

STATE OF VERMONT
ENVIRONMENTAL COURT

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 Appeals of Valsangiacomo, et al. } Docket Nos. 130-8-03 Vtec and 64-4-04 Vtec
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Decision and Order

In Docket No. 130-8-03 Vtec, Appellants Oreste and Helen Valsangiacomo, Donald and Valencia Giroux, Karen Lane, Joelen Mulvaney, Richard and Joan Parnigoni, Yvette Roy, Madeleine Simonetta, Edward Stanak, Mary Welch and Richard Wobby, Sr., appealed from the July 21, 2003 decision of the Development Review Board (DRB) of the City of Barre, approving an application to demolish a former convent building at 79 Summer Street. In Docket No. 64-4-04 Vtec the same appellants except for Richard Wobby, Sr., appealed from the March 9, 2004 decision of the DRB to approve the demolition of the convent in connection with its approval of a site plan for construction of an addition to the school and a two-car garage to serve the rectory, with associated redesign of the on-site vehicular and pedestrian circulation and parking, access to the street, paving, and landscaping, including relocation of an existing statue and memorial garden. Appellants are represented by Stephanie J. Kaplan, Esq.; Appellee-Applicants Roman Catholic Diocese of Burlington and its Parish of St. Monica are represented by William M. O'Brien, Esq.; the City of Barre is represented by Oliver L. Twombly, Esq.

As the St. Monica campus is a religious land use, we addressed issues arising out of the federal Religious Land Use and Incarcerated Persons Act of 2000 (RLUIPA), 42 U.S.C. §2000cc, et seq., and Vermont statute 24 V.S.A. §4413(a)(2004) in our rulings on summary judgment and on other pretrial motions.

As discussed in those motion decisions, the applicable review criteria may be considered by the Court, under §4413(a), “only to the extent that” the review criteria “do not have the effect of interfering with the intended functional use” of the project or property.

The site plan approval criteria are found in §4.4 of the Zoning Regulations; the additional requirements to approve demolition of a structure within the Design Review District are found in §10.2.07 of the Zoning Regulations. Prior to approving either a site plan or demolition within the Design Control District, the DRB, and hence this Court, is also directed to consider the twelve review criteria found in §10.2.08 of the Zoning Regulations. As discussed in the pretrial motion rulings, review criteria 7, 8, 10 and 11 are inapplicable to the application before the Court (or the application’s compliance with them is not contested by the parties), while review criteria 2, 4, 5, 6, 9 and 12 are applicable.

With respect to review criteria 1 and 3, the Court ruled that they are applicable only in part. Under review criterion 1, the arrangement and orientation of the proposal must be “compatible with the streetscape (front yard setback) and character of the area” and must “relate to the surrounding buildings and structures in that area;” but we may consider exterior design, texture, or materials of the proposal only with respect to the proposal’s compatibility with the streetscape and surrounding area, and not with respect to any unrelated assessment of the project’s aesthetics or design. Similarly, review criterion 3 may be applied only as it addresses the location of the proposal, that is, to assess the proposal’s effect on an adjacent “recognized historic structure,” not the proposal’s own inherent historic, architectural or aesthetic values.

An evidentiary hearing was held in this matter before Merideth Wright, Environmental Judge. A site visit was taken after the hearing by Judge Wright alone by agreement of the parties. The parties were given the opportunity to submit written memoranda and requests for findings. Upon consideration of the evidence as illustrated

by the site visit, and of the written memoranda and requests for findings filed by the parties, the Court finds and concludes as follows.

Appellee-Applicants own property (referred to at times in this decision as “the St. Monica campus”) located on Summer Street between Seminary Street and West Street, in a Planned Residential zoning district and in the Central Business Design Review District #2 overlay zoning district. The property contains several existing buildings: an existing church building, an existing parochial school building, an existing rectory building, and an existing convent building (no longer in use). An existing playground is located on the property in a fenced area near the end of West Street, between the end of West Street and the end of the existing school building.

Summer Street runs in a roughly northwest-southeast¹ direction along the westerly boundary of the property. West Street runs in a roughly northeast-southwest direction along the southerly boundary of the property. The property has access to the nearby street network by a two-way driveway from Summer Street between the church and the rectory, and by a two-way driveway from West Street. Seminary Street forms the northwesterly boundary of the property; however, it goes up a steep hill at that location and is not accessible directly from the property.

