

Town of Concord  
Board of Health

Minutes of the Meeting  
Tuesday, September 21, 2021

PRESENT: Jill Block, Chairman  
Mark Haddad  
Alma Healey  
Dr. Deborah Greene

Susan G. Rask, Public Health Director  
Karen Byrne, Administrative Assistant CBOH

OTHERS: Brian Goudreau, PE, Hancock Associates; Martin Siedel, 26 & 46 Revolutionary Road; Ted Doucette, PE, for 282 Hayward Mill Rd; Debra Stark, owner Debra's Naturals; Janet Rothrock; Keli Shepperd, Emerson Hospital; Sanford Wong, New England Deaconess; Scott Richardson; Henry Dane, BOS Liaison; Carol Wayland; Meilita Teickhart; Lois Whitney; Stephen Badar; Virginia Lang; Nina Huber; Ellen Quakenbush; Jane Moritz; Paul Gill; Mary White; Martha Stone

1. **OPEN MEETING**

Chairman Jill Block opened the public meeting at 7:00 p.m. stating that it was held on the Zoom Platform in accordance with the Town of Concord's Policy Directive and Guidelines on April 1, 2020, as amended. She read a brief statement outlining meeting protocol and noted that the meeting was being recorded and would be available for later viewing on the Town's website. All Board votes will be taken via a roll call. Board Members present (Block, Greene, Haddad, Healey).

2. **PUBLIC HEARINGS – ONSITE SEWAGE DISPOSAL**

**26 & 46 Revolutionary Road (same owner)**

Brian Goudreau, PE, Hancock Associates met with the Board for his client Martin Siedel, owner of both 26 and 46 Revolutionary Road respectively. Mr. Goudreau requested Variances to Title 5, 310 CMR 15.211: Minimum Setback Distances:

**46 Revolutionary Road**

- To locate an existing leaching field 1-foot to a property line, instead of 10' as required by Title 5

**26 Revolutionary Road**

- To locate a proposed inground swimming pool 16.5 feet from an existing leaching field at 46 Revolutionary Road instead of 20' as required by Title 5.

## **Background**

Mr. Siedel is in the process of an application for an ANR Plan (Approval Not Required) with the Planning Board to change an existing lot line for his properties to bring 26 Revolutionary Road into zoning compliance so that he can install an in the ground swimming pool. However, by doing so, the change in lot line would put both existing onsite sewage disposal systems into non-compliance with Title 5 – 310 CMR 15.211(1)<sup>1</sup>.

Public Health Director Rask referred to a letter from Andrysick Land Surveying dated August 9, 2021<sup>2</sup> stating “According to onsite observations, it appears that a portion of the piping for the soil absorption area for #46 would not meet the 10-foot setback requirement from the property line for Title 5.... the piping appears to be approximately 1 foot from the newly proposed lot line.”

Ms. Rask said it was important for the Board to consider that the stone surrounding the piping in a leaching field usually extends several feet beyond the piping and that it was an integral part of the leach field. In her opinion, it was quite possible that the stone could extend beyond the proposed new lot line which would place the leach field for #46 on the property for #26.

The PHD also noted that she was concerned that the construction of the proposed pool could damage the existing field at 46 Revolutionary Road noting that both of these systems were older and could be easily damaged.

When granting a variance under Title 5, the Board should consider the following criteria:

- Variances shall be granted only when, in the opinion of the Approving Authority:
  - The person requesting a variance has established that enforcement of the provision of 310 CMR 15.000 from which a variance is sought would be manifestly unjust, considering all relevant facts and circumstances of the individual case; and
  - The person requesting the variance has established that a level of environmental protection that is at least equivalent to that provided under 310 CMR 15.000 can be achieved without strict interpretation of the provision of the code from which a variance is sought.

## **Staff Recommendation**

The applicant is proposing to voluntarily create a non-compliance with Title 5 setback requirements on two separate properties and is considered as an owner “creating their own hardship”. Staff does not believe a variance is warranted in this particular case.

Mr. Goudreau disagreed and felt that the variances being requested were reasonable and met the intent of Title 5 and would meet the same level of environmental protection without strict application of Title 5 setbacks. He also noted that his client had conducted soil tests at 46 Revolutionary Road and if something were to occur, a new system could be easily installed.

After many minutes of discussion, consensus of the Board was that the owner was willingly creating a non-conformance of Title 5 for two properties (the code to which it had jurisdiction) in order to modify a lot line to install a swimming pool so that zoning setbacks could be achieved (not within the Board’s

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<sup>1</sup> Proposed ANR plan attached – 26/46 Revolutionary Road

<sup>2</sup> Letter from Andrysick

purview). Mark Haddad stated this was not a hardship in his opinion; if the applicant wanted to construct an inground swimming pool, then a new compliant septic system would need to be installed as well to meet the relative codes under the Board's jurisdiction (Title 5).

At this point, Brian Goudreau asked the Board to table discussion and allow his client to withdraw without prejudice allowing his client to present another proposal to the Board at its next meeting. Mr. Siedel thanked the Board for its consideration and understood the rationale. Mr. Goudreau interjected that he would appreciate a continuance and to table discussion.

Dr. Deborah Greene moved to table discussion and continue the public hearing for 26 and 46 Revolutionary Road respectively until the October meeting. Mark Haddad seconded it. All VOTED in favor. (Roll Call: Block, Greene, Haddad, Healey in favor; motion carried 4-0)

### **282 Hayward Mill Road**

Ted Doucette, PE met with the Board for his client Thomas McCormack to request a variance under Local Upgrade Approval to Title 5 as follows:

- To allow a reduction to no less than 4-feet separation between bottom of leaching field (SAS) to estimated seasonal high groundwater elevation, instead of 5-feet as required by Title 5 310 CMR 15.212
- To allow a 4-foot cover of an onsite sewage disposal system (tank and field) with the use of a vent and depth certification from manufacturer, instead of maximum 3-feet as required by Title 5.

### **Background**

Mr. Doucette noted that the design proposal was for replacement system due to a failure. Because of lot constraints due to topography and the preference to maintain a gravity fed system, the proposed leaching field will be installed approximately 4-feet below the finished grade, but it will be compensated for by the inclusion of a vent that will provide oxygen to the SAS (leaching field) and will be certified by a depth certification from the manufacturer of the vent.

### **Discussion**

The Board reviewed the plan and the section of Title 5 (15.402) Use of Local Upgrade Approvals or Variances for replacement systems for existing homes. After a short discussion, the Public Health Director recommended APPROVAL of the request as submitted and outlined by the system designer. The existing system is in failure and the waivers requested were reasonable for this type of upgrade in her opinion.

Mark Haddad moved to GRANT the variance and local upgrade approvals as submitted. Dr. Deborah Greene seconded it. All VOTED in favor. (Roll Call: Block, Greene, Haddad, Healey – in favor; motion carried 4-0).

### **3. PUBLIC HEARING – POLYSTYRENE WAIVERS**

#### **Emerson Hospital**

Keli Shepherd, Executive Chef met with the Board to discuss the application waiver from the Polystyrene Bylaw. The Board reviewed pictures and a written summary of the items:

- 12 oz. Dinex Clear Plastic Salad Bowl with polystyrene clear lid
- 5 oz. Dinex Clear Plastic Cup/Bowl with polystyrene clear lid

Ms. Shepherd explained that the hospital continues to make strides to comply with this bylaw but that no reasonable alternatives had been found for these two items. She said that the bowls were reusable but the lids that work for all populations in the hospital (including the psych unit) were not. Ms. Shepherd reiterated that as in previous years, she had asked the hospitals Cambro Rep (Dinex competitor) to bring up the issue of alternative products/lids at their annual business conference because they sell a similar product that could benefit from reusable lids but to date had not heard if there had been any forward motion with this endeavor and that it was doubtful it was during the pandemic.

