



# Town of Barnstable

## Board of Health

200 Main Street, Hyannis MA 02601



Office: 508-862-4644  
FAX: 508-790-6304

Wayne Miller, M.D.  
Paul Canniff, D.M.D.  
Junichi Sawayanagi

### BOARD OF HEALTH MEETING MINUTES Tuesday, January 10, 2012 at 3:00 PM Town Hall, Hearing Room, 2<sup>ND</sup> Floor 367 Main Street, Hyannis, MA

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on Tuesday, January 10, 2012. The meeting was called to order at 3:00 pm by Chairman Wayne Miller, M.D. Also attending were Board Members Paul J. Canniff, D.M.D and Junichi Sawayanagi. Thomas McKean, Director of Public Health, and Sharon Crocker, Administrative Assistant, were also present.

#### I. Hearing – Housing / Septic (Cont):

POSTPONED UNTIL FEB 14 2012 A. Lili Seely, owner – 33 Candlewick Lane, Hyannis – housing and septic issue (continued from Dec 2011).

Due to illness.

POSTPONED UNTIL FEB. 14 2012 B. Kenneth Carey, owner – 439 (a.k.a. 441) South Main Street, Centerville, 3 units, housing violations (continued from Dec 2011).

Due to illness.

#### II. Variances – Septic (New):

A. Stephen Wilson, Baxter Nye Engineering, representing David Brito, P&S Agreement with owners – 31 and 43 Church Hill Road, Centerville, Map/Parcel 207-138 and 207-139, total two lots is 32,045 square feet, multiple variances.

Stephen Wilson presented a revised plan which changed the design from a 3 bedroom to a 2 bedroom and added a retaining wall to allow a reduction in the amount of soil cover. Mr. Wilson said he will also be doing another revision to include a MicroFast I/A System.

Mr. McKean mentioned that a new floor plan is needed which shows 2 bedrooms.

Discussion was taken on this but it will be continued to the next meeting to allow thorough review of a new plan.

Nancy Snell of 38 Church Hill Rd stated the area usually gets flooded during a rain. There is a creek there that runs into Barnstable Land Trust property over on South Main Street and can run into the Centerville River. Her house has been there for 350 years and because of the high water table, there is constantly a little flow of water into the basement that has to get pumped out with a sump pump. Usually, the woods get completely filled with water and the brook overflows. In April of 2007, the Town was re-grading the road and it rained and it was particularly bad with a 1 ½ feet of water in the yard and the water in the basement topped the furnace, and up to the floor boards in the kitchen. Their floor boards are now ruined – believed to be due to this. Mrs. Snell had sent in photos to the Board which were taken during that April 2007 flood and she has great concern with additional water flow to the area.

Another person in the area, Eben Johnson, spoke on the need to protect the area from additional waste water flow. His concerns included the ground water level, the active brook and the variances needed. He believes the standard requirements of setbacks should be held and no variances allowed in this wetland area. He noted that the marine life in the Centerville River has already changed due to the water quality and oxygen-deprived algae and adding more nitrate-nitrogen, along with the other household chemicals into an area which will leach into the stream and river is not advisable.

Shirley Fisher, works at the Historical Society, and agrees fully with Mr. Johnson's technical analysis of the area. She feels common sense would tell us that the wetlands on the property will eventually run into the river. The site is in a resource protection area, the property's house will be on a steep slope and will cause more ground water run-off.

Tom Nortz, one of the owners of Captain David Kelley House, agrees with the prior speaker and urges the Board to not approve the variances.

Dr. Miller interjected that some of these arguments are more applicable to the Conservation Commission and hopes the neighbors will attend the other committee's meeting.

Pete Fisher said he had been the Co-Chairman of the Centerville Village Plan which lead to the DCPC area. They were aware of the fact that the non-conforming lots would soon be considered for building since most of the buildable lots had been built on. The committee's goal was to maintain or improve the water quality. Rappin Osabata thanked the Board of taking careful consideration into the plan.

Mr. Wilson expects he will have a new plan ready in a couple weeks and will bring in extra copies for neighbors who are interested in getting a copy at the Health Division.

The Health Division will also have information about the Microfast System available.

The Board will conduct a site visit on Monday, February 6, 2012 at 11:30am.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to Continue to February 14, 2012 will a revised plan showing an I/A Microfast System and a new floor plan. (Unanimously, voted in favor.)

- B. Robin Wilcox, Sweetser Engineering, representing Daniel and Suzanne Penni, Trustees, D&S Penni Realty Trust – 58 Holway Drive, West Barnstable, Map/ Parcel 136-033, 44,500 square feet lot, subdivided in 1971 as Point Hill Realty Trust, requesting multiple setback variances.

The Staff did not have any issues of concern with the plan. The Board was comfortable with it as well.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to approve the variances with following conditions: 1) A four-bedroom deed restriction is recorded at the Barnstable County Registry of Deeds, and 2) a proper copy of the deed restriction is submitted to the Public Health Division.

### **III. Title V – Septic Inspection Review:**

Joseph Smith, Bennett Environmental Associates, representing Acworth Inn – 4352 Route 6A, Barnstable, Map/Parcel 351-039, two new septic inspections were done and passed. Original inspection failed on 09/09/2011.

Joseph Smith said he passed the system on 11/18/11, saw no reason for failure and he also reviewed the other report done by Capewide done on 9/9/11 which failed.

Dr. Canniff asked Mr. Smith whether he thought it may have been hydraulically overloaded in September due to a possible busy summer usage and possibly had the opportunity to dry out by November. Mr. Smith said he installed the monitoring point 8.5 feet below the surface just outside the leaching area and the monitoring well came up dry. The design is built for 660 gallons/day flow.

