

TOWN OF ORLEANS – BOARD OF HEALTH MINUTES OF MEETING

December 6, 2012

The Board of Health convened its meeting at 2:00 p.m. on Thursday, December 6, 2012 in the Skaket Meeting Room of the Orleans Town Hall.

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

Agenda Item 1 – Public or Press

There was no one present to speak during Public or Press.

Agenda Item 2 – Variance Request – 19 Surf Path

Mrs. Judy Bersin of Ryder & Wilcox, Inc. represented The 19 Surf Path Lane Nominee Trust (Paul Gossling), owner of the property. She explained that the 20,500 square foot parcel abuts a wetland and Nauset Beach. There is a four-bedroom dwelling that is currently served by a cesspool and is soon to be for sale. It was proposed that the soil absorption system would be located as far away from the top of the coastal bank as possible bordered by the driveway and Surf Path and just seven feet from the property line necessitating a Local Upgrade Approval variance of three feet. The soil absorption system would be 83 feet from the top of the coastal bank requiring a variance of seventeen feet. Because of water in the test holes, they propose to use a low-profile Cultec chamber system for the soil absorption system, part of which will be located more than 36 inches below grade requiring a one foot variance. Locating part of the sewage disposal system below a gravel driveway requires the use of heavy-duty components. This plan had been approved by the Conservation Commission on November 20, 2012.

Mr. Canning explained that although the wetlands are very close to the soil absorption system, the entire leaching system would be contained within the property boundaries. He also discussed the floor plans of the dwelling noting that the first floor plan is the same as in the packet. Currently there are no rooms on the second floor but the plans in the Building Department show baseboard heat on the second floor, and a dormer. The Assessor's Records indicate four bedrooms in the dwelling. Mrs. Bersin affirmed that there are two bedrooms and a bathroom on the second floor as shown on a sketch included in the application.

Board members discussed that these variances are necessary because of the upgrade of the sewage disposal system in preparation for the sale of the property. It was also noted that the current system was installed prior to 1978.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted in the matter of 19 Surf Path. The issue at stake is the four-bedroom dwelling on about a half-acre which is up for sale. The cesspool currently in place needs to be replaced therefore, and a series of variances are necessary because of the small lot surrounded by wetlands. There are three variances that have been requested. The first is that the soil absorption system will be seven feet from the property line requiring a three-foot variance. The second is that a General Construction Requirement for all Components that should be less than 36 inches deep but one end of the system will be deeper than that requiring a one-foot variance. And finally, an Orleans Board of Health issue is that the system will be 83 feet from the top of a coastal bank requiring a seventeen-foot variance. Furthermore, the leach area is to be protected with railroad ties so vehicles will not be driving over it. The Cultec chamber which is being used will be heavy duty again to protect it. The whole concept is to maximize protection of the environment and I move that we approve the request for the three variances. The vote was 5-0-0.

Agenda Item 3 – Variance Request – 645 South Orleans Road

Mrs. Judy Bersin of Ryder & Wilcox, Inc. represented the Patricia Anne Johnson Family Trust I, owner of the property. Mr. Marty Leonard, caretaker of the property, was also present at this hearing. This property of approximately 11,000 square feet is located on Pleasant Bay along Route 28. There is a marsh area located directly across Route 28 and the entire property is located within the top of a coastal bank and the 100 Year Flood Zone. There is a four-bedroom house and a two bedroom cottage on the property. A tight tank was installed in 1994 to serve the cottage. Because the whole property is subject to flooding and there is no location for a leaching area, Mrs. Bersin proposed installing a tight tank to replace the existing failed cesspool serving the house. She noted that because groundwater is less than three feet below the surface, the entire tank will be located below the adjusted groundwater. To protect it from floating, a twelve-inch concrete slab will be placed on top of the tight tank. She noted the precautions to protect the environment and public health listed in her letter of November 19, 2012 and noted that MDEP approval is required following approval by the Orleans Board of Health. Mrs. Bersin listed the variances needed to Title 5 and to the Orleans Board of Health Regulations. This plan had been approved by the Conservation Commission on November 20, 2012.