The configuration of Seminary Street as it approaches Summer Street from Main Street is such that it intersects with Summer Street directly facing the front of the church building. At that location, the eastbound lane of Seminary Street separates into two lanes,

¹ This decision uses the directions corresponding most closely to the directional arrow shown on the site plan, rather than the directions used in paragraph three of the parties’ stipulation of facts or in the parties’ filings, some of which are inconsistent with one another. The Zoning Regulations, §10.2.02, treat Summer Street as running in a north-south direction (“turning north on the east side of Summer Street.”)

with a triangular pedestrian island separating them, so that the southernmost lane is a so-called slip lane for a right turn only onto the southbound lane of Summer Street, and the northernmost lane allows traffic to wait, either to turn left into the northbound lane of Summer Street, or to proceed across Summer Street at an angle to go up the Seminary Street hill.

Summer Street is a two-lane roadway with a posted speed limit of 25 miles per hour. It is a designated truck route within the City. No stop signs or traffic signals are located on Summer Street adjacent to the property. A painted crosswalk is located on Summer Street at the Seminary Street intersection. Summer Street does not contain any warning signs for motorists to indicate the presence of a school. A "25 MPH speed limit" sign and a "yield to pedestrians" sign approximately eight feet in height are located on the northbound side of Summer Street in front of the rectory building. At 7:00 a.m. the custodian in charge of the St. Monica campus manually places a three-foot-high sign reading "State Law - Yield to Pedestrians in Crosswalk" in the middle of the crosswalk on Summer Street extending from the Seminary Street intersection to the church driveway; it is removed at 3:00 p.m.

Currently, in the block of Summer Street adjoining the St. Monica campus, parking is available for ten passenger vehicles on the St. Monica campus side of the street, between the corner of West Street and the church driveway. Parking is available on the other side of the street for approximately eight to nine passenger vehicles between the corner of Seminary Street and the funeral home located at the corner of West Street and Summer Street. No parking meters or time restrictions are applicable to parking on Summer Street in front of the St. Monica campus. On days on which funerals are held at the St. Monica church, the participating funeral home puts out traffic marker cones prohibiting parking on Summer Street in front of the St. Monica campus.

West Street is a two-way, dead-end street. The St. Monica campus adjoins the

northerly side of West Street; and has an undefined access onto West Street close to the end of West Street. Four houses are located on the other side of West Street, with two on-street parking spaces on that side of West Street. The building on the corner of West Street and Summer Street is in use as an office building; a licensed daycare facility is located in the last building on West Street. When school is in session, the daycare facility serves ten children from 6:30 a.m. to 8:00 a.m and again after school from 2:15 p.m. to 5:15 p.m. Approximately seven of the children attend St. Monica school; the others take the city school bus from the stop at the corner of West Street and Summer Street. The daycare children use the St. Monica play areas during the afternoon, usually waiting for the St. Monica after school program participants to go back inside the building. The City prohibits parking on the side of West Street adjacent to the St. Monica campus; however, from about 7:20 a.m. to about 8:15 a.m., ten to twenty vehicles are parked there while people drop children off or walk children into the school, despite the no-parking signs. People drive into West Street to drop off children at the daycare, or onto the St. Monica campus, and then turn around within the dead end of West Street, or using the private driveways, causing a hazard for other vehicles and for pedestrians, including children, using West Street. In the afternoon, from before 2:15 p.m. to about 2:40 p.m., people wait in their vehicles in West Street or in the private West Street driveways, for children to come from the school, or park there and go in to collect the children.

Approximately 160 linear feet of extremely dense and tall cedar hedges are located along the edge of the St. Monica campus property along West Street, turning the corner and continuing along Summer Street. The hedges prevent visibility and the movement of people from the sidewalk onto the property.

Appellee-Applicants propose to demolish the vacant convent building; to build an addition to the front of the school; to build a two-car garage to serve the rectory; and to redesign the on-site vehicular and pedestrian circulation and parking, access to the street,

paving, and landscaping, which includes the relocation of an existing statue and memorial garden. Appellee-Applicants also propose to install a larger pipe for water service; this aspect of the proposal is not contested in this proceeding and will not be further discussed. Appellee-Applicants propose to close the existing West Street access and to construct two new parking lots, each with two-way access from West Street and each providing thirty parking spaces. The primary lot, adjacent to Summer Street, is proposed to be used as a parking lot at all times and to be available for public use when not required for the St. Monica campus uses. The secondary lot is proposed to be closed off as a paved play area, including in the morning just before the beginning of the school day.

