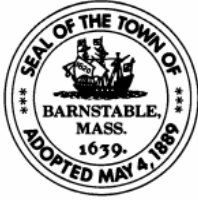


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# Town of Barnstable

## Board of Health

200 Main Street, Hyannis MA 02601

John T. Norman, Chair  
F.P. (Thomas) Lee, P.E.  
Donald A. Guadagnoli, M.D.  
Daniel Luczkow, M.D.  
Paul Canniff, D.M.D.  
Stephen Waller, M.D.-Alternate

### BOARD OF HEALTH MEETING MINUTES

#### Tuesday, December 19, 2023 3:00 PM

James H. Crocker Jr. Hearing Room, Town Hall  
367 Main Street, 2<sup>nd</sup> Floor, Hyannis, MA

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on Tuesday, December 19, 2023. The meeting was called to order at 3:00 pm by Thomas Lee, Vice Chair. Also in attendance were Board Members Donald Guadagnoli, M.D, and Paul Canniff, D.M.D. John Norman, Chair, Daniel Luczkow, M.D, and Stephen Waller, M.D, Alternate, were not able to attend. Thomas McKean, Director of Public Health, and Sharon Crocker, Administrative Assistant, were present.

#### I. Proposed Regulations/Policies:

Policy – “Deadline to Connect Buildings to Public Sewer”

The policy establishes a due date of six months for homeowners to connect to sewer once it is available to them. If determined by the Health Director, one six-month extension of deadline may be granted by him/her. For a longer extension, owners must make a request to the Board of Health.

The proposed policy was publicized and Mr. McKean stated he did not receive any responses via mail or email from the public.

Mr. McKean requested the word “of” be added to the last sentence on page 1 “The property owner shall include the reasonable period of time...”

Upon a motion duly made by Dr. Guadagnoli, seconded by Dr. Canniff, the policy, with the addition of the word “of” in last sentence of page one, was voted for adoption. (Unanimously, voted in favor.)

#### II. Variance Requests: (Continued from November 28, 2023)

Secondary Treatment Unit (S.T.U.): -

Mark Dibb, Cape & Island Engineering, representing Jeffrey Dinardo & Maria Apse, owners – 55 Poponessett Road, Cotuit, Map/Parcel 035-002, 33,541 Square Feet Parcel, in Saltwater Estuary Protection Zone, proposing using a MicroFAST 0.5 I/A Septic System and requesting a variance from Saltwater Estuary Protection regulation to allow 4 bedrooms in lieu of 3, will supply floor plans.

Mark Dibb was present and stated he supplied larger floor plans, as requested.

With the S.T.U. system, the four bedroom with put out less than 5 milligrams per liter of nitrogen loading in groundwater at the downgradient property line, which is less than the standard system of a three bedroom. Therefore, this is an improvement.

Upon a motion duly made and seconded, the Board voted to grant the use of the MicroFast Secondary Unit Treatment (S.T.U.) System and allowing four bedrooms with the condition that all requirements listed in the MA Department of Environmental (DEP) approval letter be followed. (Unanimously, voted in favor.)

**III. Innovative/Alternative Septic- Variance (Continued from November 28, 2023):**

Dan Ojala, Down Cape Engineering, representing Chef J LLC, owner Villaggio Ristorante – 4631 Falmouth Road, Cotuit, Map/Parcel 024-157, 46,460 square foot parcel, in Stage One, proposing to locate the leaching field and the SepiTech Alternative Septic System on separate lot controlled by the same owner, Zone II, permitted for 100 seats, requesting 115 seats and a variance from using a recirculating sand filter (RSF) or alternative. Variance from Saltwater Estuary Protection regulation.

Mr. Ojala had provided amended plans showing the I/A; however, when he realized Stage 1 sewer was further out than anticipated. He dropped the variance request of not installing a Recirculating Sand Filter (RSF).

Mr. Ojala was requesting 100 seats as had been understood as the currently permitted number. Per conversation at the meeting, the accurate seats allowed is 93 seats x 35 gpd = 3255 gpd.

Mr. Ojala believes the owner, Chef J, will be ok with putting leaching on the separate lot, which had also been requested by the prior owner as a cost saving measure due to repaving costs.

Mr. McKean said they would only need the Saltwater Esturaries variance if they want to increase the seating above the existing count of 93 seats. Mr. Ojala said as they are not looking to propose an increase in flow now, for facility overall, simply transferring design flow over one lot, plus eliminating possibility of future new flow before sewer on the vacant lot, it should be a winner for all.

The applicant will still need a Title V variance request to install leaching and partial tanks on separate lot and tank variances to internal lot line.

The DEP will need to review the plans after local approval of the variances and I/A package, due to the SeptiTECH permit language.

Upon a motion duly made and seconded, the Board will continue this item. Mr. Ojala will notify the Board of the desired meeting date. (Unanimously, vote in favor.)

**IV. DEADLINE EXTENSION:**

A. Pamela Doyle, Trustee – 105 Annable Point Road, Centerville, Map/Parcel 240-041, requesting deadline extension to repair failed septic system as property is in Phase 1 of sewer connection schedule.

Upon a motion duly made by Dr. Guadagnoli and seconded by Dr. Canniff, the Board voted to grant a temporary conditional variance to continue to utilize a failed septic system in lieu of the Title V Code requirement to replace or repair failed components with the following conditions: 1) the septic system must be pumped as often as necessary to ensure there will not be any raw sewage overflow onto the ground nor any sewage backup. (Voted in favor: 2 in favor, 1 abstained – Dr. Canniff.)

