

Public Meeting

February 26, 2009
Grace Gouveia – Room 10
5:00 p.m.

Members Present: Duane Gregory, Ken Janson, John Livingstone,
and Mark Phillips.

Members Absent: Jerry Anathan and Tom Gaudreau

Staff:

Brian Carlson,	Health Inspector
Jane Evans,	Health Agent
David Gardner,	Ass't Town Manager
Sharon Lynn,	Town Manager
Darlene VanAlstyne,	Licensing Agent

AGENDA

Public Comments:

John Fahanian asked the BoH to please temper anything that they decide stating this is a very bad year for rentals.

Motion: Move to waive the reading of the Public Hearing notice.

Motion: Mark Phillips Seconded: Ken Janson Vote: 4-0-0.

Chair, Duane Gregory gave a brief overview of what had prompted the initiation of these BoH regulations. She explained the format of the Public Hearing. Due to the large number of people 5 minutes time limit for comments. Duane also disclosed that she is a licensed real estate broker and holds a rental certificate. Appointing board (BoS) had determined no conflict.

Public Hearing:

Public Hearing Notice

Board of Health

The Provincetown Board of Health will hold a public hearing to consider proposed changes to the Provincetown Board of Health Regulations Part VII – Local Title 5 Supplements Article 9 and the addition of Part XIV – Habitations for Rent. (Deletions are ~~stricken through~~ and additions are underlined.)

PART VII – LOCAL TITLE 5 SUPPLEMENTS

ARTICLE 9 – Definitions

Revised December 16, 2004

Public Hearing February 26, 2009

Bedroom: Portion of a dwelling as so defined to furnish minimum isolation necessary for use as a sleeping area, which includes but is not necessarily limited to a bedroom, den, study, sewing room, sleeping loft, dining room or enclosed porch, but does not include kitchen, bath, ~~dining room~~ hall or unfinished cellar or attic. A bedroom must provide a minimum of 70 square feet of floor space with a head room of 7' or more and at least one window which conforms with the most current requirements of 780 CMR-Mass State Building Code for an emergency egress window. There must be a minimum of one electrical outlet. All bedrooms shall have finished walls and ceilings. A room that must be walked through in order to reach another room (other than a bathroom) will not be considered to have the minimum isolation necessary to be considered a bedroom. For new construction or remodeling, in order for a room not to be considered a bedroom there must be a minimum 6' cased opening into any other room. Dwellings build prior to the 1978 Building Code ~~will~~ may have their bedrooms determined on a case by case basis by the Board of Health.

Sleeping Loft: In order for a loft to be considered as a bedroom the following minimum standards must be met:

- The above referenced criteria defining a bedroom.
 - A solid privacy wall of at least 3' in height.
 - Access other than a ladder and which complies with current building codes.
- Any loft that does not meet the above criteria shall not be used for sleeping purposes.

Change of Use: Shall include but not be limited to an increase, decrease, alteration or extension within the existing use group; also defined as a transfer to another use group. The term increase is defined as: expansion of any structure that would increase its interior floor space by more than 50 square feet.

PART XIV – HABITATIONS FOR RENT

Board of Health Public Hearing
February 26, 2009

The Provincetown Board of Health promulgates the following regulation under authority of M.G.L. c. 111, Sections 3 and 127A:

Purpose

The purpose of the regulation is to protect the public health, safety and welfare of both the general public and the occupants of all rental housing units, including but not limited to, year round, seasonal and weekly rentals.

ARTICLE I – RENTAL CERTIFICATION

No person, owner or agent for the owner shall rent or lease or offer to rent or lease any building or any portion of a building to be used for human habitation without first obtaining a Rental Certification from the Board of Health. Prior to issuance of the initial Rental Certification, the health agent/inspector shall inspect the premises in accordance with Section 6 hereof, and determine the number of persons each rental unit may lawfully accommodate under provisions of 105 CMR 410.000.

Rental Certifications shall be effective on the date indicated on the approved rental certificate and shall expire, unless previously revoked, one year from that date. Applications for new Rental Certifications shall be accompanied by a floor plan depicting the layout of the premises showing the square footage of each room. No premises certified under this Regulation shall be structurally altered unless the Board of Health or its agents approve such alteration, addition or deletion, in writing. The fee set forth in Section 7 hereof shall accompany all applications.

