



Terri A. Guarino  
Health Agent

# TOWN OF BOURNE BOARD OF HEALTH

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MINUTES  
March 8, 2017

**Members in attendance: Kathleen Peterson, Chairman; Stanley Andrews, Vice Chairman; and Galon Barlow Jr.**

**Support Staff in attendance: Terri Guarino, Health Agent and Meghan McLean, Secretary**

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TOWN CLERK BOURNE

**MEETING WAS CALLED TO ORDER AT 7:00pm**

1. **90 Circuit Ave-- James Bustamante of Longfellow Design Build on behalf of Bob & Linda Morse - Request a waiver from Town of Bourne Board of Health Regulations for continued use of existing septic system, permit #91-97, to accommodate the proposed interior renovations and remodeling. Existing leaching facility does not have a 4' vertical separation to groundwater, and requires multiple setback variances, including approximately a 95' variance from the setback to the coastal bank. Discussion and possible vote continued from February 22, 2017. Ms. Guarino stated that Mr. Bustamante did not submit any of the necessary materials and withdrew the request without prejudice on March 6, 2017. There was no one present in the audience to discuss this item. No action taken.**
  
2. **Tobacco Retailer Inspection Violations-- Discussion and possible vote in regard to FDA inspections conducted on November 5, 2016 where tobacco products were sold to minors without checking identification at three licensed establishments:**
  - a. **Bourne Bridge Mobil, 2 Head of the Bay Road, Buzzards Bay**
  - b. **Cape Cod Filling Station, 156 Main Street, Buzzards Bay**
  - c. **The Liquor Barn, 150 Main Street, Buzzards Bay**

Ms. Peterson explained that we received reports from the FDA regarding tobacco inspections and violations in November 2016. This is something new to the Town of Bourne, where the local County Tobacco Control Program typically does compliance inspections. She attributed it to the fact that there were a lot of inspection failures within the last year in town. The 3 establishments were asked to attend this meeting to discuss the next steps. She stated that the Board of Health cannot fine them, but once an establishment fails an inspection the County can return and secret-shop as many times as they deem necessary. If the county fails an establishment numerous times, there are consequences. Monetary fines are assessed for first and second offense, and if the third offense occurs within 18 months, the establishment is subject to revoked licensure. The Chairman predicted that in the next 18 months, the failing establishments will could be checked anywhere

from 5-7 times, especially since the Tobacco Control Agent lives in town. She stated that it is pretty self-explanatory what will happen with further violations, and explained that the Board's tobacco regulations are very strict. The FDA notified the county of these violations, including a list of what products were sold to the shoppers. Some owners might disagree with the list of products sold, to which they have 15 days to respond to the FDA following inspection. She explained that the owners will need to create a plan for the employees who are not following regulations. The owner of the Bourne Bridge Mobil asked if the establishments could be informed when they pass an inspection. The Board of Health has asked this of the county in the past but has no control over issuing notices, and is unsure if that would begin to happen. The FDA coming to the Town of Bourne is a surprise to all and this is a very rare occurrence. They performed a quick sweep, inspecting 33 establishments in Bourne. She stated that the Board of Health cannot hold these offences against the three establishments due to a stringent time frame that was not met, but for all to be aware that the inspectors can return any day. Dennis White, owner of The Liquor Barn, stated that he has been in business for five years and always strives to constantly train his employees on tobacco regulations in town to avoid violations. He produced a government issued training summary for the Board's review. He requires all employees of The Liquor Barn to complete this training, and asked if there were any allowable punishments for the specific employees who are violating the regulations. Typically, the Board of Health will assess fines to the establishment, but it is also written in the regulation that the owner can assess fines to employees that fail to follow. The Chairman stated that the problem with most clerks is that instead of paying a fine assessed by the Board, they will just resign from the establishment. She suggested that the employee(s) attend the meeting also, instead of asking them to pay a fine. The Board thanked the owners for coming, and moved to the next topic.

- 3. 1 Bluff Rd—Brian R. Grady, R.S. on behalf of Fred Zhang—Discussion and possible vote on variances from Title V, 310 CMR 15.211 Minimum Setback Distances for the proposed new septic system. Existing property has offices on the lower level and the second-story is a model home for Realty Development Associates. New septic system is to accommodate occupancy and use of the second-story as a single-family dwelling. Applicant is requesting reductions in setback distances of the primary Soil Absorption System and reserve area to the following:**
- a. A 17 foot variance from the required 20' setback to the cellar wall**
  - b. A 2 foot variance from the required 10' setback to the property line for the primary SAS, and a 6 foot variance for the reserve area; and**
  - c. A 2 foot variance from the required 10' setback to a surface or subsurface drain.**

Brian Grady, GAF Engineering, was present on behalf of Mr. Zhang. Ms. Guarino stated that this project is already existing on the second story as a model home, and GAF Engineering is seeking approval from the Planning Board to use that as a residential dwelling. With that, the existing septic system needs to be upgraded to accommodate flows that were not originally in the design. Mr. Grady stated that this is the former location of Realty Development Associates, a modular home company. The lower level is office space as originally constructed, and the upper level is show space which was constructed to be a model home. The diagrams provided to the Board show this design, which includes an in-law apartment. Some minor modifications from the original design have been made to create livable space. Mr. Zhang is before the Planning Board for this to be used as mixed-use. The bottom level would continue to be his business offices, and the upper level would now be his living space. Since the upper level was used as a show space, there were no plumbing fixtures installed. There is a septic that exists for the lower level, and Mr. Grady is proposing a system to support the residential space on the upper level. He explained that they are forced into the proposed location by the North Sagamore Water District and the zone lines, allowing the system to

