

**Montpelier Development Review Board
December 7, 2009
City Council Chambers, City Hall**

Subject to Review and Approval

Present: Philip Zalinger, Chair; Kevin O’Connell, Vice Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, Jeremy Hoff and Roger Cranse; also Kenneth Matzner, Alternate.
Staff: Clancy DeSmet, Planning and Zoning Administrator.

Call to Order:
The December 7, 2009 meeting of the Montpelier Development Review Board was called to order by Philip Zalinger, Chair.

Review & Approval of November 16, 2009 Minutes:
Upon motion by Mr. Lindley and Mr. Cranse the Minutes of the November 16th DRB were adopted as printed on a vote of 5 to 0.

- I. 89 Main Street – CB-I/DCD**
Applicant: Dave Wendt – Village Pizza
Owner City Center Associates
Design Review for Signs.

Mr. Zalinger, Chair, told the applicant the Design Review Committee at their November 24th meeting and accepted the application as submitted.

Mr. Richardson said he understands the drawing which shows the gooseneck lights are in the concrete.

Mr. Wendt said they are going to be attached to the wood in the sign band.

Mr. Cranse moved approval of the design review application at 89 Main Street, with Mr. Blakeman seconding the motion. The application was approved on a vote of 7 to 0.

- II. 5 Memorial Drive – GB/DCD**
Applicant: David Simendinger – Champlain Farms
Owner: WESCO Realty, LLC
Design Review for Signage

Mr. Zalinger said the Design Review Committee reviewed this application on November 10th and recommended approval with several adjustments to the scope of the proposal. Mr. Zalinger asked what the applicant’s position was with regards to the Design Review Committee’s adjustments.

Mr. Simendinger said he was in agreement with the changes they want made. They have a product called alpollic which is like a fender metal. They are going to use an off white color instead of a bright white and a soft yellow color.

Mr. Zalinger said if the applicant is in agreement with the recommendations by the Design Review Committee there isn’t anything else they need to cover.

Mr. O’Connell said they want to be absolutely sure because it is quite a change from what the original proposal was. The original proposal was quite bright and different than what is there now. The Design Review Committee basically brought him back to the muted affect and he is in agreement with that.

Mr. Simendinger said at this point he needs to get rid of the EXXON logo. They have gone to their new image they are using around the state which is more with pitched roofs, brick and trying to make a

commercial building fit in more with New England with a more colonial look. They needed to come up with a Shell look. Shell understands this is located in a historic area.

Mr. Zalinger said for the DRB's purposes all of the elements that have been recommended by the Design Review Committee are now going to become elements of the application.

Mr. Blakeman said he assumes they will not have a plastic internally lit sign.

Mr. Simendinger replied that was correct. He said he has to ask for all of the components that Shell wants.

Mr. Richardson moved approval for design review at 5 Memorial Drive with the adjustments to the scope of the proposal approved by the Design Review Committee. Mr. O'Connell seconded the motion. The application was approved on a vote of 6 to 0 with Roger Cranse abstaining.

III. 133 Town Hill Road – LDR
Preliminary Plan Review for Three-Lot Subdivision
Applicant/Owner: James Nagle

Mr. DeSmet said the DRB did a sketch review on September 8th and now we are on preliminary review.

Mr. Zalinger administered the oath to James Nagle.

Mr. Nagle said after discussions with the Development Review Board on September 8th he consulted with the surveyor and the engineer who did the waste water application for the state to make some adjustments on the site plan and submitted those for this hearing. Along with his application there is a copy of Marsh Engineering Services site plan and Dubois' three-lot subdivision plot. It is three lots. Lot 1 is the original lot which is still about 15 acres. Lot 2 is about 7½ acres and that actually abuts the Towne Hill Road at the northern boundary. Lot 3 is an approximately 3 acre lot.

The site plan from Marsh Engineering Services has a series of pump systems for the residences that would be built on Lots 2 and 3.

Mr. O'Connell asked if these were proposed wells. Have they been tested to know that they are feasible in the locations indicated?

Mr. Nagle said according to Marsh Engineering and conversations with Todd Law about the particular pumps that are going to be used he believes there is a letter from Todd that is in the file for the state for the waste water system that indicates those are the pump systems that will be needed for the elevation and for the distance it has to be pumped.