Section 1. Posting of Rental Certification

The Rental Certification (a.k.a. "certificate") required by this regulation shall be conspicuously posted within the registered premises.

Such posting shall indicate the number of bedrooms and the number of persons said dwelling unit, or portion thereof, may lawfully accommodate. All significant contact information for the Owner or the owners agent/manager including, but not limited to, telephone numbers, mailing address and e-mail address shall be provided to the tenant or posted conspicuously within the registered premises. Where the owner is a realty trust or partnership, the contact information for the managing trustee or partner shall be posted. In the event that the owner is a corporation, the contact information for the president of the corporation shall be posted.

Section 2. Maximum Occupancy

Maximum occupancy of the dwelling unit and for each bedroom shall be determined by the health agent/inspector at the time of the original inspection. Maximum occupancy shall be based on State Sanitary Code 105 CMR 410.400 Minimum Square Footage which states the following:

Every dwelling unit shall contain at least 150 square feet of floor space for its

first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable room area.

In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

Section 3. Agent to Act in Owners Absence

Every property owner who offers living accommodations for rent or lease, shall make available to the tenant, in the event of the owners absence, the name and contact information of an agent authorized to act on the owners behalf in the case of an emergency which endangers the property or threatens the welfare of any person living in or on the premises.

Section 4. Definition of an Emergency

An emergency is defined as a violation of any health and/or safety code or law enforceable by a town authority including, but not limited to, the health agent/inspector, building inspector, fire inspector, wiring inspector, plumbing inspector or any police official. Failure to provide the services of a competent person to act in an emergency shall be deemed sufficient cause, upon written notification from a town authority, for a fine and/or revocation and/or suspension of the Rental Certificate for the property in which the violation occurs and for all other properties for which the same owner holds a Rental Certificate.

Section 5. Maintenance Requirements

The registered premises shall be maintained in a clean and sanitary condition and free from garbage, rubbish or other refuse. The owner of the premises shall immediately correct any condition caused by or on such premises or its appurtenance which affects the health or safety and well being of the occupants of any or of the general public.

The owner of the premises shall maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys and other structural elements of the premises so that it excludes wind, rain and snow and is rodent-proof, watertight and free from chronic dampness, weather-tight, in good repair and in every way fit for the use intended. Further, he shall maintain every structural element free from holes, cracks, loose plaster or defect where such holes, cracks, loose plaster or defect renders the area difficult to keep clean or constitutes an accident hazard or an insect or rodent harborage.

The registered premises shall be maintained in accordance with the provisions of the State Sanitary Code, and every other applicable General Law, regulation or by-law intended to protect public health, safety and/or the environment

No owner or manager shall permit the registered premises to be occupied by more than the number of persons specified on the Rental Certification at any one time.

Section 6. Inspection of Rental Units

Prior to the issuance of the initial Rental Certificate the Provincetown health agent/inspector or other authorized town official, shall inspect all rental units and continue to do so every third year from that point on. The owner or owner's agent or property manager shall schedule the inspection and be present during the entire inspection.

In addition to determining maximum occupancy, the health agent/inspector will require:

Smoke and carbon monoxide detectors, fire extinguishers and emergency lighting (if applicable) must be in compliance with Mass. Fire Safety laws.

- General cleanliness.
- Clear egresses.
- Electrical panels properly labeled.
- Proper trash receptacles and recycling bins are provided and the rubbish hauler pick-up schedule is posted as well as the hours of operation and location of the Provincetown transfer station.
- Street number and unit number must be posted on the outside of the building.
- The premise conforms to the requirements of 105 CMR 410.000 Minimum Standards of Fitness for Human Habitation.

Section 7. Complaints

All rental units are subject to inspection upon complaint or request in accordance with 105 CMR 410.820. Issuance of the Rental Certificate does not preclude the tenants right to file a complaint with the health agent/inspector; to which he or she must respond with an inspection in compliance with 105 CMR 410.000. This may result in additional requirements of compliance to be issued.

