

Harvard Board of Health Meeting Minutes
Zoom Meeting
January 10, 2022
Approved: February 28, 2022

Board of Health Members present: Libby Levison, Chair; Sharon McCarthy; Christopher Mitchell.

Others Attending: Alison Flynn, Board of Health (BOH) Administrative Assistant; Ira Grossman, Health Agent, Nashoba Associated Boards of Health; James Babu, Police Chief; Dan Wolfe, Ross Associates; Joel Bissonette, Custom Basements of New England; Joan Eliyesil, The Harvard Press.

Ms. Levison called the meeting to order at 12:02 pm. Ms. Flynn read aloud the remote meeting preamble.

PUBLIC COMMENT- None.

NEW BUSINESS

- a. 10 Babbit Lane: Hearing for variance request from the State Sanitary Code, Ch. 2, 105 CMR 410.250(A). The homeowner has applied to finish the basement. Three issues: 1) The increase in room count, will require either a new septic system or a bedroom deed restriction. 2) There is insufficient light in the basement and the owners/contractors requested a variance. 3) A proposal of an ejector pump in the bathroom to be resolved. The Board took the issues one at a time. 1) Room count. Mr Grossman stated with a 4-bedroom deed restriction in place, he has no objection. Mr Mitchell and Ms McCarthy confirmed the bedroom deed restriction is sufficient to cover the room count question. 2) Mr Grossman reminded the Board that Ch 2 says there must be windows equivalent to 8% of the floor space, half of which opens to the outside for air flow and natural lighting. This home does not meet that requirement so they are requesting a variance. Mr Grossman explained that the Building Code allows for mechanical ventilation, and said the Board should ensure that the required air exchange system is in place. The contractor, Mr Bissonette, said his company faces the window issue frequently and will install an air exchange. Mr Mitchell said he would approve the variance if the air turns were being met. Ms McCarthy stated she supported the variance if Mr Grossman would verify the air exchange rates. 3) Ejector pump. Mr Grossman said the owners need to verify what the pump is to know the total dynamic end. Mr Grossman agreed to work with the homeowners on this; the Board agreed to let Mr Grossman handle the ejector pump. Mr Mitchell made a motion to approve the variance if Mr Grossman confirms the air exchange; Ms McCarthy seconded. All were in favor by roll call vote.

- b. 37 Peninsula Road: ZBA Application for Conversion to Year-Round Use and Limits of Use (Bedrooms). Mr Grossman reminded the Board that 37 Peninsula is a seasonal home with an existing tight tank, that the house is on the market, and that the Seller has requested converting to a year-round home. Mr Grossman stated that tight tanks are used very sparingly, and the DEP was clear that the current tight tank approval was only for seasonal use. Mr Grossman advised the Board not to entertain the seasonal to year-round conversion. Ms Flynn reminded the Board that they had reviewed a memo to the ZBA with BoH comments on the conversion. Ms Levison asked how large the house lot is and the possibility of a fully compliant system; Mr Grossman explained that prior testing showed installation of a conventional subsurface disposal system (SDS) was not possible. Mr Wolfe explained that his client has applied to the ZBA for a seasonal conversion. Mr Wolfe has submitted the material requested by the BOH: the change in use septic application, a pumping contract, a written statement from the owner, and floor plans. There is an existing 2 BR deed restriction on the property. Several years ago the owners rebuilt

the structure, but given they planned to use the house sparingly, they did not go through the conversion process; now they are selling and had forgotten that the house is limited to seasonal use. Mr Wolfe explained that the marketing agent staged the property with beds in four different rooms. All documents for this property clearly state 2 bedrooms; the Buyers are aware of the 2-bedroom deed restriction. Mr Mitchell asked whether DEP limits the use of tight tanks to seasonal use only. Mr Wolfe responded that Title 5 does not recognize any differences between seasonal and year-round use. Mr Grossman clarified that under Title 5 new construction does not allow tight tanks, but when there's a pre-existing year-round home, Title 5 would allow an upgrade – but that this property is seasonal, and has always been seasonal. In his opinion, to go from seasonal to year-round use is the equivalent of new construction. Mr Grossman stated that 15.260, Section 8 is clear that tight tanks are for seasonal use only. He believes this change in use is the equivalent of new use, and thus does not qualify for a tight tank. Ms Levison reminded the Board that there is a 2001 letter from DEP that allowed the use of the tight tank for the seasonal property, and that she does not remember similar letters for other properties around the Pond. Mr Wolfe said that many of the year-round homes on Peninsula Rd have tight tanks. Ms Levison asked Mr Wolfe when the owners took down and rebuilt the structure; Mr Wolfe explained that the reconstruction of the home occurred after the tight tank approval. Mr Wolfe said that this is one of the last properties on Peninsula or Turner Lane to request conversion from seasonal use. He also clarified that most of the properties on Turner Lane have a conventional SDS, not a tight tank. Mr Grossman repeated that a tight tank could not be used for new construction, that it is only for seasonal, and that he thinks the Board has been fairly consistent on these conversions. Mr Wolfe stated that he believes that he and Mr Grossman have different outlooks on the word “New construction”. Mr Grossman explained that the change from seasonal to year-round is a different use that requires different permitting, and he advised the Board not to accept the conversion. Mr Grossman also questioned whether the increased use of homes around the Pond is having an impact on the Pond's health. Ms Levison asked if the Board has any other options beyond a deed restriction. Mr Grossman said that there is a slim chance that a conventional system might work at this location because the State now allows a 90-minute perc rate. Mr Wolfe said that they tested at the end of Peninsula Road and the land did not perc; he does not think any compliant system is possible at that address. Mr Wolfe said the house could not be built now – but there is an existing house, which is why this is not new construction; but Mr Wolfe agreed this is a change in use. Mr Mitchell stated that if the house is permitted today for occasional use, it's a big ask to change to year-round use that he is not comfortable with. Ms McCarthy stated that she shared Mr Mitchell's thoughts about the change in use. Ms Levison agreed and mentioned the threat to the Pond. Mr Wolfe stated that the threat to the Pond comes not from a tight tank but from an SDS with a leaching area that gets abused, but that a tight tank has no leaching area. The Board discussed whether to continue the discussion; both Mr Mitchell and Ms McCarthy felt it was best to continue to another day as the issue wouldn't be resolved in 5 minutes.

- c. 17 Ann Lees Road: Room count discussion and consideration of proposed deed restriction. Mr Wolfe explained that he was contracted to design a new septic system for this property which is on the market. He reported that the listing sheet advertised six bedrooms in the 12-room house but there is a 4BR SDS. Mr Wolfe said that he tried to design a fully compliant 6BR system with a reserve area, but testing showed there is not enough area for a 6BR system. Mr Wolfe said he has explained to the homeowner the need for a 4BR deed restriction and that the realtor's listing was revised to reflect only 4 BR. He is asking the BoH to approve the 4BR deed restriction and to approve the use of a GeoMat system in the SDS upgrade. Mr Wolfe explained there are two adjacent lots that are being sold together, for 3 acres. He explained the southern lot holds the tennis court wetlands and shallow depth to ledge so they are not looking to work there. Mr Wolfe said he designed a standard 4BR system with standard safety factors. He also said that with a bedroom deed restriction in place the BoH is informing the buyer of the SDS limits and if they abuse the SDS they will “pay” by repairing the system. Ms Levison reminded the group that the

Assessors card for the property lists it as 6BR. Mr Wolfe noted that realtors, assessors, and the BoH can have different records. Mr Grossman said we can change the Assessor's record. He added that there is not much to do in this case; it's not possible to install a 6BR SDS to be in full compliance. The Board's only decision is whether or not to approve the deed restriction. Ms McCarthy asked whether the deed restriction could specify that when the system is replaced in the future it needs to be a 6BR system. Mr Grossman said that it is not physically possible to do that unless the Code changes and confirmed that Mr Wolfe already tried to design a 6BR SDS. He added that the adjacent lot has an "unbuildable" declaration. Mr Grossman suggested that the permit be held until the deed restriction is filed and his office received the water quality test, and noted that the Assessors record needs to be corrected. Ms McCarthy made a motion that the SDS permit not be issued until the deed restriction for 17 Ann Lees Rd is recorded. Mr Mitchell seconded. All were in favor by roll call vote. Ms Levison made a friendly amendment to the motion that it is a 4BR deed restriction. Mr Mitchell seconded. All were in favor by roll call vote. Ms Flynn asked about water quality. Mr Wolfe informed the Board that he had just received a water test report, with a sample date of Aug 27, 2021. Mr Grossman told the Board that the water test showed radon over the limit which will require an additional deed restriction.

Ms Levison said that considering the time (1:17pm) and the items left on the agenda, it wouldn't be possible to return to the 37 Peninsular Rd discussion in this meeting and it would be on the next agenda.

- d. Enforcement authority discussion with Police Chief Babu. Ms Levison explained that one consideration when implementing a mask mandate in Harvard is who would do the enforcement: both of individuals who do not wear a mask as well as establishments that do not notify patrons/visitors of the mask requirement. Under the COVID-19 State of Emergency the BoH gave the Police Dept enforcement power, but that is not currently an option. The Chief said that from a law enforcement perspective, he isn't sure that the police should enforce public health requirements and that this is a public health issue not a public safety issue. Chief Babu explained that approximately 2 years ago Harvard Police Dept created bylaw violation tickets. The Chief offered to give BoH ticket books to allow BoH as Health Agents to issue tickets for violations. Mr Mitchell said he appreciated the Chief's position in trying to separate health and legal issues and added that the Board has not issued a mandate because of the enforcement issue. Chief Babu said he thought that education is the first activity. Mr Grossman reported that the Chief agreed to send assistance should Mr Grossman need the presence of the police. Chief Babu confirmed. Ms Levison stated that the Board would only be asking for support with locations that the Board had already spoken to and who were still not cooperating. Ms Flynn explained that she checked Harvard's Town Code and she could not find evidence that Harvard has adopted the MGL that addresses civil disposition, but that she will check with the Town Administrator. Chief Babu said that he believes that MGL Ch 40 Section 21D was adopted in order to write marijuana bylaw violations and parking tickets. Mr Grossman clarified that the regulation is not adequate, that there also needs to be an accompanying bylaw that allows ticketing and we need clarification from Town Counsel. Chief Babu confirmed that the specific Board of Health ticketable issues would need to be adopted and voted in. Ms Levison concluded by saying that in her opinion the Board of Health volunteer members and the BoH Clerk should not be put in the position of writing tickets, and reminded all that Mr Grossman covers three towns and is only available in Harvard about 10 hours a week. The Board congratulated the Chief on his new position. The Chief left the meeting.
- e. Discuss & prepare for attendance at FinCom Meeting (1/12/22 at 7pm). Ms Levison reported that the answers the Board prepared in response to FinCom questions about the FY23 budget were submitted and no further action is required.
- f. Initial discussion of preparation of submission to the Annual Town Report (due 1/31/22). Ms Levison offered to do the first draft. Ms McCarthy and Mr Mitchell will send bullets re topics they

cover (LUB, MA DPH, algae testing).

- g. Endorsement of BOH representative to the Climate Initiative Committee. Ms McCarthy asked for the Board of Health to endorse her to serve on the Climate Initiative Committee as requested by the Select Board. Ms Levison endorsed Ms McCarthy; Ms Flynn will notify Julie Doucet.
- h. Update from the LUB Meeting of 12/14/21. Mr Grossman reported a continued discussion that all LUB Boards will have to communicate before they release Occupancy permits, etc.
- i. Update from NABH Quarterly meeting 1/6/22. Ms Levison reported that she was unable to join the meeting as she didn't receive the link in time. Mr Grossman explained that the 2022 assessment will be adjusted using both the 2020 census data and a 5% increase for inflation. Ms Levison said the HBOH needs to ensure that NABH is using the corrected population data for Harvard.
- j. COVID-19: Discuss current status, advisory re masks, & testing availability. Ms Levison reported that according to the DPH data from the previous week, Harvard's positivity rate is 13.86%. She added that as the data changes the Board needs to continue to monitor and evaluate the situation. Ms McCarthy suggested the Board implement a mask mandate to support business owners, and that one business owner in town reported that ¼ of his staff are out with COVID-19. Ms McCarthy suggested the Board reach out to businesses in town to see if a mask mandate would help them. Mr Mitchell said he would support a mask mandate if it would help business owners, but there are still enforcement questions. Mr Grossman asked what the Board is proposing: who will be responsible for enforcing it – the store or would the mandate require masks so the person entering the store is in violation. Mr Mitchell said he thinks making the individual responsible is more appropriate; Mr Grossman agreed and suggested handing out signs, sending out alerts through the Town website, etc. Ms Flynn suggested the Board needed to draft the mandate; Mr Mitchell suggested that Ms Levison draft a mandate and email it for comments from the other Board members. Mr Mitchell and Ms McCarthy offered to hand out posters to Harvard businesses. The Board agreed a mandate should go through March 14, but the Board can rescind the mandate sooner. Mr Grossman advised that a fine structure should be laid out in the mandate, with a minimum of \$300-\$500 after a first warning. Ms McCarthy proposed that the Board of Health put in place a mask mandate in indoor spaces in the Town of Harvard to control the spread of the omicron and any other variant of the COVID-19 virus. Mr Mitchell seconded. All were in favor by roll call vote. Ms Eliyesil asked when the mandate would be available. Mr Mitchell said the Board would try to finalize the mandate on Tuesday to get it to the Press on Wednesday. Ms Levison agreed.

Testing: Ms McCarthy reported that there is a COVID-19 testing site in Marlboro, 8am to noon, Monday-Friday, on Donald Lynch Boulevard, past Solomon Pond Mall/Target. No appointment needed. Ms Levison reported that MA DPH has negotiated bulk prices for rapid test kits and shared the pricing information with Towns so Towns can buy for residents. Ms Levison was in touch with Mr Bragan and Ms Sobalvarro to ask if the Town is buying these rapid test kits, but was told they are waiting for an MMA webinar about the process. Ms Levison reported that she got the feeling that people think that Harvard residents can access the test kits; she advocated that at a minimum the Town should buy test kits for the seniors. Ms McCarthy suggested that Ms Levison speak to Mr Sklar of the Select Board. Board members agreed to speak to the Select Board members.

- k. Update from recent DPH COVID-19 Conference Calls. Ms McCarthy reported the main topic was the change to quarantine and isolation protocols.
- l. Clerk and Health Agent Update.

- a. Ms Flynn reminded the Board members that their Ethics training is due by Feb 1st.
- b. Ms Flynn asked the Board to review an email from Ellen Leicher about whether there is synthetic turf at Hildreth Elementary School. Ms McCarthy offered to draft a memo to the Schools requesting additional information.
- c. Ms Flynn reported that Mr Wolfe had emailed to ask if Mr Grossman can sign the 17 Ann Lees BR deed restriction. The Board agreed Mr Grossman can sign, but Ms Levison said she could sign as well.
- d. Ms Flynn asked the Board members to review and respond to an email about 94 Ayer Rd.
- e. 126 Poor Farm Rd. Ms Flynn asked if the Board members would accept the homeowner's proposed changes to language in the deed restriction which she felt were inconsistent with what the Board agreed to. Ms McCarthy asked Ms Flynn to tell the homeowner that the language is inconsistent and won't be accepted.

Mr Mitchell left the meeting at 1:55pm.

OLD BUSINESS

- a. Continued discussion re planning for winter emergency preparedness. This topic was tabled due to the time.
- b. Continued review of draft policy recommendation re notification to employees of a positive COVID test. Ms Levison asked whether the guidance can be expanded to be more complete. Ms Levison will send written comments to Ms McCarthy to incorporate.
- c. Update re status of lobbying NABH for a sustainability expert shared among towns. This item was tabled.
- d. Continued preparation of a town-wide mailing in support of the hauler regulation. This item was tabled.
- e. Finalize letter on EEA Opt-Out Process to Representatives Sena & Eldridge. This item was tabled as Mr Mitchell had left the meeting.
- f. Review Action Items. There were no action items to review.

PERMITS

Waste Hauler

Ms Flynn reported she has a partial waste hauler application from Waste Management that is not ready for Board review. Ms McCarthy asked if the Board could increase the application fee for businesses who do not apply on time. Mr Grossman said it is not in the current regulation but that the regulations could be amended to include that condition.

Septic

- 37 Tahanto Trail. Ms McCarthy made the motion to approve the permit for a D-box replacement; Ms Levison seconded. Both were in favor.

MINUTES

The Members reviewed and revised the draft Minutes of 11/30/21. MS. McCarthy made the motion to approve the Minutes as amended; Ms. Levison seconded. All were in favor by roll call vote.

ITEMS FOR NEXT AGENDA- Items for the next agenda were discussed. Ms McCarthy asked to discuss increased application fees for Waste Hauler permits if they miss the Dec 1st deadline.

ADJOURNMENT- Ms McCarthy made the motion to adjourn the meeting at 2:12 p.m.; Ms. Levison seconded. All were in favor by roll call vote.

Action Items:

- Ms Levison to draft the mask mandate, other members to review and comment
- Ms McCarthy to draft question re new “turf” at Hildreth Elementary School
- Mr Mitchell and Ms McCarthy to review emails re 94 Ayer Rd wells
- Mr Mitchell and Ms McCarthy to comment on EEA opt out letter to Eldridge and Sena
- Mr Mitchell to review email to Mr Bragan about Nov 24 meeting
- Ms Levison to send written notes on the COVID19 notification policy
- Ms Flynn to inform Chief Babu about the Waste haulers permitting process.

Respectfully submitted,

Libby Levison,
Board of Health Chair

Referenced Documents:

- Agenda
- Draft Minutes of 11/30/21
- 17 Ann Lees: D Wolfe's letter in prep for the discussion, Proposed SDS plan; Proposed 4 BR deed restriction, Floor plans, Real estate listing for 6 BR (photos are not included as the house was photographed w/o furniture), Assessor's card.
- 37 Peninsula Road: BOH comments to the ZBA re special permit application for seasonal conversion, Existing floor plans, Recorded bedroom deed restriction, Real estate listing stating 3 BR & with pictures showing 4 BR, D Wolfe email with comments from property owner re water quality & staging for sale, Recorded arsenic notice, Water quality results (x2), A Flynn e-mail to Skillings w/revised reg & best practices, Tight tank contracts with Lacombe (2015 & 2021), DEP's tight tank approval, Portion of Title 5 re tight tank approval.
- 10 Babbit Lane: Variance request letter, Building permit application, Plan.
- Past agreement enforcement agreement with HPD;
- Budget spreadsheet & narrative, FY23 goals, answers to FinCom questions
- Annual Town Report Memo
- Groton & Littleton emergency face covering regulations