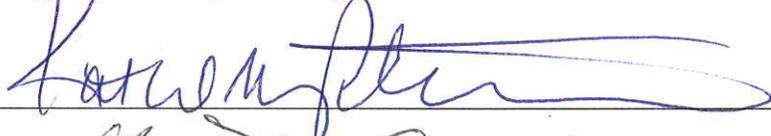
be sited only in the located provided. He was told that the well that serves that district is not in use, but the zone line still exists and the project must stay in compliance. Given the limitations on the lot, these plans are the best that can be done to site a system. There are no environmental waivers and they are providing mitigation by providing polyvinyl barriers around the edges of the system, a breakout for the front, retaining walls for the sides, and for the reduced setback to the foundation. He is aware they are close to the property line, so there is a barrier along the property line slope, along the sides, and between the system and the foundation. Mr. Andrews asked if there was any other configuration that can be done to the plans to reduce the amount of variances to the current setbacks. Mr. Grady stated that there are a few options, one of which being to turn the system 90 degrees bringing it too close to the retaining wall. The whole wall would need to be reconstructed, and the function of the stairs would be lost. There would be a lot more involved in the project if that option was to be considered. Mr. Grady suggested components further away from the property line, but he would need variances to the infiltration drainage structures, so a setback to foundation might be more feasible than a reduction to the drainage structures. He explored installing an I/A system and getting a reduction for the leaching field, but that type of system requires pressure distribution fields which would not reduce the footprint of the system. There are no alterations or modifications being made to the building size, everything existing is being kept with the exception of the plans to change the use of the upper space. Mr. Barlow stated that usually it is a problem that this hasn't been approved by the Planning Board yet. Mr. Grady explained that there are no conservation issues, and the owner has been to the Planning Board and they are waiting on approval from the Health Department first. Ms. Guarino stated that initially she wrote a letter in response to their application to the Planning Board, dated December 21, 2016, explaining that she refused the special permit application for this address. The existing system is not adequate in converting the upper floor space into two residential dwelling units, which is what the original plans showed. Please make applicant aware that no construction permits will be issued until the septic permit application is submitted and approved by the Board of Health. She stated that she did speak with the property owner upon receipt of her letter, whom had several questions and that's when Mr. Grady got involved to determine whether the system could be located due to limited square footage, existing structures, and an existing septic system on the property. Ms. Peterson explained that due to the letter that was sent prior to the hearing in front of the Planning Board, she understood why in this case we should make a decision based on the information provided. Mr. Andrews asked about the cased opening to office, of which the size is not noted on the plan. He stated that it must be 4' minimum after the casing. He also asked about the pocket door opening which leaves the upper level available to become 2 units if desired. He would like to see it opened to the same 4' cased opening. Mr. Grady was unsure what width could be obtained there since the opening is located in a hallway versus an expansive wall. Mr. Andrews gave examples of how to obtain the 4' minimum which he would require to approve the plans. Ms. Guarino stated that the original plans had 2 separate kitchens, where the wet bar is now proposed to be located and asked if the second kitchen is already existing. Mr. Grady confirmed that the second kitchen does not currently exist. Mr. Andrews stated that the architectural need to be updated with correct information before proceeding. Ms. Guarino stated her initial concern being if it was going to be a single family or double family unit. If the upper level was approved as a 4 bedroom single family, they would need to submit the updated architectural showing that in order to be approved. If it were to be double family, the property would have to have a two compartment tank for the two separate flows. She stated that even with the cased opening in the office, it will still be a 4 bedroom dwelling. Mr. Grady stated that to his knowledge the upper level will just be Mr. Zhang's home and he will use the accessory dwelling as part of the home and not an in-law apartment space. When Mr. Zhang's mother comes to visit she stay in the accessory dwelling. Mr. Grady explained that he will tell Mr. Zhang about the two compartment tank which gives him options to keep the privacy while his

mother is there. The Chairman stated that there needs to be a large enough and acceptable system in the case of this becoming a double family dwelling in the future. Mr. Barlow stated that if Mr. Zhang wants this property for specifically a single family then it will have to be deemed restricted as a single family residence only and is not to be used as an accessory dwelling. He stated that if the accessory dwelling is going to be used, now is the time to submit plans for a double family dwelling to avoid septic problems in the future. The Board will require updated architectural drawings showing the use of the upper level as a residence with an accessory dwelling. Mr. Grady understands that the updated plans must be submitted for the next Board of Health meeting. Mr. Barlow made a motion to continue 1 Bluff Rd. to the next meeting. Mr. Andrews seconded the motion and it was a unanimous vote.

- 4. **Approve the Minutes-- from the meeting dated February 22, 2017.** Mr. Andrews made a motion to approve the minutes as submitted from the meeting dated February 22, 2017. Mr. Barlow seconded the motion, and the vote was unanimous.

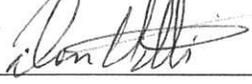
**Mr. Andrews made a motion to adjourn the meeting. Ms. Peterson seconded the motion. All were in favor and the meeting was adjourned at 7:35pm.**

Taped & Typed by Meghan McLean, Secretary

Kathleen Peterson 

Stanley Andrews 

Galon Barlow Jr. 

Don Uitti  Absent

Kelly Mastria Absent

cc Board of Selectmen/Town Clerk