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TOWN OF ORLEANS – BOARD OF HEALTH
MINUTES OF MEETING
January 20, 2022

The Orleans Board of Health convened this meeting on Thursday, January 20, 2022, as a fully remote meeting. Others could join the Board meeting via remote participation, with real-time public access provided by Orleans Channel 18 on the Town website and cable television.

Board of Health members present: Chairman, Mr. Joseph Hartung, Vice Chairman, Mr. John Smith, Clerk, Mr. Sims McGrath, Jr., Mr. John Kanaga, and Mr. Luke Chapman.

Also present: Health Agent, Ms. Alexandra Fitch

Mr. Hartung called this meeting of the Orleans Board of Health to order at 2:00 p.m. and explained the details of how to gain remote access to the meeting.

Agenda Item 1: Public and Press

There was nobody to speak during public comment.

Agenda Item 2: Variance Request – 10 Iyanough Road

John Kanaga recused himself for the agenda item.

The petitioner is requesting a variance for the Orleans requirement of a minimum setback distance of 100 feet from a wetland to a Soil Absorption System (SAS).

Bryan Weiner from Coastal Engineering on behalf of the petitioner, Joe Hoffman of the Hoffman Trust. The current septic system on the property is failing and an upgraded septic system has been proposed. Both the current (failing) system and the proposed system serve 3 bedrooms. The proposed SAS would be located within the 100-foot buffer of an isolated wetland, the proposed location is 51.7 feet from the wetland. The proposed SAS would be placed in close proximity to where the current failing SAS is located.

Ms. Fitch confirmed the information provided by Mr. Weiner and cited that the Orleans regulations for a SAS to have a setback of 100 feet from a wetland, whereas Title 5 only requires a 50-foot setback from a wetland. Therefore, the proposed system is compliant with Title 5 and only requires a variance for the Orleans regulation.

The proposed project was approved by Cape Cod Environmental Commission.

The Board commented that there is an equivalent level of environmental protection with the proposed system as there will be no change in flow and the proposed location is the same as the current location. There is no reserve area indicated with the proposed plan, as it is an upgraded system. The Board also commented that there were not other acceptable areas to install a new SAS based on current structures located on the property. Ms. Fitch confirmed that it is not required to include a reserve area, as there is no change in footprint to the existing dwelling and because the system is being upgraded.

On a motion by Mr. McGrath, and seconded by Mr. John Smith, the Board of Health voted to grant the requested variance. Without further discussion, the roll call vote was 4-0-0.

Agenda Item 3: Variance Request – 223 Beach Road

Mr. Chapman rejoined the meeting.

Mr. McGrath disclosed that he was previously a member of the appointing body for positions held by two of the people identified on the letter of application (Tom Daley and Nate Sears). Mr. McGrath clarified he is no longer holds appointment authority for those two positions and his current appointment is solely as a Board of Health member.

Also present: Tim Grace (project engineer representing Tighe & Bond), John McCoy (attorney representing The Nauset Beach Inn, an abutting business), Nate Sears (Natural Resources Manager), Thomas Daley (DPW and Natural Resources Director)

Mr. Grace explained that the 223 Beach Road parking lot project was approved by the Planning Department in 2021. The regulation that Tighe & Bond is seeking relief from is section 310 CMR 15.221-7 requiring that all components of a septic system are within 36 inches of the surface. The system itself is approximately 78 feet by 100 feet and has been designed in accordance with the MA DEP distribution requirements. Due to the significant grade change in the northeast corner of the site, the petitioner is requesting an additional 18 inches of depth between the top of the components and the finished grade to be able to maintain adequate cover for the components that will be located on the lower end of the system. The proposed system is located under a paved parking area, it will be fully vented with 4-inch PVC piping so no problems are anticipated with aeration in regards to the additional depth. The additional depth will also prevent heaving and settling that may occur due to the vehicular weights from the parking area.

Ms. Fitch confirmed that 223 Beach Road came before the Board of Health on May 20, 2021 for subsurface disposal and nutrient management variances, and that both variances were granted. The project is not considered new construction and is not considered to have an increase in flow, it is a voluntary upgrade to an existing system in response to anticipated issues with inevitable erosion. Ms. Fitch confirmed the Title 5 regulations that Mr. Grace referenced.

Mr. Daley was able to provide a shared screen view of the 223 Beach Rd property to confirm which section of the parking lot needs the variance.

Mr. McCoy confirmed that there was notice provided to his client as an abutter that this variance was being sought but stated that his client was never informed of the previous variances sought for the May 20, 2021 meeting. Mr. McCoy expressed concern that The Nauset Beach Inn might be negatively impacted by the ongoing project due to potential odors or it being unsightly. The Nauset Beach Inn has contacted an engineer to evaluate the proposed system and explain what potential impact the project will have, should it move forward. Mr. McCoy has requested that his client be provided time to fully evaluate what the impacts of the project will have on his business.

