

BEDFORD PLANNING BOARD
Victoria Road Definitive Subdivision Public Hearing
Town Hall—Multi Purpose Room/Auditorium
March 19, 2013

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

MEMBERS ABSENT: None

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

STAFF ABSENT: None

OTHERS PRESENT: See Attached

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

7:30PM—Shawn Hanegan, Clerk read Evacuation Notice

Chair Jeffrey Cohen convened Victoria Road Definitive Subdivision Public Hearing at 7:31PM.

DEVELOPMENT

Victoria Road Subdivision Public Hearing/ one lot subdivision— the Board continued deliberations from 2/5/13 Public Hearing. The following new documentation was submitted for review;

- March 11, 2013 letter from Attorney, Pamela Brown on behalf of applicant offering responses to comments from February 5, 2013 public hearing and including revised request for waivers. (Attached— March 11, 2013 Memo sharing additional documentation regarding Parcel Boundaries and Rights of Others in Victoria Road; Letter from BSC Group dated March 8, 2013 with revised Stormwater Summary dated March 8, 2013, Operation and Maintenance Plan, Sight Distance Memo, and Conceptual House and Driveway Layout Plan).
- Victoria Road Definitive Subdivision (11&15 Charles Street) Plans (updated Planset/March 3/8/13)
- March 14, 2013 memo from Catherine Perry, Assistant Planner, providing an update on issues relating to Victoria Road subdivision application.
- March 14, 2013 memo from Adrienne St. John, Public Works Engineer and Kristin Dowdy, Civil/Environmental Engineer offering updated comments on the revised Victoria road Definitive Subdivision Plans and updated (March 8, 2013) Stormwater Summary.
- March 13, 2013 email from Code Enforcement Officer Chris Laskey expressing a quick comment on a Conceptual House and Driveway Layout Sketch (for reference only)
- 2 separate sketches prepared by Chris Laskey labeled: Scenario No. 1 and Scenario No. 2 providing two different designated building envelopes.
- March 18, 2013 email from Becky Webber, President of Freedom Estates Home Owner's Association (HOA) drawing attention to the HOA's responsibility to maintain the two detention basins located on lot 78; and stating that the HOA does not want water directed into the detention basin on Lot 78 from Victoria Road Subdivision.

Document: Consent to Approval of Plan and Extinguishment of Rights in Victoria Road dated March 18, 2013 and signed by Herbert and Mary Lou Pike, Trustees, as owner of 19 Charles Street.

- Signed but unrecorded Quitclaim Deed from Eleanor Pike and Sally Farmer, Trustees of Eleanor Pike Trust to Gary and Sandra Pike dated March 18, 2013, relating to Lots 59, 65 and 142.
- Signed but unrecorded Quitclaim Deed from Gary and Sandra Pike to Eleanor Pike and Sally Farmer, Trustees of Eleanor Pike Trust, dated March 18, 2013, relating to Lot 138.
- March 14, 2013 memo written by Catherine Perry, Assistant Planner with the applicant responses added in italics on 3/18/13.

Attorney Brown briefly reviewed her submitted notes on the Rights of Others in Victoria Road. Ms. Brown explained that the title history for the abutters to the way (including lots located in Freedom Estates, Charles Street, and South Road) varies. Ms. Brown said that out of all the deeds she explored for these abutting properties, 289 South Road (Gabrielle Russo) was the only property whose deed (dated 1999) expressly indicated a right to use Victoria Road; and that she is uncertain at this time whether Ms. Russo has released her rights. Ms. Brown stated her opinion that the Freedom Estates lot owners do not have rights in Victoria Road. Also the owner of 19 Charles Street has signed a release of rights. Ms. Brown further explained that the constructed part of Victoria Road will be accessible to any party that is holding rights to use it, and until Land court orders a termination of the Victoria Road extension right of way (ROW), then the extension can also be used by those retaining rights in the ROW, including use for travel, utilities and drainage. However, Ms. Brown pointed out that there is really no purpose for use of the extended way by others, including the owner of 289 South Road because it only leads to privately owned house lots.

