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# Town of Barnstable

## Board of Health

200 Main Street, Hyannis MA 02601



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

### BOARD OF HEALTH MEETING MINUTES Tuesday, May 13, 2008 at 3:00 PM Town Hall, Hearing Room 367 Main Street, Hyannis, MA

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on May 13, 2008. 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 Junichi Sawayanagi. Thomas McKean, Director of Public Health and Sharon Crocker, Division Assistant, were also present.

#### I. Tobacco Hearing: Hearing- Tobacco:

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

A. Big Daddy's Pizza (formerly Cotuit Pantry), 4120 Falmouth Road, Hyannis – Second Offense, tobacco products sold to a minor.

This is the second consecutive meeting the owner has not been able to show up for. The Board will consider suspension of license if called before the Board and not attending.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to issue a \$100 fine for the second offense.

#### II. Hearing – Housing (Cont.):

Deborah Packard, owner – 226 Long Beach Road, Centerville, MA – housing violation(s).

CONTINUED to June 10, 2008 meeting. The Health Inspector is scheduled to inspect the premises for the removal of two bedrooms on May 31, 2008.

Provided everything is in order, the issue will be closed. However, if any unresolved issues, the owner MUST attend the next meeting.

#### III. Septic Variances (Cont):

A. Patrick Page, Trustee - 21 Buttonwood Lane, West Barnstable, 41,300 square feet parcel, Map/Parcel 217-031, variance for percolation test.

Mr. Patrick Page was present. There was much discussion. Mr. Page withdrew his request for a variance for the percolation test. and Mr. Page asked the following letter be read into the minutes:

May 5, 2008

Mr. Patrick Paige  
1780 Main Street  
West Barnstable, Massachusetts 02668

Re: 21 Buttonwood Lane  
West Barnstable, MA

Dear Mr. Paige:

This letter will confirm the results of a discussion that was held on May 2 between Brian Dudley of DEP, myself, Dr. Miller and Tom Geiler.

You submitted an application on March 24 asking for a variance from 310 CMR 15.104 to substitute a sieve analysis for percolation tests in the C4 layer of test pit # 6 on your property. Brian Dudley was consulted as to the feasibility of this approach. After our first consultation with Brian and apparently at your request, he asked to meet with us to discuss it and we agreed. The outcome of that discussion was as follows.

1. A certified soil evaluator needs to schedule and perform a second percolation test at the above referenced site in the C2 layer (in undisturbed soil) as per Title V (310 CMR 15.104(4), witnessed by the Board of Health or agent(s) of the Board of Health.
2. If the C2 layer percolates satisfactorily again in a second location, and the Board is satisfied that the C2 and C4 layers are essentially the same, or the Board of Health would have to be satisfied by the soil evaluator that the C4 layer is less restrictive than the C2 layer.
3. If # 1 and 2 above pass, you could proceed with an application for a variance from the Town of Barnstable Marginal Lot Regulation as if the lot percolated satisfactorily: in other words, you would not need the sieve analysis variance you now have pending. For the Marginal Lot Variance, the Board requires submission of fully designed septic and site plans, designed by a professional engineer or registered sanitarian, which includes a strip out of the C3 layer.
4. If the Board of Health grants you the Marginal Lot Variance requested, you can then proceed with an application for a disposal works construction permit for this property.

If you wish to undertake this approach, you should have your soil evaluator and/or registered sanitarian contact me to acknowledge and make arrangements. In that event, you would not need to continue seeking the variance for sieve analysis.

If you do not wish to take this approach, you could proceed with your sieve analysis variance request, but it appears from all our conversations with Brian Dudley that DEP would not approve such a variance which would make any Board approval moot.

Very truly yours,

Thomas McKean, R.S., CHO  
Director of Public Health

Mr. Page left.

- B. Peter McEntee, Engineering Works, representing Harold Gramse, Trustee – 98 Vanduzer Road, Barnstable, 22,280 square feet parcel, seven variances due to site constraints (continued from April meeting).

Peter McEntee presented a revised plan with the only adjustment being a pressure-dosed plan with the same configurations and with 1 ¼ length laterals. The same variances apply to the revised plan.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the variances on the plan revised and submitted at the Board meeting 5/13/08, with the following condition: a six-bedroom deed restriction recorded at the Registry of Deeds, and submitted to the Health Division. (Unanimously voted in favor.)

**IV. Septic Variances (New):**

- A. Mike Aucoin representing Bergenheim Trust, owner – 112 Nyes Neck Road East, Centerville, Map/Parcel 232-011-002, 1.0 acre parcel, repair of septic requesting four variances.

