

BEDFORD PLANNING BOARD
Selectmen's Meeting Room
Regular Session
May 19, 2015

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

MEMBER ABSENT: Lisa Mustapich.

STAFF PRESENT: Glenn Garber, Planning Director; Catherine Perry, Assistant Planner; Kim Siebert, Acting Recording Secretary

STAFF ABSENT: Cathy Silvestrone, Planning Administrative Assistant

OTHERS PRESENT: Caroline Fedele, Selectmen liaison; Todd Fremont-Smith, Nordblom Company developer of 201 Burlington Rd; Meredith McCulloch, The Bedford Citizen; Katie Moniz, BSC Group civil engineer for 201 Burlington Rd.

Ms. Lloyd called the meeting to order at 7:32 PM.

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

Ms. Lloyd welcomed Selectman Caroline Fedele as the new liaison to the Planning Board.

The Emergency Evacuation notice read by Ms. Hackman, Clerk.

OLD BUSINESS

The Board signed the decision for the *111 South Road Special Permit for mixed use including café/retail*, as drafted by Assistant Planner Catherine Perry.

The Board agreed to sign the *ANR plan for the 35 Riverside Avenue lot line change* later in the meeting.

DEVELOPMENT PERMITTING: 201 Burlington Road—Minor modification to site plan.

Documents in hand:

- 1) Memo from Assistant Planner Catherine Perry dated May 13, 2015 Subject: Site Plan Modification, 201 Burlington Road; Owner: Tremview Investments, LLC
- 2) Letter from BSC Group (on letterhead) dated May 4, 2015 to Planning Board Re: Minor Site Modification for Tenant 201 Burlington Road, Bedford, Massachusetts, signed Katie Moniz, BSC Group, Inc. Includes layout and materials plan dated May 4, 2015, "Issued for Permitting Not Construction".
- 3) Email from Code Enforcement Officer Chris Laskey dated Monday, May 11, 2015 to Catherine Perry, Subject: 201 Burlington Road Site Plan.
- 4) Email from Catherine Perry to Chris Laskey dated Monday May 11, 2015 Re 201 Burlington Road Site Plan.
- 5) Email from Conservation Director Elizabeth Bagdonas dated Thursday May 7, 2015 to Cathy Silvestrone Subject: 201 Burlington Road—Conservation Comments

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- 6) Email from Elizabeth Bagdonas dated Friday, May 15, 2015 to Glenn Garber, Catherine Perry, Cathy Silvestrone, Katie T. Moniz, Jeffrey Malloy, Subject: 201 Burlington Road, with attached GIS plan showing Vine Brook, Wetland Resource Areas and Buffer Zones.
- 7) Memo “Comments to the Planning Board” RE: 201 Burlington Road, Bedford, MA Source: Memorandum to the Bedford Conservation Commission from Elizabeth Bagdonas, May 12, 2015.
- 8) Email from Kristin Dowdy dated May 7, 2015 to Cathy Silvestrone, Chris Laskey, David Grunes, Mark Sullivan, Elizabeth Bagdonas, Catherine Perry, Glenn Garber, Adrienne St. John, indicating that DPW has no comments.

Two representatives for the project—Katie Moniz from BSG Group, and Todd Fremont-Smith from Nordblom Company—introduced themselves.

Ms. Perry then summarized her comments as captured in her 201 Burlington Road memo. Excerpted: *“In March 2014, the Board approved a site plan for 201 Burlington Road, involving changes to parking, landscaping, and pedestrian circulation in connection with a major refurbishment of the office property. The site is in the Industrial C District, on the south side of Burlington Road, opposite the MITRE campus, and is adjacent to the Route 3 ramps on the west side, There are two buildings connected by an enclosed overhead walkway over the Vine Brook; the front of the building has two stories and the rear one has three.”*

The memo also details reasons for the current minor modification to the site plan:

- Addition of a second loading dock within the loading area;
- Elimination of a set of stairs;
- Addition of fenced enclosures for liquid nitrogen tank and dumpsters;
- Addition of electrical equipment and recycling compactor;
- Loss of five parking spaces, with possible additional parking changes due to bedrock along the rear site perimeter and no blasting permitted. It was noted that the property had more than enough parking so the loss of five or more is not problematic.

