

BOARD OF HEALTH MINUTES
SEPTEMBER 22, 2009

Marie O'Rourke, Chair called the meeting to order at 7:30 p.m. Also in attendance were Robert Reader, Vice Chair, Sandra Giroux, Secretary, Fred Kenyon, Daniel Kane, Richard Berube, Director, and Joanne White, Recording Clerk.

ACCEPTANCE OF MINUTES

Mr. Kenyon made a motion to accept the Meeting Minutes of July 20, 2009. Mrs. Giroux seconded. So voted unanimously.

Mrs. Giroux made a motion to accept the Meeting Minutes of August 10, 2009. Mr. Kenyon seconded. Three voted in favor. One vote abstained (Robert Reader).

CORRESPONDENCE

Department of Public Health

Mrs. O'Rourke stated the first item under Correspondence is a letter from the Department of Public Health.

Mr. Berube explained that the Board of Health received a copy of a letter from the Massachusetts Department of Public Health that was sent to Elaine Schepici, 17 Burnham Road in response to her request for assistance from the Massachusetts Department of Public Health's Bureau of Environmental Health (BEH) regarding McFarland Cascade. The letter explained to Ms. Schepici what had transpired with a representative of BEH, representatives from For-Tek/McFarland Cascade and myself on July 10, 2009. Mr. Berube explained that fewer complaints have been registered with the Board of Health office but the specific cause/source of odors traced to the telephone poles over the past year has not been clearly identified or corrected. The BEH will provide technical assistance to the Billerica Board of Health related to the health concerns. However, the Billerica Board of Health should continue to work with the Department of Environmental Protection to identify possible remedies for this

problem.

Mrs. O'Rourke asked if the Board Members had any questions.

Mr. Kenyon asked Mr. Berube if he has contacted the Upton Board of Health and would it be possible to visit them?

Mr. Berube replied that he has talked to the Upton Board of Health on several occasions and the last time he spoke to them the poles were supposed to be moved. I do not know what the current status of the situation is.

Mrs. O'Rourke explained that not too many of the members could go because that would be considered a meeting and it would have to be posted.

Mr. Berube stated that he could make arrangements for Mr. Kenyon and himself to visit the Upton Board of Health.

Mrs. O'Rourke suggested that Mr. Berube make the arrangements for him and Mr. Kenyon. Then Mr. Kenyon could report back to the Board.

BOARD OF HEALTH BUSINESS

Proposed 2010 Board of Health Meeting Schedule

Mrs. O'Rourke stated the first item under Board of Health Business is the proposed 2010 Board of Health Meeting Schedule. Mrs. O'Rourke asked if any of the Board Members has a problem with the schedule.

Mr. Reader stated that he would not be present for the January 11, 2010 meeting. Mr. Reader explained that he planned his vacation for January 6, 2010 so that he could be present for the Board of Health meeting that is usually held on the first Monday of the month.

Mr. Berube explained that the reason for the meeting being scheduled for January 11, 2010 was because of the holiday season.

Mrs. O'Rourke asked the Board Members if they had a problem with changing the proposed January 11, 2010 meeting to January 4th.

The Board Members replied that they did not have a problem with rescheduling the January Board of Health Meeting.

Mr. Berube suggested the Board Members review the meeting schedule to see if they have any other conflicts and a vote would be taken at the next scheduled Board of Health meeting.

Flu Clinic Schedule

Mrs. O'Rourke stated the next item is the Flu Clinic Schedule.

Mr. Berube explained that Christine West, the Public Health Nurse could not be present tonight because she hurt her back. Two seasonal flu clinics have been scheduled for October. The first clinic will be held on Tuesday, October 13, 2009 for Seniors, 60 and older at the Senior Center. The second clinic will be held on Saturday, October 17, 2009 for the general public, 19 and older in the Town Hall Auditorium. Attached is an article from the Boston Globe and a memo from the Massachusetts Department of Public Health explaining why the seasonal influenza supply may be delayed. A high priority has been placed on the H1N1 vaccine. We have received a partial shipment of our seasonal flu vaccine allotment. We will schedule more clinics as needed. If we receive the H1N1 vaccine we will be offering both vaccines at the clinics.

Mr. Reader asked will they be giving out both shots at the same time.

