

**VIRTUAL  
SHERBORN  
BOARD OF HEALTH MEETING and  
PUBLIC HEARING ON PROPOSED REGULATIONS CHANGES and  
APPEAL HEARING for Bedrock Disruption Permit at 39 Wildwood Drive  
MINUTES  
July 19, 2023**

**Members Present:** Daryl Beardsley, Chair, Matt Bevers, MD, PhD, Julie Dreyfus, Diana Hoek, and Rebecca Hunnewell, MD

**Members Absent:** None

**Others Present:** Aayush Narayanan, Amanda, Andrew Jacobs, Andy Lindsay, Arthur White, Coco Birmingham, Courtney, Courtney Ek, Damon Bates, David Hunter, Elizabeth Davidson, Erin, Jeff Waldron, Jeremy Marsette, Joannie Murphy, Katharine Hayes, Kristie & Nate Kenyon, Laura Mastrobuono, Margaret Gilfoy, Mike Kepnes, Morris/McCoy, M. Powicki, Nathaniel Brese, Paige Brodie, PJ Connors, Ratna, Rick Antell, Scott Horsley, Robert Hall, Scott, Scott Hirsch, Stephanie Frirree Ford, Steve Paton, Sue Wetherill, Tom Trainor, Zenya Wild, 1508\*\*\*\*569, iPhone, Natasha Clarke, George R. Morgan, Alexia, Asha Strazzero-Wild, Berri Jacque, D Hopkins, Damon Seligson, Amanda Ahearn, Eric Dickinson, HUAWEI P30, Jane Rosengard, Julia Doctor, Kitty Sturgis, Robert Truax, P.E., Tony, Kevin Yang, Brian Moore, Frank Hoek, Laura’s iPhone, “np”, Frank Jenkins, Kane, Scott H, Peggy Homer, Carol Stark, Sally Tipton, Pat Kneeland, Keith Lewis, Desheng Wang, Francis Alves, Judy E, Leah O’Brien, Susan Tyler, Eddie, 97333114706, Chuckie, Sean Killeen, and Mark Oram, Agent.

By a roll call vote:

Vice Chair Dr. Bevers - Present

Member Ms. Dreyfus – Present

Member Ms. Hoek – Present

Member Dr. Hunnewell – Present

Chair Ms. Beardsley – Present

This VIRTUAL meeting came to order at 7:06 PM via Zoom. It was noted that all votes shall be taken via roll call vote.

1. The Chair noted the members present and reviewed the agenda, noting the following items not anticipated by the Chair 48-hours in advance of the meeting, requesting that they be added to the agenda:  
(1) Jag Bakery – 2023 Residential Kitchen #F23-49 – for approval

A motion was made to amend the agenda as stated, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed, and the agenda was amended.

**APPROVED 5-0**

2. **Jag Bakery – 2023 Residential Kitchen #F23-49** – It was noted that the level of sodium in the water was reported as 55-mg/L. The Administrator reported that the Food Inspector has recommended approval of this residential kitchen, located at 87 Harrington Ridge Road, conditional to a sodium posting, the Food Inspector’s satisfactory inspection, and compliance with all applicable codes. Such a motion was made and seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the permit was approved with conditions. **APPROVED 5-0 with conditions**

3. **State Action for Public Health Excellence (SAPHE) Program – Memorandum of Understanding for the establishment and maintenance of a shared grant-funded cross jurisdictional shared service public health initiative** (see Minutes of 5/17/23, 3/1/23, 2/15/23, 2/1/23-#13, 1/18/23-#14, and 12/21/22-#10) – The Chair reviewed that this MOU had previously been endorsed by the Select Board and signed by the Town Administrator. The Chair has now also signed. A motion was made to ratify the Chair’s previous approval of the MOU and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the previous approval was ratified. **AGREED 5-0**

4. **State Action for Public Health Excellence (SAPHE) Program – “Relavent Systems Inc” – Software-as-a-Service Agreement** – The Chair reviewed that this agreement pertains to software that will be provided to the Food Inspector for use during his food establishment inspections. Mr. Curran has already been using this software in other municipalities. The state is attempting to ensure the inspection reports are consistent among all cities and towns. A motion was made to ratify the Chair’s previous approval of this agreement, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the previous approval was ratified. **AGREED 5-0**

5. **Farm Road Homes 40B** – The Chair noted that the ZBA Public Hearing for this project opens on Tuesday, August 1, 2023.

6. **Minutes** – The Minutes of 7/12/23 have been reviewed. Dr. Bevers stated that he found one minor typo. A motion was made to approve the Minutes as corrected, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the Minutes were approved as amended. **APPROVED 5-0 as amended**

7. **Regulation III, Section 13.0 – Earth Removal Standards** – Ms. Beardsley noted that questions have come up around this regulation, and she wanted to review it in light of recent projects. She stated that this regulation, which was adopted prior to her time on the Board, was prompted by a development project in the past where a lot of naturally deposited soil was removed. Ms. Beardsley stated that it is fairly common for municipalities across the country to look at this because soils provide filtering for both rainwater and stormwater. Soils also provide depth to groundwater, so if soils are stripped away, you might not have enough soil or good soil for a septic system. She stated this regulation also pertains to removal of soil (earth) from the site. She stated that the goal is to *not* have it removed from the site. Dr. Bevers stated that the intent of the regulation is to regulate the stripping of top soil and removing it entirely from a property, as opposed to regrading or moving it around the site.

Dr. Bevers noted that another question was what does “earth” consist of, and Ms. Beardsley felt that is something the Board might want to discuss further, noting that the Board has not seen large amounts of bedrock removal. Dr. Bevers stated that if it is fine, or smaller particles, the Board *does* want that removed from a site, but Ms. Beardsley responded that the current regulations do not specify that. The current regulation specifies that if someone is removing more than 350-cubic-yards of material from a site, it triggers all of the noted requirements and triggers the need for an EHIR.

Dr. Hunnewell asked the Chair if she thought the Board should be following state regulations as far as a definition goes, and Ms. Beardsley responded that she would start with the state or federal government definition, but she stated that she could not find any. Ms. Hoek felt the regulation was incredibly vague, and asked how do you discern that health and safety concerns are addressed. Dr. Hunnewell asked if anyone on the Board knows if the state regulation that just passed for very large projects addresses any of these issues in their environmental health impact reporting, since perhaps that could be used as a guideline. She clarified that she is referencing the bill that just went into effect a year ago. Ms. Beardsley responded that the bill Dr. Hunnewell is talking about has been in effect since the 1970’s or 1980’s, but it is periodically updated. They added environmental justice provisions a year ago. Noting that she did not participate in the writing of this local regulation, Ms. Beardsley stated that she is guessing that the Board at the time wanted to have health and safety issues addressed, to prevent cave-ins of walls in deep pits.

Dr. Bevers stated that the Board may want to address this in the future, and he suggested putting it on a “to-do list” for discussion after the current round of regulation changes are completed.

8. **81 Brush Hill Road, Rory McGrath – VARIANCE HEARING – Septic Replacement #23-29** – Ms. McGrath was present. The Administrator reviewed the status of the abutter notification for this Hearing, noting that it was incomplete and insufficient, and recommended that tonight’s hearing not go forward, and a new Hearing date and time be scheduled. Ms. Beardsley stated that the MassDEP takes notification to abutters seriously, and has advised in the past that we should absolutely not deviate from the notification process. Ms. McGrath stated that they were going on vacation and that she had requested and paid for a certified abutter list from the town, but had not yet received it. To get the ball rolling she sent out certified mail letters to as many of the abutters as she could think of. She stated that she understands if she didn’t meet the regulations and will have to wait until the next meeting.

The Administrator advised that a letter scheduling the new Hearing date will be sent to her and to her designer, Eric Dickinson, R.S., of CIVILized Solutions, tomorrow.

[The Board recessed briefly at 7:40 PM and reconvened at 7:48 PM.]

9. **26 Farm Road, Keith Lewis – VARIANCE HEARING – Septic Replacement #23-36** – Keith Lewis was present with his engineer, Robert Truax, P.E. of GLM Engineering. Abutter Sarah Tipton was

also present. The Administrator reported that the certified mail return receipts (green cards) and a copy of the abutter notification letter had been received, and all was in order. The Hearing was opened.

