grill, open the drinks, the music is going, and they have bonfires. Last night they decided it was the 4th of July again and there were fireworks. She said she doesn't know how old these kids are, but she is concerned. She said she had talked to NECI about the noise, asked them to find another place for these kids to get together, and it has all fallen on deaf ears. This concerns her because Mr. Nick is the manager and responsible for these young people, some of them may be under age. He doesn't even know how old they are or if there is a resident manager. Mrs. Powell said one resident manager is not enough. And, if they don't have the buildings air conditioned you need an outdoor space where they can congregate. She said she didn't think there was careful enough planning in this. She also thinks it is unfair for students who do not have a proper supervised release for their energy. It is not fair to the neighborhood that have to live with this. There have been batches of students in there who have been so bad that she had to take sleeping pills and close her windows in order to get a good night's sleep. She said she has a 12-year old daughter and a 6-year old son, and some of the residents frequently use profanities. She said none of her concerns about sound pollution are ever addressed by NECI, and she doesn't see the applicants will manage the situation any better than they are presently. She said her opinion was that the applicants hadn't thought through the reality of the way sound travels and young people behave.

Mr. Zalinger asked if Ms. Powell's experience was based upon 10 or less residents, and she replied yes. Ms. Powell said that other students often come and party there on the property, and the drinking is just about nightly.

Mr. Zalinger said that Mr. Nick in his application had addressed the character of the neighborhood. He asked if he recalled the presentation. Jeff Nick said just the number of students they were housing. Philip Zalinger read what the application said:

"...the character of the area will not be affected by the addition of the dormitory rooms as those additions will be offset by the elimination of administrative offices and the supply room."

Mr. Nick said he was speaking to the impact of the traffic coming on and off the property. It would mean a significant decrease in the number of trips. He said he did not realize the extent that the students were a problem up there. He said he would assure folks that they would address that. They had just taken ownership as of late May. He has not been there during the evening hours and will address the issue with NECI to see what they can do.

Mr. Zalinger said they were still addressing the character of the area criteria and asked if anyone else would like to speak to this issue.

David Abbott, a resident at 11 Towne Street addressed the group. He said he heard Mr. Nick say he is moving students to that campus and that is becoming a residential campus for NECI with 50 students. Understand that area is surrounded by single family homes and the introduction of a residential campus is going to change the character of that

neighborhood. You can imagine what we are going to experience if they have 50 students on that campus turning over every two weeks 52 weeks a year. Many colleges close down their residential campuses during the summer. We're talking about a five-fold increase with 50 students on that campus.

Mr. Nick said if they were wondering about long-term intent for that campus. It is not the intent for NECI to use this property for long-term use. They are looking at other options for dormitories for NECI right now that does not include this campus.

Mr. Putter said as one of the criteria for conditional use it is time to point out that the law, as he understands it, is that the applicant has the burden of showing that conditions are met. In this particular case the law presumes that it is not a permitted use. The law presumes that the dormitories are not acceptable in this particular zoning district and the burden is upon the applicant to convince the Board that it is appropriate and that it won't, among other things, adversely affect the character of the neighborhood. We have heard already that it does. When the applicant says you have my considered opinion that it won't change, I respectfully suggest that there is a qualitative difference between having administrative offices there run by mature people who are trying to maintain a good reputation for their school, to run a school that can attract students and be attractive in the community, and young adults residing there. We're trading offices for more kids. That doesn't equate, and it doesn't make common sense. There is no quantitative or qualitative difference there. I, personally, cannot believe and accept as a fact your representation that there is no adverse affect here because you are switching one for the other. You also have to consider that this is not your ordinary dormitory. You go to a dormitory because you are a kid going to school, and you park your car, and that is where you eat and go to class and the library. But in this particular case the students don't eat up there but at a different place.

Mr. Zalinger asked Mr. Nick if there were no dining facilities at the dormitory for students. Jeff Nick said there would be kitchenette facilities in the dorms for students if they choose to eat at the dorms. Mr. Putter inquired if that changed the pattern of feeding students at the school's regular facility. Mr. Nick said no, they can still eat at Vermont College if they choose to, but on weekend and the times they don't have class they may use the kitchenette facilities at the dorms. Mr. Putter said there are a whole lot of ways that your ordinary dormitory model doesn't apply here.

