

Montpelier Planning Commission
September 22, 2008
City Council Chambers, City Hall

Subject to Review and Approval

Present: Karen Vogan, Chair; David Borgendale, Vice Chair; Anne Campbell, Alan Goldman, Jesse Moorman and Claire Benedict.
Staff: Clancy DeSmet, Planning and Zoning Administrator

Call to Order:

Karen Vogan, Chair, called the September 22, 2008 Montpelier Planning Commission to order.

Review of Minutes of September 8, 2008:

Ms. Benedict said on page 2 it says there has been an overwhelming application of people trying to put clubs in LDR zoning. Mr. DeSmet said there has not been. That should be changed. Mr. Borgendale moved approval of the September 8, 2008 minutes as amended, with Ms. Benedict seconding the motion. The Minutes were approved on a vote of 4 to 0. Mr. Goldman abstained because he wasn't present at the September 8th meeting. Members inquired about the outstanding July 14th minutes which needed approval. Mr. DeSmet said he didn't bring them with him.

Suggested Zoning Change in LDR:

There was discussion about this at the last meeting. There is no language that would change in the regulations. The Planning Commission can propose to City Council tonight that they approve on what we vote on.

Mr. DeSmet said the Planning Commission needs to have one public hearing. The next Planning Commission meeting on October 14th would be the public hearing. It has to be warned 15 days ahead of the hearing. The Planning Commission could look at the definition of "club" to see if there is anything that would worry anybody about what a "club" is.

Mr. Goldman asked why they would do it in LDR and not MDR.

Mr. DeSmet said the main emphasis is that the Elks Club would like to build a new building. They are prohibited from doing so because they are in LDR. Somewhere along the line they were never grandfathered officially. They are grandfathered by nonconformity. If they wanted to build a smaller building adjacent to their existing buildings and sell their other building for another use, they would be prohibited from doing so.

Mr. Goldman said he thinks it is inherent that it is implied in MDR. MDR is medium density and LDR is low density residential. If we are going to allow it in low density shouldn't we be able to allow it in medium?

Ms. Campbell said she agrees. This is being changed for one particular piece of property, and that doesn't seem right.

Mr. DeSmet said the golf course wasn't even considered in the table of uses, but it has been there for many years.

Mr. Moorman asked if the club bordered HDR.

Mr. DeSmet said it borders LDR and Industrial.

Mr. Moorman said David Borgendale brought up a point about realigning that boundary to include the building envelopes of this existing place. If that is possible, that is one way to allow this to happen without opening up clubs to MDR and LDR.

Mr. Borgendale said there is a building right now and a proposed new building, neither one of which are permitted uses in the kind of zoning district in which they are located. They are adjacent to a zoning district where the potential uses of both the existing building and the new building are permitted. You wouldn't declare

them to be in a separate zoning district if they were way off in the middle of LDR, but given the fact they are really an extension of that area it seemed that would be an approach that would not expose the city to some of the potential negative effects of allowing that kind of facility anywhere in residential areas and at the same time solve the immediate problem. That was his thinking, and Clancy had some good reasons why that might not work as well. His sense is that this opens up some potential cans of worms, which is his biggest concern. If you say you can have a facility like the Elks Club in what is primarily a residential area, and he is concerned about clubs that have liquor licenses because it tends to draw a different kind of membership than the Boy Scouts. Clancy pointed out that it is conditional use, which gives anybody facing that kind of use proposed on a property in a residential neighborhood to go out and object to it. There is some mitigation there, but you are establishing a precedent for having that kind of facility in a residential area. He is willing to say they should at least warn it and see what kind of public reaction there is to it. During the public hearing he will point out to people that is one of the risks they face by going this route. If the public hears that, and reacts to it the way he thinks they will, he would be inclined to vote against this approach.

Mr. Goldman said for the record he is not opposed to it being in LDR. He is against spot zoning. They should say that MDR is also included as a conditional use.

Mr. Borgendale said that correction needs to take place, too.

Mr. Goldman said otherwise there is no logic to why they have done this.

Mr. Vogan asked Mr. DeSmet to remind the Planning Commission what his thoughts were.

Mr. DeSmet said when there is a property with two different zones in it you have to actually let the zoning from the less restrictive area bleed into the other area approximately 30 feet. It's a little bit difficult to administer a project that has two zones. If we ended up moving the line and they proposed something different like subdividing, the subdivision would occur in Low Density. They have already subdivided off everything in the Industrial Zone. In certain cases it makes it difficult to deal with setbacks and dimensional requirements. This property is quite large, so it isn't as big a problem. There are places up on College Street or near Sabin's Pasture that has the line that goes through both, so if somebody wants to build a deck on the side of a building when there's not 5 feet, 10 feet or 30 feet so it is difficult to figure out how to tell them to proceed. There is a public road that goes all the way up to the parking lot. If you look at the review criteria for conditional use under § 304.D, the Development Review Board has to make an affirmative finding that the use doesn't adversely affect certain factors, including the capacity of community facilities, the character of an area, etc. If you look at the character of the area now, allowing them to be a conditional use it doesn't have an adverse affect. Regarding traffic, there is already an existing private road. He thought it was interesting the city has had this tenant for this long and the golf course too, that it would be inconsistent with the city's plan and we might want more residential units, but it doesn't seem like it is going to change for now. The Elks have come in for a conditional use permit to change the use of the building to office space, and it has to go before the DRB. They want to see if they can get a permit to do it and what their options are, because right now they can't do anything.

Mr. Borgendale said regarding the office use as well, that is one of the things that concerns him is he doesn't think it is anyone's intent to allow offices in any of the Low Residential and Medium Residential areas. The kind of office building they are talking about here, 16,000 square feet, is not a small office. He thinks there is a defect in the current legislation in terms of how we define what kinds of offices can exist in these residential areas as well.

Mr. DeSmet said right now offices are conditional in LDR, MDR and HDR as well.

Mr. Borgendale said right now "office" is anything from a 2,000 square foot small office to something like National Life.

Ms. Campbell asked if such a proposal would have to go through the Technical Review Committee first.

Mr. DeSmet said for conditional use nothing has to go through Technical Review. For example, the current project isn't changing anything.

Ms. Campbell asked who determines when technical review is in order.

Mr. DeSmet said he does.

Ms. Campbell asked if he would not determine technical review was in order for a large office space.

Ms. DeSmet said for a pre-existing structure they don't need to hook up to water, parking is already there and there is a public street.

Ms. Campbell said she hears David's concern is increased traffic impact.

Mr. Borgendale said given the broad definition of "office" and the fact it is permitted in LDR and MDR means that you could propose to build a facility like National Life. His concern would be with concerns for infrastructure, character of the neighborhood and traffic.

Ms. Campbell asked do we have mechanisms and regulations in place that would address David's concern.

Mr. DeSmet said there are the conditional use criteria.

Mr. Borgendale said a precedent is a little bit different in that the building was probably there before the zoning lines were drawn.

Mr. DeSmet said his point is valid. Someone could say why I can't build a 16,000 square foot building on North Street.

Ms. Campbell said they could as long as they meet the criteria and conditions.

Mr. Moorman said the fine print under office use in LDR and MDR and HDR refers to footnotes 5 and 16 which limit it quite a bit. Mr. DeSmet said the footnotes are on 620 and 621.

Ms. Vogan asked if there was a consensus here. She believes they all want to allow the Elks Club to try to do something.

Mr. Moorman said he believes redrawing the line to take in this little envelope of the existing nonconforming use and the proposed nonconforming building and redraw it so the little envelope is part of the Industrial Zone and thereby permitted use is cleaner than allowing clubs to submit applications for both LDR and MDR.

Mr. Goldman asked if they should look at all of the confusing properties and do that, or spot zone it. He says that because he owns a building on Court Street in that situation and his building is in noncompliance.

Ms. Campbell said if they do it for one they should be prepared to do it for all who have this problem.

Mr. Borgendale said he doesn't see a problem with doing that because he believes some of these problems were oversights or errors when the original zoning lines were drawn. It's okay to review those kinds of things.

Ms. Campbell asked how is redrawing the line on just this piece of property not spot zoning.

Mr. DeSmet asked how they get around spot zoning. The only way you find out about these problems if someone comes in and requests a permit.

