



Town of Barnstable

Board of Health

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BOARD OF HEALTH MEETING MINUTES Tuesday, August 20, 2013 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, August 20, 2013. 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. Pool – Variance (Cont):

Howard Thomas representing Cape Cod Academy – 50 Osterville West Barnstable Road, Osterville, Map/Parcel 120-145, previously granted a variance for the pool with regards to placement of handicap lift in July, requesting additional information in decision letter.

Sharon Crocker had spoken with the State who suggested the Board set something up similar to the Board's pilot program for lifeguard regulations. They did not want to stipulate to the Board what the requirements might be, but their biggest concern is the need to have access to a person in distress from the edges of pool, and secondly, avoid causing a trip hazard.

Mr. Thomas stated their desired location for the Hoyer Lift is at the three foot depth of pool. He stated their primary purpose of the pool is for their summer camp and there are three lifeguards on staff.

Dr. Miller said they will vote to accomplish the needs of the applicant and would work on adjusting the regulations at a separate time.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to stipulate the following in the decision letter: 1) a lifeguard must be present, 2) the Hoyer Life is located in an area which will not compromise the ability of reaching a person in distress in the pool (as the depth at the lift is three feet), 3) the location is next to the stairs so it does not pose an additional trip hazard, and 4) the applicant will put red tape around the Hoyer Lift. (Unanimously, voted in favor.)

II. Hearing – Tobacco (Cont):

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

First Offenses, tobacco products sold to a minor on 6/21/13.

A. Hess, 804 Main St, Osterville.

Alletta, Manager, was present and said she took over the store two weeks ago. At that time, she re-trained each employee of the procedure of tobacco sales.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to issue a warning for this first offense. (Unanimously, voted in favor.)

B. Sam's Food, 4738 Falmouth Road, Cotuit.

Mohammad Alid said he spoke with the employees again and stressed the importance of following the tobacco regulations. They do have a book and formal training on this.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to issue a warning for this first offense. (Unanimously, voted in favor.)

C. Tedeschi's, 696 Yarmouth Road, Hyannis.

James Swindler, franchise owner, apologized for missing the prior meeting as his interoffice mail was misrouted. He has owned the store for five years and the employees have training and have a manual which each employee must sign off on. Also Tedeschi's has their registers designed to prompt the birthday request after scanning any tobacco product. The clerk had cut the corners at this point.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to issue a warning for this first offense. (Unanimously, voted in favor.)

III. Hearing – Craigville Motel:

Dave Paananen, West Barnstable Fire Department, outstanding fire code violations.

Dave Paananen said he had been at the motel July 2nd. He found a smoke detector not interconnected to the others in Room 17, the fire extinguishers on the back side of motel were not up-to-date with inspections, and pesticide storage was found in with the cleaning products. Also, he did not have a current report from the alarm company. Today, he received the report and one of the items noted was that a heat detector needs to be replaced and it'll be done within 30 days. The alarm company had done the report August 12th. As this was a scheduled inspection, and he ran into a number of items, he instructed them to fix the items and schedule another inspection. They have not set up an appointment with him yet.

Tara Patel, owner, said she had a fire inspection while David was on vacation and everything is all set with the exception of the smoke detector which required a special part ordered. It will take 5-7 days and she will have it inspected as soon as they get it in.

Mr. McKean said the Health Division Inspector was out there 1 ½ months ago on a complaint but the tenant was not home and they could not get in. Ms. Patel said the complaint was regarding the bathroom light. Mr. McKean said the Health Division receives receives complaints of this establishment at least twice a year.

The Board was trying to assess whether the situation is getting better or whether the establishment should be closed.

Tara Patel explained that she no longer has the situation where the elderly who should be in nursing homes are living there. She also had to process five evictions which are lengthy and costly. She believes the situation is much improved.

The Board emphasized that they would like all the issues resolved by the October 2013 Board meeting.

