

**TOWN OF ORLEANS – BOARD OF HEALTH**  
**MINUTES OF MEETING**

**March 16, 2023**

The Orleans Board of Health (BOH) convened this meeting in the Nauset Room of the Orleans Town Hall on Thursday, March 16, 2023. This was a hybrid meeting.

The Board of Health members present were: Chairman Joseph Hartung, Vice Chairman Mr. John Smith, and Mr. Luke Chapman. Board Clerk Mr. Sims McGrath and Mr. John Kanaga were unable to be present.

Also present were: Health Agent Alexandra Fitch; Andy Grove (Ryder & Wilcox), representing Benjamin and Robyn Slen of 4 Ripple Cove Circle; Timothy Mikula, owner of 32 John Kenrick Road; Abutter Robert Southwick, 14 John Kenrick Road; Nauset Farms owner Peter Gori; Tim Counihan, owner of 23 Herringbrook Way, and Select Board liaison Kevin Galligan.

Chairman Joseph Hartung called this meeting of the Orleans Board of Health (BOH) to order at 2:00 p.m. and explained how the public can participate in the meeting remotely or through real-time public access provided by Orleans Channel 18 on the Town website and local cable television.

**Agenda Item 1 - Public and Press.**

No one was present representing public or press.

**Agenda Item 2 –Variance Request – 4 Ripple Cove Circle.**

Andy Grove of Ryder & Wilcox was present to represent owners Benjamin and Robyn Slen, who requested a variance to Chapter 147 of the Code of Orleans which regulates the fencing around residential outdoor swimming pools. It states that the fencing be no more than 20 feet from the apron of the pool. The Slens have proposed erecting a swimming pool fence that will be 89 feet from the apron of the pool at its farthest point, which will require a 69 foot variance.

The bylaw states that

*every residential, outdoor swimming pool shall be totally enclosed by a fence or solid structure four (4) feet in height, firmly secured at ground level, with no opening, holes or spaces larger than four (4) inches in any direction. Such fence or structure, including gates therein, shall not be less than four (4) feet above finished grade, and any gate shall be made self-closing and be equipped with a self-closing safety latch placed at a minimum height of four (4) feet from ground level on the inside of the gate or otherwise made inaccessible from the outside of the gate. For the purpose of this paragraph, an exterior door of a dwelling house can be used in lieu of a gate when such dwelling house is used to satisfy, in whole or in part, the enclosure requirements of this bylaw. Each swimming pool fence enclosure, as defined above, shall be placed at a distance no greater than twenty (20) feet from the apron of the pool.*

The Board of Health is empowered to grant variances to this provision after a public hearing and a determination by the Board that the public health and safety can be protected without strict adherence to the provisions of the bylaw.

Mr. Grover read his letter to the Board which specified the plans for the pool area and addressed the Board's questions, assuring that:

- all three doors from the dwelling or garage that enter the pool area will have alarms;
- the two gates will be self-latching and alarmed, and
- there are clear site lines from the interior of the house with no vegetation to obstruct the views.

His letter also stated that there will be a retractable automatic pool cover installed.

There were no abutters present.

**On a motion by Mr. Smith and seconded by Mr. Hartung, in the matter of the proposed pool at 4 Ripple Cove Circle, the Board of Health voted to approve the variance to Orleans Town Code 147-1 because there will be self-closing, alarmed safety latches on all gates; all doorways and gates to the pool area will be alarmed, and there will be an automatic retractable pool cover. As proposed this protection is equivalent to that provided under the Town Code, so please allow for the variance of 69 feet, where 20 is required, 89 + from the pool's apron. There being no further discussion, the roll call vote was 3-0-0.**

**Agenda Item 3 – Variance Request - 32 John Kenrick Road.**

(For the record, Mr. Hartung stated that he was once involved in a transaction at this property, that the proponent was not his client, that this was not discussed at the time of the property transfer, and that this was brand new to him today.)

Timothy Mikula, owner of 32 John Kenrick Road was present, requesting a variance to Chapter 147-1 of the Code of Orleans which regulates the fencing around residential outdoor swimming pools. It states that the fencing be no more than 20 feet from the apron of the pool. To account for an existing boulder wall, the Mikulas have proposed erecting a swimming pool fence that will be 35 feet from the apron of the pool at its farthest point, which will require a 15-foot variance.

