

**Montpelier Development Review Board**  
**October 16, 2006**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** Philip Zalinger, Chair (arrived late); Kevin O'Connell, Vice Chair; Alan Blakeman; Roger Cranse; Ylian Snyder; Jack Lindley; Kenneth Matzner; Guy Teschmacher; and Jeremy Hoff. Stephanie Smith, Staff.

**Call to Order:**

The meeting was called to order by Mr. O'Connell. He said he would chair the meeting until 8:30 when the Chair Philip Zalinger is schedule to arrive. He said he was going to defer approval of the minutes to the end of the meeting.

**Comments from the Chair:**

Mr. O'Connell said there was a full agenda for tonight's meeting so they were going to deal with the items in a very deliberative way. There is one item on the Consent Agenda, which should come off, which is 1 West Street. There are people in the audience who wish to speak on this, so this will be removed from the Consent Agenda and be treated as a regular application. Mr. Cranse said he was going to recuse himself from the 1 West Street application.

**I. Design Review – HDR/DCD**

160-162 Main Street

Applicant: Franklin Square Homeowners Association

- Installation of exterior foam insulation, faced in wood drip cap, frieze board, and synthetic stucco material.
- **DRC recommends approval with construction clarifications exhibited in modified drawing received 9/19/06.**

Ms. Smith said the Franklin Square Homeowners Association is seeking design review approval for the installation of exterior insulation composed of a rigid foam board and sheet metal that cover an existing rubble stone foundation on two buildings. 162 have it mostly around the perimeter of the building, and 160 have it toward the back on one side. The exterior alteration occurred without the benefit of a zoning permit. The homeowners association came through the design review process requesting approval after the fact; however the Design Review Committee would not recommend approval of the exterior insulation. The association has come back before the Design Review Committee on numerous occasions and they have come up with a plan to cover the exterior insulation in an acceptable manner. There is someone here from the Homeowners Association to speak to the Board.

Lucinda McCloud and Gail Barrows, who live at 160 Main Street, appeared before the DRB and said they were satisfied with the recommendations made by the Design Review Committee.

Mr. Lindley moved acceptance of the Design Review for 160-162 Main Street as presented. Mr. Matzner seconded the motion. The application was approved unanimously 7-0.

**II. Design Review – CB-II/DCD**

130 Main Street

Applicant: Unitarian Church of Montpelier

- Replacement of 118' long, stacked stone retaining wall along the Winooski River
- **DRC recommends approval with use of the rusticated faced concrete block.**

Interested Party: Paul Ohlson

**Ken Matzner recused himself from this agenda item.**

Ms. Smith said this is a request for design review for the replacement of an existing 118' long stacked stone retaining wall along the North Branch at the rear of the Unitarian Church at 130 Main Street. The replacement is proposed to be the rusticated faced concrete block. The Design Review Committee recommends approval as submitted.

Ms. Snyder moved approval for the design review of the replacement of a retaining wall at the Unitarian Church at 130 Main Street. Mr. Blakeman seconded the motion. The motion was voted favorably 6-0.

### **III. Design Review – CB-II/DCD**

207 Barre Street

Applicant: Crystal Maderia for Kismet, LLC

- Replacement and installation of two signs: a 3.7 square foot hanging sign and a 29.12 square foot wall sign
- **DRC recommends approval as submitted.**

Ms. Smith said that the previous sign was approved under the General Business District zoning Regulations, which allowed for larger signs than what is permitted in the Central Business-II District. There was a decision made by the Zoning Board of Adjustment back in 2001 about replacement of signs of a similar size. The wall sign that is being proposed is larger than the district currently allows, so she is letting the Board determine whether or not the decision from the Zoning Board of Adjustment in 2001 applies to this case, and if not she may have to recommend that the applicant come through for a variance to install the sign that they propose.

Mr. O'Connell said the fact that the district has changed designation; wouldn't that require a variance under any circumstance? Ms. Smith said the decision made by the Zoning Board of Adjustment in 2001 was in the design control district. The key point in the 2001 decision is on page 2 of the appeal and Findings of Fact and Conclusion: *"The determination by the Zoning Administrator that a sign permit for the ground sign at 15 Berlin Street be denied because it constitutes a "new" sign is overruled because the ZBA concludes that the replacement of obsolete or aging electrical parts contemporaneous with replacement of similarly sized sign panels does not transform the existing ground sign into a "new" sign."*

Mr. O'Connell said the zoning district designation has changed so the application itself has expired because it is over two years old. Ms. Smith replied that was correct, but a sign was installed under that earlier permit. Susan's Kitchen sign was there. Mr. O'Connell said he didn't see how the Board could approve the application. There is a procedure to follow. There is a new designation for the district and it has been five years since the previous ruling was rendered. He said he thought the Board would have to say it expired. Mr. Cranse said he agreed and that it isn't just changing electrical parts. Ms. Smith said they changed the sign panel, too. It used to be a CITGO and now it's BP. A new business owns the property and they put in their new sign. It was an interior lit plastic sign, and those are not permitted in the Design Control District. That has no bearing on this application. It was a nonconforming sign that someone was permitted to change the panels on without actually bringing the sign into conformance. It's similar, yet different with this application.

Mr. O'Connell said the fact that the district had changed its designation and the fact that the original permit had expired for the wall sign is all the Board needs to say.

Ms. Smith asked if the Board could vote to approve the hanging sign because that one conforms with the zoning regulations. They can approve the hanging sign and deny the wall sign.

Mr. Cranse moved the approval of the hanging sign at 207 Barre Street. Mr. Lindley seconded the motion. The motion was voted unanimously 7-0.

Mr. Cranse moved to approve the proposed wall sign at 207 Barre Street. Mr. Blakeman seconded the motion. The motion was denied 7-0. The wall sign was denied by the DRB.

Mr. O'Connell said that concluded the Consent Agenda items for the meeting. The other item which had been listed as part of the Consent Agenda, which is now part of the regular agenda, is the New England Culinary Institute at 1 West Street for the installation of compressors.

#### **IV. Design Review – HDR/DCD**

1 West Street

Applicant: New England Culinary Institute

- Installation of two compressor/condenser units on the west side of the building.
- **DRC recommends approval as submitted.**

Interested Parties: Eric Seidel, Vice President, NECI

Marc Molinaro, Executive Chef

**Roger Cranse and Mr. Teschmacher recused themselves from the agenda item. Jeremy Hoff replaced Mr. Cranse.**

Ms. Smith said this is an application for design review for 1 West Street for the installation of two refrigeration compressor units 6' 6" away from an existing loading dock on the west side of Dewey Hall

Mr. Seidel said as part of the modification of a portion of the interior of the building to accept our meat fabrication laboratory NECI went through the permitting process but through an oversight didn't realize they needed to include the compressors as part of the change in the site plan. Once they realized that mistake they came back to make the application.

Mr. O'Connell asked if there had been any action on the construction of these at this point. Mr. Seidel said yes. That action had taken place along with the general construction and the compressors are now in place.

Ms. Smith said she made a determination back in May when the project was brought to her attention that it didn't require a zoning permit, so there was no permit from the Planning Office for the meat fabrication laboratory. The determination was made because she felt it was part of the academic institution use, which is part of the Vermont College Master Plan. It was a classroom where students learned meat fabrication at the New England Culinary Institute. It didn't require a permit because the building contained classrooms. The compressor units would have required design review because they are located on the exterior of the building, and any exterior alterations to a building require design review. A building permit was issued.

Mr. O'Connell inquired if the compressors were contained in the original application. Ms. Smith said they were not. Mr. O'Connell said that is a critical point. Ms. Smith said she didn't see them in the materials provided to her by Black River Design.

