



# Town of Barnstable

## Board of Health

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### **BOARD OF HEALTH MEETING MINUTES**

#### **Tuesday, February 14, 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, February 14, 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. Hearings – Housing / Septic (Cont):**

- A. Lili Seely, owner – 33 Candlewick Lane, Hyannis, in WP zone, 0.25 acre lot, housing and septic issue (continued from Dec 2011).

Lili and an associate were present. Lili stated the perc test was done 2/10/12 and she is working with Ron Cadillac on the septic. The Board agreed to allow her until the April meeting to pull a septic permit.

Ms. Seely has a list of housing items to be repaired which are still open as of yesterday's re-inspection of premises. Ms. Seely said she understood the house to be a 4 bedroom at the time of purchase. The Board stated that it has been a long established fact that the Assessors information does not regulate the number of bedrooms allowed for sleeping. Mrs. Seely has spoken with the Building Department regarding windows for proper egress in the lower level. She acknowledges that the house is restricted to a three-bedroom dwelling. Ms. Seely is looking for a copy of the State Code 310 CMR 15.002 Definition of a Bedroom. The Board said they will have that page copied for her and she can pick it up at the Health Division tomorrow. She asked what constitutes the removal of a bedroom and the Board explained that in her situation, widening a doorway to a four foot opening with no casing would eliminate privacy in that room and would not be considered a bedroom and she may refer to the State Code's Definition of a Bedroom and work with that as well.

Ms. Seely brought up the windows for the lower level again. The Board said as long as she specifies to the Building Department that (1) she needs a window which provides proper egress and (2) she confirms the location as correct positioning for proper egress, the Building Department will instruct her on which windows will meet

the requirements. She said she checked with the Building Inspector about the possibility of putting a platform in the room to allow a person to step onto it and it'll bring the window to the correct height. She said the Building inspector said it was ok to have a step stool next to the window. Mr. McKean said they can verify with the Building Department if needed.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board to allow an extension for the Septic permit until April 10, 2012 and the housing list must be completed by April 10, 2012 Board meeting. Otherwise, Ms. Seely must return to the Board at the April 2012 meeting. (Unanimously, voted in favor.)

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

Kenneth Carey was present and explained that his rental maintenance job has unfortunately grown from a \$200 job to a \$2000 job because during the process, the Building Department evaluated the porch and determined that the whole porch needs to be replaced.

Mr. Carey spoke with the Health Inspector Tim O'Connell who said he has no problem holding off the house inspection until the third unit is ready. The Board did not have a problem with this. The property does not have any septic information available – the owner will have a septic inspection done. The goal will be to inspect the septic and housing for the April 10<sup>th</sup> meeting. If the third unit can not be done by then, the other two units will be inspected by April 10.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to the April 10, 2012 meeting to see if it has been completed. (Unanimously, voted in favor.)

## II. Hearings – Septic:

- A. Bonnie Cooper, owner – 131 Skating Rink Road, Hyannis, failed septic.

Bonnie Cooper was present. She is in the process of fixing it. She has taken out a septic loan with the County. She is working with B&B for the installation. B&B has made an appointment for the perc tests and once completed, they will install it. She hopes the process will be completed by April.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to the April 10, 2012 meeting. (Unanimously, voted in favor.)

- B. Freerk Jilderda, owner – 78 Pontiac Street, Hyannis, failed septic.

Mr. Jilderda lives in Canada and the Post Office shows he is in receipt of our registered letter. He has not contacted us to resolve the issue. He also needs to register his rental.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to have a letter sent stating (1) the septic has been in failure for three years and it must be repaired within 60 days, and (2) the owner must register the property as rental property within 60 days. If these criteria are not met, further action will be taken and tenants would need to be removed. (Unanimously, voted in favor.)