Mrs. Powell asked if the students were responsible for preparing their own food. Mr. Nick said yes. Mrs. Powell replied that then it was not a formal dining hall but a kitchenette with a microwave. Mrs. Powell asked if the Fire Department knew that the students would be preparing their own meals for that many students. That is different than what a dormitory would have with its own professional staff to cook. Mr. Zalinger noted that it is a sprinklered building.

Mr. McCormick said Mr. Putter pointed out the difference between your typical dormitory situation and how it affects the neighborhood. It seems that you have a lot of people living here and conducting their business elsewhere. That sounds like a rooming house because they only sleep there and all of their need will be met at other locations in the city.

Mr. Zalinger said he was going to proceed to the sub-criteria and some of the ways they measure whether the character of the area will be adversely affected is asking whether the

proposed use complies with or does not comply with the following performance standards.

- 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].* Mr. Zalinger inquired from Ms. Swigon if she knew what the standard is. She said that she did not have the decibel criteria with her. Philip Zalinger said it sounds like it would be hard to prove a certain decibel level of a gathering. He said the DRB could consider that if the number of students expands it would be logical to conclude that the noise which may result would increase. Mr. Nick replied that he understands from the testimony that there is an issue which is unacceptable to the owners of the property. He said any language that is required of us would be in the lease agreement with NECI. We would review all of this with the on-site manager to make sure these issues don't arise.
 - ii. *Emit odor which is offensive at property line [814].* Mr. Nick said he believed the only odors might be the barbecues. Dana McCarthy, a resident at 10 Towne Street, said the dumpsters stink and the banging of the dumpsters is loud. This morning they were slamming the covers at 4:00 or 5:00 o'clock.
 - iii. *Emit dust or dirt at the property line [814].* Mr. Zalinger said he didn't think anything here would emit dust or dirt at the property line. There is no adverse affect.
 - iv. *Emit smoke in excess of Ringmann Chart no. 2 [814].* That is another technical determination that is used for industrial and commercial uses. There is no adverse affect.
 - 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.* It is fair to say that this permitted use will not emit noxious gasses. Mr. Abbott said having 47 vehicles on this site raises a concern that in the winter with not all of these folks not being from this part of the United States might be inclined to step outside to warm their cars up before they drive off. He said he doesn't buy the fact that these students carpool but most of them use their own vehicles. In January or February when it is 20 below, 40 cars sitting out in the parking lot with their engines idling, and these fumes are going to come right up the hill to the neighborhood houses. If this application is allowed he said he certainly hoped there would be a condition that cars not be allowed to do this.
 - vi. *Permit lighting or signs which cause undue glare or impair the vision of drivers of motor vehicles or are offensive to the neighborhood.* Mr. Putter said that right now they don't have as many people using the place at night as they plan to have. Students coming in after a hard night of partying are going to be driving in and their headlights are going to be shining into neighbors' windows. Mr. Zalinger said it would also follow that if it is a student's residence that interior building lights would be on later and more often.
 - vii. *Cause fire, explosion, or safety hazard, or create electrical interference [814].* It's fair to assume there won't be any adverse impacts from this.
- b. *Site plan review standards in 506.C.*

Not many, or none, of the standards are applicable because there is no site plan change with this application, but the condition of the use that is being changed. There is no reconfiguration of parking or access or egress.

