

**CITY OF GLOUCESTER
Board of Health
Minutes of the Meeting
June 20, 2019
5:30 p.m.
City Hall Annex
3 Pond Road
Gloucester, MA 01930**

Board members present: Chairperson: Dr. Richard Sagall; Frederick Cowan; Claudia Schweitzer; and Joe Rosa. Present from the Health Department: Health Director, Karin Carroll; Food Inspector: Rosalie Nicasastro; Health Inspector: Marcus Costonis. Absent: Vice–Chairperson: Robert Harris and Assistant Director: Max Schenk.

The meeting started at 5:30 p.m.

This meeting was recorded by audio in accordance with State Open Meeting Law.

PUBLIC ORAL COMMUNICATION

There was no “Public Oral Communication”.

APPROVAL OF MINUTES

There was no “Approval of Minutes”.

NEW BUSINESS (CONTINUED FROM MEETING OF JUNE 6, 2019)

Attorney Nora R. Adukonis, representing Sandpiper Bakery, 65 Middle Street, Appeal of Health Department Order Dated April 18, 2019:

Ms. Carroll stated that an appeal was requested from the Sandpiper Bakery for an order that was sent on April 18, 2019 for two violations, one for insufficient ventilation of the oven and the other for insufficient padding under a board station.

Nora Adukonis attorney representing the Sandpiper Bakery appeared before the board on behalf of the owner, Susanne Clermont. She stated that the efforts to lessen the amount of noise from the bakery include putting sound dampening coverings on the legs of the work table. She stated that these coverings create a buffer between the legs of the table and the surface of the floor. She stated that the noise from the table would be caused by pounding butter which takes 40 minutes a week, either in two 20 minutes sessions or one 40 minute session. She stated that the reports are that something metallic is causing the noise which leads them to believe the noise is coming from the work sink. She stated that they added a water hammer arrester to the plumbing of the work sink to lessen the noise if that is where the noise is coming

from. She stated that in order to get a type 2 hood into the bakery they would have to punch through the wall and go up the side of the building, which is a historic building so they would have to go through the historic approval process or go up through the two condos above. She stated that they have consulted with two different ventilation companies for quotes on the ventilation system. She stated that the only violation that is listed is the absence of a type 2 hood, which falls under the Building Inspector's jurisdiction not the Health Department. She stated that all inspections that have been done by the Food Inspector have been fine and up to code. She stated that a type 2 hood removes heat and steam and it is unclear that the installation of a hood would eliminate odors. She stated that before the order was issued on April 18th, the Health Department visited the bakery on at least three occasions and found the issues unsubstantiated, which seems to suggest a lack of evidence to support poor ventilation.

In later testimony: Mrs. Nicastro explained that on her visit to Sandpiper Bakery before the order was issued, she observed a familiar ventilation system in place that had proved to be adequate in other commercial kitchens. She presumed therefore the existing vent by its reputation would be sufficient for her to report "issue unsubstantiated".

Margaret Russell of 65 Middle Street, Unit 2 appeared before the board. Ms. Russell stated Sandpiper Bakery is a tenant in Condominium Unit 1. *Ms. Russell* stated that she owns and resides in unit 2 and the odor and noise coming into her residence from the Sandpiper Bakery is unhealthy. She stated that the noise starts at 6:15 a.m. She described and in one case demonstrated the source of the noise inherent in the operation of this bakery. She stated that both sides have hired lawyers. She stated that she does not want the bakery to close, she just wants noise abatement and the proper exhaust system installed. She stated that she had a licensed engineer come and look at the system and he told her that it was an inadequate system for volume of the bakery's production. She stated that she offered to financially help install some insulation but the bakery refused her offer. She stated that whatever devices they have installed to help with the noises and the odor has not helped. She played a sound recording from her cell phone of the noise. A rhythmic drum-like pounding was audible and sustained for the length of the 60 second recording. She stated that she can hear the bakery's radio and the customer's conversation.

Chairperson Sagall asked what was in the space before the bakery. *Ms. Russell* responded that it was a sound studio for an international television program.

Chairperson Sagall asked if the noise dampeners have made a difference. *Ms. Russell* responded that she does not believe so.

Mr. Costonis stated that he was asked as an independent inspector to visit the bakery and make an assessment. He stated that what they found were two violations of the new Federal Food Code which are not violations of the Building Code. He stated that the Plumbing Inspector has also stated that the bakery needs to have a type 2 hood. He stated that the Fire Inspector has also come forward stating the need for a type 2 hood as well. He stated that Ms. Clermont told

him she would speak with the Plumbing Inspector regarding the hood and she would put down the rubber mats, that was 63 days ago and no communication has occurred. He stated that Ms. Clermont had documentation from a professional that stated that they do not need a type 2 hood but the Health Department has not seen that documentation. He stated that there has been no communication, mitigation, or resolution in the past 63 days.

Jay Jarolsav of 65 Middle Street, Unit 3 appeared before the board. He stated that he has lived in the unit with his wife since 1995. He read a letter that was written by his wife in support of the complaint of Ms. Russell. He submitted the letter to the Board of Health.

Ms. Adukonis stated that the allegations that they have not tried to call the Health Department are not true. She stated that the day they received the violation she tried to call the Health Department for more information. She stated that she has been in contact with the City Solicitor. She stated that a ventilation system will cost about \$35,000 and take more than 14 days to install. She stated that she does not believe that this is a Health Department issue.

Mr. Costonis stated that the 2013 Food Code is merged between the local and state, as well as the federal food code to simplify things and the first citation falls under section 304.11 which speaks about the design, construction, installation, and the mechanical outline for a ventilation system.

Susanne Clermont, owner of Sandpiper Bakery, appeared before the board. She stated that she does not want to be a nuisance. She stated that she thinks Ms. Russell must be hearing the sink because she does not pound butter on Sundays, she only pounds butter on Tuesdays and sometimes Wednesdays. She stated that she adheres to the quiet hours of the condominium and only does business operations from 8-4. She stated that she would not have signed the lease if she knew the space would need this regulation. She stated that she has tried to call Mr. Costonis twice in the past 63 days. She stated that the Plumbing Inspector told her he did not want to get involved and that it is the Building Inspectors's purview. She stated that Ms. Russell has indicated that the bakery has been loud sometimes when the bakery is not in production at all. She stated that Ms. Russell has indicated that noise was an issue on a Sunday when they were doing dishes which is why she thinks it is the sink's spraying arm making the noise.

Ms. Carroll stated that they would like to have an update on the progress of the Health Department's order.

Ms. Adukonis stated that the ventilation companies feel that a type 2 hood and its appropriately sized piping would have to be installed up and out but there might be ways to employ the restroom's exhaust system and to add additional exhaust to the existing HVAC system. She stated that it has been difficult because they are unsure if the Health Department will be satisfied with anything other than a type 2 hood.

Mr. Mark Nestor attorney representing the owners of 65 Middle Street, Units 2 and 3. He stated that in April the bakery stated that they had a letter stating that they could provide proper ventilation without a type 2 hood, but neither the Health Department nor himself has seen the letter. He stated that they still do not know if the proper matting was installed either. He stated that *Ms. Adukonis* stated that Northeast Restaurant Ventilation was sent to visit the bakery on June 5 and they have not seen the findings of that visit. He stated that they do not have any documentation from the Plumbing Inspector or Building Inspector either. He discussed why the previous business owners left the building.

Ms. Schweitzer stated that she would like to see recommendations from the bakery as to how they are going to mitigate the issues with a schedule.

Chairperson Sagall asked *Ms. Clermont* if she had an evaluation done before she set up the bakery. *Ms. Clermont* responded that she did have an architect and a contractor come in prior.

Mr. Cowan asked what material the work table was. *Ms. Clermont* responded that it is a wood table on which she lays down sheet of parchment. *Mr. Cowan* commented that he expected a baker's work table would have a marble work surface. He suggested a wooden table would act as a drum.

Ms. Clermont asked if she brought a letter in from a licensed HVAC contractor stating that the ventilation of the electric oven could be fixed without a type 2 hood would that appease the Board of Health.

Ms. Schweitzer responded that if that would rectify the issues and comply with the Health Department regulations then yes.

Mr. Costonis stated as a point of clarification that once attorneys are involved in an issue, by City Policy all further communications must go through the City Solicitor and their superiors. He stated therefore he personally could not respond to the inquiries from *Ms. Clermont* or *Ms. Adukonis*. He stated that his biggest point of contention is that he was told by the City's Plumbing Inspector that the oven requires a type 2 hood. He stated that he researched 132 varieties of commercial convection ovens and they all state "does not need a class 2 hood; please check with your local health department for proper compliance".

Ms. Carroll stated that she can arrange for *Mr. Costonis* to visit the bakery and verify that the rubber matting has been installed.

The board agreed to revisit the issue at the July meeting and asked for a plan with a timeline of how the appeal will be rectified.

OLD BUSINESS

There was no "Old Business".

MONTHLY REPORTS

There was no “Monthly Reports”.

CONCERNS OF BOARD MEMBERS

Next Regular Monthly Meeting Board of Health- The next Board of Health monthly meeting will be on July 11, 2019 at the CATA Training Room at 5:30 p.m.

MOTION by Mr. Rosa to adjourn.
Seconded by Mr. Cowan. **CARRIED.**
MEETING ADJOURNED – 7:07 p.m.

Respectfully submitted,

Bobbi Orlando

Accepted by:

Richard Sagall, Chairperson

Documents Referenced:
June 20, 2019 Board of Health Agenda