

BOARD OF HEALTH MINUTES
July 7, 2014

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

ACCEPTANCE OF MINUTES

Mrs. Giroux made a motion to accept the Meeting Minutes of June 9, 2014 as presented. Mr. Kane seconded. So voted unanimously.

BOARD OF HEALTH BUSINESS

Reorganization

Mrs. O'Rourke stated that since Robert Reader, Vice Chair is absent, reorganization of the Board will be postponed until the August 4, 2014 Board of Health meeting.

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 June are included in the Board's package.

Mrs. O'Rourke stated the first report is from Health Agent, Gary Courtemanche.

Mr. Berube explained that Gary conducted a total of ninety-four (94) inspections in June. Gary is catching up on all the Food Service Establishment Inspections since his surgery. Gary was also involved with the inspection of two (2) Recreational Camps. Gary observed seven (7) critical violations when he conducted the routine food inspection at Wicked Cheesy.

Mrs. Giroux asked how many critical violations has Wicked Cheesy had.

Mr. Berube explained that this is the first time under the new owner (Felicita D'Alelio) there has been a problem.

Mr. Grady asked is this the owner that came before the Board requesting a waiver.

Mr. Berube replied no. One of the partners took over.

Mr. Kane stated that an Administrative Enforcement Conference was held on June 25, 2014. What is the deadline for submitting their plan of correction to the Board of Health?

Mr. Berube replied that a follow up inspection was conducted two (2) days later and the seven (7) critical violations were corrected. A written contract explaining his plan must be submitted to the Board of Health office by July 14, 2014.

Mrs. O'Rourke asked what the critical violations were.

Mr. Berube replied that the critical violations were related to cleanliness and poor handling of the food.

Mrs. Giroux asked what the deadline is for the Order for Correction

Mr. Berube explained that the Order for Correction states that the owner must contract a food service consultant for a minimum of six (6) months. The Board of Health will also conduct a special inspection each month as well. If no improvement has been made then they will have to come before the Board. A food consultant must be in place by July 14, 2014.

Mrs. Giroux asked is the Pongal Restaurant continuing to make progress.

Mr. Berube explained that they are doing very well. They are on track with their food consultant. They have also hired a new manager. The food consultant is training him until she is comfortable with his food safety knowledge.

Mrs. O'Rourke complimented the owners of Via Dell Amore for the nice job that was done inside the food service establishment.

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

Mr. Berube stated the next report is from Health Agent, Phavy Pheng.

Mrs. Giroux asked what is the status of the court case at 78 Pinedale Avenue.

Mr. Berube explained that Phavy went to court on Monday, July 7th, 2014. Mr. Mitchell has hired a contractor to go forward with the sewer connection.

Mr. Kane asked if Mr. Mitchell brought all of the requested documents to the Board of Health office.

Mr. Berube replied that he has not brought all of the requested information to the Board of Health office however he brought enough information to the hearing so that the judge gave him extra time to obtain the permit and schedule the sewer connection.

Mrs. Giroux asked about the living conditions at 27 Billerica Avenue. Mrs. Giroux asked how can the house be sanitized with twenty-three (23) cats living there.

Mr. Kane commented that the report states that he will be moving back in end of June. Is the home habitable?

Mr. Berube replied he is not in the house at this time he is living with his daughter in Chelmsford.

Mr. Kane asked does the Board of Health have to issue an order that the house is habitable.

Mr. Berube explained that the Board of Health has been working with the Council On Aging regarding this situation.

Mr. Giroux asked has any progress been made with 36 Donald Road.

Mr. Berube explained that at first the owner was not being cooperative. However she has finally agreed to work with the Council On Aging and Elder Services to resolve this situation.

Mrs. Giroux requested that dates be added to the report so that the Board would know when the last activity or inspection took place.

Mr. Grady asked what is happening with the situation at 7 Woodbury Road.

Mr. Berube replied that the sale of the house fell through. There is a possibility that George Allen might purchase the property.

Mrs. O'Rourke asked has there been any recent complaints' regarding the situation at 7 Woodbury Road.

Mr. Berube replied that the Board of Health has not received any recent complaints.

Mr. Grady requested that the owner of 7 Woodbury Road appear before the Board at the August 4, 2014 meeting.

Mrs. O'Rourke asked how much longer does the Board of Health have to tolerate this situation.

Mr. Berube replied that we can have her house torn down. We have done it in the past. We have given her plenty of time to take care of the situation and she has not complied. So we can have the house torn down and then place a lien on the property.

Mrs. Giroux stated this has been going on for over one (1) year.

Mr. Berube stated that he would contact Joann Jamison and request that she attend the August Board of Health meeting.

Mrs. O'Rourke asked the Board Members if they had any questions regarding Phavy's report.

Mr. Berube explained that Christine has been using up her vacation time in June so she did not have much activity to report on.

Mosquito Control Project Update

Mrs. O'Rourke stated the next item on the agenda is the Mosquito Control Project Update.