Mr. Truax reviewed the plan, stating that it was a difficult site, with a lot of ledge outcropping, as well as the onsite and abutting well locations. A 3-bedroom Eljen Geotextile Sand Filter system is proposed, with no increase in design flow, although an addition is planned. The proposed house plans were reviewed, and it was determined that there are 5-rooms on the 1st floor, and 3-rooms (all bedrooms) on the 2<sup>nd</sup> floor. This room count and bedroom count meets the requirements. Mr. Truax stated that the basement is unfinished and is very dark. Mr. Lewis confirmed that the basement is unfinished, and the Agent requested that he confirm that in writing when he applies for the building permit. The requested variances were reviewed:

(1) Section 8.0(1) – to allow the proposed soil absorption system to be installed 2-feet above maximum high groundwater rather than the required 5-feet, with the use of an Eljen GSF system, per MassDEP’s “Remedial Use Approval”, last revised 3/30/22. It was noted that no increase in design flow is allowed. A motion was made to approve this variance as requested, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the variance was approved.

**APPROVED 5-0**

(2) Section 8.0(2) – to allow the proposed soil absorption system to be installed in an area with less than 5-feet of natural grade above seasonal high groundwater, where groundwater is less than 5-feet below natural grade, and with less than a 6-foot vertical separation from bedrock, ledge, or refusal. A motion was made to approve this variance as requested, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the variance was approved.

**APPROVED 5-0**

(3) Section 10.1(A) – to allow the proposed soil absorption system to be installed 75-feet from the existing onsite uphill well rather than the required 125-feet. A motion was made to approve this variance as requested and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the variance was approved.

**APPROVED 5-0**

(4) Title 5 Local Upgrade, 310 CMR 15.405(1)(g) – to allow the proposed soil absorption system to be installed 75-feet from the existing onsite uphill well rather than the required 100-feet. A motion was made to approve this local upgrade as requested, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the local upgrade was approved.

**APPROVED 5-0**

The Hearing was closed.

The Agent stated that the engineer did a good job locating the replacement system around the onsite ledge, but he noted that they may still find ledge at the septic tank. If found, the Agent stated that the ledge at that location can be removed as long as it is less than 10-cubic-yards. With that said, he recommended approval of the plan as presented, conditional to the (1) garbage grinder prohibition deed recording, and (2) the DEP Notice of Alternative System deed recording. Such a motion was made and seconded. Ms. Tipton asked what happens if a problem is discovered on the site as they go forward. The Agent responded that if any change to the site conditions is found during construction, he is notified by the septic system installer and/or the design engineer. If any change to the plan is necessary, it gets reverted back to the Board for review. He noted, however, that the testing conducted on this site was thorough. The only area *not* tested was in the septic tank area, but that can be rectified through ledge removal as long as it is less than 10-cubic-yards (as not permit is required for that amount). Dr. Bevers called for a vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the plan was approved with conditions. **APPROVED 5-0 with conditions**

10. **8/23/2023 Agenda Items** – The Administrator reviewed the next meeting agenda to date. Select Board member Jeff Waldron stated that he hopes to get Board of Health input on the *Farm Road Homes 40B* by mid-August, prior to the next meeting, so the Select Board can respond by the due date at the end of August. Ms. Beardsley suggested that 2 Board members work on the comment letter, which can then be sent by mid-August and ratified at the 8/23/2023 meeting, and it was agreed.

11. **PUBLIC HEARING Continuation – Board of Health Regulations Changes** (see Minutes of 6/21/23, 6/7/23, 5/17/23, 5/3/23, 3/29/23, 3/15/23, 3/1/23, 2/15/23-#11 and #14, 1/4/23-#6 and #8, 12/7/22, 11/16/22, 11/2/22, 10/5/22, 9/21/22, 9/7/22, 7/20/22, 6/1/22, 5/18/22, and 4/6/22) – Dr. Bevers opened the Hearing and suggested, due to the Appeal Hearing to be discussed next, that the Board immediately continue the Hearing again so the Board can have adequate time to review the proposed changes. Following brief discussion, a motion was made to CONTINUE this Public Hearing to 8/23/2023 at 8:10 PM, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the PUBLIC HEARING was continued. **AGREED 5-0 /  
Continued to 8/23/23 at 8:10 PM**

12. **APPEAL HEARING – 39 Wildwood Drive, Eduardo Rosa – Bedrock Disruption permit** (see Minutes of 7/12/23, 6/21/23, and 6/7/23) – Damon Seligson, Esq. was present with his client Ratna Narayanan (petitioner), as was Arthur White, Esq. and his client Eduardo Rosa (property owner). Many abutters and residents were also present.