The bylaw states that

*every residential, outdoor swimming pool shall be totally enclosed by a fence or solid structure four (4) feet in height, firmly secured at ground level, with no opening, holes or spaces larger than four (4) inches in any direction. Such fence or structure, including gates therein, shall not be less than four (4) feet above finished grade, and any gate shall be made self-closing and be equipped with a self-closing safety latch placed at a minimum height of four (4) feet from ground level on the inside of the gate or otherwise made inaccessible from the outside of the gate. For the purpose of this paragraph, an exterior door of a dwelling house can be used in lieu of a gate when such dwelling house is used to satisfy, in whole or in part, the enclosure requirements of this bylaw. Each swimming pool fence enclosure, as defined above, shall be placed at a distance no greater than twenty (20) feet from the apron of the pool.*

The Board of Health is empowered to grant variances to this provision after a public hearing and a determination by the Board that the public health and safety can be protected without strict adherence to the provisions of the bylaw.

Mr. Smith and Mr. Hartung had concerns about the fence possibly snaking up over the rock wall, but Mr. Mikula assured him the rock area will be *inside* the fencing. He also assured the Board that there are no doors from the house to the pool area, and that the two gates, located from the patio behind the house and on a leg of the fence parallel to the house, will be alarmed and have self-closing latches. He also stated that there are five windows looking out onto the pool from the house and there are no obstructions to block the view. There will also be an automatic pool cover.

It was noted that although this is an exercise pool for the owner's personal use, it still would be considered an "attractive nuisance" and fall under the same regulations as any other pool.

Abutter Robert Southwick, 14 John Kenrick Road, stated that he has no problem with his neighbor's variance request.

**On a motion by Mr. Smith and seconded by Mr. Hartung, in the matter of the proposed pool fence variance at 32 John Kenrick Road, the BOH voted to approve a variance of 15 feet where 20 feet is required with the provisos that all gates going into the pool area are hard wired and alarmed and that there be an automatic pool cover. There being no further discussion, the roll call vote was 3-0-0.**

**Agenda Item 4 – Variance Request – 199 Main Street.**

**(Please refer to Agenda Item #6 below– Food Service Establishment Permit Application Approval for Nauset Farms, which was voted on out of order before Agenda Item 4, in order to address the food permit before the variance request.)**

Local food establishment Nauset Farms' new owner Peter Gori has applied for two variances that were granted to the previous owner in 2013. The variances to the Federal Food Code (105CMP 590.0060101.1 590.0060101.2) will allow Nauset Farms to continue to operate its bakery on the second floor, which has a unique construction. (The "historical" ceiling includes exposed wooden beams, odd angles, and extreme heights that are not all easily accessible.) However, Mr. Gori stated, and Ms. Fitch verified, that since purchasing the store he has completed a deep cleaning and also made some improvements to the food prep area.

The relevant paragraphs from the 2013 Federal Food Code are:

**6-101.11 Surface Characteristics.**

(A) materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

- (1)SMOOTH, durable, and EASILY CLEANABLE for areas where FOOD ESTABLISHMENT operations are conducted.

**6-201.11 Floors, Walls, and Ceilings.**

Floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are SMOOTH and EASILY CLEANABLE.

Section **8-103 Variances** states in part that

“The REGULATORY AUTHORITY may grant a VARIANCE by modifying or waiving the requirements of this Code if in the opinion of the REGULATORY AUTHORITY a health HAZARD or nuisance will not result from the VARIANCE.”

Since Nauset Farms will not be hooking up to sewers until Phase 2, there was a question about grease traps. Mr. Gori stated that they do have two grease traps—one interior and one exterior.

There were no abutters present.

**On a motion by Mr. Hartung and seconded by Mr. Smith, in the matter of Nauset Farms, the BOH voted to approve the two variances as requested. There being no further discussion, the roll call vote was 3-0-0.**

**Agenda Item 5 – Approval Request – 23 Herringbrook Way.**

Tim Counihan, owner of 23 Herringbrook Way was present to discuss the property’s I/A septic system, and the testing requirements. The property is a three- bedroom dwelling on 16,117 SF of land.

