



Town of Barnstable

Board of Health

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BOARD OF HEALTH MEETING MINUTES

Tuesday, April 9, 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, April 9, 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. Regulation:

Proposed Revision of Section 360-9.1 – Liquid level in leaching pit(s) and /or cesspool(s).

Thomas McKean stated that, currently, Title V only addresses an unacceptable level of liquid of 6" within the inlet invert in the septic tank. He then explained that if there is a high level in the leaching pit, it still passes, according to Title V. The Board of Health then adopted a regulation of a 6" level in the leaching pit, or ½ day's flow whichever is greater. The ½ day's flow proves difficult to measure for the private inspectors in the field and a revision would be helpful. The proposed was advertised for two weeks in the newspaper and will address this.

Mr. McKean noted that the original regulation of requiring a septic inspection for the sale of a property was adopted to protect the environment, not actually designed to protect the buyer. Dr. Miller agreed with the proposal to use 12 inches and better to error in the direction of safety. He asked Mr. McKean if he would expect a large increase in failures if the 12 inch measurement was adopted. Mr. McKean believes it would only result in a slight increase.

Dr. Canniff stated that he agrees that protecting the environment is a good reason to choose the 12 inch proposal, but to simply ease the work of the inspectors would not be a good rationale for it.

Proposed revision to Section 360-9.1 of the Town of Barnstable Code:
Septic systems consisting of a leaching pit or cesspool(s) with a liquid depth of less than twelve (12) inches below the invert shall be upgraded to conform to 310 CMR 15.00, the State Environmental Code, Title V, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, and Town of Barnstable Board of Health Regulations.

Upon a motion made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to adopt the proposed revision above. (Unanimously, voted in favor.)

II. Variance – Septic (Cont.):

- A. Matthew Eddy, Baxter Nye Engineering, representing Joyce Angelo, owner – 280 Long Beach Rd, Centerville, Map/Parcel 185-026, 7,038 square feet parcel, new construction, requesting multiple variances (continued from March 2013).

Matthew Eddy was present and stated that all questions the inspectors had have been answered by Matt.

Mr. McKean mentioned the property constraints it is not 75 feet away from the wetlands. However, it is 61.9 feet away from the wetlands so it is in full compliance to Title V.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to grant the proposed variances on the plan dated 8/30/12, revised 3/05/13 with the following conditions: 1) record a one bedroom deed restriction at the Barnstable County Registry of Deeds, 2) furnish the Barnstable Public Health Division an official copy of the deed restriction, 3) full adherence to the provisions mandated by the renewal of certification for General Use for Advantex AX20 and AX100 issued by the MA Department of Environmental Protection (DEP) dated August 30, 2012, 4) upon transfer of the property, it is the responsibility of the homeowner to inform any purchaser of the property of the costs and maintenance operations of the Advantex system. (Variance Granted – Vote: Two in Favor, One opposed – Dr. Canniff.)

- B. Arlene Wilson representing Robin and Marcia Brown, Trustees – 250 Smoke Valley Road, Osterville, Map/Parcel 097-002, 5.8 acre parcel, multiple variances, house addition, (continued from March 2013).

Arlene Wilson was present.

Dr. Miller said his discussion with Brian Dudley, DEP, resulted with an emphatic and unquestionable answer that the setback from the top of a coastal bank extends in both directions, not just landward; and, it is considered an environmental variance.

Arlene said she will withdraw her current plans and file a new request with a revised plan. She will also obtain a letter from the owner(s) acknowledging the current septic permit # 2012-323 issued is withdrawn and will not be acted upon. (The current permit is suspended due to some discrepancies in the plan.)

Arlene also pointed out on Exhibit#1 – that the scale needs to be revised.

Dr. Miller said to Arlene Wilson that she should expect to receive notification from the Board on a hearing for the original permit. To avoid the hearing, the owners may sign a letter stating that they are aware there was a problem with the first application and the permit was given without the proper review and that the owners

agree to the permit being revoked. If this is received, then revoking the permit can be done without the hearing. Arlene Wilson said that would not be a problem and she'll have the owners send a letter.

III. Septic Variance – New:

- A. Michael Borselli, Falmouth Engineering, representing Cynthia Parrella, owner – 194 Bay Lane, Centerville, Map/ Parcel 186-075, 20,250 square foot parcel, multiple variances, house renovation and repair.

Michael Borselli was present. He stated the current leaching system has the very bottom of the system in groundwater. The new leaching system will provide the required setback from ground water which will be a great improvement.

Mr. McKean mentioned that there is no increase in flow for the proposed plan – as such, the staff found the system to meet the maximum feasible plan. If there was an increase in flow, the staff will have suggested an Innovative Alternative (I/A system). (Exhibit #2 Septic plan dated March 20, 2013).

