



# Town of Barnstable

## Board of Health

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### BOARD OF HEALTH MEETING MINUTES

**Tuesday, July 9, 2013 at 3:00 PM**  
**Town Hall, Hearing Room, 2<sup>ND</sup> Floor**  
**367 Main Street, Hyannis, MA**

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on Tuesday, July 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. Hearing – Tobacco:**

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

Bob Collett said the funding from the State has been reduced and they are not doing as many inspections as previous.

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

##### A. Cumberland Farms# 2269, 16 West Bay Road, Osterville.

Melissa Mello, Manager, was present. Her employee had been trained but in haste, during busy time, her employee did sell a cigar to a minor. Ms. Mello said the employee has been written up and the whole staff has been re-certified.

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. Hess, 804 Main St, Osterville.

No one from Hess was present.

Bill Collett, Tobacco enforcer, stated for the record that a clerk had sold a cigar to a 17 year old female on June 21, 2013 at 4:46 pm.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to continue to the August 20, 2013 meeting and send a letter asked them to state what their training process is. (Unanimously, voted in favor.)

##### C. Hyannis Package Store, 775 Main Street, Hyannis.

Mr. Donald Burke, owner and his manager, Mr. Fitzgerald, were present. They do have a training program and they are setting up a re-certification program for all employees.

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

D. Marstons Mills Food Market, 105 Route 149, Marstons Mills.

Abuim Siad was present. This was the first violation and an employee sold a blunt wrap (a tobacco product) to a minor. Mr. Siad said the employee was fired as a result, even though he was a good worker.

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

E. Route 132 Sav On Gas, 590 Iyannough Road, Hyannis.

Jak Tieruz, Manager, was present. He explained it was the employee's first day and had not received full training at that point of the day. The establishment is a full service gas station.

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

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

No one from Sam's Food was present.

Bill Collett, Tobacco Enforcer, stated for the record that a clerk had sold a cigarillo to a 17 year old female for \$1.00 at 4:22 pm on June 21, 2013.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to continue to the August 20, 2013 meeting. (Unanimously, voted in favor.)

G. Stop & Stop Fuel Facility, 125 West Main Street, Hyannis.

Dave Hardum, Manager, was present. The employee was a new employee, had been working for one week and had received the tobacco training. The employee was suspended without pay for three days and was moved to the store, where they do not sell tobacco. All the other staff was re-certified in their tobacco training.

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

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

No one from Tedeschi's was present.

Bill Collett, Tobacco Enforcer, stated for the record that a clerk had sold a Black and Mild tip cigar for \$1.37 on Jun 21, 2013, at 6:19 pm to a 17 year old female.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to continue to the August 20, 2013 meeting. (Unanimously, voted in favor.)

**II. Septic Variance – New:**

- A. Dan Ojala, Down Cape Engineering representing John Clark, Trustee – 878 Oak Street, West Barnstable, Map/Parcel 216-006, 30,172 square feet parcel, multiple variances, failed septic system.

Dan Ojala, Down Cape Engineering was present and represented the owner. The house is a three-bedroom home and stated they are not increasing the flow.

Dr. Miller pointed out the variance for the well is not listed on the plan. Dan will add this to his plan. Dan noted that the abutter's notice did include the well variance.

Mr. McKean said there is a different flood plan in the file dated two years earlier. Dan was not familiar with the older plan. He said he has asked the owners to supply a floor plan and the one in the Board's package was the one they supplied – possibly, the older was for renovations that may not have been done.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to approve the variances on the septic plan dated 5/21/13 with the following conditions: 1) the plan will be revised to include the owner's well variance with a setback of 100 feet, in lieu of 150 feet, 2) a three-bedroom deed restriction recorded at the Barnstable County Registry of Deeds, 3) an official copy of the deed restriction be submitted to the Public Health Division, and 4) supply a current floor plan showing no more than three bedrooms. (Unanimously, voted in favor.)

- B. 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), one setback variance, for house renovation and addition.

Steve Wilson summarized that he had come to the Board two times in the fall for preliminary meetings. Today the applicant is now petitioning to be granted the right to locate leaching system for #129 onto #119's lot with an easement agreement recorded. The location of the leaching system will allow the owner to comply with the Town of Barnstable's setback from the top of a coastal bank to the leaching field.

Dr. Miller said the Board has gone back and forth on this and spoke with Brian Dudley, MA DEP to see if a variance is necessary but had thought the properties were owned by the same entity. Mr. Wilson explained one is in an individual's name and one is in a Trust. The parcels have been in different names for over 90 years.

