1. Board Of Health Packet

Documents:

12 MVR SEPTIC VARIANCE REQUEST 10-4-16.PDF
BOHMIN20160915.DOCX

SITE DESIGN ENGINEEIRNG, LLC.
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October 4, 2016 SDE No. 14004

Natural Board of Health
3 East Chestnut Street
Nantucket, MA 02554

Subject: Variance Request
12 Middle Valley Road
Nantucket, Massachusetts
Tax Map 43, Lot 162

Dear Members of the Board:

The purpose of this letter is to request a variance for property located at 12 Middle Valley Road in Nantucket (the Property) from the Town of Nantucket Board of Health Regulations Section 64.04(G) which states the following:

> ***64.04(F)(2)***
> *"All properties within the Nantucket Harbor Watershed Protection District not currently connected to municipal sanitary sewer lines shall have installed upon new construction, septic system expansion, repairs, upgrades and transfers of property, a Department of Environmental protection approved Nitrogen Reducing Technology waste water disposal system."*

The Property is within the Nantucket Harbor Watershed Protection District Zone A which is considered a nitrogen sensitive area. A conventional septic system permit application was approved by the Board of Health (BOH) in November of 2014 and the system was installed in April 2015. BOH regulations after the installation were revised (as noted above section 64.04) to require installation of advanced technology treatment systems for all septic systems within this Zone. The BOH has since approved a septic permit application in December 2015 for the construction of an Innovative Treatment System however this system upgrade has not been constructed.

The property owner is requesting the BOH grant a variance from Section 64 in lieu of entering into an Administrative Consent Order (ACO) with the BOH. The applicant intends to connect to sewer per BOH requirements when it becomes available. If the BOH is inclined to grant the requested variance we would suggest that the variance contain language similar to that within the ACO which stipulates septic upgrade and sewer connection requirements.

We ask that this request be placed on the agenda of the next available BOH meeting. Please call me at (508) 503-3500 or email me at (dmulloy@sde-ldec.com) with any questions. I will attend your meeting to discuss this request in greater detail.

Respectfully,

Daniel C. Mulloy, P.E.
Site Design Engineering, LLC.

Proposed Minutes for September 15, 2016

BOARD OF HEALTH
Meeting

Town of Nantucket
3 East Chestnut Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Commissioners: Malcolm MacNab, MD, PHD (chair), Stephen Visco (Vice chair) , James Cooper, Helene Weld, RN, Rick Atherton

Staff: Roberto Santamaria, Artell Crowley, Kathy Lafavre, Hank Ross, Anne Barrett

~~ MINUTES ~~

Thursday, September 15 , 2016

4 Fairgrounds Road, Community Room - 4:00 pm

Called to order at 4:00 p.m.

Staff in attendance: R. Santamaria, Health Director; A. Crowley, Assistant Health Director; Kathy Lafavre, Inspector

Attending Members: Malcolm MacNab, MD, PHD; James Cooper; Helene Weld, RN; Rick Atherton, Board of Selectmen

Absent Members: Stephen Visco

Agenda adopted by unanimous consent

I. ANNOUNCEMENTS

II. PUBLIC COMMENTS - ANY MEMBER OF THE PUBLIC MAY ADDRESS COMMISSIONERS AT THIS TIME

1. **Steve Bender**, 72 Orange Street - Stated that on August 15, 2015, he asked the captain of a large vessel how they manage the grey water and was told that they dump it overboard "like all the other big vessels." When he asked why, he was told that the grey water pumping facilities for the harbor are inadequate for the larger vessels with large crews. Said that early summer of 2016, he asked a crewman the same question and was told they treat it and dump it overboard. He reported this to Mr. Santamaria, the Town Manager's office, and the head of the Marine Department. On August 7, 2016, he asked Rafael Osona to ask the captain of a vessel the same question; when next he spoke to Mr. Osona, he was told the captain said they dump it overboard. On September 14, 2016, he asked another crewmember of a large vessel how they manage the grey water and was told they pump it into the harbor. Mr. Bennett has a oyster farm and is concerned about water quality. This is the tip of the iceberg for a huge pollution problem. Asked that the Health Department look into this. If anyone wants to know about the effects of grey water chemicals on the environment, suggested they call the biology department at Woods Hole Oceanographic Institute.

