

BOARD OF HEALTH MINUTES
December 2, 2013

Marie O'Rourke, Chair, called the meeting to order at 7:00 p.m. Also in attendance were Robert Reader, Vice Chair, Sandra Giroux, Secretary, Daniel Kane, Mike Grady, Richard Berube, Director and Joanne White, Recording Clerk.

ACCEPTANCE OF MINUTES

Mr. Kane made a motion to accept the Meeting Minutes of November 4, 2013 as presented. Mrs. Giroux seconded. Three (3) voted in favor, two (2) votes abstained (Marie O'Rourke, Chair and Robert Reader, Vice Chair).

BOARD OF HEALTH BUSINESS

Health Department Activity Reports

Mrs. O'Rourke stated the first item under Board of Health Business is the Health Department Activity Reports.

Copies of the Health Department Activity Reports for the month of November are included in the Boards package.

Mrs. O'Rourke stated the first report is from the Public Health Nurse, Christine West.

Mr. Berube explained that Christine West, the Public Health Nurse continues with routine Communicable Disease Reporting and Follow-up on line with MAVEN. She also continues to give blood pressure checks, blood sugar screenings and lead testing on an as needed basis. Flu vaccine is still available for any residents that need a flu shot. A Smoking Cessation Program will be offered in January 2014. Mr. Berube asked the Board Members if they had any questions regarding Christine's report.

The Board Members did not have any questions regarding Christine West's report.

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Mrs. O'Rourke stated the next report is from Health Agent, Phavy Pheng. Mrs. O'Rourke asked the Board Members if they had any questions regarding Phavy Pheng's report.

Mrs. O'Rourke asked about the status of 7 Woodbury Road.

Mr. Berube explained that he was not sure when Phavy last spoke to Ms. Jamieson. The house is still vacant. If something is not done by the spring of 2014, the Board of Health will condemn the house.

Mr. Reader asked about the progress at 38 Concord Road.

Mr. Berube replied the property is owned by an older man and most of the junk and debris has been cleaned up. Significant progress has been made.

Mr. Grady asked for an update on Empire Recycling. Mr. Grady stated that he drove by last week and at that time there was a large amount of cardboard and solid waste piled up in front of the facility. How long are they going to be able to continue with this type of activity?

Mr. Berube replied that the Health Department has been trying to work with them. One of their balers has been out of operation and they are supposed to be replacing it. They always have an excuse as to why the new baler has not arrived yet. They have an agreement to complete some work with the Building Department and they also have a Consent Order from the Department of Environmental Protection (DEP). We have submitted pictures and reports to DEP regarding this problem and what actions the Board of Health has taken.

Mr. Kane stated that if this was a restaurant and their grease trap was consistently overflowing would you close them.

Mr. Berube replied absolutely.

Mr. Kane stated that if this was a problem with a resident you would order the property cleaned up in a timely manner or a fine would be issued. For a company of this size the fines that Empire Recycling have paid are minor. They have an order from the State. The State Regulations read that they cannot dump beyond the canopy. They are in violation. As the Board of Health we are more aggressive with restaurants and residential properties in issuing orders and fines than with this problem with Empire Recycling.

Mr. Berube reiterated that DEP has issued a Consent Order and they have a work agreement with the Building Department that has to be completed.

Mrs. O'Rourke asked if the Board of Health has received a report from the Building Inspector.

Mr. Berube replied no. I will talk to the Building Commissioner and see where he stands with this project.

Mr. Kane stated that Empire Recycling continues to operate without a contingency plan. If one baler is not operating they should be making some effort to meet the agreement that they have with the State and the Board of Health or simply cease their operation.

Mr. Berube explained that they have provided us with their Standard Operating Procedures (SOP's) however they are not following the SOP's. We have forwarded pictures and reports that have been taken by Phavy and Gary to the State.

Mr. Reader asked what can we do about this situation.

Mr. Kane stated even though it is their property under Chapter 5, Section 7 it is illegal dumping. How can we intervene?

A general discussion was held by the Board Members on the everyday working activities that are taking place at Empire Recycling. Several of the Board Members have driven by Empire Recycling and there is always a large pile of material and debris dumped beyond the canopy. This is unacceptable.

Mr. Reader asked if the Board of Health could send a letter to Empire Recycling allowing them fourteen (14) days to take care of this problem or we will shut them down.

Mr. Berube stated that he will talk to the Town Manager, Town Counsel and the Building Commissioner regarding the Boards concerns. He will also talk to DEP and see where they stand with this problem.

Mrs. Giroux commented that the Board has given Empire Recycling enough breaks. Mrs. Giroux asked Mr. Berube if he can come back at the next Board of Health meeting with several options.

Mr. Grady volunteered to go by on a regular basis and take pictures.

Mr. Berube explained that Phavy and Gary are riding by daily and taking pictures. We are documenting all the problems and sending the reports and pictures to DEP.

Mr. Berube stated the last report is from the Health Agent, Gary Courtemanche. Mr. Berube asked the Board Members if they had any questions regarding Gary Courtemanche's report.

Mr. Berube explained that Villaggio's is closed.

Mr. Reader asked why is it going to be closed for five (5) to six (6) months.

Mr. Berube explained that they need to do some renovations and replace some of the equipment. There is also a legal issue.

Mrs. O'Rourke explained that the owner of Villaggio's still holds the liquor license.

Mr. Berube stated that Chang An, 258 Salem Road and Christine's Donuts, 240 Nashua Road are currently in the process of changing owners.

Mrs. O'Rourke stated that DJ's Place, 265 Boston Road is also closed.

Mr. Reader asked is the Chinese restaurant still going into the old Cove Restaurant.

Mr. Berube explained that the Building Commissioner, Gary Courtemanche and I met with the owner and explained what needs to be done. The Building Commissioner tried to explain to the owners that it would be cheaper to raze the building and start over.

Mr. Berube asked the Board Members if they had any questions regarding Gary's report.

The Board Members did not have any questions.

7:15 p.m. New Locust Realty Trust – Quaker Lane – Reconsideration of a Request for a Variance for work within 25 feet of the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is New Locust Realty Trust, reconsideration of a request for a Variance for work within 25 feet of the Flood Plain at Quaker Lane.

Attorney Dangora presented the Board with a large scale drawing of the revised project for the single family dwelling to be located on Quaker Lane.

James Dangora, Jr., Shea, Dangora and Nelson identified himself. Attorney Dangora explained that he was representing John Ripa and Richard Annese the owners of New Locust Realty Trust. Attorney Dangora thanked the Board Members for having this project remanded back for reconsideration. Attorney Dangora explained that at the May 6, 2013 Board of Health meeting a plan was presented to construct a single family dwelling that would be located on a 32, 950 square feet undeveloped lot on Quaker Lane. Several meetings were held with the Conservation Commission and Mr. Berube and it was agreed to reduce the size of the house. The proposed single family dwelling will be 26 ft. x 50 ft. with an attached deck and stairs leading down behind the home. The construction of the home will have zero (0) impact on the flood plain. The Green Engineering Flood Plain and FEMA Flood Plain are at elevation 119. There will be no permanent impact on the flood plain. The reason for the variance is because work will be done within twenty-five (25) feet of the flood plain. There will be some temporary disturbance for the purpose of installing the water and sewer line. They will need to cross through the 119 elevation in front of the house to install the utility line. After the utilities have been installed the area will be graded back to its original grade. All of the areas that will be disturbed will be cordoned off during construction with straw wattles so that sediment will not leach into the Flood Plain. The plan also calls for mitigation with additional plantings between the back of the house and the Concord River. Another feature will be a post and rail fence that will be placed inside the 119 elevation around the house. Attorney Dangora pointed to the plans and explained that drainage structures will

provide infiltration for stormwater roof runoff. A swale will be in front of the house to capture any potential runoff. Attorney Dangora explained that Mr. Ripa and Mr. Annese have done some research and found that several houses on Quaker Lane required variances for work within or in the flood plain. The house at 22 Quaker Lane was reconstructed due to a fire. That house is similar to the one that is being proposed. The petitioner is requesting that they be treated like the other houses in that area. Attorney Dangora gave an example of another house that was reconstructed in that area and was allowed to cut and fill in the flood plain. The Conservation Commission reviewed and approved this project. The neighbors did appeal the Conservation Commission's decision. However, DEP looked at the project and issued a superseding order confirming this project. Doug Lees, Land Engineering is present to answer any technical questions that the Board may have.

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

Mr. Berube replied that there will be no loss of flood storage with the construction of this proposed house. Any impacts will be temporary. A review of the Board of Health records show that this entire neighborhood would not have been developed without variances from the Board for work within the flood plain and within one hundred (100) feet of the flood plain. I recommend granting the variance in order to be consistent with the past decisions that the Board has made regarding variances from flood plain regulations for this neighborhood.

Mrs. Giroux asked were you able to appease the neighbors and abutters regarding their concerns of flooding in the area.

Attorney Dangora explained that a study was done and there isn't a lot that can be done on this particular lot. There will be no impact on the abutters.

Mrs. Giroux stated that she wanted to make sure the abutters understood this.

Mr. Berube explained that Mr. Ripa, met with the Town Engineer, Kelley Conway and myself on site to verify what is in place for stormwater drainage. The drainage is well maintained and in good shape. We were trying to see if there was anything else that could be done to improve the drainage in that neighborhood. There isn't anything that could be done that does not already exist. Once the river recedes the water should drain quickly.

Mrs. O'Rourke asked if any abutters were present.

Sharon Bouffard, 8 Satuckett Lane identified herself. Ms. Bouffard explained that Diane Barry, 3 Satuckett Lane and Sally Jackson, 2 Osceola Lane could not be present however they are opposed to this project. Ms. Bouffard stated that a lot of the trees that help with the drainage in this neighborhood will be taken away. Where will the water go when the river rises and floods the street? It is such a narrow street. Ms. Bouffard expressed concern about parking in the area and the storage of snow when the area is plowed.

Doug Lees, Land Engineering and Environmental Services, identified himself. The driveway will be impervious. Mr. Lees explained that there will be no work within the flood plain or filling in of the flood plain. The recharge gutter system will collect the roof runoff and recharge the runoff into the ground. It will limit the amount of roof runoff that will affect the flood waters. Mr. Lees pointed to the plan and explained the flooding of the area from the Concord River. Mr. Lees pointed to the plans and explained where the snow would be stored beyond the house

John Wright, 22 Quaker Lane, identified himself. Mr. Wright explained that he has significant puddling in front of his house because of the way the road is graded. The water coming from that area will exacerbate the flooding problem going forward. In addition, there will be issues with snow removal, access to the fire plugs and the removal of all the trees that have been there for a long time.

Mr. Berube explained that the applicant is providing infiltration for the roof runoff which addresses any impervious area created by the proposed house and will also address any runoff into the street as well. Variances have been granted for construction of houses in the flood plain or in proximity to the flood plain. This house is not going to be in the flood plain. There will be no loss of flood storage. To be consistent with the other houses in this area that have been granted a variance, I recommend granting this variance.

Mr. Reader made a motion to grant a Variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) in order to construct a single family dwelling and work within twenty-five (25) feet of Flood Plain at Quaker Lane based on the following findings of fact 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 Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2).
- 2) The applicant proposes to construct a single family dwelling with an attached deck and associated driveway and utilities on a 32,950 square foot undeveloped lot of land on Quaker Lane that also abuts the Concord River. A portion of the lot falls within the FEMA Flood Plain and the Green Engineering Flood Plain (GEFP). Drainage structures will be installed to provide for the infiltration of stormwater roof runoff. The proposed dwelling will be serviced by town water and sewer.
- 3) The proposed dwelling will be located within twenty-five (25) feet of the FEMA/GEFP Flood boundary elevation of 119 NGVD 29. There will be a temporary disturbance in the Flood Plain for the installation of the water and sewer service. Otherwise, there will be no detrimental impact to the Flood Plain.
- 4) 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

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Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15 and 25 in accordance with the Board of Health Regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Land Engineering & Environmental Services, Inc. dated March 12, 2013 and revised to May 14, 2013 and stamped by Douglas E. Lees, RPE#40930.
- B) These conditions must be properly recorded at the Registry of Deeds and a certified copy of these conditions must be returned to the Board of Health office indicating that a marginal reference was made on the original deed, prior to the Health Department approval of any building permit, occupancy permit, certificate of compliance, etc.
- C) A deephole test must be performed at the proposed location of the proposed dwelling to determine the groundwater elevation. The minimum vertical separation distance from the basement floor above the high ground water elevation shall be two (2) feet pursuant to Billerica Health Regulations. Documentation must be submitted to the Board of Health prior to the approval of any permits.
- D) Erosion and sediment control measures shall be implemented and maintained in all areas disturbed by construction activity including but not limited to construction and waste material storage areas. Erosion and sediment control structures shall be installed and inspected by the Board of Health prior to beginning construction.

Mrs. Giroux seconded. Four (4) voted in favor, one (1) vote abstained (Dan Kane).

**7:30 p.m. Swaminarayan World Organization (USA) – 9 Brick Kiln Road – Request a Variance
for work within the Flood Plain**

Mrs. O'Rourke stated the next item on the agenda is Swaminarayan World Organization, 9 Brick Kiln Road requesting a Variance for work within the Flood Plain.

Stan Dillis presented the Board with a large scale drawing of the project with the proposed septic system

Stanley Dillis, Ducharme and Dillis, Civil Design Group, Inc. identified himself. Mr. Dillis explained that he is representing the applicant, Swaminarayan World Organization. This facility was originally a trucking terminal. The applicant purchased the facility for religious use. The existing septic system is located in front of the property which was partly in the flood plain. We have relocated it to the

rear of the property. Mr. Dillis explained that part of the fill for the septic tanks is in the flood plain, so we have compensated for that. We have met on-site with the Conservation Commission and Mr. Berube several times regarding this project.

Mrs. O'Rourke asked what this religious facility is going to be used for.

Mr. Dillis replied that religious meetings are currently being held there.

Mr. Grady asked how long have they been there.

Mr. Dillis replied for least a year.

Mrs. O'Rourke asked have you appeared before the Conservation Commission.

Mr. Dillis replied yes and we received approval and the Order of Conditions.

Mr. Berube explained that because of the change in use that is what prompted the new design for the septic system. The proposed septic system is larger than what was there for the trucking terminal. The proposed location of the septic system encroaches upon the Flood Plain and will require some filling of the Flood Plain. They are proposing to have a kitchen to serve meals. Mr. Berube explained that the green area on the plan shows where the filling in of the floodplain will take occur and the blue area shows where they are compensating. The Conservation Commission and I have met and discussed the proposed septic system. The applicant has addressed all our comments. I recommend granting the variance.

Mr. Dillis pointed to the plans and explained that the area is very flat. We will only be filling in six (6) inches, which is not very much.

Mrs. O'Rourke stated if they have been operating for over a year, why haven't they come to us sooner.

Mr. Dillis replied that these plans have been in process for several months.

Mrs. O'Rourke asked how is the work being done in the building.

Mr. Berube explained that they did not make any changes to the building.

Mr. Dillis explained that they plan on adding a kitchen and they cannot do it until the proposed septic system is installed.

Mrs. O'Rourke stated this used to be a trucking terminal and now it is a religious institution which is a change of use. How were they allowed to use this building as a religious facility?

Mr. Dillis replied that he does not know.

Mr. Berube stated that they have not applied for any building permits.

Mrs. O'Rourke asked when they changed the use did they just occupy the building.

Mr. Berube explained that the building is entirely enclosed. On the back side of the building is a loading dock. It looks like an industrial building and not a trucking terminal. They have not fully utilized the building.

Mrs. O'Rourke asked would they have to go before the Zoning Board of Appeal (ZBA).

Mr. Berube replied he does not know. They may be exempt because it is a religious institution.

Mr. Kane asked why is the system being replaced. What is the capacity of the current system? If the system is adequate for their functioning now why are they changing the system?

Mr. Dillis replied the new system is designed for three hundred (300) members with a kitchen.

Mrs. Giroux asked what is the capacity of the current septic system.

Mr. Dillis replied that he does not know.

Mrs. Giroux asked how were they able to use this space if they went from a couple of people to religious services.

The Board discussed the religious institution and the occupancy of the building with the current septic system.

Mr. Berube explained that he does not know how much of the building is being utilized at this time. It has been a long process. I have met with Mr. Dillis on several occasions and discussed what they are proposing, what the proposed use of the building is and what they need to do. They have been following those steps. One of those steps is to address the septic system.

Mr. Dillis explained that there is no kitchen in the facility at this time because the septic system is not adequate for the intended capacity and a kitchen.

Mrs. O'Rourke stated the applicant is planning on putting in a kitchen.

Mr. Dillis replied yes and at that time they will have to go to the Building Inspector to obtain a building permit. The applicant's headquarters are in New Jersey.

Mrs. Giroux asked how did the project get this far without being stopped for approvals or permits.

Mr. Dillis replied that he did not know.

Mrs. Giroux made a motion to continue the hearing until more information has been provided regarding the change in use of the property, the current activities being conducted on the property and any approvals or permits issued by other town agencies.

Mr. Kane seconded. So voted unanimously.

Mr. Dillis asked what information would you like the applicant to submit before the next hearing.

Mrs. Giroux explained that she would like to know how they are currently occupying the building because it was a trucking facility and now it is a religious institution. I would like to make sure that all the permits are in place before we approve the project. It is a good project. However, I would also like to know what size the current system is and what size will the new system be.

Mr. Berube replied that the current system is not that old.

Mr. Reader asked if the project is approved how long before the new system would be installed.

Mr. Dillis explained they will have to do that in conjunction with a building permit to install a kitchen. Mr. Dillis asked when the next Board of Health meeting would be held.

Mrs. O'Rourke replied January 6, 2014.

7:45 p.m. Ally Liu – 10 Amherst Street – Request a Variance for work within the Flood Plain

Mrs. O'Rourke stated the last item on the agenda is Ally Liu, 10 Amherst Street requesting a Variance for work within the Flood Plain.

Mr. Dresser presented the Board with a large scale drawing of the proposed upgraded sewage disposal system and addition to the existing dwelling on 10 Amherst Street.

Steve Dresser, Dresser, Williams & Way, Inc. identified himself. Mr. Dresser explained that he is representing Ally Liu. Ms. Liu wants to purchase an existing home at 10 Amherst Street which has a substandard septic system. In order to purchase the home Ms. Liu will have to upgrade the septic system. Soil testing was done in a higher area and we found that the soil was all clay and could not be perked. The only place to put the system is in the flood plain. The septic system was designed within the limits of the flood plain. In order to construct the septic system, 418.2 cubic feet of the flood plain will need to be filled in. Dirt will be removed from an area at the rear of the house to compensate for the filling in of the flood plain. This cut will be 460.2 cubic feet and will more than compensate for the filling in of the flood plain. We did extensive testing and this is the best location to put the system as far away from the river as we could.

Mr. Berube explained that this is a failing septic system and the proposed location is the only place to put it in and keep it as far away as possible from the river. They are providing compensation for filling in of the flood plain that will occur with the proposed septic system. It is the best plan that they could come up with and it also addresses any impacts to the flood plain.

Mrs. O'Rourke asked about the proposed addition on the plan.

Mr. Dresser replied that they want to square off the home and add a little more living space.

Mrs. O'Rourke asked will another bathroom be added.

Mr. Dresser replied no, they already have two (2) bathrooms. The house is designed for (4) bedrooms.

Mr. Berube explained that he doesn't see an issue with the proposed addition. It is reasonable and out of the flood plain. The proposed project will be an improvement to the neighborhood.

Mrs. O'Rourke asked has Ms. Liu purchased this property.

Mr. Dresser replied no.

Mrs. Giroux asked is sewer available in that area.

Mr. Berube replied that sewer is not available and will not be available in the foreseeable future.

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

Ed Bunker 2 Amherst Street, identified himself. Mr. Bunker stated that he is not opposed to this project. The house has been sitting there vacant for quite some time. Steve Dresser has designed three (3) other septic systems for houses on that street and everything has been working fine. I wish this couple good luck

Mrs. Giroux made a motion to grant a Variance of Board of Health Rules and Regulations, Chapter 5, Sections 5.5.005 (1) and 5.5.005 (2) in order to upgrade a sewage disposal system and construct an addition to an existing dwelling within the Flood Plain or within twenty-five (25) feet of the Flood Plain at 10 Amherst Street based on the following findings of fact 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 Billerica Health's Rules and Regulations, Chapter 5, Sections 5.5.005 (1) and 5.5.005 (2).

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- 2) The applicant proposes the upgrade of an existing sewage disposal system found to be in non-compliance with the provisions of 310CMR15.000 the Massachusetts State Environmental Code, Title 5. The failing sewage disposal system services a single family dwelling on a property that is located partially within the Flood Plain of the Concord River. Site evaluation determined that the most suitable location for the proposed sewage disposal system falls within the Flood Plain.
- 3) The work is necessary to correct the system failure and protect the public health, safety and the environment. The applicant proposes to provide mitigation work to compensate for any loss of flood storage.
- 4) Also, the applicant is proposing to rehabilitate the existing single family dwelling which includes the construction of an addition to the rear of the dwelling. The proposed addition will be located seven (7) feet from the Flood Plain. The proposed project will be an improvement to the neighborhood.
- 5) 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.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 21, 24, 25 and 29 in accordance with the Board of Health Regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Dresser, Williams & Way, Inc. dated November 15, 2013 and stamped by Stephen R. Dresser, RPE#49202.

Mr. Reader seconded. So voted unanimously.

Open Microphone

Mrs. O'Rourke asked if anyone was present for open microphone.

No one was present for open microphone.

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

The Board adjourned at 8:10 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk