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JUN 04 2012  
OB BD OF HEALTH  
5/28/2012

14 Kennebeck  
M 9 P 29

This letter is to notify you that a reopened restaurant in Oak Bluffs is abusing and not adhering to Oak Bluff's Liquor license rules and regulations.

The restaurant, located at 14 Kennebec Ave in Oak Bluffs is under new ownership and a tricky hyphenated new name. The owner, Ben DeForest is trying to use the previous license. Mr. DeForest has flaunted Oak Bluff's laws in the past and continues to do so.

It is not fair to the establishments that work hard to follow the rules. Can a new owner just keep a name, add another name and not follow the application process? If posted, the name DeForest would bring out the community to speak against that application.

Please investigate this violation of town rules. As a summer seasonal resident I hope that the town follows up on this.

Sincerely,  
Morgan Roberts  
Oak Bluff, MA

file



Town of Oak Bluffs, Massachusetts  
BOARD OF HEALTH  
P.O. Box 1327  
Oak Bluffs, MA 02557

David T. Caron, Chm  
Patricia Bergeron  
William White

Shirley L. Fauteux  
Health Agent

Telephone: (508) 693-3554 ext 116 or 117  
Fax: (508) 693-6280

COPY

June 16, 2010

Thomas C. Ward  
Carol L. Hulak  
POB 69  
Oak Bluffs, MA 02557

RE: 14 Kennebec Avenue, Map 9, Parcel 29

Dear Mr. & Mrs. Ward:

This letter is to confirm that you have come into compliance with the order dated November 10, 2009.

Sincerely,

Shirley L. Fauteux  
Health Agent

CC: Complainant  
Board of Selectmen  
Building Department

RECEIVED  
FEB 25 2010

OB BD OF HEALTH

Feb. 24 2010

Oak Bluffs Board of Health  
P.O. Box 1327  
Oak Bluffs, MA  
02557

Members of the Board;

We received your letter dated Feb. 12, 2010 notifying us that "All violations must be corrected prior to March 9, 2010 with sign-offs by the Board of Health as well as the wiring and plumbing inspectors."

We are making every attempt to complete all of *our* portion of the work. However due to the nature of, in particular the electrical work, and the need to satisfy not only the wiring inspector but NSTAR too, combined with the changing nature of the code requirements and what NSTAR demands, coupled with different electrical plans submitted by various contractors, we want to make the correct choice. We are working to be able to quickly execute our chosen plan as soon as all the facts are in and Mr. Dawley and NSTAR agree that it will meet their requirements. We are therefore, and on the advice of our attorney, aggrieved by the Certified letter 7007 0710 0002 8434 7282 because there are parts of the process we over which we have limited control. We will be certain to attend the March 9, meeting in any case.

Thank you very much,

Thomas and Carol Ward

Handwritten signature of Thomas and Carol Ward, consisting of two distinct cursive signatures.



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February 12, 2010

Certified Letter: 7007 0710 0002 8434 7282

Tom Ward  
Carol Hulak  
P.O. Box 69  
Oak Bluffs, MA 02557

RE: Zapotec building, 14 Kennebec Avenue, Map 9, Parcel 29

Dear Mr. Ward and Ms. Hulak:

This correspondence is to confirm the discussion you had with the Board of Health at its meeting on February 9, 2010, regarding compliance with the order of December 18, 2009 at the above referenced property.

All violations must be corrected prior to March 9, 2010, with sign-offs by the Board of Health as well as the wiring and plumbing inspectors. If for some reason you are unable to comply, you must attend the Board of Health meeting on March 9, 2010 at 10 a.m. to show cause why compliance was not achieved.

If you have any questions or need any assistance, please contact me.

Sincerely,

Shirley L. Fauteux  
Health Agent

Cc: Cybele Sprague  
Plumbing inspector  
✓ Wiring inspector  
Board of Selectmen

Board of Health Meeting  
February 9, 2010  
Page 2

Tom Ward – Zapotec building – engineer's report

As had been requested of him, Mr. Ward presented an inspection report of this building, prepared by Civil Engineer Kent Healy. Health Agent Fauteux read the report into the record. The report indicated that "the building is in fair condition and is structurally stable under the present use (the restaurant on the first floor and the apartment on the second floor). " Some of the windows and doors need to be repaired to make the building more weather-tight." Mr. Ward said they are working on the windows and doors. Mr. Caron expressed his gratification for the spirit of cooperation with the Board in resolving the problems at this building. He thanked Mr. & Mrs. Ward for their commitment. A date of March 9 was set for completion of the work.

HEALTH AGENT: Enhanced treatment systems

Health Agent Fauteux was notified by one of the alternative treatment companies that several homeowners have not renewed their operation and maintenance agreements and, therefore, were not in compliance with title 5. She then sent letters to the owners of these systems ordering them to come into compliance. Some have replied; some have not. She explained that it may be necessary to take legal action against those who do not comply. She added that it is the responsibility of the engineers to explain the maintenance requirements of the system to the homeowners and to emphasize that this monitoring must be carried out for the life of the system. She has decided to give the non-responders another month to reply. If at the end of this time there are still some who have not responded, she will report this to the board for a plan of action. Mr. Caron wondered if the board would ever take a position on whether or not to endorse enhanced systems. Mr. White pointed out that under certain circumstances enhanced systems are required by the state. Ms. Bergeron said she has been to several meetings and has heard experts speak against these systems. Because these systems are very expensive, she felt that they need to have a second look by the board. Health Agent Fauteux said that there are differing opinions on this, depending on which group is asked. She said this subject could be part of the discussion with DEP when the board meets with them. One of the people she hopes will attend the meeting is in charge of alternative systems. Mr. Caron suggested that Bill Wilcox might help the board in designing a policy. Mr. White said that Bill is on one side of the argument and he would like to hear both sides. Health Agent Fauteux endorsed the DEP representatives, who she said have scientific data and years of experience in this field. Ms. Bergeron felt DEP had connections with lobbyists.

