



Town of Barnstable

Board of Health

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MINUTES OF BOARD OF HEALTH MEETING Wednesday, January 17, 2007 at 3:00 PM Town Hall, Hearing Room 367 Main Street, Hyannis, MA

I. Hearing:

- A. Kathy Posner requesting hearing regarding too many bedrooms at 22 Marion Way, Osterville

The attorney had a death in the family and said they would not be able to be here. Upon the motion by Ms. Rask, seconded by Dr. Canniff, the Board voted to move this to a show cause hearing at the next meeting scheduled to be held on February 14, 2007. (Unanimously voted in favor.) The decision will go forward at that time regardless of any reasons.

- B. Charles M. Sabatt, representing Victor Skende and Beverly Skende, 77 South Street, Apartments 1-4, Hyannis, - regarding various housing violations observed.

Mr. McKean said the inspector had noted various issues which involved smoke detectors, outlets, and peeling/cracked paint and covering the four units. There is also an issue with the size of the parking area.

Charles Sabatt, Attorney, said they are addressing the heating issue and the parking issue, the client has or is in the process of correcting the other issues. The heating issue pertains to two of the three units. The units are directly in front of Nantucket Steamship Authority. The apartments have been in existence since 1940's. Each unit is approx. 400-500 square feet. Mr. McKean inputted that he and the inspector discussed the issue of heating. If all of the habitable rooms are receiving sufficient heat of 68 degrees Fahrenheit; Mr. McKean stated this would not qualify as a violation.

In regards to parking, Mr. Sabatt said he agrees with Mr. McKean there is no appeal process and no grandfather clauses. He also said the property is adjacent to steamship authority and the neighborhood is full of parking. This is not a residential area. He suggests that we are the enforcing division so we may have the option to deem it as not a violation.

The only way to adjust the Ordinance is through the Town Council reviewing and fine tuning the wording or through a legal challenge at least in a way to have areas determined as not applicable. Mr. Sabatt said you can't have any ordinance that...

Dr. Miller suggests a continuance, allowing the Board to speak to a town attorney and town council members.

Upon a motion duly made by Sue Rask, seconded by Dr. Canniff, the Board voted to continue until February 14, 2007 meeting. (Unanimously voted in favor.)

II. Variance Request:

- A. Arne Ojala, P.E., P.L.S., Down Cape Engineering representing Fred Tonsberg, 2 Short Beach Road, Centerville, 12,630 square feet lot, existing 2-bedroom proposed to be razed and rebuilt as 2-bedroom, numerous variances requested.

Arne Ojala proposes a Fast System to cut down on nitrates. The system has not failed. Conservation has approved their plan. Using the Fast System, it will improve 5.8 parts per million for nitrogen.

Mr. McKean said the staff comments originally thought this may be the proper location for a tight tank as in the property across the street. Upon further examination, comparing the two properties, this system would be located 39 feet away from a coastal bank and even further from wetland, whereas the property with the tight tank located across the street is closer in proximity to the wetlands (20 feet).

Mr. Ojala said the owner had not been interested in the house design on the old plan a few years ago. The reason of locating the system so close to house and increasing the number of variances is that the current system is partially in the right of way of the town property/road. This plan keeps it on the lot.

Dr. Miller has already spoken to Brian Dudley on this property and Brian has said the DEP would not approve a tight tank here. Sue Rask said there is not an increase in flow and the proposed plan greatly improves the current situation by having five feet above ground water instead of the two feet currently.

The Board feels a different system would be better and recommends a recirculating sand filter system, and allows an increased pressure distribution on the leaching field. Also suggests: 1) a two-bedroom Deed Restriction, 2) Monitoring Plan quarterly for the first year, then biannually after that.

Upon a motion duly made by Dr. Canniff, seconded by Sue Rask, the Board voted to continue until February 14, 2007. (Unanimously voted in favor.)

- B. Arne Ojala, P.E., P.L.S., Down Cape Engineering representing Trisko Family Trust, 270 Sandy Neck, Barnstable, 10,890 square feet parcel, variance to replace cesspool type structure with a leaching pit, composting toilets proposed.

Arne Ojala presented the use of a composting toilet and reminded the Board there is no electricity for a pump, etc. They are approximately 3 feet from ground water elevation. It has always been used as a three-bedroom cottage and would like to remain as such.

Mr. McKean stated the composting toilet should be approved. The staff did question whether the back building is actually a cottage and not a workshop as recorded. Mr. Ojala said they have a toilet there. They are using a composting toilet. He thinks it's probably been 10 years since it was put in. It has a bin under it, it not the standard compost toilet that would be approved.

The Board spoke of a site visit by Mr. McKean or his staff and take pictures and/or measurements because they do not allow the Sandy Neck cottages to increase in the number of bedrooms and they don't want the workshop to become a cottage. Mr. Ojala said he is willing to go with them. The owners are interested to do the work as early in spring as possible. The Board will take into account how it has been used historically and understands the height of ceilings will not meet seven feet.

The neighbor at Sandy Neck spoke that the property was used as a home for a family of five with three bedrooms upstairs and approximately six feet eaves.

Upon a motion duly made by Dr. Canniff, seconded by Sue Rask, the Board voted to approve a continuance until February 14, 2007. (Unanimously voted in favor.)

- C. Kieran Healy of BSC Group, Inc. representing Trustee David Ross of 0 Water Hole Lane, W. Barnstable, 149,675 sq. ft. lot, Section 360-1, SAS proposed to be located 65 feet setback to wetlands, well testing information received.

Kieran Healy summarized the history. The number of bedrooms has been reduced to three. He said the Conservation has approved the plan. There is a reserve area in-between the trenches of the septic area.

The Board reviewed the well report and the report says its fine. The Board is interested in the 75 feet setback for new construction. The foundation is set on sono tubes. The Board they are not comfortable approving a three bedroom with less than 75 feet. The Board said they are more comfortable with the original plan of three bedrooms with the 80 feet setback even though it would be closer to a vernal pool. It would be required to go to DEP for approval. Sue Rask said the plan needs to be updated to say certified vernal pool, and new plans will be needed and seeing 75 feet setback in both directions.

Dr. Miller said Mr. Healy will have to prove the direction of the water.

Patty Kellogg addressed that the land was originally a cranberry bog and she is pleased the Board is viewing the property carefully.

Upon a motion duly made by Dr. Canniff, seconded by Dr. Miller, The Board voted to approve a continuance until February 14, 2007. (Unanimously voted in favor: 2 votes in favor, 1 abstained ,Sue Rask.)

- D. Matthew Eddy, P.E., Baxter Nye Engineering & Surveying representing Shane Pacheco - 1799 Service Road, West Barnstable, 3 acre lot, new construction, proposed two dwellings and a barn, variance requested in regards to separation distance between proposed SAS and neighbor's private well.

Deferred to February 14, 2007 meeting as notice must be given to abutters.

- E. David & Linda Bennett, 71 Gosnold Street, Hyannis, variance requested from 105 CMR 410.401, request to maintain existing floor-to-ceiling height, less than seven (7) feet throughout entire dwelling.

Mr. McKean said the health inspector found multiple rooms with low ceilings. The owner informed him that the cost to raise the ceilings was estimated at \$25,000 or more.

David Bennett stated that he has been renting it for 26 years. It was built in approximately 1930's. Dr. Miller read a letter into the record for Irene Aylmer supporting the owners as a beautiful rental and kept affordable to meet the demands of housing.

Upon a motion duly made by Dr. Canniff, seconded by Sue Rask, the Board voted to approve the variance as the structure was preexisting, built in the 1920-1930's, and the extensive structural modifications would be at great cost. (Unanimously voted in favor.)

- F. David Crispin, P.E., P.L.S., BSC Group representing Dr. Nathan Rudman, 40 Waterman Farm Road, Centerville, 18.2 acre lot, new construction, six bedrooms proposed, multiple variances requested in regards to setbacks to wetlands and coastal bank.

Deferred to the March 21st meeting to properly notice abutters. Sue Rask recommended a site visit.

- G. John Churchill, JC Engineering representing Cape Property Realty Trust, 265 Sea View Avenue, Osterville, 39,640 sq. ft. lot – Proposed repair of existing septic system, two variances requested, setbacks to property line.

Mike Mentol, JC Engineering, presented the seven-bedroom house. Mr. McKean said the staff supports approval once the proper stamp is put on the plan

Upon a motion duly made by Sue Rask, seconded by Dr. Canniff, the Board voted to approve with the following conditions: 1) a revised plan will be submitted with the proper engineer's stamp, and 2) a seven-bedroom Deed Restriction must be recorded at the Registry of Deeds. (Unanimously voted in favor.)

- H. Catherine Morey, Coastal Engineering Company, representing Silvia & Silvia, 116 Scudder Avenue, Barnstable, 1.3 acre lot - Proposed house addition, five variances requested.

John Schaible, Coastal Engineering Company, presented the plan. They want to update the septic, septic tank, pump chamber, the coastal banks have been identified, and the plan has similar setbacks to previously approved plan in 1991. The current owner purchased it as a seven bedroom in 1998, with the upstairs attic finished off as two additional bedrooms not in the health division records.

In 1991, the BOH had requested the leaching field to be 81 feet from wetlands and the plan now shows it as 51 feet. The difference is that the coastal bank was not identified in 1991, so their plan shows the actual distances. Dr. Miller explained a problem is that this would be looked at as an increase in flow because the current system was not built to handle it. The 2001 inspection report lists it as five bedrooms as well. The plan shows the art studio is habitable which would be an addition bedroom. John Schaible asked to continue it to discuss the options with the health division.

Upon a motion duly made by Dr. Canniff, seconded by Sue Rask, the Board voted to Continue until March 21, 2007. (Unanimously voted in favor.)

- I. Westen H. Bartlett, 45 Spruce Street, West Barnstable, 20,120 s.f., - proposed repair of existing system, variances requested in regards to setbacks to private wells.

Weston Bartlett presented the plan. There are three variances: 1) the amount of soil coverage, 2) setback from well, and 3) setback from second well.

The Board asked the soil logs on the plan need to be easier to read and the floor plans need to be more details showing openings, etc.

Corine Savory, neighbor, spoke of her concern of the location of the system to the well. The Board let her know the distance to her well is 175 feet and no variance is needed because they are a safe distance from them.

Diana Di Gioia, neighbor, who is north of the property with the ground water flowing north. She was concerned with raw sewerage they are seen and computer components abandoned on the property. The Board explained the state's regulations are 100 feet from well and the local regulations are to review plans with distances between 100-150 feet. The Board explained this plan would be sufficient and is 110 feet and the new design of septic will allow greater protection to the neighbor's well than the current system.

The Board informed the public, the Health Division should be called whenever sewage is sited or any of the other items are sited as they are hazards.

Upon a motion duly made by Dr. Canniff, seconded by Sue Rask, the Board voted to continue until February 14, 2007, and request a new plan listing the three variances, clearly listed soil logs, change the 4 feet removal to 5 feet to meet the state requirements, and submit revised floor plans with more specifics and with dimensions. (Unanimously voted in favor.)

III. Six Bedrooms or More

Stephen Doyle representing Victoria Vallely, 448 Wianno Avenue, Osterville, 98,960 s.f. lot, seven bedrooms proposed.

Stephen Doyle presented the plans. There are only floor plans submitted for the second house.

Upon a motion duly made by Sue Rask, seconded by Dr. Canniff, the Board voted to approve the seven-bedroom with the condition that they submit floor plans to the main house to the health division. (Unanimously voted in favor.)

IV. Body Art Applicant:

Joel Josselyn – Application for Apprentice of Body Art to operate at Cape Cod Tattoo at 701 Main Street, Hyannis.