The existing septic system was proposed in 2011. At that time, their engineer came before the Board to propose an I/A system, which, with approval, would allow for a two-foot reduction in the distance to groundwater. When test holes and a perc test were done at the property they recorded a perc rate of less than 7 minutes per inch. Title 5 states the following:

**310 CMR 15.212: Depth to Groundwater**

- (1) The minimum vertical separation distance between the bottom of the stone underlying the soil absorption system above the high ground-water elevation shall be
  - (a) four feet in soils with a recorded percolation rate of more than two minutes per inch;
  - (b) five feet in soils with a recorded percolation rate of two minutes or less per inch.

The existing system was approved without a raised leach field and with a reduction in depth to groundwater because they proposed to install an I/A septic system in order to reduce the impact on public health and the environment. The conditions of approval included quarterly testing of effluent. Total nitrogen was not to exceed 19ppm.

The technology is an Orenco Advantex AX20. At the time the Orenco Advantex AX20 was installed it was considered remedial use but has since been accepted for general use by MA Department of Environmental Protection (DEP). The DEP has reduced its testing requirement for general use to be quarterly for the first year, at least twice per year in subsequent years (with one of them between March 1 and December 1 each year).

Certification of General Use from the DEP states that the System is approved for use at facilities with a maximum design flow of less than 2,000 GPD and shall meet or exceed the following effluent discharge requirements:

- Effluent Total Nitrogen (TN) concentration of 19mg/L (for 660 gallons per day per acre (gpda) loading) or 25 mg/L (for 550 gpda loading).
- Effluent PH range shall be 6.0 to 9.0

#### GENERAL USE

Through broad field use in Massachusetts or other states, alternative systems with Certification for General Use will provide a level of environmental protection at least equivalent to that of a conventional on-site system designed in accordance with 310 CMR 15.000 through 15.296. These systems can be used anywhere a conventional Title 5 system can be installed. The system owner is required to have inspection and testing performed as required by the approval on a regular schedule. All alternatives in other categories of approval could eventually be certified for General Use. Contact the manufacturer for schematics of these I/A technologies.

#### REMEDIAL USE

Remedial Use-approved alternative technologies are used to improve existing conditions at a particular facility or facilities served by a failed, failing or nonconforming system. The alternative system shall have evidence of effective past performance for at least one year of general usage in another state and will provide a level of environmental protection at least of a system designed in accordance with 310 CMR 15.100 through 15.293. The alternative can be used where there is no increase in design flow at the facility. The system owner is required to have inspection and testing performed as required by the approval on a regular schedule. These systems can only be installed on remedial sites to replace a failed system. Contact the manufacturer for schematics of these I/A technologies.

The property has shown consistently higher effluent TN than normal (greater than 100mg/L) so the Board would like to see an answer as to why – perhaps from the current company, Bennett).

There were no abutters present.

**On a motion by Mr. Smith and seconded by Mr. Hartung, in the matter of 23 Herringbrook Way I/A system sampling requirements, the Board of Health voted to amend the conditions of the original approval to sampling twice a year with at least a five-month period in between, for the next two years, and if there is a better reading, the owner can return and request another variance. With no further discussion, the roll call vote was 3-0-0.**

#### Agenda Item 6 – Administrative.

- Title 5 Inspection Report Waiver Request  
24 Blueberry Island Road.

The Health Department received a waiver request for the Title 5 Inspection report for 24 Blueberry Island Road. The inspector was not able to observe the tank outlet because the cover is

under a concrete walkway. A mirror and water test were used to verify the system is working properly and it is the opinion of the inspector that the system is working as designed.

**On a motion by Mr. Hartung and seconded by Mr. Chapman, in the matter of 24 Blueberry Island Road, the BOH voted to approve the Title 5 Inspection Report Waiver request. There being no further discussion, the roll call vote was 3-0-0.**

- Food Service Establishment Permit Application Approval for Nauset Farms.  
Local business Nauset Farms is under new ownership, at which point a new food service establishment permit needs to be applied for. The new application does not propose anything different – the owner, Peter Gori, has applied for food service and retail food permits. He has been in communication with the Health Department and met with them twice and is in the process of submitting all relevant paperwork. The HD has completed one walk-through. Ms. Fitch asked that if the Board approves the permits, that approval be pending upon a final walk through with the Health Department.

**On a motion by Mr. Hartung and seconded by Mr. Smith, in the matter of the Nauset Farms Food Service Establishment Permit Applications, the Board of Health voted to approve both the food service and retail food permits pending a second walk-through by the Orleans Health Department. There being no further discussion, the roll call vote was 3-0-0.**

#### **Agenda Item 7 – Health Agent’s Report.**

- Update on Sewer Connection Order Letters  
931 Phase 1 sewer connection order letters were sent out certified mail last week. The list of recipients included single family homes, condominium owners and businesses. In a meeting with Town counsel and the Department of Public Works (DPW) a few days before, the Health Department (HD) decided to send the letters out certified, no return receipt. The post office called it a “historic day” and said they had never seen this many certified letters, ever. Due to the volume of certified letters, the post office is processing and delivering them in waves. The Health Department has been fielding a lot of phone calls, as have some local engineering firms. Ms. Fitch reassured the Board that the plan is for the sewer hookup and abandonment of septic on a property will be done on the same day, so that there will be as little disruption to owners as possible.
- Update on Above Ground Fuel and Chemical Storage Tank (AGFST) Fines.  
Since the last Board of Health meeting, the Health Department has issued two fines to properties not compliant with the AGFST regulation. To accommodate the post office, the first batch was mailed to 47 recipients on March 3, and the second went out on Monday, March 13 to 33 owners. As of this date, there are 26 non-compliant properties left on the list, whose letters will be sent out on Monday, March 20. The next letter for those who are not compliant will be sent out April 3<sup>rd</sup>, with a fine of \$1,000. The discussion will continue at the April 6<sup>th</sup> BOH meeting. The HD is trying to be fair and aware of different owner circumstances, and the Fire Department has been reaching out as well. Owners contesting the fines may do so before the Clerk Magistrate.

**On a motion by Mr. Smith and seconded by Mr. Hartung, in the matter of the the Above Ground Fuel and Chemical Storage Tank Letters and Fines, the Board of Health voted to approve the schedule as discussed, i.e. those 26 non-compliant owners will be sent letters on March 26, with those remaining non-compliant on April 3<sup>rd</sup> being sent letters with a fine of \$1,000, with the issue of further fines to be taken up at the April 6 BOH meeting. There being no further discussion, the roll call vote was 3-0-0.**


- Update on Rental Registration Bylaw  
The rental registration topic was briefly discussed around the time of Special Town meeting in October, and a warrant article did not get approved. The Select Board is discussing a new approach and Ms. Fitch has been involved in a few meetings. Right now all that is being proposed is a very basic registration program that would not involve the Board of Health yet. The goal would be to work towards a more comprehensive program in the future.

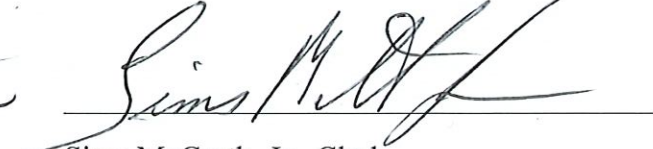
Mr. Galligan stated that Town Council brought forward a simple residential rental registration form which would deal with the health and safety of occupants, i.e. number of bedrooms, smoke and fire alarms, and would be filled out every year by every rental property owner, including residential. This will be brought up at the Spring Town Meeting. Compliance will rest with Fire Chief or Deputy. At this point, this is mainly an opportunity to build a database.

Mr. Chapman made three points: 1) the town needs to be thoughtful about how this is set up, and how the money is spent on the database; 2) before any work is done, it is important to identify, with clarity and honesty, the problem to solve and exactly why this needs to be put forth; and 3) through taxes, rental properties support infrastructure and renters contribute to the success of local businesses. Mr. Galligan, duly noting Mr. Chapman's comments, then stated that at this point the primary purpose is to collect data and to confirm that rental property owners are looking out for their tenants. A secondary benefit is the matching of the data with state tax data.

**Agenda Item 8 – Adjournment.**

**On a motion by Mr. Smith and seconded by Mr. Hartung, the Board of Health voted to adjourn this meeting of the Orleans Board of Health at 3:15 p.m. Without further discussion, the roll call vote was 3-0-0.**

Respectfully submitted,  
  
\_\_\_\_\_  
Valerie Petersen, Board Secretary

  
\_\_\_\_\_  
Sims McGrath, Jr., Clerk

November 2, 2023

Date Approved/Accepted