Ms. Fauteux has sent the annual letter to the food establishments, along with the permit application. The yearly meeting with the food establishments is set for May 4. Mr. Caron will again do the power point. She reminded the board that they voted last fall to require a walk-through inspection of seasonal restaurants before they will be allowed to open. She anticipates this will start in April. Ms. Bergeron wanted the board to decide the penalty for restaurants that fail to request and receive a walk-through prior to opening. She asked for this to be on a future agenda.



nitrogen than a regular title 5 system, as well as being extremely expensive. Therefore, the group was encouraged to not recommend enhanced treatment. Health Agent Fauteux stated that George Heufelder and other officials on the Cape have an opposite viewpoint. Ms. Bergeron asked harm would be done if the maintenance is not continued. Mr. White said these homeowners are legally bound to comply with the regulations. It was not clear what authority of enforcement the Board of Health has in this situation. Health Agent Fauteux was asked to find out what the board's legal options are and report back at the next meeting.

Mavro, 131 Pennsylvania Ave. M22, P79.2 – Smokestack

Health Agent Fauteux reported that the deadline for this issue is today, and nothing has been received from Mr. Mavro. Mr. Caron stated he got a nice phone call from Mr. Mavro's neighbor. She said she was pleased as punch. The Mavros bought a device that covers the stack and came over and talked to her about it before they did it. She said she doesn't get the black smoke anymore, just the white smoke, and she's happy. She said she also takes her hat off to Shirley and the rest of the board on how much follow up there was provided on this issue. She also said that now she knows why there are boards in place in the town for things like this. Health Agent Fauteux said that this was the goal, to solve the problem. The issue that still remains is the credibility of whoever signed the letter. He has been asked twice to hire a third party to do the measurements on the height of the smokestack and report them back to the board. Mr. Caron will talk to Mr. Mavro.

Aquarium 56 Narragansett Avenue, Map 11, Parcel 24.1, 2, and 3C

The Health Agent presented a draft cease and desist letter for the board to review. The letter contains information about site visits by Shirley and Bill and a report from a mycology lab hired by the tenants. The building and the condo in question are owned by Jonathan Blau and the aquarium business is owned by Edward McGill. Shirley said she had a meeting with Mr. McGill this morning and he appeared to want to do the right thing. Mr. Caron made a motion to approve the cease and desist letter as written by Shirley in reference to the 56 Narragansett Avenue property. Ms. Bergeron seconded. The motion passed unanimously.

#### Zapotec

Briefly discussed. Ms. Bergeron stated that the tenant told her that the owner of the building said he could not be forced to have a structural engineer inspect the building. The tenant was not optimistic that Mr. Ward would have it done.



Town of Oak Bluffs, Massachusetts

BOARD OF HEALTH  
P.O. Box 1327  
Oak Bluffs, MA 02557

William White, Chairman  
Patricia Bergeron  
David Caron

Shirley L. Fauteux  
Health Agent

Telephone: (508) 693-3554 ext 116 & 117  
Fax: (508) 693-6280

COPY

January 13, 2010

CERTIFIED LETTER: 7007 0710 0002 8434 7206

Thomas Ward  
Carol Hulak  
POB 69  
Oak Bluffs, MA 02557

RE: Zapotec Restaurant, 14 Kennebec Ave., Map 9, Parcel 29

Dear Mr. Ward and Ms. Hulak:

This is to confirm your agreement on January 12, 2010 with the Board of Health regarding the Zapotec Restaurant. The following shall be submitted to the Board by February 9:

- Certification from a licensed professional engineer stating that there are no structural deficiencies at the above-referenced building.
- Subsequent to that submission, you must correct all of the violations referred to in the orders of December 18, 2009, November 29, 2009, the December 10, 2009 plumbing report, and the November 29, 2009 electrical report.
- As a reminder, no one shall occupy the upstairs apartment until all of the violations have been corrected and confirmed by the plumbing and electrical inspectors and the Board of Health.

Sincerely,

Shirley L. Fauteux,  
Health Agent

Cc: Building inspector  
Plumbing inspector  
Electrical Inspector  
Cybele Sprague

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**BOARD OF HEALTH MEETING  
JANUARY 12, 2010  
10:00 A.M.**

**Members Present:** William A. White, Chairman  
Patricia Bergeron  
David Caron  
**Others Present:** Shirley L. Fauteux, Health Agent

**APPROVAL OF MINUTES:** The minutes of December 15, 2010 were approved after Ms. Bergeron requested a notation that Health Agent Fauteux was in attendance via phone.

**DISCUSSION:** Smoke stack verification. Health Agent Fauteux read the letter written to Mr. Mavro requiring him to obtain verification by a third party that his smoke stack was in compliance with state regulations and that this must be done by today's meeting. There has been no response from Mr. Mavro. In spite of the fact that the complainant has expressed satisfaction with what has been accomplished so far, Mr. White asserted that Mr. Mavro—having been the building official for the town—should understand that he has an obligation to respond to the certified letter sent to him. Following discussion, it was agreed that the board will send Mr. Mavro another letter, extending the deadline to January 26.

**Tom Ward, Zapotec Restaurant**

Present for this hearing were Mr. Ward and his wife, Carol Hulak, and Cybele Sprague, the tenant, and her plumber. The plumbing inspector also attended. Health Agent Fauteux reviewed the violations and the remedies expected by the Board of Health, based on its inspections as well as those of the plumbing and electrical inspectors and any other inspectors that the board may require as a result of today's meeting. Health Agent Fauteux stated that Mr. Ward had been told to attend today's meeting to present plans for repairs. He had been informed that the structural integrity of the building would be discussed today, as well as other issues that she delineated. Ms. Hulak recited their list of improvements that have been done or are slated to be corrected. Mr. Ward, Ms. Hulak and Ms. Sprague stated that they have already agreed to the specific corrections that each will be responsible for. Ms. Bergeron emphasized that the Wards, being the owners of the building, are solely responsible to the Board of Health; how they divide up the checklist of repairs is of no import to the board. It was also pointed out to Mr. Ward that it is his responsibility to make sure that any business occupying the building is in compliance with any and all codes. Regarding the structural integrity of the building, Health Agent Fauteux recommended to either have the Board of Survey (made up of various town employees) inspect the building, or the Wards could hire a licensed structural engineer to make an assessment. The Wards chose the latter suggestion. There then followed a discussion of

Board of Health Meeting  
January 12, 2010  
Page 2

the grease trap inspection report. The members and the health agent were assured by Cybele's plumber that the grease trap mechanism was working properly, and Cybele has documents proving that the grease is removed properly. They discussed the need to enclose an area in the back of the building that is used for dry storage. Cybele said she has already spent \$14,000 for repairs which has, in effect, increased the value of Mr. Ward's building, and she expressed reluctance to invest any more of her own money to further enhance the building's value. She asked about the possibility of placing a free-standing building in the back for storage of dry goods. The board members agreed to allow the restaurant to stay open, but they wanted a time limit placed on completion of the plumbing, electrical and structural work. [transcriber's note: the deadline date was not heard on the tape.]

#### Kerry Scott & Jennifer Michelson – Skunks

Ms. Michelson and her husband have owned a cottage in the campground since March of 2008. She expressed concern about the number of skunks apparently inhabiting her neighborhood and the island in general. She complained that they continue to multiply and have few if any natural predators; they carry diseases; it is expensive to hire someone to remove them from one's property, and they can "make life very unpleasant." She added that had she known about the large population of skunks, she might have thought twice about purchasing a cottage here. Kerry stated that she sells a lot of products to dog owners whose animals have been "skunked." Kerry and Jennifer both cited anecdotes relating to skunk encounters. They asked if there are any pest management regulations or organizations in existence that can be called on to resolve this problem. Health Agent Fauteux stated that the Board of Health has no regulations and the town has no integrated pest management bylaws. She added that homeowners are responsible for removing any dead animals found on their property. Bill commented that skunks are only one of many species of wildlife that live on the Vineyard. Following a lengthy discussion, it was decided to contact the local Animal Control Officer and ask her to research the problem. In addition, Health Agent Fauteux will write a letter to T.J. Hegerty, requesting his input and asking what assistance the county can provide in eradicating this problem.

#### Richard Combra – Solid Waste

Mr. Combra wanted to discuss the fee structure and the operation of the LDO, and solid waste. He is going to propose some changes, with the Board of Selectmen cooperation. He predicted that management of solid waste will change over the next couple years. He asked if the Board of Health wanted to continue to control the fee structure or if they would be interested in turning this over to the selectmen. Since he will be working with the selectmen on solid waste management changes, he felt that it made sense to turn the fee structure over to the selectmen's office. Health Agent Fauteux agreed, stating that the board's role in waste disposal has decreased significantly over the last 15 yrs, and all the contracts are signed by the selectmen; therefore it made sense to her to have one entity be responsible for the whole program. Mr. Caron made a motion for the Board of Health to send a letter to the Board of Selectmen stating that the Board of Health would like to transfer the authority of the solid waste issues now associated with the Board of Health to the Board of Selectmen. Ms. Bergeron seconded. Ms. Bergeron asked if this means the sale of trash stickers will be removed from this office. Mr. Combra said it would. There was unanimous approval of the motion.



Town of Oak Bluffs, Massachusetts

BOARD OF HEALTH  
P.O. Box 1327  
Oak Bluffs, MA 02557

William White, Chairman  
Patricia Bergeron  
David Caron

Shirley L. Fauteux  
Health Agent

Telephone: (508) 693-3554 ext 116 & 117  
Fax: (508) 693-6280

December 18, 2009

Certified Letter: 7007 0710 0002 8434 7183

Thomas Ward  
Carol Hulak  
PO Box 69  
Oak Bluffs, MA 02557

RE: Zapotec Restaurant, 14 Kennebec Ave., Map 9, Parcel 29

Dear Mr. Ward and Ms. Hulak:

This correspondence is confirmation of the verbal order issued to you today by the Board of Health members regarding the above-referenced property/Zapotec Restaurant.

On January 12, 2010, you must attend the Oak Bluffs Board of Health meeting at 10:00 a.m. in the Board of Health office to present a plan to bring the Zapotec Restaurant into compliance with the plumbing and electrical codes. Enclosed are copies of those codes.

In addition, the board will discuss with you the following:  
Rear of restaurant open to elements (storage area)  
Leaks in kitchen  
Location of hand wash sink  
Tiles missing from kitchen floor  
Structural integrity of the building

If you have any questions, please feel free to contact me.

Sincerely,

Shirley L. Fauteux  
Health Agent

Enclosures: (3)

Cc: Building Department  
Plumbing inspector  
Electrical Inspector  
Board of Selectmen  
Cybele Sprague



Board of Health Meeting  
December 15, 2009  
Page 2

Reid Silva: Map 19, Parcel 11; 294 Sea View Ave. Vibberts;  
Mr. Silva said that this property had a previously approved -but subsequently expired- permit for 6 bedrooms. The present permit application is unchanged except for the addition of enhanced treatment (Microfast). Mr. White made a motion to approve the permit, and it was so voted.

Chris Alley: Subdivision Map 17, Parcel 109.2  
Chris Alley, substituting for Doug Hoehn, explained the subdivision plan for five lots in Zone 2. There are plans for 2 "road lots" and 3 "others." He questioned if the roads could be counted in the square footage of the "road lots," thus enabling an increase in the number of bedrooms that could be allowed. It could not be clearly determined at this meeting whether this could be done. The health agent will need to do some research . Therefore, the issue was tabled and no decision was made.

Chris Alley: Map 15 Parcel 2, 151 Barnes Rd., Hopson  
This was a continuation of a previous discussion regarding a possible permit application for 12 bedrooms on this property. Chris thought he had submitted a plan, but he had not. He said he would submit it and the board will review it.

George Sourati: Map 13 Parcel 32.1; 246 Newton Rd, Lois Smyth  
Mr. Sourati stated that this is a 4-bedroom house on a paper road, served by a cesspool. The proposal is to upgrade using the FAST treatment system. The variance requests are for waivers from the coastal district from 200 ft from high water mark down to 122 ft; title 5 variances – leaching field 5 ft from the side property line instead of 10 ft, and 6 ft from the slab foundation instead of 10. The plan was approved by Mr. White and Ms. Bergeron.

Mr. Caron arrived following Mr. Sourati's appointment. Ms. Bergeron and Mr. White filled him in on the earlier discussions, including the subdivision proposal presented by Chris Alley.

Frank Daly: Map 16 Parcel 39, Michael DeBettencourt  
The board then returned to Frank Daly's request to have his plan discussed. Mr. Daly said the finish grade elevations were on the plan and he pointed them out to the members. He provided the variance requests and proof of notification of the abutters. Following a brief conversation with the Health Agent, who was still on the phone, Mr. Caron made a motion to approve the plan with the changes, including the attachment of the variance request. The motion was seconded and unanimously approved.

**Update: Zapotec**

There was a discussion regarding the pumping of grease from the grease trap at this restaurant. Russell Rogers apparently has pumped this in the past. However, Health Agent Fauteux said there is a pump located in the grease trap and she questioned why it was there and where did the grease get pumped. Several people saw the

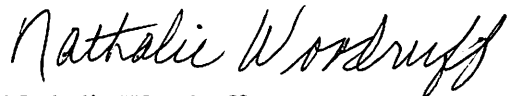
Board of Health Meeting  
December 15, 2009  
Page 3

pump but Joe Alosso said he saw no pump there. Health Agent Fauteux said it should be pumped again to see if there is an outlet pipe and determine if the grease is being pumped into the sewer. She told Mr. Ward he needed to have a system inspector examine the system. Mr. Caron wasn't sure if this was Mr. Ward's responsibility or Cybele's, the restaurant operator. Health Agent Fauteux said this responsibility should not be of concern to the board. The board should just order the work to be done, and let Mr. Ward and Cybele negotiate who is going to do it. There was then a discussion about whether the restaurant should be closed until the problems are resolved.

Health Agent Fauteux stressed the multiple serious, potentially dangerous conditions in the building, including structural, plumbing and wiring problems. She suggested that the board members do a walk-through to see for themselves. It was decided that the members and the Health Agent would do a site visit on Friday, December 18, at noon.

John Cahill: District of Critical Planning  
Side 2 of tape. This discussion and the rest of the meeting did not record.

Transcribed by



Nathalie Woodruff  
Administrative Assistant





DEPARTMENT OF BUILDING INSPECTION

RECEIVED  
DEC 11 2009

1-12-9

OB BD OF HEALTH

December 10, 2009

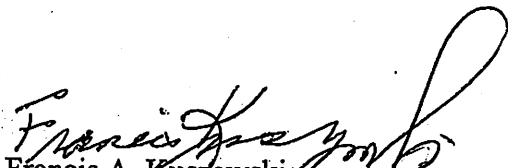
To Whom It May Concern:

The following plumbing code violations have been noted for Zapotec Restaurant on Kennebec Avenue, Oak Bluffs, MA 02557:

- 1) Commercial dish water dumping into PVC
- 2) Vegetable sink needs indirect waste
- 3) Hand sink waste redone
- 4) Ice cube maker dumping out on ground
- 5) All plumbing in PVC
- 6) Sink on deck, where icemaker is, should be disconnected.
- 7) Need back flow preventor for dishwasher
- 8) Need tempering valve for lavatories in bathrooms.
- 9) Three compartment sink not vented.

