



Town of Barnstable

Board of Health

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BOARD OF HEALTH MEETING MINUTES

Tuesday, March 8, 2011 at 3:00 PM
Town Hall, Hearing Room, 2ND Floor
367 Main Street, Hyannis, MA

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on Tuesday, March 8, 2011. The meeting was called to order at 3:00 pm by Chairman Wayne Miller, M.D. Also attending were Board Members Junichi Sawayanagi and Paul J. Canniff, D.M.D. Thomas McKean, Director of Public Health, and Sharon Crocker, Administrative Assistant, were also present.

I. Hearing – Tobacco:

Tobacco violations as reported by Bob Collett of Barnstable County Tobacco Control.

- A. AM/PM Convenience store, Falmouth Road, Centerville – First Offense, tobacco products sold to a minor.

Bob Collett read the report of the 2/23/11 inspection.

The owner said the employee made a mistake and has been warned. This was their first violation ever.

Upon a motion duly made by Junichi Sawayanagi, seconded by Dr. Canniff, the Board voted to issue a Warning. (Unanimously, voted in favor.)

- B. Hyannis Food Mart, 18 Center Street, Hyannis – First Offense, tobacco products sold to a minor.

The owner said there was only one person on that particular morning and it was very busy, stating he made a mistake. They were given a warning of dismissal.

Upon a motion duly made by Junichi Sawayanagi, seconded by Dr. Canniff, the Board voted to issue a Warning. (Unanimously, voted in favor.)

II. Hearing – Pool (Cont.):

George Simpson, owner – Anchor In, One South Street, Hyannis, lifeguard requirements (continued from September 2010).

(Moved to the end of the meeting.)

George (Skip) Simpson was present. Dr. Miller reviewed the prior discussions.

Dr. Miller recommended that if the Board was to accept a proposed regulation to allow pools to operate without a lifeguard, he would suggest the following conditions:

- Pool be no deeper than five (5) feet,
- Limited access to a pool: Access only by key or card key
- Emergency phone in pool area,
- No alcohol in pool area,
- No diving boards / slides / wave generating equipment, etc.
- Maximum occupancy of pool < 20 people (matches qual. swim.) or <25 (matches requirement for a second lifeguard)
- AED device on site,
- Staff member with adult and child CPR on site at all times.

Signage (In addition to those required by the State):

- NO LIFEGUARD ON DUTY; SWIM AT YOUR OWN RISK
- No one is to swim alone,
- No one under the age of 16 allowed unless accompanied by a RESPONSIBLE adult.

Variations for a proposed phasing-in period might consider:

- Implementation of a trial year?
- Limit to facilities with FEWER than 20 units?
- Limit to weekdays/non-holiday periods as only time without a lifeguard or qualified swimmer?
- Limit to pools open only between the hours of 8am – 8pm?

Skip said that his pool is a small pool. A swimmer is never any further from 9 feet away from a side of a pool. Skip mentioned that it is less expense to install shallow pools no deeper than 5 feet. Deeper pools used to be desired for diving boards and, nowadays, people are not using diving boards.

Limited access- Skip's comments: He has only seen a required of a latching requirement of 4 feet high. Nothing in the code currently does require a key or a card – Mr. McKean agreed.

Dr. Miller said that all pools he has used in his travels have only allowed access to the pool through a key entry. Skip said that would not cause a problem, he could have the door keys configured to open the pool or an electronic card reader. Skip also agrees that many swimming accidents occur due to liquor and would not see an issue with eliminating liquor. Skip also feels the other requirements suggested are reasonable as far as: . No diving boards / slides / wave generating equipment, etc., AED device on site and have a staff member with adult and child CPR on site at all times.

Mr. McKean suggests that the staff on site should be more specific so that they must be in close proximity to the pool and not, for example, down in the basement and too far to be handy. Skip also said that he and a number of his staff all have the CPR training allowing multiple people to be available.

Skip suggests that the key along with the latch access be at least four feet high so that no younger children can enter it accidentally. The procedure Skip uses on the use of the phone is to call 911 (not to just notify the front desk).

Dr. Miller said he knows the staff is suggesting the first phase is with condo's, he is considering the size of the facility (possibility 50 units would capture 1/3 to 1/2 of all the places requiring qualified swimmers), as the basis of the first phase.