- c. *Hours of operation.* Mr. Zalinger said he felt it would be interesting for the Board to learn the tenancy of students and how it changes over. What is the length of the term? How long are students here in Montpelier? What is their residency here in Montpelier? We have no idea what the academic schedule for NECI actually is. The Board would like you to supplement your application with that information.
- d. *Cumulative impact of the proposed conditional use taken together with other conditional uses in the neighborhood.* Mr. Zalinger said he knew of one other conditional use at the corner of Towne Hill Road and Upper Main Street. The Zoning Board of Adjustment granted conditional use for some multi-family units. He suspects those are conditional uses in that neighborhood.
- e. *The compatibility with existing and proposed development for the area [504].* Mr. Zalinger asked Mr. Nick to try to articulate how another 37 dorm residents in the medium density residential district will be compatible. Mr. Nick felt given the site with the roads surrounding half of it and the woods at the west end and the distance between the neighbors that it would be somewhat isolated. We are hearing now that is not the case. We will endeavor to apply strict conditions in the lease that will require the residential manager to keep a tight lid on the activities that might disturb the neighbors to make it compatible. We felt there was enough distance and there weren't many homes close to the buildings.
- f. *The noise generated per unit [504].* David Putter said if you are going to trade a supply closet for a dormitory room there is certainly going to be an increase in use and an increase in noise. We're talking about young adults who have worked and studied all day, it's nighttime and they are going to release a little energy that is definitely going to increase from what it is now. Mr. Putter suggested that a five-fold increase in the number of students will definitely increase the noise level.

Mr. McCormick asked if the on-site manager was going to be an adult manager or a student. Mr. Nick said it would be an employee of NECI and not a student. Mr. McCormick also asked if there was going to be one manager or one per building. Jeff Nick said there will be one in the main building, and there may be one in the second building as well. Mr. McCormick said he felt as a condition of this approval there should be two managers, one for each building. Mr. McCormick also asked if the manager would be there 24 hours a day, 7 days a week, 52 weeks a year. Mr. Nick said there would be a manager there all of the time. There will be several people in shifts.

Mr. Abbott said in addressing the noise issue, it would be interesting to know what the schedule of the students is. Mr. Nick said he spoke with NECI about this and there are at least 3 classes they get up early for. They suggested the number of trips between 5:00 and 7:00 a.m. would be about 6. Mr. Zalinger said that would be 6 more trip noise factors they would have to

deal with. Mr. Nick said for the evening hours they could come back from working in the restaurants as late as 11:00 p.m.

- 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.* Mr. Putter said the last time they appeared before the Development Review Board residents expressed concern about the traffic coming in and out of the driveway on the premises because of the hill. He said that the applicant was understating the numbers of trips from the site. He said he didn't think it was 1.5 trips a day when you have to go elsewhere for class or to eat, go elsewhere for entertainment, and if you are buying food you have to leave to buy food. There are a lot more trips going on.

Mr. Nick said he reviewed the number of trips with NECI. It has been their experience that about 75% of the students have vehicles, and since they are carpooling and walking to class, and because parking is tight downtown they find it troublesome to drive, so they do other things to get to class. Maybe they should also address peak hour trips. With NECI's previous use we actually counted vehicles, and their a.m. peak hour trips averaged to 37 and 33 p.m. peak hour trips. The office hour use that was approved averaged 17 peak hour trips. The total peak hour trips that we are calculating based on a dormitory use and small office use is a little over 10 in the a.m. hours and a little over 14 in the p.m. hours.

Mr. Zalinger said he wasn't sure if Mr. Nick understood that the Institute of Traffic Engineers has defined both peak and hourly trips, and he was not sure that Mr. Nick was using the terms correctly. Mr. Nick said they applied the ITE figures to office use. The other peak hour trips he is referring to are actual counts that we took when NECI was occupying, and then NECI's own estimations of what the students were doing. Mr. Zalinger said a trip-end is doubled, because he who comes also goes. Mr. Zalinger asked if the numbers reflected the trip-end, and he replied yes.

Roger Cranse said in looking at the July 12th memo it has the average trips per student. Does this have both ends of the trip – coming and going? Mr. Nick said that would be 4 trips. Mr. Cranse said he was concerned about the numbers because he couldn't tell if they were leaving or coming back.

Mr. Zalinger requested that the traffic study be amplified. He said they had projects over the past two or three months and had taken testimony based on ITE studies and they can always give us an estimation that we are confident in. Many questions have been raised here, and certainly staff have raised questions in our own staff review. Mr. Nick said he would review these numbers again with NECI. Mr. Zalinger also requested an update on what the student residency schedule looks like for 47 students.