Plumbing Code 248CMR:

- 10.06 Materials
- 10.09 Interceptors, separators and holding tanks
- 10.12 Indirect waste piping
- 10.14 Water supply and water distribution
- 10.15 Sanitary drainage system.

  
Francis A. Kuszewski  
Oak Bluffs Plumbing &  
Gas Inspector

December 7, 2009

RECEIVED  
DEC 10 2009

Cybele Peper (Sprague)  
Zapotec Restaurant  
Oak Bluffs, MA 02557

OB BD OF HEALTH

Hi Cybele:

In mid October you received a letter from us outlining a number of ongoing issues relating to the Zapotec's electrical usage.

At that time we requested that you contact us in order that these problems in general, and more specifically the overload of the 100 amp electrical system currently in place, could be addressed and resolved. Aside from a brief conversation during which you concurred that steps were necessary we have not heard back from you.

Since that time the Restaurant's premises have been inspected by Peter Dawley the Town's electrical inspector. He has cited a number of conditions which require urgent attention.

In his report (copy enclosed) he notes: "tenants complain about the refrigerator continually blowing the circuit breaker, the coffee maker and the soup machine. The 100 amp panel which services the restaurant gets excessively hot. When you energize the blender, the ceiling lights go out." Having mentioned these conditions to Mr. Dawley indicates that you are well aware that the service is being overloaded.

In this regard we refer you to and paragraph 11 of your lease agreement with us:

#11 *"The Lessee shall not permit the leased premises to become overloaded, damaged, stripped, or defaced, nor suffer any waste."*

Until such time as these issues are addressed you remain in default of your contractual agreement with us.

We strongly suggest that you downsize the equipment you are currently using immediately. If the refrigerator blows the breaker remove all other equipment from that circuit (your largest walk in only consumes 7 or 14 amps). It should run without blowing the breaker if it is the only piece of equipment on that branch.

We refer you to paragraph 7 of your lease agreement:

*"Lessor shall have **no obligation** to provide utilities or equipment other than the utilities and equipment within the premises at the commencement date of this lease. In the event Lessee requires additional **utilities** or equipment, the **installation and maintenance** thereof shall be **the Lessee's sole obligation**, provided that such installation shall be subject to the written consent of the Landlord."*

We are also enclosing a copy of a certified letter from Shirley Fauteux, the Oak Bluffs Health Agent. In it she requests that the grease trap be inspected and indicates that she believes an alarm needs to be added. Based on our understanding of a conversation you had with Tom on Sunday, December 6<sup>th</sup> although the grease trap pump is a trade fixture you prefer that we handle these arrangements. We will advise you of the cost and when the work is scheduled.

Thank you,

Tom & Carol Ward

CC: Peter Dawley, Inspector of Wires  
Shirley Fauteux, Health Agent

I did not suggest an alarm  
be added. There is an (alarm Pump)  
already installed. My question  
is where is the grease(?) being  
pumped to?

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

OAK BLUFFS MA 02557

Postage	\$ 0.44	0568
Certified Fee	\$2.80	05
Return Receipt Fee (Endorsement Required)	\$2.30	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.54	12/09/2009

Sent To Cybele Rejev  
 Street, Apt. No. or PO Box No. P.O. box 2705  
 City, State, ZIP+4 OAK BLUFFS, MA 02557

PS Form 3800, August 2006 See Reverse for Instructions

7009 0060 0001 7964 9334

Zone 1 First Class

Letter  
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 Return Rcpt (Green Card) \$2.30  
 Certified \$2.80  
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 Customer Postage -\$0.44  
 Subtotal: \$5.10  
 Issue PVI: \$5.10  
 Total: \$5.64  
 Paid by: AMEX \$5.64  
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from us outlining a number of ongoing issues age.

that you contact us in order that these problems in general, and that of the 100 amp electrical system currently in place, could be resolved. Aside from a brief conversation during which you concurred that we have not heard back from you.

premises have been inspected by Peter Dawley the day after the inspection. He has cited a number of conditions which require urgent attention.

He notes: "tenants complain about the refrigerator blowing the circuit breaker, the coffee maker and the soup machine. The 100 amp circuit in the restaurant gets excessively hot. When you energize the circuit, it trips out." Having mentioned these conditions to Mr. Dawley the day after the inspection, we are aware that the service is being overloaded.

In this regard we refer you to and paragraph 11 of your lease agreement with us:

#11 "The Lessee shall not permit the leased premises to become overloaded, damaged, stripped, or defaced, nor suffer any waste."

Until such time as these issues are addressed you remain in default of your contractual agreement with us.

We strongly suggest that you downsize the equipment you are currently using on that branch immediately. If the refrigerator blows the breaker remove all other equipment from that circuit (your largest walk in only consumes 7 or 14 amps). It should run without blowing the breaker if it is the only piece of equipment on that branch.

We refer you to paragraph 7 of your lease agreement:

"Lessor shall have no obligation to provide utilities or equipment other than the utilities and equipment within the premises at the commencement date of this lease. In the event Lessee requires additional utilities or equipment, the installation and maintenance thereof shall be the Lessee's sole obligation, provided that such installation shall be subject to the written consent of the Landlord."

VINEYARD HAVEN MPO  
VINEYARD HAVEN, Massachusetts  
025689998

4371430568-0097  
12/09/2009 (800)275-8777 12:01:50 PM

Sales Receipt			
Product Description	Sale Qty	Unit Price	Final Price
44c #10 Seabiscuit Envelope	1	\$0.54	\$0.54
OAK BLUFFS MA 02557 Zone-1 First-Class Letter			\$0.44
0.90 oz. Return Rcpt (Green Card)			\$2.30
Certified Label #:			\$2.80
Customer Postage			70090080000179649334 -\$0.44
Subtotal:			\$5.10
Issue PVI:			\$5.10
Total:			\$5.64
Paid by: AMEX			\$5.64
Account #:			XXXXXXXXXXXX2010

letter from us outlining a number of ongoing issues  
ical usage.

you contact us in order that these problems in general, and  
of the 100 amp electrical system currently in place, could  
ide from a brief conversation during which you concurred  
ve not heard back from you.

premises have been inspected by Peter Dawley the  
ias cited a number of conditions which require urgent

otes: "tenants complain about the refrigerator  
aker, the coffee maker and the soup machine. The 100  
urant gets excessively hot. When you energize the  
Having mentioned these conditions to Mr. Dawley  
that you are well aware that the service is being overloaded.

In this regard we refer you to and paragraph 11 of your lease agreement with us:

#11 "The Lessee shall not permit the leased premises to become overloaded, damaged, stripped, or defaced, nor suffer any waste."

Until such time as these issues are addressed you remain in default of your contractual agreement with us.

We strongly suggest that you downsize the equipment you are currently using immediately. If the refrigerator blows the breaker remove all other equipment from that circuit (your largest walk in only consumes 7 or 14 amps). It should run without blowing the breaker if it is the only piece of equipment on that branch.

We refer you to paragraph 7 of your lease agreement:

"Lessor shall have no obligation to provide utilities or equipment other than the utilities and equipment within the premises at the commencement date of this lease. In the event Lessee requires additional utilities or equipment, the installation and maintenance thereof shall be the Lessee's sole obligation, provided that such installation shall be subject to the written consent of the Landlord."



**Peter Dawley**  
Inspector of Wires  
Town of Oak Bluffs, MA 02557

---

November 29, 2009

RECEIVED  
NOV 30 2009

Shirley Fauteux, Health Agent  
Town of Oak Bluffs,  
School Street  
Oak Bluffs, MA 02557

OB BD OF HEALTH

**RE: 10 Kenebec Avenue, Wiring Violations**

Dear Shirley:

On November 24, 2009 as per the request of Jerry Weiner, Building Inspector, and yourself, I did a walk-through inspection with you and Health Board member, William White. I noticed numerous violations.

Beginning with the restaurant on the first floor, I noticed extension cords permanently feeding equipment both in the kitchen and back yard areas. The current tenants complain about the refrigerator continually blowing the circuit breaker, the coffeemaker, and the soup machine. The 100-amp panel, which services the restaurant, gets excessively hot. When you energize the blender the ceiling lights go out. There is a waterproof cover missing from a receptacle on the back porch. Romex supplying power to a flood light on the back porch is unsecured. There is a waterproof receptacle on the back porch, which is not secured to the building. The wiring for the grease trap is a common plug and on the back porch the receptacle is below grade.

In the second floor apartment I noticed that the bathroom door hits the romex supplying current to the bathroom light. Smoke detectors are missing. It appears that something, possibly rodents, have chewed the covering from the romex to the right of the kitchen sink.

Respectfully submitted,



Peter Dawley  
Wiring Inspector



Town of Oak Bluffs, Massachusetts  
BOARD OF HEALTH  
P.O. Box 1327  
Oak Bluffs, MA 02557

William White, Chm  
Patricia Bergeron  
David T. Caron

Shirley L. Fauteux  
Health Agent

Telephone: (508) 693-3554 ext 116 or 117  
Fax: (508) 693-6280

## **VIOLATIONS AT 14 KENNEBEC AVENUE, M 9, P 29**

### **UPSTAIRS:**

Windows not weather-tight; 2 windows have been boarded up

### **DOWNSTAIRS: ZAPOTEC**

Grease trap: Referred to Wastewater Department to check. Also have requested inspection of the grease trap.

Entire rear of restaurant open to the elements

Ice machine is draining onto ground

Leaks in the kitchen when raining

Vegetable and hand wash sink installed next to each other

Floor tiles missing from floor

Entire building needs structural inspection by a professional engineer

**Board of Health Meeting  
December 15, 2009  
Page 2**

Reid Silva: Map 19, Parcel 11; 294 Sea View Ave. Vibberts;  
Mr. Silva said that this property had a previously approved -but subsequently expired- permit for 6 bedrooms. The present permit application is unchanged except for the addition of enhanced treatment (Microfast). Mr. White made a motion to approve the permit, and it was so voted.

Chris Alley: Subdivision Map 17, Parcel 109.2  
Chris Alley, substituting for Doug Hoehn, explained the subdivision plan for five lots in Zone 2. There are plans for 2 “road lots” and 3 “others.” He questioned if the roads could be counted in the square footage of the “road lots,” thus enabling an increase in the number of bedrooms that could be allowed. It could not be clearly determined at this meeting whether this could be done. The health agent will need to do some research . Therefore, the issue was tabled and no decision was made.

Chris Alley: Map 15 Parcel 2, 151 Barnes Rd., Hopson  
This was a continuation of a previous discussion regarding a possible permit application for 12 bedrooms on this property. Chris thought he had submitted a plan, but he had not. He said he would submit it and the board will review it.

George Sourati: Map 13 Parcel 32.1; 246 Newton Rd, Lois Smyth  
Mr. Sourati stated that this is a 4-bedroom house on a paper road, served by a cesspool. The proposal is to upgrade using the FAST treatment system. The variance requests are for waivers from the coastal district from 200 ft from high water mark down to 122 ft; title 5 variances – leaching field 5 ft from the side property line instead of 10 ft, and 6 ft from the slab foundation instead of 10. The plan was approved by Mr. White and Ms. Bergeron.

Mr. Caron arrived following Mr. Sourati’s appointment. Ms. Bergeron and Mr. White filled him in on the earlier discussions, including the subdivision proposal presented by Chris Alley.

Frank Daly: Map 16 Parcel 39, Michael DeBettencourt  
The board then returned to Frank Daly’s request to have his plan discussed. Mr. Daly said the finish grade elevations were on the plan and he pointed them out to the members. He provided the variance requests and proof of notification of the abutters. Following a brief conversation with the Health Agent, who was still on the phone, Mr. Caron made a motion to approve the plan with the changes, including the attachment of the variance request. The motion was seconded and unanimously approved.

Update: Zapotec

M 9 P 29

There was a discussion regarding the pumping of grease from the grease trap at this restaurant. Russell Rogers apparently has pumped this in the past. However, Health Agent Fauteux said there is a pump located in the grease trap and she questioned why it was there and where did the grease get pumped. Several people saw the

**Board of Health Meeting**  
**December 15, 2009**  
**Page 3**

pump but Joe Alosso said he saw no pump there. Health Agent Fauteux said it should be pumped again to see if there is an outlet pipe and determine if the grease is being pumped into the sewer. She told Mr. Ward he needed to have a system inspector examine the system. Mr. Caron wasn't sure if this was Mr. Ward's responsibility or Cybele's, the restaurant operator. Health Agent Fauteux said this responsibility should not be of concern to the board. The board should just order the work to be done, and let Mr. Ward and Cybele negotiate who is going to do it. There was then a discussion about whether the restaurant should be closed until the problems are resolved.

Health Agent Fauteux stressed the multiple serious, potentially dangerous conditions in the building, including structural, plumbing and wiring problems. She suggested that the board members do a walk-through to see for themselves. It was decided that the members and the Health Agent would do a site visit on Friday, December 18, at noon.

John Cahill: District of Critical Planning  
Side 2 of tape. This discussion and the rest of the meeting did not record.

Transcribed by

Nathalie Woodruff  
Administrative Assistant



**Board of Health Meeting**  
**December 1, 2009**  
**Page 2**

submit formal letters of request to the chairman of the selectmen. In spite of complying with this, the board never received a response to any of the letters. The members agreed that there will be no information released regarding this discussion until a letter is received from the Board of Selectmen.

At Health Agent Fauteux's request, Mr. Collett then gave a synopsis of the functions of the tobacco control program. He gave credit to Ron Tolin, along with support from the local boards of health, for the success of the program on the island. There was also a discussion about the chronic problem of the unlocked humidior at Jim's Package Store. It is supposed to be locked at all times, but it was found to be unlocked on several inspections, and a number of verbal warnings were issued. A certified letter will be sent, informing the owner that he will be fined if the next inspection or walk-through reveals the humidior to be unlocked.

Health Agent Fauteux reported that someone complained about smoking on the deck at the PA club: when the doors are open the smoke comes into the building. Shirley and Bob went to the club before the meeting, met with the manager, and discussed the complaint. They concluded that the deck is not exposed enough to the open air, according to state regulations, and the club cannot ensure that no smoke will enter the building through the door and/or the nearby windows. Therefore, it is a violation to allow smoking on the deck. A gazebo-like structure was suggested; something with a roof but open on all sides.

Brooks Billingham: Variance M12, P5

This residence has a cesspool that has been failing and Mr. Billingham has designed a 3-bedroom title 5 system. The lot is very small and variances are requested for shortened distances from the foundation, from a shed and from a fish pond. No variances are requested for the lot lines. Following a short discussion, Ms. Bergeron made a motion to accept the variance requests; Mr. Caron seconded; the motion passed unanimously.

**MEMBERS:**

Dave Caron reported on his visit to Dick Mavro's house to take measurements to see if his outdoor wood burner is in compliance with the state code. The tape malfunctioned and the discussion could not be heard.

Tom Ward: Sanitary Code Violations M9, P29, Zapotec Restaurant, 14 Kennebec Avenue

Mark Peters, who was in the office, overheard the discussion of this property (a restaurant with an upstairs apartment) before the owners arrived, and he proceeded to relay his and his brother's recent experience there. He said the grease trap is illegal and some of the grease gets pumped into the town sewer and there was sewage on the ground under the building.

When Mr. Ward and his wife arrived, Health Agent Fauteux described the complaint she received regarding the conditions in the upstairs apartment. She has conducted an inspection and documented her findings. Because the apartment and the restaurant below share some components, she did a partial inspection in the restaurant. Of particular concern to her was the wiring of the entire building. She had the wiring inspector meet her there. Board of Health member White and Mr. Ward were present also. She stressed the need for a more thorough inspection of the restaurant, including wiring and plumbing, but her main focus at this time is on the conditions





DEPARTMENT OF BUILDING INSPECTION

RECEIVED  
DEC 11 2009

OB BD OF HEALTH

1-12-9

December 10, 2009

To Whom It May Concern:

The following plumbing code violations have been noted for Zapotec Restaurant on Kennebec Avenue, Oak Bluffs, MA 02557:

- 1) Commercial dish water dumping into PVC
- 2) Vegetable sink needs indirect waste
- 3) Hand sink waste redone
- 4) Ice cube maker dumping out on ground
- 5) All plumbing in PVC
- 6) Sink on deck, where icemaker is, should be disconnected.
- 7) Need back flow preventor for dishwasher
- 8) Need tempering valve for lavatories in bathrooms.
- 9) Three compartment sink not vented.

Plumbing Code 248CMR:

- 10.06 Materials
- 10.09 Interceptors, separators and holding tanks
- 10.12 Indirect waste piping
- 10.14 Water supply and water distribution
- 10.15 Sanitary drainage system.

  
Francis A. Kuszewski  
Oak Bluffs Plumbing &  
Gas Inspector

**Peter Dawley**  
Inspector of Wires  
Town of Oak Bluffs, MA 02557

---

November 29, 2009

Shirley Fauteux, Health Agent  
Town of Oak Bluffs,  
School Street  
Oak Bluffs, MA 02557

RECEIVED  
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Respectfully submitted,



Peter Dawley  
Wiring Inspector



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9/29



Town of Oak Bluffs, Massachusetts

BOARD OF HEALTH  
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Patricia Bergeron  
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November 23, 2009

Tom Ward  
Carol Hulak  
POB 69  
Oak Bluffs, MA 02557

Certified Letter: 7099 3400 0010 2656 2695

RE: Board of Health Hearing

Dear Mr. Ward:

This notice is to confirm the phone call you received this morning from Shirley L. Fauteux, Health Agent. You have been scheduled to meet with the Board of Health commissioners on December 1, 2009 at 11:00 a.m. in the town hall Board of Health office.

Sincerely,

*Nathalie Woodruff*  
Nathalie Woodruff  
Administrative Assistant



Town of Oak Bluffs, Massachusetts

BOARD OF HEALTH  
P.O. Box 1327  
Oak Bluffs, MA 02557

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November 10, 2009

Certified Letter: 7099 3400 0010 2656 2701

Thomas C. Ward  
Carol L. Hulak  
PO Box 69  
Oak Bluffs, MA 02557

RE: 14 Kennebec Ave., Map 9, Parcel 29

Dear Mr. Ward and Ms. Hulak:

In accordance with MGL c111 S 127A and 127B, 105 CMR 410.000 State Sanitary Code, Chapter 11: Minimum Standards of Fitness for Human Habitation, I, Shirley L. Fauteux, Health Agent for the town of Oak Bluffs, on November 5, 2009, conducted an inspection of an apartment located at 14 Kennebec Ave., Oak Bluffs, MA . A copy of the inspection report is annexed hereto.

The following is a list of the conditions which are violations of State Sanitary Code 105 CMR 410.000:

- Three (3) steps on exterior stairway loose (410.452, 410.500)
- Ceiling in kitchen (inside cabinet) leaks when raining (410.500)
- Windows in entire apartment not weather-tight (410.501(A) )
- Entry door not weather-tight (410.501(B) )
- Wires, cord going from bathroom wall to inside kitchen wall (410.822) (referred to wiring inspector) (410.256)
- Gas odor in apartment (410.351)
- Oven not working, two (2) top jets not working (410.351)
- Rat seen going from kitchen to bathroom. Holes in wall in bathroom. Hole around PVC pipe under sink (410.550(B), (410.351)

Please be advised, within 10 days of receipt of this order, all of the enclosed violations must be in compliance, with the exception of the weather-tight windows, which shall be in compliance within 21 days of receipt of this order. Failure to comply will result in further action. Please call the Board of Health office to schedule an appointment for a re-inspection to confirm compliance.



Thomas G. Ward  
Carol L. Hulak  
November 10, 2009  
Page 2

Should the current tenant vacate the apartment, no one else shall occupy said apartment until the above-referenced violations have been corrected and are in compliance.

Should you be aggrieved by this order, you have the right to request a hearing before the Board of Health. A request must be received in writing in the Board of Health office within seven (7) days of receipt of this order. At said hearing you will be given an opportunity to be heard and to present witnesses and documentary evidence as to why this order should be modified or withdrawn. You may be represented by an attorney. Please also be informed that you have the right to inspect and obtain copies of all relevant inspections or investigative reports, orders, notices, and other documentary information in the possession of this department, and that any adverse party has the right to be present at the hearing.

If you have any questions, please contact me at (508) 693-3554 extension 116.

Sincerely,



Shirley L. Bauteux  
Health Agent

Enclosure

Cc: Complainant  
Building Department  
Board of Selectmen