

**Montpelier Development Review Board**  
**May 3, 2010**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

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

**Call to Order:**

The meeting of the Development Review Board for May 3, 2010 was called to order by Kevin O’Connell, Acting Chair, at 7:00 P.M.

**Review of April 19, 2010 Minutes:**

Upon motion by Mr. Blakeman and Mr. Richardson the Minutes of the April 19, 2010 DRB were approved on a vote of 4 to 0.

**I. Site Plan Review for a 3 Unit Condominium – HDR**

27 Franklin Street

Owner/Applicant: Ali Sarafzade

Interested Parties: Dave Frothingham, Brian Lane-Karnas, Bob Provost

Mr. O’Connell administered the oath to the interested parties for the application at 27 Franklin Street.

Mr. DeSmet said the applicant seeks site plan review approval for the proposed 3-unit condominium at 27 Franklin Street. It meets all dimensional requirements except for the lot size, but it is an existing small lot so it is permissible. The only outstanding issue is the parking, access and circulation. There is the site plan, cover sheet, general notes, site utility plan, grading plan, and correspondence regarding the driveway design and three options. There is also correspondence from the Department of Public Works to the Administrative Officer. There are also comments from the Agency of Natural Resources River Management to the Administrative Officer regarding floodplain.

Ali Sarafzade introduced himself as the owner of 27 Franklin Street.

Brian Lane-Karnas said he is with DeWolfe Engineering.

Dave Frothingham with DeWolfe Engineering.

Bob Provost said he was the general contractor.

Mr. Lane-Karnas said the project is a 3-unit condominium building located at 27 Franklin Street. It is a lot that was recently administratively granted a demolition permit for the existing 2-unit apartment house that is currently on the lot. Each of the condominium units are proposed to be the dimension of 18' x 40' and each are 2 bedrooms. They each have a garage and as the project is originally proposed a driveway parking space. The driveway is a continuous curve cut at the sidewalk and then splits into 3 smaller drives in order to access each unit with a small sidewalk for the entry doors. They are proposing a planter adjacent to each entry door there to provide some relief of the architectural façade and also to provide a little bit of a sense of privacy and ownership for each of the individual unit owners. It also limits the amount of space available for parking so you don't have cars all over the place and it mitigates the effect of a very large parking area. It breaks it up a little bit so it has a more residential aspect to it. Obviously, it is all municipal water and sewer. They are planning a 4 inch connection to the existing main with 1 inch connections to the individual units for potable water and fire water. There is a small amount of grading that goes on in the back yard in order to accommodate a walkout in the back. The backyard is drained by a few PVC drains that will connect to the units' storm sewer on Franklin Street. They are proposing overhead electric and communication lines in order to minimize the amount of trenching that has to go on with the construction of the project.

Mr. O'Connell said the purpose of the excavation in the back is for what?

Mr. Lane-Karnas said there is a ground floor walkout in the back with a patio for each of the units. The existing lot slopes slightly so it is higher in the back than it is in the front. There is a small amount of excavation that has to be done just to bring the grade in the back down to the first floor elevation of the units. It is a very gentle slope, but there is some slope so they will just have to take a little bit off in the back. Once you have the patios the grade has to continue down for a small amount so water will drain away from the building into the drains.

Mr. Frothingham said they never calculated the amount of cut but it rises between 2 and 2 1/2 feet from the back of the sidewalk to the back of the building, and then rises more steeply from there up about 4 feet to the back of the property.

Mr. Provost said there is a finished floor elevation and it is proposed to be 527.35' and the existing ground is 526', so there is about a 1 1/2 foot rise to the slab. That is floodplain.

Mr. Blakeman said he hopes there has been a demolition.

Mr. Lane-Karnas said there has been.

Mr. O'Connell said the demolition is proposed. The existing building is still there.

Mr. Lane-Karnas said the demolition permit has been issued. It was issued administratively. It was dated on the 7<sup>th</sup> of April.

Mr. O'Connell asked if Mr. Lane-Karnas and Bob Provost were familiar with the comments of the Technical Review Committee and the letter written by Tom McArdle. They replied they were. Mr. O'Connell asked Clancy too summarize the comments from the Technical Review Committee for the DRB.

Mr. DeSmet said there were some visibility problems that the Department of Public Works mentioned with having three cars stacked like that. They were worried about visibility for pedestrians and access management purposes. They recommended denying the curb cut based on the original proposal.

Mr. O'Connell added the letter from Tom McArdle is quite detailed.

Mr. Lane-Karnas said he would be happy to address the access management issues for the Board.

Mr. O'Connell said it is essential and the preeminent issue with the project considering the Public Works and Technical Review Committee's comments.

Mr. Lane-Karnas said the Board has the three plans they had prepared illustrating the various options they presented to the Technical Review Committee. The Technical Review Committee's main concern was visibility for the center car exiting the development when pedestrians are traveling on Franklin Street. What they are showing in the three plans is the area of sidewalk that is visible to the middle car assuming that there are two other cars parked in the adjacent driveways. For purposes of this analysis the vehicle that is used in all three driveways is a full sized pickup truck such as a Toyota Tundra. That is probably the biggest vehicle that can reasonably be expected to park at the development. With the original design the curb cut width is 48 feet and there are defining places for driveway parking for each of the three units. Due to the location of the spaces in the driveway the cars are separated horizontally from each other which provide the maximum amount of visibility when you have the worst case parking scenario. With the original there is 53.3 feet of visibility at the edge of the roadway. Then, the Technical Review Committee asked them to look at was a driveway design that included a neck which is a narrowed area close to the street so as to reduce the amount of exposure that the pedestrian has as they walk down the street to areas where cars may be crossing the sidewalk.

First, they looked at strict compliance with the access management guidelines, which is a maximum of 24 foot neck on the driveway. In order to accomplish this they had to take the left and mirror it so that the two garage entrances are adjacent to each other rather than being separated by the entry door. While it wouldn't be their intent to park on this side it is certainly possible that someone could be parked on this side. It resulted in a longer viewing

area of 72.2 feet, but it is severely restricted to the right hand side. In fact, from this direction strict compliance with the access management guidelines results in a situation where it is more difficult for a car or truck leaving the development to see pedestrians coming down the street as well as cars traveling on Franklin Street. Additionally, even if there were no cars parked there in order to achieve a 10 foot curb radius, which is the minimum for an urban area, it wouldn't allow access. You only have 9.3 feet of perpendicular driveway area so that makes the movement for this garage and the other garage quite complicated to be able to back out of there and be able to turn your car so as not to drive off the driveway and not to hit your car on the garage, and then they are coming to the sidewalk at a skewed angle which will severely limit visibility regardless of what is parked in the driveway. Additionally, this configuration wouldn't be possible to get a vehicle into the garage. It is unlikely you would even to be able to get a four-door sedan into the garage with this small amount of driveway space in front of the garage itself.

