



BOARD OF HEALTH Meeting

Town of Nantucket
3 East Chestnut Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Commissioners: Stephen Visco (chair), Malcolm MacNab, MD, PHD (Vice chair), James Cooper, Meredith Lepore, Melissa Murphy

Staff: Roberto Santamaria, Artell Crowley, Kathy LaFavre, John Hedden, Anne Barrett, Madison Humphrey

~~ MINUTES ~~

Thursday, February 18, 2021

This meeting was held via remote participation using ZOOM and YouTube,

Pursuant to Governor Baker's March 12, 2020 Order Regarding Open Meeting Law

Called to order at 3:00 p.m.

Staff in attendance: R. Santamaria, Health Director; A. Crowley, Assistant Health Director; K. LaFavre, Health Inspector; John. Hedden, Inspector; T. Norton, Town Minutes Taker

Attending Members: Stephen Visco; Malcolm MacNab, MD, PHD; James Cooper; Meredith Lepore; Melissa Murphy, Select Board

Late Arrival: M. Murphy, 3:11 p.m.

Town Counsel: Gregg Corbo, K&P Law, P.C.

I. ANNOUNCEMENTS

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

1. None

III. APPROVAL OF MINUTES

1. January 21, 2021:

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

Roll-call vote Carried 4-0//MacNab, Lepore, Cooper, and Visco-aye

IV. BOH APPLICATIONS REVIEW

1. Loan Release: 18 Golfview per Tax Collector's Office (allow chair to sign for Board)

Sitting Visco, MacNab, Cooper, Lepore

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – Work is completed.

Action **Motion to Release the Loan and allow the chair to sign it.** (made by: MacNab) (seconded)

Roll-call vote Carried 4-0//MacNab, Lepore, Cooper, and Visco-aye

2. Loan request: Fog, 12 Shimmo Pond Road, 54-15 - septic to sewer

Sitting Visco, MacNab, Cooper, Lepore

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – This is to tie into Town sewer.

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

Roll-call vote Carried 4-0//Cooper, MacNab, Lepore, and Visco-aye

3. Loan request: David, 9 Ridge Lane, 38-87 – septic repair

Sitting Visco, MacNab, Cooper, Lepore

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – No objections.

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

Roll-call vote Carried 4-0//MacNab, Lepore, Cooper, and Visco-aye

4. Variance request: 2 Seven Mile Lane, 72-52 – bedroom credit for I/A in wellhead

- Sitting Visco, MacNab, Cooper, Lepore
Documentation Supporting documents and plans, staff recommendations.
Discussion **Crowley** – This is in the ‘Sconset wellhead; BOH allows staff to grant bedroom credits outside but this is inside the wellhead district. It is a net benefit; recommend approval.
Action **Motion to Grant the variance.** (made by: Cooper) (seconded)
Roll-call vote Carried 4-0//Lepore, MacNab, Cooper, and Visco-aye

5. Renew discussion of denied variance: 29 Ridge Lane

- Sitting Visco, MacNab, Cooper, Lepore
Documentation Supporting documents and plans, staff recommendations.
Discussion **Paul Santos**, Nantucket Surveyors – In December, we sought variance for a septic within 9 feet of a property line. It was denied. Since then, he had discussions with Massachusetts Department of Environmental Protection (DEP); an alternative would be to seek an easement from the abutter to justify lack of 1-foot in the separation. He’s coming before the BOH to see if it’s okay to seek the easement.
Crowley – He had a conversation with Brian Dudley of DEP; it’s a viable option. The easement will have to be restricted.
Cooper – Asked on whose property the easement is.
Santos – It abuts the Fisher’s Landing Inc. open land. The easement would have to go through the Association Board and have final sign-off from them. If they don’t grant the easement, the septic tank will have to be moved.
Crowley – This is one step in the compliance process they can knock out.
Cooper – Asked if it might set a precedent.
Crowley – It could, but he thinks it will be difficult to get the easement.
MacNab – Let them do it and see what happens.
Lepore – Her concern is that it will set a precedent for putting in a septic with the wrong measurements.
Visco – The saving grace is the abutting property is open space; it would be very different if it were occupied.
Action No action.
Roll-call vote N/A

6. Continued Variance discussion: 167 Hummock Pond Road, 65-36

- Sitting Visco, MacNab, Cooper, Lepore, Murphy
Documentation Supporting documents and plans, staff recommendations.
Discussion **Dan Mulloy**, Site Design Engineering – The BOH last saw this about a year ago. This is for a bedroom credit with an I/A system; at the last hearing, you didn’t vote due to an incomplete application. They are looking to put in I/A treatment system for a commercial kitchen and a second system for future construction. The plans show the property conventionally with 18 bedrooms; an I/A system would allow for 22 bedrooms. If approved, they would place an easement over the properties equated to support the flow. The permit can’t be issued until all easements are on record.
Crowley – He and Mr. Dudley went over this extensively to ensure the loading rate is appropriate for the property; the use of I/A would keep it within the nitrogen loading rate for Hummock Pond. The land would be deed restricted and meet letter of the law with Title 5. With the food facility using I/A, part of granting the variance would be an add-on for bi-monthly nitrogen testing and installation of a digital flow meter on the effluent. A restaurant requires 35 gallons per seat with 1000 gallons as the minimum regardless of size of facility. As long as the facility is open, testing should be every other month.
Visco – Due to seasonality, the testing could be started in Spring and done bi-monthly. He likes the idea of the digital flow meter for effluent, given issues with other facilities.

- Action **Motion to Approve the plan with the condition of bi-monthly testing during months of operation and installation of an effluent flow meter.** (made by: MacNab) (seconded)
- Roll-call vote Carried 5-0//Cooper, MacNab, Lepore, Murphy, and Visco-aye
- 7. Variance request: The Faraway Hotel, 29 Centre Street, 42.3.1-68.1: 3-bay sink in coffee area 105 CMR 590, the merged food code, 11/16/2018
- Sitting Visco, MacNab, Cooper, Lepore, Murphy
- Documentation Supporting documents and plans, staff recommendations.
- Discussion (3:30) **Dillon Prives**, Blue Flag Construction – Requesting a variance to the requirement to have a 3-bay sink at the front coffee bar; all food preparation will be done in the kitchen, reducing the scope of work at the coffee counter. The coffee bar will operate from 7 a.m. to 3 p.m. at which point everything is transported back to the kitchen for cleaning. The restaurant doesn’t open until 5 p.m.; that allows 2 hours for cleanup. There will be no dine in for breakfast and lunch, only take out.
Hedden – There is a lot going on for only one proposed 3-bay sink with a coffee station, a bar, and food service with takeout. In his opinion, this coffee bar should be self-sufficient. The size of the sink is based upon the size of the largest pot or pan; other coffee bars on the Island have 3-bay sinks, which aren’t very large.
Lepore – Sounds like they will be prepping for the night while prepping for lunch. She has concerns about food travelling that far; it would be safer if the coffee bar has its own 3-bay sink.
Crowley – There is a lot going on between the bar, coffee bar, and restaurant; to serve the public safely, there should be a 3-bay sink at the coffee bar.
Murphy – Asked if the coffee bar is open to the public or just for guests (open to the public).
- Action **Motion to Deny the variance.** (made by: MacNab) (seconded)
- Roll-call vote Carried 5-0//Cooper, Lepore, MacNab, Murphy, and Visco-aye

VI. PUBLIC HEARING

- Continuation of Public hearing: 105 CMR 435:00 Minimum Standards for Swimming Pools
- Sitting Visco, MacNab, Cooper, Lepore, Murphy
- Speakers Sarah Alger, Sarah F. Alger P.C.
Brian Burnett
Ford Athmann, Smith Costello & Crawford
Ruth Plandowski, 10 Thistle Way
- Discussion (3:45) **Santamaria** – Reviewed the last discussion. To ensure we followed all procedures, connected with Town Counsel. Mr. Corbo is here.
Murphy – One thing she struggles with is the standard set by Massachusetts laws regarding residential pools and keeping our policy consistent with the State. Asked if that is an accurate assessment.
Corbo – He hasn’t done a survey of other communities with semi-private, residential pools. It is a matter of regulations that is within the discretion of the BOH. You can assess each application on a case-by-case basis or do a regulation. The State sets forth 4 factors to make that determination but how those factors are implemented is within your discretion. There seemed to be some confusion as to what the local rules refer to: hotels/motels only or other facilities. The BOH should do something more definitive one way or the other. Regulations would be formal. The four criteria in the regulations, 105 CMR §435.17(4), of the Department of Public Health minimum standard of sanitation for swimming pools requires taking into account the size and capacity of the pool, the average attendance, the complexity of the disinfection equipment, and the facility’s history of compliance with the regulations. Those are guidelines to aid the BOH in exercising discretion. The test is going to be if the BOH decision is rationally related to the protection of public health
Murphy – She has gone back and forth on the issue; she does understand our responsibility to public health is to ensure we are implementing measures to secure the health of our community.

She thinks a lot of our developments are smaller in nature with only a few larger ones; she doesn't think this policy is inappropriate. Asked if it would be appropriate to consider a parameter being the number of lots in a development; i.e. semi-public pools with more than 20 lots need to have an attendant.

Lepore – If one person dies in a pool, that's one person too many. There need to be attendants at pools that will be used by visitors and residents to ensure no one drowns.

Cooper – When we're talking about 132 homes with 132 days the pool is open and with 2 people from each home going to the pool, that's over 30,000 people a year using that pool; he feels it's a small price to pay to have someone watch those people.

Crowley – We believe the residential pool communities operate much like hotels and motels; there are a lot of visitors to those pools because of the rentals. We did a quick investigation for short-term rentals; out of the five subdivisions, we came up with 30% of the homes are on the short-term rental list; the number is probably higher since we only had time for a cursory look.

Barnett – We've touched on these issues before. There was no clarity around the enforcement of this regulation, which goes back to a 2011 decision where residential pools were excluded. In 2019, it was decided to enforce it with residential pools. There are requirements in place to test the pool water which have nothing to do with a full-time attendant. There is a factor about where the resources are best deployed; these communities are occupied by people who don't rent out their homes.

Plandowski – In Beach Plum Village, more than one 3rd of our residents are year-round, another 3rd do rent their homes, and the last 3rd are seasonal and do not rent their homes. She believes their pool water is tested frequently; if it weren't clean, the pool would be closed. She's concerned that this will put up roadblocks to small community pools and increase the number of strictly private pools, where there is more danger in terms of accidents. The whole issue for her is that semi-private pools have a safer situation than private pools; no one under 16 is allowed without an adult and you need a key and keycode to enter. Requiring an attendant for smaller developments will result in a large bill beyond their Homeowner Association (HOA) dues.

Alger – It is important for the BOH to have written and adopted regulations that are available to the public.

Visco – Any regulations or policies are posted on the BOH website.

Barnett – If you build two houses and share a pool, that is technically an HOA. The threshold is critical.

MacNab – Asked if Beach Plum Village has regulations and how are they enforced.

Plandowski – She's never seen any child in the pool area without an adult; if there were, someone would say something. The only children in the pool without an adult climb the fence at night.

Alger – There were members who weren't at the last hearing; asked if they have read back in and is the signed paperwork filed.

Corbo – The requirement is that a member who misses a session can participate as long as they file the required certification.

He's not clear on what the board is voting on at this point.

Athmann – He is also unclear on what the vote would be on. This whole thing has been surrounded by a lack of clarity, which is continuing. Ms. Murphy mentioned the possibility of having a cap on the number of homes; many communities have done that. Encouraged the BOH think harder on the number of lots that would require a pool attendant.

MacNab – We have nothing proposed on which to vote. We need to have a draft regulation to debate. The sense of the Board is to have a regulation.

Murphy – Regarding the lack of clarity, her question is does a regulation exist and if so does the current regulations apply to semi-private pools. Asked if the Board is voting to uphold an existing regulation.

Santamaria – We never passed a regulation; we never held a public hearing for a regulation or voted on a regulation. In 2011, the vote exempted residential pools; the 2015 vote was to enforce a specification of CMR 105 on residential pools and it was voted in as policy. If the Board were to vote now, it would be to uphold the 2011 or 2015 policy while we create a new regulation.

Barnett – His question around the 2015 regulations stands; that policy meeting was based upon regulations for which there was no public hearing. A decision was made when the principals had no opportunity to comment.

Santamaria – They were given a chance to attend; the meetings were posted, and we have proof of those postings.