Architectural building elevations have not been shown for the proposed rectory garage. It appears to be proposed to be constructed at grade level and to have a single exit onto the proposed loop road, across from the entrance to the secondary parking lot or play area. When the secondary parking lot is closed off for use as a play area, users of the rectory garage will have to circulate around the loop road in order to exit the property.

The complex of buildings on the St. Monica campus has changed over the years. The church building was originally constructed in 1887, as a brick and granite Victorian Gothic building fronting on Summer Street facing the Seminary Street approach from Main Street. The original front of the building was constructed with a large central Gothic-arched front door, surmounted by a larger Gothic arch containing a large round central stained glass window outlined in stone tracery. The entrance was flanked by two asymmetrical towers, one a tall spire, and each having a smaller Gothic-arched doorway, surmounted by gothic arched windows and louvered openings. The steep gable roof features projecting cross-gables at the midpoints of each side elevation. Along the long walls and the end of the cross-gables, Gothic-arched windows alternate with shallow brick buttresses. The building ends in a projecting five-sided apse. The church building is ornamented with a corbeled brick frieze along the eaves and along the upper part of the

side walls, with stone trim on the windows and capping the buttresses. The size and style of the original church building is reminiscent of European cathedral construction. In approximately 1973, both towers and the front entrance of the church building were demolished; they were replaced by an unsympathetic brick entrance façade impairing the architectural integrity of the church structure. Nevertheless, the church building is a recognized historic structure, as the term is used in §10.2.08(3).

The rectory building was originally constructed in 1895. It is a late-Victorian wood frame building, principally constructed in the stick and Queen Anne styles, with a granite foundation, a substantial wrap-around porch, a projecting window bay, and a hipped roof with cross-gables and a polygonal dormer. The building retains many of its original exterior² characteristics, although it has been clad in synthetic siding and its original porch has been removed on the side facing the convent building and on most of the front of the building. Nevertheless, it is a recognized historic structure, as the term is used in §10.2.08(3). It remains an impressive residential building for the institution, and relates both architecturally and functionally to the original church building. The rectory building provides the personal living quarters for two priests: the pastor and the vicar of the parish. It also houses the administrative offices of the parish. The lack of a garage for the rectory creates problems for the functioning of the parish when one or both of the priests needs to leave the St. Monica campus to perform parochial duties, especially in an emergency, as the parking spaces for their vehicles are sometimes blocked by on-site activities or others' on-site parking.

A small dead-end street known as Addison Place originally extended into the campus between the church and the rectory. It originally provided access to a group of

² The interior retains almost all of its original finishes and characteristics; however, for the purposes of the issues in the present case, its interior is not relevant.

tenement buildings located on property behind that of the church property. In approximately 1925, that large tract of property was purchased for the church, the land was cleared of its buildings and used as a playground for the children associated with the church.

The Summer Street graded school, a city-owned school located at the corner of Summer Street and West Street (in the location now proposed for parking and an alternate parking/paved play area), was purchased from the city in about 1926 and was used as the St. Monica parochial school beginning in 1927. In 1929 the school building was approximately doubled in size by an addition designed by Boston-area architect John Heffernan. It was a three-and-a-half story, flat-roofed brick building, with large windows and contrasting horizontal frieze bands and inset concrete medallions, built in a style similar to that of the convent building described below. We will refer to this building as the former St. Monica School building, to distinguish it from the current school building. The former St. Monica school building was demolished in the 1970s.

John Heffernan was a Boston-based architect, working from 1923 through 1970, who specialized in religious institutional architecture, particularly for the Diocese of Burlington and the Archdiocese of Boston. Many of the buildings he designed remain extant throughout New England, so that preservation of the convent building is not necessary to preserve his architectural output. Over his long career, he became regionally important, working largely in Vermont from 1923 through about 1940, and largely in eastern Massachusetts thereafter. The former St. Monica school building was one of his earliest Vermont buildings; the St. Monica convent building at issue in the present case was one of his latest Vermont buildings.

In 1956 the current school building was constructed as the Marian high school. Both it and the former St. Monica school building were in use simultaneously for a time, until the former St. Monica school building was demolished.