Section 8. Rental Certificate Registration fees

All Rental Certificates must be renewed annually, whether an inspection is required that year or not, in accordance with the following fee schedule (No fee for deed restricted affordable housing):

1. Initial Rental Certificate with Inspection: \$150.00

Annual Renewal of Rental Certificate: \$60.00

Annual Renewal of Rental Certificate with Inspection (after every third year): \$100.00

The annual renewal of a Renters Certificate, on the years when an inspection is not conducted, must be accompanied by verification that the smoke detectors, carbon monoxide detectors, fire extinguishers and emergency lights (where applicable) are all in good working condition and functioning as intended. This verification shall be provided by either:

1. A professional fire protection company.

A Homeowner's Affidavit provided in the application packet.

Renewal applications shall be submitted to the Licensing Department fifteen (15) days prior to the expiration date posted on the Rental Certification. If the renewal application is for a year in which an inspection is required, the inspection shall be conducted prior to issuance of a Rental Certificate for the following year.

Section 9. Enforcement

The Board of Health may suspend or revoke any Rental Certification, after a hearing and in accordance with the procedures set forth in 105 CMR 410.830-410.860, for any violation of any provision of this regulation, the State Sanitary Code, or any other applicable General Law, regulation or by-law intended to protect public health, safety and/or the environment.

If any rental certificate is suspended or revoked, the owner and manager of the premises shall be responsible for finding alternative and comparable housing for the tenant until such time as the tenancy ends or the rental certificate is reinstated.

The Board of Health may enforce the Regulation or enjoin violations thereof through any lawful process; and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

Section 10. Fines and Penalties

Any agents of the Town's Board of Health may enforce this regulation.

Whoever violates any provision of this regulation may be penalized by a non criminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law. If non criminal disposition is elected, then any person who violates any provision of this regulation shall be subject to the penalties set forth below, commencing ten days following day of receipt of written notice from the Board of Health. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

This schedule of fines is in accordance with the Provincetown General By-Laws Schedule A:

1st offense.....\$100.00

2nd offense..... \$200.00

3rd offense, and all there after..\$300.00

Section 11. Severability

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

Section 12. Operation and Effect

This Regulation shall become effective upon publication pursuant to G.L c. 111, §31.

Part VI – Local Title 5 Supplements; Article 9 – Definitions; Bedroom

Jane Evans explained this was housekeeping. It has been the board’s policy to require 6 ft or greater opening for a room not to be considered a bedroom with new construction or remodeling. In 2004 when this was last addressed, Jane and Duane recall that we had included the language, but somehow it never was posted in our regulations. Another slight change referred to egress windows. There were neither questions nor comments from the public or the Board on these changes.

Part XIV – Habitations for Rent

There has been a regulation in the general by-laws which required registration of units rented for 90 days or less. There enforcement issues and other flaws in the by-law and the Licensing Board felt it wasn’t their responsibility. At one time it was thought to be a money making issue for the Town. At the last meeting between the BoH chair, staff and the Board of Selectmen (BoS), the BoH was encouraged to pursue a Board of Health inspection regulation for the sake of the public health and the environment.

Jane Evans, referring to her complaint log, said that complaints usually come from year round rentals. Brian agreed. Duane said the goal is for all rentals to meet the minimum standards of human habitation.

Questions from the audience:

Adam Wolf has a few units and wondered what “minimum standards” mean in the meeting notice he had received.

David Gardner answered by saying he had tried to do outreach to the community. He sent invitations (for the hearing) to find landlords with multiple units. Duane said that David went above & beyond to invite you all to the meeting.

Jim Turner wondered if it were true that all affordable housing units are exempt from paying. Answer – It is proposed they have to be inspected but at no charge. Selectmen would have final say on that policy.

Alan Wagg asked what kind of communication the BoH has had with non-residents who own property here? How are they informed?

David G. said that once this is in effect – a notice will be inserted in their tax bill.

Joe DeMartino wondered - how many people does it take to do an inspection? - how much? - how often? how long? He counts over 1200 rentals and asked if anyone has budgeted staff time and what will it cost the town?

