



BOARD OF HEALTH

Meeting

Town of Nantucket

16 Broad Street

Nantucket, Massachusetts 02554

www.nantucket-ma.gov

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

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

~~ MINUTES ~~

Thursday, June 16, 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; K. LaFavre, Inspector; T. Norton, Town Minutes Taker

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

Absent Members: None

Agenda adopted by unanimous consent

I. ANNOUNCEMENTS

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

1. None

II. APPROVAL OF MINUTES

1. May 19, 2016: Approved by unanimous consent
2. June 6, 2016: Approved by unanimous consent

III. BOH APPLICATIONS REVIEW

1. Variance to 64.07 Weinman & McLaughlin 280/282/284 Polpis Rd

Sitting MacNab, Cooper, Weld, Atherton

Recused Visco

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:04) **Rhoda Weinman**, co-owner – The 3-bedroom main house on 280 has a 6-bedroom septic for two people; the 1-bedroom cottage on 284 not-winterized has a 3-bedroom septic; the third lot 282 is vacant. Based on the size of the three lots, she could have 36 bedrooms. She is asking for the variance based on the amount of land, the size of the septic, and there are only two year-round residents. She is willing agree to the conditions to do inspections every three years to ensure there is no hydraulic failure in the system and that once the house goes on the market a new system must be installed and. She believes this situation is unique and granting the variance won't set a precedent. She asked the variance be granted with the conditions she will agreed to. The main dwelling septic is at 5.6 feet rather than 6 feet and the cottage at 5 feet.

Santamaria – Pointed out that the board previously granted a variance for a property with .1 separation. The Horsley-Witten map, based upon 1988 soil tests, puts water separation at 4.95. Noted there haven't been any recent water tests on the property.

Cooper – He asked, if it matters how many acres they have if the separation isn't met.

Santamaria – In this case and the separation revolves around the strength of the effluent coming out. This property is in Harbor Watershed District Zone A and separation is very important. Records show an inspection indicated a technical failure; the owners were sent a letter requiring installation of an I/A system within one year of the date of the letter.

Crowley – Inspections revealed 24 technical failures from Gardner Road east; all 24 have been sent letters and will receive follow-up letters reminding them of the September 1 deadline date. None of those 24 properties have requested a variance. He believes how the board rules today would dictate whether or not the other 23 properties with failing septic systems will request a variance.

Weinman – Reiterated this is a unique situation in that nowhere else in the neighborhood are there two people living on nine acres and that granting this request won't set precedent.

MacNab – There are some unknown factors here that give him pause about approving the variance: 23 possible similar requests, this was declared a failure years ago, and what is the current groundwater level.

Atherton – Suggested not taking action on this at this time and have for further discussion about where this could lead.

Paul Santos, Nantucket Surveyors, for the applicant – Confirmed that the other 24 are non-transfer subjects with technical failures; this is the first request. The variance would defer the installation until such time as the property changes ownership.

Atherton – They never sell the house and live there for 25 or more years.

Weinman – The letter went out a year ago and since then she has talked to the Health Department and the Department of Environmental Protection. The purpose of this board is to look at each situation individually; look at the facts before you and make a decision. Our situation is unique.

Cooper – Looking at the facts, the fact is the septic system does not have sufficient separation and that is a failure.

MacNab – Asked when the system must be installed.

Santamaria – The permit must be pulled by September 1.

MacNab – Ms Weinman makes a good argument but he also doesn't want to start diluting Regulation 64. He would like to see a list of the other properties in failure. If we vote today, we would deny the variance.

Cooper – Asked if the other 24 are technical failures based upon separation.

Santos – Asked how many more have not been inspected.

Crowley – The 24 are technical failures based upon separation. As for other properties, there are conventional systems that are inspected every five years; that process is on-going. The Health Department has known about these technical failures for a number of years; however, there was no way to address them prior to the amendment of Regulation 64. We are on the second round of inspections; technical failures don't change. The inspection based upon the soil evaluation from 1988; we read ground water differently today.

Santos – Upgrading to an I/A system costs \$20,000 to \$30,000; replacement of a system costs more.

Wienman – If this is deferred, asked for clarification on what the board would be looking at before the next hearing. Asked also what the appeal process would be.

MacNab – He would just as soon vote; but other board members would like to think about it.

Santamaria – The decision would be appealed through Superior Court.

Atherton – Would like to continue the matter to review the situation more carefully.

Motion to Defer discussion to the July meeting. (made by: Atherton) (seconded by: Cooper)
Carried 3-1//MacNab opposed

Action
Vote

2. Nitrogen Aggregation Plan for Hummock Pond Association

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:35) **Santamaria** – Within the subdivision, there is a property being looked at to use as a credit lot for undersized lots to maintain the 4-bedroom.

Teddy King – There 36½ -acre lots that have 4-bedroom septic systems, which were installed in 1981; there is an adjacent 13-acre land that would continue to allow the 4 bedrooms. There are no separation failures, though there might be a few hydraulic failures that are being fixed.

Visco – Some of the lots are in the Hummock Pond Zone B.

Cooper – Noted that some of the houses were built as 3-bedrooms but rooms have been added. Asked if all the lots are all in compliance with the 4-bedroom limit.

King – Some have studios.

Atherton – This is a pre-existing situation. Today, they wouldn't be allowed to have 4 bedrooms on a ½-acre lot.

MacNab – There would be no further building or expansion of structures.

Visco – Reminded the board that in Fisher's Landing they have to repair with I/A systems. The same I/A requirement should hold true here because they are in Zone B.

Gregg Ross, Hummock Pond Association – If there is a system failure, a new I/A system has to go in. Asked why a traditional system can't be repaired out of failure and left in place with the addition of the credit land.

