



Town of Provincetown

Meeting of the

BOARD OF HEALTH

Thursday, May 2, 2013

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

Board Members Present: Mark Phillips, Chair; Dr. Janet Whelan, and Ken Janson

Board Members Absent: Laurie Delmolino, Elizabeth Williams, Paige Mansfield, Alternate

Other attendees: Brian Carlson, Health and Environmental Affairs Manager and Morgan Clark, Public Health and Safety Officer

Call to Order: Mark Phillips called the meeting to order at 4:00 p.m.

Public Comments:

James Roderick, a local septage hauler addressed the Board regarding the Tri-Town Treatment Plant. He brought it to the attention of the Board that as of May 2015 the treatment plant will be full and will no longer be accepting septage. After this point in time, all septage will have to be trucked over the canal. He raised the issue to make the board aware of the upcoming closure so it could be proactive about it.

Discussion:

There was no discussion by the Board at this time.

Old Business:

There was no old business brought forward

New Business:

a. Food Code Variance Request Section 3-501.19 ~ Johnny Thai's, 149 Commercial Street. Request for time as a public health control when handling Sushi Rice.

Discussion:

Morgan Clark introduced the request for the variance to Board. She explained that there are two sections of the Federal Food Code that can be used to handle Sushi Rice. The Board had previously heard a variance request using Section 3-502.11, to use of vinegar as a method of food preservation. There is another code, Section 3-501.19 that uses time as a public health control. Mr. Pak comes before the Board requesting a variance according to Section 3-501.19 to use time as a public health control.

Mr. Pak explained to the Board that his restaurant uses vinegar for seasoning, not for pH control. He consulted with the State Board of Public Health and was informed that he could use time as a means to control Sushi Rice. The maximum time for each batch to be left in the temperature danger zone is 4 hours. He usually makes frequent, small batches that are generally consumed within this time frame. Only he and one other chef are responsible for making the Sushi Rice, cooling it, adding the vinegar and refrigerating it. Anything that is left over within the 4 hour time frame is discarded and a new batch is made.

In response to a question by Mark Phillips about the log, Mr. Pak stated that the log includes the date and time of when each batch of rice is cooked and when it is either finished or discarded. Janet Whelan asked if there is a signature or initialing for the entries on the log and why does he not use vinegar as a means of control? Mr. Pak responded that he was advised by the State that he had the option of using time as the control and added that he is present in the restaurant the whole time of service.

Morgan commented that she prefers the acidification variance as she believes there are less variables involved. She mentioned that she requested all establishments that serve Sushi Rice to apply for the variance before they opened for the season.

Motion: To grant the variance to Johnny Pak and the variance must include a written procedure to insure compliance with Massachusetts Health Code 3-501.19 for the making of Sushi Rice.

Motion: Ken Janson

Seconded: Janet Whelan

Vote: 3 – 0 - 0

Documents Submitted: Procedure of Handling Sushi Rice at Johnny Thai Bistro & The Monkey Bar (9 Point Plan)

b. Food Code Variance Request Section 3-502.11 Saki, 258, Commercial Street. Request for a variance to use a specialized processing method for Sushi Rice.

Discussion:

Morgan Clark explained that Mr. Schnitzer is here for a similar variance for Sushi Rice, but is requesting the variance using Section 3-502.11, which uses acidification to render Sushi Rice non-hazardous. Prior to this a pH log was kept at Saki for the rice. Her main concern is that he knows how to calibrate and use the pH meter.

Mr. Schnitzer commented that in the past he had difficulty finding anyone who could explain how to test for pH, but now has a very accurate pH meter. His restaurant also goes through an enormous amount of rice. It never lasts more than 45 minutes and is also kept in an insulated rice warmer the whole time. They check the pH when times are slow, but they are very conscientious about the vinegar. There are 3 people who are responsible for the rice preparation.

Motion: To accept Mr. Schnitzer’s application for a variance using acidification to preserve Sushi Rice before it is consumed, in accordance with Section 3-502.11.

Motion: Janet Whelan

Seconded: Ken Janson

Vote: 3 – 0 – 0

Documents Submitted: Guidelines for Validating Sushi Rice from Environmental Health Services, Sushi Rice Preparation Flow Chart, and an example of a monthly Sushi Rice pH Log

c. 410 Commercial Street – Historical Bedroom Determination, Ralley Trust

Discussion:

Mr. Carlson explained that he did a walk through with Dr. O’Malley of the premises. The room that they are seeking designation for currently has to be walked through to reach another dwelling unit within the same structure. At some point in history it seems there may have been a wall separating the units. Dr. O’Malley provided a narrative of how it has been used in the past. In recent history, going back to 2001, it has been used as a bedroom.

Dr. O’Malley stated that they are looking for a correction to the assessor’s data. For at least the last 13 years the room has been used as a bedroom. Sometime around 1950 the original owner added a rear unit to the original building, including a mother –in-law apartment upstairs. Dr. O’Malley purchased it in 1984 for his parents. The room in question was used as a sun porch. It connects to the internal bedroom of the front unit, but also opens up onto the living room of the rear unit. In 2001 his son and daughter-in –law built a temporary wall and used it as a bedroom with the other

bedroom being used for their child. Since 2003, Dr. O'Malley's daughter Grace has resided in the apartment and has used the room as a bedroom also, since then. Dr. O'Malley's intention is to divide the two units, thereby creating a two bedroom rear unit on the upper floor with the first floor for kitchen and living room. The assessor has it listed as 4 bedrooms; he contends that it has been 5 bedrooms for a long time.

Mr. Phillips asked if he has any documentation from the previous family who lived there attesting to the use of the sunroom. He is concerned about establishing precedent with only 10 to 12 years of use as an historic bedroom. Mr. Carlson stated that it is before the Board because it was built before the 1978 building code. It does meet the definition of a bedroom, regarding ceiling height, door width and windows.

Wilsa Ryder, speculated that the room may have been used as a Summer bedroom because it has windows on 3 sides. Grace O'Malley offered that she can access the bedroom from her section of the house and it is not necessary to access it from the other side of the house.

Motion: To accept that the dwelling unit at 410 Commercial Street be designated as 5 bedrooms.

Motion: Ken Janson

Seconded: Janet Whelan

Vote: 3 – 0 – 0

Documents Submitted: Narrative, Brian O'Malley and Wilsa J. Ryder, May 1, 2013; Statement, Robin Ryder-O'Malley, April 16, 2013; Existing Floor Plan, 410 Commercial Street: Proposed Floor Plan, 410 Commercial Street, Assessor's Property Card, 410 Commercial Street

d. 30 Conwell Street - ACO Request, Chris Nagle representing TD BANK, INC.

Discussion:

Brian Carlson introduced the ACO application to the Board. He explained that 30 Conwell Street is a mixed-use building that has retail space, office space and a 2 bedroom residential unit. It is currently served by an "Old Code" Title % system, which has some peculiarities. It had an inspection, which needs further review by the local approving authority. It is currently owned by TD Bank. In order to pass papers for a real estate transfer, it will need an ACO from the Board of Health. There are some "Quick Fixes" that would have to be made to the septic tank, which Mr. Roderick is here to discuss. Currently, the tank is situated under what appears to be the garage and there is a dwelling unit that was constructed above it at an undetermined time. The garage is on the South side of the building and the leaching pit is in the driveway.

Mr. James Roderick mentioned that sometime in the 1990s a previous owner had constructed a “carport style” structure and then had extended a living room to his apartment above it to the retaining wall. Over time, a garage door was added.

He further explained that under normal conditions, the current system would be “conditionally” passed with a failed septic tank that needed to be replaced “in place”. The reason why we are here today is because the tank is located in the garage and is nearly impossible to access to replace it. Mr. Roderick’s suggestion for a “Quick Fix” was to install a new 1,500 gallon H₂O septic tank in the parking lot between the front corner of the building and the leach pit. It would technically be compliant to the 1978 code. The leach pit has enough separation from ground water.

Mr. Phillips asked if it would require any set back variances, to which Mr. Roderick replied that he thought there was enough room although he is not an engineer. The damaged tank could be crushed in place and filled with sand. Mr. Janson asked if the sewer goes through this area? Mr. Carlson stated that there are no plans at present for that to happen.

Mr. Nagle represents the prospective buyer. The buyer does not have any engineered plans for a new septic system. The bank is not pursuing engineering; they are leaving it up to the new owner. There is a contract in place. One possible “Quick Fix” that was discussed is to make the garage door inoperable, install reinforced concrete on top of the tank or any quick solution that would allow transfer of the property.

Mr. Phillips thought the garage over the septic tank was quite problematic. He enquired what the current use of the garage is? It is apparently used only as garage space. Mr. Carlson said that the best thing would be to install a new Title 5 or connect to the sewer, but we are in a middle ground right now.

Mr. Nagle suggested that the prospective owner intends to do what the Board thinks best, upon ownership. He is requesting time in order to first purchase the building and then install a compliant system. They are not necessarily asking for the entire 5 years of an ACO to accomplish this.

