



# BOARD OF HEALTH

## Meeting

Town of Nantucket

131 Pleasant Street

Nantucket, Massachusetts 02554

[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

**Commissioners:** Stephen Visco (chair), James Cooper, Meredith Lepore, Kerry McKenna, Brooke Mohr

**Staff:** Roberto Santamaria, John Hedden, Kathy LaFavre, Cathy Flynn, Jake Visco, Anne Barrett

~~ MINUTES ~~

**Thursday, September 15, 2022**

**4 Fairground Road, Community Room**

*This meeting is also held via remote participation using ZOOM and YouTube.*

Called to order at 4:00 pm. by Mr. Visco

Staff in attendance: J. Hedden, Chief Environmental Health Officer; C. Flynn, Health Inspector; J. Visco, Health Inspector; T. Norton, Town Minutes Taker

Attending Members: Stephen Visco; James Cooper; Meredith Lepore; Brooke Mohr, Select Board; Kerry McKenna

Absent Members:

### I. ANNOUNCEMENTS

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

1. None

### III. APPROVAL OF MINUTES

1. August 18, 2022

Action **Motion to Approve.** (made by: Cooper) (seconded)

Roll-call vote Carried 4-0//Lepore, Cooper, Km, and Visco-aye; Mohr abstain

### IV. BOH APPLICATIONS REVIEW

1. Loan Application for 17 Bayberry, 67-66, Ellen Ray, septic to sewer

Sitting Visco, Cooper, Lepore, Mohr, McKenna

Documentation Supporting documents and plans, staff recommendations.

Speakers None

Discussion **Hedden** – Noted the property owner’s primary residence is 15 Bayberry Lane. There has been discussion about loans going only to the primary residence; moving forward, funds will be limited so this is a discussion we will need to have.

**Mohr** – She’s curious how the use of the secondary property would be considered; a seasonal rental would not be as important as a year-round rental.

**Visco** – That is something we should discuss at the next meeting.

Action **Motion to Approve the loan application.** (made by: Cooper) (seconded)

Roll-call vote Carried 4-1//Lepore, Cooper, Mohr, and Visco-aye; McKenna-nay

2. Loan Application for 15 Bayberry, 67-65, Homer Ray III, septic to sewer

Sitting Visco, Cooper, Lepore, Mohr, McKenna

Documentation Supporting documents and plans, staff recommendations.

Speakers None

Discussion **Hedden** – This is similar but held by a different owner.

Action **Motion to Approve the loan application.** (made by: McKenna) (seconded)

Roll-call vote Carried 5-0//Lepore, Cooper, Mohr, McKenna, and Visco-aye

3. Loan Application for 15 Massachusetts Avenue, 60.3.1-317, tight tank

Sitting Visco, Cooper, Lepore, Mohr, McKenna  
Documentation Supporting documents and plans, staff recommendations.  
Speakers None  
Discussion **Hedden** – This is for a tight tank over Millie’s Bridge where they are permitted. This is not a primary residence; it’s most likely a seasonal residence.  
**Cooper** – If we’ve been giving the money for secondary residences, we should continue doing so. Discussion about the amount of money left in the fund.  
**Visco** – This is about separation not failure.  
Action **Motion to Approve the loan application.** (made by: McKenna) (seconded)  
Roll-call vote Carried 5-0//Lepore, Cooper, Mohr, McKenna, and Visco-aye

4. Variance request for 24 Medouie Creek Road, 20-2, set-back from property line

Sitting Visco, Cooper, Lepore, Mohr, McKenna  
Documentation Supporting documents and plans, staff recommendations.  
Speakers Don Bracken, Bracken Engineering for the applicant  
Discussion **Hedden** – This variance is for the setback from the street. It’s going in between the buffers to 2 wetlands.  
**Bracken** – It’s squeezed in at an old leeching pit with a setback of about 8’ from the street line. This is an I/A system. It’s in the Harbor Watershed Area.  
**McKenna** – There is a lot of impervious area proposed.  
**Bracken** – This has received Conservation Commission approval; the parking will be pervious with a catch-basin drywell system.  
**Mohr** – Asked if this could be located where the pool is going or is the variance to allow for the pool.  
**Hedden** – There are 2 wetlands, and this is in the best location for those setbacks. If this went where the pool is located, they would need a variance for the wetland setback. This meets maximum feasible compliance.  
Action **Motion to Approve the variance.** (made by: Cooper) (seconded)  
Roll-call vote Carried 5-0//Lepore, Cooper, Mohr, McKenna, and Visco-aye

