

FINAL/APPROVED

**BEDFORD PLANNING BOARD**  
**Regular Session Minutes**  
**Town Hall—Selectmen’s Meeting Room**  
**May 13, 2014**

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

Chair Hanegan convened the meeting at 7:30 PM

**Emergency Evacuation notice** read by Amy Lloyd, Clerk

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

**DEVELOPMENT:**

**1) 165-169 Concord Road – Approval Not Required (ANR) Plan endorsement request**

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

- Form A application dated, April 14, 2014 (received April 24, 2014) and related Plan of Land for property owner, Richard D’Augusta, Trustee, Concord Road Trust.
- April 14, 2014 letter from Attorney Pamela Brown requesting an endorsement of an ANR Plan for 165-169 Concord Road dated April 11, 2014. *Attached to the letter*— a copy of a special permit issued by the Zoning Board of Appeals dated January 23, 2014 granting modifications to two non-conforming lots with existing houses (Lots A and B), and resulting in the creation of an additional lot (Lot C). Conditions were set by ZBA that only a single family home may be built on lot C and all setbacks and dimensional requirements required under the Zoning Bylaws must be followed.
- May 9, 2014 memo from Glenn Garber, Planning Director sharing comments and a recommendation for the Board to endorse 165-169 Concord Road ANR Plan as submitted.

Attorney Brown shared that the two existing house lots on Concord Road were reconfigured (as Lot A1 and Lot B1) to create one new building lot (Lot C) with frontage on Selfridge Road. Ms. Brown noted that ZBA granted a Special Permit to allow modification of the two non-conforming lots. Ms. Brown commented that each lot contains necessary frontage on public ways and there are no wetlands or other constraints restricting access from the public ways to the respective lots.

Planning Director Garber commented that in terms of ANR endorsement, all three lots meet the statutory test of having complying frontage on an acceptable way. Mr. Garber pointed out that Selfridge Road is a private way and informed the Board that by endorsing the ANR Plan they are determining that the roadway is of acceptable grade, width and construction, and then voiced that this appears to be the case. Mr. Garber did raise some concern regarding the strategy of approaching the ZBA for a special permit to modify or extend non-conformities and create conditions that would allow increased development through the ANR process. Mr.

Garber mentioned that in this particular case (165-169 Concord Road), it can be argued that the ZBA special permit allowed somewhat of a self-created density bonus. Mr. Garber said Planning staff isn't questioning ZBA granting this special permit because they were presented with a reasonable argument and acted accordingly; however, Mr. Garber did say that issues such as this merit further legal and policy review with a view to future decisions on other properties in Bedford.

Board members shared their concerns and had a further discussion regarding interpretation of the zoning bylaws and the appropriateness of granting special permits versus going through the variance process. A majority of the board members agreed with Planning staff's recommendation to endorse the plan for 165-169 Concord Road as not requiring approval under the subdivision control law, for reasons discussed in Planning Director Garber's memo dated, May 9, 2014 and also agreed that it's important to seek further legal review regarding this approach before applying it on other properties.

*MOTION: Lisa Mustapich moved that the Board endorse 165-169 Concord Road Plan of Land dated, April 11, 2014 as not requiring approval under the Subdivision Control Law for reasons discussed in Planning Director Garber's memo dated May 9, 2014 and because the property meets the statutory test of having complying frontage on a way of acceptable grade, width and construction. (Jeffrey Cohen seconded the motion)*

*VOTE: 4-0-1 (Sandra Hackman abstained)*

## **2) 224-226 Carlisle Road-- Approval Not Required (ANR) Plan endorsement request**

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

- Form A application dated, April 23, 2014 and related Plan of Land dated, April 18, 2014 for property owner, Anthony and Ann Iafrate (226 Carlisle Road) and Regina Fox Tree (224 Carlisle Road).
- April 23, 2014 letter from Attorney Pamela Brown, requesting ANR plan endorsement for a lot reconfiguration of 224 and 226 Carlisle Road, located in the Residence R zoning district. ***Attached to the letter***— a copy of a special permit issued by the Zoning Board of Appeals, dated March 27, 2014, granting changes to two non-conforming lots at 224 & 226 Carlisle Road.
- May 8, 2014 memo from Catherine Perry, Assistant Planner, noting that the intention of the ANR plan is to adjust lot lines between two pre-existing, nonconforming residential lots that have existing houses and accessory structures.

