



BOARD OF HEALTH

~~ MINUTES ~~

Thursday, April 18, 2024

4 Fairground Road, Community Room

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

Called to order at 4:00 p.m.

Staff in attendance: John Hedden, Chief Environmental Health Officer; Heather Nardone, Public Health Inspector; Jake Visco, Public Health Inspector; Vince Murphy, Sustainability Programs Manager
Attending Members: Meredith Lepore, James Cooper, Ann Smith
Remote Participant: Malcom MacNab
Absent: Kerry McKenna
Early Departure: -

I. ANNOUNCEMENTS

Chair MacNab announced that this meeting is being audio and video recorded and announced the transfer of chairmanship to Meredith Lepore, since she was present in the room, making it easier for her to manage the meeting.

II. PUBLIC COMMENTS

Chair Lepore called for public comments. There were no public comments.

III. APPROVAL OF MINUTES

Action:	Motion to approve the minutes of March 21, 2024. (Motion by: Cooper) (Seconded by: Smith)
Roll-Call Vote:	Carried 3-1// MacNab, Cooper, Smith (aye)//Lepore (abstain)

IV. LIFT CONDEMNATION OF 7 LILY STREET

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Discussion: (00:02:56)	Hedden - Engaged Riverhawk Environmental for the cleanup work on the property after an oil spill in the basement. - Witnessed all cleanup reports and received receipts for the new boiler installation. - Reviewed all documentation provided concerning the cleanup efforts. - Recommended lifting the condemnation on the property, as the issue had been resolved since its inclusion on the February agenda.
Action:	Motion to lift the condemnation. (Motion by: Cooper) (Seconded by: Smith) (00:03:49)
Roll-Call Vote:	Carried 4-0// MacNab, Cooper, Lepore, Smith (aye)

V. SEPTIC SETBACK

1. 35 Warren's Landing, Septic Setbacks from Madaket Regulation, Code of TON Chapter 303.

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Representative:	Don Bracken, Bracken Engineering, Inc.
Discussion: (00:04:28)	Bracken - Requested setback variances from the Madaket regulations to accommodate a new septic system for a newly created Covenant lot. - Described the existing structures on the lot, which include a four-bedroom main house, a garage with one bedroom, and a two-bedroom house within the new 20,000 ft² Covenant boundary. - Proposed that the lot be divided and sold off, with a new individual septic system installed for the existing two-bedroom structures.

Minutes – BOH April 18, 2024, adopted May 16, 2024

- Suggested converting the current septic system, which serves a two-bedroom cottage and a one-bedroom garage, into a one-bedroom system due to one of the leaching trenches not meeting Title 5 requirements due to its proximity to the lot line.
- Reviewed the history and amendments to Madaket regulations, noting the significant changes in requirements from 1973 to present, especially the expansion of the regulation area and updates to environmental standards.
- Highlighted discrepancies in the records at the state central register regarding the regulations, suggesting a potential oversight in procedural adherence by the Board of Health.
- Cited Massachusetts General Law Chapter 111, Section 31, to emphasize the Board of Health's authority and the procedural necessities for adopting new or amended regulations.
- Questioned the current regulations' applicability to new areas, given the lack of recorded amendments and the substantial changes in environmental and regulatory landscapes over the years.
- Argued for a variance by stating the design offers equivalent environmental protection without strict adherence to current setback requirements, challenging past denials of similar variance requests without substantial explanations.
- Outlined the environmental benefits of the proposed septic system setup, emphasizing the improvement over existing conditions and advocating for the variance as a practical solution over more costly alternatives like shared systems.

Smith

- Questioned the potential harm or concerns that might arise from changing the current regulations regarding the variance request.

Hedden

- Explained that one concern is the groundwater quality in Madaket, historically noted as poor.
- Highlighted that the regulations, including the 50-foot property setback for soil absorption systems and the 100-foot well radius, aim to limit bedroom numbers and the size of soil absorption systems in Madaket to preserve groundwater.
- Noted the incorporation of Innovative/Alternative (IA) systems within the Madaket Harbor Watershed as part of efforts to enhance groundwater protection.

Bracken

- Explained the creation of a map to illustrate how the current location differs from the original Madaket area, which now mostly has town water.
- Noted that the water quality for well water at this site is good, unlike the historically poor quality observed when the regulations were originally written.
- Questioned the consistency of regulations across the town, highlighting that the expanded area is no different from other town areas, making it hard to justify distinct treatment for this site.
- Expressed skepticism about the impact on groundwater between having a 50 ft versus a 20 ft setback, arguing that the difference is negligible in terms of environmental protection.
- Highlighted the challenges associated with shared systems, such as the need for a maintenance fund and the difficulties in getting agreement among users for system replacement.
- Stressed the benefits of installing an Innovative/Alternative (IA) system, which is environmentally superior and would be required during property transfer anyway.

MacNab

- Acknowledged the numerous problems associated with shared septic systems, questioning the overall benefit of such setups.
- Expressed a preference for the proposed environmentally sound individual system.
- Raised concerns about the potential legal issues due to the unfilled regulations, suggesting the need for a legal opinion.

Minutes – BOH April 18, 2024, adopted May 16, 2024

	Hedden • Explained how granting a variance might affect future requests from others. • Acknowledged the applicant's point that each case should be considered on its own merits. • Advised the board to exercise caution and be specific about the reasons for granting this particular variance to ensure clarity and maintain consistency in future decisions. Lepore • Observed that variances are often requested for large AI systems with many bedrooms, such as 10 or 12 bedroom systems. • Noted that this particular request is different because it involves relocating a small, two-bedroom septic system to another side of the property. • Expressed support for this variance despite generally not favoring them, as it doesn't increase the number of bedrooms or the size of the property's septic system. • Explained that the move is necessary due to the property line, aiming to avoid shared systems by ensuring each property has its own septic system. Hedden • Recalled that the Madaket Harbor Watershed was approved around 2006 or 2007 in collaboration with the Department of Environmental Protection (DEP). • Stated that this approval involved establishing regulations specifically for Madaket, including a 50ft property line setback for soil absorption systems. • Noted that these regulations were further endorsed in 2015 within the Comprehensive Wastewater Management Plan by the DEP. • Suggested that the board might consider setting a bedroom limit for cases like this in the future, recommending a cap of three bedrooms or fewer when evaluating similar scenarios. Richard Glenn, Representative of Mrs. Tuesdale (Contract Purchaser) • Acknowledged lack of expertise in septic systems but noted that the property improvements will retain a four-bedroom house and cottage with a barn, only changing the septic arrangements. • Outlined that one of the existing systems will be replaced with an Innovative/Alternative (IA) system, considered an environmental upgrade. • Pointed out that the changes involve only the lines on a plot plan, with no actual environmental degradation expected from the modifications. • Argued that similar circumstances for neighboring properties would also merit a variance, highlighting the role of the board in discerning when variances are justified. • Described the client's situation: contracted to purchase the property five months ago, obtained necessary approvals from the Planning Board and financing from Cape Cod 5 for the covenant house, as part of the island's housing strategy. • Explained the discovery that the existing septic system did not comply with the lot line, necessitating either a move or a new installation, resulting in the decision to build a new two-bedroom IA system with a deed restriction to limit it to two bedrooms. • Concluded that the case meets the criteria for a variance and emphasized that the regulations provide the board with the authority to grant variances under appropriate circumstances, asserting that this case qualifies.
Action:	Motion to approve the variance. (Motion by: MacNab) (Seconded by: Smith) (00:28:46)
Roll-Call Vote:	Carried 3-1// MacNab, Lepore, Smith (aye)//Cooper (nay)

Minutes – BOH April 18, 2024, adopted May 16, 2024

V. SEPTIC LOAN REQUESTS

1. 35 Warren's Landing, Septic Loan Request.

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Discussion: (00:30:07)	Hedden - Mentioned that the property transaction was contingent upon the approval of the variance, which the board just granted. - Noted that a 150% was requested, likely as a requirement from the bank financing the property. - Reminded the board that similar concessions have been granted in the past to other new property owners in comparable situations.
Action:	Motion to approve loan request. (Motion by: Smith) (Seconded by: Cooper) (00:32:23)
Roll-Call Vote:	Carried 4-0// MacNab, Cooper, Lepore, Smith (aye)

VI. NITROGEN LOADING CREDIT

1. 6 Woodland Drive – Nitrogen Loading Credit

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Representative:	Dan Mulloy, Site Engineer
Discussion: (00:33:38)	Mulloy - Clarified the location of the property at Six Woodland within the Well Hood Protection District, noting there are no other environmental or wetland-related concerns impacting the request. - Stated that the property has an 80,000 square foot area, which conventionally supports up to eight bedrooms. - Requested a variance to increase the capacity to ten bedrooms, utilizing an Innovative/Alternative (IA) system. - Described the request as straightforward, similar to others that the board has previously reviewed and approved. Hedden - Stated the property is on an 80,000 square foot lot within the Wellhead Protection District, requesting a variance for 10 bedrooms using an IA system. - Explained the request arose after the discovery of a pool cabana with a bathroom being built, which classified as a studio, necessitating an upgrade to the septic system. - Noted the building permit was initially denied due to the need for system upgrades, leading to enforcement actions and ongoing litigation with the property owner. - Reported a walkthrough confirmed the presence of about 10 bedrooms, highlighting the need for this variance to bring the property into compliance. - Described the situation as stemming from previous violations, some of which the new owner inherited, with unauthorized construction activities occurring without Board of Health approval. - Indicated that if the variance for additional bedrooms is not approved, the property owner may consider demolishing some buildings. MacNab - Expressed reluctance about frequently granting variances that allow properties to operate similarly to hotels but acknowledged that doing so has historically brought properties into compliance. Smith - Agreed with a fellow board member's discomfort about approving variances for properties with excessive bedrooms, describing the idea of a 12-bedroom property as abhorrent. - Clarified that the Board of Health's role is not to rule based on personal preferences but to determine compliance with existing health and safety codes.

Minutes – BOH April 18, 2024, adopted May 16, 2024

	- Acknowledged that despite personal reservations, the board may not have grounds to object if the proposal meets the written code. Hedden - Confirmed that the proposed septic system design is compliant with local regulations for the Wellhead area, which stipulate one bedroom per 10,000 square feet for IA systems. - Explained that nitrogen-reducing systems like IA systems are credited to require less square footage per bedroom, thus enhancing environmental benefits. - Noted that while the system reduces nitrogen loading, potentially allowing for an increase from five to eight bedrooms, there are considerations regarding other pathogens and overall environmental impact. - Suggested that these aspects may need further consideration in future regulatory evaluations and decisions. Lepore - Expressed frustration with the building department's recurrent issue of acting first and seeking approval afterward, which results in requests for forgiveness rather than seeking prior permission. - Clarified that although the construction is recent (within the last two years), it's not brand new, and the property owners are now retroactively seeking permission for actions already taken. Hedden - Confirmed that the property owners constructed a cabana near the pool, which includes a bathroom, meeting the local definition of a studio equivalent to one bedroom in terms of septic capacity. - Acknowledged that this construction was carried out without prior review by the health department, and it's unclear whether a building permit was even obtained for this addition. Mulloy - Recapped that when the current owners purchased the property, it already contained eight to nine bedrooms. - Confirmed the unauthorized addition of a pool cabana that included a bedroom, completed without Board of Health review, which was not compliant with regulations. - Clarified that historical documentation for the property is incomplete, hence the uncertainty between eight and nine existing bedrooms. - Noted that the addition of the cabana effectively increases the total to ten bedrooms, which is now reflected in the proposed septic design. - Emphasized that while there was a violation in the addition of the cabana, the situation involves ten bedrooms in total, not twelve.
Action:	Motion to approve the nitrogen credit for 6 Woodland Drive. (Motion by: MacNab) (Seconded by: Cooper) (00:43:37)
Roll-Call Vote:	Carried 4-0// MacNab, Cooper, Lepore, Smith (aye)

VII. VARIANCE REQUESTS

1. Kitty Murtagh's – Variance request from installation of floor drain.

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Representative:	Michael Wilson
Discussion: (00:44:38)	Wilson - Stated that there has not been an opportunity to address Mr. Keane's concerns. - Requested that the board consider postponing the hearing by one month to allow Mr. Keane to be present. - Explained that the postponement would provide time to follow up on the discussions Mr. Keane has had with the health department regarding the floor drain issue.

Minutes – BOH April 18, 2024, adopted May 16, 2024

Action:	Motion to continue this request for one month. (Motion by: MacNab) (Seconded by: Smith)
Roll-Call Vote:	Carried 4-0// MacNab, Cooper, Lepore, Smith (aye)

2. Nantucket Beach Dogs – Variance request from bathroom requirement.

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Representative:	Jack Decker, Owner, Nantucket Beach Dogs
Discussion: (00:46:00)	Decker - Recapped that the Land Bank had previously applied for three licenses to operate facilities at Cisco, all of which were denied due to various reasons, including erosion issues and the impracticality of both brick-and-mortar and mobile bathrooms. - Proposed a potential solution involving the setup of a temporary hand washing station, which includes features like hot water availability, a waste collection bucket with a lid for daily disposal at a commissary, and the ability to keep water warm for up to four hours. - Highlighted the station's design and is equipped with a soap and napkin holder, suggesting this could allow for a variance approval. Hedden - Recapped previous discussions about the Land Bank's application for operating licenses at Cisco, which were denied due to concerns about erosion and the suitability of bathroom facilities. - Outlined the Department's view that the proposed food cart would have a minimal impact due to its limited food handling, being situated outdoors, and the addition of a proposed handwashing station to be located outside the bathroom. - Explained the variance sought is from local regulations that prohibit chemical toilets in food establishments. - Emphasized that decisions on such variances should be taken on a case-by-case basis, considering the amount of food preparation, handling, cooking steps involved. - Highlighted the applicant's long history at Cisco, good track record with inspections, and limited food handling, suggesting these factors make the variance request reasonable for board consideration. Cooper - Questioned if the current proposal is significantly different from what was previously requested by the Land Bank. Hedden - Clarified that each food establishment must apply individually for a variance, rather than relying on a blanket approval that might have been granted to the Land Bank for all food trucks. - Emphasized that the approach is on a case-by-case basis, focusing on the responsibility of each food establishment to seek its own variance from local regulations. - Indicated that this method allows for tailored considerations of each application based on specific circumstances and compliance needs. - Described the minimal food preparation involved in the operation, such as using tongs and gloves to handle steamed hot dogs, and no addition of raw ingredients like lettuce and tomato to items like cheeseburgers. - Noted the outdoor setting of the food operation, which minimizes the risk of contaminant tracking from less sanitary facilities such as portable toilets. - Suggested that the current need for a variance might be due to increased scrutiny on mobile food establishments or possibly previous oversight by health officials regarding the limited nature of food handling involved.
Action:	Motion to approve the variance. (Motion by: Smith) (Seconded by: Cooper) (00:51:50)
Roll-Call Vote:	Carried 4-0// MacNab, Cooper, Lepore, Smith (aye)

Minutes – BOH April 18, 2024, adopted May 16, 2024

3. Nantucket Hotel - Variance request from natural light requirement per 105 CMR 410.000

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Representative:	Mark Snider, Owner and Managing Director, The Nantucket Hotel
Discussion: (00:52:51)	Hedden - Identified during an inspection that the staff housing, located partially below ground, fails to meet the housing code's requirement for natural light in habitable rooms. Each habitable room must have 8% of its floor area in natural lighting, equating to windows or other glazing solutions. - Explained that the building code differs from the housing code by allowing artificial light to fulfill the lumens or candles requirement for habitable rooms such as bedrooms, living rooms, and kitchens over 70 square feet. - Mentioned the common occurrence of basement bedrooms on the island not meeting this natural light requirement, which does not necessarily pose a life safety issue but is still unfortunate. - Noted that the building has had a Certificate of Occupancy (CO) from the building department for over ten years, suggesting that the lack of natural light was an oversight in past inspections. - Stated that the state's guidance on handling such issues typically involves seeking variances from the natural light requirement from the board. - Reported that one room was completely without natural light, using only artificial lighting, but the applicant has now proposed installing a door with a window to address this issue. Snider - Stated that the hotel has undergone Board of Health inspections for 12 years, complying with requirements for about half of that time, and has ensured that all habitable rooms are fully illuminated. - Explained that the windows in some rooms look out beneath the hotel's pool deck, which would prevent any additional natural light from entering, even if expensive retrofits were undertaken. - Highlighted a letter from the building inspector that points out a significant conflict between state housing and building codes, describing it as an unfair situation for the hotel which has consistently attempted to comply with regulations. - Emphasized the hotel's efforts to meet Board of Health demands, including modifying a door to improve compliance, and expressed frustration at being penalized despite these efforts. - Stressed the obligation to enforce the housing code, which mandates 8% natural light for habitable rooms. - Acknowledged the conflict with the building code, which permits artificial light to substitute for the required natural illumination. - Expressed the difficulty of the situation given the clash between the two codes, putting the enforcement team in a tough position. MacNab - Pointed out the existence of two conflicting codes—housing and building—and the unfairness of retroactively penalizing someone who complied with regulations a decade ago. - Expressed belief that there is no significant safety or health issue at stake that would necessitate denying the variance, noting that the primary concern is ensuring emergency egress rather than natural light levels. - Supported granting the variance as a matter of fairness, describing the ongoing code conflicts as "silly" and a repetitive problem in board discussions. - Suggested the need for better coordination across town departments to resolve these recurring issues with conflicting regulations.

Minutes – BOH April 18, 2024, adopted May 16, 2024

Action:	Motion to approve the variance. (Motion by: MacNab) (Seconded by: Smith) (01:01:20)
Roll-Call Vote:	Carried 4-0// MacNab, Cooper, Lepore, Smith (aye)
Discussion Cont. (01:02:14)	Snider • Stated that the hotel has consistently paid its fees to the Board of Health on time in previous years. • Explained that this year, payment was made one day late on January 2nd due to the New Year holiday, resulting in a significant penalty of four times the usual amount, totaling a \$2,000 premium. • Addressed a previous warning from the Board of Health about late payment, clarifying that their records show they were not late the previous year as alleged, with evidence of payment made on December 30th. • Requested that the penalty for this one-day delay be waived, arguing that it was unfair and unprecedented given their history of timely payments. Heddon • Emphasized the department's consistent efforts over the past year to encourage entities to proactively engage with the office for scheduling inspections and ensuring compliance. • Referenced a case from a few months prior involving another entity that operated without a permit for two consecutive summers, highlighting efforts to enforce compliance in similar situations. • Acknowledged that several entities were held to this standard of timely compliance and fee payment. • Expressed uncertainty about the feasibility of obtaining a refund for the penalty from finance, indicating that while challenging, it is not impossible. • Reminded that it is essential for entities to engage with the health office proactively for inspections and fee payments to avoid penalties and ensure smooth operations. MacNab • Expressed support for issuing a refund given the circumstances, suggesting a reassessment of the penalty based on the provided evidence of past compliance. Smith • Expressed agreement with a previous comment by Malcolm, considering the penalty for a one-day delay due to a holiday to be excessive. Snider • Acknowledged that the late payment was due to confusion in their office, exacerbated by the timing around their New Year's event, which led to the oversight. • Took responsibility for the one-day delay but emphasized their 12-year history of timely payments. • Reiterated commitment to continue paying promptly and complying fully with Board of Health regulations. • Asserted that they have never attempted to circumvent Board of Health laws or fail to meet regulatory requirements. Cooper • Expressed skepticism about exempting the representative from the penalty, noting the consistency needed in treating all late payments. • Argued that allowing an exception in this case could set a precedent, making it difficult to justify not refunding others who also paid late. Lepore • Distinguished between the severity of operating for two summers without payment and missing a payment deadline by just one day. • Expressed opinion that these situations are significantly different. Heather Nardone, Public Health Inspector • Clarified that the office was closed on January 1st due to the holiday, and January 2nd was their first day back.

Minutes – BOH April 18, 2024, adopted May 16, 2024

	- Indicated that although the check might have been prepared on January 2nd, it was not received by the office on that day. - Offered to verify the actual receipt date of the check by reviewing their records to confirm when it was actually received. MacNab - Emphasized the distinction between the current situation of a one-day payment delay and another case where an establishment operated without a license for two years. - Reiterated the belief that the penalty for a one-day delay, given these comparisons, appears excessive. Smith - Highlighted the importance of considering an establishment's history of compliance when assessing penalties. - Noted that the current issue appears to be an oversight rather than a pattern of repeated violations. Hedden - Indicated the need to review past cases to determine how many other establishments could be affected by such a decision and to ensure consistency in handling similar scenarios in the future. Jake Visco, Public Health Inspector - Clarified that establishments typically come in to renew their permits and make payments around November. - Explained that inspections are then scheduled based on these November renewals for the permits required for the following year. - Pointed out that it is unusual for establishments to seek inspections at the start of the New Year when they are already in operation, emphasizing the normal timeframe for these administrative tasks. Snider - Acknowledged their unique situation as the only establishment open during a certain period. - Expressed willingness to comply with regulatory requirements earlier than usual, if that is preferred by the board.
Action:	Motion to waive the penalty fees for the Nantucket Hotel for all future payments, this waiver applies up to the amount they were penalized for in January 2024. (Motion by: MacNab) (Seconded by: Smith) (01:10:05)
Roll-Call Vote:	Carried 3-1// MacNab, Lepore, Smith (aye)// Cooper (nay)

4. 17A Mary Ann Drive - Variance request from natural light requirement per 105 CMR 410.000

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Representative:	VTI Management
Discussion: (01:22:05)	Representative (Anthony) - Reported a resident issue that led to inspections by multiple departments, uncovering several compliance issues. - Spent approximately \$30,000 on immediate remedies, including upgrading ventilation and widening window wells for fire safety. - Faced a specific challenge with meeting the 8% natural light requirement due to the unique layout of the two bedrooms separated by a partial wall. - Installed an additional window in the dividing wall to increase natural light diffusion between the rooms. - Rejected by the Health Department, the solution was deemed insufficient; they insisted on enlarging the existing windows by cutting into the foundation.

Minutes – BOH April 18, 2024, adopted May 16, 2024

- Expressed satisfaction with the new lighting solution by the tenant, who preferred avoiding further construction.
- Applied for a variance to avoid the significant disturbance and risk of cutting into the foundation, arguing that the benefits of slight additional natural light did not justify the disruption to the tenant.

Hedden

- Expressed concern over the inadequacy of natural light in basement environments.
- Questioned the effectiveness of the additional window installed in the middle of the room in terms of enhancing outside light penetration into the bedrooms.
- Indicated that the building department's files classified the basement as intended for storage and mechanical space, not for habitation.
- Doubted the legitimacy of the basement being used as habitable space, as it was not clearly permitted as such according to the building plans.
- Referenced the certificate of occupancy, which listed seven bedrooms for the duplex unit, not including the basement.
- Specified that the duplex configuration includes three bedrooms on the first floor and four on the third floor.
- Counted two additional bedrooms in the basement, which would increase the total to nine bedrooms, effectively making it a triplex.

Anthony

- Conducted inspections with the health, fire departments, and the building inspector on February 5th who expressed no problems.
- Acquired the property in its current condition, which had previously passed fire department inspections required for purchase.
- Stated the current resident that lives in the basement for over 10 years, with other residents on different floors living there for about 20 years.
- Assumed the completed modifications to the basement was around 18-19 years ago, before the current ownership.
- Secured approvals for all aspects of the unit except for the natural light requirement.

Hedden

- Explained that an inspection conducted by the health department that confirms compliance with the housing code, will cease further investigation once compliance with the housing code has been established, regardless of permitting status.
- Described the arrangement of the space as odd, featuring a dividing wall that splits what could be considered one large area into two.
- Indicated that there are no doors between the divided areas, which complicates the definition of them as separate bedrooms.
- Highlighted that the room on the right side of the partition lacks a window, posing a potential issue with egress.

Anthony

- Confirmed that both bedrooms are equipped with one exterior window.
- Added one 15 square foot window in each bedroom to enhance light and egress possibilities.
- Informed by the fire department that, upon widening the window wells, the windows were approved for use as egress, meeting safety standards.

Hedden

- Outlined that the calculation for natural light is based on the floor area of the room in relation to the window size.
- Illustrated with an example where a 100 square foot room requires a window of 2 feet by 4 feet, resulting in 8 square feet of glass to meet the 8% natural light requirement.

Cooper

- Pointed out that if all modifications were approved under a building department permit and passed inspections, the property owner should be considered compliant.

Minutes – BOH April 18, 2024, adopted May 16, 2024

	- Noted the discrepancy between the building code and the health department standards, particularly regarding natural light requirements, which can confuse property owners. - Highlighted that this issue is particularly problematic in Nantucket due to the prevalence of basement apartments. - Expressed concern over the challenges of navigating compliance when codes differ between departments. Smith - Agreed with other board members that strictly enforcing natural light requirements could lead to significant challenges. - Expressed concern over the potential impact of rigorous inspections based on specific light requirements, suggesting that it could harm residents who are currently living safely in such apartments.
Action:	Motion to approve the variance request. (Motion by: Smith) (Seconded by: MacNab) (01:27:40)
Roll-Call Vote:	Carried 4-0// MacNab, Cooper, Lepore, Smith (aye)

5. ACK Surf School - Variance request for recreational camp per 105 CMR 430.161, 430.300, 430.373

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Representative:	Gavin Norton, Owner of ACK Surf School
Discussion: (01:28:35)	Norton - Requested a variance for first aid supplies, potable water, and a handwashing sink for a surf school. - Confirmed possession of first aid supplies and training in AED, first aid, and CPR, and noted upcoming lifeguard certification to meet state requirements. - Explained the logistical challenges of providing potable water at the beach, where operations are conducted from a truck and trailer, and expressed willingness to supply bottled water if permitted. - Voiced concerns about the potential need for a food permit to supply water, which has previously deterred bringing water to avoid regulatory issues. - Expressed commitment to comply with all required health and safety regulations and to consult with a medical professional for further training. - Questioned the necessity of a handwashing station when hand sanitizer was deemed sufficient during health department inspections, especially given the context of operating on a beach and previous approvals during the COVID-19 pandemic. Hedden - Outlined that the school meets the definition of a recreational camp according to the code, which applies if five or more children participate each day for longer than two hours. - Clarified that although the surf school operates with five or more children daily, the lessons are one-on-one and only last for one hour each, which complicates the classification as a recreational camp under the current definitions. - Noted that in the past, the surf school was possibly perceived as operating on a drop-in basis. - Stated that operating solely on a drop-in basis exempts an entity from being classified under the definition of a camp according to the camp code. Norton - Clarified that his operation has never been on a drop-in basis, emphasizing that such a model would be unsafe and impractical given the unpredictability of weather and ocean conditions. - Described the structured nature of the surf school, noting that it operates with scheduled lessons which are essential for planning and safety.

Minutes – BOH April 18, 2024, adopted May 16, 2024

- Mentioned the extensive training and certification he and his staff undergo to ensure high safety and operational standards, highlighting his accreditation through NSSIA.
- Asserted the importance of safety, stating that no employee is allowed to work without proper training, regardless of their background.
- Expressed concern about the potential implications of being classified incorrectly under local codes, which could threaten the viability of his 16-year-old business.
- Indicated that occasional walk-up lessons are available if staff are free and there are cancellations, but this does not constitute a drop-in business model.
- Emphasized his commitment to running a strictly regulated and safe surf school, contrary to the notion that it operates as a drop-in facility.

Hedden

- Received information from Carrie Wagner at Community Sanitation, who handles recreational camps for children, regarding the operation's classification.
- Clarified that based on the information from the state, conducting one-hour lessons that serve five or more children per day meets the definition of a recreational camp.

MacNab

- Expressed concerns about problems arising with a surf school that has been operating professionally for 16 years.
- Questioned whether the issues stem from an interpretation of the definition of a camp.

Jonathan Berry, Owner, Next Level Water Sports

- Stressed the broader implications of rule interpretations on various water-based educational activities on Nantucket, including community sailing and surf schools.
- Described the challenges of complying with regulations meant to be all-encompassing yet difficult for operations like his that are inherently "primitive" due to their nature of being on the water.
- Highlighted that such businesses do not have the luxury of operating from fixed waterfront facilities, complicating compliance with standard facility-based requirements.
- Noted the existence of 'Primitive Camp' guidelines within the regulations that allow for variances by Boards of Health, tailored to the needs of businesses operating in such environments.
- Argued for the necessity of granting variances to ensure continued opportunities for water safety education and recreational activities for all children, not just those from affluent backgrounds.
- Cited examples from other parts of Massachusetts where businesses operate in similarly primitive conditions under approved variances, such as camps conducting white water rafting or extended hiking trips.
- Appealed to the Board of Health to work collaboratively to find solutions that would allow these essential community services to continue operating safely and legally.

MacNab

- Restated the belief that these operations should be classified as primitive camps due to their nature and settings.
- Addressed the ongoing issue as one of interpretation of rules, emphasizing no objections to the current operations.
- Recognized the valuable contributions these camps have made over many years to the community by educating the island's youth.
- Commended the professionalism with which these activities are conducted, highlighting their importance in teaching safety.

Hedden

- Listed several specific compliance needs including storage and administration of medication for children.
- Emphasized the necessity for proper handwashing facilities, toilets, infirmaries, and potable water provisions.
- Noted that these requirements extend to proper waste receptacles as part of the overall camp standards.

Minutes – BOH April 18, 2024, adopted May 16, 2024

- Acknowledged that many organizations on the island successfully adhere to these codes and meet all defined requirements for operating camps.

Lepore

- Pointed out that some approved camps utilize the services of the organizations being discussed, meaning that children from compliant camps would still participate in activities provided by these organizations for set periods.
- Expressed a view that prohibiting these organizations from operating might not substantially change the overall situation.
- Shared personal skepticism about the necessity of structured water safety camps, reflecting on personal experience growing up in the area.
- Acknowledged that these organizations have been operating consistently, suggesting a level of established practice.
- Cited detailed definitions from the regulations, describing what constitutes a recreational camp for children, including criteria such as the number of children served, the period of operation, and how these entities promote themselves.
- Clarified the definition encompasses a wide range of activities and organizational structures, impacting how they are regulated.

Norton

- Expressed confusion over the interpretation of "primitive camp" definitions, noting that no clear guidance has been provided by the state or town in the way others have interpreted it.
- Described his surf school operations as safe and conscientious, emphasizing the precautions taken when ocean conditions are not favorable.
- Highlighted a history of proactive safety measures, such as requesting lifeguard placements at specific beaches to enhance safety.
- Stated compliance with all town requirements, including submitting attendance records and other requested documentation.
- Voiced concern about being blindsided by new regulatory interpretations regarding lessons, noting that non-compliance could have led to the abrupt end of his business.
- Reflected on his long-standing commitment to running his business responsibly since he was a teenager, emphasizing that his operations are community-oriented and not primarily profit-driven.
- Reiterated his dedication to providing affordable and accessible surf lessons to maintain the beach community spirit of Nantucket.

Emma Conway

- Pointed out that the current interpretation of the rule, which considers operations as camps if they serve five children throughout the day, could broadly impact various recreational programs beyond surf schools, including tennis and golf lessons.
- Suggested revisiting the definition to potentially differentiate between serving five children at a time versus five children distributed throughout the day.

MacNab

- Highlighted the simplicity of the primitive camp definition and raised concerns about relying on an external interpretation from a state representative.
- Emphasized that the local Board of Health has the authority to interpret these laws, suggesting that the board should exercise this right.
- Questioned the practicality of implementing certain requirements, like placing an infirmary at the ocean side, labeling such ideas as unrealistic.
- Argued that the current direction of enforcing stringent interpretations may be misguided, noting that the programs in question are run by experienced individuals.
- Expressed disagreement with the ongoing focus on strict definitions and the influence of state-level interpretations on local practices, advocating for a more flexible and sensible approach to regulations concerning primitive camps.

Minutes – BOH April 18, 2024, adopted May 16, 2024

	Norton • Capped participant numbers at his camp at 15 to maintain a manageable and safe environment, though he rarely reaches this maximum. • Adjusted staffing levels based on the number of participants and weather conditions, often adding more instructors during challenging conditions. • Acknowledged sometimes operating at a loss due to prioritizing safety over profit, underscoring a commitment to well-being over financial gain. • Described his proactive role in providing first aid, comparing his accessibility and visibility favorably to that of lifeguards due to his location at the beach entrance. Smith • Suggested that more guidance from the state is needed, given the unique challenges faced by certain sports camps in meeting standard camp regulations. • Identified that the nature of the sports taught at these camps makes it impractical, if not impossible, for them to meet typical facility requirements, necessitating their classification as primitive camps. Hedden • Recalled discussing various issues and questions during the webinar presented by the State, which provided insights into the operational definitions affecting the camps. • Expressed surprise at learning about the one-hour lessons and the tolling effect, where serving five kids in a day qualifies an operation as a camp. • Considered the implications of these definitions, especially how they relate to what constitutes a "Primitive Camp." MacNab • Highlighted the concern that much of what is considered regulatory compliance seems based more on interpretation than on clearly stated law. • Expressed a desire to prevent recurring discussions about the same issue in future meetings. • Stated a preference for resolving all outstanding questions and ambiguities related to the regulations by September of the current year. • Indicated willingness to accept an amendment allowing a one-year provisional period, provided that a permanent resolution is achieved within that timeframe.
Action:	Motion to grant the variance for ACK Surf School for one-year. (Motion by: MacNab) (Seconded by: Smith) (02:00:05)
Roll-Call Vote:	Carried 4-0// MacNab, Cooper, Lepore, Smith (aye)

6. Great Harbor Yacht Club - Variance request for recreational camp per 105 CMR 430.103(B)

Sitting:	MacNab, Cooper, Lepore, Smith
Recused:	Lepore
Documentation:	Supporting documents and staff recommendations.
Representative:	Emma Conway, Great Harbor Yacht Club
Discussion: (02:03:15)	Conway • Sought a variance from the standard lifeguard certification requirement for watercraft supervision, proposing an alternative due to the specific needs of their sailing program. • Referenced guidance from the Commonwealth that allows local Boards of Health to approve more suitable training depending on the watercraft and activities involved. • Proposed that US Sailing Level One certification or Irish Sailing Association certification be recognized as adequate for their instructors, arguing that these provide more relevant training for sailing and motorboat activities than general lifeguard certification. • Cited precedents from Manchester by the Sea and Maryland where similar variances were granted, supporting the proposal with examples from other locations. Hedden • Reported that the approval from 2023 is considered expired due to a new code implemented in March, which imposes stricter requirements on lifeguard certification.

Minutes – BOH April 18, 2024, adopted May 16, 2024

	- Indicated that the state plans to request the local Board of Health to rescind the previous variance because of these updated standards. - Recommended maintaining lifeguard certification as the "gold standard" for safety in watercraft supervision scenarios. - Suggested that boater safety education certification should also be required for instructors to ensure comprehensive safety training. Conway - Explained that US Sailing Level One certification requires obtaining a boater safety education card, which is not granted until this prerequisite is met. - Outlined additional training components included in the certification, such as Safe Sport training and concussion awareness. - Described the specific rescue techniques taught in the course, including how to handle capsizes, rescues from the water, and man-overboard situations. - Sent detailed documentation to support the effectiveness and relevance of this training for situations involving sailboats and motorboats. - Argued that comparing the capabilities of a lifeguard trained primarily for pool or beachside safety to those required for overseeing children in complex marine environments involving sailboats and motorboats is not appropriate or fair. - Identified US Sailing as the governing body for sailing in the United States, responsible for providing training to instructors nationwide. - Clarified that Level One certification is the foundational level, with further advancement available up to Level Two, Level Three, and Program Director. - Noted that in addition to signing up for the Lifeguard course, the assistant Waterfront Director will also participate, ensuring leadership is well-prepared. - Stated that all instructors are required to have at least US Sailing Level One certification or the Irish Sailing Association equivalent. - Asserted that the training provided through these certifications offers far superior preparation for keeping children safe on the water compared to standard lifeguard certification. Smith - Reflected on personal experiences of living locally and observing own children learning and teaching sailing. - Acknowledged the distinct challenges presented by water sports, emphasizing that the skills required for rescuing someone under a capsized boat are specialized and differ significantly from those used by lifeguards monitoring swimmers. - Questioned the relevance of current regulations to the specific needs and risks associated with sailing and other water-based activities, suggesting that they may not adequately address the unique safety requirements.
Action:	Motion to grant the variance to approve the US Sailing or Irish Sailing safety rules. (Motion by: Smith) (Seconded by: Cooper) (02:08:17)
Roll-Call Vote:	Carried 3-0// MacNab, Cooper, Smith (aye)-

7. Next Level Watersports - Variances from 105 CMR 430.000, Recreational Camp Code for Children

Sitting:	MacNab, Cooper, Lepore, Smith
Documentation:	Supporting documents and staff recommendations.
Representative:	Jonathan Berry, Owner, Next Level Water Sports
Discussion: (02:09:20)	Berry - Requested 12 variances initially due to the lack of formal facilities, and anticipated needing additional variances after hearing other discussions. - Explained that all staff are required to have US Coast Guard Captain's licenses, which involve over 325 hours of water training and a week-long course covering boating safety and navigational skills.

Minutes – BOH April 18, 2024, adopted May 16, 2024

- Received approval in writing for their camp operations from the Board of Health, inviting them to observe operations, but received no response and later did receive a cease-and-desist letter.
- Compared their situation with other local water sports schools, emphasizing similar regulatory challenges.
- Expressed frustration over the inability to have a productive dialogue with the health department or even submit an application for this year.
- Submitted a comprehensive 130-page training manual to demonstrate their commitment to safety and compliance.
- Aimed to establish a model for teaching boating safety and water sports that complies with local health regulations, seeking to ensure a safe environment for teaching children each summer.
- Proposed using a satellite phone as a workaround to improve communication in remote areas, drawing on practices from other camps in more isolated settings.
- Equipped the staff with VHF radios, ensuring constant accessibility to the US Coast Guard on channel 16.
- Trained all staff annually on the use of emergency communication tools and protocols.
- Conducted annual emergency training and exercises to ensure all staff are proficient in implementing emergency plans effectively.
- Emphasized the availability of multiple avenues for contacting emergency personnel, underscoring the camp's commitment to safety and preparedness.

MacNab

- Expressed support for granting variances for a one-year period to allow time to address and resolve the underlying challenges comprehensively.

Cooper

- Outlined the significant deficiencies in the facility's infrastructure, noting the absence of several basic amenities.
- Highlighted that there is no emergency medical facility, which is crucial for safety and compliance.
- Mentioned the lack of handwashing and toilet facilities, emphasizing that these are essential for maintaining hygiene and health standards.

Smith

- Indicated that similar variances have been granted to other entities during the evening's discussions.

Berry

- Explained that the code specifically addresses situations where standard requirements cannot be met by outlining exceptions for primitive camps.
- Applied for these exceptions, arguing that the camp qualifies as a primitive camp due to its inability to provide conventional facilities.
- Listed best practice workarounds that have been implemented, such as using a fire-retardant tent for shelter and safety.
- Mentioned the camp's operational practices, which include monitoring weather conditions closely and making conservative decisions about when to cancel activities to ensure safety.
- Highlighted the camp's history of safe operation for nine years without incidents, supporting this with a letter of recommendation and references from community members who acknowledge the camp's positive impact and safety record.
- Noted that, like other operations discussed, they operate for limited hours (three hours, like Gavin's operation) and have taken measures to mitigate the lack of permanent shelter and other facilities.
- Clarified that bathroom needs while on the water have never been a significant issue, as the kids are potty trained and aware of the bathroom arrangements before they start activities.

Minutes – BOH April 18, 2024, adopted May 16, 2024

	• Purchased a slip at the Town Pier specifically to provide easy access to public bathroom facilities if needed. • Assured that in the event of a need for a bathroom, they have the capability to transport children to the town facilities promptly and then return to activities. • Emphasized the practical measures in place to address restroom needs, underscoring that this aspect has been managed successfully without prior incidents. • Referenced the Leave No Trace Foundation, noting its role as a national leader in promoting low-impact environmental practices. • Proposed using wag bags as a variance solution for toilet facilities, which are portable and disposable systems that align with Leave No Trace principles. • Described the wag bags as foldable toilets where users can manage waste hygienically and dispose of it in the trash, offering a practical and environmentally responsible solution for temporary facilities. Lepore • Questioned the specifics of how medications should be stored and administered at the camp, especially for children with medical needs. • Clarified the need for proper storage solutions for medications such as insulin, which may need refrigeration, and EpiPens, which require secure but not necessarily refrigerated storage. • Expressed that the setup for medication storage does not seem overly complicated, implying that straightforward solutions like a locked box could be sufficient to meet safety standards.
Action:	Motion to grant the variances for one year. (Motion by: MacNab) (Seconded by: Smith) (02:22:00)
Roll-Call Vote:	Carried 3-1// MacNab, Lepore, Smith (aye) //Cooper (nay)

PFAS UPDATES

Discussion:	MacNab • Stated that PFAS regulations are advancing quickly, outpacing the town's ability to adapt at the same speed. • Acknowledged that while scientific understanding of PFAS sources on the island is still developing, state efforts are ongoing to address these uncertainties. • Mentioned local regulations related to real estate transactions and the availability of testing kits for well water at the health department. • Emphasized the need for proper testing procedures to ensure accuracy and the forthcoming guidance from the town on what steps to take if PFAS is detected in water sources. • Admitted that the town has been slow in providing necessary guidance but reassured that more detailed information and support are expected soon. • Informed that if residents find high PFAS levels in their water, they should report these findings, highlighting the need for clear instructions on how to respond to such results. Hedden • Reported that the community was the first in the state to adopt the state PFAS guidelines, highlighting the rapid pace of regulatory changes. • Described efforts to provide more guidance and information on filtration systems as part of catching up with these new regulations. • Emphasized the town's proactive stance in implementing these regulations ahead of other communities. • Outlined the availability of PFAS testing kits at the health department, including costs, collection times, and the procedure for submitting samples. • Reiterated the specifics about obtaining and using the testing kits, reinforcing the community's commitment to addressing PFAS concerns effectively.
--------------------	--

Minutes – BOH April 18, 2024, adopted May 16, 2024

DIRECTORS REPORT

Discussion:	Hedden • Indicated that operations are progressing smoothly, with a focus on various regulatory and inspection activities. • Highlighted ongoing challenges and tasks, including addressing PFAS issues, managing short-term rentals, and conducting numerous inspections related to food establishments, lodging, and soon, pools. • Announced Heather Nardone as the newest inspector, noting her rapid acquisition of knowledge and integration into the team. • Updated on Tomeka Gary's transition from office manager to the role of public health office coordinator, praising her performance and expressing satisfaction with her contributions to the department. • Expressed a positive outlook on the department's activities and staff dynamics, reaffirming a commitment to continue effective operations.
-------------	---

UPDATE ON TICK SEASON

Discussion:	Hedden • Reported the number of Lyme disease cases for 2023 was 186, a rise from 134 cases in 2022. • Noted additional tick-borne diseases, with 20 cases of Babesiosis and five cases of Anaplasmosis in 2023, compared to zero and less than five cases respectively in 2022. • Mentioned zero cases for both years for a less common tick-borne disease, <i>Borrelia miyamotoi</i>. • Introduced Leah Hamner, an epidemiologist on Martha's Vineyard, as a new contact who provided the data and seems very helpful in supporting local health initiatives. • Referenced upcoming resources and “care packages” from a biologist, Patrick (last name not recalled), to aid in local tick disease prevention and education. • Highlighted the availability of educational materials, including a recommended video of a Tick Symposium featuring Dr. Tim Lepore, available on the town website for further public guidance on tick prevention. • Expressed an intention to enhance outreach and educational content on the town's website and recommended visiting mass.gov for additional reliable information on tick-borne diseases.
-------------	--

The following items were continued to the next BOH meeting:

Update On Summer House Food Establishments And Lodging

Adoption Of New Disposal System Construction Application Permit Form And Certificate Of Compliance Form.

Adoption Of New Food Establishment Plan Review Form

ADJOURN

Action: **Motion to Adjourn at 6:34 pm.** (made by: Smith) (seconded by: MacNab)

Roll-call vote: Carried 4-0// MacNab, Cooper, Lepore, Smith

Submitted by: Elaina Cano