



# Town of Provincetown

## Meeting of the BOARD OF HEALTH

Thursday, February 19, 2015

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

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**Board Members Present:** Steve Katsurinis, Acting Chair; Elizabeth Williams, Dr. Janet Whelan and Joseph Freitas, Alternate

**Board Members Absent:** Ken Janson, and Mark Phillips, Chair

**Other attendees:** Morgan Clark, Director

**Call to Order:** Steve Katsurinis called the meeting to order at 4:00 p.m.

Mr. Katsurinis, acting as chair in the absence of Mark Phillips, announced that he has a conflict of interest with **Agenda Item III a. 169 Bradford Street - Request to Install a New, Varianced Title 5 System** and will be recusing himself from the discussion. Betty Williams will be temporarily chairing the discussion and deliberation of this Agenda Item.

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

There were no public comments.

### **II. Old Business**

There was no old business raised.

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

#### **a. 169 Bradford Street - Request to Install a New, Varianced Title 5 System**

#### **Discussion:**

Dave Lajoie, engineer of the proposed Title 5 system from Felco and Christine Barker, owner of the property, appeared before the Board. Mr. Lajoie explained that the existing structure, which has 6 bedrooms, will be modified by adding a small addition in order to make it a legal two family dwelling with proper routes of entry and egress. Ms. Barker will be giving up 1 bedroom to cause less variances.

Town sewerage is not available in this area. Ms Barker had offered to pay for the Town sewer infrastructure to be brought to her property, but it was not possible to do so. The proposed Title 5 system requires four variances, none of which are health-related. The variances requested are as follows:

1. 5' from tank to cellar wall (locus - addition)
2. 3' from leach area (TR.#2) to cellar wall (dwelling slab)

3. 8' from leach area (TR#1) to lot line (street)
4. 48% reduction in required leach area capacity; use of alternative technology remedial use approval

A flow barrier will also be installed to insure there is no back flow from the leaching area to the slabs. The alternative **Advantex – AX20** nitrogen reduction treatment unit allows for the reduction in size of the leach area up to 50%. It will feed into the pump chamber, which in turn will pressure dose the leaching trench.

Ms. Williams asked about the condition of the current septic system. Ms. Barker informed her that it has failed. The house is not currently being used.

Ms. Clark explained that there has been a lot of back and forth with the plans submitted by Mr. LaJoie. The original request had 8 variances. What we now have is a good compromise according to the County Reviewing Health Agent George Heufelder.

He made the following points in his review of the project:

*~ The plan reflects a reduction in number of bedrooms (flow) and therefore may be reviewed using the standard of a repair as opposed to new construction.*

*~The applicant has proposed an onsite alternative treatment septic system that has reduced the required area for the soil absorption system*

*~ By using alternative treatment, the applicant has minimized the variances egregious to Parcel 81*

*~The applicant has proposed a slab foundation in the area that most compromises the setback requirements of 310 CMR 15.211*

*That being said, the proposed building project does remove land that could otherwise be used to come into greater compliance with the Title 5. However, in any circumstances, some variance would be required. The Board must decide whether it is reasonable to grant the variances in light of the concessions that the applicant has proposed (1 less bedroom, advanced treatment, slab foundation for part of the area of the addition).*

*If the Board of Health considers the project favorable, they should place on the applicant the following conditions:*

*~Prior to obtaining a Certificate of Compliance and an Occupancy Certificate, the applicant shall show proof that they have an Operation and Maintenance Contract for the alternative treatment unit with a minimum of two years.*

*~ The applicant shall register with the Deed for the property a statement to the effect that an Operation and Maintenance Contract shall be required by the Board of Health for the life of the system.*

*~The applicant shall comply with all registration requirements of the Town of Provincetown for alternative treatment units.*

Dr. Whelan asked for an explanation of how the system works. Mr. LaJoie offered a synopsis of the process which ultimately releases a significant portion of the Nitrogen byproduct into the air rather than into the ground through the leaching process thus allowing for the 50% reduction in size of the leach trenches.

Mr. Freitas asked if the variances were all related to setbacks. Mr. La Joie replied that all but the request of reduction in size of the leach area due to the alternative system are related to setbacks.

Ms. Williams asked for interested abutters to speak to the Board. Brandon Quesnell an immediate abutter at 8 Dyer Street read a prepared statement in support of the project. He informed the Board that he has been engaged in discussion with Ms. Barker throughout the planning of the system and is satisfied that the proposed plan would not have an impact on his property.

***Motion: To approve the variances to Title 5 requirements for 169 Bradford Street as requested with the four requirements as outlined by George Heufelder.***

**Motion: Betty Williams**

**Seconded: Dr. Janet Whelan**

**Vote: 3 - 0 - 0**

**Materials provided:** Site & Sewage Plan, 169 Bradford Street, Provincetown, Ma; Ecotecture Development + Design, 916 Union St., 1C, Brooklyn, NY 11215, Floor Plans 169 Bradford Street, Provincetown, Ma; Hammer Architects, 21 Bishop Allen Drive, Cambridge, Ma 02139

At this point in the meeting, Mr. Katsurinis returned to the bench to resume as Chair.

**b. 336 Commercial Street – Grease Interceptor Approval/ Variance to BOH Article 5, Section (4C)(7)**

**Discussion:**

Mr. Donald R. Edwards appeared before the Board to discuss the grease interceptor variance for 336 Commercial Street. He explained that the restaurant, located upstairs at this address, has a grease interceptor installed under the sink approved by the plumbing inspector. It is functioning perfectly. He states that being required to hook up to an external grease trap would be excessive.

Ms. Clark informed the Board that the regulations which require an external grease trap are found in the Board of Health, Water & Sewer and Licensing Board regulations. To her knowledge, there are only two locations in Town, connected to the sewer, that do not have external grease traps, a small ice cream shop and a small coffee shop. Neither of these places do any food preparation. Mr. Edwards' restaurant, however, is a full service restaurant.

Ms. Clark told the Board that she is open to a larger discussion on the issue of grease traps. Provincetown has the right to require stricter regulations than the State code, in this case, an external grease trap. Mr. Edwards' current grease interceptor has had no problems over the course of the five years it has been in use. She does not think a variance should be given until a larger discussion of grease traps regulations takes place. Mr. Edwards actually brought the violation to the attention of the Health department.

Mr. Katsurinis stated that the grease trap regulations currently in place don't always make sense. Regulations should take into consideration the actual use and number days the business is actually

open. Ms. Clark responded that the State plumbing code may actually suffice, but she can't make that decision. The process is not clear. She is comfortable with leaving it as it is. A joint meeting with the Water and Sewer and Licensing Boards with a full complement of Board of Health members in mid-April would give them a chance to figure this out.

Mr. Katsurinis suggested tabling the matter ending further discussion on it. He is not in favor of granting the variance or denying it at this time.

***Motion: That the Board table this request until it can meet with the Water & Sewer Board and Licensing Board about the overlapping grease trap regulations.***

**Motion: Betty Williams**

**Seconded: Joseph Freitas**

**Vote: 4 - 0 - 0**

**c. 52 Creek Road – Title 5 Variance Request – Seeking to Keep Cesspools upon Transfer**

**Discussion:**

Attorney J.Lester Murphy and David Nicolau appeared before the Board representing the property owners, Donald Croxton and Douglas Pew. Mr. Murphy clarified that it is not a variance request; it just a request to delay the installation of the Title 5 until after the closing. The property is served by four cesspools. An inspection of the cesspools verified that they are all functioning properly. The buyer of the property has plans that may involve moving or changes of the layout of some of the cottages. Installing the Title 5 first could complicate the moving of the cottages. The buyer wants to rent the cottages for the summer. Plans for an unvarianced septic system have already been submitted. The buyer has agreed to be responsible for the Title 5 installation post-closing.

Dr. Whelan asked what the period of time is that the cottages would be rented. Mr. Nicolau replied that usually it is May 15<sup>th</sup> to September 15<sup>th</sup>. The buyers requested a delay until September 15<sup>th</sup> to complete the installation. Mr. Nicolau is of the opinion a later date would be more realistic, but this is the date the buyers asked for.

