

**Montpelier Development Review Board**  
**October 20, 2008**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

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

**Call to Order:**

Philip Zalinger, Chair, called the meeting of the Development Review Board to order at 7:00 P.M.

**Review of October 6, 2008 Minutes:**

Mr. Lindley moved approval of the October 6, 2008 DRB Minutes with an amendment showing the golf course at the Elks Club is a 9 hole course, not a 29 hole course as typed on page 6. Mr. Blakeman seconded the motion. The minutes were adopted by a unanimous vote.

- I. 62 Ridge Street – HDR/DCD**  
Applicant: Neil Meier, Union Institute & University  
Owner: Vermont College of the Fine Arts  
Design Review for two signs.

Mr. Blakeman moved approval for the two signs for Vermont College of the Fine Arts, with Mr. Richardson seconding the motion. The motion was approved on a vote of 6 to 0.

- II. 5 Memorial Drive – GB/DCD**  
Applicant: David Simendinger  
Owner: David Simendinger/WESCO  
Design Review for replacing sign faces.  
Interested Party: David Thomas

The Design Review Committee recommended approval with an adjustment to the scope of the proposal. The DRC recommended approval of the application with an adjustment that the pump tops and lower logos are to be changed to “Shell” according to the specification sheet. Mr. Zalinger inquired if there was a change in the application between submission and the DRC hearing. Mr. DeSmet replied twice.

Mr. DeSmet said WESCO is in the process of doing a reimagining of all of their EXXON stations. They weren’t sure how far they wanted to proceed and the DRC decided to make an adjustment to the scope. Originally, they were just applying for the lighted sign out on Memorial Drive showing the gas prices. They actually wanted to do a little bit more so the DRC amended their application to include the pump tops.

Mr. Zalinger said it isn’t just the pump top, but the entire face of the pump. Mr. Thomas replied that was correct. They are going to remove EXXON and put Shell logo and graphics on the pump. They are going to just rebrand the door and the actual pump top. Whatever is there that says EXXON they would simply put a new sticker that says Shell. There is no physical change to the pumps. Because they are on such a tight deadline because EXXON is pulling out of the state very quickly, as soon as they get their signs for all 26 locations throughout the state, which are either going Gulf or Shell. Then, they will come back with a plan to reimage the rest of the building and the canopy. Right now they are just doing the pumps.

Mr. Zalinger said he couldn’t vote in favor of something that he is uncertain is going to be created. Unless they can tell him that all of this is going to be created with the exception of the canopy, he can’t vote for it. Mr. Thomas said that was correct.

Mr. Lindley moved acceptance of the Design Review for replacing signs at 5 Memorial Drive with the understanding that the top of the pump, which reads quality fuels #1, is not part of this request. Mr. Richardson seconded the motion. The motion was approved by a unanimous vote of 6 to 0.

**III. Request for Extension of Approved Conditional Subdivision and PUD-MDR/GB**

Applicant: Fecteau Residential, Inc.

Owner: Fecteau Residential, Inc.

Mr. Zalinger administered the oath to Mr. Fecteau and interested parties.

Mr. DeSmet said two years ago Fecteau Residential was given conditional subdivision approval and PUD approval of two lots on Isabelle Circle and River Street. These were for 45 single family lots, 5 multi-family lots, and 60 units of elderly housing. They were given an extension of two years to come back for final approval. The ordinance has now changed so it is preliminary and final as opposed to conditional. They would like an additional extension until 2012.

Mr. Zalinger said the composition of the DRB has changed. He asked Mr. DeSmet to give the chronology of the application.

Mr. DeSmet said in January 2007 Mr. Fecteau was granted conditional subdivision review approval for a proposed planned development. The ordinance at the time, which still says you have to come back for final approval within six months, the Board under Condition 14 of that decision gave the applicant two years to come back. It is his understanding that it would be under the previous zoning ordinance which was in existence when the application was submitted. Their extension is due to expire January 16, 2009.

Mr. Fecteau said we all know what is going on with the housing market right now. What is happening right now it is hard to justify going ahead with a major project. The reason they are asking for an extension until 2012 is because they have a lot of time and money involved with the project. He thinks it is a good project in the right time, and right now is not the right time to start it. When is going to be the right time? He really doesn't know.

Frank Carriveau, a resident at 28 Isabelle Circle, stated he was strongly opposed to granting a second extension of time for three more years. He was given a two-year extension, and he understands the current extension is ready to expire in January 2009. This ordeal has gone on long enough, and it is time to end it now. If you deny a second extension, does this mean he has to start the process all over again, or does he just pick up where he left off but has to meet the current regulations at the time he submits the new application? Or, does he fall back under the regulations of 2 to 3 years ago? He said he hopes the DRB makes the right decision and denies his request for a second extension. He has had plenty of time to get his act together. Who is to say that in three years he may be back again asking for another extension? Enough is enough!

Geoff Beyer from the Montpelier Parks Department said whether this project moves forward the Board should take another look at the open space portion of the plan. Parks and Recreation had a recommendation that did not get included in the application as it moved forward and he would appreciate another look at that if the subdivision moves forward.

Mary Baum, a resident at 26 Isabelle Circle, said she didn't believe the extension should be granted. She would like him to comply with the new zoning laws as opposed to falling under the old zoning laws with another extension.

George Johnson, a resident at 13 Isabelle Circle, asked if someone could tell them what the difference is between the old zoning laws between the new zoning laws as it applies to this project. What difference would it make practically in his design of the project if he were not grandfathered in under the previous zoning laws, or if he had to go ahead with final approval under the new zoning as proposed in Mr. DeSmet's memo of October 17<sup>th</sup>?

Mr. Zalinger said there is procedure and substance. Formerly the zoning ordinance called it conditional approval and then final approval of a subdivision. The way ordinances view subdivisions is they understand the

applications are submitted and they undergo modification and amendment during the process. You get conditional approval and then under the old ordinance you have to come back for final approval by a date certain. The zoning ordinance now uses different nomenclature and now it is called preliminary approval and final approval. He isn't sure there is substantive difference between the two. Essentially, it is the same review. The language in the ordinance as to what happens at preliminary and what happens at final review is substantively the same. It is still a subdivision of land. What the new ordinance permits in the two districts where the property is located, which is General Business along Route 302 and MDR up the side hill to Isabelle Circle – there is not a lot of substantive difference in the old ordinance and the new ordinance. We have planned unit development which allows an applicant and the DRB to modify a project to accommodate a planned unit so you give up some elements to achieve other goals. Substantively, the review of the project he doesn't think would be materially different under the new ordinance as well as the old ordinance, except you have some different descriptions of the process from conditional to final.

Mr. Johnson said he assumes the ordinances in general in Montpelier allow you to start a project under one ordinance and finish under a new set of ordinances. Is that permitted to happen? That appears to be the proposal.

Mr. Richardson said it is a state law. When you apply under an old set of ordinances and they change midstream you are still governed by the old set of ordinances.

Mr. Johnson said isn't what is being proposed tonight to allow final approval under the new set of ordinances.

Mr. DeSmet said that is merely a staff recommendation.

Mr. Johnson asked if that was okay. Can it be done?

Mr. Zalinger said the staff's recommendation to the Board is not binding.

Mr. Johnson said in Clancy's document of October 17<sup>th</sup>, about half way down page 2, there is a paragraph about a certain amount of unknown information compounded by allowing this proposal to continue under the old ordinance. Aren't the same unknowns applicable if you allow Mr. Fecteau to continue under the new ordinance under final approval?

Mr. Zalinger said that is correct.

Mr. Johnson said he isn't sure he understands the purpose of that paragraph. The unknowns are the "unknowns" whether you are under the old ordinance or the new ordinance. Would there be different unknowns under the new ordinance?

Mr. Zalinger said he suspected not.

Mr. Johnson said near the end of Mr. Fecteau's letter he suggests this extension will be only the first of more than one, perhaps at least several. By approving this tonight isn't the DRB giving de facto approval to future extensions because nothing will have changed except him asking for another extension. He is asking for multiple extensions. He is being very up front about it. He is saying this is one of maybe two or three possible extensions, but if you grant this one tonight aren't they saying to Mr. Fecteau unless something drastic changes the board will grant another one two to three years from now, and maybe another after that. That he would be opposed of because the project is dragging on forever and probably isn't in the city's best interest.

Mr. Zalinger said he isn't sure who is going to be on the Board in November 2011, but he doesn't think any of the members of that board will feel bound by the intimation that subsequent extensions will be forthcoming unless it is specifically granted in any decision they make. He certainly doesn't feel bound. He was Chair of the DRB when this action was taken, and he doesn't feel bound morally or legally by any intimation that they may have made to Mr. Fecteau at that time.

Mr. Zalinger said he thinks it is important for folks to understand that the approval that was given in 2007 was conditional approval. It wasn't approval that permitted the subdivision to occur, development to take place and the project for a backhoe to start digging. It was tentative and conditional. It was only intermediate approval that in the broad generalization it appeared the project met the detailed requirements of the ordinance. It wasn't a permit to build. It was a tacitly limited conditional approval that Mr. Fecteau, or any applicant who comes to the DRB with a subdivision, understands the DRB has reviewed it, it appears to meet the criteria that they have to assess in the ordinance, and that they can continue planning their project based upon that conditional approval. It is not unconditional approval. Unconditional approval is followed by a building permit. A zoning permit is issued and you can have the backhoe out the next morning. Conditional is just a temporary state. It still needs final review and approval. To the folks who feel this has gone on long enough the ordinance understands there is a marriage or a romance period for a developer between designing a project, putting the elements together, and having it reviewed at the local level or at the Act 250 level, and putting together the project's financing and marketing. It is a process. It is not one-stop shopping. You just don't walk in and get a zoning permit for a project like this.

The approval the Development Review Board granted was conditional. It is still subject to final review and application of the zoning ordinance to the facts at hand. It doesn't mean that Mr. Fecteau can't change elements of the project before he seeks final review. He could increase it to 50 single family house lots, or reduce it to 40. He is not wed to the project as it was submitted at that time. He has to understand though if he goes forward and changes it at his own peril on the road to final review, that at some point if there are so many changes that the conditional review isn't even applicable.

Mr. DeSmet said the reason he said there were unknowns is because there are 15 conditions that had to be satisfied just to proceed to final review. Having not been in the office when it was approved, and not being familiar with the ordinance that it was conditionally approved under, his recommendation was carried forward.

Mr. Zalinger said Clancy's idea about wedding an extension of the conditional approval with Mr. Fecteau with an understanding that the project would then be reviewed under the new ordinance was meant to bring us all to the current status. Mr. DeSmet said there were some changes in the development standards that might make this project more closely tied to the municipal plan. He thought the extension was a lot longer than most, but it is a large project.

Mr. Zalinger said if they were to read the DRB's decision from January 2007 it was based upon hearings they had in April, May, June, October, November and December of 2006. There were several pages that deal with the detail of many elements of the project. The DRB and the neighbors, and the City of Montpelier's Technical Review Committee, which is the Department of Public Works, Fire and Police, still have an opportunity to review every aspect of the project when final review continues. It may even be that the applicant comes back and says he is going to change the setbacks for single family residential lots. Instead of using a waiver of the rear yard setbacks from 8 feet to 10 feet. The small details of the project may change, and to the extent they do the conditional review the DRB gave to the original project is no longer applicable. Is that a fair statement?

Mr. DeSmet replied yes.

Mr. Zalinger said if there is any change in the details of the project, the conditional approval that the board granted in January 2007 would no longer be applicable. We also make findings about capacity of the city to accept storm water, capacity of the city's sewage treatment plant; the board made findings about the ability of the city to deliver water to that area that were preconditioned upon an increase in the main. The lens through which the Board viewed this project also anticipated that there would be evolution over a period of time.

Mr. Fecteau said there is going to be some more review on traffic as well. There are quite a few things left to be done.

Mr. Zalinger said if they were opposed to the project originally he can see how they would be opposed now to granting an extension. He tried to explain that an extension of the ability to come back before the DRB for final review really doesn't substantively change the quality of the review that the project is going to receive, and it

doesn't necessarily enfranchise Mr. Fecteau with rights to develop because the rights he has to develop now are by definition conditional.

A member of the audience said she had a question about Mr. DeSmet's memo. It says under the previous ordinance, and under the current ordinance, an applicant has six months to proceed to final approval. She wonders why the ordinances were written that way. Whoever wrote the ordinance seemed to think those six months was a reasonable amount of time to move through that process. They have been at two years now, and if you grant this extension it is five years. The ordinance felt six months was an appropriate amount of time. She is wondering why now 3, 5 or 7 years seems to be an appropriate period of time.

Mr. Zalinger said the Board hasn't acted.

She asked if there was a value to the city in moving forward in six months. Why doesn't the ordinance say a year, 18 months, or 2 years if that is a more appropriate period of time?

Mr. Zalinger replied he couldn't answer that question.

Mr. Hoff said he doesn't see necessarily what the applicant has to gain by extending the conditional approval. So many of the findings they have made in the Board's approval five years out are not going to be applicable. It is not only the project that changes. It is everything else that goes on in town and around the state. He sees a lot of the Board's findings being irrelevant. He thinks to some extent Mr. Fecteau is putting himself at a disadvantage because the conditional approval is an opportunity for him to put his plan before the Board so they can give him feedback and tell him where the holes are. When he comes back for final review he will have all of his ducks in a row. If he comes back in 5 years he is going to have to be prepared to redo everything in the application.

Mr. Fecteau said right now none of them know what is going on with the housing market. Right now it is just so unstable. At his place everything he is selling is less than \$200,000, including the lot. They are selling quite a few. When things get back to normal he can move forward again with the project. Right now it would be foolish for him to make any move. This is a major project. They are talking about a mile of road that needs to be built. They need to start with the right project because you can decrease the value of your project by not knowing what you are doing. When the economy gets better he hopes to get the project going. He is asking for an extension because it is a massive project. In September 2007 was when hell broke loose. He had to put everything on hold because he had no choice. He doesn't think the city wants to see him go ahead with the project and fail.

Mr. Hoff said he definitely doesn't want to see that, but if he thinks he is doing the city a favor and taking things of their plate he doesn't see it that way.

Mr. Richardson said he is noticing in condition # 15 says that if the project faces final approval if granted will expire 15 years from the date of the Board's review of the sketch plan submission. That is essentially the Board saying that if final review is granted to the applicant and he is approved he has 15 years that the permit is good. What he is hearing from Mr. Fecteau is a major realignment of the real estate market and he doesn't know what it is going to look at in 6 months or 2 years from now. As a result of how it realigns, then he is going to redesign his plan. He doesn't think that answers Jeremy's question that we are really talking about a potential for a major redesign of this program such that conditional review starts to look like it has expired. He doesn't see the sense for putting it off for 4 years. If he is locked into this Phase 1, 2 & 3 why not go for the final review and get the permit that is good for 15 years. Or, if he is thinking he is no longer wanting to go with Phase 1, 2 & 3 as it has been described, why not just simply wait, call it off, redesign it when the market forces realign and then go forward.

Mr. Fecteau said the reason he is here tonight is because he has a lot of money invested already in the design. He feels there is nothing wrong with the design. The only thing that can change is the price of the housing. It used to take six months to sell a house; now it takes a year. It is going to be the same project, but there may be less dwellings and perhaps bigger homes in the project.

Mr. Lindley said he understands his consternation about the changing world outside, and they all share that. Under the new ordinance the Board can move conditional and final approval in one step. Why wouldn't he want to be under the new ordinance with the proposal instead of the old system? Why wouldn't he think it would be more effective when he knows what the final design of the project will be and that he could move much more quickly than under the old ordinance with the extensions? He has conditional approval by the Board now for a project that appears to him may change rather dramatically because of the market conditions. It makes sense to work under the new ordinance that allows different setbacks plus conditional and final approval in one step. Why wouldn't it as a businessman be more prudent to be able to move in that direction? It doesn't mean he has lost his money in terms of the engineering he has done on the project. There were sewage problems that the city had to fix. He had water problems, which the city has been fixing. There were a number of findings that will be overcome. Wouldn't it make sense to just put a better package together for the market conditions that exist for whatever year he is going to start for 15 years? Times have changed. The Board wants to encourage development in the city. We badly need more housing. If he is looking at it as a businessman and the elements of the system have changed rather dramatically, why wouldn't he want to be working under the new zoning ordinance rather than the old ordinance which had different setbacks?

Mr. Fecteau said he really doesn't know what type of home they should be building there. He said he still has to go through Act 250, and under Act 250 he needs to start his project within a year. If he only had the local rule, but they need to go through Act 250. He has a lot of money and time invested.

Mr. Lindley said the DRB has spent a lot of time with this project. The city wants to encourage his type of development, and they need housing. Whether an extension is really very helpful or not is questionable. That is not to say he is going to lose the work he has done, but because he has done all of this work it makes it a lot easier for the Board. Frankly, he doesn't know that an extension gets him where he needs to go. The Board's granting or not granting an extension does not affect any conversation he will have with his banker.

BATTERY DIED.