



BOARD OF HEALTH Meeting

Town of Nantucket
131 Pleasant 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

~~ MINUTES ~~

Thursday, August 19, 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 4:00 pm. by Mr. Visco

Staff in attendance: R. Santamaria, Health Director; A. Crowley, Assistant Health Director; K. LaFavre, Health Inspector; J. Hedden, Health Inspector; T. Norton, Town Minutes Taker
Attending Members: Stephen Visco; Malcolm MacNab, MD, PHD; James Cooper; Meredith Lepore; Melissa Murphy, Select Board
Late arrival: MacNab, 4:23 pm

I. ANNOUNCEMENTS

II. ELECTION OF OFFICERS

Held until Dr. MacNab arrived.

1. Chair

Action **Nominate Mr. Visco for Chair.** (made by: MacNab) (seconded)
Roll-call vote Carried unanimously//Cooper, Murphy, MacNab, Lepore, and Visco-aye

2. Vice Chair

Action **Nominate Dr. MacNab for Vice-chair.** (made by: Cooper) (seconded)
Roll-call vote Carried unanimously//Murphy, Cooper, Lepore, MacNab, and Visco-aye

3. Cannabis Advisory Committee (CAC) representative

Macnab – He is resigning from the Committee; Ms. Murphy is willing to do it.

Murphy – We should check with counsel about her representing both BOH and Select Board, if we want to cross our Ts and dot our Is.

Action **Nominate Ms. Murphy as the CAC representative for the BOH, pending review of Town Counsel.** (made by: MacNab) (seconded)

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

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

1. None

IV. APPROVAL OF MINUTES

1. July 15, 2021

2. August 5, 2021

Action **Motion to Approve.** (made by: Cooper) (seconded)
Roll-call vote Carried 4-0//Cooper, Murphy, Lepore, and Visco-aye

V. BOH APPLICATIONS REVIEW

1. Release of ACO 253 Madaket Road, 59.4-270, compliant system being permitted by Nantucket Surveyors

- Sitting Visco, Cooper, Lepore, Murphy
- Documentation Supporting documents and plans, staff recommendations.
- Discussion **Santamaria** – Recommend release
- Action **Motion to Approve the release.** (made by: Murphy) (seconded)
- Roll-call vote Carried 4-0//Cooper, Murphy, Lepore, and Visco-aye

2. Request for ticket to be waiver Old South – flavored tobacco
 Motion to Table until the applicant for the waiver arrives. (made by: Cooper) (seconded)
 Carried 4-0//Cooper, Murphy, Lepore, and Visco-aye

- Sitting Visco, MacNab, Cooper, Lepore, Murphy
- Documentation Supporting documents and plans, staff recommendations.
- Discussion **Bob Collett** – He went through all retailers in Town on a routine inspection. Flavored tobacco products are prohibited by the State. On the date of the inspection, he found several flavored products at the Old South Market. There is no provision for a variance under the State law; the State law supersedes local law in this case. The BOH can treat it as one offense or two separate offenses. The fine for a 1st offense is \$1,000 and \$2,000 for a second offense. Recommends looking at this as a 1st offense since he found both violations during the same inspection. Retailers were sent letters by the State advising of the change in the State tobacco regulation.
- Action **Motion to treat this as a single offense with a \$1,000 fine and deny the request for a waiver of the fines.** (made by: MacNab) (seconded)
- Roll-call vote Carried unanimously//Cooper, Murphy, Lepore, MacNab, and Visco-aye

3. Variance Request for 80 Millbrook Road, 40-79.1, 56.02 A flow rate

- Sitting Visco, Cooper, Lepore, Murphy
- Documentation Supporting documents and plans, staff recommendations.
- Discussion **Dan Mulloy**, Site Design Engineering – Looking to increase to 18 bedrooms. There are three I/A systems with one leach field on the property. Loading rate is about 1 per 700sf.
Visco – We’ve allowed these in the past in this district; it is a net benefit.
Crowley – The Board has granted bedroom credits in Hummock Pond. With the credit, they could go to 21 bedrooms but are going to only 18; that’s equivalent to 9 bedrooms with a conventional system. The system is over 300 feet from the well head. Staff recommends this.
Lepore – Asked if they could add more bedrooms if we approve this.
Crowley – Calculating the way bedrooms are done, they could have 9 bedrooms but 36 total rooms. Their room count requires an 18-bedroom system. They can go to 21.
Mulloy – They would have to come back to ask for permission to go up to 21. It’s a room-count issue not 18 actual bedrooms.
- Action **Motion to Approve.** (made by: Cooper) (seconded)
- Roll-call vote Carried 4-0//Cooper, Lepore, Murphpy, and Visco-aye

4. Variance request for 265 Madaket Road, 59.4-319, setbacks 51.02 B, 51.02 C, 54.04 A

- Sitting Visco, MacNab, Cooper, Lepore, Murphy
- Documentation Supporting documents and plans, staff recommendations.
- Discussion **Dan Mulloy**, Site Design Engineering – This property has 7 active bedrooms and the BOH files says 3; we’re trying to fix that. Asking for relief to go from 3 to 5 bedrooms with an I/A system. His client acquired the property in this condition.
Crowley – The main dwelling was approved for 2 bedrooms but now has 4 bedrooms and the barn was converted into 2 bedrooms and the cottage always had 1 bedroom. Approving this would be rewarding bad behavior. The I/A is already required in Madaket so there is no net benefit.
Cooper – Asked if the buyer knew this was going on; how was ownership transferred without an inspection. Asked if the current owner can correct any of this to bring it into compliance.

Mulloy – It was purchased through foreclosure. He didn't know what was on the property until they could access it in May. Without the allowance, they would have to do some demolition to eliminate the extra bedrooms.

Visco – Buyer beware; he purchased a 3-bedroom septic. We can't give him 2 bedrooms because the previous owner added 4 without permission. The owner could upgrade the system, but it would have to be to a 5-bedroom I/A system.

Cooper – If you give him the variance, he gets 2 bedrooms where there shouldn't be any; that sets a precedent.

Action **Motion to Deny the variance request.** (made by: Cooper) (seconded)
Roll-call vote Carried unanimously//Cooper, Murphy, MacNab, Lepore, and Visco-aye
5. Variance for 227 Madaket Road, 59-1.2, set-backs 51.02A, 52.02A & 51.405(1)f

Sitting Visco, MacNab, Cooper, Lepore, Murphy
Documentation Supporting documents and plans, staff recommendations.

Discussion **Don Bracken**, Bracken Engineering – This relates to a septic upgrade to a new septi-tech system with 5' separation from groundwater; it will meet State 50' setback requirements from wetlands. We are asking for variances for 50' rather than 100' from the wetlands, relief for 10' rather than 50' setback to the foundation system, and 142' rather than 150' setback from the well. We have Conservation Commission approval.

Crowley – This is maximum feasible compliance; this is the only place it can be sited. Recommend approval of the variances.

Action **Motion to Approve the variance.** (made by: Murphy) (seconded)
Roll-call vote Carried unanimously//Cooper, Murphy, MacNab, Lepore, and Visco-aye
6. Variance for 153 Polpis Road, 44-13, Local BOH Reg 52.02(A) buffer zone

Sitting Visco, MacNab, Cooper, Lepore, Murphy
Documentation Supporting documents and plans, staff recommendations.

Discussion **Jeff Blackwell**, Blackwell & Assoc. – The property is within the Nantucket Harbor Watershed District, the leach field 45' away from a wetland boundary. To renovate the structure, an upgrade to a new leach field and septi-tech system is necessary. A new well will be installed.

Visco – This is maximum feasible compliance.

Crowley – This is a better system further from receptors and meets maximum feasible compliance. Recommend granting the request.

Action **Motion to Approve the variance.** (made by: Murphy) (seconded)
Roll-call vote Carried unanimously//Cooper, Murphy, MacNab, Lepore, and Visco-aye
7. Variance for reduced oxygen packing for Noemi's Dumplings

Sitting Visco, MacNab, Cooper, Lepore, Murphy
Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – This is a pretty standard request for vacuum packaging.
Hedden – They submitted a packaging plan, which he reviewed. He has no concerns.

Action **Motion to Approve the request.** (made by: Murphy) (seconded)
Roll-call vote Carried unanimously//Cooper, Murphy, MacNab, Lepore, and Visco-aye
8. Appeal tickets on 15A Young's Way, 68-328.4

Sitting Visco, MacNab, Cooper, Lepore, Murphy
Documentation Supporting documents and plans, staff recommendations.

Discussion **Michael Pierce** for Walter Glowacki Trust – Asked for a reconsideration of fines assessed over the past week cited in BOH letters dated August 2 & 6. Violations included: the basement was not a legal apartment; over-crowding, lack of stair rails, lack of bathroom fans, missing smoke and CO² alarms, and someone sleeping illegally in the loft. Many of the August 2 violations have been addressed. We found a place for the young family, who were living in the basement. There is now a padlock on the basement door. Asked the Board when assessing the fines to consider that the Trust must pay for the alternate housing for the young family. We were cited for one penalty for 1st-floor overcrowding, which was rectified; two other squatters have been removed.

LaFavre – We were called by the Police on the overcrowding and basement occupancy. Reviewed the results of that inspection. They were fined for violations that were not immediately addressed and on-going violations. The basement apartment had no proper egress and was missing smoke and CO² alarms; they had 24 to 48 hours to vacate the property from August 2; on August 6 they were still occupying the basement. She is opposed to any waiver of the fines.

Lepore – We all know overcrowding is a horrible problem; she agrees with Ms. LaFavre. She finds it hard to believe no one knew the violations were going on.

MacNab – He also agrees. Excluding the fines sends the wrong message.

Cooper – He agrees but there’s no place to go. He gets calls all the time from people looking for someplace to rent.

Hedden – He accompanied Ms. LaFavre on all the inspections. He’s not in favor of waiving the fines.

Murphy – She appreciates the responsiveness of the owners; she agrees with everything said. The Town is being responsive to the affordable housing crisis. Unfortunately, from decades of inaction, we are now in a crisis. It would be irresponsible for us to forgive the fine and it would send the wrong message.

Pierce – There is a housing crisis here. It was a tough call for the landlord and my firm is working on managing the home now. Mr. Glowacki rented the basement to the young family and rented another area; two other families found their way into the home. If the BOH isn’t willing to rescind the fine, we ask for a reduction. Feels they couldn’t throw the residents onto the street.

Cooper – Asked if the BOH has the power to tell the Health Department that we are taking the fines away.

Santamaria – There is a process for the levying fines; if they appeal the fines, it will go to Superior Court.

Action **Motion to reject the repeal of the fines.** (made by: MacNab) (seconded)

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

VI. BOH BUSINESS

1. **Santamaria** – Noted that this is Mr. Crowley’s last BOH meeting before his retirement. Thanked him for his many years of service.

2. BOH direction on well-to-septic variances in Madaket

Sitting Visco, MacNab, Cooper, Lepore, Murphy

Documentation Supporting documents and plans, staff recommendations.

Discussion **Crowley** – In 2006, the BOH allowed staff to grant variances under three conditions in order to expedite some of the septic repairs. People from Madaket are now asking for relief from the 150’ setback of the septic from a well; he questions granting relief when they can connect to Town water. In some cases, the septic was being forced closer to the wetlands and the harbor or the Madaket Ditch or Hither Creek; if they connect to Town water, that would allow the systems to be set farther from those sensitive areas. He’s looking for BOH guidance, should staff continue to grant the variance or require them to connect to Town water.

Visco – It was a mistake not to mandate connection to Town water when it went to Madaket. In his opinion, if there is a water line in front of your house, you should connect to it.

Bill Grieder President Madaket Conservation Association – We are concerned about the well-being of Madaket Harbor and density; the setback for septic and wells helps maintain low density for Madaket. If wells are abandoned and everyone connects to Town sewer and water, that would allow for secondary and tertiary dwellings and pools on lots that now can have only one structure. Asked the Board to reschedule this discussion to a subsequent date.

MacNab – There are a lot of issues here; increased density is a health issue for him. He feels we need to think about it more and give the community time to respond. He wants to assess whether or not it’s true that going to Town water and sewer would increase density.

Visco – When we created the Harbor Watershed district, it required 10,000sf per bedroom. That hasn't changed.

Crowley – There is no setback requirements for foundations, dwellings, or pools. A well could be preserving land that would be developed. He's bringing this to the Board in order to keep septic as far from sensitive areas as possible.

Murphy – Agrees with Dr. MacNab about taking the time to understand this and give the community notice. She'd like to know if there is a way to work with other boards regarding planning. It would be helpful for her to see Mr. Crowley's recommendation in writing.

Tabled for the next regular meeting.

Action

Roll-call vote N/A

3. COVID Emergency Order Discussion

Sitting Visco, MacNab, Cooper, Lepore, Murphy

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – Since implementation of the mask order, daily case predictions from Sewer has dropped; the current prediction is 5 new cases per day; 2 weeks ago, it was 40 cases a day. We still have a large number of people on Island. He recommends continuing the mask order and reevaluate it at the September 16th meeting.

Murphy – Asked for an update on the schools' plans.

Santamaria – The School Committee is meeting tonight.

Lepore – The nurses met with the superintendent on Tuesday; Ms Hallett was going to forward that recommendation to the School Committee. That recommendation is everyone wears masks when indoors.

Murphy – She wonders if that complicates things for schools or if it is the best protection for children.

Lepore – Continuing masking is important especially for the unvaccinated younger children.

MacNab – Asked if through contact tracing they know the source of recent infections.

Santamaria – The first big jump was associated with gatherings of large groups of people going to and from restaurants and catered events; that also resulted in restaurant workers being infected. We are catching a lot of asymptomatic travelers who are showing positive. We are showing cases R1.3, two weeks ago that was R2.6; we can see how quickly the mask order impacted transmission.

Cooper – Asked about the booster shot.

Santamaria – With the vaccinations and COVID, there is waning immunity; they always knew a booster shot would be needed, just not when. Center for Disease Control recommends we start giving booster shots on September 20th to immunocompromised people first. To get that shot, you must get a notice from your primary care physician, and that notice will be added into your records. They recommend the booster be the same manufacturer of your initial shots; but they are seeing that mixing works just as well. The booster should be given 8 months after your second shot.

Robert Clough – Asked about the mask mandate with the upcoming wedding season. The thought of not seeing the smiling faces of family and friends is stressing him out. If we verify vaccination status of all attendees, would the BOH be willing to suspend the masks. The wedding will be indoors. Feels the risk is minimal with extra cautions of vaccination status and negative testing.

Santamaria – The mask is the most effective way to avoid infections.

Visco – We will review the mask order on September 16th. We need to protect the public and the masks work; it's working across the State.

Murphy – She relies on the expertise of Mr. Santamaria's recommendation. Large gatherings have been a source of transmission. Public health and safety are our top priority; she'd be open to any creative solution for dealing with this, but if Mr. Santamaria says it's not safe, she will support him.

MacNab – Things might change for the better or worse by September 16th. As of now, the mask order is in place.

Clough – Asked if we can consider testing of all attendees as an option.

Santamaria – We will look at that at the September 16th meeting.

VII. ADDITIONAL DOCUMENTS USED

1. Draft BOH Minutes as listed
2. Emergency Order 16

VIII. ADJOURN

Action **Motion to Adjourn at 5:48 pm.** (made by: MacNab) (seconded)
Roll-call vote Carried unanimously//Cooper, MacNab, Murphy, Lepore, and Visco-aye

Submitted by:
Terry L. Norton