Attorney Brown explained that the existing lots (parcels 304-0009 and 034-0010) are irregularly shaped, have existing homes, and have non-conforming setbacks and building envelopes that are difficult to work within. Ms. Brown further explained that the proposed reconfiguration of the lot lines will make the existing lots more regularly shaped and useable, plus provide compliant zoning frontage for 224 Carlisle Road, which is currently non-conforming. Ms. Brown shared that Zoning Board of Appeals granted a special permit to allow reconfiguration of the existing lots due to existing non-conformities that would otherwise continue.

Catherine Perry, Assistant Planner, commented that working with two non-conforming lots together is unusual, and that the legal provision which allows alteration of an existing non-conforming house is normally applied to situations where a family requires an addition rather than changing the lot for new development. Some aspects may merit further legal review for future reference. Ms. Perry reviewed points made in her May 8, 2014 memo, acknowledging that the ZBA decision is in place and that the plan shows adequate frontage for each lot, but pointing out the plan does not make it clear that both lots will remain nonconforming going forward, and are dependent on the terms of ZBA's special permit for buildability.. Ms. Perry commented that she found the notes on the ANR plan to be misleading; they may give someone the impression that the larger lot meets current zoning, thus overlooking the risks of merger or loss of buildable status if the houses weren't

reconstructed promptly. Ms. Perry advised the applicant to either explain the zoning situation more transparently on the ANR plan or in the note section, describe the combined land areas as parcels instead of lots, but the applicant declined this advice. Ms. Perry alternatively suggested that the applicant add a note on the plan stating the area of the larger lot, excluding land that is more than 500 feet from the road, in order to provide important factual information without making a statement regarding zoning. Ms. Perry noted that the applicant has made some other minor corrections to the plan as advised.

The Board and applicant had a further discussion regarding ZBA's rationale in relation to the applicant's special permit application to the ZBA seeking reconfiguration of non-conforming lots under section 7.1.2 of the Zoning Bylaws. Jeffrey Cohen shared that ZBA discussed the shape, dimension, and topography of the lots and the merits of both plans (A & B) presented. Mr. Cohen commented that he was in favor of Plan B because the land swap maintained the same lot area (not beyond 500 feet) on 224 Carlisle Road; and therefore did not intensify the non-conformity. Mr. Cohen discussed the synopsis Code Enforcement Director, Christopher Laskey, provided. In Mr. Laskey's opinion, Section 6.4 of the Zoning Bylaw applied in this case (*...and no buildable or built-upon lot shall be sub-divided, altered or reduced except by eminent domain taking or by conveyance for a public purpose for which eminent domain taking could have been made, so as to result in a violation of the dimensional or other requirements of this bylaw*) Mr. Cohen said Mr. Laskey consulted Town Counsel regarding the opinion he offered to ZBA, and Town Counsel agreed that Section 6.4 could apply in this situation.

Catherine Perry commented that given ZBA's approval and subject to suggestions she made in her May 8 memo and discussed this evening, she recommends the Board **not** withhold endorsement of the ANR Plan. However, Ms. Perry further commented that this case and others have raised questions and doubts as to proper procedures, tests and limits under Bedford's zoning bylaw and state law in terms of reconfiguring lots. Ms. Perry stated that staff welcomes further exploration of these issues.

*MOTION: Lisa Mustapich moved that the Board endorse 224-226 Carlisle Road ANR Plan of Land dated April 18, 2014 for reasons discussed and as outlined in Catherine Perry, Assistant Planner's May 8, 2014 memo and because the property meets the statutory test of having complying frontage on a way of acceptable grade, width and construction. (Amy Lloyd seconded the motion)*

*VOTE: 4-0-1 (Sandra Hackman abstained)*

**COMPREHENSIVE PLAN IMPLEMENTATION**—Planning Board implementation priorities and work program third discussion; the first April 8, second April 29.

Planning Director Garber briefly spoke about the outcome of the first two CP discussions in regards to moving forward with priority implementation measures from the list of CP actions. Director Garber provided the Board with a handout entitled; Reordering & Scheduling of Comprehensive Plan Implementation Projects in the Memorandum to Planning Board for 4-29-14 Meeting. Director Garber explained that the content of the implementation projects outlined in the April 29 document hasn't changed; only the order, priorities and scheduling have been modified or added in the May 13 document. Mr. Garber further explained that it's still possible to select individual work pieces and/or combine them as the board sees fit.