Mr. Cranse said each unit does have a first floor garage.

Mr. Lane-Karnas replied it does.

Mr. Cranse asked if that was all that was on the first floor.

Mr. Lane-Karnas replied there is the garage and then there is a small entry way/hallway, and in the back of the unit there is a family room and den area which opens out onto the patio and a second a third floor. The second floor is generally living and kitchen space and the third floor is bedrooms.

Mr. Lane-Karnas said they also looked at a third option. There is a 36 foot wide throat. In this option they can restore the units to their original arrangement and not mirror this last unit. However, with increased driveway space you have more possibility of people parking in the driveway so you only result in a 36.2 foot visible area of the sidewalk at the road edge, which doesn't even cover the entire driveway apron in this area. Both of the options when you use the planner you are losing the aesthetic element of separation and relief to the façade and also the relief of the visual perception of a very large paved area in front of the units.

Mr. O'Connell said for this option to work would seem to require a lot of parking discipline.

Mr. Lane-Karnas said they can say they won't allow people to park in the driveway, but in reality unless you have someone in a lawn chair sitting out there saying they can't park there it would be very difficult to insure that this situation wouldn't happen. If they have a 36 foot throat they have a 36 foot viewable area. If there is a 24 foot throat there is a 72 foot viewable area but only 14 feet to the one side. With the original proposal the viewable area is 53.3 feet. Given the analysis of a design that is focused more on strict compliance with the access management guidelines they feel that this design not only provides the greatest safety but also provides the greatest aesthetic benefit to the development.

Mr. Cranse asked Mr. DeSmet what the rear setback requirement is for this district.

Mr. DeSmet said it is 30 feet.

Mr. Lane-Karnas said the development is back as far as they could put it and remain in compliance.

Mr. Richardson asked if there was a sidewalk on the other side of the street.

Mr. Provost replied no.

Mr. Richardson asked if there was any other house in that neighborhood that has this kind of wide curb cut.

Mr. Lane-Karnas said across the street there is a warehouse. Their curb cut is a similar size.

Mr. Richardson asked if there was any other residence in this neighborhood with this kind of wide curb cut.

Mr. Sarafzadeh replied yes, across the street about three houses down. It is the house that is owned by the Land Trust with the columns.

Mr. Provost said the condominium project just down the street, Riverside; there is a similar layout with planters separating parking areas that back on to their thru way.

Mr. O'Connell said that is a self contained complex.

Mr. Provost said from the perspective of traffic flow, traffic patterns, and the speed of traffic along with pedestrians it is very consistent. There is a lot of pedestrian traffic and the vehicular traffic is relatively slow.

Mr. Lane-Karnas said given the pedestrian bridge at the north end of the complex there are a lot of pedestrians that walk through their parking area as well.

Mr. O'Connell asked if they had considered alternative configurations considering the Public Works memo and Technical Review Committee's recommendations.

Mr. Lane-Karnas said it is difficult to consider in this case because this is a modular unit. It is his understanding there is a restricted number of configurations that you can get from the manufacturer.

Mr. Sarafzadeh said if they turned it sideways it would require a variance because length wise they are 80 feet.

Mr. Cranse said the Public Works Department's report recommends that if we accept or approve Option 1 the recommendation is that the length of the planter be reduced by about 5 feet and to increase the separation of the planter from the sidewalk to a distance of about 8 feet. Is that acceptable or make sense?

Mr. Sarafzadeh said it was acceptable to him.

Mr. Cranse said he is comfortable with the parking plan Option 1.

Mr. Lindley asked if they could show them the 53 feet visual.

Mr. Lane-Karnas said they measured the truck and this area is what is visible by the driver at this point. The 53 feet is at the edge of the road. Obviously, if these were three sedans or three Honda Civics that visibility would increase proportionately. The trucks are 19 foot long vehicles. It is not incredibly likely there will be three full sized pickups parked in the driveway.

Mr. Matzner asked how the planters are constructed and how is the driveway to be paved.

Mr. Lane-Karnas said the pavement is just standard 2 inch concrete and the planters aren't specified yet, but the height of the planters plus the plants are restricted to 3.5 feet to insure that visibility will be maintained over the top.

Mr. Matzner said he is thinking the residents might get frustrated with the planters and just fill them in and park in those areas.

Mr. Lane-Karnas said his imagining of what these would be would be raised beds but short with a couple of 4' x 4's you could fill in and plant with juniper and daffodils.

Mr. Sarafzadeh said these are rental units so he wouldn't allow that. He has gone through a lot of effort to create something that is visually pleasing.

Mr. O'Connell said he sees some very strong concerns raised by Public Works. He read a letter from Tom McArdle's memo:

*With regard to points raised about on-street parking, the concern raised by this office primarily regards pedestrian safety. Should overflow parking on the street result, this would be due to the higher density and not necessarily the sub-standard driveway designs presented as choices. This should not be considered as a consequence of denying the design preferred by the applicant or engineer. Regardless of the intended meaning of this point, the proximity of the driveway serving 29 Franklin would preclude on-street easterly of the applicant's driveway due to the insufficient space in all three options.*

That is pretty strong language. They don't like any one of the three options and where they raised the issue of pedestrian safety considering that Main Street Middle School is just 75 yards down the road or less, that resonates with him. He would draw the Board's attention to that point.

Mr. Richardson said he sees the pluses and minuses of each of the three designs. He keeps coming back to the fact they are dealing with an existing small lot and they have elected to put three units on it. Multi-dwelling units are a permitted use in an HDR, but you are creating your own problems by having this be three units as opposed to one or two. While he is not necessarily opposed to any of the three designs he isn't overly sympathetic either.

Mr. Frothingham asked Kevin O'Connell if his biggest concern had to do with Public Works' fear or concern about parking on the street.

Mr. O'Connell said the Technical Review Committee makes a technical analysis based upon engineering standards so there are concerns by issues that are raised in the April 29<sup>th</sup> letter.

Mr. Frothingham said in the past when a situation like this arises has there been a resolution or solution, i.e., putting up no parking signs.

Mr. O'Connell said potentially there is any number of resolutions. Speaking for himself he would want to hear Public Works specifically address the issues that are raised in the April 29<sup>th</sup> letter. They don't have the benefit of having them here this evening so that is not possible. He will have to ask the other Board members to chime on this.

Mr. Lane-Karnas said even though the Technical Review Committee expressed reservations about the safety of this design the option they presented they agreed was the safest option. In the third to the last paragraph it says, "Should the DRB wish to approve the application by considering which deviation from the guidelines presents the least amount of conflict with pedestrians and sight lines, we would agree with Mr. Lane-Karnas that option #1 achieves the least amount of danger to pedestrians by achieving the greatest amount of sight distance through separation of the three driveways with a planter."

Mr. O'Connell said it is the least worse option according to the letter.