Stephen Martorano, P.E., BSC Group, reviewed changes to the stormwater management system for the proposed roadway in response to concerns discussed during the February 5, 2013 public hearing. Mr. Martorano explained that a natural stormwater management system is proposed for this subdivision in efforts to replace a traditional structural drainage option that would provide a roadway with catch basins that directly pipe into a closed drainage system. Mr. Martorano further explained that the proposed roadway will not be curbed so that drainage can flow off the northern side of the driveway into a shallow grassed swale leading to a deeper swale located in the Victoria Road extension ROW. Mr. Martorano pointed out that the grass swale will promote groundwater infiltration, provide pollutant treatment, and offer a low maintenance finish. Mr. Martorano shared that the primary reason for the current design changes was to respond to drainage concerns raised by abutters. Mr. Martorano stated that by capturing the majority of overland flow from Charles Street properties, less overland flow will reach South Road and Freedom Estates abutters, thereby reducing the burden of flood issues they are currently experiencing. Lastly, Mr. Martorano said that the newly proposed stormwater system is more expensive, and is an improvement from the previous design; it will be easier for the homeowner of Victoria Road to maintain because it will be less likely for the system to clog.

Attorney Brown, referring to two drawings labeled Scenarios 1 & 2 for a Designated Building Envelope, provided by Chris Laskey, Code Enforcement Director, asserted that because the road rights to Victoria Rd. will have been extinguished, Scenario 2 is the appropriate building envelope.

Sandra Hackman asked if grass will be planted in the swales. Mr. Martorano replied that they chose drought tolerant grass species to be planted in the swales, and added that you don't mow this type of grass you just weed-whack it.

Chair Cohen asked Mr. Martorano if he would like to speak about the three comments that were provided by DPW.

Comment #1 reply: Mr. Martorano spoke about the test pits and noted that BSC has agreed to perform additional test pits in the area of the proposed detention basin and based on these results will make any

necessary modifications to the design of the drainage system to provide additional separation to groundwater. Mr. Martorano added that BSC will continue to work with DPW to address this issue and come up with a final design before endorsement of the mylar. Comment #2 reply: Mr. Martorano, referring to the conceptual house envelope plan, explained that the grades haven't been set for the proposed house; and that BSC will continue to work with DPW on the positioning of the infiltration system to ensure proper infiltration, and to achieve the desired one foot of separation from high groundwater. Comment #3 reply: DPW asked that the Operation & Maintenance Plan note any maintenance necessary for the beehive area drains; Mr. Martorano said this will be addressed.

Lisa Mustapich raised a question about the safety of the swale and then asked how deep it will be.

Mr. Martorano stated that in the narrow portion alongside the road, the swale is very shallow and that in the wider portion the depth would be approx. 2.5 ft.

Sandra Hackman mentioned that Ms. Russo had a question regarding *who would be responsible for the maintenance of the roadway* because Ms. Russo has not given up her rights to it, and is concerned about liability; and therefore Ms. Hackman wanted to know if information should be provided in the Operation and Maintenance Plan stating *who* is responsible for maintenance of the roadway.

Chair Cohen asked the applicant to confirm if it is the Pikes who are responsible for the maintenance of the roadway.

Attorney Brown replied yes; the Pikes, or any future owner(s) of lot 143, would be responsible for the maintenance of the roadway, but the Operation and Maintenance Plan allows for any other users to share costs.

Shawn Hanegan asked what happens if the homeowner doesn't comply with the Operation & Maintenance Plan.

Ms. Brown said that the Code Enforcement Director could contact the homeowner and request that maintenance be done.

Lisa Mustapich spoke about Victoria Road remaining a private way and having the homeowner responsible for maintenance and not the town.

Catherine Perry, Assistant Planner, said that the road design does not meet the Town's current standards for acceptance as a public road, and the applicant has expressed an intention for it to remain a private way. A condition can be included in the Certificate of Action to require its ongoing maintenance, referencing the Operation and Maintenance Plan.

Catherine Perry & Attorney Brown discussed a comment made by Ms. Perry on page 2 of her March 14, 2013 memo, regarding the status of other homeowners' rights to use Victoria Road. Ms. Perry said although Ms. Brown provided documentation suggesting that Freedom Estate lots don't have rights to use Victoria Road, and a former paper street that would have connected to the end of Victoria Road has been discontinued, there are a few existing lots that may still have rights. Ms. Brown agreed with this statement. However Ms. Brown disagreed with Ms. Perry's further comment which indicated that as long as the ROW alongside the proposed house is still in existence, the lot boundary used for zoning purposes should **exclude** the ROW. Attorney Brown noted that for zoning purposes, the ROW could be excluded without making the lot non-compliant in terms of minimum lot area; also she stated that a structure would not be constructed within the ROW because the easement would be respected. However, Attorney Brown was concerned about the application of building

setbacks under zoning and argued that the building envelope should be located at the setback distance from the property line or at the edge of the ROW; whichever is greater. Ms. Brown reiterated that Chris Laskey's

scenario #2 sketch is "correct". Ms. Perry pointed out that under Section 6.2 of the Zoning Bylaw, the front yard setback is measured from the sideline of a street ROW, and the two sketches were provided to illustrate the situations with and without it. Ms. Perry noted that the street ROW currently has status with the Land Court, which has jurisdiction over it, and that Ms. Brown has indicated that there is a procedure available for its termination which the applicant would probably pursue.; Therefore Ms. Perry thought this would be the proper route to follow if the applicant wishes to use the larger building envelope. She asked if there was any problem in requesting the Land Court to terminate the ROW.

