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# Town of Barnstable

## Board of Health

200 Main Street, Hyannis MA 02601



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

### BOARD OF HEALTH MEETING MINUTES Tuesday, August 24, 2010 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 August 24, 2010. The meeting was called to order at 3:00 pm by Chairman Wayne Miller, M.D. Also attending were Board Members Junichi Sawayanagi and Paul J. Canniff, D.M.D. Thomas McKean, Director of Public Health, and Sharon Crocker, Administrative Assistant, were also present.

#### **I. Hearing – Housing:**

Estate of John S. Rittershaus, 217 Sea Street, Apt# 4, Hyannis – ceiling height.

No one was present to represent the owner.

Mr. McKean said he had inspected it and found there are two buildings on the property. The front building has 4 bedrooms and is allowed 6 tenants under the rental ordinance. The rear building has three floors. There are a total of three units on the first and second floors. The rental ordinance allows two people per unit x 3 equals a total of 6 people. The third floor of the rear building has the ceiling height issue with only 80 square feet of space above 7 feet and the state regulations require 150 square feet to allow one person to sleep there; thus, the space would not be available for sleeping. The owner is applying for a ceiling variance with a measurement of 160 square feet above 6.8 feet. If the variance is approved, the owner would be allowed to have one person sleep in that area. There were other issues at the site including smoke detectors not working and overcrowding (the leases stated two people and four people were living in there.) Rent was picked up weekly, thus it is believed the owner's agent, Christine Thorensen, was aware of the overcrowding. At the time of this hearing, most issues were fixed and both buildings were vacant. There is still a garbage issue.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to (1) Continue to the September 14, 2010 meeting and request the owner be present, and (2) the third floor apartment shall not to be rented until after the issue is heard at the September meeting. (Unanimously, voted in favor)

**II. Hearing – Pool Permit:**

**POSTPONED UNTIL SEP 14, 2010** Comfort Inn, 1470 Iyannough Rd, Hyannis - Lifeguard, near-drowning.

**III. Show-Cause Hearing for Food Permit:**

Centerville Lobster & Fish Market, 1600 Falmouth Road, Centerville - multiple violations, no Servsafe certified persons on site.

Theodore Ray Schilling, Esq. and Jenna Licciardi, owner of Centerville Lobster & Fish, were present for the hearing.

Mr. McKean spoke of the multiple types of violations including: 1) On June 28<sup>th</sup>, the owner opened without a license and without anyone qualified with a proper food safety handling course. 2) The facility is a no-seating facility. Mass Environmental Police Officer Clayton was there on Sunday, August 1, 2010, and saw six people eating at a table and no employees present had servsafe training. 3) A later date, the Health Inspector stopped in and found the owner was not present and, again, there were no servsafe trained personnel.

Attorney Schilling mentioned the owner has a signed agreement with the prior owner which states the prior owner had agreed to be on hand at the premises and train her and he would have the necessary servsafe training required until she received all her permits. He stated the prior owner did not honor their agreement. The Board asked the owner to provide a copy of such agreement to the Board. Attorney Schilling said on the third event, the owner had gone home to change after getting wet loading ice. The report from the Health Inspector stated he was told the owner had not come in for the day at the point of the inspection.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to allow continuation of operations with the understanding that the facility will be immediately closed down if another servsafe or seating violation occurs. It will be closed until the owner is able to come in front of the Board again. A reminder was noted to owner that it is required to respond promptly to the health inspector's instructions in the future and to understand the health inspector has the authority to close the establishment for major violations to keep the public safe. (Unanimously, voted in favor)

**IV. Variance – Food:**

Jenna Licciardi, new owner, Centerville Lobster & Fish Market – 1600 Falmouth Road, Unit#12, Centerville, toilet facility variance.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve a variance for one toilet facility provided there is no seating. (Unanimously, voted in favor)

**V. Show-Cause Hearing for Food Permit:**

Borders Books Café / Seattle's Best – 990 Iyannough Rd, Hyannis, multiple offenses, no servsafe certified persons on site.

Stephen Maloney, Sales Manager, was present and filling in for the General Manager position which was recently vacated.

Mr. McKean discussed the Health Inspector's reports of 2/26/10, 8/6/10, and 8/9/10 which included the violation of no personnel on hand with servsafe training.