**WITHDRAWN** B. Ellen Dietel representing George and Audrey Dietel, owners – 52 Goose Point Road, Centerville, Map/Parcel 252-087-T00, requesting deadline extension to repair failed septic as property is in Phase I of sewer connection schedule.

C. Randy Bern representing new owners, Wendy and Steven D'Angelo – 103 Long Beach Road, Centerville, Map/Parcel 205-017, requesting deadline extension to replace single cesspool as property is in Phase 1 of sewer connection schedule.

Upon a motion duly made and seconded, the Board granted the approval of use of existing septic system until the sewer becomes available to connect or until December 20, 2028, whichever comes first. This variance is granted with the following conditions:

- (1) The septic system must be pumped as often as necessary to ensure there will not be any raw sewage overflow onto the ground nor any sewage back-ups into the dwelling.
- (2) This property shall be connected to public sewer within sixty (60) days of availability. [Note: This property is located within Phase 1 of the Comprehensive Wastewater Management (CWMP) Plan.]
- (3) When this property transfers to a new owner, the new owner of this property shall be notified of this variance and of the conditions contained within this letter.

(Unanimously, voted in favor.)

**V. HEARING – Show Cause Tobacco:**

A. Anil Diwan, owner - C.B. Perkins Cigar Lounge & Bar, 649 Main Street, Hyannis, Map/Parcel 308-134, Tobacco Violation on November 28, 2023. Second violation in last three years (10/08/2021 and 11/21/2023) Board determined 10/8/21 as warning.

Anil Diwan and Attorney, David Lawler, appeared before the Board of Health. This hearing was held in order to receive testimony regarding alleged actions or non-actions observed at C.B. Perkins Cigar Lounge & Bar located at 649 Main Street Hyannis on November 28, 2023, at 4:57 p.m.

Massachusetts General Law Chapter 270, Section 28 requires onsite consumption of flavored tobacco products or tobacco product enhancers at smoking bars. A tobacco compliance check was performed on November 28, 2023. A Tobacco Compliance Check Form was completed by Barnstable County Tobacco Control Program personnel on that day and was submitted to the Town of Barnstable Board of Health. The form indicated a flavored product was purchased on that date at this business establishment. The form also indicated the 'purchaser was not required to use product prior to leaving the establishment.'

A video taken at the time of the compliance check showed the identified purchaser make a purchase. Then sometime afterward while standing at the counter, the same purchaser retrieved a device from his back pocket, while on the opposite side of the sales counter with his back pocket out of view and at a lower elevation compared to the counter height, thus apparently out of view of the business operator who just made the flavored tobacco product sale to him. The purchaser brought the unknown device to his mouth. The video then showed the purchaser exhaling smoke. These actions clearly occurred while the purchaser remained inside the business establishment.

After hearing testimony and viewing video footage of the identified purchaser's actions as described above, the Board voted to dismiss this case. The Board members understood that it

would have been difficult for the business operator to determine whether the onsite consumption was from the purchased device or from another device that the purchaser brought-in and had kept on his person.

Upon a motion duly made and seconded, the Board voted to dismiss the violation. No violation was determined to have occurred. (Unanimously, voted in favor.)

- B. Vijay Patel, owner – Hyannis Smoke Shop, 276 Falmouth Road, Hyannis, Map/Parcel 308-134, Tobacco Violation on November 21, 2023. Second violation in past 3 years (5/11/2021 and 11/21/2023).

M. Vijay Patel appeared before the Board of Health for a show-cause hearing. The hearing was held in order to receive testimony regarding alleged actions or non-actions observed at Hyannis Smoke Shop, 276 Falmouth Road Hyannis on November 21, 2023, at 3:03 p.m.

Massachusetts General Law Chapter 270 Section 28 (b) reads as follows: *‘No person, retailer or manufacturer shall sell, distribute, cause to be sold or distributed, offer for sale any flavored tobacco product or tobacco product flavor enhancer in any retail establishment, online or through any other means to any consumer in the commonwealth...’* No person, retailer or manufacturer shall market or advertise a proposed sale or distribution that is prohibited herein.’

A tobacco compliance check was performed on November 21, 2023, at Hyannis Smoke Shop, located at 276 Falmouth Road, Hyannis. A Tobacco Compliance Check Form was completed by Barnstable County Tobacco Control Program personnel on that day and was submitted to the Town of Barnstable Board of Health. The completed form read as follows ‘flavored products are kept in a black briefcase; customer requests to see the briefcase, then chooses the illegal product to purchase.’ The completed report also indicated a vape device, identified as a sour grape flavored tobacco product, was purchased for \$25.00 by credit card on November 21, 2023, at 3:03 p.m. from this business establishment.

After hearing testimony and upon a motion duly made and seconded, the Board voted to uphold the violation and a \$1,000.00 ticket citation will be issued. (Unanimously, voted in favor.)

## **VI. Regulation/Policies:**

**SCHEDULED FOR JANUARY 23, 2024.** A. A public hearing to review and discuss proposed revisions to Sections 385-6 and 385-4, and 376-19, revision of deadline to submit revised plans.

- B. Policy – “Temporary Holding Tanks at Locations Where Public Sewer Will Be Provided in the Near Future (within Two or Three Years)”.

Mr. Lee continues to work with the MA DEP in an effort to obtain their acceptance for the use of a holding tank for properties looking to be connected to town sewer in the near future in lieu of installing a new septic system for such a limited time. No action taken at this time.

## **VII. Minutes:**

Minutes – November 28, 2023.

Minutes moved to January 23, 2024, meeting.