Stephen said Attorney Schilling will be preparing a three bedroom deed restriction and an easement agreement.

Discussions included finding out if the owners would be willing to put both properties in the same name. Dr. Miller said he had checked with Legal before the meeting and had understood that the properties do not automatically get joined as one when properties are undersized lots and become owned by the same person. He and Stephen Wilson had both said they had believed the Town joined two undersized lots if they became owned by the same entity.

Dr. Miller said the easement document would have to be reviewed by the Town Attorney as he believes this is the first time the town has done this.

Mr. McKean stated the two issues of the staff were: 1) the concern of whether it was okay to have the easement or whether the properties need to be properly combined as one, and 2) they would like to review the wording of the easement documentation.

Dr. Canniff brought up the question of whether the owner has met the two tests for a variance: 1) must be manifest unjust, and 2) must provide the same level of protection. Dr. Canniff said the second condition has been met. However, he does not believe the first condition has been met. Dr. Canniff questioned why a second building "Guest Quarters" should be permitted with a variance. The plan was to remove one of the two bedrooms in the cottage by the water, and to add a Guest Quarters which would have two bedrooms and no kitchen. The property at # 129 would have three bedrooms on it.

Stephen Wilson expressed that due to the Flood Zone Regulations, they are only allowed to fix up / improve the structure by 50% of the assessed value and it is impinging on the full appreciation of property. Upon the Board's inquiry of moving the Guest Quarter's forward a bit, Mr. Wilson said he would be running into Conservation regulation issues.

Mr. Wilson said the location of the structures have not changed from the initial preliminary discussions with the Board in the fall.

Stephen Wilson said he would like to continue to the August 20 meeting.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to continue to the August 20, 2013 Board meeting. (Unanimously, voted in favor.)

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

Richard O'Hearn (filling in for Mr. Wilcox) and Tia Lilly were present. It is unclear what the official records are for the house, whether it is 3, 4 or 5 bedrooms. The current actual configuration is a 5 bedroom plan: three bedrooms on the first floor and two bedrooms in the basement. Mr. O'Hearn said the plan meets maximum feasibility.

Thomas McKean said the major issue the staff had was that they located a document in the Building Department's records dating May 4, 1976 which said the property was allowed a maximum of three bedrooms. The staff had also commented that there is not proper egress for the bedrooms in the basement, and they did not know where the third septic system was located.

Tia Lilly spoke for the owner and said that they are anxious to have it approved today. The applicant is willing to accept a three bedroom limited. The system is in failure and they would like to resolve it. The Board explained the plan itself and the floor plans would need to be revised before the Board could vote on it. The owner will have to keep the system pumped, if needed. They would be able to get an emergency approval through Mr. McKean so they can start the work and then return to the Board in August for the variance requests.

Upon a motion duly made by Dr. Canniff, seconded by Dr. Miller, the Board voted to continue the item to the August 20, 2013 Board meeting. (Unanimously, voted in favor.)

- D. Bruce Waluck representing Audrey Loughnane, owner – 22 Burning Tree Lane, West Barnstable, Map/Parcel 136-025, 35,199 square feet parcel, variance.

Bruce and Susan Waluck were present and said the subdivision was developed in the 1970's and the lot had been grandfathered under zoning.

Mr. McKean said the staff had a number of notations:

- 1) Plan is missing the septic system for #25 Burning Tree – to show the distance from the applicant's well,
- 2) Variance 397-2 is not listed on the plan,
- 3) Proposed water line from well to dwelling is not shown,
- 4) There is contraction on the number of outlets from the D-Box. There should be 5 outlets for this plan. On page 1, it shows 5 outlets, but on page 2, under design calculations, it says it's using a 3-outlet D-Box,
- 5) On page 2 under the cross-section view, it should state "the separation between inlet and outlet is equal to or greater than the liquid depth" to be in compliance,
- 6) The package should also contain a fully State compliant Title V conventional system as required when applying for an innovative alternative (I/A) septic system,
- 7) The plan does not provide a minimum of 400 square feet of effective leaching area as required for an I/A system, and
- 8) The application is for a three bedroom but the floor plans list a fourth room which would qualify as a bedroom. It is labeled study/office with glass doors opening into it.

Audrey Loughnane said the property is vacant and the well had been installed in 2007.

Dr. Miller explained to the applicants the plans will need to be adjusted for the items above, and he does believe there will be a problem with the plan as he understands the proposed I/A system is to allow maximum distance from the well.