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve the variances listed on the septic system plan dated March 20, 2013, with the following conditions: 1) record a three bedroom deed restriction at the Barnstable County Registry of Deeds and 2) provide the Public Health Division with an official copy of the deed restriction, and 3) make the dimensions of the leaching field easier to read (10' x 36', with 11 ½" of side wall built into the system because a standard flow diffuser is used. (Unanimously, voted in favor.)

IV. Food Variance (New):

- A. Ted Schilling, Esq., representing James Surprenant, owner, Crisp Flatbread, 791 Main St, Osterville, variance from Title V for additional seating (310 CMR 15.203 / 15.204).

Attorney Theodore Schilling and James Surprenant, owner, were present. They discussed the history of the restaurant and that previous food establishments located there were using 14 seats outside during the summer.

Atty. Schilling said they are asking for the slight increase of 14 seats during the months of May-Sep. He checked with the prior owner and the COMM Water Department and the water usage has been very low. For the last three years, the water usage was as follows: in 2012 - 113K gallons, in 2011 - 143K gallons, and in 2010 - 79K gallons. The business would also be willing to pump the tank four times a year or, whatever the Board would request.

Dr. Miller pointed out that there was one permit which had permitted 14 seats outside and 21 inside, still totaling 35 seats. Normally, the permits stated 35 seats (or less).

The Board informed the applicant that they have seen people present their cases to MA DEP with low water usage and DEP did approve before. The State sets the allowable flow.

Dr. Miller suggested they either decide to continue this item and apply to DEP, which may take 30-60 days or more to make a judgment.

David Columbo, owner, Black Cat Harbor Shack, suggested that the Board and applicant may consider that until the DEP makes a decision, perhaps the Board will grant the understood allowance of 35 seats but that there would be 46 seats on site with the understanding that only 35 seats may be used at a time. This way, the establishment would be able to seat people outside when the weather permits.

Dr. Miller thanked him for the suggestion but said that it would be too difficult to enforce. It would not make a difference to him if they moved seats from inside to out so that there were still only 35 seats set up.

Attorney Schilling said they have to go back to the Liquor Board because they only approved inside seating. Attorney Schilling said they would like to continue the item.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board approved a continuance to the May 14th meeting. (Unanimously, voted in favor.)

- B. David Columbo, owner, Black Cat Harbor Shack, 159 Ocean Street, Hyannis, review of pilot program and approval as an ongoing business.

David Columbo was present to review the pilot program of the outdoor raw bar.

Mr. McKean said the Health Inspector, Marybeth McKenzie, wrote a summary report which stated everything was always being handled correctly. Marybeth mentioned in her report that the establishment and the Board may want to divide the permit into two different permits because if there is any problem which may come up in the future, may not want to close down the full establishment.

Mr. McKean stated that they are not obligated to close down the whole establishment, only the area which is having a problem. Mr. McKean said if there is a problem at an establishment, the Health Division would try to work with the establishment. Similar to having a restaurant discard certain foods which may not be at the proper temperature, but still be able to operate the other foods.

Mr. Columbo mentioned that there is no inside seating at the establishment. There is a kitchen which prepares cooked food, food is served in the front patio and in the back. There is the raw bar only in the back.

The Board said as long as Mr. McKean feels comfortable to keep it all as one permit would be fine with the Board. Mr. McKean said he is comfortable with this.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to grant the continuation of the raw bar with the regular routine inspections with the following conditions: if any problem occurs in the future which is not

immediately rectified, then the raw bar privilege would be revoked by the Health Division. (Unanimously, voted in favor.)

Mr. McKean mentioned that if any other establishment is interested in this, they too will have all the same process and equipment, and one year probation to go through a pilot program period and review.

- C. David Shulman, Jera Cape Cod, LLC, new owner, Auntie Anne's Pretzels, Cape Cod Mall, 793 Iyannough Rd, Hyannis, two variances: 322-3 grease trap variance and 322-4 toilet facility variance.

David Shulman was present.

Mr. McKean said this is a change of ownership, same menu and same processing. He spoke with the plumbing inspector and town engineer. All were in agreement to support the grease trap variance as the property is on town sewer.

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

V. Old / New Business:

- A. Approval of the Minutes March 12, 2013.

Minutes are not available at this time.

- B. Mobile Food Unit – Proposed policy to include boats.

Mr. McKean spoke on the policy. The goal is to include boats in Health's guidelines and procedures. They did advertise the proposed policy. Legal mentioned this was not necessary.

The proposed policy is (Exhibit#3):

March 2012, Revised Feb. 14, 2013

**Public and Environmental Health Program
Policies, Procedures, and Guidelines**

Mobile Food Units, Including Boats, Self-Propelled Units and Trailers	No.
2013-02	

Equipment

The mobile food unit operator shall strictly comply with Section B paragraphs 1 through 14, contained within the State Sanitary Code, 105 CMR 590.009. In addition, the mobile food unit shall be equipped with the following:

- a. Mobile food operations shall be fully enclosed, with smooth easily cleanable floors *, walls, and ceilings

- b. All mobile food operations selling or distributing ready-to-eat PHF's shall be equipped with mechanical refrigeration that can maintain PHF's at or below 41 degrees F.
- c. A convenient hand-washing sink (hot and cold running water under pressure, dispenser soap, paper towels) must be available inside the mobile food unit for employee handwashing whenever handling unpackaged foods.*
- d. A double bay or triple bay sink shall be provided for cleaning and sanitizing utensils *
- e. The door(s) shall remain closed during food service operations. Serving windows shall be equipped with electronic air curtains and/or with screens which are automatically or mechanically self-closing; or if mechanical air-conditioning is provided, all serving windows must be closed and equipped with automatic or mechanical self-closing devices.**

* The requirements to provide easily cleanable flooring in section "a" as well as items "c", "d," and "e" do not apply to the sale of pre-packaged food items (i.e. the sale of packaged ice-cream bars).

** The requirement to provide air curtains and mechanically closing screen windows and doors may not be required on boats if it is demonstrated that all foods will be kept covered during food preparation and storage (e.g. below deck with the galley door closed).

Time Restriction

The operator of a mobile food unit shall not remain parked at any particular location (parcel) selling and distributing foods for an extended period of time. The maximum allowable time period for selling and distributing foods from a mobile food unit at any particular location (parcel) shall not exceed four hours. The Board of Health may vary this restriction for special events and celebrations such as carnivals for which a temporary food permit is issued; and/or for contracted services provided at town-owned properties (i.e. public beaches). **

** See BOH Parameters to Allow a Mobile Food Unit to Remain at a Fixed Location for More Than Four (4) Hours, dated June 18, 2012.

Fixed Licensed Food Establishment or Food Processing Plant

Mobile food operations shall operate from a fixed, licensed food establishment or food processing plant and shall report at least daily to such locations for all food, water and supplies and for all cleaning and service operations. Only commercial facilities shall qualify as fixed food establishments or food processing plants. Private homes and residential kitchens shall not be utilized for this purpose. Ships and large vessels may be exempt from this requirement only if it is demonstrated that the mobile food operation is of sufficient size to store and prepare all of the foods proposed on the menu, as well as provide all of the required equipment in full compliance with the State Sanitary Code, 105 CMR 5900.00 and local health regulations.

Certification

The mobile food unit operator shall be certified in safe food handling practices (Serv-Safe or equivalent) and shall be food allergen awareness certified.

Exemptions: Ships and Vessels Inspected By Other Jurisdictions

Ships and vessels inspected and licensed by another governmental State or Federal jurisdiction for the purposes of ensuring and verifying proper food handling, safety and sanitation (e.g. United States Public Health Service) shall be exempt from this policy, if copies of the mobile food establishment inspection reports are available immediately upon the request of a health inspector. The State Sanitary Code, 105 CMR 590.010(C) authorizes the Board of Health to accept inspection reports from that jurisdiction and to conduct joint inspections.

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

C. Status Report – Craigville Motel, 8 Shootflying Hill Rd, Centerville.

Tara Patel and her maintenance manager were present.

Dr. Miller acknowledged the establishment has done at good job at resolving the issues to date. The Board has allowed 120 days to clear up the issues. It is less than 60 days into the process and much improvement has occurred.

Tara mentioned there is a tenant who will not allow anyone in at this time and they have been issued a Notice to Quit. The Board asked that they continue in the same manner.

Dr. Canniff asked about Room 34 where they have a child. Tara said they are paying their rent on time and are looking for an apartment. Tara said she spent four hours cleaning their room herself as they were not doing the cleaning. Mr. McKean said he will review the issue with Donna, the Health Inspector.

Additional Items/Comments:

Dr. Miller mentioned that when he was in New York City recently, all the restaurants are required to post their latest inspection grade and it is a very large size.

Voted to Adjourn at 4:36 pm.

List of Exhibits

- Exhibit# 1 RE: 250 Smoke Valley Road, Osterville
CSN Engineering's Plan dated 5/30/12 .
- Exhibit# 2 RE: 194 Bay Lane, Centerville
Michael Borselli, Falmouth Engineering's septic plan dated
March 20, 2013.
- Exhibit# 3 RE: Proposed Policy
Mobile Food Units, Including Boats, Self-Propelled Units and
Trailers No. 2013-02 March 2012, Revised Feb. 14, 2013