Mr. Canning reiterated that use of a tight tank will be approved by MDEP only to replace a failed system “when no other feasible alternative exists.” He noted that because of the tightness of the parcel and the proximity of the Bay and the wetlands across the street, a new 3000 gallon tight tank is proposed which would accommodate more than the 500 percent daily flow required by Title 5. Mr. Canning also reviewed the Title 5 criteria for use of a tight tank as listed in Packet item 3-2 and this proposal meets all criteria. He also reviewed the record of water meter readings which seemed high although there is an irrigation system on the property; then suggested that the irrigation system usage be metered separately to monitor how much water is going into the septic system. To summarize he acknowledged that it is a very difficult site and most likely the best solution for the site.

Board members inquired whether it would be a problem for the owner to separate the irrigation system water usage from the household usage to which Mr. Leonard answered it would not. They also discussed that the last large storm caused the wetlands to flood across Route 28 into the Bay. In response to an inquiry about the age of the dwellings, Mr. Leonard explained that the main house is 130 years old and has had additions to it in that time period. He also explained that there is a fairly large lawn in front of the house requiring the irrigation system. Mr. Leonard remarked that he had recently checked the toilets and faucets to determine if they might have been the cause of the high water usage, and they are not leaking. It is his opinion that there is a break in the irrigation lines which he will repair in the spring. In response to a question about the floor plan and number of bedrooms in the house, it was explained that, as shown in Exhibit 3-1, there are two bedrooms and two bathrooms on the second floor. Regarding the water usage compared to the pumping records in Item 3-3, there seemed to be several anomalies. Mr. Canning explained that the pumping records are for both the existing tight tank for the cottage and the existing cesspool and the amounts for the cesspool pumping are very small compared to the larger amounts for the existing tight tank. It was reiterated that there should be separate records of water usage for both the irrigation and the household usage.

On a motion by Mrs. McKusick and seconded by Attorney Taylor, the Board of Health voted in the matter of 645 South Orleans Road. It is a property of approximately one-quarter of an acre which is between a state highway and Pleasant Bay. Parts of the property are a four-bedroom home and a two-bedroom cottage over 130 years old. The main house has been served by a cesspool until now and the cottage has been served by an existing tight tank. I move that we allow the main house to be replumbed with a 3000 gallon tight tank to serve that property and request that the water lines serving this house be split so that consumptive water can be measured other than irrigation water. The variances as shown in the small box at the top of the plan dated 11/20/12 include:

- **To CMR 15.211, Minimum Setback Distances, the tight tank shall be twenty feet from the top of bank (stone wall revetment) to the east. A five-foot variance required.**

- **To CMR 15.227, Placement and Construction Tees, the inlet invert elevation of the tight tank shall be less than twelve inches above the high groundwater. A one-foot variance required.**
- **To the Orleans Board of Health Subsurface Sewage Disposal Regulations: Section IV, General Requirements, Setbacks:**
 - **The tight tank shall be twenty feet from the top of bank to the east. A thirty-foot variance required.**
 - **The tight tank shall be 31 feet from mean high water. A nineteen-foot variance required.**
 - **The tight tank shall be 44 feet from the top of bank to the west. A six-foot variance required.**
 - **The tight tank shall be 21 feet from a drainage system discharging into a wetland. A 29-foot variance required.**

A condition would be that they do separate the meters to the water lines and that they put a heavy cement lid on there to hold it down should it float.

It was discussed that the precautions listed in the Ryder & Wilcox application letter dated November 19, 2012 be listed as conditions in the motion. Mr. Canning explained that it could be noted as included as part of the application received. He also suggested as part of the motion that while they are inspecting the new tight tank that the existing tight tank be inspected as well.

Attorney Taylor stated that upon a favorable vote from the Board, the requested variances and caveats as noted above would be approved. He called for a vote. **The vote was 5-0-0.**

Agenda Item 4 – Variance Request – 16 Ridgewood Road

Attorney James M. Norcross of Toabe and Riley represented Jeffrey and Susan Cahill, owners of the property at 16 Ridgewood Road. He discussed the documentation describing the dwelling as having three bedrooms. The house was built in 1970 and the septic system was installed in 1989. The owners would like to renovate the house, maintaining three bedrooms on the property. However, under the current criteria used by the Health Department it was determined that one of the downstairs bedrooms did not have sufficient light and ventilation therefore rendering it unusable as a bedroom (meaning the house has only two bedrooms). The filed Building Permit is for a three-bedroom house renovation. The owners would be required to upgrade the septic system to meet the standards of Title 5 for a three-bedroom house. Attorney Norcross explained that the room in question had been used as a bedroom since occupied by the previous owner. It was his opinion that since the room had always been used as a bedroom, one of three bedrooms, that there would be no change in use or increase in flow if the new owners follow through with their plans to renovate the house to include three bedrooms. He also noted that it would be a financial hardship if the owners were required to upgrade the septic system at this time as part of the renovation.

