

TOWN OF HARWICH



BOARD OF HEALTH

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**TOWN OF HARWICH BOARD OF HEALTH  
TUESDAY, NOVEMBER 12, 2019-6:30 P.M.  
HARWICH TOWN HALL – SMALL HEARING ROOM  
MINUTES**

BOARD OF HEALTH MEMBERS PRESENT: Chairwoman Pamela Howell, R.N., Members Matthew Cushing, M.D., Ronald Dowgiallo, D.M.D & Sharon Pflieger, MS

BOARD OF HEALTH MEMBERS ABSENT: Matthew Antoine

STAFF MEMBERS PRESENT: Health Director Meggan Eldredge & Executive Assistant Jennifer Clarke

OTHERS PRESENT: Parin Patel, Paresh Patel, David Clark, Tom McLellan, Dan Speakman, The Grande Family & others

*Recording & Taping Notification: As required by law, the Town may audio or video record this meeting. Any person intending to either audio or video record this open session is required to inform the Chair.*

**I REORGANIZATION OF THE BOARD OF HEALTH**

**Ms. Howell nominated Sharon Pflieger as Vice Chairwoman of the Board of Health, 2<sup>nd</sup> by Dr. Cushing and approved 4-0-0.**

**II CALL TO ORDER**

Chairwoman Howell called the meeting to order at 6:33 p.m.

**III MINUTES OF PREVIOUS MEETING- September 10, 2019**

**Ms. Pflieger moved to approve the minutes of the September 10, 2019 Board of Health meeting, 2<sup>nd</sup> by Dr. Cushing and approved 4-0-0.**

**IV 6:30-7:00 PM- BOARD OF HEALTH WORK SESSION**

**A. Discussion- E-Cigarette Products & CDC Recommendations**

Health Director Eldredge stated that Dr. Cushing brought this to her attention prior to the temporary ban on all electronic products. She provided an update on the ban, noting that it has been extended until January 25, 2020. The CDC has done testing with the patients who have lung illness and a common denominator issue is the addition of vitamin e into the products. After the ban went into effect, Health Department staff visited all of the retail tobacco permit holders to ensure compliance. There was no resistance from any of the retailers.

**B. Discussion- Draft Application for Board of Health Variances & Abutter Notification Form**

The Health Department receives many questions about what is required when applying for Board of Health Variances. These documents would be a template for the applicants to use when filing and notifying their abutters.

Dr. Cushing requested to make the application double spaced. He also suggested adding a line on the public hearing notice that would provide the property owner's name that is requesting the variances.

**Dr. Cushing moved to approve the application for Board of Health Variances and public hearing notice as amended, 2<sup>nd</sup> by Ms. Pflieger and approved 4-0-0.**

#### **C. Discussion- Proposed Fertilizer & Pesticide Use Bylaw**

Health Director Eldredge provided background information for the Board. In 2013, this came before the Board as a discussion to adopt model regulations for fertilizer. In 2013, the model regulations were comprehensive and included the education and adoption of fertilizer regulations in town. Part of the Comprehensive Wastewater Management Plan is to develop fertilizer regulations. At the time, the Board thought it was a little beyond their purview and voted to not adopt any regulations. Since 2013, various towns have adopted regulations. Health Director Eldredge drafted the Town of Harwich Draft Nutrient and Pesticide Control Bylaw dated November 4, 2019. The proposal would be town wide, including town owned and private land. Some towns have created a bylaw which would require a vote of town meeting and others have adopted a regulation which would require only a public hearing. The regulation would cover our promise to the Comprehensive Wastewater Management Plan and would need to be vetted through the Cape Cod Commission in order to get the needed nitrogen credits.

Ms. Pflieger feels that this is a good start, but questioned what the mechanisms for enforcement and implementation would be.

Dr. Cushing would like to see the education component be proactive before the regulation went into effect. He suggested that in addition to property owners, that landscapers be aware of any changes.