Santamaria - Stated that a 1988 bylaw states no dumping of grey water and that the harbor is a national no-dumping zone. The trouble with enforcing this is the boats are considered private property; they cannot get onto the boats without cause; even then, the occupant must allow them on. The only other way is with an administrative warrant. Another way would be to use dye tablets, which go into the grey or black water tanks, and would smear the side of the boat. Again, there is no way to ensure they use the dye tablets. It is hard to quantify the amount of grey water being dumped.

Bruce Mandel, 10 Midland Avenue - Many boats in Madaket have heads and we in Madaket are concerned about how that water is disposed of. This is critical in Madaket because the nitrogen testing station is in Hither Creek Harbor. Feels this needs to be focused on more than it has been. Suggested looking into how other harbors around the country handle this.

MacNab - Suggested creating a workgroup to look into this that might include the Harbor Master, Mr. Bender, and others to work out recommendations.

PROPOSED

III. REVIEW/APPROVAL OF MINUTES

1. August 18, 2016 - Adopted by unanimous consent.

IV. BOH APPLICATIONS REVIEW

1. Nitrogen Aggregate Plan: Hummock Pond Cluster Subdivision

Sitting	MacNab, Cooper, Weld, Atherton
Recused	None
Documentation	Supporting documents and plans, staff recommendations.

PROPOSED

Discussion

Santamaria - This is a request for an aggregation variance.

Gregg Ross, Hummock Pond Association - Reviewed the presentation included in the members' packet: 36 lots with 4 bedroom-systems allow 144 bedroom, the addition of the credit lot would allow for 288 bedrooms; the lots average ½ acres in a 2-acre zone with 55 acres, under a conservation restriction, set aside to meet that 2-acre requirement; 22 bedrooms are in Zone B and septic systems are required to meet the Title 5 requirement of 10,000 square feet (SF) per bedroom. The proposal is to allocated 13 acres of the 56 acres to meet that 10,000 SF requirement, which would allow people to put in traditional systems. Tapping only 13 acres caps the amount of flow and number of bedrooms. Nantucket Islands Land Bank and Nantucket Land Council have approved this plan using the 13 acres. Asks the Board to take the 55 acres into account and approve this request.

Cooper - Confirmed that they are not asking for additional bedrooms.

Ross - If anyone wants an additional bedroom, they would have to install an I/A system. People with existing 4-bedroom systems and aren't adding a bedroom, they could put in a conventional system. We are talking about Zone B and outside the watershed.

Santamaria - If there had been an aggregate plan created when this subdivision was built, this request wouldn't be here; we'd only hear requests for additional bedrooms with an I/A system.

Joe Rich, homeowner - The key phrase here is "replace in kind" should a system fail. Homes that have expanded beyond 4 bedrooms have put in I/A systems.

Discussion about the aggregate plan approved for Fisher's Landing as compared to this situation.

Discussion on the motion:

Crowley - This plan is not consistent with what this board has done in the past.

Santamaria - Read the local regulation codifying all replacement be done with I/A systems in Zone B.

Arthur D. Gasbarro , Nantucket Engineering & Survey - Reviewed their proposal; the crux of the issue is one bedroom for 10,000 SF; not having that 10,000 SF triggers the need for an I/A system, not that it is in Zone B. Adopting the plan gives them that extra 10,000 SF. Noted the plan restricts the number of bedrooms per lot to four.

Discussion about the aggregate plan created for Pippen's Way.

Cooper - The 13 acres allows the 36 houses to have 4 bedrooms; if an owner wants to add a bedroom with an I/A, asked is there an aggregate for that extra bedroom.

Gasbarro - In that case, they would have to meet Title V; there is no aggregation plan on file for Massachusetts Department of Environmental Protection (DEP) and couldn't use the 13 acres. The 13 acres is credit land so that under the local regulation they can have 4 bedrooms per lot.

Atherton - He's still troubled about this and would abstain from voting.

MacNab - This is potentially controversial and feels it should be consistent with what they have done in the past. He wants to review the documents used for Fisher's Landing and the minutes of that hearing.