4. *Parking & Loading [805 and 807].* The required parking for the proposed use and the existing uses that will remain is 34 spaces for the banquet hall (1 space per 3 seats), 47 spaces for the dormitories (1 space per room) and 3 spaces for the offices (1 space per 250 square feet). This will result in a total of 84 spaces required when the banquet hall, dormitories and offices are all in use. The site plan shows 72 existing parking spaces. Section 805.B provides that the Development Review Board may increase or decrease the parking standards if deemed appropriate to

accommodate the parking needs of an applicant. Mr. Zalinger said they would like some evidence from the applicant as to what likelihood the contemporaneous use of all demands on parking may be. In order to go further on this, we need a better fix on what uses are going to take place there.

5. *The zoning and Subdivision Regulations in effect [504].*
6. *Provisions to protect the utilization of renewable energy resources [504].*

Mr. Zalinger said he felt it was appropriate to continue this application. The staff and DRB are also going to be looking at the AI-PUD issues because your tenant is migrating west. In view of the changes at Vermont College, it is highly likely that the Development Review Board may be faced with this question again. We need to have a clear understanding of what happens to the PUD designation. Where does it go? If Vermont College comes to us and starts subdividing its property and it all stays within a PUD and not subject to the specific restrictions of the zoning ordinance, then it becomes difficult to administer. He said that the DRB will look at this on its own and share with you anything we discover that is relevant to your application.

Mr. Zalinger suggested that the conditional use review of this application be continued to August 21, 2006.

III. Continuation of Public Hearing - Site Plan Review – GB/MDR

5 Allen Row

Applicant: Pamela Milsoevich and Anne Charbonneau

- o Change of use from single family residential to medical clinic with proposed access through 184 Berlin Street
- o Removal of an existing garage, a 1,350 sf addition, and site alterations including parking and lighting

Kathy Swigon briefed the DRB on the status of this application. She said that the staff report had been updated and new information was highlighted in bold type. She said that the stormwater management calculations had been provided and the plan updated to show proposed grading and ditching. She said that the Department of Public Works found the information acceptable to meet their concerns about stormwater runoff and site stability. She said that they did ask for a copy of a jurisdictional determination from the state that no stormwater discharge permit would be required.

She said the most substantive staff comment related to the provision of an easement for a driveway. If you recall, there are two driveways both owned by the applicant.

Ms. Swigon said there was an e-mailed letter of comment from a neighbor, and basically said she was satisfied with the plan. Her concern was lighting. There is no lighting shown along the driveway which abutted her property and she would not want to have lighting added there.

Dan Richardson said he would like to address the four substantive points in the staff report. He said that an easement can't be granted because there is a unity of ownership between the two parcels. What the applicant would propose is that there be an Easement Letter. We would ask that you make a condition of the permit that any future use of this clinic must include these easements. A second step would be to put these easements into an "Easement Letter" to be filed in the land records with both of these properties. It

wouldn't include deed language because we couldn't legally because of the unity ownership. He said he was concerned about the contrary problem that if you did create easements that indeed you might create confusion down the line when these properties were sold and someone might assume there was a valid easement when in fact there was not. They are just proposing that this letter act as notice so that in the future should these parcels become split up and sold off and the clinic use continues, the 5 Allen Row property the letter would be on file that would alert the owner and put them on notice to get a valid easement, therefore minimizing any possibility that the City of Montpelier would have to step in to enforce the permit

Mr. Zalinger inquired whether parcel B was going to be the subservient parcel, the Berlin Street parcel, and parcel A will be the dominant parcel, and it is in common ownership right now. Mr. Richardson said that is correct.