David G. responded that the town is aware it will be a demand on our health staff (2 people). We're talking about doing a third of the town the first year and we hope for good compliance with this. He knows it will take some time to get to all those units. In any given year we'll do about 1,000 inspections. We'll do rolling inspections. Duane added that they'll be set up so that you'll renew annually from the date of inspection so all do not expire at the same time.

Napi VanDerek said is dead set against the whole policy. He asked: If the purpose is public safety - what about condos?

Jane said that the state code for minimum habitation only applies to rentals and if an owner wants to live in a substandard house – it's their castle!

David Nicolau – referring to the language in the 1st paragraph – shouldn't it be the owner of record? Duane said that the by-law that went before this one was combined with the redo. The word "agent" can mean different things, i.e., it could be the rental agent, or the complex managing agent, etc. She suggested that the board will discuss alternate language which may eliminate real estate agents from culpability.

John Fiset asked if the \$150 was for each and every unit?

Jane said that the \$150 is for the first unit and then it is proposed to change to be \$50 for each additional unit.

Duane also said that these fees are not set in stone and the final fee will be approved by the BoS.

Emily Flax said that her question hasn't been addressed yet – does the inspection go with the property if it is sold? Answer: Yes. There would be an obligation for the new owner to give his contact info to the town and tenants.

Klaus Betten said that he made several calls – no other town has this – did you do your research? Provincetown is always double or triple any other town for fees. Duane answered that we did look into other towns doing this and they exist both on and off the Cape.

Gregg Russo said that registering your rental has always existed. The by-law has always been on the books.

Duane said that it wasn't cost-effective and David said that it was an expansion of the existing by-law.

Astrid Berg – referring to Klaus' question – asked - how did you come up with the numbers? She has studio apartments and they won't take that long to inspect. She needs reason for the inspection cost.

David cited a methodology in determining the cost and said that included in this cost is a factor for compliance. We need to do a notification to property owners and we do that by certified letter, etc. All that cost has been factored into the fee. It's a spreadsheet that considers the individual staff cost and other needs.

Paul Tasha asked what is considered a standard of "general cleanliness?" Also he asked about unfinished bedrooms as opposed to finished bedrooms and what that meant. Paul, too, said that insurance companies inspect an entire property for \$175. yet we have to pay unit by unit. Duane said that you always have the recourse to come to the BoH and complain if you feel you have been treated unfairly. Duane also said that there are units that may not pass for year round use. Units can be deemed seasonal use only.

Liz Carney questioned if it was an issue if people prefer to sleep in the living room rather than the bedroom. No, as long as the occupancy is proper.

Tony Banford asked if the BoH has a record on how many complaints you have received. Brian C. said that the majority of complaints 75% or 80% are from year-round rentals. There are about 10 or 15 every year. Jane feels that many people don't complain because they may be afraid of repercussions.

Helen VanDerek asked - is there a real need for this based on so few complaints? Duane said that the BoS seems to think so. When a person rents his property to another we have a responsibility to ensure the safety of the public. We're not the only town who does this – Barnstable, Boston, and Haverhill, etc.

Steve Busa asked - what about Truro and/or Wellfleet? Why do we need to inspect and they don't? Sharon Lynn, the town manager said that for the 22 months that she's been here – the BoS have asked about the system and why we're not capturing more than 150 or 200 rentals? Why are we not capturing more of these inspections? We're now faced with cutting staff – but to say it's been a BoS concern is an understatement.

Susan Davis said that a lot of people are concerned with the timeline and when it will take affect? Duane said that the BoH wants to ease the requirement in and the BoH will inform people when that might happen. No one is out to get people if they are making an attempt to comply.

Joe DeMartino wondered how you handle this issue when people rent through many sources? David G. said that it's the responsibility of the property owner.

Don Fiset said that the emphasis has been on bedrooms and number of occupants and you want to know square footage of each room – why would you have to know other rooms that are not bedroom? Jane said that 70 sq ft is required for a one person bedroom and you must have 120 sq ft for two people in a bedroom to meet the minimum standards of habitation.

Comments from the audience:

David Nicolau, once again commented on the 1st paragraph and wanted it to read owner of record. Also he said that he's all for safety but it couldn't happen at a worst time. The economy couldn't be worse and he requests the BoH to please do this with minimal cost to the homeowners.