Mr. O'Connell asked Mr. Seidel how long the compressors had been in place. Mr. Seidel said since approximately May of this year. They have been operating since that time. Mr. O'Connell asked if Mr. Seidel could tell the Board what kind of compressors they are and how often they operate. Mr. Seidel said one of the compressors supplies a walk-in cooler in the meat laboratory and one of them supplies a small walk-in freezer in the laboratory. They operate as an air conditioning unit or refrigeration unit would. They cycle on and off depending upon the load.

Mr. O'Connell asked what design criteria were used to mitigate the effects of the compressors on the surrounding neighborhoods. Mr. Seidel said they installed sound baffling panels around the two compressors. The compressors are mounted side by side. They enclosed them with four hanging sound panels to alleviate some of the noise. Mr. O'Connell asked if they had done sound ratings on the property lines. Mr. Seidel replied there was a report from DuBois & King.

Mr. Seidel emphasized that the installation of the compressors was an oversight. They are sorry they didn't pick up on it.

Mr. O'Connell opened up the meeting for neighbors to speak about the application by NECI at 1 West Street.

Ian Grimmer from 29 Ridge Street, whose house is directly adjacent to Dewey Hall, appeared before the DRB. He said he would like to talk directly about the compressors, but in order to understand his comments it is necessary to put them in context and talk about the changes that have accompanied the introduction of the meat processing facility, which apparently sailed through the permitting process.

Mr. O'Connell said he would like to focus the discussion specifically on the design review of the compressors. Those are on the exterior of the building. He said he assumes that is his greatest concern. Mr. Grimmer said actually that's not true because there have been quite a number of big changes which have resulted from this facility in terms of both noise problems and garbage pick-ups which were one or two days a week and now are done every single morning. There has been no room for public discussion about this process, which was apparently rubber stamped at zoning, and a lot of people in the neighborhood are very upset about that. They would like to have some kind of public forum to discuss this because they feel the whole facility has had a negative impact on the neighborhood.

Mr. Grimmer said speaking specifically to the compressors, the important information that Mr. Seidel omitted from his presentation is that the sound reduction barriers were not introduced initially. The compressors were put in at the end of May. There was no sound reduction barriers put up for at least two months after the City of Montpelier had been notified by folks in the neighborhood that there was a noise violation. The amount of noise the compressors were making was in violation of the Montpelier noise ordinance at the property line every day 24/7.

Mr. Grimmer said we are now essentially approving some work that has been done to completely bypass the zoning process. He said he feels quite strongly that NECI should be responsible for a big noise problem that existed for the entire summer. Mr. O'Connell said the fact that this is being done retroactively doesn't mean that it will be approved. It is now before the DRB, which is where it should have been in the beginning.

Mr. Grimmer said he feels NECI should be fined for being in violation of the noise ordinance for over 60 plus days. That money should go into some kind of escrow account to pay for a mediator to address the specific problems that neighbors are having in relation to this facility and somehow productively engaging discussion about this issue. In terms of the design of the compressors themselves, the noise levels measured below the ordinance requirements at the property line. However, it is a background noise that is there. In conjunction with the excessive noise that is created by the garbage trucks and other delivery trucks which are there throughout the day, it contributes to an overall negative situation. If the compressors are going to stay on the outside of the building more measures could be taken to address the noise, perhaps including sound panels on the bottom to provide some acoustical paneling.

A bigger issue he would like to raise is why the compressors needed to be installed on the outside of the building. The hallway leading out of the meat processing facility is basically just a utility type hallway. The compressors could have easily been installed in the hallway itself, not externalizing the noise to the neighborhood. The issue of noise in relation to Dewey Hall is that we are talking about an enormous four-story brick structure that is shaped like an L, which means that any kind of noise that is generated there is bouncing off and has nowhere to go except into the neighborhood. These compressors should be moved indoors because of this.

Lastly, he said he wanted to reiterate again that the changes relating to this facility really need at some point to be discussed in an open forum. The neighbors were never notified about this taking place. He said he hoped the zoning process would create this kind of forum in which to address these kinds of issues.

Early Fechter from 4 Tracy Street said he supported everything Mr. Grimmer had said. This has been a big problem for the neighborhood. He has been a Montpelier resident for 30 years and lived for 24 of those years at 4 Tracy Street. In regards to Ms. Smith's comments about rubber stamping this whole process, he said he wanted to direct the Board's attention to Article 9, the Certificate of Compliance procedures, section 904.C. appeals, *Any interested party may appeal the Administrative Officer's decision by filing an appeal to the Development Review Board in accordance with provisions of Article 10.*" Article 10. Appeals and Variances. Section 1003. Definition of Interested Persons. A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under this ordinance, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed... Mr. O'Connell inquired if he was suggesting he wanted to file an appeal. Mr. Fechter said the fact that they allowed the meat processing facility to go forward with no information given to the adjoining property owners whatsoever. This facility has been reviewed by the USDA and it is judged to be a meat processing facility and it has to satisfy the required standards. We keep hearing the phraseology about educational use, but that is a sliver of a much bigger picture.

Mr. O'Connell said there is the definition about the AIPUD (Academic Institution Planned Unit Development). It sounds like Mr. Fechter is contending that this type of facility falls outside of what the intent of that facility is. Mr. Fechter said that is right. Mr. O'Connell said if he were to frame an appeal to that, it would be incumbent upon him to make that connection to the original language in the ordinance. But you seem to be saying this is way outside of what it was originally intended for. Mr. Fechter said is right. Mr. O'Connell said that is a good tactic if you want to pursue it. However, he would like to focus the discussion this evening on what is before the DRB, which are the two compressor units. Mr. Fechter said it is a mere detail about why they need these in the first place. They are trying to establish a refrigeration unit for meat processing. The neighbors would like to know how many pounds of meat are going through this facility in a week and what is it being used for. Where is the meat going once it leaves the property? What about all of the truck traffic? Mr. Fechter said he gave the Board some photographs and some agreement settlements that were established by Vermont College and New England Culinary Institute that are being violated every day morning to night.

Ms. Smith said she was aware of the truck traffic. She said she was aware of the settlement agreement. Because we are talking about the compressor units, didn't think this was relevant for the Board to make a decision. Mr. Fechter said that is the problem, all these issues are getting rubber stamped with the euphemism of educational facility, but they are hiding a much bigger set of problems.

Mr. O'Connell said the Board doesn't have to act this evening. Mr. Fechter said he understood that and he doesn't expect any resolution tonight. This is going to be a long drawn out process. Mr. Fechter said he wants the Board to understand that this is a bigger problem than just a couple of little compressors that have been there for over 67 days with no permit.

Susan Labarthe from 6 Tracy Street said she had lived at the same residence for 19 or 20 years. She said she wanted to support the fact that the compressors are not a trivial issue. Her bedroom is in the front of the house and the noise from the compressors kept her awake all summer. She likes to open her windows in the summer months. She reiterated that the compressors are really the smallest part of the problem. With the number of dumpsters out there it sounds like World War III in the morning. Vermont College trucks are throwing glass into the dumpsters at 4:00 a.m. She found a dead rat in her yard. She had never seen a rat in her yard before. Yes, the compressors are annoying, but that is only the tip of the iceberg and they are probably the smallest annoyance in this whole project. There has been an incredible difference in the neighborhood – noise, pests, big trucks – not stuff that belongs in my backyard. She thanked the DRB for their patience and listening to the neighbors tonight. They hope they will have an opportunity to review the whole process.

Cindy Milstein, a resident at 29 Ridge Street, appeared before the DRB. It feels like you are trying to circumscribe that it is just the compressors. For that reason she opposes them. It isn't just the noise and the fact they are outside, but also it seems one of the things that Vermont College, and Montpelier in general, is they are the site of historical architectural integrity, which she appreciates. Earlier you were talking about sign sizes. The

compressors actually make the buildings, which are already not attractive, look worse. It seems like this ends up as something NECI didn't deal with but only after neighbors complained. If this gets approved, it will basically mean the whole decision about what this facility gets used for is approved. She asked the Board not to make a decision on the compressors, but also to open up the process for the whole facility.

She said that Vermont College is also using the dumpsters as a central dumping facility as well. The meat processing facility has opened up a whole bunch of uses that weren't there before. She watches Vermont College trucks drive around with a bunch of garbage. During the summer it isn't just classroom space. They had open barbecues outside. She was sitting on her porch one day and a whole bunch of ash came raining down onto her porch.

If you want to move it outside the educational realm, somebody came door to door in the neighborhood with a flyer saying it is one of the best kept secrets in town is the NECI restaurant at Dewey Hall. Suddenly there is a restaurant happening in the neighborhood and not just a meat processing facility. They encourage you to come by giving you a punch card. If you buy 8 or 10 meals there you'll get a free meal. A restaurant usage opens up another whole area of concern for the neighborhood. The changes in use are dramatically changing the feel of the neighborhood.

Mr. O'Connell said he wanted to be clear that the focus of the hearing this evening is the compressors because that is what has been warned and is on the agenda for the Board. They are also hearing from a number of residents in the neighborhood that there is a much bigger concern and a question as to whether or not this fits within the academic institution planned unit development intent. I understand you will be receiving an interpretation of where the whole project is and where it is supposed to go. Mr. O'Connell said he understood the neighbors concerns, and he hopes NECI is hearing your concerns. It doesn't sound like a trivial issue. It sounds like one that has been growing and festering for at least this past summer. Mr. O'Connell said he doesn't know about the Board, but he isn't inclined to take action this evening on the compressor unit.

Mr. Matzner asked Stephanie Smith if the large trucks using the Dewey Hall location aren't in compliance with previous agreements. Ms. Smith said she was aware of a settlement agreement as to how deliveries can occur and when they can occur on the property. She has spoken to Mr. Grimmer and Earl Fechter about the deliveries but she hasn't actually witnessed them. Mr. Fechter said the settlement agreement says clearly what is and what is not allowed and they are way outside of what is allowed. Ms. Smith said she would have to review this and would like to take a trip up there. This would be a violation that the administrative officer would pursue with the property owner as a separate action.

Mr. Matzner said he wanted to note that if the Board does decide not to act tonight and the residents in the surrounding neighborhoods don't appeal the issuing of the site plan approval, then the Board is essentially allowing these unpermitted compressors to continue and we have chosen to pass on the applicant submitting an application for approval. If by not addressing that now, are we just letting it slide? Mr. O'Connell asked if they had the normal 45 or 60 days to act. Ms. Smith said they didn't take action tonight the matter isn't closed. The City of Montpelier won't take enforcement action against the applicant for not having a permit for having the installed compressor units because there is an application in the process. The 45-day decision period will begin at the closed of the hearing.

Mr. O'Connell said the Board has a lot of new materials presented that needs to be reviewed for any potential enforcement action. Ms. Snyder said that all of the materials that had been presented tonight are not materials relating to the compressor units but about parking, deliveries and other issues of concern. The hearing is not about those issues, although they may be legitimate concerns. The hearing is about the compressors and the compressors only. The Board should not be putting this on hold to see what the outcome of everything else is. We need to take action on the compressors. Mr. O'Connell told Ylian Snyder he would agree with her with this caveat ; that the information they have tonight on the compressors doesn't give him enough information for an up or down vote. Does that address what needs to happen even with the compressors? He said he had done some research into compressors and the impact they can have on the external environment and they can be sound controlled but we don't have the information showing those kinds of options. Ms. Snyder said they have the

material submitted from DuBois & King which shows they have done the baffling with the installation. It does show what the decibel readings are at the property lines and they do meet our requirements. The information is in the Board's packets. Mr. Fechter said the 54 rating by DuBois & King is challenged by Noise Pollution Clearinghouse. The neighbors used a piece of their equipment, which showed the rating at well over 60 decibels. The Noise Pollution Clearinghouse group spoke to him this evening and they are willing to get involved, if necessary. Just because the rating came in at 54, and the ordinance itself is 55, and the neighbors had a reading of 60 plus. Every time trucks come in and out, oh my God, the noise goes way up.

Ms. Smith said she was in an e-mail exchange with the City Manager Bill Fraser this afternoon and thought it might be helpful to have mediation between the neighbors and the City of Montpelier as well as NECI and the university. This has been passed on to Yvonne Byrd, who works at the Community Justice Center, so hopefully something will come out of that to address the other concerns.

Mr. O'Connell said what has bearing on the application this evening is the fact that there is a dispute as to whether or not the sound readings at the property line are accurate or not. That in itself would be enough to suggest that additional information would be appropriate. There should be an independent reading of the decibel levels for the compressors to confirm or conflict with the readings done by DuBois & King.

Mr. Grimmer said the question he raises is, why do the compressors need to be on the outside of the building? There is hallway space that is neither used for processing meat or classroom activity that is where utility type things are being stored and students go in and out of there. If this is simply not a rubber stamping session where something that has already been installed is being approved, then we have to begin to look at it from step one. What would this look like if they were to begin the process? Why is this put outside? Mr. Matzner said they cannot redesign projects for applicants. The Board can only approve or deny, and that would be something you would need to mediate. Mr. O'Connell said there is one significant issue. This is a design review, and the design review because the units are already set in place and we are looking at this retroactively, and it doesn't really allow us to take a hand in what is most appropriate for a design review outcome.

Dan Sagen, a resident at 31 First Avenue, said he ate dinner at the NECI cafeteria this evening. They moved to the neighborhood a little over three years ago and the sound levels have increased dramatically over the past year. To the specific point of the reading of the decibel level at the property line, for one professional organization to say that the reading was 1 point below the acceptable limit to him that is not enough information to make a decision. Seeing there is a dispute about that, and seeing that the tolerance levels are close, there should be at least another test with impartial parties present. Mr. O'Connell said he wasn't sure there needed to be parties present, but there does need to be a certified test result. He said there are a lot of issues in play at this point, and just one is the design and review for the compressor units. Where does the Board wish to go with this?

Mr. Lindley said he is willing to let the neighbors provide the Board evidence at the next meeting that they have exceeded the noise at the property lines if that is going on. Obviously, it is a credibility issue. The applicant has provided evidence that they haven't exceeded the noise levels. We can give them until the next meeting to provide evidence so we can act on just the compressors. He said he finds it very troubling that there are more issues than just the compressors being presented tonight. He said he would assume staff would work through those issues and give the Board an idea about the change in the neighborhood. Mr. Lindley asked Stephanie Smith if they old AIPUD designation had run out. Has that run out or is the university going through the planning process to get the designation renewed.

Ms. Smith said it didn't run out. There was an amendment in 2004, or early 2005, which then sets the clock for another five years. It has not expired. The amendment which was made recently renewed it for another five years. Mr. Lindley said he felt if there was concern about noise at the property line we should give the parties an opportunity to present evidence about that. He is willing to delay action on this request until the next meeting.

Mr. O'Connell said he wanted to remind the Board that it isn't just what the decibel levels are at the property line. It is also a matter of design review for the entire project, which, unfortunately, is already in place, but that doesn't tie the Board's hands as to the review of the project as it was a clean slate.

Mr. Lindley moved that the request the application for 1 West Street until November 6<sup>th</sup>. Mr. Matzner seconded the motion. The motion was voted favorably 5 to 1. Ylian Snyder voted no.

Mr. Seidel said if the neighbors come back with the pollution control report, he would suggest that be treated much more as an advocacy than the professional engineering sound study NECI had done, and there will be room for dispute at that point. He said he suggested their party and his party get together and suggest an impartial third entity to perform the study. Ms. Smith said Chief Hoyt may have a meter. The police enforce the noise ordinance of the city. We could schedule a time for all three parties to get together to do that.

Mr. O'Connell told everyone that there is three weeks before the next meeting and he is hopeful there can be some dialogue that can occur between now and then. Again, the issue on the table this evening was the design review for the compressors. It is not just the sound issues, but the design review of where they are placed, how they are placed, how they look. Mr. O'Connell thanked everyone for appearing.

#### **V. Public Hearing – Conditional Use and Site Plan Review – CB-II/DCD**

207 Barre Street

Applicant: Crystal Maderia for Kismet, LLC

- Change of use from take-out and catering to eating and drinking establishment with take-out, catering.

Mr. O'Connell said this is independent from the previous application for 207 Barre Street. This application is not for the sign but for change in use, which requires a conditional use review.

Ms. Maderia said she is one of the owners who recently purchased Susan's Kitchen, what was known as 209 Barre Street and is now known as 207 Barre Street. We're located right next to the Land Trust condominiums. We purchased Susan's Kitchen with the intention to continue it as a take-out business with the addition of 15-20 seats to serve breakfast and brunch during the week and on weekends. They are proposing Wednesday through Sunday breakfast and brunch from 7:30 a.m. to 3:00 p.m. Mr. O'Connell said he is familiar with the building and is wondering where they are going to fit 15 tables. Ms. Maderia said it is 15 seats and not 15 tables. There will be 3 tables and 2 bars stools. It's very small.

Ms. Smith said that what was Susan's Kitchen had take-out 5 nights a week and the applicant had put on their application they would only like to do it three nights a week. Because take out is a non-complying use in the district, once the applicant received approval for takeout 3 nights a week, if the applicant ever wanted to offer it 5 nights a week again, they would never be able to go back to 5. The Board could let them maintain the use as it is today as a grandfathered use. Mr. O'Connell said they could always ask for an amendment. Ms. Smith said it is a non-complying use, so once the use went away the applicant could not request to reinstate it. Ms. Maderia said she agreed with 5 nights a week of take out.

Mr. O'Connell asked if there were further issues with parking or traffic. Ms. Smith said the requested change of use to eating and drinking establishment requires the applicant provide parking. 20 seats would require a minimum of 7 parking spaces; it's 1 parking space per 3 seats. She said she believed Ms. Maderia has a lease agreement with Central Vermont Community Land Trust for 4 spaces. The parking lot is at the corner of Barre and Granite Streets. There are 33 parking spaces there. CVCLT are leasing 4 to Kismet Kitchen and 10 to River Station Properties, and 10 to the Co-op. There are sufficient spaces there to lease. Mr. O'Connell asked if Ms. Maderia was maintaining that relationship with the Land Trust. She said yes, and they have in writing if they needed more spaces that could be a possibility. Ms. Smith said there would be 3 spaces that wouldn't be accounted for. Ms. Maderia said there is on-site parking for 1 for her restaurant, so they would only need 2 additional spaces off site.

Mr. Matzner asked how patrons would know where the parking spaces to the restaurant were. Ms. Maderia said you can see the parking spaces from the front door and there will be information made available. Ms. Smith said the zoning regulations allow for off-site parking within 1,000 feet and this is within 350 feet. Mr. O'Connell said with this kind of establishment a lot of it will be a returning clientele. Ms. Smith said there is also on-street parking on Stonecutters Way.

The Development Review Board reviewed the conditional use criteria as prescribed in both state statute and the city zoning ordinance. The Board has to review it for the capacity of planned or existing community facilities. From the testimony this evening, it would appear there are no adverse impacts. It is going to be the similar use as currently in place.

Mr. Blakeman moved approval for the application for 207 Barre Street for conditional use for Kismet Kitchen. Mr. Cranse seconded the motion. Mr. O'Connell said the Board is going to suggest it is for the same number of days as was previously approved, 5 days per week.

Ms. Maderia said as a point of clarification the take-out is for 5 days a week. Is the restaurant approved for 5 or 7? Ms. Smith stated that she said the restaurant would be opened Wednesday through Sunday, so that is what the Board would approve. Did you want to have the restaurant for 7 days a week rather than the 5? Ms. Maderia said she would like that option available to her. Ms. Smith said it is very specific with conditional use, so if you would change your hours you would actually have to come before the DRB. The restaurant will be open 7 days a week from 7:30 a.m. to 3:00 p.m., and 5 days a week for the take-out, which is the status quo of what is there today.

The motion to approve the application for 207 Barre Street for Kismet Kitchen was approved unanimously 7-0.

#### **VI. Public Hearing – Variance Request & Design Review – CB-II/DCD**

101 Northfield Street

Applicant: Kuldeep Sharma, represented by John Miller of Sign Design

- Installation of a 32.5 square foot ground sign (previously approved)
- **Variance request was withdrawn.**

Interested Party: John Miller

Ms. Smith said this agenda item was initially warned as a variance request for a 37 square foot sign. Back in 1991 the then property owners came through the permit process for a 37 square foot sign. It was not permitted, but a variance was granted for a 32.5 square foot sign. Eventually, they put up a 37 square foot sign anyway, so it has been in violation since 1991 and only recently brought to our attention. The application is for a 32.5 square foot sign and the variance is no longer being applied for. This is a new sign needing design review approval because the materials have changed from what was previously approved.

Mr. O'Connell said this would come into compliance with the original variance approval in 1991. Ms. Smith replied that was correct, and it has taken a really long time to get to this point.

John Miller from Sign Design appeared before the DRB to answer questions regarding the application. Ms. Smith said all the Board is approving tonight is the design review. In essence, it is a change in the material. Mr. O'Connell inquired of Mr. Miller what was going to be used for materials. Mr. Miller said it is a composite with aluminum. Basically, it is a white baked enamel semi-gloss aluminum; it's called a matte' finish.

Mr. Lindley moved approval of the 32.5 square foot sign at 101 Northfield Street. Mr. Blakeman seconded the motion. The motion was approved unanimously 7-0.

**VII. Sketch Plan – MDR**

179 North Street

Applicant: David Hudson

- Subdivision of a 0.84 acre lot into two lots:  
Lot 1 – 0.52 acre and Lot 2 – 0.32 acre

Interested persons: David Hudson

Mr. O’Connell said the applicant gets to provide the DRB with their plans and get some feedback from the Board. This is not a formal hearing or formal testimony.

Mr. Hudson said his mother currently resides at 179 North Street and he would like to subdivide the lot to build him a house there. He said he currently has city water and sewer.

Ms. Smith the two lots meet the city’s minimum size lots requirements in the district in which the lots are located because it is actually divided by a district boundary line. The proposed access is across a 20 foot wide permanent easement through the 179 North Street lot. The new lot will not have frontage, but the Board may approve something as long as it has a permanent dedicated easement accessing it to begin with. That has been met. Mr. O’Connell said this is medium density residential, so the two lots that are being proposed are certainly well within what we would find in the MDR. Ms. Smith said it is also HDR. The property is divided by both – MDR and HDR. The line goes right through the property.

Ms. Smith said since the plan was created the zoning has actually changed. The new setbacks for the high density residential district are 10 foot front yard, 5 foot side yard, and a 30 foot back yard. The existing house is in the HDR district. The MDR district, where the proposed house would go, is to match the building line of older adjacent buildings and at least 10 feet; that’s the front yard setback. It needs a 10 foot side yard, and a 30 foot rear yard.

Mr. O’Connell inquired if there were any thoughts or comments from Board members. He said the plan seems reasonable. When he gets into the details the Board will be looking a lot closer at the actual plans. Ms. Smith said staff recommended that the applicant proceed if they comply with all of the application requirements for the preliminary and final subdivision review within a year.

**VIII. 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, 28 condo units, 60 units of elderly housing
- Phase 2 – 29 single family lots and 46 condo units
- Phase 3 – 40 condo and 16 single family lots

Interested persons: Rick DeWolfe and David DeWolfe DeWolfe Engineering Assoc.; Vic Fecteau and Josh Nicosia, Fecteau Homes; George Johnson and Heather Cipolla.

Philip Zalinger chaired this portion of the Development Review Board meeting relating to Capital Heights. Mr. Zalinger inquired if there was anybody here to testify this evening who had not testified in the past and needed to be sworn in. Mr. Zalinger asked Stephanie Smith to bring the Board up to date on this application.

Ms. Smith said she believed July 5<sup>th</sup> was the last time the Board took up this application. We have information on traffic tonight. Janet Choi from Resource Systems Group is here tonight. She was hired to review the traffic report submitted by Bob Alexander from Summit Engineering,.

Mr. Zalinger inquired if the applicant had any preliminary remarks he wanted to discuss with the Board. Mr. Fecteau said he did not.

Ms. Choi gave the Board a handout, which she testified from. She said the handout was a summary of the formal review she submitted on October 10<sup>th</sup>. Resource Systems Group was hired by the City of Montpelier to review the traffic impacts for Capital Heights. They offered two levels of review, and are doing the first level, which is a general overview of the assumptions and whether they are reasonable or not. There are several outstanding issues with the most recent impact studies. The most critical issues are listed in bold in the report. She grouped them into four areas, the first being trip generation, distribution and area volumes. There are a few things that need some clarification: what was used to distribute trips during peak hours, what data sources were used, where the volumes came from, and how the tractor supply trips are distributed in the area, and the congestion analysis which is the estimated delay. The v/c ratio compares the volume of a roadway to the capacity. The v/c ratio ends up being greater than the capacity of the roadway, so low v/c ratios are desirable. For un-signalized intersections the v/c ratios are often better indicators of congestion and what is acceptable.

Ms. Choi said there are no LOS (level of service) results for the Route 302 commercial interaction, and the volumes coming out of the commercial driveway aren't very large since it is a main site driveway it should be included in the study. Ms. Choi said she was handed some results just prior to this meeting that may fill this need but she hasn't had an opportunity to review them.

Ms. Choi said the results for the Route 2/Route 302 intersection were taken from an older report prior to 2000. Typically, you don't want to use data that is no older than two or three years old. That study would be using outdated data.

Moving on to the mitigation measures, it is not clear what data was used to evaluate the signal warrant, when the 8-hour signal warrant is met, but she would need to know what data is used to evaluate that. The four-hour vehicular volume warrant has higher thresholds, but she would have to see that data, too. Finally, they recommend that a monitoring study be part of the mitigation measures for this study, and they recommend a monitoring study be conducted a year after half of the development is built, or at the discretion of the city's planning director. This monitoring study would look at left turn signal warrants to see that these are warranted. Mr. Zalinger asked if the left turn warrants are on Route 302. Ms. Choi said yes.

Ms. Choi said in the safety analysis there is no analysis of high crash locations. The crash data is from 1999-2003, but there is more recent data available. An outdated high crash location report was used, 1998-2002, and this is old data as well. The report reference in the Lamoreaux and Dickinson study of the US 2/US 302 intersection mentions that this is one of the highest accident crash locations in the state so she thinks safety is a critical issue at that intersection.

Mr. Blakeman said the state is supposed to be building a roundabout on Route 2/US 302 that will hopefully take care of the higher accidents. Will this have any effect on numbers? Ms. Choi said that roundabouts generally have resulted in a significant reduction in crashes, so that should address the high crash location nature of the intersection. In terms of volumes, she doesn't know if people necessarily avoid roundabouts or find that roundabouts move traffic so well more traffic will be able to get through. Roundabouts are able to move more traffic than signal generally so the installation of a roundabout would probably improve the average delay per vehicle.

Mr. Zalinger asked if it was Ms. Choi's recommendation that the analysis that Mr. Alexander did be updated to incorporate these comments. Ms. Choi said she would recommend that be done. She said she thought these were very critical issues and should be addressed. Some of them may be addressed tonight.

Ms. Smith said in her larger report she had also recommended the level 2 analysis. Ms. Choi replied yes.

Mr. Zalinger asked if they were going to proceed with the traffic issue by simply having the city's expert analyze Mr. Alexander's analysis, comment to him and then he goes back in and revisits the issues that RSG identified and submit the materials to us. Mr. DeWolfe said he believed that took care of the technicalities that need to be done between the consultants. He said the Board is probably interested in the conclusions that have been reached so far by both consultants. In other words, there is more that has been agreed upon than disagreed upon. The fact they have made changes in the plans they are going to be talking about tonight regarding the connection of streets, cul-de-sacs, etc., which has been flip-flopped around. At some point in the build out of this project we are going to require a signalized intersection at River Street somewhere between mid point and final point the occupancy of the subdivision a traffic signal will be warranted there. There is no dispute about that. All of the numbers justify that. The same is true with dedicated left turn lanes for west bound Route 302. Yes, the story needs to be finished, but the consultants will finish that.

Mr. DeWolfe said if the Board has questions about traffic that tonight is a good time to ask them because everybody is here tonight. He said it would be good for Bob Alexander to give the basis for the study and what he has done and a quick synopsis for the Board so they will know how they have gotten to where they are presently.

Mr. Zalinger said if the design of the project has changed, the analysis of any of the consultants has to be based upon the revised project. Mr. DeWolfe said the current analysis is based on the revised project. Ms. Smith said RSG reviewed the plan as it is presented this evening. Ms. Smith said there is additional information from Bob Alexander that RSG has not had an opportunity to review yet. She said as the project is proposed this evening there is a double cul-de-sac scenario and all of the traffic from the units will come onto River Street.

Mr. Zalinger asked if they could hear from Tom McArdle from Public Works. Mr. McArdle said the plans were revised. There are double cul-de-sacs and the traffic will be exiting through their access road and there will be a commercial lot. Some of the preliminary conclusions in the Summit Engineering report have not been verified. Speaking further with Janet there is no certainty at this point that the traffic signal will be needed at any point throughout the completion of the course of the development. That is one of the things that Janet needs to confirm, how the warrant analysis is done and what data was used to reach those conclusions.

Ms. Choi said that her engineering judgment is that the volumes generated by the development over a day needing a warrant wouldn't be significant. An 8-hour warrant is a pretty high threshold and it isn't clear whether the 12-hour volumes along River Street were used from a counter. Mr. Zalinger said he isn't sure everyone follows her technical terms. For instance, an 8-hour warrant is a technical term in the industry but it doesn't translate very well for lay people. Ms. Choi said there are 8 different warrants that can be evaluated to determine whether a signal is needed, and there are various thresholds. An 8-hour warrant looks at 8 hours of data. During the day the line along River Street ebbs and flows and the 8:00 a.m. peak hour is higher than 10:00 a.m. The p.m. peak hour is probably the highest peak hour of the day. You would compare those volumes along River Street to the demand on a side street, which in this case would be the main site driveway or the commercial driveway. There are different thresholds based on those two volumes to determine whether in that particular hour a signal would be warranted. If those thresholds are met in 8 hours, then your 8-hour warrant has been met. There are a different set of thresholds for the 4-hour warrant, and those are met in 4 hours. There are also qualitative warrants such as crashes, and if it is near a school there is a different set of warrants for that. The typical warrants that are evaluated are the 8-hour and 4-hour ones. A warrant equals need or demand.

Mr. Lindley asked if a level 2 review of traffic would clear up all of the questions between the two traffic consultants. Ms. Choi said it would because then she could look at the raw data used.

Mr. McArdle said the conclusion here, and perhaps good news for the developer, which is the cost, is there isn't the need for a signal. The folk who develop warrants and apply these standards, and the city's interest is in the interest of providing traffic control devices that move traffic efficiently. Signals are not the answers to all of our traffic woes. Many of our signals in fact lead to other problems, such as congestion and, in some cases, accidents; they also resolve a lot of problems. The type of effort that is being put into this is to make sure that we

get what is actually needed for this type of development. It would be just for this development. There are no other reasons to signalize River Street at this location. It's the creation of a block so it is important to get this right.