The current school building, as contrasted with the Heffernan-designed buildings, is a long, relatively low, largely two-story brick building, added onto from the Marian high school. Its horizontal appearance is emphasized by the alignment of its longer dimension with Summer Street and by the horizontal window panels and entry overhang. The West Street end of the building incorporates a breezeway through the building which is occasionally used for parking or as a covered play area; it provides access to a small triangular open area behind the building. Between the end of the building and the end of West Street, a fenced playground area has been constructed. Unlike the church, rectory, or former school building, the current school building is set far back in the lot, a distance of approximately 215 feet from Summer Street.

Religious instruction for the children of the parish had been provided by a group of nuns, beginning in late 1900; they lived in private homes in the area until a house at 101 Summer Street was purchased for use as a convent in 1902, succeeded in 1927 by another house at 115 Summer Street, which was used until the construction of the convent building on the St. Monica campus in 1939.

The convent building was also designed by John Heffernan. Like the former St. Monica school building, it is a three-and-a-half story brick building with a flat roof. It was constructed on a steel frame, and has had a brick addition built on the back in the 1950s, so that the distance between the back face of the convent building and the front face of the current school building (without the proposed addition to the front of the school) is approximately 44 feet (by scale from Exhibit 13). A projecting bay in the front of the convent houses the convent chapel. The corners of the building are elaborated with stylized brick quoins; the building is ornamented with cast concrete features, in imitation of stone, including the water table, entrance arch, inset medallions, copings and cornice trim. The stairwell windows on the southerly façade are arranged within a vertical paneled enclosure. Projecting bays supported by decorative corbels are located on the northerly

and easterly façades. The convent was a good, serviceable institutional building in its time, especially in relation to the former St. Monica school.

The convent building is set back from Summer Street nearly as far back as the back of the rectory building. The convent building formed a related architectural complex with the former St. Monica school building and the garden between the two buildings. Both buildings shared similar design features, materials and massing, and were related in function as well, as the nuns living at the convent taught at the school. While the side of the rectory building formed the third side of the garden enclosure, the rectory was oriented primarily towards the street and the church building, rather than towards the school building or the convent garden. Neither the rectory nor the church building is related, either in materials or in building style or in orientation, to the convent and former school building.

The complex of buildings on the St. Monica campus, in their original form, had historic as well as architectural significance in the context of the broad patterns of the history of immigration, ethnic heritage, education, religion, and commerce in Barre in the late nineteenth through the mid-twentieth centuries. The campus can be “read” or perceived by an observer as a grouping of educational, residential and administrative buildings related to and focused on the Catholic Church. The historic as well as the architectural significance of the convent related primarily to the former St. Monica school at which the nuns taught. With an appropriately sympathetic site plan, and as the former St. Monica school has already long-since been eliminated, elimination of the convent will not necessarily impair the ability of the observer to “read” the campus as continuing as complex of educational, residential and administrative buildings related to and focused on the Catholic Church.

The current St. Monica school consists of a pre-school, a kindergarten, and grades 1 through 8. It had an enrollment of 147 students in the 2004-05 school year, of which 44

children were six years old or younger. It is also used for after-school activities until 5:15 p.m. for approximately 20 to 25 of the students, ranging in age from four to eleven years old.

The current St. Monica school is also used for after-school religious education classes; the volunteer teachers for the program park on site. On Tuesday afternoons (from 4:15 to 5:30 p.m.) classes are held for approximately 195 public elementary school students. A public school bus drops approximately 35 of these students off at the intersection of the existing St. Monica driveway and Summer Street on Tuesdays at approximately 4:00 p.m.; the others arrive by car. All the children are picked up at approximately 5:30. The school is also used on Sunday evenings (from 5:30 to 7:00 p.m.) for religious education classes for approximately 110 junior high and high school students, some of whom walk home themselves. Drivers are allowed to drive onto the property to drop off the children on Sundays and are allowed to drive onto the property to pick up the children both on Sundays and on Tuesdays; the religious education program encourages them to enter from Summer Street and leave by West Street.

Services are held in the church building seven days a week. Weekend services are held on Saturdays at 8:00 a.m. and at 5:15 p.m., and on Sundays at 7:45 a.m., 9:30 a.m. and 11:15 a.m. A 7:00 a.m. Mass service, ending at approximately 7:30 a.m., is held Monday through Friday. Those who attend the 7:00 a.m. weekday Mass service park in the church driveway and on Summer Street. Weekday services are also held on Monday through Thursday at 5:00 p.m. and on Tuesday at noon. The buildings on the St. Monica campus are also used for events such as weddings, and for bingo on Monday nights. Other than the church services and school functions, approximately fifteen weddings, fifty baptisms, and one hundred funerals are held at the church every year, as well as diocesan meetings.

The St. Monica school day begins at 7:50 a.m. with the ringing of a school bell. Staff and teachers arrive at the school between 7:00 a.m. and 7:30 a.m., and park in the parking

area between the driveway and the Seminary Street embankment, northerly and easterly of the church, or along the front of the school building. The teachers are on duty from 7:30 a.m. Children arrive at the school typically from 7:15 a.m. to approximately 8:00 a.m., with the majority of the drop-offs occurring between 7:30 a.m. and 7:50 a.m. Depending on the number of children transported per vehicle, approximately ninety vehicles need to stop to drop children off in the mornings during this twenty minute period. Depending on the ages and circumstances of the children, and the weather conditions, the adult will either stop to drop off the children, or will park and accompany the children inside the school. Sometimes parishioners are leaving the 7:00 a.m. Mass service as the children are arriving.

In the afternoons, the preschool is dismissed at 2:00 p.m., followed by dismissal of the remainder of the school at approximately 2:15 p.m., with the first bell announcing the afternoon dismissal being rung at 2:05. Most children are brought to and from school in vehicles by adults, rather than walking unaccompanied to school. Some of the older children are dropped off at the sidewalk of the school property and walk onto the St. Monica campus themselves; many of the younger children are accompanied into the school by an adult. Especially in the cold winter months, at dismissal time most of the children wait inside the school or near the entrance to be picked up. It takes approximately an average of one to two minutes to drop off children, although some take a shorter time and some take much longer.

Approximately 20 to 25 of the children remain at the school to attend its after-school program; another seven children are met to walk over to the after-school day-care program in a house at the end of West Street. Approximately a hundred children are picked up at the school each afternoon, in fewer than a hundred vehicles, as many families have more than one child at the school.

The on-site circulation and parking on the St. Monica campus is poorly defined and

poorly differentiated from the areas used by children for play. For this reason, when children are playing outside, that is, during school hours, cars are barred from most of the St. Monica campus, controlled by plastic or wood barriers moved into place during school hours. All outdoor play is supervised by at least three to four teachers at any given time. Children play outside in the 7:30 to 7:50 a.m gathering time, at a 9:30 a.m. recess for the older children, at a 10:45 to 11:15 a.m. recess for the preschool children, at a 12:25 to 12:45 p.m. recess for the first through fifth grade children, and again for the preschool children from 1:45 until they are picked up at 2:15. The barriers are placed at the West Street entrance to the property and across the drive between the rectory and the northerly (cafeteria) end of the school. Most drivers comply with the barriers but some move the barriers in order to get closer to the front of the school. The existing driveway between the church and the rectory is narrow for use as a two-way driveway when vehicles are parked on both sides, and worse during the winter, due to accumulation of snow and ice.

The grassy area roughly enclosed by the cedar hedge at the corner of Summer Street and West Street is used as an active outdoor play area, as is the playground at the West Street end of the school building. Children also use the paved area in front of the school as a play area, as well as under the breezeway that forms the West Street end of the school. A small area behind the school accessible through the breezeway contains fuel tanks located near the building, but is not otherwise currently used, other than during fire drills. Fuel deliveries are made to the tanks approximately monthly, in the afternoon, and do not conflict with the other uses on the site.

When not prohibited or limited, that is, other than during school hours, parking is available on site along the side of the church building facing the rectory, on the other side of the church building (where the accessible ramp is located) between the church and the Seminary Street embankment, along the front of the school building, and along the driveway/paved area that constitutes the present West Street access. Approximately 100

vehicles can be parked on the property in its present configuration when school is not in session. In addition, depending on an event's timing, several hundred parking spaces are available in the neighborhood, on the street and in other parking lots, especially on Sundays, holidays, and after hours.

However, during the school day, between 7:00 a.m. and 8:15 a.m., cars are parked on both sides of Summer Street in front of the St. Monica campus, generally with fewer cars parked across the street than on the same side of the street as the St. Monica campus. Because of the limited number of on-street parking spaces available in that block of Summer Street, some adults who need to walk children into the school seek to park their vehicles elsewhere than on that block of Summer Street. Some adults temporarily remove the barriers so as to obtain access on-site to the St. Monica campus, either at the West Street entrance or at the school driveway.

During the morning drop-off period from about 7:15 a.m. to about 8:15 a.m., Summer Street is congested with vehicles traveling on Summer Street in the morning commuter rush hour; with vehicles being parked in and pulling out of the on-street parking spaces; with vehicles traveling on Summer Street waiting for pedestrians to cross in the crosswalk to the church driveway; and with two city school buses stopping to pick up public-school children at the southeasterly corner of West Street and Summer Street. During the afternoon pick-up period from approximately 2:00 p.m. to 3:15 p.m., Summer Street is also congested, but less so due to less commuter traffic at that time. Six city school buses a day stop to pick up or drop off children at the corner of West Street and Summer Street.

At least two automobile incidents occurred in 2002 due to conflicts between traffic traveling on Summer Street and cars parked on the St. Monica block of Summer Street. In one instance the passenger side and passenger side mirror of a car traveling on Summer Street was damaged when someone in a parked car opened the car door while attempting

to exit the vehicle. In another instance, when Summer Street was congested with traffic due to a funeral, and when the parking spaces on Summer Street were occupied, the open driver's door of a parked car was struck by a vehicle traveling on Summer Street, just after the driver had placed her children in the rear seat of the car and while the driver was entering the driver's seat of the car. The conditions which exist on Summer Street during the morning drop-off and the afternoon pick-up periods are exacerbated in the winter due to the accumulation of snow and ice. The conditions which exist on Summer Street during the morning drop-off and the afternoon pick-up periods make it hazardous and dangerous for children to cross the street throughout the school year.

Appellee-Applicants propose to construct a small addition at the front of the school containing a new entrance lobby and office space for the school, and to construct a new two-car garage to serve the residents of the rectory. They propose to construct a new one-way loop driveway system around the rectory, with a new entrance-only driveway on the southerly side of the rectory, connecting in front of the school with the existing driveway between the rectory and the church, which is proposed to be converted to an exit-only driveway, with five parking spaces along the side of the church. The one-way loop driveway is proposed to be 18 feet wide, except at the head of the loop in front of the school, where it is proposed to be 26 feet wide, to allow vehicles to bypass and continue around the loop while other vehicles are stopped along the curb to drop off children. The geometry of the curve at the head of the loop driveway would allow only four passenger vehicles to be parked at the curb at any one time. The loop driveway is sized to allow access by school buses and emergency vehicles, if necessary. The use of the loop driveway will increase the potential for pedestrian/vehicle conflict at the sidewalk, as the area of the curb cuts will be increased and the activity through the curb cuts during peak periods will be greatly increased as compared with the present limitations on vehicular access during school hours.

Two spruce trees associated with the rectory are proposed to be removed to facilitate access by the loop driveway. Appellant-Applicants propose to demolish the convent in connection with the proposed new driveway, relocation of the memorial garden and statue, and new grassed play area.

Appellee-Applicants propose to construct two new parking lots in the area at the corner of West Street and Summer Street, each with thirty parking spaces, and each with a 24-foot-wide, two-way curb cut onto West Street. They propose to close the existing access onto West Street, and to retain the existing tall, dense hedges, except as needed to be removed for the new curb cuts. Both parking lots are proposed to have access to and from the one-way loop driveway system. The parking lot closest to Summer Street is proposed to be available for temporary parking for the neighboring funeral home and for public special events, but not for general public parking, not for overnight parking, and only when not needed for parking to serve the St. Monica campus functions. The parking lot farther from Summer Street is proposed to be striped for parking, but to be closed off with barriers to be used as a hard surface play area during the school day, including in the early mornings prior to the commencement of the school day, and therefore would not be available during the morning drop-off period.

The total number of parking spaces now available on site and on Summer Street and West Street in the vicinity of the site will not change due to the proposal, but as most of the on-site parking is now unavailable for use during the drop-off and pick-up periods, the available spaces for use during that process would increase by the thirty spaces in the open parking lot (as the four drop-off spaces in front of the school in the proposal are balanced by the loss of five spaces on Summer Street, due to the new driveway opening).

The new rectory garage is proposed to have access to the in-only side of the one-way loop driveway, just across from the dual parking lot/paved play area. However, during

school hours when that area is closed off as a hard surface play area, including during the heaviest use periods for the one-way loop driveway system, the priests would be unable to exit the site in their vehicles without going fully around the loop road with the rest of the on-site traffic.

Appellee-Applicants propose to convert the currently-paved area from the existing West Street access along the front of the school to a new grassed play area, with a sidewalk leading from West Street connecting with a walkway to the breezeway and the front of the school. Sidewalks are also proposed along the one-way loop driveway system and along West Street. They propose new exterior lighting consistent throughout the site, with luminaire fixtures to minimize glare and minimize the spread of light onto adjacent properties.

Appellee-Applicants propose to have snow plowing done on the property prior to 6:30 a.m., with snow storage as is done at present, in piles behind the church, in the grassed play area, or in the secondary parking area. In major storms it will be necessary to remove snow from the site.

Improvements to the on-site circulation and parking on the St. Monica campus associated with the dropping off and picking up of the school children would provide a significant benefit to the city if the improvements were to reduce the potential for vehicle-to-vehicle conflict and vehicle-pedestrian conflict on the nearby streets and sidewalks during the drop-off and pick-up periods for the school. That is, it would benefit the municipality, as well as the users of the St. Monica campus, to move this currently chaotic and unsafe student drop-off and pick-up function onto the St. Monica campus. There is no question that the current situation is chaotic and dangerous, and that a well-designed one-way loop system would be an improvement in safety, especially for the children.

However, the site plan as designed will not adequately perform that function. Because the new entrance to and existing exit from the one-way loop driveway system are

proposed to be so close together on Summer Street, congestion and unsafe conditions will be caused on Summer Street by cars waiting to make left turns into the in-only drive, or turning left out of the exit driveway onto Summer Street so close to the Seminary Street intersection. While such congestion may be tolerable in an existing urban intersection, a new access onto an existing street should not be designed to create such a level of congestion. This problem is exacerbated by the slip lane in Seminary Street, so that drivers turning right onto Summer Street from Seminary Street may have to stop suddenly to avoid a collision with cars waiting to make the left turn into the in-only driveway. Access to the property via West Street does not cause this conflict with the location of the existing driveway. Drivers are alert for turns into and out of West Street, as it is an existing city intersection, and it could be equipped with a signal if it were to become more congested in the future.

Moreover, to achieve a smooth flow of vehicles dropping children off in front of the school, each drop-off event will have to take no more than thirty seconds to a minute, as estimated by Appellant-Applicants, including the time for the driver to pull into or park at the curb, get out of the vehicle, assist the children with their belongings, accompany them into the school if necessary, return to the vehicle, maneuver out of the space, and reenter the bypass lane. It is not reasonable that the children who need to be accompanied inside can be dropped off in that short a time period. If drivers leave their cars in front of the school, it will be made more difficult for other drivers to maneuver in to parallel park, due to the relatively tight radius of the curve. It is likely that the one-way loop driveway system will back up during that peak period in any event, due to the difficulty of exiting onto Summer Street when it is heavily traveled, especially to make a left turn. It is likely that drivers who have waited for some minutes to work their way around the loop to the front of the school will not readily use the bypass lane to leave the system without dropping off their children, causing further delay or the unsafe circumstance of children

being dropped off from the bypass lane. In addition, because the second parking lot will not be available for use during the peak drop-off and pick-up times, drivers who pull into the in-only entrance to the loop and realize that vehicles are backed up will be unable to choose to exit through the parking lot onto West Street, or to park in the lot, if they have already passed the internal access for the lot. Similarly, at the most congested times cars from the rectory garage would be prevented from exiting the site through the secondary parking lot, and would have to wait in the one-way system to exit the site. The site plan is designed with a limited extent of curbside available for drop-off, as it is on a relatively tight curve rather than on a more extended shallow curve. Even if all thirty of the spaces in the parking lot are available during these peak periods for people to park to accompany children inside or to pick up children inside, the proposed plan will not function to accommodate the number of children being dropped off or picked up in the short time available. Moreover, nothing in the proposal precludes spaces in that lot from being used by teachers, administrative staff, or parishioners attending the 7:00 a.m. services, or even by people bringing children to or picking children up from the West Street day care or the public school bus stop at West and Summer Street.