Action

~~Motion to Approve the aggregate plan to allow the use of nitrogen credit land to satisfy the required loading of 10,000 SF for 110 gallons per day for sewage flow for the existing 36 four-bedroom lots within the Hummock Pond Cluster Subdivision. (made by: Cooper) (seconded by: Weld)~~ Motion rescinded.

Tabled to October meeting by unanimous consent.

Vote

N/A

PROPOSED

2. Variance to 64.07: Weinman & McLaughlin, 280 and 284 Polpis Road

Sitting	MacNab, Cooper, Weld, Atherton
Recused	None
Documentation	Supporting documents and plans, staff recommendations.
Discussion	**Rhoda Weinman** , owner – This is for the two septic systems at 280 and 284 Polpis Road in technical failure and partially located in Zone A and Zone B. The minutes of July are incorrect in that they state she is looking for separation for under 5 feet; she is looking for under 6 feet. Main septic is at 5.6 feet and the cottage rounded to 5 at 4.9 feet. The three lots total 361,533 square feet; based on that she is entitled to 36 bedrooms. She has 3 bedrooms on a 6-bedroom system with only one bedroom used; the one-bedroom cottage is occupied only briefly in the summer and has a 3-bedroom system. The third lot is vacant. She is asking that the system in place be allowed to remain until such time as the property is sold; at that time, an I/A system would be installed. They are willing to accept a condition to the variance that the system be inspected every three years. 24 properties in the area also received letters at the same time she received hers; she is the only homeowner who has responded and is asking for a variance. At the last hearing, the members asked for a list of the 24 properties to review the lot areas and separation; of those only two have more acreage than her and most have under 5 feet of separation. She believes her property meets the criteria as outlined in the regulations for a variance. She has researched other municipalities to ascertain whether or not Nantucket's regulations are unique; she learned this is the only town that requires someone in a situation like hers being asked to put in two new systems. At that point she decided putting in a test pit was not something she wanted to do because it would either confirm the existing separation or show she has the 6 feet of separation. She feels the requirement to put in two I/A systems is onerous. Asked that a decision be made now and if the variance is denied, she requires a very detailed explanation as to why be included in the minutes. **Cooper** – Our regulations might be unique but they are our regulations. **Weinman** – The board has a variance procedure for unique situations and she has a unique situation. Expressed frustration that the board is not listening to her. **Santamaria** – An application for an I/A system at this property was made a few days ago and was approved. **Atherton** – Given the situation, this board might be well advised to discuss a written denial, if that is the motion, with Town Counsel. **MacNab** – Asked for a motion. Agrees that a detailed written analysis can't be provided until it is discussed with Counsel. **Weinman** – Stated she is entitled to know why she was denied. Stated she also feels the notification and hearing process for Regulation 64 were inadequate.
Action	**Motion to Deny the variance request for 280 and 284 Polpis Road subject to review of the final written analysis to be adopted at a later date.** (made by: Weld) (seconded by: Cooper)
Vote	Carried 3-1//MacNab opposed

3. Administrative Consent Order (ACO): Kohlhepp, 59 Meadowview Drive

Sitting	MacNab, Cooper, Weld, Atherton
Recused	None
Documentation	Supporting documents and plans, staff recommendations.
Discussion	**Santamaria** – This is very straightforward and sewer is coming to that area.
Action	**Motion to Approve the ACO.** (made by: Atherton) (seconded by: Cooper)

PROPOSED

Vote Carried unanimously

PROPOSED

4. ACO: Trifero, 4 Meadowview Drive

Sitting	MacNab, Cooper, Weld, Atherton
Recused	None
Documentation	Supporting documents and plans, staff recommendations.
Discussion	**Santamaria** - This is very straightforward and sewer is coming to that area.
Action	**Motion to Approve the ACO.** (made by: Atherton) (seconded by: Cooper)
Vote	Carried unanimously

5. Variance from connecting to sewer: Glowacki, 109 Old South Road

Sitting	MacNab, Cooper, Weld, Atherton
Recused	None
Documentation	Supporting documents and plans, staff recommendations.
Discussion	**Santamaria** - The variance is asking to not connect to sewer until such time as the property is sold or the owner dies. **Joan Bunting**, daughter - Her mother is very old and this is a financial burden and the requirement is creating stress on her health. She believes the system was inspected a year ago. **Santamaria** - To his knowledge, the system has not failed and George Hughes maintains the system; he doesn't know when it was last inspected. Noted that this is outside the harbor watershed district. **MacNab** - He would approve this with the condition that should Ms Glowacki die or the system fails or five years the property will connect to sewer.
Action	**Motion to Grant the variance with the conditions that should the system fail or the owner dies the property is connected to sewer and that this is reevaluated in 3 years.** (made by: Cooper) (seconded by: Atherton)
Vote	Carried unanimously