Mr. Berube explained that the Massachusetts Department of Public Health Arbovirus Surveillance Report states that there is no reported cases of the West Nile Virus (WNV) or EEE in this area. Central Mass Mosquito Project continues to respond to resident's complaints and requests for spraying.

Mr. Grady asked where the contact information is posted for the Central Mass Mosquito Control Program.

Mr. Berube replied that there is a link on the Board of Health website with all the information.

Mrs. Giroux asked if there is any information posted about the new Caribbean mosquito. Mrs. Giroux explained the symptoms of this virus.

Mr. Berube replied that we have not received any information from CDC or the Massachusetts Department of Public Health. Mr. Berube stated that the cases could be from local people traveling abroad. When we receive any information it will be posted on the website.

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

The Board Members did not have any questions.

Preliminary Subdivision Plans – “Sumner Farms” – Nashua Road

Mrs. O’Rourke stated the next item on the agenda is the Preliminary Subdivision Plans for “Sumner Farms” on Nashua Road.

Mr. Berube explained that a Site Walk for the new project “Sumner Farms” is scheduled for Wednesday, July 16, 2014 at 2:30 p.m. and 5:00 p.m. All Departments, Planning Board Members and all other Board Members are welcome to attend the Site Walk. The Preliminary Subdivision consists of sixty-one (61) lots. Mr. Berube stated that this project will be coming before this Board in the near future.

Mrs. Giroux explained that this project was presented to the Town Meeting Representatives at the 2014 Spring Town Meeting. All the abutters are in favor of this project.

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

The Board Members did not have any questions.

7:15 p.m. DH Realty Trust – 4 Alderwood Avenue – Request a Variance for work within the Flood Plain

Mrs. O’Rourke stated the next item on the agenda is DH Realty Trust, 4 Alderwood Avenue requesting a Variance for work within the Flood Plain.

Derek Allgaier, Trustee of DH Realty Trust, identified himself. Mr. Allgaier explained that he is proposing to raze the existing house and move it back out of the flood plain. The proposal is to construct a 34 ft. x 28 ft. colonial home.

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

No abutters were present for 4 Alderwood Avenue.

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

The Board Members did not have any questions.

Mr. Berube explained that the existing house is partially located within the Green Engineering Flood Plain. The proposed house will be constructed outside of the Flood Plain which will increase flood storage. This project will be an improvement to the neighborhood. I recommend granting the variance.

Mrs. O'Rourke asked the location of the proposed project.

Mr. Allgaier explained the location of Alderwood Avenue off Bridle Road. The existing home is on septic. The proposed home will be connected to town sewer.

Mrs. Giroux asked how many bedrooms will there be.

Mr. Allgaier replied the proposed house will have three (3) bedrooms.

Mrs. Giroux asked will a garage be constructed under the proposed house.

Mr. Allgaier explained that the existing house has a garage however the new construction will not have a garage. Gutters will be installed for roof runoff.

Mr. Berube explained that the plan indicates that an infiltrator system will be installed for roof runoff.

Mrs. O'Rourke asked will it be necessary to install louvers in the foundation.

Mr. Berube explained that louvers would not be necessary because the house is being moved out of the flood plain.

Mrs. Giroux asked if the new dwelling was being constructed to sell.

Mr. Allgaier replied yes the new house would be for sale.

Mrs. O'Rourke asked is the existing house occupied at this time.

Mr. Allgaier replied no.

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

Mr. Kane made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Sections 5.5.005 (1) in order to construct a single family dwelling within twenty-five (25) feet of the Flood Plain and work within the Flood Plain at 4 Alderwood Avenue based on the 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).

- 2) The applicant proposes to raze an existing dwelling and garage and construct a new single family dwelling. A portion of the existing dwelling is located within the Flood Plain. The proposed dwelling will be located twelve (12) feet upgradient of the Flood Plain. 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 work will increase flood storage. The project will result in an improvement to the neighborhood.
- 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 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, 24, 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 Dresser, Williams & Way, Inc. dated June 10, 2014 and stamped by Stephen R. Dresser RPE#49202.
- B) 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 groundwater 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.

Mrs. Giroux seconded. So voted unanimously.

7:25 p.m. Real Estate Investment and Equity LLC – 0 Tom Grace Way – Request a Variance for work within 25 feet of the Flood Plain

Mrs. O'Rourke stated the last item on the agenda is Real Estate Investment and Equity LLC requesting a Variance for 0 Tom Grace Way.

Mr. Eriksen presented the Board with a large scale drawing of the proposed project.

Steve Eriksen, Norse Environmental Services, identified himself. Mr. Eriksen pointed to the plans and explained where the intermittent stream and the vegetated wetlands are located. In addition, Mr. Eriksen pointed to the Green Engineering Flood Plain and the FEMA Flood Plain locations. The applicant is proposing to construct a single family dwelling outside the flood plain. Mr. Eriksen pointed to the 50 foot Conservation No-Disturb Buffer zone. The proposed dwelling will be located out of the

flood plain. We have met the requirements for the minimum setbacks and sidewalk. Drainage structures will be installed to provide for the infiltration of stormwater roof runoff. We are not proposing any grading in the area of the flood plain or out back. The stream has a water shed area of .33 square miles.

