

BEDFORD PLANNING BOARD
Regular Session Minutes
Town Hall—Selectmen’s Meeting Room
June 18, 2013

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

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

DEVELOPMENT SESSION:

1) **100 Plank Street**—Special Permit Amendment Public Hearing for a mixed use project at 100 Plank Street **began at 7:32 PM** and **closed at 8:06 PM.** *(Please refer to 100 Plank Street Special Permit Amendment Public Hearing Minutes dated, June 18, 2013 for details)*

2) **Freedom Estates**—A Planning Board determination is needed to clarify the status of a trail segment between 22 and 24 Liberty Road located in the Freedom Estates Subdivision. The following documentation was provided: **a.** Supplementary memo sharing two additional points, dated, June 13, 2013 from Planning Director Garber, re: Disposition on 22-24 Liberty Road Trail Segment/Freedom Estates Incomplete Subdivision; **b.** Memo dated, June 12, 2013 from Planning Director Garber, regarding a disagreement over a short pedestrian trail segment at Freedom Estates located between 22-24 Liberty Road; **c.** Sketch showing the trail segment in question; **d.** Sketch showing existing fence (at #24 Liberty Road) set 1-foot within the property line and near a 20’ utility and access easement; **e.** Cluster Development Special Permit Decision with findings for Freedom Estates Realty Trust and Certificate of Action for Freedom Estates Definitive Subdivision, both dated, May 28, 2004 (with various easements and restrictions documentation attached); **f.** List of electronic documents Planning Board has on record for Freedom Estates Subdivision; and **g.** Letter from Herbert and Mary-Lou Pike, 19 Charles Street, dated, June 13, 2013 sharing their concern regarding the status of the walking path between the end of Charles Street and Liberty Road.

Chair Cohen informed everyone that this is not a public hearing; however, he will do his best to incorporate public opinion when appropriate.

Robert Mangiaratti, Town Counsel, provided a visual presentation showing location of the trail segment/easement in question. Attorney Mangiaratti spoke about the Board’s and residents’ intentions regarding the purpose of this easement as a pedestrian trail/utility easement. Attorney Mangiaratti restated information from an April 2, 2013 Executive Session discussion he had with the Board and Staff regarding this matter as follows;

Attorney Mangiaratti noted that the trail segment running between 22 & 24 Liberty Road in the Freedom Estates Cluster Subdivision development (and also connects Liberty Road with Charles Street) was not clearly approved or legally bound in the permitting process. Attorney Mangiaratti said that this trail segment was not included in the pedestrian trail easement document, nor was it cited in the original special permit; however, he observed that a walkway path/pedestrian trail was shown on a Landscape Plan (sheet # 29 of the original plan set dated, June 29, 2004) which was approved by the Board, but with no specific annotation to clarify its purpose or connectivity and/or to distinguish it from a general access easement for utilities or other public purpose. Attorney Mangiaratti also spoke about the involvement of property owners at 22 and 24 Liberty Road; and how they are opposed to constructing a walking path along the lot line separating their properties, and that are not interested in any negotiations. Attorney Mangiaratti said he reviewed both property owners' deeds (22 & 24 Liberty Rd.) and found no language that subjects either lot to include a walking trail. Attorney Mangiaratti informed the Board that the town's case for affirming the required trail segment is weak and that he doesn't recommend pursuing this matter, as it would hold up street acceptance. Lastly, Attorney Mangiaratti suggested that the Board hold a public meeting to verify for the record that the construction of this trail segment could not be upheld given that the relevant registered documents and plans provided do not create a walking path easement over these two lots, and then pointed out that the Board accepted his recommendation during an Executive Session.

Herb Pike, 19 Charles Street, articulated that during the design phase, at the very beginning of the Freedom Estates Cluster Subdivision project, David Veo (developer) and Roger Corbin (BSC Group) had approached Charles Street residents with several proposals and some of these proposals showed Charles Street connecting with Liberty Rd. Mr. Pike also shared that the residents agreed that they wanted Charles Street to remain a dead-end; and therefore he personally gifted a parcel from his property to Freedom Estates to accommodate a required turnaround with the agreement that there would be access from Charles Street to Liberty Road via a walking path so that the residents of Charles Street could get to Liberty Road sidewalks and onto the Town Forest walking paths. Mr. Pike said when the final plan was presented to the residents of Charles Street it clearly showed a connecting path from Charles Street to Liberty Road.

Greg Sharpless, 4 Charles Street, attested that Mr. Pike's recollection of events in respects to the residents of Charles Street trusting that a pedestrian trail would be included is accurate.

Attorney Mangiaratti said he is sure that there was discussion and intent to have this connection; however, as Town Counsel, he needed to examine the legal documents on file with the Middlesex Land Registration office before providing a recommendation to the Board; and that based on his review of this documentation he found that there was not sufficient evidence to support requiring the developer to create a walking path easement between 22 and 24 Liberty Road.