Applicant withdrew the application, he will not be working at Cape Cod Tattoo.

V. Massage License Applicant:

Bonnie J. Williams – Proposal to practice massage at Lewis Bay Chiropractic, Hyannis

Upon a motion duly made by Dr. Canniff, seconded by Sue Rask, the Board voted to continue until the February 14, 2007 to allow the applicant to obtain the proper signatures as the signature from a physician was not given. (Unanimously voted in favor.)

VI. Food Establishment:

Richard L. Kelly Jr., 146 Rosary Lane, Hyannis, Bagel Bar and Deli – Variance requested from Section 322-3, toilet facilities, only one toilet provided, no seating provided, proposal to expand menu and to utilize a grease recovery device (GRD).

Richard Kelly said the plumber, Ray Silvers, installed a Big Dipper. There is a three-bay sink. He expects there may be three employees at a time. The space would not allow more than four to fit in it. The toilet facility will not be used for the public. There will be no seats.

Upon a motion duly made by Sue Rask, seconded by Dr. Canniff, the Board voted to approve the variance of one toilet facility with the following conditions: 1) no seating, 2) obtain an inspection from the plumbing inspector for the Big Dipper, and 3) the new menu submitted at this meeting. (Unanimously voted in favor.)

VII. Discussion:

A. Ed Pesce, 18 Bay Lane, Centerville, status update.

Ed Pesce was present. Originally the plan had the septic located in the back. As they started to install the system, a potential purchaser said he was interested in purchasing both properties and was interested in building the house in the back.

Upon discussion of the steps that were then taken, the Board explained this is viewed as new construction and is within 100 feet buffer of wetlands. With two or more components changed in the plan, this represents a significant change from the original plan. Therefore, the applicant is required to come back before the Board for approval.

The Board also stipulated that the bedrooms will have to be taken out of the carriage house.

B. Ed Pesce, 381 Old Falmouth Road, Marstons Mills - Requested a discussion regarding failed septic system.

Ed Pesce is working on the above address which has 43 commercial condominium units at it. There are six septic systems. Jim Ford inspected all six systems and 2 of the 4 center units have failed. Dr. Miller asked what the total design flow is for all six. Ed's research found the four systems for the center units are at 600 each x 4 is 2,400, then there are two smaller septic units for the two end units which he does not have the amounts for.

A question came up on whether there has been a change of use. There is a change of use in the types of businesses there but Mr. Pesce does not believe the change in use has caused any change in flow.

The original application was designed as warehouse but the current use would prompt the 1650 rule. Mr. Pesce said he would ask the Board to not apply the 1650 rule due to the hardship of extensive costs. Dr. Miller said the property is tight and hard to fix the systems but with two failed, the others are probably on the way out. Sue expressed the concern is that if two systems are new, the amount of land which would remain would be so tight, that it would inhibit the other systems being changed when it comes time.

Mr. Pesce asked if the Board would want the 1650 rule applied as there is recent information in the field now that questions the value of the I/A systems in certain situations. Sue acknowledged that yes, this application would probably be problematic. The Board asked him to present how the flow would be calculated then 1970's, and calculate as though it were built new today to aid in the decision.

The Board will continue it to the March 21, 2007, meeting

C. William Weller, Weller & Associates, Fisherman's Village Condominium, 855 West Main Street, Hyannis – Requested a discussion regarding a failed septic system.

William Weller presented the failed situation. One owner had spoken with Mr. McKean and explained the large cost of \$100,000 for one building's repair using a FAST system and pressure dosage. They are in a zone two.

William Weller asked if they could just repair a part of the system. They have corrected leaks to ensure the decrease in taxing the system. The flow is 2,200 and there are 10-12 property owners sharing the cost.

Dr. Miller said the Board needs to know the priority of the Town as far as who gets on the sewer system. They need to know from the town just how close the complex is to getting that particular location on sewer. If the time frame is 10 years or less, a compromise may be possible provided there is a stipulation that an escrow be established for the cost of a sewer hookup.

The Board will continue until February 14, 2007.