The Appeal Hearing was opened at 8:20 PM. Dr. Bevers stated that later tonight the Board will discuss the proposed septic system and well plan, but he noted that this Hearing is limited to the bedrock disruption permit. The Vice-Chair stated that the Board did receive an appropriate petition under the Board of Health Regulations in the appropriate timeframe for an Appeal. Subsequently, the Board received a

number of additional materials supporting the Appeal, some of which were received today. He stated that, while he has reviewed the initial appeal request, he has not been able to review some of the subsequent information. Dr. Bevers noted that the Board has received a request from the appellant to continue this Hearing to August 23, 2023 to allow for the scheduling of the consultants, and Mr. Seligson agreed. Ms. Dreyfus expressed concern about the implication for the property owner if the Hearing is continued. Dr. Bevers responded that the regulations are silent about that, but he felt the owner could proceed at his own risk, although he felt doing so would probably not be in his best interest given the outstanding appeal. Ms. Beardsley agreed.

In terms of any additional information to be submitted for the Appeal, Ms. Beardsley stated that she would like to see it submitted in early August in order to ensure the Board has adequate time to review it, noting it is a complicated topic. Dr. Bevers agreed, stating that, in fairness to everyone, the Board wants to give the appellant time to ensure they have all necessary documents, give the Board adequate time to appropriately review the material, but “continuing to continue” the Hearing also doesn’t feel fair to the property owner.

Dr. Bevers asked Mr. Seligson if he could get the remaining documents to the Board by August 8<sup>th</sup>, which would give the Board 2 full weeks to review, and Mr. Seligson responded affirmatively, saying that is the intention, noting that this has been a very rushed effort to get something to the Board to show there is new evidence without it being a “trial by ambush”. Mr. Seligson stated that was the reason for the request for a continuance – to ensure the Board, and also Mr. Rosa and his representative, have the information so it is a fruitful exercise and they can educate as to what the concerns are in time. Ms. Dreyfus requested confirmation that in the situation of a continuance, the applicant came move forward at their own risk, and Dr. Bevers confirmed, noting that the Board’s appeal process does not include a stay of the permit.

Mr. White, representing Mr. Rosa, stated that he would like to move forward with the Appeal tonight, and he would also like to attempt to convince the Board that this Appeal should not even be heard. He stated that the Board’s regulations require that the filing of an appeal should be within 14-days, and he stated that it was received on July 5<sup>th</sup>, which is 14-days from the date the permit was granted (after 2 nights of very detailed public hearings. Mr. White stated that the Administrator provided him with a copy of the approved Minutes of 6/21/23. He stated that their interpretation is that when the Appeal is filed within the 14-day period, all conditions (1, 2, or 3) for an Appeal as noted in the regulations have to be presented – otherwise the Appeal should not be heard. He noted that it is a tight 14-day period, but the purpose of that is to promptly address a permit that was issued after very detailed public hearings. He stated that those conditions have not been met, and this appeal puts the property owner in a very precarious position. He noted that Mr. Rosa met with some of the neighbors last week at their request to explain what is going on with the property, and he stated that delaying the appeal to give the appellant more time does not make sense. Mr. White stated that he would prefer to have the Appeal go forward tonight – the property owner would like to move forward, and they don’t believe the appellants have met the conditions of an Appeal. However, Mr. White stated that he could not fault the Board if they choose to continue.

Dr. Bevers noted that the first step would be to review the materials submitted by the appellant and determine if the conditions for an Appeal have been met. He stated that the Board did receive a petition within the required 14-days, and he noted that the Board can determine the time to receive additional material. Ms. Dreyfus asked about the finite point that the Hearing could be continued, and Dr. Bevers reviewed the process followed for past appeals, noting that the first step will be for the Board to determine if appropriate conditions have been met for an Appeal, and he felt that part of that requires the Board’s ability to review the information sent in. If it is determined that it has, then the Board will go into details in terms of they way things are submitted. The Board does require the petition for an Appeal be filed within 14-days, but does not specifically require that all supporting material be received within 14-days, and he acknowledged that this is a short timeline. Dr. Bevers reviewed that he feels they’ve met the criteria for submitting a petition within 14-days, and now the Board can determine needing additional time to review

materials, and then at that point, the Board can decide whether they've received appropriate materials to justify an appeal. In response to a question from Ms. Dreyfus, Dr. Bevers felt that if the Board sets a deadline for receipt of additional material, if enough material isn't provided by that date to support opening the Appeal, then that would be the end of it.

Ms. Beardsley stated that she would be open to reviewing the materials received thus far, if the rest of the Board is ready to review it. Ms. Dreyfus responded that if that material is reviewed, it would be looking to see if any of the 3 conditions are satisfied, and Ms. Hoek noted that if more materials are expected, that could certainly weigh into that aspect of it. Dr. Bevers stated that if the Board is going to continue, the Board should address everything at that point rather than doing it piecemeal. He stated that he has had only a brief time to review the materials already submitted, and he stated that he needs more time to review.

Dr. Hunnewell stated that because there are potentially public health considerations, and most of the research that is available in the literature is limited to manganese arising in nature, she believes it is appropriate for the Board, with the jurisdiction to regulation public health considerations, obtain information from experts, since this is not a typical situation. As we don't have all the information, she stated that she believes it is appropriate to continue the Hearing. Dr. Bevers reviewed that Dr. Hunnewell feels we don't have all the information, we haven't had time to review it, so the hearing should be continued. Ms. Dreyfus stated that she is concerned that the applicant has followed all of the Board's regulations, and she would like him to have closure and be able to move forward, and she worried about if this is going to become extended to a point where it is not going to be a standard that will be consistent. Dr. Bevers felt some of the trickiness here is the choice of a date, noting tonight's date for the Hearing was somewhat arbitrary and made at the last meeting with the hope of moving it along. He felt it comes down to whether the regulation requires that all of the information be supplied with the appeal notification, or whether the Board just has the information in time to review it prior to the hearing. Since the regulation is silent on that, Dr. Bevers did not believe it would be appropriate to impose additional conditions that are not required by the regulation. He was in favor of setting a deadline now. Ms. Beardsley again stated that she would be willing to review the information already provided, but Dr. Bevers felt it would be difficult to make a determination without seeing everything together. Dr. Hunnewell stated that, because the Board's responsibility is public health, it is important that public health be considered, and she felt that requires the information that the Board has been told is forthcoming.

Dr. Bevers made a motion that the Board require that all information from either party be submitted by Wednesday, August 8<sup>th</sup>. Mr. White stated that the homeowner needs to have an opportunity to adequately review whatever documentation is being submitted. He offered to send a formal letter of representation to the Board, and copy Mr. Seligson so Mr. Seligson can copy Mr. White on whatever is filed with the Board. However, Mr. White stated that he should have an opportunity to review that information and file a rebuttal or professional opinion that may be contrary or may provide additional information. He noted that the same information that was submitted by the appellant today was forwarded to him by the Administrator, and none of their professionals, engineers, or builders had any opportunity to adequately review and respond. Mr. White stated that he thinks it makes sense to not segment it and do anything tonight, and he requested that the property owner be given a 7-day period to provide any professional response to any documentation that is filed on behalf of the appellant. Dr. Bevers asked Mr. Seligson if he had any objections to this request, and Mr. Seligson responded that is how appeals typically work in courts – by a certain date you file your documentation and evidence in support of your appeal, and the other side has an opportunity to respond to that. Then, the Board that is arbitrating or adjudicating the appeal, the Board of Health in this instance, has everything by the time of the hearing. He stated that they have no intention of delaying, and that he was in agreement.

Dr. Bevers asked how the Board felt about the suggested process, and Ms. Hoek responded that she felt it was reasonable. Ms. Dreyfus stated that having the appellant and the applicant in agreement makes

her even more convinced that it is reasonable. Ms. Beardsley asked Mr. White if 7-days would be enough time, and he responded that it would depend on the amount of documentation provided. To be safe, he asked to be provided a 10-day response period. If the deadline was August 8<sup>th</sup> for the appellant to submit their materials, Mr. White requested to have until August 18<sup>th</sup> to provide responsive documents, noting the Board would then have until August 23<sup>rd</sup> (the meeting date) to review.

Dr. Bevers asked the Board members if having all information from the appellant by August 8<sup>th</sup>, and all information from the property owner by August 18<sup>th</sup> would give them enough time to review the information prior to the meeting on August 23<sup>rd</sup>. Ms. Dreyfus suggested having all information from the appellants by August 5<sup>th</sup>, but Mr. Seligson interjected that he felt that was too aggressive, and he suggested August 7<sup>th</sup>. That would provide Mr. White until August 17<sup>th</sup> to submit responding documents. Dr. Bevers asked the Board members how they felt about this revised schedule for submissions. Ms. Hoek noted that she will be away at that time, stating that she will be unable to attend the next meeting. Dr. Hunnewell stated that the timeline worked for her. Ms. Beardsley stated that any rebuttals would then be presented at the Hearing, as opposed to before, and Dr. Bevers agreed.

Dr. Bevers asked if Town Counsel was present, and Heather White, from Town Counsel's office, stated that she was. She stated that the Board has the authority to establish reasonable restrictions on the numbers of submission and also the timing of those. What is currently under consideration would be acceptable, and she stated that the Board could cut off further submissions at that point. Alternatively, she stated that the Board also has the option to authorize the Chair the discretion to decide whether further submissions should be allowed – or that could be left to a further motion. If the submissions reveal themselves to require further response, the Board could amend this schedule at that time.

Dr. Hunnewell stated that the Board has the responsibility of representing all parties, so they represent the abutters and other people that could be affected by this. So, she stated it makes sense for the Board to have as much information as possible. Dr. Hunnewell felt it is important that the Board remember that.

Dr. Bevers made a motion that this Appeal Hearing be continued to the August 23, 2023 Board of Health meeting, and that any additional materials being provided by the appellants be submitted by the end of business on Monday, August 7, 2023, and then the property owner be given the opportunity to respond to those with any additional documents submitted by the end of business on Thursday, August 17, 2023. Any further rebuttal, will be presented verbally at the meeting on August 23, 2023. The motion was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the Hearing was continued, with conditions. **AGREED 5-0**

The Administrator asked about the *time* for the continuance, and after brief discussion the Vice-Chair advised that the continuance would begin at 8:30 PM. **Appeal Hearing Continued to 8/23/23 at 8:30 PM**

13. **39 Wildwood Drive, Eduardo & Michele Rosa – New Septic/New Well #23-14/15** (see #12 of these Minutes) – Desheng Wang, P.E., Ph.D., Francis Alves, E.I.T. of Creative Land & Water Engineering were present, as was owner Eduardo Rosa.

The Agent noted that at a previous meeting (see Minutes of 6/21/23-#8) the Board required the applicant to submit a revised plan including a profile of the house versus the ledge, and he stated that has been received and is shown on sheet 3 of 3. The Agent noted that the assumed (estimated) groundwater is also shown. He stated that he previously emailed Dr. Wang noting that the Board, per Regulation I, Section 8.0(4), considers groundwater flowing at the point of where it meets the ledge. He noted that on



the plan, ledge is higher than the house foundation, which is why ledge removal is required. However, if the Board considers that groundwater, he stated that it is much higher than what was the estimated seasonal high groundwater. So, if the ledge is removed, he asked how they will prevent the groundwater from being at least 2-feet from the base of the house foundation. The Agent stated that the estimated seasonal high groundwater, as shown on the plan, is *not* accurate in his professional view, as groundwater runs the course of the ledge. Ms. Beardsley commented that, because bedrock is refusal of sorts, except for the fractures, and she stated that one assumption is that groundwater would sit on top of the bedrock and ledge, and she stated that the reason the Board is concerned about this – and requires a 2-foot separation from the bottom of the basement floor – is because moisture in a basement or a portion of the house could lead to health issues (such as mold). If you are cutting in to ledge, there could be shedding of water along this surface, and even though the ledge has been removed, this portion of the house could be pushing water inside. She noted that there are ways to prevent that moisture at the foundation. Precedent from a previous similar situation was noted [21 *Green Lane*, see Minutes of 6/20/18, 5/16/18, 5/3/18, 4/11/18, 3/22/18, 6/21/17, and 4/5/17-#12]. She stated a professional should evaluate where the water might be, how much there might be, and what kind of protection might be afforded to the foundation and the dwelling, and the location where the water might be diverted. She stated that someone needs to at least do the evaluation and planning. Following that, the Board would require a deed recording that alerts any future owner that this is an issue, and that if they anticipate digging near the foundation, they could encounter a curtain drain or some other kind of drainage system that is important to remain in place. The Agent agreed and asked that the applicant's engineer resubmit with the professional information just noted – the amount of water that might be expected to flow toward the foundation, how it is exiting, and the type of unit to be built to divert that groundwater. Ms. Beardsley stated that would not be reviewed for performance criteria, but the Board wants that planning done for the protection of the homeowner. Mr. Alves stated that they are proposing a perimeter drain encompassing the entire foundation. He referred to the profile cross-section, stating that the blue line was the perimeter drain they are proposing. Mr. Alves stated that they are proposing to hammer out 24-inches of ledge, build the cellar floor, and daylight that perimeter drain (which will go around the entire building. Where they have elevation, they are proposing to daylight it. Mr. Alves stated that they can certainly calculate how much water they expect to intercept.

Dr. Bevers stated that we might be closer to acceptance of this plan than originally thought, but we do still need additional information, as the Agent has stipulated. The Agent initially felt a variance hearing would be needed for this, but the Administrator noted that the Board has never before granted a variance for new construction. The Agent stated that he would need to check the previous Minutes for the previous precedent on *Green Lane*. Ms. Beardsley pulled up those Minutes, and it was determined that a deed recording was used due to the difficulty with establishing the groundwater level. She noted that when you are dealing with ledge, and then remove ledge, the Board puts the onus on the agents for the developer to evaluate how to protect the house and what generally to consider, without specifying exactly what method is chosen. Then, a deed recording is required in order to let all future owners know about the system. Following review of the 6/20/2018 Minutes for 21 *Green Lane* (the precedent property), it was confirmed that the additional technical information and evaluation is required, as well as the deed recording, to ensure proper notification to future owners. The estimation of water flow should be added to the perimeter drain information on the foundation profile. Ms. Beardsley stated that a clear description of exactly what the system looks like, including sizing and what it looks like, should be provided. She noted that it would be similar to an as-built, for this additional perimeter drain system associated with the dwelling.

Dr. Hunnewell stated that she would like to add an agenda item to a future meeting – a discussion of whether the use of deed recordings is wise when the homeowners and future homeowners will not know how to assess the fact that all of these issues have the potential to create serious public health risks. She stated that she doesn't know if deed recordings protect public health, and she stated that this Board is a board that is supposed to be responsible for protecting public health. Dr. Hunnewell stated that she feels

deed recordings are a liability risk, and that they do not protect public health. In response to a question from Dr. Bevers whether the agenda item pertained to this specific deed recording for this property, or for deed recordings in general, Dr. Hunnewell stated that it should be about this particular situation at the next meeting, but she would also like to discuss it in general at a future regulation review meeting.

Dr. Wang stated that they did all the testing and monitoring during the high-water time. The proposed house is almost on top of a hill, and there was no water when they were digging. The soil test results show no signs of water, so he stated that most of the water will shed off the hill right away. Noting that you always expect some kind of cracks in the ledge, Dr. Wang explained that is why when they were monitoring the septic leaching field area, they found only one monitor well with a little bit of water in it. There was no water in the monitor well in the house footprint area. Dr. Wang stated that, based on his experience from the past study and the hundreds of houses that are really in the water table these days, there is good water-proofing technology. For this site, Dr. Wang stated that he is proposing a foundation perimeter drain, commenting that a curtain drain isn't necessary because the foundation hole will be excavating down below the footing of the house, the perimeter drain plus the membrane spray water-proofing, he felt there would be no chance this house will be a concern. Dr. Wang stated that sometimes, due to sediment, sometimes there might be surface water intrusion, and that is why they believe the foundation drain should daylight at the downgradient site, which is already 5-feet below the bottom of the house. The engineer stated that he has designed hundreds of houses – some of which are really in the groundwater, but for this ledge removal, which is not the first case he has done, and none of those houses have had any water in them. He stated that he actually has dozens of ongoing mitigation jobs where he is mitigating other people's design errors. Dr. Wang stated that he agrees he can provide some more detailed specifications on this drain system, but he stated that he does not expect much, if any groundwater. He will provide information for the possible surface water intrusion in his design for clarification for the Board's review, stating that both the Board and the design engineer have the same common interest of saving the owner and future owners from having a flooded basement. Dr. Wang stated that he believes he has provided a sound engineering design, but he will provide some clarifications. With regard to surface water, Dr. Wang stated that the final grading will pitch away from the foundation, and will have the foundation perimeter drain at the bottom, so no water will flow towards the house.

Dr. Wang stated that they did go through a stormwater management review process with the Planning Board, and that they have that permit. He noted that considered the surface water management and erosion control process.

Ms. Beardsley reviewed the necessary additions to the plan discussed earlier, and Dr. Wang agreed to add that additional information to ensure everything is consistent with the previous submittal.

14. **Adjournment** – A motion was made to adjourn the meeting, and it was seconded.

By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

This virtual meeting adjourned at 9:28 PM.

Respectfully Submitted,



Ellen J. Hartnett  
Administrator

cc: Town Clerk; and File.

[cc: via email to: Planning Board; Conservation Commission; Board of Assessors; Select Board; Fire Chief; Building Inspector; and Mark Oram, Agent]

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**DOCUMENTS REVIEWED AT THE VIRTUAL 7/19/2023 MEETING**  
**(All items stored in the Board of Health files unless otherwise noted)**

1. **81 Brush Hill Road –**
  - BOH Regulation I, Section 22.0 – Variance Procedures
2. **26 Farm Road –**
  - Septic Replacement plan #23-36, drawn by Robert Truax, P.E., and dated 6/12/23
  - Application for Local Upgrade Approval (Form 9A)
  - Variance request letter dated 6/12/23 from Robert Truax, P.E., GLM Engineering
  - Certified list of abutters from Assessor’s office dated 6/13/23
  - Copy of abutter notification letter dated 6/27/23 from Robert Truax, P.E.
  - Certified mail return receipts (green cards) and/or usps.com printouts from abutter notification letters
  - Local Upgrade Approval (Form 9B)
  - Proposed house plans, received 6/27/23
3. **State Action for Public Health Excellence –**
  - MOU with Charles River Public Health District – signed by Town Administrator and BOH Chair
  - Relevant Software-as-a-Service Agreement – signed by BOH Chair
4. **39 Wildwood Drive –**
  - 7/3/23 Appeal letter from Damon Seligson, Esq., with attachments
  - 7/17/23 letter from Damon Seligson, Esq. requesting continuance of Appeal Hearing
  - BOH Regulation XI – Appeal Procedures
  - 7/18/23 letter from Scott Horsley, Water Resources Consultant
  - 7/19/23 letter from Damon Seligson, Esq. with attached spreadsheet of list of residents in support of the appeal, Scott Horsley’s 7/18/23 letter, and an “electronic submittal” dated 7/19/23 from Brian Moore P.G., L.S.P. to Ratna Narayanan
5. **39 Wildwood Drive –**
  - New Septic / New Well plan #23-14/15, drawn by Creative Land & Water Engineering, last revised 6/22/23
  - Minutes of 6/20/2018 regarding *21 Green Lane* (for precedent)
6. **2023 Residential Kitchen Permit –**
  - Jag Bakery, 87 Harrington Ridge Road - #F23-49
7. **Earth Removal –**
  - BOH Regulation III, Section 13.0, Earth Removal Standards
8. **Minutes –**
  - BOH meeting Minutes of 7/12/23