Napi VanDerek said that he's been in business for the last 40 years and now that condos have begun to grow it has become the norm. He has 21 rental units and this will change his whole perspective on it. If this really passes I'm going to condo everything. This is just one more level of bureaucracy!

Duane Cremins said that he lives next door and if it this goes through it hurts renters. He also added that he is unemployed right now.

Joe DeMartino works in real estate and handles rentals. He said that there is no more fishing; no other industry in town. All we have is tourism and 2nd home owners This could be the straw that breaks the camel's back. This will create an unintended consequence for all of us. The second homeowner and their taxes are subsidizing the rest of us and our services. He knows that the BoS and the town want more money but he urges not to allow this.

Paul Tasha said that he didn't realize the urging for this came from the Board of Selectmen. I leave here with a different perception on the reasons why! It's for the money.

Frank Vasello said if his landlord has been charged \$150 dollars and it will be passed on to me. Doesn't feel its outrageous. It's about \$13 month.

Astrid Berg agrees with Paul Tasha – biggest problem seems to be not catching the extra units that are renting 90 days or less – how are you going to catch them? She suggests going back to the drawing board and finding representation of 2nd home owners. She didn't get a letter and feels a fee should cover the expense of the services. Also should consider this when second home owners are here.

Robert Silva asked about the complaints – were they life threatening – or what? Brian answered by saying that the complaints vary some are and some aren't.

Don Fiset said that you're trying to pass along water rate increases – your inspections – and he has tenants that have been here for many years and he will lose them.

Adam Wolf said that he has many units – one of his tenants said that she would gladly pay out of her pocket. He has 25 and 35 year long tenants. He feels this program may cost more to administer than it is worth. The BoS will find that it will cost more in staff. His suggestion if they need money call it a tax.

John Fahanian said that the last thing people need is inspectors in the summer!
burocracy

Paul Tasha said that a lot of his tenants are behind already. It does eventually mean that there's a far reaching impact, i.e., the more the town takes out of your pocket the less you spend in town.

David Nicolau wondered about a 2nd means of egress. Some people fear they will need to do extensive work.

Napi VanDerek mentioned the word bureaucracy one more time referring to the new inspections proposal.

Gregg Russo said he is not opposed necessarily and that the issue is more about the year-round property owners. He thinks it's overall a good plan but he feels it going to be a daunting task. He cautioned that the BoH needs more feedback.

Moe VanDerek feels too much regulation but if it is going to be implemented the fees should be adjusted downward.

Emily Flax said that if this is all about safety – then the fees should be secondary. Duane was assured by the chair of the BoS that this was not about revenue raising.

Duane thanked everyone for their input and assured them that there would be no decisions made today and careful thought by the BoH is needed.

Each member of the BoH had their concluding comments and they all thanked the gathered group and assured them that they would take all their questions and comments under serious advisement.

The public hearing was closed at 7:00 p.m.

Duane said that regarding Klaus' comment – we are high. Barnstable is big and charges only \$95. John L. asked David G. for his methodology and wanted to know to what extent the Town has been transparent. This would be useful especially when people are really counting their money. Duane said that what remains is for the BoH to do their homework and come to the next meeting with any suggestions they may have for changes/alterations, etc.

Ken Janson said that all these people are making money on their rentals. The amount of the inspection will be spread out over 12 months and these attitudes are a lot of crying; paying for these inspections is just a cost of doing business.

Duane wondered if we should say \$150 for the inspections and that amount is good for three years?

I. Health Agent's Report

Jane said that she had a letter from the county regarding alternative septic systems and they're asking for the BoH to submit another letter to continue with the program. It was signed.

I. Health Inspector's Reports

Brian said that he wrote a letter of support for a grant from the BoH for the DPW.

Motion: Move to approve a letter of support for a DPW grant and authorize the Chair to sign off on the letter.

Motion: Ken Janson Seconded: John Livingstone Vote: 4-0-0.

Also Brian told the BoH that he is still working on a tenant issue.

The meeting adjourned at 7:15 p

Respectfully submitted,
E. Rogers Gaudiano

Approved by the Board of Health on _____, 2009

Duane Gregory, Chair