



# Town of Provincetown

## Meeting of the

### BOARD OF HEALTH

Thursday, August 4, 2016

Judge Welsh Hearing Room, Provincetown Town Hall,  
260 Commercial Street, Provincetown, MA

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**Board Members Present:** Mark Phillips, Chair; Elise Cozzi and Dr. Janet Whelan

**Board Members Absent (Excused):** Steve Katsurinis, Vice-chair; Betty Williams; Fred Latasa-Nicks; Alternate and Joseph Freitas, Alternate

**Other attendees:** Laura Marin; Health Agent  
Absent: Morgan Clark, Health Director

**Recording Secretary:** Susan Leonard

**Call to Order:** Mark Phillips called the meeting to order at 4:00 p.m.

#### **I. Public Comments:**

There were no public comments.

#### **II. Old Business**

There was no old business raised for discussion by the Board

#### **III. New Business:**

**a. Request for Variance to Food Code (2.103.11) – Upper Deck, 336 Commercial Street, Donald Edwards, presenting.**

##### ***Discussion:***

Ms. Marin prefaced the request to the Board by explaining that Mr. Edwards is not required to provide bathroom facilities to his patrons because the food service is entirely outdoors. Only restaurants with indoor seating are required to provide bathroom facilities. However, Mr. Edwards would like to offer a bathroom to his customers. In this particular case, access to the bathroom requires customers to pass through the warewashing and food prep areas. This came to the department's attention because of a complaint by someone claiming that Mr. Edwards allowed customers to access to the employee bathroom through the food prep area which it is not allowed by code.

According to **Section 2-103.11 (Person in Charge)** of the Food Code, the person in charge shall ensure that “Persons unnecessary to the food establishment operations are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single use-use articles are protected from contamination”

According to **Section 8-103.11 (Documentation of Proposed Variance and Justification)** of the Food Code the following documents are required before a variance is approved: “A statement of the proposed variance of the Code requirement citing relevant Code section numbers”; and “An analysis of the rationale for how the potential public health hazards and nuisance addressed by the relevant Code sections will be alternatively addressed by the proposal;”.

Mr. Edwards explained the food prep area is mainly used in the morning before the restaurant opens and the clean dishes are removed immediately and placed on the counter in area away from the public. He believes there is a minimal chance of contamination. He made the request because he has had several customers become verbally abusive to staff when not allowed to use the bathroom. The nearest public restrooms would be at Town Hall or the MPL. There is no other way to access the bathroom due to the small size of the restaurant and moving the bathroom would cause complications for the tenant on the ground floor.

Mr. Phillips asked Ms. Marin a procedural question of how to give a variance to something that is not required? Can the Board grant a variance for patrons to use the restroom? Ms. Marin said it ay affect other departments if a variance was granted, but doesn't know what that might be. Mr. Phillips is of the opinion that, at a minimum, the bathroom would have to be up to whatever the codes are.

Dr. Whelan asked if the customers are waited on or do they pick up thir order at the counter? Mr. Edwards replied that he has the right to wait on the customers, but at the moment they pick up the food at the counter.

Ms. Cozzi stated that approving the variance may open up a “can of worms” and the public would want to access bathrooms at all the take-out restaurants in town. She suggests signage that informs patrons there are not bathroom facilities for patrons to discourage them.

Mr. Phillips asked how many other restaurants in town might be requesting a variance to this code? Ms. Marin replied there is one more that needs to get a variance, as far as she knows.

Mr. Phillips added that this is difficult because Mr. Edwards is not required to have a public bathroom. The easiest solution is to say there are no public restrooms. Dr. Whelan she is uncomfortable with the layout and public access to the food prep area. Ms. Cozzi stated she is not inclined to go with the variance.

Ms. Marin suggested that if the Board denies the request, she could write a letter from the Board of Health explaining that customers are not allowed to use the bathroom.

**Motion: To deny the request for 336 Commercial Street, Upper Deck Barbeque Restaurant for a variance to Food Code 2-103.11 in accordance with Food Code 8.103.11.**

**Motion: Elise Cozzi**

**Seconded: Mark Phillips**

**Vote: 3 – 0 - 0**

**b. Request for Variance to Part 7, Article 6 of the Board of Health Regulations –  
30 Alden Street, Carol Marsh, presenting**

***Discussion:***

Hal Winard of Winard Construction, appearing on behalf of the architect Carol Marsh, introduced himself to the Board and distributed plans for the proposed renovation.