6. Set-back variance: 17 Columbus Avenue 59.3-108

Sitting	MacNab, Cooper, Weld, Atherton
Recused	None
Documentation	Supporting documents and plans, staff recommendations.
Discussion	**Santamaria** - This is for a variance from the distance required between a leeching facility and a basement. **Matt MacEachern**, Emeritus Development - The structure and septic are pre-existing; looking to do an addition with basement. There is a limited area for an addition. **Atherton** - Asked if in the staff's opinion this is the maximum feasibility possible. **Crowley** - A variance was previously granted for this lot; this addition is farther away than that variance granted. **Bruce Mandel**, 10 Midland Avenue - This property is in the proposed sewer district and close to Long Pond. His concern is there are 111 failed systems out of 574 in Madaket and granting this variance could set precedent and the board needs to look at what it means to Madaket as a whole.
Action	**Motion to Grant the variance.** (made by: Atherton) (seconded by: Weld)
Vote	Carried unanimously

PROPOSED

7. Appeal of well permit denial: 15 Delaney Road

Sitting	MacNab, Cooper, Weld, Atherton
Recused	None
Documentation	Supporting documents and plans, staff recommendations.
Discussion	**Arthur D. Gasbarro** , Nantucket Engineering & Survey - Requested this be held over to October meeting.
Action	Tabled to October by unanimous consent.
Vote	N/A

V. BOH BUSINESS

1. I/A Systems in sewer area discussion:

Santamaria - This is on the agenda because there is a significant amount of discussion and comments about the requirement for I/A systems in areas that will eventually be sewered and are in watershed areas. The installation of an I/A system costs significantly more that the cost for hooking up to sewer. As the BOH, we have control over how long a property has to connect to sewer once it becomes available; our regulations require six months for properties in a watershed district and two years for properties outside watershed districts. The questions is what to do for properties with new I/A systems once sewer becomes available; it feels unjust to have an I/A system that is only two years old removed to hook to sewer.

MacNab - The board would be faced with never-ending variance requests; might also discuss with the Board of Selectmen to provide a "break" in the fees for those properties when hooking to sewer.

Cooper - Asked if this would be retro-active for properties that put in I/A systems before sewering was discussed.

Santamaria - It would be for whomever the board decides. If we make it a regulation, we have to have an open hearing. If we make it a general policy, we can choose to have an open hearing.

Weld - Asked if there is the option to extend the hook up period five to eight years and waiving hook-up fees.

Santamaria - The BOH doesn't have jurisdiction to waive the fees.

Cooper - Noted that for Madaket, a hook up requirement time of six months is not practical; there aren't enough people to do that work.

Santamaria - The six-month requirement is for beginning the work: pull the permit and showing proof that the process is starting.

Atherton - Noted that doing this has to be thought about in depth due to the cost of installing sewer, hooking up, and abandoning an existing septic.

Bruce Mandel (guessing he didn't state his name), 10 Midland Avenue - A Madaket citizen's group submitted a warrant to defer the decision on sewer to Madaket from the STM to Annual Town Meeting in April. That would allow time to answer unaddressed questions and resolve on-going issues in regards to what is going on. The taxpayer will pay approximately $125 per property to sewer Madaket. Noted that properties on the east side of Long Pond is not included in the sewer district even though flow is toward the pond. Noted that abandoning a new high-tech septic system is a burdensome expense. One open issue Madaket residents have is how will people be compensated and why is it a case-by-case, arbitrary decision; they would like to see a set policy about how the situation will be dealt with.

Atherton - Suggested one possibility is to use ten years from this year; for example if the system was installed last year they would have nine years, 2014 would have eight years.

PROPOSED

MacNab - He is strongly in favor of sewer to Madaket. Stated it upset him when he heard people are talking about delaying this decision to do more study. We don't need more scientific work; enough of that has been done.