Herb Pike said if this is a clerical error, can something still be done to correct it.

Attorney Mangiaratti replied; this issue is well beyond a clerical error, as two home buyers relied on deeds that were recorded by the Town of Bedford indicating no walking path between the lots.

A further discussion took place between the Board and residents regarding the intent to include the pedestrian trail (or not); and how that should weigh into a resolution to complete Freedom Estates Subdivision. Board members shared similar frustration as residents who believed the walking path should exist because it had been the Board's intent as well to have it included.

Attorney Mangiaratti commented that land courts aren't interested in hearing about intent; and that decisions are based on written documentation. Attorney Mangiaratti pointed out that the deeds for Lots 111 & 112 clearly indicate that a pedestrian walkway doesn't exist; while the documented easement between these lots (noted as a Utility and Access Easement) is not clear because "Access" was not specifically defined as a "Pedestrian Access".

Sandra Hackman asked why Mr. Elyzar (24 Liberty Road) was able to build a fence that runs along and crosses a town utility/water access; and then asked if the town can request that he move the fence.

Planning Director Garber said the town did request that Mr. Elyzar move the fence, but he wasn't amicable to that. Director Garber pointed out that if Mr. Elyzar does not move his fence, he assumes a risk to his fence if the town needs to gain access to the water line.

Herb Pike declared that a segment of Mr. Elyzar's fence is on located his property; and then asked what is going to be done about that.

Director Garber replied; the issue of Mr. Elyzar constructing a portion of his fence on Mr. Pike's property is something that needs to be settled between the neighboring parties involved; and that it's not the town's responsibility to resolve this matter.

A brief discussion took place regarding the term "access" and how it was perceived. Board members shared empathy for neighbors who perceived "access" to mean pedestrian access and also noted that the term "access" by itself can be confusing. Board members also shared their disappointment regarding the loss of this pedestrian trail that had potential to serve many people in the area.

Amy Lloyd shared that she was disappointed that the homeowners of 22 and 24 Liberty Road were not more concerned with the larger community needs, as well as the important issue of the subdivision's future street acceptances at Town Meeting.

Chair Cohen said the Board needs to verify for the record that the construction of this trail segment can't be required of the developer because the documentation was not clearly approved or legally bound during and following the permitting process; and therefore, non-construction of this trail should not hold up street acceptance.

MOTION: Lisa Mustapich move to no longer require the developer to construct a walking path between 22 and 24 Liberty Road as a condition for recommending street acceptance in Freedom Estates Cluster Subdivision as public ways. (Shawn Hanegan seconded the motion)

VOTE: 5-0-0

Mark Siegenthaler, Selectman, stated that Attorney Mangeratti is planning to write a memo to the Selectmen listing steps to complete for Freedom Estates street acceptances; and that the above action is one small piece of that process.

BUSINESS/STAFF REPORT

- 1) Verbal updates on the following development permitting cases—by Glenn Garber Planning Director
 - **29A Chelmsford Road Definitive Subdivision**—Applicant, Richard Iovino submitted an application for a definitive subdivision to create four new house lots on a 4.65 acre parcel and will include a construction of a new way.

- North Road/Homestead Circle—Potential 1-lot subdivision with frontage on North Rd. and access via Homestead Circle.
 - 46 Wilson Road/Scenic Road—review an applicant’s request to install a new driveway that bisects an embankment containing rocks that might have been part of an existing stonewall on a scenic road.
 - Wellington Way (Approval Not Required) Form A application—applicant Gary Ruping submitted a request to change interior lot lines for the purpose of marketing newly created house lots. Mr. Garber stated that this is doable; however, the subdivision still needs to be closed out, but this particular action is not contingent upon the completion of the subdivision.
 - 54 Loomis Street—Director Garber reported that the special permit application for 54 Loomis Street appeal period of 20 days has ended; and that the Depot Park Advisory Committee has suggested some changes; however, the Board is not in charge of the total development.
 - Comprehensive Plan Progress—pulling past comments from previous element discussion and working on the editing process.
 - Blake Block—Director Garber reviewed information in a letter he sent to Bruce Blake on June 17, 2013 clarifying the location of the required bicycle rack (approved in a special permit minor amendment recorded with the Town Clerk on May 17). **1) The bicycle rack on Great Road (location A) will be relocated to a point in the grassy strip at the easterly end of the Blake Block property, across the interior walkway from the brick outdoor dining patio, in order to provide more space to facilitate bike parking 2) Installation Deadline; new racks ordered and delivered by December 31, 2013 and racks in possession installed by August 7, 2013; and 3) if the Fletcher Road Bike Rack capacity is greater than 5, the owner shall consult in advance with Planning, Code and possibly DPW regarding its installation.**
- 2) Minutes—Board members agree to postpone reviewing minutes until the July 9 meeting.

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

VOTE: 5-0-0

TIME: 9:55PM