Ms. Perry reported that Code Enforcement Officer Laskey reviewed the Materials Safety Data Sheet in relation to the proposed location of the nitrogen tank and is satisfied with the plan subject to any input from the Fire Department. The Conservation Commission met and its position is not settled. It viewed the proposed changes as minor but if necessary, the applicant will tighten the nearby compact parking spaces to reduce impervious surface as mitigation. Ms. Perry recommended that the Board not hold up the application on this account. As for the reduction in parking spaces, Ms. Perry said that the applicant has estimated the total number as 445 compared with 460 previously approved and offered to supply final numbers on an as-built plan. She considered this satisfactory.

At the conclusion of Ms. Perry’s comments, Mr. Fremont- Smith gave an overview of the work executed at the site, and described the current business real estate market in Bedford and environs.

“The market is booming right now. We really feel that this Route 3/128 intersection is going over a tipping point in terms of amenities and in terms of the human resource base that exists. There are a lot of amazing companies in this area and they continue to grow; we wanted to re-invest in Bedford.”

Showing a photo of the new exterior, he described some of the pre-rehab issues that included environmental hazards such as underground tanks and PCV caulking on the exterior that have been removed and “properly” disposed of. Ms. Moniz added that, by directive from The Conservation Commission, extensive invasive species removal was completed, most notably bittersweet that had been choking the Vine Brook. “The challenge is to do this year after year and try to get good growth on our slopes,” Ms. Moniz said. “We also included a rain garden at the rear of the lot and really tightening up our footprint.” The second loading bay will be added without increasing impervious surface.

Building amenities like a café area and a fitness center for tenant use only were also added.

With this \$24M refurbishment complete, Nordblom is marketing the property. Keurig Coffee, headquartered in Burlington, will be the first tenant and has leased 45,000 sq. ft. [out of the total 135,000] to be used for offices and R & D. Mr. Fremont –Smith said they hope to take occupancy by July 4th.

Mr. Cohen asked about removal of stairs that the Code Enforcement Director’s memo inquires about. Ms. Moniz reported that the stairs were installed by previous tenants as “convenience stairs”, not as a required egress. Mr. Cohen added he is “happy to see the building come to life” after a long dormancy.

Ms. Hackman asked about the fenced enclosures and the dumpster. Ms. Moniz said Conservation asked the development team to consider additional wetlands mitigation due to the two enclosures with fence lines that are within 50 feet of the Vine Brook: one for a liquid nitrogen tank and the other for the dumpsters.

Ms. Moniz explained: “Although these are paved surfaces, [the Commission] felt that additional mitigation would be warranted for the structure of the fence enclosure itself, which adds up to about 250 sq. ft. of mitigation required. So, what we’ve proposed here is that there are nine existing compact car parking spaces today. They are actually very wide—10 feet in width by 15 feet deep. A traditional compact is actually a 7 ½ by 15. It was sort of a function of the geometry of what was left over from the original project. Understanding that this area is very valuable to the Conservation Commission, we felt we could be more efficient by striping these down to true compact car dimensions.

“The site is in the flood plain. These [enclosures]—with respect to the State [wetlands] Act— are not actually structures. Structures are a building with a roof. This is really equipment and with respect to the State act is more of a temporary activity instead of a permanent installation. That being said, we did have excess mitigation at each elevation and we’ll quantify that for the Conservation Commission so that they feel that nothing was lost...They’re referring to a local bylaw that speaks to a 25 ft. yard which tends to be a residential property owner questioning whether or not you can put sheds and certain elements within your yard. It falls under that trigger.”

Mr. Cohen referred to the most recent communication from Conservation that speaks to concerns about the dumpster area.

Ms. Moniz said they had been before Conservation and spoken about the dumpster as well as the other external elements. “The dumpsters were there for previous tenants. This building had multi-tenant users; everybody put a dumpster wherever they wanted to in this back area. What we’re proposing to do is to confine that location to one single enclosed area versus having dumpsters wherever people wanted them.

The reason that we selected the location that we did [for this new dumpster] is this is the loading surface portion of this site. Unfortunately, everything on this site is jurisdictional to Conservation, in one way or another...We don't think this is a significant deviation from the uses that have happened on the property and it's probably an improvement to enclose it so that trash is not airborne."