Mr. Kane asked is there currently a structure on the lot.

Mr. Berube replied that the 1971 Green Engineering Flood Plain maps show that there was a structure on the property.

Mr. Eriksen replied there is nothing there except for a few trees.

Mr. Berube explained that no work will be occurring in the flood plain, therefore there will be no adverse impacts to the flood plain. The applicant is providing stormwater infiltration for the roof runoff. Mr. Berube recommended granting the variance.

Mrs. O'Rourke asked how can a 100 foot wetland buffer go right through the dwelling.

Mr. Eriksen explained that the buffer zone is for the bordering vegetated wetland it can show up anywhere. Mr. Eriksen pointed to the wetland boundary. We have filed with the Conservation Commission as required. This project has already been before the Conservation Commission however some changes needed to be made. We have not received approval from them yet. Part of the Conservation's regulations state that we need to receive prior approvals from the other boards before we receive permission from them.

Mrs. O'Rourke asked Mr. Eriksen if he expects any problems with the Conservation Commission.

Mr. Eriksen replied that we had to make a few minor changes for the Conservation Commission. The Conservation Commission wanted a 50 foot no disturb area so we put up a fence. We may change that and plant some bushes. They had some questions regarding the water shed area. We explained that we have a program that we run to determine the water shed size.

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

Mr. Kane stated this is a very small lot. With a 0 Tom Grace Way address how did that become a buildable lot?

Mr. Eriksen replied that the foundation will be pinned before it is poured because there is not much room for error.

Mr. Kane stated that he would like to know more about the history of that lot.

Mr. Eriksen replied that the lot is now buildable because town sewer is available in that area.

Mrs. Giroux stated that she is concerned because the proposed dwelling will be very close to the properties on both sides. She is also concerned with the wetland buffer running through the house. Mrs. Giroux stated that she would prefer to wait until the Conservation Commission has ruled on this project.

Mr. Eriksen replied that the Conservation Commission does not have a problem with the wetland boundary.

Mrs. Giroux replied that she has a problem with it.

Mr. Eriksen explained that usually Isabel Tourkantonis, the Director of Environmental Affairs checks the wetland boundary as soon as a filing is submitted.

Mrs. Giroux replied that it is a small lot. The proposed dwelling will only be seven and one half feet off the wetland boundary. Mrs. Giroux is concerned that anything could go wrong and shift this project closer to the property line.

Mr. Eriksen explained that the foundation would be pinned before the foundation walls are poured.

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

No abutters were present.

Mrs. O'Rourke asked Mr. Berube for his comments.

Mr. Berube explained that no work is taking place within the flood plain and that is the purpose for this hearing. Wetlands are the concern of the Conservation Commission. Mr. Eriksen has addressed the buffer zone with the Conservation Commission and the necessary changes to the plan have been made. It is an existing 5,000 square foot lot. If Mark LaLumiere, the Building Commissioner feels that it is not a buildable lot then he will deny the necessary permits to go forward with this project. As far as the flood plain issue that is not a problem.

Mrs. Giroux asked if the Building Commissioner has ruled this a buildable lot.

Mr. Berube replied that the owner is present. I do not think the owner would have pursued this if there were any issues.

Paul Cammarata, 8 Jewel Drive, Wilmington identified himself. Mr. Cammarata explained that he purchased the house at 39 MacDougall and renovated it. This was a separate lot and was being taxed as a separate piece of property.

Mrs. Giroux asked was this lot a piece of 39 MacDougall Street that was separated.

Mr. Cammarata replied he thought so.

Mrs. Giroux asked where is the access to this lot.

Mr. Cammarata replied the access is off Tom Grace Way.

Mrs. Giroux asked will the proposed property be connected to town sewer.

Mr. Cammarata replied yes.

Mr. Kane asked what the ground water level is.

Mr. Eriksen replied fifty-four (54) inches.

Mrs. Giroux 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 0 Tom Grace Way contingent upon the Conservation Commission's approval of this project and 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 5,000 square foot vacant lot of land on Tom Grace Way near a stream that is a tributary to the Shawsheen River. A portion of the lot falls within the FEMA Flood Plain. The Green Engineering Flood Plain (GEFP) is located off site. 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 base flood elevation of 97.7 NAVD88. There will be no alteration of 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 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, 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 LJR Engineering, Inc., dated May 7, 2014 and revised to June 30, 2014 and stamped by Luke J. Roy, RPE#47356.
- B) This variance is contingent upon obtaining final approval from the Conservation Commission (CC) for this project. A copy of the Order of Conditions from the Conservation Commission that has been properly recorded at the Registry of Deeds shall be submitted to the Board of Health office as proof of compliance with this condition.

Mr. Grady seconded. So voted unanimously.

Open Microphone

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

No one was present for open microphone.

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

The Board adjourned at 7:45 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk