



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

March 8, 2021

JR DeFreitas
DeFreitas Family Trust
21 Lakeview Avenue
Lynnfield, Massachusetts 01940

**RE: Approval of Title 5 Variance for Setback to a Tributary to a Surface Water Supply
45 Lakeview Avenue, Lynnfield (18 – North Coastal)
MassDEP Transmittal No. X287399**

Dear Mr. DeFreitas:

The existing cesspool serving the residential property located at 45 Lakeview Ave in Lynnfield is located on an abutting property. The cesspool is currently in failure and requires upgrade in accordance the 310 CMR 15.000, Title 5 of the State Environmental Code. Most of the property is located within 100 feet of Pillings Pond. Pillings Pond is a tributary through a diversion to Hawkes Pond. Hawkes Pond is a Class A surface water supply for the City of Lynn.

In accordance with 310 CMR 4.11(5), local approving authorities are not authorized to approved variances that result in the location of septic systems within 100 feet of tributaries to surface water supplies. That authority rests with the Massachusetts Department of Environmental Protection (“MassDEP”).

MassDEP has completed its review of the above referenced application after consultation with MassDEP’s Drinking Water Program. Accompanying the application were the design plans, titled as follows:

Title: Subsurface Sewage Disposal System Upgrade (two sheets)
Location: 45 Lakeview Avenue, Lynnfield
Applicant: JR DeFreitas
Designer: Joseph J. Serwatka, P.E. (Civil) No. 36981
Date (date stamped/signed): September 28, 2020 (October 6, 2020)

The property is limited because of the proximity of Pillings Pond, which abuts the property, and the existing dwelling. In fact, the existing garage is being torn down to accommodate the system upgrade. The septic system upgrade is located as far from Pillings Pond as possible on this lot. The application included email correspondence with the Lynn Water & Sewer

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

Commission (“LWSC”) who were consulted relative to the proximity of the proposed septic system to Pillings Pond. LWSC, upon review of the initial design for this upgrade, required inclusion of extra protective measures around the septic system. The plan currently depicts a block wall with an impervious barrier essentially ringing the entire septic system apart from one small area. If this is not consistent with the requirements from LWSC, then the design should be modified to incorporate measures as deemed appropriate.

Based upon its review of the application, and in accordance with 310 CMR 15.410, MassDEP has determined both of the following:

- a) The applicant has established that enforcement of 310 CMR 15.211(1) [5] would be manifestly unjust, considering all the relevant facts and circumstances of this case: *The upgrade is to service an existing dwelling with no increase in design flow. This home, and other homes in the area, were constructed well before surface water classifications and associated restrictions were placed on the adjacent pond. To deny the applicant the ability to upgrade the existing system would be manifestly unjust.*
- b) The applicant 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 application of 310 CMR 15.211(2). The applicant has established equivalent environmental protection as follows: *The septic system, especially the soil absorption system, is proposed to be located as far from the tributary as site conditions permit. It is an upgrade over the existing failing cesspool located on an adjacent property. The water supplier affected has been contacted and is amenable to the upgrade, provided that protective measures are incorporated into the design. Although a block wall with impervious barrier has been incorporated into the design, MassDEP is imposing a condition requiring that LWSC be consulted again to make sure that this wall and barrier are sufficient.*

This variance determination is an action of MassDEP. If the applicant is aggrieved by this determination, he may request an Adjudicatory Hearing in accordance with 310 CMR 1.00 and M.G.L. C.30A. A request for an Adjudicatory Hearing must be made in writing and postmarked within 30 days of the date of issuance of this determination. Pursuant to 310 CMR 1.01(6), the request must state clearly and concisely the facts that are grounds for the request and the relief sought.

The hearing request, along with a valid check payable to Commonwealth of Massachusetts in the amount of one hundred dollars (\$100.00), must be mailed to:

*Commonwealth of Massachusetts
Department of Environmental Protection
P.O. Box 4062
Boston, MA 02211*

The hearing request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver, as described below. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. MassDEP may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver

must file, together with the hearing request as provided above, an affidavit setting forth the facts in support of the claim of undue financial hardship.

As part of its approval of this system, MassDEP requires that LWSC be consulted again to confirm that the proposed block wall with impervious barrier is a sufficient protective measure. If the LWSC determines it to be insufficient, the applicant shall have the design modified to address any additional requirements of the LWSC.

If you have any questions regarding this matter, please contact me directly at 978-694-3244 or at claire.golden@mass.gov. Please note that MassDEP is currently teleworking because of the COVID-19 pandemic: email is therefore the most effective means of communication with MassDEP staff.

Sincerely,



Claire A. Golden, EEIV
Wastewater Management Program
Bureau of Water Resources

CAG/cag
\\2021\variances\x287399app

ecc: Kristin Esposito McRae, Lynnfield Health Director
Jon Whyman, Whyman Construction
Joseph J. Serwatka, PE
Bruce Bouck, MassDEP/BWR/Boston