Ms. Hackman asked about seepage from the dumpster. Ms. Moniz said that the use of the building will not be of the type that would lead to seepage.

Planning Board members and Assistant Planner Perry determined that Conservation should handle these concerns directly. Ms. Moniz added that if Conservation wanted to have the dumpster relocated, BSC "would be open to a conversation" but that in order to "get the correct use", they would want the location to be very near the one now identified.

Ms. Lloyd said the question was whether or not to continue the Planning Board's review to a later date. Consensus was to move forward with a decision rather than postpone. Ms. Moniz said that, wherever the dumpster ends up, it will, out of necessity, be on the paved surface footprint.

MOTION: Mr. Cohen moved that the Planning Board approve this minor modification to the site plan as presented, including parking reductions as described, subject to provision of an as-built plan showing final numbers of parking spaces on the property. Small changes to the compact parking and the dumpster position to satisfy the Conservation Commission would be acceptable, subject to review by Planning staff. Mr. Hanegan seconded. The motion passed, 4-0-0.

NEW BUSINESS: General Discussion on the methods of building height measurement:

Continuing a previously initiated discussion, the Board delved more deeply into questions of how building height is measured and whether the bylaws should be amended to address residential height, and elevation change including mounding. Ms. Lloyd provided the Board with research she has done, looking into bylaw language used in other towns.

"Quite a few of the towns are very specific about measurements [being applied] before there's any change to elevation," Ms. Lloyd said. "We would not be forging any new ground, if we were to adopt that [kind of change.] Our bylaws don't say anything about the state of the land prior to construction. It's pretty much open season. I think we've seen this in certain properties where there's a tremendous amount of elevation change before a structure then gets built."

Mr. Hanegan agreed that something could and should be done to address elevation change. However, looking at the different ways in which other towns have worded their bylaws, questions arose. Comparing them, Mr. Hanegan prefers Concord's description of height measurement because it is "very precise so it would hold up."

Ms. Hackman asked how Concord's bylaw language re: elevation measurement "in the absence of an existing structure" would apply to a teardown. "That's what this is all about. We're trying to contend with ways to minimize the impact of teardowns. Is this after you tear down the existing building?"

Ms. Perry said she believes the language refers to an undeveloped site.

Mr. Garber said a lot of these situations would be ANRs [Approval Not Required], not solely teardowns.

Ms. Hackman continued, “But if you have a building on the site and it gets torn down, when do you measure?”

Mr. Cohen said information about a property, before a house is torn down, would be on file and would guide how high a new house could be.

Ms. Perry said that in Lincoln, site re-grading in anticipation of building is not allowed. Grading is reviewed as part of the site plan review that the Planning Board conducts.

Mr. Hanegan approved of this sort of clear language because, “you know someone is going to look for a loophole.”

Ms. Hackman posed another question about bylaw language that, in Concord’s case, “allows the Zoning Board of Appeals to grant relief from the height definition ‘if there are no reasonable alternatives to the proposed height.’ I’m not sure what that means. If there’s a height limit, there’s a height limit... That defeats the purpose of the bylaw, doesn’t it? ...It opens the door and we don’t want that.”

Ms. Lloyd asked the Planners if they could think of any circumstances under which it would be valid to seek relief from the height restriction.

Ms. Perry said she also questioned what the wording meant. Speculating, she said a homeowner might need more space in an existing house and the only choice, given dimensional constraints, would be to go up, not out.

Ms. Hackman said, “You don’t need to put that [exception to the rule language] in there. Isn’t that just a loophole that invites people to go to the ZBA?”

To apply for relief through a variance, Mr. Garber said an applicant would have to demonstrate one of three hardships: soil, shape or topography.

Ms. Perry said the language was probably meant to allow flexibility. “I think it’s trying to provide something that’s not as difficult as a variance.”

Ms. Lloyd said that, in the case of a house being built “on an extreme slope” an exception to the rule might apply. She added that it is probably not necessary to include an exception like Concord’s bylaw. “It sounds like we’re pretty much in agreement that there are other avenues and this doesn’t have to be explicitly stated.”