It will be important for the staff to receive the revised package by August 5<sup>th</sup> or 6<sup>th</sup>, so they are adequate time to research the distances of neighboring wells and septic systems.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to continue this item to the August 20, 2013 meeting. (Unanimously, voted in favor.)

**III. Permission to operate Dry Toilet:**

Conrad Geysler representing Cotuit Mosquito Yacht Club, owner – 95 Old Shore Road, Cotuit, Map/Parcel 044-002, propose to operate a “Cotuit Dry Toilet (CDT) at the location.

Mr. McKean said it must be approved by the MA Plumbing Board, local plumbing inspector and MA DEP. We need to have documentation given to the Board to show these divisions have approved it.

Dr. Miller said there are a number of questions to be answered as well: how will the hand-washing be handled, will this be generating grey water, how will they handle securing the manure bin, where will it be located, and how will they get rid of waste. They will have to continue with the port-o-potty until all the Board’s questions can be answered.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to the August 20, 2013 meeting. (Unanimously, voted in favor.)

**IV. Subdivision#822 (Definitive Plan):**

Dan Ojala, Down Cape Engineering representing Edith Frei and William Riley, owners, Definitive Plans at 2519 Main Street, Barnstable, Map/ Parcel 257-010, on public water, on-site sewerage disposal system and is not in a Groundwater Protection Overlay District.

Dan Ojala summarized the Subdivision’s plans stating there is a conservation land all around the subdivision, all lots are standard size and it will be connected to town water.

Mr. McKean said the staff had no issues with the plan. The plan is outside of all the zones of contribution. He said there is an existing house with a 1992 septic system which passed an inspection.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant the subdivision’s review with the following conditions: 1) public water will be provided to the lots in the subdivision, and 2) there will not be any occupancy permits issues (with the exception of the existing house) until there are operational fire hydrants as proposed by the Fire Chief. (Unanimously, voted in favor.)

**V. I/A Monitoring Plan – Test Results**

Sullivan Engineering representing Oyster Harbors Club, owner - 170 Grand Island Drive, Osterville, Map/Parcel 053-012-001, innovative alternative monitoring results.

Peter Sullivan said the Oyster Harbors Club has been on this 12.7 acre parcel since 1927. In the late 1990s, the septic system was upgraded in compliance with Title V. In 2005, they demolished the club to upgrade the facilities. Upon passing a septic inspection, they received approval by the Board to re-utilize the septic system as there would be no increase in flow. They also added a Micro Fast system to it. The existing septic tank was relocated. It was not in any overlay district, other than being in the estuary district. The Board had asked for monitoring testing to be done and the results from 2006-2012 to be reviewed with an interest in the effect seasonal use would have.

Peter presented the test results from 2006-2012. The results submitted tested effluent in and out. The actual reduction was given and the % of reduction which had resulted due to the use of the Fast system. The Nitrogen and BOD's were good. Mr. Sullivan said there appeared to be a couple bad tests as the results for October 2010 and July 19, 2011 did not make any sense. Everything else looked good.

Dr. Miller asked why there was the huge influx in results between testing dates. Dr. Miller had thought the higher results would appear before the season due to the lower use throwing the numbers off. Peter said he thinks the results would be higher after July 4<sup>th</sup>, rather than before, because of the demand.

The lab was recommended by the manufacturer, Micro Fast, and Peter was unfamiliar with it. He would like to talk to the lab and see what protocols they are using when conducting the testing. Possibly, it is a simple issue which are throwing some testing or the TSS results off a bit.

Mr. Sullivan said this is the first restaurant he has tracked in this manner and asked if the Health Division had any others to compare the results to. This is also the first one for the Health Division. In general, the Board and Mr. Sullivan were glad to see the wonderful reduction in all three parameters.

Dr. Miller agreed, as Peter had pointed out, the owners did not have to even install the Micro Fast system and the two years of monitoring was a benefit for all. Even with the inclusion of the two bad testing days, the reductions are showing at 64% - 74%. The Board had originally been interested in June and August yearly results.

Conclusion: The Board would like to have the testing done once this summer, in July or August, 2013. They also requested the testing be done Mid-June 2014 and Mid-July 2014. Giving time to review the results, the Board would like the applicant to come back to the Board in September 2014 to discuss the outcome.

**VI. Variance – Pool:**

Howard Thomas representing Cape Cod Academy, owners – 50 Osterville West Barnstable Road, Osterville, Map/Parcel 120-145, requesting a variance for the pool with regards to placement of handicap lift.

Howard Thomas was present and is applying for a variance for their new semi-public swimming pool so that they can be in compliance with the other State regulation requiring a handicapped lift (Here, a Hoyer lift will be used.)

The Board discussed the variance from the swimming pool State regulation which requires a minimum width of four feet of continuous unobstructed walkway(s) around semi-public and public swimming pools. This variance is contingent upon the following:

- The applicant shall seek a variance from the Massachusetts Department of Public Health.

The Board acknowledged the need for the variance as it would not be physically feasible to install the lift elsewhere other than within the four feet walkway of the swimming pool. Lifts or sloped entries are now required at all public and semi-public swimming pools in accordance with the Federal Americans with Disabilities Act (ADA) and Massachusetts AAB Standards.

**VII. Food Variance (Cont):**

Continue to August 20, 2013 A. Terri Perry, owner of Café Crumb – 846 Main Street, Osterville, 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 Dolci) – 430 Main Street, Hyannis, grease trap variance.

Attorney Stephen Hayes and Thomas George, owner of property were present. The owners of the restaurant, Jorge and Sergio Montero, were also present. They are petitioning to operate the restaurant pending the installation of the grease trap.

Mr. McKean said Roger Parsons was under the belief that there was a commitment by an installer to do the work.

Mr. George had contacted Rusty's to install it. Rusty's contacted Roger Parsons directly this morning and by the conclusion of the call Rusty's determined it was a larger job than they could handle as it involved paving and engineering. Mr. George will be speaking with Bortolotti's and Robert Our for a quote. He was not able to reach them prior to the meeting. Mr. George said it has always been a food service facility as long as he can remember and is asking that the new tenants be allowed to function while the work is being handled.

Dr. Miller has said when he spoke to Roger Parsons, Roger had understood that it will only take a month to tie in.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to adopt a conditional variance with the operation of the facility with the existing Big Dipper (GRD) and the submitted menu dated 7/09/13 until the August 20, 2013 meeting. If the grease trap has not be installed at that time, the applicant will come to the August meeting with the actual plan and a definitive time frame of when the grease trap will be installed for the Board to consider. (Unanimously, voted in favor.)

**VIII. Food Variance (New):**

- A. Pam Remy, owner of Inpopnito – 575 Main Street, Hyannis, proposes to sell popcorn, requests grease trap variance.

Pam Remy, owner, and Anthony Sidary, representative of New England Pretzel and Popcorn Manufacturer, were present. Pam is requesting the variance because her product does not produce grease.

Mr. McKean said he spoke with a number of people regarding this product. The staff does not have a problem with it, nor does the Plumbing Inspector. The Town Engineer does feel he wants an in-ground grease trap installed and showed Mr. McKean an article of how a popcorn facility had damaged sewer lines elsewhere.

Dr. Miller and Anthony Sidary said the article was about a large industrial factory and involved caramel and popcorn being poured out and on a scale much greater than this smaller establishment could be compared to.

Dr. Miller and Dr. Canniff recommended Ms. Remy and if possibly, Anthony Sidary, meet with Roger Parsons, Town Engineer, as the Board can only issue a temporary approval and would want the Town Engineer to support it.

Upon a motion duly made by Dr. Canniff, seconded by Dr. Miller, the Board voted to grant a temporary conditional variance until September 10, 2013 with the condition 1) the owner meet with the Town Engineer for support of this, 2) an under-the-counter grease trap is installed, and 3) return to the Board for the September meeting. (Unanimously, voted in favor.)

**IX. Food – Temp:**

Elyse Degroot representing Duffy Health Center for annual event National Community Health Center Week – Staff Appreciation Day. This event will be held on Tuesday, August 13, 2013 at 94 Main Street, Hyannis. A mobile (open grill) truck will be at the location.

Elyse Degroot was present but had to leave.

Mr. McKean said the Health Division is very familiar with the vendor, Ken Foster, and he runs the grill truck following procedures. The staff has no issues with his procedure.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant the annual food event of National Community Health Center Week – Staff Appreciation Day. (Unanimously, voted in favor.)

**X. Septic Installer (New):**  
Michael Moreshead, Foxboro, MA

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, The Board voted to grant a temporary septic installer's license for six months with the condition he come back to the Board for review for a full annual septic installer's license. (Unanimously, voted in favor.)

**XI. Old / New Business:**  
A. Approval of the Minutes May 14, 2013 and Jun 18, 2013.

The Minutes will be continued to August 2013 meeting.

Voted to adjourn at 5:40 pm.