Mr. Berube replied yes if the H1N1 vaccine is available at the time of the clinics.

Mrs. O'Rourke asked will the pneumonia shot be offered.

Mr. Berube replied yes the pneumonia shot will be available. Mr. Berube explained there has been some clinics scheduled for school age children, however they have been put on hold until the H1N1 vaccine has been received.

Mr. Kenyon asked is Donna Popkins, Council On Aging Director at the Senior Center, aware of the possibility of the two vaccines being available.

Mr. Berube replied if we receive the H1N1 vaccine we will inform Donna. It is going to be a very busy flu season for the Health Department. It is very difficult to schedule all these clinics and get enough volunteer help.

Mrs. O'Rourke stated it is recommended that school children get the H1N1 vaccine. Does every school in Town have a nurse?

Mr. Berube replied he thinks so.

Mrs. O'Rourke asked are the school nurses going to administer the shots.

Mr. Berube replied that is being worked out with the school nurses. A schedule is being set up for the school based clinics.

Mrs. O'Rourke asked will the school nurses be giving out the shots in each school.

Mr. Berube replied that Christine West will be participating and helping out at all these clinics. The school nurses along with qualified volunteers will be giving out the shots at each school.

Mr. Reader stated that he heard that children under 10 years of age will need two shots.

Mr. Berube explained that is what they are talking about. It is believed that because the children are so young they will need two shots to develop an immunity. The Health Department is constantly receiving e-mails with the changes that are going on.

Mr. Reader asked does the Board of Health office have any seasonal flu vaccine now.

Mr. Berube replied yes, we have a partial allotment so that is why we are still going ahead with the two clinics that have been scheduled. Clinics will be scheduled as needed when we receive more vaccine.

Mrs. O'Rourke asked the Board Members if they had any questions.

The Board Members did not have any questions.

Water Conservation Committee Update

Mrs. O'Rourke stated the next item is the Water Conservation Committee Update. Mrs. O'Rourke asked Mr. Kenyon if he would update the Board.

Mr. Kenyon explained that at the August 19, 2009 meeting the Water Conservation Committee reorganized. Lee Dubuc was reelected as Chairman, Bob Accomando was reelected as Vice Chairman and Fred Liberatore will remain as Secretary. John McGovern explained that the Department of Environmental Protection (DEP) has proposed a new law which would return streams to their natural flows to encourage wildlife. Mr. Kenyon stated that this would be very unrealistic for a town like Billerica because our water source is provided by the damming of the Concord River in North Billerica. Mr. Kenyon explained that Mr. McGovern will be updating the committee on its progress. The Committee discussed some of the water backup sources. We discussed switching to the MWRA however, that would be very expensive. Our water is primarily surface water that feeds the Concord River and is high in organic materials. We talked about supplementing the Concord River with wells. Mr. McGovern explained that the water from the wells would be high in mineral content and would have to be treated differently. We discussed the water usage and how it was down this summer compared to other years. Was that due to water conservation or that we had more rain? At the September 16, 2009 meeting we reviewed the proposed Billerica Water Conservation Policy that was written by the Department of Public Works Director, Abdul Alkatib. The policy is in a draft form. The committee was asked to review the draft for content and recommend any changes before it is approved. The goal of this policy is to encourage all water users in the Town to conserve water. The Town will work to achieve

the targets established by DEP in their Guidance Document for the Water Management Permitting Policy effective January 17, 2006. Mr. Kenyon explained the three goals. The first goal is the residential water use rate of approximately 65 gallons per capita per day based upon the level of stress in the Concord River. The usage has gone up to as high as 75 gallons per day. They want to have the usage at 65 gallons per day or lower. The second goal is the unaccounted water level of approximately 10% based upon the stress level of the Concord River. That is water that cannot be accounted for such as leakage from pipes. Mr. McGovern has a way of measuring the amount of water that comes in and the amount of water that is billed and based on that he can figure out the amount that is used. The third goal is a reduction in non-essential water use such as people watering their lawns and residents not buying water conservation utilities. This is only a draft at this time. Mr. Kenyon stated that once the policy has been approved by the Town he will provide the Board Members with a copy.

Mrs. O'Rourke stated that she did not think Billerica could join the MWRA because we were not in that corridor.