Upon questioning by Mr. Phillips, Mr. Roderick recommended that the garage door be rendered inoperable and a concrete barrier be installed to prevent vehicles from driving onto the cracked tank. When a new system is eventually installed, the old tank will still be accessible, then it can be filled properly with sand and rendered inoperable.

Mr. Janson suggested that they come to the Board with a plan of *exactly* what they intend to do as a “Quick Fix”; not just to say they are going to do a “Quick Fix”. He would like them to come back to the Board with a plan.

Mr. Nagle stressed that he is looking for the quickest fix possible.

Motion: *That we approve the ACO request as submitted, subject to the applicant and new owner coming back to the Board with an engineered plan to implement the “Quick Fixes to be done within 30 days of the sale of the property.”*

Motion: Mark Phillips

Seconded: Ken Janson

Vote: 3 – 0 – 0

e. 105–109 Bradford Street Extension – ACO Request, Nadine Licostie, Mgr. of The Chateau

Discussion:

Brian Carlson presented the request to the Board. The applicant is seeking an ACO in preparation for a real estate transfer. The property is presently served by cesspools, which will technically fail upon transfer of title. The bedroom count is 57 bedrooms and 10 fast food seats at 20 gallons per day for Title 5 purposes.

J. Lester Murphy spoke on behalf of the applicant Nadine Licostie who is in the process of forming an LLC. The property is under agreement. They have looked at the possibility of doing a complete Title 5 upgrade. Both the seller and buyer agreed that they want to look into the possibility of connecting to the sewer, which may be extended along Bradford Street Extension in the future.

Brian Carlson stated that he does not know what the time frame is for that phase of the sewer, but he can find out. It has been his experience that with a project of this size it would bring more engineering to this end of town.

Mr. Murphy stated that the sooner the better. All the cesspools are functioning at this point in time. He has impressed upon his client that if the sewer is not extended to the property within the time frame of the ACO that they are responsible to do whatever necessary to be in compliance. The best option for this property is the sewer, not multiple septic systems. He proposed that the ACO would be signed and recorded simultaneously with the closing of the property and the first payment be made at that time.

Mr. Phillips added that the property should be inspected once a year to show that the system is still functioning within 30 days of the property closing for the season.

Motion: To approve the Administrative Consent Order for the property at 105-109 Bradford Street Extension; there shall be proof of recording at the Barnstable Count Registry of Deeds and the first payment be delivered to the Provincetown Board of Health Department within 14 days and the property cesspools shall be inspected yearly in a period 30 days before closing for the season.

Motion: Ken Janson

Seconded: Mark Phillips

Vote: 3 – 0 – 0

Any Other Business That Should Properly Come Before The Board

Mr. Phillips mentioned a couple housekeeping items, which will be coming before the Board at the next meeting. One of the agenda items will be the election of officers. Anyone interested in being an officer should think about it. At the same meeting, the fiscal year 2014 goals for the health Department are usually discussed. The other thing that he would like to discuss are any “emerging trends” which we might be aware of, such as what was brought up during Public Statements at this meeting.

Approval of Minutes

April 18, 2013

Mr. Phillips had one correction, which is Brian Carlson’s title, Health and Environmental Affairs Manager.

Motion: To approve the minutes of April 18, 2013, as corrected.

Motion: Ken Janson

Seconded: Janet Whelan

Vote: 3 – 0 – 0

Health Department Report

Inspections & Permitting

Inspections are moving along, there are a lot of restaurants opening and seasonal guest houses opening, as well as pools and hot tubs.

Pools & Hot Tubs

The pools and hot tubs feed back with the new application so far has been good. Everyone has been in compliance. There is a lot of good faith effort being made to become certified.

Christian's Law

As an update on Christian's Law, Morgan attended a Massachusetts Health Officers Association semi-annual seminar. It was a big topic there. A lot of our questions were answered and she took a FAQ sheet. Christian's Law was passed in October; we now have a Massachusetts General Law, but not a CMR Code yet. She has informed the West End Racing Club and the Recreation Department that they need to meet the requirements of the law until she has the codes available to enforce the law. These two establishments do fall under Christian's law, but are not considered "Camps".

Bathing Beaches

Brian Carlson mentioned that it is coming up to bathing beach season and asked the Board if they wanted to do the "flags" again this year. The County will be doing the water quality testing again and the Summer Sanitarian begins sometime right after Memorial Day. We will update you on their schedule when we know what it is. The Water Quality Task Force can convene a meeting soon. The water testing begins in the first week of June.

Board Members' Statements

There were no statements made by the board members

Adjournment:

There being no further business, Mark Phillips adjourned the meeting at 5:20 pm.

Respectfully submitted,

Susan Leonard

Approved by _____ on _____, 2013