Mr. O'Connell asked Mr. DeSmet if Public Works had reviewed the Marsh Engineering plan.

Mr. DeSmet replied yes. Their comments are after having reviewed that. Mr. DeSmet said Public Works had a little bit different recommendation for the systems.

Mr. Nagle said that had been incorporated into Marsh Engineering and state plan.

Mr. O'Connell asked how many acres they are talking about for all three lots.

Mr. Nagle replied it is about 27 acres.

Mr. O'Connell said they would need the Act 250 review as well.

Mr. Nagle said he believed not.

Mr. Zalinger added it is under the threshold of the number of lots to be created, which is five.

Mr. Lindley asked if he understood they weren't going to use city water.

Mr. Nagle said city water will probably be used on Lot 2. It will not be used on Lots 1 and 3.

Mr. Lindley asked why Lot 3 wouldn't not be included.

Mr. Nagle said Lot 3 already has a building permit for a well and the well is in use.

Mr. Lindley asked when they got a permit for a well on Lot 3. Was it recently?

Mr. Nagle said it was within the last year.

Mr. Zalinger said House Site 2A and House Site 2B are not depicted on the survey. Is that correct?

Mr. DeSmet said they are. One is accessory to the other.

Mr. Hoff asked what his intention of having two house sites is.

Mr. Nagle replied it is going to be an accessory site. It will be a guest house and a house. The potential purchaser intends to build a guest house and live in that house until his parents retire from their work in New Jersey and then he is going to sell them the guest house and build another house on the lower part of the lot. It will be very similar to what they have on the other side of the driveway where the existing one bedroom guest house is a guest house and the main house is near the barn. It will be a parallel type of set up there. They are hoping that the rest of the property they can use for agriculture. They are thinking about fruit trees and vegetable gardens.

Mr. Hoff asked if the whole lot a field.

Mr. Nagle said they are looking at Lot 2 there are no trees except for a small birch tree at the pond and a very old apple tree just north of the ponds. It used to be the Johnson Horse Farm, but it is all grass and pasture. Lot 3 where the house is and the driveway that is all pasture. As the lot goes down into Blanchard Brook there is a tree line. Actually, where it says unmonumented corner is so many degrees north and west. Right there is the tree line and then it drops. On the site plan you can see how it goes down. There are also trees along the waterway in Lot 2, very small trees.

Mr. Richardson asked if he was going to put the rest of the utilities underground.

Mr. Nagle said as the site plan shows the underground utilities are marked.

Mr. Zalinger said with the creation of Lot 3 it is his intention to sever common ownership from Lot 1.

Mr. Nagle replied yes.

Mr. Zalinger said if it is contemplated that there are two building envelopes on Lot 2, isn't it just a matter of time before this 3-lot subdivision becomes a 4-lot subdivision?

Mr. Nagle replied he didn't know. He said they would have to come to the DRB to ask for that.

Mr. Zalinger asked if that wasn't incremental subdivision.

Mr. Nagle said it isn't his intention that this becomes four lots.

Mr. Zalinger asked if he would accept a restriction that Lot 2 not be further subdivided in the future.

Mr. Nagle said he would be fine with that. He doesn't know if someone who would want to subdivide it would be okay with it.

Mr. Zalinger said he is the owner right now. The guest house on Lot 3 is permitted without a subdivision.

Mr. Nagle said without a subdivision he can put up to four houses on the property.

Mr. Zalinger said the question becomes where the burden lies. Does the burden rest with the DRB to anticipate but close its eyes to prospective subdivisions or do we anticipate in a situation such as this where Lot 2 is openly and notoriously represented as having plans for two separate residences on that lot. Is it a wink and a nod to believe that this is a 3-lot subdivision, one lot of which has two residences on it? Then, they just anticipate that they in the future, whether it is 5, 8, 10 or 15 years, that subdivision of Lot 2 becomes apparent or do they act proactively and restrict further subdivision of Lot 2 as a tenant of this permit and put the burden on the purchaser to fully project what their plans are, and anticipate the fact that if they do develop it with two residences that it may well in fact have to remain one lot.