**III. Hearing – Connect to Sewer:**

30 Thornton Drive- Business Condos, Barnstable

Owners:

A. William and Rita Amaral	1 Unit	Map/Parcel 296-008-00A
B. Richard Fleming	2 Units	Map/Parcel 296-008-00B & 00C
C. Bert Mosher	1 Unit	Map/Parcel 296-008-00D
D. Michael Michnay	2 Units	Map/Parcel 296-008-00E & 00F

Sean Enright, septic installer, was representing William and Rita Amaral. Also present were Richard Fleming and Bert Mosher.

Issues that exist: The building was originally set up as a condo trust. One of the owners, Michael Michnay, has moved out of town and is headed into foreclosure. Mr. Fleming's attorney had advised him not to hook up as he would become liable for the whole building. David Anderson, DPW, requires having all owners fill out a questionnaire prior to connection to sewer. Information on questionnaire includes chemicals used in units and whether the units have floor drains. The owners confirmed that units A-D do not have floor drains. It is unknown whether units E&F do. Those units are rented to the tenant Cape Cod Truck Caps. It is unknown how many septic systems are at the location.

Action: The Health Division will send a letter to Michael Michnay requesting the questionnaire be filled out within 30 days. The septic installer Sean Enright will find out how many septic systems are there. Tom McKean will meet with Dave Anderson, DPW to see how we can move forward and Dr. Miller will check with the Town Attorney on any possible issues.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to the April 10, 2012 Board meeting. (Unanimously, voted in favor.)

**IV. Innovative / Alternative (I/A) System (Cont.)**

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, three variances, MicroFAST system, (continued from Jan 2012)-revised plans.

Stephen Wilson was present and stated that the variances are from the Town Code and not from Title V. Dr. Miller asked whether the two lots are now recognized as one as the Board is unable to vote on this unless it is officially a single lot. It is

Stephen's understanding that when the town went to two acre zoning, these lots with common ownership merged to one lot. Ruth Weil, Town Attorney, said there are a number of reasons why it may not have been merged into one lot. The Board decided to hear comments on the proposal but will not take a vote until Zoning has confirmed it to be a single lot.

Two letters were read into the minutes and are attached at the end of the minutes. The Board corrected the statement made in the Barnstable Land Trust letter and stated that the septic system is not in the Flood Zone and is well within the setbacks which are required. Also, Dr. Miller explained that even if they agree with concerns raised, the Board of Health has to address issues pertaining to public health. Topography is not one of the items the Board can take into consideration.

Mr. McKean said Mr. Wilson's revised plan has included all the recommendations made by the staff which included reducing it from a 3- to a 2-bedroom, reducing the cover over the system (down from six feet), introducing innovative technology, and having a reserve area.

Atty. Paul Revere, represented an abutter, Nancy Snell, and Roy Richardson on the Board of Centerville Historical Museum and spoke of two reasons for granting a variance to Title V: (1) enforcement of Title V is manifest unjust and (2) the system installed provides equivalent environmental protection to a system which complies with Title V. He feels neither one apply here and believes there would be no reason why someone purchasing the property would have an expectation of building on it as the town classifies it as "unbuildable" and as the tax bill on each of the two lots is \$36. Dr. Miller said one of the criteria to granting the I/A is that a regular Title V system is able to be installed on the property but the I/A is desired for its additional benefits.

The Board voted to continue to the March 13, 2012 Board meeting to allow time to determine from Zoning whether the property is officially one lot or two, and to allow Mr. Wilson time to make adjustments in his plan.

Eben Johnson, 349 Main St, Centerville, stated that currently without a building on the lot, there is no nitrate nitrogen being emptied into the Cedar Swamp Brook and the I/A system can remove up to 50% of the nitrate nitrogen waste. However, this still leaves 50% of the nitrate nitrogen waste which will find its way into the estuaries. He feels the standards have not been met and this should not be granted.

Shirley Fisher stated she is still opposed to the plan as she stated at the previous Board of Health meeting in January.

