

**Montpelier Development Review Board**  
**November 5, 2007**  
**City Council Chambers, City Hall**

*Approved*

**Present:** Philip Zalinger, Chair; Kevin O’Connell, Vice Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, Jeremy Hoff, Roger Cranse, and Kenneth Matzner. Mr. Matzner did not participate in voting on issues before the Board since he was present as an Alternate.  
Staff: Clancy DeSmet, Planning and Zoning Administrator.

**Call to Order:**

The Montpelier Development Review Board was called to order by Philip Zalinger, Chair.

**Review of October 15, 2007 Minutes:**

Mr. O’Connor said Clancy sent him the findings, or lack thereof, with regards to the decision the Board made on the Main Street project, and there was nothing added to it. At the end of the meeting he would like to have a discussion about the decision and what the Board wants to include in the findings.

Mr. Zalinger said regarding the Minutes of the October 15<sup>th</sup> meeting Jack Lindley was acting chair and he was present for some of the matters before the Board. Whoever was here for a partial participation should note that their vote, if they approve of the minutes, should be only for that portion of the meeting in which they participated.

Mr. Blakeman moved approval of the minutes of the DRB of October 15<sup>th</sup> as printed. Mr. Hoff seconded the motion. The October 15, 2007 Minutes of the Development Review Board were adopted 6-0.

**I. Preliminary/Final Subdivision Approval – LDR**

133 Towne Hill Road  
Applicant: James Nagel

Mr. Zalinger administered the oath to Mr. Nagel.

Mr. DeSmet told the Board that Mr. Nagel came in to the Planning Office for a 3-lot subdivision. There is an existing 3,000 square foot home on the property. He is going to subdivide by adding two lots, one is approximately 1.062 acres and the other lot will be a little over 2 acres. The property is located in a low density residential district and municipal services are available. There is a nonconforming frontage issue. Mr. Nagel would also like to combine preliminary and final approval.

Mr. Zalinger asked Mr. Nagel if he had a map that shows the 23 acres. Mr. Nagel said he didn’t have it with him. He said on the original sketch plan there was the balance of the rest of the property. At this point, it is pretty much a rectangle that goes from the southern boundary, which would be in Lot 2, across the right-of-way and continues for approximately another 300 feet. Then, it goes south about 600 feet to Sabin’s Pasture.

Mr. O’Connell noted the item highlighted from the DRB February 6, 2007 minutes noted that the Board members talked about the possibility of combining the conditional and final reviews of the application. Mr. O’Connell said it would be acceptable provided that the application materials addressed the issues raise in the staff comments. He asked Mr. DeSmet if he had the original materials containing the staff concerns.

Mr. DeSmet replied that the issues were drainage, municipal services and driveway cuts. He has a copy of the staff recommendations.

Mr. O'Connell asked where the Technical Review Committee's report was.

Mr. DeSmet said Tom McArdle and Todd Law reviewed both sets of plans. Everything they recommended turned up in Clancy's report with regards to waste disposal, storm water, and some advisory comments about maintenance of the road. He believes Mr. Nagle's new plans show where water and sewer would be brought from the town service on Towne Hill Road to each of the parcels.

Mr. O'Connell asked Mr. Nagle if he had been working with the Department of Public Works in developing his plan.

Mr. Nagle said he talked with Mr. McArdle about exactly where he would want the water and sewer located. Based on his recommendations, that is what he included in the plans.

Mr. Lindley asked if the two lots were the square areas within the map. The 30 feet to the lot line of Peter Goodell is zoned outside the 1.062 acres, is that common land?

Mr. Nagle said the inside squares are actual building envelopes.

Mr. Lindley asked what was the size of the structures that will go into the building lots.

Mr. Nagle said that would be up to the people who are going to build their houses there. His guess is they will probably be 3-bedroom, 2-bath houses of approximately 2,500 square feet or less.

Mr. DeSmet replied that 3 stories or 45 feet is the maximum for low density.

Mr. O'Connell asked Mr. Nagle if his plan was to sell the subdivided lots and not develop them himself.

Mr. Nagle replied he wasn't going to be building.

Mr. Richardson asked if he was going to be installing the water and sewer to the lots.