Mr. Nagle replied the potential purchaser he is working with knows this is supposed to be one lot with two residences on it. That is how they are putting it forward, and that is his and the potential buyer's understanding.

Mr. Zalinger said from a regulatory prospective what the DRB need to protect against is the creeping subdivision where it is only proposed as three lots. One of the lots has two residences and logic and the economics of scale dictate that not many parcels of property remain improved with more than one residence for a significant length of time. It is very infrequent. He certainly would recommend that the DRB consider as a condition that Lot 2 not be subdivided further in the future.

Mr. Hoff asked if he had any idea of the time frame for building the two house sites out. If we issue a zoning permit now is there any restriction on the amount of time that the applicant would have to build on the house site?

Mr. DeSmet said he didn't think so. If they aren't proposing development they can come in at any time.

Mr. Nagle said the timeframe for House Site 2A is the spring and for House Site 2B anywhere between five and seven years, maybe longer. That is the representation he was given.

Mr. Zalinger asked how he anticipated to address common road maintenance issues.

Mr. Nagle said the common road, underground utilities, pump systems and common sewer lines are all going to formal written agreements both in the deed and separately and will be pro rata distance that each owner has.

Mr. Zalinger asked if there would be an association.

Mr. Nagle said there will be agreements in the deeds and separate agreements.

Mr. Zalinger asked if the traveled way at this time 20 feet in width.

Mr. Nagle replied yes.

Mr. Zalinger asked if he understood the Fire Department's objective.

Mr. Nagle said it was made perfectly clear at the Design Review Committee that this was important.

Mr. Zalinger asked Mr. DeSmet if the Fire Department comment whether there was sufficient turnaround capacity at the residence on Lot 1 and the one on Lot 3.

Mr. DeSmet said there was a question about it. They wanted to make sure it could happen.

Mr. Nagle said on Lot 1 the Fire Department has been down there with their engines for fire permits and they never seem to have any problem turning around and using his driveway.

Mr. Zalinger said there is a hammerhead there the way the driveway is configured now.

Mr. Nagle said for Lot 3 the actual turnabout is big enough for them to either come in and back in there or where it says checked valves on the site plan, the intersection between Lots 2 and 3, there is a hammerhead that goes out because there have been tractor trailers coming in for construction for the house. They did build something that went to just before the edge of the right-of-way. It is almost a 50 foot turnaround that other trucks have been using. It is going to stay there for gas trucks, fire engines, etc. The gravel has already been put in there so it won't go away.

Mr. Zalinger said when the owner of Lot 2 says it is going to go away....

Mr. Nagle said it doesn't go to Lot 2. It goes right to the boundary of Lot 2. It is within the 50 foot right-of-way. It is a little more than 50 feet if you include part of the driveway that already exists for Lot 3. According to the Fire Inspector he said that was sufficient.

Mr. Zalinger asked who was going to retain fee ownership to the right-of-way.

Mr. Nagle replied he is, Lot 1.

Mr. Zalinger asked if he wanted it depicted on his plan. It should be shown there if it is part of the application, especially if the Fire Department is relying upon that statement. There are a number of staff and advisory comments he is sure he is conversant with in his ongoing dialogue with the Zoning Administrator and the Technical Review Committee. He would ask him to consider those items before he prepares his final plan for the Board.

Mr. Nagle said if you look at the proposed findings, item 5, 5b has already been changed on the state permit to be what is asked for here. He has already consulted with his surveyor about item 7. Does the Board want to see the actual building envelopes or just the setbacks for Lots 1 and 3?

Mr. Zalinger added he didn't think they needed to see the envelopes. He said he had a question about the creation of Lot 2. Lot 1 will have a long stem and a big head and the stem terminates on Towne Hill Road. The stem is 50 feet wide. Does that then create Lot 2 as having 110 feet of frontage on Towne Hill Road?

Mr. Nagle replied yes. That is the driveway is going to come off the right-of-way.

Mr. Zalinger said it should be included in the findings that the Board is being asked to approve the creation of a lot in LDR that has 100 feet of frontage on Towne Hill Road accompanied by a 50 foot right-of-way.

Mr. Blakeman asked how many feet does the building need to be on Towne Hill from the property line.

Mr. DeSmet said 20 in the front yard, 30 in the side yard and 75 in the rear yard.