While the proposal provides better access for emergency vehicles than the present undefined configuration (due to the present necessity to remove or drive through the temporary barriers), if emergency access were required during the heaviest drop-off or pick-up periods, it would be difficult for vehicles backed up in the one-way loop driveway to move out of the way to allow an emergency vehicle to gain access to the school or the back of the church or the back of the rectory.

Review criteria §10.2.08(6) and (9), and §4.4.01(1) and (2) (vehicular and pedestrian access and circulation, parking, and snow removal)

Accordingly, site plan approval of this particular design for parking and on-site circulation must be denied, as the proposed site plan does not provide adequate vehicular access, circulation and parking for all vehicles that can reasonably be expected to serve, use and access the site. It also will not adequately separate vehicles and pedestrians if the bypass lane is in fact used for dropping off children due to the congestion discussed above.

We proceed to address the other review criteria only to the extent that it may be helpful to the parties in considering the design of any future application.

Review criteria §10.2.08(4) and (5), and §4.4.01(3) (landscaping and open space)

In any future site plan proposal, Appellee-Applicants should be prepared to address the extent to which the dense, tall cedar hedge may have itself become incompatible with the streetscape, the extent to which its replacement with other plantings, fencing, and/or street trees would improve the relationship of the property to the surrounding area and allow the play space and landscaped open space on the property to add to the visual amenities of the vicinity. Moreover, any proposal to retain the cedar hedge surrounding a parking lot accessible to the public should address the extent to which the hedge may affect security issues on the property, and visibility for drivers of vehicles entering onto or exiting from the site through openings in the hedge. Appellee-Applicants should also be prepared to address the placement of the memorial garden in relation to the on-site circulation and in relation to the perception of the complex as related to the Catholic Church. Appellee-Applicants should also be prepared to address the removal of the existing grassy play area and the trees near the rectory in relation to compliance with review criterion §10.2.08(4).

Review criteria §10.2.08(1), (2) and (3) (compatibility of proposal with streetscape and character of area, relationship with surrounding buildings and structures, effect on recognized historic structures)

As discussed above, the demolition of the convent, with an appropriate site plan to relieve the municipality of the congestion and hazard due to the dropping off and picking up of children on Summer Street and West Street, would not necessarily diminish the architectural and historic value of the rectory or the church (nor of the existing school). However, the effect of that demolition on the streetscape and on the character of the area must be evaluated in the context and placement of any associated structures, gardens, street trees, landscaping, parking and on-site circulation proposed in any future site plan. We note that, under the state statute and the zoning ordinance, it is not the role of this Court, sitting in place of the DRB, to impose policies regarding the retention of existing buildings or their adaptive reuse, if those policies are not found in the municipal ordinance carrying out the municipal plan.

Review criterion §10.2.08(12) (lighting)

The proposed luminaire (down-cast) light fixtures are attractive, will minimize light pollution and avoid glare and therefore meet the requirements of this section.

Demolition of the convent building

While the proposed site plan cannot be approved, it is being denied without prejudice to Appellant-Applicants' redesign of and future application for a parking and on-site circulation proposal to provide safe play areas for the children; adequate and orderly on-site parking; and a circulation scheme that would facilitate the drop-off and pick-up functions discussed in this decision, as well as the other uses on the St. Monica campus. However, because the proposed demolition of the convent can only be approved in

conjunction with the approval of a site plan, and because that site plan as proposed in the present case cannot be approved, the Court cannot approve the demolition in this proceeding either. We note specifically that this denial of the site plan is not a determination that demolition would be denied (or that it would be approved) with an appropriately functional site plan. The parties may wish to consider whether they wish to provide for documentation of the convent building's architecture or to allow that work to be done, while any plans for the redesign of the site plan are being prepared.

Based on the foregoing, it is hereby ORDERED and ADJUDGED that approval of the specific site plan proposed in this application is DENIED, for the reasons discussed in this decision, and that therefore the demolition of the convent cannot be approved under §10.2.07 at this time. This decision is without prejudice to Appellee-Applicants' filing any future application with the DRB for approval of any revised site plan, and is specifically without prejudice to future proposals for demolition of the convent.

The Court will proceed to rule on the pending motion for sanctions on the basis of the existing memoranda and any further filing filed at the Court on or before May 19, 2006.

Dated at Berlin, Vermont, this 11th day of May, 2006.

Merideth Wright
Environmental Judge