Mr. Daley explained the history of the septic system on the 223 Beach Road property to address the concerns expressed by Mr. McCoy. Mr. Daley explained that the purchase of 223 Beach Road by the Town of Orleans for the purpose of building a parking lot, and as part of the Nauset Beach Retreat Project, has been public knowledge since the purchase of the property over 10 years ago. The storms from 2018 that caused over 80 inches of erosion made evident that the project needed to be expedited. Mr. Daley confirmed that the current project is to move the SAS present under the current Nauset Beach parking lot to be under the parking lot at the top of the hill. Mr. Daley explained that, as part of the grant provided to fund the project, all abutters were notified for a public meeting February 7, 2021. Mr. Daley confirmed that ongoing construction is in relation to the parking lot only and that no work was being done in relation to the SAS pending the issuance of the variance and, subsequently the installation permit. In response to Mr. McCoy's concern regarding potential odor issues, Mr. Daley explained that odor issues are a result of a failing septic system, which is not occurring at the petitioning property.

Mr. Grace confirmed in response to a question from that Board that the remainder of the components (tank, distribution box) are all within 36 inches of grade and fully accessible. Mr. Grace also confirmed that there is less of a concern by increasing the depth of the SAS, but explained additional depth could increase problems with aeration. The proposed SAS plans have addressed potential aeration problems by providing numerous vents.

On a motion by Mr. McGrath and seconded by John Smith, the Board of Health voted to approve the requested variance. Without further discussion, the roll call vote was 5-0-0.

Agenda Item 4: Variance Request – 41 & 43 Nauset Road

Also Present: Nicholas Aguiar (civil engineer) of Ryder & Wilcox to represent property owner.

The petitioner is requesting a variance to §147-1 Fencing requirement that the pool fence be no greater than 20 feet from the pool apron. The proposed fence would be 45 feet from the pool apron at the furthest point. The installation of the pool will also incorporate a patio as well as meet existing fencing that encloses an outdoor shower and mechanicals. There is no access from the dwelling nor from the garage into the pool area. The pool fence gates would provide the sole access to the swimming pool. An automatic pool cover is proposed to be installed in conjunction with the pool. No existing obstacles or vegetation that would impede line of sight from the dwelling.

The Board reviewed the site plan and suggested that alarms are installed on the gates due to the potential limited visibility/line of sight from the sunroom/living room area of the dwelling.

The retaining walls on the west of the proposed pool area are to accommodate a 3-foot grade of the property. It will be investigated as to whether the height of the retaining wall requires a handrail. The pool fence is proposed to be 4 feet above the height of the retaining wall.

There are no abutters present.

On a motion by Mr. Smith and seconded by Mr. McGrath , the Board of Health voted to approve the variance of 25 feet with the conditions that the gates are alarmed and an automatic pool cover is installed. Without further discussion, the roll call vote was 5-0-0.

Agenda Item 5: Bedroom Determination – 33 Nauset Heights Road

Mr. Peter Prevedi called in to represent his property.

The petitioner has applied for a building permit to enclose an existing screened porch to repurpose it as a 3 season room. Mr. Prevedi confirmed that his intention for the room is to use it as a porch and for entertainment purposes.

Ms. Fitch explained that 33 Nauset Heights Road is an existing 5-bedroom dwelling on 22,988 sq ft of land. Ms. Fitch continued that the proposed room qualifies as a bedroom for septic design purposes, as it is isolated and habitable. According to the state code for habitable rooms, some (though not all) of the criteria taken into consideration include isolation, traffic patterns, minimum square footage, light and ventilation, electrical fixtures, weather tightness and ceiling height. If the room qualified as a sunroom, it would be excluded as a bedroom. The room does not qualify as a sunroom because it does not have the minimum 40% glazing as required. Initial glazing calculations submitted demonstrated 42% glazing, but these calculations did not include (as required) the ceiling space.

Mr. Prevedi confirmed that there is no closet in the proposed room, nor is there heat provided. He also stated that the proposed room would provide a critical exit from the house. Ms. Fitch confirmed that, according to state code, the two elements identified by Mr. Prevedi (closet, heat) are not required in order to designate a room as a bedroom. Mr. Prevedi commented that the property currently has four bedrooms and an attic, not the 5 bedrooms stated on file.

The Board inquired as to whether the proposed room would be weathertight, Mr. Prevedi confirmed it would be. The Board inquired if the petitioner would be amenable to a deed restriction on the property to maintain it as a 5-bedroom house, and Mr. Prevedi expressed his reasons for hesitancy. The Board also presented Mr. Prevedi of other design options to disqualify the room as a bedroom, such as installing more windows or to widen the opening into the proposed room.

On a motion by Mr. McGrath, the Board of Health voted to approve the variance provided that the owner files a deed restriction of 5 bedrooms, or that the Health Agent do a site visit to determine if the dwelling only has 4 bedrooms, in which case the deed restriction would not be required. There was further discussion that Mr. Prevedi agreed to a deed restriction limiting the use of the proposed room to that of a porch. The roll call vote was 5-0-0.

Agenda Item 6: Review Correspondence – Cumberland Farms Waiver Request

Mr. McGrath excused himself on account of another commitment.

A letter was received from an attorney on behalf of E.G. American, doing business as Cumberland Farms. The letter stated that due to supply chain shortages, the client anticipates difficulty obtaining single-use cups that comply with the Orleans General Bylaw, Chapter 96: Polystyrene Reduction.

Town Council was consulted in regard to the correspondence and the request for a waiver to the bylaw. The bylaw does not include any provisions relating to supply chain problems, nor have other businesses made similar requests. Town Council stated that, in extraordinary circumstances, the Board of Health can grant the Health Agent authority to not enforce the bylaw. If there truly is a shortage of materials, it will be felt by other businesses in town and Town Council would recommend to not enforce the bylaw on a town-wide

level. Town Council also stated that it would require a vote by the Board of Health and include parameters such as a definitive timeline.

The Health Department surveyed numerous businesses that would use large quantities of single-use cups and did not have any other reports of similar issues as that expressed on behalf of Cumberland Farms. The correspondence on behalf of Cumberland Farms did not state a specific timeline of when suppliers will again be able to meet demand.

The Board of Health confirmed that other businesses are not experiencing the same difficulties that have been expressed by Cumberland Farms. Considering that this obstacle is not being faced by other facilities, there are operational solutions for Cumberland Farms to maintain compliance. The Board of Health also confirmed that it is difficult to grant a waiver with the limited information supplied in the correspondence, as there was no representative present on behalf of the petitioner.

The Board of Health decided to deny the request for a waiver. The petitioner may request to come back to a later meeting to provide additional information that would support the need for a waiver.

Agenda Item 7: Health Agent's Report

Ms. Fitch introduced the newly hired Assistant Health Agent, Kelly Messier. Kelly has a Masters in Public Health from the University of New England, and brings a lot of experience with microbiology and the clinical laboratory setting.

Ms. Fitch continued to give an update on the pandemic. There are 35 active cases at the time of the meeting, bringing the total number throughout the pandemic to 688 cases. There are still some at-home test kits available at the Health Department. She reiterated that the at-home test kits should be used in cases of exposure or individuals that are symptomatic. Because of the limited number of test kits available, they should not be requested simply for residents to be able to store them for potential future use.

Ms. Fitch confirmed that the number of active cases in town is similar to that reported at the last meeting on January 6, 2022. This could be due to an increase of at-home test kits being used for diagnostic purposes, or if the number of cases truly has plateaued. The PCR testing is still offered by Barnstable County and is available on Tuesday mornings at the Orleans DPW.

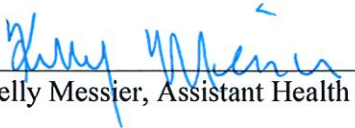
The last item to be addressed are temporary food permits for the Snow Library. The Snow Library has applied to have 39 events over the course of the year. The events will be similar to those hosted in the past, to include art reception events and children's events. They will be offering shelf-stable pre-packaged cookies, cakes and breads. All events will be indoors, and surfaces will be sanitized prior to the events. The food handlers will be wearing gloves and using tongs when necessary.

With a motion by Mr. Kanaga and seconded by Mr. Hartung, the Board of Health voted to approve the requested temporary food permits for the Snow Library events for the calendar year. Without further discussion, the roll call vote was 4-0-0.

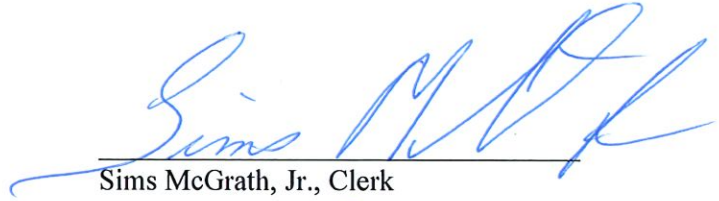
Agenda Item 8: Adjournment

On a motion by Mr. Hartung, the Board of Health voted to adjourn this meeting of the Orleans Board of Health at 3:30 p.m. Without further discussion, the roll call vote was 4-0-0.

Respectfully submitted,



Kelly Messier, Assistant Health Agent



Sims McGrath, Jr., Clerk



Date Approved/Accepted