Mr. Blakeman said for the house that is being proposed would have to come before the Board.

Mr. DeSmet said a single family residence wouldn't.

Mr. Zalinger said there are two envelopes on Lot 2. One is closer to Towne Hill Road.

Mr. DeSmet said the other plan has the whole lot. The site plan with the utilities doesn't show the whole lot. The dotted line is the envelope and it has the dimensions. They have proposed an envelope that meets those dimensions so if they build inside of that they will be in conformance.

Mr. Hoff said he is thinking about the frontage issue. It would be cleaner if Lot 1 didn't retain the ownership of the 50 foot wide strip leading off to Towne Hill Road and if Lot 2 would take that and provide an easement back to Lot 1 and Lot 3 they wouldn't have to increase the nonconformity issue. The minimum requirement for frontage is 200 feet. They are already noncompliant.

Mr. Nagle said it would be 160 foot versus 110 foot. It is still nonconforming. The last time he came here for the three lot subdivision Lot 2 was only 1 acre and it still had only 110 foot nonconforming use and the Board approved it. The only difference is that Lot 2 is much bigger than it was the first time around. Granted it was a couple of years ago, but he was relying on that wouldn't be an issue based on the fact that the driveway is not being cut into Towne Hill Road and being cut off the original driveway. It is within the character of the neighborhood up on Towne Hill Road. He doesn't think the actual frontage is any different than the frontage they see on the other lots across from that particular lot.

Mr. Hoff asked if he lived in Lot 1.

Mr. Nagle said he lives in Lot 1. He wants to have control what is done. He lives at the bottom and wants to make sure it is maintained and everything is done to his specifications.

Mr. Hoff asked if he didn't think some other arrangement could accomplish that.

Mr. Nagle replied he didn't. He won't have as much control over it.

Mr. Zalinger said he believes for preliminary approval it is necessary to take a vote. He pointed Mr. Nagle to the staff and advisory comments on page 3 to address the matters referenced there as he prepares his final plan.

Mr. Lindley said he is still troubled whether this is 3 or 4 lots they are creating here. He is perplexed because Mr. Nagle represents it is the plan that at some point in time to make this a 4-lot subdivision.

Mr. Nagle said he does not make that as a point of contention. That is not true.

Mr. Lindley said he is asking for two envelopes on Lot 2. He is going to have 4 homes and 3 lots. He has created Lot 3 for a home that is on Lot 1 and he is going to create another home for a lot that goes on Lot 2.

Mr. Nagle said he isn't creating anything. He is going to be selling this. He is giving the Board the long term plan of the potential buyer of this property and he felt it was his obligation to let the Board see what he knew so they would be fully informed about it. His representation to him was that he is building a guest house for his parents and he is going to then live in it until his parents retire. Then, he is going to build a smaller house down at the lower part of Lot 2, but it would still retain one lot.

Mr. Richardson said he is a little confused about supporting up to 4 houses on a single lot.

Mr. DeSmet said Article 6 Section 605.c, page 6-7. That was the basis which he gave a permit for the structure that is going to exist on Lot 3.

Mr. Richardson said in reading that it would be his understanding that such a multiple family dwelling would be subject to then Section 6's table which would require if he went beyond the two dwellings to go into conditional use because then you are talking about multi-family.

Mr. DeSmet replied multi-family is 3.

Mr. Richardson said if he is above 2 then he is in conditional use. That is actually not what is being proposed for Lot 2. He is proposing an accessory building that would essentially be a guest house that would follow our standards.

Mr. Zalinger told Mr. Richardson that isn't before us. Conversations between a prospective purchaser and Mr. Nagle are conjectural. Any motion that is made he is going to recommend that a condition be added that there be a prohibition against any future subdivision of Lot 2.

Mr. Lindley said he could live with that condition.

Mr. Cranse said he doesn't understand why they would make that condition.

Mr. Zalinger said it transpires all of the time in land use issues. It happens at the Act 250 level. It prevents creeping development and subdivision in incremental steps. If you are seeking an Act 250 permit and there are 20 acres and there are going to be 10 2-acre house sites, and you judge and gauge the capacity of the plans, storm water, effect on school systems, impact on how much agricultural land is dedicated, all of the criteria of Act 250, it is not unusual for there to be a prohibition against any future subdivision of any lot because otherwise the evidence you took at the time the permit was considered really doesn't track with the density that will some evolve on the site.

Mr. Cranse asked if there was something in our regulations that speaks to preventing subdivision creep.

Mr. DeSmet said the DRB may impose conditions.

Mr. Hoff asked if he was saying he wouldn't approve a four-lot subdivision in this case. It meets the minimum acreage. It may or may not meet the frontage if you have that right-of-way to use. He doesn't see why they should put a restriction in place now where the applicant might come back and based on how the zoning ordinance is written create three lots out of Lot 2. He doesn't see the justification in the ordinance for putting that restriction in place, either.

Mr. Zalinger said what alerts him to the need for this is the fact that two building envelopes have been proposed for only one lot so it seems to anticipate that it will be improved with two residences on one lot. If that is the case logic tells him they should be considering a four-lot subdivision and distilling the evidence and considering the project as a 4-lot subdivision rather than a 3-lot subdivision with two building envelopes on one lot. The significance of the process should be respected. He doesn't like to think it is a 3-lot subdivision that will be four lots in several years.

Mr. Richardson said he thinks he is putting a significantly higher burden on a future applicant to overcome a permit condition that has been imposed than simply coming before the Board with the ordinance as it is. It isn't as if these were two guest houses directly behind the primary residences. They are sort of at the opposite end of Lot 2 which makes the idea of a subdivision not only more likely but more feasible. If this were written as a 4-lot subdivision he would be analyzing this in a different manner because it's not as if the fourth lot would create some change in our application and seems to meet the minimum standards.

Mr. Lindley said in defense of what the Chair is saying we have some serious issues relative to water and sewer and how those proposed lines go. It's a shot in the dark right now if we are going to have a 4-lot subdivision.

Mr. Richardson said regardless of how many lots you are installing the same infrastructure that you would need for a 4-lot subdivision.

Mr. Lindley said he isn't sure that is on these plans.

Mr. Zalinger said he isn't as troubled by the water and sewer issues because the Technical Review Committee and the permitting apparatus of the city as well as the Agency of Natural Resources have a way of insuring that 21st

century standards are installed and maintained. He wants to ask hypothetically about traffic. When there is one house on the end of this right-of-way and there is ingress and egress to Towne Hill Road Mr. Nagle has told us that the frontage of this lot on Towne Hill Road is not all that different from other lots on Towne Hill Road. Not all of those driveways lead to two or three other residences. Only this one does. As a consequence we have the original guest house that is now going to be on Lot 3 going from one bedroom to two bedroom. There is the principle residence that is on Lot 1, and there is Lot 2. The number of trip ins which is ingress and egress per day grows by 25 percent or 33 percent if you go from three residences to four residences. What point does consideration of the impact of traffic entering and departing from Towne Hill Road become significant? If it is three houses, any group of seven reasonable people might say no. If it goes to four houses the same group might come down differently on whether traffic is an issue. How about five or six? That is the "creep", Roger, with doing this in a compartmentalizing this without anticipating what the next natural step is. If every house has two cars and you add one more house on this driveway, traffic engineers will tell you that those two cars leave and come back twice a day times two so there is that incremental change in the traffic. That is among the issues that come up. That is why he doesn't think it is unreasonable to take his applicant at his word and suggest Lot 2 is not proposed to be subdivided but to be proposed for improvement with two residences. He thinks a guest house is a rather new element in Montpelier. He has lived here for almost 30 years and there are not a lot of guest residences on one lot in this community. It may be different in Greenwich, Connecticut. It is just the way you look at the evidence when you make a decision like this.

Mr. Blakeman said in the more populated part of Montpelier we allow mother-in-law apartments. Isn't that the same theory?

Mr. O'Connell said conceivably as long as it is one lot.

Mr. Nagle said the person who owns Lot 2 in the future and they want to subdivide they have to come back to the Development Review Board. Isn't that correct?

Mr. Zalinger replied yes.

Mr. Nagle said they would have to come back and make the argument that they could subdivide this lot, too. They would have to make that argument assuming the ordinances hadn't changed. He isn't making the argument for them. He is here to have a three lot subdivision, and the reason it is three lots is because that is what he can do with this particular set up. He can't do more than that. He doesn't have the funding to make it 10 lots.

Mr. Lindley said somehow in the process there is a guest house that is now Lot 3 and he doesn't know they had approval for that.

Mr. DeSmet said they had a zoning permit for that. Currently now there is one single lot that is about 27 acres.

Mr. Nagle said he feels like he is being penalized for giving the Board what the potential buyer wants to do with their Lot 2. If he had the application just for Lot 2A and the person came a month after they bought the house after this had been permitted for one lot with just one house site and then came back and said they wanted to put in another house on their lot they wouldn't have to come before the Board. They would only have to go to the Building Department and get a zoning and building permit. He is providing the Board with the information as he knows it and feels like he is being penalized for it, and he doesn't think that is fair.

Mr. Zalinger told Mr. Nagle he isn't being penalized. If having to sit and listen to this discourse is a penalty then they apologize.

Mr. Nagle said he feels people aren't taking consideration about the fact that he is trying to be up front as possible with the Board so this wasn't going to be something that was going to be snuck through for another house five years from now with just a building permit.

Mr. Cranse said he respectfully disagrees and doesn't share that concern in terms of the regulations about whether it will eventually become a four lot subdivision. He has one other concern he would like to raise which was raised originally by Mr. Hoff. If the DRB approves this application they would be creating another nonconforming lot which is the frontage on Towne Hill Road. Although he understands Mr. Nagle's desire to control the access to the property that he will retain it does create a very strange lot with that long piece of property that terminates in a nonconforming frontage. Are there any guidelines or standards about the lots besides the nonconforming part that would apply? This is the creation of a very strange lot.

Mr. DeSmet replied that one is the DRB can create a subdivision with sufficient access at least with the minimum of 20 feet, which Mr. Nagle proposes 50 feet. Then, there is a provision under section 718.D starting on page 729 that talks about lot shape.

Mr. Cranse said that does apply. Lots with irregular shapes, curves, jaws, dog legs, bowling alleys may not be approved unless warranted by conditions of topography, natural resources, existing road location and/or shape or use of the tract being subdivided. The existing driveway under section 718.D makes this strange lot permissible. He said the clarification helps.

Mr. Matzner asked Mr. DeSmet if there is a limit on the number of houses that can be accessed by a single driveway.

Mr. DeSmet replied yes. He believes it is three. If it becomes four it has to be built like a public street. It can still be a private street but it has to be improved to that standard.

Mr. Matzner said if they added a fourth house they would have to improve the road considerably. Mr. DeSmet said that is correct.

Mr. Matzner asked what is the length of that dead end road or driveway. It looks like it is close to 1,800 feet which is the limit of a dead end street.

Mr. DeSmet said that dead end streets can be no more than 1,800 feet in length.

Mr. Nagle said it is actually 1,060 feet.

Mr. DeSmet said at this point he wanted to be clear it is only a private drive.

Mr. Matzner said if they do not put a prohibition upon the subdivision of it, is it true that it could not be subdivided again for another five years?

Mr. DeSmet said he believed that is another regulatory jurisdiction. He hasn't seen that in the ordinance before.

Mr. Matzner said it might be a state regulation.

Mr. Zalinger asked if the end of the right-of-way is where it enters Lot 1.

Mr. Nagle replied yes.

Mr. Richardson moved for approval of the preliminary plan review on 133 Towne Hill Road and Mr. Blakeman seconded the motion.

Mr. O'Connell said he is torn on the idea of Lot 2 and the potential future subdivision. He isn't sure if putting a prohibition on a future subdivision is the appropriate way to go. The Board has the testimony from the applicant that the current plan with the current potential purchaser so he isn't inclined to support a condition.

Mr. Lindley said he is inclined to support a prohibition because he realizes this is only talking about one purchaser, but it is very clear to him that another purchaser could come in and put in however many units on a particular lot. He would be in support of a provision limiting it to one lot at this point in time.

Mr. Zalinger proposed an amendment to Mr. Hoff's motion that the preliminary approval of the 3-lot subdivision carry with it a condition that Lot 2 not be subdivided in the future. Mr. Lindley seconded the amendment.

