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TOWN OF ORLEANS
TOWN CLERKS OFFICE

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TOWN OF ORLEANS – BOARD OF HEALTH

MINUTES OF MEETING

December 2, 2010

The Board of Health convened its meeting at 2:00 p.m. on Thursday, December 2, 2010 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman, Job Taylor, III, Vice Chair Augusta McKusick, Jan Schneider, M.D. Also present: Robert Canning, Health Agent, and Susan Christie, Liaison from the Board of Selectmen.

Excused: Robin Davis, Ph.D. and Elizabeth Suraci

Agenda Item 1 – Public or Press

There was no one present for Public or Press.

Agenda Item 2 – Variance Request – 114 Barley Neck Road

Mr. David Lyttle of Ryder & Wilcox and Mr. Peter Polhemus, of Polhemus Savery DaSilva represented Richard and Lisa Pell, owners of the property at 114 Barley Neck Road. Mr. Lyttle explained the request for a variance to the Orleans Town Code, Chapter 147 – Swimming Pool Fencing. He explained that the fence is proposed to be a greater distance (52 feet instead of 20 feet) from the edge of the dipping pool. He affirmed that the pool house would be considered part of the fencing.

Mr. Canning discussed that this is a variance to a Town of Orleans Regulation, and he reviewed the specifications required by that regulation. The fence must be inspected by the Building Department but the Board of Health would be allowed to grant a variance after hearing appropriate arguments in favor of a variance. The owner must be able to view the fencing from all areas to determine that it is maintained, structurally sound, and protects the public health and safety.

Board members discussed that the pool in question is approximately four (4') feet deep.

There were no abutters present.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 114 Barley Neck Road to grant the variance as requested to permit the pool fence to be 50 feet / 52 feet at one area as opposed to 20 feet.

Mr. Canning mentioned that abutters Bert and Kristi Klein had submitted a letter expressing no objection to the request.

The vote was 3-0-0.

Agenda Item 3 – Variance Request – Orleans Villa Pizza

Mr. Jeff Goddard, owner of Orleans Villa Pizza, and his son Mr. Todd Goddard were present to request a variance from the Federal Food Code 6-301.13 – Hand Washing Aids and Devices, Use Restrictions. Mr. Jeff Goddard explained his proposal to use the restaurant's utility sink in place of a hand washing sink in the men's room. The restaurant is currently undergoing renovations in preparation for sale of the business to his son, Mr. Todd Goddard. His plumber determined that the additional sink cannot be installed according to Code because the bathroom is very small (four feet by five feet). Mr. Goddard ex-

plained their proposed protocol for discarding floor washing water into the toilet. They would also sanitize the utility sink after each use as a utility sink.

Mr. Canning affirmed that the Federal Food Code, Section 6-301.13, does not allow the use of a slop sink in a restroom for hand washing.

Board members discussed the need for two bathrooms in the restaurant which Mr. Canning explained that it is calculated on the number of seats in the restaurant. Mr. Goddard also explained that following earlier renovations they were required to have two bathrooms, one of which is handicap accessible. It was also suggested that the signage be changed to allow both bathrooms to be unisex.

There were no abutters present.

On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health voted in the matter of Orleans Villa Pizza. Findings are:

1. **Currently there are two bathrooms/restrooms in this restaurant with fifty-two (52) seats, designated currently for men and for women.**
2. **The men's room currently has a single sink which is a utility sink that has been used as the hand washing for that restroom, and employees and customers that use it.**
3. **Code requires that a utility sink not be used for hand washing. However, the room itself is too small for a second sink to be installed.**
4. **The variance request is that we allow the utility sink to be used for hand washing, recognizing that it will thoroughly be sanitized and cleaned any time it is used in its utility sink function.**

I move that we approve that variance. The vote was 3-0-0.

