

TOWN OF ORLEANS – BOARD OF HEALTH
MINUTES OF MEETING

June 7, 2012

ORLEANS TOWN CLERK
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The Board of Health convened its meeting at 2:00 p.m. on Thursday, June 7, 2012 in the Skaket Meeting Room of the Orleans Town Hall.

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

Excused: Elizabeth Suraci

Agenda Item 1 – Board of Health Reorganization and Appointments

This Agenda item could not be completed because not all Board of Health members were present at this meeting.

Agenda Item 2 – Public or Press

Ms. Beverly Carney inquired about the Board of Health actions regarding the TriTown Board of Managers' Meetings. She noted that none of the Board of Health members attend the Board of Managers' meetings.

Mr. Canning addressed Ms. Carney's questions. He explained that the Board of Health reviews the approved minutes of the Board of Managers' meetings. The Board of Health does not vote on those minutes, they are for information only.

Ms. Carney noted that TriTown the Board of Managers' meetings are not posted on the Town's website, but she would like to have members of the Board of Health attend the meetings.

Agenda Item 3 – Variance Request – 11 Heritage Drive

Mr. Jason Ellis of J.C. Ellis Design Company, Inc. represented Thomas and Jacqueline Jurkowski for this hearing. Mr. Ellis explained the variance requested to the Orleans Board of Health Nutrient Management Regulations to allow the proposed owners of the property to build a three-bedroom house on a 21,344 square foot lot by installing an Advantex AX-20 nitrogen reducing system. This system can be monitored and controlled offsite before the homeowner is aware of a problem.

Mr. Canning explained that this variance request does not require a hardship. The Nutrient Management Regulations allows the use of I/A technology to add a third bedroom to a dwelling on a half-acre lot. He explained the previous standard conditions required and recording necessary if the variance is approved.

Board members inquired who the provider of the service contract would be. Mr. Ellis explained that he has taken over the service contracts for monitoring the systems he has designed and that he is licensed to operate the system.

On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted to grant the variance requested for 11 Heritage Drive, to approve installation of an Advantex AX-20 nitrogen reducing system subject to all the standard conditions The vote was 4-0-0.

Agenda Item 4 – Variance Request – The Optimal Kitchen

Ms. Heather Bailey, dba The Optimal Kitchen, was present for this hearing to request a variance to allow her to use the certified kitchen at the Federated Church to prepare, package, and then store food in her designated refrigerator at her home after she has prepared them for the Farmers' Market.

Mr. Canning explained that Ms. Bailey is requesting a variance to 105 CMR 590 – Residential Kitchens, which concerns preparation and protection of Residential Kitchens. He read from the regulation which states that only non-potentially-hazardous food may be prepared and stored in a Residential Kitchen. Ms. Bailey proposes to prepare potentially-hazardous food in a licensed kitchen and store it in her Residential Kitchen which is prohibited by this regulation.

Board members discussed whether there are mechanical differences between residential kitchen refrigerators and commercial kitchen refrigerators. Mr. Canning explained that commercial refrigerator motors are more powerful for cooling, and that potentially-hazardous foods must be prepared and stored in a commercial kitchen. Ms. Bailey reiterated that she wants to prepare the potentially-hazardous food in a licensed kitchen, and then just transport it across the street to her separate Residential Kitchen refrigerator. Mr. Canning inquired if she could install her own refrigerator at the church to which Ms. Bailey responded that she is trying not to impact the church's operation in any additional way. She explained that any vegetable product is potentially hazardous once it is cut into. She noted that it is very difficult to find a commercial kitchen not attached to a restaurant. Ms. Bailey also noted that previously she had a full breakfast license at her bed and breakfast.

Board members discussed further the issue of transporting the food from the commercial kitchen to a residential kitchen, then to market. Mr. Canning again explained that a residential kitchen cannot deal with potentially-hazardous foods. Ms. Bailey explained that everything is packaged before it leaves the commercial kitchen.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted in the matter of The Optimal Kitchen. The issue is that a commercial kitchen facility has been identified in which food may be prepared which is within the current regulations. However, storage is not available at that site. It so happens that the location of The Optimal Kitchen is directly across the street from the location of the commercial kitchen; and in The Optimal Kitchen location there is a dedicated refrigerator used only for the purposes of the commercially-prepared food. The variance that is requested is that the food prepared on one side of the street be transferred into the residential location where a dedicated refrigerator currently stands. I move that we approve the variance allowing the food to be taken across the street by cooler with the understanding that the transfer will be swift and that the distance will be small.