Mike Aucoin presented their revised plan and they have done test on the well. The current well is within 30-50 feet of the components of the owners septic. It is, however, over 150 feet away from the neighbor's well.

The current septic appears to be 20-25 years old. There is an old steel tank there which has been properly filled and abandoned. There is a leaching field beyond the septic tanks. The plan proposes to move the septic tank 100 feet away from their well.

Mr. McKean said the staff comments included a need for another variance from Title V - a variance for the inlet tee as it will be within 12 inches of ground water.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to Continue until the June 10, 2008 Board of Health Meeting. (Unanimously voted in favor.)

- B. John Lavelle, Coastal Engineering, representing Oyster Harbors Yacht Basin Realty, owner, 122 Bridge Street, Osterville, Map/Parcel 093-009, 1.77 acre parcel, one variance request.

John Lavelle presented his plans. Mr. McKean mentioned the staff wanted to know the status of the moon when the test occurred. Mr. Lavelle said it was a full moon.

Dr. Canniff. said he was out at the property. It's a difficult piece of property not allowing many choices. The plans do show the pipes are waterproofed – as noted on page two. Dr. Canniff would like to made sure the pipes are sleeved

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the variance to groundwater (from 12 inches to 11 inches) and with the plan dated November 30, 2007, revision date March 19, 2008. (Unanimously voted in favor.)

- C. Arlene Wilson representing Cotuit Oyster Company, owner, 26 Little River Road, Cotuit, Map/Parcel 053-009, 0.16 acres, requesting a modification of septic system variance issued 4/29/04.

Arlene Wilson presented the plan, along with Mary Leis Kelly, project manager at Cotuit Oyster Company. Cotuit Oyster has owned the property for a long time and had leased the property next door until recently. The Board had approved variances at an earlier date with the stipulations that they use an incinerating toilet and that they have a restriction on property not to use it for residential.

Staff had asked for (another) copy of the floor plans and Ms. Wilson has brought them.

Ms. Wilson mentioned the changes to be: it was 76 feet from BVW and now it is 69 feet from BVW, 2) it was 8+ feet from property line and now it will be 4 feet to property line, the pump chamber moved a little further away from the BVW. It was 94.5 feet from BVW and it is now 96.6 feet from BVW. There is no change in the number of employees, there will be no changes in flow

Our town attorney, Charles McLaughlin, presented that they are within hours of resolving and he feels it will be a good solution.

Mary Leis Kelly, Cotuit Oyster Company, said she is asking for a continuance on this. The new owner may want to reserve the right to change the plan.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to CONTINUE until June 10, 2008 BOH meeting. (Unanimously voted in favor.)

- D. Whitney Wright, owner – 4308 Main Street, Barnstable, 145,800 square feet parcel, one variance (postponed from Feb 2008 meeting).

Mr. Whitney Wright presented his plan.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to accept the plan with the following condition: the water supply of the irrigation well shall be kept separate from the town supply of water. (Unanimously voted in favor.)

**V. Variance – Food (Cont):**

John Cotellessa, owner, Original Gourmet Brunch at 517 Main Street, Hyannis, requesting grease trap variance and expansion in seating from 70 to 94.

John Cotellessa stated he spoke to Brian Dudley, DEP. Brian explained that because it is on town sewer and town water, he does not need to approve.

John is short 47 gallons on the 94 seats for the grease trap and does not have any place to increase the grease trap.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve a temporary variance to expire Oct 30, 2008 with the condition that two inspections will be done: in Jun 2008 and Aug 2008 showing the ratio of grease, then bring the results in to the Oct meeting and at that time the Board will use the data to evaluate the frequency needed for future pumping during their heavy season especially. (Unanimously voted in favor.)

**VI. Variance – Food (New):**

- A. Felis Barreiro, owner of Alberto's Restaurant, 356 Main Street, Hyannis, Map/Parcel 327-004, additional 32 seats with a grease trap variance request.

Mr. Barreiro presented his request to have additional seating. He currently has a 3,000 gallon grease trap and has a permit for 198 seats including a function room (which is not always used).

Mike Macheras, Schooners, spoke stating his concern that the restaurant's permit broken down by rooms adds up to 256 seats. He is already over the Health Division permit of 228 seats.

Mike says Alberto's actual seats are in violation of the permit.

Mr. Barreiro said he is negotiating with the town for use of the parking spaces

The maximum seats (inside and out) is 250 seats. He requests it be distributed so that he can have 32 seats in the front, 32 in the back, and 198 inside seating. Dr. M. said the seating can be worked out by the inspectors and the owner, but once determined it must stay as that breakout.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve a conditional variance with the condition that it be inspected monthly (Jun- Sep) through the summer showing the ratio of grease and then presented to the Board in Oct 2008 BOH meeting. (Unanimously voted in favor.)