Mr. Nagle said he would not. He will be asking them to come in front of the DRB and get building permits from the City of Montpelier. These are proposed lots based on Mr. McArdle's recommendations.

Mr. Richardson asked if he would be building the road.

Mr. Nagle replied the road is already there. It is an existing gravel driveway approximately 15 to 16 feet wide.

Mr. Richardson asked who would maintain the road.

Mr. Nagle said he would be maintaining the road since it is his property. Essentially, this is his driveway and the subdivided lots will have right-of-way. He perceives some type of agreement in the actual deeds which will accommodate that.

Mr. Lindley asked if the Fire Department offered any views on the driveway.

Mr. Nagle said they have had fire engines come all the way down from Towne Hill to their house without any problems in the past. Right on Towne Hill Road where the 100 foot marking is, that is very close to a fire hydrant.

Mr. Richardson said he noticed there is a pond next to Lot 1. Is that a spring fed pond?

Mr. Nagle replied yes.

Mr. Richardson asked if there were any plans to maintain the pond.

Mr. Nagle said when the lot is sold there will be an agreement whether to maintain it or let it drain. Below the pond is a drainage area. It isn't a wetland, but it is a wet area. It is just a moist area.

Mr. O'Connell asked if Mr. Nagle had shown this document to staff.

Mr. Nagle said he didn't believe he had shared the most recent document with the staff yet. The only document he has is the one dated for the meeting of February 6, 2006.

Mr. Zalinger said very often going through site plan criteria the Board doesn't have to make affirmative findings for each of the separate criteria. A lot of the evidence is already in the record in the form of the application itself.

Mr. O'Connell said under the utilities on page 3 it says no development is proposed at this time. However, if development is proposed in the future it should have underground utilities, including primary and secondary electric power, cable television, and telephone service.

Mr. Nagle said he would want it to be underground. The utilities at this point are above ground on Towne Hill Road, and they are on the north side of the road. They would probably bring it down to the northwest corner and at that point put them underground.

Mr. Zalinger said he would like to discuss vehicular access and circulation. What is the width of the right-of-way that you are going to grant to the purchasers?

Mr. Nagle said that particular right-of-way is 50 feet.

Mr. Zalinger said his question is what is the size of the right-of-way Mr. Nagle plans to grant to the purchasers of these lots? Is it 50 feet?

Mr. Nagle said their right-of-way will be the gravel driveway and then whatever cut they make onto their property.

Mr. Zalinger said when you get down to the language he is going to employ; you are going to grant a right-of-way to the purchasers. You are going to grant them a right-of-way \_\_\_\_ feet in width, the center of which is located upon the center of the existing driveway. It has to be a minimum of 20 feet to comply with the ordinance, so that could be 10 feet on other side of the center of the drive.

Mr. Nagle said it would be at least the minimum.

Mr. Zalinger said there also needs to be a right to leave that area and enter into their lot at a designated area. He said his concern is that 20 feet is only barely sufficient for two cars to pass. 20 feet is generally the width of two parking spaces.

Mr. Nagle said the existing driveway is actually 25 feet wide, then it would be 12 ½ feet on either side of the center. That is the gravel driveway.

Mr. Richardson said as of today from beginning to end of this corridor the driveway is 25 feet wide. Mr. Nagle said it is 25 feet in some places, and even more than that in other places.

Mr. Richardson said it seems to indicate here on the proposed subdivision that the right-of-way is actually 50 feet wide at certain points. This map seems to indicate there is 50 feet of right-of-way, so they will have the right to run utilities or cuts anywhere along that right-of-way because it extends the entire width of the property.

Mr. Nagle replied that was correct.

Mr. Zalinger said his testimony is shifting. Are you going to grant the purchasers the right to travel anywhere over and upon this 50 feet wide parcel?

Mr. Nagle said not to travel with a vehicle. The driveway itself is 25 feet wide, and he would like to keep it at that. He doesn't want to make it any wider. For utilities, sewer and water, they would be allowed to use the 50 foot width right-of-way.

Mr. Zalinger said where his driveway intersects with Towne Hill Road, what is the width of the driveway at that location?

Mr. Nagle said it was at least 25 feet, and it might be more.

Mr. Zalinger said there is only one family using the driveway now. If we triple that number and there are three families using that driveway, there is the likelihood that there will be ingress and egress occurring at the same time. He is harboring some concern that the mouth of the drive where it meets Towne Hill Road is wide enough to accommodate two cars coming and going.

Mr. Nagle said at this time it is wide enough to accommodate two cars coming and going.

Mr. Zalinger inquired if there were any plantings on the corners.

Mr. Nagle said no, not on his property.

Mr. Zalinger asked if he would object to a condition that prohibited plantings there to preserve sight.

Mr. Nagle said he wouldn't have any problem with that. Once you get to the top of the driveway the only thing that impedes your sight is the hill on Towne Hill Road going to the east and the other end of the intersection with Main Street where there is a hill.

Mr. Cranse said if the map is drawn to scale the gravel driveway doesn't look like it is 25 feet wide. Mr. Zalinger said the improvements aren't drawn to scale. Mr. Cranse said right next to the pond the whole

right-of-way area is 50 feet, which is the narrow stretch of property. The gravel path doesn't look like half of that but more like a quarter of it.

Mr. Zalinger said a surveyor wouldn't draw a man-made improvement to scale. They weren't called upon to survey this road.

Mr. Lindley asked Mr. Nagle if he had any objection if there was a condition that the gravel driveway is at least 25 feet. Mr. Nagle said no.

Mr. Zalinger said it both the right-of-way for ingress and egress as well as the improved surface must be a minimum of 25 feet.

Mr. Lindley said it was Mr. Nagle's testimony he would accept a 25 foot improved traveled surface within the right-of-way. Mr. Nagle said yes, he would.

Mr. Zalinger asked Clancy if he got the notes that there will be a prohibition against improvements at the intersection to maintain the sight distances. These are conditions. Also, there is a prohibition against plantings or other improvements to maintain the sight distance.

Mr. Zalinger asked if it was Mr. Nagle's intention that he requires the people who purchase the lots to install the utilities under ground. Mr. Nagle said that was his intention. Mr. Zalinger said the Board would piggyback a condition that the subdivision be required to have underground utilities.

Mr. Lindley said his intention is to use municipal water and sewer. He assumes he will install a pump station for the sewer to move it up to meet the top of Towne Hill Road. Mr. Nagle replied yes, he was.

Mr. Richardson asked Mr. Nagle what he had for water and sewer on his property.

Mr. Nagle said he had a well and septic. That will not change with the subdivision.

Mr. Richardson said he noticed when he was reviewing the application earlier there is a frontage issue. He wondered if there were any concerns at the sketch review.

Mr. Zalinger said it was pre-existing. The entire lot was created with less than 200 feet of frontage before that dimension was added to the zoning ordinance. The Board has the authority to waive that distance if there is another access provided. He doesn't disagree that it is admirable goal, but if you already have 160 feet of frontage on a misshapen size lot he isn't worried about it. They aren't savaging the zoning ordinance by granting this subdivision.

Mr. Richardson said one problem this reflects is there seems to be off Towne Hill Road to be a series of roads that dangle like icicles that do not create. It creates these isolated neighborhoods. This is something that predates this lot.

Mr. Blakeman said if Lot 1 or Lot 2, or both are sold, and the owners come in with plans for buildings, is this a scenic view written into the Master Plan. Mr. Zalinger said if someone wants to build there they don't need a permit from the DRB. Residential construction in the LDR is a permitted use as long as they don't need a variance. If they meet the dimensional requirements and all other aspects of the zoning ordinance, they are free to build.

Mr. Matzner asked at what point would it be appropriate for Mr. Nagle to provide bylaws for a homeowner's association for the subdivision.

Mr. Zalinger said if he suggested he was going to create a homeowners' association you might ask to see the bylaws, but he hasn't suggested that.

Mr. Matzner said in the advisory comments they suggested that be put in as a condition.

Mr. Zalinger said he looked at that and disregarded it.

Mr. Matzner asked if he had thought about any of this being dedicated to public use, such as a trail link.

Mr. Nagle said when the Sabin's Pasture issue becomes a little more solidified there is property along with owners along the north border with Sabin's Pasture have already had discussions about donating part of their land.

Mr. Matzner said this is already designated as conservation land and so designated in the Master Plan. He wondered if Mr. Nagle had thought about where the trail corridor might go.

Mr. Nagle said it would probably run along the existing trails along Blanchard Brook and on the far south end of their property. It wouldn't be along the driveway.

Mr. Hoff moved approval for the preliminary and final subdivision approval of 133 Towne Hill Road as submitted, with the following three conditions: 1) prohibition against plantings at the end of the graveled drive where it intersects with Towne Hill Road to insure appropriate sight corridor; 2) 25 foot wide easement for ingress and egress be provided to Lots 1 and 2; and 3) 50 foot wide easement for underground utilities also be provided for Lots 1 and 2.

Mr. Lindley asked if Mr. Hoff would accept a friendly amendment on the 25 foot issue, that it be a 25 foot paved or maintained drive. Mr. Zalinger said the right-of-way for ingress and egress is at least a minimum of 25 feet, and that the improved traveled way be a minimum of 25 feet. He would add another condition that water supply and sewer disposal be municipal. He asked Mr. Nagle if that was part of the application as it stands now.

Mr. Nagle said it was part of the application. For Lot 2, since it is greater than 2 acres, the person who would want to build on that lot does have the option of doing a well and septic according to the low density residential zoning.

Mr. Richardson said that is not shown on his map. He said anything that is shown on the map becomes a condition necessary to the permit.

Mr. Lindley said that is such a wet area there he would be very reluctant to grant a septic or sewer line in that area because of what it could do to the aquifer in that particular area. He thinks the condition for municipal water and sewer for both lots is appropriate.

Mr. O'Connell said he would agree with Mr. Lindley as the plan is shown on the map.

Mr. Nagle said along with this conversation does he need anything other than a pump station. Mr. Zalinger said if it is installed underground he would have to install whatever the requisite engineering necessities are in order for it to function.

Mr. Nagle said he would agree with that condition. His well is below these properties so he would pump it up.

Mr. Zalinger said another condition that is part of this is he had agreed that the utilities would also be installed underground. Mr. Nagle agreed.

Mr. O'Connell asked to review the conditions to the application.

Mr. Zalinger said the conditions were:

- 1) There would be no plantings or other man-made improvements at the intersection with Towne Hill Road to preserve the sight distances;
- 2) The minimum 25 foot right-of-way and improved surface;
- 3) The utilities be underground;
- 4) Municipal water and sewer be a condition for each lot;
- 5) There would be a 50 foot wide easement for utilities, which then have to be underground.

Mr. O'Connell seconded the motion.

Mr. Zalinger said often times the question comes up about whether there are future plans for subdivisions. Mr. Nagle said at this time they have a couple of goats and chickens and are hoping to have some sheep. They would like to keep the rectangle that is the 23 acres as is. Depending on what happens with Sabin's Pasture, the lower wooded area of that 23 acres may be included in some type of open space.

Mr. Zalinger said Lot 2 could be subdivided. He asked Mr. Nagle if he would accept the condition that Lot 2 could not be further subdivided. Mr. Nagle said he would be fine with that.

Mr. Zalinger said it is disarming to him to have the DRB look at this relatively minor subdivision when there is substantial acreage that has been retained. He doesn't think it is equitable at this point to ask Mr. Nagle what his long terms plans are. Part of what the DRB is charged with doing is trying to extract from applicants their long term plans. He understands it is fair for Mr. Nagle to say he doesn't have any long term plans, but things change. The next time the Board has a sketch plan he would like to encourage an applicant to give some thought to what their long term plan is because there is no prohibition against further subdivisions to the balance of his acreage. The burden is on the road and ingress and egress to Towne Hill Road compounds the one-owner problems. There might be problems if there were two, three or four more house sites. Mr. Zalinger said he is fairly familiar with the topography and setting there. These are concerns he hopes in the file future Development Review Boards will have heard our concerns and heard the conditions to respond accordingly if there is ever a proposal to develop the retained lands.

The motion was voted favorably by the DRB 6-0, and subdivision approval was granted for 133 Towne Hill Road.

**Other Business:**

The Development Review Board adjourned from their public hearing and went into deliberative session with respect to outstanding matters.

**Adjournment:**

Mr. Lindley moved adjournment, with Mr. Hoff seconding the motion. The Development Review Board adjourned.

Respectfully submitted,

Clancy DeSmet  
Planning and Zoning Administrator