Mr. Smith also said the other report doesn't make sense because if there is hydraulic failure you usually see the D-box full and in the other report, the D-box was at the invert height which would be zero – no water.

Mr. McKean said the other report had run a camera down the eight laterals and reported seeing sand and water, the soil saturated.

Mr. Smith mentioned that you would see some water in the laterals due to the perforations in the pipes.

The owner had two inspections done the same day 11/18/11 by two inspectors which both passed. The Board explained that as this type of situation has been coming up over the last eight months, they normally want a year in between the two inspections. Mr. Smith had been unaware of this and asked the Board to add something in writing to the Health's web page to inform the public more. The Board said that would be done and it specify that it is on a case-by-case basis.

Mr. Smith may also check with Capewide and view the video from them. The two of them may then come up with the same conclusion, which would then allow the owner to know where things stand sooner rather than later as the owner is in the process of selling the property.

Upon a motion duly made to Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to rescind the request to have the septic system replaced within one year, and to do another septic inspection during the month of August or September 2012. The applicant is to come back to the Board at the 9/11/2012 meeting with the outcome. (Unanimously, voted in favor.)

**IV. Variance – Food (New):**

- A. Kathy Murray, owner, Barnstable Market – 3220 Main Street, Barnstable, Map/Parcel 300-010, grease trap variance, has limited menu and is a small market.

Board Member Mr. Sawayanagi recused himself and stepped out of the room.

Kathy Murray was present, along with Roger Parsons, Town Engineer.

Barnstable Market proposed to use both the Big Dipper (a grease trap interceptor) and a 600 pound grease trap known as the Trapzilla which will be outside the building. There is a smaller one which holds 400 pounds of grease but they decided to go with the larger one.

Roger Parsons, Town Engineer, said that grease needs to cool down before grease can separate, therefore, he suggested the Trapzilla.

Kathy Murray said their three restaurants will all be maintained by the same contractor and the Barnstable Market will begin by being on the same schedule, emptied every six weeks, until they assess the actual need – which will probably be less frequently.

Upon a motion duly made by Dr. Canniff, seconded by Dr. Miller, the Board voted to approve the grease trap variance with the condition that Roger Parsons, Town Engineer, will take a look at the grease situation for the first two months. (Unanimously, voted in favor.)

- B. Attorney David Lawler representing Mary Phelps, owner of Earthly Delights – 15 West Bay Road, Osterville, Map/Parcel 141-016, request for two variances: toilet facility and outdoor dining.

Attorney David Lawler and Mary Phelps presented their variance. David Lawler, Esq. said the property has had benches and seating much before Earthly Delights – probably for at least 20 years. Mary Phelps never realized it was to be viewed by us as outdoor seating with the increased toilet facility. The owner did write a letter stating the seats are not exclusive to Earthly Delights. They do have employee bathrooms. The menu is take-out. They presented a petition with 240 signatures as well.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve a toilet facility variance to allow the 12 outdoor seats. (Unanimously, voted in favor.)

- C. Jason Berg, Panera Bread – 790 Iyannough Rd, Hyannis, Map/Parcel 311-092, request for toilet facilities variance with additional seating.

Jason Berg presented a floor plan and stated that Panera Bread has 75 restaurants and the Hyannis location is the only one which has a separate employee bathroom. Mr. Berg said that their employee bathroom is seldom used. He fully plans to meet the plumbing code's requirement. Mr. Berg said it was not cost effective to keep one of the bathrooms as it would prevent the necessary increased seating needed to meet the revenue demand.

Mr. McKean mentioned that the staff is not opposed to a unisex employee bathroom. The policy exists because in the past, a restaurant had run into the lack of toilet facilities and unsanitary conditions developed.

The Board would consider a proposal to change one to a unisex employee toilet facility and convert the other employee bathroom to be accessible to both the public and the employee.

Upon a motion duly made Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the request of eliminating two employee bathrooms for additional seating. (Unanimously, voted TO DENY).

(They may return to the Board to propose that one employee bathroom be converted to a unisex toilet and a second employee toilet facility be converted to be both public and employee use.)

**V. Septic Installer (New):**

A. Daniel Duprez, Littleton, MA

Upon a motion duly made Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve Daniel Duprez for a septic installer. (Unanimously, voted in favor.)

B. Craig Condinho, Marstons Mills, MA

Upon a motion duly made Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve Craig Condinho for a septic installer. (Unanimously, voted in favor.)

**VI. Policy / Regulation:**

POSTPONED TO FEB 14, 2012      A. Signage "Wording" and Beach Designations.

B. Ban on Pharmacy Tobacco Sales.

There are six-seven towns which have recently put into effect a similar ban.

The staff is opposed to the ban. They feel it interferes with equal rights.

Each of the Board members felt it is necessary. The State is also looking into passing a state-wide policy. Mr. McKean will research and see how close the State is to passing the policy. In the meantime, Dr. Miller will have the Legal Department write up a regulation to be reviewed.

**Additional:**

- Dr. Canniff mentioned in the June 2011 Minutes the property at 986 Seapuit Avenue, Osterville had been requested to do a full septic inspection and he asked if it has been done. It has not been done yet. Mr. McKean had spoken to John O'Dea at Down Cape Engineering and he said they are in contact with the owner.
- Dr. Canniff asked for the status of Ron Jansson, 5 General Patton, Hyannis – 2/9/10 the Board granted a six-month extension on a plumbing repair because the concrete slab had to be broken to get to the plumbing. He would like to know whether the repair been done.
- Dr. Canniff asked for a status on William Amaral, Thornton Drive, required to hook up to town sewer.