Corbo – Based upon information he has, a transcript of an audio recording of a meeting states Richard Ray asked for mandated lifeguards for all hotel/motel pools; later it states that recommendation was voted unanimously. From November 19, 2015, there is discussion of a letter from hotel managers requiring lifeguards at public and semi-private pools; the motion is to have an attendant at “the” pool with certification. The record is not abundantly clear on what “the” pool means and what the rules are. A regulation would clearly set forth categories mandating what is needed: a lifeguard, or attendant, or signage. Explained how the process would work if the BOH decides to review on a case-by-case basis.

Alger – The other part of the issue is that even the minutes weren’t approved until May 2020; people trying to educate themselves had no good way to do that. Either put regulations in place or do it on a case-by-case basis.

Murphy – Asked if there is any risk that if we create new regulations, could existing developments argue they are excluded from those regulations and that they only apply to new developments.

Corbo – Anyone can argue anything. With respect to BOH regulations, there is no automatic grandfathering.

MacNab – There’s nothing to vote on today. Recommend staff put together a draft regulation that we can discuss in a public hearing. He needs to something in writing that is clear and can be debated and discussed.

Athmann – When Mr. Barnett said residents didn’t have an opportunity to speak before the Board, in 2015, the discussion was indicated to be regarding hotels and motels; there was no mention of residential pools. We’d prefer no enforcement of this regarding residential pools but agrees on something being drafted and discussed.

Corbo – Timing is an issue here with applications coming in starting in March; suggested for this coming season, staff put together recommendations in the form of guidelines and the BOH consider the applications on a case-by-case basis those which do not plan to have a lifeguard or attendant. Those guidelines could be turned into regulations next year.

Murphy – Asked if we close this public hearing and how we move forward.

Motion to Close the public hearing at 4:34 p.m. (made by: Murphy) (seconded)

Carried 5-0//Cooper, Macnab, Lepore, Murphy, and Visco-aye

Motion to Request staff to draft guidelines for 2021 pool applications and draft subsequent regulations for Board review. (made by: Murphy) (seconded)

Carried 5-0//Cooper, Macnab, Lepore, Murphy, and Visco-aye

Action
Roll-call vote
Action
Roll-call vote

VI. BOH BUSINESS

1. BOH Emergency Order #11: extend outdoor dining for restaurants,
2. BOH Emergency Order #13: paragraph 5 gathering limits (Governor’s COVID Order-19 Order #54 indoor 10 max attendees outside 25 max attendees).

Sitting Visco, MacNab, Cooper, Lepore, Murphy

Documentation Supporting documents and plans, staff recommendations.

Discussion **Crowley** – Would like to extend Emergency Order 11 to December 31, 2021. Emergency Order 13, paragraph 5 would be replaced by the Governor’s order.

Santamaria – Extending Emergency Order 11 allows us to continue outdoor dining. Emergency Order 11, paragraph 5 is stricter than the Governor’s order, which allows gatherings of 10 indoors and 25 outdoors.

Action **Motion to Approve extending Emergency Order #11 to December 31, 2021 per staff recommendation.** (made by: Murphy) (seconded)

Roll-call vote Carried 5-0//Cooper, Lepore, Murphy, MacNab, and Visco-aye

Action **Motion to Amend Emergency Order #13 to remove paragraph 5 per staff recommendations.** (made by: Murphy) (seconded)

Roll-call vote Carried 5-0//Cooper, MacNab, Murphy, Lepore, and Visco-aye

3. COVID-19 Update

Santamaria – Phase2 Step II opened up today; if people signed up, they’ll get an email from the Hospital inviting them to schedule an appointment. Our site at the VFW is a State site, so no one has to go to the State Vaccination sites in Gillett or places. We are giving Pfizer and Moderna vaccines, which do attenuate the variances we are seeing. Testing lines are down, and the number of positives are down.

Lepore – Asked if we are tracking for the variance.

Santamaria – The Brode Institute has ability to check for the variance; we are waiting to hear from BioBot to see if the variances can be tested for in the sewer.

Murphy – Though she’s grateful to see the numbers coming down, the community should continue masking and get vaccinated. Doing so keeps our kids in school and gives our businesses the best chance of survival.

VII. ADDITIONAL DOCUMENTS USED

1. Draft BOH Minutes December 17, 2020
2. BOH Emergency Orders #11 & # 13

VIII. ADJOURN

Action Motion to Adjourn at 4:44 p.m. (made by: Cooper) (seconded)

Roll-call vote Carried 5-0//Cooper, Lepore, Murphy, MacNab, and Visco-aye

Submitted by:
Terry L. Norton