



TOWN OF TISBURY

office of

THE BOARD OF HEALTH

PO Box 666, 66 High Point Lane
Vineyard Haven, Massachusetts 02568

MEETING MINUTES – April 9, 2024 – 4:10 PM

The Board of Health (BOH) met at the Tisbury Town Hall Annex, 66 High Point Lane, and virtually by Zoom, meeting ID: **884 6784 0838**, Passcode: **318684**, or by phone at **646-876-9923**.

Commissioners in attendance were Chairman Malcolm Boyd and Vice Chairman Dr. Michael Loberg. Commissioner Jeff Pratt attended via Zoom. Drew Belsky, Health Agent, Fred Hehre, Assistant Health Agent, and Valerie Soushek, Administrative Secretary, were also in attendance.

Chairman Boyd called the meeting to order at 4:10 PM.

The meeting minutes for January 23, 2024 were approved as written by Commissioners Boyd and Loberg.

APPOINTMENT(s)

4:10 PM Geoff Wheeler & Don Angus – 30 Hillside Path/15-F-1.2
re: bedroom count discrepancy due to unpermitted basement apartment

At the last BOH meeting, the commissioners approved a NitROE retrofit plan for 30 Hillside Path. Shortly afterwards, it was brought to our attention that the dwelling had an unpermitted finished basement apartment. A walkthrough by D. Belsky on April 9, 2024, confirmed (4) existing bedrooms with a (3) bedroom septic system in the Lagoon Pond Watershed and DCPC (District of Critical Planning Concern), where regulations adopted in 1989 restrict additional bedrooms.

Chairman Boyd explained that there isn't a precedent for accepting such a situation.

Mr. Angus understood but stated that the company hired by the broker to generate floor plans mistakenly showed the office off the kitchen as a bedroom. The room has been used as an office by the Wheelers. Only the (2) bedrooms on the second floor are used for sleeping. There is an apartment in the basement, but the Wheelers have not altered the dwelling since they acquired it more than a decade ago. They do not wish to use the home as a 4-bedroom home. They have listed the property as a 3-bedroom dwelling, including a 1-bedroom apartment.

D. Belsky stated that his research confirmed the following-

- The original building permit for new construction was issued in 1998.
- In 2015, a weatherization permit was issued.
- The field card began showing the apartment reference in 2016.

Mr. Angus stated that they are being proactive in installing an I/A system before selling the property to get ahead of the new septic regulations. While there was an error on the floor plans in the real estate listing, it does describe it as a 3-bedroom dwelling.

Mr. Wheeler added that the property was purchased as a 3-bedroom dwelling with a finished basement, and they've only used it as a 3-bedroom dwelling plus an office. He is not interested in remodeling and devaluing the property, especially since he will have a NitROE system installed before the sale at a significant expense.

Upon inquiry by Commissioner Loberg, D. Belsky confirmed the following-

- By BOH regulations, there are (4) existing bedrooms, including the room used as an office on the first floor.
- Due to the unpermitted plumbing in the basement, it would not be possible to change the configuration by calling the basement bedroom an office.

Possible options to resolve this matter are-

- Decommissioning a bedroom.
- Ordering a deed restriction without changing the layout of the bedrooms to say it is only a 3-bedroom dwelling plus an office.

D. Belsky reminded the commissioners and property owners that as an unpermitted basement apartment, it would be necessary to apply for a special permit with the zoning board to see if they would allow the unit to remain intact. This filing should be made and acted on before deciding which bedroom to decommission. If the basement must be deconstructed, the BOH would require no changes upstairs. If the basement stays intact, then the bedroom/office door could be widened to 7 feet (removing the standard door is insufficient to remove privacy).

Mr. Wheeler was not in favor of removing the privacy factor from the office/bedroom on the first floor because it could be used as one-level living for ageing occupants. He stated that if he must get rid of one, he'll get rid of the bottom basement.

D. Belsky also suggested ordering a deed restriction for a basement with only a half bath or combining the (2) second-floor bedrooms into one room.

Mr. Angus requested consideration for a deed restriction given Mr. Wheeler's forthrightness about the proposed septic upgrade; there has been no change or violation of change in use, and renovations would cause the Wheelers financial hardship.

The commissioners concurred—that one bedroom must be removed. A deed restriction would not be sufficient without removing some walls. While they believe the intentions of Misters Wheeler and Angus are honest and straight, there is no measure of whether a deed restriction is followed when a property changes hands, not unlike when the Wheelers purchased the property with an illegal basement apartment, technically a 4-bedroom house with a 3-bedroom septic.

Mr. Angus referenced the statute of limitations under 40A, Section 7, which the commissioners were unfamiliar with and could not respond to. He also referenced a grandfather period for unpermitted work, to which D. Belsky responded that with the construction being unpermitted, it would not be preexisting nonconforming since no permits were submitted before the health board considered basement apartments to be potential issues. In this case, the BOH doesn't have proof of when the work was installed.

Mr. Angus confirmed that record restrictions, including deed notices, follow the chain of title.

Commissioner Loberg suggested that (for financial considerations) buyers of the property could be held responsible for upgrading the septic system, which Mr. Wheeler opposed as it could be a deterrent for potential buyers.

In closing, the commissioners invited Misters Angus and Wheeler to the next BOH meeting on April 23, 2024, to present their proposal for a resolution given the commissioners' requirements to decommission a bedroom.

Dusan Veselinovic – Bridle Path – re: a DWA extension – No show/no formal request for an extension received.

On June 29, 2023, Mr. Veselinovic purchased an undeveloped property on Bridle Path with an approved septic plan that expired on March 17, 2024. The plan proposed a MicroFAST system within the Lagoon Pond Watershed. He is requesting an extension of the plan given the recent BOH regulation changes on January 1, 2024.

HEALTH AGENT REPORT

Withholding of Septic Plan Approval – 30 Hillside Path – Please see the appointment summary.

ARPA (American Rescue Plan Act) grant funding updates

Two grant funding opportunities remain available, and two inquiries are pending.

MVC Montessori School Decision

Martha's Vineyard Commission (MVC) voted to approve the new building project for the Montessori School. D. Belsky is planning to approve the proposed septic plan upon confirmation of accurate calculations from Schofield Barbini & Hoehn.

Nina's Dine N Dash

It was brought to our attention that Nina's is out of compliance with most permits they hold to be in operation, including their current food establishment license. Consequently, D. Belsky and F. Hehre had them close until they bring several outstanding items into compliance.

ASSISTANT HEALTH AGENT REPORT

F. Hehre has been training in food inspections and tablet software: he's participated in (11) inspections, developed an Excel spreadsheet for documenting communication with food establishments, and studied the food code. All is going well.

DISPOSAL WORKS APPLICATIONS FOR BOARD APPROVAL

DWA 4469 Cartier / 53 Weaver Avenue / 13-B-4.2 –

A proposed NitROE retrofit for an expansion/remodel for one additional bedroom and a full basement, a total of (2) additional bedrooms. The property owners are requesting a variance to the distance from the septic tank to the building (slab) foundation for a new mudroom.

While the commissioners understand there is precedent for sealing foundation walls to prevent effluent intrusion, they requested a discussion with the property owners to understand why they cannot meet the 10' tank-to-foundation distance requirement when there appears to be room for such an adjustment.

The commissioners motioned to table their approval for more information from the property owners regarding variance #3: *Variance required to allow existing septic tank to remain in place at 8' from proposed crawl space foundation (at the mudroom).*

DWA 4470 Tucker / 142 Lake Street / 24-A-43.6 – A proposed retrofit with (2) NitROE tanks, for (4) current + (2) future bedrooms, no variances, in the Lake Tashmoo Watershed and the proposed Lake Street cluster system district. Approved.

NEW BUSINESS

57 Authier Avenue a half bath in the basement proposal – D. Belsky provided the commissioners with a rough sketch of the proposed floor plan and informed them that the property has a 3-bedroom dwelling with a 3-bedroom septic system design outside a watershed. The commissioners discussed the possibility of a half bath in the basement with a deed restriction, which they have granted on a case-by-case basis. Still, based on the sketch provided, they were concerned about potential bedrooms in other basement areas, and they voted to table a decision until additional information, including floor plan sketches for the entire dwelling, is available. D. Belsky agreed to request more thorough floor plans for review at a future board of health meeting.

OLD BUSINESS

Light Industrial Overlay Proposal update

No information to share other than Oak Bluffs taxpayers will be voting on the proposal at their town meeting tomorrow.

The next BOH meeting will be held on April 23, 2024. Commissioner Pratt will be traveling starting March 27th through mid-June.

BILLS AND PERMITS FOR APPROVAL

Chairman Boyd adjourned the meeting at 5:32 PM with no further business to conduct.

Respectfully submitted,

Valerie Soushek
Administrative Secretary

Document(s)

The Board of Health commissioners accept the meeting minutes, April 9, 2024, as presented.

Date: 23 April 2024 Signed: 