COMMENTS:

Ray Gilmartin, 7 Prescott Place, commented on the potential location and function of the proposed detention basin/infiltration system in respects to setbacks and the building envelope; and then asked if there would be impacts to the area.

Ms. Perry said that the Planning Board could approve the Definitive Subdivision Plan for Victoria Road, but hold off signing the mylar plan until they are satisfied that the drainage system details are satisfactory.

Mr. Gilmartin asked: given the design of the swale, are there plans to re-plant trees for privacy? Mr. Gilmartin also asked if an extension to his existing fence could be provided by the developer to maintain privacy.

Mr. Martorano explained that the detention swale is a trade-off to a tree buffer.

Lisa Mustapich suggested possibly shifting the road and adding deciduous trees to provide privacy.

Sandra Hackman said it may be worth it for the developer to take care of the neighbors' privacy requests as opposed to having a tree scape on Victoria Road for the homeowners of lot 143.

Gary Pike, 11 Charles Street, and property owner of Victoria Road, stated that during the permitting of the Freedom Estates Subdivision, Mr. Gilmartin was offered the choice of a 6' fence or some trees as a buffer; and that Mr. Gilmartin chose a fence. Mr. Pike further stated that his property (via Freedom Estates permitting) was supposed to get trees and that he never got them.

Rafael Cordero, 5 Prescott Place, shared that he has pine trees, but no fence as a buffer; however he is concerned about the root system of the pine trees.

Becky Weber, 9 Prescott Place, (and current President of Freedom Estates Home Owners Association), stated that she wants to be sure that drainage from Victoria Road doesn't flow into the Freedom Estates detention pond, because the HOA for Freedom Estates is responsible for maintenance of this detention pond.

Brad Carmena, 287 South Road, was concerned that the runoff from South Road would be delivered into this area causing additional flooding. Mr. Carmena wants to be sure that drainage in the area of his home remains the same and doesn't get worse once Victoria Road is developed. Mr. Carmena also inquired about receiving a fence for privacy.

Chair Cohen asked Mr. Martorano if they plan to match the existing grades of nearby properties. Mr. Martorano replied; yes.

Sandra Pike, 11 Charles Street, and property owner of Victoria Road, stated that she and her husband Gary want to be good neighbors, and that they can appreciate the neighbors' desire to maintain privacy, as they want their privacy too; therefore the Pikes would be willing to cooperate with abutting neighbors to ensure they get privacy. Ms. Pike agreed to extend the existing fencing at 7 Prescott Place and provide a new fence along the property line of 287 South Road.

Steven Protasowicki, 3 Prescott Place, shared his concern regarding excess water at the riprap inlet where the pipes connect and then said that if the trees at the rear of 19 Charles Street are removed he would like some shrubs added.

Catherine Perry suggested that the Board review the list of waivers provided by the applicant and decide whether to allow such waivers, based on a finding that they are in the public interest and not inconsistent with the purpose of the subdivision control law. Ms. Perry stated that, in her opinion, these waivers are appropriate, and therefore she recommends that the Board first vote on the waivers, and then on the Definitive Subdivision.

Catherine Perry and Attorney Brown briefly continued their discussion on the interpretation of the zoning bylaws regarding Ms. Perry's recommendation to include a condition and annotation on the lotting plan sheet, stating that for zoning purposes, the lot will be considered to be bounded by the dashed line unless the projected portion of the ROW is terminated by Land Court.

Chair Cohen asked how long it would take to obtain a Land Court ruling. Attorney Brown estimated anything from a few days to three years. Mr. Cohen stated that he was not in favor of waiting for Land Court and that he would like Chris Laskey to exercise his judgment on how the zoning setbacks should be applied. Glenn Garber suggested simply noting on the plan the calculated area of the lot with and without the land in the ROW and a statement that no building will be located in the extension of Victoria Road until that portion of the ROW is terminated.

*MOTION: Lisa Mustapich moved to close Victoria Road Definitive Subdivision Public Hearing.
(Sandra Hackman seconded the motion)*

VOTE: 4-0-1 (Amy Lloyd abstained)

TIME: 8:47PM.

Please refer to Regular Session Minutes dated, March 19, 2013 for motions and votes on waiver requests and the decision for Victoria Road Definitive Subdivision.