The Board had a productive discussion on the Reordered & Scheduled Action Alternative write ups and shared the following comments:

**Jeffrey Cohen—**

- would like residential component eliminated from I.M.U. (Industrial Mixed Use); concerned with further loss of commercial land.

- re: medical marijuana; noted that it is an agricultural use that could appear in any district; Director Garber commented that 5 acres is needed.
- inquired about the Bicycle/Pedestrian plan timeline; Director Garber said; within 9 months, but also noted that, to date, a procurement hasn't been written.
- inquired about the Great Road Master Plan status—Mark Siegenthaler shared the following: 1) the South Road/Springs Road intersection is in its design period; and 2) School Way/Mudge Way project is underway.

**Sandra Hackman—**

- favors looking at I.M.U. in an integrated way by the Spring.
- raised concern regarding medical marijuana bylaw issues overriding CP implementation efforts.
- in favor of the timeline provided for CP implementation action items
- shared that Complete Streets is important and would like to work on model designs, policy, and create a potential task force that would include D.P.W. (Mark Siegenthaler commented that the Pedestrian/Bicycle Plan may be the action that will help move that process forward). A potential state incentive program was mentioned.
- in favor of the Selectmen's idea to work on long-term capital planning process and use it to build in action items from the CP.
- looking forward to hearing Selectmen reaction to CP priority action items (especially along Great Road)

**Amy Lloyd—**

- also agreed with eliminating housing as an allowed use in I.M.U. if it can be done separately and quick.
- inquired why medical marijuana hasn't been discussed with Selectmen and voiced that this needs to be done soon.
- commented that she would like to learn more about medical marijuana potential fiscal impacts, tangible benefits to the town, and health and security issues that may arise.
- expressed that she didn't want OSRD (Open Space Residential Development) to be forgotten.
- Inquired about the status of the Railroad Avenue bike trail extension-- Mark Siegenthaler mentioned that the this extension was approved, but design work is still being finalized, and further mentioned that regional work is also needed to move forward with the final stage.

**Lisa Mustapich—**

- agreed with removing the housing component from the I.M.U. bylaw and focus more on the other allowed uses in I.M.U. areas.
- re: Action Alternative B (formerly #2) allowed height increase in Industrial/Office Buildings; voiced that this maybe too aggressive to complete by Fall; and suggested waiting until Spring.

**Shawn Hanegan—**

- raised similar comments to the other Board members and also agreed to eliminate housing as an allowed use in I.M.U. and hold off bringing Action Alternative B/Allowed height increase in Industrial/Office Buildings until Annual Town Meeting—Spring 2015.
- inquired if there could be incentives for timely completion of projects incorporated in the bylaws.

**Mark Siegenthaler (Selectmen Liaison)—**

- commented that he is willing to re-raise the medical marijuana issue with the Selectmen and let them know that the Planning Board has thought about it and is inquiring what can be done. Mr. Siegenthaler said that he will also bring up the possibility of creating a Task Force to assist with this effort. However, he noted that some state licensing and banking issues are still being sorted out.
- mentioned that although efforts will be made in Pedestrian/Bicycle plan to incorporate Complete Street actions wherever possible, certain streets are not under town control. Mr. Siegenthaler shared 285 Great Road, the former Travel Lodge site, as an example of a roadway (ran by the State, not the town) where Complete Street initiatives were recommended; however, the State decided to go with its original decision instead of what the town proposed.

**Glenn Garber, Planning Director—**

- recommended moving forward with Action Alternatives A,C, and D and target Annual Town Meeting (Spring 2015).
- Suggested preparing some items for Special Fall Town Meeting (2014); move forward with greenbelt provision modification and Federal Telecommunication Act
- hold off on Action Alternative B/Allowed height increase in Industrial/Office Buildings until Annual Town Meeting Spring 2015.
- Compile a list of items that the Board would like to discuss with the Selectmen during a joint meeting in June.

Overall board members and planning staff were in agreement with comments made during the discussion and agree to move forward with the above recommendations/suggestions provided by Planning Director Garber.