Mr. Lane-Karnas said they are in the High Density Residential district and it is the intention of the district to create densely developed housing. If you look at the zoning map the majority of the HDR district is the older sections of town that are already fairly densely developed and have small lots.

Mr. O'Connell said they would find no argument from him on that point, and that isn't the issue he is raising as a concern.

Mr. Richardson said they are developing an existing small lot, which is already under sized and they are packing in three fairly good sized multi-family units in which you are almost guaranteed to have at least two cars per unit. It is a recipe for this kind of situation. Did they do any traffic analysis as to the number of cars that come down Franklin Street?

Mr. Sarafzadeh said they did not.

Mr. Richardson asked if these site lines affected by anyone parking in front of 29 Franklin Street.

Mr. Lane-Karnas said the maximum of site line was considered as the edge of the property so any parking on adjacent properties wouldn't affect any of this because he assumed you couldn't see past the edge of the property.

Mr. Richardson said he is looking at option #2 where the 72 foot site line carries over to 29 Franklin Street.

Mr. Lane-Karnas said it does, but the line of actual site from the driver's eye is limited by the iron rod at the corner of the property. Once you get past the property he is making the assumption that the owner of 29 Franklin Street isn't going to construct anything in the public right-of-way.

Mr. Richardson said he isn't concerned about the construction in the public right-of-way but he visited the site and saw a fairly large F-150 pickup parked right in front of 29 Franklin Street.

Mr. Provost said there is a contractor that shows up and they are remodeling the interior of that.

Mr. Richardson said his particular concern is cars coming Cross Street over around Franklin Street because there is a house that sits fairly close to the corner there creating somewhat of a blind corner. Any car coming out of 27 Franklin Street is probably going to be backing out so it can go south on Franklin Street because that would head towards Main Street. Any car coming around Cross Street because there is a whole neighborhood back there creates in his mind a somewhat difficult situation because they are coming around a blind corner and this house is situated fairly close to that corner.

Mr. Lane-Karnas said it is the middle house in the street. The other houses don't have a tremendous amount of parking areas so that may be an existing condition with the other houses and people backing out into the road. Obviously, the closer the car gets to the road down here the more the site triangle increases as well. He doesn't feel that the conflict is quite as much as a concern as pedestrian conflict.

Mr. Richardson said in his mind they are both significant issues because this is a fairly well traveled street. There is no sidewalk on the other side so anyone coming from the Lane Shops or the Meadow across that foot bridge is going to be coming down the sidewalk if they are heading either towards the Middle School or to Main Street.

Mr. Lane-Karnas said he doesn't have the vehicle count information on Franklin Street unfortunately.

Mr. Cranse said the application meets the requirements of section 705 regarding parking. This is High Density Residential and option #1 seems to be consistent with what is in that area right now. He doesn't see a safety problem that is any greater than a number of other buildings in that area or in other parts of the city. To him it is a good use of the lot and the parking meets the dimensional requirements and he thinks the parking in the application is reasonable. People have to be careful backing out. He has to be careful. He is fine with the application.

Mr. Hoff said to pick up on what Dan was talking about with vehicular issues those don't bother him quite as much. He thinks the issue is going to exist no matter how you develop this lot. There might be more cars backing out than there would be if it was a single family house, but the issue is still there.

Mr. Lane-Karnas said they are only increasing the units on the lot by one because the existing building is a two-unit. He is fairly certain those cars back out of the driveway in the existing building.

Mr. Sarafzadeh said what bothered him with the other two options is you are going to increase parking on the street which is only going to exacerbate some of the concerns you have about the cars coming because the visual site line is no longer who is in the sidewalk but now who is in the street.

Mr. Richardson said he sees there is certain reasonableness in option #1. What Tom McArdle grappled with as well is that putting three units on this lot does increase significantly the amount of cars coming out.

Mr. Sarafzadeh said to keep in mind that the existing lot he went by has been disturbed because they have slowly started to do. In fact, the previous owner only used a small portion and did back out consistently. The rest of was a grassy area meant for recreation; he didn't use it as a parking lot.

Mr. Richardson asked how the footprint of this structure differs from the existing structure as far as where it is placed on the lot.

Mr. Lane-Karnas said the existing structure is placed further over to this side of the lot. The existing drive is in this area. In the previous configuration the driveway really was not wide enough for the cars to enter, turn and then come back out. Generally, there were two cars parked in there most of the time.

Mr. O'Connell said he would like to hear from the other Board members. He said he doesn't take lightly what Public Works raises as a serious concern. On the flip side of that he is sympathetic to the applicant's desire to get a project moving that in all other regards except the Public Works issue about pedestrian safety seems to fit the bill. One option they do have is to bring in Public Works, presumably Tom McArdle, to answer any questions.

Mr. Frothingham said with regard to Public Works Tom recommends denial of the curb cut as presented. However, he goes to say he would recommend reducing the length of the planter by 5 feet, which to him says it would be acceptable to him.

Mr. O'Connell said to him it's not clear exactly where he is going with that thought, and that would be one of the first questions he would like Tom to answer.

Mr. Frothingham said he is suggesting how it could get approved.

Mr. Cranse said it is clear what he is saying. He is saying he thinks it should be denied but if you want to do it here is what you should do.

Mr. O'Connell said he is a little hesitant to try to interpret exactly what slant he is putting on that.

Mr. Lindley said he agrees with Roger. It's a difficult issue, but he thinks if the developer is willing to move the planters back as recommended by Public Works that they probably have the best situation they possibly can have under the circumstances. The best situation they can have is cutting the planters back and giving as much visual to the project they can have, and he would be in favor of moving on.

Mr. Blakeman said there are some neighborhoods right here in Montpelier that are very similar when you think about the driveways. He is thinking about Court Street where there is a fair amount of traffic. First, it looks like it would be very good in terms of looks. He sees he is marketing to single people and couples mostly. He doesn't see too many people with 5 kids going into the rental units.

Mr. Sarafzadeh said they would be too small for a family.

Mr. Blakeman said the concern about the Middle School and the entrances to the school itself and to the playground are not there. There is a walk-in from Peck Place and Cross Street, and when it comes to the doors of the school itself they are up further. He lived in a

city where there were similar situations and you just don't drive that fast. In fact, he walks on that Franklin Street several times a month and you find that people just don't drive that fast. On Cross Street you just have to look carefully when you drive. He thinks the project would be an improvement for the whole neighborhood. He doesn't know what happened with the house that got demolished.

Mr. Sarafzadeh replied it wasn't habitable from day one. His original plan was to rehab it, but its foundation were gone and the ceilings were only 6 1/2 to 7 feet.