5. Variance request for 9 Columbus Avenue, 59.3-112, setbacks from wetlands

Sitting Visco, Cooper, Lepore, Mohr, McKenna  
Documentation Supporting documents and plans, staff recommendations.  
Speakers Art Gasbarro, Nantucket Engineering & Survey for Jeff Blackwell, Blackwell & Associates  
Discussion **Hedden** – This is to get the leach field as far from the pond as possible. Staff has no objections.  
**Gasbarro** – He reviewed Mr. Blackwell plans. This is for an upgrade to I/A and for increased capacity. Its meets maximum feasible compliance.  
Action **Motion to Approve the variance.** (made by: McKenna) (seconded)  
Roll-call vote Carried 5-0//Lepore, Cooper, McKenna, Mohr, and Visco-aye

6. Variance request for 110 Surfside Rd, 80-6, Local Reg 64.04 B nitrogen loading

Sitting Visco, Cooper, Lepore, Mohr, McKenna  
Documentation Supporting documents and plans, staff recommendations.  
Speakers Art Gasbarro, Nantucket Engineering & Survey for the applicant  
Discussion **Hedden** – This is for bedroom credit in the Wellhead Protection District.  
**Gasbarro** – A conventional system would allow 10 bedrooms; we’re asking for 12 bedrooms with an I/A system. It’s consistent with other approvals; the lot is 105,000 square feet. The plan is for a main dwelling and ancillary structures.  
Action **Motion to Approve the variance.** (made by: Cooper) (seconded)  
Roll-call vote Carried 4-0//Lepore, Cooper, McKenna, and Visco-aye; Mohr-abstain

7. Restriction of 167 Surfside Road, 87-118, to I/A system

Sitting Visco, Cooper, Lepore, Mohr, McKenna

Documentation Supporting documents and plans, staff recommendations.

Speakers Dan Mulloy, Site Design Engineering for the applicant

Discussion **Hedden** – This is part of 2 properties; 11 Western Avenue currently has a 4-bedroom system with this lot having the septic system. The system straddles both these lots; this property should be restricted to an I/A system for 1 bedroom.

**McKenna** – His concern is the number of people being jammed into a small area and the impact on the Island. Every lot can go to its max and we don't know the Island's capacity. We are on the 3<sup>rd</sup> approval on 4 lots in this area.

**Mulloy** – It's a lot of record; at the last meeting, a similar application was approved for 4 Canonicus. This is essentially the same application.

Action **Motion to Approve restricted to a 1-bedroom I/A system.** (made by: Mohr) (seconded)

Roll-call vote Carried 5-0//Lepore, Cooper, Mohr, McKenna, and Visco-aye

8. Request from 8 Sachems Road, 30-239, to build pool with violations on property – Continued to October

9. Next Level Water Sports operating a camp without a permit contesting ticket

Sitting Visco, Cooper, Lepore, Mohr, McKenna

Documentation Supporting documents and plans, staff recommendations.

Speakers Jim Mondani, for Next Level Sports

John Berry, Next Level Sports co-owner

Discussion **Mondani** – This is to appeal the order for cessation of recreational activities. We feel the activities aren't subject to the camp regulations. His clients offer semi-private classes; it's a business and doesn't fit the definition for a traditional camp. His clients are required to obtain a business license through the Town and must comply with USCG and Harbormaster regulations. The Town enforces the regulations set forth by the State Board of Health; reviewed those regulations. Meeting those regulations would be onerous.

**J. Visco** – This ticket is for advertising as a camp; the minimum regulations state no camp will operate without a license from the BOH and they must be licensed as a children's camp prior to operation. They've been calling themselves a camp since 2019.

**McKenna** – Looking at the brochure, they mention being a camp 3 times.

**Mohr** – If they didn't advertise as a camp, what would happen.

**Visco** – Explained the minimum requirements to qualify as a camp; 4 days within 14 days, operates more than 2 hours at a time, has 5 or more children.

**Mondani** – They have 3 boats which accommodate a total of 6 kids and each session is 3 hours. Parents like the idea of a camp and that is why they marketed it that way.

**Cooper** – If you market it as a camp, the parents expect it to be a camp.

**Hedden** – The Department of Environmental Protection (DEP) agree that it qualifies as a children's camp.

**Berry** – We've offered kite and wake-boarding lessons since 2016. In 2020, we came up with the idea of taking kids out and calling it a kite-boarding camp. He went through CMR 105-430; the challenge is we are in boats on the water every day; we can utilize toilets at the Town Pier. This year we won't meet those requirements. Our goal is to comply after working with the Health Department in order to meet the growing need for more camps. Marketing was an oversight, and we modified our program to work our kids into the regular instruction program. We are willing to pay the fine.

**Mohr** – Asked the difference between the traditional lesson structure and what they had going on here. Thinks there is a way to structure this without it being a camp.

**Berry** – Explained the difference between private lessons and "camp" instruction. Explained how they restructured away from a group setting.

**Mondani** – What triggered the “camp” was more than 5 kids for more than 2 hours. He doesn’t believe 2 kids in a boat on the water triggers the definition of a “camp.”

**McKenna** – We are concerned with safety. Encourages them to start working with the BOH now to prepare for the 2023 summer season. We want kids to have safe, healthy experiences.

**J. Visco** – One issue was the bathroom, so they applied for a variance to have 2 toilets on a barge.

**Hedden** – If they want to apply for variances to the code, they may do so. We have plenty of time to work things out for next summer.

**Berry** – Our regular operations has never been in question in the past; a cease and desist of operations is devastating to our business. We want to make sure we are in good standing moving forward into 2023.

**Visco** – He’d been in favor of letting up and giving them time to work it out.

**McKenna** – Two meetings ago, we fined the Sustainable Market, which had worked with the BOH. If they want to withdraw the appeal and pay the fine, it’s acceptable to him. This is a 1<sup>st</sup>-time offense on a solvable problem.

Action **Motion to Accept the withdrawal of the appeal.** (made by: McKenna) (seconded)

Roll-call vote Carried 5-0//Lepore, Cooper, Mohr, McKenna, and Visco-aye

10. Discussion of exceeding the 124-seat capacity at Millie’s Restaurant

Sitting Visco, Cooper, Lepore, Mohr, McKenna

Documentation Supporting documents and plans, staff recommendations.

Speakers Bryan Swain, Vaughan, Dale, Hunter & Beaudette, P.C.

Richard Beaudette, Vaughan, Dale, Hunter & Beaudette, P.C.

Discussion **Hedden** – You were sent a letter from Richard Beaudette, Vaughan, Dale, Hunter & Beaudette, P.C. asking to postpone this discussion, neither Mr. Beaudette nor the owner could attend this hearing. They are allowed 124 seats based upon the septic design. We are asking for a policy that the count include people who are standing. They have not yet been ticketed; we are asking for a policy that allows us to suspend operations if they are in violation. The ticket is \$500 a day.

**Swain** – He’s here for Mr. Beaudette; we reached out to get this continued. Asked for a motion to continue to October so Mr. Beaudette and the applicant can be present. Millie’s will be operating until October; they are not serving as many people at this time. There were multiple permits involved; there’s a lot of information that could be submitted.

**Mohr** – If they were closed for the season, a delay would be warranted, but they aren’t closed.

**Visco** – This issue was hashed out before; they were found not to be following the 124-seat plan. During the site visit there were over 124.

**Hedden** – He counted 250 seats, which is double the septic system design flow and they have only 2 bathrooms, which accommodates the 124.

**Mohr** – With some of the outdoor seating permits in Town, interior seats had to be removed to meet the seating cap.

**Swain** – We are under the COVID permits that allows outdoor seating.

**Hedden** – Under the Governor’s COVID regulations, they could have outdoor seating but could not exceed their seating capacity; those regulations no longer stand. Millie’s still needs to be in compliance with the bathroom regulation and their septic capacity. There were 130 people seated with other people standing and drinking.

**Cooper** – The permit says 124 people; that’s their limit and if they are exceeding that, they should be shut down.

**Lepore** – It sounds like Staff is recommending a 1-day suspension. It’s clear there was a violation. It’s bad for the Island to overtax the septic system.

**Hedden** – We are looking for a suspension policy moving forward; reviewed the draft policy. There aren’t too many restaurants on a septic; the policy is currently geared toward this establishment, which has had repeated violations.

**Beaudette** – Explained why he had asked for a continuance and that he had to leave another meeting to attend this; he’s disappointed they wouldn’t continue this matter. They have not had a violation in 8 years. We want to see a proper record of the count before we respond. This Board should see all the minutes of what went on 8 years ago. He sees no harm to the septic, the Town, or the BOH by pushing this discussion out to October. Pointed out that there is zero flow through the system 6 months out of the year.

**Mohr** – Doesn’t know that the anything in minutes from 2014 would change anything; the seating is set at 124.

**Visco** – The applicant might not want us to pull the summer water records; he’s certain it would be more than 400 gallons per day. He doesn’t know what could be presented that change anyone’s mind regarding the 124-seat maximum.