Agenda Item 4 – Hearing Request – 4 Harborview East

Mr. Edmund Pitcher, owner of the property at 4 Harborview East, was present to explain his predicament. Mr. Keith Fernandes of J.M. O'Reilly and Associates, professional engineer for the owner, was also present.

Attorney Taylor and Mr. Pitcher discussed whether to use a Power Point presentation Mr. Pitcher had prepared. It was decided to have Mr. Canning introduce the facts of the catastrophic damage to the subject property.

Mr. Canning explained to Mr. Pitcher that in an emergent situation he must immediately discuss with Board members any necessary action to be taken to rectify the urgent situation. Mr. Pitcher requested a variance for the new septic tank to be placed at the same depth as the previous tank although it would be approximately six (6') feet below grade. He reported that the tank has been installed but has not yet been connected to the dwelling.

Mr. Canning outlined the chronology of events leading up to the failure of the septic system and how he met with Mr. Pitcher, Mr. Fernandes, and Mr. Daniels, licensed septic installer (also present), to discuss what steps would be taken to resolve the damage. He explained that the property is surrounded on two sides by wetlands and a Coastal Bank that extends up from the wetland; therefore he authorized the immediate installation of the new septic tank and pump chamber prior to receiving a variance from the Board of Health. A letter from Mr. Fernandes confirmed that the leaching pit is also compromised and must be replaced. Mr. Canning noted that the Pitcher's have moved quickly and diligently to resolve the situation.

Board members discussed what variances are necessary to allow the project to go forward. Mr. Canning explained that he and Mr. Fernandes discussed the location of the Coastal Bank and whether the loca-

tion of the septic tank and pump chamber are outside the fifty (50') foot setbacks or if a variance is needed to that setback in addition to the variance for depth of the components. Board members also discussed and Mr. Canning affirmed that the septic tank could temporarily be used as a holding tank until the plans for a full septic system are prepared. They also discussed when and under which regulations the damaged septic system was installed with respect to the distance from the Coastal Bank. Mr. Fernandes reported that the current system was installed in 1984 and then explained the approximate distances of the septic tank and leaching pit to the Coastal Bank. He also explained that the leach pit is essentially defunct. They discussed whether the new septic tank could be used as a pump chamber and Mr. Fernandes explained that the new tank that has been installed can be used as part of the final design of the compliant septic system.

Mr. Pitcher explained his request to install a gravity septic system. He noted that his septic system was originally installed on grade and then filled with sand and clay material up to the lower level of his house. He requested that he be allowed to install a system located six or seven (6'-7') feet underground to avoid destroying the driveway. He described where his property lines are and the topography and slope of the land on either side of the driveway.

Mr. Fernandes explained that the soils are primarily sandy in the area of the septic tank and that the soil could support an on-site sewage system. Mr. Canning discussed the original soil testing conducted at the site. He suggested that the Board would need to consider variances to the top of the Coastal Bank, drainage system variances, and variances to the fill above the leaching system. Mr. Fernandes explained that he would need to establish the level of groundwater and where the bottom of the leaching field would need to be, but the new system would most likely meet the requirements.

Mr. Fernandes requested determination of the number of bedrooms in the dwelling. Mr. Canning explained the rooms on the first and lower levels and suggested that the Board members consider the traffic pattern on the lower level to determine whether the family room might meet the criteria of a bedroom.

On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter 4 Harborview East. Findings are:

1. **This is a two-level property.**
2. **On the upper level there is a master bedroom on the plans submitted to us dated December 2, 2010.**
3. **There is an area called the den which meets our criteria, and can be considered a "bedroom" no matter what its use may be.**
4. **On the lower level there are interesting traffic patterns with two halls, a family room, and three areas designated as bedrooms. Because of the particular traffic patterns they are able to be isolated, although the family room does not seem to be.**

Therefore, this property is considered to be a five-bedroom property. The vote was 3-0-0.

