

**Montpelier Development Review Board**  
**November 15, 2010**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** Philip Zalinger, Chair; Alan Blakeman, Daniel Richardson, Jack Lindley and Sabina Haskell.  
Staff: Clancy DeSmet, Planning and Zoning Administrator

**Call to Order:**

The meeting was called to order by Phil Zalinger, Chair, at 7:00 P.M.

**Review of October 18, 2010 Minutes:**

Upon motion by Mr. Lindley and Mr. Richardson the Minutes of the October 18, 2010 meeting were approved as printed on a vote of 5 to 0.

**Comments from the Chair:**

There are only five members present this evening. Two members could not be here tonight and the alternate is unavailable. The other alternate seat is empty. Five members constitute a quorum, but if any one member of the body chooses to recuse him or herself from a matter that will leave us with only four members, which is also a quorum, but under Vermont law you need an affirmative vote of a majority of the Board. In that case you would need unanimity amongst the remaining members in order to constitute the act of the Board.

- I. **89 Main Street – CB-I/DCD**  
Owner: City Center Associates  
Applicant: The Skinny Pancake  
Design Review for a sign  
Interested Party: Benjy Adler

Mr. Zalinger said from review at the Design Review Committee they reviewed the application on November 9<sup>th</sup> and recommended approval as proposed. Since the Design Review Committee approved the application completely and they are advisory to this Board, unless members have any questions or comments we proceed directly to a vote.

Upon motion by Mr. Lindley for approval of the sign at 89 Main Street with Mr. Blakeman seconding the motion, the application was approved on a vote of 5 to 0.

- II. **146 Main Street – CB-II/DCD**  
Owner/Applicant: Linda Butsch  
Design Review for Replacing Roof

Mr. Zalinger said he has a property at 140 Main Street. He doesn't think that renders him unable to be objective about this matter so he will continue to sit. The Design Review Committee reviewed the application on November 9<sup>th</sup> and recommended approval as proposed with a recommendation regarding the color choice of the new standing seam roof. They recommended she choose between charcoal gray, dark bronze or Hartford green. Ms. Butsch said those were acceptable choices to her.

Mr. Richardson asked if the replacement of her roof is because the slate is unreparable.

Ms. Butsch replied that is correct. When she field the application two different members of the Design Review Committee members took individual looks at it and both agreed. Both Jay White and Eric Gilbertson both agreed it was necessary.

Mr. Richardson moved for design review approval of 146 Main Street with the condition that the color of the proposed standing seam roof be a dark color, i.e. gray, dark bronze, charcoal or Hartford green, as proposed by the Design Review Committee. Sabina Haskell seconded the motion. The application was approved on a vote of 5 to 0.

**III. 207 Barre Street – CB-II/DCD**

Site Plan Amendment

Owner: Trevor Cole

Applicant: Suzanne Podhaizer, dba Salt, LTD

Change in Hours of Operation

Mr. Zalinger administered the oath to Suzanne Podhaizer.

Ms. Podhaizer said Kismet operates until 3:00 P.M. She is subleasing the space from Crystal who owns Kismet and she asked that we not do a breakfast place in that space so as not to compete with her in her new location. They are hoping to have a dinner restaurant which would serve until 9:00 P.M. in the evening, and possibly 10:00 on Fridays and Saturdays. They would open at 11:00 A.M. and serve coffee and pastries and light lunches and at 5:00 P.M. start to serve dinner until 9:00 P.M. week days and 10:00 P.M. on Fridays and Saturdays. That would be Wednesday through Sunday. She asked on the application for Tuesday just in case they need to expand their hours so they wouldn't have to go through the process to change it again. They would be closed on Mondays.

Mr. Zalinger told Mr. DeSmet he didn't see any changes to the site plan except for hours of operation.

Mr. DeSmet said he did a little review of the previous history. Kismet proposed a certain amount of hours in a certain way. There were rumblings on this body about a site plan amendment needed if the hours were to change from different days to different times. He

thought it was an alteration of the concept and he thought it would be appropriate for the DRB to review it.

Mr. Richardson made a motion for site plan review approval for 207 Barre Street. Mr. Lindley seconded the motion.

Mr. Zalinger said Kismet was never opened in the evening.

Ms. Podhaizer said not on a regular basis. They had some private parties there but not regular business hours.

Mr. Zalinger said this will be the introduction of evening and nighttime hours in the neighborhood. Do they plan to have a liquor license?

Ms. Podhaizer replied they are planning to have one.

Mr. Zalinger asked if Kismet had a liquor license.

Mr. DeSmet replied they do.