- B. Swan River Fish Market, 1600 Falmouth Rd – Unit# 12, Centerville, request a toilet facility variance.

Mr. Al Burns, Swan River Fish Market, said the menu will be basically the same as the Osterville Fish Market Too, and there will only be two employees and only a take-out menu and hopes to open in early Jun 2008.

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

**VII. Variance –Temporary Food (New):**

- A. First annual maritime festival event "SeaCotuit" for May 24-25, 2008, on the Village Green, Main Street, Cotuit.

Mr. Jim Power spoke of the first annual maritime festival event. A tent will be set up and four local food establishments will serve their food and the fifth table will be Cotuit Federated Church will have sodas/water.

Two old-time trolleys will be available to keep the parking available at the school and ball park.

Upon a motion duly made by Dr. Caniiff, seconded by Mr. Sawayanagi, the Board voted to approve the annual event of SeaCotuit with the condition that the two portable toilets be ordered with running water. (Unanimously voted in favor.)

- B. Leticia Durham, Harry's Cajun Restaurant, sponsoring "Spring Blues Festival" on May 25, 2008, at 350 Stevens Street (outdoors), Hyannis as a fundraiser for the Duffy Health Center.

Leticia Durham and Alicia presented the event. The only supplier will be Harry's Cajun Restaurant. They will prepare the food inside Harry's and put into chaffing dishes. The event will be May 6 from 1-6 pm. They will have four portable toilets with water.

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

- C. John Rega representing "Taste of Cape Cod" to be held on May 26, 2008 at Resort & Conference Center, 35 Scudder Road, Hyannis as a fundraiser for the Family Food Pantry.

John Rega presented the event.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve the "Taste of Cape Cod" event. (Unanimously voted in favor.)

- D. Cape Cod Life sponsoring a food event "Food and Wine Festival with a Taste of Culture on June 1, 2008 at Rectrix Aerodrome, Barnstable Road, Hyannis.

Mimi presented the events for Cape Cod Life. There will be a "dualling chefs event with six different chefs, and they will have a refrigerated truck outside the Rectrix and a truck with ice will be on site.

There will be two coolers at each table.

- E. Cape Cod Life sponsoring Food and Wine Festival on June, 4, 2008, at Cotuit Center for the Arts, Falmouth Road, Cotuit with two vendors, Siena and Regatta of Cotuit.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve with the contingency that it meets Mr. McKean and his staff

- F. Cape Cod Life sponsoring a "Boat Show" food event on June 14-15, 2008, at the harbor, Ocean Street, Hyannis.

Approved for one vendor, Mario.

Upon a motion duly made by Mr. Sawayanagi, seconded by Mr.

- G. BayBridge Clubhouse sponsoring "Local Fest" on June 20, 2008 on Hyannis Village Green as fundraiser for Department of Mental Health.

**VIII. Subdivision # 767 - Modification of Definitive Plan:**

Down Cape Engineering representing Penelope Hinckley, owner - Modification of the Definitive Plan at 620 Main Street, West Barnstable, Map and Parcel 157-004, private wells, on-site sewerage disposal system, scheduled to be heard at the May 12, 2008 Planning Board Meeting.

No objections to the Subdivision# 767 as on the plan, originally dated 3/20/00 with revised date 2/8/08.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to send a letter to the Planning Board of approval of the proposed plan. (Unanimously voted in favor.)

**IX. Correspondence/Updates:**

- A. Correspondence from John Lebica, Cape Cod Community College.

Correspondence read.

- B. Draft ordinance to permit absentee board members who participated in adjudicatory hearings, to continue to participate.

Dr. Miller suggests deferring the decision to accept the draft until after he has an opportunity to meet with the town attorney. He is concerned with using only audio recording as it sometimes is difficult to hear. He would be happier if the video is the criteria.

Dr. Canniff said the Mullin Rule must be something that's already been scrutinized. Dr. Canniff acknowledged that for a three member board it would be useful. The Board agreed with him and will wait to speak to the town attorney.

- C. Letter from Lombardo Associates regarding Nitrex Nitrogen Removal Technology.

The Board acknowledged it is another alternative, but noted, it is a big cost for a short-term solution. They discussed the possibility of bringing Sue Rask in for a special meeting to discuss the alternative.

**X. Emergency Septic Repair: 245 Mitchell's Way, Hyannis**

Mr. McKean presented the plan for an emergency plan for 245 Mitchell's Way, Hyannis with setback variances.

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

Voted to Adjourn. 6:15 pm.