

Montpelier Development Review Board
March 3, 2008
Council Chambers, City Hall

Approved

Present: Philip Zalinger, Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, Jeremy Hoff, and Roger Cranse.
Staff: Clancy DeSmet, Planning and Zoning Administrator

Review of Minutes of February 19, 2008:

Mr. Lindley moved the minutes be accepted as printed, with Mr. Blakeman seconding the motion. The minutes of February 19, 2008 were adopted on a 5-0 vote.

I. Site Plan and Design Review – CB-I/DCD

64 Main Street

Applicant: Mark Smith

Install a window on north side of building; remove one shed on the west/rear of building and restore the wall.

Mr. DeSmet said he came in to the Planning Office requesting to do a demolition of a rear shed at 64 Main Street as well as the installation of a storefront window on the north side. The storefront window and sign band were tabled by the Design Review Committee. They gave the applicant the option of replacing windows that were also on the north side that were of conventional size. Removal of the rear shed was approved. He is going to try to restore it to the original brick on the back of the building.

Mr. Smith said with regards to the windows on the north side there are existing openings that were there before and the landlord wishes to put windows back in the existing openings.

Mr. Zalinger inquired about the doorway. Mr. Smith said the doorway will remain the same because behind that is a bathroom and there wouldn't be any sense to install a door there. Mr. Smith said they are proposing to tear off the shed and return the rear of the building back to its original state. The DRC requested they be painted to blend in with the red brick.

Mr. Smith said the DRC tabled the window towards the front of the building with the impression they want only half that size window. He hasn't heard from the landlord as to how he wants to proceed. He represents the landlord, Steve Lewinstein out of Boston.

Mr. Lindley asked if Mr. Smith had any objections to the recommendations of the Design Review Committee. Mr. Smith replied he did not. Mr. Smith said the DRC tabled the two front windows and he agreed with the committee. The applicant said they were going to restore the original windows that were in the building towards the rear. One window opening is missing a sill. There is some extra granite in the cellar so they can put the sill back.

Mr. Blakeman said under the relevant site plan review criteria it says in 1.b. it is not clear how the applicant will secure the rear of the structure after it is restored and painted. Mr. Smith said upon removal of the shed there is going to be a metal bulkhead to secure.

Mr. Smith said as far as the ground level being brought up to the parking lot, the shed that is on there has no foundation and is ready to collapse at any time. While the shed is there they would like to take care of the façade so when the shed comes down it will be pleasing to those who see it. They won't be able to do anything to the ground level before spring.

Mr. Richardson asked if he understood correctly that one of the DRC's recommendations is that the façade is not to be sandblasted. Mr. Smith said that is correct. They are going to use a chemical. He wasn't aware that if they sandblast brick on the exterior of the building that moisture will go into the brick and do further damage. They

will use a chemical solution that will take the graffiti off and it takes off any distortions. The local Aubuchon's can order that in 5-gallon pails. It will clean the façade, and it will be done without sandblasting per the DRC's recommendations. Mr. Smith replied they were in agreement with the condition of the DRC.

Mr. Smith said for the rear of the building was secured because it was a pharmacy and all of the windows were boarded up. They propose not to open those up but to paint them with the rest of the building to blend in with the brick.

Mr. Richardson asked where he was using the chemical wash. Mr. Smith said the chemical wash is around the outside brick. The granite sills are painted. They want to take the paint off the granite sills. The granite headers are painted. Then, there is a line that is not painted down to the ground, so they are talking about a section that is approximately 8 to 8 ½ feet just around the doorways that are painted in a cream color. If they take the shed off it won't look too good so they want to do this before the shed is removed from the building.

Mr. Richardson said the tabled items would have to be a separate permit. Mr. Smith said he acknowledged that. That will be brought back up per the landlord's request as a new permit.

Mr. Richardson said above the shed there seems to be a cream colored emergency door. Are there any plans to do anything to that door? Mr. Smith said there are three of them on the side of the building. They were not included in the application.

Mr. Richardson inquired if they were functioning doors. Mr. Smith said they were functioning to the extent where people go out and have a cigarette. They do open onto a fire escape that Labor and Industry does not recognize, so therefore there is 6 feet removed off the fire escape. The doors are just there. Some people open them occasionally in the hot summer months, but that is it. Montpelier has their own Building Inspector now and is following the same rules as Labor and Industry.

Mr. Zalinger said he would like to offer a message for Mr. Smith to return to the owner of the premises. They would appreciate if he could expedite the renovation of the front of the building because there is nothing like watching a vacant building sitting there with old signage in the windows. It is very demoralizing downtown. The DRB has no jurisdiction over this issue. The Board is just expressing their disappointment that months have gone by with that message in a vacant building.

