

FINAL APPROVED-- Zoning Amendment PH & Regular Session Minutes

BEDFORD PLANNING BOARD
Zoning Amendment—Flood Plain Public Hearing
& Regular Session Minutes
Town Hall—Selectmen’s Meeting Room
February 25, 2014

MEMBERS PRESENT: Jeffrey Cohen, Chair; Shawn Hanegan, Clerk; Sandra Hackman; and Lisa Mustapich

MEMBERS ABSENT: Amy Lloyd

STAFF PRESENT: Glenn Garber, Planning Director; Catherine Perry, Assistant Planner; and Cathy Silvestrone, Planning A.A.

STAFF ABSENT: None

OTHERS PRESENT: See Attached

Emergency Evacuation notice read by Shawn Hanegan

Note: All submittals are available for review in the Planning Office.

Chair Cohen convened the meeting at 7:30 PM

BUSINESS SESSION

1) Zoning Bylaw Amendment: Flood Plain Public Hearing—

Shawn Hanegan, Clerk, opened the public hearing at 7:32PM by reading a Legal Notice stating that the Planning Board will review an amendment to the Zoning Bylaw concerning flood plains, prior to Annual Town Meeting. The proposed amendment is to incorporate revised Flood Insurance Rate Maps and the related Flood Insurance Study prepared by the Federal Emergency Management Agency (FEMA). The map panels being replaced encompass the Concord River flood plain.

Chair Cohen reviewed for the record the following documentation that was submitted in conjunction with the proposed Zoning Bylaw Amendment:

- February 20, 2014 memo from Catherine Perry, Assistant Planner, highlighting proposed changes to the Zoning Bylaws relating to flood plain maps.
- Article 6; proposed language for a Zoning Bylaw Amendment—Flood Plain Map Reference
- Copy of **Section 7.2 Flood Plain/Wetland District** of the 2010 Zoning Bylaws (for reference)
- Map entitled: Preliminary Concord River Floodplain Change Analysis (created by DPW-March 2013)

Also available at the public hearing for viewing were advance proof copies of the revised Flood Insurance Rate Map (FIRM) panels numbered 264F, 268F, 377F, 381F, and 383F, dated July 7, 2014, and an index of panels. Catherine Perry, Assistant Planner, explained that although though the Planning Board is proposing changes to the Zoning Bylaws relative to flood plain maps, it was FEMA that initiated the action to revise its maps of the Concord River flood plain. Ms. Perry briefly reviewed the proposed changes to **Section 2.2 (Zoning Map)** and **Section 2.3 (Zoning Map Interpretation, Subsection 5 Flood Plain boundaries)** highlighted in Article 6. She further explained that the regulations governing land uses and construction in the flood plain are set out in Section 7.2.

Chair Cohen, referring to the Preliminary Concord River Floodplain Change Analysis Map, pointed out that the circle locations represent residential properties affected by the changes in the boundaries of flood risk areas on the FEMA maps, and said that it was his understanding that DPW had contacted any residents whose property fell in those changed areas.

Shawn Hanegan asked if the affected property owners would have to purchase flood insurance. Ms. Perry said if a resident carries a mortgage then they could be required through that to purchase flood insurance; otherwise she believes that purchasing flood insurance would be at the discretion of the homeowner. Ms. Perry also said people in lower risk areas may wish to have insurance; and that The National Flood Insurance Program will only be available if the Town updates its bylaw to stay in compliance.

Chair Cohen asked if anyone from the public had questions or would like to share comments regarding the proposed Zoning Bylaw Amendment. No questions or comments were provided by the public.

MOTION: Sandra Hackman moved to close the Zoning Bylaw Amendment: Flood Plain Public Hearing. (Lisa Mustapich seconded the motion)

VOTE: 4-0-0

TIME: 7:42 PM

2) 381A North Road/Homestead Circle—Approval Not Required (ANR) Plan endorsement request.

Chair Cohen read for the record the following documentation related to the above ANR Plan endorsement request:

- Form A Application dated January 29, 2014 and related Plan of Land for property owners, Forest Carignan and Anne Digiovanni at 381A North Road.
- January 29, 2014 letter from Attorney Pamela Brown requesting an endorsement of an ANR Plan in accordance with MGL c. 41 Sec. 81P for 381A North Road. The lot division is proposed to create a house lot for the property owners' daughter. (Attached to this letter: excerpt from Subdivision Control Law sharing Mass. Gen. Laws c. 41 Section 81L definitions and Massachusetts Case Law)
- February 21, 2014 Memo from Glenn Garber, Planning Director with Catherine Perry, Assistant Planner, outlining information regarding the application, access to the proposed new lot, issues raised by the request for endorsement as an ANR plan, relevant court cases, and a recommendation (on balance, favoring denial).
- GIS Map showing location of proposed property, including easements and wetlands
- February 22, 2014 letter from Attorney Mangiaratti, Town Counsel, supplying a legal opinion regarding the Carignan ANR Plan Application.
- Copies of Mass General Laws; Chapter 41-- Section 81Q, 81 R, 81M and related case law were given to Board members during the meeting by P. Brown.