Visco – This area is in a nitrogen zone; the rules are different for those zones.

Atherton – We are trying to lower the nitrogen flow into the Harbor and Hummock Pond Watershed Districts. If the system is replaced, it must be replaced with an I/A system regardless of the size of the lot.

Crowley – In this area it is 1 bedroom for every 10,000 square feet (SF) and they can have a conventional system.

Action **Motion to Deny the variance as related to Zone B.** (made by: Atherton) (seconded by: Weld)

Vote Carried unanimously

3. Variance – Millie's food trailer leave site once a week.

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:49) **Santamaria** – This is the same as their request from last month except this is for a trailer. Lobster Trap was approved as a pilot program to be reviewed in September.

Christian Broder, Millie's Restaurant – They have replaced the truck at Cisco Brewers with a trailer. This trailer is not quite as large as the Lobster Trap trailer.

MacNab – Lobster Trap was approved as a pilot program. He was uncomfortable with approving that.

LaFavre – She has executed three inspections for Lobster Trap: one week the trailer wasn't there, one week it wasn't cleaned, one week it was cleaned but not satisfactorily.

Santamaria – Pointed out that the Fish Market on Hummock Pond Road is planning to apply for the same request next month.

Visco – He was uncomfortable with approving the Lobster Trap; that has already become an issue. Pointed out their variance can be revisited at any time.

Atherton – Mobile food units are supposed to be mobile; these are something else in disguise.

MacNab – Asked for a formal review of Lobster Trap be on the August agenda.

Action **Motion to Deny.** (made by: Visco) (seconded by: Atherton)

Vote Carried unanimously

4. Baker, 74 Arkansas – Administrative Consent Order (ACO) request rather than Betterment Loan

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:57) **Santamaria** – The Betterment Loan was granted to install an I/A system; consulting and design work was started but the owners changed their mind and now want an ACO with the balance of the betterment rolled into the ACO. One condition of a Betterment Loan is that it cannot be issued for an ACO; they would have to pay back all the loan before entering into an ACO.

Action **Motion to Deny the ACO request.** (made by: Weld) (seconded by: Visco)

Vote Carried unanimously

5. Variance from Local BOH Regulation 64-07 for 34 Brewster Road, M/P 54-288

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (5:00) **Santamaria** – They are requesting to install a 5-bedroom conventional system on 40,500 SF lot. **Brian Swain**, for the owners – The owners haven't broken ground on the property yet; looking for a temporary variance to have a 5-bedroom system servicing the property until sewer is available. The variance would be granted on the condition that the system be abandoned as soon as sewer becomes available, which is predicted for 2018.

Cooper – Suggested they design a 4-bedroom house and office with no closet then change the office to a fifth bedroom when they hook up to sewer.

Swain – For a decade, they were led to believe that if they applied for an I/A permit, they would be awarded the fifth bedroom; they did apply and were awarded an I/A permit.

Crowley – This property has been approved a permit for a 4-bedroom I/A system. Noted that this application wasn't made until after implementation of Regulation 64; the owner was well aware he was limited to 4 bedrooms before the permit was issued.

Swain – Stated that the regulation was passed September 1, 2015; the permit went into effect September 28, 2015. Noted that the request is in perpetuity; it is just to bridge the gap until sewer is available. The owners are there only on weekends; there is no threat of over-burdening the system.

Atherton – Believes Mr. Cooper's suggestion is excellent.

Santamaria – Stated that houses with more than nine rooms are counted as 5-bedroom houses.

MacNab – Pointed out that installing a 5-bedroom I/A system for only 2-years is a burden for the owner.

Action Motion to Continue for July meeting. (made by:) (seconded by:)

Vote Carried

6. Authorizing the Tax Collector to act as BOH agent signing on the release of Betterment Loans

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – Every time a Betterment Loan is paid off, the BOH has to vote to release the loan. The tax collector is asking to do in house.

Action **Motion to Approve the Tax Collector as an agent to release the Betterment Loan.** (made by: Cooper) (seconded by: Atherton)

Vote Carried unanimously

7. Release of Hano's Betterment Loan (13 Massachusetts Avenue)

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – Needs board member signatures to release the loan.

8. Correction for the Land Court on the Jennison Betterment Agreement and ACO document

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – This is for separate properties; the trust that held the properties had expired; the name of the trust holding them had to be changed. This provides has the right name. Needs member signatures.

9. Expansion of Deer Hunting Area to include Audubon Property for the Venison Donation Program

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion **Ernie Steinauer**, Massachusetts Audubon – They have a state-wide ban on hunting on their properties. He would like to get the almost 1000 acres of properties on Nantucket opened to hunting and is asking the BOH to write a letter about this being helpful to reduce the deer population. Deer are a problem for conservation efforts as well in that they eat the flowers of endangered species almost as soon as the blooms appear.

MacNab – Reviewed the letter he drafted.

Atherton – Suggested in the last paragraph “We” be replaced by “the BOH”.

IV. DIRECTOR'S REPORT

1. The presentation on the mice program went well; encouraged the public to watch the video available on the Town website before making comments on the subject.
2. They have two interns this year. Abigail Silber has started work. Emma Ospelt is on her way.
3. Brochures on ticks and bio-degradable packaging are now available. Explained how the brochure on bio-degradable packaging will be disseminated. Explained how the tick brochure will be disseminated. They are drafting a brochure for best practices on fertilizer use for property owners; that will go out with the tax bill.
4. Weld – Asked that at the August meeting there be a report from the hospital. Santamaria – He can do that in July; it will be hospital only and not include physicians. Enumerated exotic mosquito-transmitted diseases that have appeared on Island, mostly resulting from travel.

V. ADJOURN

Motion to Adjourn: 5:34 p.m.

Submitted by:

Terry L. Norton