Agenda Item 5 – Approve Minutes

The minutes of the Board of Health meeting held on November 18, 2010 had previously been distributed to Board members for review and approval. The minutes were held for lack of a quorum of members present at that meeting.

Agenda Item 6 – Health Agent's Report

Mr. Canning reported on the following:

Solid Waste Issues

The Board of Selectmen has invited the Board of Health to meet with them on Wednesday, January 5, 2011 at its regularly-scheduled meeting. The purpose of this meeting is to follow up on Solid Waste Planning Issues, including:

- Update on Town of Bourne's Regional Solid Waste Forum and possible options involving long term access to their municipal landfill
- Other options to consider with the SEMASS contract expiring in 2015 (i.e., pay as you throw; stabilization fund to offset future solid waste costs)
- Discuss staff recommendations for any fee increases for FY12

It was established that there would be a quorum of members of the Board of Health available for that meeting.

Housing Report

33 Eli Rogers Road

On October 7, 2010, after holding a hearing, the Board of Health ordered the owner of 33 Eli Rogers Road to correct the following health and safety items within 30 days (November 6, 2010).

Interior Stairway

- Handrail is loose

Bathroom

- The bathroom light sconces above the sink are loose/not properly secured.
- The electrical outlets on the bathroom sconce lights do not work.
- The toilet is not firmly affixed to the floor.

Utility Room

- The electrical heating panel has fallen off the wall and is lying on the floor of the room

Hallway leading to the bathroom and utility room

- There is an outlet extending out from the hallway closet. This outlet is not secure.

Exterior

- Repair the flood light above the front entry door

Bedroom #1 (left of stairway)

- Both Windows are not capable of being locked.
- The window to the rear of the room does not stay open.

Bedroom #2 (right of stairway)

- Both windows are not capable of being locked.

Hallway at top of stairs

- Window is incapable of being locked.

Living Room

- There is a propane gas heater in the living room; tenant complains that there is a strong gas odor. Tenant expressed concern about the installation of this unit. Compliance with this item must be satisfactorily addressed with the Building Department.

On December 1, 2010 the Health Department conducted a re-inspection of the premises to confirm compliance with the above noted items. At the time of the inspection the following remained out of compliance:

Bathroom

- The bathroom light sconces above the sink are loose/not properly secured.
- The electrical outlets on the bathroom sconce lights do not work.

Bedroom #1 (left of stairway)

- The window at the rear of the room does not stay open.

Living Room

- There is a propane gas heater in the living room; tenant complains that there is a strong gas odor. Tenant expressed concern about the installation of this unit. Compliance with this item must be satisfactorily addressed with the Building Department. (The tenant stated that the unit was worked on and leaks were found; however, Mr. Canning has not located a town inspection for the repairs.)

None of the items requiring compliance within 90 days have been addressed.

In addition to the above, when the Health Department spoke to the tenant on November 30, 2010 to schedule the re-inspection they were informed that on November 25, 2010 the hot water tank was leaking substantially to the extent that it flooded the lower level of the dwelling unit. The Health Department was also informed that on November 24th the electrical service to the unit had been shut off by the owner. (The owner requested that the utility company turn it off.)

During the December 1, 2010 re-inspection the Health Department observed that the hot water tank was leaking into the utility room, there was no hot water provided to the unit. They also observed that the floor tiles surrounding the toilet were missing and bare wood was exposed. According to the tenant, these tiles had become dislodged when the area was flooded from the loose toilet leaking.

Based on these observations, the Health Department issued an order for these repairs. (Hot water tank must be repaired within 24 hours, and the floor tiles repaired within 30 days.)

On December 2, 2010 the Health Department received a complaint that there is no potable water being supplied to the dwelling. On December 2, 2010 the Health Department confirmed that there is no potable water being supplied to the dwelling and will follow through on this item as required.