There was a short discussion regarding temperature requirements for a commercial kitchen refrigerator to which Mr. Canning explained that it must be maintained at forty-one degrees Fahrenheit or lower. Ms. Bailey was asked if the dedicated refrigerator in her house is accurately monitored to which Ms. Bailey confirmed that she keeps temperature logs as part of her Residential Kitchen License. She also confirmed that all products would be prepackaged.

Dr. Schneider amended his motion to use the adjective "prepackaged" referring to the food in the pending motion. Dr. Davis suggested amending the motion to condition that both locations are right across the street from each other for rapid transit, and if anything changes the situation would be revisited by the Board of Health. She also noted that Ms. Bailey is a Certified Food Protection Manager. Dr. Schneider further added to his amendment that the Board recognizes that this situation is unique and that this is a break from the regulations as written and that it is not a precedent for any future decisions.

The motion was called and was denied. The vote was 2-2-0.

Agenda Item 5 – Extension Request – Skaket Beach Motel

Mr. Hemant Patel, owner of the Skaket Beach Motel located at 203 Cranberry Highway, was present for this hearing to request an extension of the swimming pool permit expiring on June 7, 2012 and to allow him to operate the swimming pool for the summer of 2012 although it has only one skimmer when two are required for the pool size. However, the water quality has been acceptable. An additional skimmer and its installation would be very costly.

Mr. Canning explained that Mr. Patel is requesting an extension of time to make the necessary repairs to bring the swimming pool into compliance with 105 CMR 435 – Minimum Standards for Swimming Pools. The pool was designed with two skimmers but one is not working. The owner requested that the Board of Health allow

him to operate the pool during this summer and in the off season they will make the required repairs. The working skimmer is missing a weir and basket causing everything to go to the filter but they are trying to fix this skimmer as soon as possible. They have not had any issues with bacteria or clarity of the water.

Board members discussed that the pool has only one skimmer but it is missing the weir and basket. Mr. Canning affirmed that the one skimmer is not working efficiently. Mr. Patel explained that because the pool was customized for its location, a custom skimmer for that pool is required. He has ordered the custom size basket and is awaiting its delivery. He is not sure he will replace the second skimmer because of the cost and construction involved.

Mr. Canning explained that a routine inspection this year showed that the second skimmer was not working because of an accumulation of debris on the bottom of the skimmer well. Mr. Patel noted that the second skimmer had not been working for the previous owner for a number of years. Mr. Canning suggested requiring manual skimming of the pool three times a day and frequently scrubbing the sides at the water line. He explained that by law they must check for water quality four times per day, and they have always met the requirements. Mrs. McKusick requested that by Labor Day Mr. Patel provide a plan of how these problems will be remediated before next season. Dr. Schneider suggested that the Board not allow opening of the pool until the new skimmer basket and weir are installed.

On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted to grant the requested extension that we received from Skaket Beach Motel up until October 1, 2012, and anything past that will require a further application; and that the Skaket Beach Motel continues to follow the laws of testing the water four times daily, and following all the other rules. The vote was 4-0-0.

Agenda Item 6 – Discussion – 7 Arena Drive

Ms. Liz Argo, owner of the property at 7 Arena Drive, had requested postponement of this hearing.

Agenda Item 7 – Approve Minutes

The minutes of the Board of Health meeting held on May 17, 2012 had previously been distributed to Board members for review and approval.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to approve the minutes of the meeting held on May 17, 2012 as presented. The vote was 3-0-1. Dr. Davis abstained because she had not been present at the last meeting.

Agenda Item 8 – Review Correspondence / Old and New Business

Attorney Taylor suggested that the Board of Health hold a public hearing to discuss the tobacco issue on July 12, 2012 and to have the hearing start at 1:00 p.m.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to schedule a public hearing for 1:00 p.m. on July 12, 2012 to discuss the revised Orleans Nicotine Dispensing Regulations. The vote was 4-0-0.

8 – 1 – The Annual Water Quality Report for the year 2011, prepared by the Orleans Water Department, had previously been distributed to Board members for review and discussion.

8 – 2 – A copy of the Consumer Confidence Report Certification for the Town of Orleans Water Department prepared by the Mass. Department of Environmental Protection had previously been distributed to Board members for review and discussion.

8 – 3 – A letter to Charles Kessler from the Orleans Water Department dated May 30, 2012 had previously been distributed to Board members for review and discussion. This letter notified Mr. Kessler of a violation of 310 CMR 22.22 – cross connection between potable plumbing and non-potable plumbing (irrigation system).

8 – 4 – A copy of the 2012 Annual Notice to Local Boards of Health with an inventory of all public water systems from the Mass. Department of Environmental Protection had previously been distributed to Board members for review and discussion. Mr. Canning reported that the full report is in the Health Department if anyone would like further information from this report.

8 – 5 – A letter from the Health Agent to Property Owners dated May 29, 2012 regarding Nutrient Management Regulations had previously been distributed to Board members for review and discussion.

8 – 6 – A letter from the Health Agent to Martin D. Rich dated June 1, 2012 had previously been distributed to Board members for review and discussion. Mr. Canning reported that this letter was specific to Mr. Rich's inquiry.

Agenda Item 9 – Health Agent's Report

Licensing/Permits

Mobile Food Permit

Attleboro Del's & Ice Cream

Mr. Canning reported that Paul Piatelli, owner of Attleboro Del's & Ice Cream had requested a Mobile Food Permit to locate his food cart at Mid-Cape Home Center in Orleans to sell only soft frozen lemonade. Soft frozen lemonade is to be prepared at Attleboro Del's licensed Food Service Establishment. Lemonade will be transported daily to the location from Attleboro in a freezer van and stocked on to the food cart. The cart will be returned to the licensed facility in Attleboro each day. Lemonade will be portioned per customer order using a ladle. Restrooms and hand washing facilities will be available inside Mid-Cape home centers. Leftover lemonade will be returned to Attleboro Del's and kept at or below 41°F. Ladles will be held in the container with handles out of the product. Sanitizer will be available in a spray bottle for the cart. Wet wipes and hand sanitizer will be available for employees and they will be required to wear gloves. The cart will be plugged in at the end of each day to recharge the freezer cart. They do have a Certified Food Protection Manager, but that person will not be at the site; instead, they will have a "person in charge".

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted to grant a Mobile Food Permit to Attleboro Del's & Ice Cream for the frozen lemonade product to be served outside the Mid-Cape Center with a condition that they wear a glove when scooping. The vote was 4-0-0

Temporary Food Permit

Hernica William

Ms. Hernica William had requested four Temporary Food Permits to conduct bake sales (to aid the victims of tornadoes and other charities) at the Stop & Shop on July 12, 2012, August 16, 2012; and at Shaw's on July 18, 2012 and August 8, 2012. She plans to sell home-baked brownies or cookies, store-bought crackers (peanut butter or cheese), soda and water. Items will be kept under a cake cover and served to order on paper plates or aluminum foil. Soda and water will be held in coolers on store-bought ice. Ms. William had requested that the Board of Health waive the fee charged for the Temporary Food Permits.

Board members questioned how the money is to be used and for what charity. Mr. Canning reported that Ms. William does not have a non-profit tax identification number, nor does she list how or to whom the money earned is distributed.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of Hernica William to grant the Temporary Food Permit with payment of the permit fee for the first event and hold the Temporary Food Permits for the other events until the charities are determined and discussed at a future meeting. The vote was 4-0-0

Lower Cape Outreach Council

Mr. Ken Foster had requested a Temporary Food Permit for a Week of Hope event to be held at the Odd Fellows Hall on Namskaket Road on Friday, May 25, 2012 from 4:00 to 6:00 p.m. (already occurred). Hamburg-

ers, hot dogs, bottled or canned water and soda was served. Food was cooked on a mobile grill unit provided by Breakaway/ Hall Oil. Hot dogs were boiled then grilled, and burgers would be cooked to well done. Condiments were available in squeeze bottles or packets. Hand washing facilities were available on the grill unit. The grill unit has covers over the grills, and a tent was used for food service. Restroom facilities were available inside the Odd Fellows Hall. Only disposable items were used for customer service.

This event was approved by the Health Department with concurrence from Chairman Taylor.

On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health voted in the matter of Lower Cape Outreach to ratify the Temporary Food Permit issued for the Week of Hope event held on May 25, 2012 from 4:00 p.m. to 6:00 p.m. at the Odd Fellows Hall. The vote was 4-0-0.

Local Scoop

Mr. Canning reported that Mary DeBartolo, owner of the Local Scoop located at 34 Route 6A had applied for a Frozen Dessert Wholesale Permit with approval subject to the Health Department's final review.

On a motion by Mrs. McKusick and seconded by Attorney Taylor, the Board of Health voted in the matter of the Local Scoop, 34 Route 6A, to grant approval of a Frozen Dessert Wholesale Permit pending final inspection by the Health Department. The vote was 4-0-0.

Update

15 Rayber Road

The Health Dept. has received and accepted the Septic System Inspection Report for that condominium.


Agenda Item 10 – Adjournment

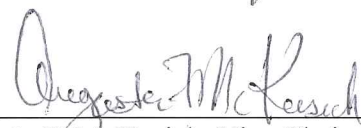
On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted to adjourn this meeting at 2:51 p.m. The vote was 4-0-0.

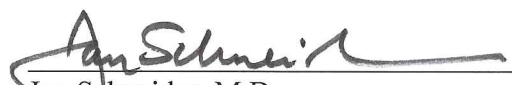
Respectfully submitted,


Lynda M. Burwell, Board Secretary

ORLEANS BOARD OF HEALTH

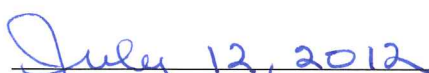

Attorney Job Taylor, III; Chairman


Augusta F. McKusick, Vice Chairman


Jan Schneider, M.D.

Robin K. Davis, Ph.D.

Excused
Elizabeth Suraci


Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE June 7, 2012
MEETING OF THE ORLEANS BOARD OF HEALTH**

Agenda Item 3 – Variance Request – 11 Heritage Drive

- 3 – 1 – Variance Request dated May 29, 2012 prepared by J.C. Ellis Design Company, Inc.
- 3 – 2 – Septic System Design Plan prepared by J.C. Ellis Design Company, Inc.
- 3 – 3 – Preliminary Building Plans
- 3 – 4 – Excerpts from OBOH Nutrient Management Regulations
- 3 – 5 – OHD Nitrogen Loading Calculations

Agenda Item 4 – Variance Request – The Optimal Kitchen

- 4 – 1 – Variance Request Letter (no date) from Heather Bailey.
- 4 – 2 – Excerpts from State Sanitary Code Chapter X and 1999 Federal Food Code

Agenda Item 5 – Extension Request – Skaket Beach Motel

- 5 – 1 – Hearing Request dated May 31, 2012 from Hemant Patel, Skaket Beach Motel
- 5 – 2 – Excerpts from State Minimum Standards for Swimming Pools
- 5 – 3 – OBOH Swimming Pool Permit May 25, 2012 through June 7, 2012

Agenda Item 6 – 7 Arena Drive

- 6 – 1 – Letter dated June 4, 2012 from Liz Argo
- 6 – 2 – OHD letter dated May 15, 2012 to Elizabeth D. Argo
- 6 – 3 – OHD letter dated March 12, 2012 to Elizabeth D. Argo
- 6 – 4 – Orleans Building Department letter dated February 23, 2012 to Elizabeth D. Argo
- 6 – 5 – Excerpts from 105 CMR 410.000 Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)

Agenda Item 7 – Approve Minutes

- 7 – 1 – OBOH Minutes of Meeting held on May 17, 2012

Agenda Item 8 – Review Correspondence and Old/New Business

- 8 – 1 – OWD Water Quality Report
- 8 – 2 – OWD Consumer Confidence Report
- 8 – 3 – OWD letter dated May 30, 2012 to Charles Kessler
- 8 – 4 – MDEP 2012 Notice to Local Boards of Health
- 8 – 5 – OHD letter dated May 29, 2012 to property owners regarding Nutrient Management Regulations Permit Extension Act
- 8 – 6 – OHD letter dated June 1, 2012 to Martin D. Rich

Agenda Item 7 – Health Agent's Report