



Town of Provincetown

Meeting of the

BOARD OF HEALTH

Thursday, July 18, 2013

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

Board Members Present: Mark Phillips, Chair, Ken Janson, Laurie Delmolino, Vice Chair; Elizabeth Williams and Dr. Janet Whelan

Board Members Absent: Paige Mansfield, Alternate

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

Recorder: Susan Leonard

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

Public Comments:

There were no public comments.

Old Business:

a. 16 Bradford Street - Title 5 Variance Request – Philbert Roderick

Discussion: This Agenda item was continued from the previously scheduled meeting of the Board for June 20, 2013, which was cancelled due to lack of quorum.

Allen Cabral, Engineer with Felco, Inc. appeared to present the request for Mr. Philbert Roderick. He stated that this was a fairly straight-forward upgrade. The proposed plan is a Title 5 upgrade consisting of a septic tank and a leach area, which replaces two existing cesspools. Due to the tight nature of the property 5 variances were requested:

- 1) 4' from septic tank to property line (Franklin Street) – 310 CMR 15.211
- 2) 4' from septic tank to cellar wall
- 3) 8' from leach area to property line (Franklin Street)
- 4) 16' from leach area to cellar wall
- 5) 18% reduction in required leach area provided – 310 CMR 15.405(1)(d)

All of the variances affect this property only. There is no impact on abutting properties. A flow barrier is proposed to protect the cellar and a note for the contractor requires sheathing to protect the Franklin Street retaining wall during excavation.

Ken Janson commented that historically this type of variances are absolutely required since there is nowhere else to locate this system on the property.

Mark Phillips inquired what would happen to the cesspools? Mr. Cabral replied that they would be excavated out during the construction of the Title 5 system. The cesspools will be pumped first and the concrete blocks will be disposed off.

Laurie Delmolino asked if there was a reason why the property is not connecting to the sewer system? Mr. Carlson explained that, according to the Water & Sewer Department, this property may be part of the Phase 4 sewer system, but it has not been determined yet where it will be going. Mr. Cabral mentioned that the property owner has received funding through a housing rehabilitation agency, which will pay for the upgrade. Mr. Cabral stressed that these are all non-environmental variances and he is reluctant to agree to any conditions being placed on the property owner especially regarding hooking up to the sewer system since the Board approved a similar system about 2 months earlier at Conwell Street without any conditions. There would be no benefit in forcing the owner to abandon a new Title 5 system in order to hook up to the sewer system at a later date.

Motion: *To approve the site and sewage plan for 16 Bradford Street.*

Motion: Ken Janson

Seconded: Laurie Demolino

Vote: 5 – 0 – 0

Documents Submitted: Project Summary Letter, Felco, Inc., June 4, 2013; Certified Abutters List, May 29, 2013; Site & Sewage Plan, 16 Bradford Street, Philbert Roderick, Felco Inc., June 3, 2013

New Business

a. Dog Dining Variance – Aquarium Mall

Discussion: Ben De Ruyter appeared before the Board to seek clarification on dogs being allowed on the property. If it is determined that a variance is necessary he would like to seek it at this meeting. He questioned if a variance was required at all. Morgan Clark, Public Health and Safety Officer asked Mr. De Ruyter to come before the board.

Mr. Phillips asked Ms. Clark to clarify what the variance would be for. She explained that it is the Federal Food Code 6 - 501.115 which prohibits animals of any sort being in a food service establishment. The Board allows a variance for outdoor dining. She asked Mr. De Ruyter to appear before the Board to answer complaints and questions she has received from food service establishments and patrons at the mall. She asked for the Board's guidance in the matter.

Betty Williams asked if dogs have to walk through the mall to get to his establishment. Mr. De Ruyter explained that he owns the entire mall, but he is representing his tenants, as well. The entire property including the deck in the rear is open to the public. One does not have to buy food from the restaurants there in order to use the deck. His question is whether his property is actually a food service establishment? It is more like a public park with picnic tables.

Ken Janson questioned whether it falls under the Health Department regulations since there is no food service on the deck. Morgan Clark stated that it is definitely a licensing anomaly. The Health Department licenses the individual food establishments within the mall. Dogs are not allowed into these food stalls, but she is not clear if dogs are allowed go through the interior thoroughfare to reach the deck area. The Aquarium Mall itself is not licensed as anything by the Health Department.

Mark Phillips registered concerns regarding whether there should be dogs where food is consumed and whether the pass-through is really an open space since there are picnic tables outside the stalls. He expressed his concerns, in general, with variances being granted to various food establishments for dog dining. He has noted that many of these establishments seem to not be in compliance with the things that they said they would do to get this variance. He is reluctant to grant more variances because there is a lack of compliance.

Betty Williams wondered how many dogs are actually at the establishment? Mr. De Ruyter likes the public nature of his property. It would be a shame to limit access to dog owners to the public space. Typically there are one or two dogs there. He has no way in enforcing a limit on the number of dogs.