Mr. Zalinger said there is a provision in Title 24 that says that the title of pre-existing conforming lots doesn't necessarily merge. Mr. Richardson said he wasn't familiar with that statute. Mr. Zalinger said he doesn't disagree with Mr. Richardson's analysis, but there may be a provision that permits two pre-existing severable lots to continue to exist without merger. If there is no merger, then an easement could be created. Mr. Richardson said he knew there was certain language about merging in a zoning capacity, but even these are conditional to a zoning permit they are really for granting easements instead of ownership. Mr. Zalinger said a license could be granted. Mr. Richardson said they were amenable to anything that would satisfy the need. Mr. Zalinger said that the DRB is concerned about permitting a use and permitting a site plan that has one severable lot being an integral part of the project that is being approved on another lot, and if we don't have empirical evidence we can't create a condition subsequent that says later down the road you promised to create an easement. Mr. Richardson said they didn't want to create an easement that may create more problems than it solves. Certainly, down the line, if this remains a clinic it follows logically that whoever uses it they need this parking space and this right-of-way to maintain it as a clinic.

Mr. Richardson said the next issue of substantive importance is the lighting. There was some confusion as the plans developed and changed, one type of lighting was proposed and then another was substituted in. The new lights are completely enclosed in and would be on 10 foot poles, and they are indicated on the map that was submitted in three areas around the parking lot. There is one light at the interior corner where the parking spaces meet and then there are two around the outside parking spaces running perpendicular to River Street. Ms. Swigon said Mrs. Belanger's concern was the location and that it not be along that access drive. Her property abuts 184 Berlin Street, so she did not have issues with the types of lights down in the parking lot.

Mr. Richardson said the other issue about the lights is the timer. These would be turned on from dusk until about 9:30 p.m. when the last staff member would leave the clinic and shut them off for the night. Obviously, that would change with the seasons.

Mr. Richardson said the only remaining question is about the Department of Public Works requiring a copy of the jurisdictional determination. He said they would provide that to them when it comes in from the state.

Mr. Zalinger said he wasn't sure how to deal with the easement and license. I suspect counsel could draft a license that would be pertinent to the Allen Row property over the

184 Berlin Street property to be used for drive and parking purposes. The length of the license would be renewable annually so long as the Allen Row property was conducting business activities that were consistent with the site plan review approval by the Montpelier Development Review Board, and the license was recorded. So long as the Allen Row property was continued to be used, the license would remain in effect over the Berlin Street property. Mr. Richardson said he believed they could draft something similar to that to be filed. Mr. Zalinger said Allen Row needs an enforceable right to use 184 Berlin Street for the purposes that are absolutely necessary for the functioning of Allen Row.

Mr. Zalinger said that the Board could come up with a motion that would require the applicant to reach a solution for grant of permit rights at Allen Row satisfactory to staff and the city attorney, or other legal advice that the administrative officer seeks. That would give you an opportunity to make a submission, and if the administrative officer approves it, a permit would be issued. It is either that or we continue this to another date and take testimony on the subject, and he said he didn't think that was necessary. Mr. Richardson said he thought that was acceptable. He said he felt the staff and the city attorney could come up with language that would be amenable to all.

Roger Cranse MOVED approval of the Site Plan Review at 5 Allen Row and 184 Berlin Street, incorporating staff recommendations and conditioned upon the applicant reaching a solution for granting of access rights at Allen Row satisfactory to staff and the city attorney. Jack Lindley asked Mr. Cranse if he would accept a friendly amendment on condition #3 that the lights are turned out at 9:30 p.m., and Roger said yes. Jack Lindley SECONDED the motion.

Mr. Zalinger inquired if the Board would be willing to receive something less than an unequivocal jurisdictional opinion from the discharge folks at the State of Vermont. Would it be sufficient that there be evidence satisfactory to the administrative officer that stormwater discharge rules don't apply? The Board agreed. Also, could the second staff comment about sidewalks and pedestrian paths be excluded so it wouldn't be applicable? It was agreed to.

The MOTION was approved unanimously 6-0.

IV. Public Hearing – Variance – Conditional Use Approval – MDR

431 North Street

Applicants: Ray Mikus and Karen Hinkle

- Construction of a 20' x 20' deck off the first floor and a 70' x 8' deck off the back of the house.

Ms. Swigon said this application had been withdrawn by the applicant. They have redesigned and no longer require the variance.

