

TITLE 5 ISSUES THAT DON'T GO AWAY

(no matter how hard you try!)

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MEHA
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Seminar

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OUTLINE

- Bedroom(s)
 - Definition
 - Number
- New Construction
- Deed Restriction/Notification/ Covenant and Easement
 - When
 - Why
 - What
- Variances/LUA
 - Full Compliance Goal
 - Step-by-step Process
- Other Issues/Questions

BEDROOMS

BEDROOM DEFINITION – 310 CMR 15.002

A room providing privacy, intended primarily for sleeping and consisting of all of the following:

- (a) floor space of no less than 70 square feet;*
- (b) for new construction, a ceiling height of no less than seven feet three inches;*
- (c) for existing houses and for mobile homes, a ceiling height of no less than seven feet zero inches;*
- (d) an electrical service and ventilation; and*
- (e) at least one window.*

BEDROOM DEFINITION CONT'D

Living rooms, dining rooms, kitchens, halls, bathrooms, unfinished cellars and unheated storage areas over garages are not considered bedrooms.

BEDROOM DEFINITION CONT'D

Single family dwellings shall be presumed to have at least three bedrooms.

- Traditionally a presumption for new construction
- Not a presumption for a 2-bedroom upgrade
- Tiny homes issue
- Common sense

Presumption may be overcome by the following:

The applicant may design a system using design flows for a smaller number of bedrooms than are presumed in this definition by granting to the Approving Authority a deed restriction limiting the number of bedrooms to the smaller number.

BEDROOM DEFINITION CONT'D

Where the total number of rooms for single family dwellings exceeds eight, not including bathrooms, hallways, unfinished cellars and unheated storage areas, the number of bedrooms presumed shall be calculated by dividing the total number of rooms by two then rounding down to the next lowest whole number.

Examples:

9 rooms: $9/2 = 4.5$, therefore 4 bedrooms

17 rooms: $17/2 = 8.5$, therefore 8 bedrooms

But....remember that this presumption may be overcome...

BEDROOM DEFINITION CONT'D

The applicant may design a system using design flows for a smaller number of bedrooms than are presumed in this definition by granting to the Approving Authority a deed restriction limiting the number of bedrooms to the smaller number.

In order for this design to be approved, the Board of Health must be willing to accept the deed restriction. If there is any issue with the facility design that concerns the BOH as to the actual number of bedrooms in the dwelling, the BOH does not have to accept the restriction.



NEW CONSTRUCTION

NEW CONSTRUCTION DEFINITION

*The construction of a new building for which an occupancy permit is required or
an increase in the actual or design flow to any system or
an increase in the actual or design flow to any nonconforming system or
an increase in the design flow to any system above the existing approved capacity.*

NEW CONSTRUCTION DEFINITION CONT'D

New construction shall not include replacement or repair of a building in existence as of March 31, 1995 that has been totally or partially destroyed or demolished, provided there is:

- *no increase in design flow,*
- *no increase in design flow above the existing approved capacity to any system,*
- *no increase in the number of dwellings or dwelling units or*
- *no increase in the number of bedrooms in any dwelling or dwelling unit.*

LET'S TAKE A LOOK AT SOME EXAMPLES...

Disclaimer: Discussion and conclusions of this entire presentation but especially this section, are based solely on Title 5, 310 CMR 15.000. Local bylaws, regulations, interpretations and practices may vary.

NEW CONSTRUCTION?

Existing circa-1950s dwelling.

No records at BOH.

Assessors records indicate 3 bedrooms historically and no building modifications.

Failed system inspection and an upgrade is required.

New Construction?

NO

House has been there 60 years and taxes have been paid on a 3 bedroom. Barring a BOH record, the only official record is the Assessors.

NEW CONSTRUCTION?

Existing circa-1970s dwelling.

BOH records indicate a 3-bedroom system circa 1979.

Assessors records indicate 4 bedrooms historically.

It is a two-story dwelling with 4 bedrooms upstairs.

Failed system inspection.

Designer designs for 440 gpd.

New Construction?

NO*

House as-is has been there 40 years and taxes have been paid on a 4 bedroom. Looks like there was an error way back. I believe they are entitled to the 4.

NEW CONSTRUCTION?

Existing circa-1982 dwelling.

BOH and assessors records both indicate 2 bedrooms.

Failed system inspection and an upgrade is required.

Designer comes in with a 3-bedroom design.

New Construction?

YES

If the design can meet new construction standards for 3 bedrooms, including a reserve area, then a 3-bedroom system may be installed. If not, 2 bedroom design to MFC with deed restriction as discussed in 310 CMR 15.203 is appropriate.

NEW CONSTRUCTION?

Existing circa-1996 3-bedroom dwelling.
BOH has a CoC for a 1995-Code 440 gpd system.
Assessors records indicate 3 bedrooms historically.
Owner wants to add a bedroom.

New Construction?