Attorney Pamela Brown stated that property owners Forest Carignan and Anne DiGiovanni of 381A North Road, request Planning Board endorsement of an ANR (Approval Not Required) Plan of Land dated January 21, 2014 dividing their existing lot to create an additional house lot for their daughter. The proposed plan creates a conforming house lot for the existing home at 381A North road with frontage on North Road; the existing driveway access to this house lot is over an easement for a shared driveway on the adjacent house lot. The proposed new lot has some frontage on both North Road and Homestead Circle. Ms. Brown asserted that access is available to both lots (existing and proposed) from North Road, but said that the driveway to the new

home is proposed to be constructed from Homestead Circle for the following reasons: 1) access would be safer without an additional curb cut on North Road; 2) the proposed driveway would be shorter; and 3) work wouldn't be needed in the wetlands or in its buffer zone to access the new lot, thus creating a more environmentally friendly access. The proposed driveway will be long, but some existing houses in town have driveways over 500 feet long.

Ms. Brown stated that during an ANR review, the Board only needs to determine that access to the lot(s) is not illusory, and should not be concerned with the location of the driveway to the proposed home. Ms. Brown briefly reviewed examples of case law she provided, and the definition of "frontage" as it is stated in Bedford's Zoning Bylaws. She pointed out a portion of the "Conclusion" of Town Counsel's opinion regarding this matter, stating that the Planning Board should not endorse the presented Carignan ANR Plan unless it satisfies the fundamental purpose of the Subdivision Control Law of ensuring safe and efficient vehicular access to each lot shown on the plan. Ms. Brown said she didn't agree with the other aspect of Town Counsel's opinion which states that the Carignan plan is a sufficiently similar case to the plan examined by the court in Gates v. Planning Bd. of Dighton for the Board to conclude that an ANR should be denied, because the "facts on the ground" concerning the wetlands, were fundamentally different and weren't represented fully by Town Counsel. Ms. Brown pointed out that Bedford's Zoning Bylaws do not state that access needs to be created via zoning-compliant frontage; whereas some other towns' bylaws are more specific and state this. Ms. Brown added that even if the Board endorses an ANR plan, it doesn't necessarily grant approval for a buildable lot.

Sandra Hackman asked if the ANR process was the only alternative explored.

Planning staff stated that they advised the applicant a while ago to file a Definitive Subdivision Plan to avoid ANR issues because the case for making this a frontage lot exemption through the ANR process might be questionable given that the North Road frontage is blocked by a dense band of wetlands, and therefore could be considered illusory access. Ms. Perry shared some information regarding relevant ANR court cases that have supported a Planning Board's denial of an ANR endorsement due to some physical factor making actual access from the zoning-compliant frontage impractical, unsafe, or illusory. These cases included intervening wetlands preventing reasonable access from the lot frontage to the interior building lots within the applicant's parcel. Ms. Perry voiced that if the applicant pursued this development project as a definitive subdivision, design waivers could be considered to make road construction minimally disruptive to the landscape.

Attorney Brown noted that it didn't make sense to force construction of a roadway.

Chair Cohen (referring to language stated in Town Counsel's conclusion) asked what's considered *not* safe within the applicant's proposal in terms of ensuring *safe and efficient vehicular access to each lot shown on the plan* in order to receive Planning Board endorsement of the plan.

Planning Director Garber voiced that there is nothing inherently unreasonable with building one house on 4.6 acres and providing site access to it with a driveway; it would also be permissible to have two houses where the minimum lot size is 40,000 sf.; however, this would trigger subdivision control and a wetlands order of conditions. However, Mr. Garber noted that after careful review, Planning staff still struggled with whether the applicant is legitimately entitled to an exemption from subdivision control. Mr. Garber explained that the North Road frontage meets the zoning requirements for both of the proposed lots; however, construction of a road from there would involve wetland crossing, which is undesirable. Mr. Garber pointed out that the proposed driveway (in the 40' strip from Homestead Circle) is an understandable alternative solution from the applicant's point of view; however, as far as confirming if the proposed access ensures safe and efficient vehicular access to each lot, he was unsure, given that the ANR process doesn't go through the same stringent review as a definitive subdivision.

Lisa Mustapich raised a question regarding the location of the proposed house, and commented that some of the existing house lots along Homestead Circle are similar to the applicant's proposal. Ms. Mustapich agreed that in this particular application, a definitive subdivision process may be cleaner; however, she would rather see a less environmentally imposing driveway rather than a road.