Health Director Eldredge stated that we first need to decide if this will be a regulation or bylaw. Ms. Pflieger & Dr. Cushing stated that they would like to see it as a regulation. Health Director Eldredge added that the benefit of a town meeting would be the education component. Whichever way the Board decides, pre-information would be provided before anything is enforced. She would imagine that enforcement would be complaint based.

The Board agreed that they would like to have a Board of Health work session scheduled for further discussion. They also agreed that they would take all information provided under advisement.

#### **D. Discussion- Review 2020 Board of Health Meeting Schedule**

It was decided that the 2020 Board of Health meetings will start at 6:30 as in previous years. The work session will begin at 6:30 with old/unfinished & new business starting no earlier than 7:00 p.m. The 2020 Board of Health meetings will be held on the 3<sup>rd</sup> Tuesday of each month.

**Dr. Cushing moved to adopt the 2020 Harwich Board of Health meeting schedule as presented, 2<sup>nd</sup> by Ms. Pflieger and approved 4-0-0.**

#### **V OLD/UNFINISHED BUSINESS (NO EARLIER THAN 7:00 P.M.)**

**A. Show Cause Hearing-262 Oak Street/Shanley-** Discuss violations in accordance with 105 CMR 410.000 "Minimum Standards of Fitness for Human Habitation" cited on April 23, 2019 (Continued from September 10, 2019 Board of Health meeting)

This case has been continued for a couple of months and the unit remains vacant. Health Director Eldredge provided a brief background of the complaint. She feels that the Board should close the hearing and direct staff to follow up as needed.

**Dr. Cushing moved to close the show cause hearing for 262 Oak Street/Shanley and direct Health Department staff to follow up as needed, 2<sup>nd</sup> by Ms. Pflieger and approved 4-0-0.**

**VI NEW BUSINESS**

**A. Request for Extension of Board of Health Condition-** Request from 21 Plus Smoke Shop, 1421 Orleans Road, to extend the deadline of their approved tobacco application until April 30, 2020

Paresh & Parin Patel were present and thanked the Board for approving their application at their previous meeting. Unfortunately after the meeting, the state ban went into effect and ruined the purpose of what they were trying to achieve with the new business. They are now asking the Board to allow for an extension of the deadline of the approved tobacco application until April 30, 2020.

Health Director Eldredge reported that this was one of the 3 applications that was approved before the new tobacco regulations went into effect. Only the application was approved, not the permit. As a Board of Health condition, the applicants were given an expiration date of December 31, 2019 to have their business operational. If they do not have a permit, they cannot renew it and they would be required to do a new application. A new application would not be allowed in this location because it would be within 500' of an existing tobacco establishment.

Ms. Pflieger stated that she would think a smoke shop would also be selling tobacco and cigarettes, so she questioned why they couldn't open. Mr. Patel responded that at this point, the products that they would be selling in their store are included in the temporary ban.

Health Director recommended that the Board could amend the condition to state that they have to be in operation by February 15, 2020.

The applicants reviewed with the Board the % of sales that they have made from both flavored and unflavored tobacco products. They will have a better idea once there is more clarity from the state on how they will move forward.

**Ms. Pflieger moved to approve the request to extend the deadline of the approved tobacco application from 21 Plus Smoke Shop, 1421 Orleans Road, until February 15, 2020 and that the Board of Health will re-consider it further at their February 15, 2020 Board of Health meeting, 2<sup>nd</sup> by Dr. Cushing and approved 4-0-0.**

**B. Hearing-Route 137 Development, LLC, Land off of Route 137 (Maps 96, 97 & 106/Parcels Unassigned)-** Definitive Subdivision Plan prepared by Clark Engineering, LLC

Chairwoman Howell opened the hearing. David Clark from Clark Engineering, LLC was present. The applicant is proposing a 10-lot definitive subdivision plan off of Route 137. This application is for the approval of the subdivision only, and not an Environmental Impact under Regulation 1.211. The subdivision is proposed to be served by town water and sewer in Phase 2, Contract 1.

