

**Montpelier Development Review Board**  
**April 18, 2011**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

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

**Call to Order:**

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

**Review and Approval of March 21<sup>st</sup> and April 4<sup>th</sup> Minutes:**

Upon a motion by Mr. Blakeman and Mr. O'Connell the Minutes of March 21, 2011 were approved and adopted on a vote of 5 to 0.

Upon a motion by Mr. Richardson and Mr. Cranse the Minutes of April 4, 2011 were approved and adopted on a vote of 6 to 0.

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

Owner/Applicant: Dejung Gewissler  
Sketch Plan Review for a two-lot subdivision  
and two new dwelling units  
Interested Party: Don Marsh, Marsh Engineering

Mr. Zalinger explained that sketch plan review doesn't involve the introduction of sworn testimony but generally a preliminary review of the outlines of the plan and intended to provide feedback from the DRB to the applicant.

Mr. Marsh said the Board has seen this project a couple of times already. In either case it hasn't met with much satisfaction with the neighbors so they have revised it to be a two-lot subdivision with two houses, both single family dwellings. One will be on the upper corner near Towne Hill Road which is just over an acre. The remaining land will be Lot B which will be almost 3 acres with a single family dwelling. Both would have access of a common 20 foot wide graveled access road. Both would use municipal sewer. The front building A will have municipal water. The building on Lot B will have an on-site drilled well. Both buildings will be sprinklered and both have on-site parking next to their garages. They are single family houses with attached garages.

Mr. Lindley asked what they had done with the wetland issue.

Mr. Marsh replied they had done nothing. There are no mapped wetlands on the site. The soils aren't hydric soils so they would not likely be a wetland.

Mr. Zalinger asked Mr. Lindley if there was a wetland issue.

Mr. Lindley replied they asked him to look into it the last time he appeared before the Board.

Mr. Richardson said he didn't think they asked them to look into it. He believes the question was simply raised and the Board asked for further information.

Mr. Marsh replied they have confirmed the soils aren't hydric soils which would be the prerequisite to be a wetland.

Mr. Zalinger said a professional engineer has a legal obligation to depict wetlands on a plan. This is the first he has ever heard of there being wetlands on this site and they have looked at this a multitude of times over the years. He doesn't see there is a wetland issue.

Mr. Lindley replied the city is trying to get water diverted. There have been some real problems and the city has been working on the Towne Hill Road. This area comes up from the Commoli property all the way down through and there is a raceway for water collection and the pond wouldn't be there if there wasn't a significant amount of water.

Mr. Marsh added the ground water is very shallow. The high season ground water is within a foot or two which is typical of these types of soils so it isn't surprising you would be able to maintain a pond because it likely intersects the ground water. Certainly, there were some flooding problems a few years ago because of either the blocked or under sized culvert on Towne Hill Road. The city is scheduled to replace that this summer. That is not on the property nor does it discharge on to the property in question. The stream that has been a concern is not on the property either. It runs on the west side of the common road which is off the property. There is one small stream that does run all the time which is on the lower part of Lot B.

Mr. Zalinger said the location of the proposed dwellings complies with the ordinance for setbacks and coverage issues.

Mr. Marsh replied yes. The setback is 75 feet from the rear and 20 feet on the sides of the property.

Mr. Blakeman said for the property that is on Lot B is going to have well water and they need to make sure there is enough water for the sprinklers. Have they reviewed that?

Mr. Marsh replied yes. They reviewed that with Glenn Moore from the Fire Department. Depending on the well driller's yield of the well once it is drilled if it has a high capacity then you can do it from the well. If it doesn't have a high capacity then you would have to put a storage tank in the basement and have a booster pump for sprinkler storage. That is both an accepted way to do it and something that Glenn has accepted.

Mr. Blakeman asked if the storage tank would be fed from the well.

Mr. Marsh said it is like an oversized toilet tank. There would be a float in there and if it were to evaporate and go down you would fill it, and then there would be a small booster pump that would have a suction line from that tank and distribute to the sprinklers.

Mr. Zalinger reminded members this is premature for a sketch plan and somewhat outside the scope of the zoning issue. In order to get a building permit for a new residence in the city of Montpelier you need to qualify your firefighting system. How it works is beyond the Board's scope of inquiry. Mr. Zalinger asked what long term plans are for Lot B.

Mr. Gewissler said as of now he doesn't have any long term plans for Lot B.

Mr. Zalinger said they certainly aren't enamored of reviewing a subdivision plan in one year that consists of two lots and in another year or two looking at one of those lots being subsequently subdivided. It is only fair for the Board to ask if the project has been designed to consist of more than two lots and whether it has been contemplated.