The Board acknowledged that Mr. Wilson has done a very good job responding to the comments of the staff and the audience. Dr. Miller said that in reviewing the setback variance to only 60% of the distance to the bordering vegetated wetland (BVW), he looks for 60% of the gallons a day allowed on the lot. This brings the flow to approximately 198 gallons a day. Mr. Wilson proposes that using the I/A

Microfast System gives a 50% improvement which bumps the flow up to above a 2-bedroom flow requirement. Dr. Miller reads Title V regulations to state that you are not allowed to use the I/A system unless a fully compliant Title V System can be installed. Also, Dr. Miller has heard there may be additional regulations by FEMA for the flood zone on new construction.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to the March 13, 2012 Board meeting to determine from Zoning whether its one lot or not, and to give the engineer time to respond to the comments. (Unanimously, voted in favor.)

**V. Variations – Septic (New):**

Peter McEntee, Engineering Works, representing Thomas Kelly, owner – 128 Saint Francis Circle, Hyannis, Map/Parcel 291-228, 14,900 square feet lot, septic variance(s) due to site constraint.

Peter was present.

The staff had no problems with the plan.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve the variations as requested with the following: 1) a 3 bedroom Deed Restriction recorded at the Barnstable County Registry of Deeds and 2) a proper copy of the recorded deed restriction be submitted to the Public Health Division. (Unanimously, voted in favor.)

**VI. Variance - Septic (Request to Rescind):**

Stephen Wilson, Baxter Nye Engineering, representing Wolfram Vedder, Trustee – 129 Island Avenue, Hyannis, Map/Parcel 265-018-002, 0.26 acre parcel, Board of Health approved variations on April 2009, new plan has no variations.

Stephen Wilson was present and summarized that they have moved the system so that the new plan has no variations.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to rescind the prior variance and the prior requirement of a 2-bedroom deed restriction provided a 3 bedroom plan submitted is fully compliant with Title V. (Unanimously, voted in favor.)

**VII. Variance – Food (New):**

A. John Green, owner, The Mill Street Tavern, Inc, d/b/a Duck Inn Pub – 447 Main Street, Hyannis, Map/Parcel 308-081-001, toilet facility variance, currently has two for patrons and one for employees.

No one was present for the owner.

Mr. McKean stated the business has a new owner and is proposed to operate in the same manner as the prior owner and will have 100 seats.

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

- B. Mark Hansen representing Vincent D'Olimpio, owner, Fogo – 55 Iyannough Rd, Hyannis, Map/Parcel 343-005, toilet facility variance.

Mark Hansen presented the plan. One toilet facility will be unisex and there will be two toilet facilities for the patrons. They are also in the process of installing a grease tank installed. They will have no more than 83 seats.

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

### **VIII. Policy/ Regulation:**

- A. Signage “Wording” and Beach Designations.

See attached – minutes from 12/13/2011 – for List of Beaches to be tested and which the Town will bear the cost of.

This list begins with Covell’s Beach and ends with Estey Ave, Hyannis

- Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve.

See attached – minutes from 12/13/2011 – for List of locations which will not be tested and which will have signs posting at them.

This list begins with Cross Street and ends with Oregon, Cotuit.

- Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve.

This leaves three locations needed more research: Crocker’s Neck, Long Pond, Centerville, and Middle Pond, Marstons Mills, which will be addressed in the future.

- B. Discussion: Mobile Food Unit / Trailer

We have to be realistic as well as we try to form this regulation.

Vito said the air curtains are noisy and some do not have very powerful  
He does suggest that we recommend the air curtain is installed at the time of purchase to save some money.

The draft proposal of Mobile Food Unit / Trailer also had added to it: will not remain any longer than four hours. If they have a temporary permit or have a contract with the Town to be the vendor during the summer season, they would be excluded from the time limits.

Mr. Sawayanagi said that he would like to see an added statement that the food must be removed from the trailer and put in a refrigerated unit overnight.

This will be continued at March 13, 2012 meeting.

C. Policy for Considering Passing a Septic System Which had Previously Failed.

Add sentence prior to the last sentence in the first paragraph: Properties that experience seasonal use, then the time frames for the inspections shall be specified by the Board.