She respectfully requested that a waiver be granted because it met (2) of the criteria required in the bylaw: no reasonable alternative and unique performance category (specifically for the psychiatric unit where unique patient care criteria must be met due to safety).

Dr. Greene moved to GRANT the waiver as requested. Alma Healey seconded it. All VOTED in favor to approve. (Roll call: Block, Greene, Haddad, Healey – in favor; motion carried 4-0).

#### **New England Deaconess**

Sanford Wong, Manager met with the Board to discuss the application for waiver from the Polystyrene Bylaw. Similar to Emerson Hospital Mr. Wong stated that patient safety was of the utmost importance and until a comparable product could be found he respectfully requested the Board grant the waiver. He also noted that two of the lids were going to be discontinued shortly and it was likely that plastic wrap would have to be utilized until such time a new product could be found. During the pandemic, he said it had been next to impossible to find any manufacturer with compliant product (to the Town Bylaw). He requested until such time Deaconess could phase into all china/ceramic products that a waiver be granted for:

- 8 oz. Dinex Mugs and 5 oz. Dinex Bowls with polystyrene clear lid
- 9 oz. Dinex Bowls with polystyrene clear lid
- X-slot plastic flat lid, translucent/white for 8 oz. juice cups
- X-slot plastic flat lid, translucent/white for 6 oz. juice cups

At this point, Scott Richardson interjected that he would like the Board to inquire what types of actual efforts had been made by the applicants to find materials that were not polystyrene before quickly granting the waivers. Several Board members responded that over the past several years, these same applicants had worked diligently to find comparable/durable items to use since this bylaw enforcement was assimilated as a public health issue under the Board's purview. Dr. Greene said that the hospital, nursing homes and other large congregant care units were under tremendously challenging times working to prevent cross contamination from Covid-19 and in her opinion any waiver to do so at this time was warranted.

All Board members concurred with Chair Jill Block noting that the waiver requests for Polystyrene Products had gone down significantly since the bylaw was adopted at Town Meeting in 2016 and to her that was a success and showed the Board did take it seriously. As a side note, Keli Shepperd stated the Hospital had reduced waivers from 6 items to 2 items since 2016. There was no further discussion.

Dr. Greene moved to GRANT the waiver as submitted. Alma Healey seconded it. All VOTED in favor. (Roll Call: Block, Greene, Haddad, Healey – in favor; motion carried 4-0).

#### **4. DISCUSSION & UPDATES – COVID-19**

The Board reviewed the Covid-19 Dashboard (data) for Concord relative to cases of the Covid-19 virus from July 1<sup>st</sup> through September 15, 2021. PHD Rask said a slight increase in cases, likely due to the Delta Variant were expected but that the numbers were not alarming. According to contract tracing and data from Public Health Nurse Tricia McGean, there were a total of 116 cases of Covid-19 during the time frame on the dashboard, of which 67 of the cases were vaccinated.<sup>3</sup> There are 15 active cases in Concord at this time. PHD Rask stated that all in all the Town of Concord's case numbers were relatively low but noted it was not a time to stop good public health measures like getting vaccinated when available and good hygiene practices (washing hands, covering cough, wearing masks in highly populated areas/buildings).

Board members discussed at length whether to reimplement an indoor mask mandate for the Town of Concord or if it should continue to follow the CDC guidelines to “strongly encourage” wearing a mask indoors regardless of vaccination status. The Board reviewed (3) versions of mandates from Carlisle, Lincoln and Sudbury. In speaking to other members of the Public Health Community, PHD Rask stated that the number one issue for staff was enforcement and that it would be next to impossible for the Concord Health Division to do so.

Many members of the audience suggested asking the Police Department to help with the enforcement. Ms. Rask stated that the Town of Concord was in a very different place now than 18 months ago when the Police (under emergency directives from the State) assisted to encourage mask wearing in public places. At this time, there was a high vaccination rate and vaccines were becoming more readily available for the younger population which would continue to help minimize the spread.

Several members of the audience encouraged the Board to require an indoor mask mandate because they did not feel safe going into the grocery stores and pharmacies particularly if staff members were not required to wear masks. The majority of the public comments were geared towards feeling “safe” in retail spaces or restaurants. One audience participant pointedly asked Dr. Greene specifically about the safety of the general public if one did not know the vaccination status of the person next to them walking around town or working in a retail space

Board members reiterated their position that Concord Covid-19 rates were not at a level in Town where it felt reimplementing of the mask mandate was warranted but would watch the rates/data closely and revisit the issue if necessary. Dr. Greene, Mr. Haddad and Ms. Healey all felt that adding a statement strongly encouraging masks to be worn regardless of vaccination status as well as to follow CDC guidelines was sufficient.

Mark Haddad moved that the Board NOT reimplement a mandatory mask mandate but to reiterate the statement made in a letter to the public on 9/2/21<sup>4</sup> adding the language “to strongly encourage mask

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<sup>3</sup> Covid-19 Dashboard 7/1/21-9/15/21

<sup>4</sup> CBOH Letter to Public News and Notices 9/2/21

wearing and to follow CDC guidelines. Dr. Greene seconded it. All VOTED in favor of the motion. (Roll Call: Block, Healey, Greene, Haddad – in favor; motion carried 4-0).

## **5. REQUEST TO BE HEARD**

Chair Jill Block announced to audience members that were on the Zoom Meeting that the next item up for discussion was not a public hearing for a variance request but an opportunity for the owner of Debra's Naturals to discuss a proposal that may lead to a variance request down the road.

Debra Stark owner of Debra's Naturals requested an opportunity to discuss the use of refillable containers in accordance with the Massachusetts Food Code 105 CMR 590.000 specifically allowing customers to bring in clean reusable containers from home to take bulk foods and other items sold at the store in an effort to reduce the consumption of single-use plastic containers and to support the Town's Comprehensive Sustainability and Energy Committee goals (Town Meeting 2017 & 2018).

Ms. Stark stated that over the past 30 years, Debra's Natural Gourmet had safely allowed customers and staff to fill containers from home (returnables) with food from bulk bins and had not been aware of any illnesses resulting from the practice. She said it wasn't until she and her staff met with Public Health Inspector Gabrielle White and PHD Rask in the spring discussing the expansion of her store was she made aware that this was a violation of the "Model Food Code". Ms. Stark said she was aware of several other large supermarkets in Massachusetts that have been allowed to do this and it appeared to be a town-by-town decision. Ms. Stark stated she was uncomfortable giving the names of such entities as not to create controversy for them. After several minutes of outlining her position, providing the Board with copies of several studies/letters relative to plastic reduction and on the effects of plastics and health; letters from the Comprehensive Sustainability and Energy Committee and many other customers encouraging the Board to support this endeavor and entertain a variance request at a later date. In closing, she mentioned that she had been in contact with some folks at Massachusetts Department of Public Health who noted that some changes were on the horizon relative to this specific topic but that things move very slowly and asked the Board to consider writing a letter urging the Food Protection Program to change some of the codes that are no longer in the best interest of "public health and safety".

Janet Rothrock, audience member and supporter of Ms. Stark's request read a statement<sup>5</sup> into the record<sup>6</sup> asking the Town of Concord Health Board to be in the forefront of helping to change the requirements that prohibits customers from using their own containers to fill with bulk food items. She noted that she had reviewed the "FDA Model Food Code" but did not see anything directly related to prohibiting consumers from using their own containers. She felt the code contradicted itself by allowing refillable cups for coffee to be allowed and not containers. Ms. Rothrock reiterated other comments relative to the Town of Concord's commitment to Sustainable Municipal Practices and encouraged the Board to take actions to assist with contacting the Department of Public Health to help change this part of the code.

### **PHD – Background & Discussion**

PHD Rask informed the Board that in the Spring of 2021 the Health Division had become aware that Ms. Stark, the owner of the proposed Debra's Next Door (new project) wanted to allow customers to use containers brought from home to purchase bulk food. Health Division staff met with both Ms. Stark and her son Adam Stark as well as their safety consultant Lisa Berger (Berger Food Safety Consulting) while in the design phase to discuss this proposal. At that time, staff explained in detail the regulatory

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<sup>5</sup> Email statement from Janet Rothrock 9/17/21

requirements as well as practical ways it felt Ms. Stark could comply with the requirement to allow customers to bring containers to the store and met Ms. Stark's goal of reducing plastics.<sup>7</sup> Suggestions included Ms. Stark issuing marked jars/containers to customers, take them back after use and then clean and sanitize the container and give the customer a new marked clean container for filling at their next visit. Staff felt it was important to meet proactively with Ms. Stark, her architect and food safety consultant to ensure that everyone was on the same page understanding the regulatory requirements, infrastructure for washing and storing containers, etc., to include in proposed plan. Ms. Stark was also advised at that time to develop her proposal with the assistance of her Food Safety Consultant and include that with the proposal for the new project (Debra's Next Door). None of that was included in the final design plan that was reviewed by Health Staff therefore a variance would now be required by the Board.

Ms. Rask stated several public health concerns including but not limited to:

- How will the staff ensure that each container is clean and sanitized?
- How will cross-contamination be prevented?
- How will the store determine what types of containers are acceptable (many plastic containers from home cannot withstand repeated washing?)
- Will the store's staff have a plan to ensure adequate staffing to oversee that the containers used are cleaned, sanitized, smooth, unbroken and intact?

Lastly, Ms. Rask clarified that 2013 Federal Food Code that was adopted by the State of Massachusetts as the Minimum Sanitation Standards for Food Establishments and was the regulation that Health Staff and the Board were charged with using to enforce public safety as it relates to food service. She stated it was not a "model" or a "guide" – it was a Massachusetts Regulation and should be treated no differently than the Building Code to which the Building Inspectors are required to enforce for items within their purview.

Following a lengthy discussion, consensus of the Board was that Ms. Stark formally submit a written request for a variance of the specific section, items, etc., she was looking to receive relief and the Board would entertain that at the next meeting. They also noted that it would be useful if Ms. Stark shared the information on other towns, she claims this type of waiver has been granted so that Concord staff could discuss with them and see how it is handled. Mark Haddad noted that a collaborative goal of encouraging continued conversations between vendors and the State certainly was not an unreasonable ask of the Board and he felt that the Board could at some point write a brief letter to the State simply encouraging forward moving conversations to accomplish goals of both sustainability and protection of the public health.

Ms. Stark thanked the Board for its time and stated she would prepare the necessary paperwork for the October meeting.

## **6. BOARD CALENDAR & MINUTES**

The next Board meeting is scheduled for October 13, 2021 (Wednesday) via Zoom due to conflicts with a quorum.

The minutes for the July 20, 2021 meeting were reviewed and approved as submitted. Mark Haddad moved to APPROVE the minutes as submitted. Dr. Greene seconded. All VOTED in favor. (Block, Greene, Healey, Haddad – yes; motion carried 4-0).

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<sup>7</sup> PHD staff comments for BOH 9/21/21

**7. STAFF MEMBER REPORTS**

PHD Rask asked the Board to approve the appointment of Ian Worstall as the new Tobacco Control Compliance Officer and for him to be appointed as an Agent of the Board to conduct Tobacco Compliance Inspections. Dr. Greene moved to APPROVE the appointment as recommended by staff. Mark Haddad seconded it. All VOTED in favor. (Block, Healey, Greene, Haddad – yes; motion carried 4-0). This information will be forwarded to the Town Manager for formal appointment and approval.

Mark Haddad moved to adjourn the meeting. Dr. Greene seconded it. All VOTED in favor to adjourn. The meeting ended at 9:45 p.m. (Greene, Block, Healey, Haddad – yes; motion carried 4-0)