Mr. Borgendale said if you have a parcel that is adjacent to a zoning district where the use of that parcel is consistent with the adjacent zoning district and you expand the line to incorporate that property he doesn't consider it spot zoning at all.

Ms. Campbell said if it is written that way and not just for the Elks Club.

Mr. Borgendale said they are going to find situations on the map currently where the line is drawn and anybody would ask why they did it this way.

Mr. Goldman said he brought that very concern up a year and a half ago and they told him to wait until they redo the plan. He has the exact same situation. He has a CB-I type structure just over the line of CB-II, which made the whole building noncompliance.

Mr. DeSmet asked Mr. Goldman if he thought he would receive zoning approval for adding two stories on a historic building.

Mr. Goldman said he already has a four-story structure, and because of it everything he does becomes a conditional use. Everything is noncompliance. He can't add a porch, an awning without going through conditional use.

Mr. Moorman said here with the Elks Club they have a pre-existing nonconforming use that by the intent of their zoning bylaws any change to this would be to phase out completely because nonconforming uses are allowed to exist as they are unless they want to change them. Here it doesn't make any sense because they have this great wonderful building that could generate additional tax revenue for the city.

Ms. Campbell said if it is conditional use in the Industrial Zone shifting this to Industrial isn't going to be any different than making it conditional. She said she would be interested in the city attorney's position on this, but it does really seem like spot zoning. We're changing the zoning for one individual property owner.

Mr. DeSmet said he didn't see it exactly like that. He sees it changing for the whole district, and maybe two districts now. He proposed it to be conditional use because he wanted there to be a deliberative process for the public.

Mr. Borgendale said there is always talk about spot zoning, and he supposes it has a legal definition.

Mr. Goldman said it is in the statute and he will bring a copy of it at the next meeting.

Mr. Moorman said it involves a test of whether there is some public benefit, but the fact they are now making it permissible by doing this line drawing and making it conditional they aren't giving anything. There is still a hurdle to cross that requires real scrutiny.

Ms. Campbell said to redraw the line for one property.... Mr. Goldman said if they make it conditional for the whole district, then at least everyone has the same chance to come in and go through that process. The Elks Club is off of Route 2, so they are very different. They don't drive by peoples' homes where our kids sit outside. They have a unique situation where people drive up and down, and we don't see them do their thing. They don't endanger us.

Mr. Borgendale said there is no current plan to redraw the lines.

Ms. Campbell said the concern about shifting to conditional use in LDR and MDR has to do solely with the liquor license.

Mr. Moorman said there is concern about the broad definition of "club."

Mr. Goldman said a club may not always fit with a sparsely populated residential neighborhood.

Ms. Campbell said there are clubs in rural areas throughout the state.

Mr. DeSmet said they don't have any zoning.

Ms. Campbell said another way to address this is flexibility. Some things in these regulations are so absurdly arbitrary that to be able to build some flexibility into it would not be a bad thing.

Mr. Moorman said that is what the redraw is all about, to build flexibility into this without creating too much flexibility. We are here because the Elks Club has asked what they can do with this place because they can't do anything with it at the moment.

Mr. Goldman said there is a whole list of things they can do. There are almost 40 things they can do. They just can't do the thing they want to do.

Mr. DeSmet said redrawing zoning lines is more specific to a spot.

Ms. Campbell said simply put it is zoning for one particular property to the exclusion of others. That is why they should include additional property as well.

Ms. Vogan asked what the Elks will do if they don't do anything.

Mr. DeSmet said he doesn't know. They have applied for a conditional use permit.

Ms. Vogan said they have just a few options here. They can vote to change LDR and MDR to put a club as a conditional use. The other option on the table is redrawing the line. Or, they can propose at the public hearing both options and hear what the public has to say, and vote at the end of that meeting.

Ms. Benedict said perhaps input from the public hearing would clarify this.

Mr. Moorman said he would redraw the lines. Mr. Goldman said he agrees it is a better solution.

Mr. Borgendale said they really need to get an opinion from the city attorney. It is a legal issue.

Ms. Campbell said they should get an opinion from the city attorney, and if the city attorney deems it is not spot zoning then we go ahead with the public hearing for redrawing the zoning lines.

Mr. Borgendale said they have to have a specific proposal to change the zoning ordinance, either a map that is changed or an outline of how the text or charts of the ordinance change as well. That needs to be included in the warning for the public hearing. Right now they are voting to warn a public hearing on a proposed change and left it up to Clancy to come with what that is. That is not how it is supposed to work.

Mr. Goldman asked why they were having a special meeting on this subject.

Mr. Moorman said they usually meet twice a month, and have been meeting once a month since he started on the Planning Commission two months ago. It is actually a scheduled meeting.

Mr. Goldman said the Elks Club has been talking about doing things at the club for about three years.

Mr. DeSmet said they have subdivided two pieces of property recently.

Ms. Campbell said maybe they have a potential buyer and the buyer needs to know what they can do with the building.

Ms. Vogan asked if they could make a motion that includes all of the details the Planning Commission needs to redraw the line with the caveat that the city attorney needs to approve it.

Mr. Borgendale moved that the Planning Commission to direct staff to first seek opinion of the city attorney as to whether or not redrawing the district boundaries would constitute spot zoning, and assuming the answer to that is no then we direct the staff to propose a change to the zoning map for the Planning Commission's consideration

and bring that back to the Planning Commission for consideration to possibly warn a public hearing on the change at the next regular meeting.

Mr. DeSmet said when he asks the city attorney for the opinion regarding this, can he ask about an alternative proposal.

Ms. Campbell said they need to know all of their options. Ms. Vogan agreed the more information the better.

Mr. Borgendale said this body needs legal advice on almost all of the legislation they consider. They have gotten city attorney legal opinions on the zoning changes they made in the past.

Ms. Campbell said she needs to understand why they can't write this proposal up tonight so that if the city attorney says it is okay to proceed.

Mr. Moorman said he hasn't even seen a map.

Mr. DeSmet said the line moving is a lot more complicated than adding conditional use for clubs.

Mr. Goldman asked if they could go the first route and tighten up the definition.

Mr. DeSmet said there is a motion to vote on first.

Mr. Borgendale said his motion was to direct staff to seek the city attorney's opinion as to whether or not modifications to the zoning map to incorporate the necessary parts of the property into the Industrial District was permissible and not illegal spot zoning, and, secondly, assuming the city attorney's opinion is favorable that staff can proceed to prepare a proposed change to the map for the Planning Commission's consideration.

Ms. Campbell said she couldn't vote to approve the motion. She doesn't see compelling reasons why conditional use is really a problem for clubs in LDR and MDR.

Ms. Vogan asked for a vote on the motion. The motion passed on a 5 to 1 vote.

Mr. Borgendale suggested to accommodate Anne's concerns he would not think it would be totally out of line for the Planning Commission to change the date of the meeting. They would meet next on October 14th and have the public hearing on October 29th. Ms. Campbell said they could meet earlier than the 14th.

Ms. Vogan asked representatives from the Elks Club if holding the public hearing in October would help. They responded it would make a big difference.

Mr. Goldman asked if the attorney said it isn't a good idea, can they go back to the original plan of giving conditional use.

Mr. DeSmet said they could if someone makes that motion.

Ms. Vogan said they are waiting to hear from the city attorney.

Mr. Borgendale said he would be happy to meet a different day than October 14th. He has a Regional Planning Committee meeting on the 14th. The next Planning Commission meeting could be scheduled on October 8th.

Municipal Planning Grant:

The Planning Commission talked about ideas about a planning grant at the last meeting. The deadline for submitting an application is in a short time. Apparently, Clancy, Gwen Hallsmith, the City Manager and Mayor had a discussion about the staff's resources devoted to a municipal planning grant and the process for writing it and it's a rather competitive process. The city is still in the midst of spending the last grant and should keep that as a priority for our staff and not use resources to apply for another grant.

Mr. Borgendale said the deadline of September 30 is for communities that are not in compliance with the regional plan and who are applying for grants to become compliant with the regional plan. Just the ordinary grants need to be submitted by the deadline of October 31st. When they discussed this at the Regional Planning Commission meeting it was a special condition that only Montpelier doesn't have that requires a municipal legislative body authority to take action. He doesn't even know if City Council has to vote to approve it.

Mr. DeSmet said they did for the last one.

Mr. Borgendale said the Planning Commission typically asks them to do it, but he doesn't know that it is legally necessary. He hates to pass up the opportunity for the city to get money to do good stuff.

Mr. DeSmet said Gwen seemed to think that the city was not going to be competitive if the city received a grant last year.

Mr. Borgendale said the city has gotten a grant every year he has been on the Planning Commission. Maybe funds are tighter this year.

Ms. Campbell asked how much money they are talking about.

Mr. Borgendale replied \$25,000.

Ms. Vogan said a couple of grant proposals on the table at the last Planning Commission meeting had to do with conducting a study on renewable energy, a study on economics and transportation. Nobody has come up with any detailed proposal.

Mr. DeSmet said last year they had to receive approval from the City Council.

Mr. Borgendale said the Planning Commission would recommend to the City Council they wanted to apply for a municipal planning grant for a study for this purpose. The current grant is finding out a lot of stuff having to do with the growth center designation. They have received a grant for a transportation study in the past. Mr. Borgendale said he is willing to let it go.

Ms. Campbell asked if all they need by September 30th is a paragraph and a decision about what they want to spend the money on.

Mr. DeSmet said the City Council is not going to meet again this month.

Ms. Campbell said what they are talking about for Wednesday for City Council is just a request for the grant. If we request permission from the City Council to go ahead, does that just give the Planning Commission a green light to submit a proposal?

Mr. DeSmet said when Gwen Hallsmith, the City Manager and the Mayor discussed not requesting a grant he moved it off the agenda.

Ms. Campbell said the reason she is pursuing this is because she has been to so many meetings lately and all city groups and various organizations are talking about energy use and support for weatherization and how to keep people fed and warm this winter. What she is observing is there are so many disparate methods and the right hand doesn't know what the left hand is doing. She assumes that a planning grant could be used to bring all of those efforts together into a unified approach that would be more effective and efficient. She hates to pass up the potential for \$25,000 of money to move this along because these issues are only going to get more difficulty, strained and pressing.

Mr. Borgendale said what they would be doing tonight is say something to the effect that we want to study the feasibility of developing a municipal compost facility. We would take a vote as a Planning Commission and say we recommend to the City Council that the city apply for a municipal planning grant for the purpose of studying

the feasibility of opening and operating a city owned composting facility. That would go to the City Council and they would approve it or not. Then, staff would do a grant proposal.

Ms. Vogan asked if members had a suggestion of something to bring to City Council.

Ms. Campbell said “for purposes of planning a coordinated approach to energy conservation and support for community members.” Is it more efficient to provide for this coming winter knowing people are going to be in big trouble with increased heating costs to provide energy assistance or provide weatherization? How do you focus your energy? If you are cold this winter and can’t afford your heating costs, is the city going to help you weatherize your house or provide fuel assistance?

Mr. Goldman said it really depends case by case.

Mr. Borgendale said they can’t use this money to decide on specific instances what to do.

Ms. Campbell said it is for planning a coordinated response delivery system of putting together a coordinated energy team. If the Planning Commission writes a sentence all we need to do is put it on the City Council’s agenda.

Mr. DeSmet said the City Manager, Mayor and Gwen agreed they wouldn’t apply for a grant this time.

Ms. Vogan said they may want to consider that since the grant application process is extremely competitive and the staff is overworked.

Mr. Borgendale said they would need to have a motion that says the Planning Commission recommends to City Council that we apply for a municipal planning grant for the purpose of

Ms. Campbell said a municipal planning grant for the purpose of forming a coordinated response to energy needs. She moved that the Planning Commission submit a request to the City Council to apply for a municipal planning grant for the purposes of developing a coordinated response to energy needs. Ms. Benedict seconded the motion. The motion passed on a unanimous vote of 6 to 0.

Adjournment:

Upon motion by Mr. Borgendale and Mr. Moorman, the Planning Commission adjourned.

Respectfully submitted,

Clancy DeSmet
Planning and Zoning Administrator