



TOWN OF GROTON
Board of Health
173 Main Street
Groton, Massachusetts 01450

MEETING MINUTES
August 2, 2010

Board of Health Members Present:

Jason Weber, Chairman
Robert Fleischer, Member
Dr. Susan Horowitz, Member

Others Present:

Land Use Director Michelle Collette
Margot Hammer

Meeting Called to Order:

Chairman Weber called the meeting to order at 7:10 pm in the Town Hall.

Permits Signed:

Jon Sjoberg, 534 Martins Pond Road

534 Martins Pond Rd.

Present: Stan Dillis

Cory Rooney, abutter

Mr. Dillis said this is an upgrade of a failed septic system. The new system will be 12 feet from the property line; the 20-foot requirement can't be met due to the location of an in-ground pool and a protected wooded area. He said Natural Heritage wants the system as far away from the protected wooded area as possible.

Abutter Rooney said he wants to be sure his septic system and well are protected.

Mr. Dillis said a portion of another lot is between Rooney's property and the proposed system, which will be at least 100 feet from his lot line.

Member Horowitz noted the variances requested don't have any impact on Mr. Rooney's well or septic system.

Chairman Weber said Mr. Rooney was notified as an abutter and not because the Town is assuming a problem will arise.

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Member Horowitz asked Mr. Dillis why the wells weren't dug during the season, as required, since the property has been on the market for a long time.

Mr. Dillis said the Title V test was only recently done when someone expressed interested in purchasing the property.

Mrs. Collette said the Health Agent recommended that this application be heard tonight because it is simple and straight forward and he is unable to attend.

Mr. Dillis said there are good soils and thinks the original system failed because of a garbage disposal. Of note: 2 minute perk rate.

Member Horowitz made a motion to accept the variances as requested. Member Fleisher seconded and the motion passed unanimously.

Variance Requested: Sections I.A.2; I.E.7:

I.A.2 – Deep Observation Holes

Required: Deep observation holes for the determination of ground water elevations may be performed during the months of March & April.

Requested: The proposed system is a replacement of a system determined to be in failure after the month of April and is therefore not feasible to test within this time period.

I.E.7 – Minimum of 20 feet to property line

Required: A minimum of 20 feet must be available between any property line and the entire exterior perimeter of any proposed leach areas.

Requested: Due to the constraints of the existing lot (i.e. the location of the pool) it is not feasible to meet this requirement. Relief to 12 feet is requested.

Standard Conditions:

The Board of Health granted the variance with the following conditions:

1. The applicant must submit any proposed change in the above referenced plans to the Board of Health for its review and approval before the change is implemented.
2. The applicant is responsible for obtaining any other permits (including but not limited to) those required by the Board of Selectmen, Conservation Commission, Building Inspector, DPW Director, Planning Board, Stormwater Advisory Committee, and Zoning Board of Appeals.

3. Any construction activities (or related activities) within 100 ft of a wetland or resource protection area requires approval of the Groton Conservation Commission.
4. It is the applicant's responsibility to insure that the contents of this permit are made known to all contractors who perform work at this site.
5. It is the applicant's responsibility to contact Dig Safe prior to the commencement of any work at the site.
6. If the project is not completed, including issuance of a Certificate of Compliance, within two (2) years from the date the sewage disposal system permit is issued, it is the responsibility of the applicant to request an extension. The Board of Health may grant extensions for additional time provided that the applicant submits a written request for renewal no later than 30 days prior to expiration of the permit.
7. Any change in use or increased sewage flow is not to be made without prior approval of the Board of Health and any other applicable Board or Commission.
8. The existing 4-bedroom house is to remain a 4-bedroom house with no increase in the number of bedrooms, unless expansion plans are reviewed and approved by the Groton Board of Health.
9. This variance shall not be in effect until certified copy of the variance decision is recorded at the Middlesex South Registry of Deeds. Evidence of such recording shall be submitted to the Board of Health by the applicant.

Discussion ensued regarding the size of the lot: 98,000 square feet.

Mr. Dillis said he had Cons. Comm. approval.

Old Business:

50 Hoyts Wharf Road

Variance from 30 day well testing requirement, Chap. 330; Variance from radon deed notification filing requirement;

Michelle Collette, Real Estate Broker Karen Earnest, Michelle Halsey(prospective buyer), Michelle Walsh(realtor for buyer)

Mrs. Collette said the initial testing found 20,000 Pico-Curies level of radon in the well. The applicant discussed with Mr. Grossman, Health Agent, how best to mitigate. A water filtration system was installed and the March 2010 test level went down to 1300 pc/liter. The Speads (homeowners) prepared a deed notice as instructed that was mailed to the Registry of Deeds. The buyer's attorney had issue with the deed notification and asked where the BOH had the authority to require, noting that it would create issues for resale. The homeowner is asking for a variance from the 30-day requirement before closing of having the well retested. The re-test is on Friday, 8/6/10.

Mrs. Collette asked if the Friday test shows there is no longer a radon problem, what instrument the BOH has to show the new owner/s that the problem has been rectified. She said this deal might fall apart if this is not resolved.

Karen Earnest said the well was dug in 2005 and tested high in radon. The Speads bought in 2007 and the well again tested with high radon. A pump on the water filtration system installed to remediate problem malfunctioned the day before the home inspection. The pump was repaired but the well could not be retested for one week, which is Friday, August 6. She said she pulled records from other homes in town with wells and only found one deed restriction in place. She said the Speads shouldn't be penalized for following the rules.

Chairman Weber suggested addressing the two separate issues separately.

Member Fleischer asked what the purpose of the 30-day testing period, as opposed to 20 days.

Chairman Weber said 30 days is typically a minimum for a board to receive feedback.

Member Horowitz suggested that the board should vote on the first issue because it is simpler, and that the board needs to do more checking on the deed notification issue.

Discussion ensued regarding when the by-laws were adopted.

Karen Earnest said the water treatment system is large and hard to miss, and there are several standards in place to protect the water and keep future owners in the know. She said having something on the deed is a significant "black cloud" that city lawyers don't think should be in place.

Mrs. Collette said there is a working group authorized by the BOH that has been meeting and is ready to wrap discussion up, and in light of Town Counsel's response to deed restrictions, there is a difficulty here in how to undo this when it is already part of the deed. She asked how another document could be put on record that supersedes the first notice. Atty. Collins, a local lawyer, suggested putting a second notice on record. She said having documents on file at Town Hall in the BOH office creates a record without creating a huge hardship for home buyers/sellers.

Karen Earnest said Groton is one of the few towns that require a deed restriction/notice for radon.

Discussion ensued regarding how to handle since deed notice has already been filed.

Prospective owner Halsey said she has no problem with the water filtration system and how it works, but is concerned that because of the deed notification, she wouldn't be able to sell in the future. She said she wants the blemish to be as removed as it could be.

Member Horowitz said she has no problem sending a letter to the State stating that the system is working, although the vote needs to be contingent on receiving a passing number from the Friday test.

Discussion ensued regarding the need to notify abutters for a variance.

Mrs. Collette said that denial or requirement of notification of abutters would qualify as a "manifest injustice" to the applicant because they would lose the sale of their property. Chapter 330-16 Variances states:

- A. The Board may, after a public hearing, grant a variance from the application of these regulations when, in its opinion, the enforcement thereof would do manifest injustice, and the applicant has demonstrated that the equivalent degree of protection will still be provided to the private water supply without strict compliance with the provisions of these regulations.

Chairman Weber said the BOH would be acting on behalf of the town to vote to file the second deed notification.

Chairman Weber made a motion to waive the 30 day well testing before closing requirement to facilitate the pending sale of the property at 50 Hoyts Wharf Road, and if there is a requirement of abutter notification, moved to waive that as well, due to the specific nature of this case and to no way be consider as precedent setting.

Member Horowitz seconded and the motion passed unanimously.

Chairman Weber made a motion that contingent upon the results of the 8/6/10 testing being received by the BOH and passing as defined as radon levels less the 10,000 pc/liter, the BOH will attach a superseding deed notice for 50 Hoyts Wharf Road that the situation has been thoroughly remedied by the system in place.

Member Horowitz seconded and the motion passed unanimously.

Chairman Weber said the BOH needs to obtain a copy of the test results and when received will draft a copy of a second deed notice.

The board discussed the possibility of reopened the well and septic regulations. Karen Earnest said there are unclear specifics about the number of water tests required, noting that each one is over \$400 and a hardship for homeowners.

Chairman Weber made a motion to adjourn at 8:15 pm. Member Horowitz seconded and the motion passed unanimously.

Respectfully submitted,

Margot Hammer
ZBA Assistant
Approved 8/16/10.