Board members discussed that the dwelling is no longer habitable and expressed concern and frustration that orders from the Health Department have been disregarded. Mr. Canning outlined the steps necessary to declare a dwelling uninhabitable. It was suggested that if the Health Department has not heard from the owner within twenty-four hours that the matter be referred to Town Counsel. Board members discussed further whether to pursue compliance with the Health Department orders or to request that Town Counsel condemn the property. Mr. Canning noted that if the potable water and hot water are restored, the property would again become habitable.

18 Industry Way

On November 22, 2010, upon the findings of the Board of Health, the Health Department issued an order to the owner of the property, effective November 30, 2010 to cease and desist the use of this unit as a habitable dwelling unit until such time that all violations have been corrected.

On November 23, 2010 the Health Department conducted a re-inspection of the dwelling unit at 18B Industry Way. At the time of the inspection several items remained in violation of Chapter II.

On December 2, 2010 the Health Department conducted an inspection to confirm that the unit was vacant. At the time of the inspection they met with Marcel Cosantino who informed them that the tenant had moved out on Tuesday, November 23, 2010. Mr. Cosantino stated that the locks have been changed and no one is going to occupy the unit until all repairs are complete. Mr. Canning reported that there are still some personal belongings left in the dwelling unit; however Mr. Cosantino assured him that the tenant had intentionally left them behind.

Temporary Food Permit

Orleans Chamber of Commerce

Pam Patrick of the Orleans Chamber of Commerce was present to request a Temporary Food Permit and a variance for the menu to be served at the Seaside Christmas in Orleans chowder tasting on Saturday, December 18, 2010 from 11:30 a.m. to 2:30 p.m. This will be held at the MidCape Home Center Kitchen Design Showroom. Chowder and crackers (no beverages or other items) will be served.

Seven local restaurants are participating and will bring their hot chowder to the site and hold it hot at the tasting. Each restaurant will have a location in a kitchen display area. All chowder will be served using disposable cups, spoons, napkins, etc. Toilet and hand washing facilities are available at the site.

Food will be served to order and any leftovers will be discarded at the end of the day. All restaurants will be asked to bring extra serving ladles as there are no washing facilities on site. The event coordinator will check for proper holding temperatures regularly during the event. Hand sanitizer will be available at the tasting.

Mr. Canning reiterated that the Board would need to grant variances for the menu (chowder) and from the requirement to have a Certified Food Protection Manager at the event.

Ms. Patrick explained the purpose of the chowder tasting is to have an activity in town to entice shoppers to shop for Christmas and to help town merchants. She listed the participants as follows: The Beacon Room, Cape Cup, Land Ho, Hole In One, Jailhouse Tavern, Sir Cricket's, and Yardarm. Ms. Patrick will personally be responsible to ensure that the proper temperature is maintained for the chowder. She noted that the vendors will probably run out of chowder before 2:30 p.m., essentially ending the event early.

Attorney Taylor, as Chairman of the Board of Health, waived the requirement for this variance hearing to be listed on the agenda for this meeting due to Ms. Patrick's unfortunate personal matter.

On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted in the matter of the chowder tasting event scheduled for the last weekend before Christmas in Orleans on Saturday, December 18th between 11:30 a.m. and 2:30 p.m., or until the chowder runs out. There being seven participating restaurants, all of which will prepare the chowder or food on their own premises in their own kitchens and will bring the chowder to the MidCape site. The temperature of the food will be maintained at 140 degrees or above, and that will be carefully monitored by experts with thermometers. The only variance that we need to grant is that there will be no on-site Certified Food Protection Manager even though each of the restaurants clearly does have such an individual. I move that we approve it under those circumstances with a designated person in charge. The food to be served, we are told, will be seven varieties of clam chowder. The vote was 3-0-0.

Agenda Item 7 – Review Correspondence / Old and New Business Correspondence

7 – 1 – A listing of the Board of Health Permits proposed for 2011 was previously distributed to Board members for review and discussion. This was postponed until the next meeting on December 16, 2010 when more Board members will be present.