Shawn Hanegan, referring to an earlier comment Ms. Brown made regarding wetlands on the applicant's property being fundamentally different from those cited in the Gates versus Dighton case, asked Ms. Brown; using what criteria and under what authority is the Planning Board able to make a judgment on what constituted substantial differences in types of wetlands?

Ms. Brown repeated that she sees no purpose for a full subdivision; and mentioned that if the Carignans did come forth with a subdivision plan, they would probably propose more than one house lot. Ms. Brown briefly reviewed a handout sharing information from Mass General Bylaws; Chapter 41-- Section 81Q, 81 R, 81M and related case law to further support the applicant's position.

Sandra Hackman voiced that although proposing a driveway is better than creating a roadway, going through the ANR process in this instance could potentially set a precedent for the town to accept any future ANR application scenarios that appear similar to this one.

Planning Director Garber reiterated that to avoid the ANR conflict, the Planning Board could encourage a roadway with minimal disruption to the environment and grant various waivers if the applicant chose to go through the Definitive Subdivision process.

Karl Wirth, 7 Homestead Circle, said he wasn't in favor of the proposed driveway cutting through the 40' portion of the lot and then asked why Mr. Carignan doesn't extend his existing driveway that originates on North Road and serves lot #1.

Glenn Garber said that the existing driveway currently serves two properties, (Carignan & Casserly); and that a special permit for a common driveway is limited to two users.

Mr. Wirth also commented that the land slopes up a hill towards the back of the proposed lot and that the stream in the wetlands is a "raging river" in spring.

Forrest Carignan, owner of the proposed property, shared that he once owned a larger parcel of land in the area of his existing property and Homestead Circle; and that over the years he sold off various parcels of land via the ANR process. Mr. Carignan expressed that he didn't see any reason why he would have to go through the definitive subdivision process just to create one house lot for his daughter.

Mark Siegenthaler said he was on the Planning Board when the land was being broken up into various lots via the ANR process; and that even back then it was confusing for the Board to decide if the ANR process was appropriate.

Catherine Perry said that she had researched the history and noted that since the lots on this side of Homestead Circle were created through ANR rather than subdivision, the Planning Board would have had no input into the design or purpose of the long 40 foot strip and no assurance would have been given about future lot configurations. Also the minutes confirmed that the Board had been conflicted on those ANRs. It was important to note for present purposes that they were a long time ago and that the most relevant case law is more recent.

Shawn Hanegan said it appears that what the applicant is proposing to achieve is doable; however, he is struggling with the ANR process as the proper vehicle for the proposal as opposed to definitive subdivision.

Chair Cohen reiterated that the ANR process doesn't guarantee that something will be built on the created lot. Mr. Cohen declared that the applicant would need to acquire a building permit from Code Enforcement, and shared that most likely the Fire Department would review the building permit application and they may require the new house to have a sprinkler system. Chair Cohen, reverting to language in Town Counsel's opinion/conclusion, said he could support this ANR application because it can't be determined that what the applicant is proposing is unsafe in terms of ensuring safe and efficient vehicular access to each lot shown on the plan, and because this action is consistent with what was done in the past.

Karl Wirth commented that, in his opinion, the proposal is different from the existing two properties on Homestead Circle because the proposed lot would create a very long driveway.

Mr. Cohen replied that he believes what's being proposed is a better option than constructing a roadway for just one house.

Sandra Hackman voiced that she can see why people struggle with this process; and commented that in general the ANR process is undesirable. Ms. Hackman suggested that in the future, the zoning bylaws need to be more specific in this area.

MOTION: Lisa Mustapich moved that the Board endorse 381A North Road Plan of Land dated January 21, 2014 for reasons discussed and as follows: 1) proposed lot would have frontage on North Road that complies with current zoning; 2) access will be located on a public way that has an acceptable grade, width and construction; and 3) the creation of a driveway for one lot (via ANR process) will be more environmentally friendly than creating a roadway (via definitive subdivision process). (Shawn Hanegan seconded the motion)

VOTE: 3-1-0 (Sandra Hackman against)—Amy Lloyd absent

COMPREHENSIVE PLAN SESSION

a. Presentation of Comments Volume—Planning staff provided the Board with a hard copy of the CP Comments Volume. Board members stated that they were pleased with this document. Sandra Hackman recommended (on the top of page 45-very first sentence) placing *the average of .18 students per [multi-family] unit* in **bold** type. Director Garber agreed with Ms. Hackman's recommendation.

b. Adoption of CP and Planning Board Vote—Shawn Hanegan read for the record a Resolution to Adopt Bedford Comprehensive Plan document drafted by Planning staff.