Mr. McArdle said as far as the level 2 analysis, it had been their thought that the level 1 would be completed with the conditional approval phase, so the Board could proceed and reach some conclusion before final design began. With this level of effort started at least the applicant will have some idea whether or not this project might even receive approval with that type of investment in it.

Mr. Blakeman asked if a roundabout would be a possible answer to this. Mr. McArdle said not in this case. This is not a current intersection but a primary through route that is intersected by a side street. A roundabout is generally used for traffic that is proportionately equal. There can be low volumes within that, but it would still have to go through the warrant analysis. The side streets have to be proportionately equal. You would be looking at 33 percent traffic volumes all ways.

Bob Alexander said warrants relate to the level of service. The tractor supply store has a D level of service with long delays, but there are so few that you live with it. That is an area where there is low impact. They are no different from Cody Chevrolet or anyone else along that road. Looking at it with respect to policy, what is the city willing to live with for minor side streets? This is a minor side street. When there is full build out in the year 2012 the numbers currently show it is an F. The overall intersection looks pretty good because Route 302 and River Street suffer very little delay. It is stop sign controlled. In Berlin, across from the highway garage there is a signal there. The next one is at Walker Motors. In between there is not much to impede traffic. One of the caveats in warrants is operating speed. Here it is 40 mph. High speed matters in the judgment as well as delays. High speed in the classic sense kills. It is uninterrupted around the Berlin Town line to Walker Motors and the operating speeds are up there, so that influences our thinking about how important is it.

Mr. Alexander said that the risks involved if the delay is too long, motorists are going to use gaps in the traffic that are too small. If it isn't a 4.5 second gap, then you are squeezing it and you'll get into an accident. There is more to it than straight number crunching. The city is facing some tough decisions. The numbers coming out of Moonlight Terrace are small. Sherwood Drive is a little higher.

Mr. Cranse said if the Board makes a condition at a level 2 analysis involving the two engineers' conclusions at the final review, then he thinks we are getting into too much detail. He thinks they can hear the level 2 analysis at the final review after a resolution of the two reports. Mr. Zalinger said he didn't disagree, but it is also interesting for the stage to be set with this kind of an analysis and there hasn't been any discussion about the traffic at all. He said it doesn't hurt to be refreshed on traffic issues.

Mr. Zalinger said Mr. Alexander had referred several times to left-hand turns, and it seems like there are two left-hand possibilities. One is a left-turn from Route 302 into the project and the other is the left-turn departing the project. Mr. Alexander said that was right. Mr. Alexander said for the number crunching if they form two lanes coming out of the project, the left turns can sit there and wait as long as they want to and the right turns can go ahead. Mr. Zalinger asked if the left turners sit there as long as they want or, or as long as they have to. Mr. Alexander said the left turns on Route 302, River Street itself, if you signalize, it would be a shame not to have an exclusive left-turn lane.

Mr. Zalinger said they don't have a final analysis that both consultants have agreed upon, so it seems premature to talk about signals at the intersection. Mr. Alexander said he thought they were pretty close to agreement.

Ms. Smith asked if a left-turn lane without a signal is what would be warranted before you would actually get a signal from Route 302 into the development. What are the progressions of what needs to happen at this intersection? Mr. Alexander said there was a de facto left-turn lane in the first report, if the width is there and the paved shoulder is wide enough, you would go out around it.

Mr. Zalinger said the Board needs to hear some testimony about the changes in the configuration of the project so the traffic issues can be put into context. Mr. O'Connell said what he would find particularly helpful, since it has been awhile, is to draw the line between what was the last design on the table and specifically highlighting the new one. Mr. DeWolfe said they could do that.

Mr. DeWolfe said after a discussion with the Technical Review Committee the sentiment was that we not connect this project to Isabel Circle. In the materials the Board received there is information from Tom and us that supports the conclusion that the road should not be connected. They have to provide a safe turnaround at the end of Isabel Circle, which is not there now, and they also have to provide a cul-de-sac at the end of the proposed road. There are two cul-de-sacs that are back to back with the edge of pavement 10 feet apart from each other which would allow a graveled road painted and signed that would allow the Fire Department or emergency vehicles to pass through there if they needed to. Or, in the case that something caused this entrance not to be used, then temporarily traffic could be routed to Berlin Street, Isabel Circle and Hebert Road.

Mr. Cranse asked if there would be a barrier of any kind between the two cul-de-sacs and the gravel connector. Mr. DeWolfe replied yes, the Fire Department has agreed that they would like a gate there that they are provided a key for. the Police Department said they did not care and they did not want a key. Mr. McArdle said the understanding he had with both the Police and Fire Departments was that there would be no gate and no barrier. The Police Department wants no gate there. Mr. Cranse asked if they were concerned that it would become an informal throughway. It was discussed with Doug Hoyt and the Police Department would be willing to enforce it. Mr. McArdle said there will be those who will pass through. It will be designed to discourage it. There will be signs. When it becomes a city street, there will be an ordinance presented to City Council for their action so it will be an enforceable motor vehicle offense. The Police Department understood the reason why this was being proposed and they accepted that as a possibility.

Mr. DeWolfe said the other change that happened as a result of the discussions from the last Board meetings was take the condos on two cul-de-sacs, which is phase 2, where there were two streets coming in that were two dead ends, connected the streets and pulled the units further away from Isabel Circle to provide more of a buffer between the proposed and existing units.

Ms. Smith said she receive an e-mail from Josh Nicosia this morning concerning this report. Under § 815 of the staff criteria, there is a condo unit that is located on the ridgeline. Mr. DeWolfe said at the last meeting regarding ridgelines they were unable to substantiate what is a ridgeline by the current definition. There will be signs down on River Street that says no outlet. He said he would have to review the warning signs as part of the intersection to see if something warrants putting the signs up there. You need to know there is no outlet before you turn off. If you are driving by at 40 mph you aren't going to be able to see the warning sign that is 200 feet up the road.

Mr. Zalinger inquired of Mr. DeWolfe how widely he had disseminated the new plan. Mr. DeWolfe said they had submitted it to the city. Mr. Zalinger said the neighbors and other interested parties are hearing this for the first time this evening.

Ms. Smith said another item she has on her list of changes is a note concerning the drive serving the commercial lot. It doesn't show a driveway in that location. It just shows a lot that represents an easement that exists. Mr. DeWolfe said there is a driveway for AAA now. Mr. DeWolfe said they don't know what use there will be for the commercial lot yet. Mr. Blakeman asked Mr. DeWolfe if it was conceivable that the commercial lot could be split into two or more lots. Mr. DeWolfe said they would have to obtain a subdivision permit. Ms. Smith said it would require an amendment of the PUD. Traffic would be discussed as well.

Mr. Zalinger said he and Stephanie did an analysis of traffic and where it arises in the context of the Board's jurisdiction over the project. Under the conditional use criteria, it impacts upon the capacity of the planned or existing community facilities. We need to have evidence of the traffic generated per unit. Under the

site plan criteria it deals with streets and vehicular access and circulation. He isn't sure they can take evidence on that tonight because it doesn't sound like the clay is hardened on any of the traffic issues because there is a revision in the plan that changes the amount of traffic that is generated.

Mr. McArdle said that has been reflected in the traffic reports to date. That change forces the double cul-de-sac forcing all of the traffic to River Street, and it has been reflected in all of Bob's work and Janet's review at this point. That doesn't answer Janet's question. This concept has been out there for two months with the design team.