**Beaudette** – He thinks its about fairness to the owner. He has questions about how the count was done.

**Lepore** – She’s looking at the minutes from July 30, 2014; read the inspector’s comments stating 133 people were seated.

**Beaudette** – Recalls that at the last BOH hearing the count was to be based upon 124 people, not 124 seats. He doesn’t know if this time the count was in accordance with what was unanimously decided by the BOH in 2014. If we were over 124, it was our fault.

**Mohr** – Confirmed the Staff policy would apply to future violations, not this one.

**Hedden** – The manager submitted a seating chart, which was hard to read. He would recommend they provide a new seating chart showing 124 seats. The picnic tables seat 8; as he recalls, the tables were to seat 6.

Further discussion on the count and how it was taken: bodies versus chairs.

**Mohr** – Suggested Staff be authorized to issue the violation based upon a headcount and put this back on the agenda for further discussion.

**Beaudette** – Gave his reasons why any decision should be delayed for further discussion and clarification of how the restaurant operates. Confirmed with Staff that there have been no seating violations since 2014.

Discussion on the motion: arrangement of the 124, flexibility of where people sit, “3<sup>rd</sup>-strike” results in shutting down for a day.

Action **Motion to Adopt the Staff recommendations as stated for a policy for all restaurants with septics and not to be retroactive.** (made by: McKenna) (seconded)

Roll-call vote Carried 5-0//Cooper, Lepore, Mohr, McKenna, and Visco-aye

11. Discussion of exceeding the 50-seat capacity at Bar Yoshi – Local Regulation 14

Sitting Visco, Cooper, Lepore, Mohr, McKenna

Documentation Supporting documents and plans, staff recommendations.

Speakers None

Discussion **Hedden** – This is similar; there is only 1 bathroom which limits seats to 50. They have a lot of outdoor seating; counted over 50 on 3 separate inspections. Recommend suspending the permit for 1 day after the 1<sup>st</sup> violation, and 5days for the 2<sup>nd</sup> violation.

Action **Motion to Approve the Staff recommends.** (made by: Cooper) (seconded)

Roll-call vote Carried 5-0//Lepore, Cooper, McKenna, Mohr, and Visco-aye

12. Discussion of semi-public pools chemical testing requirements not being met: • Hawthorne Park • Park Circle • Beachside Hotel • Cliffside Beach Club • Finback • Grey Lady • Nantucket Hotel • Naushop, • White Elephant

- Sitting Visco, Cooper, Lepore, Mohr, McKenna  
Documentation Supporting documents and plans, staff recommendations.  
Speakers None  
Discussion **Hedden** – These are based upon inspections of the places listed: not testing 4 time a day or logging all the tests required. Recommend the same ticket and suspend the permit.  
**McKenna** – There were other violations as well.  
**J. Visco** – There were multiple violations especially improper testing; there was a lack of knowledge among the pool attendants about the testing procedures and required tests.  
**Visco** – Staff has to authority to write a ticket and fine; if they want to, do so; they can come to us to appeal the ticket.
- Action No action taken.  
Roll-call vote N/A

13. Partial Condemnation of 5 Cow Pond Lane - Basement

- Sitting Visco, Cooper, Lepore, Mohr, McKenna  
Documentation Supporting documents and plans, staff recommendations.  
Speakers None  
Discussion **Hedden** – Staff received notification of sewer issues and overcrowding. In the basement, there are 3 bedrooms, none with a proper means of egress.  
**Mohr** – Asked if the homeowner is required to rehome those who lose their housing in this situation: if they knowingly over lease versus they are not aware of subletting.  
**Hedden** – A landlord should know if the housing meets the regulations. In this case they were illegal apartments.
- Action **Motion to ratify the condemnation.** (made by: Cooper) (seconded)  
Roll-call vote Carried 5-0//Lepore, Cooper, Mohr, McKenna, and Visco-aye

## V. BOH BUSINESS

1. Discussion of short-term rentals  
**McKenna** – He knows one house that is interval ownership; they advertise with Airbnb. The address isn't on the advertisement. Asked how a violation would be issued if the address is unknown.  
**Visco** – That is a subject for a separate discussion.

## VI. ADDITIONAL DOCUMENTS USED

1. Draft BOH Minutes August 18, 2022
2. Draft STR regulations

## VII. ADJOURN

- Action **Motion to Adjourn at 6:10 pm.** (made by: Cooper) (seconded)  
Roll-call vote Carried 5-0//Lepore, Cooper, Mohr, McKenna, and Visco-aye

Submitted by:  
Terry L. Norton