Also, a similar statement to above, will be added at the end of Item #2.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to continue to the March 13, 2012 meeting. (Unanimously, voted in favor.)

POSTPONED TO FUTURE DATE      C. Ban on Pharmacy Tobacco Sales.  
Awaiting Draft Regulation

**Additional:**

Draft of The Body Art regulation modification – to be reviewed for the March 13 meeting.

Voted to adjourn 6:08pm

**Attachments:**

**RE: IV. Innovative / Alternative (I/A) System (Cont.)**

31 and 43 Church Hill Road, Centerville

Two letters were read into the minutes and are attached.

*February 13, 2012*

*Re: Proposal to build/variance requests – 31 Church Hill Road, Centerville*

*We are unable to attend the hearing today due to the time and work conflicts.*

*However, we feel very strongly opposed to the building requests on Church Hill Road. The variance figures are clearly contrary to those recommended by the present regulations.*

*The historic character of our village is at risk in our understanding of the proposed building. Maintaining the integrity of a village such as ours requires true dedication to the preservation of standards that support the historic elements.*

*We also have great concerns about the effect of building causing compromise to the land.*

*Thank you for careful consideration of all concerns.*

*Sincerely,  
Jim and Molly Sproul  
548 Main Street  
Centerville, MA*

Second letter:

*February 14, 2012*

*Re: 31 & 43 Church Hill Road, Centerville Application*

*Barnstable Land Trust owns property very near the construction proposed on 31 & 43 Church Hill Road. We are quite concerned about actions being contemplated by the Board of Health.*

*As we understand it, there is a proposal to build a two bedroom home with a new de-nitrification system. Three variances to the Board of Health regulations are being sought that carry consequences to public health.*

*Of greatest concern are the changes to topography within the flood zone.*

*Changes in topography would radically alter the flood storage capacity of the wetland systems which now serve to protect down gradient properties. As you are no doubt aware, the neighbors already see high water and serious flooding during major storm events. Construction being contemplated would exacerbate an already challenging situation. Also, by placing a septic system in the flood zone, there is a very real likelihood that surface waters will be degraded. In a high water*



*event, the nitrogen and bacteria are very likely to foul the river system which feeds the Centerville River.*

*The Board of Health is responsible for protecting public health. Given the increased recurrence of major flood events, we ask that you give serious consideration to the precedent you may be setting and public health risks you would be creating, should you approve these variances.*

*The Town assesses these two properties as undevelopable land. From our perspective, this is one of those properties that should not be developed. We would be happy to work with the landowner to preserve this land and keep it in a natural state for the health and benefit of all.*

*Sincerely,  
Jaci Barton*

**Attachments:**

**RE: VIII. Policies / Regulations**

**A. Signage “Wording” and Beach Designations.**

List of beaches which are to remain being tested on a regular basis:

- Covell’s Beach, Centerville
- Craigville Beach, Centerville
- Dowser’s Beach, Osterville
- Eugenia Fortes, Hyannis
- Kalmus Beach, Hyannis – Both Sides Tested: Ocean + Yacht Club sides
- Keyes (aka Sea Street) Beach, Hyannis
- Loops Beach, Cotuit
- Millway Beach, Barnstable
- Sandy Neck, West Barnstable
- Veteran’s Beach, Hyannis
- Hamblin’s Pond, Marstons Mills
- Hathaway’s Pond, Barnstable
- Joshua’s Pond, Osterville
- Lovell’s Pond, Marstons Mills
- Wequaquet Town Beach, Centerville
- Estey Avenue, Hyannis.

List of beaches which will not be tested and which will have signs posted which read “water quality not tested for swimming”. The six locations are:

- Cross Street, Cotuit
- Ropes Beach, Cotuit
- Scudder Lane, Barnstable
- Wianno Avenue, Osterville

- Mystic Lake – Race Lane Area, Marstons Mills
- Shubaels Pond by boat ramp and parking lot, Marstons Mills
- Oregon, Cotuit