Mr. Zalinger said if there are items that the two consultants agree upon, let's hear about them. He said this is a public hearing. Normally, we would hear the evidence in public rather than just having it submitted in technical reviews.

Ms. Choi said they agree about the geographic scope with the new design. They added the U.S. Route 2/Route 302 intersection to the study. We agree that the study include peak hours and they use base years 2007 and 2012, assuming the development is half built in 2007 and the complete build out is finished in 2012. They agree that is reasonable. The adjustments they have made to account for background traffic growth over time and to reflect the design hour of traffic look reasonable as well.

Mr. Zalinger said the items that are not resolved are the trip generation and distribution scenario volumes. He asked Mr. Alexander if he understood they and RSG are going to explore that. Mr. Alexander said yes. Also unresolved is the congestion analysis, so they are going to pursue a resolution of that. Mr. Alexander is going to pursue the dialogue about mitigation measures with RSG. Safety analysis is another area to be resolved. The conclusion is that there continues to be deficiencies with the study which make it difficult to make definitive conclusions. The most critical issues are level of service and safety analysis at U.S. 2 and Route 302, level of service and safety analysis at the Route 302 commercial driveway intersection, and the commercial driveway intersection is different than the project intersection. Also as part of the critical issues is clarification of the data used for background traffic volumes and explanation of the signal warrant methodology. Can the two consultants reach common ground on those issues? Mr. Alexander and Ms. Choi both said they could. The Board has to be able to take this engineering science and block it so they can make some conclusions under the zoning ordinance which isn't cast in technical language of engineering studies.

Ms. Smith asked whether it would be established in the level 1 study whether or not off-site mitigation will be necessary. Ms. Choi said she needed to look at the data and crunch some numbers.

Mr. Zalinger asked if it was fair to say that within the next two to four weeks we'll have another memorandum that will tell the Board you have reach resolution on all of the other subjects. Mr. McArdle said they were trying to tackle this project by stages. In fact, this is the third time we have discussed level 1. This is Janet's third report on the same subject, so we're recommending we go ahead with level 2.

Ms. Smith told Tom McArdle that he mentioned in his memo about the off-site mitigation and how it is important to know the timing of that. Would it be okay for conditional approval to occur and your timing is okay for the level 2 analysis at the final approval? Mr. McArdle said yes. He said for conditional approval they have seen projects over the years have much less information and conditional approval was granted subject to resolution of all of the remaining items. The applicant can say they have conditional approval and can meet the conditions, and if I can meet these conditions he can justify the expense. This project is pretty advanced in design.

Mr. Zalinger said his inclination as one member of the Board would be loathe requiring the applicant to go to level 2 analyses as a condition for conditional review because it is a substantial investment. There are other parallel issues the applicant has to take into consideration. If we had the level 2 analysis for conditional review, it wouldn't necessarily make a difference in the Board's ability to grant conditional review.

Mr. O'Connell said he would tend to agree with the Chair with regard to the traffic portion of the conditional review so we could move on to the other items, if the rest of the Board agrees. Just because this has been such a huge project and such a huge review process, what else do we have for conditional review? Ms. Smith said the Board should review preliminarily the conditional use criteria. However, a decision won't be made on the conditional use criteria or approved. Conditional review is to air the concerns. It is a similar sketch plan, but it is an actual public hearing and a formal decision is made to at least explore the conditional use criteria and also explore the site plan review criteria. This is to give a report of what may or may not be deficient in the application and what the Board agrees upon from the testimony from the applicant and the public. At the July 5<sup>th</sup> meeting there was discussion about ridgelines. There was a very preliminary discussion about traffic, and there was discussion about the water line and water main. The trail system was also discussed.

Mr. Cranse said Stephanie had prepared a pretty clear staff report, and if we run through the conditional use criteria and Stephanie's recommendations and findings, then we'll get to the end. Ms. Smith said this is also the opportunity if there are any mistakes in her staff report for the applicant and his engineers to bring that up so they are correct. If the findings are incorrect, they need to correct them now.

Mr. Zalinger said pages 2, 3 and 4 deal with general findings of fact and the conditional use criteria begin on the bottom of page 4. This would be the appropriate time to hear from the applicant with respect to municipal water and sewer infrastructure issues as well as stormwater discharge. Mr. DeWolfe said using Stephanie's memo as a guideline, Tom McArdle issued a memo on the 11<sup>th</sup> of October of this year addressing a cost sharing approach for both pump stations and the city's agreement to upgrade the sewer on River Street down by Noyle Johnson Insurance. We accept those conditions at this time in the tentative form.

Mr. DeWolfe said under the conditional use review criteria, 14.b. traffic, everyone knows where that stands. Under storm water they have asked us to copy the city on all of our submissions when they get storm water discharge permits. There will be ponds and areas of land they turn over to the Public Works Department. They will keep the city in the loop about design because it becomes the city's property in the end. They will work that through Public Works because as the operator they have to sign the application.

Mr. Zalinger said the last paragraph in Tom McArdle's memo: *"With regard to the level of review assistance we are receiving from RSG, and in consideration of the status of the Summit Engineering impact review and its reliability, we strongly urge that RSG be authorized to undertake a level two review of the analysis. Accordingly, we ask that the DRB impose the requirement that Fecteau Homes provide supplemental escrow funds to cover this additional review cost and to include cost overruns for the phase one review."* He asked Mr. McArdle if that was contrary to what he just testified to about having the level 2 analysis done for the final approval. Mr. McArdle said that was meant to be as a condition of your conditional approval. There have been three rounds of level 1 approval done.

Mr. DeWolfe said as far as water is concerned he believes the city has adequate water supplies to provide the project water. There may be some pressure issues in the very high portions of the property to provide fire protection within the units. That is the only point he disagrees and he will not know the answer until they design the units, but at this point adequate quantity is available from the city. They discussed in phase 1 of the project that they would actually run a water line from River Street up to the Stonewall Meadow condominiums so they could provide an adequate number of fire hydrants throughout the phase I project. Phase 2 would actually connect to Isabel Circle. This will not only serve their project but provide a little better service to Isabel Circle. There shouldn't be any water conditions to worry about.

Ms. Smith said she didn't hear anything from either the Fire or Police Departments concerning the capacity of the community being able to serve this new neighborhood. The school system can serve the 44 predicted students. Mr. DeWolfe said they received a letter from the school district affirming this.

Mr. Zalinger asked to move on to the character of the area affected under the conditional use criteria. He said the performance standards aren't really applicable. Mr. DeWolfe said these are residential uses in a

residential area. The same standards will come into effect for every single condominium unit and the commercial project. They will be back before the DRB for each of those individually for site plan approval. Ms. Smith said the DRB couldn't give final conditional use review until each phase is submitted. Two of the things she has written down under conditional use review is that the level 2 analysis should be complete for the traffic as a possible condition.

Mr. DeWolfe said that brings them to the relevant site plan review criteria for streets. As he described before, they have created two back to back cul-de-sacs 80 feet in diameter. The current city standards call for 100 feet in diameter. They had discussions with Public Works and Public Safety people and discussed using a smaller diameter circle. They reviewed other cul-de-sacs in town and picked a cul-de-sac using a diameter of 80 feet, which comes from the turning radius of a large school bus because that would be the typical design of a large vehicle that would need to turn around here. A typical town plow truck has a shorter wheel base. The only vehicle that may come up this way that would have a longer wheel base would be from the Fire Department. That would have the opportunity to go straight through to Isabel Circle since it is an emergency vehicle, or make a three point turn in the area of the cul-de-sac into adjacent driveways. At the cul-de-sac at the end of the proposed street will be main entrance drive to the condo development. That can also be used for the turning around of an extra long vehicle. Essentially, a 40 foot diameter circle is acceptable by the criteria. They did research on the internet and Portland, Oregon was accepting 70 foot cul-de-sacs in residential areas.