Mr. Smith said that is subject to change within the next seven days. There is a potential tenant. He said he also manages the property.

Mr. Lindley moved site plan and design review approval for 64 Main Street as submitted, with Mr. Blakeman seconding the motion. Site plan and design approval for 64 Main Street was approved unanimously on a 6-0 vote.

II. Subdivision Amendment Review – MDR

Towne Hill Road

Applicant: Hugh Hawkins

Amend approved subdivision to relocate right-of-way.

Mr. Zalinger administered the oath to Mr. Hawkins.

Mr. DeSmet said originally there was a 2-lot subdivision that bordered East Montpelier and Montpelier. What were known as Lot 3 became Lot 3A and Lot 3B. This was in April 2005. In October of that same year a 4-lot subdivision was created out of 3A and 3B. 3A is 6.5 acres; 3B is 7.8 acres; 3C is 3 acres; 3D is 3.5 acres. Lots 3A and 3B were proposed to be served by a 60 foot right-of-way on Towne Hill Road, which is in East Montpelier through the western side of Lot 3D.

The original 60 foot right-of-way was on the western side of Lot 3D. In April 2006, Mr. DeSmet's predecessor did an administrative approval of the right-of-way being moved to Lot 3C on the eastern side. He now proposes to move the right-of-way to the eastern side of Lot 3D and reduce it by 40 feet.

Mr. Zalinger asked if that was the East Montpelier/Montpelier town line, the eastern side of Lot 3D. Mr. DeSmet said that is in East Montpelier. Lots 3A and 3B are in Montpelier. Lots 3C and 3D are in East Montpelier. He said he was under the impression that the same person owns Lot 3C and 3B.

Mr. Hawkins said that was correct. Lot 3B and 3C were sold as one unit to one person. Lot 3D has also been sold, and there is a house on that lot which is served by the right-of-way he is requesting. It would extend from Towne Hill Road across Lot 3D to the line to Lot 3A.

Mr. Zalinger asked Mr. Hawkins if part of this if he was suggesting that Lot 3B will no longer have access to Towne Hill Road because it is merged with Lot 3C.

Mr. Hawkins said the person who bought those two lots presumably won't use the right-of-way that is shown on the map. It is not a practical access to those lots. He would at some point request access or curve cut onto Towne Hill Road approximately in the center of Lot 3C. Because there is a stream there and where he would want to put his house, that right-of-way shown would not be a practical access to Lots 3C and 3B.

Mr. Zalinger said because the frontage and access all originates in East Montpelier we haven't been involved in subdivision permits because the two lots they had in Montpelier were landlocked and all of the real development issues were East Montpelier's. He doesn't see the city has any more horse in this race now than it did before. He is concerned they are setting themselves up for is multiple accesses on Towne Hill Road if the owner of Lots 3B and 3C no longer has access.

Mr. Hawkins said instead of being subdivided into two lots, it is now one parcel.

Mr. Zalinger said he believes the deed by which he conveyed Lots 3C and 3B to the buyer granted 3B a right-of-way over Lot 3C.

Mr. Hawkins said he didn't understand why that would be necessary, but the right-of-way is there for access to Lot 3B if someone chose to use it. If the same person owns the whole parcel, how would he need access? Mr. Zalinger said he wouldn't need it, but he would have the expectation of perhaps of being able to convey at some time in the future 3B and subdivide it again, or roll back the merger.

Mr. Hawkins said there is no septic system available on Lot 3C. The only available septic site is on Lot 3B. Therefore, Lot 3C cannot be sold separately as a building lot because there is no available septic on that site.

Mr. Zalinger said if the Board approves this change, is he asking the Board to add an additional right-of-way for Lot 3A and leave the right-of-way for Lot 3B to remain? Mr. Hawkins replied yes. Mr. Zalinger said he understood this application to be a substitution. Mr. Hawkins said they have a potential buyer for Lot 3A and the house site will be at the top of the lot. He has a permit from East Montpelier to use the existing curb cut that is there that services Lot 3B. They have given permission for that same curb cut to also serve as Lot 3A.

Mr. Zalinger asked if he was asking the City of Montpelier to trade off the right-of-way they approved that is on 3C. In other words, the city gave a permit to create Lot 3B with a 60 foot right-of-way over Lot 3C. Does he understand tonight's application to request an additional right-of-way for Lot 3A that is over Lot 3D and to keep the right-of-way for access to Lot 3B in existence? Mr. Hawkins replied yes. He doesn't foresee that would ever be used, but it was permitted.

Mr. Zalinger said if someone purchased the property in reliance upon the subdivision permit having that term, then they might be very disappointed if they amended the subdivision permit to revoke that.

Mr. Hawkins asked if they could add an additional right-of-way. Mr. Zalinger said they would have to because if someone else owns Lot 3B and Lot 3C they would have to be parties to this application if the Board were going to impact upon the access to the subdivision permit that affects their property.

Mr. Richardson said Lot 3D is owned by another party on which Mr. Hawkins wants the right-of-way to go over. Mr. Hawkins said Lot 3D is owned by a person who has a house and driveway. Mr. Richardson inquired if they were party to this application. Mr. Hawkins said it was written into their deed that there is a right-of-way access to Lot 3A.

Mr. Zalinger said that is in East Montpelier. The DRB only has jurisdiction over Lot 3A.

Mr. Richardson asked if they could grant a right-of-way that would essentially affect a property even though it is outside of Montpelier's jurisdiction.

Mr. Zalinger said the Board isn't granting the right-of-way. The Board is amending the subdivision permit to allow the owner and whoever he can persuade to provide access to Lot 3A in an alternate location than what the Board has permitted already. It is up to Mr. Hawkins to get all of this right on paper. It is an unusual situation for a jurisdiction to stop midway in the right-of-way. Lots 3A and Lot 3B are in Montpelier.

Mr. Zalinger said it is clear that the existing right-of-way for access to Lot 3B will remain. Mr. Hawkins replied yes. Mr. Zalinger said the subdivision permit issued by the City of Montpelier the application is seeking an amendment of that to provide an alternate right-of-way to Lot 3A over Lot 3D.

Mr. Blakeman said Lot 3B is left holding the bag. Mr. Zalinger said no that right-of-way is going to remain in place.

Mr. Cranse asked if the language under proposed findings match what we have been describing under 1c that the applicant proposes to revise the final subdivision approval by relocating and reducing the 60 foot right-of-way. Mr. Zalinger said it doesn't. It is articulated as if it was as an exchange, but it's not. The existing has to stay and there is going to be approval of an alternate access. By the time this is signed it will be correct. It will say what we want it to say.

Mr. DeSmet said he called the East Montpelier Zoning Administrator and he said if Montpelier will allow it they will allow it.

Mr. Richardson moved for the modification of Hawkins subdivision at Towne Hill Road, which is Permit No. 5316 to allow for an additional access to Lot 3A through Lot 3D as applied for. Mr. Lindley seconded the motion. The motion was approved unanimously on a 6-0 vote.

III. Preliminary Plan Review (LDR/IND)

203 Country Club Road

Applicant: Montpelier Lodge of Elks #924

Interested Party: George Gillander

Two lot subdivision

Richard Comi appeared in place of George Gillander.

Mr. DeSmet said the Elks complied with the DRB's previous request of a location map showing the abutting properties as well as a smaller map showing the parcels of contours. Those were the only outstanding requests from the Development Review Board. This is preliminary approval of the subdivision for the Elks Lodge.

Mr. Zalinger asked if the Elks Lodge anticipated that the ultimate owner of Lot 3 will access the lot at the end of Country Club Drive. Mr. Comi agreed it would.

Mr. Zalinger said that was why the Board asked for the elevations because if you don't know the road fairly well it all looks flat on the plan. They anticipate that access to that lot and to the developable sections of the lot will be garnered through Country Club Drive without continuing onto the Elks property. Mr. Comi agreed that was right.

Mr. DeSmet said the two zones are low density and industrial. Mr. Zalinger said the land of the western portion of the lot is industrial and to the east of the zoning boundary line is low density residential. Mr. Lindley said it is apparent to him they are going to have to build a driveway in a low density residential area to get to the commercial size of that zone on the lower part of the parking lot. How long is that driveway going to be?

Mr. Zalinger said he hopes the Elks is receiving advice on these issues because this is the kind of situation that makes it very troublesome if there is an impediment later. It is almost impossible for the Board to grant a variance if the subdividing party was responsible for creating the noncompliance.

Mr. DeSmet added that it is difficult with a building envelope proposed. Mr. Zalinger said if they approve the subdivision and a later perspective purchase of the new lot seeks to develop it in the industrial zone, and the access they are seeking to the industrial site involves a roadway over a portion of the property that is in the LDR, what we are trying to do is identify whether that is permissible under the zoning ordinance.

Mr. Comi asked if that was something they were responsible for finding out. Mr. Zalinger said before the Board approves a subdivision they like to make sure they understand what all of the ramifications are of the subdivision. If we approve it now and Developer X comes back in the fall and says they want to develop the industrial area but they need the only topographically suitable location for the driveway from Country Club Drive, which is through the low density residential zone, we don't want to create a situation where that is not permissible.

Mr. Zalinger said he is asking rhetorical questions because they don't like to create a box. They don't like to allow property owners to paint themselves into a corner.

Mr. Cranse asked if the same would hold true for the perspective uses of the land. You couldn't have a car wash in an LDR zone whereas you could in the industrial zone. There are things you could do in the industrial zoned and sometimes conditional uses are permitted.

Mr. Lindley said a year from now they don't need to have a variance if they create a problem. Mr. Cranse said the owner of the property has to know his use of it is going to be circumscribed by the fact that it is divided in two. Mr. Zalinger said half of the property is in one zone, and the other half is in another zone. The access to the town road is through the more restricted zone to get to the least restricted zone. Mr. Richardson said it isn't a problem of having a hospital if it is permitted use in an industrial zone as long as it met the minimum lot size within that particular lot. It is the access to get to the hospital, to get to the permitted lot; you would have to go through the low density lot.

Mr. Comi asked how they can address a condition now because the purchaser has to be aware of the two conditions. Wouldn't that person have to address it at the time he develops the lot? Mr. Zalinger said that was correct. If the answer to their problem is to seek a variance, which is an exception to the zoning ordinance, by law the Board isn't allowed to grant a variance if the need for the variance was occasioned by the act of the applicant.

Mr. Lindley said there are criteria the Board needs to follow in order to grant a variance. One of those the Board is not allowed to do is if the applicant creates the problem.

Mr. Comi asked how the applicant would create the problem. Mr. Zalinger said if there was a new owner the Board would paint that new owner with the same brush as the Elks. In other words, we aren't going to let the Elks to create this quandary and then sell it to someone else and have the new person come in seek relief.

Mr. Comi asked if this would be something that would have to be stipulated in the deed to start with, to say what that person can or cannot do in that area.

Mr. Zalinger said someone has to do the research necessary to show that the ordinance can permit that because all of the indications are that is what is going to result. It could be that someone who is interested in the property is going to use the portion of the property that is in the LDR only for LDR purposes in which case there shouldn't be any difficulty in obtaining a building permit. That has access onto a town highway, Country Club Drive, and the

access would come in just west of the Elks parking lot and would enter the back portion of the parcel only for uses that are permissible in the LDR. There are topographical problems because of the hill.

Mr. Comi said let's assume a person put a driveway along the southerly edge of the Elks parking lot where the new boundary line would be, they could go in there without it spilling into the industrial area without it being an industrial type development. Mr. Zalinger said he believed it could because it is a more restrictive use and it would spill over into a less restricted zone, but the converse cannot occur.

The Board's concern is does the zoning ordinance permit development in the industrial zone that is accessed through the LDR zone? The caveat is that the access through the LDR zone is necessary because of the topography. Maybe it is an abundance of caution on the Board's part, but it is what they are left with because of the subdivision patterns that occurred some years ago with the creation of the tower lot on the side of Country Club Drive. Whoever researches this should discuss this with Clancy and look over the zoning ordinance, but it isn't incumbent upon the zoning administrator to answer the question. It is really the property owner's obligation.

Mr. Richardson told Mr. Comi he may also want to look at the table of uses under section 606 on the Montpelier Zoning Regulations, because while it is a general rule that industrial is less restrictive than low density residential there are certain types of developments in low density residential that are less restrictive than industrial. You may end up having conditions on this lot that would limit what he could do with the lot because of the two zoning areas.

Mr. Zalinger said what they want to avoid is approving the subdivision with a configuration that leaves the Elks with a lot that is configured such that its development and its potential for use is limited. If they don't do this before the subdivision approval is granted, then a perspective purchaser could be back here seeking an amendment to the subdivision application because what they desire to do here can't work because the access road is over the LDR. The Board wouldn't be able to grant a variance on these facts. They would have to amend the subdivision, and in order to amend the subdivision the Elks would have to start carving off other lands in order to create a developable lot.

Mr. Comi said if the person owns both the industrial site and the LDR site he can't put a driveway across his own property to access the industrial side.

Mr. Zalinger said it is a use issue. The Board has to issue a decision and must act this evening. Mr. Zalinger said the Board should give some thought to considering a motion that would grant preliminary review on the condition that the applicant can satisfactorily answer the question of whether the LDR area of the proposed lot can be utilized as an accessory to potential development of the portion of the lot that is in the industrial zone. The Board will have another vote on the final review. Our preliminary approval would have that condition in it, so the applicant wouldn't come back for final review without that condition having been satisfied.

Mr. Lindley moved preliminary approval of the Elks two-lot subdivision at 203 Country Club Road, with a second by Mr. Blakeman. The motion was passed on a unanimous vote of 6-0.

Adjournment:

Upon motion by Jack Lindley, seconded by Alan Blakeman, the Development Review Board adjourned.

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator