

BOARD OF HEALTH  
Thursday, April 14, 2016  
Dennis Town Offices  
Selectmen's Hearing Room

Present: Chairman Covell, Vice Chairman Bunce, Members Chamberlain, Duffy, & McDowell  
Staff: Health Director Terence Hayes, Assistant Elise Zarcaro

Mr. Covell called the meeting to order at 7:00 p.m.

## **I. ADMINISTRATIVE**

### **Re-Organization of the Board: Elect Chairman, Vice Chairman, and Clerk.**

#### **Chairman: Mr. Paul Covell**

Mr. Duffy moved to nominate Mr. Covell.  
Mrs. Chamberlain seconded the motion.

#### **VOTED**

**In favor            4**  
**Opposed            0**

#### **Vice Chairman: Mr. Joseph Bunce**

Mrs. Chamberlain moved to nominate Mr. Bunce.  
Mr. Duffy seconded the motion.

#### **VOTED**

**In favor            4**  
**Opposed            0**

#### **Clerk: Mrs. Diane Chamberlain**

Mr. Bunce moved to nominate Mrs. Chamberlain.  
Mrs. McDowell seconded the motion.

#### **VOTED**

**In favor            4**  
**Opposed            0**

## II. ACTION

### A. John & Barbara Kelly- Variance Application (Failed System)

**58 Sea Street, Unit 4, Dennisport, M.39-38 –Stephen Haas, P.E., Stephan Haas Engineering Inc.**

Mr. Covell read the legal notice: A variance request for John & Barbara Kelly, 58 Sea Street, Unit 4, who seeks the following variance(s) from the Town of Dennis Regulations for Subsurface Disposal of Sewage: **EXHIBITS/ DOCUMENTS: Complete variance application dated March 9, 2016. Memo to the Board of Health dated April 6, 2016. Title 5 Inspection Report dated December 14, 2015. Documents are available for review in the Health Department Septic System File Map 39-38.**

#### Title 5

**15.224(2): Variance requested to allow less than 48 hour detention time. The first compartment of the septic tank is required to have 48 hour detention time. The existing first compartment of the septic tank is 1000 gallons instead of the required 1100 gallons. 43.6 hour detention time is proposed. The existing second compartment is 1000 gallons, where only 550 gallons is required.**

#### **PROPOSAL:**

The applicants propose to upgrade the failed septic system for their three (3) bedroom condominium, which is part of The Wooden Whale Condominiums. Unit 4 contains a kitchen/dining room, living room, three bedrooms and two (2) bathrooms. Unit 4 shares System 1 with Unit 1, which contains two (2) bedrooms.

On December 14, 2015, the Health Department received a Title 5 Inspection Report that required "further evaluation". Following review, the Health Department determined that, while the system was designed for four (4) bedrooms, it was handling the sewage flow from five (5) bedrooms and ordered the owners to replace the system with one designed for five (5) bedrooms by December 7, 2017.

The existing septic system consists of 2 1000 gallon septic tanks and three (3) 500 gallon leaching chambers with 4' of stone around. The applicants propose to add one (1) 500 gallon leaching chamber to the existing leaching chambers. The system has been designed for five (5) bedrooms

Approval is not required from the Conservation Commission.

The engineer was called and asked to provide documentation from the condominium association granting permission to the applicants to upgrade the system.

Mr. John Kelly represented himself. Mr. Kelly read notes from his engineer Stephen Haas.

Mr. Duffy asked Mr. Hayes about detention time. Mr. Hayes explained that it is the holding capacity of the tank.

**Mrs. Chamberlain moved to grant the variance for John and Barbara Kelly, 58 Sea Street, Unit 4, Dennisport as printed in the April 6, 2016 Memorandum to the Board of Health with any previous conditions be reinstated.**

**Mr. Duffy seconded the motion.**

**VOTED**

**In favor**            **5**  
**Opposed**           **0**

**B. Michael & Anna-Jean McGillvray – VARIANCE APPLICATION (ADDITION/ALTERATION)  
 71 EASY STREET, DENNISPORT, M36-60 – Robin Wilcox, P.L.S., Sweetser Engineering, Inc.**

Mr. Covell read the legal notice: A variance request for Michael & Anna-Jean McGillvray, 71 Easy Street, Dennisport, who seek the following variance(s) from the regulations of the Mass. Department of Environmental Protection, Title 5, and the Town of Dennis Regulations for Subsurface Disposal of Sewage:

**EXHIBITS/ DOCUMENTS: Complete variance application dated March 22, 2016. Memo to the Board of Health dated April 6, 2016. Documents are available for review in the Health Department Septic System File Map 36-60.**

The applicant(s) seek the following variance(s) from the regulations of the Mass. Department of Environmental Protection, Title 5, and the Town of Dennis Regulations for Subsurface Disposal of Sewage:

**Title 5**

**15.211(1):        Variance of 7' requested from the septic tank to the foundation.  
 Variance of 8.3' requested from the septic tank to the lot line.**

**15.248(1):        No reserve area provided.**

**Town of Dennis**

**Reg. 9.0:         Variance of 7' requested from the septic tank to the foundation.  
 Variance of 8.3' requested from the septic tank to the lot line.**

**Reg. 15.0:        No reserve area provided.**

**Reg. 16.B:        Variance requested to allow an addition of habitable space in an Environmentally Sensitive Area.**

**PROPOSAL:**

The applicants propose to add a bedroom onto their existing, two (2) bedroom dwelling. The property contains 4,800 square feet of land.

The existing single-story dwelling contains a porch, open kitchen/living room, two bedrooms and a bathroom.

The 9'x12' bedroom at the rear of the house will be reduced in size to accommodate a hallway to a new 13'x12' bedroom. The proposed addition will be built on sonotube piers with the top of the floor elevation above the base flood elevation.

The applicants intend to utilize the existing septic system that was installed in 2003, except that the septic tank will be relocated north of the addition. The system consists of a 1500 gallon septic tank, and a 22.5'x 20' leaching bed, with 6' of stone, for the soil absorption system. The system was designed for three (3) bedrooms and was to include a Zabel A1800 Effluent Filter (or equal). The adjusted groundwater elevation was 15.75'.

On August 20, 2001, the Health Department granted variances for the upgrade of the septic system, subject to the following conditions:

1. **The design engineer shall submit a certified as-built plan, with elevations, to the Health Department.**
2. **No increase of habitable space to the dwelling without review by the Board of Health.**

The Conservation Commission issued a Determination of Applicability for the project on March 17, 2016.

Ms. Tanya Daigneault represented Sweetser Engineering. The owners would like to change the existing porch to a bedroom, making the existing three (3) bedroom system actually serve a three (3) bedroom dwelling. They are very close to a flood plain and groundwater. The home is only used for about one (1) month of the year.

**Mr. Bunce moved to accept the variance application for Michael & Anna-Jean McGillvray, 71 Easy Street, Dennisport, as printed with the following conditions:**

1. **No Garbage Disposal**
2. **Water-saving Devices shall be installed and verified by the Health Department.**
3. **No alteration of the floor plan to the dwelling without further review by the Board of Health.**
4. **Record Variances and conditions at the Registry of Deeds to run with the property with a copy to the Health Department**
5. **The design engineer shall submit a certified as-built plan, with elevations, to the Health Department.**
6. **An engineered report shall be submitted to the Board of Health after any inundation of the system, due to flood or natural causes.**

Mrs. Chamberlain seconded the motion.

**VOTED**

In favor	5
Opposed	0

C.

1. **OVER-EASY REALTY TRUST/DEBORAH KLIMSHUK – Show Cause Hearing for Noncompliance with an Order Issued by the Health Department to Correct a Violation of 310 CMR 15.000: The State Environmental Code, Title 5  
675 MAIN STREET, WEST DENNIS, M67-3 & 79**

Mr. Covell read the legal notice: Show Cause Hearing Over- Easy Realty Trust, Deborah Klimshuk, 675 Main Street, West Dennis, for noncompliance with an Order issued by the Health Department to correct a violation of 310 CMR 15.00, the State Environmental Code, Title 5.

**EXHIBITS/DOCUMENTS: Letters from the Health Department and Board of Health dated October 25, 2010; November 16, 2010; December 1, 2014; and March 4, 2016; Letters from Deborah Klimshuk dated October 18, 2010 and November 7, 2015. Memos to the Board of Health dated April 7, 2016. Documents are available for review in the Health Department Housing File Map 67-3.**

On December 17, 2007, a failed Title 5 report (received on 6/3/09) was submitted to the Health Department. The system failed because the inspector determined that a portion of the soil absorption system was below the high groundwater elevation.

The Board of Health granted variances for the upgrade on June 11, 2009 and on November 12, 2009, after it was remanded back by the Department of Environmental Protection.

On December 9, 2010, The Board granted a five (5) year extension to upgrade by December 17, 2014 and the Health Director granted an additional one year extension to December 1, 2015.

On March 4, 2016, the Health Department sent a show cause hearing notice to the owner informing them that the septic system was overdue for upgrade following their extended deadline of December 1, 2015.

The Health Department received a new application for variances on March 29, 2016.

John O'Reilly of J.M. O'Reilly represented the property owner, who was in attendance. Mrs. Klimshuk is looking for additional time to raise the funds for the system that is to be installed.

Mr. Covell reports that the system is not in failure and Mrs. Klimshuk stays on top of pumping and maintenance of the current system. It currently does not pose a threat to public health. Mrs. Klimshuk has been working with the Board and is working to save the necessary funds.

Mr. Hayes recommends that this be continued for two (2) years.

**Mrs. Chamberlain moved to accept Mr. Hayes' recommendation to continue the show cause hearing for two (2) years.**

**Mr. Duffy seconded the motion.**

**VOTED**

In favor	5
Opposed	0

**2. OVER-EASY REALTY TRUST/DEBORAH KLIMSHUK – VARIANCE APPLICATION (FAILED SYSTEM)  
675 MAIN STREET, WEST DENNIS, M67-3 & 79 – John M. O’Reilly, P.E., P.L.S., J.M. O’Reilly & Associates, Inc.**

Mr. Covell read the legal notice: A variance request for Over-Easy Realty Trust/ Deborah Kilmshuk, 675 Main Street, West Dennis, seek the following variance(s) from the regulations of the Mass. Department of Environmental Protection, Title 5, and the Town of Dennis Regulations for Subsurface Disposal of Sewage:

**EXHIBITS/DOCUMENTS: Complete variance application dated March 29, 2016. Letters from the Health Department and Board of Health dated October 25, 2010; November 16, 2010; December 1, 2014; and March 4, 2016; Letters from Deborah Kilmshuk dated October 18, 2010 and November 7, 2015. Memo to the Board of Health dated April 7, 2016. Documents are available for review in the Health Department Housing File Map 67-3**

The applicant(s) seek the following variance(s) from the regulations of the Mass. Department of Environmental Protection, Title 5, and the Town of Dennis Regulations for Subsurface Disposal of Sewage:

**Title 5**

- 15.211(1): Variance of 11’ requested from the soil absorption system to the cellar wall.**  
**15.203: Variance of 40% requested – the soil absorption system is not designed at 100% capacity – 60% held.**

**Town of Dennis**

- Reg. 9.0: Variance of 11’ requested from the soil absorption system to the cellar wall.**

**PROPOSAL:**

On June 11, 2009, the Board granted variances for the upgrade and the applicant applied to the Department of Environmental Protection for a “Request for Alternative Design Flow”. The DEP determined that the applicants were not required to obtain the permit, in light of the proposed I/A system for the facility. A variance from the Board of Health and DEP’s regional office from disposal area sizing requirements and distance to groundwater, as allowed by use of the proposed wastewater treatment technology, would accomplish what the applicant was proposing.

On November 12, 2009, the Board granted variances (copy attached) for the upgrade of the failed septic system, subject to the following conditions:

- 1. An annual maintenance agreement report shall be submitted to the Health Department verifying that the Zabel Filters have been cleaned and are functioning properly.**
- 2. If the use of the building changes to anything other than a “breakfast room”, the proposed use shall be reviewed by the Board of Health.**
- 3. No garbage disposal.**
- 4. Water-saving devices shall be installed and verified by the Dennis Plumbing Inspector.**
- 5. No alteration of the floor plan to the dwelling without further review by the Board of Health.**

6. **Record variances and conditions at the Registry of Deeds to run with the property with a copy to the Health Department.**
7. **The design engineer shall submit a certified as-built plan, with elevations, to the Health Department.**
8. **A signed maintenance agreement for the alternative system shall be submitted to the Health Department, prior to the release of the Disposal System Construction Permit. The O&M agreement for the alternative system shall include a requirement for testing. This testing shall be conducted four (4) times per year for TKN, BOD5, pH, nitrate, and temperature. After two (2) years of operation, the applicant shall return to the Board of Health for review of the alternative septic system.**
9. **A time-run meter shall be installed and hard-wired into the main electrical panel.**
10. **An engineered report shall be submitted to the Board of Health after any inundation of the system, due to flood or natural causes.**

The proposed septic system has been redesigned to avoid the 100' setback variance to wetland and the need for alternative enhanced treatment for the 96 seat restaurant. The proposed plan utilizes the existing information from the previous design and, if the Board grants the variances, the plans will be finalized to confirm the existing conditions and prepared for construction/permit purposes.

The design flow for the system is based on the 96 seat Title 5 tabular flow (35 gpd per seat) of 3360 gpd. The proposed design eliminates the FAST treatment units and replaces them with a Presby Leach Field System, which has been located beyond the 100 foot setback from the wetlands. The Presby technology allows for a 40% reduction in leaching facility size and a minimum separation to maximum high groundwater of 3'.

The proposed system will consist of an H-20, 2000 gallon grease trap, an H-20, 7500 gallon septic tank, an H-20, 4000 gallon septic tank, an H-20, 4500 gallon pump chamber, and an Enviro-Septic Wastewater Treatment System. The restaurant is open 271 days per year and the average daily flow to the system (147,750 gpd/271 days) is 545 gpd. The actual nitrogen loading calculations is 9.60 ppm for the daily flow of 545 gpd.

The Conservation Commission extended the permit for the Order of Conditions to May 28, 2017.

John O'Reilly of J.M. O'Reilly, reported that there are wetlands in the area. With the proposed Presby System, the nitrogen load is very low.

Mr. Hayes reported that the system has remedial use.

Mr. Duffy questioned about the original design which called for I/A technology, but this system does not include it. He noted that the nitrogen load is even lower with this design.

**Mr. Bunce moved to accept the variance application for Over-Easy Realty Trust/ Deborah Klimshuk, 675 Main Street, West Dennis as printed with the following conditions:**

1. No garbage disposal.
2. Water-saving device shall be installed and verified by the Health Department.
3. Record variance and conditions at the Registry of Deeds to run with the property with a copy to the Health Department.
4. The design engineer shall submit a certified as-built plan, with elevations, to the Health Department.
5. An engineered report shall be submitted to the Board of Health after and inundation of the system, due to flood or natural causes.

Mrs. Chamberlain seconded the motion.

VOTED

In favor	5
Opposed	0

D.

1. Randy & Sharon Pfenniger, et ux – Continue Show Cause Hearing for Noncompliance with an Order Issued by the Health Department to Correct a Violation of 310 CMR 15.00, The State Environmental Code, Title 5 (continued from 10/8/2015).  
1 Clarlaw Way, West Dennis, M49-121

Mr. Covell read the legal notice: Show Cause Hearing for Randy & Sharon Pfenniger, 1 Clarlaw Way, West Dennis, for noncompliance with an Order issued by the Health Department to correct a violation of 310 CMR 15.00, the State Environmental Code, Title 5.

**EXHIBITS/ DOCUMENTS: Complete variance Application dated March 30, 2016. Title 5 Official Inspection Form dated September 21, 2004. Letter to the property owners dated November 2, 2004. Email to the Health Department from property owner dated June 4, 2014. Letters to property owner from the Health Department dated June 12, 2015; July 9, 2015; July 14, 2015; August 3, 2015; August 19, 2015; September 17, 2015; October 14, 2015; December 29, 2015. Letter from Robert Perry, Engineer to Board of Health dated July 6, 2015. Email correspondence between Health Department staff and property owner dated October 5, 2015; October 8, 2015; October 20, 2015; October 22, 2015; October 28, 2015; December 29, 2015; January 7, 2016; January 19, 2016 ; February 11, 2016. Email From Engineer Robert Perry dated December 29, 2015. Memos to the Board of Health dated May 29, 2015; July 2, 2015; August 7, 2015; September 3, 2015; September 29, 2015; December 29, 2015; February 4, 2016; March 3, 2016; . Documents are available for review in the Health Department Septic System File Map 49-121.**

At the March 10, 2016 show cause hearing, staff informed the Board that the owner's engineer, Robert Perry, reported that they would not be installing the urine diverting toilets, as planned, but would install



a standard alternative system. Mr. Perry was in the process of preparing the plans and would file for approval from the Conservation Commission and then the Board of Health, immediately thereafter. The Board voted to continue the hearing to April 14, 2016.

The Health Department received an application and plans for a variance on March 30, 2016.

**HISTORY:**

On February 10, 2000, the Board granted variances for the voluntary upgrade of the septic system, subject to the following conditions:

1. **A signed maintenance agreement for the alternative system (Singulair) shall be submitted to the Health Department, prior to the release of the Disposal System Construction Permit. The alternative design shall be tested (from the distribution box) twice each year, for a period of two years, for total nitrates, TSS, BOD5, specific conductance, pH and temperature.**
2. **The test results shall be submitted to the Board of Health at the end of the two year period for review.**

**The new system was not installed.**

On September 21, 2004, the septic system was inspected by a Title 5 Inspector who failed the system because of the following:

1. Backup of sewage into facility or system component due to overloaded or clogged SAS or cesspool.
2. Any portion of the SAS, cesspool or privy is below high ground water elevations.
3. Any portion of the cesspool or privy is within 100' of a surface water supply or tributary to a surface water supply.

The Health Department sent an order to upgrade the system by **September 21, 2006**.

A show cause hearing was, originally, scheduled for June 11, 2015 and has been continued to allow the owners the opportunity to explore the possibility of using composting toilets at the property. In the interim, preliminary plans for the upgrade were prepared by Cape Cod Engineering.

At the October 8, 2015 hearing, the owners informed the Board that they were waiting for a response from the State Board of Plumbers & Gas Fitters regarding the installation of urine diverting toilets. The Board voted to continue the hearing to January 14, 2016, and instructed the owners to continue communications with the Health Department.

On November 11, 2015, Ms. Pfenninger sent an e-mail to the Health Director informing him that she received permission to work under the Bourne permit for the urine diverting toilet. This now allows Cape Cod Engineering to proceed with designing the septic system.

On December 1, 2015, Robert Perry, of Cape Cod Engineering, forwarded an e-mail addressing the septic system design options with use of the urine diverting toilet (a copy is attached).

At the January 14, 2016 hearing, Staff reported that the Pfenningers intend to install a Drip system with a two-stage, pre-treatment Innovative/Technology System to replace their failed system and their engineer was working on the final design.

On January 19, 2016, Mrs. Pfenninger sent an e-mail confirming that they have decided to use the aforementioned system and a design was being developed by Cape Cod Engineering.

As of January 19, 2016, the system has been pumped seven (7) times, since May 25, 2013 (5/25/13, 8/7/13, 7/2/14, 8/25/14, 6/24/15, 7/23/15 and 8/17/15). The pumping report is attached.

At the February 11, 2016 meeting, staff reported that the owners submitted an e-mail explaining that their engineer has filed with the Conservation Commission for their March 3, 2016 meeting and will file with the Board of Health immediately thereafter.

The Board voted to continue the hearing to March 10, 2016.

Bob Perry of Cape Cod Engineering was present and representing the homeowners.

Mr. Hayes reports that the Pfenningers are requesting variances in Agenda Item D2.

Mr. Perry says that they are proceeding with upgrades after a very long time. They have filed with the Conservation Commission.

Mr. Hayes urges the Board of Health to continue this item until the system has been installed.

**Mrs. McDowell moved to accept Mr. Hayes' suggestion to continue this item until the system has been installed.**

**Mrs. Chamberlain seconded the motion.**

**VOTED**

<b>In favor</b>	<b>5</b>
<b>Opposed</b>	<b>0</b>

**2. Randy & Sharon Pfenninger, et ux – VARIANCE APPLICATION (FAILED SYSTEM)  
1 CLARLAW WAY, WEST DENNIS, M49-121 – Robert M. Perry, P.E., Cape Cod  
Engineering**

Mr. Covell read the legal notice: A variance request for Randy & Sharon Pfenninger, et ux, 1 Clarlaw Way, West Dennis, who seek the following variance(s) from the regulations of the Mass. Department of

Environmental Protection, Title 5, and the Town of Dennis Regulations for Subsurface Disposal of Sewage:

**EXHIBITS/ DOCUMENTS: Complete variance Application dated March 30, 2016. Title 5 Official Inspection Form dated September 21, 2004. Letter to the property owners dated November 2, 2004. Email to the Health Department from property owner dated June 4, 2014. Letters to property owner from the Health Department dated June 12, 2015; July 9, 2015; July 14, 2015; August 3, 2015; August 19, 2015; September 17, 2015; October 14, 2015; December 29, 2015. Letter from Robert Perry, Engineer to Board of Health dated July 6, 2015. Email correspondence between Health Department staff and property owner dated October 5, 2015; October 8, 2015; October 20, 2015; October 22, 2015; October 28, 2015; December 29, 2015; January 7, 2016; January 19, 2016 ; February 11, 2016. Email From Engineer Robert Perry dated December 29, 2015. Memos to the Board of Health dated May 29, 2015; July 2, 2015; August 7, 2015; September 3, 2015; September 29, 2015; December 29, 2015; February 4, 2016; March 3, 2016; . Documents are available for review in the Health Department Septic System File Map 49-121.**

#### Title 5

**15.211(1): Variance of 4' requested from the soil absorption system to the lot line.**

#### Town of Dennis

**Reg. 9.0: Variance of 4' requested from the soil absorption system to the lot line.**

**Variance of 50' requested from the soil absorption system to the wetland.**

**Reg. 8.D-1: Variance from the USGS groundwater adjustment is requested. The site is located at the outside edge of the mapped boundary of the range zone "A" due to the presence of a wetland and marsh associated with a tidal coastal wetland, as area where the water level range zone map is not applicable. Monitor well study from July 2015 to February 2016 yields a resulting observed high groundwater elevation of 3.7 NAVD88; Frimpter adjustment from July observation give H.G. EL=3.7 (coincidentally).**

#### **PROPOSAL:**

The applicants propose to upgrade the existing failed septic system, per the order of the Health Department.

The existing dwelling contains a living room, kitchen, three (3) bedrooms and a bathroom. The property contains 7,400 square feet of land and borders vegetated wetland.

The proposed septic system consists of an H-20, 1500 gallon MicroFAST 0.5 septic tank, a pump chamber, and a 34' long leaching bed with 2 rows of Cultec C4 chambers, for the soil absorption system. The system has been designed for three (3) bedrooms.

The Conservation Commission issued a Determination of Applicability on March 17, 2016.

Bob Perry, Cape Cod Engineering, reported that they will be using a 0.5 Microfast I/A System. He explained the variances that they have requested and proposed that the system be put in the side yard. He believes that with the I/A system and the existing vegetation the wetlands can tolerate more relief. Mr. Perry reported that he has monitored the well at the soil test site that was done in July 2015. Over the past six (6) to eight (8) months the reading has been 3.7. He stated that this is where the Frimpter Method maps fail. The Pfenniger's will need a containment wall.

Mr. Duffy asked about a disinfection unit.

Mr. Hayes reported that it is a great distance from any sensitive receptor.

**Mrs. McDowell moved to accept the variance application for Randy and Sharon Pfenniger, 1 Clarlaw Way, West Dennis, with the following conditions:**

1. **No garbage disposal.**
2. **Water-saving devices shall be installed and verified with the Health Department.**
3. **No alteration of the floor plan to the dwelling without further review by the Board of Health.**
4. **The exposed retaining wall shall have soil, vegetative or textured covering.**
5. **Record variance and conditions at the Registry of Deeds to run with the property with a copy to the Health Department.**
6. **The design engineer shall submit a certified as-built plan, with elevations, to the Health Department.**
7. **A signed maintenance agreement for the alternative system shall be submitted to the Health Department, prior to the release of the Disposal Systems Construction Permit. The O & M agreement for the alternative system shall include the requirement for testing. This testing shall be conducted four (4) times per year for TKN, TSS, BOD5, pH, nitrate, and temperature. After two (2) years of operation, the applicant shall return to the Board of Health for review of the alternative system.**
8. **A time-run meter shall be installed and hard-wired into the main electrical panel.**
9. **An engineered report shall be submitted to the Board of Health after any inundation of the system, due to flood or natural causes.**

Mr. Bunce requested the addition of condition number four (4): The exposed retaining wall shall have a soil, vegetative, or textured covering.

Mr. Duffy seconded the motion.

**VOTED**

In favor	5
Opposed	0

E. **CHRISTOPHER D. BIRDSEY – VARIANCE APPLICATION (ADDITION/ALTERATION/FAILED SYSTEM)**

**58 FEATHERBED LANE, DENNIS, M353-7 – Richard J. O’Hearn, R.J. O’Hearn, P.L.S.**

Mr. Covell read the legal notice: A variance request for Christopher D. Birdsey, 58 Featherbed Lane, Dennis, who seek the following variance(s) from the regulations of the Mass. Department of Environmental Protection, Title 5, and the Town of Dennis Regulations for Subsurface Disposal of Sewage:

**EXHIBITS/DOCUMENTS: A complete variance application dated March 30, 2016. A failed Title 5 Inspection Report dated May 4, 2015. Memo to the Board of Health dated April 7, 2016. Documents are available for review in the Health Department Septic File Map 353-7.**

**Title 5**

**15.221(7): Variances requested to allow components to be more than 36” below finish grade:  
Variance of 1.9’ requested to allow the septic tank to be 4.9’ below grade.  
Variance of 2.9’ requested to allow the pump chamber to be 5.9’ below grade.**

**Town of Dennis**

**Reg. 9.0: Foundations of dwellings shall be not less than 2’ above the lowest point of the road.  
Low point of road = El. 136.2. Top of foundation of existing dwelling = El. 103.0±.  
Variance of 35’ requested.**

**Reg. 16.B: Variance requested to allow an addition/alteration of habitable space in an Environmentally Sensitive Area.**

**PROPOSAL:**

The applicants plan to renovate and construct an addition to their existing five (5) bedroom dwelling. The property contains 126,020 square feet of land that borders Scargo Lake, to the north.

The existing first floor contained a kitchen, dining room, bedroom, living room, foyer and a sun room. The second floor contained four bedrooms and two (2) bathrooms.

The proposed first floor will contain a master suite, living room, dining room/kitchen, two bathrooms and an equipment storage closet. The second floor will contain three bedrooms and two (2) bathrooms.

There is a note on the plan that the fifth bedroom will be located in the basement.

The septic system failed a Title 5 inspection on April 13, 2015 and the owner is under order to upgrade the system by April 13, 2017. The existing septic system consists of three (3) cesspools.

The proposed septic system will consist of a 2500 gallon septic tank, a 1500 gallon pump chamber and 48' long x 11' wide x 2' deep soil absorption system. The system has been designed for five (5) bedrooms and does not contain I/A technology.

This property also contains a garage and a pool house. The engineer states that there are no rooms above the garage. The owner is currently before the Zoning Board of Appeals to convert the pool house into a two-bedroom in-law house. The hearing has been continued to May 23, 2016. The pool house has its own septic system (installed in 1981) and had a Title 5 septic system inspection on April 13, 2015. The owner is under order to repair or replace the outlet of the septic tank and the inlet and outlet of the distribution box. The deadline for the repair was June 5, 2015; however, the system hasn't been repaired to date.

The Conservation Commission has signed off of the project as "approval not required".

Dick O'Hearn, R.J. O'Hearn, reports that the existing five (5) bedroom home will remain a five (5) bedroom home. The designed system is a pump system since the elevation of the lot varies. He reports that the Historic District requires planting, but he did not include this in his nitrogen loading calculation. Mr. Bunce said that this property abuts Scargo Lake, but the soil absorption system is still above the lakes surface.

**Mr. Bunce moved to approve the variance application for Christopher Birdsey, 58 Featherbed Lane, Dennis, per memorandum dated April 7, 2016 as printed with the following conditions:**

1. **No garbage disposal.**
2. **Water-saving devices shall be installed and verified with the Health Department.**
3. **No alteration of the floor plan to the dwelling without further review by the Board of Health.**
4. **Record variance and conditions at the Registry of Deeds to run with the property with a copy to the Health Department.**
5. **The design engineer shall submit a certified as-built plan, with elevations, to the Health Department.**

Mrs. Chamberlain seconded the motion.

**VOTED**

In favor	5
Opposed	0

- F. **Janet A. Santiago – Show Cause Hearing for Noncompliance with an Order Issued by the Health Department to Correct Violations of 310 CMR 15.000: The State Environmental Code, Title 5, and The State Sanitary Code, 105 CMR 410.000, Chapter II: Minimum Standards of Fitness for Human Habitation**  
**17 FIDDLER'S GREEN LANE, WEST DENNIS, M14-54**

Mr. Covell read the legal notice: An appeal hearing for Janet A Santiago, 17 Fiddlers Green Lane, West Dennis, for noncompliance with an order issued by the Health Department to correct violations of The State Sanitary Code, 105 CMR 410.000 Chapter II, Minimum Standards of Fitness for Human Habitation:

**EXHIBITS/DOCUMENTS: Complaint dated August 13, 2015. Letters from the Health Department dated August 18, 2015; September 18, 2015; March 18, 2016. Email Correspondence between the Health Department Staff and the Home Owner dated March 17, 2016; March 28, 2016. Memo to the Board of Health dated April 7, 2016. Documents are available for review in the Health Department Housing File Map 14-54.**

On September 10, 2015, the Dennis Board of Health met to hear Ms. Santiago's appeal of the Health Department's order, issued on August 18, 2015, to correct septic system and housing violations

She informed the Board that she has rented this property for the past 18 years and at the beginning of each season, she has the system pumped. Within a few days of the tenants moving in, she received notices from her realtor with complaints about the septic system. She hired a septic hauler, who found nothing wrong with the system, and then Ready Rooter, who used a camera, found a blockage caused by a package of baby wipes that had been flushed down the toilet. She asked to have the violations dismissed and stated that she would no longer rent her home and that it would be used, strictly, for personal use only.

Following the discussion, the Board voted (5-0) to vacate the order to correct the violations of 310 CMR 15.000, The State Environmental Code, Title 5, and 105 CMR 410.000, Chapter II: Minimum Standards of Fitness for Human Habitation, and MGL, Chapter 111, Section 122, for the property at 17 Fiddler's Green Lane, West Dennis.

On September 18, 2015, the Health Department sent an affidavit form, along with the Board's decision letter, asking her to sign and date it and return it to our office. The affidavit states that you no longer intend to rent the property. However, the form was not returned.

On February 1, 2016, the Health Department posted payment and issued a 2016 Rental Occupancy Permit; therefore, it appeared that the property would continue to be rented.

The Health Department scheduled a show cause hearing to have Ms. Santiago address the outstanding violations prior to the rental of the dwelling.

**UPDATE:**

On March 28, 2016, Ms. Santiago sent an e-mail to explain that she is not renting her home and thought she had returned an affidavit to us last fall. She sent a renewal application for a 2016 Rental Occupancy

Permit because her children intend to use the house and she thought she needed a permit. However, she will be moving into the house in June. She is currently in Florida and, therefore, she will not be able to attend the hearing.

The Health Department received her "Not Renting Affidavit", therefore, she is in compliance with the Board's order.

Staff recommended that the show cause hearing be removed from the agenda.

The homeowner was not in attendance.

Mr. Hayes reported that Janet Santiago is in compliance.

**Mrs. Chamberlain moved to remove this item from the agenda.**

**Mr. Duffy seconded the motion.**

**VOTED**

In favor	5
Opposed	0

- G. MARK & ANTONINA WEARE – Show Cause Hearing for Noncompliance with an Order Issued by the Health Department to Correct a Violation of 310 CMR 15.000: The State Environmental Code, Title 5  
78 SURFSIDE ROAD, WEST DENNIS, M11-2**

Mr. Covell read the legal notice: Show Cause Hearing for Mark and Antonia Weare, 78 Surfside Road, West Dennis, for noncompliance with an Order issued by the Health Department to correct a violation of 310 CMR 15.00, the State Environmental Code, Title 5.

**EXHIBITS/DOCUMENTS: Letter from the Health Department dated November 30, 2015. Letter from the Board of Health dated March 4, 2016. Documents are available for review in the Health Department Housing File Map 11-2.**

On November 30, 2015, the Health Department found that the grading over the newly installed septic system at 78 Surfside Road, West Dennis, had been changed and with an increased weight bearing load on top of the components, the system could potentially be put into failure. The owner was ordered to have the system inspected by a Certified Septic System Inspector within 30 days. However, to date, the Health Department has not received the report.

The homeowners were not in attendance.



Mr. Covell asked if there had been any contact.

Mr. Hayes reported that there had been no contact with the property owners. The last the Health Department heard from them was that they needed more time to install the I/A system.

There was discussion among Board Members. There has been no communication and Mrs. Chamberlain does not like being ignored. The Board Members discussed sending this matter to court.

**Mrs. Chamberlain moved to send this matter to court.**

**Mr. Duffy seconded.**

**VOTED**

In favor            5  
Opposed            0

- H. **MATTHEW FREDRICKS - Show Cause Hearing for Noncompliance with an Order Issued by the Health Department to Correct a Violation of 310 CMR 15.000: The State Environmental Code, Title 5  
3 INDIAN MOUND TRAIL, DENNISPORT, M100-10**

Mr. Covell read the legal notice: Show Cause Hearing for Matthew Fredricks, 3 Indian Mound Trail, Dennisport, for noncompliance with an Order issued by the Health Department to correct a violation of 310 CMR 15.00, the State Environmental Code, Title 5.

**EXHIBITS/DOCUMENTS: Letters from the Health Department dated July 10, 2015; August 27, 2015; September 18, 2016; January 14, 2016; March 4, 2016. Complaint dated January 14, 2016. Email from abutter dated April 6, 2016. Memo to the Board of Health dated April. Documents are available for review in the Health Department Housing File Map 100-10.**

Matthew Fredricks' turned the house over with equity to his step-daughter, Theresa Fredericks, who attended the meeting. She has had many troubles with the home. She had to repair the roof after it caved in after a snow storm and issues with the shed. Now she is having trouble getting a loan since she does not officially own the property. She has had appraisals done to evaluate the value of the home and is working with a broker to be in the first time home buyers program. When it rains the system floods and causes an issue. Theresa has had JM O'Reilly come out and she's had elevations looked at. She was granted two (2) years by the court to upgrade, but it was withdrawn and she had until April 16, 2016 to upgrade the system. She asked for more time (three (3) months) to get the property into her name in order to get the loan she needs to pay for the septic system.

Mr. Hayes reported that the leaching facility is in full failure. When the pump chamber is pumped, it blows out the side of the distribution box and out onto the neighbor's property and is affecting his

septic system. Mr. Hayes urged the Board of Health to deem this property “unfit for human habitation” and condemn the property.

There was discussion about the appearance of the system and the sewage flowing onto the surface of the ground.

Theresa reported that she had Robert B. Our Co. pump the septic in January and Tuesday, April 5, 2016. The pumper told Theresa that the system should be fine for the time being if it was pumped every six (6) weeks.

Mr. Hayes said as long as the pump does not turn on, it is okay, but once it does, it sprays.

There was discussion about an abutters email and what would happen if the Board deemed the property uninhabitable.

Mr. Covell asked if Theresa could get someone out to pump on a regular basis. She said that is what she has been doing.

There was further discussion about pumping and a time frame.

**Mr. Duffy moved to grant a three (3) month extension for the show cause hearing for Matthew Fredricks, 3 Indian Mound Trail, Dennisport with the following exceptions:**

- 1. The system must be pumped every four (4) weeks.**
- 2. The records of the pumping must be submitted to the Health Department.**
- 3. Should the property not be transferred and this is not resolved in ninety days, the property will be condemned and deemed unfit for human habitation.**

**Mrs. Chamberlain seconded the motion and stated the next pumping shall be on May 10, 2016.**

**VOTED**

<b>In favor</b>	<b>5</b>
<b>Opposed</b>	<b>0</b>

- I. William N. Kennedy, Et Al - Continued Show Cause Hearing for Noncompliance with an Order Issued by The Health Department to Correct Violations of The State Sanitary Code, 105 CMR 410.000 Chapter II, Minimum Standards of Fitness for Human Habitation (continued 2/11/16)**  
**5 Regis Road, Dennisport, M.59-44.**

Mr. Covell read the legal notice: A variance application for William N. Kennedy et al, 5 Regis Road, for noncompliance of an order issued by the Health Department to correct violations of The State Sanitary

Code, 105 CMR 410.000 Chapter II, Minimum Standards of Fitness for Human Habitation continued from March 10, 2016:

**EXHIBITS/DOCUMENTS: Complaint report dated June 23, 2015. Letters from the Health Department dated June 24, 2015; August 26, 2015; January 21, 2016; February 11, 2016; February 19, 2016; March 10, 2016. Memos to the Board of Health dated February 11, 2016; March 1, 2016; April 4, 2016. Email correspondence dated August 31, 2015; March 1, 2016. Documents are available for review in the Health Department Housing File Map 59-44.**

On April 1, 2016 Mr. Kennedy came into the Health Office to explain that the drywell that was noted on the original inspection report had been previously filled in and that there was no washing machine in the dwelling. There are no other drywells located on the property. All other violations had been corrected, and Mr. Kennedy's presence is not required at the April Board of Health meeting.

Mr. Bunce moved to remove this item from the agenda.

Mr. Duffy seconded the motion.

**VOTED**

<b>In favor</b>	<b>5</b>
<b>Opposed</b>	<b>0</b>

- J. RICHARD & MAUREEN COUTU – Variance Requested from the Habitable Space Requirements of The State Sanitary Code, 105 CMR 410.000, Chapter II, Minimum Standards of Fitness for Human Habitation  
6 FENWAY ROAD, DENNISPORT, M38-176**

Mr. Covell read the legal notice: A variance application for Richard & Maureen Coutu, 6 Fenway Road, Dennisport, from the Habitable Space Requirements of The State Sanitary Code, 105 CMR 410.000 Chapter II, Minimum Standards of Fitness for Human Habitation:

**EXHIBITS/DOCUMENTS: Letters from the Health Department dated March 14, 2016; March 23, 2016. Email correspondence dated March 23, 2016. Documents are available for review in the Health Department Housing File Map 38-176.**

Rich Coutu was present. He reported that the property has been in the family since the 1960's. They have previously had occupancy permits for six (6), but the recent measurement only allows for five (5). He requested that the occupancy be moved back to the original six (6).

**Mrs. Chamberlain moved to grant the variance request from the Habitable Space Requirements of The State Sanitary Code, 105 CMR 410.000 Chapter II, Minimum Standards of Fitness for Human Habitation for Richard and Maureen Coutu, 6 Fenway Road, Dennisport to increase the occupancy from five (5) to six (6).**

Mrs. McDowell seconded the motion.

**VOTED**

In favor	5
Opposed	0

- K. **BRIAN MCMANUS & GARRETT SMITH** – Show Cause Hearing for Noncompliance with the Town of Dennis Housing Space & Use By-Law  
16 & 18 OLD MAYFAIR ROAD, SOUTH DENNIS, M171-17

Mr. Covell read the legal notice: A Show Cause Hearing for Brian McManus & Garrett Smith, 16 & 18 Old Mayfair Road, South Dennis, for noncompliance of the Town of Dennis Housing Space & Use By-Law.

**EXHIBITS/DOCUMENTS: Letters from the Health Department dated January 28, 2016; February 17, 2016; April 1, 2016. Property Not for Rent Affidavit dated April 14, 2016. Documents are available for review in the Health Department Housing File Map 171-17.**

Mr. McManus came into the Health Office on April 14, 2016 and stated that the duplex at 16 & 18 Old Mayfair Road, South Dennis, is not rented. He stated that he occupies one side and the co-owner occupies the other side.

He completed an affidavit stating that the property is not rented. The Health Department Staff recommends this item be removed from the agenda.

Mr. Duffy moved to remove this item from the agenda.

Mr. Bunce seconded the motion.

**VOTED**

In favor	5
Opposed	0

- L. **DEBORAH J. PAULIN** – Show Cause Hearing for Noncompliance with an Order Issued by the Health Department to Schedule an Appointment for an Inspection for Possible Violations of 105 CMR 410.000: : **Minimum Standards of Fitness for Human Habitation**  
59 MAIN STREET, UNIT 7-3, DENNIS, M223-2

Mr. Covell read the legal notice: A Show Cause Hearing for Deborah J. Paulin, 59 Main Street, Unit 7-3, Dennis, for noncompliance of the Town of Dennis Housing Space & Use By-Law.

**EXHIBITS/DOCUMENTS: Complaint dated January 15, 2016. Letters from the Health Department dated January 29, 2016; March 31, 2016. Documents are available for review in the Health Department Housing File Map 223-2.**

No one was in attendance for this property. There has been no correspondence or response to certified mail.

Mr. Hayes reported that the Police Department referred the complaint to the Health Department for unsanitary living conditions and possible hoarding. The agents have not had access to inspect further.

**Mr. Bunce moved to send this matter to court.**

**Mrs. McDowell seconded the motion.**

**VOTED**

In favor            5  
Opposed            0

### **III. AGENDA ITEMS**

- 1. JOHN J. BORKOWSKI – Review Proposed Floor Plans for Alteration of Habitable Space, Per Board of Health Condition  
16 ELLIOTT DRIVE, WEST DENNIS, M51-102**

On February 11, 2016, the Board granted a variance for the alteration of habitable space in an Environmentally Sensitive Area. At that time, the applicant proposed to add a second floor to his existing, single-story, two (2) bedroom dwelling. The second floor was to contain one bedroom. The existing septic system was installed in 2005 and was designed for three (3) bedrooms. The property is considered environmentally sensitive because a portion of the lot has groundwater within 6' of the natural grade.

The application was approved, subject to the following conditions:

- 1. A revised plan shall be submitted to the Health Department showing the addition of an Innovative/Alternative Technology system and an Ultraviolet Disinfecting Unit.**
- 2. No garbage disposal.**
- 3. Water-saving devices shall be installed and verified by the Health Department.**
- 4. No alteration of the floor plan to the dwelling without further review by the Board of Health.**
- 5. Record variances and conditions at the Registry of Deeds to run with the property with a COPY TO THE HEALTH DEPARTMENT.**
- 6. The design engineer shall submit a certified as-built plan, with elevations, to the Health Department.**
- 7. A signed maintenance agreement for the alternative system shall be submitted to the Health Department, prior to the release of the Disposal System Construction Permit. The O & M**

agreement for the alternative system shall include a requirement for testing. This testing shall be conducted four (4) times per year for TKN, TSS, BOD5, pH, nitrate, and temperature. After two (2) years of operation, the applicant shall return to the Board of Health for review of the alternative septic system.

8. A signed operation and maintenance agreement for the ultraviolet disinfection unit shall be submitted to the Health Department prior to the release of the Disposal System Construction Permit. The effluent shall be tested for fecal coliform four (4) times per year.
9. A time-run meter shall be installed and hard-wired into the main electrical panel.
10. An engineered report shall be submitted to the Board of Health after any inundation of the system, due to flood or natural causes.

Mr. Borkowski is abandoning his plans to add a third bedroom because he does not wish to install an I/A technology system. He now proposes to raise the ceiling height by 10" (currently 7'-2"). The attic will remain an attic; however, it will house an HVAC indoor unit/utility area, with duct work throughout, as well as a storage area.

Scott Collary, contractor, was present to represent the homeowners. The homeowners no longer want to add a second story third bedroom, but would like to raise the ceilings to a height of eight (8) feet. The dwelling will remain a two (2) bedroom dwelling.

**Mr. Bunce moved to rescind the variances granted on February 11, 2016 for the addition of habitable space in an Environmentally Sensitive Area and approve the revised plans for John Borkowski, 16 Elliott Drive, West Dennis, as presented.**

**Mr. Duffy seconded the motion.**

**Mrs. Chamberlain moved to add the condition that there is no alteration of the floor plan to the dwelling without further review of the Board of Health.**

**Mrs. McDowell seconded the motion.**

**VOTED**

<b>In favor</b>	<b>5</b>
<b>Opposed</b>	<b>0</b>

2. **WINSTON A. STEADMAN, II/BJORNHOLM FAMILY TRUST – Request to Remove/Eliminate the Ultraviolet Disinfecting Unit from the Singular System**  
**31 JIMMY CROWELL'S PATH, DENNIS, M278-12**

Winston Steadman, All Cape Environmental/Sigmund Environmental and licensed operator, reported that he has mixed emotions about ultraviolet treatment in residential units. The particular unit that was installed is very dangerous. The unit that was installed is an SDR35 which has the least amount of ultraviolet resistance of all pipes. It is in a trap configuration. These pipes are manufactured to be covered up or installed inside before it is buried away from ultraviolet light. This unit was manufactured with an ultraviolet light bulb in it. The pipe becomes brittle and being in a trap configuration, sediment

builds up and it needs to be cleaned out periodically. Winston suspects that the unit has collapsed. He will not know until he takes it apart; he would not like to add the ultraviolet unit back into the system.

There was discussion about the location of the property and its proximity to the wetlands.

Winston will apply for the repair permit to add a Salcor ultraviolet disinfection unit to the system.

**Mrs. Chamberlain moved to deny the request to remove/eliminate the ultraviolet disinfection unit at 31 Jimmy Crowell's Path, Dennis.**

**Mr. Duffy seconded the motion.**

**VOTED**

In favor	5
Opposed	0

#### **IV. MINUTES**

##### **1. Regular Meeting of March 10, 2016**

**Mr. Bunce moved to approve the March 10, 2016 minutes as printed.**

**Mrs. McDowell seconded the motion.**

**VOTED**

In favor	5
Opposed	0

**Mrs. Chamberlain moved to adjourn the April 14, 2016 meeting of the Board of Health.**

**Mr. Duffy seconded the motion.**

**The meeting adjourned at 8:14 pm.**