Mr. Richardson said he disagrees. Another point that occurred to him is that when people are coming down Cross Street taking the left they are going to be concentrating on the Lane Shops and all of the traffic coming out of there. He thinks they are over burdening the area. The entrance to the Middle School is down further, but how do you think they get there? They have to walk down the sidewalk from the Meadow or other locations. It's a fairly heavily travelled pedestrian avenue. He has seen kids come down in the morning from that street. How much of a problem is this sidewalk and what will these 6 cars create as far as making this more like a city like intersection rather than a neighborhood?

Mr. Matzner said quite a few of the residents in the Lane Shops are elderly and/or in some way disabled and many of them don't have cars. Traffic on that sidewalk might have impaired judgment as much as a child.

Mr. Sarafzadeh said the character of the neighborhood is already set. There is a warehouse across the street which regularly has deliveries made by large trucks. There are the Lane Shops which is heavily developed with large parking lots that already exist. That neighborhood's character in terms of being highly travelled by cars is set. His three little units won't change that character.

Mr. Hoff said he doesn't think Option #2 or #3 as far as the parking arrangement is good. They add additional challenges to the development that doesn't make sense to him, so he is at the point of either Parking Option #1 with the reduced planter or that three units isn't appropriate for this lot. He doesn't know the area very well and would be benefitted by a site visit to help him with the decision.

Mr. Cranse said if this proposal meets every requirement of our regulations how can Jeremy say that three units isn't appropriate?

Mr. Hoff said they could have different configurations of the driveway if there were fewer units essentially.

Mr. Cranse said the application meets every requirement of section 705 which covers parking. How can he say it's not appropriate?

Mr. Hoff said it meets the parking requirements but not the access.

Mr. O'Connell said access management is an issue because of the proposed width of the drive. There is no separation between the parking and driveway specifically. There is certainly enough division from the Board that the outcome is debatable. He does see they do have the option of delay until their next regularly scheduled meeting with the benefit of both a site visit and testimony from the Public Works Department. They can proceed with going through the criteria or the applicant could wait for further testimony on May 17<sup>th</sup>.

Mr. Lindley said if Jeremy thinks it needs a visit to the site he is willing to concede they should be able to get there. Roger's point about the application meeting all of the criteria is right. If you want to bring in Tom McArdle in here, that's fine, but he will be not any clearer than he is with his language in the memo.

Mr. O'Connell said they could ask specific questions.

Mr. Lindley said he doesn't know if they want to table it or just continue the hearing until May 17<sup>th</sup>. He would be happy to make that motion to continue the hearing until May 17<sup>th</sup>. Mr. Blakeman seconded the motion.

Mr. O'Connell said he would like to add to that the Board has Mr. McArdle at the next meeting and all members should visit the site.

Mr. Richardson said he would like to understand fully the pedestrian issue. He would like to know if this is going to have an impact. He would also like to see some of the site lines for the traffic with cars in the street as they are in front of 29 Franklin Street. he doesn't want to put a burden on the applicant creating a traffic study but the more he understands this, the better. He agrees with the rest of the Board as far as the other criteria. To answer Roger's concern is a lot of times with traffic or setbacks they are little canaries in the coal mine regarding the placement of a project. This traffic sticks out fairly big to him when the rest of the project seems to go along smoothly.

Mr. O'Connell thanked Dan for his comments and said they mirrored his own concerns.

Mr. Matzner asked if they needed to talk about the utilities issue.

Mr. O'Connell reminded the Board they have a motion and a second, and the discussion is on that motion. That would be appropriate for discussion at the continuance of the hearing on May 17<sup>th</sup>.

Mr. Cranse told Mr. Lindley his motion didn't include a site visit.

Mr. Lindley said it isn't an organized site visit.

Mr. O'Connell asked for a vote which passed on a unanimous vote of 6 to 0.

**II. Variance Request for second dwelling unit – LDR**

3360 Elm Street

Owner/Applicant: Robert and Pamela Lamphear

Interested Party: Joan Anderson

Mr. O'Connell administered the oath to the applicants.

Mr. DeSmet said the applicant seeks a variance from the dimensional requirements to add an additional dwelling to their property at 3360 Elm Street. The minimum setbacks are met. They were granted approval for the demolition of an existing garage and the construction of a new garage with a dwelling at the top. At the time they were permitted to place a manufactured home during construction. They decided upon completion to leave the manufactured home on the site for an additional dwelling. It is not on city water or sewer so the minimum lot size is two acres. They have 1.9 acres in Montpelier and some additional acreage in Middlesex.

Mr. O'Connell asked if the additional acreage is directly adjoining.

Mr. DeSmet replied it is. They are seeking a variance to allow that additional dwelling to stay.

Mr. Richardson asked if there was any initial ruling if this was a variance from the city. He noticed there was some argument presented by Mr. Anderson in his filings.

Mr. DeSmet said he didn't think there was a disagreement about that. They applied for a variance prior to retaining Mr. Anderson's services.

Mr. and Mrs. Lamphear identified themselves. Jon Anderson identified himself and said he is helping the Lamphears tonight. There are a couple of ways for the Board to give the Lamphears the relief they are requesting which is they have their house. They own 6.9 acres in all, and a little over 4 acres of that is in Middlesex but the same lot. What they would like to do is to be able to have their son be able to occupy a trailer that is on the lot. Their daughter has received approval to build on the land in Middlesex. Ultimately, the end result is that there will be three houses on one lot.

Mr. O'Connell said it is considered as two lots, though, on the land records.

Mr. Anderson replied it is taxed by two different municipalities. One of his favorite clients has a house that straddles the boundary between South Burlington and Shelburne so if he wants to declare his residency in Shelburne he can move to a different bedroom in the house. The way he thinks the setback issue should be analyzed and lot size issue should be

analyzed is they look at the whole lot? That is the alternative suggestion he makes to the Board. If you don't do it that way, then the other issue is they qualify for a variance by virtue of the fact that their land is divided by a municipal boundary and it is the extraordinary shape of the lot.

Mr. O'Connell said he thinks the facts of the matter are that the 1.9 acres of land in Montpelier is what they are dealing with. It may be very well true that there is a contiguous part of the legal parcel, but they are dealing with Montpelier and a variance request from Montpelier. Does he agree with that?

Mr. Anderson said he thinks that is part of what they are dealing with. The other part if they accept his interpretation of the law they don't need the variance request. They qualify. The lot size is 6.9 acres. There is case law they have cited that says you can use land outside the municipality as long as it is the same lot to qualify for the density requirement. The density requirement is the only problem they have. The bottom line is that if all of this land was in Montpelier they wouldn't be here.

Mr. O'Connell replied of course not.

Mr. Anderson said in terms of what they are trying to achieve with density or having things look like the neighborhood, if there are four of the members who want to vote for the variance then he is very happy.

Mr. O'Connell said case law isn't the city's ordinance. Our ordinance is what it is and they are dealing 1.9 acres in Montpelier and dealing with a variance request for that. In his view they are dealing with 1.9 acres in Montpelier.

Mr. Richardson said it depends upon the analysis and what Mr. Anderson is proposing as an alternative to a variance. If they are dealing with just the Montpelier lot they are dealing strictly with the variance issue and the minimum lot size which they are under by a tenth of an acre. A tenth of an acre is other case law requires a variance. The single lot straddles the town boundaries. The case law allows for that but there a couple of questions raised. The variance is difficult because it is a variance. It is meant to be a high hurdle. He doesn't know if the applicants have an inclination one way or the other.

Mr. O'Connell said they can look at some of the variance criteria. It seems as though that the variance may give them what they need but it has to be a unique situation.

Mr. Anderson said in general his observation has been that oftentimes if it looks like a good idea for the neighborhood and if you don't have neighbors who are objecting to a variance that oftentimes you get the variance, and that is the condition you have here. That is what they have tried to put in front of the Board. There is a situation where they have vented all of the neighbors, letters from all of the neighbors and two are here tonight, and overall the

density of what they are proposing the look of the neighborhood won't change. The density of the neighborhood won't change. He just doesn't want to give up the other alternative.

Mr. O'Connell said maybe they don't have a problem on the variance request.

Mr. Lindley said if they try to sell the lot, which includes Middlesex and Montpelier, do you need a variance from Montpelier? If we said you have plenty of land and not to bother us right now for a variance, would they need a variance to get a clear title?

Mr. Anderson replied no. If whatever the Board does and there is no appeal from it within 30 days, then it is over and done with. The Supreme Court doesn't have patience for raising these issues down the road.

Mr. Lindley said if they are silent tonight about this situation because of the Middlesex property, can they sell that lot without a variance?

Mr. Anderson replied yes. What he would like to do in that situation is get the issuance of the building permit, and if there is no appeal from the building permit within 30 days, then it is fine, and he would be very comfortable with that. He said he doesn't care how they get there, and he thinks he has two good arguments here.

Mr. Lindley said there are 6.9 acres in this lot and it just happens to be that only 1.9 of it is in Montpelier.

Mr. Lamphear said for the past 20 plus years they have been paying on 2.6 until they had it surveyed and now they are down to 1.9 acres.

Mrs. Lamphear said prior to that they paid taxes on the last house on the street, which is the Scruton house, which used to be attached to their property until the city decided to auction it off.

Mr. Blakeman said he has gone through the maps and only sees two corners of what might be where the house is. There should be a footprint of the house.

Mr. DeSmet said that is the building they tore down and rebuilt, and that is the housing they were using temporarily but now would like to use. They aren't requesting any development; they are just requesting to be able to allow this second dwelling on the parcel.

Mr. Anderson said they have referred to it as temporary housing. These folks bought the lot with the trailer that is there now on it and a barn. They reached a point where they said they would like to build their house so they took down the barn and use that footprint, so they built a workshop with their living quarters are up over it. At that time they were both fully employed. Mr. Lamphear works for a home builder and Mrs. Lamphear where her life was

threatened at the work she was doing so she changed her employment. The result is that their income went down. The other part of the situation is that now their son is in need of housing, so if their son occupies the trailer then they will have enough money to pay the taxes so they can cover the taxes and get their son a place to live. When they came in before, they said yes this trailer has been here a long time and they were going to live there until the house was built and remove the trailer.

Mr. Cranse asked Jeremy what he thinks about this issue. Is there a variance required or not? There is section 805 which is referenced by the attorney and he doesn't understand what it says. "Adopted in the future as part of these regulations shall be considered merged into a single lot." That is section 2 of 805 (2).

Mr. Hoff said typically there are two small lots that are in common ownership that they could under some circumstances by operation of law merge so that one is no longer in compliance. You mentioned the existing small lot argument. If we do end up determining that there is a 1.9 acre lot in Montpelier as opposed to a 6 acre lot that straddles the line, then isn't that an existing small lot?

Mr. Anderson said he is happy to go with that, yes. The implications of that are that you can use it for any use that is legal. What they are proposing is a legal use, which is housing, and this low density residential. It is the density issue which is 2 acres if you have on site water and septic. What they are seeking to do is to borrow the lot size from Middlesex to go to the density.

Mr. Hoff said it is basically an accessory structure which is a permitted use in LDR and if the lot was configured in 1899 in the same location, and when the zoning went into effect there was still 1.9 acres on the Montpelier side so it is an existing small lot. To the extent you can develop it in accordance with the zoning you wouldn't need a variance either because you don't need a variance to develop an existing small lot.

Mr. O'Connell said they do if it doesn't have the dimensions required and there is already one unit.

Mr. Lindley said there is no variance for setbacks required. You can have auxiliary structures under our ordinance. As long as you haven't affected the setbacks you don't need a variance.

Mr. Richardson said he would like to make a pitch for Mr. Anderson's original argument which would be about using the Middlesex property. He thinks it is sensible from this perspective. This is one lot. It is 6 acres that happens to straddle the Montpelier/Middlesex line. If the zoning on the other side in Middlesex is equivalent to the zoning of LDR here in Montpelier, then it makes sense to treat this as one parcel and to give them a permit without a variance but incorporate that land that just happens to be on the other side in Middlesex.

That might require going through Middlesex and getting some approval there or registering the permit on the Middlesex side, but then we treat the whole lot as a single lot which is the way the Lamphears have treated their property since they owned it, and probably before that as well. Then, we don't get into the variance criteria. We get a minimum lot size so if they do sell it they are not going to use that as a dividing line and end up with an odd shaped parcel. That passive piece will always be attached. For them it makes sense to have the three houses here, but someone down the line may want to start to subdivide. It would be nice if they are going to have two houses that are close to have some kind of language that would incorporate that Middlesex parcel by virtue of the nature of this permit that is registered on both sides of the line.

Mr. Anderson said they said they would be happy to have a condition. They have a permit to build a unit in Middlesex. They are happy to have a permit from the DRB that says they can't do anything more on the property anywhere without coming back here.

Mr. Richardson said he is thinking about even a more simple solution which is a tenth of an acre away from having the minimum lot size. Why not just simply out that tenth of an acre carved out so you don't create some kind of wicky situation down the line.

Mr. O'Connell asked Mr. Richardson if that wouldn't be creating an additional complexity that perhaps wouldn't be necessary?

Mr. Lindley said but by the grace of God they had this thing surveyed and it came out 1.9 versus 2.2 acres.

Mr. Hoff asked if the Board's decision be binding on Middlesex.

Mr. DeSmet said if it is the same property how do you share?

Mr. Anderson said a condition on your permit is binding on the Montpelier portion of the property so if you say we can't do any further development on the lot without the Board's approval, then by virtue of part of the lot being in Montpelier it is binding. They have to go to Middlesex to satisfy their permit requirements for the portion of the land in Middlesex. But if they put a condition on them as part of that requirement that they couldn't do anything in Montpelier without further approval, then they would have to live with that.

Mr. Hoff said with that argument extended you came to Montpelier and asked for a zoning permit. Could you get this permit from Middlesex because it is the same lot?

Mr. O'Connell said they couldn't to build in Montpelier.

Mr. Hoff said conditions prohibiting things would be allowed but we couldn't give them a permit to build in Middlesex but we condition our permit that they couldn't build in Middlesex.

Mr. Anderson said under the theory of the case he gave the Board they are borrowing the land area from Middlesex. It's a passive use. They aren't proposing any development; they are simply borrowing that area and bringing that borrow into the jurisdiction of Montpelier for the Development Review Board. As a condition of allowing them to make that borrow the Board can impose conditions on what happens in Middlesex because if they turn around and develop five units in Middlesex they no longer conform to Montpelier's ordinance.

Mr. O'Connell said he is going to ask Clancy to specify what we are really looking for because in the Low Density Residential the requirement is two acres per unit so what they are looking at is four acres and not two.

Mr. Richardson said they are allowed to have two units because they aren't subdividing. This is like Towne Hill Road Lot #2 subdevelopment where you have two houses on lot.

Mr. DeSmet said they had 25 acres so they could get a waste water permit.

Mr. Lindley said they have 6.9 total acres.

Mr. DeSmet said he isn't opposed to the solution to this.

Mr. Richardson said the three houses, and that's it for the permit. He thinks it can be enforced through Montpelier. If they seek a permit and obtain one that is noncompliance with the conditions that Montpelier puts on their permit, then Montpelier falls out of conformity and you raise a whole host of issues down the line.

Mr. DeSmet said if they came in to do anything else the person in his job would look at the dimensional requirements of what they are doing and they would come to the same conclusion. The frontage and the acreage are deficient according to 2008 zoning, but if you borrow from the other town he doesn't see that as a problem.

Mr. Cranse asked if that fixed the frontage issue.

Mr. DeSmet said the frontage is the frontage. They are not going to be able to get any more.

Mr. Anderson said they are not introducing a violation of the frontage. The frontage is what it is, and what it has been for more than a century.

Mr. Cranse asked if they needed a variance on the frontage.

Mr. DeSmet said it is up to the Board. In his opinion he thought they needed a variance to add an additional unit and the deficiencies he found was the frontage and acreage. There was no incursion on the setbacks.

Mr. Matzner told Dan he had put up an interesting statement about whether the zoning in Middlesex is equivalent to the zoning in Montpelier. Do we know what that zoning is?

Mr. Anderson said it requires a larger density requirement but they have satisfied that. It requires more acres per unit, and they have satisfied that. In fact, the zoning is the same for single housing.

Mr. Cranse said they have a 6 plus acre lot. Legally, in terms of the regulations section 805(2) seems to say that you can merge the 1.9 and whatever is in Middlesex and count it as one lot for the purposes of our regulations. If that is the case they have got more than enough acreage to permit them to keep the trailer there, which this is all about. He still thinks they need a variance on the frontage.

Mr. Lindley said he is concerned about going for a variance on the frontage because as you look through the criteria you aren't going to make it.

Mr. DeSmet said if you also determine that it is an existing small lot it wouldn't need a variance.

Mr. Matzner said a variance is only necessary if you are creating a nonconforming lot. This one we are not creating.

Mr. DeSmet said a variance is necessary for any deviation. If you find that it is an existing small lot he doesn't think the variance is necessary.

Mr. O'Connell asked how they handle this. They aren't dealing with a variance if they accept the fact that they don't need to do the frontage.

Mr. Lindley said he thinks the record should reflect they are talking about this particular parcel with all land included as a six acre lot. The minutes should reflect the fact that we want something with Middlesex to indicate that this is one parcel.

Mr. O'Connell asked if that would be in the form of a motion.

Mr. Lindley said he didn't know whether to form a motion. If somebody wants to look at the record that is what everyone should come to a conclusion on.

Mr. Hoff asked if he is correct in recalling that the applicants had a building permit in Middlesex for a house and there is 10 acre zoning in Middlesex.

Mrs. Lamphear said they grandfathered in on 5 acres.

Mr. Hoff said they used exceptions to the zoning ordinance in Middlesex to get permitted on 5 acres down from 10 acres in the district. The district calls for 10 acres and they grandfathered in on 5. The parcel is 6 acres. You have an acre left over from Middlesex so they are borrowing land from Montpelier to get permitted in Middlesex. Now we are in Montpelier and there is one unit and an accessory structure, and the owner had a second one which gets you up to 4 acres, so really you are talking about 14 acres worth of structures.

Mrs. Lamphear said no. At the time when they bought the land it didn't need to have that much acreage. It is just over the past few years with new rules and regulations that went from a building lot and you only needed a couple of acres. The problem was they waited too long to do anything until now, and now they are saying they need more acreage.

Mr. Lindley said he thinks they are using an auxiliary structure in here to add up to the acreage to 14. There is a trailer and an auxiliary structure, both of which include the ability to live in.

Mr. Hoff said they also have the permitted building in Middlesex. There are three structures and an auxiliary structure and accessory structure.

Mr. Lindley said there are three total structures which have living quarters in all three, in which case they are residential.

Mrs. Lamphear said they had a garage and basically are using the same footprint as they had before. They tore down the old garage and put up a new garage with an apartment over the top of it. Their deed does say they will look at Montpelier and Middlesex land as one and the same, as one lot. The deed for Middlesex and Montpelier are the same.

Mr. O'Connell asked if there was anybody on the Board right now that thinks a variance is the preferred way to go as opposed to approaching this as one lot that happens to straddle the town line. Now we are crafting the best solution to this.

Mr. Lindley said the minutes ought to reflect the Board's deliberations in coming up with a conclusion that it is one lot with 6 acres. Whether they want to craft language which ties up Middlesex land to do that he doesn't know. He is inclined to think it is one lot.

Mr. Hoff said he is having real issues not knowing what the Middlesex zoning says. If they have minimum dimensional requirements for the permitted lot in Middlesex, how much of that is used up, and whether we can borrow from something that is already used up.

Mr. Lindley said conversely they have owned that long enough so they predated whatever the current situation is in Middlesex.

Mr. Richardson said they may have owned it, but when they go for the building permit that is when the clock starts.

Mr. Lindley asked how they got the permit for the house. How did Middlesex approach the Lamphears in terms of getting a permit for the house for the son?

Mr. Lamphear said they grandfathered in on the five acres in Middlesex.

Mr. Anderson said this Board is concerned about the enforcement of Montpelier zoning bylaws. They think they comply with Montpelier's zoning bylaws. There is this issue out there in Middlesex as to whether what they are doing in Montpelier will cause them to be in violation of the Middlesex zoning ordinance, but that isn't the DRB's concern because you don't have jurisdiction. If they can figure out a way either by grandfathering or to keep the folks in Middlesex happy for whatever reason, then they are allowed to do. The DRB's jurisdiction extends to Montpelier and they are happy to borrow. If these were different uses that were allowed then they couldn't even borrow.

Mr. Hoff asked if they knew approximately what year they achieved grandfather status in Middlesex.

Mr. Lamphear said it was two years ago. They got all of the building permits in place two years ago for Middlesex.

Mrs. Lamphear said they talked to Middlesex three or four years ago and it didn't seem to be a problem. They asked for the permits a year and a half to two years ago and then Bobby and she went down to talk to the Town Clerk about the zoning.

Mr. Anderson said this may be a changed circumstance they need to tell Middlesex about. Middlesex may change things, but that is between them and Middlesex.

Mr. Matzner said they do have 5 acres in Middlesex and based on that they are clean.

Mr. Richardson said that is the 5 acres Middlesex gave them. If we start taking land away from Middlesex that's the exact situation they are trying to avoid, which is the left hand doing something and the right hand doing something different but taking from the same pot. They are in a difficult situation because the land straddles boundaries and they are dealing with two boards that don't usually communicate and don't have overlapping jurisdictions. But trying to treat this as one parcel as they are and making sure everyone is right their own zoning laws is a problem and makes you want to go back to a variance.

Mr. O'Connell said a variance might be the least complicated.

Mr. Cranse asked why not because it is not a hardship created by them.

Mr. Richardson inquired if the house they built an accessory or a house.

Mrs. Lamphear said it is an apartment over the garage. They started it seven years ago when everything was great.

Mr. O'Connell said they also approached this originally with what you felt was 2.6 acreage in Montpelier.

Mr. Hoff asked if this is approved what will be on the lot?

Mr. DeSmet said if this approved the 70 foot long manufactured home and the 32 x 44 garage with a dwelling. There are two buildings.

Mr. Lindley said the way it is configured now it is an accessory building.

Mr. O'Connell said it is a residence and being lived in.

Mr. Hoff asked if they could have two residences on one lot.

Mr. Lamphear replied yes.

Mr. O'Connell asked Clancy if the Board goes through the variance criteria what they are looking for a variance for.

Mr. DeSmet replied it would be the dimensional requirements and frontage.

Mr. O'Connell said the .1 acre would make one residential structure because it is 2 acres per dwelling unit. There are two dwelling units on 1.9 acres. Without a variance you can have one dwelling unit on two acres in low density residential. There are two dwelling units on 1.9 acres.

Mr. DeSmet said his understanding of more than one principal residential structure is that if it met the dimensional requirements then it was fine, but anything over three was automatically kicked into a different jurisdiction. In the case they are talking about on Towne Hill Road they had 27 acres so an additional dwelling, including a subdivision, didn't offend the ordinance. That was the analysis he went through when he talked to the Lamphears.

Mr. O'Connell asked if the Board was ready to review the criteria for a variance, and the variance would be dimensional for two units on 1.9 acres plus the frontage.

Mr. Lindley said now they are making a determination that the lot isn't 6 acres. If Middlesex has a problem, that's their problem. We don't have a problem and we have got 6 acres.

Mr. Richardson said maybe if Montpelier had come first, but the fact is he knows now that Middlesex has a permit on which they conditioned 5 acres. He doesn't see where they can start assuming that acreage is available. Imagine if you owned two lots and you start borrowing from the other. They were both under sized so you borrowed from one lot to make the other fit, and then borrowed from the other.

Mr. Hoff said if they conclude that it is an existing small lot. You can build one structure on an existing small lot. Why isn't that requirement waived as well?

Mr. Lindley said it is an existing small lot and the structure is already there.

Mr. DeSmet said an existing small lot can't be narrower than it says in the ordinance. 27 Franklin Street if it was only 40 feet wide, or 42 feet, they couldn't have considered it without a variance. It says even though not conforming to the minimum lot size requirement if such lot is not less than one eighth of an acre with a minimum width or depth of 40 feet. This one is larger than that. You wouldn't have to preclude them from doing this. He doesn't know that a variance works.

Mr. Cranse said there is a manufactured home there. It was supposed to be removed. The applicants wish not to remove it now and want it to stay there permanently. In order for it to stay there permanently the lot has to be big enough, and the lot isn't big enough. But if we include the land on the Middlesex side the lot is big enough.

Mr. Matzner said there is a permit on that land.

Mr. DeSmet said that is the landowner's own issue with the Town of Middlesex.

Mr. Hoff said if there was a one acre lot and there were no structures on it which was an existing small lot they could put a structure on it.

Mr. DeSmet replied yes.

Mr. Hoff said there already is a structure on it. It is a 1.9 acre lot and it is still nonconforming. Why can't we use the existing small lot provision to put the second structure on it?

Mr. DeSmet said he isn't saying they can't.

Mr. Hoff said the small lot provision waives the size requirements of the lot.

Mr. DeSmet said the manufactured home doesn't offend any of the setbacks.

Mr. Hoff said it's bigger than an eighth of an acre and has the adequate width and depth, and other than that if it is an existing small lot the dimensional requirements are waived.

Mr. DeSmet said it would be different if they were on city water and sewer; the requirements would be less.

Mr. Anderson said the existing small lot language is that if it is small that it can be used for any purpose that is legal in the district, which is three units. They lost the case he put in front of them unfortunately, but Judge Durkin's view of the world is that you waive all of the dimensional requirements if it is a small lot which would get rid of the 6 acre requirement.

Mr. O'Connell said if they just go through the variance criteria why they can't find the necessary hardship is the small lot.

Mr. Lindley said it is being created by the appellant.

Mr. Richardson said there is a difference between waiver and variance. Waiver doesn't cause the Board to go through that fiction saying if people were ignorant of zoning before the lot that caused this hardship. It says it doesn't conform. How do we deal with it? He would feel comfortable using Jeremy's reasoning as the engine to get us there, but he would sleep well at night having the condition that this is it. If it was an existing small lot and it came in the door, would it need to come to the DRB?

Mr. DeSmet asked for two dwellings.

Mr. Richardson replied no.

Mr. Hoff said if there was no building on this lot and they came in for their first structure and they came to the Zoning Administrator and said we have an existing nonconforming lot. Would they need to come to the DRB, and it is a permitted use in the district, or is that an administrative approval?

Mr. DeSmet said he didn't think so. He doesn't feel equipped that the zoning assists him in his decision and they have to come to a decision by this Board. He doesn't think just on its face if it was a plain lot with 1.9 acres and someone wanted to put two dwellings on it that it would be permitted. If it was an existing small lot and it wasn't too narrow or too small, he would definitely give them a permit for a single family dwelling.

Mr. O'Connell said they all know where they want to go on this.

Mr. Hoff said in his opinion treating this as an existing small lot would accomplish that because they wouldn't need to step over the boundary. We accept what we have in Montpelier as 1.9 acres and proceed on that basis.

Mr. Lindley said they would need a variance.

Mr. Matzner said they would need four acres for two units.

Mr. Hoff said they are waiving the dimensional requirements because it is an existing small lot.

Mr. Lindley said this brings them back to the difference between a variance and a waiver, and he isn't sure in his own mind what the great divide is between the two of them. He has a sneaking feeling with these variances that they aren't going to get a variance very easily. He doesn't know what the criteria is for a waiver. Is it just a motion to waive?

Mr. Richardson said that is all it says. If it is an existing small lot the dimensional requirements don't apply.

Mr. Cranse asked what action does the Board need to take.

Mr. Anderson said ultimately the action they are looking for is for Clancy DeSmet to say they can amend their previous permit approval by keeping the mobile home that has been there for 20 years. That is really what they are looking for.

Mr. Lindley said Mr. DeSmet is saying he is not comfortable without this Board taking an action to be able to allow that to happen and he doesn't feel comfortable doing it administratively. Is that right?

Mr. DeSmet replied correct.

Mr. Anderson said the question is whether there is a vote that could be taken by the Board tonight that would make him feel comfortable giving them that relief.

Mr. O'Connell asked if they were at a point where they could make that kind of motion or determination.

Mr. Lindley said they have to go with Dan's supposition on waivers versus variances. He isn't comfortable going with a variance because he doesn't think they are going to get there. He understands what Dan is saying, and that gives us some ability to sleep without violating the Bible according to the great zoning ordinance.

Mr. Richardson said Clancy's point is valid in that yes a waiver would work for one building on that existing small lot, but if we follow it through to what we are proposing, which is two or three structures, then you could actually have more buildings on a smaller lot than you could on a regular sized two acre parcel, and it becomes absurd.

Mr. Cranse asked what if they said the Board discussed the application at 3360 Elm Street and determined that the Zoning Administrator could decide on the basis of section 805 of the ordinance.

Mr. O'Connell said it only gets us one unit, Roger, and that's the problem. We would be back at the start. Jack, why can't the variance work?

Mr. Lindley said it is his opinion if they were to go down there they have created the hardship. How do you give a variance to somebody that has created the hardship?

Mr. Cranse asked if the hardship was the lot size.

Mr. Lindley replied yes.

Mr. O'Connell said the counter point to that is Roger's point which is the hardship is the lot size.

Mr. Hoff said he thinks the second criteria is even harder that without a variance there is no possibility that the property can be developed in strict conformity. It is already developed. It is already approved for a single family residence. The fact they want two is where you create the hardship.

Mr. Lindley said he just isn't comfortable with a variance.

Mr. Richardson said the house that the Lamphears live in is 32' x 44'.

Mrs. Lamphear said they currently live in the trailer. They have not yet occupied the barn.

Mr. Richardson said when it is all done it will be 32' x 44'.

Mrs. Lamphear said the barn downstairs will be a garage and the upstairs will be an apartment. It is really no bigger than what was there before except for a second story.

Mr. Richardson said on the drawing it seems to indicate that the mobile home is 70' x 12'. They are dealing with a 32' x 44' building with two stories. The new building is going to be 2,616 square feet including the garage and dwelling. The mobile home is 70' x 12' so they are talking about 840 feet, which would be less than 50 percent of the garage and the house structure. Is there any reason why they couldn't consider the mobile home as an accessory?

structure? Under section 605(d)(2) the definition of an accessory structure is a structure whose use is incidental, subordinate to, customarily associated with the primary structure located on the same lot. An accessory structure shall not exceed 50 percent of the gross floor area of the structure that is dedicated as primary use. Here is his concern about making these two units and not giving one accessory, which is that they come down the line 10 or 15 years from now and there is another owner who wants to subdivide. That is why they are having the trouble with the existing small lot. This is one lot that should never be subdivided. Maybe the mobile home should be an accessory structure.

Mr. Anderson said they would be happy to say that the mobile home is a subordinate structure.

Mr. O'Connell asked Dan if he had also looked at the accessory apartment section. Mr. Richardson replied yes.

Mr. Matzner asked if an accessory apartment had to be attached.

Mr. O'Connell replied it did not.

Mr. Matzner said they just can't subdivide the lot and sell the accessory structure to somebody else.

Mr. Richardson said it isn't a primary residence or a separate dwelling unit saying accessory use. It's your apartment.

Mr. Anderson explained it is their son's apartment. They have their house.

Mr. O'Connell asked Dan what they could give Clancy to allow him to proceed with the permit.

Mr. Richardson said he would make a motion that we find that this is a section 805(e) existing small lot, and second they find that the mobile home is an accessory apartment to the primary residence under section 605(e)(4). Then he moves they grant the application as a permitted use within the district under those circumstances.

Mr. O'Connell asked if he would draft an e-mail that the Board can circulate amongst themselves.

Mr. Richardson said he could do a draft opinion. He would work with Mr. DeSmet on that. Those are the key elements.

Mr. Lindley said they aren't indicating in any way that a variance is required. They are just making the judgment that we have a small lot. How do you take care of the frontage issue?

Mr. DeSmet said it wouldn't come into play because if the Board decides this is an accessory apartment or structure those things aren't applicable because the reason they came up with accessory apartment was to allow higher densities in places that typically wouldn't be allowed. It says here that accessory apartments are exempted from lot area per dwelling unit requirements of this ordinance, which is exactly what the problem is.

Mr. Lindley said by saying this is an accessory apartment that the title to that accessory structure would remain in the hands of the owner of the land.

Mr. Richardson replied that is correct.

Mr. Lindley asked if that was what their intent was and not to turn it over to his son.

Mr. Lamphear replied yes.

Mr. DeSmet said the city would still consider it two units.

Mr. Lindley said they aren't talking about a structure that can't be moved, but they would retain the title of the accessory apartment.

Mr. Hoff said recognizing a lot as an existing small lot takes care of some of the issues that could crop up later on if someone tried to pull land from Middlesex. Mr. Hoff said he would second the motion.

Mr. Blakeman asked if the Lamphears would still be able to build their house.

Mr. O'Connell said it is already built.

Mr. Anderson said they are divorcing Montpelier from Middlesex.

Mr. Lindley said they aren't talking about their problems in Middlesex. They are going to have to deal with the Middlesex board. They are only covering the Montpelier property.

Mr. O'Connell told Mr. Blakeman the DRB had dealt with the situation in Montpelier to the applicant's satisfaction without borrowing land from Middlesex.

The vote on the motion was unanimous on a vote of 6 to 0.

**Adjournment:**

Upon motion by Mr. Matzner and Mr. Richardson the Development Review Board adjourned on a vote of 6 to 0.

Respectfully submitted,

Clancy DeSmet  
Planning and Zoning Administrator

Transcribed by: Joan Clack