Mr. Clark questioned condition # 4 on the preliminary subdivision approval that the Board granted which read "Should the lots not be developed under a 40B Comprehensive Permit, an Environmental Impact Review under Regulation 1.211, and full compliance with state and local regulations is required prior to development." Health Director Eldredge responded that at the time of the preliminary approval, we were not sure if the lots were going to be built prior to the construction of the town sewer. If under a 40b, local regulations would not apply. She is not recommending that to be a condition on the definitive approval.

No public comment was heard. Chairwoman Howell closed the hearing.

Health Director Eldredge recommended approval of the definitive subdivision plan designed by Clark Engineering, LLC with the following conditions:

1. The lots shall be served by town water.
2. The lots shall be served by municipal sewer.

**Dr. Cushing moved to accept the recommendation of the Health Director for 137 Development, LLC, Land off of Route 137, as presented, 2<sup>nd</sup> by Ms. Pflieger and approved 4-0-0.**

**C. Hearing-Berset, 10 Central Avenue,** to reconsider Order of Conditions granted February 19, 2019-No increase in square footage or habitable space without further review by the Board of Health. Project consists of finishing the basement. Floor plan prepared by Zibrat & McCarthy, LLP and presented by Clark Engineering, LLC.

Chairwoman Howell opened the hearing. David Clark from Clark Engineering, LLC was present. The applicant is requested a reconsideration of previous variance condition "no increase in square footage or habitable space without further review by the Board of Health." On February 19, 2019, the owners requested variances to install a new Title 5 septic system. This system required a property line variance of 5'. At the time of the request, the existing garage and dwelling were proposed to be razed and replaced. The new dwelling consists of 3 bedrooms and an unfinished basement. The applicants are now requested to allow an increase in habitable space by finishing the basement. The basement is accessible through the first floor of the house and no bulkhead/walk out doors are shown. The plans indicate a single window well for the basement.

Ms. Pflieger asked if the Board could allow to increase the size of the septic system. Health Director Eldredge responded that they had just enough room to install a 3 bedroom system with only 1 variance. A larger system would require more variances and the Board does not allow variances for increases in flow.

No public comment was heard. Chairwoman Howell closed the hearing.

Health Director Eldredge recommended approval of the reconsideration request with the following conditions:

1. All previously recorded conditions on the variance approval notice dated February 26, 2019 remain in full force and effect.

**Ms. Pflieger moved to accept the recommendation of the Health Director for 10 Central Avenue/Berset as presented, 2<sup>nd</sup> by Dr. Cushing and approved 4-0-0.**

**D. Hearing-Lavine, 6 Camp Avenue,** to consider a request for variances to upgrade a Title 5 septic system prepared by Dan A. Speakman Construction

Variances from 310 CMR 15.211-Minimum Setbacks

1. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 3' from the property line where 10' is required. Variance request of 7'.
2. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 5' from the property line where 10' is required. Variance request of 5'.
3. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 7' from the property line where 10' is required. Variance request of 3'.
4. Per 310 CMR 15.211: To allow a proposed septic tank to be 2' from the property line where 10' is required. Variance request of 8'.
5. Per 310 CMR 15.211: To allow a proposed septic tank to be 8' from the property line where 10' is required. Variance request of 2'.
6. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 4.8' from the foundation where 20' is required. Variance request of 15.2'.
7. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 4.9' from the abutters foundation where 20' is required. Variance request of 15.1'.
8. Per 310 CMR 15.211: To allow a proposed septic tank to be 6' from the foundation where 10' is required. Variance request of 4'.
9. Per 310 CMR 15.211: To allow a proposed septic tank to be 4' from the foundation where 10' is required. Variance request of 6'.

Chairwoman Howell opened the hearing. Dan Speakman from Dan A. Speakman Construction was present. Health Director Eldredge reviewed the variances that are being requested. The property consists of an existing 2 bedroom dwelling on a crawl space foundation. The dwelling is currently served by a single cesspool on an extremely small lot. The proposed septic system is a great improvement over the existing cesspool.

Ms. Pflieger asked how the Board can determine the number of variances that are acceptable. Health Director Eldredge responded that we are looking for maximum feasible compliance which means that we want to get the largest system to accommodate the bedrooms with the fewest amount of variances. The applicant also should try to be the least impactful to the abutters.

Trevor Carlton from 24 Pine Street was present. He asked if the road would be impacted at all. Mr. Speakman responded that there will be machines parked along the roadway during construction, but that at the end, it will look as if no one was there.

Chairwoman Howell closed the hearing.

Health Director Eldredge recommended approval of the variances with the following conditions:

1. The property shall be restricted to a maximum of 2 bedrooms.
2. No increase in square footage or habitable space without further review by the Board of Health.
3. Variances and conditions to be recorded at the Barnstable County Registry of Deeds.

**Dr. Cushing moved to accept the recommendation of the Health Director for 6 Camp Avenue/Lavine, as presented, 2<sup>nd</sup> by Ms. Pflieger and approved 4-0-0.**

**E. Hearing-Harris, 4 Cottage Avenue,** to consider a request for variances to upgrade a Title 5 septic system prepared by Bass River Engineering

Variances from 310 CMR 15.211-Minimum Setbacks

1. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 16' from the cellar wall where 20' is required. Variance request of 4'.
2. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 11' from the bulkhead where 20' is required. Variance request of 9'.
3. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 8' from the property line where 10' is required. Variance request of 2'.
4. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 8' from the garage slab where 10' is required. Variance request of 2'.
5. Per 310 CMR 15.211: To allow a proposed septic tank to be 8' from the property line where 10' is required. Variance request of 2'.
6. Per 310 CMR 15.203 (2): To allow a proposed soil absorption system to be sized 18% less than 550 gallons per day

Chairwoman Howell opened the hearing. Tom McLellan from Bass River Engineering was present. Health Director Eldredge reviewed the variances that are being requested. The property consists of an existing 5 bedroom dwelling on a full foundation. The dwelling is currently served by three single cesspools on a lot abutting Nantucket Sound. No changes to the dwelling are proposed at this time. The proposed septic system is a great improvement over the existing cesspools.

Ms. Pflieger asked that if the leaching field is smaller, could there be a requirement that the system has to be serviced more frequently. Health Director Eldredge responded that Title 5 does not have a requirement for pumping but that the Board could add a pumping condition. If the system were to have a problem, the tank would back up before the leaching facility would.

No public comment was heard. Chairwoman Howell closed the hearing.

Health Director Eldredge recommended approval of the variances with the following conditions:

1. The property shall be restricted to a maximum of 5 bedrooms.
2. No increase in square footage or habitable space without further review by the Board of Health.
3. Variances and conditions to be recorded at the Barnstable County Land Court.

**Dr. Cushing moved to accept the recommendation of the Health Director for 4 Cottage Avenue/Harris as presented, 2<sup>nd</sup> by Ms. Pflieger and approved 4-0-0.**

**F. Hearing-Grande, 832 Orleans Road**, to consider a request for variances to upgrade a Title 5 septic system prepared by Bass River Engineering

Variance from 310 CMR 15.211-Minimum Setbacks

1. Per 310 CMR 15.211: To allow a proposed soil absorption system to be 17' from the cellar wall where 20' is required. Variance request of 3'.

Variance from Harwich Board of Health Regulation 1.210

1. Per Harwich Board of Health Regulation 1.210: To allow a proposed soil absorption system to be 17' from the cellar wall where 20' is required. Variance request of 3'.

Chairwoman Howell opened the hearing. Tom McLellan from Bass River Engineering was present. Health Director Eldredge read the variances that are being requested. The property consists of an existing 3 bedroom dwelling on a full foundation. The dwelling is currently served by a failing Title 5 system and not in a water recharge area. No changes to the dwelling are proposed at this time.