Mr. Canning explained that when the Health Department reviewed the new Building Permit it was noted that one of the existing bedrooms did not have sufficient light and ventilation to meet the bedroom criteria in Chapter II of the State Sanitary Code. Reviewing old records showed that the septic system was upgraded in 1989 but there was no indication of the number of bedrooms in the house on the application. In 1992 the window in the room in question was converted from a regular cellar window to a double-hung window and the exterior was regraded to accommodate this change. In 2003 a play room was constructed and the Health Department approved it because there would be no increase in flow and not sufficient light and ventilation to be used as a bedroom. Because the room does not meet the requirements of the State Sanitary Code, the Health Department cannot approve it as a three-bedroom dwelling.

Mr. Canning explained further that if the Board approves the requested variance, it would be necessary for the owner to record the variance at the Registry of Deeds. He gave the Board the option of ordering the room to come into compliance when the renovations take place. He also noted that the builder stated that there would be no living area in the basement, that it would be used for storage.

Board members discussed that the current septic system was designed and will accommodate flow from three bedrooms in the house. Mr. Canning noted that the current septic inspection report showed that the system is operating adequately and that the report does not confirm the number of bedrooms in a dwelling.

On a motion by Attorney Taylor and seconded by Mrs. Suraci, the Board of Health voted in the matter of 16 Ridgewood Road to not act on the variance request; instead the Board orders that that bedroom come into compliance with the light and ventilation requirement. We will accept the construction of the new room and the elimination of that room as coming into compliance. The vote was 5-0-0.

Agenda Item 5 – Discussion – Bacterial Monitoring in Pleasant Bay

Ms. Carole Ridly, Coordinator of Pleasant Bay Alliance, and Ms. Judith Bruce of the Conservation Commission were present for this discussion. Ms. Ridly explained that as part of updating its Pleasant Bay Resource Plan they have determined that continuation of bacterial water quality monitoring in the public and semi-public swimming areas around Pleasant Bay is a recommendation in their plan. She inquired if the Board might be able to continue testing the water in those particular areas.

Attorney Taylor noted that although he, personally, would like to see the monitoring continued, funding is not included in any of the town's budgets. Dr. Davis pointed out that the Board of Health does not have a budget; any expenditure like this would need approval of the Board of Selectmen.

Ms. Bruce noted that the process of licensing or not licensing certain beaches has resulted in unintended circumstances.

Mr. Canning reviewed the events and history leading up to this recent change in water quality monitoring at beaches.

Board members inquired and Ms. Ridly discussed how the data collected from water sampling is used. It was suggested that the Alliance contact the Mass. Department of Public Health for assistance in this matter. It was also noted that the Orleans Board of Selectmen might rethink their decision to declassify certain beaches as town beaches. It was also suggested that the Alliance might contact the Chatham lab to see if they would conduct testing at the Pleasant Bay beaches.

Attorney Taylor requested, and all individual Board members expressed their support for the Alliance's position on this issue.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted that because the health of the environment is as important to the Board of Health as well as the physical health of residents and visitors, the Board is in favor of the efforts of the Pleasant Bay Alliance to conduct surface water monitoring in Pleasant Bay although the Board realizes they do not have the funds to support it. The vote was 5-0-0.

Agenda Item 6 – Approve Minutes

The minutes of the Board of Health meeting held on November 15, 2012 had previously been distributed to Board members for review and approval.

On a motion by Dr. Schneider and seconded by Mrs. McKusick, the Board of Health voted to approve the minutes of the Board of Health meeting held on November 15, 2012 as presented. The vote was 5-0-0.

Agenda Item 7 – Review Correspondence / Old and New Business

Item 7 – 1 – A draft of the proposed Right to Farm bylaw for the Town of Orleans had previously been distributed to Board members for review and discussion. Mr. Canning noted his concern that certain farming activities may create nuisances and that the bylaw does not say that one could expect odors and noise from farming, but it does say that the right to farm does not preclude enforcement of regulations. The Board of Health had previously

discussed drafting a Barn Regulation and it should not conflict with the Right to Farm bylaw. It was noted that there are several barns in Orleans; however, Mr. Canning noted that the placement of livestock near another owner's property line could present a nuisance to that property owner. Periodically the Health Department must investigate a farm nuisance complaint and recommend remediation of the problem.

Item 7 – 2 – A Technical Review of the Massachusetts Estuary Project Nauset Harbor Embayment System Report for the Town of Orleans dated 27 November 2012 had previously been distributed to Board members for review and discussion. Mr. Canning noted that only the odd numbered pages had been distributed; he distributed the even numbered pages to the Board members.

Item 7 – 3 – A letter dated November 13, 2012 from the Mass. Department of Environmental Protection approving the approved plans for the upgrade to the wastewater treatment facility at 9 Main Street had previously been distributed to Board members for review and discussion.

Item 7 – 4 – Minutes of the Orleans, Brewster, Eastham Groundwater Protection District, Board of Managers Meeting on October 10, 2012 had previously been distributed to Board members for review and discussion.

Item 7 – 5 – The FY2014 proposal for services between the VNA of Cape Cod and the Town of Orleans dated November 20, 2012 had previously been distributed to Board members for review and discussion. Mr. Canning noted that this proposal reflects the same level of funding as for the current year.

Agenda Item 8 – Health Agent's Report

Mr. Canning reported that the annual licensing process is moving very smoothly. Bonnie Campbell, Betsy Sorensen, and Erin Shupenis are very efficiently completing this task.

Agenda Item 9 – Adjournment

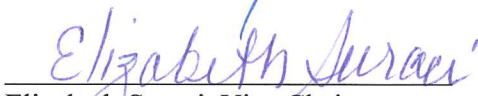


On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to adjourn this meeting at 3:20 p.m. The vote was 5-0-0.

Respectfully submitted,



Lynda M. Burwell, Board Secretary

ORLEANS BOARD OF HEALTH


Attorney Job Taylor, III; Chairman
Jan Schneider, M.D.
Elizabeth Suraci, Vice-Chair
Robin K. Davis, Ph. D.
Augusta F. McKusick
Date Approved/Accepted

**Documents Provided For the December 6, 2012
Meeting of the Orleans Board of Health**

Agenda Item 2 – Variance Request – 19 Surf Path

- 2 – 1 – Variance Application Form prepared by Ryder & Wilcox Engineering, Inc.
- 2 – 2 – Proposed On-Site Sewage Treatment and Disposal System plan dated October 30, 2012

Agenda Item 3 – Variance Request – 645 South Orleans Road

- 3 – 1 – Variance Application form prepared by Ryder & Wilcox Engineering, Inc.
- 3 – 2 – Excerpts from Title 5
- 3 – 3 – Septic System Information for 645 South Orleans Road
- 3 – 4 – Proposed Tight Tank plan dated November 20, 2012 by Ryder & Wilcox
- Exhibit 3 – 1 – First and Second Floor plans for 645 South Orleans Road

Agenda Item 4 – Variance Request – 16 Ridgewood Road

- 4 – 1 – Letter from Toabe and Riley dated November 28, 2012
- 4 – 2 – Letter from Toabe and Riley dated December 4, 2012
- 4 – 3 – Memo to File dated November 27, 2012 Calculation of Basement Bedrooms
- 4 – 4 – OHD letter to Richard M. and Mary J. Hatch dated August 3, 2012
- 4 – 5 – Orleans Assessors record for 16 Ridgewood Road

Agenda Item 5 – Discussion – Pleasant Bay Alliance

- 5 – 1 – Letter from the Pleasant Bay Alliance dated November 26, 2012
- 5 – 2 – Memo to File re: Bathing Beaches – Summary of Licensure dated December 4, 2012
- 5 – 3 – OBOH letter dated September 6, 2012 to the Mass. Bureau of Environmental Health

Agenda Item 6 – Approve Minutes

- 6 – 1 – OBOH Minutes of Meeting held on November 15, 2012

Agenda Item 7 – Review Correspondence / Old-New Business

- 7 – 1 – Draft Right to Farm By-Law, Town of Orleans, dated October 31, 2012
- 7 – 2 – RPS ASA Technical Review of the Massachusetts Estuary Project Nauset Harbor Embayment System Report for the Town of Orleans dated November 27, 2012
- 7 – 3 – MDEP letter dated November 13, 2012 re: Subsurface Sewage Disposal, 9 Main Street
- 7 – 4 – Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting Minutes Oct. 10, 2012
- 7 – 5 – VNA of Cape Cod FY2014 proposal for services for the Town of Orleans