Ms. Clark informed the Board that she consulted with the Health Agent in Truro. The Truro agent said that if and when they consider a delay in upgrading cesspools it is done for a 30 or 60 day period and requires that there be no habitation of the property. George Heufelder from the County recommended the cesspool inspection be done to determine whether they were functioning. Ms. Clark also pointed out that there is no renters certificate on file for the property even though it has been rented. She has never inspected the properties and knows nothing of the status of the buildings. Ms. Clark also reported that although Mark Phillips is away, as chair of the Board, he still reviews the agenda. He stated that he is not aware of a similar request ever being approved and is not in favor of it.

Mr. Nicolau informed the Board that the cottages have been rented for years. The main house has the water and heat on and is used occasionally. There has never been an overflow of the cesspools. The buyers are not asking for a huge amount of time. They want to use them a bit and then will install the unvarianced Title 5.

Mr. Katsurinis stated that he sees that there are two issues. One is the Board is being asked to approve the sale prior to installation of the Title 5 and the other is that they approve use of the cottages in the interim. Ms. Williams added that she would, at the least, like to see the cottages get a rental certificate. Ms. Clark asked the Board to be very clear in what they want in any motion they make. Mr. Katsurinis asked what the practical effect would be if the installation is not completed by

September 15<sup>th</sup>. Would they be in violation? Ms. Clark replied that it would be up to the Board to determine that.

Nick Norman, agent for the buyers, appeared before the Board with an explanation of what the buyers intend to do with the property. They are currently working with an architect on plans for the cottages. The Title 5 should be installed as it is shown on the plan.

Mr. Freitas asked if further conditions be placed on occupancy of the property if the system is not installed by the September deadline. Mr. Katsurinis replied that the certificate of occupancy could be withdrawn if the deadline is not met. Both Ms. Williams and Dr. Whelan expressed concern that the septic system will not be completed in the requested time frame. She went on to ask Mr. Norman why the septic system could not be installed before the cottages are rented. Mr. Norman replied that at least one of the cottages might have to be demolished in order to accommodate the leach field.

Ms. Clark expressed concern about the use of the cesspools. She pointed out the septic inspection was done while the property was not being used. There is no way to know how well the cesspools would work during the peak season. Atty. Murphy suggested that the Board could require an inspection June 15 to determine that they are functioning and is not a hazard to public health. Ms. Williams suggested that more than one inspection should be required. If the system fails at a point in the rental season then the owner will not be able to rent for the rest of the season.

***Motion: To approve the waiver, subject to a deadline of November 1, 2015; any rental of the property must comply with obtaining a rental certificate and will trigger three cesspool inspections on June 15, 2015, July 15, 2015 and August 15, 2015.***

**Motion: Steve Katsurinis**

**Seconded: Betty Williams**

**Vote: 3 - 1 - 0**

**Materials Provided:** Cesspool Inspection Report, January 23, 2015, Christopher R. Lucy;  
Site & Sewage Plan, 52 Creek Road, Provincetown, Ma, Felco, Inc., 1/13/ 2015

#### **d.132 Bradford Street - Title 5 Variance Request – Seeking to Keep Cesspools upon Transfer**

##### **Discussion:**

Steve Riley the purchaser of 132 Bradford Street appeared before the Board to discuss the variance request.

Ms. Clark informed the Board that the buyer of the property seeks to postpone the installation of a compliant Title 5 system. It is currently served by cesspools and the municipal sewer is not an option. She consulted with the County Agent, George Heufelder on the request. Mr. Heufelder recommended tabling the request because the buyer had not submitted all the requested information. At the time of the meeting a cesspool inspection report had not been received, and there was no indication of the intended use or a date for approved septic plan installation.

Mr. Riley stated that he plans to continue using the property as it is currently used – parking facilities and retail sales. He does not intend to provide a public rest room, but will provide porta-potties. The only use of the toilets will be by employees. He may be eligible for Economic Development gallons and if that is not available then he will install a Title 5 system.