Mr. Canning distributed the new order for 33 (37) Eli Rogers Road that he had previously discussed in his Health Agent's Report. (*Exhibit 6-1*)

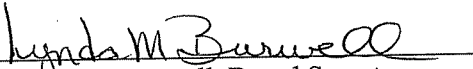
Ms. Christie offered that Mr. McGrath gave a presentation on solid waste disposal at the Board of Selectmen's last meeting that could be informative for the Board of Health members prior to their January 5, 2011 discussion of Solid Waste Disposal proposals with the Board of Selectmen.

There was no further business to discuss during this meeting.

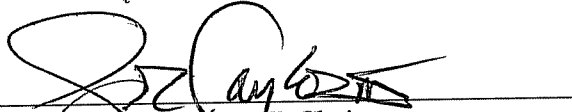
Agenda Item 8 – Adjournment

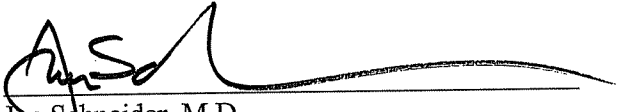
On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to adjourn this meeting of the Board of Health at 3:14 p.m. The vote was 3-0-0.

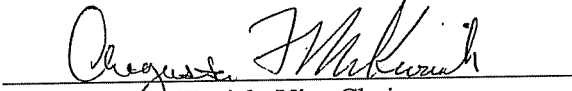
Respectfully submitted,


Lynda M. Burwell, Board Secretary

ORLEANS BOARD OF HEALTH


Attorney Job Taylor, III; Chairman


Jan Schneider, M.D.


Augusta F. McKusick, Vice Chairman

Excused
Robin K. Davis, Ph.D.

Excused
Elizabeth Suraci

December 16, 2010
Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE December 2, 2010
MEETING OF THE ORLEANS BOARD OF HEALTH**

Agenda Item 2 – 114 Barley Neck Road

- 2 – 1 – Letter and Variance Application submitted by Polhemus Savery DaSilva Architects. Dated November 16, 2010
- 2 – 2 – Fence Plans by CBA Landscape Architects dated April 26, 2010
- 2 – 3 – Excerpt of Orleans Town Code, Chapter 147, Swimming Pool Fencing
- Exhibit 2 – 1 – Abutters Letter from Bert & Kristi Klein dated November 24, 2010

Agenda Item 3 – Orleans Villa Pizza

- 3 – 1 – Variance request letter from Todd Goddard, Christopher Tomkinson, and Elaine Goddard dated November 23, 2010
- 3 – 2 – Photo of Washroom

Agenda Item 4 – 4 Harborview East

- 4 – 1 – Hearing request letter from Edmund and Sue Pitcher dated November 26, 2010
- 4 – 2 – OHD letter dated November 22, 2010 regarding Failure of Septic System
- 4 – 3 – Excerpt of OBOH Subsurface Sewage Disposal Regulations, Section III Definitions and Section IV General Requirements and Excerpt of Title 5, Section 15.303 Systems Failing to Protect Public Health and Safety and the Environment
- 4 – 4 – Floor Plan of Main and Lower Levels
- 4 – 5 – Plot Plan of property and septic system from OHD files
- Exhibit 4 – 1 Letter from J.M. O'Reilly dated December 2, 2010

Agenda Item 5 – Approve Minutes

- 5 – 1 – OBOH Meeting Minutes of November 18, 2010

Agenda Item 6 – Health Agent's Report

- 6 – 1 – Letter from the OHD to Trudy Nordhausen dated November 22, 2010 Re: 18 Industry Way, Unit B
- 6 – 2 – Unit B Housing Order resulting from November 23, 2010 Inspection
- Exhibit 6 – 1 – OHD Letter to George Albert dated December 1, 2010 Re: 33 Eli Rogers Road

Agenda Item 7 – Correspondence / Old New Business

- 7 – 1 – Board of Health Permits 2011