NO

System has approved capacity of 440 gpd and the additional bedroom will not cause this to be exceeded. A system inspection should be done to see how the system is performing and for locational issues related to the addition. If failure, owner is still entitled to 4 bedrooms under LUA. Setbacks must be maintained.

NEW CONSTRUCTION?

Existing circa-1970s dwelling.

No BOH records.

Assessors records indicate 3 bedrooms historically.

Developer wants to tear down and rebuild a dwelling with a bigger footprint but still only 3 bedrooms.

System passed inspection.

New Construction?

NO

This is where that exemption for reconstruction of a building wholly or partially destroyed/demolished comes into play. Be careful though regarding setbacks since the larger footprint may cause setback issues.

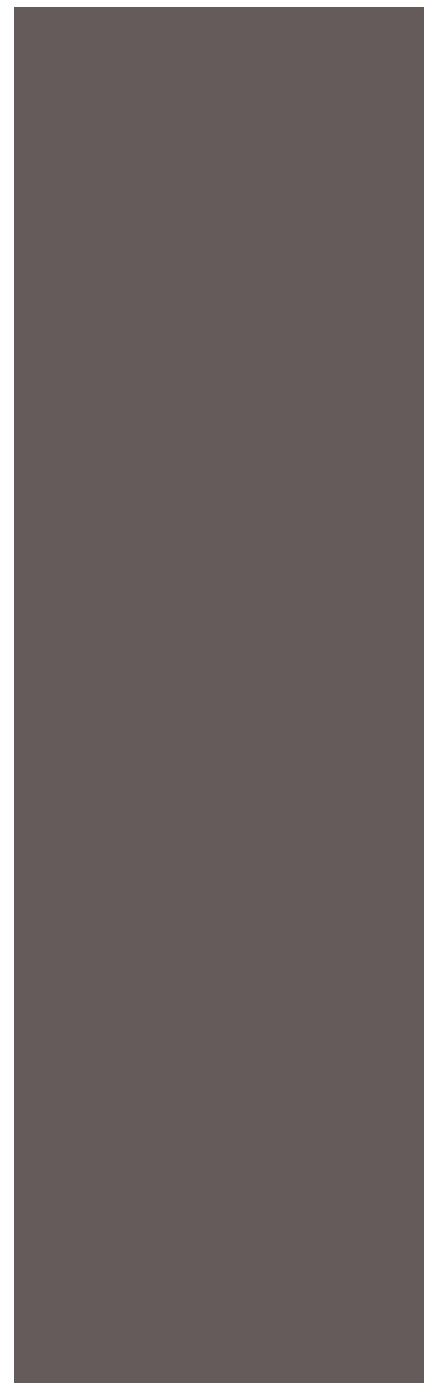
NEW CONSTRUCTION?

Existing old 8-bedroom Victorian single family home.
Property has sold before and passed System Inspection.
New owner wants to convert it into eight 1-bedroom condominiums.

New Construction?

YES

The exemption does not apply because there is an increase in dwelling units. Therefore, a new system that complies with new construction standards needs to be designed and installed.



RESTRICTIONS, NOTIFICATIONS, COVENANTS AND EASEMENTS

RESTRICTIONS

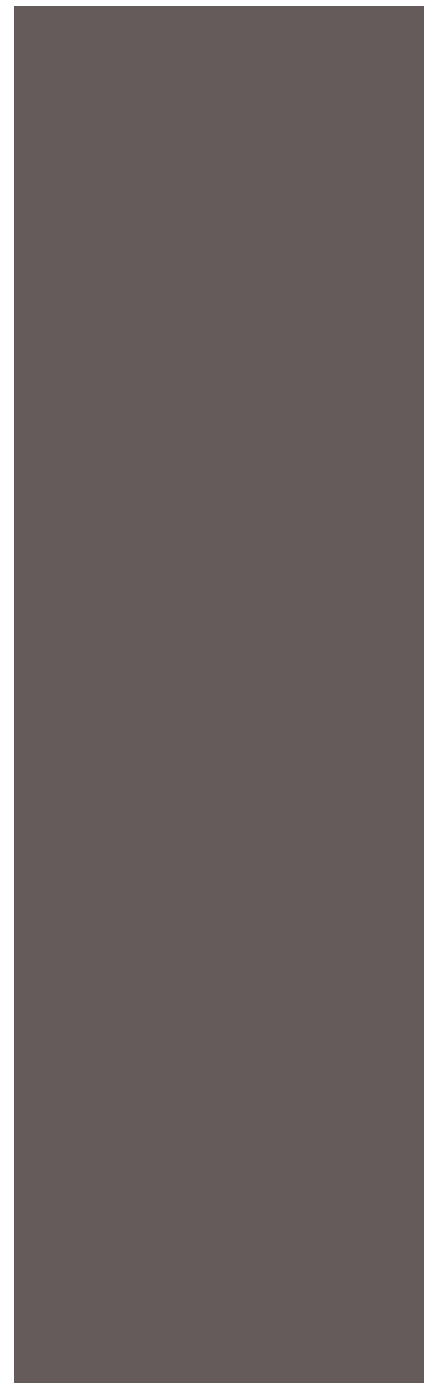
- Bedroom
 - 310 CMR 15.002 *Bedroom*
 - 310 CMR 15.203(2)* *
- Nitrogen Aggregation Approvals
 - 310 CMR 15.216(5)
 - *Guidelines for Title 5 Aggregation of Flows and Nitrogen Loading*
- Seasonal Use Residential Facility (use of tight tank)
 - 310 CMR 15.260(8)