**Motion: To table the request.**

**e. Policy Decision – Deed Restricting Finished Basements?**

**Discussion:**

Ms. Clark informed the Board that this Agenda Item arose because of a conversation with the current Building Inspector Anne Howard, who used to serve on the Board of Health. Ms. Howard said that in the past, the Board of Health would occasionally order a deed restriction when property owners finished their basements, because most people were moving from cesspools where the number of bedrooms could be unclear to Title 5 septic systems. Ms. Clark would not necessarily call a finished basement a bedroom just because it has a door at the top of the stairwell. Town Counsel provided an extensive form for issuing a deed restriction, but counseled that it did not seem necessary given that the Title 5 flow of the property already restricts the number of bedrooms. Ms. Clark believes that existing Growth Management and Title 5 regulations determine the number of bedrooms on a property and therefore an additional deed restriction may be unnecessary.

Ms. Howard’s general concern was that there have been cases where a finished basement was the first step in turning a basement into a living space. In the past she has found homes being represented as having more bedrooms than are permitted being shown by agents for sale. Incremental additions have become bedrooms. Unless there is a complaint by a tenant, the building inspectors do not have access to the property to determine if there is an illegal bedroom.

Mr. Katsurinis encouraged the Building Inspector to bring situations like this forward to the Board, however regulations already exist to address the issue. It should be aggressively pursued with fines. If there is a gap in authority that the Board can fill, it would be happy to do so.

**f. 227R Commercial Street - Discussion of Derelict Property**

**Discussion:**

Ms. Clark asked the Board to table this Agenda Item because she did not have time to inspect the property appropriately in sufficient time to legally post the item.

The Board had no objections to tabling the item.

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

There was none

**V. Approval of Minutes**

**December 4, 2015 Minutes**

**Motion: *Move to approve the minutes of Thursday, December 4, 2015 as written.***

**VI. Health Department Report**

Ms. Clark informed the Board that she will have the sewer maps they requested for them at the next meeting. The DPW is asking the department to review all of its solid waste regulations. They want to start taking recycling from commercial haulers.

The board will have to address how it will administer the remaining sewer gallons. There are properties that will become public health issues and there may not be enough gallons to serve them all. It will not be an easy task. The Board of Health should educate the Board of Selectmen on its priority of sewerage as much of the town as possible.

## **VII. Board Members' Statements**

Mr. Freitas expressed that how much he enjoyed the meeting and being on the board. The board welcomed him as its newest member.

Ms. Williams asked about the status of the Surf Club. Ms. Clark stated that the Licensing Board is aware of the situation.

Mr. Katsurinis acknowledged Ms. Clark's work. She has been doing the work of two people for a while. The Board's confidence in her is very high; if there is anything the Board can do to help her let them know.

He suggested that the Board should ask for an additional alternate member. There has been a lack of quorum for several meetings this winter.

***Motion: To draft a warrant article for the Annual town Meeting for an additional alternate member on the Board of Health.***

**Motion: Steve Katsurinis**

**Seconded: Betty Williams**

**Vote: 4 – 0 - 0**

Mr. Katsurinis said the sewer discussion with the Board of Selectmen was enlightening. He did not go as far as he wanted because he was representing the Board as a whole. He feels the Board needs to educate the public about rising water levels, the danger it poses to unmanaged cesspools and the alternative new technologies available. If we can't convince the Town to expand the sewer then we should undertake training sessions for these new technologies available to us.

Mr. Katsurinis brought up the question of "historic bedrooms". Can the Board formally request guidance for draft regulations from the Building Department? Ms. Clark replied that Town Counsel was of the opinion that the Board did not have a legal basis to grant "historic bedrooms". Mr. Katsurinis then suggested that the Board put a halt to granting them.

***Motion: To proceed and to put an absolute halt to "historic bedrooms" and to not entertain any more requests.***

**Motion: Betty Williams**

**Seconded: Dr. Janet Whelan**

**Vote: 4 – 0 - 0**

Betty Williams thanked Laurie Delmolino for her time on the Board and hopes she is happy with her new position on the Historic Commission.

**Adjournment:**

There being no further business, Dr. Whelan moved to adjourn the meeting at 6:02 pm  
Betty Williams seconded the motion. Vote: 4- 0 - 0

Respectfully submitted,

Susan Leonard

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2015