Chair Cohen initiated a roll call vote to adopt the Comprehensive Plan as follows—

Shawn Hanegan, Clerk—yes

Sandra Hackman—yes

Amy Lloyd—absent

Lisa Mustapich—yes

Jeffrey Cohen—yes

The Planning Board voted 4-0-0 to adopt the Comprehensive Plan

BUSINESS SESSION (continued)

3) Minutes—Regular Session Minutes dated, February 11, 2013

MOTION: Lisa Mustapich moved to approve February 11, 2013 Regular Session Minutes with minor edits. (Sandra Hackman seconded the motion)

VOTE: 3-0-1 (Shawn Hanegan abstained; was not present at the February 11 meeting)

DEVELOPMENT UPDATE (Verbal)

1) 200 Springs Road (Bedford Veterans Administration Hospital Housing Project)— Assistant Planner Catherine Perry reported that various Town staff members, including Planning, met with the development team for a site at the VA Hospital on February 20 and discussed a proposal to construct 70 one-bedroom rental housing units. The site plan will be coming to the Board for a courtesy review soon. Many comments from the Conservation Commission, state DEP and town DPW have already been incorporated. Director Garber added that the proposed units will be located in one three-story building, and one of the units will be occupied by a resident supervisor subsidized by the VA Hospital. Staff further reported that the units will be available for veterans 55+ years of age, and that no sex offenders will be allowed to reside in these units. VA Hospital representatives plan to submit documentation for the site plan review soon and would like to be on the March 11 agenda.

2) 10 DeAngelo Drive—The applicant went before the Conservation Commission on February 12 and is now ready for site plan review. The applicant requested to be on the March 11 agenda; however, other applicants have also come forth and would like to meet on that date as well; therefore Planning staff needs to sort out the schedule before committing.

3) 205 Burlington Road Site Plan Review—A prospective applicant expressed interest in creating a self-storage use at this site but may be seeking more floor space than is allowed under current zoning bylaws. The applicant discussed its options with the Code Enforcement Officer.

4) 201 Burlington Road Site Plan Review—The applicant is proposing modifications to the parking area in conjunction with the rehabilitation of the building which is underway. The applicant currently has plans to meet with Conservation and Zoning Board of Appeals prior to moving forward with Site Plan Review.

5) Irene Road Preliminary Subdivision—The applicant asked Planning staff for guidance and may file a preliminary subdivision application in the near future.

OTHER BUSINESS

1) 285 Great Road/bike lanes—Chair Cohen shared that he recently attended Selectmen's meeting and a discussion regarding 285 Great Road street improvements was on the agenda. Mr. Cohen said Terry Gleason, representing the Bicycle Committee, also attended this meeting and he informed the Selectmen that he has been in contact with the local Department of Transportation District Office 4 and learned that the permit *didn't* include a review from the State's Complete Streets Engineer; who is well-informed with the DOT's Complete Street guidelines and bicycle accommodations. Mr. Gleason informed the DOT District office that the bicycle lane shown on the approved plan was 4-foot wide and doesn't comply with complete streets dimensional guidelines of 5-foot wide. Mr. Cohen revealed that an additional 2 feet is needed curb to curb in order to provide two 5 feet bike lanes; and that Mr. Gleason contacted the Druckers' traffic engineer (from BSC Group) to see if they would be willing to re-align the curb in front of the site to accommodate necessary curb clearance. BSC's engineer appeared open to suggestions regarding improving the design; however, he said would need to present these ideas to Mr. Drucker. Mr. Cohen added that Mr. Gleason asked the Selectmen to write a letter to DOT's district office encouraging them to include complete street guidelines into the street improvements plan for the revised building use at 285 Great Rd. Mr. Cohen mentioned that the plan the ZBA reviewed for street improvements during their latest review was the same plan that the Selectmen referred to; however, the

Selectmen, as road commissioners, commented that they would like to be involved with DOT's plan. Mr. Cohen said he spoke with Mr. Laskey and he said the Drucker's engineer should have a copy of that plan.

Terry Gleason commented that it was the state's Complete Streets Engineer who encouraged Bedford to write a letter to DOT to get clarification on the plans for this segment of roadway. Mr. Gleason confirmed that when he asked the state's engineer if he got opportunity to review the street improvement plan for this area; he replied, no.

Mr. Cohen commented that the ZBA hopes their concerns regarding access to this site are taken seriously and that a left turn lane remains part of the street improvement plan. Lastly, Mr. Cohen reported that the Selectmen did draft a letter addressed to DOT's district 4 office regarding this matter, and he believes a copy of the letter can be made available to Planning via Town Manager's office.

2) Chair Cohen suggested placing ***Reorganization of the Board*** first on the March 11 agenda because he will not be present at the March 24 meeting (brief meeting prior to Annual Town Meeting), when this action was anticipated to happen.

ADJOURNMENT

MOTION: Lisa Mustapich moved to adjourn the meeting. (Shawn Hanegan seconded the motion)

VOTE: 4-0-0

TIME: 9:35 PM