V. Continuation of Public Hearing – Conditional Use Review & Site Plan Review – MDR

383 Sherwood Drive

Applicant: Family Center of Washington County

- Change of use 3,700 square foot building from church use to community center use on one acre parcel of land;
- Including but not limited to parking alterations, drainage, and landscaping.

Continuation of Site Plan Review – MDR

Sherwood Drive

Applicant: Family Center of Washington County

- Construction of an 8,500 square foot child care facility on a 9.2 acre parcel of undeveloped land including but not limited to construction of parking lot, landscaping, drainage, access and lighting.

Guy Teschmacher and Ylian Snyder **recused** themselves on these applications.

Ms. Swigon said the last meeting that this project was discussed was on June 19, 2006. At the time it was continued to allow the applicant to provide some additional information on a landscaping plan and to meet with the adjoining property owners to talk about buffering in relation to landscaping. She said that the applicant had submitted a memo describing the meetings that have occurred and copies of updated plans and photo simulations of what the landscaping would look like at various points of some abutting properties.

Lee Lauber said she would like to take this opportunity to draw the Board's attention to two letters, which are on your desks. The first is from Gweneth Dean, who is a resident of Sherwood Drive. She says she would be proud to have us in her neighborhood. The second letter is from John Everitt, who is the superintendent of schools for the Montpelier School District. He highlights in his letter the importance of the Family Center's relationship to the Montpelier School District and the services for preschool children in this community. For the past 25 years the Montpelier School District and the Family Center have been partners in providing and integrating a learning environment for young children with disabilities before they enter school. The superintendent's comments are that this is an important partnership and should be continued in the city of Montpelier.

Mr. Rahill described the existing vegetation on the site. He said it was important to show the amount of screening that was around the majority of the parcel. He displayed photographs showing the existing parking lot at Kingdom Hall and the border with the Gidney property. He said it was important to point out that this site is surrounded by mature trees.

Mr. Rahill showed representations of what the existing vegetation and the proposed plantings and screenings would look like from the various points bordering the site. He said that the landscape architect added some additional beds that would be planted with perennials transplanted from existing beds on the site. He said that, based upon a meeting with the Farnums, the landscape plan was revised to include a row of hemlock trees as a buffer along the property line. Mr. Rahill said that the criteria were that the shrubs not get too tall, and also that it not be as susceptible to deer browsing as the previously proposed cedars. He said that it was agreed that the hemlocks would be the better choice than yews because yews grow more slowly. Mr. Rahill said that he felt they had a good comprehensive plan. Mr. Zalinger asked Mr. Farnum what his observations of the new plan were. Mr. Farnum said the yews were a good choice, but they take too long to mature. He said that the hemlock buffer is very satisfactory as far as buffering is concerned.

Mr. Zalinger asked if Mr. Farnum was satisfied with the analysis of the entire project that the applicant has now done. Mr. Farnum said the buffering and screening has much improved, but there are still many other areas of concern. Mr. Farnum said that he had written comments to submit. He said that there remained issues including parking, the character of the neighborhood, and many other things he would like to summarize, but he would ask that other neighbors have the opportunity to speak.

Joan VanCour, a resident at 286 Sherwood Drive, said this plan looks better. She said she thought it was going to be difficult to hide the fact that there is a huge facility in a residential neighborhood, and that has been her long term concern. The fact that there are a few trees in front of it will not make a difference. She believes it is going to affect the character of the neighborhood.

Mr. Zalinger said that the Board reviewed the conditional use criteria during the hearing on June 19th. Mr. Farnum said noise was an issue that had never been discussed. He said that, although neighborhood residents have asked repeatedly about noise from the very large playground behind the child care facility, those questions have never been answered verbally or in writing. He asserted that, given the fact that the child care facility could handle up to 70 children and 18 staff adults at one time, plus playgroups and after school programs, noise will be a real problem for the neighborhood, and especially for those in the immediate vicinity, the playground will be very noisy and have a negative impact on that neighborhood.

Mr. Zalinger said that the prohibition is against the project emitting noise at the property line in excess of the standards set forth in the ordinance. It is measurable and quantifiable. Mr. Farnum inquired who monitors the noise. Mr. Zalinger said if they were dealing with a generator they would have the manufacturer's specifications that would tell them what decibel level the generator would run at. In this instance, they would have to estimate what the sound of 43.2 children playing with 5 supervisors would be at the nearest property line.