Morgan stated that she would not necessarily be comfortable speaking to Mr. De Ruyter about dogs coming into the mall since it is open to the public. It is a special case and we should be careful about what we expect from Mr. De Ruyter, since we do not regulate very much of what happens in the mall itself, just the food stalls. It would be difficult to hold Mr. De Ruyter accountable for what happens in an individually licensed food stall.

In answer to a question from Dr. Whelan, Mr. De Ruyter stated that the individual food vendors have installed hooks for dog leashes outside the food stalls, so customers do not have to enter with their dogs while ordering food.

Mr. Phillips pointed out that none of the food establishments in the mall have requested a variance for dogs to be allowed within their space, therefore one can conclude that dogs are currently not allowed in the food establishments. Morgan added that there is a clear delineation between the food stalls and the public spaces.

Betty Williams asked who would be held responsible for a dog bite, Mr. De Ruyter? He does carry insurance for such occurrences. That notwithstanding, Betty felt that the Board should leave the current arrangement as it is. Mr. Janson expressed that he doesn't think it is the Board's place to regulate this property. Laurie Delmolino doesn't see that they have regulations covering this situation. Dr. Whelan agreed, as well. She had questions of cleaning up after dogs. Ken Janson stressed the point that Mr. de Ruyter be very proactive with the staff that dogs are not allowed up on the tables. Mr. De Ruyter agreed with the recommendation and will follow up on it.

b. Cesspools in Provincetown - Health Department Report

Discussion: Mr. Carlson presented to the Board the map of cesspools in the Town, which was compiled by Senja Melin the AmeriCorps volunteer. The data says that there are 188 cesspools, which may not be entirely accurate. That would require going through each property file to verify. When the next AmeriCorp volunteer arrives the project will be continued. He has requested an updated sewer count from the Water & Sewer Department. It is good to have a visual. It is good to be able to identify how a particular property may be contributing to poor water quality. The water quality this summer has been rather good.

Betty Williams asked if Brian has the authority to check out the properties with cesspools to determine if they are still functioning well? He said that he did.

Mark Phillips mentioned that he had asked Brian to create this map last summer and has a few questions about the process and asked the Board to consider them, as well.

Do we want to regulate these properties somehow? There are local and State regulations that cover cesspools. Currently, the Town only addresses it at a transfer or sale of the property. There may be some of these properties that may not be sold for many years. If there is no inspection or requirement of the home-owner to do anything how do we know if they are working?

Ken asked if there are pumping records which would show if a system has failed? Brian said the data is available, but not very accessible. It could be added to the spread sheet. Septage haulers do inform the Health Department when they find a failed system. A system is considered failed if it is pumped 4 times in a year. There can be hydraulic failure and it does not leach.

Mr. Phillips asked if the County or State has any information on other towns implementing a process to eliminate cesspools? Are our internal procedures good enough to catch a failure? A licensed septic inspector's report will note how many times a system has been pumped. Laurie Delmolino asked if there is way to improve the reporting system from the septage haulers? Morgan said there is no electronic system in place. Mr. Phillips asked if it would be reasonable to require cesspools to be inspected at some interval, for example every 5 years?

Dr. Whelan asked if there is any information available about the leached liquid's pathogenicity? Is the liquid still infectious? Brian replied that the effluent is being treated by sand over time. In a Title 5 the fluid is considered safe once it has gone through the leaching process.

Mr. Phillips suggested that the Board might want to be more proactive now that it is 40 years hence from the original legislation.

Any Other Business That Shall Properly Come Before the Board

There was none.

Approval of Minutes

May 16, 2013

Mr. Phillips had one correction on page 6 it should read " he responded that it *may be* covered under article 8."

Motion: Move to approve the minutes of Thursday, May 16, 2013 as revised.

Health Department Report

Inspections

The summer sanitarian comes in on Mondays. She has covered a lot of ground with inspections. Once the heat came up, we had refrigeration issues, but they were minor and could be worked around. We have an intern for the summer who is helping with storm water quality, as well as public outreach using email.

Storm Preparedness

We are working with the Senior Volunteer on an inventory of the shelter materials and equipment so we can be ready in case of a hurricane. The VMCC is now a functioning building so we can now be a satellite regional shelter.

Harbor Water Quality

Mr. Phillips asked if the Water Quality Harbor Committee has re-met? Brian said it has not. Jennifer Shepard from DEP was down last week to test the Freeman Street pump station to help with the data she has been collecting over the past couple of years. There is an RFP out for a grant this year; we can talk further about whether we want to go for funds for further water quality testing.

Board Members' Statements

There were no statements made by the board members

Adjournment:

There being no further business, Laurie Delmolino moved to adjourn the meeting at 5:10 pm.

Respectfully submitted,

Susan Leonard

Approved by _____ on _____, 2013