Mandel - By deferring the vote, the process and plans can continue. Article 1 is not meant to stop the sewer completely. The residents of Madaket are very much in favor of the sewer to protect the eel grass, groundwater, and watershed.

Cooper - If this gets deferred, asked what happens if it keeps getting deferred and Madaket isn't signed up and the Town looses the zero-percent-interest-rate loan. For him that is a problem.

Mandel - The State Revolving Fund subsidy that makes the zero-percent financing is an annually rebirthing process. The Town has already applied for that subsidy and that won't be lost.

MacNab - Wants to move this on to the health issues. Asked how this board will deal with the Regulation 64 and I/A issues.

Santamaria - Suggested there are two actions: one is make a policy that states if an I/A was installed after 2014, the owner has until 2019 to connect to sewer; second is to continue dealing with it on a case-by-case basis.

Atherton - Noted that for Dukes road, the Board allowed homeowners to put off connecting for one year, which allowed them time to save up money without delaying it too long.

Consensus of the Board does not want to deal with the I/A issue on a case-by-case basis.

Mandel - Allowing the delay does not only help homeowners amortize their investments in the I/A septics but frees them from the monthly sewer rate helping with raising the money to abandon and connect.

Santamaria - Stated that freedom from the monthly sewer rate is not true. Property owners with I/A systems have to have Operation and Maintenance Agreements, which cost about $1800 a year plus water testing and pumping.

Cooper - The permit has to be taken out within a certain amount of time; that puts a person on a list. The second is to decide whether or not properties with I/A systems get a time extension for hooking to sewer.

Santamaria - Pulling the permit is covered in the regulation and that is six months from the time sewer becomes available. There are only two people qualified to do the hook up. He will think about and draft a policy for further discussion.

Cooper - Asked to see how many I/As are in the system now and date of installation.

MacNab - Asked if the board wants to endorse the Special Town Meeting (STM) warrant for sewer in Madaket.

Atherton - Feels there are options that haven't been discussed and has concerns the consultants aren't reviewing options.

Cooper - At the last Town Meeting during the vote on Monomoy, a Madaket resident asked that Madaket be voted on at the October meeting. Now someone from Madaket is going to ask the sewer vote be deferred.

Three-of four wants to support Article 2.

Mandel?? - Every highlighted property has been excluded from the sewer district and are at the water measurement stations. If we are going to sewer, do the whole job. Reiterated that as one of 45 reasons to defer the vote to April.

Motion to Support Article 2. (made by: Cooper) (seconded by: Weld) Carried 3-1//Atherton opposed

2. Connection of sewer policy discussion:

Santamaria - Presented a policy that laid out distances from the sewer line: if within 200 feet of a sewer line, the property must connect; if between 201 and 500 feet from the sewer line, must request BOH approval; if over 500 feet from the sewer line, that is an automatic waiver. Asked the Board to accept or deny the policy.

PROPOSED

MacNab – Asked to hold this for the next meeting to allow him time to read the policy.

3. Venison Donation Program:
   Santamaria – Looking at this program again this year; the donor is again available to provide funding. Looking to hear back from the processor. Noted a letter was sent to Massachusetts Audubon asking them to allow hunting on their properties and waiting to hear from them. The plan is for the program to be running before Archery Season to catch the entire hunting season from October 15 to December 31.
4. Director's Report:
   a. Watershed inspection policies: Making headway in the inspections for technical and hydraulic failures. All letters have gone out to the Nantucket Harbor Watershed district. All the technical failure letters are out. Also we have all the Operation and Maintenance Agreement for I/A findings and the I/As are 100% in compliance. Noted that one problem has been addresses for letters going out; they use the Assessor's database which is slow to update. Some letters have gone to wrong addresses or to people who no longer own a property.
   b. Biodegradable packaging: The intern has been working with vendors to connect them to buyers and talking to the buyers about compliance; the resistance is easing. The Department of Public Works can process this packaging as either recyclable or compost. To know if packaging is biodegradable, the consumer is looking for a 5, dishwasher and microwave safe and reusable, or a 7, polylactic acid. 5 with a ps under it is still Styrofoam.

VI. ADJOURN

Adjourned by unanimous consent at 5:53 p.m.

Submitted by:
Terry L. Norton

PROPOSED