Roger Cranse said he had a copy of the ordinance. In the daytime, residential noise limits are 60 decibels, and the evening and nighttime it is 55 at the property line. Mr. Zalinger told Mr. Farnum that, while he understands there will be more noise in the playground area, it is hard for the DRB to ascertain that the noise from that use will exceed the standards set in the ordinance, although it could accept Mr. Farnum's evidence that there will be more noise. Lee Lauber pointed out that the playground is associated with the new building, but only the proposed use of the existing Kingdom Hall building requires conditional use. Mr. Farnum said that the noise criteria is also a performance standard, so all uses, permitted and otherwise, have to meet that standard. Mr. Zalinger said that conditional use review is pertinent to Kingdom Hall renovation, and that is where these specific standards are applied. He said that the applicant's response is correct, that the only noise that will come from Kingdom Hall is derived from the office use and not the playground. The playground use is on the Sherwood Drive property, which has site plan review jurisdiction. Mr. Farnum pointed out that the performance standards apply to all development.

Mr. Farnum said the City's staff analysis indicates that the Kingdom Hall site that 28 parking spaces are proposed. The required parking for the proposed Family Center use at the Kingdom Hall site is 13 parking spaces. For the child care facility the required parking for the new use is 25 spaces, so the required parking, therefore, for both parcels is 38 spaces. He said that the neighbors do not believe that such an enormous proposed lot of 66 spaces can be justified.

Mr. Farnum said that this is a quiet residential neighborhood and currently, the Kingdom Hall site is used infrequently. He said, no matter the construction style and the materials, the dimensions and bulk of the new building will be totally out of scale with the neighborhood. The church itself is a large building, and the new buildings will be more than double that size. The buildings taken together, with the enormous parking area, and the intensity of daily use, will completely dominate our residential neighborhood and destroy its residential scale and character. The development of the proposed Family Center project will not conform to the scale and character of any low density residential neighborhood. Finally, the most compelling and most important and critical evidence of all for the DRB to consider is a petition signed by 49 neighbors of Sherwood Drive, Robin Hood Circle, Forest Drive and Berlin Street requesting that the Montpelier Development Review Board deny the zoning permit applications for the Family Center of Washington County. The petition indicates that the neighborhood opposition is based on facts that: 1) the proposed development will cause unreasonable traffic congestion and unsafe conditions on existing streets, intersections and driveways; 2) the proposed buildings and uses will adversely affect the scale and character of our neighborhood; and 3) the impact of the building size, parking, noise and intense uses of other buildings are not compatible with surrounding residential development. Mr. Zalinger inquired if this was a petition that had been signed and submitted, and Mr. Farnum said absolutely back in March. This was signed by 49 residents of our neighborhood.

Lee Lauber said she believes the information the Family Center submitted in the original application, as well as follow-up addendums to that application, directly addresses the criteria that you have before you. She said they would be happy to provide any details to any of those you wish to address.

Mr. Lindley suggested that it was appropriate for a motion to close the hearing and move to deliberative session, unless anybody else has further information to add to the record. Mr. Zalinger said he believed they had asked several times if there was additional information. He said he would agree with Jack's suggestion that there being no further evidence they should close the record and take this under advisement. Mr. Zalinger said he would like the opportunity to review the evidence and the Board members deliberate amongst themselves before we reach a decision. He explained that, sometimes, the Board issues written decisions after it has deliberated. Jack Lindley MOVED that the Board close the hearing and deliberate on the matter, SECONDED by Alan Blakeman. The MOTION was approved unanimously 4-0.

Lee Lauber inquired about a time frame you contemplate deliberating and making a decision. Mr. Zalinger said the Board has 45 days from the date it closes the record.

Adjournment

Roger Cranse MOVED adjournment of the meeting, with Alan Blakeman
SECONDDING. The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Kathy Swigon
Administrative Office

Prepared by Joan Clack

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.