



# Town of Barnstable

## Board of Health

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Wayne Miller, M.D.  
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Junichi Sawayanagi

### BOARD OF HEALTH MEETING MINUTES Tuesday, November 8, 2011 at 3:00 PM Town Hall, Hearing Room, 2<sup>ND</sup> Floor 367 Main Street, Hyannis, MA

#### I. Discussion:

Bill Rabe representing Center Village Condo – Captain Cook Lane, Hyannis, sewer plans (also, see Jun 2011).

Bill Rabe presented Center Village Condominium's private sewer plan. The Town said they will allow for the two necessary easements needed for the plan in exchange for the hookup of Police Department and Natural Resources. This allows the condominium to cut out 200 feet of pipeline cost. Bill Rabe said the final design will be ready at the end of the week. The cost (paid by the condo association) is estimated at \$476,000 which is very reasonable when divided up by the number of units it will be able to handle (roughly \$8,000 per unit). Mr. Rabe also said that neighboring condominiums will be invited to connect up to their sewer for a fee after they are done.

Kerry McNamara of Cape Cod and Islands Property Management and who manages two neighboring condominiums, Strawberry Hill and Shallow Pond, was in attendance and expressed an interest in hooking up.

The Board of Health is in full support of this and is excited to hear of the possibility of all three complexes hooking up to the system. The Board asked that Mr. Rabe and Mr. McNamara return to the Board at the December 13, 2011 meeting and give the Board another report.

#### II. Hearing – Septic in Failure:

A. Michael & Paula Picard, owners – 288 South Main Street, Centerville, past deadline repair date.

Mr. Picard sent a letter explaining he was unable to attend the Board meeting due to another commitment and explained the status of his situation. The house was flooded (due to a neighbor's contractor's error) and he is paying for the repairs

himself. The repair costs to date are \$35,000 and \$15,000 more is expected to be needed to finish. The house is not occupied and he is not able to repair the septic system at this time. He hopes to have enough funding to complete it over the next year. He is asking for one year's extension.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to give the owner the option to (1) appear before the Board in person at the December 13, 2011 meeting or (2) the Board shall give notice that there shall be no occupants until the septic is repaired and the house will be posted as "Not Fit for Habitation." (Unanimously, voted in favor.)

B. Anthony Pino, owner – 23 Sycamore Street, Hyannis, past deadline repair date.

Mr. Pino has supplied the Board will a copy of a signed contract with a septic installer and the permit has been pulled.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to January 2012 meeting to make sure the septic has been completed. (Unanimously, voted in favor.)

C. Marcia Moniz, owner – 17-19 Fresh Holes Rd, Hyannis, past deadline repair date and has signed a contract to have Capewide install a new septic.

Ms. Moniz has supplied the Board will a copy of a signed contract with a septic installer and the permit has been pulled.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to January 2012 meeting to make sure the septic has been completed. (Unanimously, voted in favor.)

D. Alan Curtis and Gail Eagan, owners – 204 Washington Avenue, Osterville, past deadline repair date.

Mr. Curtis corresponded that he was unable to attend the meeting and that he was unaware of a septic failure. At the time of purchase, he was given the septic inspection which passed and had thought both houses were on the same system. The Health Division received one septic inspection for each house and one is in failure. Mr. Curtis asked for a two month extension to research the situation. The house is unoccupied.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve a two month extension on the deadline and return to the Board on January 10, 2012. (Unanimously, voted in favor.)

E. Marcia Elliott, owner – 37 Rue Michele, Barnstable, past deadline repair date.

Read statement into the minutes:

This letter is in response to certified mail# 7006 0810 0000 3524 5423

Thank you for the opportunity to respond to the issue regarding the septic system at #37 Rue Michele. I have had the inspection that was previously performed reviewed by two other Title V inspectors one of which is a Chief Engineer. Following is a brief rational as to why the past inspection is inconclusive:

- 1) The report was done before the drainage and the roadway was built and installed...as mentioned in the report.
- 2) As stated in the report all of the components were not opened for a complete inspection: the tank, the Distribution Box and the pit. The inspection was incomplete.
- 3) There was no odor when the test holes were done.
- 4) The one criteria checked on the Title V Inspection report which lead to a failed report was in regards to the ground water level...which as stated several times in the report was possibly due to the plugged up culvert drain/pipe in the immediate area. All other criteria passed.
- 5) Four times the clogged culvert pipe/drain was mentioned in the report and that he (the original inspector) thought it could be the reason for the abnormally high ground water table...because the water had nowhere to go due to the clogged drain/pipe.
- 6) Before the road was built, there was a problem with the culvert pipe/drain. This problem was corrected upon the design and installation of extensive drainage and the construction of the roadway.

I would like for this case to be reviewed since there has been extensive drainage installed and there have not been any problems with the system.

Respectfully submitted,  
Marcia Elliott

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to allow further inspections to be done to see whether they are in agreement with the initial report. In order to reverse the earlier inspection, two passing inspections would need to be done; one in the near future and one twelve months after the first one. (Unanimously, voted in favor.)

**III. Hearing – Housing:**

Lei Reilley, owner – 111 and 111-B Sea Street, Hyannis, housing issues (also, see August 2011 BOH Meeting).

Lei Reilly was not present. Mr. McKean summarized the events: the Board heard the case in August, there were repeated housing violations including overcrowding, and the Board had voted to uphold the actions of the Health Inspection and the penalties.

Dr. Miller asked that the Board send a letter to the Town Attorney specifying this case and ask if, with repeated violations, are we permitted to restrict the owner from renting in the future, i.e., restrict her from the rental application,.

**IV. Variations – Septic (New):**

- A. Michael Pimentel, JC Engineering, representing Christian Camp Meeting Association, owners –915 Craigville Beach Road, Centerville, Map/Parcel 225-001, 2.5 acre lot, two setback variances.

Michael Pimental, JC Engineering and Rich Capen, Capewide Enterprises, were present. Currently, there are three separate systems for the property: one for the snack bar, and one for each of the men and women's toilet facilities. The plan submitted today is to replace the men's toilet facility. It is technically not in failure but the owners want to put in a better system knowing it is on its way out. The plan is a mirror image of ladies facility which the Board approved three years ago. The property does not fit into any specific category for the State Code on flows. Mr. Pimental is proposing the same flows that currently exist be used. He used the water meter usage and divided by 365 days.

The Board reviewed and believes dividing the water meter usage by 100 days is more accurate as the property is open 3 ½ months a year. The Board also said that DEP is adamant that they want to review any properties which do not fit into their usage categories.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to December 13, 2011 so the applicant can speak with Brian Dudley, DEP, for his approval on the water flow. (Unanimously, voted in favor.)

- B. Sanjay Palit, owner – 169 Keveney Lane, Barnstable, Map/Parcel 351-057 65,340 square feet lot, variance for a leaching system greater than 3 feet below grade.

Dan Ojala, Down Cape Engineering, represented the owner.

Mr. McKean stated the staff did not have any issue with the revised plan.

Upon a motion duly made by Dr. Canniff, seconded by Junichi Sawayanagi, the Board voted to approve the plan with the 1.8 foot variance. (Unanimously, voted in favor.)

**V. INFORMAL DISCUSSION:**

Daniel Penni, D & S Penni Realty Trust, owner – 58 Holway Drive, West Barnstable, Map/Parcel 136-033, 44,500 square feet parcel, interested in expanding system to accommodate an additional bedroom, discuss system's proximity to lot line & wells.

Daniel Penni was present. The plans will either require moving the wells or requesting variances to extend the septic closer to the lot line. They currently are only seven feet away from the lot line.

Mr. Penn is looking for input to see whether the idea of an additional bedroom is feasible. An engineer may be able to fit in one more leaching chamber which is not asking for a lot. The Board acknowledged it is a realistic proposal.

**VI. Variance – Food (New):**

A. David Columbo, owner, Black Cat Harbor Shack – 159 Ocean Street, Hyannis, Map/Parcel 326-039, grease trap variance and toilet facility variance, request to operate an outside bar with a raw bar.

David Columbo was present and began with the variance from 322-4 for toilet facility variance. The adjacent property is owned by him as well and is only about 20 feet away from the outside bar. There are three on site and four toilets in the adjacent property, The Black Cat.

**Upon a motion duly made by Mr. Sawyanagi, seconded by Dr. Canniff, the Board voted to approve the toilet variance to allow three toilet facilities on site (two public, one employee). Unanimously, voted in favor.)**

David Columbo, then, spoke of the requested increase in seating of 83 seats with the 1,000 gallon grease trap.

**Upon a motion duly made by Mr. Sawyanagi, seconded by Dr. Canniff, the Board voted to approve the variance for an increase in seating to 83 seats with a 1,000 gallon grease trap. (Unanimously, voted in favor.)**

David Columbo spoke on the third variance of operating an outside bar with a raw bar. The design of the equipment keeps the food safe. The freshness is maintained. The food is then moved to an iced location and prevents the rise in temperature. He believes his proposal provides the more protection than if they were to bring the food out from the kitchen itself after cooking.

Mr. Columbo stated the setup will not attract flies as flies do not like ice on plates (the temperature is too cold) and he will also be installing an oscillating fan to keep the air moving as flies do not like a breeze.

Mr. McKean said the staff had made the comment that they would favor consistency in policy in regards to air curtains, etc.

The Board specified conditions and said this will be a pilot program to be reviewed in one year.

**Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve the operation of an outside bar with a raw bar with the following conditions:**

- **Product maintained on ice,**
- **Shellfish must be maintained under raw bar inside the insulated ice sink, on ice, and under the ice sink's safety glass closure**
- **Menu only approved for raw bar shellfish – shrimp, oysters.**
- **With adequate air flow to be a deterrent to insects.**
- **Area must be under cover,**
- **There is to be a second area of cover (under glass)**
- **Hand wash sink must be in close proximity,**
- **Area must be cleaned at the end of each day.**
- **And, protocol must be in place for transporting shellfish to and from the refrigerate area at the end of the day.**

B. Steven Hirschberger, owner, Arnold Bakery Outlet – 163 Barnstable Road, Hyannis, new location, toilet facility variance.

There is one bathroom which are shared between two facilities – a church which is only open Sundays and Wednesdays, and Arnold's Bakery which only has two employees and is open 6 days a week. Mr. Hirschberger will be responsible for the shared bathroom and its upkeep.

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

C. Janis and Randy Gold, owners, The Broken Cone – 569 Main Street, Unit D-1, Hyannis, MA, reconsider grease trap variance.

Janis Gold was present. The Board had issued a temporary variance to The Broken Cone last spring which allowed them six months to put in a grease trap or prove to DPW that there was not enough grease to need one. The Broken Cone decided to reduce their menu to be limited to ice cream and just a few sandwiches with little or no mayonnaise to avoid the need for a grease trap. The facility has a Big Dipper (internal) grease trap.

Roger Parsons, DPW, said they do not have the manpower to have and analyze chemical testing, etc. for the compliance for the use of the sewer.

Roger prefers the property be connected to a grease trap so the Health Division does not have to continually monitor the owner following the accepted menu. However, he does give his guarded approval of it.

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

- D. Krasimir Dzhulen, new owner of Dominos Pizza – 40 Industry Road, Marstons Mills, grease trap variance.

Mr. McKean explained the location of the screen on the Big Dipper. Daily removal of the grease is required.

**Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the grease trap variance with the following condition: a daily grease removal log is maintained. (Unanimously, voted in favor.)**

- E. Keith Bettencourt, BKA Architect, owner, Chipotle Mexican Grill – Cape Cod Mall, 793 Iyannough Rd, Hyannis, toilet facilities.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the food establishment with two toilet facilities, in lieu of the required four, with the condition that there is no more than a total of 54 seats, 48 inside and 6 outside. (Unanimously, voted in favor.)

**VII. CORRESPONDENCE:**

- A. Eben & Sara Arlene Johnson regarding 337 South Main Street, Centerville.

A copy of the letter is submitted for the minutes:

*TO: Board of Health, Town of Barnstable  
200 Main Street  
Hyannis, MA*

*FROM: Eben L. & Sara Arlene Johnson  
349 South Main Street  
Centerville, MA 02632*

*SUBJECT: An expression of concern relating to informal discussions between the Board of Health and Christopher Kuhn regarding a restaurant to the rear of 337 South Main Street, Centerville, MA. This letter expresses our great concern regarding a proposal that a restaurant being considered for the lot at 337 So. Main St., Centerville, be permitted to utilize the combined flow of the*

lot and a parcel at 49 Weaver Road, in order to accommodate the anticipated effluent flow.

*The “swapping of flows” is a paper credit which allegedly compensates for excessive flow at another location. It relates solely to the quantity of water involved; it is a paper mitigation which absolutely fails to consider water quality, and will not change the quantity or the quality of the effluent that would be entering the proposed facility’s leaching field. The site under consideration at 337 So. Main St. would require the septic tank and leaching field to lie between the “garage structure” and a flowing stream; it would be in a location that lies within Flood Zones A & B, in the same area that probably would be required for parking. What alternate location might there be? Toward the street, adjacent to an historically significant, Early 18<sup>th</sup> Century residence that has its own septic system beneath the lawn area?*

*Construction of a restaurant on any part of the lot at 337 So. Main St. will introduce a significant quantity of new wastewater into what has been declared an environmentally sensitive area, an area that demands critical planning. The effluent will contain both a large amount of bacteria and a variety of chemical components; it will have a significant impact on the stream, the wetlands and the Centerville River.*

*We also must express concern about replacing “...an existing 1,300 square foot garage structure with a 1,400 square-foot restaurant...” (Barnstable Patriot, 14 Oct 2011). The existing structure contains two boulder walls, remnants of an ancient 19<sup>th</sup> Century barn, that were flanked by two Mid-20<sup>th</sup> Century lean-to additions and covered by a flat, make-shift “roof”. IT is a structure that should not be construed as either a garage or a relic structure which affords the “footprint” for new construction.*

18 October 2011

Respectfully,

*Eben L. Johnson, Ph.D.  
Professor Emeritus  
Cape Cod Community College*

*Sara Arlene Johnson*

The letter will be read at the meeting the next time 337 South Main Street, Centerville, is presented at the Board.

The Board voted to Adjourn at 5:14pm.