No public comment was heard. Chairwoman Howell closed the hearing.

Health Director Eldredge recommended approval of the variances with the following conditions:

1. The property shall be restricted to a maximum of 3 bedrooms.
2. No increase in square footage or habitable space without further review by the Board of Health.
3. Variances and conditions to be recorded at the Barnstable County Registry of Deeds.

**Mr. Dowgiallo moved to accept the recommendation of the Health Director for 832 Orleans Road/Grande as presented, 2<sup>nd</sup> by Dr. Cushing and approved 4-0-0.**

## **VII REPORT OF THE HEALTH DIRECTOR (September & October 2019)**

Health Director Eldredge reviewed her monthly reports for September & October 2019. She also provided a brief update regarding the ongoing sewer project.

## **VIII CORRESPONDENCE**

Health Director Eldredge reviewed correspondence that was provided in the Board's packet.

## **IX PERMITS**

ESTABLISHMENT	ADDRESS	TYPE
<b>FOOD SERVICE</b>		
Hissho Sushi (2019 New)	111 Route 137	retail: <600 sq. ft.
Moose Mountain Maple (2019 New)		Event
Platinum Pebble (2019 New Owners)	186 Belmont Road	Limited Food Service

**Dr. Cushing moved to approve the permits as per the list dated November 12, 2019, with the condition that Hissho Sushi will be released after a passing inspection, 2<sup>nd</sup> by Mr. Dowgiallo and approved 4-0-0.**

X      **OTHER**

No other items were discussed.

XI      **ADJOURN** -The meeting adjourned at 8:08 p.m.

**Dr. Cushing moved to adjourn the meeting at 8:08 p.m., 2<sup>nd</sup> by Ms. Pflieger and approved 4-0-0.**

**Respectfully Submitted,**

**Jennifer Clarke**

**Next meeting is Tuesday, December 10, 2019 at 6:30 p.m. in the Small Hearing Room.**

Documents included in November 12, 2019 Board of Health Meeting Packet:

- November 12, 2019 Board of Health Agenda
- Harwich Board of Health Members & Staff List dated October 24, 2019
- Draft Minutes of the September 10, 2019 Board of Health Minutes
- E-mail Correspondence from Board of Health Member Matthew Cushing dated September 7, 2019
- Draft Application for Board of Health Variances
- Draft Public Hearing Notice for Board of Health Hearings
- Draft Town of Harwich Nutrient & Pesticide Control Bylaw dated November 4, 2019
- Draft 2020 Harwich Board of Health Meeting Dates & Filing Deadlines
- Site Summary for 1421 Orleans Road dated November 12, 2019
- Request from Paresh Patel for 1421 Orleans Road dated September 30, 2019
- GIS Map for 1421 Orleans Road
- Site Summary for Route 137 Development dated November 12, 2019
- Subdivision Plan for Route 137 Development dated October 28, 2019
- Site Summary for 10 Central Avenue dated November 12, 2019
- Board of Health Variance Application for 10 Central Avenue dated October 30, 2019
- Site Summary for 6 Camp Avenue dated November 12, 2019
- Board of Health Variance Application for 6 Camp Avenue dated October 29, 2019
- Site Summary for 4 Cottage Avenue dated November 12, 2019
- Board of Health Variance Application for 4 Cottage Avenue dated October 29, 2019
- Site Summary for 832 Orleans Road dated November 12, 2019
- Board of Health Variance Application for 832 Orleans Road dated October 29, 2019
- Health Director Monthly Report for September 2019 dated October 1, 2019
- Health Director Monthly Report for October 2019 dated November 1, 2019
- Letter from J.M. O'Reilly & Associates regarding Headwaters Drive dated October 1, 2019
- Any other documents submitted for/at November 12, 2019 Board of Health meeting