



MEETING MINUTES

City of Melrose
City Hall
562 Main Street
Melrose, MA 02176

Committee/Board: Board of Health

Meeting Day/Date/Time: Tuesday, October 3, 2023

Location: City Hall, Cassidy Conference Room

Call to Order: Frank Brincheiro

Time Called: 6:35 PM

Second by: Carol Ann Licitra

In Attendance/Roll Call:

Board Members: Frank Brinchiero, Carol Ann Licitra

Health Department: Regional Senior Environmental Health Specialist Erin Carleo; Administrative Assistant Christy Bolduc; Health Inspector Michael Carlino

Approval of Minutes for August 21, 2023, Meeting:

Frank Brinchiero made a motion to accept the minutes from the August 21, 2023, meeting.

Carol Ann Licitra second the motion

Further Discussion: None

Frank Brincheiro— Yes

Carol Ann Licitra – Yes

Lillian Kelly – Absent

PASSED 2-0-1

Public Comment was opened at 6:36 PM by Frank Brinchiero

Carol Ann Licitra made a motion to table Public Comment at 6:36 PM

Frank Brincheiro second the motion

Further Discussion: None

No public comment was made.

Vote to table Public Comment:

Frank Brincheiro— Yes

Carol Ann Licitra – Yes

Lillian Kelly – Absent

PASSED 2-0-1

Frank Brincheiro opened discussion for adoption of the 2022 FDA Food Code at 6:36 PM
Health Specialist Erin Carleo and Health Inspector Michael Carlino Made brief presentation of the 2022 FDA Food Code.

Carol Ann Licitra queried on some of the benefits and differences between existing Food Code.
Erin Carleo responded.

Carol Ann Licitra made a motion to approve the 2022 FDA Food Code at 6:36 PM

Frank Brincheiro second the motion

Further Discussion: None

No public comment was made.

Vote to table Public Comment:

Frank Brincheiro– Yes

Carol Ann Licitra – Yes

Lillian Kelly – Absent

PASSED 2-0-1

Public Hearing- 39 Poplar St.

Frank Brincheiro opened discussion for public hearing for the request of the noise variance at 39 Poplar St. and set rules for proceedings.

Paul Flaherty at 40 Poplar made comment would like to know recordings of the decibel level.

Erin Carleo made Michael Carlino was on site and used a calibrated decibel meter to measure the noise level. Michael Carlino made note that the decibel reading was 80-81DBs from the first public way closest to Mr. Flaherty's front steps.

Paul Flaherty made comment of his experience with the drilling noted it was "the loudest noise I have ever come across."

Carol Flaherty at 40 Poplar commented that she is retired and is exposed to the noise on a consist basis.

Frank Brincheiro inquired about the nature of the noise.

Mr. Flaherty continued to describe the demolition of the rocks being split.

Frank Brincheiro inquired about the timing of the work being done.

Mr. and Ms. Flaherty responded that the times the workers would arrive early mornings "approximately" 10 times.

Noted she called the building inspector who she claimed said the plans were a non-issue and is exposed to the noise and unable to enjoy her property. Noise continues in evenings and weekends.

Mr. Flaherty noted the types of drilling going on and the dust is not contained.

Michael Carlino and Erin Carleo made note of the plans submitted to the building department by Michael Fantasia.

Elena Clouser 31 Poplar addressed the noise and claimed to live 10 ft from where the work was being done.

Ms. Clouser read her statement into the record.

Frank Brincheiro invited Robert Bell to make his presentation as a representative of his client Michael Fantasia.

Robert Bell noted that the work doesn't need a permit due to slope protection ordinance per building department. Note the landscape of Mr. Fantasia's property being located on a ledge. And described the nature of what work was being done to Mr. Fantasia's driveway. Mr. Bell claimed that the work being done is necessary and the method of work being done is much less harmless to the earth than traditional blasting or drilling. Noted the Melrose noise ordinance (Chapter 164) "This chapter is intended to prohibit preventable and unnecessary noise and is not intended, nor shall it be construed, to regulate the usual and customary noise incidental to urban life."