Ms. Hackman asked whether a warrant article addressing this bylaw revision could be ready in time for Special Town Meeting in November.

Ms. Perry asked whether the bylaw would apply to future houses or existing houses as well. If it applies to older homes a revision would result in a larger inventory of non-conforming residences. “You could put a date in the bylaw saying, ‘houses built before this date are measured one way and houses built after it are measured another way,’” she suggested.

After discussion about pre-existing houses, new houses, and non-conformities, Mr. Garber cautioned that zoning revision is never simple. “I don’t think it would be a good idea to approach this without a fairly extensive public education program. We need to inform builders, developers and homeowners...I’m thinking of the practical politics involved. Another thought I have is about changing the residence to the high point—the peak of the gable: we also need to put this through the filter of building codes and code enforcement and maybe the ZBA because the long-standing definition was drawn more from building code rather than from zoning...This is going to take some preparation of materials and some compilation of data about potential non-conformities.”

Ms. Lloyd asked what type of data should be pulled out for analysis.

Mr. Garber said it would be interesting to know how many housing lots were significantly mounded above original grade. No data, however, is collected on original grades and Mr. Garber pointed out that Code Enforcement does not have unlimited data-collecting capacity, although Assessors’ records include info like numbers of stories. Height measurements are tracked in Europe, but not in the US. “Engineers can triangulate from photos and can get very accurate, to-the-foot, measurements but somebody would have to do that....All of this stuff would be great to have but we clearly have a limited capacity.”

Ms. Lloyd said that some data on Google Streetview dating from 2007 can be used to see whether parcels have since been mounded. She added that, over a year ago, Code Enforcement Officer Chris Laskey, was the first person to suggest that bylaws to address mounding and elevation change should be researched.

Ms. Hackman reminded the Board that when it had first started talking about these subjects, members thought it was appropriate for Code Enforcement to take on the bylaw revision. “We have information now that we wanted to get about what other towns are doing. Can we talk to Chris about doing research that would inform any bylaw change that we bring to Town Meeting?”

Mr. Cohen said the public education piece Mr. Garber spoke of would be important to do, making a fall Town Meeting goal seem too soon. Mr. Garber agreed, saying fall TM means a September warrant deadline.

Ms. Lloyd said, in actuality, multiple things are being discussed. “Firstly, we’re talking about where the [height] measurement is being taken from. But then there’s a second issue which we really haven’t talked about yet and that is, whether there should be any grading allowed. And then, finally, there’s a third issue: what is the top limit of that measurement?...It sounds like we’re all in broad agreement that there’s value in requiring the initial computations to be taken from an undisturbed, original situation but now I think we also need to say what we would do if somebody wants to grade or mound.”

Ms. Lloyd said Mr. Laskey is aware that some places allow a certain amount of elevation change; beyond that, a Special Permit is required. “The ZBA looks at every situation individually; it’s very clear to them [the difference between uneven topography] and a flat piece of land with a mound on top.”

Mr. Garber said he and Ms. Perry could pose a question to their counterparts on the municipal planning list serve to see if anyone has a two-tiered bylaw similar to the type Ms. Lloyd mentioned.

Consensus was reached that measuring to the top of the peak of the roof— as opposed to midway—is preferable although, with flat roofs, Mr. Hanegan suggested the mass and shadowing might require a

different measuring system. As for height limits, the discussion was tabled about how high a peaked roof measurement could go. Ms. Lloyd said most towns limit it at 35 feet rather than 37 feet, Bedford's current measurement. Mr. Hanegan and Mr. Garber said that changing the height limit is apt to be controversial.

Mr. Hanegan added that setbacks are a component of how massive a house feels to its neighbors. Ms. Lloyd said that gathering setback information from other towns would entail a huge data-gathering effort. Mr. Hanegan disagreed, saying such figures are readily available.

Ms. Lloyd said she, personally, prefers to stay with the three basic issues discussed before delving deeper. Mr. Hanegan agreed.

Mr. Garber will meet with Mr. Laskey to share the collected data.

57 & 75 HARTWELL ROAD PUBLIC HEARING CONTINUANCE: *MOTION: Mr. Hanegan moved to continue the public hearing on 57 & 75 Hartwell Road until June 9, 2015. Mr. Cohen seconded. The motion passed, 4-0-0.*

It was noted that the developer, neighbors, abutters and attorneys continue to discuss revisions to the plans but a revised plan set has not yet been submitted to the Planning office.

STAFF REPORTS:

30 Chelmsford Road—pending special permit PRD [Planned Residential Development]: The public hearing for this development has not yet been publicized so the earliest meeting date would be June 23. Mr. Garber reported “some back and forth with the Conservation Commission that is still not resolved.” The developer is working on “two very different cluster designs, including possibly a cottage design. I think they're trying to be receptive to the Board's views.”

Potential Page Place Expansion: Ms. Perry said this has just come in and would require a zoning change. At this point, the developer is requesting an informal discussion about conceptual ideas for addition units. The item is scheduled for the June 9th meeting.

162 South Road PRD: Progress has slowed due to concerns about a variety of blackberry seen in wetland areas, indicating potential Conservation jurisdiction. The Planning Board is in possession of an excerpt of an email relating to the issue from developer Attorney Bob Scarano to Mr. Garber dated Monday, May 18, 2015.

It was noted there have been no soils or hydrological evidence indicating the presence of wetlands. An outside consultant will be hired to look into the matter.

Ms. Lloyd expressed frustration that potentially unnecessary cost is being incurred by Mr. Scarano. Mr. Garber said the cottage-style development proposed at 162 South is a prototype that addresses an unmet market need for this style and scale of housing. Mr. Scarano's email mentions changes to the design based on feedback from the Board. Planning generally sees the delay as unfortunate.

39 Crosby Drive –potential new development: Exploration of options under the industrial mixed-use special permit for a second building on an existing parcel. Date of presentation unknown.

Evergreen Avenue—potential subdivision: A property located off South Road which is one of the last remaining farms in Bedford. “Depending on what’s being considered, I will certainly want to touch base with Conservation to see if the property is on the Town’s acquisition list,” Mr. Garber said.

Hotel: Information from the Economic Development Officer is that sites are being scouted for a new hotel. Due to availability, location, acreage, zoning, and permitting the locus-of-interest is presumed to be Bedford Woods. Mr. Garber emphasize, however, that this project is still in the speculative stage.

OTHER BUSINESS:

The Board signed the ANR mylar plan and one copy, for the lot line change at 35 Riverside Avenue and 28 Rand Place, as voted at the previous meeting on May 5.

Ms. Perry noted the handout she distributed from a planning law update session at the recent MAPD conference, authored by Kopelman and Paige, setting out timelines for various types of permit. She mentioned that spare copies are also available of notes on Massachusetts court cases from the last 12 months but these are relatively obscure.

Mr. Garber said that an update to the now obsolete MA Planners’ Handbook is being created. “[The revisers] are deconstructing all the planning, zoning and subdivision statutes, then re-constructing them in plainer English with helpful tables for easy reference. It might be ready for the fall but certainly by early next year.”

Ms. Hackman said Representative Ken Gordon is highlighting MASS DOT’s plans for realignment of the Rte. 3/128 interchange, with a view to building support for action. As Mr. Hanegan reported at the last meeting, there are four scenarios. Rep. Gordon is looking for Planning Board feedback.

Members expressed the need for more info before being able to provide feedback. Mr. Hanegan will write to Rep. Gordon to get more than just the visual schemas that have been provided. The Board will then put the matter on the agenda for discussion. Selectman Fedele agreed the Selectmen would want to give feedback as well.

The joint training session for Planning and the ZBA scheduled for May 21. Will include topics such as: basic education about what the zoning statute says and how it relates to Bedford’s bylaws; special permits; variances; MGL 40A, section 6 re: non-conforming situations and vested rights “which nobody understands.”

PLANNING DIRECTOR’S PERFORMANCE REVIEW: Discussion by Board members opened at 8:50, closed at 9:20.

ADJOURNMENT: *MOTION: Mr. Cohen moved to adjourn the meeting at 9:21. Mr. Hanegan seconded. The motion carried, 4-0-0.*

Respectfully submitted,
Kim Siebert, Acting Recording Secretary