Ms. Marin informed the Board that the proposal is to add an office space to the existing condominium, Unit 34 at 30 Alden Street. It is being designed to minimize its visibility from the public way. By doing so, the office will have an opening of 4’8”, not meeting the Board of Health Part VII, Article6 Regulation. The applicant is seeking a variance of the regulation that requires an opening be a minimum of 6’ in order not to be considered a bedroom.

Mr. Winard said it is not possible to get a larger opening to the proposed room because of the logistics of the building. There will be a 10’ x 10’ addition built on top of the ground floor bedroom to create a 10’ x 10’ office. The only option to allow a wider opening would require an addition to the building and addressing zoning problems that would arise.

The owner, Jonathan Dunn would like a variance with a deed restriction for the office with a 4’8” opening.

Ms. Marin stated that if the Board were to approve the variance the deed restriction would be very important, so that in the future the property can’t be turned into a two bedroom home. The deed restriction would satisfy her concerns.

**Supporting Documents:**

*Letter from, Carol Marsh, Architect Helios Design Group to Anne Howard, Laura Marin, Brian Baumgartel, 07/07/2016*

*As Built and Proposed Architectural Drawing for 30 Alden Street, Unit #4, Helios Design Group, 06/30/16*

**Motion:** *That we approve the variance in this case with deed restriction.*

**Motion:** Dr. Janet Whelan

**Seconded:** Mark Phillips

**Vote:** 3 – 0 - 0

**IV. Any Other Business That Shall Properly Come Before the Board**

Mr. Phillips brought to the Board’s attention a report from Cape Cod Mosquito Control. The report states that West Nile virus was found in a batch of mosquitoes tested from Woods Hole. On August 2, 2016. The catch basins and standing water will be treated by the mosquito control staff. Surveillance of Asian Tiger mosquitoes will be increased, as well.

Dr. Whelan asked if there is a public information pamphlet available? We should make the public aware of this some how. Ms. Marin said she has posted on the Town Crier information about protection against mosquitoes. She can post more information from the CDC also. Mr. Phillips asked that the Board be kept informed of any further communications about mosquito activity in the County.

## **V. Approval of Minutes**

There were no minutes presented for consideration by the Board.

## **VI. Health Department Report**

~Ms. Marin reported that there has not been any further activity at 227R Commercial Street. The designated person in charge has not been able to contact the current owner for further instructions. There is not anyone living there.

~Ms. Marin had a phone conversation with the owner of Napi's Restaurant regarding water conservation. He suggested that water not be served to patrons unless they ask for it. Perhaps the Board could send out an email to restaurants recommending water conservation measures. Mr. Phillips is not sure it is a Board of Health issue. Its response might be different if the Town declared an emergency water shortage.

~Ms. Marin informed the Board that Nicolay Velchev, the Code Compliance Officer, has been doing a great job with rental certificates. He researches local rental properties listed on line and cross checks them with the properties that do have rental certificates. If the property is not registered he sends them a letter that states the regulations and fees. There is a \$300 rental fee and the owner is subject to a penalty of double fees if not complied with. The department has received many calls asking if the property owner can be exempt from the fine. Would the Board of Health consider requests for exemption from the fine?

Mr. Phillips responded that the Board would not take the requests on a case by case basis because it is a violation and the fine is not negotiable. The reason the extra fees are there is it is unfair to the people who follow the rules. There are hundreds of others who have complied and followed the law. He thinks it should be well known by this time that the rental certificate is required. He thinks the Code Compliance Officer is doing a great job finding these properties.

The Mr. Velchev added that considering the high rental fees that are being charged, he does not think that \$300 fee for a three year certificate is too much. Some of the properties are being offered through rental agents who should be informing these clients they have to register the property before they offer it for rent.

Mr. Phillips asked if during his on-line property research Mr. Velchev has found the rental certificate number posted? Mr. Velchev replied that he has not seen it included in the rental ads, so far. He is concentrating on people who do not have rental certificates. Sometimes there are active certificate numbers from a previous owner. Mr. Velchev has found at least fifty properties not in compliance. Ms. Marin said she would add the section of the regulation that requires posting the certificate number in any advertisement to the letter that is sent out to property owners.

~There have been no new beach closures.

~ One of the sunscreen dispensers installed at the beach near the Surf club has been vandalized. It has been removed by DPW and will not be replaced. It was donated to the Town by the County.

~A Sun Safety Outreach program will be presented at the Library tomorrow by a County Public Health Nurse.

**VII. Board Members' Statements**

There were no statements made by the board members

**Adjournment:**

There being no further business, Mark Phillips moved to adjourn the meeting at 4:58 pm.

Respectfully submitted,

Susan Leonard

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2016