Mr. Bell reiterates he is there to request a variance and that the chapter is of the noise variance is necessary to the removal of that rock. And there There's about 10% of the work left to do and the estimate from is rock people is they've got, you know, one to two days left of work.

Mr. Bell claimed to look for a formal application for a variance; however, there is no such thing.

Erin Carleo states that she spoke with Melrose Mark Romley, our legal counsel regarding the noise ordinance. And there is no mechanism for a variance of the noise ordinance.

The board is tasked with deciding if a violation occurred by interpreting the definition of a noise violation, which would be is this usual and customary noise incidental to urban life?

Mr. Bell rebuttals with the fact that those aren't the only criterium and the work is in fact necessary.

Ms. Flaherty stated, "This is not normal urban noise. And the second point and it's also been going on for a very long time, probably that pool could have been built 15 times over in the length of time that this work has been going on. And the other point I want to make is that it isn't strictly necessary.

Mr. Flaherty stated I found in the CDC website a statement that that decibel levels between 80 and 85 decibel level damaged the hearing possible after two hours that's on that's from the national superficial safety and health part of the of the of the of the CDC and I can tell you that it was over 80 it was 8182 on my porch and that was and we've been subjected to that for more than two hours in total for all of this work. Last week is that going to be measured again in the future or is just it once and done and he's on his own and he could do anything from there on

and who's going to check who's going to and you know who's going to check to see that you need to stay focused on the noise issue but who's going to who's going to check the noise.

Frank Brinchiero asks that Mr. Flaherty, and everyone stay on topic.

Amy Copeland-Potamis speaks on the record in support of her friend Elena Clouser stating. She is at her Ms. Clouser property frequently and that the work is not soothing.'

Ms. Clouser laments "some of the information is also not correct Mr. Bell in the sense that when he first started the work, he was given permission to widen the driveway 3 feet."

Light banter between Ms. Clouser and Mr. Bell occurs.

Ms. Clouser stated she would like a solid date of when the work would be completed, a decimal meter that reports the readings so that we have access to that to know what distal level is acceptable and what for what length of time, like how long, like they're saying like 2 hours, an hour, and 10 minutes. But I'm making sure that that's what's staying in place I guess is what I'm asking. And then specified hours of work for a part time, hours of work, so that we know and the consistent schedule. Because a lot of the work sometimes is done after hours, or you know there are different times.

Erin Carleo intervened asking "does anyone ever call the police about this because so the noise ordinance can be enforced by the police, the building department and the Board of Health?"

Ms. Clouser stated she had not.

Frank Brinchiero clarifies the goal of the meeting and what viable options there are.

Erin Carleo claimed the law has advised not to grant a variance there is no process.

Mr. Brinchiero and Ms. Licitra agree they can't super cede Melrose' Legal team.

Ms. Licitra asked me to put things in terms. of public health and asked if in terms. of if you have any other information like again, I think it's very, do we all agree on what customary noise incidental to Urban Life and how are we identifying or defining what's necessary and required,

you know, when you buy a property, you know, I, I think these are the terms. that we're kind of not really paying attention to in adoption.

Mr. Bell responded and stated the rock must be removed as necessary.

Mr. Brinchiero follows up with that the argument of customary noise, I don't think that you know, drilling and jackhammering kind of noise has been described or the length has been described is usually customary. So, you know, these are the measurements that Michael gave us and from the, you know, specifics of the density levels in the noise ordinance, yeah, it is, it is excessive. And if we can't really do anything like a variance, I think we're kind of left with the question of how we are going to reach a compromise between neighbors who ultimately, we're all neighbors and hopefully going to continue to be.

With the following questions:

Like you said, there's only one or two days, 10% more of the work to be done.

But I guess that makes me wonder why did the 90% of the work then take so long?

Mr. Fantasia responded "This is it's very, very hard to get the workers to show up and that is the is the actual core of this issue. They won't even tell me when they're going to show up. They send me a text message at 7 AM."