Ms. Podhaizer said she believes they have Class I and II. She was also going to get a Class III liquor license. It is going to be a very limited bar menu but they wanted to be able to make some creative cocktails to go with their food. It is not going to be a focus of the business but a complement.

Mr. Zalinger asked if she planned to offer any entertainment of any kind.

Ms. Podhaizer replied no.

Mr. Zalinger said their application doesn't include the right to offer entertainment.

Ms. Podhaizer said the space is extremely small and any kind of music would be too loud and take up too much room so it isn't in their business plan at all.

Mr. Zalinger asked if they were going to continue to rely upon public parking in the area.

Ms. Podhaizer replied yes. There are four spots that are being rented and they are going to continue to rent them as well. They are down on the other side of Granite Street.

Mr. Zalinger asked if all of the adjoining property owners received notice.

Mr. DeSmet replied yes.

Mr. Zalinger asked if the signage was going to change at all.

Ms. Podhaizer said it is and she is going to submit a separate proposal for that. Her graphic designer wasn't ready with the information she needed. She won't put out any kind of exterior sign until then.

Mr. Lindley said his only memory of Kismet was the Barre Street beverage store that has the steel grates he was worried about the neighborhood being inundated with his free parking he had in front of the store. That is down to one or two spaces now. The neighbors must have accommodated each other. That was the only objection in the beginning.

Mr. Richardson said that was his memory as well that the concern was with the neighbors and parking.

Ms. Podhaizer said there is a 15-minute parking section that might accommodate three cars and as Kismet did they are going to ask their customers not to park in those spots.

The motion passed on a vote of 5 to 0.

**IV. 153-155 Elm Street – CB-II/DCD/FP**

Design Review, Site Plan & Conditional Use Approvals

Owner/Applicant: Win Turner & Laura Bozarth

Addition of a residential unit, change of use from office to personal services, and multiple exterior renovations.

Interested Party: Flor Diaz Smith

Mr. Richardson recused himself from participating in this application.

Mr. Zalinger told the applicant that in order for them to obtain design review, site plan and conditional use approvals it will be necessary for all four of the members of the DRB to vote in favor of the application. If one chooses not to, even though you have a majority of the four, the three affirmative votes will not constitute a majority of the seven members of the DRB.

Ms. Diaz Smith said they would take their chances because they want to move the project forward.

Mr. Zalinger administered the oath to Laura Bozarth and Flor Diaz Smith.

The design review elements are those items that went before the Design Review Committee. The Design Review Committee reviewed the application at their November 9<sup>th</sup> meeting and recommended approval with an adjustment to the scope and with a recommendation to the DRB. The reconstruction of the historic wraparound porch is conditionally approved based

upon the use of the original design and materials as submitted with the application. Is there any objection to proceeding that way?

Ms. Diaz Smith replied no.

Mr. Zalinger said the adjustment is that the proposed extension of the roof on the southwest elevation will be constructed partially three inches shorter so as not to project beyond the brick corner of the main building. Ms. Diaz Smith said the adjustment is okay with the applicant.

Mr. Zalinger said he would like to interrupt the proceeding now and ask for a motion for design review approval.

Mr. Blakeman moved for design review approval of 153-155 Elm Street with the adjustment suggested by the DRC. Ms. Haskell seconded the motion. The motion passed on a vote of 4 to 0.

Site plan – Ms. Diaz Smith said they aren't really changing anything on the site plan.

Mr. DeSmet said it has to do with the parking and the circulation. You are establishing a new use.

Ms. Diaz Smith said there will be a change of use at 153 Elm Street for the back building. The right side office the tenant has moved out and the new tenant is going to be a salon which represents personal service so it is a change of use.

Mr. Zalinger asked if they had an approximate square footage of personal services it will be dedicated to.

Ms. Diaz Smith said it is 500 square feet minus the bathroom. In the spring they are going to redo the whole parking lot. They talked to the people from Casella and he said they could get a large dumpster and put it on wheels. It will stay in the same spot as it is right now. They are proposing to do the porch in the front so that will change the site plan in the front. Then, they were proposing to extend the roof to accommodate the chiropractor. The change in the site plan is on the front and has to do with the porches.

Mr. DeSmet said the development was an additional dwelling and a change of use. They aren't proposing a dumpster.

Mr. Zalinger said they would deal with site plan separate from conditional use. Is there a motion to grant site plan approval?

Mr. Lindley made a motion to approve site plan for 153-155 Elm Street. Sabina Haskell seconded the motion. The vote on the motion for site plan approval was favorable on a vote of 4 to 0.

Mr. Zalinger asked Mr. DeSmet to explain to the Board why conditional use jurisdiction arises.

Mr. DeSmet said the table of uses requires that a change of use to personal services in a historic structure requires conditional use approval.

Mr. Zalinger said the simple matter from changing office space to a hair salon requires it.

**Conditional Use Criteria:**

The DRB in order to grant conditional use approval needs to make the following determination:

That the proposed use does not adversely affect the following:

- a) *The capacity of existing or planned community facilities.* He thinks they can accept extrinsic to the application that from the facts of 500 square feet of hair salon they won't be any undue burden placed upon the capacity of the city of Montpelier to provide general services of water, sewer, fire protection, police protection.
- b) *The proposed use does not adversely affect the character of the area.* It is mixed use with residential and commercial.
- c) *The proposed use does not adversely affect the traffic on roads and highways in the vicinity.* The parking is the same calculation as for offices as it is for personal services. There is no requirement that there be additional parking and they have already approved the site plan for that amount of vehicle use. It appears that the project is not going to adversely affect traffic on roads and highways in the vicinity.
- d) *The proposed use does not adversely affect zoning and subdivision regulations in effect at present.* He said he thinks it is prima facie that it is not going to adversely affect the zoning ordinance.

Mr. Lindley asked how they are complying with the floodplain development issues.

Ms. Flor Diaz Smith said it is an existing historic structure so they aren't altering anything. They are using the same space as has been used.

Mr. DeSmet said the decks have to be constructed out of materials that are resistant to floodplain. They aren't changing anything with the entrance to the building. Historic structures are exempt from substantial improvement requirements, but they still have to comply on the outside with any new development.

Mr. Lindley moved conditional use approval for 153-155 Elm Street as proposed. Mr. Blakeman seconded the motion. The motion was approved on a vote of 4 to 0.

- V. **116 Main Street – CB-I/DCD**  
Conditional Use and Site Plan Amendment  
Owner: Ray Alvarez  
Applicant: Terry Wendelken  
Change of use from retail to bar/nightclub

Mr. Zalinger administered the oath to Mr. Wendelken.

Mr. DeSmet said the applicant requests site plan amendment and conditional use approval for the proposed change of use from retail to bar/nightclub at 116 Main Street. Bar/nightclub is a conditional use in Central Business I. There are no exterior changes at this time, no signs or lights. The applicant intends to have live music and will not serve food. It is in the space that Adorn used to be in. It is right next to the Main Street Bar and Grill run by NECI.

Mr. Zalinger asked if this use was a conditional use in CB-I.

Mr. DeSmet replied yes.

Mr. Zalinger said this application is light on facts.

Mr. Wendelken said he hopes he can answer any questions that might help the conditional use go forward.

Ms. Haskell asked how many square feet they were talking about.

Mr. Wendelken said he didn't have that figure with him. It isn't very large. There would be 25 seats with entertainment.

Mr. Zalinger asked if he had any tentative discussions with a liquor control inspector for Central Vermont.

Mr. Wendelken said he didn't know if he had spoken with Mr. Prevost.

Mr. Zalinger said there are a variety of rules and regulations that a licensee has to comply with. He asked if he had a lease yet with the landlord.

Mr. Wendelken said he did not.

Mr. Zalinger asked if the landlord understand what he is applying for.

Mr. Wendelken replied he did.

Mr. Zalinger asked if he understands that an element of the lease will have to be an apportionment of the cost and expense of providing the kind of fundamental changes to the plumbing and electrical service in the building.

Mr. Wendelken replied he is aware of that.

Mr. Lindley said he is confused about the hours of operation. He asked if it was going to be opened on Sunday.

Mr. Wendelken replied it will be open. A Sunday afternoon would be a nice time for an afternoon music venue.

Mr. Lindley asked if he was aware of the sound ordinance in the city.

Mr. Wendelken replied he was.

Mr. Lindley asked if he intended to comply with that.

Mr. Wendelken replied he does.

Mr. Richardson asked what type of insulation, if any, exists between the walls.

Mr. Wendelken said there is enough so that when he has been in there I can't hear anyone on the other side of him. He doesn't know if there is any actual soundproofing between the walls.

Mr. Zalinger asked if he had contemplated how he is going to improve the inside of the project. Does he have a floor plan?

Mr. Wendelken replied he has a tentative floor plan he has shared with the building inspector. It has some closet spaces and changing room areas that were just tapped into the floor and they would be removed. He is still looking at handicapped regulations he would put into place and there would be an actual physical bar installed there.

Mr. Zalinger asked if the back of the building opened to the parking area in the rear.

Mr. Wendelken replied it does.

Mr. Zalinger asked if there would be a means of ingress and egress for the public from the rear.

Mr. Wendelken said he thinks there probably would be. He doesn't know if there are regulations covering that or not. His understanding is you have to have both exits opened at all times for fire safety.

Mr. Zalinger said that is a different question than whether the public is given ingress and egress from the rear as well.

Mr. Wendelken said he doesn't know how many people will come in from the back but it would be opened.

Mr. Zalinger said if he is managing it then it would be up to him whether you want the clientele to come in the back door.

Mr. Wendelken said he would prefer they come in the front door. His plan is they would come in the front door.

Mr. Zalinger said he is going to share his concern about being asked to make a decision on such thin facts. He feels he is going to have a hard time articulating based upon the application what they are asking to approve tonight if they acted upon the application. The hours are projected to be only from 4:00 P.M. to midnight Monday through Friday.

Mr. Wendelken replied that is correct. On Saturday they would be open until 2:00 A.M.

Mr. Zalinger said that certainly gives them a rough idea of when he might be opened, but for purposes of determining the other criteria under conditional use they don't have any idea about the plans for menu, etc.

Mr. Wendelken replied there would be no food. It will only be chips, etc.

Mr. Zalinger said he was thinking about the alcohol menu.

Mr. Wendelken said it is only beer and wine.

Mr. Zalinger said they can't design his project for him but it is awkward for them to consider an application that relies upon the board asking the right questions.

Mr. Wendelken said on his drive home they would be able to say they gave or did not give conditional use approval for a new bar in town that is going to have live music and generally regular bar hours that all of the other bars in town do. That is what the conditional use approval would be for.

Mr. Lindley asked if they had seen any review by the Police Department or any of the regulatory folks in town. Did they have a chance to take a look at this?

Mr. Zalinger said the other permits or approvals that an applicant needs are relevant to the DRB only insofar as they impact upon the conditional use criteria. They can run down through the criteria in general terms. The first is the capacity of existing or community facilities. Next is the character of the area affected to the impact of this use within that block on other neighbors. Next is how it impacts traffic on highways and roads in the vicinity and the zoning and subdivision regulations in effect. Last, is the utilization of renewable energy resources which would not be applicable? It relates to capacity of the existing or planned community facilities and the ability of the city to provide water and sewer services at the site, police and fire protection. Next would be the character of the area affected and the impact of traffic on roads and highways in the vicinity. The facility is located on 116 Main Street next to two restaurants with entertainment offered.

Mr. Lindley asked if they would be using the sidewalks for entertainment and drinking in the summertime.

Mr. Wendelken said at this point he doesn't anticipate that but he would be happy to come before the board again and request that later.

Mr. Zalinger said he isn't sure his liquor license would allow folks to enter on to the sidewalk to drink.

Mr. Richardson said he has a concern about sound. This is unlike any of the other music venues in that it has usage side by side. He is concerned there is no knowledge about the sound quality preventing him to put in live music without further information. It could set up a potential clash which would be neither good for the city or the applicant. If he starts playing music loud and NECI starts complaining that can lead to a lot of trouble down the road. He would like to know more about the sound quality.

Mr. Wendelken said NECI is aware he is here tonight. He would hope if they had concerns about the music being loud they might have been here. He doesn't intend to irate his neighbors and be a jerk next door with people he intends to share space.

Mr. Richardson said he doesn't feel he hasn't been provided enough information. As he admitted earlier, he doesn't know what the ability for sound to travel through the walls is or the effect it might have. NECI may not be aware of it. As a member of the Board who has

to regulate when these things come through and how they get approved puts him in a very difficult position very similar to what the Chair articulated to approve something he doesn't have enough information about. There is a noise regulation but that is more for a nuisance level. If you look at other places in downtown venues they don't have neighbors directly next door that has evening facilities. For instance, Langdon Street Café sits by itself. Positive Pie has two neighbors on either side, but they are closed well before their music begins. This is a new potentially discordant use with an existing restaurant where there is a certain value in

the quiet enjoyment of the meals that may be disrupted. He isn't saying they are incompatible, but he doesn't have enough information tonight to make any kind of finding either way.

Mr. Wendelken said obviously he wouldn't want to be in a restaurant and be disturbed because there is loud music next door. Should he turn up a boom box and go next door to see if there is a certain level it should be at?

Mr. Richardson said he can't make that recommendation for him. There is exposed brick on the NECI side. A contractor can tell you certain sound baffling qualities of certain materials. For him there is no evidence of what impact this will make. He is proposing two things. He is proposing to serve alcohol to people and proposing to entertain them with music. He is saying maybe he will play some acoustic but he isn't committing himself to strictly acoustic.

Mr. Wendelken said he is here tonight to hear the concerns of the Board and see what he can do to alleviate those concerns to go forward with this project in this location or another.

Mr. Richardson said he has options. Part of what bothers him is a lack of information. It seems like he comes before the Board with some ideas but he hasn't talked with the Liquor Control Board. Usually when they receive an application there is a floor plan and the knowledge of the square footage so they can review it. This asks them to imagine the space. Maybe they should table the application until he has more information.

Mr. Zalinger said when he first spoke about his application he suggested that it was thin on facts. Really what he has come to the Board with is a concept and the concept hasn't really been reduced to a plan, or at least a plan which has sufficient facts from which he as a member of the Board could determine that it would not cause an undue adverse effect on the character of the area in which it is located.

Mr. Wendelken said they can table the application and he will come again.

Mr. Zalinger said as he proceeds through the process he will have to make decisions in response to the City Building Inspector Glenn Moore and talk to Martin Prevost who is the Liquor Control Inspector. He will have to meet and make plans with his landlord about what his expectations would be for improvements and he will have to make decisions about water and electrical decisions. How many restrooms will he need on site?

Mr. Wendelken said he is aware of all the things he needs. He can't go forward without conditional approval from this board. If they are not going to allow him to have this bar or nightclub in this location he will be spinning his wheels. He isn't going to lease this place unless he has some kind of guarantee he can do what he wants with the space.

Mr. Zalinger said he would suggest he needs a lease but you have to at least a fundamental understanding with the landlord about scope of the lease and what improvements he will have to make.

Mr. Wendelken said he would say an assessment of his project is in the words that are written in the application.

Mr. Zalinger said the plan is still in the conceptual stage. He isn't adverse to the addition of this kind of facility. It is obviously in the CB-I District and this is where it belongs. He knows a concept. He has seen folks come to them and want them to do the plan for them by asking the right questions. They have been through enough of the kind of questions they need to ask for him to embellish and expand upon the content of the application with square footage and the idea of what the internal scheme is.

Mr. Wendelken said he does have that information and this is the first time he has come before the Board to be heard. He isn't someone who has come into a situation before where he has had to make these kinds of requests so he did not bring the actual square footage and same kind of floor plan that he might have to Glenn Moore for fire purposes, which he has basically done. He agrees what he is saying.

Mr. Zalinger said what he needs to understand is that conditional use approval requires the board to make an affirmative determination that the proposed use doesn't cause an undue adverse affect on the character of the area. Cumulatively he isn't sure it will. He can see it having an adverse affect. He can also see a plan that wouldn't. His application doesn't say it is just beer and wine. The Board doesn't have jurisdiction over what he serves but what he serves will have an impact upon the affect his project will have in the neighborhood. He doesn't think in CB-I that this kind of use will have an undue adverse affect on the character of the area, but there are two open items. One is the entertainment and the impact upon his neighbors. Regarding traffic on roads and highways he has a hard time believing he would have an undue adverse effect on Main Street with those hours of operation because there is public parking everywhere. The capacity of the city's facilities they won't know that until he has talked about it with Glenn Moor and talked about it with the Police Department and the Liquor Control Board. The Liquor Control Board needs positive feedback from the City Council in order to approve the issuance of a license in the city. All of this is information the Board would benefit from having. They can't make an affirmative decision until he has been to these agencies and had feedback from about what their expectations will be about his plan. That way his plan keeps moving and developing and then it is a final plan and not a concept for the Board.

Mr. Wendelken said he would be happy to comply.

Mr. Zalinger asked if there was a motion to table the application for conditional use at 116 Main Street until their next regularly scheduled meeting on December 6<sup>th</sup>.

Mr. Richardson moved to table the application at 116 Main Street. Mr. Blakeman seconded the application.

Mr. Zalinger said the Board can table the application but it has to be until their next regularly scheduled meeting. If he has more by that time he should communicate with the Zoning Administrative Officer and make a determination between the two of you about whether there is sufficient information to come back to the Board or they can schedule it again to their next regularly scheduled meeting which would be December 20<sup>th</sup>. The application will be amended. The motion was voted favorably to table until December 6<sup>th</sup> on a vote of 5 to 0.

**Adjournment:**

Upon motion by Mr. Lindley and Mr. Blakeman the Development Review Board adjourned.

Respectfully submitted,

Clancy DeSmet  
Planning & Zoning Administrator

Transcribed by: Joan Clack