

**Montpelier Development Review Board**  
**February 22, 2011**  
**City Council Chambers, City Hall**

*Approved*

**Present:** Philip Zalinger, Chair; Kevin O’Connell, Vice Chair; Alan Blakeman, Daniel Richardson, Jack Lindley, Roger Cranse, Sabina Haskell and Ali Sarafzadeh.  
Staff: Clancy DeSmet, Planning and Zoning Administrator.

**Call to Order:**

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

**Review & Approval of February 7<sup>th</sup> Minutes:**

Upon a motion by Alan Blakeman and Sabina Haskell were approved on a vote of 6 to 0.

- I. **153 Elm Street – (CB-II/DCD)**  
Owner: Win Turner & Laura Bozarth  
Applicant: Sonia Rivera, Incognito Salon  
Design Review for a Sign.

The applicant appeared before the Design Review Committee on February 15<sup>th</sup> and the Committee approved the application as submitted.

Mr. Lindley moved approval for the application for a sign at 153-155 Elm Street as reviewed by the Design Review Committee. Mr. O’Connell seconded the application. The sign was approved on a vote of 7 to 0.

- II. **58 Barre Street – (CB-II/DCD)**  
Owner: City of Montpelier  
Applicant: 58 Barre Street Housing Limited Partnership  
Design Review, Preliminary and Final Plan Review for a Planned Unit Development, Signage and Exterior Renovations.  
Interested Parties: Garth Genge, Planning Department  
JoAnne Troiano, Capital City Housing Foundation

Mr. Zalinger said the most effective approach to this would identify what changes or modifications have been in the project since they were here for sketch plan.

Mr. Genge said there have been minor changes. At the request of the Council they consulted with the Department of Public Works on the traffic pattern and the parking. There have been minor changes in the location of the handicapped spots to fill in as appropriate and they added a bike rack. Those are outlined in the memo from Tom McArdle to Clancy.

Mr. Zalinger said two things came to mind when he reviewed this. The dumpster is going to have a three sided fence. He asked Mr. Genge to refresh their memory as to what the status of the ownership of the playground is.

Mr. Genge replied it is going to three condominium development with the housing being one condominium, the Montpelier Senior Activity Center area second and the playground would be its own condominium. That way in the future if the Senior Center ever relocates and the city wants to sell its section of the condominium it would still retain the playground because they are responsible for that in

perpetuity. The city would end up owning two portions of the condominium, the Senior Center occupied space and the second condominium section would be the playground, and the housing would be the third condominium owner. They would still be the sole majority owner of the property.

Mr. Zalinger said the city would be the title holder to two ownership interests, one for the playground and one for the Senior Activity Center. The third is the housing partnership that will hold title to that portion of the project which constitutes the residential units on the second and third floor. That is a separate private nonprofit limited partnership.

A member of the audience wanted to know if that was determined who that is at this point.

Mr. Zalinger explained it is an entity.

JoAnne Troiano said the Capital City Housing Foundation is a general partner and the equity partner is the Community National Bank.

Mr. Zalinger said there is a tax credit in there which motivates the Community National Bank to invest.

Ms. Troiano said the partnership itself isn't a nonprofit. The general partner is a nonprofit so they will be paying full property taxes to the city for the housing portion.

Mr. O'Connell asked if the drop off spot was long enough. The two handicapped spots are occupied what size vehicle can get in to the drop off.

Mr. Genge replied it is an extended size so a van should to be able to easily pull up there, back up and parallel park, and then drop off and pull out.

Mr. Lindley inquired about signage.

Mr. Genge said there would be signage on the ground and on display on racks for all of the different parking areas.

Mr. Lindley asked if the van accessible area would be a tow area if somebody decided to park there for a day.

Mr. Genge replied yes. Managing parking in downtown Montpelier is always going to be a challenge. Getting somebody to come and tow it before it is driven away is a challenge as well. The intent is to manage the parking space as it is allocated.

Mr. Lindley said that seems like that is a critical part of moving some of the seniors in and out of that area. Mr. Genge said it is an ongoing issue in downtown Montpelier. Right outside City Hall you can often see the handicapped spaces occupied by non-handicapped vehicles and they try to move them out as quickly as possible.

Mr. Zalinger said the only ones immune to that are the Greyhound Bus Company.

A member of the audience asked if there was a timeline involved for the site work in terms of moving some of the playground equipment.

Mr. Genge replied no, not at this point. They are under application to the Department of Interior through the State for making the adjustments. Some of the playground material needs to be moved with the sale of

St. Michaels being imminent. There will have to be adjustments to the playground. The application has just been submitted and they have to wait to hear from the Department of Interior. The hope is to be able to actually expand the parking and the playground equipment back in. There are certain items on the St. Michaels site that won't exist unless they reconfigure the site but that is still under advisement and not part of the application at this point.

Mr. Lindley asked if they give blanket permission by accepting this tonight to be able to make those changes on the playground so they won't have to see another application for the playground.

Mr. Genge replied not as far as he knows.

Mr. Zalinger said no part of the application has to do with the playground. The ownership belongs to the city.

There are also design review components. The Design Review Committee approved the application as submitted. There isn't a name yet for the entity. The Board should separate these matters as they exist under their jurisdiction. Is there a motion regarding design review approval?

Mr. Richardson moved approval for design review at 58 Barre Street recommended by the DRC stating that the lighting fixtures be of the warmer color LED bulbs. Mr. Cranse seconded the motion. The motion for design review approval for 58 Barre Street was granted by the DRB on a vote of 7 to 0.

Now they will take into consideration the preliminary and final plan approval for the PUD component of the project. Alan has a question outstanding about the floodplain.

Mr. Blakeman said it says all development be constructed with materials and utility and equipment resistant to flood damage. What is it?

Mr. Genge replied said where the utilities are installed in the mechanical room installing retaining walls to keep the flood waters out and elevate fuel tanks or the mechanical equipment in the spaces. It is basically flood proofing the mechanical room and the utilities in the mechanical room. It is taking the elevations that are possible with the floodplain and trying to guesstimate what would be the most effective heights. Flood, especially caused by ice jams, are actually relevant to the floodplain. He leaves that up to the engineers to design according to their specifications.

Mr. Lindley said it indicates in the report that it doesn't provide any details regarding the protection of said utilities. He suspects they now have that in place.

Mr. Genge replied they have been given the direction from Clancy and the representative from the Agency of Natural Resources River Management and that has been forwarded on to the mechanical engineers.

Mr. DeSmet said what they have done in the past it has been part of the certificate of compliance and condition of approval. Administratively he will determine it meets the requirements.

Mr. Zalinger said ANR's determination is separate and apart from the DRB's.

Mr. DeSmet replied it is a component of it.

Mr. Zalinger asked if all of the issues raised in Tom McArdle's January 28<sup>th</sup> memorandum been addressed in the most recent plan.

Mr. Genge replied yes.

Mr. O'Connell moved to grant preliminary and final approval of the Planned Unit Development at 58 Barre Street. Mr. Richardson seconded the motion. The motion was passed on a vote of 7 to 0.

**III. 18 Leap Frog Hollow (LDR)**

Owner/Applicant: Dejung Gewissler

Don Marsh, Engineer

Sketch Plan Review for a 3 Lot Subdivision with 5 Dwelling Units

Paul Guiliani said he put his name down as an adjoining abutting property owner on this matter. The first notice he received of this meeting was a phone call last night and he would like to know if he has been entered into the proceedings as a party or not.

Mr. Zalinger inquired of Clancy if sketch plan was a noticed matter.

Mr. DeSmet said it is a noticed matter and they attempted to get everyone on the list notified again and he apologizes for that.

Mr. Zalinger said they will repeat what occurred at the earlier hearing on the project that was initially proposed at 18 Leap Frog Hollow. The scope of the Development Review Board's jurisdiction of this project at the present time is: *"The intent of sketch plan review is to provide the applicant an opportunity to consult with and to obtain feedback from the DRB to save time and expense in the preparation of plans and final review. For larger complex subdivision projects the applicant is urged to meet informally with appropriate municipal representatives to discuss the project prior to submitting a request for a sketch plan review."* It goes on to list five areas of the city's governmental structure. *"The applicant is also urged to notify neighboring property owners to identify issues that may arise in subsequent public hearings and to seek resolution of any such issues."* *"Following review of the materials submitted at the sketch plan review the Development Review Board shall make recommendations to guide the applicant in preparation of plans for preliminary plan review. The Board's recommendation shall be recorded in the minutes of the meeting and shall be provided to the applicant. Action by the Board on a sketch plan review does not constitute approval of a subdivision plot but is merely authorization to proceed to the next step of review."*

In any project such as this there are three steps of review. One is sketch plan; the second is preliminary plan approval; the final step is final plan approval. Although the second and third steps can be joined if the DRB approves that action.

Consequently, those who are interested in the last matter and who are here again he thinks they will find that the process tonight will mirror that which they undertook last time. They just have a different project before them.

Mr. Marsh said to summarize the project has been responsive to the Board comments and neighbor's comments. The most significant changes are really two. Instead of doing a PRD the project is now a 3-lot subdivision with a total of 5 units. There is a 3 acre parcel proposed, a 1 acre parcel and a 3.3 acre parcel in the rear and southern part of the site. The other change is the proposed multi-family building at the top of the lot is actually been changed to a 2 family dwelling.

Mr. Zalinger said Lot C would be the southern most parcel and that is 3.3 acres. It is proposed there be one house site on that parcel. Lot B is 1 acre and there is one single family residence on that lot. Lot A is also 3 acres and on that parcel will be one single family dwelling and the building he just described as a duplex will be 2 units.

Mr. Marsh said the other change is the parking for that. There was parking in the front and there was some concern. The parking has been relocated to both the rear and the end garage is underneath so the primary parking is in garages underneath. There will be overflow parking behind the building. The driveway is over 75 feet from the intersection and the road because they have reduced the number of units can shrink by 2 feet so it is a 16 foot travel land instead of 18 feet. Everything else basically remains the same.

Mr. Lindley said the well shields extend over the lot lines. How do they protect the wells? Do they go to the neighbors and buy protection?

Mr. Marsh replied until a year ago there were no issues whatsoever. A year ago the Legislature determined that if your well shield goes onto a neighboring parcel you need to provide them with notice of the application. That is the practice that is current. No septic systems are allowed within the well areas. There could be development but no septic systems. All of their septic gets pumped to the municipal sewer.

Mr. Lindley said the houses he is building does he have generator backup when electricity fails in order to run the sprinkler systems. Is that his intent?

Mr. Marsh replied no.

Mr. Lindley asked if he was proposing any fencing.

Mr. Gewissler replied no he had not intentions for any fencing.

Mr. Blakeman asked if each of the living units had a sprinkler system.

Mr. Marsh replied yes because that is a city requirement now.

Mr. Blakeman asked if he had enough water from his wells to take care of that.

Mr. Marsh said the answer is no but that will go through Glenn Moore and he needs to issue a building permit that would cover that. You deal with it after the well is drilled so depending on the yield of the well they could either provider sprinklers with a pump in the well. If the well capacity is not sufficient then they would need to put a storage tank in the basement and have a small pump out of that tank to fire the sprinklers. That would be something that would have to go through Glenn Moore for a fire safety final permit issue.

Mr. Richardson said the last time they talked about being interested in preserving the walking trails. Is that still part of this plan?

Mr. Gewissler replied the walking trails were there before when the lot was going to be maintained as one 7 acre lot. Given the fact those lot lines cross those trails there is no guarantee that will continue because it is within the lot boundaries. Those trails actually were not meant to be public access trails. They were for the units that were going to be residing on the property previously. The question brought up about public access was to cross the pasture to get to Sabin's Pasture. It was identified that his property does not abut Sabin's so other property owners' permission were sought after.

Mr. Richardson inquired if there were any variances for setbacks necessary for the two family dwelling.

Mr. Marsh replied no. The two family dwelling will have municipal water for their sprinklers because that is up next to Towne Hill. There isn't a well issue for the sprinklers for the two family units because they would be covered by municipal water.

Mr. Zalinger said there are three separate parcels of property that are going to be subdivided and have three different owners. The common plan of small scale agriculture is no longer included in this plan.

Mr. Richardson asked if the driveway for the two family building a separate entrance off of Towne Hill Road than Leap Frog Hollow.

Mr. Marsh replied no, it will come off of Leap Frog Hollow down about 80 feet and turn off that into the rear of the building. It is a separate issue. It is off the common road as its own individual entrance.

Mr. Cranse said the January 28<sup>th</sup> Marsh Engineering memorandum to Clancy under streets says existing common drive will serve 7 units but the rest only talks about 5 units.

Mr. Zalinger replied there are already 2 residences to the west.

Mr. Lindley said if they used city water they wouldn't have to worry about whether the sprinkler system would work or not because there would be plenty of pressure. They might want to consider that at some point.

Mr. Zalinger said the Board doesn't have jurisdiction over the appearance of the properties.

Aaron Brondyke, Chair of the Parks Commission for the City of Montpelier, said they are present tonight to request the DRB consider the use of what seems to be a relatively little used provision of the zoning code that allows the DRB to require the applicant to dedicate up to 15 percent of the property acreage for conservation or recreation purposes. The rationale for doing so is outlined in the zoning code as well. In Article 7 Section 720 and also in Article 12 which is the code that talks the park impact fee it allows the DRB to require this in lieu of the impact fee. The Park Commission's interest with making this request is they are still optimistic that some day a park will be created at Sabin's Pasture and looking at the tax maps this parcel is very clearly like an arrow straight towards Sabin's Pasture. Their interest is in insuring the Towne Hill neighborhood has public pedestrian access to Sabin's Pasture if it is ever turned into a public park. They are not requesting that the Board require the applicant to donate 15 percent of the land and acreage at this time, but they are proposing that the applicant set aside a permanent public access trail easement on the eastern edge of the property. They would leave that to the Board's discretion. They would ask them to look at the second attachment to the letter which shows the distance of various neighborhoods in Montpelier to the public parks and it clearly shows that the Towne Hill Road neighborhood is located up to two miles away from any of Montpelier's public parks, which is not a lot of distance and addresses the zoning codes suggestion that the DRB look at recreation in certain neighborhoods when making this decision. One other consideration within the zoning code is whether the land is identified by the Montpelier Municipal Plan as a potential recreation or wildlife corridor. When they look at the Master Plan it seems to be within what is called the potential green way which is wildlife and recreational corridor that extends from Towne Hill to Barre Street to Sabin's Pasture. They acknowledge that the property doesn't connect to Sabin's Pasture. Their interest is in being proactive here setting aside the trail easement so that in the future should they have the opportunity to negotiate a continuation of the easement across the adjoining property they at least have that opportunity preserved.

Mr. Zalinger asked Aaron if he had any experience or familiar with any other municipality where the DRB or the Zoning Board of Adjustment substituted an easement for language that seems to indicate an area for a park, playground or other outdoor recreation purpose. That conveys to him a passive dedication.

Mr. Brondyke said he interpreted the provisions within the zoning code could allow the DRB to request the donation of an interest in land for which a pedestrian easement would be and it would be for other recreational purposes. The City of Concord, New Hampshire allows its Conservation Commission to collect property transfer tax revenues and use them to acquire land and easements so it isn't totally unprecedented.

Mr. Zalinger said there is a distinction between New Hampshire law and Vermont law.

Parks Director Geoff Breyer said he would like to add that the easement is proposed in scale of the development since it is a small development. The trail is clearly a recreational trail in nature.

Mr. Brondyke said he didn't think the Parks Commission is looking for a decision tonight. They were hoping to start the conversation and revisit it at a later meeting.

Mr. O'Connell asked what they can do with the park topics in a sketch plan review.

Mr. Zalinger said the Board can discuss it.

Mr. Brondyke said the idea is that this pedestrian easement would hook up with the Cross Vermont Trail which is mapped across the southern portion of Sabin's Pasture.

Mr. DeSmet replied that is a railroad bed now.

Mr. Brondyke agreed it is but he understood it to be a continuation of the bike path.

Mr. Lindley said they are saying it would be possible to create a link from Towne Hill down to the bike path at some point.

Mr. Brondyke said they are hoping this is the first piece of the puzzle to hooking up Towne Hill with the bike path in the future.

Mr. O'Connell replied they would be having this conversation with other property owners as well.

Mr. Brondyke replied there is one between this parcel and Sabin's Pasture.

Mr. Richardson asked if they had approached that parcel owner.

Mr. Breyer replied not yet. They are just trying to start implementing what is written in the Master Plan about having a hub system in Montpelier so as opportunities come up, whether through the Design Review Committee or Development Review Board, they may be approaching landowners about purchasing easements to make the important links to the center of town. There is linking the parts as well as linking the center of town so everybody has a connection. Ideally, with each neighborhood connected there wouldn't be any one trail system that was over loaded with a lot of public access but just be neighborhoods using the trails.

Mr. Richardson said he is concerned they do get this easement and get the link and it becomes a major highway for pedestrian traffic because none of the other access points are either developed or sought after so it would bear a disproportionate use.

Mr. Breyer said one way they could control that it wouldn't be onerous is by not providing a lot of parking and that way it would just likely serve the neighborhoods. He doesn't see that happening without the parking being provided.

Mr. Gewissler said one concern he has is as a property owner that through parking they can try to mitigate the use of the corridor. Leap Frog Hollow is a rather long road and there is a lot of parking along the side of the road. It is a remote area so he could see the traffic increasing very quickly and it would have a direct impact on the owners of the housing units there with people coming through their backyards. Knowing where his property is and where the James Nagle property is located, and another property to the east shows they are actually asking for three property easements whereas the next road east of Leap Frog Hollow has one property. He is concerned they are asking for this easement impacting three property owners as opposed to one.

Mr. Breyer said their goal is to have something that benefits the city and the neighborhood, and if there is a problem with parking he sees working with the Police Department to set up parking so it is neighborhood friendly and is really a neighborhood asset. Ideally, if this is done properly then each neighborhood is connected not only to the center of town but to significant public spaces so every neighborhood is glad they have that connection.

Mr. Richardson said what they are trying to get is something similar to the shortcut that people take from Murray Hill down into town through St. Augustine's Cemetery. What they are looking for is a connector route so people walking in the neighborhood can walk down to Sabin's Pasture or to the Co-Op. He is leery about doing it here in a manner in which it seems like it has been thought out because most of the times when you are talking about easements you are talking quid pro quo. It would make him more comfortable if the Park Commission had this as some type of a plan.

Mr. Breyer said it is actually part of the Master Plan. If you look at the map you will see there are only several green corridors connecting Towne Hill Road area to Sabin's Pasture and the middle of town. This is one of the few green corridors through those neighborhoods. Ideally, they would like to see this be an asset for whichever neighborhood receives these public trails. It is really a valuable enhancement.

Mr. Zalinger pointed out to Mr. Breyer the attributes of an easement is usually the ability to provide ingress and egress for an active corridor. Parking is not an activity. An easement doesn't generally come with the right to park so any individual who took it upon themselves to avail the use of the easement he is proposing would have no right to park. It is great unless you are one of the landowners on Leap Frog Hollow and there are cars parked on Leap Frog Hollow.

Mr. Breyer said he agreed; they aren't asking for the parking. They would work with the landowner to restrict the parking should that be a problem.

Mr. Gewissler said he his interest would on the eastern side of the property and that is exactly where the houses are to be developed.

Mr. Breyer said this would really be an asset to his property. Neighborhoods really enjoy this kind of thing. People at Murray Hill love that kind of connection. Every neighborhood that has that kind of trail enjoys it.

Mr. Zalinger said there won't be a resolution to this question this evening. For the Parks Commission this is a new approach they have taken. New approaches are sometimes met with trepidation. Not only by the DRB but by an applicant who is surprised by this suggestion. They are in the process of proceeding from sketch plan to preliminary review. This is the opportunity for them to discuss this. If after discussion they can't agree then feel free to tell the DRB and make your proposals as you see fit. He has suggested this in

the past for larger projects. This is certainly by size a modest project with only seven acres and 3 lots and 5 single family units. In the past they have discussed this for much larger projects with 25 or 30 units out on Elm Street and they recognize the ability of the DRB to exercise that authority to create park and recreational facilities within subdivisions. The scale was much larger.

Mr. Brondyke said they were alluding to asking the applicant to give something up in exchange for something else. The scale of the development and the number of units proposed is one thing but there is also looking at the public values that potentially become compromised by the development. When you look at the Master Plan this parcel does sit upon what is identified as the Blanchard Brook Green Way. When you look at the habitat map that Geoff attached to the letter it is sort of a narrow swath of both wildlife habitat and a scenic corridor through that neck of Towne Hill so there are public values that are going to be compromised by this development. That is their reason for justifying their request for an easement in this particular case. Finally, should Sabin's Pasture become a park some day it is not a park that is only accessible from College Hill and Barre Street that people from Towne Hill Road can actually get to it.

A member of the audience said she lives on Coolidge Street which abuts Dejung's land and would like to make a comment about the parks. She has two small children 11 and 7 and they live on a dead end street. The beauty of letting them outside to play is she knows all of her neighbors and they aren't strangers walking through their yard. That would be her opposition to walking trails from the city.

Peter Gooddell said he lives immediately to the east. The Parks Department referenced the east side as being their preference for the trail. There is no parking on Towne Hill. Both sides of the road there is no parking all the way up and down and it is very narrow for the driving lanes. There is a sidewalk on one side and a ditch on the other. The duplex and the structure on the northeast side are actually a 30 foot setback from the property line which means there would have to be a very narrow trail and very close to the two residences. He is concerned because he owns a property to the east and since that property is square he is doubtful that people would go down and make a 90 degree turn and is fearful his back lawn would become the curve in the trail. He wishes the Board to take that into consideration.

His background is in real estate finance and he has a concern that Lot A is proposed to include two structures that are separate and of different nature. Whoever owns that parcel will own both structures. From a real estate marketability standpoint it is very difficult to sell two structures on one parcel unless they are very contiguous to each other. In the future the Board may be facing another request when it is realized it would be better off if they were split.

Mr. Zalinger said this is a substantively different project than what was presented the last time. The multi family dwelling has shrunk substantially. The project is now represented as a subdivision with separate fee owners of the three different parcels. It is fair that the applicant can assume that conventional mortgage financing is not going to be available for parcel A for construction and ownership long term. Severance of ownership between the three different parcels makes more sense in the neighborhood than the last project the Board reviewed. It certainly seems to be less intrusive along the Towne Hill Road corridor. It seemed like the applicant listened to the observations from neighbors about the scale of the building and its visibility from Towne Hill Road.

Mr. Lindley said he is still concerned about the height of the structure.

Mr. Marsh in his memo to Clancy identifies what the ridgeline of the roof is relative to the height of the elevation of Towne Hill Road.

Mr. Lindley said there is a public value they need to be concerned about in terms of the site and the views and vista. How much is this building going to interfere on that issue?

Mr. Marsh replied the roof would be about 20 feet above the elevation which would be typical of a single family residence.

Mr. Lindley said the DRB had a lot of concern about structures at a condominium development being proposed on Berlin Hill and there was concern about height in that issue relative to the construction of the buildings. This is a green way and they do have to preserve some of the public value we have of that site and looking down to the college.

Mr. Gewissler said if that was the issue then his first submission was really working toward preserving the green way aspect of this property. Now he has had to come back with a subdivision that further does not address that.

Mr. Lindley added he just wanted him to know that he is looking at the view and vista that is going to be taken in by that structure as you drive down Towne Hill.

Mr. Richardson added that isn't in the Design Control District so there is no specific zoning about the vista.

Mr. Gewissler said he wants to reiterate the fact he is already permitted to build a house there that is 45 feet tall. Actually he plans on making it lower than the neighboring houses already there.

Mr. Lindley added that the neighboring houses as they sit there are not part of the view shed. They sit on either side of that view.

Mr. Richardson said he thinks this plan does represent a very responsive reaction to the earlier sketch plan and the comments of the neighbors, and he think it shows that the neighbors' comments tonight were focused on other issues.

Mr. Cranse said he concurred with Dan's observation concerning this sketch plan.

Mr. Richardson said the only thing he sees missing is the review and sign off from the Department of Public Works, emergency services and other members of the Technical Review Committee.

Mr. Marsh said the driveway needs to be improved to meet the intersection standard. The water and sewer have already been approved by Tom McArdle once.

A neighbor said for years her parents owned this parcel of land and she always understood that it was exchanged. She thought it was 2 acre low density residential for a 2 single family house. Has that changed?

Mr. DeSmet responded by saying it is 1 acre if there are city services and 2 acres if there are not. City services include water and sewer. All of the lots are going to city services for sewer but not for water.

Her father always told her there wasn't enough road frontage at the top of Towne Hill. There was only 80 feet.

Mr. DeSmet said there is 160 feet and the issue was waived by the DRB in the previous subdivision because there is frontage along the drive. The ordinance says you need a minimum of 20 feet.

Mr. Zalinger told the Parks Commission he appreciated their letter tonight. It is fair to suggest to them that in the course of the applicant putting together his preliminary plan for their next return to the DRB it is

appropriate for the DRB to ask the Commission to present their best case in support of what they are asking the Board to do. Once they get to preliminary review the project starts to harden. If they have any further discussions with the applicant and have independent views of their suggestions that they make their best presentation for the preliminary review and not the final review.

Mr. O'Connell said he would like to echo the Chair's comments. It is difficult to look at the granting of an easement for a hypothetical project which is still perhaps years or decades down the road. They need to look at this in a holistic way and come up with some type of visionary concept of where they want to go with this thing.

Mr. Marsh said with their preliminary application they will request that preliminary and final review be combined.

Mr. Zalinger said they have to decide this at this stage. He doesn't think they can decouple it if they determine to couple it. His inclination would be to vote against combining preliminary and final review. There are outstanding issues and he doesn't feel comfortable projecting at this point they will be resolved or addressed in a comprehensive fashion so that preliminary and final could go forward at the same time, and have everyone who has an interest in the project feel like they had an adequate opportunity to be heard.

Mr. Richardson said in that respect it would benefit both the applicant and interested party because it would give an additional hearing in which to respond.

Mr. Zalinger closed the sketch plan review of the revised 18 Leap Frog Hollow project. He thanked everyone for their responses.

**IV. 106 East State Street (HDR/DCD)**

Owner/Applicant: Gary Schy

Design Review, Site Plan Amendment and Variance request for converting a vacant barn to a residential use.

Mr. Schy remains under oath.

Mr. DeSmet said Mr. Schy met with the Public Works Department regarding the issue of the parking and issue of front yard area with the proposed crushed stone. There are two documents at the end of the packet which have been revised. Tom McCardle confirmed that the three parking spaces on the gable side of the barn fits; it is wide enough. Mr. Schy was amenable to narrowing the curb cut with granite curbing. Currently as it exists the curb cut is technically the distance of the barn so the concern with the DRB the last time was that it was too wide of an area and no separation between the housing and the road. If the curb cut was narrowed, i.e. a curb was placed in to direct traffic so there was only one car ingress and egress there would be less of a conflict.

Mr. Zalinger asked if the city's Department of Public Works was amenable to the installation of a granite curb along there.

Mr. Schy said absolutely, yes. He proposed keeping a crushed stone apron around the barn just to keep the sill dry and from rotting again and then to have grass. The side yard that exists, which will become one yard, will give people a place to be in the front. Tom McCardle said he would be willing to hook them up to the storm drain and the curb would also prevent water from running. That solution will work really well.

Mr. O'Connell said he would think the parking stop would work three seasons of the year but what about winter time with the snow.

Mr. Schy said the snow ends up blocking it even more. They use a snow blower and clean really well.

Mr. Zalinger said you see bollards that appear around fire hydrants and they also appear around propane tanks. Behind some of the Barre Street buildings there seems to be a willy nilly jurisdictional issue.

Mr. Richardson said he knows they have had other proposals that involved propane tanks close to a parking area that have required bollards or some type of protection, particularly on Barre Street where Butterfly Bakery is. That may be a state public safety issue. The zoning regulations talk about fuel tanks being in compliance with state regulations. That was before the city building department as well.

Mr. DeSmet said there might also have been a floodplain issue over there.

Mr. Richardson said it raises concerns because there is a common sense element here which is you don't want someone to fly in and smash into those.

Mr. Zalinger asked but is it a site plan issue. The consensus is that it is not.

Mr. Schy said he would be happy to talk to Irving Oil and Tom McArdle about that. Irving is in this business and would hope they would know about the issues when they install the tanks.

Mr. Zalinger said they would move on to the site plan criteria. The area identified as crushed stone will also be the walkway for the residents who have parked to the rest. An area identified as yard is now green grass lawn. Under landscaping and screening on the earlier application where staff comments are there are none as proposed. He asked if they could impose upon him to put some shrubs in.

Mr. Schy replied there is now. A bush or lilac would be pretty.

Mr. Richardson said there are a number of shrubs available that mound and never get larger than 3 feet.

Mr. Schy agreed he would be willing to put a couple of appropriate shrubs in.

Mr. Zalinger said they are going to consider the plan amended to provide for lawn in the area where it is identified as yard and there will be landscaping across the frontage on East State of at least 2 shrubs and some perennial flowers. Mr. Schy replied yes.

Mr. Richardson moved for site plan approval for 106 East State Street and Mr. Blakeman seconded the motion. Approval for site plan review was granted on a vote of 6 to 1.

Mr. Zalinger said the final matter of this application is the variance requested for the rear of the building.

Mr. Schy said he is proposing for the back for the building a full length deck. There is a 10 foot setback so he would be encroaching into that by about 4 feet. The buildings themselves are 2 feet apart. The encroachment is in open space and there will never be a structure there. The neighbor is fine with a variance. It would look really funny to have a deck part way along the building and not continue the rest of the way. Since the 10 foot setback has already been broken by the buildings themselves he would like to give the tenants a chance to enjoy the back yard. It is something that no one looks at right now.

Ms. Haskell inquired if the deck was for both units in the barn or just one.

Mr. Schy replied for both.

Ms. Haskell asked if there would be something dividing it in the middle.

Mr. Schy said he would put up a little divider.

Mr. Zalinger asked what the width of the deck was going to be.

Mr. Schy replied 10 feet deep and the length of the building which is 40 feet. Each side would be 10 x 20.

Mr. Zalinger said each of the units in the building will have a ground floor access out to the deck.

Mr. Schy replied yes.

Mr. Zalinger said Mr. Schy's comment on January 24<sup>th</sup> was he was changing the project for a permit request from a 3 unit project to a 2 unit project. Mr. Schy replied that is correct.

The DB reviewed the variance criteria:

**Variance Criteria - § 1006.**

- a) *That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lots size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.*

The unusual circumstances would be the fact that the existing building is already built within the side yard setback.

- b) *That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.*

In light of the fact that the adjoining property isn't developed in that area at all he could conclude that authorization of a variance is necessary to enable a reasonable use of the property because it would be nonsensical to require the deck to conform to the side yard setback when the rest of the mass of the building doesn't.

- c) *That the unnecessary hardship has not been created by the appellant, and the hardship relates to the applicant's land, rather than personal circumstances.*

It is clear that 106 East State Street predated the adoption of the Montpelier zoning ordinance.

- d) *That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.*

The area where the deck will encroach into the setback by 3 feet is really no use on the adjoining property so it will not alter the essential character of the neighborhood or impair the appropriate use for development at the adjacent property.

- e) *That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the Montpelier Municipal Plan.*

The variance is only extending the mass to comply with the existing encroachment of the building itself. It is the minimum variance that would afford relief.

- f) *The variance will not result in the initiation of a nonconforming use of land.*

This use of this land has already been permitted under the zoning regulation.

Mr. Richard moved approval for a variance at 106 East State Street to build the proposed deck 3 feet within the setback. Mr. O'Connell seconded the motion. The motion for the variance was approved on a vote of 7 to 0.

**Adjournment:**

Upon motion by Sabina Haskell and Roger Cranse the Development Review Board adjourned.

Respectfully submitted,

Clancy DeSmet  
Planning and Zoning Administrator

Transcribed by: Joan Clack