

California Regional Water Quality Control Board  
Santa Ana Region

December 14, 2012

ITEM: 11

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Sara Friedman, 125 East 24th Street, Upland, San Bernardino County, APN 1003-161-04

DISCUSSION:

On August 7, 2012, Sara Friedman contacted staff requesting approval for the use of an existing septic tank subsurface disposal system to serve a detached guest house at the above-referenced site. The guest house was the result of a garage conversion without obtaining the proper building permits from San Bernardino County. The County is currently pursuing an enforcement action for this code violation. Mrs. Friedman applied for an after-the-fact permit from San Bernardino County for the garage conversion in March 2012; however, the County would not consider issuing a permit without clearance from the Regional Board.

The main house and guest house are located on a 0.43-acre lot and are currently served by a 1,000-gallon septic tank-subsurface disposal system for the discharge of sanitary wastes. This area of the County is unsewered. Staff denied Mrs. Friedman's request for approval of the guest house connection to the septic tank-subsurface disposal system because connection of the guest house to the septic tank-subsurface disposal system does not meet the Regional Board's minimum lot size requirements.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment to incorporate minimum lot size requirements (MLSR) for septic tank-subsurface disposal system use. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwaters of the Region.

In adopting the MLSR, the Board recognized that it was appropriate to distinguish between "existing" developments using subsurface disposal systems (i.e., those already approved at the time the MLSR were adopted), and "new" developments. The Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval of tentative parcel or tract map) had been obtained by that date. The one half acre requirement applies only to "new" developments.

The Board also recognized that there would likely be proposals for additions to existing developments that would result in increased wastewater flow. The Board's MLSR address these circumstances. The MLSR distinguish between the types of additions to existing dwelling units. Additions to existing dwellings (bedrooms/bathrooms) are exempt from the MLSR. However, the MLSR state that any proposal to add a freestanding structure that would result in additional wastewater flows must be considered a "new" development. The intent of distinguishing between additions that are attached to existing dwellings and freestanding structures was to guard against the use of the freestanding structure as a second single-family residence on the property, which would result in substantial additional wastewater flows.

On October 9 and November 14, 2012, Mrs. Friedman revised her initial August 7, 2012 request, and is now proposing to convert the guest house back to a garage/workshop with a storage room. Mrs. Friedman is now requesting approval for the existing connection of a detached garage/workshop to the septic tank-subsurface disposal system. Mrs. Friedman also wants to retain the full bathroom (1 toilet, sink and shower) in the garage. The proposed garage/workshop, with bathroom, would be a freestanding structure. The freestanding structure was not approved by the County prior to September 7, 1989. As such, the project as a whole (the existing house and detached garage/workshop) must now be considered a "new" development to which the one-half acre MLSR applies.

Mrs. Friedman's existing house is exempt from the one-half acre rule, as it had received approval prior to the adoption of the MLSR. However, the MLSR stipulate that new developments for which on-site subsurface disposal system use is proposed must have a minimum of one-half acre of land per dwelling unit. Mrs. Friedman's proposed garage/workshop with bathroom is a new development for which the MLSR apply. To satisfy these requirements, Mrs. Friedman's house and garage/workshop would each require a one half-acre minimum lot size. With a density of 0.215 acres per dwelling unit, Mrs. Friedman's proposal to use the existing septic tank for the free-standing structure does not comply with the MLSR. Accordingly, Board staff denied Mrs. Friedman's request for an exemption from the minimum lot size requirements.

Board staff has advised Mrs. Friedman that staff has no objections to her converting the guest house to a garage/workshop provided that she remove the bathroom fixtures from the structure and eliminate the connection to the septic tank-subsurface disposal system. Staff has also advised Mrs. Friedman of options identified in the Board's exemption criteria. Mrs. Friedman could proceed with her development if she connected another septic tank-subsurface disposal system (that would not otherwise be required to be connected to the sewer) to the sewer to offset the impacts of her "new" discharge. Mrs. Friedman could also propose the use of an alternative disposal system to serve her house and guest house or garage/workshop in place of a conventional septic tank-subsurface disposal system. Mrs. Friedman has declined both offers due to monetary reasons.

RECOMMENDATION:

Deny Mrs. Friedman's request for an exemption from the minimum lot size requirements for the proposed use of a full bathroom in the detached garage.

Comments were solicited from the following agencies:

San Bernardino County Environmental Health Services – Josh Dugas / Jon Reid  
San Bernardino County Building and Safety – Marc Conway / James Werner