

# Town of Barnstable

## Board of Health

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### **BOARD OF HEALTH MEETING MINUTES Wednesday, March 21, 2007 at 3:00 PM Town Hall, Selectmen's Conf. Room 367 Main Street, Hyannis, MA**

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on March 21, 2007. The meeting was called to order at 3:00 pm by Chairman Wayne Miller, M.D. Also attending were Board Members Paul Canniff, D.M.D. and Susan Rask. Thomas McKean, Director of Public Health and Sharon Crocker, Division Assistant, were also present.

#### **I. Hearing (cont):**

- A. Charles Sabatt, Attorney, representing Hyannis Public Library, update regarding removal or abandonment of underground fuel storage tank.

Attorney Sabatt stated the new storage tanks are already connected. They are working with the Fire Dept. to remove the old storage tank, still underground and appears to be under the walkway. Mr. Sabatt believes it is pumped out. He will check into it. The old storage is not being used at this time.

Upon a motion duly made by Dr. Canniff, seconded by Ms. Rask, the Board voted to continue for three months or to be given in writing that the storage tank has been drained. (Unanimously voted in favor.)

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

Charles Sabatt, Attorney, brought up three points regarding the fact that the parking is being used in excess of 25% of the front yard: 1) the front yard area has existed since 1940's documented by pictures, 2) the flaw in ordinance is that there are not variances allowed, and 3), this ordinance is meant to protect residential areas and this property is much more a commercial property. Mr. McLaughlin, Town Attorney, told him it should have an appeal process. Also, Mr. McKean added the Fire Dept prefers an entrance of 24 feet to multiple dwellings to get apparatuses in and out. The ordinance only allows 20 feet. The Board suggested to continue for 3-6 months to allow time for the Town Council to review the ordinance and possibly amend it. Leah Curtis, Town Council said she will bring our comments back to the Town Council.

Upon a motion duly made by Dr. Canniff, seconded by Ms. Rask, the Board voted to continue for six months to October 9, 2007 meeting. (Unanimously vote in favor.)

II. **Hearing (New):**

Evandro DeCastro – 1384 Falmouth Road, Centerville – regarding recurring housing violations including overcrowding and insufficient septic system capacity.

Mr. McKean spoke of the site visit. It appears even without basement bedrooms, it has always been a five bedroom. The prior owner was sited for violations and two years ago they did rip out bedrooms and take down walls. They sold property. The septic still needs repair. The current owner is out of the area through April.

Upon a motion duly made by Dr. Canniff, seconded by Ms. Rask, the Board voted to continue until May 22, 2007 Board of Health meeting. (Unanimously voted in favor.)

III. **Variance Request (Cont.):**

**POSTPONED** Catherine Morey, Coastal Engineering Company, representing  
**UNTIL** Silvia & Silvia, 116 Scudder Avenue, Barnstable, 1.3 acre lot -  
**APR 17, 2007** Proposed house addition, five variances requested.

IV. **Variance Request (New):**

A. 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.

Norman Hayes, BSC Group, stated they are only installing one septic system on 17 acres. David Crispin presented data. They are not crossing any creeks on the property. There is bordering vegetation wetlands (BVW) and coastal wetlands. They have installed at least nine monitoring wells to monitor water flow direction. They have all uniformed soil, thus all the water will flow to salt marsh. The town coastal bank is 71 feet away and is wooded. It is 67 feet to the BVW but with the water flowing to salt bank, the flow would be 150 feet from salt bank. They would like to install a bathroom in the barn, thus, one line would run to the left going out to the barn.

Mr. Hayes said the nitrogen loading is 1.5 mil. per liter which is well below the recommended and this would be a fully compliant Title V with the setback variance. On 9/11/06, they did a high water mark test and are well over 100 feet from that. Reserve area requires a setback variance from the Town ordinance. The property is 5.7 feet from ground water. Soil testing has been done in the right side of property where the system would normally be located. Soil test must be done in the area of the proposed septic.

Sue Rask would like them to supply the geologist readings. There is concern of the accuracy of flow due to the space between the monitoring wells near the far right wetlands. Unless it was totally impossible, the Board has never allowed less than 75 feet to wetlands. Here there appears to be a number of locations. Sue Rask will run the information passed the hydro geologist at the County as a free service to evaluate the presentation. The Board would be interested to know whether the hydro geologist concurs that the location is better with the proposed. The Board would also be interested in a site visit.

Norman Hayes proposed a continuation so the Board can review with the County expert. and they can take consideration of the comments at the meeting.

Upon a motion duly made by Ms. Rask, seconded by Dr. Canniff, the Board voted to continue until the May 22, 2006, Board of Health meeting. (Unanimously voted in favor.)

- B. Thomas and Michelle Russell - 44 Betty's Pond Road, Hyannis, 1.5 acre lot, request to waiver variance.

Michelle Russell said it would cost over \$20,000 for new septic. The County had told her the septic may be there in 2-3 years and the estimated connection cost would be \$10,000. Currently, the cesspool has an overflow which is in water.

The Board would like to see the discontinued use of the two existing cesspools, the replacement of the cesspool with a new tank, and feed it into the existing leaching system. That way the cost will be much less and it will take care of the immediate issue. In 1982, floater fuses were installed but they are only 2 feet above water. At this point, DPW will not commit to the date as it is not possible to commit without the funds appropriated but believes it will arrive within a short time.

Upon a motion duly made by Dr. Canniff, seconded by Ms. Rask, the Board voted to approve a continuance to April 17 BOH meeting. (Unanimously voted in favor.)

A letter will be drafted to Mark Ells, DPW, asking him to acknowledge that if everything goes as expected, this location will be on the top of his list of hookups and, given this, what would a predicted time frame be.

A second letter will be drafted to Mark Ells concerning the complex Fisherman's Village to express the people are willing to cover their hookup costs as expected. This condominium complex is also in close proximity to the sewer lines. It is an urgent location.

- C. John Morin, Jr., owner – 97 Wequaquet Lane, Centerville, .44 acres, variances to setback of septic system components.

John Morin prefers a foundation and there is 8 feet, in lieu of 10 feet, setback of components. The Board needs the elevations put on the plan so they can properly make a decision.

Upon a motion duly made by Dr. Canniff, seconded by Ms. Rask, the Board voted to continue this until April 17, 2007 and if the applicant chooses to put on sono tubes, he will not need to come back before the Board. (Unanimously voted in favor.)

**V. Six Bedrooms or More:**

- A. Arne Ojala, Down Cape Engineering representing Susan Whelan, 41 Mount Vernon, Hyannis, 0.4 acre parcel, six bedrooms, no variances.

Rob Pagula, Builder, and Sarah Ojala presented the plan for remodeling the house, keeping the same number of bedrooms with no variances needed.

Upon a motion duly made by Dr. Canniff, seconded by Ms. Rask, the Board voted to approve the six bedroom house. (Unanimously voted in favor.)

- B. Stephen Wilson, Baxter Nye Engineering, representing Dennis Berkey – 756 Main Street, Cotuit, 1.73 acre lot, eight bedrooms, no variances.

Stephen Wilson was present. Staff did not have any objections to the plan. An I/A system was discussed but would not work well as this is a seasonal home.

Upon a motion duly made by Ms. Rask, seconded by Dr. Canniff, the Board voted to approve the plan. (Unanimously voted in favor.)

- C. Arne Ojala, Down Cape Engineering, representing Tom Olsen, 440 Grand Island Drive, Osterville, 47,921 square feet lot, proposed seven bedrooms.

Ms. Sarah Ojala has 5 bedrooms, an exercise room, and a study. No variances required.

Upon a motion duly made by Ms. Rask, seconded by Dr. Canniff, the Board voted to approve the seven bedroom plan. (Unanimously voted in favor.)

#### **VI. Food Establishment Variance:**

- A. Frank Whelan, Cooke's Restaurant, at 1120 Iyannough Road, Hyannis, variance for in-ground grease trap for new owner.

Frank Whelan, the new owner, was present. The conditions with the prior owner was to have monthly inspections and to pump 3-4 times a year.

Upon a motion duly made by Dr. Canniff, seconded by Ms. Rask, the Board voted to approve the variance with the following condition: 1) the pumping records by Bill Roberts are reviewed by Mr. McKean and meet his review, then the variance will be granted. (Unanimously voted in favor.)

- C. James Higgins, Cape Cod Hospital, at 88 Lewis Bay Road, Hyannis, touch-less faucet variance.

Ms. L. Fisher represented the hospital and stated their policy is to have the employees wash their hands a second time, once inside the kitchen area.

The faucets discussed here are in the employee locker rooms and they do not go back into the hospital area for work. They would be off their shifts and heading home.

The Board expressed their view is to be consistent in enforcing the regulation. All the food establishments will be required to install in both the food prep area and the restrooms.

Upon a motion duly made by Ms. Rask, seconded by Dr. Canniff, the Board voted to approve the variance. (Unanimously voted to Deny.)

D. Michael Santos representing Barbara Niggle, Willy's Gym, 865 Attucks Lane, Hyannis, grease trap variance.

Michael Santos brought a revised plan. They are interested in expanding the services offered including play-daycare and children's parties. There would be food preparation to include frozen pizzas heated up and served, mini sandwiches made there, deli type sandwiches. A popcorn machine and food grill, an ice machine. They currently have a two-bay sink,

The Board does not favor having people walking through the food prep areas. They would want a wall dividing the space.