Mr. Brinchiero stated that there's been a few folks that have said that they are not being notified.

Mr. Fantasia responded "They never asked me to be notified. If they had, I would have. I have been notifying another neighbor that nicely asked me, hey, could you give me a heads up? Happy to do that. If that's something you need, that's very reasonable.

Other people did ask for that. So, I did that. But I only get notice very, very late because this is basically a tiny job for them. They kind of don't care about me. It is just what it is. But I, you know, started the project so that we could, you know, use our property lawfully and we are, you know, really this this close to being done and you know, getting these folks to show up.

I don't know if anyone here has done construction on their property, lately, but it is bad and it's expensive. This project because of delays that I'm now learning, I didn't know we're largely driven by this group in this room is over \$20,000 over budget. That's my life that I must work to pay for that and not legally stopped in my opinion, but it is what it is. At some point people can't afford to live in this town and improve their properties and that's just sad and wasteful and unfortunate. We don't want to make it so expensive that no one can live here.

Mr. Brinchiero keeps the conversation to the topic and asks if there are only 2 more days.

Mr. Fantasia responded "So, I wish I could say I knew for sure. To me, it looks like a very small amount left to go relative to where they started. But I can't, I can't promise you. And I would hate to be sitting here and say it's two days and then it's 2. I don't think that that's reasonable or fair given the level of investment I've made in effectively building a nice rock wall and extending my driveway through like it just feels unfair.

Ms. Licitra added, "it's just discomforted in some way, whether it's financial, whether it's health, whether it's, you know, I think there's an in house that matters.

Mrs. Flaherty asked if the rock dust could be brought up and Ms. Carleo added that is a separate issue.

Ms. Licitra stated, "This is a balance situation and folks need some sort of ability to get relief or to get some sort of you know something that addresses that that concern of theirs and not just I need to get the work done, but which I appreciate that as well."

Mr. fantasia responded "You know our alternatives as we understand them is to have a jackhammer. So we don't like the jackhammer because it's percussive in its nature. So but if you have a construction background, you may have run across this before, but a jackhammer causes force to go through the rock and it fractures it. A drill, which is what we're doing, it just creates a hole and then imagine the difference from like a structural standpoint. You know, we want the rock to be structural as sound.

If you're a long term owner of a property, you want to preserve it the best you can.

The method I'm using is the most expensive and it's the least destructive.

I think we're in agreement that if some noise has to be made that is the better of the three options, that's just building a little bit out.

But again, we don't have a better idea.

That's the challenge."

Mr. Brinchiero claims. compromise is the best method of action.

Ms. Flaherty stated "I think that's probably the best that we can hope for right now and you know some idea that I when it's going to stop. You know we keep looking at the driveway and it's like a little tiny bit wider and we have no idea how wide it is supposed to go when is it going to stop."

Mr. Bell "Well, that's none of your business."

*Mr. Brinchiero, Ms. Licitra diffuse the situation.

Mr. Flaherty "As far as I know it is cumulative, therefore you know being exposed to 85 decibel level noise for two hours is bad.

That has nothing to do with what the configuration of the driveway.

Well because if he's going to have you know he's going to do it again and again and again then I'm going to be I'm going to be you know exposed to two not two hours or 4 hours. 8 hours 10, 12.

How many hours of 80, 85 decibel level we must make sure.

Mr. Brinchiero stated " legally we can't do a variance or do anything that would be legally binding. You know, I think me personally, I would just say, you know, you guys are neighbors. You're going to continue to be neighbors. And I think you have to find a way to say right, you know, we'll limit it to this much and we'll tell you when it's going to be.

And on that day, if it's unbearable, then you can plan to, you know do something and we'll find some way can really rate the noise, whether it's blanket ones for everyone."

Mr. Bell "So advance notice is probably the 1st place to start."

Mr. Brincheiro "We can't really decide anything that is legally binding.

We can only make a recommendation as again, friends and neighbors.

And I think, again, it is totally reasonable to want some advance notice. And I understand the position you're in. I also think it's reasonable to kind of to come, you know, come up with a timeline as well. And I know again maybe you can't do that, but that's a very reasonable request." Ms. Licitra "Again, I'm not able to tell you to do that, but if it were my neighbor, I'd want to make sure my neighbors are comfortable and make sure you know the other neighbors getting what they need. Guess it's on all of you to really talk and figure it out and say OK I have

a commitment that they're going to come in at least two days and they're going to get it done or as close as they can get it done."

Mr. Brinchiero "And if you guys have made plans to be somewhere else or do something so that work can get done everyone will be.

Ms. Clouser "I mean I'm going to try to I have to work from home."

Mr. Brincheiro "Yeah, no, I don't think we're not going to be able to fix that."

You know, just logistical, but I think it it's a matter of at this point, you know you guys coming up with whatever compromise works, realizing that doing it for shorter and doing these increments of time, of course it's going to last longer. But I don't know that we again as a board can recommend anything beyond that. And again, it's I guess just a recommendation, not a legally binding thing."

Ms. Flaherty "So you have, you have no ability to enforce the noise."

Mr. Flaherty "He's saying he's saying that all he could do is shut down and if they if they go their way and tomorrow, they show up and they start subjecting us to the 85 decibel boys again. We need to call you again and have you come out to measure it again and shut them down as they as you did before each time, they do it That's what you sound like to me that you're saying."

Ms. Clouser "We are willing to work with Michael and decide on the days that he's going to do it and just get it done and if he can't get and if he can't get it done in two or three days then we must have another conversation because that's not going to work for us. I know you're not looking at me, Michael, but that's not going to, you know, I didn't even call anybody for 2 1/2 months and they must have come a dozen times."

I know you say 8 times.

I believe it was more.

I'll have to go back, and I have the dates, but I'm not going to work, you know, it's just like, I understand your position and my position, and the noise is outrageous.

But I also understand that if we keep delaying it, it's going to be or ever.

But I also don't know if he needs to do more.

There's a lot done already."

Mr. Flaherty "I don't understand why he must be enthralled to these guys. He's paying them thousands and thousands of dollars. He can't say, you know, I'm going to pay you, but you've got to show up on this day, you know, or whatever and do it for this length of time, cause I'm paying, I mean who's in charge or who's paying the money.

Mr. Brinchiero "So to answer your question, that we can't enforce the noise ordinance?

Yes, we can.

And clearly there's noise that was too loud.

That's been established and you've been told to stop.

But again, we're just trying to say as people we hope that you guys as neighbors we can work something out because I think that's what we left with right now.

We can't mandate anything more."

Ms. Clouser

"I respect all of you and I appreciate all and personally appreciate everything.

You're welcome.

It's not an easy job.

But it's just and I know we can't really go any further.

It's just that this has been difficult.

Like I said, I didn't call for two months, you know, anybody, because I was like I want him to get the work done, but this never seems. like it's done."

Mr. Brinchiero "Again I agree that it would be great to have a finish line and end point and figure out a good way then a way to get there that everyone feels like there's a compromise side.

Mr. Fantasia "At this point the wall builders can't even come before winter. It's my like if I called the wall guys, they're going to say you missed the season. So I mean we can get rid of the rock, but like I'm not going to be able to finish the wall because we can't pour concrete in the frozen ground."

Ms. Flaherty "Well, you're not going to get a curb cut either at the driveway, so you're going to, you're still not going to be able to back into that driveway because there's not going to be any curb cut. I'm just saying, you know, it's going to be delayed."

Ms. Licitra My final comment would just be as you've said, you know neighborly in good thing. You know, if I think a gesture of that would go a long way, you know, like what can you offer as far as notification or not even timeline but number of days, you know, whatever it is that might at least alleviate some of the stress of not knowing of you know, being sort of inundated at the last moment. And I get that you're not particularly notified in advance but you know that's that might be something that you can pursue in terms. of from the course of dealings."

Mr. Fantasia " I can say that they've never shown up without calling me at 7:00 in the morning if this group would like to be notified I'm happy to do that. As I previously stated, I can't necessarily give that I can ask, but I can't promise something I can't deliver.

I just don't do that.

I'm not willing to lie to get in my way.

I just rather deal with the truth.

And truth is this is what these guys do to me.

It's what I it's what I can do.

It's what I can ask and I can that complete.

But I can't guarantee for notice that's the thing that's possible.

They have told me that if we weren't stopped the other day that we had two days of work left.

They've been horrible at estimating their ability to complete the work.

Horrible and I think that it's benefited them.

So a potential strategy that could help is to say I want you to finish the work.

You have two days and that's it.

Or and knowing that they're going to lie to me and cause it to be 3.

So you know but set a budget because they are probably pocketbook driven like the rest of the transgressing streets and city.

Just tap their feet then I'm not paying you another Don.
It's an it's an idea.
I can't promise the thing.
I don't know if it'll work.
They might say good luck to you my friend.

Ms. Clouser "Can I ask what still needs to be done."

Mr. Fantasia "There's a there's a drainage Swale that's being built to address to take well the there's a dryly wall being put in well dryly in the front, a little more in the back building.

There are wall builders out there that will build walls right up against rock.

It's not a great way to build.

It's not a 100-year solution.

The rest of this, this has been built in 1840 and my wife wants it to keep the character of the wall that's already in the front.

We're putting the proper drainage in even though it's at this point 10s of thousands of dollars more expensive than what we signed up for because it's historically consistent with we're not like historical house officially, but my wife was a history major so was that the, the rock cutting,
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Ms. Clouser "What specifically still needs to be done because that's like it looks done with me like I'm not I'm not an expert."

Mr. Fantasia "The rock guys say 90%.

Ms. Clouser "But I don't really truly know what that means."

Mr. Fantasia
"Most of the drainage is or most of the Swale is created.

There's a little bit more of the Swale.

It's about like less than 20% of the total project, like 100 square feet many.

And there's the final cosmetic, the final straight edge part of the face of the rock that's going to allow for drainage to be put behind the wall."

Ms. Clouser

"100 square feet still need to be removed because it was only 410 you had.

So now it's another.?"

Mr. Fantasia "No, now you're putting words in my mouth."

Ms. Clouser "OK, I misunderstood."

Mr. Fantasia "It covers 100 square feet.

That's already in the scope.

This is, again, this is about drainage in the existing workspace."

Ms. Clouser

So within the scope, it was 410 square feet according to the engineer that you have.

Mr. Fantasia "Correct."

Ms. Clouser "And so, 100 is still up.

So 1/4 is still up."

Mr. Fantasia"

"No, that's not true because material drawings are in 2D, and life is in 3D.

The project in 3D is 90% complete according to the rock people. They estimate two days.

I have seen them estimate wrong and I'm telling you everyone transparently, that's what they've done."

Ms. Licitra

"So, it does sound like you are willing and open to getting more information from them, finding out if there is more information."

Mr. Fantasia

"I think I've already; I've already done that.

I've given this group all the information I have, which is there's limited work required to do to be done."

Mr. Brinchiero "Yeah, and that would be the real shame if this doesn't get resolved.

In my eyes it sounds pretty close to the finish line, hopefully 90% one or two days. It would be a shame to not be able to see its completion, you know, here at the beginning of this, that would be a different issue. But it sounds like hopefully you guys can, you know, work something out causes it's, it's sounds like you're almost there. I think we don't have any other items. on our agenda for."

Ms. Licitra "Thank you for sharing your thoughts."

Frank Brincheiro made a motion to adjourn the meeting at 7:39 p.m.

Carol Ann Licitra second the motion to adjourn the meeting.

Further Discussion: None

Vote to adjourn the meeting:

Frank Brincheiro– Yes

Carol Ann Licitra – Yes

Lillian Kelly – Yes

PASSED 3-0-0

Meeting Adjourned at 7:39 p.m.