Mr. Marsh replied it has been designed several times and they are finally trying to get something that might appease the neighbors and people who have threatened lawsuits. They know what they wanted to do and that didn't seem to go very well with the neighborhood. He doesn't see any difficulties with the DRB but they have to face the practicality and Dejung needs a place to live and a place to build. Appeals are timely.

Mr. Zalinger said his feedback on a sketch plan review is that no DRB likes to see half of the long term view at this time. They will certainly ask whether he would accept a condition that would say there would be no subsequent of Lot B only because it defeats the whole purpose of planning and zoning if logic moves forward in a piecemeal fashion. He thinks it is fair for the Board to be able to ask that question.

The sketch plan review is intended to provide the neighbors and others interested in the property an idea of what the plan contemplates and to provide the applicant with feedback from the DRB about the scope of the project. It seems to comply with all of the specific dimensional requirements of the zoning ordinance, setback size, lot size, lot coverage and it appears at least from the preliminary drawings it otherwise complies with the technical issues in the zoning ordinance.

Mr. Lindley asked Mr. Marsh if he anticipated an easement on Lot A to get to the anticipated building envelope on Lot B.

Mr. Marsh replied yes and it is shown on the plan. There will be a driveway easement just below the pond.

Mr. Zalinger said he sees the applicant also wants to combine preliminary and final review.

Mr. Gewissler replied that is correct.

Mr. O'Connell said he would be open to that. He moved to combine preliminary and final review for the project. Mr. Cranse seconded the motion. The vote on the motion was to approve on a vote of 7 to 0.

**II. 1 Poolside Drive (MDR)**

Owner: City of Montpelier

Applicant: Arne McMullen, Montpelier Recreation Department

Site Plan Amendment for construction of an open air pavilion

Thomas Wood, Architect

Mr. Zalinger administered the oath to Mr. McMullen and Mr. Wood.

Mr. DeSmet said the applicant is requesting site plan review and floodplain development approval for the construction of an open air picnic pavilion approximately 56' x 26' with an enclosed storage area of 8.5' x 26' at Poolside Drive.

Mr. O'Connell said the warning said site plan amendment. Was there a previously approved plan that the Board is now amending?

Mr. Zalinger said at some point between 1973 and now there was a site plan approval that was issued for the pool facility.

Mr. O'Connell said then it would still be warned as an amendment even if it was that many decades ago.

Mr. McMullen said they are trying to build a picnic pavilion on the back side of the pool outside the fence and hope to use it as a picnic pavilion for the public but during the day throughout the summer they also have an outside licensed day camp that kids participate in all summer, upwards of about 160 kids who

participate throughout the summer. By the end of the summer many of them are there many weeks at a time. Right now they have two tents located, 2 30'x30' tents. One of the dilemmas they run into every year is when they get a couple days of rain the kids are standing in the mud underneath the tents and it creates difficulties for parents with shoes and clothing coming back muddy. Of course, the smell of the mud is not great after a couple of weeks of really damp weather. Their goal is to build a simple pavilion that has some storage but also a cement slab that will be accessible for people in wheelchairs, etc. The sides will be open.

Mr. Zalinger said the Board's site plan jurisdiction is fairly limited. It has to do with streets and pedestrian access. He wanted to establish for the record that the sides were open and it is really just a slab and roof and the storage area. Maybe they can right to the site plan criteria and review it.

**Site Plan Criteria - §306**

§702 – Streets: No new streets are proposed.

§703 - Pedestrian Access & Circulation: No changes are proposed.

Mr. Wood said there is not going to be a material change from what exists there today. There is 1 Poolside Drive which comes down to the open parking lot before the pool so this will connect with the pool activity, and the parking lot is sufficient for the activities that will happen there. They have had the day camp there for years so they aren't proposing any change in use.

Mr. Zalinger asked if there were paths that run down to that area.

Mr. McMullen replied it is just the open field. They decided to site this at the back of the field to preserve the activity area in front of it between the parking lot and the pavilion and to set it back from the top of the bank of the river approximately 50 feet. That was an attempt to try to preserve the open field for the activities the kids do.

Mr. Zalinger said pedestrian access and circulation is going to be consistent with the existing use and folks who use this will walk across the field.

Mr. McMullen replied they will because it is intended to be a seasonal activity. They don't intend to maintain access to it during the wintertime.

§704 – Vehicular Access & Circulation: no changes are proposed.

§705 – Parking & Loading: Now new parking is proposed.

§708 – Landscaping & Screening: None is proposed.

§710 – Lighting: None is proposed.

Mr. Wood said there is intent to get underground electrical service to the pavilion so they can put light fixtures up in the roof trusses. It is intended to be closed when the pool closes at dusk but they do want to have provisions to have electric lights there if there is a need to turn them on for eating or cleaning. They will also have lights in the storage area of the pavilion because that will be very dark without some lighting.

Mr. Zalinger said this won't materially change the security issues that already exist with the pool and pool improvements at present.

Mr. McMullen replied it won't change any security issues. They are talking about some of the lighting being motion sensed so if the Police Department drove by and saw a light on down there after dusk they would know that someone was hanging around the pavilion that shouldn't be.

§716 – Floodplain Development:

Mr. Wood said the concern here is that this is located in the floodplain. The actual wood structure is built off the slab about an inch so it doesn't hit the slab. In the event there is a flood event here it is their vision that the water will flow through the pavilion. It isn't intended they would have seasonal storage there. If there is flooding in the spring it would be unoccupied and the storage room would be empty. There are no mechanicals or air conditioning.

Mr. Lindley asked if there was any requirement that the electrical be above water so they don't electrocute half the people.

Mr. Wood said there will be a subpanel there which will have a steel conduit underground coming from around the light poles that surround the pool. That will be above any theoretical flood.

Mr. Zalinger asked if they were aware of the recommendations the Vermont Department of Environmental Conservation made.

Mr. McMullen replied yes, Clancy forwarded them to them. The bank was reinforced several years ago. That project was done because there was some erosion down there. They filled that in.

Mr. Zalinger asked how they felt about the recommendation that if they moved back away from the bank a little further.

Mr. McMullen said placing it approximately 50 feet from the top of the bank placed it almost in the center of the playing field to give people access to the activities happening around it. They felt 50 feet back from the top of the bank was a reasonable setback.

Mr. Zalinger said it is hard to ignore DEC's recommendations because sometimes they speak with a very conservative perspective. As a resident and citizen of Montpelier think our folks can decide where to put their structure, but if DEC turns out to be correct and you could have put it 10 feet to the west and then DEC sounds more reasonable and they are 10 feet further from the bank. If they do have to reconstruct the bank it would be easier if the pavilion were further away just to facilitate the work. Is moving it 10 feet to the west objectionable?

Mr. McMullen replied no.

Mr. Zalinger said he didn't think the aesthetics of placement of this in the field why it would have to be in a certain place.

Mr. Wood replied yes. They could amend it or the Board could attach that as a condition of approval that they move it 10 feet the west would be fine.

Mr. Zalinger said the western edge of the entire facility is going to be moved 10 feet to the west. That may win friends and influence people at DEC. Other permits may be required for this work. Please contact John Miller, the Vermont ANR Permit Specialist, to see what other environmental permits may be needed.

Mr. Zalinger said he didn't see any other site plan criteria affected by this application.

Mr. Sarafzadeh asked if there was a particular reason why it was placed where it is as opposed to right next to the parking lot.

Mr. McMullen said the field where their primary tent was where the kids used to collect was over by the tennis courts on the other side. Over behind the pool was the secondary tent where they sent the teens. This is getting the kids a little further away from the parking lot so their parents aren't as concerned with cars. That area in between is pretty dry getting to and from. It is the water that collects under the tent coming off the roofs and just doesn't dry out.

Mr. Richardson moved approval for site plan for 1 Poolside Drive as amended. Mr. O'Connell seconded the motion. Site plan amendment approval was approved on a vote of 7 to 0.

**III. 456 East Montpelier Road (IND/FP)**

Owner: James and Donna Daniels

Applicant: Sam Daniels Company, Inc.

Rick DeWolfe, Engineering Associates

Site Plan Review and Conditional Use Review

Mr. Zalinger administered the oath to Rick DeWolfe from DeWolfe Engineering.

Mr. DeSmet said the applicant requests site plan review and conditional use approval for a site plan amendment involving the construction of three additional self-storage units, also know as a mini warehouse, and the change to the existing access on a parcel at 456 East Montpelier Road. The project is within the special flood hazard area and currently the project is within the regulatory floodway. The applicant has applied for a letter of map revision based on fill. Because the project involves more than 10,000 square feet of space it is conditional use pursuant to §605(B)(2)(b).

Mr. Zalinger said when they granted conditional use to this project previously.

Mr. DeSmet said he realized that when conditional use was granted it goes away, but in this case the ordinance calls it out as being cumulative as far as the 10,000 square feet. Previously they just reconfigured existing space.

Mr. Zalinger asked if he could identify for the Board what the change in the traffic is.

Mr. DeSmet said currently there are two curb cuts at this site. They have decided to close the eastern most curb cut to restrict access to one spot thereby reducing the amount of conflicts for traffic both incoming and outgoing.

Mr. Zalinger asked why it is still shown on the plan then.

Mr. DeWolfe replied it is shaded in to be seeded.

Mr. DeSmet said there is an interesting wrinkle with this parcel. The reality of it is that the base foot elevation of this site is 547.5 and the proposed flood insurance map that has been pending for four years now is calling out the base flood elevation at this site to be 545. Clearly when those maps become effective they are going to be about 2 feet above. The finished first floor elevation of all the buildings is proposed to be above that base flood elevation. This site is technically located within a regulatory floodway so there is a larger restriction on any type of development. In the late 70's the Daniels Company put fill on this site. In February of this year on behalf of Daniels DeWolfe Engineering has applied for a letter of map revision to remove this site from the regulatory floodway and from the special flood hazard area, and that is still pending.

Mr. DeWolfe said they have to file for that because the regulatory plan is the 1981 plan which does not take into account the fill that was placed there previous to that date. All of the structures are above and all of the property and work proposed is above the 100-year flood elevation regulations from 1981. the LOMA map amendment is pending. They expect it to be issued and it affects two structures called new storage building B and new storage building C. New storage building A is outside of the regulatory floodway and flood boundary of the 1981 study. They are requesting tonight to get site plan approval and conditional use approval for all three buildings, but they would expect the Board would restrict the issuance of a final zoning permit for Building B and C subject to the issuance of a LOMA.

Mr. Zalinger replied it could be made a condition. LOMA has to be issued before construction of that portion of the site. He asked what was the large square building in the center of the parcel was.

Mr. DeWolfe replied it is the original foundry building where they originally built furnaces and dumpsters, and that has been divided up into storage units.

Mr. Cranse said he remembers the DRB saw this property recently.

Mr. DeWolfe said they came in three or four years ago and got approval for the three long rectangular buildings they see on the site. Somehow the one that is labeled Building 2 they had the same issue with the floodway then and received approval for it. It has subsequently been built and whoever was the ANR reviewer at the time did not take exception to it. This time Rebecca has said they need the LOMA Clancy received comments from Rebecca Pfeiffer on the 14<sup>th</sup> regarding this.

Mr. O'Connell inquired if all the new buildings were storage units.

Mr. DeWolfe replied yes. The center building has been divided up into storage units. There is a small office for the management of the storage units. There is no more manufacturing going on there. There is one comment in Rebecca Pfeiffer's notes that he thinks an explanation needs to be provided. In her last paragraph she says that Mr. Daniels should be aware that Building B and C could be at risk for river rain erosion at the site as the lot is at the confluence of the Stevens Branch and Winooski River. He brought a map with him so they could see how close it is to the confluence of the river. If you are familiar with the stretch that comes under the bridge on the East Montpelier Road on Route 2 you can actually see the ripples in the stream. The stream is fairly fast moving to a point just beyond the bridge and then it becomes a bath water from the confluence. They don't agree that he is subject erosion occurring and don't see an erosion issue with the project. Erosion on a curve usually happens on the outside of the curve. This is where the Montpelier Gun Club is so that is the side that would be subject to erosion in that type of a river situation. The engineer says no and the reviewer who is not an engineer says something else.

Mr. Zalinger asked the Board if they wanted to undertake site plan review with the project and make a determination without the LOMA. Site plan review and conditional use would be separate. They can start and finish conditional use.

#### **Conditional Use Criteria - §304.D**

1. A conditional use may be approved only if the DRB determines that the proposed use does not adversely affect the following:
  - a. The capacity of existing or planned community facilities;  
Since there is no water or sewer on the site and already existing storage there that it is not going to materially affect fire fighting and providing police protection to the site or any of the other services the city provides.
  - b. The character of the area affected, as defined by the purpose(s) of the zoning district within which the property is located, and specifically stated policies and standards of the Montpelier Municipal Plan;  
He asked Mr. DeWolfe what the design of the buildings is going to be. Mr. DeWolfe replied they will be exactly like the other ones with metal siding single story. Mr. Zalinger said he remembers encouraging the applicant the first time to adopt a design that was more barn like than was initially presented. It is his testimony that the design is going to be compatible or identical to those already there. Mr. DeWolfe replied they will be similar to the units previously constructed. Mr. Lindley inquired about the lighting and Mr. DeWolfe said it would be cutoff and mounted on the building. There will be no site lighting other than lights right on the face of the building that shines down on the doorways. He reminded the

Board that this project is adjacent to the Industrial District and not in the Design Review District.

- c. Traffic on roads and highways in the vicinity;  
There's testimony that traffic will be improved in the vicinity by giving up one of the two accesses to Route 2. Mr. DeWolfe replied they will be reducing the number of conflict points.
  - d. The Zoning and Subdivision Regulations in effect; and  
Mr. Zalinger asked if it was going to meet the setback requirements. The setback is at the top of the bank. Mr. DeWolfe replied the side yard setback is 50 feet and Building A is about 54 feet back from the setback line. The property line is the high water mark of the Winooski River. Clancy said it is confirmed that the rear setback is okay and the zoning and subdivision regulations are being complied with.
  - e. The utilization of renewable energy resources.
2. Area affected. The DRB shall consider the following when determining whether the proposed development will adversely affect the character of the area:
- a. The performance standards (§714)
  - b. Site plan review standards and approved conditions in §306.C;
  - c. The cumulative impact of the proposal's failure, if applicable, to fully satisfy each of the conditional use standards in §§304.D and 712;
  - d. The noise generated per unit; and
  - e. Any other factors judged to have an adverse impact on the area.

There are no other characters of the area affected issues for performance standards.

A motion was made by Mr. Lindley to grant conditional use at 456 East Montpelier Road, seconded by Mr. Blakeman.

Mr. O'Connell said he had a question about the FEMA application. Is the DRB's conditional use conditioned upon FEMA taking action?

Mr. Zalinger replied that would be a site plan issue.

The motion on conditional use approval was granted on a unanimous vote of 7 to 0.

With regard to site plan there were no adverse impacts. Relative to floodplain development for the site plan Mr. Zalinger said the Board could issue a decision and have it include a condition subsequent that requires obtaining the Letter of Map Amendment (LOMA) before construction. Of course, that puts the burden on the city then if construction commences without the LOMA to take initiative to enforce the terms of its zoning ordinance.

Mr. Lindley said there is no problem with Building A but Buildings B and C have the issue.

Mr. Zalinger said it would be better to say site plan approval is contingent upon subsequent issue of LOMA.

Mr. DeWolfe said there are three separate structures and what they are asking for is the Board conditions it to allow for construction of Building A without the LOMA and require the LOMA to be filed with the city before the construction of Buildings B and C.

Mr. Cranse said that sounded reasonable to him. If the other proposed firm comes through that would also answer the floodway question.

Mr. DeWolfe replied it would make the issue go away.

Mr. DeSmet said the Letter of Map Amendment revision will come first. The new maps were issued a week before he started this job four years ago. They are currently on appeal from the City of Barre. The City of Montpelier prevailed on their appeal and the City of Barre did not.

Mr. Richardson moved for site plan approval at 456 East Montpelier Road with the condition subsequent that the permit approval of site plan for Units B and C are contingent upon filing with the City of Montpelier the Letter of Map Amendment (LOMA) from FEMA.

Mr. Blakeman seconded the motion.

Mr. DeSmet said he doesn't understand why they wouldn't just condition the whole approval on the LOMA. He is just trying to make it easier for the administration of it.

Mr. O'Connell said he believes that the application at this point has been amended to divide A from B and C so the Board is acting on the amended application.

Mr. DeSmet asked how he issues a permit for that. Do they come back for Building B and C?

Mr. Cranse replied no that he would get the LOMA.

Mr. Richardson asked wouldn't get a permit for the whole thing but they couldn't build until the subsequent condition was fulfilled.

Mr. O'Connell replied that is how he sees it. They can't act on B and C.

Mr. Richardson said it goes to say the permit issues appellant's rights run, it becomes final and then it is based upon the conditions subsequent.

Mr. Zalinger said the site plan approval of B and C requires the LOMA before the construction commences of those two buildings.

Mr. Sarafzadeh said just to clarify the motion as worded he can begin Building A.

Mr. Cranse asked if the motion should specify that the LOMA removes the property from the floodway.

Mr. DeWolfe replied it doesn't remove the property but removes a portion of the property.

Mr. Zalinger replied he thinks the LOMA is good enough because it is a Letter of Map Revision and the resulting revision that results from the letter permits the location of Buildings B and C where they proposed because they are no longer in the floodway. They can't be built under the map as it presently exists.

The vote on the motion was unanimous on a vote of 7 to 0 and the project was approved.

**Adjournment:**

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

Respectfully submitted,

Transcribed by: Joan Clack