NOTIFICATIONS

- **Tight Tank – approval letter**
 - 310 CMR 15.260(8)
- **I/A Approvals – most require a notification**
 - **General Use: excludes non-treatment units such as septic tanks and pump-only units and Alternative SAS with Patented Sand Filter**
 - **Remedial Use**
 - **Piloting Use**
 - **Provisional Use**

COVENANTS AND EASEMENTS

- **Shared Systems**
 - **310 CMR 15.000 Appendix 1**



VARIANCE
LOCAL UPGRADE APPROVAL
I/A TECHNOLOGIES

VARIANCES

(310 CMR 15.410 – 15.413)

- Full Compliance Goal
 - Upgrades
 - New Construction
 - If not possible, variance
 - Most only require BOH Approval
 - MassDEP must review/approve:
 - Tank or SAS < 200 ft to surface water supply
 - Tank or SAS < 100 ft to tributary to surface water supply
 - Tank < 25 ft of any surface water
 - SAS < 50 ft of any surface water
- * See 350 CMR 11.00 Watershed Protection regarding the Ware, Quabbin and Wachusett watersheds.

VARIANCE STANDARDS

- Enforcement of the provision would be manifestly unjust
 - For new construction, must demonstrate that enforcement of the provision would deprive the applicant of substantially all beneficial use of the property
- A level of environmental protection equivalent to that provided under Title 5

These findings need to be made with every application for variance. BOH's approval should note each variance and how it meets the standards.

LUA AND MFC

(310 CMR 15.403 – 15.405)

- Goal is full compliance for upgrades
 - Fully complying system
 - I/A
 - Shared system
 - Connection to municipal sewer
- If SI failure caused by one component, upgrade component with caveats
- If full compliance is not possible, LUA

LUA

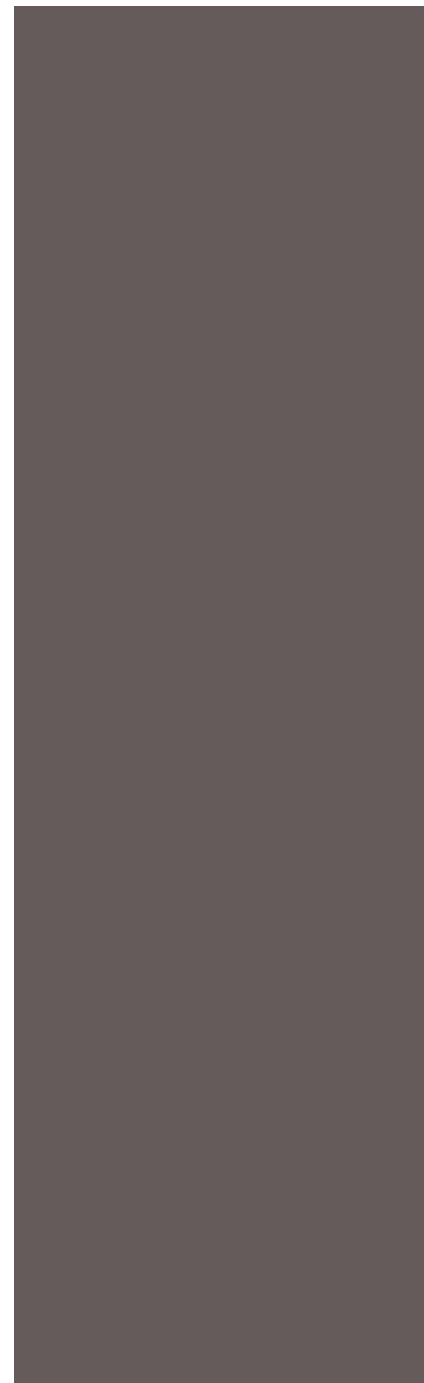
- Compliance must not be feasible [310 CMR 15.404(1)and 15.405(1)].
- Best feasible upgrade.
- Protection of water resources and treatment of the sewage should be emphasized.
- Reductions are in the order they are to be considered.

ORDER OF LUAS

1. Property line setback*
2. Foundation, slab, swimming pool setback
3. 25% SAS area reduction;
4. Zone II or 100 ft of private well*, well relocation
5. BVW setback
6. Various wetland resource areas
7. Water supply setback
8. Depth to groundwater* *

* Notification to affected abutter(s), if applicable, is required.

** Pre-conditions must be met.



OTHER QUESTIONS/ISSUES?

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COMPLAINTS
COMMENTS
COMPLIMENTS