Mr. Maloney stated the difficulty they have had with turnover after training takes place. Mr. Maloney said Charlotte, who will be overseeing the Food and Beverage at this time, come in to meet with the Health Inspector to make sure they proceed correctly.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to (1) revoke the current food service permit until all violations are fixed, (2) with the proper application process, a retail permit may be issued which will limit the items to coffee and prepackaged foods requiring no processing. (Unanimously, voted in favor)

**VI. Modification of Comprehensive Permit (ZBA # 2003 – 90):**

Submitted by JDJ Housing Development, LLC, and Dakota Partners, Inc. – "0" Independence Drive, Barnstable, Map/Parcel 332-010-001, 14.32 acres.

No one was present.

The Board reviewed the plans to submit comments to the Zoning Board. The Board concurred with the Health staff's concerns that an on-site manager is not planned until Phase Two of the project

The recommendations to Zoning will be to include the on-site manager in Phase One so staff is present from day one. The trash will be fenced/screened in to meet the Health regulations. The trash removal contract must be sufficient to handle the number of units. Also, there was expressed concern that the elevators originally proposed have been removed and would like to understand why it was removed. The Board feels it would be valuable to have one or more of the buildings with elevators.

**VII. Hearing – Septic Deadline Extension:**

A. Joseph & Inessa Katsman, owner – 45 Straightway, Hyannis, failed septic system.

Joseph Katsman was present. The original failure goes back to the bank, Country Line Home Loans, who formerly owned the property. Mr. Katsman was notified on 6/14/10 that there was a failed septic report on file.

The Board reviewed the inspection report which stated there were no problems other than the riser having a stain line on it which may be from a bit of debris, not clearly qualifying the system as a failure and the owner states all indications are that it is working fine. He has lived there two years (as a second home) and has pumped it once, with no indications of a problem.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve Mr. Katsman having another septic inspection report done by a certified septic inspector who will submit the results to the Health Division: and, if it is stated to be in failure, the system must be repaired by December 1, 2010. (Unanimously, voted in favor)

- B. Margaret Grant, Steele Associates, represents Pauline Porkka, owner – 301 Pine Street, Centerville, failed system, requests deadline extension.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board approved to extend the deadline for repair to Dec 1, 2010 with the following condition: 1) must sent the Board a copy of their Purchase and Sale stating the escrow will be set aside for the replacement of the septic. (Unanimously, voted in favor.)

- C. Dan Ojala, Down Cape Engineering, represents Albert Colton, owner – 94 Holly Point Road, Centerville, failed system, requests deadline extension.

Dan Ojala was present. He stated the septic failure was due to tree roots in the pipe with no visible problem of it backing up at this time. This location falls within possible sewer connection. The owner only comes down on weekends and rents for a 9-10 week period in the summer.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board approved to extend the repair deadline until April 1, 2011. The deadline will be revisited at that time to see if sewer is moving forward in this area. (Unanimously, voted in favor.)

**VIII. Variance – Septic (Cont.):**

- A. Daniel Ojala, Down Cape Engineering, represents Dennis and Susan Ausiello, owners – 80 Cross Street, Cotuit, Map/Parcel 033-029, 0.50 acre lot 5, variances, upgrade in system, new construction – expansion of habitable space.

Dan Ojala presented the septic plan. Staff has no objections.

Dr. Miller noted what he had asked for at the last meeting was: make sure system was not within the estuary zone, that a full reserve area is identified (as there is an increase in flow requested) and two additional percolation tests be done as would normally be required with this.

The Board would like the owner to provide some proof of the fourth bedroom historically.

Upon a motion duly made by Dr. Canniff, seconded by Junichi Sawayanagi, the Board voted to approve the septic plan dated July 16, 2010.

**IX. Variance – Septic (New):**

- A. Stephen Wilson, Baxter Nye Engineering, represents Jetty Realty Trust, Jane Bertolami, Trustee, owner – 15 Sea View Avenue, Osterville, Map/Parcel 162-026-002, 0.56 acre lot, 2 variances.

Stephen Wilson was present and presented the revised plan with a setback variance from the property line and a coastal setback variance.

Mr. McKean said the staff had no issues with the revised plan.

Upon a motion duly made by Dr. Canniff, seconded by Jim Sawayanagi, the Board voted to approve the plan dated August 16, 2010. (Unanimously, voted in favor.)

- B. Arlene Wilson, A. M. Wilson Associates, represents Thomas and Nina Weld, owners – 269 Seapuit Road, Osterville, Map/Parcel 095-005-002. 2.0+ acre lot, repair of failed septic, set variances, local upgrade approval.

Arlene Wilson presented her plan. The leaching system is only 10 feet from wall so they are providing a liner and they will install the system in the same location as the prior one.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the variances in accordance with the plan dated August 25, 2010 to be revised to show a T at the d-box inlet side and with the following conditions: (1) a seven-bedroom deed restriction is recorded at the Barnstable County Registry of Deeds, (2) a proper copy of the deed restriction is submitted to the Town of Barnstable Public Health Division, (3) the septic tank and pump chamber shall be reinforced precast concrete watertight and waterproof, (Unanimously, voted in favor.)

**X. Innovative Alternative Review:**

- A. Linda Pinto represents Justin and Martina Larhette, owner – 10 Flowing Pond Circle, Osterville, Map/Parcel 146-066, 0.36 acre lot, septic failure, one-bedroom deed restriction, proposed increase in flow to a 2 bedroom capacity using I/A system.

Linda Pinto presented her plan for the septic system which does not require any variances. Ms. Pinto stated that in the future, once the reserve is needed, the leaching pit can be moved to avoid a variance and they can obtain a new easement from the neighborhood association or move the leaching pit further down the drainage easement.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve the plan with the following conditions: 1) change the wording on the Reserve Area detail to say "leach basin to be relocated once the reserve area is used", 2) change the Deed Restriction from one bedroom to two bedrooms at the Registry of Deeds and supply the Health Division with a copy, and 3) submit to the Health Division a two year quarterly Monitoring Plan showing the State's requirements for monitoring the system. (Unanimously, voted in favor.)

- B. Winston Steadman II represents Brian Smith, owner – Fancy's Market, 699 Main Street, Osterville, Map/Parcel 141-011, proposed change from Soil Aireator to Sludgehammer installation to assist the septic system – not required for the treatment of water.

Winston Steadman II was present. The owner would have liked to continue using the Soil Aireator and the maker of the Soil Aeriator did not want to do an O & M and, without the pilot program continuing (due to cost), they are now applying for the use of a Sludgehammer.

Sludgehammer is going to enter the air into the system as well and will use a high and a low vent to aid in this and should work better.

The flow is only at 440-490 and they have a high concentration with the creams, etc, being used. This will be addressed by using the Sludgehammer and introducing air. There will be two additional filters added.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the plan dated 7/27/10 using the Sludgehammer with the following conditions: 1) done in accordance to the specifications listed in the MASS DEP approval letter of Sludgehammer for Remedial Use dated August 4, 2009, and (2) an O&M be filed with the Public Health Division, 3) quarterly monitoring in the SAS for depths of ponding and if ponding continues to be equal or greater to original state of ponding over the first three months, the Sludgehammer shall be removed. (Unanimously, voted in favor.)

**XI. Body Art Practitioner Permit:**

Rebecca Marona, Centerville, MA, to work at Oottat Tattoo, 599 Main Street, Hyannis.

Rebecca Marona was present and had taken the Quincy Skin Course.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve the application as a Temporary Body Artist for a period of 18 months with the following conditions: 1) work only at a Body Artist Establishment which has been in operation for at least two years, 2) the Board of Health must then receive a certified statement from her immediate supervisor that there have not been an problems during this time and provided the Board of Health has not had any complaints/issues with her during this time as well, the Board will issue a permanent license. (Unanimously, voted in favor.)

**XII. Old/New Business:**

A. Monitoring Plans: 11 Nyes Point Way, Centerville and 18-20 Sunset Avenue, Centerville.

The Board asked Pete McEntee to submit revised Monitoring Plans for the two addresses above. Mr. McEntee was not present, but had submitted the revisions.

11 Nyes Point Way                      Revised to extend the monitoring system to two years and quarterly for two years, rather than the initial one year.

18-20 Sunset Avenue                      Revised to extend the monitoring system to two years and quarterly for two years, rather than the initial one year.

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

B. Follow up from June 8, 2010 meeting: Safety adjustments made to existing swimming pool at Sandy Terrace – 570 Wakeby Road, Marstons Mills.

Anchor Design and Pool Corporation and the Board of Health had further discussions about the pool at Sandy Terrace. The State does not want the fences on either side of the pool. They are against the regulations, so they must be removed. The State wants the stairs painted a contrasting color from the pool and the State wants the additional hand rails down the stairs.

Dr. Miller asked for a letter to be sent listed the requirements before a pool permit will be issued next year.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board approved the modifications to be done at the Sandy Terrace to meet the State requires for a pool permit next year: (1) removal of the safety barriers (fences) on either side of the pool, (2) the stairs must be painted a contrasting color from the pool, (3) Two additional handrails are to be added on the stairs equal distance from the center rail to the sidewall on each side of the pool, and (4) there must be egress methods every 75 feet around the perimeter of the pool. The State allows either a ladder, or stairs or foot holes in the side of the pools. (Unanimously, voted in favor.)