IV. Septic Variance (Cont):

- A. Stephen Wilson representing Wolfram Vedder, and Wolfram Vedder, Trs, WVDV Island Avenue Realty Trust, owners – 119 and 129 Island Avenue, Hyannis, Map/Parcels 265-018-001 and -265-018-002, 0.99 acres (total both parcels), house renovation and addition, easement for septic.

Theodore Schilling, Attorney, for the owners. The property has been there since 1919. They had thought of tearing down the house which is built into the bank but decided it would have a detriment to the bank and both properties to either side. With the limitations established after Katrina, FEMA limits them to no greater than 50% of value in improvements; otherwise, they will be required to raise the property up 16 feet.

Mr. Schilling said the owner has agreed to put both the properties in the same name and keeping them as individual lots. He proposed to have a deed restriction on #129 and a notice stipulating that an easement for the septic or an alternative will be handled if the lots are sold separately. The intent of the owner is not to sell the lots.

Upon a motion duly made by Dr. Canniff, seconded by Dr. Miller, the Board voted to grant the acceptance of the septic leaching system to be located on #119 with the following conditions: 1) a three bedroom deed restriction will be recorded with the Barnstable County Registry of Deeds for # 129 Island Avenue, 2) an official copy of the deed restriction will be submitted to the Public Health Division, 3) a notice will be recorded on both properties (# 119 and # 129) which states if the properties are ever sold separately, there will be a proper provision to the lots which acknowledge an easement allowing #129's leaching system to be located on #119, unless they move it to a proper location. (Unanimously, voted in favor.)

- B. Brad Hall, Sweetser Engineering, representing 24 Bay Rd Cotuit, LLC, owner – 24 Bay Road, Cotuit, Map/Parcel 020-118, 22,780 square feet parcel, house renovations, multiple variances, failed septic system.

Mr. Robin Wilcox was present for the owner. He has reduced the system from a five bedroom to a three bedroom system and submitted a proposed floor plan for three bedrooms. Mr. Wilcox said there are no water table issues. The elevation will be 20 feet to the bottom of the system.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to grant the variances with the following conditions: 1) a three bedroom deed restriction will be recorded at the Barnstable County Registry of Deeds, 2) an official copy of the deed restriction will be submitted to the Public Health Division, and 3) the floor plan will be renovated in accordance with the three bedroom floor plan dated 5/25/13 (Exhibit A). (Unanimously, voted in favor.)

- C. David Coughanowr representing Bruce Waluck, potential buyer, and Audrey Loughnane, owner – 22 Burning Tree Lane, West Barnstable, Map/Parcel 136-025, 35,199 square feet parcel, new construction, variances requested.

David Coughanowr was present. The Board reviewed the plan and stated the existing well will be abandoned for potable use. It may remain, if desired, for irrigation use. A new well will be placed in the southwest corner of the lot.

The pool house was discussed. It will be a single, unheated room (so it will not be used as a bedroom) with the possibility of a bathroom being installed later. The bathroom will need to be connected to the main septic as the distance required around a pool will not allow a second system. David Coughanowr said he will adjust the plan for the potential of this. The adjustment may require the tank to be dropped down a bit. He will have to review it.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to grant the variances with the following conditions: 1) existing well will be abandoned for potable use, 2) a new well will be placed in the southwest corner of lot, 3) the pool house will be a single, unheated room (no bedroom) with the possibility of having a bathroom installed, 4) a revised plan will be submitted with a revised elevation, if necessary, for the future plans of a bathroom in pool house, 5) a three bedroom deed restriction will be recorded at the Barnstable County Registry of Deeds, 6) an official copy of the deed restriction will be submitted to the Public Health Division, 7) the reference to using the existing tank will be removed from the plan, and 8) a five-foot opening will be made into the study. (Unanimously, voted in favor.)

V. Septic Variance – New:

- A. Stephen Wilson, Baxter Nye Engineering, representing Raymond Kwasnick, Trustee – 346 Holly Point Road (and 5 Vine Road), Centerville,

Map/Parcel 232-024 (and merged parcel 232-072), total of 40,994 square feet parcel, failed system, multiple variances requested.

Stephen Wilson presented the septic plan requesting the use of cultec leaching chambers. He expressed that it is a very tight lot and difficult to get excavating equipment to it.

Mr. McKean said the staff comments were that the current permit allows for three bedrooms and there are two additional (unmarked) rooms in the basement. This needs to be resolved. The main discussion centered around the new regulations for I/A systems requiring reserve areas, etc.

Dr. Miller said the new requirements do say that as long as it is a conventional size system it will not require a deed restriction and Steve is not looking to increase the flow from the three bedroom system. Dr. Miller said the proposed is a great improvement over what is in the ground.

The Board has not had the opportunity to review the recent state approval letter for the new I/A systems and would like to go through it more to understand why a repair would require a reserve now.

Mr. Wilson said a building permit has been obtained to remove the two bedrooms in the basement. He was not opposed to a continuation to allow more discussion with Brian Dudley, MA DEP and suggested a possible site visit to see the constraints of the lot.

Mr. McKean said the term "reserve area" is not mentioned in the approval letter. It says the applicant must show where a new system would be located if the proposed system fails.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to continue to the September 10, 2013 Board meeting and Stephen Wilson will speak with Brian Dudley. (Unanimously, voted in favor.)

- B. Dan Ojala, Down Cape Engineering, representing Sheldon Stewart, Trustee – 602 Shootflying Hill Road, Centerville, Map/Parcel 193-035, 30,927 square feet parcel, failed system, request for multiple variances.

Dan Ojala presented the plan to the Board. The owner has been pumping the system since Spring and is anxious to put a new system in. The percolation test has been completed and Conservation has approved the plan. It is in a sensitive area on the lake and he has chosen an I/A Presby Sand Filter System for remedial use approval. It will be mounded up three feet and is a much improved system. Dan is proposing a three bedroom deed restriction to address the two other rooms which will not be used as bedrooms.

Mr. McKean said the staff had a number of comments. The State approval letter says that you can not combine a plan with variances in a reduction of the size of the SAS along with a variance to groundwater.

Mr. Ojala said it is his understanding that as long as it doesn't go down to a 40% reduction (his is 50%), then the groundwater variance was allowed.

Dr. Miller read where it states any reduction at all in the leaching area shall not be combined with a groundwater variance.

The new I/A regulations require a 23 page review process and pose a number of questions including reserve area criteria which the Board and Mr. Ojala will speak to Brian Dudley, MA DEP, for clarification.

Dr. Canniff asked what the cost is to run the system. Mr. Ojala said the Presby is a nice system which requires very little O&M needed, roughly the cost of running a hair dryer.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to continue to the September 10, 2013 Board meeting. (Unanimously, voted in favor.)

VI. Monitoring Plan:

Peter McEntee, Engineering Works, Inc. representing Dorothy Stahley – 44 Percival Drive, West Barnstable, Map/Parcel 111-059, 36,386 square feet parcel, house addition, innovative alternative system, general use.

Peter McEntee said the owner has been granted a special permit from the Zoning Board of Appeals for an apartment at her dwelling which would increase the flow from 3 bedrooms to 4 bedrooms. He is proposing an I/A system for general use with quarterly monitoring for the first year and twice a year thereafter. Mr. McEntee said the preliminary figures associated with the O&M monitoring plan is \$2,000/yr.

Mr. McKean said the standard for Board has used for the I/A monitoring plans has been monitoring done quarterly for the first two years, then a review can be requested after that to reduce it.

Dr. Miller stated the monitoring guidelines were developed when most of the I/A systems were under conditional use rather than general use. With general use, he feels the technology has met the performance standards of the State and it may be reasonable to establish reduced monitoring for the systems under general use.

The Board determined it would require quarterly monitoring for the first year and, provided all the parameters fall within the standards, they may reduce it to twice/year monitoring thereafter.

Dr. Canniff noted that seasonal use properties would change the results. This property is a year-round dwelling.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to grant the plan with quarterly monitoring for the first year and if the

parameters are all within acceptable limits, they may reduce the monitoring to twice a year thereafter. If any parameters are outside the standards, the applicant must come back to the Board for review. (Unanimously, voted in favor.)

VII. Subdivision#819 (Definitive Plan):

Dan Ojala, Down Cape Engineering representing Maki Realty Trust, owner, Definitive Plans at 781 Oak Street, West Barnstable, Map/ Parcel 215-014-003, 6.95 acres, three lots, private wells and on-site sewage disposal systems, not in GP District.

Dan Ojala said it is a division into three two-acre lots with a master well and septic plans.

Mr. McKean said that along with the master well and septic plans, the standard requirements included in the approval letter are that there will be no burying of stumps or brush, and for grassy landscaped areas, a minimum of four feet of loam will be used.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant the subdivision definitive plan. (Unanimously, voted in favor.)

VIII. Food Variance (Cont):

Continue to A. Terri Perry, owner of Café Crumb – 846 Main Street, Osterville, September 10, 2013 requesting a grease trap variance with a revised menu (continued).

B. Stephen Hayes, Attorney, representing Jorge Montero, LLC, owner of Vista de Mare Diner (formerly Caffè E Dolce) – 430 Main Street, Hyannis, grease trap variance (continued).

Attorney Stephen Hayes and the property owner, Thomas George were present. Mr. George said he left a deposit off at Baxter Nye Engineering and they will do the plan for the grease trap connection as soon as possible.

Dr. Miller said he was glad to see it moving forward and would like to see it finished by the October 8 meeting. Mr. George said he will contact Baxter Nye Engineering to inform them.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to continue the item until the October 8, 2013 meeting. (Unanimously, voted in favor.)

C. Chandler Bosworth, Bosworth Associates, representing Enrique Valdovinas, owner of Mi Pueblo, 459-B Main Street, Hyannis, grease trap variance (continued).

Chandler Bosworth said he has had a couple meetings with Roger Parsons and has spoken with Tom McKean. He has his grease trap installer secured along with a plumber. The grease trap installer is handling the engineering. He spoke with Roger Parsons and the installation will take place in early October so it won't disrupt

Embargo's parking or his own during the busy season. He is close to deciding which of his two options he will take: tying into an existing grease trap at Embargo's or doing an independent one but either way, it'll be done in the beginning of October.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant an extension to October. If the digging for the grease trap has not commenced by the October 8th meeting, the applicant is to return to the Board with the status. (Unanimously, voted in favor.)

IX. Food Variance (New):

- A. Peter Goulet, Morning Glory Café – 211 Route 149, Marstons Mills, grease trap variance, seating for 8.

Peter Goulet, owner of Morning Glory Café, was present and is requesting a grease trap variance.

Mr. McKean stated the a letter dated 2003 stated no cooking or grilling of food allowed on the premises and if the business is sold or transferred, both the licensee and the owners of the property, Craig Larson and John Falacci, have the obligation to notify potential purchases that these conditions apply.

Currently the food establishment has a 30 gallon grease trap which Mr. Goulet assured the Board that he is monitoring and cleaning. Mr. Goulet said he has two handicap bathrooms available to the rear of the building and he did have the landlord install a door up front so people can enter the hall and access the bathroom.

Dr. Miller said they need a grease trap because they are in the groundwater protection zone. He said the grease trap is most important and with that installed, the bathroom variance can be addressed later.

The whole building is permitted for 440 gallons/day. The building has a two-bedroom apartment upstairs so the allowable septic flow for the food establishment would only allow three seats. The engineer wrote a letter calculating the use for the building but based it on 572 gallons/day and the permit only allows for 440 gallons.

For the regular menu (not being fast food), the regulations are based on 35/gal/seat. Therefore, only three seats are available unless the use for the office in the building or the apartment uses changes.

Dr. Miller asked Tom McKean if he would be comfortable with a trapzilla grease trap at this location. The Board informed the applicant that the Barnstable Market by the Courthouse has one and he might speak with them and determine whether it would be less expensive for him.

Mr. Goulet mentioned a number of his patrons are elderly and would appreciate a place to sit while waiting. The Board said he can add a bench and take out the excess seats, leaving a table and three seats. The outside seats may exist without a

table there so people can wait. They recommended visiting Nirvana in Barnstable to see how they are set up.

Mr. Sawayanagi said there are ways to reduce the grease in the meantime. Mr. Goulet will adjust his ingredients and will use only pre-cooked chicken or deli chicken for now. He'll buy pre-cooked bacon, as well.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to continue this to the October 8, 2013 meeting with the condition that (1) the owner develop a revised menu to reduce the grease level until the October 8 meeting then will discuss whether a trapzilla will be installed or revise the menu permanently, and (2) reduce the seating to three seats and will allow waiting benches for the customers. (Unanimously, voted in favor.)

- B. Carol Cronin, owner of Cape Cod Chocolatier – 1600 Falmouth Road, Unit# 12 (formerly Unit# 7 & 8), Centerville, toilet facility variance, no seating.

Carol Cronin said the toilet facilities are just for the employees and there are no more than three employees at one time.

Mr. McKean said the staff has no issues with it.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to grant the variance with the condition there will not be any seating. (Unanimously, voted in favor.)

X. Food – Temp:

Amanda Converse representing “Love Local Fest”. This event will be held on Sunday, August 25, and Sunday September 29, 2013 at 11 am -7 pm.

Amanda Converse was present and said the event will be three times a year.

Mr. McKean said the only concern the staff had was the vendor, The Wicked Quahog, out of Falmouth. Mr. McKean said he spoke with Dan Sawyer in Falmouth and received word the commercial kitchen is fully approved by the Falmouth Board of Health. The staff had no objections to the event.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to grant the temporary event a food permit for three times/year. (Unanimously, voted in favor.)

XI. Old / New Business:

- A. Approval of the Minutes: May 14, 2013.

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

- B. Regulation / Policy – Reduce the age requirement for Qualified Swimmers from 18 years to 16 years old.

The reason behind this is that the age requirement nationwide for lifeguards is 16 years. This would standardize the age requirement. As a lifeguard, we are entrusting 16 year olds maturity level and yet, the lesser demands placed on the qualified swimmers currently requires the maturity level of 18 years.

Mr. McKean proposed this to the agenda because a couple of motels had expressed the difficulty in obtaining coverage for the pools. The hope is that there will be a good number of 16 year olds interested in the job.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to adopt the revision in the qualified swimmers requirements to allow 16 year olds. (Two voted in favor, One opposed – Dr. Canniff.)

- C. Regulation / Policy – Chapter 378 Swimming Pools. Add wording to include: New pools must be tested for coliform bacteria before opening and seasonal pools must be tested for coliform bacteria before seasonal opening. unless the pool is filled with town supplied water which should not have coliform in it.

Upon a motion duly made Dr. Miller, seconded by Dr. Canniff, the Board voted to adopt the wording: New pools must be tested for coliform bacteria before opening and seasonal pools must be tested for coliform bacteria before seasonal opening. (regardless of where the water was supplied from). (Unanimously, voted in favor.)

- D. Discuss NStar yearly operational plan and ROW spraying plan.

The Board had been asked to submit comments on the proposed NStar operational plan to the Town Council.

Dr. Miller said the State regulations do preempt the local pesticide and herbicide regulations. He noted that Karen Malkus, Health Division, was able to locate the regulation 333 CMR11 which states the local board is not allowed to enforce the pesticide and herbicide regulations, however, they are allowed to bring forth their concerns at the public comment period and the concerns must be taken into consideration. In the event of a question or dispute, the more restrictive will apply.

With that said, Dr. Miller and Mr. McKean had added a phrase to the document given to the Board for comment. Added into the second to last paragraph, the wording was added... as they apply to sensitive areas such as water supplies, well recharge areas, the wetlands, and surface water bodies. The Board will each sign the comments and pass on to the Town Council.

Motion to adjourn at 5:35 pm.