Staff recommends phasing it in and starting with residential living units, i.e., condominiums and residential pools currently requiring permits. The majority of these would be owner occupied units. Dr. Miller suggested that the signage is more likely to be read by the owners as opposed to the transient/visitor ones and may be a better site to do the trial test with.

Dr. Miller asked Skip to whether he had any input on the variations of phasing in a new regulation:

Skip felt that the day of the week someone is using a pool is inconsequential to swimming accidents. Theoretically, it could be just the opposite. As far as the length of hours of operations, he felt he could only speak from his experience where he opened from 9am to dusk, weather permitting

In reference to limiting pools open only between the hours of 8am – 8pm, Skip agrees that the later in the day it gets, there is more likelihood of behavioral problems.

Skip asked which way they are leaning. He largest concern is the depth issue as his pool is deeper than five feet. Dr. Miller said he will be checking with insurance people to see if they have any actuarial tables on this.

Dr. Miller will formulate a proposal to vote on at the next meeting, April 12, 2011.

The public is encouraged to inform the Board of any comments they may have on the lifeguard issue.

III. Hearing: Show- Cause for Stable Permit (Cont.):

Sally Burke, owner of Sea Flash Farm – 2346 Meetinghouse Way, West Barnstable, 14 horses, violations of Chapter 376-8 and 376-9 (continued from January 2011).

Sally Burke was present. She said she has not yet determined whether they will be composting at the property. She has been removing the manure there

approximately every two weeks. The deadline is still at July 2011. Sally Burke will appear at the July 2011 Board meeting.

IV. Hearing – Underground Storage Tank

Jeffrey Lowery, owner – 88 Bay Road, Cotuit, MA. Underground storage tank (continued from February 2011).

Jeffrey and Nancy Lowery were present. Mr. Lowery said they purchased the 1,000 gallon tank from Owen Corning. It is fiberglass and Owen Corning guaranteed it for 100 years. It was purchased during the Carter Administration and during an energy crisis. They chose the tank after considering the environment and energy conservation, etc. They went to the expense of this size because it afforded the protection of the environment they wanted. Mr. and Mrs. Lowery were unaware of the regulation requiring removal of underground tanks until the most recent letter received 11/24/10.

The Board explained to the Lowerys that the fiberglass tanks are also susceptible to leakage.

Upon a motion duly made by Dr. Canniff, seconded by Junichi Sawayanagi, the Board voted on the following: 1) abandon the use of the underground tank (1,000 gallon) by July 1, 2011, and unless approved by the Fire Department for “abandonment in place”, then the tank must be removed by August 15, 2011. (Unanimously, voted in favor.)

V. Variances – Septic (New):

A. Gregory MacDougall representing Sacha Negron and Michael James, owners – 165 Parker Road, West Barnstable, Map/Parcel 176-027, 45,378 square feet lot, setback variances to wetlands and well.

Upon a motion duly made by Dr. Canniff, seconded by Junichi Sawayanagi, the Board voted to approve the variance with the following conditions: 1) a two-bedroom Deed Restriction will be filed at the Barnstable County Registry of Deeds, and 2) a proper copy of the deed restriction will be submitted to the Public Health Division. (Unanimously, voted in favor.)

CONTINUED TO APRIL 2011 B. Carmen Shay representing Allen Halliday, Trustee – 154 Eel River Road, Osterville, Map/Parcel 115-010-001, 74,985 square feet lot, setback variances for septic tank and pump chamber to wetlands.

VI. Variances – Septic (Cont.):

Joe Henderson, Horsley Witten Group representing Town of Barnstable, owner – 425 Sandy Neck Road, West Barnstable, additional information on capacity of system (continued from Board meeting Feb 10, 2011).

Joe Henderson explained his purpose for returning to the Board was to clarify the actual extra capacity in the system. Last meeting, the extra capacity per square foot was incorrectly referenced as 2 gallons.

The actual extra capacity is 129 gallons per day. With this in mind, Mr. Henderson is hoping the Board will revise the conditions put on the variance approval to eliminate the monitoring of the water use and to reconsider the 'use' stipulation.

Mr. Henderson said the total required flow is 2,751 gallons. The breakout is as follows: 200 parking spaces/2 people per car equals 400 people at 5 gal/day/person. The 413 s.f. lifeguard room based at office use of 75 gal/day/1000 s.f., equals 31 gal/day. And the snack bar/restaurant use is at 20 gal/day x 36 seats and equals 720 gal/day. The design flow is 2,880 gallons/day.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to revise the conditions of the variance approval of March 8, 2011 to now state there are no restrictions in use of the accessory building during the period outside of the dates between and including Memorial Day to Labor Day. The water monitoring condition will remain. The Board will revisit the conditions after receiving the first year's readings of water usage. (Unanimously, voted in favor.)

VII. Variance – Food (Cont):

- A. Mario Mariani representing Pain D'Avignon Café – 15 Hinckley Road, Hyannis, outdoor dining, air curtain variance (continued from December 2010).

Mario Mariani was present. There are three openings, one at 36" wide, and two French doors at 72" wide/each.

Mr. McKean stated the staff has no objections to trying this. Fluctuations of complaints would identify any issues, as well. Mario stated they would, of course, not be interested in causing any complaints to arise.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to temporarily approve the variance of air curtains, permitting the establishment to operate without requiring a screen used in conjunction with the air curtains while providing table service to tables outside with the following conditions: 1) all openings will have air curtains constantly on during this time – the three openings are the 32" wide entrance door, and two French doors, each at 72" wide, 2) no table will be allowed within 6 inches of the air curtain as this will disrupt the function of it, and 3) they must appear before the Board of Health, after the season, at the Oct 11, 2011 meeting to revisit the situation. (Two voted in favor. Dr. Canniff voted to deny. Board approved.)

- B. Michael Thiel representing Michael's Creative Baking – 424 Main Street, Hyannis (formerly, Center News), grease trap variance.

Michael Thiel was present. He said the Center News in the front of store will remain as it is. Then in the back, he will have a sandwich – bakery counter. All the baked products and prepared foods will be made at their other location, i.e., chicken salad. They will be using paper and plastic dishware and utensils.

Mr. McKean noted that, as with all food variances, this variance would not continue on to the next owner.

Dr. Canniff expressed his concern in using the grease trap recovery device is that the kitchen personnel may not actually use it correctly.

Upon a motion duly made by Dr. Canniff, seconded by Junichi Sawayanai, the Board voted to approve a grease trap variance with the following conditions: 1) the DPW must be in agreement as the property is tied to sewer, 2) based on the menu submitted 3/8/11 with the items prepared offsite noted, and 3) a log of daily grease removal will be kept and made accessible to the Public Health Inspector. (Unanimously, voted in favor.)

C. Cynthia Hall representing Osterville Farmers Market, Osterville Historical Museum, 155 West Bay Rd, Osterville, donuts.

No variance required as the applicant has decided to make the product off-site at a residential kitchen.

Upon a motion made by Junichi Sawayanagi, seconded by Dr. Canniff, the Board did officially vote to approve donuts at the Farmer's Market (already covered under baked goods.) provided they are made off-site. (Unanimously, voted in favor.)

VIII. Regulation / Policy:

Tobacco Policy: Propose change in length of time to review records of establishment - extending time beyond two years.

Bob Collett's opinion was obtained in the beginning of the meeting. He does support the increase to five years of review.

Mr. McKean said the good news is that there has been a significant decrease in the violations in the tobacco program since Bob Collett has been issuing violations.

It was discussed to change the current penalty of no cigarette sales for a period of up to two days ... be changed to .. up to one week, or .. up to one month. Currently, the owners have been proceeding with training programs for employees advising them of the tobacco regulations and it has shown to be effective. The suggestion of "up to four days" was agreed on.

Upon a motion duly made by Dr. Canniff, seconded by Junichi Sawayanagi, the Board voted 1) to change from two years to five years, 2) the Board may

suspend the owner's right to sell tobacco for up to 4 days at the third offense, and 3) the fine for the fifth and any subsequent offenses would be \$ 500. (Unanimously, voted in favor.)

IX. Old / New Business:

A. Craigville Beach DCPC Septage Pumping.

Mr. McKean reviewed the forms the Cape Cod Commission has designed for the Pumping records. The staff recommended that the forms be done with a yellow carbon backup so that the inspectors give one copy to the owner and submit the original to the town.

The Board of Health approved.

B. The new FEMA required regulations due by 6/16/11 - to remain qualified for flood insurance.

C. Dr. Canniff's comments on following up on a "restaurant" whose condition of a food variance has not been met. Discussion of system to identify.

Vote to Adjourn at 6:00pm.