Mr. O'Connell inquired what would the impact of cars being parked on the cul-de-sac curve be. Mr. DeWolfe said the school bus would not be able to get around unless the car was parked within the island. There could not be cars parked on the cul-de-sac.

Ms. Smith said she had a landscaping question. Are the cul-de-sacs just going to be asphalt? Mr. DeWolfe said no. There would be a 40 foot diameter island in the center. He believes going through final approval those dimensions will be amended with Public Works. Their design at this point is an 80 foot outside diameter cul-de-sac with a 40 foot diameter island in the middle of it. The outside of the cul-de-sac would be curbed to control drainage and the inside of the cul-de-sac would not be curbed so if you had a vehicle that required a tighter inside radius for turning around his tires could roll on the inside. It is similar to see what you see at the roundabout on Main Street. If it is desired by the city for us to have a hard surface within that island, they would have no objection to that.

Mr. Zalinger asked what is the length of the proposed street from Route 302 to the terminus at the cul-de-sac. Mr. DeWolfe said it was approximately 5,000 feet. Ms. Smith said in Section 802.B.10, Dead End Streets, of the old zoning regulations, states that dead-end streets that are designated to be so permanently shall be provided with a cul-de-sac having an outside roadway diameter of at least 100 feet, and a street right-of-way diameter of at least 120 feet. No dead-end street shall be more 1,800 feet in length. Whenever interconnecting streets can reasonably be provided, dead end streets shall be discouraged. Mr. Zalinger asked if the DRB could waive that requirement. Ms. Smith stated the Board could read this and interpret it as they wish. She said this standard did not change in the new zoning regulations.

Mr. Zalinger said if the Board is being asked to give conditional approval, and the applicant is proposing something that is not explicitly permitted by the ordinance; does the DRB have the jurisdiction to waive this requirement if it is a PUD? Ms. Smith said in Section 508.B., Planned Unit Development, an area of minimum contiguous size as specified in this ordinance to be planned, developed, operated and maintained according to a plan as a single entity, the plan for which may not conform to the zoning and subdivision regulations concerning lot size, bulk, type of dwelling, commercial or industrial use, density, lot coverage, or open space. Mr. DeWolfe said this is in agreement with a city department. If they are in agreement that this is an allowable deviation, it should be okay.

Ms. Smith said she also recalled a conversation with the applicant that they are providing a connection between the two streets with the 18 foot gravel connection. Mr. DeWolfe said it's the connection for public safety that they are providing. They are not providing the connection for public convenience.

Mr. Zalinger and Mr. O'Connell said they think this is an important issue for discussion. He is hoping they could resolve most of the issue, and then move on to the trail system. Mr. Lindley said he and Mr. Blakeman's concern was the public safety. The fact they are providing access for emergency vehicles probably takes care of the concerns they had. Mr. Lindley said he remembers they had testimony from the Fire Department that 1,800 feet would be adequate to fight a fire. Mr. Zalinger inquired if a fire truck could turn around in an 80 foot cul-de-sac. Mr. DeWolfe said some can and some can't. The ladder truck, which is the longest wheel based truck they have, will have to make a three point turn going through that and will have to drive through the center island to do so. Mr. Zalinger said he has to do that to get off Main Street, too. Mr. DeWolfe said when you look at Chestnut Hill Drive, Westwood Drive and Grandview Terrace you'll see they all extend beyond that 1,800 foot. We are not creating a new situation here.

Mr. Zalinger said the analysis about the DRB having the authority to waive standards for city streets is a result of the ordinance that says the applicant shall construct streets to x standards. Are we accepting the analysis that if we have the authority to waive other dimensional requirements that we also have the authority to ignore the prohibition that no dead-end street shall be more than 1,800 feet in length? It's a different premise to accept that it's not a true dead-end street. If providing the emergency access renders the street not being a true dead-end, then it is not applicable. What's the sense of the Board? Mr. Cranse said he would agree with that assumption.

Mr. Zalinger asked Mr. Blakeman if he had any problem with concluding that this is not a true dead-end street. He said no. Mr. DeWolfe said suggestions had been made that they use a mountable curve to separate the driveway between the two cul-de-sacs. Another suggestion came in that they use a concrete pavement like a sidewalk spec between the two in order to encourage pedestrian access between two streets.

Mr. Zalinger asked if the Board was comfortable proceeding on the basis that the back to back cul-de-sacs with the 18 foot connection were not dead end streets. Board members were in agreement.

Mr. Zalinger said he would like to discuss the trail system to conclude tonight's agenda.

Heather Cipolla, a resident from Isabel Circle, appeared before the DRB regarding Capital Heights trail system.

Ms. Smith said it sounds like there will be trail easements wherever there is a trail. Regardless if there are water line easements, you will still need to have a pedestrian access easement wherever the trail is located. Mr. DeWolfe agreed.

Mr. Blakeman asked if these were private trails as opposed to open to the public. Mr. DeWolfe said that question had never been resolved. He was hoping that as part of the conditions they would be public, or open to the residents, or whatever. It is what the city desires.

Mr. Zalinger asked if he contemplated there would be an association of owners. Mr. DeWolfe answered yes. Mr. Fecteau said he understood the trails would be owned by the condo association. Mr. Zalinger said he would have the difficulty of knowing where the public would park if they wanted to use the trail system. It presents a whole raft of technical problems.

Mr. DeWolfe said he believed under their previous discussion about the description of the trail system, similar to the existing recreation area there, that is semi-public. The development isn't providing a public park like Hubbard Park, but a multiple neighborhood trail system. He would picture the trails being under the jurisdiction of the homeowners' association, single family and condos. They would all be members of a Stonewall Meadows Association. They would have the jurisdiction to restrict the use of the trails if they needed to. Mr. Zalinger said or as an association to collaborate with their fellow association on the other side of the hill

for a reciprocal understanding about the use of the existing recreation area. The trail system would be owned and maintained by the homeowners association and open to the members of the homeowners association.

George Johnson of 13 Isabel Circle said the trails as designated on the map and described in the staff report lead from both ends to the Stonewall Meadows Recreation Association land, the 8 acres in the shape of a baseball field. They anticipate just over 200 units of people moving in over the hill from that land, and that will have severe impact on that piece of land, which they as an association own. It seems logical that people in Capital Heights will use that land. They have no particular objection to that, and have never posted the property. They are certainly willing to sit down with the developer and work out some sort of an agreement. It sounds like from reading the staff report that the Development Review Board has the authority to designate something in the bylaws of such an organization when it is established that might allow them access to that land. Does the DRB have the authority to dictate to a landowners association what should be contained in their bylaws? On page 10, section 26.b.i, it sounds like the DRB has some say over what the bylaws contain. He said he feels they should request the bylaws contain a clause giving the Stonewall Meadows association access to the trail system of Capital Heights and we should sit down and work out a reciprocal agreement giving the people at Capital Heights access to the Stonewall Meadows Association land as well. He said he would like to see something a little more formal in writing. He said for the record both parties have agreed they will let the other party to access each others land. Mr. Fecteau agreed.

Mr. Zalinger said he was going to suggest their conditional approval will contemplate evidence of final agreement between the two homeowners associations. This should be in writing and signed by both parties.

Mr. Zalinger said they were going to call tonight's meeting on Capital Heights to an end and continue the conditional use criteria to November 6<sup>th</sup>.

**Minutes:**

The next item on the agenda is the review of the October 2<sup>nd</sup> minutes. Jack Lindley moved approval, with Alan Blakeman seconding the motion. The minutes from October 2<sup>nd</sup> were accepted 4-0.

**Adjournment:**

Kevin O'Connell moved adjournment, with Alan Blakeman seconding the motion. The motion to adjourn the meeting was approved 7-0. The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Stephanie Smith,  
Administrative Officer

Transcribed & Prepared by:  
Joan Clack, City Clerk & Treasurer'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.*