Upon a motion duly made by Ms. Rask, seconded by Dr. Canniff, the Board voted to approve the proposed variance. (Unanimously voted to DENY.)

Upon a motion duly made by Ms. Rask, seconded by Dr. Canniff, the Board voted to approve a similar variance as the previous owner with shakes, packaged foods, juice drinks, and water, with the addition of a touchless hand wash sink.

E. Michael Santos representing Freshen Yogurt, 569 Main St, Hyannis

Michael Santos presented the plan for a new location for a food service establishment. The menu consists of soft serve yogurt and dipped ice-cream. Concern was expressed of whether the GRD works with ice cream. DPW had said they are not concerned though (per Dr. Miller.)

Dr. Miller asked for a written clarification from Big Dipper as to whether the low-fat milk made ice-cream can be handled with the Big Dipper. Also, Mr. McKean will speak with Peter Doyle, DPW, for clarification of whether the sewer system handles it.

Upon a motion duly made by Dr. Canniff, seconded by Ms. Rask, the Board voted to continue until the April 17, 2007 meeting. (Unanimously in favor.) (if all questions are answered favorably, he can be approved and taken off the April agenda.)

**VII. Discussion:**

A. David B. Mason for Catherine and Peter Murray – 336 Holly Point / 39 Vine Street, Centerville – Requested a discussion of groundwater determination.

David Mason and Dan Crowley presented information. Mr. Crowley handed out a summary to date. The system was upgraded 1995. Groundwater is at 35 feet and they are three feet above that. This is 100 feet from wetlands. There was confusion on how the system had received approval and installed in less than 100 feet and had to be 4 feet above groundwater. Ms. Rask said with the sewer coming to this area, and given

they had received a permit signed off by the town, the owner should expect they can use the system after spending the money on it.

The Board needs to have the health division pull the permits for the Board's review and see the date of when it was approved. This is only 50 feet from the lake. A major concern is the 50 feet distance to the lake. They may want the system replaced.

The Board recommended a formal hearing on it to make the decision clear of whether to allow the owner to keep the system or not. The Board also recommended having a plan prepared for the next meeting if the applicant needs to expedite the process. This would allow both to be addressed at the same meeting.

Mr. Mason asked if the owner submits a letter saying he is willing to put in a new system upon determination by the Board, can the Health Division sign off on building permit so the work can be started.

Procedurally, this is not possible. It will need to come back before the Board.

B. Enforcement of minimum seven (7) feet ceiling height.

Mr. McKean said the Building Division has told him that this month, the ceiling regulations are changing from 7 feet to 6 feet 8 inches. The Board would like to have all the applicants for variances on ceiling heights to come before the Board for review.

C. Mary Ann Barboza representing Mr. and Mrs. Joseph – 539 River Road, Marstons Mills.

Mary Ann Barboza has a letter of a friend supporting the issue which will be submitted at a later time. Mr. and Mrs. Joseph bought a 4-bedroom which they were told was a 5-bedroom. They have not made any changes to it. There are 8 people living there, all family. They would like to upgrade. The owners are being fined and are requested to eliminate 2 bedrooms. A recent Septic Inspection Report was done in April.

The house was listed by realtor as a four-bedroom and the Assessor's have listed as a four-bedroom. The first and second floor is the original (judging by the looks)

Mary Ann Barboza asked why Mr. and Mrs. Joseph can not put the property on the market as the 5 bedrooms they believed they had purchased. It was explained that the town has since hired someone (2 ½ years ago) to enforce the illegal apartments and provides an amnesty program. The attorney at the closing and the real estate broker should appraise the buyer of these items.

The flow is for 550 and the permit was approved July 30, 1987. In 1988, Mr. Norris said he put the fourth bedroom in with a permit. The septic permit went in in July of 1987 and the 330 Rule went in Nov 7, 1987.

The Finding from the Board, with the septic system put in prior to the Rule 330, is to allow the 5-bedroom capacity and eliminate the fines assessed.

**Additional Items:**

Dr. Miller met with the Town attorney, David Houghton, before the meeting and, in an interim process of the actuary report, Mr. Houghton is going to go to the three areas of concern (Centerville River, the Three Bays, and Popponesett) and then prepare an interim regulation to be reviewed on a yearly basis, limiting construction to 330 per acre.

The Board thanked Ms. Rask for her work with the Board over the past three months while awaiting a new Board member.

The Board welcomed Jimmy Sawayanagi to the Board as the new member.

Voted to adjourn.