

TOWN OF ORLEANS – BOARD OF HEALTH

MINUTES OF MEETING

December 1, 2011

The Board of Health convened its meeting at 2:03 p.m. on Thursday, December 1, 2011 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman Job Taylor, III, Vice Chair Augusta McKusick, Jan Schneider, M.D., Elizabeth Suraci and Robin Davis, Ph.D. Also present: Health Agent Robert Canning, Susan Christie, Liaison from the Board of Selectmen, and Dale Fuller, Liaison from the Finance Committee.

Agenda Item 1 – Public or Press

There was no one present for Public or Press.

Agenda Item 2 – Discussion – 23 Herring Brook Way

Mr. Tim Counihan, owner of the property at 23 Herring Brook Way, was present for this hearing. He explained his request to renovate a room at the back of the garage (which is finished with walls and wood floors) into a family room with a half bathroom. He would also like to relocate the laundry to this area. Mr. Counihan acknowledged that he had just recently discovered a condition placed on the variance for installation of a septic system which restricts any increase of habitable space within the dwelling. His proposal would increase the habitable space by about 200 square feet. Mr. Counihan acknowledged that he was unaware of the deed restriction at the time of purchase.

It was noted that the lot size is less than one-half acre and the owner would be installing an Advantex septic system to reduce the amount of nitrogen dispersed into the groundwater.

Mr. Canning reported that the Health Department examined the room in question in 2010 and explained that it could not be classified as a bedroom. The proposed room has direct access to the garage, therefore not meeting the criteria as a bedroom. Because of its size the screened porch does not meet the criteria of a bedroom. Mr. Canning outlined the description of a bedroom as listed in the State Housing Code versus in Title 5. He also discussed a restriction that has been removed from Title 5 Code now allowing an increase in habitable living space.

Board members discussed whether a garage is habitable living space. Mr. Canning stated that a garage would not be considered habitable living space. It was noted that the proposal is utilizing current garage space as habitable space. There would be no harm to the environment. Board members discussed the mechanism to reverse the previous Board action restricting any expansion of the habitable space in the dwelling. Attorney Taylor explained that it would be necessary to hold a formal hearing to revoke the condition previously placed on the property.

Mr. Counihan will prepare a variance request for a future meeting.

Agenda Item 3 – Bedroom Determination – 6 Marshwind Lane

Mr. Sam Streibert of Streibert Associates – Architects represented Lawrence and Anne Gaine, owners of the property at 6 Marshwind Lane. He explained the request from the owners to add a bedroom on the second floor and designate a current bedroom on the first floor as a dining room; and to finish a basement area, constructing an additional bedroom. He distributed photographs of the basement area (Exhibit 3-1) and also discussed the criteria of isolation and showed a plan of the basement area noting the lack of isolation and light that would prevent the new room from meeting the criteria as a bedroom.

Mr. Canning discussed the division of the master bedroom into two bedrooms and the classification of the

family room in the basement as meeting the criteria of another bedroom by the Health Department. The septic system was approved with variances for four bedrooms. He suggested having a door from the master bedroom into the new bedroom. Board members concurred that it appears there are five rooms that meet the criteria of a bedroom.

Mr. Streibert inquired if a deed restriction would be appropriate.

On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted to deny the request as presented. The request as presented would be a five-bedroom location at 6 Marshwind Lane; and if it went forward as presented, if the master bedroom was not divided it would be a four-bedroom space with the downstairs basement area. If the master bedroom was divided and the lower level (the bottom level) was not completed it would be four bedrooms. The third option is to divide the master bedroom but only have the access from the physical bedroom space. The vote was 5-0-0.

Agenda Item 4 – Approve Minutes

The minutes of the Board of Health meeting held on October 20, 2011 had previously been distributed to Board members for review and discussion.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted to approve as presented the minutes of the meeting held on October 20, 2011. The vote was 4-0-1. Mrs. Suraci abstained because she had not been present at that meeting.

The minutes of the Board of Health meeting held on November 17, 2011 had previously been distributed to Board members for review and discussion.

On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health voted to approve as presented the minutes of the meeting held on November 17, 2011. The vote was 3-0-2. Mrs. McKusick and Dr. Davis abstained because they had not been present at that meeting.

Agenda Item 5 – Review Correspondence / Old and New Business

5 – 1 – The Orleans Board of Health Permit Renewals for 2012 had previously been distributed to Board members for review and discussion. Mr. Canning distributed a Revised Permit Renewals (Exhibit 5-1) and outlined the changes made to the previous version.

On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted in the matter of The Terraces (change of name from Orleans Convalescent Home) to grant a thirteen month license starting December 1, 2011 going through December 31, 2012. The vote was 5-0-0.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health, voted to approve the Orleans Board of Health Permit Renewals for 2012 subject to complete application and all other requirements of the Health Department being met. The vote was 5-0-0.

5 – 2a – A letter dated November 22, 2011 to Daniels Recycling Company, Inc. with the November 15, 2011 Inspection Report had previously been distributed to Board members for review and discussion.

5 – 2b – A letter dated November 21, 2011 to Daniels Recycling Company had previously been distributed to Board members for review and discussion.

5 – 2c – An article from the November 25, 2011 Cape Codder had previously been distributed to Board members for review and discussion.

Mr. Canning reported that DRCI had requested that the Health Department come observe the building and it is fairly empty, therefore complying with one of the requirements of the previous Board of Health hearing.

Two items on the agenda would not be discussed at this meeting: 137 Rock Harbor Road has been postponed to the next meeting; and Mr. Canning reported on 7 Prence Lane in his Health Agent's Report.

Agenda Item 5 – Health Agent's Report

Mr. Canning reported on the following:

7 Prence Lane

In 2010 the owner was issued an order to repair the septic system as a result of septage overflow. At that time the owner requested additional time and the Board of Health allowed an extension of time. The owner was required to have the system monitored monthly and report monthly to the Health Department. To date there has been no response from the owner except to notify the Health Department of a contract with Daniels. There was no sewage evident on top of the ground on November 30, 2011. This dwelling has an apartment that is currently rented. Mr. Canning recommended that the owner be called for a show-cause hearing.

Attorney Taylor requested that the Health Agent write a letter notifying the owner that three months of the six month extension have expired, and giving office hours to contact the Health Department. Board members discussed recourse for the Health Department. Mr. Canning explained he could apply to Housing Court for an order.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 7 Prence Lane to have the Health Agent advise the owner that there will be a hearing to show cause as to why we should let them continue when they are not complying with the requirement to give us reports monthly when they haven't given us any.

Discussion ensued regarding the subsequent actions to be taken if the owner refused to appear at the Show Cause hearing. It was suggested that their water be turned off but then pointed out that that action is not within the jurisdiction of the Board of Health. Immediate referral to Town Counsel would be prudent if the owner does not come to the Show Cause hearing.

The motion on the table was amended by Dr. Davis and seconded by Mrs. McKusick to let the letter include the wording that if the party does not show up for the Show Cause hearing, that the Health Agent has been instructed by us to turn the matter over to Town Counsel for immediate action.

The amended motion was voted unanimously – 5-0-0.

Mr. Canning noted that he would notify both the owner and tenant.

Permits/Licenses

Orleans Chamber of Commerce

Mary Corr, representing the Orleans Chamber of Commerce, has requested a variance which is needed for the menu, and a variance needed from the requirement to have a Certified Food Protection Manager during their event. The Seaside Christmas in Orleans is to be held on Saturday, December 17, 2011 from 11:30 a.m. to 1:30 p.m. at the Mid-Cape Center in the Kitchen Design Showroom. Chowder, crackers, and bottled water will be served.

There will be seven local restaurants participating and each will bring their hot chowder to the site and hold it hot on site. Each restaurant will have a location in a kitchen display area. All chowder will be served using disposable cups, spoons, napkins, etc. Food will be served to order and any leftovers will be discarded at the end of the day. Each restaurant 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 event. Toilet facilities are available on the site.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted to grant a Temporary Food Permit and the variance from the requirement to have a Certified Food Protection Manager to the Orleans Chamber of Commerce for December 17, 2011; and name Mary Corr as the person in charge lacking a Certified Food Protection Manager. The vote was 5-0-0.

The following has been previously approved and must be ratified:

Fiddlestix

Heidi Pleso, owner of Fiddlestix, requested a Temporary Food Permit for the Craft Show held at Nauset Regional Middle School. The event was held on November 25, 2011 from 10:00 a.m. to 4:00 p.m. and on November 26, 2011 from 10:00 a.m. to 5:00 p.m.

Food that was served included chicken, steak done as a sandwich, served over rice, or as a roasted veggie bowl; fried zucchini, fried macaroni and cheese, fried eggplant, falafel or dumplings (all fried); bottled water, soda and hot tea. The applicant has a full mobile unit with three refrigerators, freezer, hand wash sink, a three-bay sink, and a grill. She has a current Mobile Food Permit in Sandwich.

All food items are prepared on the trolley. Chicken and steak are pre-cooked and held under refrigeration until re-heated for service. All food items are received from AGAR (a purveyor) and held directly in the unit. The unit also has hot and cold running water filled from Sandwich town water. Tongs, spoons, spatulas, gloves etc. will be used to prevent bare-hand contact

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to ratify the Temporary Food Permit previously granted to Fiddlestix to operate at the Craft Show held at the Nauset Regional Middle School on November 25 from 10:00 a.m. to 4:00 p.m. and on November 26, 2011 from 10:00 a.m. to 5:00 p.m. The vote was 5-0-0.

Flu Clinic

The Health Department had a successful flu clinic on November 18th. Approximately 70 individuals attended the clinic. In all, the Orleans clinics administered approximately 550 vaccines this year.

DRCI:

On November 30, 2011, the Health Department received a call from DRCI requesting that they observe the progress made since the Board of Health Hearing on November 17th. At the time of the inspection the processing building had been substantially cleaned of all material. What remained was a small amount of material in the area of the building near the "sump".

Nutrient Management Regulations

Two individuals have made requests for situations that are not clear in certain sections of the regulations. Mr. Canning read Sections 7.1 and 7.3 as follows:

Section 7 General Requirements

- 7.1 No Disposal System Construction Permit shall be issued by the Board of Health or its Agent for any of the projects described in Section 6.1 above unless the proposed system is designed to receive or shall receive four hundred forty (440) gallons per day or less per forty thousand square feet (40,000) of lot area or ratio thereof.
- 7.3 No facility described in Section 6.1 shall be expanded or have a change of use that increases the design flow until a Disposal System Construction Permit has first been obtained, unless the Board of Health, or its Agent, determines that the existing sewage disposal system is adequate (per Title 5 and the Orleans Board of Health Subsurface Sewage Disposal Regulations), including documentation that the facility's design flow is less than or equal to 440 gallons per 40,000 square feet of lot area or the ratio thereof.

The Health Department is looking for guidance on how to handle the following scenarios:

1. A strip mall has an approved flow of 1,300 gpd. This flow includes a dentist at 200 gpd. The dentist left and was replaced with a new use with a flow of 100 gpd (beauty salon chair). The new flow from the site is 1200 gpd. The property is less than 30,000 s.f. which limits the design flow to 290 gpd. If the owner wants to recapture the 1300 gpd can he?
 - a. The system design capacity is >1300 gpd.
 - b. The system complies with all current regulations.

- c. The mall is not in an exempt area.

Board members discussed whether the parcel should be "grandfathered" at the maximum previously approved flow.

2. A mixed use facility is being sold. The facility historically has been occupied by two doctors (500 gpd) and a two bedroom apartment (220 gpd) for a total sewage design flow of 720 gpd. An individual has inquired about purchasing the property and his immediate plans would be to occupy the lower level with a professional office (75 gpd) and have two one bedroom apartments on the second floor (220 gpd) for a total sewage design flow of 295 gpd. In the future the buyer would like to further develop the property which would remain under the current flow of 720 gpd, however, it would exceed the "phase 1" flow of 295 gpd. Will he be able to increase the flow in the future? This property is currently under agreement for a pending sale.
- a. The property is approximately 16,000 s.f. (limited design flow of 177 gpd).
 - b. The property currently has a failed septic system.
 - c. The existing septic system likely did not have a design capacity of 720.
 - d. The property is not in an exempt area.

Board members discussed the location of these properties and whether strictly adhering to the regulations as they are currently will eventually limit the use of commercial buildings. It was a consensus that a parcel should be grandfathered for the amount of septage flow that was in place when the Nutrient Management Regulations were put into effect on July 1, 2009. Mr. Canning will draft a revision to the policy.

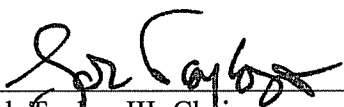
Agenda Item 11 – Adjournment

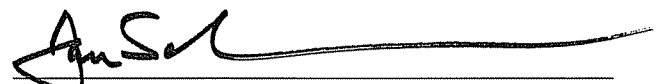
On a motion by Mrs. McKusick and seconded by Mrs. Suraci, the Board of Health voted to adjourn this meeting at 3:15 p.m. The vote was 5-0-0.

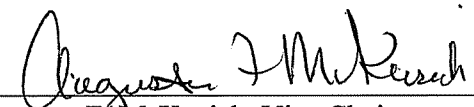
Respectfully submitted,

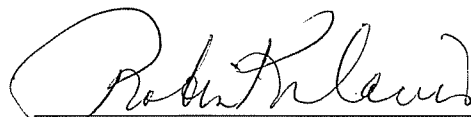

Lynda M. Burwell, Board Secretary

ORLEANS BOARD OF HEALTH

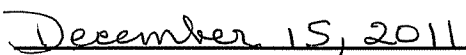

Attorney Job Taylor, III; Chairman


Jan Schneider, M.D.


Augusta F. McKusick, Vice Chairman


Robin K. Davis, Ph.D.


Elizabeth Suraci


Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE DECEMBER 1, 2011
MEETING OF THE ORLEANS BOARD OF HEALTH**

Agenda Item 2 – Approval Request – 23 Herring Brook Way

- 2 – 1 – Counihan letter/request dated 10/20/11
- 2 – 2 – OHD letter dated 7/28/11 to J.C. Ellis Design Co., Inc.
- 2 – 3 – Floor plan sketch and OHD notes
- 2 – 4 – Septic System Upgrade Plan by J.C. Ellis Design Co., Inc. dated Rev. 8/1/11

Agenda Item 3 – Bedroom Determination – 6 Marshwind Lane

- 3 – 1 – Streibert Associates letter/request dated 11/28/11
 - 3 – 2 – Streibert Associates Floor Plans dated 11/28/11
 - 3 – 3 – Original Floor Plan and OHD Notes
 - 3 – 4 – OHD Letter to Coastal Eng. Co. dated 3/10/2000
 - 3 – 5 – Plot Plan
 - 3 – 6 – Overview Map dated 11/29/11
- Exhibit 3-1 – Four photos from Streibert Associates

Agenda Item 4 – Approve Minutes

- 4 – 1 – OBOH Minutes of October 20, 2011
- 4 – 2 – OBOH Minutes of November 17, 2011

Agenda Item 5 – Review Correspondence and Old/New Business

- 5 – 1 – OBOH Permit Renewals for 2012
 - 5 – 2a – OHD Letter dated 11/22/11 to DRCI with Inspection Report
 - 5 – 2b – OHD Letter dated 11/21/11 to DRCI
 - 5 – 2c – Article from 11/25/11 Cape Codder
- Exhibit 5-1 – Revised OBOH Permit Renewals for 2012

Agenda Item 5 – Health Agent's Report