Mr. Zalinger said they have to vote on the amendment first.

Mr. Hoff asked if they would accept an amendment to include Lot 1 also. Mr. Lindley said he didn't have a problem with including Lot 1. Mr. Hoff said there would be no future subdivision on both Lot 1 and Lot 2.

Mr. O'Connell asked why. Lot 2 is the lot which has the representation that it is likely to be two structures at some point which begs the issue in terms that it would be very easy.

Mr. Richardson said he didn't understand why it would be any easier on Lot 2 than it would be on Lot 1. He doesn't see any difference at all between the two.

Mr. Lindley said it is the "creep" question. He thinks the Chairman has articulated it very well. There is a very fast paced Towne Hill Road with traffic issues and issues with water and sewer. If they don't take that into account they have missed their opportunity to understand how things can explode.

Mr. Zalinger said his motion only applies to Lot 2. He respectfully declines to expand his motion to include Lot 1. The pending motion is to amend Mr. Richardson's motion to grant preliminary approval by including a condition prohibiting subsequent subdivision of Lot 2. That is the motion they are voting on. The vote on the amendment was 2 to 5 and failed.

The motion pending is to grant preliminary approval to the subdivision as proposed for 133 Towne Hill Road. The motion passed on a vote of 5 to 2.

IV. 190 River Street – GB

Site Plan Amendment for an Additional Storage Building.

Applicant/Owner: James Barrett

Interested Party: Reuben Sherman

Mr. Zalinger administered the oath to Mr. Barrett and Mr. Sherman.

Mr. DeSmet said Mr. Barrett seeks approval for a 20' x 150' mini warehouse at the end of the parcel. There are no other improvements. They were granted conditional use and site plan approval for the construction of four mini warehouse buildings in 2007. There are residential dwellings to the north and south.

Mr. Zalinger said this unit will be on the River Street side of the existing drive.

Mr. Barrett said it is at the very east end of the lot.

Mr. Zalinger said it looks like some of the storage buildings are on the river side of the internal driveway.

Mr. Barrett said it will be on the same driveway between the river and the railroad tracks on the river bank.

Mr. Zalinger said there is a proposed steel building and it looks like it is on the railroad track side of the driveway.

Mr. Barrett said it is on the river side of the driveway. It abuts the river.

Mr. O'Connell said the proposed storage number 4-8, are they proposed or existing?

Mr. Barrett replied that 4-7 are existing.

Mr. DeSmet said he is proposing the 8th storage building.

Mr. Cranse said the Board denied this originally. It went to mediation. The mediation was settled and they had complied with the terms and conditions at Clancy's determination. Why is this application before the Board?

Mr. DeSmet said it is because they are proposing another storage unit.

Mr. Cranse asked which one was denied?

Mr. Zalinger said in 2007 there was an application for four units. Those were the ones denied.

Mr. Cranse said those were settled by mediation.

Mr. DeSmet said they just want to add one more unit.

Mr. Hoff asked if the fourth was proposed in the prior application.

Mr. Barrett said it was proposed, but it was taken off of the original plans.

Mr. DeSmet replied that in the mediation it was removed. During the compromise during the mediation one of the proposed storage units was removed.

Mr. Zalinger said at the time this transpired there was an element of the as built quandary. Number 8 hadn't been started and the others had been started. As the compromise through the mediation process it was to take number 8 off the table and the others had been started. That further compounded the difficulty of the situation.

Mr. Lindley asked if Number 8 had concrete on the ground now.

Mr. Barrett replied no. There is nothing there but old pallets. There are no building materials there.

Mr. Zalinger asked if folks who used Storage Unit Number 8 would park in the existing parking area. The site plan shows 9 parking spaces.

Mr. Barrett said there are more than 9. There is well over 100 feet for parking there and he doesn't believe there is any parking requirement for storage units anyway.

Mr. DeSmet said the parking is based on the number of employees.

Mr. Zalinger said if you go to visit your storage locker you need to stop the car and get out. It's not a parking question. It's just a site plan circulation issue.

Reuben Sherman asked if there was anything specific about lighting requirements.

Mr. Barrett said there will not be any lighting on the building. They will lease a light from Green Mountain Power on one of the light poles on the street which will face the building. It will be up on River Street facing down towards the river. He is 99 percent sure the lights will come from River Street on a leased light pole from Green Mountain Power. There is no electricity in the buildings so the light will come from the street facing down towards the building.

Mr. Zalinger said any lighting they do plan will be affixed to the GMP pole. Mr. Barrett replied that is correct. There is no lighting included with this application.

Mr. Sherman said there are residences up that far and there is a residence across the river.

Mr. Zalinger said he appreciates Mr. Sherman's neighborhood watch approach, but unless they are talking about visibility from his residence he isn't sure what they need to explore here about whether Green Mountain Power puts up.

Mr. Sherman said if it is up on the pole it is probably visible from his house, too. He doesn't know how much illumination it is, what its direction is.

Mr. Lindley said it is reported in the staff report that there is to be no highway glare. That would be enough of a signal to him that it would not reach the residences.

Mr. Zalinger said a proposed light on a GMP pole within the public right-of-way is not an element of the application. The application says there is no lighting proposed for the building.

Mr. Lindley said it says in the event lighting is installed there shall be no highway glare onto River Street.

Mr. DeSmet said that was meant to be directed towards the light pole they were leasing so it didn't shine on motorists coming through. It's his testimony that it is going to be focused on the building.

Mr. Zalinger said these are only proposed findings.

Mr. Sherman asked who Green Mountain Power talks to.

Mr. Zalinger said no one knows what the Zoning Administrator was thinking when he wrote these words. He thinks it is fair for the Board to go on this premise, that there is no lighting proposed in connection with the project so if Mr. Barrett is going to add lighting it would be a site plan amendment however it is introduced. That is the easiest way to approach it because if you say there is going to be lighting in the future it will only be from a leased pole on a GMP pole along River Street that opens Pandora's Box for the Board because then they approve an application with a conjectural source of lighting and they don't know what the height will be, the illumines will be. It is easier for the Board and the applicant right now to say he doesn't plan any lighting for unit number 8.

Mr. Barrett said they should just come in the future if they put that light on that pole and go through whatever they need to.

Mr. Zalinger said it is probably better to accept this permit with no lighting and if he plans to introduce lighting he could amend his site plan for the building by talking with the Zoning Administrator before he installs or pursues lighting rather than afterwards. This site plan proposal has no lighting. If he adds lighting it would be an amendment to the site plan. It is better to do it in an incremental manner that way. Then, lighting itself will be the only question and if there is an issue they will consider it by itself exactly with respect to what is proposed rather than lighting in the sky from a GMP pole.

Mr. Richardson asked Mr. DeSmet if there was anything in the ordinance about successive applications other than the site plan amendment section. Is there anything that limits applicants from coming back with altered plans?

Mr. DeSmet replied not that he was aware of.

Mr. Richardson said he is curious about the fact that there was a permit granted, a settlement agreement, or some combination thereof, that eliminated one building as a condition of approving four out of five buildings and now the applicant is coming back for the 5th. Is there anything in the settlement agreement that talked about that?

Mr. DeSmet said the only information he had from the settlement agreement is what he paraphrased in the letter. He didn't work for the city at the time and was instructed from our representative counsel to issue the permit

based on the settlement agreement. That is all of the information he had. He isn't aware of any cumulative prohibition.

Mr. Richardson asked if Clancy had any information why this was denied the first time in 2007.

Mr. Lindley said one of the bigger issues was a fire issue.

Mr. DeSmet said there was a fire issue and a flood plain issue and it required letters of map amendment. They are no longer subject to the flood plain restrictions.

Mr. Cranse asked if the Fire Department had looked at the current application?

Mr. DeSmet replied yes. There are no problems. They installed a hydrant down there.

The hydrant is in front of where the old Re-Store building was.

Mr. DeSmet said it was further complicated by the railroad right-of-way and it is an old Green Mountain Power site.

Mr. Cranse moved approval of the Site Plan Amendment for 190 River Street as proposed, with Mr. Blakeman seconding the motion. The motion was approved on a vote of 7 to 0.

Adjournment:

Upon motion by Mr. Blakeman and Mr. O'Connell the Development Review Board adjourned on a vote of 7 to 0.

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator

Transcribed by: Joan Clack