**OTHER:** Planning Director Garber reported that Alyssa Sandoval, newly hired Economic Development Coordinator, will attend the May 27 meeting to discuss economic development initiatives with the Board; and that a joint meeting with the Selectmen to discuss CP Implementation Action will take place sometime early June.

**DEVELOPMENT UPDATE:** (verbal report by Catherine Perry)

- 1) 120 Great Road, potential reuse for expanded home occupation, medical office, and residence; staff met with prospective buyer and a concept design is in the works.
- 2) Village at Taylor Pond—property owner wanted an estoppel certification in connection with refinancing. The Selectmen recently created an estoppel document, noting that condition #30 from the original special permit is still outstanding; this contains a penalty clause for non-construction of offices on the Plank Street site. Therefore the property owner plans to submit a minor special permit amendment request for Planning Board consideration on May 27 to eliminate condition #30.
- 3) Restaurant at Blake Block—restaurant owner seeking Planning Board's consideration for a minor special permit amendment on May 27 to include limited outdoor seating. Applicant is currently exploring the potential to change existing liquor license to accommodate outdoor seating.
- 4) Freedom Estates—received an inquiry from a Freedom Estates resident regarding the removal of three old diseased trees that might be located within the greenbelt. It was later determined that only one of the three trees was actually located in the greenbelt and is not contributory to the continuous buffer. This issue has been dealt with.

- 5) 263 Old Billerica Road—continue to receive inquiries regarding property for sale; however, the lot is too small to subdivide so other options are being explored.
- 6) Flatbread—inquired about extensive outdoor seating; no application has been filed.
- 7) 2 Irene Road—potential 4-lot cluster subdivision; staff met with the developer to discuss potential development scenarios. Planning Director Garber suggested that the developer consider a Planned Residential Development (PRD).
- 8) Bedford Business Park—staff met with developers; work on phase 1 and the façade is in progress. Developer is working on a better gathering area design and is considering attaining ground-level parking on abutting MassDOT property; Ms. Perry commented that if the business park owner succeeds in obtaining the MassDOT parcel then they need to return to the Board to include the additional parking area as part of the special permit.
- 9) Bedford Motel—Director Garber met with prospective buyers; potential for a mixed use development.
- 10) Blake Block—DPW Engineer determined that stormwater issues are related to maintenance. Code Enforcement Director is issuing a stormwater performance letter to the property owner.
- 11) Bedford Market Place Shopping Center—the new owner of the shopping center plans to move forward with the redevelopment of the site. Mark Siegenthaler commented that the Selectmen, as Road Commissioners, need to be involved with the effect of the site plan changes on road access; and therefore they want to ensure that they are given opportunity to review any new or modified plans for this site.
- 12) Elm Street/Daugherty property—still considering cottage style housing.
- 13) FEMA Concord River Flood Plain Update –zoning bylaw changes were approved by the Attorney General.

### **BUSINESS SESSION:**

- 1) Minutes—April 29, 2014 Regular Session

*MOTION: Lisa Mustapich moved to approve April 29, 2014 Regular Session Minutes with some minor edits. (Amy Lloyd seconded the motion)*

*VOTE: 4-0-1 (Jeffrey Cohen was absent during the April 29 meeting)*

2) Remote Meeting Participation—Mark Siegenthaler reported that the Selectmen/Town Manager’s Office are considering instituting remote meeting participation and therefore will be polling other town boards and committees for their positions regarding this matter.

- 3) Other Business—
  - Meeting dates –the board agreed to reschedule its Tuesday, June 10 meeting to Monday, June 9 so that they may join the Selectmen in a discussion regarding Comprehensive Plan Implementation. The Board also agreed on July 8, July 22, August 12, August 26, September 16 and September 30 as upcoming meeting dates.
  - Coast Guard Housing—Selectmen’s charette/discussion regarding the vacant Coast Guard Housing (off Pine Hill Road) will continue on May 15, 2014.
  - Planning Director’s Managerial Review – Board discussed the Planning Director’s annual review.

### **ADJOURNMENT:**

*MOTION: Lisa Mustapich moved to adjourn the meeting. (Amy Lloyd seconded the motion)*

*VOTE: 5-0-0*

*TIME: 10:25pm*