Mr. Kenyon explained that according to Mr. McGovern that is an alternative. However, I will check on it at the next meeting.

Mr. Reader asked why does Mr. McGovern think that water conservation will not work at the local level in Billerica.

Mr. Kenyon replied because businesses are watering in the rain and residents are watering their lawn on the wrong days. People think because the river is high they don't have to conserve.

Mr. Reader asked why Mr. McGovern thinks water conservation will work at the State level.

Mr. Kenyon replied because if the State is involved the laws would be mandated. The State needs to be involved in addition to the Town.

Mr. Reader stated even if the State is involved the Town will have to enforce the laws.

Mr. Kenyon replied the State laws are stricter and the fines cost more. At the local level when a resident is cited for the first time it is a warning. The fine for a second offense is fifty (50) dollars and the third offense is one hundred (100) dollars.

Mr. Reader asked has Mr. McGovern given out many fines this year.

Mr. Kenyon replied that Mr. McGovern has given out about fifty-five fines.

Mrs. Giroux asked if the State is involved does the money that is received from the fine given to the State of the Town.

Mr. Kenyon replied that he did not know, but he inquire about that.

Mrs. O'Rourke thanked Mr. Kenyon for the update.

KFC/Taco Bell Update

Mrs. O'Rourke stated the next item is the KFC/Taco Bell Update.

Mr. Berube reported that KFC/Taco Bell has substantially complied with the order that the Board issued to them at the last meeting. The only thing that needs to be worked out is the details for the pumping schedule. They have paid the cost recovery charge.

Mrs. O'Rourke asked if the Board Members had any questions.

The Board Members did not have any questions.

Billerica Mall Update

Mrs. O'Rourke stated the next item is the Billerica Mall Update.

Mr. Berube showed the Board some current pictures of the Mall. The roof has been replaced over much of the mall. The rest of the roof has been repaired. The area of the old cinema has been gutted. The section between Papa Gino's and Burlington Coat has been sealed off. The plan is to clean out and demolish the interior section of the mall that is vacant.

Mrs. O'Rourke asked has anything been discussed about relocating Papa Gino's to where Baskin & Robbins used to be.

Mr. Berube replied they are still negotiating leases with Mall News, Ma's Dry Cleaning and Papa Gino's.

Mrs. O'Rourke stated that she thought Ma's Dry Cleaning was not going to be relocated.

Mr. Berube replied that area will be reconstructed so that it will be a store front facing out towards the parking lot.

Mrs. O'Rourke asked did they tell you when that work would begin.

Mr. Berube replied no. Mr. Berube explained that Steve Glaser does not get involved with the lease arrangements.

Mrs. O'Rourke asked are you satisfied with the work that has been done. Mrs. O'Rourke stated that she has not seen any improvements except for the Dollar Tree Store and the painting of KMart.

Mr. Reader stated that he had heard, a Health Club is negotiating a lease. The Health Club would be located between the Dollar Tree Store and Burlington Coat Factory.

Mr. Berube stated that he has heard that rumor but he did not know if it is true. RD Management is certainly making progress and spending some money. At the last meeting I talked about the drainage problem behind the mall. RD Management made arrangements with an engineering firm and investigated the problem. The problem has been traced to a drainage pipe that conveys Webb Brook to underneath Tower Farm Road down Frost Street. The Town is going to have to do something about that drainpipe. In the past few months we have seen an effort by RD Management to clean up the mall.

Mr. Reader stated that he has spoken to a few people that work at the mall and they told him that a lot of work has been done.

Mr. Kenyon asked is Home Depot still in litigation. What would happen if Home Depot wins and they want to go into the mall?

Mrs. O'Rourke stated nothing is being done in that section where Home Depot was planning on going, so that should not be a problem.

Mrs. O'Rourke asked if the Board Members had any questions.

The Board Members did not have any questions.

McFarland Cascade Progress Report

Mrs. O'Rourke stated the last item under Board of Health Business is McFarland Cascade's Progress Report.

Mr. Berube explained that the progress report states that the inventory has been reduced to 895 poles. Most of those poles are the new poles that have been treated with the new formulation of pentachlorophenol. There are only 187 of the older poles remaining in the yard and the plan is to send those poles to another site. The majority of the poles that are at the facility have been treated with the new formulation. Along with the progress report is a copy of the draft of the air-monitoring plan prepared by TRC. They are looking for comments from the Board. I have reviewed the plan and their proposal follows the Department of Environmental Protection (DEP) and Environmental Protection Agency (EPA) guidelines. However, there is one portion that I find fault with. They are not collecting any samples at the storage facility. They need to establish what chemicals are off gassing from those poles. It is not just PCP that we need to be concerned with. We also have to be concerned with what else is being volatilized and establish what is leaving the site. Otherwise the testing at those 4 addresses that the Board mentioned would be useless. They need to establish what is coming from the pole storage facility. One of my comments is that they need to do some testing and collect some air samples at the storage facility.

Mrs. O'Rourke asked are they going to be on the agenda at the October 5, 2009 Board of Health Meeting?

Mr. Berube replied that the plan is to have McFarland Cascade be present at the next meeting to discuss the results of the air sampling.

Mr. Kane asked will they be talking about the results of the soil testing as well.

Mr. Berube replied yes.

Mr. Reader stated there is a total of 895 poles on the site, what was the total amount of poles on the site before?

Mr. Berube explained that when this report was sent to me there were 895 poles at the facility. When this problem began 2,500 to 3,000 poles were being stored at the facility. Mr. Berube showed the Board a few of the current pictures of the poles that are stored on the site.

Mr. Reader asked are you still receiving a lot of complaints.

Mr. Berube stated that since the last meeting the Board of Health has received a total of 15 complaints.

Mr. Reader asked is that about average.

Mr. Berube replied in the past we have received many more complaints. The Health Department has checked out as many of the 15 complaints that we could. We could not verify an odor from the complaints that we checked out. Some of the complaints were reported in the evening and we were not able to verify the odor.

Mr. Kenyon stated that if you look at the incidents the wind is coming from the opposite direction. How can you prove the wind is causing the problem?

Mr. Berube stated some of the data is inconclusive because there is not a lot of detail. Mr. Berube stated the air sampling will provide some answers.

7:45 p.m. Middlesex School – 20 Riveredge Road – Request Variance for work within the Flood Plain

Mrs. O'Rourke stated the last item on the agenda is Middlesex School, 20 Riveredge Road requesting a Variance for work within the Flood Plain.

Matt Crozier, Chief Operating Officer, Middlesex School, Concord MA identified himself. Mr. Crozier introduced Andrew Truman, Civil Engineer, Samiotes Consultants, Biagio DiTullio, Project Executive and Tony DeSantis, Project Superintendent from Commodore Builders. Mr. Crozier explained that the Middlesex School owns the property at 20 Riveredge Road, Billerica. The proposal is to build a boathouse on the site for the Middlesex School crew program. Our school is located in Concord, MA approximately six miles from the site. Middlesex School has appeared before this Board and a variance was granted. At that time we were proposing to utilize the existing structure as a boathouse for our rowing curriculum. We were proposing to construct a dock and retaining wall along the Concord River. After an evaluation of the existing structure, it has been determined that the structure was not going to suit our needs so we decided to come back before the Board and request approval for a larger structure on the site. The proposal is to raze the existing structure and construct a new two- story boat house on piers. The design of the dock and retaining wall has not deviated from the previously approved design. We have met with Mr. Berube on several occasions to discuss our plans. Mr. Crozier explained that the school will be meeting with the Zoning Board of Appeal (ZBA) on October 21, 2009 and the Conservation Commission on (Con Com) on October 7, 2009. We have applied for a Zoning Variance from the ZBA for parking and setback issues. We are working with the Conservation Commission on some general mitigation and other related issues. Tony DeSantis, Project Superintendent has been working on the site over the last few days. We have an existing Building Permit and existing approval from both the Conservation Commission and the Board of Health for a Notice of Intent for the old project. Mr. DeSantis has been working on the project with approval from Markus Pinney, Conservation Commissioner. ZBA was not clear that we are working under the old Notice of Intent. We are in the process of trying to resolve that. We are trying to do the dock and river work while the Concord River is low. Our team is working to clarify that the work we are doing on the site is related to the old Notice of Intent. We are still in the permitting process for the new Notice of Intent. Mrs. Sullivan and her brother are present tonight because they are abutters. I talked to Mrs. Sullivan's attorney to discuss the sliver of land that has been surveyed a couple of times. There has been a discussion and debate regarding which piece of land the sliver belongs to. That will be discussed tonight as well. We are trying to resolve that issue within the next couple of days or weeks. Mr. Crozier stated he is not sure if that issue is relative to the Boards decision. Mr. Crozier explained that Andy Truman is present to discuss the proposed new building on the site.

Andy Truman, Civil Engineer for Samiotes Consultants identified himself. Mr. Truman explained the existing house is a single-family home and was boarded up years ago. The original concept was to construct an addition on the back to store the shells in and build a retaining wall on the Concord River and a dock. Once we started we realized the structure was not capable of storing the shells. The school decided to raze the existing house and build a new boathouse. The original building was in the flood zone. Mr. Truman pointed to the original building and the flood zone on the plans. The original design had the first floor in the flood zone and as you recall there was a lot of issues with flood storage. The basement in the existing structure was vulnerable to flooding. The proposed design will be constructed on piers and the existing basement will be filled. Mr. Truman explained the front of the property will be kept the same because of the parking. Around the boathouse will be a series of ramps and decks providing ADA accessible access to the building and dock. The first floor elevation will be at 121.

Mr. Berube commented it will be out of the flood plain elevation.

Mr. Kenyon asked how high the structure will be.

Mr. Truman replied the building will be street level. The back of the house will remain as it is. Some more flood storage compensation will be added on the sides.

Mr. Kenyon asked will the structure be heated.

Mr. Truman replied no. There will be two bathrooms, a mop sink and some space heaters that will be used in the Spring when they come in to do some work on the shells. Mr. Truman pointed to the plans and explained the structure, the dock and the deck.

Mrs. O'Rourke asked Mr. Berube if he had any comments.

Mr. Berube explained that Frank McPartlan, SEA Consultants was present and the Board has a report from SEA Consultants.

Frank McPartlan, SEA Consultants identified himself. Mr. McPartlan explained SEA has reviewed the application information and the work along the river has not changed from the previously approved submission. We verified the calculations and the flood storage on the site that will increase the storage volume. By raising the building on piers it would eliminate a lot of concerns about the floodwater remaining in the basement. The hydrological calculations for the project are acceptable. The runoff from the site will be slightly reduced. The existing ground cover was not in good condition so by doing the new landscaping and eliminating the paved driveway it will reduce the runoff slightly from the site. The paved driveway will be replaced with a gravel surface driveway. SEA recommends that any storage of site material and stockpiling shall occur in the front of the building, in the existing driveway area limiting impact to the floodplain. SEA also recommends the replacement of the existing sewer lateral.

Mrs. O'Rourke asked Mr. Berube if he had additional comments.

Mr. Berube stated the new proposal is a vast improvement over the old one. This is a very good project. As Frank McPartlan has stated there would be an increase in flood storage and it would also reduce any impact to the flood plain. Mr. Berube recommended that the Board grant the variance to Middlesex School.

Mrs. O'Rourke asked the Board Members if they had any questions.

The Board Members did not have any questions.

Mrs. O'Rourke asked if any abutters were present and would like to speak.

**BOARD OF HEALTH MINUTES
SEPTEMBER 22, 2009 PAGE 11**

Rita Sullivan, 8 Riveredge Road, Billerica, identified herself. Ms. Sullivan explained that there is a discussion going on between Middlesex School and my lawyer about my property line. The construction that has already been started has changed from what was originally documented and submitted to the Town. The lighthouse that is on my property is on their plot plan. I am hoping that this is going to be resolved. I have been offered a substantial amount of money for an easement, which I refused. I have been offered something else, which I refused. I have no intention of giving up any of my property. If this has to go to court it will.

Mr. Kenyon asked could you construct the building without that sliver of land.

Mr. Crozier replied that I would have to defer this question to the builders. The building itself is not an issue. The issue that Ms. Sullivan is referring to has nothing to do with the building. The ZBA has jurisdiction over the setbacks they can set the reasonable setbacks as they see fit for the school. It is possible we will be having these discussions with the ZBA. We will be meeting with them on October 21, 2009. The property in question does not impact the physical structure of the house it would only impact how the setbacks are calculated from the property.

Mr. DiTullio explained it is a dimensional impact. It would not be a physical impact.

Mrs. Giroux asked how much land are we talking about.

Mr. Crozier showed on the plans the area in question and how the land goes from a thin strip to about five feet wide to the corner.

Mrs. O'Rourke asked how could this have happened.

Mr. Truman explained our previous land surveyor informed us that there was no real barrier information. The only thing he has to work with was a cottage plan that was a very small drawn plan. There were no dimensions or angles. Our land surveyor made the determination according to what information he had. Based on that information he stamped and submitted the original plans to the Board of Health and Conservation Commission. Our new land surveyor took a look at the information and he did not think the original interpretation was correct it is subjective. There is no land court decision. It is highly unlikely that the land court would take it because of the lack of information.

Mrs. O'Rourke asked what information Ms. Sullivan has.

Ms. Sullivan replied she has information and pictures of her father putting up the lighthouse and the walls and the surveying plan. I will have my property surveyed again if I have to.

Mrs. O'Rourke asked Ms. Sullivan if she has a deed.

Ms. Sullivan replied yes. I also have pictures from 1938 of my father on his property. I am quite adamant about my position. I did not know a second set of plans were submitted to the Town and my

**BOARD OF HEALTH MINUTES
SEPTEMBER 22, 2009 PAGE 12**

property line was changed. Someone should have notified me. I did not find out until they started construction. My lawyer told me to go to the Police Department and request that the construction be stopped. At that point the Police Department sent me to the Building Department. The Building Department gave me a copy of the new plot plan and the lighthouse is no longer my property. That is when I found out my property line had been changed. I had been working with the school to resolve this issue.

Mrs. O'Rourke stated when Middlesex School came before this Board you were present and you were in favor of this project. The only thing that you were concerned about was the sea wall. This sliver of property was not even mentioned at that meeting.

Ms. Sullivan explained because the lighthouse is mine and the property to the right of it is mine. The School said that maybe they wanted a lease or an easement or maybe something else. Then they said it was too complicated and they did not need to be bothered with that piece of land. So that was fine with me. Then I went to the Town and found out that lighthouse is not mine anymore. I am very upset at this point. I am going to let my lawyer handle it and I hope it can be worked out. I am concerned that these changes took place. I am also concerned that the setbacks from the wall will be met. Ms. Sullivan stated there could be up to ninety students on the site when a meet is being held and I am concerned for the safety of the students.

Mrs. O'Rourke stated that she was under the impression that the school was just storing canoes in the boat house.

Mr. Crozier replied that we would be storing crew shells. The crews will be practicing Monday through Friday and then there will be meets. There are five meets scheduled for this coming spring. There are approximately forty kids in the crew program.

Mrs. O'Rourke stated that was never brought up at the first hearing.

Mr. Crozier stated that he was not part of that discussion. Mike Kinney, Inspector of Buildings denied our building permit because there is not enough parking. We are working with the ZBA on the parking issues. The school would like to build the boathouse and work with Ms. Sullivan and her lawyer to resolve the property issue. Our purpose is not to take Ms. Sullivan property.

Mrs. Giroux stated that she heard Middlesex School is looking at another piece of property.

Mr. Crozier replied Middlesex School does have another piece of property on 6 Edgehill Road but that property was deemed to be less workable than this one.

Mrs. O'Rourke asked is that property near the marina.

Mr. Crozier explained the location of the property at 6 Edgehill Road.

**BOARD OF HEALTH MINUTES
SEPTEMBER 22, 2009 PAGE 13**

Mrs. O'Rourke asked Mr. Berube will the Board's decision to vote in favor of the variance have an impact on Ms. Sullivan's problem.

Mr. Berube replied no. That issue is really between Ms. Sullivan and the Middlesex School. The land issue does not fall within the Board of Health's jurisdiction. The Board is granting a variance for work just on Middlesex School's property alone. They would be restricted to work on the property at 20 Riveredge Road. They can not go on to Ms. Sullivan's property until this issue is resolved.

Mr. Reader asked if the Board votes in favor legally they cannot go onto her property.

Mr. Kane stated they will not be able to start construction until the zoning setbacks are resolved.

Mr. Berube asked Mr. Crozier why the Middlesex School is appearing before the ZBA.

Mr. Crozier replied for parking variance and something else. I can get that information for you.

Mr. Berube asked is there a concern about the setbacks of the building.

Mr. Crozier replied there was a discussion about that with the ZBA. That was not the reason that we were denied but I am sure it will come up in discussion.

Mr. Berube asked when will you be meeting with ZBA.

Mr. Crozier replied we meet with the ZBA on October 21, 2009 and with the Conservation Commission on October 7, 2009.

Mr. DeSantis explained the issue with the ZBA is for parking and determination of a Special Permit (Finding) of the Zoning-By-Law to allow the petitioner to demolish and rebuild a building for its student crew program at this site in a Neighborhood Business Zone.

Mr. Berube asked if the section of land that is in dispute belongs to Ms. Sullivan how would that impact the project.

Mr. Crozier replied it would not have an impact on the structure. The only impact there could be would be on how the ZBA interprets the setbacks of the construction.

Mr. Truman explained the new landscaping would have to be moved. It would not have anything to do with the building. The new building will be in the existing footprint.

Ms. Sullivan asked what are the setbacks from the new building to the property line on the side.

Mr. Truman pointed to the building and explained the structure and setbacks

Mr. DiTullio explained the footprint of the building will be the same on the sides.

Mr. Truman stated the building will be a little longer in the back.

Mr. Berube explained if the Board votes to grant the variance and this dispute affects the Middlesex School plans and they have to make significant changes they will have to come back before the Board for a hearing.

Mrs. O'Rourke asked the Board Members if they had any questions.

The Board Members did not have any questions.

Mr. Reader made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) for the Middlesex School at 20 Riveredge Road to construct a new boat house and appurtenant structures for boating use within the flood plain based upon the following finding of facts and pursuant to the following conditions:

FINDINGS OF FACT

1. The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
2. The Board of Health conducted a public hearing on September 22, 2009 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
3. Originally, the Board of Health granted approval for a variance to the Middlesex School on June 2, 2008 to construct an addition to the existing dwelling and appurtenant structures for boating use within the flood plain.
4. The applicant proposes to construct a new building to be used as a boat house as well as reconstruct a retaining wall and install a dock platform at the edge of the Concord River. The entire property falls within the Green Engineering Flood Plain and approximately 95% of the property falls within the FEMA Flood Plain.
5. The applicant has submitted plans showing compensation for the loss of flood storage. The proposed work for the retaining wall and dock has not changed from the originally approved plans. The proposed boat house will be constructed on piers which will result in an increase of flood storage.
6. The proposed project was reviewed by Frank McPartlan of SEA Consultants, Inc., the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain.

7. The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
8. The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment, and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

STANDARD CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20 and 21 in accordance with the Board of Health regulations and Special Conditions:

- A. All construction must be in accordance with plans and reports submitted for review and approval, prepared by Samiotes Consultants, Inc., dated June 1, 2009 and stamped by Andrew M. Truman, RPE#45505.
- B. The applicant must provide a construction schedule for inspections to be performed by the Board of Health's consulting engineer which must be approved by the Health Department. In particular, the applicant shall request a pre-construction meeting involving the Health Department, the project design engineer, the Board of Health consulting engineer, the project construction site supervisor and any other interested parties to review construction plans, sediment and erosion control plans, any other concerns and to plan for all necessary inspections. This meeting shall be required prior to the approval of any permits by the Board of Health.
- C. Construction materials shall be stored and stockpiled in the existing driveway in a manner to limit impact to the flood plain.
- D. All equipment necessary for work on the wall shall be restricted to working on the land side (not the riverside) of the wall.
- E. The work to replace the wall shall be performed only during an extended time of dry weather and low flow periods to limit impacts to the Concord River.
- F. The final grading on each lot shall be consistent with the approved plans. Any changes shall require immediate notification to the Board of Health by the Design Engineer and applicant. Further review and approval may be required at that time.
- G. The existing sewer service lateral shall be replaced in accordance with the requirements of the Department of Public Works Wastewater Division.
- H. This variance supersedes the variance granted by the Board of Health on June 2, 2008.

Mrs. Giroux seconded. So voted unanimously.

Mrs. Giroux made a motion to adjourn. Mr. Kenyon seconded.

The Board adjourned at 8:20 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk