

**BRAINTREE BOARD OF HEALTH**

**MINUTES**

**February 18, 2010**

**IN ATTENDANCE:** Dr. Philip Nedelman, Chairman  
Dr. Mark Samuelson, Clerk

**ALSO PRESENT:** Marybeth McGrath, Director of ML & I

Dr. Nedelman called the meeting to order at 7:00pm.

**MINUTES:**

**Motion By:** Dr. Samuelson approve the minutes of January 14, 2010.  
**Second By:** Dr. Nedelman

**NEW BUSINESS:**

**1. Request for Plumbing Variance-Dave & Buster's at South Shore Plaza**

Present: Russell Forsberg, Inspector of Buildings  
Brian Dundon, Civil Engineer with RJ O'Connell and Associates  
representing Dave & Buster's architectural team.

Mr. Forsberg advised the Board that what is before them this evening is a request for a reduction in the number of women's water closets at the proposed Dave & Buster's location at 250 Granite Street. Under the terms of the plumbing code and based on the capacity, the applicant would be required to provide twenty four water closets. The proposal would be to only provide seventeen, which is a disparity of seven toilets. It is being requested by the applicant that the Board endorse this variance request to the state plumbing board.

Mr. Forsberg advised the Board that he has just had the opportunity to speak with Brian Dundon from RJ O'Connell and Associates, which is representing Dave & Buster's this evening. He advised that he discussed with Mr. Dundon proposed compromise solutions of this variance request. One solution is to raise the number of women's water closets to twenty to meet half-way between what is required and what is being proposed. Additionally, they spoke about the possibility of limiting the capacity so as to bring the number of fixtures being proposed into compliance with the ratio of one to thirty.

Mr. Forsberg advised that Mr. Dundon is at a slight disadvantage at this time, as he has not had the opportunity to review these proposed options with the Dave & Buster's company at this time. Therefore, he may make a request of the Board for consideration of a deferral of this hearing so that he may meeting with and discuss these options with Dave & Buster's representatives.

Dr. Nedelman asked about the total number of fixtures in the establishment for men and women.

Mr. Forsberg advised the Board in detail about the total number of toilet fixtures in the establishment as per the proposed floor plan, and the required ratio of plumbing fixtures per the State Plumbing Code.

Mr. Forsberg recommends consideration of the following two options:

- 1) Dave & Buster's propose to provide twenty women's water closets, which is essentially half-way between what they proposed and what is required per the State Plumbing Code;
- 2) Limit the capacity to approximately 1025 persons and in doing so would allow for the ratio of women's water closets to meet the requirement of one in thirty.

Mr. Forsberg advised that these are the two options he had just discussed with Mr. Dundon.

Dr. Nedelman asked Mr. Dundon if he is familiar with other Dave & Buster's in other parts of the country regarding their size, their footprint and the capacity.

Mr. Dundon advised that he was not. He advised that this is the first Dave & Buster's to be planned for Massachusetts. The nearest Dave & Buster's outside of Massachusetts is located in Rhode Island at Providence Place, which has been integrated into a mall setting.

Dr. Nedelman asked if Mr. Dundon had any specification on that location with regard to size and number of people.

Mr. Dundon advised that he did not have that information at this time, but could provide that information to the Board.

Mr. Forsberg reviewed the variance request documentation submitted with the Board regarding fixture counts proposed and what is required by the State Plumbing Code, including handicapped accessible facilities. He further provided a general layout of the restroom locations throughout the proposed establishment per the plans.

Ms. McGrath advised the Board that after she reviewed this variance request documentation, she spoke with Andy Lyne, the Plumbing Inspector and Russ Forsberg because she was concerned about the request to reduce the number of women's closets.

Ms. McGrath further advised that the Board does not approve the variance request. The State Plumbing Board reviews and makes a decision on the variance request. The Board of Health either endorses or does not endorse the variance request. Thereafter, a letter is prepared based on the endorsement determination of the Board, which must accompany the original variance request application to the State Plumbing Board.

Ms. McGrath advised Mr. Dundon that if he needs to review this information with his clients, then he could request that the Board table this matter to the March 11, 2010 meeting.

Mr. Dundon advised the Board that with the brief history that his clients have provided him about this establishment, what is driving the women's count up is essentially accounting for the gaming area associated with that part of the business. In actuality he has been advised that women do not really utilize the gaming area. It is mostly male dominated type activities. Based on past studies done at other Dave & Buster's locations, namely one in Milwaukee and one in Indiana that they were providing a count of seventeen women's water closets and it seemed to be functioning properly. Further, that the size of those stores was comparable to this proposed store. Mr. Dundon mentioned that he did advised his clients that those were two out of state locations, and that this project was in Massachusetts and the code may be different here. He further advised that in the interest of full disclosure, this is his first Dave & Buster's project and he cannot rely on past history.

Ms. McGrath advised the Board and Mr. Dundon that she feels there are two reasonable compromises to offer to the state.

Mr. Dundon advised that he does think that the compromises that have been offered are reasonable in that it gives the folks at Dave & Buster's and their architectural team two options to evaluate, so that when they do submit the request they can at least acknowledge on a letter that given the two choices which one they chose and provide plans to reflect that option. Mr. Dundon advised that he is not in a position at this time to make a business decision.

Ms. McGrath asked Mr. Dundon if he wanted the Board to consider tabling this matter until the next meeting.

Mr. Dundon advised probably not, that he felt a letter from the Board with the two options would be adequate.

**Motion By:**

Dr. Samuelson to endorse the variance request with the following two options: either to provide twenty women's water closets, which is essentially half-way between what is proposed and what is required per the State Plumbing Code; or to limit the capacity to approximately 1025 persons to allow for the ratio of women's water closets to meet the requirement of one in thirty

**Second By:** Dr. Nedelman

**2. Animal Permit application/Keeping of 5 chickens-61 Strathmore Circle**

Present: Richard Roche, property owner-61 Strathmore Circle

Dr. Nedelman read into the record the application and accompanying documentation, including a letter from a neighbor requesting denial of the permit.

Ms. McGrath advised the Board that in early to mid January, the department received a complaint that there was a rooster on the premises located at 61 Strathmore Circle. Ms. Carey, Health Code Enforcement Officer with the department conducted a follow up investigation and met with Mr. Roche. Ms. Carey determined that there was no rooster on the property, but there were five chickens on the property. At that time, she informed Mr. Roche with regard to the chickens that there was a keeping of animal regulation in the Town of Braintree and what the requirements would be to get them permitted. Mr. Roche was unaware that there was a regulation and permit requirements.

Since that time, Mr. Roche has worked to accomplish meeting the regulation requirements of notifying the abutters to the property, including the complainant, working with the building department regarding permitting of the coop, advising the department of the method of manure disposal and cleaning methods.

Ms. McGrath advised that the department then received a complaint letter from the neighbor requesting denial of the permit.

Ms. McGrath provided the Board with an area plot plan to describe the location of 61 Strathmore Circle in Braintree, the location of the chicken coop on said property and the distances to fences and the property lines, as well as its relation to the abutting properties. She also provided pictures of the coop and property taken by the department.

Ms. McGrath and Mr. Roche advised the Board that the chicken coop is fifteen and one-half feet to the closest property line, which is on the side of the property.

Ms. McGrath advised that the distance between the chicken coop to the rear stone wall is twenty-nine feet.

Mr. Roche advised that his rear property line is another three to four feet beyond the stone wall.

Ms. McGrath advised that the distance between the chicken coop and the back of the complainant's house is at least fifty, if not more. She further advised that the complainant's house is not the closest neighbor to the chicken coop. There are two other abutting properties that are closer.

Dr. Samuelson asked what the building inspector would do?

Ms. McGrath advised that the Building Division would evaluate the necessity for a building permit on the chicken coop.

Mr. Roche advised that he obtained the chickens in May 2009 after Easter for his son.

Dr. Samuelson asked if there were any other complaints up until now.

Ms. McGrath advised no. The department had no idea that there were chickens on this property until January when a complaint was received. Once we were made aware of a complaint, it was investigated and that is how we found out about the chickens.

Dr. Nedeman asked if there are trees lining the property.

Mr. Roche advised that he has it all landscaped. He also plans to put up a stockade fence. He does not plan to have any more than the five chickens he has. Further, if they were loud and obnoxious he would not want them.

Ms. McGrath advised that when an onsite inspection was by the department, we tried to somewhat startle the chickens by clapping and knocking on the coop to see how loud they became and they were not loud.

Mr. Roche advised that he recollected one night he heard a loud squawk outside and went outside to see if something was in the hen house and nothing was there. He believes something startled the chickens. Mr. Roche advised that normally he cannot hear the chickens from inside his house.

Ms. McGrath advised that the complainant indicated that she can hear the chickens inside her house with the windows closed.

Ms. McGrath advised that all of the notification to the direct abutters were delivered, and she has no other calls, concerns or letters.

Ms. McGrath advised that the department has been onsite several times since the complaint was received and found the coop clean with no odor and found no problem with noise from the chickens. She further advised that the department can continue to monitor once the weather is warmer and windows are opened.

Dr. Samuelson advised based on the materials he has reviewed on this matter he does not see a public health issue.

**Motion By:** Dr. Samuelson to grant the permit for the keeping of five chickens.

**Second By:** Dr. Nedelman

**INFORMATIONAL:**

**3. Letter from MA Association of Health Boards-RE: Electronic Cigarettes**

Ms. McGrath advised the Board that there is a kiosk at the South Shore Plaza that offers electronic cigarettes, which have a nicotine insert cartridge and are run by battery. The kiosk has a posting to advise that this product will not be sold to persons under age eighteen. She further advised that no regulations exist that oversee or regulate this type of product. A letter was forwarded to the Board by the MA Association of Health Boards to offer assistance in the creation of electronic cigarette regulations for Boards of Health considering them.

Ms. McGrath advised that if the Board is interested, she can reach out to Cheryl Sbarro, attorney with MA Association of Health Boards for more information.

The Board did not express interest at this time.

Dr. Nedelman inquired about the status of a town sponsored substance abuse awareness program.

Ms. McGrath advised the Board that Mayor Sullivan is in the process of forming a group to work on a proposed substance abuse awareness program. However, she is not aware of the status of progress on the working group.

**4. Memorandum from Town Solicitor-Employee Evaluations and Electronic Mail Under the Open Meeting Law**

Ms. McGrath advised the Board that Ms. Murray, the Town Solicitor requested that this documentation be forwarded to all Boards.

Ms. McGrath advised the Board that Mayor Sullivan has inquired about the status of the Health & Wellness Advisory Committee, and that she has advised him that Mr. Corcoran is the Chairman and would be better able to speak to this matter. Ms. McGrath mentioned that she has advised Mayor Sullivan that one of her concerns is that the Committee members need more clarification on what tasks the Mayor would like to see the Committee undertake.

Dr. Samuelson advised that he sees the Committee as advisors, and he is ready and willing to advise about health and wellness matters.

**Motion By:** Dr. Samuelson to adjourn the meeting at 7:35 pm.  
**Second By:** Dr. Nedelman